



AT WHAT COST?

**The Human, Economic and Strategic Cost of Australia's
Asylum Seeker Policies and the Alternatives**

Cover photo: Photo of asylum seekers at Nauru RPC (supplied, along with other images of children in this report, by Free the Children Nauru (see Facebook: Free the Children Nauru)).

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I. EXECUTIVE SUMMARY

This report explores the human, economic and strategic cost of Australia's current policies which seek to deter asylum seekers from migrating to Australia by sea. It examines the impact of these policies in a domestic, regional and global setting, taking into account the unprecedented scale of global forced migration at present and the limited range of options currently available to those in the region with protection needs. It provides a set of alternatives which would bring an end to the harm that is being done and ensure the protection of a much greater number of refugees in the region.

The challenge of forced migration across the globe and in the region

Figures released by the United Nations High Commissioner for Refugees (UNHCR) in June 2016 reveal global forced migration on a scale never seen before – more than 65 million forced migrants globally, with children representing about half of the refugees under the UNHCR's mandate.¹ Numerous protracted conflicts around the world are driving up the number of forcibly displaced people, with the availability of durable solutions not keeping pace, leaving a growing number of people in protracted periods of limbo and often with inadequate protection and support.² In 2015, only 107,100 refugees were able to access resettlement places globally, leaving the vast majority of the world's 21 million refugees with little prospect of resettlement in a safe country.³

In the Asia Pacific region, the number of internationally displaced persons sits at approximately 3.8 million.⁴ According to UNHCR figures, the number of refugees and asylum seekers in Thailand, Indonesia and Malaysia appears to have increased by more than 35 percent over the last three years.⁵ Those who cannot access resettlement face a precarious existence and uncertain futures in transit or host countries which are typically unable or unwilling to offer durable and effective protection to all who require it.

The scale of global forced displacement is challenging policymakers across the globe. The need to offer protection and dignity to a dramatically increased number of people, combined with concerns about deaths at sea and border protection, create an extremely complex policy area presenting challenges that do not have straightforward solutions.

Australia's policies of deterrence

Following an increasing number of asylum seekers reaching Australia via irregular maritime migration in 2012 and 2013 and an increase in the instances of asylum seekers drowning at sea,⁶ successive Australian governments made significant changes to asylum seeker policies. These all shared a primary objective of deterring people from seeking asylum in Australia through irregular maritime migration.

While recognising that there are other policy settings that also add to the policy framework of 'deterrence' (such as the reintroduction of temporary protection visas), this report focuses on the following key policy settings which we believe establish the core architecture of Australia's approach to asylum seekers who seek to arrive by boat:

- the mandatory and indefinite detention of asylum seekers who arrive by sea both onshore and offshore, a practice which while technically dormant in offshore processing, remains permissible under the laws of Australia
- the current system of offshore or 'regional' processing in Nauru and Papua New Guinea (PNG) and the policy that those who seek to arrive by sea will never be permitted to settle in Australia
- the practice of naval interceptions or boat turn-backs pursuant to which asylum seekers are repelled from Australia's maritime borders

- the closure of regular resettlement channels from Indonesia for certain groups of refugees, and
- those measures which seek to avoid transparency and accountability in relation to the practical implementation of these policies and thus conceal the true 'cost' of these policies from the Australian public.

The impact of these policies is examined in the context of the unprecedented scale of global forced migration. It is further considered in light of the scale of Australia's annual humanitarian intake, which currently restricts the number of places for humanitarian migrants to enter Australia through government-sanctioned pathways to 13,750 people per annum.⁷

The real costs concealed

Successive Labor and Coalition governments have sought to justify deterrence measures as 'necessary' while acknowledging that they are also 'harsh' and 'cruel' in the way that they impact upon the individuals caught within the net of mandatory detention and offshore processing.⁸ The general consensus of international law experts is that many aspects of Australia's policies are contrary to international law, or lead to unjustifiable violations of basic human rights.⁹

By adopting policies of operational secrecy, by criminalising the disclosure of human rights violations by whistleblowers, and by refusing to engage in open discussions in relation to alternative policy approaches, the Government has not equipped the Australian public with sufficient information to assess whether these policies are necessary or appropriate, nor to understand the true quantum of the human, economic and strategic costs they entail.

Over the last three years, numerous organisations and independent experts have criticised many aspects of Australia's asylum seeker policies. However, much of the commentary in relation to the human cost of these policies has focused on a single issue or a limited range of impacts and often relies heavily on individual anecdotes to question the appropriateness of Australia's policies.

There have also been few attempts at comprehensive analysis or comparison of the economic cost of Australia's asylum seeker and refugee policies. This is partly due to issues of operational secrecy, which limits the public availability of information and impedes the work of non-government economists in undertaking detailed modelling based on known facts and practices. It is also because the relevant policy frameworks typically draw on multi-agency efforts and cut across programs with varying objectives, making it very difficult to isolate the cost of those specific policy elements.¹⁰

The need for further analysis

UNICEF Australia and Save the Children Australia (Save the Children) believe that, in order to fully understand and evaluate these policies, it is important that they be examined from a broader standpoint, taking into account a wider range of human, economic and strategic considerations in a regional and global context.

Accordingly, Save the Children and UNICEF Australia have cooperated to produce this report which examines the human, economic and strategic costs of Australia's current deterrence policies. The report has a particular focus on the experience of children in Australia, Nauru and the broader Asia Pacific region. This is partly due to the child-focused agenda of our respective organisations, but also based on our view that the impact of the harsh aspects of Australia's policies is experienced most acutely by children, who face additional risks and amplified harms by virtue of their age, needs and vulnerabilities.

Given the focus on the experience of children, this report does not examine in detail the experiences of those transferred to Manus Island in PNG, other than to observe that many are fathers who remain separated from their children by virtue of current policy settings, including some with children residing in Australia.

The human cost

This report explores the ways in which children who have found themselves within the net of Australia's domestic and offshore processing systems face a wide range of harms, risks and deprivations including the trauma of mandatory and indefinite detention, the hopelessness and anxiety of a life-in limbo and many other serious and well-documented harms. By examining the particular experiences of children and families transferred to Nauru, this report reveals that the rights and wellbeing of people transferred to Nauru are being sacrificed to the goal of deterrence. They are subjected to the consequences of an incomplete policy which has up until now failed to identify permanent solutions for those sent there for refugee 'processing'.

Children who have been repelled from Australia's jurisdiction by boat turn-backs have potentially been exposed to further dangers at sea, returned to harm in countries from which they fled, or returned to circumstances that do not provide effective protection or a sustainable and dignified existence.

Children who are 'trapped in transit' in Indonesia (which may number as many as 7,000)¹¹ have been unable to access safe pathways to protection, along with those in other countries in the region who have been deterred from attempting to reach Australia. These children face the risk on-going danger, persecution, discrimination and other serious harms and challenges while remaining in their home countries or countries of first asylum or transit.

The human cost

Children and their families who have sought Australia's protection; have been repelled by Australia's deterrence policies; or have been deterred from seeking Australia's protection, have been exposed to the following potential dangers and harms:

- the anxiety and despair of a life-in-limbo
- prolonged exposure to detention and detention-like conditions
- deterioration in mental health leading to despair and self-harm
- impaired childhood development
- exposure to violence, abuse and exploitation
- indefinite family separation
- impaired access to appropriate education and healthcare
- incapacitation of parents and family break-down
- social isolation, negative stereotyping and discrimination
- in the case of families transferred to Nauru, increased instances of babies born stateless
- in the case of families transferred to Nauru, impaired enjoyment of cultural rights and identity
- potential injuries or deaths at sea following turn-backs
- potential return to harm in countries of persecution following turn-backs
- the risks of undertaking dangerous journeys to other countries
- lack of protected legal status in many host or transit countries
- lack of access to livelihoods and basic necessities in host or transit countries
- the risk of remaining in host or transit countries in conditions that do not provide effective protection or sustainable protection
- the risk of remaining in countries of persecution, including death, torture or other serious harm

The economic cost

The cost of such human suffering can be understood and described but never reduced to a single statistic or quantitative measure. However, the economic cost of Australia's policies can be quantified and, to the extent that such information is available, reveals that Australia has spent, and is likely to continue spending, extraordinarily large sums in implementing these policies.

Our analysis reveals that financial costs of at least \$9.6 billion were incurred by Australian taxpayers between 2013 and 2016 in maintaining offshore processing, onshore mandatory detention and boat turn-backs. Offshore processing alone is estimated to cost over \$400,000 per person, per year.

POLICY SETTING	ECONOMIC COST (2013-2016)
Offshore processing in Nauru and PNG (see part 5.1)	At least \$3.6 billion
Mandatory immigration detention (onshore) (see part 5.2)	\$5.6 billion
Boat turn-backs (see part 5.3)	At least \$295 million
Other programs (see part 5.4)	\$112 million
Total	\$9.6 billion

However, the true financial cost is likely to be much greater. In addition to the \$9.6 billion in costs outlined above, there are numerous categories of additional expenditure incurred by the Australian Government in order to maintain, interrogate and defend the current approach. These additional costs include numerous reviews and inquiries conducted by the Senate, Australian Human Rights Commission (AHRC), and other government appointees or agencies; the cost of defending extensive litigation challenging Australia's laws; and potential compensation payments to government employees or contractors who have suffered adverse impacts as a result of their work at the frontline of Australia's deterrence policies.

In combination, the opacity of the true human and economic costs of Australia's policies mean that Australia's tax payers and voters are being asked to judge the merits of a policy response, without having all the facts on the table. Therefore, the case to increase the transparency of these arrangements is both urgent and compelling.

The strategic costs

In addition to these human and economic costs, these policies present significant risk to Australia's international reputation and strategic interests both within the region and globally, and are likely to hamper, rather than aid, in the creation of more sustainable systems of responsibility-sharing and cooperation in the region.

Strategic costs

These include:

- damage to Australia's global reputation as a rights-respecting country
- adverse impact on Australia's candidacy for UN Human Rights Council seat
- impaired ability to influence global human rights issues (eg the global abolition of the death penalty)
- impaired ability to influence regional respect for human rights
- impaired ability to influence regional respect for international law generally, including potential adverse impacts on regional peace and security
- impaired ability to contribute to progressive refugee solutions through regional forums
- reduced incentive for other regional countries to adopt the Refugee Convention¹² and related resettlement programs
- strain on bilateral relationship with Indonesia and other bilateral relationships in the region
- adverse impacts on effectiveness of foreign aid and investments in PNG and Nauru
- strain on relationships with other traditional aid recipients now deprioritised

The justification

Australia's policies of deterrence have in part been justified by reference to the desire to ensure that would-be asylum seekers are not exposed to the risk of drowning at sea in the course of attempting to travel to Australia by boat. While both UNICEF Australia and Save the Children fully support the aim of preserving lives at sea, this justification does not address the question of what happens to the individuals who are repelled and returned from Australia's jurisdiction. There is no evidence to suggest that these individuals are any safer as a result of these policies or that their protection needs are resolved by Australia's decision to disregard them. To the contrary, the evidence suggests that the scale and seriousness of the need in the region is increasing¹³ and therefore Australia's repulsion of these people, without additional protective measures, is likely to be contributing to, rather than alleviating, the desperation of those who require protection in the region.

The evidence examined in this report demonstrates that Australia's approach is failing to adequately respond to the basic needs of people who, but for our harsh deterrence policies, might otherwise have sought our protection. For those people, the evidence suggests that current policies effectively result in asylum seekers being left to a very uncertain fate which may include perilous journeys to other parts of the world, or lives lived in constant danger, fear and uncertainty in countries of first asylum, transit or host countries. These countries are typically developing states which allow asylum seekers to enter (or are unable to prevent them from doing so) but which are unable or unwilling to offer effective protection or durable solutions. Let us not forget that the vast majority of asylum seekers who have sought Australia's protection in the past have typically been found to be refugees entitled to protection under international law.¹⁴

In short, Australia's policy response to the challenge of forced migration can be seen as an incomplete policy response, aspects of which are driven more by political considerations than any desire to find a sustainable and humane approach that reflects Australia's legal and moral obligations as a rights-respecting member of the international community.

The future costs of Australia's policies

The report highlights the human, economic and strategic costs that Australia will continue to bear or inflict if these policies are allowed to continue. These include:

- **ongoing harm, or risk of harm, to children in Australia and Nauru including:**
 - risk of indefinite immigration detention onshore or offshore
 - more mental health disorders and incidents of self-harm, voluntary starvation and suicide attempts among children
 - more incidents of children exposed to violence and abuse, including sexual assault
 - an increasing number of children with parents who are too unwell to care for them
 - ongoing indefinite separation of some children from their parents in other countries
 - ongoing lack of access to safe and appropriate education
 - ongoing lack of access to appropriate and timely medical care
 - more babies being born in Nauru stateless, without any access to a nationality
- **ongoing neglect of tens of thousands of refugee and asylum seeker children in the region repelled, deterred or ignored by our policies including:**
 - ongoing risk of detention and deportation (including possible refoulement)
 - ongoing risk of violence and abuse, including risk of trafficking and exploitation
 - risk of deterioration of mental health, self-harm and suicide
 - risk of extreme poverty and related lack of access to adequate healthcare, shelter and nutrition
 - ongoing challenges in accessing education
 - prolonged displacement without effective protection
 - ongoing separation from family and lack of provision for unaccompanied children
 - risk of attempting dangerous journeys to destinations other than Australia
 - risk of not fleeing persecution
- **ongoing costs of up to \$5.7 billion over the next four years in continuing offshore processing, onshore mandatory detention and boat turn-backs**
- **ongoing damage or potential damage to Australia's international reputation and strategic interests at global, regional and bilateral levels including:**
 - impaired access to positions of global influence, such as the UN Human Rights Council
 - impaired global reputation and influence in relation to human rights issues, including on strategic priorities such as the global abolition of the death penalty
 - impaired regional reputation and influence in relation to human rights issues and respect for international law
 - impaired bilateral relationships with Indonesia and others in the region
 - reduced foreign aid effectiveness

A pathway forward – expanding protection and reducing harm

In light of the findings in this report, it is untenable for the Australian Government to claim that Australia is a constructive global leader or player in this policy area. In the absence of effective regional refugee protection and support, policies which simply seek to repel or deter asylum seekers who travel by sea do not address the greater problem of forced displacement in the region.

The Government must consider options to change course and embrace greater regional cooperation in the area of refugee protection and provide hope to the children and adults who Australia has chosen to abandon to these punitive policies. This would enable Australia to phase out boat turn-backs and restore its global credibility in the area of human rights as well as its regional standing and bilateral relationships where those have been harmed by these policies.

It has long been recognised in the Australian policy debate concerning irregular migration that 'the only viable way forward is one that shifts the balance of risk and incentive in favour of regular migration pathways and established international protections and against high-risk maritime migration.'¹⁵ Save the Children and UNICEF Australia believe that this shift can and should be achieved through investing in measures which increase the protection of refugees and asylum seekers in Australia and in the region, rather than by harsh deterrent policies which cause significant harm to those fleeing persecution. By doing so, Australia can not only ensure the protection of a much greater number of refugees but also ensure that its humanitarian migration spending works to enhance, rather than erode, Australia's strategic interests in bilateral, regional and global settings.

In this report UNICEF Australia and Save the Children propose a suite of enhanced protective measures in order to achieve the objectives of resolving the predicament of those transferred to Nauru and PNG and ensuring safe, orderly and sustainable protection pathways for a much greater number of refugees in the region than the number currently allowed to enter Australia. Our proposed approach would make more efficient use of Australia's resources in this area and is likely to enhance, rather than damage, Australia's strategic interests internationally. It also aligns strongly with the recent statement issued by Paris Aristotle, who has advised successive governments on refugee policy and was one of the members of the 2012 Expert Panel on Asylum Seekers which recommended a suite of policies aimed at creating a 'comprehensive regional network'.¹⁶

These recommendations have been devised to work hand-in-hand with one another to achieve these objectives and should be considered as a system rather than as stand-alone proposals.

Recommendations to the Australian Government for immediate implementation (0 to 6 months)

1. Publicly affirm that Australia is committed to (i) honouring the letter and spirit of the Refugee Convention, and (ii) the equitable sharing between states of the responsibility for responding to the challenges posed by global forced displacement.
2. Publicly commit to a plan, with timelines, for resettlement¹⁷ of those refugees currently in Nauru and Manus Island in an appropriate country, in compliance with international law and human rights standards.
3. Legislate against the immigration detention of children and invest in and expand child-friendly alternatives to detention.
4. Revoke the ban on resettlement of refugees who arrived in Indonesia after 1 July 2014 and normalise resettlement flows between Indonesia and Australia.
5. Commit to increase the transparency surrounding the true fiscal cost of maintaining Australia's approach to asylum seeker and refugee policy, commencing with a full audit of public expenditure from 2013 by the Australian National Audit Office.

Recommendations for medium term implementation (6 months to 3 years)

6. Increase humanitarian intake to 30,000 by 2018/2019 with flexibility to accommodate spikes in regional or global refugee numbers.
7. Demonstrate leadership by proactively supporting the establishment of a regional protection framework for asylum seekers and refugees in South East Asia, through re-energised engagement with new or existing multilateral forums.
8. Phase out boat turn-backs and reallocate spending from offshore processing in Nauru and PNG towards regional search and rescue operations linked with regional protection services and systems.
9. Adopt measures to improve the access of asylum seekers to non-humanitarian migration streams.

These recommendations, explained in more detail in part 7, are proposed as a broad conceptual framework which form the foundations of a set of sustainable domestic policy responses to the challenge of forced migration in the region – one which would ensure that more people are protected and less harm is done by Australian engagement on this issue. Much more work is required, however, to determine the details of these alternative policy proposals. Clearly, to the extent that our alternative policy proposals have regional implications, this policy framework would require Australia to work in close collaboration with its neighbours in the region and further develop and refine its own role in response to the needs and concerns of its neighbours.

As a precursor to such regional engagement, we encourage the Government to host a domestic consultation process during 2016 with relevant mandates and appropriate expertise. This consultation should provide a forum by which the Government can join with civil society and NGO groups, migration experts and multilateral organisations to develop a broad vision for Australia's future policies and regional engagement in this area. The concepts developed through such a consultation would then inform the measures that Australia can propose in multilateral discussions, whether such discussions take place within newly created or existing regional forums such as the Association of Southeast Asian Nations (ASEAN), the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) or the Jakarta Declaration on Addressing Irregular Movement of Persons (Jakarta Declaration).

2. BACKGROUND AND INTRODUCTION

2.1 Australia's current approach

UNICEF Australia and Save the Children acknowledge the complexity involved in balancing the need to act humanely and in accordance with international obligations to protect asylum seekers, and the need to be mindful in doing so not to incentivise travel by dangerous maritime voyages.

The scale of global forced displacement is challenging policymakers not only in Australia, but across the globe. It is a complex policy area, presenting challenges that do not have straightforward solutions. The challenge posed is resistant to quick, easy or full resolution. This is compounded by disagreement as to root causes, contributing or influencing factors, and measures to address the challenges posed.

As a result, the task faced by those formulating policy or providing policy advice to address complex problems is to reassess traditional ways of working and problem-solving, while maintaining coordinated action through Government and relevant civil society actors.¹⁸

Australia is a party to the Refugee Convention and as such is bound by its core obligation of 'non-refoulement' (ie the duty to not return a refugee to a place where he or she has reason to fear persecution).¹⁹ In recent decades, Australia has had one of the more generous voluntary resettlement programmes for refugees in the world both in per capita terms and overall numbers.²⁰

However, Australia's current response to asylum seekers who seek to enter through irregular pathways shows no such generosity. These policies have been borne out of the increasing scale of inbound irregular migration over the last two decades. In comparison with the global figures, however, the numbers of asylum seekers and refugees attempting to come to Australia by sea have been relatively small, even at higher levels of 2011-2013, when an estimated 33,000 asylum seekers sought protection in Australia.²¹ In contrast, UNHCR figures reveal that during the first 8 months of 2016 an estimated 271,876 people arrived by sea in Italy, Greece and Spain.²²

As a result of increasing numbers of asylum seekers reaching Australia in 2012 and 2013 and an increase in asylum seekers drowning at sea, successive governments made significant changes to asylum seeker policies.²³ In combination, the measures enacted by the former Labor Government and the current Coalition Government have sought to stop people arriving by sea through deterrence (ie mandatory and prolonged immigration detention, offshore processing, no resettlement in Australia and limited temporary protection) and a focus on border protection (ie turning back boats and other activities designed to disrupt irregular migration by boat).

These measures were accompanied by a commitment to increase Australia's humanitarian intake to 20,000 places under Labor.²⁴ In the lead up to the 2013 election, the Coalition also committed to this increase but later reduced its commitment to the current 13,750 places per annum,²⁵ with an increase to 16,250 in 2016-17 and 18,750 in 2018-19.²⁶ These commitments to increase Australia's humanitarian intake were previously complemented by a temporary investment in programmes that would reduce risky travel by boat, via a 'Displaced Persons Programme' to promote the stability of displaced persons through service provision in social protection, accommodation, food, livelihoods and vocational training and education. Investment was made in 2012-2013 in both migrant 'source' and 'transit' countries including Pakistan, Afghanistan, Indonesia, Syria, Lebanon, Jordan, Turkey, Iran, Bangladesh, Malaysia, Sri Lanka, Thailand and other countries.²⁷ However, the Displaced Persons Programme has since been defunded.

Some of Australia's current policy measures reflected aspects of the advice provided to the Labor Government in August 2012 by the Expert Panel on Asylum Seekers (Expert Panel). At the time, the Expert Panel suggested that new strategies were needed that would 'shift the balance of Australian policies and regional arrangements to give greater hope and confidence to asylum seekers that regional arrangements will work more effectively, and to discourage more actively the use of irregular maritime voyages.'²⁸

The Expert Panel recommended, among other things, a regional processing framework including the establishment of an offshore processing capacity in PNG and Nauru, and a 'no advantage' principle to ensure that no benefit would be gained through circumventing regular migration arrangements.²⁹ Importantly, however, the Expert Panel also recommended other linked measures including a strong regional protection framework, a significant increase in Australia's intake of humanitarian refugees and the development of a more effective whole-of-government strategy for engaging with source countries.²⁰

The Expert Panel set out a comprehensive framework for asylum-seeker policy in Australia, which included mechanisms to both deter sea voyages and to create safer pathways to asylum. Without going into a detailed analysis of the strengths and weaknesses of the Expert Panel's framework, we note that successive Australian governments have cherry-picked the harsh, deterrence focused measures, while failing to put in place any of the safeguards and regional cooperation measures recommended by the Expert Panel.

In short, the Australian policy response since 2012 makes no serious attempt to establish a regional cooperation framework and has failed to recognise or contribute to a long-term response to the particular migration challenges facing the Asia-Pacific region, which continues to have one of the world's largest refugee populations at 3.8 million people.³¹

In addition to these central policy features, the Australian Government currently engages a range of measures which significantly impede a full and rigorous analysis of the full costs and impacts of these policy choices. Secrecy laws which impose criminal sanctions on potential human rights whistleblowers,³² combined with the policy of operational secrecy,³³ operate so as to impede a full evaluation of the human costs of Australia's policies. Furthermore, the economic costs are reported without sufficient disaggregation between the controversial deterrence-related policies, and less controversial elements of Australia's immigration and border-protection policies, making it extremely difficult to precisely and fully determine the full economic cost of these policies to the Australian budget. For example, the Australian Department of Immigration and Border Protection (the Department or DIBP) expenditures on border security do not disaggregate between activities that protect Australia from illicit imports (such as drugs or weapons) as distinct from border security activities designed to identify the arrival of asylum seekers by sea.

2.2 UNICEF and Save the Children's engagement

UNICEF Australia and Save the Children, as international organisations principally concerned with promoting the rights and interests of children around the globe, have joined together in producing this report. It reflects the serious concern we share in relation to the rapidly rising number of forced migrants, especially child migrants, in the world. We consider that Australia's current policies require further analysis and debate, especially in relation to their effects on children and families.

The research our organisations have undertaken, combined with our experience in delivering a variety of programmes aimed at assisting children and families in the region, informs our shared concern that Australia's current asylum seeker and

refugee policies carry human, economic and strategic costs which are not justifiable. Both organisations share the view that rather than continue to pursue these policies, Australia should be exploring ways to invest in the creation of more pathways for protection and safe migration in the region and by doing so, engage constructively with the challenge posed by unprecedented levels of forced migration.

UNICEF Australia is a National Committee for UNICEF. UNICEF works in 190 countries for the survival, protection and development of every child, with a focus on the lives of children who are most disadvantaged and excluded. UNICEF advocates for the international community to address the root causes of forcibly displaced children. This includes providing the required humanitarian support in countries of origin, as well as neighbouring, transit and host countries. We reach out to children wherever they find themselves, and wherever they are travelling. UNICEF is on the ground and providing humanitarian assistance including urgently needed support and supplies in health, nutrition, sanitation, hygiene, education and child protection.

