

# Project SafeCom News and Updates

Saturday, 6 February 2016

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1. Waleed Aly on Nauru: How long can we keep lying to ourselves?
  2. Michael Gordon: No clear winner likely from High Court ruling
  3. Lenore Taylor: Malcolm Turnbull has legal defence but not a moral one over Nauru and Manus
  5. Michael Gordon: High Court decision puts the onus squarely on Malcolm Turnbull
  6. Michael Bradley: A tragic day for both asylum seekers and the law
  7. George Williams: Asylum seekers on Nauru are in a legal black hole
  8. Madeline Gleeson: Glimmers of hope for detained asylum seekers in the High Court's Nauru decision
  9. Richard Ackland: The high court, despite the law at its disposal, has let them get away with it
  10. Behrouz Boochani: Silence falls as Manus Island detainees' hopes for justice are dashed
  11. Editorial: End offshore detention of refugees now
  12. Editorial: Church's lead on asylum seekers sanctuary a game changer
  13. The Saturday Paper: The lawful truth of the High Court's offshore detention decision
- 
14. Australia's right to send asylum seekers offshore faces dual challenges
  15. Christmas Island braces for High Court detention judgment
  16. MEDIA RELEASE: Manus intimidation steps up; phones confiscated as court decision looms
  17. Guards accused of building tensions on Manus
  18. The faces of the babies Australia wants to send back to 'hell' on Nauru
  19. 5yo boy allegedly raped on Nauru could be sent back to detention centre, doctor says
  20. Medical advice to be considered in case of 5yo allegedly raped on Nauru, Peter Dutton says
  21. PM Malcolm Turnbull urged to have a heart regardless of High Court ruling on Nauru
  22. High Court throws out challenge to Nauru offshore immigration detention
  23. High court upholds Australia's right to detain asylum seekers offshore
  24. High Court finds offshore detention lawful
  25. MEDIA RELEASE: High Court maintains legal fiction: #LetThemStay protest Thursday
  26. Turnbull unmoved by calls to spare 267 asylum seekers from deportation to Nauru
  27. Nauru, Manus ruling no blank cheque as court signals limits to detention
  28. Sri Lankan asylum seeker tells of terror on Nauru: 'If I am sent back, I will commit suicide'
  29. Sanctuary offered to asylum seekers facing removal to offshore detention by churches across Australia
  30. Churches offer sanctuary to asylum seekers facing deportation to Nauru
  31. Church leaders risk potential jail time by offering sanctuary to asylum seekers
  32. Churches become potential flashpoint after offering sanctuary to asylum seekers in wake of High Court verdict
  33. Churches outside the law when offering sanctuary to asylum seekers

# 1. Waleed Aly on Nauru: How long can we keep lying to ourselves?

The history of asylum seeker policy in Australia will be remembered as a story of how successive governments legislated their lies to justify a world of make-believe borders and imaginary compliance.

Sydney Morning Herald  
February 4, 2016 - 1:45PM  
Waleed Aly

Wonderful idea, sovereignty. It conveys this reassuring sense of control; a sense that on each of our own patches, we're in charge and things happen by some exercise of our own free choice. And maybe that sense isn't an illusion. Maybe, for example, Nauru just happened to choose to open a "regional processing centre" for asylum seekers. And maybe it just happened to put an Australian government office in it. And maybe it just happened to ask the people in that office – who just happen to be Australians – if they could wear Australian government uniforms with the Australian coat of arms on them while they deal with the detainees in that centre.

Maybe it's mere happenstance that Nauru has made visas all but impossible for journalists to obtain if they want to scrutinise these detention arrangements, in a manner eerily similar to the way the Australian government routinely denies journalists access to our own detention centres.

Maybe that same happenstance accounts for the fact that the single journalist to have been the exception to this rule in the past two years is a dedicated supporter of the Australian government's asylum-seeker policies.

And maybe Nauru's sudden decision to open the gates of its detention centre so its detainees could roam freely around (but not leave) Nauru had nothing whatsoever to do with the fact that the Australian government was – at precisely the same time – in danger of losing a case in the High Court that would bring its offshore detention regime crashing down.