Domestically, UNICEF Australia focuses on the protection of asylum seeker and refugee children and their families as a priority. We provide policy advice and conduct strategic research to improve the protection of asylum seeker and refugee children in Australia and the Asia Pacific region. In accordance with Recommendations on the Rights of Children in the Context of International Migration, UNICEF Australia stresses the primacy of the Convention on the Rights of the Child (1989) in addressing the rights of asylum seeker and refugee children. In relation to Australia's asylum seeker framework we continue to emphasise that:

- all persons under 18 years must be recognised as children first and foremost and without exception
- the best interests of the child are a primary consideration, and ongoing and individual best interest assessments should be conducted
- governments are obliged to protect asylum seeker and refugee children from life threatening situations (including refoulement), violence, abuse and exploitation
- governments should cease the immigration detention of children immediately and invest in and/or expand child-friendly alternatives to detention
- asylum seeker and refugee children should be treated as children first and foremost
- governments must do more to provide equal access to quality services
- the importance of preserving family unity is paramount

Save the Children is a leading independent international organisation for children and child rights. Our vision is of a world in which every child attains the right to survival, protection, development and participation. Our purpose is to inspire breakthroughs in the way the world treats children and to achieve immediate and lasting change in their lives. We work towards this vision in more than 120 countries across the globe. Save the Children is heavily engaged in advocating for the rights of children in situations of forced migration, with 'Children on the Move' being a current global priority for our organisation. In Australia, Save the Children has been actively involved in advocating on behalf of child asylum seekers and refugees for many years, particularly in connection with Australia's policies in relation to the detention of children and offshore processing.

Most recently, Save the Children Australia was contracted by DIBP from August 2013 to October 2015 to provide education, recreation, child protection and welfare services in Nauru to asylum seekers, including children and their families, childless couples and single adult women. Save the Children was also contracted to provide education, welfare, employment and other support services to refugees in Nauru from April to December 2014. The relevant individuals were transferred to Nauru by the Australian Government under the terms of a bilateral Memorandum of Understanding between Australia and Nauru (MOU) and related domestic legislation. In that capacity, Save the Children worked closely for more than two years with asylum seeker children and their families residing in

the Regional Processing Centre (RPC). Save the Children's contract expired on 31 October 2015, with the Australian Government electing to award the new contract to private contractor Broadspectrum Ltd (formerly Transfield Services) following the adoption of new eligibility requirements which prevented not-for-profit organisations from being directly appointed for the provision of welfare services.

As the primary rights-based organisation working with asylum seekers and refugees in Nauru from 2013 to 2015, Save the Children believes it is critical that as an organisation, continue to explain and highlight the impact that Australia's harsh deterrent policies have on asylum seekers in the region, with a particular focus on the experience of children.

Given the shared concerns of our two organisations, UNICEF Australia and Save the Children have joined together in producing this report. It aims to provide a comprehensive, albeit high-level, account of the impact of these policies upon children (the 'human cost'), as the economic costs to the Australian Government and taxpayer, and the strategic costs of these policies to Australia's bilateral, regional and global interests. By doing so, we hope to encourage policymakers and the Australian public to consider, or reconsider, whether such costs justify the perceived benefits (ie 'stopping the boats'), particularly in light of available policy alternatives which might achieve similar objectives through less harmful means.

While this report is not structured as a human rights analysis per se, its contents are significantly informed by the rights guaranteed under the UN Convention on the Rights of the Child 1989 (the Convention on the Rights of the Child or CRC),³⁴ along with other principles of international law, including rights under the Refugee Convention. The report is premised on our conclusion, shared by many independent legal experts, that Australia has legal obligations under applicable human rights treaties in relation to all people who fall within its jurisdiction (whether or not they are in Australia's territory),³⁵ in addition to moral obligations to these individuals. In this regard we note the observations of the Senate Committee Report (2015) went so far as to say 'the Government of Australia's purported reliance on the sovereignty and legal system of Nauru in the face of allegations of human rights abuses and serious crimes at the RPC is a cynical and unjustifiable attempt to avoid accountability for a situation created by this country.'³⁶

3. SCOPE AND METHODOLOGY

3.1 Policies under examination

This report examines some of the key 'deterrence' policies of Australia which have potentially significant adverse impacts on child asylum seekers including:

I. The 'offshore processing' of all asylum seekers who arrived in Australian waters from 19 July 2013 in Nauru and PNG and related detention practises

The Australian Government first began transferring asylum seekers to the Republic of Nauru in 2001, pursuant to what became known as Australia's 'Pacific Solution'. Bilateral asylum seeker transfer arrangements were abandoned in 2007, but later reinstated in August 2012 when Nauru re-opened its immigration detention centre in connection with the MOU between the Government of Nauru and Australia.³⁷ Australia is responsible for meeting all of Nauru's costs in connection with these arrangements under the MOU.³⁸

Under the MOU, Australia transfers to Nauru individuals who have travelled to Australia by sea, or who are intercepted at sea whilst travelling to Australia, without a valid Australian visa. This policy was adopted to deter individuals from travelling to Australia by boat in these circumstances. These individuals are transferred by Australia without their consent and Nauru has accepted the transfer of all such individuals to date.

Up until recent changes in October 2015 which saw the RPC become an 'open centre', transferred individuals were placed in mandatory immigration detention in Nauru's RPC while Nauruan authorities assessed whether or not they had valid claims to protection as refugees; a processes that has taken years in many cases.³⁹

It was clear from the outset that Australia would bear responsibility for providing permanent resettlement places for refugees, whether in Australia or elsewhere and that '[n]obody was to be left on Nauru indefinitely.⁴⁰ The MOU anticipates that those transferred to Nauru would stay in Nauru for 'as short a time as is reasonably necessary'.⁴¹ Asylum seekers who are recognised as refugees by the Government of Nauru are currently issued with temporary settlement visas that initially could be renewed for up to five years, though it appears that arrangements are now in place which may result in refugees remaining on Nauru for up to 10 years.⁴² In any event, permanent resettlement in Nauru is still not an option.⁴³

The Australian Government entered into similar arrangements with the Government of PNG in late 2012. Transfers to initially PNG included the transfer of child asylum seekers, though this was swiftly discontinued.⁴⁴ In contrast to the Nauru arrangements, arrangements with PNG do countenance that refugees may permanently settle in PNG.⁴⁵ However, the practical challenges faced by refugees who have sought to do that make this highly untenable in practice.⁴⁶

Pursuant to Australia's arrangements with Nauru and PNG, we estimate that there are now roughly 2,500 asylum seekers and refugees (including approximately 240 children) who are in Nauru or PNG or in Australia in connection with medical treatment and at ongoing risk of return to Nauru or PNG.⁴⁷

II. The policy that those who sought to arrive in Australia by boat after 19 July 2013 can never be settled in Australia

Since entering into offshore processing arrangements with both Nauru and PNG in 2012, the Australian Government has maintained the policy that no person who arrived by boat after 19 July 2013 will be permitted to resettle in Australia.⁴⁸ Given the reported collapse of Australia's plans to secure the permanent resettlement of this cohort in Cambodia⁴⁹ and Australia's past refusal to accept New Zealand's offer of resettlement for refugees Australia has sent to Nauru,⁵⁰ this leaves refugees on Nauru with no clear pathway towards permanent resettlement in any country. Similar concerns arise in the context of PNG, though for practical, rather than legal reasons, as explained briefly above.

III. The policy and practice of 'turning back' boats containing potential asylum seekers and refugees attempting to reach Australia

The term 'turn-backs' refers to Australia's policy of locating 'Suspected Illegal Entry Vessels' (SIEVs) and turning them back towards their point of origin, typically to Indonesian waters, before the vessel can reach Australia's territorial waters. This practice was first introduced in Australia in 2001 under the Howard Government before being abandoned in 2006, and later reintroduced in July 2013 by the Abbott Government. The current policy is to turn back boats 'where it is safe to do so', with boat turn-backs forming a central component of the Coalition Government's 'Operation Sovereign Borders'.⁵¹

The practice of boat turn-backs is an attempt to prevent potential asylum seekers from entering Australia's sovereign territory, and thereby engaging Australia's obligations under the Refugee Convention, by physically stopping them from entering Australian waters. It complements the objectives of offshore processing, which is a regime which applies to those who successfully enter Australia's territorial waters. While this report does not examine the status of turn-backs under international law in detail, it is important to note that the practice of turn-backs may not in fact assist Australia in avoiding the engagement of its obligations under international law, given that in some circumstances human rights obligations apply to the actions of a state even where those actions take place beyond the physical territory of the state.⁵²

A related practice is that of 'enhanced screening' which was reportedly used in the early days of Operation Sovereign Borders in response to boats entering Australian territorial waters.⁵³ Enhanced screening refers to a brief interview given to asylum seekers typically whilst still on the water, apparently by poor-quality satellite phone connections to mainland officials, to determine whether or not they might have credible protection claims which would engage Australia's obligations under the Refugee Convention.⁵⁴

IV. The mandatory and indefinite onshore detention of people who seek to arrive in Australia by boat, including children and their families

Australia's laws which enshrine the practice of mandatory and indefinite detention upon children have been in place since 1992.⁵⁵ The Migration Act requires that any non-citizen who is in Australia without a valid visa must be detained.⁵⁶ People who arrive by boat without a visa are referred to as 'illegal maritime arrivals' (IMAs) and must be held in immigration detention until they are granted a visa or removed from Australia.⁵⁷

V. The policy that refugees from Indonesia who arrived after July 2014 shall not be eligible for resettlement in Australia

In November 2014, the then Immigration Minister Scott Morrison announced that Australia would no longer accept refugees for resettlement from Indonesia through long-standing UNHCR-facilitated pathways and that this new policy would apply to any refugee who arrived in Indonesia after 1 July 2014. This, along with a reduction in resettlement places for those who arrived before July 2014, was intended to 'drain the pool' of asylum seekers and refugees in Indonesia.⁵⁸

Other policies also discussed throughout the analysis include:

- the policy of 'operational secrecy' in relation to Government decisions and actions concerning asylum seekers who arrive by boat
- the lack of independent human rights monitoring and child friendly/safe complaints mechanisms in relation to the system of offshore processing, and
- the lack of access to an effective remedy for human rights abuses experienced by those subject to offshore processing in Nauru or PNG.

These policy settings are examined against the backdrop of the current scale of Australia's humanitarian intake, currently set at 13,750 places per annum and set to increase to 16,250 in 2016-17 and 18,750 in 2018-19.⁵⁹

We recognise that there are other elements of Australia's policies in relation to refugees and asylum seekers that are also widely considered to be harmful to children and their families. This includes the long delays experienced by asylum seekers residing in Australia who wish to make their claims for protection, the use of temporary protection visas for certain cohorts of refugees, inadequate legal representation for asylum seekers in relation to their refugee status determinations and inadequate avenues for independent appeal of negative decisions.⁶⁰ However, we have elected to focus on the above policies which we see as the central pillars of Australia's attempt to repel and deter asylum seekers who might otherwise seek to come to Australia via irregular migration pathways, most notably, by sea. They are also the policies that most significantly impact on Australia's bilateral and multilateral relationships in the region as well as the scale and nature of the refugee challenge faced by the region.

3.2 Secrecy and lack of transparency and monitoring

A range of laws and policies are in place which impede transparency in relation to a full examination of the human, economic and strategic costs of Australia's deterrence policies, particularly in relation to offshore processing and boat turn-backs. These include:

- the policy of operational secrecy in relation to Governmental decisions and actions⁶¹
- Australia's secrecy laws which criminalise 'whistleblowing' disclosures by those working with the offshore processing system⁶²
- the absence of child-friendly complaints mechanisms, particularly in the context of offshore processing on Nauru
- restricting the access of human rights monitors to the offshore RPCs⁶³
- Nauru's restrictive approach to the presence of foreign journalists in Nauru⁶⁴
- the absence of avenues for redress or effective remedies in relation to human rights violations experienced by the affected children and families
- the Government of Nauru's decision to cancel tourist visas issued to Australian and New Zealand passport holders,⁶⁵ and
- the Government of Nauru's ban of Facebook.⁶⁶

Further challenges in relation to the accessibility of economic data are discussed in part 3.4 below.

3.3 Human cost – methodology, assumptions and limitations

In analysing the human cost of these policies, we have chosen to focus primarily on the experience of children and their families, which means this aspect of the report does not deal with the human cost of Australia's offshore processing arrangements with PNG in great detail, given that children are not transferred to PNG at this time.⁶⁷

The relevant children

The experiences of the following groups of children and their families are the focus of this analysis:

- child asylum seekers and refugees in the RPC in Nauru
- child refugees living in Nauru
- child asylum seekers and refugees temporarily in Australia from Nauru in connection with medical transfers
- child asylum seekers and refugees in key 'transit' or 'host' countries (eg Indonesia, Malaysia and Thailand)
- child asylum seekers and refugees who are subject to boat turn-backs
- children who have parents in offshore processing centres and who are separated from them

Given the focus of this report is on Australia's policies of deterrence, the most obviously affected group of children outside Australia and Nauru is those asylum seeker and refugee children living in Indonesia, Malaysia and Thailand. These countries are the main refugee 'hosting' countries in the region and, in the case of Indonesia and Malaysia, the countries through which asylum seekers who wish to gain protection in Australia have traditionally transited if they are unable to enter Australia by air.⁶⁸

The relevant 'human costs'

The human costs this review has sought to identify in relation to the above groups of children and their families includes:

- extended periods of family separation
- mental health, self-harm and suicide
- isolation/negative stereotyping
- impacts of institutionalised living on parenting and family life
- family breakdown
- impacts of witnessing/experiencing violence
- lack of access to appropriate education
- impaired child development
- statelessness of children born in Nauru
- lack of access to livelihoods
- lack of access to healthcare and nutrition

Methodology for review of human costs

The human costs referenced in this report are based upon a desk-top review of literature which examines the experience of children in Australia and other relevant regional countries, along with field research undertaken by Save the Children in Indonesia, Malaysia and Thailand.

The analysis of the impact of Australia's policies on children transferred to Nauru is limited by Australia's secrecy laws and practices, as well as the impact of operational secrecy and lack of transparency as discussed in part 3.2. For example, it is very challenging to find government statistics on the total number of children who have been held in immigration detention over recent years.

In addition, it has not been possible to identify the number of children in the broader region who are directly affected by boat turn-backs, largely due to lack of government transparency in relation to turn-backs. Government reports indicate the number of boats and people turned away, but they don't reveal the backgrounds of the relevant individuals, how many children were on-board, the operational logistics involved in the turn-backs or the circumstances to which they were returned.

We have not been able to ascertain all of the dimensions of the impact of Australia's deterrence policies on children who remain in transit or 'host' countries, or in countries where they face persecution. This is in part owing to the lack of available data in relation to the number of forced migrants who may have set out to seek protection in Australia but have become 'stuck' in transit.

Key sources relied upon in preparing this report include:

- The Australian Human Rights Commission's (AHRC) Forgotten Children Report (2014) (Forgotten Children Report (2014))⁶⁹
- The report of the Senate Select Committee which examined conditions in the Nauru RPC (Senate Committee Report (2015))⁷⁰
- The Philip Moss Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru (2015) (Moss Report (2015))⁷¹
- The report of Professor Elliot and Dr Gunasekera to the AHRC which described the results of medical assessments of the health and well-being of children in immigration detention at Wickham Point in the Northern Territory, most of whom had previously been detained in Nauru (2016) (Elliot and Gunasekera Report to AHRC (2016))⁷²
- The joint Human Rights Watch/Amnesty International Report of 2 August 2016 (HRW/Amnesty International Report (2016))⁷³
- The 'Nauru Files' published by The Guardian in August 2016 (Nauru Files (2016))⁷⁴
- Recent field research and related analysis undertaken by Save the Children in South East and East Asia regional offices in relation to the treatment of children involved in the Andaman Sea crisis of 2015

In preparing this report we have also engaged in informal consultations with various NGOs and international organisations in Australia and South East Asia including AHRC, Amnesty International (Australia), Asylum Access (Thailand), Centre for Policy Development, Fortify Rights, Human Rights Law Centre, Human Rights Watch, Oxfam Australia, UNHCR and World Vision Australia. The views contained in this report do not necessarily reflect the views of any of those organisations or their employees.

The human costs not examined in this report

The scope of this investigation has not included the human impact of Australia's policies on government and private sector personnel charged with implementing these policies or other affected stakeholders, nor the economic cost of compensation claims that might follow from such impacts. Mental health impacts, relationship stress and high rates of attrition are just some of the adverse impacts experienced by those current and former personnel working in this field, particularly those who have been posted to the RPC facilities in Nauru and PNG. Dozens of claims have already been lodged with more expected to follow in the years ahead; with compensation potentially running into tens of millions of dollars based on reported figures.⁷⁵ It may be a number of years before we can fully appreciate the scale of the human and economic cost of these policies from the perspective of such people, and the cost to government of related compensation claims.

Further, this report doesn't examine the long term impact of Australia's deterrent policies to the extent that they may contribute to negative representations of asylum seekers and xenophobia directed against Muslim migrants or indeed the long-term human and economic effects of the harm suffered by those adversely impacted by these policies. While we recognise that negative portrayals of certain migrant groups is not a new phenomena in Australia, it is reasonable to expect that these policies have an adverse impact on attitudes held by some members of the Australian community⁷⁶ and the experience of social cohesion, or absence of social cohesion, in Australian communities. Multi-generational harm is also foreseeable, particularly these policies have resulted in children suffering significant mental illness, developmental delays and impairments or significant deprivation in relation to basic needs (such as contact with mentally competent parents and lost educational opportunities).⁷⁷

3.4 Economic cost – methodology, assumptions and limitations

The approach taken to estimate the fiscal costs is to attempt to capture the Government's budget envelope that contains the majority of the costs of the Government's asylum seeker and refugee policy framework. The economic costs are primarily gathered from Federal Government budget documents, which include the Portfolio Budget Statements and Portfolio Additional Estimate Statements of the relevant departments, and the annual Budget and Mid-Year Economic and Fiscal Outlook statements prepared by Treasury. All costs are expressed in Australian dollars.

There have been few attempts at comprehensive analysis or comparison of the economic cost of Australia's asylum seeker and refugee policies since mandatory detention came into effect in the early 1990s. Part of the reason for this is that the policy frameworks over that time have typically drawn on multi-agency efforts and cut across programs with varying objectives. As a result, it is not just the lack of transparency in budget allocations against specific policy elements, but the difficulty in attributing the cost of those specific policy elements when they involve common and joint costs for other objectives.⁷⁸

A clear example of this is the current policy on boat turn-backs. Part of Operation Sovereign Borders, turn-backs involve elements of on-water operational costs and the cost of gathering and analysing people-smuggling intelligence, drawing principally on the Australian Defence Force, Australian Federal Police and DIBP. However, the activities may also rely on intelligence and services from other supporting agencies including: the Attorney-General's Department, the Australian Crime Commission, the Australian Fisheries Management Authority, the Australian Maritime Safety Authority, the Department of Foreign Affairs and Trade and the Department of Prime Minister and Cabinet.

A lack of transparency in reporting and aggregated budget allocations make it difficult to accurately describe the cost of Australia's asylum framework. There is also an added complication that the policy settings themselves affect the numbers of people attempting to enter Australia. For example, the current policies may have reduced the number of people attempting to enter Australia by boat in recent years, but the cost of subjecting those that have arrived to Australia's policies of deterrence (in particular mandatory detention and offshore processing) are high – both in economic and human terms.

On the other hand, the cost of the current policy framework can be partly attributed to expenditures that are made on detaining and processing people that arrived under previous policy settings – the legacy caseload, and expenditures on preventing, deterring and enforcing the new policy.

Methodology for onshore detention costs

As of 2016-17, the onshore programmes that account for IMA and non-IMA detention will be merged, making it difficult to get an estimate of how much will be spent on IMA onshore detention over the forward years.

Expenditure on IMA is declining because the deterrence element of the current policies has prevented new people from arriving by boat to Australia. At the same time, the rate of non-IMA detainees has been increasing (due to visa cancellations) so the proportion of IMA to non-IMA detainees in onshore facilities has been decreasing.

Due to the counteracting trends, we have used two ways to get an estimate of the likely future cost of subjecting IMAs to mandatory detention. First, we scale the Government's projected cost by the proportion of IMAs that are currently being detained onshore (see method 1 below). Second, we apply the current proportion of expenditures between the two programmes (IMA vs non-IMA) to future years. The estimated costs are presented in the table below:

EXPENDITURES ON IRREGULAR MIGRATION DETENTION							
(\$m)	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Onshore management total	2,345	1,933	1,241	1,690	1,191	1,031	986
<i>Method 1: Proportion of IMA detained</i>				0.39	0.39	0.39	0.39
Lower estimate	2,345	1,993	1,241	659	465	402	385
<i>Method 2: 2015-16 proportion of IMA to total onshore</i>				0.72			
Upper estimate	2,345	1,993	1,241	1,225	863	747	715

Source: Portfolio Budget Statements DIAC (2013-14), and DIBP (2014-15 through 2016-17), DIBP Immigration Detention Statistics.

Note: Method 1 assumes that the proportion of IMA detained remains constant over the next four years.

Note: Method 2 assumes that the ratio of IMA onshore to total onshore is the same in the forward years as 2015-16.

Other ad hoc costs

The above methodology does not clearly include, or exclude, the cost of other ad hoc expenditure of the nature outlined in part 5.5 (eg cost of official inquiries, High Court litigation etc). Some of these costs may be included within the cost envelope estimated by this report, while others may be excluded depending on which departments are responsible for relevant expenditure and the budgetary programs against which such items are allocated.

3.5 Strategic cost – methodology, assumptions and limitations

Our analysis of the strategic cost of Australia's deterrence policies is based upon a review of publicly available commentary by credible authors and organisations which identify Australian foreign-policy interests that might be adversely affected by its current policies of deterrence. These include:

- Australia's global and regional standing as a rights-respecting country
- Australia's interest in the promulgation of respect for human rights and international law in the region
- Australia's interest in securing wider ratification of the Refugee Convention in the region
- Australia's interest in promoting respect for international law and managed migration in the region
- the effectiveness of Australia's foreign-aid spending and the potential impacts on bilateral relationships with countries who experience cuts in Australian aid

This section is not intended to offer an exhaustive, nor conclusive, examination of the issues but rather aims to highlight some of the potential adverse impacts of Australia's approach in connection with its global, regional and bilateral relationships and reputation. It is likely that there are other potential strategic impacts of Australia's policies not identified in this report, particularly in relation to defence and trade relationships between Australia and its regional neighbours.

4. HUMAN COST

4.1 Impact of offshore processing on children transferred to Nauru

Save the Children worked extensively with child asylum seekers in the Nauru RPC from August 2013 to October 2015 as a service provider under contract with the Australian Government. During that time, Save the Children was witness to a wide range of adverse incidents involving children and formed a number of conclusions about the status and treatment of child asylum seekers in Nauru.

Save the Children has analysed the incidents that its staff witnessed, or received reports of, while providing services on Nauru and has prepared a report which was provided to the Department of Prime Minister and Cabinet, the Attorney General's Department and Immigration Minister Peter Dutton in May 2016, which followed an earlier report of a similar nature, provided to the Immigration Minister in August 2015.⁷⁹ However, owing to Australia's secrecy laws (which criminalise the disclosure of this sort of information by contractors in the offshore processing system) and the terms of our service contract with the Department, we have been unable to release those reports publicly for fear of criminal prosecution or other reprisals.



Aerial view of Nauru

The private reports which Save the Children submitted to the Australian Government in May 2016 contained a detailed quantitative and qualitative analysis of large volumes of incident reports and staff case notes compiled over the 26 months that Save the Children worked in the RPC in Nauru. It summarised data and trends in relation to the detention of children and their conditions and experiences whilst residing in the RPC which raised serious concerns in relation to potential violations of Australia's international obligations under the Convention on the Rights of the Child as well as under international refugee law.

Given that Save the Children is unable to disclose the material referred to above, the following analysis of the human cost of the system of offshore processing upon children transferred to Nauru is based on publicly available information from a variety of sources including official inquiries, media reports, whistleblower accounts and, where available, data published by the Government.

While the precise numbers are difficult to determine, based on publicly available information and informal consultations with a number of organisations, we estimate that since September 2012 approximately 300 children (including at least 27 unaccompanied children) have been transferred to Nauru along with approximately 1960 adults.⁸⁰ We estimate that at present up to 150 of these children remain in Nauru (49 in the RPC and approximately 80 to 100 living in the Nauruan community), with approximately 90 to 100 children currently in Australia in connection with medical transfers and at risk of being transferred back to Nauru at any time.⁸¹

Save the Children's experience in Nauru has informed our impressions in relation to the human cost of Australia's offshore processing arrangements which align consistently with well-publicised reports released by non-governmental sources concerning child asylum seekers and refugees in Nauru including the recently published Nauru Files (2016), the HRW/Amnesty International Report (2016), submissions to the 2015 and 2016 Senate Select Committees and the work of other organisations such as the AHRC and the Australian Medical Association (AMA).

This material confirms that children have been, among other things:

- detained in closed detention for extraordinarily long periods of time, some for more than 2 years⁸²
- disproportionately negatively affected by the experience of detention, with children vastly over-represented in reports of adverse 'incidents' at the RPC⁸³
- frequently exposed to harm, violence and abuse with the Nauru Files revealing seven reports of sexual assault of children and 59 reports of assault on children over a period of roughly two years⁸⁴
- suffering significant harm to their mental health, with the Nauru Files revealing 30 reports of self-harm involving children and 159 of threatened self-harm involving children over a period of roughly two years. The number of such incidents has increased dramatically over time, indicating a marked deterioration in mental health,⁸⁵ and
- unable to reunite with their parent(s), in cases where children have travelled separately from one or more parent, by virtue of the offshore processing system.

Added to this is the inherent harm involved in subjecting children to immigration detention, with research and evidence gathered from other settings revealing that immigration detention has a severe and detrimental impact on the physical and mental health of children.⁸⁶ Further, the special needs and vulnerabilities of children can exacerbate the impacts of detention and cause additional problems for children's developmental, physical and psychosocial health.⁸⁷

The following section provides a brief overview of some of the most serious harms suffered by children transferred to Nauru, but it is by no means exhaustive.