And maybe all that has absolutely nothing to do with the fact that the Australian government pays for that centre. And nothing to do with the fact under our government's agreement with Nauru, we have the right to step in and take over the centre whenever we like. Maybe all this is some completely free, unbounded choice of Nauru's that miraculously happens to coincide with the Australian government's interests again and again.

So maybe it's true that while the arrival of boats of asylum seekers in our waters is severe enough to mean people smugglers are robbing us of our sovereignty, our own official, uniformed control of Nauru's detention centre somehow leaves theirs perfectly intact.

Or maybe that's all crap. It matters because whatever it is, we're building our asylum-seeker policy on it. That has been true for years now. Perhaps you've noticed how often when controversy arrives, say in the form of some act of abuse in these detention centres, these things become matters for Nauru. Nauru has become a screen behind which we hide our own culpability; its sovereignty a charade, really – a sort of legal fiction we use to obscure the consequences of our own policy even as we claim its successes.

This week we learned those consequences might have included the rape of a five-year-old boy. And this week, the High Court confirmed the government has every legal right to send him straight back to the scene of that alleged crime. And who could honestly claim to be surprised if the government did exactly that?

The horror of this thought is obvious. But perhaps the greatest horror is that as a nation, we've now become so hopelessly addicted to the fictions that justify it. It's not just the fiction of Nauru. It's also the fiction of Australia, which you might recall we've declared simply doesn't exist if you're coming here by boat. You can dock in Sydney Harbour if you like, and as far as the law is concerned, you simply never arrived here. But there's also the fiction that Nauru and Papua New Guinea were ever anything more than a dumping ground for us.

If these countries were truly something more, we'd have known from the beginning how the asylum seekers we were sending there would be resettled. Or indeed that it was going to happen at all. But there was never any plan. There still isn't. The "regional processing centre" in Nauru seems drastically misnamed given precious little processing is actually happening. Remember last year when we heard the 600 remaining detainees on Nauru would be processed within a week? Many weeks on, 537 remain.

This as we've paid Cambodia \$55 million to resettle almost nobody (or four nobodies to be precise). And while we've been belatedly scouring the region looking for countries to take asylum seekers off our hands, we've flatly rejected an offer from New Zealand to resettle 150 of them each year. Resettlement in New Zealand, you see, would encourage more boats.

Note, here, the tacit admission that our policy is to send them to places so bad they couldn't possibly want to live there. Only then, it seems, will they stop coming. It's a problem that goes back to the very inception of this policy, implemented in the last throes of Kevin Rudd's political career. Labor's present objection that people were not meant to be "languishing in indefinite detention" is so profoundly hypocritical because it ignores that the Rudd government had never arranged anything else.

Ultimately, this whole issue exists in a world of make-believe: make-believe borders, make-believe compliance with the refugee convention, and make-believe resettlement policy. Among all the moral injuries we've inflicted on ourselves in this sordid area of politics – and there are many – the most overlooked is how adept we've become at lying to ourselves.

One day, when the history of this period is written, it will be a story of how successive governments have legislated their lies. How John Howard, then Julia Gillard made real their pretence that boat arrivals never got here, so we could be good international citizens yet still owe these people nothing. How Tony Abbott passed a law in June last year to ensure Rudd's Nauru arrangement was legal, and how that law pretended it had been in force ever since 2012.

I don't know if we can do this forever; if eventually our lawmaking won't be able to outrun our lying. But I know that buried in this week's High Court judgment is unanimous agreement the government simply cannot detain people indefinitely on Nauru. At some point, the clock runs out. And on that day, maybe the alarm will sound on these mighty fictions that have been sustaining us. Then who will we be?

<http://www.smh.com.au/comment/nauru-detention-centre-clock-ticks-on-our-addiction-to-fictions-of-asylumseeker-policy-20160203-gml6or.html>

## 2. Michael Gordon: No clear winner likely from High Court ruling

Sydney Morning Herald  
February 1, 2016 - 5:55PM  
Michael Gordon

Here's one reasonably safe prediction about Wednesday's High Court decision on the legality of the Australian government's role in offshore detention on Nauru: there will not be one unqualified winner.