(i) The harm of prolonged detention

Children have spent prolonged periods of time in detention or detention-like conditions in the RPC, with some detained for more than two years.⁸⁸ This is in clear contradiction to the requirement of the CRC that any arrest, detention or imprisonment of a child shall be used as 'a measure of last resort and for the shortest appropriate period of time'.⁸⁹

The prolonged detention of children is inherently harmful – it deprives them of their freedom and dignity as well as exposing them to a wide range of other serious harms.⁹⁰ It is well recognised that the longer a person remains in immigration detention, the greater the risk of harm and that this harm is experienced more acutely by children than adults.⁹¹

In August 2015 the Senate Committee Report (2015) concluded that it was 'of the overall view that the present conditions and circumstances at the Regional Processing Centre on Nauru are not adequate, appropriate or safe for the asylum seekers detained there'.⁹² There are a wide variety of sources supporting the view that children transferred to the RPC in Nauru suffer unacceptably poor standards of living, 'in a range of areas, including exposure to the elements, lack of privacy, poor hygiene and insufficient access to water and sanitation'.⁹³ Access to appropriate healthcare is also an issue.⁹⁴

Notwithstanding the October 2015 transition of the RPC to an 'open centre', there remains a real concern that asylum seeker children and their families, while theoretically free to move around the island, remain effectively 'detained' in the Republic of Nauru or at the very least unduly restricted in relation to their freedom of movement. This is due to practical considerations involved in moving around the island, safety considerations involved in interacting with the local community as well as policy settings that do not allow for travel outside of Nauru.

(ii) Deterioration of mental health, self-harm and suicide

In August 2016 the Nauru Files revealed 30 reports of self-harm involving children and 159 reports of threatened self-harm involving children over a period of roughly two years. The number of such incident reports increased dramatically over time, indicating a marked deterioration in mental health.⁹⁵

Even in 2014 the AHRC concluded that children transferred to Nauru under Australia's offshore processing arrangements 'are suffering from extreme levels of physical, emotional, psychological and developmental distress'.⁹⁶

This conclusion is supported by the more recently released medical report, the *Elliot and Gunasekera Report to AHRC (2016)* which assessed the health and well-being of children in immigration detention at Wickham Point in the Northern Territory, most of whom had previously been detained in Nauru. This report provides the results of health screening conducted in October 2015, based on widely used screening tools, in relation to a group of 69 children, 49 of whom had been detained in Nauru for an average of 10 months prior to transfer for medical assessment or treatment. This report concludes (among other observations) that:

- closed immigration detention in Wickham Point and Nauru is harmful to the health and mental health of young children and youth, and
- harm increases with increasing duration of detention.⁹⁷

The Moss Report (2015), a Government-commissioned inquiry into the allegations relating to conditions and circumstances at the RPC in Nauru, found clear evidence to support allegations that some children, as young as 11 years old, had attempted suicide or engaged in other forms of self-harm.⁹⁸ In just one of many examples, the recent HRW/Amnesty International Report (2016) included an account of an interview with a 15 year-old-girl who stated 'I'm tired of my life' and indicated that she had already tried to commit suicide twice.⁹⁹

The Senate Committee Report (2015) concluded that it was 'particularly disturbed by the evidence it has received about abuse of children, traumatising and mental illness among children, and the impact of the persistent, indefinite detention of children in the poor conditions which prevail at the RPC'.¹⁰⁰

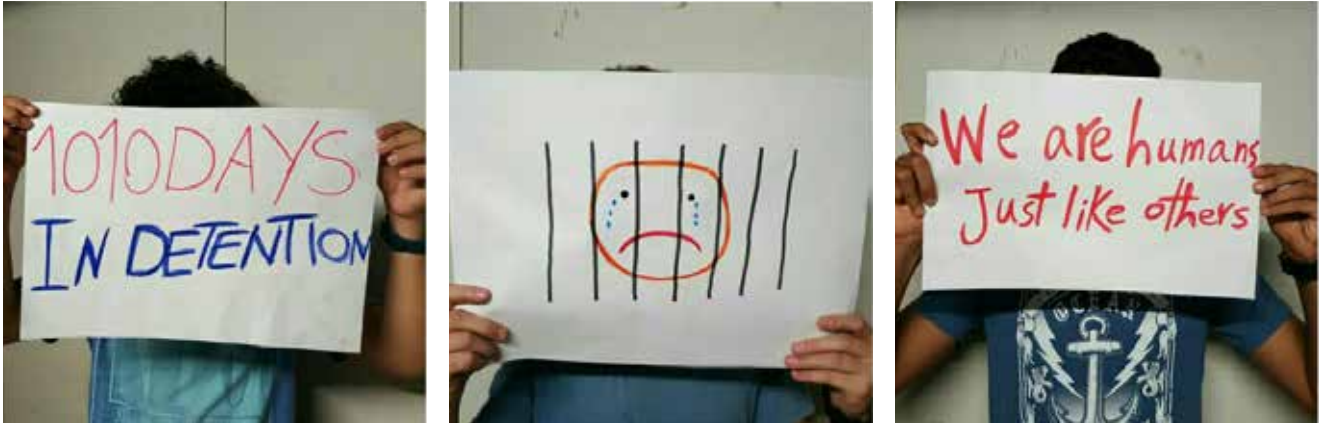
These policies negatively affect children's mental health and impede their healthy development.¹⁰¹ The UN Special Rapporteur on the Convention Against Torture¹⁰² has observed that '[t]here is widespread agreement among experts that the institutionalization of children contributes to physical underdevelopment, abnormalities in brain development, reduced intellectual abilities and development, delays in speech and language development, and diminished social skills. Inappropriate conditions of detention exacerbate the harmful effects of institutionalization on children'.¹⁰³

Children are adversely affected by the conditions they face in the RPC in Nauru not strictly due to 'detention' per se, but also (i) the sub-standard living conditions within the RPC (with many families still living in mouldy tents); (ii) the institutionalisation involved in living in a remote immigration facility; and (iii) the lack of certainty, hopelessness and fear for the future related to their lack of permanent protection pathways.¹⁰⁴ In this regard the Senate Committee Report (2015) noted that '[t]he 2012 expert report that recommended the reopening of the detention facility on Nauru proposed it as a short-term measure, pending further development of an integrated regional framework for processing asylum claims. Almost three years on, the Government has not made meaningful progress on a genuine regional framework, and the RPC in Nauru and its inhabitants have been left in limbo: In a facility without permanent infrastructure, enduring long and uncertain processing times, and absent any clarity about the future of the RPC or their own fate'.¹⁰⁵

The issue of hopelessness is tragically highlighted by the recent self-immolation and subsequent death of Omid Masoumali, a male refugee in Nauru, in April 2016.¹⁰⁶

(iii) Exposure to violence, abuse and exploitation

Children who were transferred by the Government to Nauru are frequently exposed to, or the victims of, violence and abuse and are not sufficiently protected from such forms of harm. The Nauru Files (2016) reveal 'seven reports of sexual assault of children and 59 reports of assault on children'¹⁰⁷ over a period of roughly two years.



The Senate Committee Report (2015) concluded, in relation to children transferred to Nauru, that '[t]hese children are not only denied a reasonable approximation of childhood in the RPC, but often do not feel safe, and in fact often are not safe. Their extreme vulnerability is further exacerbated by their location in a country which lacks an adequate legal or policy framework for their protection.'

In 2016 UNICEF Pacific Office and the Government of Nauru released a joint Review of the Child Protection System in Nauru.¹⁰⁸ The aim of the review was to (i) develop a full picture of the child protection system including policies, legislation, a map of services and an understanding of community attitudes towards children, and (ii) to develop recommendations to strengthen the existing framework.

The research was conducted through an extensive desk review, interviews with key informants with current knowledge of child protection approaches and social welfare, and group discussions more broadly across the community. The review identified primary child protection issues as raised by key informants and community stakeholders, but does not provide findings on prevalence. Primary protection concerns include sexual abuse, physical abuse, harsh discipline, neglect and witnessing family violence.

This review focused primarily on the protection situation of Nauruan children. Restrictions on access (both physical and linguistic) proved too challenging to include children living in the RPC or refugee children living in the Nauru community. However, the review provides us with an understanding of the local child protection system and its capacity, or limitations, in responding to the complex needs of asylum seeker and refugee children and families.

The review found that the Government of Nauru has taken significant efforts to improve the national child protection system. In 2016, the government passed the Child Protection and Welfare Act. The Act is a vital piece of legislation that better aligns Nauru with international human rights standards. The legislation has provisions that give the Ministry of Home Affairs a clear mandate to take action to protect children from harm, provides investigation powers, and allows for children to be moved from situations of harm to safe caregivers. Importantly, the legislation introduces a mandatory reporting requirement for cases of child sexual abuse.

While this is a positive development, in practical terms further work and resourcing is required to ensure that the Child Protection and Welfare Act can be properly implemented. The child protection system in Nauru, at this stage, is developing and is currently not well positioned to respond adequately to the complex needs of refugee children and their families. Further efforts and investment will be required to strengthen the basic building blocks of the child protection system, train skilled staff, improve the referral and case management systems, address incidents of gender-based violence and to support children with disabilities.

Without a well-functioning and adequately resourced child protection system, it is difficult to understand how successive Australian governments have considered offshore processing a safe or sustainable policy decision for refugee children and their families. In the absence of key systems and basic services for child protection, offshore processing arrangements cannot reasonably be considered in their best interests.

(iv) Access to quality education

Save the Children has documented significant challenges faced by refugee children in accessing education in the local school system in Nauru, including bullying, racism and widespread tensions between the refugee and Nauruan communities.

It is worth noting that there were no resources dedicated to building social cohesion between the refugee population and Nauruans as the host population. Community tensions have been the inevitable outcome of Australia's offshore detention policies that transferred a culturally diverse group of people into a very small developing nation with a highly homogenous population of only 10,000 people.¹⁰⁹

Following the closure of Save the Children's successful school program on Nauru, there has been a considerable drop in the attendance of asylum seeker and refugee children in local schools. Save the Children staff estimate that less than 15 percent of such children are in attendance and there is a lack of specialised educational services.¹¹⁰ The Government of Nauru has commendably put a considerable focus on boosting national education standards. As children were transitioned into the local education setting, the Australian Government did not take adequate steps to address gaps to ensure that curriculum was socially, culturally and linguistically relevant to refugee children and assist in strengthening the local education system.

In a media report earlier this year it was noted that 'a five year-old asylum seeker was urinated on by a group of Nauruan boys', 'asylum seeker girls have been sexually harassed at school', and 'many parents are too scared to send their children to school in 2016'. The same media piece reported that asylum seeker children on Nauru had alleged that 'Nauruan students threaten them with knives and teachers routinely swear at them'. Other children stated they did not attend the school due to safety concerns associated with leaving the detention centre.¹¹¹

The interviews cited in the HRW/Amnesty International Report (2016) reveal similar concerns with a 14 year-old reporting on behalf of himself and his younger brother:

*Local kids kept attacking us, and even throwing stones. When we complained to the principal, the kids were made to say "sorry" to us. But when we left the principal's office, they got even angrier at us.*¹¹²

(v) Access to healthcare

In addition to the health risks posed by Nauru's detention of child asylum seekers and their families, concerns arise in relation to the availability of necessary medical services on Nauru. These concerns are pertinent to those living in the RPC as well as those refugees living in the community.

Various reports indicate:

- a lack of specialised medical equipment and access to medical specialists, including paediatricians and neonatal specialists
- inadequate maternal and child health services
- delays in access to medical evacuation for life-threatening injuries and illness
- inappropriate treatment plans for complex and serious medical conditions (including over-the-counter painkillers such as Panadol commonly given as the only response to serious health complaints)
- inadequate hygiene standards and facilities in the hospital
- a lack of access to dental treatment (other than tooth extraction) and prescription glasses including for children
- a general dismissal of clients who report serious health concerns, and
- lack of access to emergency ambulance services.¹¹³

The above concerns are particularly alarming when one considers that those transferred to Nauru are a cohort of people who are likely to have complex pre-existing and recently acquired mental and physical health conditions.

These concerns were tragically highlighted recently by the case of Omid Masoumali, a refugee in Nauru, who died after setting himself alight, apparently in protest against his treatment by the Australian and Nauruan governments. It is reported that Omid waited in Nauru for more than 24 hours before being airlifted for medical treatment in Australia, during which time he apparently did not have access to even the most basic pain relief or medical care in Nauru's hospital.¹¹⁴

(vi) Extended periods of family separation

A significant number of children transferred to Nauru have been physically separated from one or more of their parents and unable to pursue family reunification by virtue of the offshore processing system established between Australia and Nauru.¹¹⁵

Some children transferred to Nauru have one or more parents in Australia with whom they could be reunited if Australia's usual visa rules were to apply, but they are prevented from reuniting with their parents due to the policy that those who arrived after 19 July 2013 will never be permitted to resettle in Australia.

Toddler in Nauru separated from father in Australia

In May 2015, ABC's 7.30 Report reported: *A young Tamil woman and her toddler, who boarded a people smuggling boat to Australia hoping to be reunited with their husband and father in Melbourne, are on Nauru having been told they'll never come to Australia and, after her suicide attempt, lawyers are appalled at her alleged treatment as details of a new High Court challenge to the offshore detention system emerge.*¹¹⁶

Similar concerns arise for children residing in Australia whose fathers have been detained on Manus Island under Australia's offshore processing rules.

Sherene's Story

Journalist and author Peter Mares tells the story of a girl named Sherene and her mother Sima, one-time clients of the independent community legal centre Refugee Legal. Sherene and Sima were Hazaraghis who fled Afghanistan and arrived in Australia in November 2012, where they continue to live on bridging visas, waiting for the opportunity to have their refugee claims determined and protection visas issues. Sherene's father Ali attempted to travel to Australia to join them but arrived in August 2013, after Kevin Rudd's 19 July 2013 cut off, and so was subject to Australia's punitive offshore processing system and was sent to immigration detention on Manus Island.¹¹⁷

Families have also been separated indefinitely by the practice of medical transfers, in which one member of the family may be transferred out of Nauru for medical treatment, sometimes with little or no warning, leaving other members of the family in Nauru. The HRW/Amnesty International Report (2016) contained the following account of a child impacted by a medical transfer which took place without warning.

Father reports son angry and withdrawn after mother transferred without warning

The next thing I heard was, "Oh, we sent your wife to Australia on an emergency flight." That was the next day. My son took it very bad. He was in shock. He wasn't able to say goodbye to his mother. [On arrival in Australia] my wife woke up, and she didn't have any information; she didn't even know she was in Australia...

*I am really worried about my son. For the last 40 days, he hasn't left his room. He had a special relationship with his mother. Now he doesn't talk. He's very angry, and he doesn't talk. I can't control his behaviour. Everything has changed about him.*¹¹⁸

(vii) Harm to parents and erosion of parenting capabilities

The conditions in which asylum seekers live in Nauru (including the institutionalisation of life at the RPC and the fear, uncertainty and apparent hopelessness experienced by asylum seekers) are in some cases causing significant harm to the physical and mental health of parents and significantly impairing their ability to adequately care for their children as well as their ability to form healthy attachments with their infants.¹¹⁹

In addition to the health effects experienced by parents who have been transferred to Nauru, the institutionalisation that comes with living in the RPC arguably interferes with the ability of parents to care for their children. For example, the lack of access to family cooking facilities, the limited access to personal possessions, the inability of parents to work and provide for the needs of their children, the lack of private family recreational spaces and the lack of privacy involved in living in cramped accommodation, all prevent parents from caring for their children independently in the manner that most families are accustomed to.

Observers have noted the vicious cycle that exists in relation to the links between parenting capacity, the risks of children being exposed to violence and abuse and parental ability to care for children, as revealed in the evidence provided to the 2015 Senate Select Committee Inquiry:

[T]he inability for parents to protect children from harm in the RPC was having a significant detrimental impact on parental and child mental health.

...in the detention facilities asylum seekers have no ability to avoid such individuals and therefore the ability to adequately protect themselves or their family members from abuse. This has contributed to the severe mental distress that parents experience as a result of their inability to remove their children from people who they believe to be unsafe.¹²⁰

The Nauru Files (2016) cite two examples of parents in such despair they wished to relinquish their babies into the care of others overseas, with one couple telling caseworkers 'We want to give our baby to Save the Children and we want to die. We don't want anything for us we just want our baby to be safe. Our baby is not safe here.'¹²¹

(viii) Statelessness

Children who are born to asylum seeker/refugee parents who are among the Nauru cohort may be at risk of statelessness (whether born in Nauru or in Australia), unless either Australia or Nauru offers such children citizenship. This is particularly relevant in cases where parents are themselves stateless.¹²² We note that according to Government sources, there were more than 100 stateless people residing in the RPC in July 2015.¹²³

In this context it is relevant to note that Australia is a party to the Reduction of Statelessness Convention,¹²⁴ by virtue of which it has undertaken to grant Australian nationality to children born in Australia who would otherwise be stateless.¹²⁵ Australia's citizenship laws give effect to these obligations by declaring that children born in Australia who would otherwise be stateless are eligible for Australian citizenship.¹²⁶ It is not yet clear whether Australia will honour its obligations under the Reduction of Statelessness Convention or its own domestic laws in relation to children born in Australia to parents among the group of asylum seekers Australia selected for transfer to Nauru.

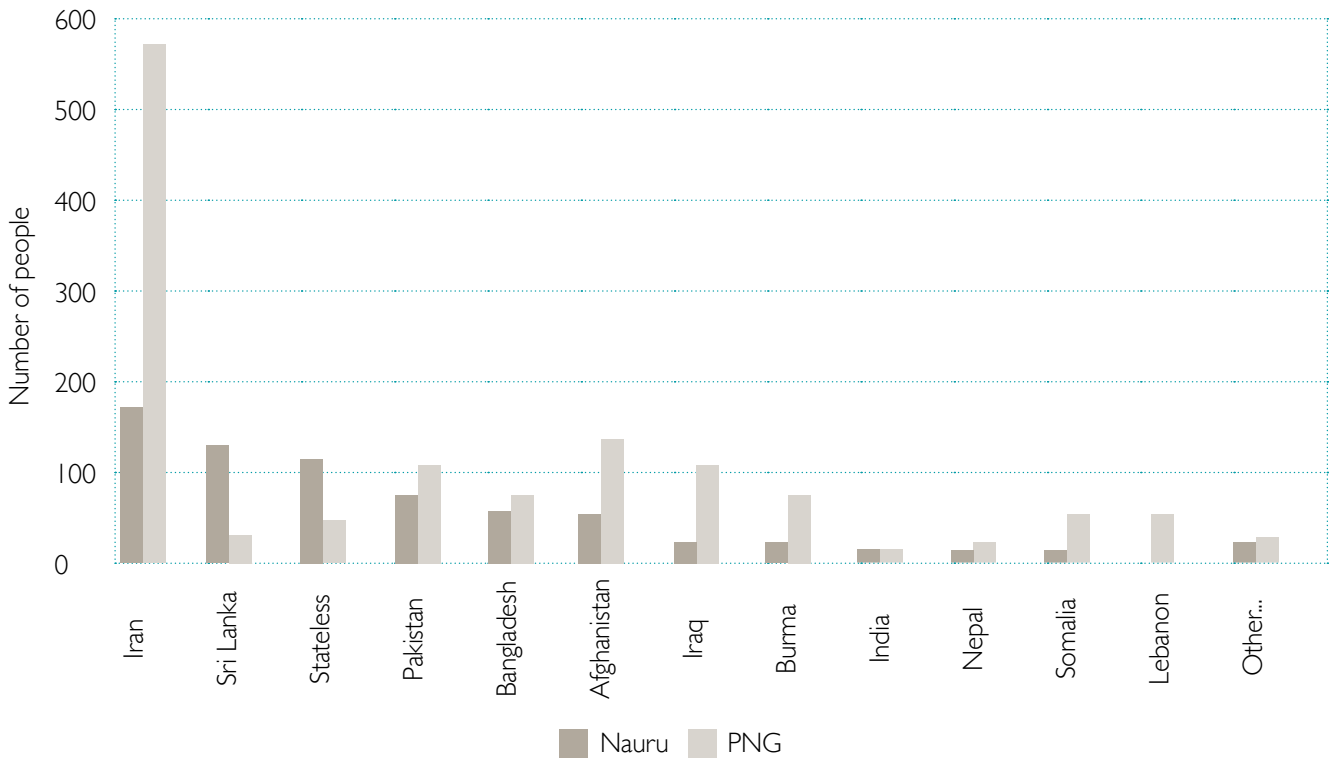
Australia's offshore processing arrangements with Nauru generally appear to disregard Australia's obligations under the Reduction of Statelessness Convention as well as under article 7(1) of the CRC which recognises the right of every child to acquire a nationality. By comparison, Nauru is not a signatory to the Reduction of Statelessness Convention and its domestic laws relating to citizenship do not apparently provide stateless asylum seeker children with any entitlement to Nauruan citizenship,¹²⁷ Australia's transfer of asylum seeker families and children can thus be seen as potentially contributing to the global problem of statelessness.

The lack of provision for the legal status of children born to asylum seeker or refugee parents (whether in Nauru, or in Australia prior to transfer to Nauru) may therefore prevent the relevant children from enjoying the right to a nationality and may contribute to the global problem of statelessness, contrary to the CRC and other international conventions.

(ix) Impact on identity and minority rights

The following chart, which replicates that released by DIBP in 2014, reveals that the children transferred to Nauru come from a wide variety of national, religious and cultural backgrounds, with more than 12 nationalities (one of which is the category of 'other') represented in the RPC population.¹²⁸

NATIONALITIES OF ASYLUM SEEKERS AT EACH PROCESSING CENTRE



Nauru's population of roughly 10,000 people is highly homogenous. 86 percent of its people are either ethnically Nauruan or from another Pacific Island ethnic group. 95 percent speak Nauruan as their main language spoken at home. 93 percent of the population identifies as Christian.¹²⁹ Given the size, physical isolation and ethnic/linguistic homogeneity of Nauru, it is essentially impossible to ensure that the minority rights of these children are fully respected and protected, and that their national, cultural, religious or linguistic identities will be protected and preserved.

If these children were living in the community in multicultural urban Australia, or in another larger country with a harmonious diverse and multi-cultural population, it would not be difficult for them to connect with a meaningful number of other people who share their national, cultural, linguistic or religious backgrounds. In the context of Nauru, it is virtually impossible for many asylum seeker children to connect with meaningful numbers of others who share such backgrounds and thus it is unlikely that such aspects of the child's identity can be protected and preserved. Given Nauru's isolation and economic challenges, significant inward migration is very unlikely and thus it is unlikely that this situation will be remedied any time in the foreseeable future.

(x) Lack of transparency and access to remedies for rights violations

As discussed in part 3.2 above, both the Australian and Nauruan governments have adopted a range of laws and policies which impede transparency in relation to the treatment of asylum seekers and refugees and other measures which have a chilling effect upon freedom of speech of asylum seeker children and those who wish to advocate on their behalf.¹³⁰

These measures may violate the rights of children in relation to freedom of expression and the right to receive and impart information¹³¹ and critically, make it very difficult for the children affected by these policies to make their situation known to the Australian community and wider world.

These impediments to the free flow of information are particularly concerning when one considers that children transferred to Nauru have no meaningful process by which they can complain about human rights violations experienced by them or seek a remedy for such violations.¹³²

To date neither the Australian nor Nauruan governments have established any ongoing comprehensive or independent mechanism which systematically identifies child rights violations or ensures that child asylum seekers and refugees who suffer human rights violations while in Nauru have access to a remedy for such a violation.¹³³ In this regard, we note that Australia has not yet ratified the Optional Protocol to the Convention against Torture (OPCAT) or the CRC Optional Complaints Protocol. Ratification of OPCAT would subject Australian-run detention centres to greater scrutiny and monitoring and ratification of the CRC Optional Complaints Protocol would allow children who have experienced rights violations to bring complaints before the CRC Committee.¹³⁴

(xi) Other human rights violations

In addition to the harms identified above there is reason for serious concern that the system of offshore processing established by Australia with Nauru violates a number of other core human rights principles including:

- the principle that the 'best interests of the child' should be a primary consideration in all decisions affecting children¹³⁵
- that children are being transferred to a country where they face serious harm, contrary to the principal of 'non-refoulment'¹³⁶
- that the rights of separated and unaccompanied children are at risk¹³⁷
- that the system may inflict cruel, inhuman or degrading treatment on children¹³⁸
- that children have faced and continue to face unreasonable restrictions on their freedom of movement,¹³⁹ and
- that children face interference with their right to privacy.¹⁴⁰

Status of refugees in Nauru

While a great deal of public attention has focused on the condition of children living within the RPC, the human cost of the offshore processing system is also felt by children, and their families, who have been recognised as refugees and who are living in the Nauruan community.¹⁴¹ Save the Children estimates that there are currently approximately 80 to 100 child refugees currently living in the Nauruan community, in addition to the 49 residing in the RPC and the 90 to 100 children currently in Australia in connection with medical treatment (some of whom are refugees and some of whom are asylum seekers still awaiting status determination).¹⁴²

Some recognised refugees have been moved into accommodation in the villages that comprise the broader Nauruan community, while others remain within the geographically isolated RPC, including in tents, in the hope that community housing might become available in the future.¹⁴³

Those refugees living in the community have greater practical freedom of movement within the island as well as the opportunity, in theory, to work and provide for their families. However, many of the problems identified above in relation to asylum seeker children residing within the RPC apply equally to refugee children including:

- deterioration of mental health and self-harm driven by hopelessness and lack of certainty about the future; as tragically highlighted by the two recent incidents of self-immolation¹⁴⁴
- exposure to violence, abuse and exploitation, including sexual assault and lack of access to appropriate child protection mechanisms, and
- challenges in accessing quality education and adequate healthcare.