If the challenge on behalf more than 260 asylum seekers who were brought to Australia for medical treatment is defeated, the mental torment of those on Nauru and Manus is dramatically increased – and with it the risk of another awful episode.

If, on the other hand, the challenge succeeds, you can bet that the Peter Dutton has a contingency plan aimed at ensuring that offshore processing continues, so this result would not, of itself, end the ordeal of those seeking relief. Far from it.

Given the way the case has transpired, with the goal posts moving not once, but twice, during proceedings, a more nuanced verdict would seem likely.

First, the Coalition government made retrospective changes to legislation to shore up its position after the case began. Then, the Nauruan government moved to an "open" centre arrangement, insisting asylum seekers were no longer being detained.

The latter change could make it harder to draw conclusions from the decision about the legality of the detention arrangement on Manus Island, where more than 900 men remain in what amounts to indefinite custody in harsh conditions.

Among the questions being considered by the full bench is whether the Australian government's role in the detention of those on Nauru was big enough for it to be considered the detainer.

If the court finds in the asylum seekers' favour on this question, it has to rule on whether that detention infringed the limits of constitutional power and, perhaps, whether retrospective laws were valid.

Even a "victory" on these questions would not necessarily free the asylum seekers from the prospect of return to Nauru, because the Australian and Nauru governments can say asylum seekers are no longer detained on the island.

But it would suggest a challenge on behalf of the Manus detainees, who have just endured their third Christmas in detention, could be successful.

As things stand, the Immigration Minister is intent on sending back those who came from Nauru for medical treatment, along with the babies born on the mainland, not least because this would leave barely a handful of children in mainland detention centres.

One measure of his determination not to bend could be the preparation of the family compound on Christmas Island to hold these people until a way can be found around any adverse decision.

Sooner or later, however, the Australian government will have to step back, see the bigger picture and find a way to end the suffering of those on Nauru and Manus.

Daniel Webb of the Human Rights Law Centre is right. "The legality is complex but the morality is simple – it is fundamentally wrong for the Government to condemn vulnerable people to a life in limbo on Nauru and Manus."

<http://www.smh.com.au/federal-politics/political-opinion/no-clear-winner-likely-from-high-court-ruling-20160201-gmiyzc.html>

### 3. Lenore Taylor: Malcolm Turnbull has legal defence but not a moral one over Nauru and Manus

If major parties believe detention is the price of border control and deterring people smugglers then they should at least show the public the full picture

The Guardian

Lenore Taylor

Wednesday 3 February 2016 15.26 AEDT

The high court has ruled that it is legal. Now the major parties need to explain why they believe offshore detention is moral. And they should have the courage to do it while allowing Australians to see the full reality of the camps on Manus Island and Nauru.

Both major parties effectively argue that the ends justify the means, that “stopping the boats” and “preventing the drownings at sea” justify the collateral damage – the men, women and children detained far away with no idea when, if ever, they will be able to build a new life. They both argue the plight of these people is the price of regaining “control of our borders” and deterring the people-smuggling trade.

Successive governments have tried to find other places these people could call home but the only glimmer was the \$40m deal with Cambodia, which has, to date, settled only four people. An offer from New Zealand to resettle some was rejected, presumably because it might be seen as a weak link in the wall of people-smuggler deterrence.

Labor does have some ameliorating policies – mandatory reporting of child abuse, an independent monitoring regime. But it cannot say where the people in the camps should go – replying only that it would work for “a regional humanitarian framework” and give more money for the UN high commission on refugees.

It claims it does not support “indefinite detention” but, in the absence of any alternative plan for where the people in detention should go, it’s hard to know what that means. The detention is sure looking indefinite from the point of view of the refugees waiting for two years or more while their lives pass them by in the Australian-funded camps.