Rather than being allowed to rebuild their lives, children in this situation continue to experience harm under Australia's current deterrence policies, which have thus far failed to identify a permanent protection pathway for those transferred to Nauru. It appears that the initial five year deal with Nauru may now extend to 10 years,¹⁴⁵ however at no time has the Government of Nauru indicated that permanent resettlement in Nauru will be an option.

This incomplete policy framework results in anxiety and despair among refugee families about what the future may hold for them.¹⁴⁶ The impact of this anxiety and hopelessness on child refugees is not difficult to appreciate – they too are growing up with this sense of anxiety and despair and are additionally impacted by the deteriorating mental health of their parents and the broader refugee community.

4.2 Impact of mandatory detention on children detained onshore

The policy setting examined in this part is the detention of child asylum seekers (and their families) in the onshore immigration detention system. The detention of children in Nauru is dealt with separately in part 4.1 above.

Pursuant to Australia's laws and policies governing the treatment of asylum seekers who arrive by boat without a visa (ie 'IMAs'), thousands of asylum seeker children have been detained in Australian immigration detention facilities over recent years. In 2014, by way of example, the AHRC reported 889 children in Australian-based detention centres (which include Christmas Island) along with a further 179 in Nauru.¹⁴⁷

In April 2016, Minister Dutton made a positive announcement that there were no more children held in immigration detention onshore owing to the fact that all children without visas had either been released into community detention or other forms of accommodation that were no longer strictly classified as immigration detention.



Notwithstanding Minister Dutton's announcement there have been no changes to Australia's laws that would prevent children from being detained in immigration detention centres in the future and no public commitment to pursue any such legislative amendment. Accordingly, the matter remains entirely at the discretion of the Immigration Minister (who determines when, and in what circumstances, individuals may be transferred to Community Detention or issued visas). What remains is an ever-present threat of potential detention, which is a corner stone of the architecture of Australia's deterrence framework.

Figures released by the Government state that 'the average period of time for people held in detention facilities was 454 days at 31 March 2016'.¹⁴⁸ This average is not disaggregated for children.

For those children unfortunate enough to have been caught up in Australia's onshore immigration detention system, the human cost has been enormous and well-documented by numerous reports and inquiries.

The AHRC's Forgotten Children Report (2014) summarised the impacts on children as including:

- high levels of mental health disorders, with 34 percent of children in detention having serious mental health disorders when compared with less than two percent of the Australian population
- the danger involved by children being in close confinement with adults who suffer high levels of mental illness, and
- the risk of assaults, sexual assaults and self-harm involving children.¹⁴⁹

The Commission concluded:

*Despite the best efforts of the Department of Immigration and Border Protection and its contractors to provide services and support to children in detention, it is the fact of detention itself that is causing harm.*¹⁵⁰

The AHRC also detailed specific risks and impacts in relation to mothers and babies, pre-schoolers, primary school-aged children, teenagers and unaccompanied minors.¹⁵¹

The more recent Elliot and Gunasekera Report to the AHRC (2016) discussed in part 4.1 above confirms and expands upon these findings in relation to the damaging physical and mental health impacts of immigration detention upon children and families as well as related concerns in relation to child development and developmental regression.¹⁵²

The AMA has cited independent medical research in observing that:

*Detention facilities create an unacceptable risk to children's health. The Forgotten Children report provides exceptional direct evidence showing the negative effects of detention on children. Detention not only compounds mental health problems in children but also creates it, resulting in high rates of self-harm. There are commonly observed psychological disturbances among children in detention facilities, including separation anxiety, disruptive conduct, nocturnal enuresis, sleep disturbances, nightmares and night terrors, sleepwalking, and impaired cognitive development. Furthermore, detained children also experience significant developmental and language delays.*¹⁵³

Australia's mandatory immigration detention system is plainly in breach of a number of core human rights principles, including that:

- children should only be detained as a measure of last resort and for the shortest appropriate period of time (article 37(b) CRC)
- children should not be arbitrarily detained (article 37(b) CRC)
- children are entitled to prompt and effective review of the legality of detention (article 20(1) CRC)
- unaccompanied children are entitled to special protection (article 20(1) CRC), and
- the best interests of the child must be a primary consideration in all actions concerning children (article 3(1) CRC).

Applying these principles in the context of forced migration, there is now general international consensus that the detention of children is 'never in their best interests' and that 'detention of a child because of their or their parent's migration status constitutes a child rights violation'.¹⁵⁴

4.3 Impact of boat turn-backs on children repelled from Australia's territory

This section examines the human cost of Australia's policy of locating 'Suspected Illegal Entry Vessels' (SIEVs) and turning them back, or towing them back towards their point of origin before the vessel can reach Australia's territorial waters. Typically, this has involved repelling boats back to Indonesia, although there are also a number of examples of boats being turned back to Sri Lanka as recently as August 2016.¹⁵⁵ Turn-backs have been undertaken even where boats are specifically noted to have children onboard.¹⁵⁶ Also of concern, it appears that turn-backs are in some cases taking place even where boats have entered Australia's territory, with a recent report of Australia returning 12 people to Sri Lanka after their boat was intercepted in the Cocos (Keeling) Islands (an Australian territory) in May 2016.¹⁵⁷

This practice was first introduced in Australia in 2001 under the Howard Government before being abandoned in 2006, and later reintroduced in September 2013 by the Abbott Government.¹⁵⁸ The current policy is to turn back boats 'where it is safe to do so', with boat turn-backs forming a central component of 'Operation Sovereign Borders'.¹⁵⁹

The veil of operational secrecy that is a central hallmark of Operation Sovereign Borders prevents the public from obtaining reliable information in relation to the circumstances of those turn-backs and the nationalities, backgrounds and motives of the people who have been on-board boats involved in turn-backs.

Minister Dutton announced in March 2016 that since the start of 'Operation Sovereign Borders' in September 2013, 25 boats carrying 698 people had been turned back and safely returned to their country of departure.¹⁶⁰ This announcement was followed more recently by Prime Minister Malcolm Turnbull issuing a press release stating that it had been 'two years since the last successful people smuggling venture' and that '700 people from 28 people smuggling ventures have been returned safely to their countries of departure'.¹⁶¹ These numbers are likely to include a significant number of children, though an official breakdown is not available.

It is clear that the children and adults who are on-board boats subject to 'turn-backs' (however conducted) face a number of serious risks which cannot be ignored by the Australian Government, whether or not the operations take place within Australian territorial waters. Australia clearly has human rights obligations to those within its territory and legal experts widely agree that Australia's human rights obligations are triggered by its engagement with these boats, whereby it uses its naval force or authority to take 'effective control' of these vessels and those on board.¹⁶²

Death or injury is a foreseeable outcome, particularly where the boats that they are on-board are of poor quality, overcrowded or lack essential equipment, provisions or fuel. In addition, those turned-back face the dangers of piracy, kidnapping and extreme weather conditions. Operational secrecy does not permit the public to know of the fate of those who are turned-back – assuming their safety is tracked at all once they are turned around by Australian officials. Jakarta warned Australia in March 2016 that it considers turn-back operations to be potentially dangerous.¹⁶³

It is likely that many of those on board relevant boats have credible claims to refugee protection.¹⁶⁴ By turning boats back to their points of origin (including to Sri Lanka, a country well-known for human rights abuses and persecution of certain groups, such as Tamils), the Australian Government risks returning people (including children) to serious harm and persecution. It is not clear what, if any, 'screening' methods are used by the Government to identify those with credible refugee claims.

At some points in time, it is apparent that 'enhanced screening' and 'rapid assessment' interview techniques have been used to identify those with protection needs.¹⁶⁵ However, these interviews have been reported to take place on board vessels at sea in circumstances that are highly unlikely to be conducive to a credible assessment of a person's protection needs. It appears that a process that would typically take multiple interviews, over several days, with the assistance of legal representation, is conducted on board a boat, in a matter of minutes, without legal representation and in circumstances where asylum seekers may be physically exhausted (having not had access to food, water or sleep for extended periods) and traumatised by their experiences at sea.¹⁶⁶

The example in May 2016 of a vessel carrying 12 Sri Lankan asylum seekers (including at least two children) being intercepted in the Cocos (Keeling) Islands is particularly alarming. In that case, the asylum seekers were flown back to Sri Lanka, rather than returned by boat. However, they were subjected to only the most cursory of questions and reportedly arrested by the Sri Lankan Government immediately upon arrival in Colombo.¹⁶⁷

The Government has stated that since September 2013 it has successfully turned-back 700 people on 28 boats. Further, no additional asylum seekers have been transferred to Nauru or Manus since August 2014 and January 2015 respectively.¹⁶⁸ This tells us that whatever the Government's on-water procedures are, it is apparently not 'screening in' people who may have genuine protection needs. Anyone 'screened in' would be subject to offshore processing and their arrival within Australia's offshore processing system would appear in the available offshore transfer data.¹⁶⁹ In this regard we note the Government's statistics indicate that as of May 2016, 77 percent of those transferred to Nauru, and 98 percent of those transferred to PNG, have been found to be refugees.¹⁷⁰ These individuals collectively represent the profile of people arriving by boat prior to the introduction of the current deterrence policies and there is no reason to think that the 25 boats carrying 698 people who have been turned-back since September 2013 are any less likely to have serious protection needs.

Manoj's Story

The following story of Manoj and his family (including two children) is illustrative of this concern – a Sri Lankan family turned back by the Australian Government into the hands of Sri Lankan authorities and later recognised by the UNHCR in Nepal as refugees.

Manoj and his family attempted to travel to New Zealand along with 37 other Sinhalese and Tamil Sri Lankans in mid 2014. Their boat was intercepted by the Australian navy near the Cocos Islands. Those on board were given poor quality satellite-phone interviews with department officials on the mainland in very stressful physical circumstances and after little sleep. The Australian Government 'screened out' all but one of the 41 people on board, including Manoj and his family, meaning that they were considered to not be in need of refugee protection. They were then handed over at sea to the Sri Lankan army. Given the media attention to the case, Manoj temporarily avoided serious harm from the Sri Lankan authorities and ultimately made his way to Nepal, with the help of smugglers, where he and his family were interviewed by the UNHCR and recognised as refugees.¹⁷¹

Manoj's story is pertinent, not only because it tells of the danger that those subject to turn-backs and enhanced screening may be returned to the harm from which they fled, but it also shows that Australia's policies may not in fact be preventing people from making dangerous journeys to destinations other than Australia. Having become aware of Australia's harsh deterrence measures Manoj and his travelling companions were in fact attempting to reach safety in New Zealand, rather than Australia, when their journey began. But a defective boat, illness and the sailing conditions found them within the vicinity of the Cocos Islands instead. The 8000 kilometre journey from South East Asia to New Zealand is far longer and more treacherous than the 440 kilometre journey from Indonesia to the nearest Australian land mass of Christmas Island.¹⁷² This report of asylum seekers trying to reach New Zealand in response to Australia's harsh policies is far from an isolated example.¹⁷³

In addition to these dangers, a countless number of children requiring protection may be deterred from seeking Australia's protection due to the policy of turn-backs, which may mean they remain in countries where they face persecution or remain living a precarious existence in countries of transit, where effective protection is increasingly elusive. These impacts are explored further in sections 4.4 and 4.5 below.

4.4 Impact of closing-off resettlement options for refugees from Indonesia

In November 2014, the then Immigration Minister Scott Morrison announced that Australia would no longer accept refugees for resettlement from Indonesia and that this new policy would apply to any refugee who arrived in Indonesia after 1 July 2014. This, along with a reduction in resettlement places for those who arrived before July 2014, was intended to 'drain the pool' of asylum seekers and refugees in Indonesia.¹⁷⁴ Minister Morrison publicly stated 'We are trying to remove the incentive for people to travel to Indonesia as a destination as a good neighbour.'¹⁷⁵ What this means, in effect, is that asylum seekers who travel to Indonesia and who are assessed by the UNHCR to be refugees and eligible for resettlement, can never resettle in Australia if they arrived in Indonesia after 1 July 2014. This policy has nothing to do with people who attempt to travel to Australia by boat. It applies to those who might otherwise have settled in Australia through the regular, well-worn pathways of resettlement established between Australia and the UNHCR.

At the time of this announcement the Indonesian Minister for Justice and Human Rights Yasonna Laoly commented '[i]t's Australia's right, but it becomes a burden for us'.¹⁷⁶ In 2016 the Indonesian Government joined the UNHCR in subsequently calling on Australia to revoke this position.¹⁷⁷

Rather than 'draining the pool' it is now apparent that this policy has actually created a backlog of refugees in Indonesia who are awaiting an opportunity for resettlement through UNCHR channels, with one of the most historically significant of those channels suddenly, and without warning, closed off. UNHCR cites that '[i]n Indonesia, during the past one decade (2004 - 2014) as many as 3,108 people were resettled to third countries, in particular Australia.'¹⁷⁸ It is not clear how Minister Morrison expected that his new policy would 'drain the pool', in the absence of additional or alternative resettlement pathways opening up.

At the time of Minister Morrison's announcement, he reported that there were 10,000 people in Indonesia awaiting resettlement.¹⁷⁹ In February 2016, the UNHCR's Indonesia operation reported 13,829 refugees and asylum seekers registered with its Jakarta office,¹⁸⁰ a number which is likely to underestimate the true number of asylum seekers and refugees in the country. Based on the observation that globally approximately half of the world's refugees are now children,¹⁸¹ it is reasonable to assume that there may be as many as 7000 asylum seeker and refugee children in Indonesia in need of effective protection and durable solutions.

Hussein's Story

The people affected by this sudden change in policy include children like Hussein, a Hazara from Afghanistan, who an Australian journalist met camped outside of the UNHCR office in Jakarta shortly after this policy announcement:

He's 15 and has bedded down here since arriving in Indonesia a week ago.

Hussein says he did not know when he left Afghanistan about Scott Morrison's new policy to ignore refugee applications from people who arrived in Indonesia after July 1. He knows now that he will never get his wish of resettlement in Australia, but says he probably would have come anyway. He feels he had no choice.

"My mother was sick . . . and she wanted to go from Jaghory to Kabul for the doctor. On the way, beside the road, there was a bomb. When they got close in the taxi, the bomb exploded," he says.

Hussein's mother, father and sister were all killed. He fled for his life, selling the family's possessions and paying a people smuggler \$US6000 (AUD\$7200).

Now he has no money and faces an indeterminate wait in Indonesia, where he cannot go to school or earn a living.¹⁸²

Hussein's story reveals why Australia's policy shift was unlikely to ever 'drain the pool'. He probably would have come anyway. He feels he had no other reasonable choice.

The UNHCR's Indonesia Factsheet of February 2016 sheds some light on the challenges that are faced by those who enter Indonesia looking for durable protection options.

- *The average waiting period from first registering [with the UNHCR] to obtaining a first instance interview of 8 to 20 months depending on the priority and complexity of the case. This waiting period does not include the additional months or years that they must wait before they receive their refugee status determination.*
- *In 2015 a total of 610 refugees were resettled to countries offering resettlement... while 1,494 others were submitted for consideration by States. In addition: Some 343 people (all but a few being asylum-seekers) returned to their countries of origin in 2015.*

If one were to use these figures to generously estimate that 1000 refugees would access resettlement or voluntarily return to their home countries each year, it would take almost six years to effectively 'drain the pool' of 6,269 refugees formally recognised by UNHCR Indonesia, and that is assuming that no more refugees arrive during those six years.¹⁸³

The Indonesia Factsheet reveals that asylum seekers and refugees face numerous risks and challenges in Indonesia, many of which flow from the fact that Indonesian law does not extend any special legal status to asylum seekers and refugees, with the result that they are legally classified as 'illegal immigrants':

- **Immigration detention:** As of February 2016 'some 4,273 persons of concern are currently detained, including women and children. The Government continues to use detention to deter onward movement by intercepting and arresting mixed groups attempting to enter or leave the country illegally, including persons under UNHCR's mandate.' Related to this concern, a media report notes 'Indonesia's director-general of immigration, Ronny Sompie, told The Jakarta Post that Indonesia's 13 immigration detention centres were overcrowded as the number of 'illegal migrants' had increased more than fivefold over the past seven years.'¹⁸⁴
- **Desperation leading to self-reporting to detention:** 'In addition to those who are detained for illegal entry or exit, over the past year UNHCR has been challenged by the increasing number of asylum-seekers and refugees who have self-reported to immigration authorities to be detained because of their inability to financially support themselves.' Related to this, reports have emerged that a tragically bizarre economy has been created in which asylum seekers, desperate to secure basic shelter and food, are in some cases paying bribes to guards in order to secure a place in immigration detention.¹⁸⁵
- **No work rights:** Refugee and asylum seekers do not have the right to work in Indonesia. Financial assistance is limited and not available to all. UNHCR, for example, does not provide any financial assistance to asylum seekers.¹⁸⁶
- **Limited Educational Opportunities:** 'Refugee children have access to primary and secondary education in Indonesian public schools.' Other reports suggest that the official position is not realised in practice and the theoretical entitlement to education does not extend to asylum seeking children.¹⁸⁷ Of additional concern the Indonesia Factsheet notes '[i]n 2015 only 51 school-age refugee children are enrolled in public schools.'

Tariq's Story

Tariq, an unaccompanied child asylum seeker, travelled from Afghanistan to Indonesia where he was detained for several months due to his 'illegal' status. Dr Missbach's account of Tariq's experience supports other reports that unaccompanied children are not in practice exempt from being detained in immigration detention facilities in Indonesia prior to their attaining refugee status, which is likely to take years to obtain.¹⁸⁸

Other important concerns raised in the material below in relation to the impact of deterrence on children who need protection also apply to those refugees in Indonesian who are currently barred from resettlement in Australia.

4.5 Impact of deterrence on children in the region

Australia's deterrence policies appear, on the surface, to have been effective in reducing the number of asylum seekers attempting to travel to Australia by boat.¹⁸⁹ However, not surprisingly, Australia's deterrence policies do not reduce the number of people requiring protection around the world, nor have they been shown to reduce the number of people in the region who are seeking durable protection options. To the contrary, Dr Antje Missbach has observed that Australia's policies have resulted in an accumulation of asylum seekers in Indonesia and elsewhere in the region.¹⁹⁰

The number of internationally displaced people in Asia and the Pacific region is estimated to now stand at 3.8 million, as compared with 3.5 million at the end of 2013.¹⁹¹ A statistical analysis of what portion of these numbers may be sensitive to changes in Australia's policies is beyond the scope of this report. However, what is clear is that the need for protection and durable solutions is immense and that until the governments of the region addresses this need, the incentives for irregular migration will continue and human suffering will continue.

That said, it is important to bear in mind that not all of those with protection needs within the region require or are seeking permanent resettlement in Australia. Of the 3.8 million internationally displaced people estimated by the UNHCR to be in the Asia and Pacific region (a figure which includes refugees and people in refugee-like situations),¹⁹² the UNHCR only identifies 153,358 people as being in need of permanent resettlement, as opposed to the other durable solutions of local integration in the country of asylum or voluntary repatriation.¹⁹³ Observations made by Save the Children during recent fieldwork in Thailand, Malaysia and Indonesia suggests, for example, that the vast majority of Rohingya asylum seekers residing in South East Asia are seeking to reunite with families and secure economic opportunities in Malaysia, where existing diaspora communities and family networks have been formed over many years of migration.¹⁹⁴

The following table shows the number of asylum seekers and refugees that fall within the UNHCR's population of concern in 2015, compared with 2012, and indicates that across key host countries the number of asylum seekers and refugees has increased by 36 percent in the last three years.

UNHCR POPULATION DATA:ASYLUM SEEKERS AND REFUGEES* BY COUNTRY OF RESIDENCE 2012 AND 2015 ¹⁹⁵			
	2012	2015	Percentage change
Indonesia	7,945	13,508	70% increase
Malaysia	101,835	154,486	52% increase
Thailand	99,059	116,468	17.5% increase
Total	208,839	284,462	36% increase

This compares with the following Australian resettlement statistics¹⁹⁶

	2012-13	2015-16	Percentage change
	20,019	13,750 (planned)	30% decrease

*Refugee numbers include refugees and persons assessed by the UNHCR to be in 'refugee-like' situations.

Accordingly, it stands to reason that by deterring asylum seekers from attempting to travel to Australia, without offering expanded regularised migration pathways or enhancing protection in the region, Australia's policies abandon asylum seekers to their fate in the region and further afield.

The following is a brief summary of some of the key risks and prospects faced by child asylum seekers and their families deterred from seeking Australia's protection. While the unique challenges faced by unaccompanied children are not specifically addressed, it is important to recognise that the risk-factors identified below are likely to be experienced more often and more acutely by children who are in the region and not accompanied by an adult relative.¹⁹⁷

The lack of effective protection for asylum seekers and refugees in the region is partly a function of the fact that relevant countries such as Indonesia, Malaysia and Thailand are not currently party to the Refugee Convention as well as the absence of comprehensive national laws, policies and services that specifically cater to refugees and asylum seekers. The issues identified overlap with many of the issues highlighted in part 4.4 above in relation to those refugees in Indonesia who are barred from resettling in Australia.

(i) Risk of detention

Save the Children has recently undertaken extensive fieldwork in a number of countries in South East Asia, including Malaysia, Thailand and Indonesia, in which it identified that in each of these countries asylum seeker children are subject to arbitrary arrest, detention and deportation. Asylum seekers and refugees are not adequately provided for in domestic immigration laws, and generally lack legal status which recognises their right to seek protection, often being treated as 'irregular migrants' or 'illegal aliens' throughout the region.¹⁹⁸

Immigration detention is widely recognised as inherently harmful to children and is only permitted under human rights law as a last resort and for the shortest appropriate period of time.¹⁹⁹ In addition to the inherent and unavoidable harm that comes with a serious deprivation of liberty, when children spend time in immigration detention in transit or host countries in the region, they are exposed to further risks including:

- risk of violence and abuse
- risk of deterioration of mental health, self-harm and suicide
- risk of inadequate nutrition, hygiene and basic living standards
- lack of access to education, healthcare and recreation
- risk of family breakdown and incapacitation of parents²⁰⁰

(ii) Risk of deportation and refoulement

The absence of protected legal status of refugees and asylum seekers in the region exposes them to the risk of deportation.²⁰¹ The risk of deportation, a serious concern in itself, gives rise to some other very serious concerns, including the risk that asylum seekers and refugees may be returned to countries where they face persecution or other serious harm (ie refoulement).²⁰² In addition asylum seekers in the region are exposed to physical danger and potential refoulement in the course of being repelled or 'pushed-back' while at sea.

The Andaman Sea crisis of 2015 is a poignant example of some of these risks. The Centre for Policy Development summarised the situation as follows:

In May last year, the discovery of mass graves on the Thai-Malaysia border and stranding at sea of around 8,000 people fleeing Myanmar and Bangladesh cast the spotlight on the grave reality of forced migration in our region.

The regional response was sorely inadequate. Boats were intercepted by Thai, Malaysian and Indonesian authorities, and reportedly pushed back out to sea. Smugglers and traffickers abandoned boatloads of asylum seekers, many of whom were without food or water. Some were saved by local officials or fisherman, or swam to shore. 370 people are known to have died. After several weeks, a one-off meeting convened by the Thai Government finally helped to provide a stop-gap resolution for the immediate crisis – but only after the muted capacity of regional institutions and architecture to deal with displacement crises had been tragically exposed.²⁰³

(iii) risk of exposure to violence and abuse, including trafficking and exploitation

Recent field research in Thailand, Indonesia and Malaysia conducted by Save the Children's South East and East Asia regional office indicates safety and protection concerns in relation to child asylum seekers and refugees in urban environments as well as in camps/ shelters. In the absence of national and state level protective mechanisms and services, the findings of this research reinforces the findings of existing reports of violence, abuse and exploitation (including child trafficking) faced by refugee and asylum seeking children.²⁰⁴

(iv) Risk of extreme poverty and related difficulties in accessing adequate nutrition, shelter and healthcare

The irregular or illegal legal status of most asylum seekers and refugees in the region means that they typically lack work rights or any entitlement to financial assistance or social security. If not in immigration detention or refugee camps, families are reliant upon personal savings (if any), family networks and assistance from NGOs, charities and other providers of support. Unfortunately, organisations providing material support to asylum seekers in the region are typically vastly under resourced and unable to respond to the scale of need that they face, which has grown at an alarming rate in recent years owing to increased refugee numbers globally and within the region.

The fact that some asylum seekers in Indonesia are bribing guards to be allowed back in to immigration detention facilities in Indonesia (see 4.4 above) reveals the depth of the poverty and need so often faced by forced migrants, including significant numbers of children, in the region.

The extreme poverty that can follow from asylum seekers becoming 'trapped' in host-countries without work rights or resettlement pathways has been identified as one of the key factors involved in asylum seekers becoming the facilitators of irregular migration (or 'people smugglers') in order to make a living. Dr Antje Missbach reports on a case study of three men convicted of people smuggling charges, noting that each of them could be appropriately described as a 'victim-offender'.²⁰⁵

Dawood's Story

Troubled Transit tells the story of a young Hazara, Dawood Amiri who was only 18 or 19 when he first became involved in facilitating the irregular movement of people. Having arrived in Indonesia at the age of 17, he was arrested in 2010 while trying to travel to Australia and subsequently held in immigration detention for 14 months. He subsequently escaped and keen to help other asylum seekers find protection and in the absence of financial support from the UNHCR or IOM, turned to people smuggling in order to support himself and his new wife and baby as well as his other family members, who had fled to Pakistan.²⁰⁶

(v) Lack of access to adequate education, healthcare, nutrition and other basic needs

There are many barriers, including lack of protected legal status, which prevent asylum seeker and refugee children in the region from accessing education.