If the major parties want to argue that this price, paid in human lives, is a necessary one, then the very least they can do is let the Australian people know exactly what it means, instead of implementing every possible law, and legal fiction, to hide the reality.

Malcolm Turnbull’s government could, for example, stop hiding behind the nonsense that it has no influence at all to persuade the Nauruan government to allow journalists to visit the island. Only one journalist has been there in the past two years and he was happy to concede that his public support for strong border protection measures might have swayed that decision.

They could repeal the provisions of the Border Force Act that provide for two-year jail sentences for workers and health professionals who disclose “protected information” to the media, or at the very least clarify that whistleblower laws would cover disclosures.

Despite these restrictions details of the abuse, the sexual assaults, the inadequate healthcare, the violence, the mental illness and the self-harm do emerge, through parliamentary inquiries and reports to government and information pieced together by the press.

But the responses are bureaucratic, procedural or euphemistic rambles about “tough decisions” that “take sugar off the table”.

And, in some cases, they are downright dishonest, for example the government’s continuing refusal to admit the former minister Scott Morrison was wrong to accuse Save the Children staff of “coaching” asylum seekers on Nauru.

And since the public seldom sees the faces of the people, the debate grinds on with claim and counterclaim, the defenders of the policy pointing to the boat-free seas and hiding the rest behind process, the opponents increasingly desperate.

If the government is comfortable that the human price of stopping the boats is justified, if it really believes what it says about refugees running businesses and building a happy long-term future on Nauru, why not let the public see the full picture?

Presumably because when the public sees the faces of the babies now facing deportation back to Nauru, or hears stories like those of the alleged rape of the five-year-old boy also facing deportation, the reports and submissions come to life and more people start thinking the “collateral damage” is too high a price to pay.

The high court decision means Malcolm Turnbull can – legally – continue to hide the policy reality behind euphemism and sound grabs and process. It’s his decision whether – morally – he wants to.

<http://www.theguardian.com/australia-news/2016/feb/03/malcolm-turnbull-has-legal-defence-but-not-a-moral-one-over-nauru-and-manus>

## 5. Michael Gordon: High Court decision puts the onus squarely on Malcolm Turnbull

Sydney Morning Herald  
February 3, 2016 - 1:36PM  
Michael Gordon

Now that the legality of detaining asylum seekers indefinitely on foreign shores has been upheld by the High Court, Malcolm Turnbull has some big decisions to make.

The most immediate is whether he moves quickly to send around 100 children, including 37 babies, to the tiny, sweltering island with their mothers to face a precarious life in limbo.

Barely a fortnight ago, Immigration Minister Peter Dutton signalled that this was the government's intent, saying it would leave just seven children in mainland detention centres.

But now is the time for restraint – and the onus is on Turnbull and Dutton to display it.

The most prudent course would be to say little and do nothing that will compound the distress of those who, after all, were only brought back to Australia because of serious mental and physical health concerns.

If Turnbull's initial declaration as PM that he cares about the plight of those languishing on Nauru and Manus means anything, no child will be ripped out of an Australian school and put on a plane to Nauru.

The same applies to the dozen or so women who allege they were the victims of sexual assaults and harassment on Nauru. And the same goes for the babies born in Australia whose pictures appeared on Fairfax platforms this week.

To a large extent, the government is captive to its own brutal rhetoric and the mindset that any show of compassion will represent a green light for people smugglers to resume their trade.

If it really believes it can't say that vulnerable families and children will be allowed to stay in Australia, it can assess each case individually and not act in a way that will cause even more harm than has been done already.

The bigger decision confronting the Prime Minister is what to do about those still on Nauru, including some 537 people (and 68 children) still in the processing centre, and the 1000-plus men in custody on Manus, who continue to endure conditions that international agencies insist are in clear breach of human rights standards.

One certainty is that the court's decision represents another body blow to those who are already on the edge - who exist on a diet of sedatives and pain killers and regularly resort to self-harm.

Rather than step up security at Manus, now is the time to increase psychological support for those at risk.

What is most urgently required is a serious effort to engage the United Nations refugee agency to find a durable solution.