Indonesia, for example, requires that children hold certain documentation in order to access education, a requirement that many forced migrants are unable to satisfy.²⁰⁷

In Malaysia, the 'irregular migrant' status of refugee and asylum seeking children means that they are excluded from the national education system.²⁰⁸ Children in immigration detention centres are typically unable to even access informal educational programs set up by non-governmental groups.

In Thailand, the Ministry of Education has been implementing the Education for All Policy since 1999, and in 2005 the government adopted a Cabinet resolution under which Non-Thais have the right to free basic education regardless of their legal status. However, in 2014, 60 percent of the 200,000 migrant children living in Thailand were not registered in Royal Thai Government schools and were not receiving any forms of schooling.²⁰⁹ This gap is caused by different factors, including the cost of education, difficulties in obtaining documentation for enrolment, language barriers, and the fact that migrant families are often unaware of educational options for their children.²¹⁰

The irregular legal status of asylum seeker and refugee children in the region leads to similar challenges in accessing healthcare, adequate nutrition and shelter; whether children are residing in urban areas, camps or immigration detention centres.

(vi) Prolonged displacement

The number of refugee and asylum seekers is apparently increasing in key host-countries such as Thailand, Indonesia and Malaysia, and the number of resettlement places remaining extremely low. It is apparent that those seeking asylum in the region are therefore likely to face increasingly prolonged displacement.

Even obtaining the limited protection that a positive UNHCR refugee determination and identification card can provide can take several years. In Malaysia, for example, asylum seekers are currently waiting an average of 535 days in order to obtain an initial interview with the UNHCR, with a further wait of 165 days on average until they actually receive an initial determination in relation to their refugee status.²¹¹

(vii) Family separation and lack of provision for unaccompanied children

Throughout South East Asia, the absence of protected legal status for asylum seeker and refugee children means that state-endorsed family reunification is simply not an option. In addition to the challenges in accessing basic support and services, this leaves many asylum seeker and refugee children residing in host countries without a legal guardian and at risk of violence, abuse, sexual and labour exploitation and trafficking.²¹²

(viii) Risk of attempting dangerous journeys to destinations other than Australia

If asylum seekers and refugees are unable to find effective protection in the region, and are effectively deterred from seeking protection in Australia, they may elect to explore other options for irregular migration, exposing them to dangerous journeys to alternative destinations. The story of Manoj's attempted journey to New Zealand with his wife and children in part 4.3 also supports the argument that Australia's deterrence policies may push people towards making other, potentially more dangerous journeys by sea.

(ix) Risk of not fleeing

Australia's deterrence policies may also operate so as to dissuade individuals from fleeing persecution in the first place, leaving them to face whatever dangers and harm exists in their countries of origin. The story of Syed, a Hazaraghi man who came to Australia prior to the introduction of current policies, with his wife and children remaining in Quetta, is particularly pertinent in this regard.²¹³ Australia's policies appear to have deterred his wife and children from attempting to join Syed so they remain living as Hazara refugees in Pakistan – where the Hazara community has faced numerous targeted attacks in recent years.²¹⁴

4.6 Global impact - a dangerous Australian export?

Australia's policies of deterrence have also been coupled with diplomatic pressure on countries in the region to effectively perform outsourced border control on behalf of Australia. Australian academic Dr Missbach has explored the role that Australia played in Indonesia's policy toward migrants from Iran. She explains that until 2013 Iranians had the option of obtaining a visa on arrival in Indonesia, which many Iranians made use of, some intending to travel onwards to Australia. However, in response to pressure from Australia, in July 2013 Indonesia's Minister for Justice and Human Rights signed a decree putting an end to this option.²¹⁵ While Iranians may still have the option of travelling to the region via Malaysia, it is apparent that if Australia's agenda was to gain traction throughout the region, Australia's policies could significantly contribute to the phenomenon of asylum seekers remaining trapped within countries where they face persecution.

In recent years Australia has also reportedly been 'a major provider of funding and resources to the Indonesian Government to use immigration detention to prevent onward journey to Australia.'²¹⁶ Furthermore, Australia's use of boat turn-backs arguably paved the way to South East Asian countries engaging in push-backs of boats during the Andaman Sea crisis of 2015.

Further afield, in the context of a global migration and refugee crisis, it is concerning that Australia may seek to promote its deterrence approach in Europe.²¹⁷ Many European countries have recently sought to close their borders to asylum seekers and push responsibility for asylum seekers onto host or transit countries such as Turkey,²¹⁸ and we see new instances of European states such as Bulgaria introducing mandatory immigration detention for asylum seekers and refugees.²¹⁹ Most alarmingly, a delegation of Danish politicians planned to visit Nauru in late August/early September 2016 in order to help them to assess whether Australia's deterrence framework could be applied in Denmark, although the trip was subsequently cancelled after the Government of Nauru refused to grant visas to some members of the group (particularly those who had publicly criticised Australia's offshore processing arrangements with Nauru).²²⁰

Australia's approach, if adopted on a global scale, would certainly mean the end of the notion of refugee protection. As a senior foreign affairs advisor in Jakarta reportedly observed '[i]magine if other countries followed this approach... The international order would collapse.'²²¹

5. ECONOMIC COST

Various attempts have been made in the past to quantify the economic cost of Australia's approach to asylum seeker policy. In a 2007 report titled 'A Price Too High', A Just Australia and Oxfam analysed the 'Pacific Solution' framework to assess claims made at the time that the policy was efficient and effective – a position they found to be untenable on multiple cost grounds.²²² The report found that over the six years following the Tampa crisis more than \$1 billion was spent to process around 1,700 asylum seekers in offshore locations – equating to more than half a million dollars per person.

Importantly, A Just Australia and Oxfam noted difficulties in arriving at a final tally for the financial cost due to the fact that the policy framework was not neatly encapsulated as a single program, with functions spread across many government departments. The current policy framework presents precisely the same problems faced in 2007: the total suite of the policies of deterrence is spread across more than ten agencies.

In a more recent attempt to quantify the costs of intercepting, detaining and processing asylum seekers arriving by boat, Spinks, Barker and Watt (2013) report that no Australian government has ever provided a single figure estimate of the total cost of asylum seeker policy. They argue this is not just because the costs are incurred across a number of departments, but also because activities are carried out across programs that have broader objectives than just asylum policy. A case in point is the policy of boat turn-backs that is one task among many carried out by border protection officials. As a consequence, Spinks et al did not attempt to state a final overall cost, but rather concluded that the total expenditures run into billions, but may never be known.²²³

The bottom line is that the lack of transparency in reporting and aggregated budget allocations make it difficult to accurately describe the cost of Australia's asylum framework. If it is not possible to accurately estimate the cost of the policies, then it is also difficult to establish what value for money is being derived from these expenditures, if any, and where alternative policy frameworks would prove more efficient and effective.

Notwithstanding transparency issues, our strategy is to attempt to capture what we believe are the bulk of the expenditures on offshore regional processing centres, onshore immigration detention, boat turn-backs, regional agreements and cooperation. We find that from 2012-13 to 2015-16, the Government spent at least \$9.6 billion on its policies of deterrence, and plans to spend between \$4.0 to \$5.7 billion over the next four years as summarised in the following table.

SUMMARY OF COSTS (\$ MILLION)	2012-13 TO 2015-16	2016-17 TO 2019-20
Offshore regional processing	3,619	1,988
Onshore mandatory detention	5,578	1,911 to 3,551
Boat turn-backs and related operations	295	89
Regional elements:		
Cambodia agreement	40	
Regional Cooperation Arrangement (Indonesia)	72	55
Total	9,604	4,044 to 5,683

Sources: DIBP PBS 2014-15 through 2016-17; Treasury Budget Paper 2, 2013-14 through 2016-17; MYEFO 2013-14, 2014-15; Cambodia MOU²²⁴

Each of the costs in this table is described in more detail in what follows. Other costs are also discussed but not included in our overall estimate due to uncertainty over their magnitude, underscoring the importance of greater transparency and accountability for the policies. Hence, the cost reported here is likely to be lower than the true cost to taxpayers.

The operation of the offshore processing system, and the onshore immigration detention network, account for most of the cost associated with Australia's deterrence policies. Budget documents reveal that in the last three years (ie July 2013 to June 2016) the Government has spent around \$9.2 billion for offshore processing and immigration detention of 'illegal maritime arrivals' (IMAs), and expects to spend between \$3.9 and \$5.5 billion over the next four years.

The costs incurred depend partly on the structural settings of the policies – how mandatory detention directs people claiming asylum to one of the four categories of offshore processing, onshore detention, community detention or Bridging Visa-E; and partly on the numbers of people in each of these categories – both those that are already in the system in each of the components and those new arrivals attempting to seek asylum. Since the latter are influenced by the structural settings, there is a transition between the old policy of onshore processing and permanent protection visas to the new settings which has resulted in around 1,500 people who set out to seek asylum in Australia relocated to Manus Island or Nauru, and several boats turned around at the border.

In what follows we look at the trends in the numbers of people in processing and detention, and the structural factors and activities that contribute towards the cost. First an overview is obtained by examining trends in total IMA and the current cross section, and the relative average costs across the categories of detention. Then we examine the cost of key policy elements in more detail.

The cohort of around 32,000 men, women and children that are in the immigration detention and processing system are currently distributed across the categories according to the table below:

IMMIGRATION DETENTION AND PROCESSING – MARCH 2016				
	Men	Women	Children	Total
<i>Immigration detention</i>				
Christmas Island	183	0	0	183
On-shore	1,320	159	17	1,496
<i>In community</i>				
Community under Residence Determination	184	154	317	655
Community in Bridging Visa E	21,190	3,381	4,050	28,621
<i>Regional Processing Centre</i>				
Republic of Nauru	363	55	50	468
Manus Island, PNG	905	0	0	905
Total offshore	1,451	55	50	1,556
Total onshore	22,694	3,694	4,384	30,772

Source: Compiled from Immigration Detention Statistics, DIBP²²⁵

These numbers do not appear to include the people who have been recognised as refugees in Nauru and PNG who are no longer residing in the RPCs.

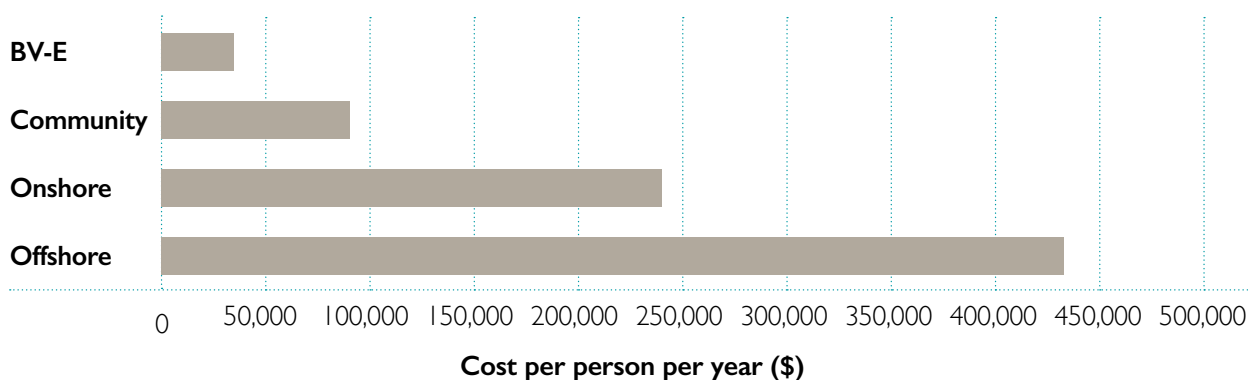
Relative costs of processing and detention

Offshore processing has been very expensive to implement due to high overhead costs (extensive capital expenditures, regional agreements with partner countries), and the costs of managing the centres in the remote locations (travel costs, logistics, and transport). Robust estimates of the per person per year cost consistently exceed \$400,000.²²⁶

On the other hand, onshore detention has been costly in absolute terms because while it is cheaper to manage and provide services on mainland Australia, there were more people in onshore detention. At its peak in July 2013, the onshore detention network housed nearly 7,000 people.²²⁷ On a per person basis, the cost of onshore detention is lower than offshore at around \$240,000 per person, per year.²²⁸

The figure below illustrates the relative costs of the different categories of detention per person, highlighting that community detention and Bridging Visa-E categories have a much lower cost than detention in immigration facilities – around \$90,000 and \$33,000 per person per year respectively.

RELATIVE COST PER PERSON FOR 12 MONTHS IN DETENTION, 2013



Source: Reproduced from National Commission of Audit, originally from Department of Finance – assumes chart is to scale.²²⁹

The difference in the relative cost per person of the categories of detention show how the distribution of people directly affects the cost of IMA policy. If a person currently in an RPC were to be detained onshore instead, the Government saves around \$200,000. Moving that person into community residence saves around a further \$150,000. And finally if that person was issued a Bridging Visa-E, the cost would be reduced by another \$50,000.

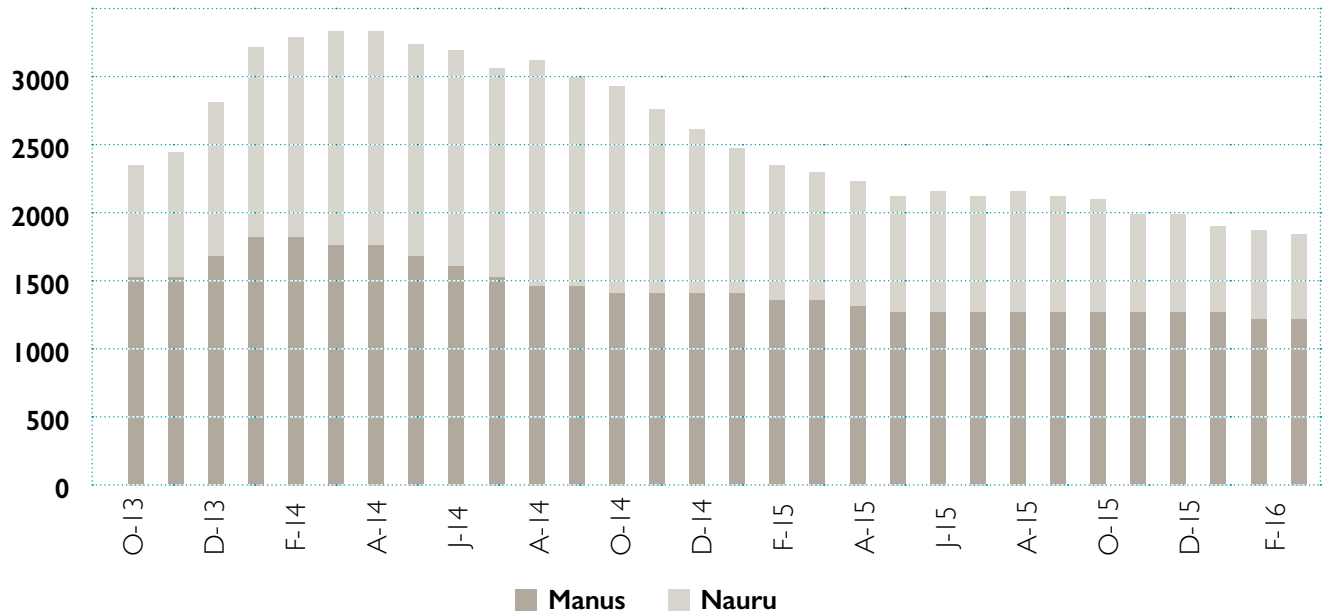
Before discussing each of the main cost components in more detail, it is important to put the lower expected fiscal cost of the Government's policies into perspective. Lower outlays in the future are not necessarily driven by efficiencies in service provision, but reflect that large capital expenditures had been incurred (and largely sunk); and that the rate of arrival of new IMAs has slowed or stopped altogether due to the fact that boats are being prevented from reaching Australian territories. So the lower cost should not be interpreted as an efficiency-achieving result, but rather that the same amount of human cost that the current policies inflict on the people in detention can be achieved at a lower dollar cost.

The following sections describe the costs incurred in regional offshore processing, onshore detention, boat turn-backs regional agreements and cooperation, and other important areas of the Government's deterrence policies. For each element, the numbers of people affected as well as the top line costs are reported. Where possible, some disaggregation of the costs into key activities conducted is also explored.

5.1 Economic cost of offshore processing

The number of people in detention in the respective RPCs in Nauru and PNG (Manus Island) are shown below. Note that while numbers are decreasing on Nauru as people are resettled into the community, the numbers on Manus Island – all men – remains approximately constant at around 1,000.

NUMBER OF PEOPLE IN MANUS ISLAND AND NAURU RPC

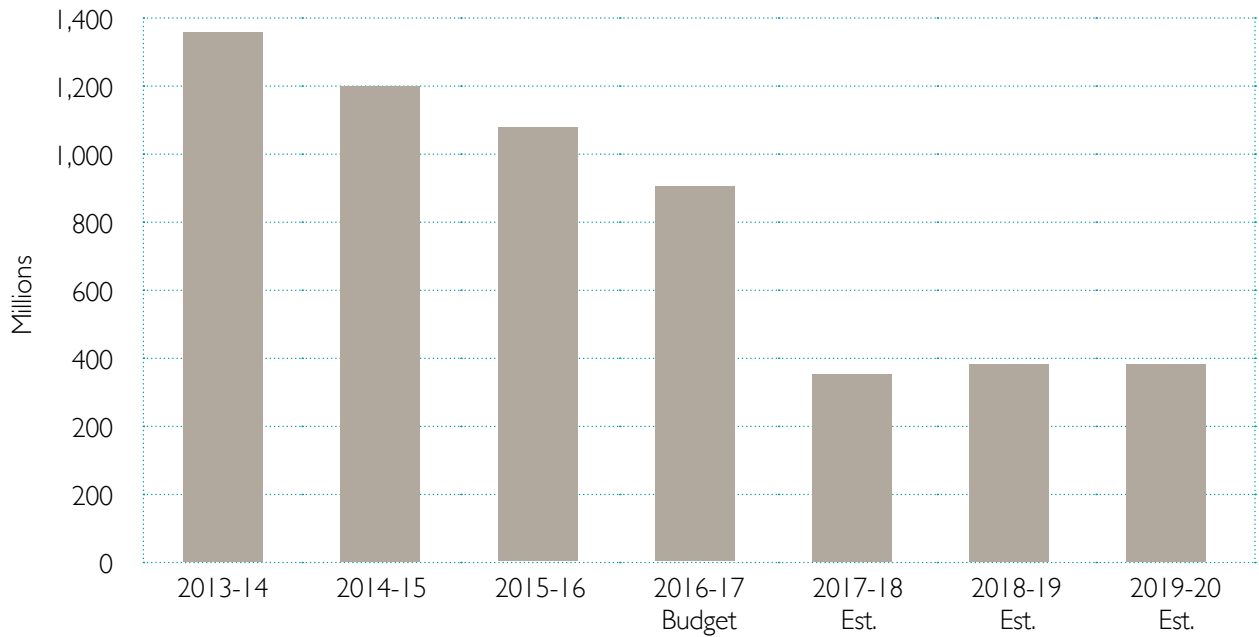


Source: Compiled from Immigration Detention Statistics, DIBP²³⁰

Budget documents reveal that in the last three years (ie July 2013 to July 2016) the Australian Government has spent at least \$3.6 billion establishing and operating its offshore processing systems and facilities. These figures include costs associated with 'services that assist partner countries to manage settlement of transferees found to be refugees'.²³¹

While there are a number of activities undertaken by different governmental departments, the bulk of the Government expenditures on offshore processing are administered by DIBP under a programme known as I.4 IMA Offshore management, shown below.

COST OF OFFSHORE DETENTION AND PROCESSING – 1.4 IMA OFFSHORE MANAGEMENT



Note: The offshore management expenses reported for 2013-14 and 2014-15 include capital expenditures which were reported in Senate Estimates on 27 May 2015. The capital expenditures are \$391 million in 2013-14 and \$286 million in 2014-15. Capital expenditures for Manus and Nauru from 2015-16 onward have not been reported. However, the figures would not be affected substantively in any case: (administered) capital expenditures for the whole department was \$203 million in 2015-16, budgeted at \$148 million in 2016-17, falling to around \$20 million over the following three years to 2019-20.

Source: Portfolio Budget Statements DIAC (2013-14), and DIBP (2014-15 through 2016-17)²³²

Large capital expenditures and larger numbers of people explain the higher expenditures between 2013-14 and 2015-16. However, while future cost estimates are lower, they are conditioned on boats being either deterred from coming or being turned around at sea. Hence, this policy of deterrence is exposed to an up-side cost risk if there is a surge in the number of boats that cannot be turned-around or whose passengers are sent to one of the RPCs for whatever reason.

Shutting down the centres immediately would likely result in a saving of nearly \$2 billion over the next four years provided all other elements of the policy framework were to remain the same. Since boat turn-back activities have proved effective at stopping boats from arriving in Australian territories, there is a strong argument that persistent expenditure on offshore processing at these levels is inefficient against the broader objective of providing refugee protection. Instead, reinvestment of these planned expenditures in a regional protection framework would achieve greater protection outcomes without incurring the enormous human cost entailed in offshore processing in Nauru and PNG.

While detailed breakdown of expenditures on the RPCs is not generally available, the below table provides an itemisation for 2014-15 obtained from a Senate Estimates hearing.

COST OF REGIONAL PROCESSING CENTRES 2014-15			
RPC Expenses 2014-15 (\$m)	Nauru	Manus Island	Description
Charters	24.7	20.7	Flights to and from RPC
Escorts	8.6	7.8	AFP and local police force escorts
Independent reviews	0.48	0.39	Conduct of various reviews and inquiries
Garrison and welfare	316.9	0.39	Services contracted to Transfield
Healthcare	25.4	177.8	Health services contracted to IHMS
Payments to governments	0.6	7.9	Capability and development support
Other costs	57.3	70.1	Including unaccompanied minor support, visas, leases, post-assessment costs
Department costs	35.1	23.8	Cost of government staff and supplies
Capital costs	113.4	271.8	Cost building and maintenance of facilities
Total	582.5	580.7	

Source: Senate Estimates – Monday 20th October 2014²³³

Service delivery has been a large component of the expenditures, and the scope of services paid for by Australia for the operation of these two RPCs is detailed above for 2014-15. These expenditures remain indicative of the expenditures currently incurred. Asset management firm Transfield Services is contracted to provide garrison and welfare services in Nauru, and Manus Island, with Wilson Security sub-contracted to provide the security services on Manus Island.²³⁴

Escorts and charters are another large component of expenses. Travel to and from RPCs for detainees, their escorts and officials is undertaken by a combination of contracted private providers and the RAAF.

Health care services are provided by IHMS, who work with local health care providers to provide emergency and acute care. Limited health care services on both islands mean that people often need to travel to Australia for specialist health care. This compounds the cost due to the high cost of escorts noted above. In one much publicised case, a pregnant woman was flown back to Nauru from Sydney on a chartered flight, costing over \$115,000.

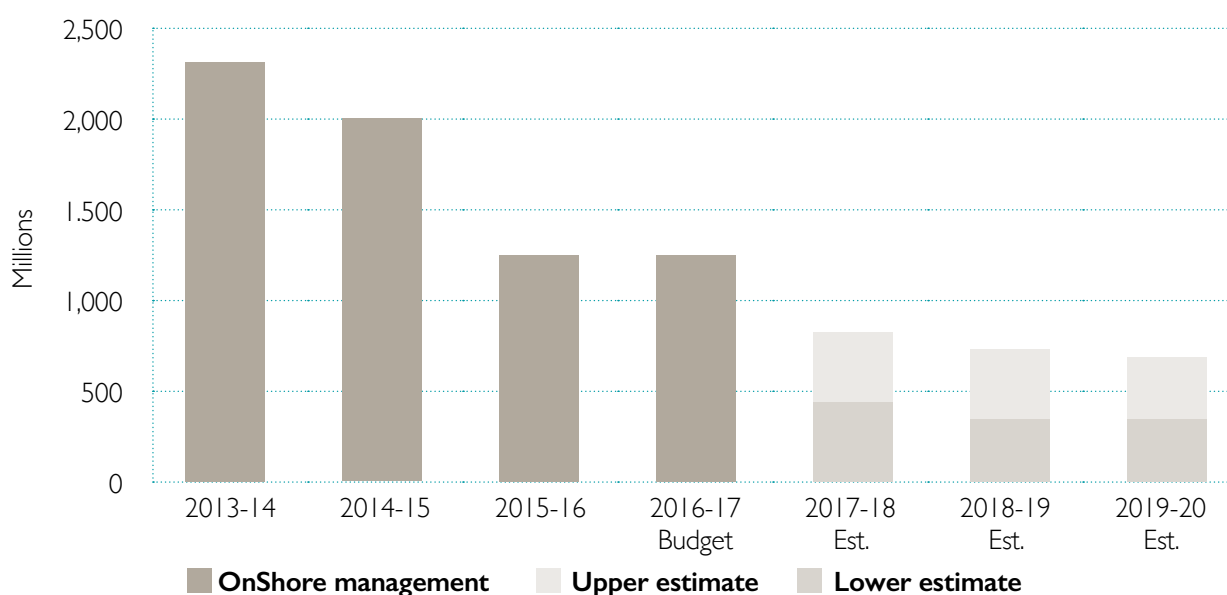
Other costs of operating Manus Island and Nauru include advisory committee functions, returns and removals, leases and visas. We note that the Government of Nauru charges Australia \$3,000 per month per person for asylum seekers and refugees transferred to Nauru.²³⁵

5.2 Cost of onshore mandatory detention

People arriving to Australia without a valid visa are mandatorily detained under the Migration Act. Onshore detention accommodates people detained as un-authorised arrivals (people arriving by air without a valid visa) as well as people who arrived by boat under the previous policies who are awaiting status resolution or are yet to be transferred to an offshore processing centre (ie IMAs) and visa over-stayers and visa cancellations.