Efforts to offload these people on other poor countries like Cambodia with no capacity to resettle refugees on any scale have come to nought and cost a small fortune. The focus should be on engaging resettlement countries, including the United States and New Zealand (who has a standing offer on the table to assist).

Australia's commitment to take 12,000 refugees from Syria is a solid foundation to re-open discussion on this difficult topic, but the reality is that a portion of those on Manus and Nauru should have the chance to rebuild their lives on Australian soil, especially those with strong family ties to those already here.

The court has removed much of the legal uncertainty about the indefinite detention of asylum seekers offshore. Only the Prime Minister can end the nightmare of those involved.

<http://www.smh.com.au/federal-politics/political-opinion/high-court-decision-puts-the-onus-squarely-on-malcolm-turnbull-20160203-gmkqr8.html>

## 6. Michael Bradley: A tragic day for both asylum seekers and the law

What Australia designed on Nauru is a sophisticated work-around: a way to wash its hands of responsibility for these asylum seekers. Today, the High Court backed the Federal Government's cleverness, writes Michael Bradley.

ABC The Drum  
by Michael Bradley  
First posted Wed 3 Feb 2016, 12:43pm  
Updated Wed 3 Feb 2016, 1:08pm

I'll put it as simply as I can: the High Court has placed its seal of approval on a piece of legal sophistry which is, when you boil it down, just a cheap con.

It's tragic that the regional processing arrangements between us and Nauru have been upheld; it's sad in the human sense that this appalling travesty is going to continue unabated and that over 250 traumatised people, including dozens of children, now face imminent deportation back to Nauru.

But it's tragic for the law too. I'm ashamed to say that our Highest Court has been done over by experts.

There is one sliver of light on this tough day - the lone dissenting voice of Justice Michelle Gordon, the most junior member of the High Court bench. She has delivered a stinging clear opinion which clinically cuts through the arguments of the Commonwealth and shreds them, exposing the really ugly truth which the whole Court should have seen.

The plaintiff in this case was a Bangladeshi woman who was on a boat intercepted at sea, detained and then forcibly removed to Nauru in January 2014. She was held in detention at the Regional Processing Centre (RPC) there until August 2014, when she was flown back to Australia for medical treatment. The case was about whether she (and her baby, born here) can be lawfully returned to Nauru.

The legal arguments were, as you'd expect, complex. They required detailed interpretation of the Australian Constitution and the Migration Act. But it boils down to this: who is detaining the asylum seekers on Nauru; and, to the extent that Australia is involved in that, is it legal?

The majority determined that the detention is being carried out by the Government of Nauru. Yes, the Australian Government effectively brought that detention about, by providing and paying for all of the material support necessary for the establishment and maintenance of the RPC, applying for the necessary visas and paying the visa fees. But to that extent, that was within the legal power of the Commonwealth under our Constitution, and therefore entirely valid.

Gordon J said that reasoning is plain wrong. She found that it is Australia who detained the plaintiff on Nauru, and she identified 12 specific actions of the Commonwealth Government which make this conclusion unarguable.

Full story at <http://www.abc.net.au/news/2016-02-03/bradley-a-tragic-day-for-both-asylum-seekers-and-the-law/7136812>

## **7. George Williams: Asylum seekers on Nauru are in a legal black hole**

All this means that Australia's treatment of asylum seekers by way of offshore processing will now raise few legal questions. Instead, it will be governed by the politics of the day.

Sydney Morning Herald  
February 3, 2016  
George Williams

People seeking asylum have won notable victories in the High Court. They succeeded in overturning the Gillard government's Malaysian solution, and won a succession of cases that require a fair determination of their claims.

Today was not such a day. Instead, the High Court comprehensively rejected a challenge to Australia's offshore processing regime in Nauru. The finding leaves Immigration Minister Peter Dutton with broad powers to transfer asylum seekers to Nauru as he sees fit.

The plaintiff was a Bangladeshi national known only as M68 who entered Australian waters seeking asylum. Classified as an 'unauthorised maritime arrival', she was detained and sent for processing to Nauru.

Later, she was returned to Australia for medical reasons, and gave birth to a child. She brought her High Court action to avoid being sent back to Nauru.

Her fate is shared by many other mothers and the 37 babies born to them in Australia.

Lawyers for M68 mounted a long list of arguments. They said that no Australian law authorised her detention, that the Commonwealth lacked the authority to enter into a memorandum of understanding with Nauru and that there was no authority for federal funds to be used for the regime. It appeared that M68 was on strong ground and might win the case, which could have left Australia's offshore processing regime in tatters.

The Commonwealth responded by rushing emergency legislation through both houses of the federal Parliament on June 24 and 25 last year. This inserted a new section 198AHA into the migration act that provides a blanket authorisation for whatever action the Commonwealth might need to undertake to support its regional processing policies.

This law came into force a few days later on June 30, 2015, but was backdated to take effect from 2012. The retrospective operation was designed to support Commonwealth actions before that time that could otherwise have been invalid.

The passage of this special law undercut the arguments of the plaintiff, who failed in the High Court on all counts. The logic of the majority was straightforward. In the absence of any special protections for asylum seekers in the Constitution or elsewhere, the Commonwealth can participate in offshore processing regimes so long as this is authorised by law.

In this case, the requisite legal authority was provided by section 198AHA. It was argued by the plaintiff that this section was not a valid law under the Constitution.

However, this failed when the High Court applied one of its earlier decisions from 2014. That case upheld similar provisions that supported the sending of asylum seekers to Manus Island in PNG.

The result was that the federal government has the power to detain people who come to our shores claiming to be a refugee. It also has the power to send those people to other countries without first determining whether their claims are correct.

Once removed, their fate is put beyond Australian law and the oversight of our courts. As Chief Justice French and Justices Kiefel and Nettle stated, once removed from Australia, the plaintiff is 'detained in custody under the laws of Nauru, administered by the Executive government of Nauru'.

This follows from the fact that Australian courts do not rule on what occurs within another sovereign state. This is true even if that state, as is the case with Nauru, is beholden to Australia, and has a dubious record of upholding the rule of law within its own borders. In such a case, asylum seekers can find themselves removed from Australia to what is in effect a legal black hole.

These findings of a majority of the High Court put beyond doubt the capacity of the Commonwealth to continue its offshore detention policies in Nauru.

What is striking is just how few checks now apply to these policies. There is no requirement that children are well treated, or that their best interests are safeguarded. There is also no need for asylum seekers to be treated fairly, such as by having their claims promptly and properly assessed.

By sending them to Nauru, the law enables Australia to wash its hands of such matters.

<http://www.smh.com.au/national/nauru-a-legal-black-hole-for-asylum-seekers-20160203-gmklf8.html>

## **8. Madeline Gleeson: Glimmers of hope for detained asylum seekers in the High Court's Nauru decision**

The Conversation  
Madeline Gleeson  
February 3, 2016 4.59pm AEDT

On Wednesday, over five separate judgments, the High Court dismissed a challenge to the legality of Australia's offshore processing regime.

The judgment has been reported as a "win" for the government. However, things may not be that clear-cut.

### ***Background to the case and decision***

The plaintiff in this case, a Bangladeshi woman, originally brought a much larger claim against the Australian government. She alleged that her detention as an asylum seeker on Nauru was unlawful on several counts.

This was not a matter the Australian government could afford to lose. So, in June 2015, the government fast-tracked legislation to give retroactive legal coverage to anything the plaintiff claimed it might have done wrong on Nauru since 2012. With the opposition's full support, the Abbott government effectively decimated the bulk of the case against it.

A few months later – just two days before the High Court was due to hear the case – the Nauruan government announced that the detention centre on the island was "open". It was a fortuitous coincidence, according to Australian Immigration Minister Peter Dutton, leaving the Australian government open to argue that there was now nothing left for the court to decide.