Budget documents reveal that the Government has spent \$5.7 billion on onshore detention of IMAs over the last three years (ie July 2013 to June 2016), and will spend between \$1.9 - \$3.6 billion over the next four years continuing to detain asylum seekers.²³⁶

COST OF ONSHORE IMMIGRATION DETENTION



Source: Portfolio Budget Statements DIAC (2013-14), and DIBP (2014-15 through 2016-17), DIBP Immigration Detention Statistics.²³⁷

Note: the lower estimate method assumes that the proportion of IMA detained remains constant over the next four years. The upper estimate method assumes that the ratio of IMA onshore expenditure to total onshore expenditure is the same in the forward years as 2015-16.

These expenditures broadly cover services in both community and detention environments in Australia, but not the cost of those people on bridging visas. Activities that are carried out within the budget include construction and maintenance of the places of detention, provision of services to detainees – including services for those choosing to be voluntarily returned to their country of origin, and health and other support services for those waiting for status resolution. Expenditures also include transfer of eligible IMAs to an offshore processing centre following status resolution.

5.3 Cost of boat turn-backs and related operations

In July 2016 the Government reported that 'since [Operation Sovereign Borders] commenced, 700 people from 28 people smuggling ventures have been returned to their countries of departure'.²³⁸ The suite of deterrence policies that led to this outcome were designed to eliminate the incentive for people to choose the irregular migration pathway and included not just physical boat-turn backs, but also the activities to disrupt people smuggling which prevent boats from setting out. These include measures such as a community liaison program in Indonesia; a communications campaign in Afghanistan, Iran, Sri Lanka and Pakistan; and various dedicated postings for officials in the region. The cost of these related activities have also been factored into this analysis.

From the publicly available economic data detailed in the table below, we estimate that the cost of boat turn-back operations over the last three years (ie July 2013 to July 2016) was a least \$295 million and that future annual expenditure is likely to be in the order of \$20 million if boats continue to be deterred. It must be highlighted that the cost reported in this section relates to activities carried out specifically to turn back boats, rather than baseline expenditures on customs and maritime surveillance. DIBP alone spends around \$1.25 billion every year in border enforcement and management and programs²³⁹ but only a small portion of that can be attributed directly to activities supporting boat turn-backs (see below).

Part of Operation Sovereign Borders, boat turn-backs involve elements of on-water operational costs and the cost of gathering and analysing people-smuggling intelligence, drawing principally on the Australian Defence Force, Australian Federal Police and DIBP. However, the activities also rely on intelligence and services from other supporting agencies.²⁴⁰ The aggregated budget allocations make it especially difficult to make an attribution of expenditure specifically to boat turn-backs.

Other serious attempts to clarify the cost of aspects of Australia's asylum seeker and refugee policy have encountered similar issues – see Spinks, Barker and Watt (2013).²⁴¹ In their analysis, Spinks et al attempt to quantify government expenditures on responding to IMA, concluding that it is not possible to discern what proportion of the overall funding allocation – of approximately \$300 million per year for all maritime surveillance and response – was spent on responding to IMAs in particular. The task here is a somewhat finer point: to estimate a dollar figure associated specifically with turning back boats separately from the myriad other customs and maritime surveillance tasks.

Since the Government undertakes business-as-usual expenditures on maritime surveillance and border operations, a cleaner approach for estimating the cost of the boat turn-around element of the OSB policy can be deduced by looking for deviations of expected expenditure from the business-as-usual baseline. With the introduction of boat turn-backs as explicit policy a number of new measures were announced that cut across those services. The sum of these expected new additional expenditures is the closest approximation possible for obtaining a cost of boat turn-backs.

KEY IMA BOAT TURN-BACK EXPENSES UNDER OPERATION SOVEREIGN BORDERS					
(\$m)	2012-13	2013-14	2014-15	2015-16	2016-17
Australian Customs and Border Protection Service					
Strengthening response capability for IMAs	-	12.3	101.4	22.4	21.7
Community engagement and strategic communications campaigns	-	8.1	8.9	2.5	0.5
Department of Immigration and Border Protection					
Enhancing Border Controls and Improving Identity Management	-	19.3	11.7	9.9	-
Department of Defence					
Operation Resolute – extension	-	31.6	-	-	-
Attorney-General's Department					
Enhancing people smuggling intelligence gathering, disruption and joint policing					
Australian Federal Police	-	11.1	18.2	8.7	-
Australian Secret Intelligence Service	-	7.3	13	6.5	-
Australian Secret Intelligence Organ	-	0.4	0.7	0.3	-
Australian Crime Commission	-	0.1	0.3	0.1	-

Source: 2013-14 and 2014-15 Mid-Year Economic and Financial Outlook, Treasury

To give an impression of the scope of activities covered by boat turn-backs, each of the budget items in the table above are described briefly below:

Australian Customs and Border Protection Services: Announced as a new budget measure, the new government committed to providing \$81.2 million over four years to increase the Australian Customs and Border Protection Service's operations in Australia's northern waters in response to maritime people smuggling. The announced measure included allocations to:

- extend leases for the Australian Customs Vessel (ACV) Triton and ACV Ocean Protector
- extend the lease for the Reims aircraft and increase flight hours for existing Dash 8 aircraft, and
- extend the capability of the existing Australian Maritime Identification System to expand information exchange capability with Indonesian agencies.²⁴²

Nearly \$20 million was also allocated over four years to 'expand and enhance existing community engagement activities in Indonesia, targeting potential illegal immigrants and crews of people smuggling ventures'.²⁴³

This included costs for:

- The *Department of Immigration and Border Protection*: Further regional assistance of nearly \$41 million was allocated over three years in the Mid-Year Economic and Fiscal Outlook (MYEFO) to support regional countries to prevent irregular movements of people and the potential flow of people by boat to Australia.
- The *Department of Defence*: Operation Resolute, which drawing on resources from the Air Force, Navy and Army, carries out activities related to asylum seekers, including the detection, interception and turn-back of IMAs.²⁴⁴ This includes undertaking 'enhanced screenings' of IMAs to identify whether individuals have legitimate protection requirements. The Government provided \$31.6 million to expand Operation Resolute to include activities related to Operation Sovereign Borders, including:
 - cost of an additional major fleet unit, resulting in the permanent assignment of two major fleet units to Operation Resolute
 - increased personnel and associated support
- The *Attorney-General Department*: \$66.8 million over three years was provided for anti-people smuggling activities including intelligence gathering, disruptions and joint policing.

5.4 Other regional costs

In addition to offshore processing, government policy expenditures are made broadly across the region in efforts ranging from finding third country resettlement solutions through to supporting immigration detention in other countries. The most prominent costs are through Australia's current agreement with Cambodia to resettle people from Nauru, and the expansive regional cooperation programme that has long been part of government policy. These are described below.

Cambodia agreement

In September 2014 the Australian and Cambodian governments signed an agreement to resettle refugees detained in the Nauru Detention Centre who had originally tried to seek protection in Australia.

The MOU binds Australia to expenses involving the resettlement cost of refugees, of Cambodian officials travel to Nauru, and greater Official Development Assistance to Cambodia. Under the MOU, the Australian Government will:

- bear the direct costs of the settlement arrangements. This includes assistance to refugees choosing to resettle in Cambodia to re-establish their lives – including tailored services and treatment that are commensurate to local community standards. Services include: temporary accommodation, meals, clothes, health services, translation services, security services and meeting other basic needs²⁴⁵
- be responsible for the cost of the travel of Cambodian officials to the Republic of Nauru to provide information on living conditions, customs, traditions, culture, and religion of Cambodia to the Refugees who may be settled. This has no reported cost
- provide additional development assistance within the agreed bilateral development priorities, including to ensure benefits to local communities where Refugees are settled, as further determined by both Participants

The commitment by Australia pursuant to this MOU is \$40 million over four years – not directly related to the resettlement – and an additional \$15 million contingent on the number of people actually resettled.²⁴⁶ To date, only five people have elected to relocate from Nauru to Cambodia.²⁴⁷

Regional cooperation programs

The Government has spent nearly \$275 million since 2013-14 for regional cooperation activities which aim to strengthen relationships with other governments and to work with the international organisations that provide services for irregular migrants. The Government expects to spend a further \$240 million over the next four years.²⁴⁸

The activities that this expense is intended to cover include cooperation with the Indonesian Government under the Regional Cooperation Arrangement (RCA) program to manage potential irregular migration pathways. Part of these expenditures support the management of potential illegal immigrants in Indonesia through the International Organisation for Migration (IOM) (refer to commentary in relation to Australia funding immigration detention in Indonesia in part 4.6 above). The budget also covers supporting regional meetings such as the Bali Process, and providing funding for the IOM.

The \$275 million regional cooperation program covers activities that are broader in scope than just irregular migration. For example, it covers cooperation in relation to illegal fishing and smuggling of prohibited goods. There is no disaggregation of the regional cooperation budget indicated against deliverables, and little discernible way to cost individual components apart from the occasional insight through announcement of expense measures except where they are explicitly announced as a budget measure – such as assistance to Indonesia through the RCA.

However, it is clear that the Government has spent \$72 million since 2013-14 on the RCA, and intends to spend \$55.4 million in 2016-17. As such, we have attributed these costs to the summary of costs associated with Australia's deterrence policies, as summarised in the table in 5.1 and the Executive Summary, but have excluded the balance of the \$275 million regional cooperation program from that summary.

5.5 Ad hoc costs

The costs incurred by the Australian Government in pursuing its deterrence policies include a number of additional areas of expenditure which are not captured by the analysis above nor reflected in the summary of costs contained in the Executive Summary. The reason for not including them is that while they are expected to be non-trivial costs, they are not transparently reported or disaggregated from broader activities, or they are unknown costs. The following section outlines the nature of some of these costs, however the task of ascertaining the quantum of the Government's expenditure on these items is beyond the scope of this report.

Review and inquiries

Since 2013 there have been a number of independent reviews and Senate inquiries into offshore processing in particular (listed in the table below). As these have typically been conducted by government and not contracted out individually, it is not possible to ascertain their cost.

The cost of independent inquiries, such as the Philip Moss Review, are included in an item in the cost of regional processing centres for 2014-15, but not separately documented. Adding to these costs, some reviews may draw on departmental staff which would not be included in the independent reviews budget item but might be covered in departmental staff expenditures. For example, commissioned in October 2014, the Moss review took the form of an administrative inquiry conducted by Philip Moss but was also assisted by a team of DIBP officials.²⁴⁹

This opacity in costs also extends to Senate inquiries which draw not only on Senators' resources, but also departmental staff and witnesses – the costs of the latter typically borne by the witnesses. The costs of these inquiries are not documented and impossible to estimate without a lot more detail on the scope and composition of inquiry staff and the arrangements made by witnesses. Other reviews, such as the Australian Human Rights Commission 'National Inquiry into Children in Immigration Detention 2014' are analogous.

Notwithstanding the difficulties in separating out costs, explicit Government expenditures on reviews of around \$1 million for the RPCs in 2014-15 have been documented (see the table above on Cost of Regional Processing Centres). Extrapolating this, reviews are likely to be in the order of \$1 million per year.

NAURU	
Independent reviews	<ul style="list-style-type: none"> • Keith Hamburger AM, Nauru Review 2013: Executive Report of the Review into the 19 July 2013 Incident at the Nauru Regional Processing Centre (Nov 2014) • Australian Human Rights Commission, The Forgotten Children (Nov 2014) • Phillip Moss, Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru (March 2015) • C Doogan, Review of recommendation nine from the Moss Review (15 Jan 2016)
Senate inquiry	<ul style="list-style-type: none"> • Senate Select Committee, Taking Responsibility: Conditions and Circumstances at Australia's Regional Processing Centre in Nauru (Aug 2015) • Senate Legal and Constitutional Affairs Committee Inquiry, Conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea (Interim report May 2016)
PNG	
Independent reviews	<ul style="list-style-type: none"> • Robert Cornall AO, Review into the events of 16–18 February 2014 at the Manus Regional Processing Centre (May 2014) • Robert Cornall AO, Review into Allegations of Sexual and Other Serious Assaults at the Manus Regional Processing Centre (Sep 2014)
Senate inquiry	<ul style="list-style-type: none"> • Senate Legal and Constitutional Affairs References Committee Inquiry into the incident at the Manus Island Detention Centre from 16 February to 18 February 2014 (Dec 2014) • Senate Legal and Constitutional Affairs Committee Inquiry, Conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea (Interim report May 2016)

Source: Karlsen, E., (2016), 'Australia's offshore processing of asylum seekers in Nauru and PNG: A Quick Guide to statistics and resources,' Australian Parliamentary Library Research Paper, Canberra.²⁵⁰

High Court litigation

There have been a number of High Court judgements made since 2013 that have affected both the operation and costs of Australia's asylum seeker policy framework. The number and complexity of the High Court cases themselves would represent a significant expenditure to the Government, though it is not possible to get a precise attribution for each case. The costs include legal counsel retained by both parties, and court fees. Legal counsel in the High Court can run into tens of thousands of dollars per day, and will vary substantially by case. Hence it is difficult to estimate the cost of these cases.²⁵¹

RECENT HIGH COURT JUDGEMENTS²⁵²

S156/2013 v Minister for Immigration and Border Protection & Anor (18 June 2014)

This case concerned the validity of the regional processing scheme under sections 198AB and 198AD of the Migration Act 1958 and former Immigration Minister Bowen's designation of PNG as a regional processing country.

CPCF v Minister for Immigration and Border Protection & Anor (28 January 2015)

This case considered a claim for damages for false imprisonment arising out of the plaintiff's detention at sea on a Commonwealth vessel.

Plaintiff M68-2015 v Minister for Immigration and Border Protection (3 February 2016)

This case considered the constitutional validity of the offshore detention arrangements in place in the Nauru RPC.

Compensation for employees/contractors

As noted in part 3.3 above, this report does not include a detailed assessment of the human and economic costs that relate to the adverse impact of Australia's deterrence policies on government personnel and private contractors charged with implementing the policies. These costs may run in to the tens of millions of dollars, though it will take a number of years before their full extent is apparent.

5.6 Future projections

Costing of the entire Australian asylum seeker and refugee policies proves to be a difficult proposition due to the complexity of the framework, the high level of aggregation of budget allocations, and the lack of information on all the components. However, since the bulk of expenditures can be attributed to the offshore processing and onshore detention network, the above analysis is likely to give a fairly good approximation of the extent of Australian Government expenditures in pursuing 'deterrence' policies, and planned expenses over the budget years.

It must be reiterated that the lower projected fiscal cost of the Government's policies, compared with historical costs, are a function of the transition dynamics between the old and new policies, and the fact that capital expenditure (required to build and refurbish facilities) has already been incurred. The lower projected future costs relative to the last few years do not imply that cost efficiencies have been achieved. Rather, they indicate that if the current policies of deterrence persist, then the same asylum seeker system could be maintained at a lower dollar cost to taxpayers, assuming that the current policies continue to deter boat-arrivals, which remains to be seen.

The table below captures the costs if the current policy settings were to persist into the next year and beyond:

POLICY SETTING	PROJECTED COST (2016-17)	4 YEAR PROJECTED COST (2016-2020)
Offshore Processing (see part 5.1)	\$881 million	\$1,988 million
Onshore Mandatory Detention (see part 5.2)	\$659 million to \$1,225 million	\$1,911 million to \$3,551 million
Boat Turn-backs (see part 5.3)	\$22 million	\$89 million
Regional elements: (see part 5.4)		
Cambodia agreement	-	-
RCA (Indonesia)	\$55 million	\$55 million
Total	\$1.67 to \$2.18 billion	\$4.04 to \$5.7 billion

This analysis shows that costs of at least \$9.6 billion were incurred by Australian taxpayers between 2013 and 2016 in maintaining offshore processing, onshore mandatory detention, boat turn-backs, and regional agreements and cooperation. Offshore processing alone is estimated to cost over \$400,000 per person.

However, the true economic cost is likely to be much greater.

Additional expenditure falling into many other different categories is incurred by the Australian Government in order to maintain, interrogate and defend the current approach. These costs include: numerous reviews and inquiries and independent reviews conducted by the Senate, Australian Human Rights Commission, and other government appointees or agencies; the cost of defending extensive litigation challenging Australia's laws; and compensation from government employees or contractors who have suffered damage as a result of their work at the frontline of Australia's asylum seeker response.

The complexity in obtaining expenditures on the asylum seeker and refugee policy documented here and in other reports (A Just Australia and Oxfam, Spinks et al) limit an objective analysis of the costs and benefits of both the current framework but also the search for credible alternatives. This highlights the need for a commitment to increase the transparency surrounding the true fiscal cost of maintaining Australia's approach to asylum seeker and refugee policy, commencing with a full audit of public expenditure from 2013 by the Australian National Audit Office.

6. STRATEGIC COST

The Lowy Institute has observed that while Australia's policies may have resulted in a decline in boat arrivals, by most other measures the current approach 'can hardly be considered a success'. In its April 2015 report on Australia and the Refugee Convention, the authors discussed Australia's deterrence policies and noted:

*It consumes significant resources and will continue to do so. It has strained relations between the executive and judiciary. It has similarly poisoned bilateral and regional alliances. And it has sullied Australia's standing in the global community. Just as the political significance of asylum outweighs its numerical significance in Australian domestic politics, so too does Australia's response risk having a disproportionate effect on its international reputation. However gung-ho some of Australia's politicians may be, international opprobrium is bound to undermine Australia's claims and ambitions to regional and international relevance and leadership.*²⁵³

The following explores some of these issues further and raise additional concerns in relation to Australia's bilateral relationships in the region.

6.1 Global standing and influence

There is little doubt that Australia's policies with respect to asylum seekers who attempt to enter Australia by boat have been highly controversial globally and have damaged Australia's reputation as a rights-respecting country.

During the recent Universal Periodic Review of Australia's human rights record by the UN Human Rights Council, the discussion of Australia's human rights record was dominated by the topic of Australia's harsh treatment of this group, with member countries making no fewer than 60 recommendations (out of a total of 291 recommendations) directed at Australia's policies in this area.²⁵⁴ It is important to bear in mind that the universal periodic review is a process driven by the views of member states, not UN experts, which suggests that Australia's policies have damaged the way in which it is regarded by other countries in relation to its human rights record.

In addition to this, UN bodies and experts have been very outspoken in their criticism of Australia's policies in this area. A number of experts and international bodies have highlighted concerns that the mandatory indefinite detention of children may violate the right to be free from torture or other cruel, inhuman or degrading treatment or punishment. These include the UN Special Rapporteur on torture²⁵⁵ and the UN Committee against Torture.²⁵⁶ The Office of the UN High Commissioner for Human Rights recently issued a statement in connection with the M68 case,²⁵⁷ sharing our concerns in relation to the human cost of Australia's offshore processing policies.

*We believe that transferring these 267 individuals to Nauru could further damage their physical and mental health, and would put Australia at risk of breaching its obligation not to return any person to cruel, inhuman or degrading treatment under the Convention against Torture.*²⁵⁸

The impact of Australia's weakened human rights reputation resulting from its harsh asylum seeker policies may be a consideration felt when Australia's bid for a seat on the UN Human Rights Council for the 2018-2020 period will be put to a vote of UN member states in 2017.²⁵⁹ Its lack of co-operative engagement with the UN in relation to asylum seeker policy is also likely to feature as an issue, a pertinent example being Australia's refusal to guarantee that those who shared information about the offshore detention centres with the Special Rapporteur on the human rights of migrants would not be subject to reprisals.²⁶⁰

If Australia does secure a seat on the Council, its own approach to asylum seekers makes it highly unlikely that Australia's delegate could function as a strong advocate for progressive developments in relation to refugee protection and global responsibility sharing. Furthermore, its domestic policies in this area are likely to curtail its ability to be strong and credible in holding other countries to account for compliance with the full spectrum of human rights, even when it might be in Australia's direct interest to do so.

By way of example, Foreign Minister Julie Bishop has indicated to the UN General Assembly that if elected to the Council Australia would 'wage a tireless campaign to end the death penalty around the world,' while simultaneously attempting to counter criticism that Australia's candidacy for a seat on the Council is at odds with its policies of deterrence and mandatory detention.²⁶¹ Australia has a significant interest in ending the use of the death penalty given the number of Australians sentenced to death in foreign jurisdictions every year and the vocal opposition voiced by the Australian public in relation to execution of Australians abroad.²⁶² Australia's harsh asylum seeker policies are likely to reduce the influence that Australia might have otherwise had in promoting its campaign to end the use of the death penalty.

Putting aside Australia's potential seat on the UN Human Rights Council, it is apparent that 'the human rights principles once a core part of Australia's foreign policy have been undermined by its determination to deter the arrival of asylum seekers and migrants by sea.'²⁶³ Phil Robertson of Human Rights Watch makes this assertion with a number of examples which, while focusing on regional human rights issues, reveal global implications. Robertson notes a number of pressing human rights issues in the region including repression by the military in Thailand; crack-downs on freedom of political expression in Malaysia; the criminalization of political dissent in Cambodia, Laos and Vietnam; Myanmar's ongoing repression of ethnic Rohingyas; and the persecution of religious minorities in Afghanistan, Pakistan and Indonesia. He observes that:

*Australia is rarely pushing for rights-respecting solutions these days – and more than that, is too often part of the problem. Politicians trapped in the refugee policy dialogue in Canberra frequently fail to recognise that Australia's boat push-back policies, and offshoring asylum seekers into abusive conditions of detention in Nauru and on Manus Island, are seen as a green-light by Asian governments to do the same: send asylum seekers and refugees back into harm's way or lock them up in indefinite detention.*²⁶⁴

Robertson draws on the example of the Andaman Sea crisis of 2015 during which, rather than intervening or encouraging a humane response to the 'human ping pong' being played out, 'then prime minister Tony Abbott did the unconscionable by justifying those tactics, saying "if other countries choose to do that, frankly that is almost certainly absolutely necessary if the scourge of people smuggling is to be beaten." It suddenly became much harder for non-governmental organisations, governments, and UN agencies to persuade those three countries to bring the Rohingyas to shore.' He goes on to observe:

*By soliciting governments to help stop boats, Australia also ends up looking the other way on other rights abuses. By cooperating with Australia to take back boats of their nationals, both Sri Lanka and Vietnam know they could count on Australia not to publicly raise concerns about the rights abuses that drove those people into the boats in the first place. Push backs by other countries are also met with silent acquiescence from Canberra. Australia said nothing when Thailand sent back 109 ethnic Uighurs in July to China to face torture in custody and long prison terms, and has kept silent as Beijing pursues its dissidents in Bangkok. China arrests and sends fleeing North Koreans back to the brutal regime of dictator Kim Jong-Un, and is met by deafening silence from down under.*²⁶⁵

6.2 Regional standing, influence and challenges

Australia is currently involved in a number of multilateral responses to the issue of migration flows in the region including:

- The Bali Process and its non-binding Regional Cooperation Framework
- The Jakarta Declaration
- ASEAN meetings and the ASEAN Human Rights Declaration

These forums and frameworks, while generally non-binding and currently lacking detailed operational mechanisms and obligations, are generally responsive to the principle that regional cooperation is the best way forward in dealing with the challenges of irregular migration, which includes irregular movement of asylum seekers and refugees.

However, these forums and frameworks have not yet developed a coordinated regional protection framework nor any operational responses of benefit to asylum seekers and refugees in the region. It is difficult to imagine that these processes will lead to tangible commitments and the creation of regional protection mechanisms if Australia continues to pursue its deterrence policies, which are generally geared towards shifting responsibility for asylum seekers on to other countries in the region and at odds with the principle of responsibility sharing. Australia seems unwilling to 'walk the talk' in this regional policy area, as evidenced by its refusal to offer assistance in the context of the ad hoc regional response to the 2015 Andaman Sea crisis which saw approximately 8000 asylum seekers and other migrants (including children)²⁶⁶ from Bangladesh and Myanmar stranded at sea, subjected to boat 'push-backs' and prevented by states in the region from disembarking, with thousands later brought to shore in Malaysia, Indonesia and Thailand.²⁶⁷

Given current policy settings, Australia's involvement in regional forums is likely to see these processes continuing to be preoccupied by their emphasis on a securitised discourse, focused primarily on cooperation in the areas of international law-enforcement and border control rather than in the provision of protection.²⁶⁸ Furthermore, far from building the friendly relationships that are required in order to develop a genuine regional cooperation framework, the current policy response has arguably placed negative pressure on diplomatic relations with some of our largest and most important potential partners in a genuine regional framework, including Indonesia, as explored further in part 6.3 below.

The discussion in part 6.1 above refers to a number of examples of regional human rights issues with which Australia could constructively engage, to the benefit of its own strategic interests. One particular example is treatment of the Rohingya people in Myanmar, where systemic discrimination against this minority group and their stateless status has prompted extraordinarily large flows of asylum seekers in the region, highlighted so tragically during the 2015 Andaman Sea crisis. If Australia were to engage with Myanmar effectively on this issue, and necessary reforms achieved in Myanmar, regional refugee flows from Myanmar would likely reduce significantly, leaving Australia and the rest of the region with less of a refugee challenge to grapple with. Foreign Minister Bishop, however, has shown a reluctance for Australia to engage directly with Myanmar on this issue. Rather, Minister Bishop has indicated that the issue is one which she 'would assume' is something that ASEAN 'could have on it's agenda'.²⁶⁹

Another example of the way in which deterrence policies compromise Australia's regional strategic interests is apparent when one considers the growing and urgent need for refugee protection and resettlement in the region.²⁷⁰ It is often observed that Australia is one of the few countries in the region that is signatory to the Refugee Convention and willing to offer voluntary resettlement, a factor which is seen as a barrier to greater regional cooperation on this issue. However, Australia thwarts its own long-term objectives by undermining the international regime, rather than promoting respect for refugee rights and the importance of more countries in the region becoming party to the Refugee Convention and establishing domestic laws and policies for ensuring the rights of refugees. Dr Khalid Koser of the Lowy Institute observes:

A second incentive for Australia to promote reform relates to the particularities of Australia's asylum hinterland. Probably no other country is impacted more directly by the consequences of the stumbling international protection system. ... Most analysts agree that being one of the few signatories in the region, combined of course with its wealth and living standards, is an important reason why asylum seekers come to Australia. But this should not be a reason for Australia to lower its standards to those of its neighbours. Rather it is a reason to shape a system that these neighbours would be willing and able to endorse and implement, and to exercise regional leadership in achieving this goal and raising standards across the region.²⁷¹

At an even broader level, Australia's asylum seeker policies, and general lack of engagement with the concerns of UN monitors, is setting a concerning precedent in relation to respect for the norms of international law and the authority of international bodies tasked with ensuring that they are upheld. This is a precedent that may well work against Australian interests in the region on a number of levels. On one of the most pressing issues of regional security, the South China Sea dispute, Australia's principle diplomatic message is to reinforce the need for all parties, and China in particular, to respect the norms of public international law and not to use unilateral force or other measures to achieve outcomes contrary to these norms.²⁷² To the extent that Australia shows an unwillingness to abide by the same norms, it works against its own efforts and in fact contributes to the erosion of the authority of international law, with potentially negative ramifications for regional peace and security.

Furthermore, considering the example of the Andaman Seas crisis, it is not far-fetched to consider that the scale of forced migration in the region may at some point lead to tensions that threaten regional peace and security. In such a situation, a respect for the norms of international law would be one of the foundations required for the negotiation of peaceful and humane solutions. The precedent set by Australia in this region would hinder, rather than aid, in the successful resolution of such conflicts.

6.3 Bilateral relationships and foreign aid dynamics

The impact of Australia's policies on its bilateral relationships with governments in the region is an area of particular concern, impacting on issues of territorial and political sovereignty as well adversely influencing Australia's foreign aid effectiveness and the broader dynamics shaped by Australia's foreign aid program.

Australia's actions directly impact on migration flows in the region, giving rise to potential conflict in relation to matters of territorial sovereignty.

Indonesia and regional neighbours

Australia's relationship with Indonesia has been adversely affected by Australia's closure of pathways for resettlement of those refugees who arrived in Indonesia after July 2014, even if they pass through UNHCR channels.²⁷³ The impact of this policy has seen an increase in the number of asylum seekers 'trapped in transit' in Indonesia, whom the Indonesian government must ensure are supported, or risk social consequences and international condemnation. Furthermore, Australia's ban could be seen as interference in Indonesia's own immigration policies, with the ban having a clear, albeit indirect, potential impact on inbound migration in Indonesia. In this regard we note the recent appeal by the Indonesian Director-General of Immigration to the Australian Government to accept more refugees from those awaiting resettlement in Indonesia, as well as the related call by the UNHCR on Australia to reverse its ban on resettlement of persons arriving in Indonesia post June 2014.²⁷⁴

Furthermore, the practice of turn-backs at times disregards Indonesian sovereignty, particularly when boats are turned back with no consultation with Indonesia or even prior warning.²⁷⁵ Dr Antje Missbach has observed, in her detailed work in this area: 'Relations between Indonesia and Australia have been severely strained by the tow-backs; Vice-Chairman of the Indonesian Parliament, Priyo Budi Santoso, has characterized Australia's actions as 'toying with Indonesia.'²⁷⁶ It appears that Australia has in the past also physically breached the sovereignty of Indonesia's territorial waters in connection with these operations.²⁷⁷ Added to this is the additional damage done to the relationship by the revelation that Australian officials allegedly paid people smugglers almost US\$30,000 to take 65 asylum seekers back to Indonesia, when a central justification for its operations is 'putting people smugglers out of business'.²⁷⁸

The adverse effects of Australia's unilateralism are felt beyond Indonesia with Dr Missbach observing:

A further consequence of tow-backs and forced returns, which has heightened the frustration of Australia's northern neighbours, is the increasing accumulation of asylum seekers in other transit countries such as Malaysia'.²⁷⁹

The negative impact of these policies on Australia's relationship with Indonesia stands in sharp contrast to Australia's broader aspirations for a close and mutually supportive relationship. In response to a recent survey on Australian attitudes to Indonesia Foreign Minister Bishop commented on the importance of the Australia-Indonesia relationship and undertook that '[a]s Foreign Minister, I will continue to place a high priority on our relationship with Indonesia'.²⁸⁰

Effectiveness of foreign aid and other expenditure

Australia's offshore processing arrangements have also been criticised as adversely impacting on Australia's foreign aid effectiveness and its ability to have appropriate oversight over government funds invested in projects in PNG and Nauru.

PNG is undoubtedly in need of Australian development aid.²⁸¹ However, the effectiveness of Australia's spending may be adversely impacted by its reliance on PNG to play its critical role in Australia's offshore processing system.

In the context of negotiations around the reopening of the detention centre on Manus Island Australia promised the PNG Government \$400 million in aid to construct a new hospital in Lae, PNG's second largest city.²⁸² Since that time PNG has asked for more funding for the project in a move that some have interpreted as containing an implied threat to the future of the Manus Island detention centre should Australia not comply.²⁸³ It would be concerning if similar political considerations distorted the application of Australia's commitment to provide \$558 million in Overseas Development Aid to PNG in the 2016-17 year (with PNG now the largest recipient of Australian foreign aid).²⁸⁴

On a broader level, Australia's reliance on PNG hosting the regional detention centre on Manus Island has an adverse impact on Australia's ability to pursue opportunities to have a positive influence on the direction of PNG policy in key areas such as the promotion of effective governance.²⁸⁵ In December 2015 Jenny Hayward-Jones, a fellow at the Lowy Institute, commented that the bilateral relationship had taken a number of 'hits':

The most recent came when an AFP officer alleged in the media last week that Australian police serving as advisers in Papua New Guinea were constrained because of the Manus processing centre.

...A number of prominent commentators on Papua New Guinea have publicly and privately regretted the impact of the political imperative to maintain the Manus island refugee processing centre as a deterrent to future asylum seekers. The ANU's Stephen Howes and I are on the public record saying that this imperative dissuades the Australian government from tackling tough issues in Papua New Guinea and constrains Australian policy options. Anti-corruption campaigner and head of the now de-funded Taskforce Sweep in Papua New Guinea, Sam Koim, has also cautioned about ignoring corruption at the highest levels in Papua New Guinea in order to preserve the O'Neill government's cooperation with refugee resettlement processing and resettlement.²⁸⁶

In more recent months, Australia's response, or lack of response, to the PNG Supreme Court decision regarding the unlawfulness of the detention of asylum seekers on Manus Island²⁸⁷ is likely to have further constrained the potentially positive influence of Australia's foreign aid and diplomacy in PNG.

Similar concerns may arise in connection with Australia's strategic interests in Nauru. The 2015 Senate Select Committee noted that it was 'concerned that there is minimal oversight of expenditure on Nauru, whether it is a public work or assistance to a foreign government...the committee believes that the department should undertake an audit on all expenditure for the RPC on Nauru and associated projects and provide an explanation as to why an exemption from oversight by the Public Works Committee applies...The committee is of the view that clarification is required as to what expenditure associated with the RPC is classed as aid, given that there appears to have been a significant investment of Australian taxpayers' money in the RPC with no parliamentary oversight, including in the Estimates process.'²⁸⁸ It would not be farfetched to question whether this lack of oversight may be in whole or in part influenced by Australia's reliance on Nauru to implement its offshore processing system and the significant leverage that this provides Nauru in its bilateral relationship with Australia.

Distortions in allocation of foreign aid

A further cause for concern is the long-term strategic impact on Australia's relationships with those countries which may be missing out on foreign aid due to the linkage of foreign aid expenditure with Australia's asylum policies. Scholarship in this area suggests that Australia's allocation of aid (whether in the form of official development assistance or other programs) is influenced by the agenda of preventing the flow of refugees and asylum seekers to Australia.²⁸⁹ This may leave states which are not directly involved in these refugee flows less likely to attract Australian assistance and deteriorate those relationships over time.

Although the need for sustained aid and development investment in PNG is not contested, the impact of regional asylum seeker policies on foreign aid allocations, and resulting bilateral relationships, is arguably demonstrated by the experience of the 2015-2016 Budget in which Australia's ongoing aid to PNG was largely preserved, with massive cuts being made in the allocation of aid to Africa, the Middle East and Myanmar.²⁹⁰

6.4 Future Projections

If Australia continues to pursue its policies of deterrence and fails to engage more constructively with the agenda of regional responsibility sharing and protection, there is likely to be ongoing damage to Australia's strategic interests at global, regional and bilateral levels including the potential for:

- impaired access to positions of global influence, such as the UN Human Rights Council
- impaired global reputation and influence in relation to human rights issues, including on strategic priorities such as the global abolition of the death penalty
- impaired regional reputation and influence in relation to human rights issues and respect for international law
- impaired bilateral relationships with Indonesia and countries which face cuts in Australian aid allocations
- reduced foreign aid effectiveness

7. ALTERNATIVE POLICY FRAMEWORK AND RECOMMENDATIONS

Save the Children and UNICEF Australia have developed the following set of recommendations which we believe, taken in combination with one another, form the pillars of a new path forward whereby Australia could redirect its investment in policies of deterrence towards policies and programs which would offer more humane, less harmful and more sustainable protection to a far greater number of people in the region.

It is important to stress the interconnectedness of, and synergies between, these proposals. For example, Australia's credibility and influence in relation to its future engagement in developing a regional protection system would be significantly enhanced if Australia were to (i) identify and implement a humane and dignified resettlement solution for those transferred to Nauru and PNG; (ii) commit to a sizeable increase in Australia's relevant migration intake (whether through its humanitarian or other migration programmes); and (iii) accede to Indonesia's request to resume resettling refugees who arrived in Indonesia after July 2014.

7.1 Affirmation of Refugee Convention and responsibility sharing

Recommendation: We urge the Government to publicly affirm that Australia is committed to (i) honouring the letter and spirit of the Refugee Convention; and (ii) the equitable sharing between states of the responsibility for responding to the challenges posed by global forced displacement.

7.2 Resettle refugees from current offshore processing arrangements before the end of 2016

Recommendation: We urge the Government to publicly commit to a plan, with timelines, for resettlement of those refugees currently in Nauru and Manus Island. Australia should take full responsibility for finding a permanent resettlement solution for these refugees. If Australia continues to refuse to resettle them in Australia, it must ensure third country resettlement by the end of 2016 in line with certain minimum criteria (set out below).

Refugees and asylum seekers should only be transferred/resettled to a third country where they will enjoy:

- access to health, education and basic services
- freedom of movement (ie individuals will not be subject to immigration detention or other forms of arbitrary detention)
- safe and accessible reception arrangements
- protection against refoulement
- access to employment and/or self-employment opportunities, including through the provision of work rights and lawful stay
- access to appropriate settlement services that address the challenges of social integration and the vulnerability of this group, given their experiences to date

- availability of prospects for family reunification and commitment (in policy or practice) to support family reunification efforts
- enjoyment of all other rights under the Refugee Convention, including freedom of movement (which would include right to travel outside the receiving State)
- countries would be signatory to both the Refugee Convention and the Convention on the Rights of the Child, or alternatively be able to guarantee equivalent protections under domestic law. This includes having a credible system for determining refugee status in line with international laws and practices
- ideally countries would have existing multicultural societies, able to absorb refugees from diverse cultural, ethnic, linguistic and religious backgrounds

Any transfer/resettlement agreement would need to ensure:

- That each individual benefits from individual assessments, prior to transfer, as to appropriateness of transfer to identified third country, including taking into account particular vulnerabilities and circumstances of the individual. In all cases where children's resettlement is considered, individual best interest determinations must be completed to ensure the best interests of the child remain a primary consideration. This includes consideration for family reunification for separated and unaccompanied children. If the outcome of either of these assessments identifies resettlement not to be an appropriate solution, then the relevant individual or family group should be transferred to Australia pending the identification of a more appropriate permanent solution.
- Those found to be refugees by the Nauruan/PNG governments will be accepted as refugees without having to be re-assessed by the third country. Those who have received negative determinations in the first instance will be candidates for transfer but will have their determination reviewed on arrival in the country of potential resettlement. Those who have not yet had their refugee status determined would have access to a credible refugee status determination process in the third country.
- Each individual has access to information as to conditions available in and commitments made by the receiving country, so as to ensure full and informed consent prior to any resettlement. Individuals would not be forced to resettle in other countries if they would prefer to stay in PNG or Nauru and that option is available to them.

If Australia elects to pursue transfer/resettlement to a third country but is unable to successfully find a solution by the end of 2016, then all relevant individuals should be immediately transferred to Australia and be entitled to access refugee determination processes and protection options in Australia in a manner that does not discriminate against them based on their date or mode of arrival.

Anyone who has been transferred to Australia for medical reasons and who is currently residing in Australia should have their refugee status determined in Australia (if not already determined) and be released from immigration detention (where relevant) and allowed to remain in Australia permanently if found to engage Australia's protection obligations. Save the Children and UNICEF Australia are particularly concerned that children and their families living in the community not face any further displacement.

Finally, resettlement in Australia should be available for those within Australia's offshore processing system who already have close family members residing in Australia.

7.3 Legislate against the mandatory immigration detention of children

Recommendation: We recommend that the Government introduce legislation immediately to end the immigration detention of children in Australia or in any other settings funded, facilitated or supported by the Australian Government.

There is general international consensus that the immigration detention of children is 'never in their best interests' and that 'detention of a child because of their or their parent's migration status constitutes a child rights violation'.²⁹¹

Save the Children Australia previously recommended an interim reform of instituting a 90 day cap on the immigration detention of children, at a time when hundreds of asylum seeker children were routinely detained by the Australian Government, sometimes for years at a time. In light of recent changes in government practices which have seen the release of children from onshore immigration detention, we consider it timely to now legislate a 'zero tolerance' approach. This will involve the Government investing in and expanding child-friendly alternatives to detention.

This recommendation is intended to apply not only to onshore immigration detention, but also to any other forms of detention funded, facilitated or in any way involving the Australian Government.

7.4 Re-open resettlement pathways with Indonesia

Recommendation: We join the UNHCR and Indonesian Government's call for Australia to immediately revoke its ban on the resettlement of refugees who arrived in Indonesia after 1 July 2014. Australia should resume the resettlement of people from this group in consultation with the UNHCR and normalise resettlement flows between Indonesia and Australia.

7.5 Increase transparency in relation to fiscal costs

Recommendation: The Government should commit to increase the transparency surrounding the true fiscal cost of maintaining Australia's approach to asylum seeker and refugee policy, commencing with a full audit of public expenditure from 2013 by the Australian National Audit Office.

7.6 Increase humanitarian intake significantly over next the three years

Recommendation: The Government should increase Australia's humanitarian intake to 30,000 by 2018/2019 with flexibility to accommodate spikes in regional or global refugee numbers.

Despite the largest ever number of people forced from their homes – now more than 65 million, which includes over 21 million refugees – Australia's humanitarian programme has stayed between 12,000 and 13,750 places since 1995, with the brief exception of the temporary rise to 20,000 in 2012-2013.²⁹² Towards the end of 2013, the incoming Government reduced the intake to 13,750 in line with its pre-election commitment.²⁹³ In late 2014, in order to pass wide-ranging changes to migration laws including increased powers to intercept and turn back boats and temporary protection visas, the Government committed to gradually increase the humanitarian intake to 18,750 over four years.²⁹⁴ We note, however, that there has been no commitment from the Australian Government to maintain this increased intake beyond 2018-2019.²⁹⁵

Australia can and must do more, including by committing to scale up its humanitarian programme commensurate with our population and prosperity. We have done so before. In 1979-80, Australia's refugee and humanitarian programme granted 19,954 visa places and in 1980-81, approximately 22,545 visa places were offered. Further, our economy is three times the size it was in the 1980s, when we offered safe haven to much larger numbers than we are today.

Given the growth in our population and economy since that time, Save the Children and UNICEF Australia suggest scaling up our humanitarian intake more in proportion to our population: 20,000 places in 1980 equates to approximately 35,000 places in 2016.

Recognising the administrative complications in increasing the humanitarian intake and the need for comprehensive screening of those eligible for resettlement, UNICEF Australia and Save the Children have publicly called for a more a feasible increase to 30,000 places by 2018-19, with subsequent increases being made based on population and economic growth and the extent of global need.²⁹⁶ Allowing for unanticipated spikes in global mass migration – such as those that have emerged through the Syrian conflict – we recommend that this 30,000 annual intake should exclude any future one-off responses to unforeseen events.

Australia should prioritise those awaiting resettlement or family reunification in the region which, we note, includes not only refugees from countries within the region but also those who have travelled from outside the region to transit or host countries within the region in order to seek protection. The additional 16,250 places created by the proposed increase to 30,000 places should go to people currently in the region and either awaiting resettlement or family reunification, with the current offshore allocation of 11,000 places being allocated according to need and vulnerability on a more global level. Giving priority to those awaiting resettlement or family reunification in the region would be a measure significant enough in scale to relieve some pressure on the factors that compel individuals to embark upon dangerous voyages by boat in the region, but not so great as to draw additional asylum seeker flows into the region.

7.7 Improve protection in countries of asylum

Recommendation: The Government should demonstrate leadership by proactively supporting the establishment of a regional protection framework for asylum seekers and refugees in South East Asia by 2020, through re-energised engagement with new or existing multilateral forums.

According to the Lowy Institute, a recent study commissioned by DIBP demonstrates that many forced migrants move onwards from host or transit countries 'because their basic rights (safety, employment, decent standard of living) are not properly respected in their current locations.'²⁹⁷

Australia needs to invest in increasing the incentives for orderly and safe humanitarian migration which entails, among other things, ensuring that refugees residing in the region have access to effective protection and support while awaiting or developing more durable solutions. Accordingly, we are calling on the Australian Government, in collaboration with other relevant foreign governments, to invest in the creation of comprehensive regional protection principles, systems and services in countries in South East Asia to which asylum seekers and refugees can safely access:

- safe and accessible disembarkation options for those travelling by boat and safe border crossing systems for those crossing land borders
- legal status which shields against immigration detention and deportation (including child-sensitive alternatives to immigration detention in line with the best interests of the child, where required)
- adequate shelter, physical security, food, water and sanitation
- financial assistance and/or work rights
- suitable primary and secondary education
- adequate healthcare
- freedom of movement
- enforceable protection from refoulement and other serious human rights abuses
- family reunification (viable pathways that can be accessed within a reasonable timeframe)
- timely and fair processing of claims for asylum, refugee status determination, and assessment of resettlement need

The nature of such systems and services would be a matter to be resolved through multilateral forums taking into account the needs and requirements of asylum seekers and refugees, as well as those of the host-countries. Broadly speaking, comprehensive regional protection is likely to involve an urban-integration model in which asylum seekers and refugees would have access to a range of protection and services while living within urban host communities. In some cases, particularly where large-scale, temporary protection of large groups is required, protection may need to be provided through the creation of planned refugee settlements in strategic locations (eg near ports and border crossings) provided that freedom of movement is guaranteed. It may be that the best results can be achieved by using a combination of both of these models depending on the circumstances in the relevant host country. Significantly increasing Australia's funding to UNHCR and other front-line service providers will be necessary in this context.

The development of other viable solutions to the challenge posed by the current levels of global displacement will require collaboration between Government, civil society and other stakeholders. We encourage the Government to host a targeted domestic consultation process during 2016 in which the Government can join with civil society and NGO groups, migration experts and multilateral organisations to develop a vision for a comprehensive regional protection framework. The concepts developed through such a consultation would then inform the measures that Australia can propose in multilateral discussions, whether such discussions take place within newly created or existing regional forums such as ASEAN, the Bali Process or the Jakarta Declaration.

While these recommendations lay down the principles of a highly ambitious regional project, the individual components of the protection framework proposed are not novel or untested. The Refugee Council of Australia reports a number of examples of policies that already endorse some of these features:

- *In Iran, refugees officially have access to primary and secondary education and basic healthcare and those between 18 and 60 can access temporary work permits.*
- *Pakistan affords many refugees a level of legal protection through Proof of Registration cards.*
- *India generally does not restrict refugees' freedom of movement and in 2012 allowed refugees to apply for Long Term Visas which can provide access to tertiary education...*
- *In Hong Kong, the government refrains from detention and issues "recognisance papers" to refugees allowing them to live in the community."²⁹⁸*

Malaysia is also examining the possibility of offering temporary work permits to refugees from Rakhine State minority groups from Myanmar residing in Malaysia, though it appears that announced policy changes may not yet have been implemented.²⁹⁹ We also understand that the view that work rights are an essential part of any viable regional protection framework is gaining traction through the Bali Process.

The involvement of Indonesia, Malaysia and Thailand is critical to any viable regional protection framework that speaks to the issues of concern to Australia and its immediate neighbours. However, other countries in the region and further afield may also have a significant role to play in developing this framework.

Once gaining effective protection, the potential for permanent integration into host communities (one of the three identified 'durable solutions' for refugees) may be enhanced. It stands to reason that if refugees in countries of asylum are receiving effective protection, rather than being marginalised from society, desperately impoverished and legally sanctioned, they are more likely to be able to find sustainable livelihoods in host communities, make positive contributions to the economies and communities in which they live, and more likely to be considered candidates for more permanent forms of residence.³⁰⁰

7.8 Replace turn-backs with search and rescue

Recommendation: The creation of a robust regional protection framework would allow for turn-backs to be phased out and replaced with multilateral search and rescue operations which would identify those at risk on the sea and ensure their safe arrival at identified disembarkation locations in the region where they would be directed to appropriate protection locations or services. We urge the Government to commit to phasing out turn-backs in favour of investing in search and rescue operations, in conjunction with a commitment to invest in the creation of a regional protection framework.

7.9 Increase access to non-humanitarian migration pathways

Recommendation: The Government should commit to investigating the legal or practical barriers which impede access by refugees and asylum seekers to Australia's broader migration programme and, in conjunction with transit or host countries, put in place mechanisms to actively encourage and facilitate visa applications under the migration programme for individuals fleeing persecution. This might include: (i) making information on Australia's migration programme more widely available in source, transit and host countries in relevant languages; (ii) opening migration programme Departmental outposts in key overseas locations; (iii) developing a mechanism to refer qualified candidates to prospective Australian employers seeking overseas applicants; (iv) prioritising visa applications for those with protection needs; (v) waiving or deferring certain fees and documentation requirements; and (vi) removing any legal barriers which may prevent those seeking humanitarian visas from also applying under the migration programme.

A number of expert commentators have highlighted the need for governments to pursue additional and diverse avenues to admit refugees. For example, the UNHCR has noted in the context of the current global refugee numbers that:

Alternative forms of admission complementary to traditional resettlement such as humanitarian admission, humanitarian visas, private sponsorship, scholarships for students, expanded opportunities for family reunification, medical evacuation and possible labour mobility schemes with protection safeguards have increasingly been used to provide solutions for refugees.³⁰¹

We understand that the UNHCR is actively pursuing these sorts of migration opportunities in response to the challenge posed by forced migration in South East Asia. The Lowy Institute notes that '[o]ne option that has attracted increasing attention is to integrate asylum and migration policies [which] could allow for legal routes for entry for asylum seekers, access to the labour market and social welfare, an avenue to integration, or managed return options'.³⁰²

The Expert Panel on Asylum Seekers made similar recommendations in 2012, though expressed low expectations in relation to the use of skilled migration pathways in light of the refugee demographics at that time.³⁰³

It is particularly timely for Australia to consider a wider range of options for providing protection to forced migrants in the context of the challenges posed by the Syrian refugee crisis and the contents of the political declaration that Australia will be adopting at the upcoming UN General Assembly High-Level Meeting on 19 September 2016.³⁰⁴

These sorts of strategies also resonate with emerging scholarship in the global refugee debate, which aims to reframe the nature of the relationship between refugees and the countries which offer them protection. This involves the recognition that, given appropriate opportunities and conditions, refugees can have significant positive economic and other impacts upon countries of asylum,³⁰⁵ contrary to the dominant characterisation of refugee protection as an unwanted burden upon host countries.

Given its annual permanent migration programme intake of up to 190,000 people,³⁰⁶ Australia is well placed to offer protection to more individuals than the number of humanitarian visas that are made available specifically for that purpose. Importantly, the figure of 190,000 excludes temporary visa categories (such as student visas or 457 work visas) which could be relevant to those with protection needs in some situations. We note that Save the Children has in recent times received unsolicited approaches by members of Australia's business community who wish to recruit individuals from abroad to meet demand in certain areas, and have expressed a preference for employing a refugee in order to secure the dual objectives of filling a vacant position while also offering much needed protection.

Furthermore, it appears that many of those seeking resettlement as refugees in Australia could well meet the criteria for visas within the broader migration programme, but may have practical problems accessing such visa categories in light of their circumstances, having fled from conflict or persecution.³⁰⁷ Access to information about suitable visa categories, the means to fund application fees, access to the necessary documentary support (for example educational records) and other practical challenges make these very difficult process to navigate for persons who have fled, or are trying to flee, persecution.

While urging the Government to explore these other migration pathways, we recognise that those with particularly traumatic life experiences who might be eligible for visas under the migration programme may, depending on individual circumstances, require some additional referrals or support similar to that required by refugees or other entrants under the humanitarian programme.

8. CONCLUSION

The number of forced migrants in the world at present tells two stories. The horrifyingly large numbers tell of the growing global conflict, persecution and need in the world that is compelling people to leave their homes to seek protection elsewhere. However, these numbers also tell of the millions of people around the world who still have hope for the future and faith that the people, nations and systems of the world will honour their commitment to provide persecuted people with shelter and protection.

Australia's asylum seeker policies carry very significant human costs to a great deal of children and adults in Australia, Nauru, PNG and the wider region, which erode the hope, dignity and safety of forced migrants. Our policies of deterrence also come at a very high economic cost to Australia and have a significant negative impact on Australia's strategic interests internationally.

Our policies attempt to coerce those fleeing persecution to stay where they are, to wait indefinitely and to endure countless dangers, indignities and lives lived in limbo. What's more, Australia's current deterrence policies set a dangerous precedent which, if replicated elsewhere, will increasingly result in tides of men, women and children pushed up against closed borders. If faith in our global refugee system is completely destroyed, the result will be a future in which people simply do not flee persecution at all and remain where they are to suffer whatever fate may befall them in countries not willing or able to protect them.

We urge the Australian Government to reconsider the current policy framework of deterrence and to consider feasible alternative approaches. It is time for Australia to turn away from a short-sighted focus on deterrence and to engage more constructively with the real challenge at hand. It is time to find solutions for those caught within the web of offshore processing; time to engage with the region in constructing regional systems and services that offer protection and support to a much larger number of people; and time to lift our humanitarian intake to reflect our true capacity and generosity as a nation.

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35. The 2015 Senate Select Committee Inquiry which examined conditions on Nauru 'accept[ed] the evidence from a range of legal and human rights experts that Australia holds obligations under international and domestic law, as well as responsibilities under the MOU with Nauru, in relation to asylum seekers at the RPC.' (see the Final Report of the Senate Select Committee on the Recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru Taking responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru, 31 August 2015 (available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report) (Senate Committee Report (2015)), p 122.
36. *Ibid*, para 5.19.
37. See Memorandum of understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues, signed 29 August 2012 (2012 MOU) (available at https://www.humanrights.gov.au/sites/default/files/Docs%20tabled%20with%20Instrument%20of%20Designation.Nauru_.pdf) .This was subsequently replaced by another MOU signed on 3 August 2013 (2013 MOU) (available at <http://dfat.gov.au/geo/nauru/Documents/nauru-mou-20130803.pdf>).
38. See clause 6, 2012 MOU and clause 6, 2013 MOU.
39. Stephanie Anderson, 'Immigration detention times on Nauru and Manus Island blow out to 450-day average under Liberals', 13 January 2016, ABC News, (available at <http://www.abc.net.au/news/2016-01-13/immigration-detention-times-blow-out-to-almost-450-days/7085264>)
40. See Madeline Gleeson, *Offshore* NewSouth Publishing, 2016), p 20. See clause 11, 2012 MOU.
41. See clause 11, 2012 MOU and clause 15, 2013 MOU.
42. See Minister Dutton's comments in 'Interview on Sky News Viewpoint with Chris Kenny', 26 April 2015 (available at <http://pandora.nla.gov.au/pan/143035/20150915-1829/www.minister.border.gov.au/peterdutton/2015/Pages/interview-sky-news-viewpoint.html>)
43. See Peter Alford and Sonya Kohlbaser, 'Cambodia your only option, Peter Dutton warns Nauru refugees', *The Australian*, 23 April 2015 (available at <http://www.theaustralian.com.au/national-affairs/immigration/cambodia-your-only-option-peter-dutton-warns-nauru-refugees/news-story/a0302c04facb12016842f4b1e8793a4f>)
44. See Dan Harrison, 'Children moved from Manus Island detention', 20 June 2013, *The Sydney Morning Herald* (available at <http://www.smh.com.au/national/children-moved-from-manus-island-detention-20130620-2olz5.html>).
45. See Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to, and assessment and settlement in Papua New Guinea of certain persons, and related issues, signed 6 August 2013 (available at <http://dfat.gov.au/geo/papua-new-guinea/pages/memorandum-of-understanding-between-the-government-of-the-independent-state-of-papua-new-guinea-and-the-government-of-austraxp>) This supersedes an earlier MOU signed on 8 September 2012.
46. See David Fedele, 'Resettling refugees in Papua New Guinea: a tragic theatre of the absurd', 20 May 2016, *The Guardian* (available at <https://www.theguardian.com>)

com/commentisfree/2016/may/20/resettling-refugees-in-papua-new-guinea-a-tragic-theatre-of-the-absurd#img-1)

47. This estimate is based upon publicly available information as well as informal consultations with a variety of organisations. See also Kaldor Centre, 'Transfer Tracker', UNSW Law, (available at <http://www.kaldorcentre.unsw.edu.au/publication/transfer-tracker>); Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, November 2015 (available at <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/forgotten-children-national-inquiry-children>) p185; DIBP, *Immigration Detention Statistics for 31 July 2016* (available at <https://www.border.gov.au/about/reports-publications/research-statistics/statistics/live-in-australia/immigration-detention>); Kara Vickery, 'Peter Dutton pledges to be tough on people smugglers regardless of what High Court decides on Nauru', 3 February 2016, *News.com.au* (available at <http://www.news.com.au/national/politics/peter-dutton-pledges-to-be-tough-on-people-smugglers-regardless-of-what-high-court-decides-on-nauru/news-story/dccbbfd4d2ed3bdc11908cb6684bbb42>); Michael Gordon, 'Peter Dutton vows children released from detention are still bound for Nauru', 4 April 2016, *The Sydney Morning Herald* (available at <http://www.smh.com.au/federal-politics/political-news/peter-dutton-vows-children-released-from-detention-are-still-bound-for-nauru-20160404-gnxkkl.html>)
48. Harriet Spinks and Ian McCluskey, 'Asylum seekers and the Refugee Convention', Australian Parliamentary Library, (available at http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook44p/AsylumSeekers)
49. See Lindsay Murdoch, 'Plan to resettle refugees in Cambodia collapses', *Sydney Morning Herald*, 30 August 2015 (available at <http://www.smh.com.au/world/plan-to-resettle-refugees-in-cambodia-collapses-20150830-gjavdv.html>)
50. See Stephanie Anderson, 'New Zealand unable to accept refugees from Nauru after Australia backs away from deal', 13 January 2016, *ABC News* (available at <http://www.abc.net.au/news/2016-01-12/nz-unable-to-accept-nauru-refugees/7082764>)
51. See Kaldor Centre for International Refugee Law, 'Turning back boats', 26 February, 2015, UNSW Law, (available at <http://www.kaldorcentre.unsw.edu.au/publication/%E2%80%98turning-back-boats%E2%80%99>); Tony Abbott, 'Operation Sovereign Borders' (Press Release, 25 July 2013), (available at <http://www.tonyabbott.com.au/LatestNews/PressReleases/tabid/86/articleType/ArticleView/articleId/9311/Operation-Sovereign-Borders.aspx>)
52. See Natalie Klein, 'Assessing Australia's push back the boats policy under international law: Legality and accountability for maritime interceptions of irregular migrants', [2014] *Melbourne Journal of International Law* 14; Patrick Emerton and Maria O'Sullivan, 'The Power to Detain Asylum Seekers at Sea Under the Maritime Powers Act 2013 (Cth)' [2015] *UNSW LawJ* 25; (2015) 38(2) *University of New South Wales Law Journal* 695.
53. See AHRC, 'The Enhanced Screening Process' (available at <https://www.humanrights.gov.au/sites/default/files/document/publication/enhanced-screening.pdf>)
54. *The Saturday Paper*, 'Sinhalese asylum seekers' on-water claims accepted by UN', 31 January 2015, (available at <https://www.thesaturdaypaper.com.au/news/politics/2015/01/31/sinhalese-asylum-seekers-water-claims-accepted-un/14226228001441>)
55. Janet Phillips and Harriet Spinks, 'Immigration Detention in Australia', 20 March 2013, Australian Parliamentary Library (available at <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=ld%3A%22library%2Fprspub%2F1311498%22>)
56. See Division 6, *Migration Act 1958* (Cth).
57. *Ibid*
58. Michael Bachelard, 'Asylum seekers on the doorstep of United Nations office in Jakarta with nowhere to turn', 8 December 2014, *The Sydney Morning Herald* (available at <http://www.smh.com.au/world/asylum-seekers-on-the-doorstep-of-united-nations-office-in-jakarta-with-nowhere-to-turn-20141207-122d6q.html>)
59. See DIBP, *Australia's Humanitarian Programme 2016-17 Discussion Paper*, p 3 – 4 (available at https://www.border.gov.au/ReportsandPublications/Documents/discussion-papers/discussion-paper-humanitarian-programme_2016-17.pdf).
60. See Kaldor Centre, 'Legal assistance for asylum seekers', 30 November 2015, UNSW Law (available at <http://www.kaldorcentre.unsw.edu.au/publication/legal-assistance-asylum-seekers>); DIBP, *Refusal of a Temporary Protection visa or Safe Haven Enterprise visa application* (available at <https://www.border.gov.au/Refugeeandhumanitarian/Pages/refusal-of-a-tpv-or-she.aspx>)
61. See, for example, Daniel Hurst "Peter Dutton invokes 'on water' secrecy over claims of payments to boat crew", 10 June 2015, *The Guardian* (available at <https://www.theguardian.com/australia-news/2015/jun/10/peter-dutton-invokes-on-water-secrecy-over-claim-of-payments-to-boat-crew>)
62. See section 70, *Crimes Act 1914* (Cth) and section 42 *Australian Border Force Act 2015* (Cth).
63. See Jane Lee, 'UN cancels Australia visit over Border Force laws' *Sydney Morning Herald*, 26 September 2015 (available at <http://www.smh.com.au/federal-politics/political-news/un-postpones-australian-visit-over-failure-to-guarantee-protection-of-detention-centre-whistleblowers-from-recrimination-20150926-gjvqm2.html>); Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, November 2015 (available at <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/forgotten-children-national-inquiry-children>), p194-5, para 12.17; Bianca Hall, 'Human rights chief warned off islands visit', 5 March 2013, *Sydney Morning Herald*, (available at <http://www.smh.com.au/federal-politics/political-news/human-rights-chief-warned-off-islands-visit-20130304-2fyg9>.html); and Lisa Cox and Sarah Whyte, 'UN investigators denied access to Nauru detention centre', 9 April 2014, (available at <http://www.smh.com.au/federal-politics/political-news/un-investigators-denied-access-to-nauru-detention-centre-20140409-zqspk.html>).
64. See Senate Committee Report (2015), 90; Amanda Meade, 'Chris Kenny the first foreign news reporter in 18 months to be granted Nauru visa', *The Guardian*, 20 October 2015, (available at <http://www.theguardian.com/world/2015/oct/20/chris-kenny-first-foreign-news-reporter-in-18-months-granted-nauru-visa>)
65. See Simon Cullen, 'Nauru cancels visitor visas for Australian and New Zealand Citizens', *ABC*, 18 February 2016 (available at <http://www.abc.net.au/news/2016-02-19/nauru-cancels-visitor-visas-for-australian-nz-citizens/7183684>)
66. See Pacific Beat, 'Nauru's President defends Facebook ban, says social media has power to create social instability', *ABC News*, 29 May 2015 (available at <http://www.abc.net.au/news/2015-05-29/nauru-president-baron-waqa-defends-facebook-ban/6507240>) .
67. See Dan Harrison, 'Children moved from Manus Island detention', 20 June 2013, *The Sydney Morning Herald* (available at <http://www.smh.com.au/national/children-moved-from-manus-island-detention-20130620-2olz5.html>).
68. Susan Kneebone, 'ASEAN and the Conceptualization of Refugee Protection in Southeastern Asian States', Chapter 13 in Ademola Abass and Francesca Ippolito (ed) *Regional approaches to the Protection of Asylum Seekers: An International Legal Perspective* (Routledge, 2016).

69. See AHRC, above n 47
70. Human Rights Watch and Amnesty International, 'Australia: Appalling Abuse, Neglect of Refugees on Nauru', 2 August 2016 (available at <https://www.hrw.org/news/2016/08/02/australia-appalling-abuse-neglect-refugees-nauru>).
71. Philip Moss, Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru, Final Report, 6 February 2015 (available at <https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/review-conditions-circumstances-nauru.pdf>).
72. Elizabeth Elliott, Hasantha Gunasekera, The health and well-being of children in immigration detention: Report to the Australian Human Rights Commission Monitoring Visit to Wickham Point Detention Centre, Darwin, NT: October 16th-18th 2015 (available at <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/health-and-well-being-children-immigration>)
73. Final Report of the Senate Select Committee on the Recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru Taking responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru, 31 August 2015 (available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report)
74. Nick Evershed, Ri Liu, Paul Farrell and Helen Davidson 'Nauru Files', August 2016, The Guardian (available at <http://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>)
75. Nicole Hasham, 'Detention centre workers suffering their own trauma in dealing with asylum seekers', 26 February, The Sydney Morning Herald (available at <http://www.smh.com.au/federal-politics/political-news/detention-centre-workers--suffering-their-own-trauma-in-dealing-with-asylum-seekers-20160225-gn3buk.html>)
76. Shalailah Medhora, 'Reclaim Australia's rallies 'hurtful' to new migrants and refugees', 6 April 2015, The Guardian (available at <https://www.theguardian.com/world/2015/apr/06/reclaim-australia-rallies-hurtful-new-migrants-refugees>)
77. See Louise Newman, 'Sending children back to Nauru risks creating a generation of damaged people', 4 February 2016, The Conversation, (available at <http://theconversation.com/sending-children-back-to-nauru-risks-creating-a-generation-of-damaged-people-54115>)
78. Other serious attempts to clarify the cost of aspects of Australia's asylum seeker and refugee policy have encountered similar issues – see for example Harriet Spinks, Cat Barker and David Watt, 'Australian Government spending on irregular maritime arrivals and counter-people smuggling activity', 4 September 2013, Australian Parliamentary Library, (available at http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1314/PeopleSmuggling)
79. The Guardian, 'Save the Children's letters to Dutton and Turnbull about harm to children in Nauru – the full text', 18 August 2016, (available at <https://www.theguardian.com/australia-news/2016/aug/18/save-the-childrens-letters-to-dutton-and-turnbull-about-harm-to-children-in-nauru-full-text>)
80. See Kaldor Centre, 'Transfer Tracker', UNSW Law, (available at <http://www.kaldorcentre.unsw.edu.au/publication/transfer-tracker>) Forgotten Children Report (2014), p 185.
81. See above n 47
82. Children began being transferred to Nauru in March 2013 where many of them were held in closed detention in the RPC up until it became an 'open centre' in October 2015.
83. Paul Farrell, Nick Evershed and Helen Davidson, 'The Nauru files: cache of 2,000 leaked reports reveal scale of abuse of children in Australian offshore detention', 10 August 2016, (available at <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>)
84. Ibid
85. Ibid
86. There is unequivocal evidence from various sources that immigration detention has a severe and detrimental impact on the physical and mental health of children detained. For example: Guy Coffey, Ida Kaplan, Robyn Sampson and Maria Tucci, 'The meaning and mental health consequences of long-term immigration detention for people seeking asylum', *Social Science & Medicine*, Vol 70, Issue 12 (June 2010); Human Rights and Equal Opportunity Commission (HREOC), *A Last Resort? National Inquiry into Children in Immigration Detention* (2004); International Detention Coalition, *Captured Childhood* (2012); Joint Select Committee on Australia's Immigration Detention Network, *Final Report* (March 2012); Royal Australian and New Zealand College of Psychiatrists, *Children in immigration detention – position statement 52* (September 2011); Steel Z, Momartin S, Bateman C, Hafshejani, Silove D, Everson N, Roy K, Dudley M, Newman L, Blick B and Mares S, *Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia* (2004) *Australian and New Zealand Journal of Public Health*, 527 – 536; Robjant K, Hassan R, Katona C, *Mental health implications of detaining asylum seekers: systematic review* (2009), *British Journal of Psychiatry*, 306 – 312.
87. International Detention Coalition, *Captured Childhood* (2012), 48.
88. See above n 82
89. Article 37(b), CRC.
90. See above n 86
91. Refer to the incidents data referred to in the Nauru Files (2016). The AMA stated in its report to the 2016 Senate Committee Inquiry that '[t]he longer a person is in detention, the higher their risk of mental illness. The impact on children is magnified.' (Australian Medical Association, AMA Submission to Legal and Constitutional Affairs Committee - Conditions and Treatment of Asylum Seekers and Refugees at the Regional Processing Centres in the Republic of Nauru and Papua New Guinea, 2 February 2016 (AMA 2016 Senate Submission), Cover Letter, l.
92. Senate Committee Report (2015), Chapter 5, para 5.7.
93. Senate Committee Report (2015), Chapter 5, para 5.64; see also Forgotten Children Report (2014), 187.

94. See HRW/Amnesty International Report (2016).
95. See database of Nauru Files (2016)
96. Forgotten Children Report (2014), 195
97. See Elliot and Gunasekera Report to AHRC (2016), 3.
98. Moss Report (2015), p 36, para 3.92.
99. HRW/Amnesty International Report (2016)
100. Senate Committee Report (2015), Chapter 5, para 5.72.
101. See UNICEF 'Building Better Brains: New Frontiers in Early Childhood Development', 2007 (available at http://www.unicef.org/earlychildhood/files/Building_better_brains____web.pdf)
102. UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations Treaty Series, vol. 1465, p. 85 (entry into force 26 June 1987).
103. UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 March 2015, A/HRC/28/68, para 71.
104. See Human Rights and Equal Opportunity Commission, A Last Resort? National Inquiry into Children in Immigration Detention A Last Resort? National Inquiry into Children in Immigration Detention, April 2004 ('HREOC Report'); Department of Immigration and Multicultural Affairs and Indigenous Affairs (DIMIA), DIMIA, Contract Operations Group Minutes, 19 July 2001, (NI, Q3, F4), as quoted in the HREOC Report.
105. Senate Committee Report (2015), Chapter 5, para 5.23
106. Nicole Hasham, 'Horror video emerges showing Nauru refugee setting himself on fire', 27 April 2016, The Age (available at <http://m.theage.com.au/federal-politics/political-news/horrifying-video-emerges-showing-nauru-refugee-setting-himself-on-fire-20160427-gog0gx.html>)
107. See above in 83
108. UNICEF Pacific and Ministry of Home Affairs, Government of Nauru, Review of the Child Protection System in Nauru (available at <http://www.unicef.org.au/Upload/UNICEF/Media/Documents/Nauru-ChildProtection-Review.pdf>)
109. Elizabeth Jackson and staff, 'Asylum seeker children bullied in Nauru schools, Save The Children consultant says', 30 July 2016, ABC News, (available at <http://www.abc.net.au/news/2016-07-30/asylum-seeker-children-bullied-in-nauru-schools-charity-says/7675048>)
110. Ibid
111. See Nicole Hasham, 'Asylum seeker children on Nauru abused, sexually harassed at school: former teacher', The Sydney Morning Herald, 8 January 2016 (available at <http://www.smh.com.au/federal-politics/political-news/asylum-seeker-children-on-nauru-abused-sexually-harassed-at-school-former-teacher-20160107-gm1mdh.html#ixzz3wysYjAu5>).
112. See HRW/Amnesty International Report (2016)
113. HRW/Amnesty International Report (2016); Forgotten Children Report (2014), 188-190 (citations omitted); Helen Davidson and Ben Doherty, 'Wife of man who died after setting fire to himself in Nauru slams delay in care', 29 April 2016, The Guardian (available at <http://www.theguardian.com/world/2016/apr/29/wife-of-man-who-died-after-setting-fire-to-himself-in-nauru-slams-delay-in-care>)
114. Helen Davidson and Ben Doherty, *ibid*.
115. The Forgotten Children Report (2014) indicates that 27 unaccompanied children had been transferred to Nauru at the time of publication (see p 23).
116. Madeleine Morris, 'Nauru detention separates husband and wife as lawyers lament her alleged treatment', 14 May 2015, ABC 7.30 Report (available at <http://www.abc.net.au/7.30/content/2015/s4236047.htm>)
117. Peter Mares, *Not Quite Australian: How Temporary Migration is Changing the Nation* (Text Publishing, 2016), Chapter 7.
118. HRW/Amnesty International Report (2016)
119. See Forgotten Children Report (2015), Chapter 6.
120. Senate Committee Report (2015), 101.
121. Paul Farrell, "'I want death': Nauru files chronicle despair of asylum seeker children", 10 August 2016, The Guardian, (available at <https://www.theguardian.com/news/2016/aug/10/i-want-death-nauru-files-chronicle-despair-of-asylum-seeker-children>)
122. Neelima Choahan, 'Birth of first refugee baby on Nauru sets 'dangerous precedent'', 21 September 2015, The Sydney Morning Herald, (available at <http://www.smh.com.au/national/birth-of-first-refugee-baby-in-nauru-detention-centre-sets-risky-precedent-20150921-gihke.html>)
123. Elibritt Karlson, 'Australia's offshore processing of asylum seekers in Nauru and PNG: A Quick Guide to statistics and resources', 30 June 2016, Australian Parliamentary Library (available at http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1516/Quick_Guides/Offshore#_Total_number_of)
124. UN General Assembly, Convention on the Reduction of Statelessness, 30 August 1961 (entry into force 13 December 1975), UN Treaty Series, vol. 989, p 175.
125. Article 1, *ibid*.
126. See section 21(8) of the Citizenship Act 1958 (Cth)

127. We understand that typically a child will not be considered a Nauruan national unless he or she has at least one Nauruan parent (See Naoero Citizenship Act 2005 (Nauru)).
128. See Elibritt Karlson, above n 123
129. United States Central Intelligence Agency, World Factbook: Nauru (available at <https://www.cia.gov/library/publications/the-world-factbook/geos/nr.html>)
130. See Amnesty International Submission to the UN Universal Period Review, Nauru: Weakening Human Rights Protections and the Rule of Law, November 2015 (available at <https://www.amnesty.org/en/documents/asa42/2279/2015/en/>), p 7.
131. See article 13, CRC.
132. The Committee on the Rights of the Child (CRC Committee) has observed 'for rights to have meaning, effective remedies must be available to redress violations' (See CRC Committee, General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child, CRC/GC/2003/4, 1 July 2003, para 24, (available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en)
133. Appropriate remedies for violations are likely to include 'appropriate reparation, including compensation, and where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration as required by article 39 [of the CRC]' Ibid.
134. Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Compilation of SPT Advice in response to NPMs requests, II(3) (available at <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx>)
135. Forgotten Children Report (2015), p 36.
136. See article 33 Refugee Convention, article 3 of the Convention Against Torture (UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984 (entry into force 26 June 1987), United Nations, Treaty Series, vol. 1465, p 85.) See also Office of the UN High Commissioner for Human Rights: 'We believe that transferring these 267 individuals to Nauru could further damage their physical and mental health, and would put Australia at risk of breaching its obligation not to return any person to cruel, inhuman or degrading treatment under the Convention against Torture' (Office of the UN High Commissioner for Human Rights, 'Comment by the Spokesperson for the UN High Commissioner for Human Rights, Rupert Colville, on the possible transfer of 267 people from Australia to Nauru', 3 February 2016, (available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17024&LangID=E>)
137. See Forgotten Children Report (2015), p 187
138. See Forgotten Children Report (2015), p 195; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/28/68, 5 March 2015, para 80 and Add 1 to the same document, para 19; UN Committee against Torture, Concluding observations on the combined fourth and fifth periodic reports of Australia, CAT/C/AUS/CO/4-5, 23 December 2014, para 17..
139. Freedom of movement is not a right provided specifically to children under the CRC, but it is a right that applies to all people under article 12 of the International Covenant on Civil and Political Rights, 16 December 1966 (entry into force 23 March 1976), United Nations, Treaty Series, vol 999 p 171 (ICCPR).
140. Forgotten Children Report (2015), p 195
141. Our sources indicate that some individuals determined to be refugees are still residing within or adjacent to the RPC (which is now unlocked) given the lack of available housing in the broader community.
142. We understand from consultations that some of those who have been transferred to Australia for medical treatment have had their refugee status determinations effectively 'suspended' until such time as they return to Nauru.
143. HRW/Amnesty International Report (2016)
144. Nicole Hasham, 'Mentally ill refugee tried to incinerate herself at Nauru husband says', 26 May 2016, They Sydney Morning Herald (see <http://www.smh.com.au/federal-politics/political-news/mentally-ill-refugee-tried-to-incinerate-herself-at-nauru-husband-says-20160525-gp3d6m.html>; woman named in HRW report)
145. See SkyNews, above n 42
146. See HRW/Amnesty International Report (2016)
147. Forgotten Children Report (2015), p 51.
148. DIBP, Immigration Detention and Community Statistics Summary, 31 March 2016 (available at <https://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-31-mar-2016.pdf>)
149. Forgotten Children Report (2015), p 29-30.
150. Forgotten Children Report (2015), p 29-30.
151. Forgotten Children Report (2015)
152. Elliot and Gunasekera Report to AHCR (2016)
153. AMA 2016 Senate Submission, p 2.
154. See CRC Committee, Report of the 2012 Day of General Discussion: The Rights of all Children in the Context of International Migration, 32 (available at http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGD-Childrens_Rights_InternationalMigration.pdf); Inter-Agency Working Group to End Child Immigration Detention (IAWG), Summary of standards relating to child immigration detention, June 2016; IAWG, Ending Child Immigration Detention, p 9 (available at [http://picum.org/picum.org/uploads/file/IAWG_Advocacy%20Brochure_Aug%202016_FINAL%20\(web\)_1.pdf](http://picum.org/picum.org/uploads/file/IAWG_Advocacy%20Brochure_Aug%202016_FINAL%20(web)_1.pdf))

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