If the plaintiff was sent back to Nauru she would no longer face detention there. According to the government, the only outcome left for her – a declaration that her past treatment had been unlawful – could be of no further consequence.

The High Court didn't buy this argument. A number of the judges noted that things could change on Nauru at any time. Justice Bell pointed out that the Nauruan government could always revert to a scheme under which asylum seekers taken by Australia to the island were detained in the future.

While the High Court did not explicitly articulate it, there is also the possibility that Nauru could choose to start detaining people again who have already been released – for example, if their presence among the local population were to prove too volatile or problematic to be sustained. If such a change were to occur, a very real legal issue would remain as to whether Australia could continue transferring people there in those circumstances.

The High Court thus turned to two main questions.

- • Prior to the introduction of an open centre arrangement in October 2015, was Australia detaining people itself on Nauru, or otherwise participating in their detention by funding, authorising, causing, procuring and effectively controlling it?
- • If the answer was yes, did Australia have the legal authority to do so?

Six of seven judges found that whatever the Australian government's involvement, it was not acting outside the powers conferred on it under Australian law. This finding is probably the only one of immediate concern to the plaintiff, the other 266 people subject to transfer back to Nauru, and the several hundreds more already there – not to mention those watching on from Manus Island to see how this case might affect their fates.

For these men, women, and children, the judgment was undoubtedly a loss.

### ***Glimmers of hope?***

Yet the judgment offers small but significant glimmers of hope for asylum seekers in offshore detention. There are two important things to note about how the judges reached their final decision.

First, all judges – with the possible exception of Justice Keane, who was more circumspect – held that Australia had either been responsible for the detention of people on Nauru itself, or had otherwise been implicated in their detention by Nauru.

Australian participation was “indisputable”, according to Chief Justice French and justices Kiefel and Nettle. Justice Gageler found that Australia had “procured” the detention of asylum seekers on Nauru through its contractors who exercised physical control over them. Justice Bell also held that Australia had “exercised effective control”.

Strongest of all was Justice Gordon's dissenting judgment. This concluded unambiguously that “the plaintiff was detained by the Commonwealth on Nauru” – in violation of all Australian law.

These findings deal a crucial blow to the tired argument that what happens offshore is not Australia's responsibility, but rather is wholly a matter for Nauru (or Papua New Guinea). This claim – maintained with stubborn insistence by the Gillard, Rudd, Abbott and now Turnbull governments – has arguably been the biggest obstacle to improving the treatment of people sent offshore for processing.

By denying any responsibility for mistreatment and human rights abuses occurring on Nauru and Manus Island, Australia has rebuffed every charge that it is violating its international obligations. It has perhaps also headed off some of the moral outrage that could have transpired if the Australian public more widely understood their government was committing these violations with their money and in their name.

The second finding that offers some hope was laid out in various terms by all six of the judges who deemed Australian involvement in detaining asylum seekers on Nauru to be lawful: the government cannot support an offshore detention regime that goes beyond what is reasonably necessary for processing.

This is to say that Australian law – since the June 2015 amendment – only authorises the government to be involved in the detention of people offshore for as long as it takes for their asylum claims to be processed. To some this may seem nothing more than a legal door left slightly ajar. But, if probed deeper, it may prove to be a much wider gap.

The truth of who is really processing asylum claims on Nauru and Manus Island, and how decisions are actually made, may never be known. Filing another court case and the discovery of revealing documents, it risks falling into the ever-expanding category of information kept as a government secret.

But, lack of transparency aside, it appears that the processing “tap” has been turned off at various times on both islands over the years. This has unnecessarily drawn out the decision-making process, keeping people detained much longer than some might argue is “reasonable”. There is no endgame for refugees on either island; no answer to where they are supposed to settle in the long term. Until one is found (if ever), there is no pressing need to complete processing and release the men on Manus Island, and nothing to stop Nauru changing its mind about granting freedom to those who are there.

The High Court may have delivered its judgment, but the matter is far from over.

---->>>> *Madeline Gleeson is a Research Associate at the Andrew & Renata Kaldor Centre for International Refugee Law, UNSW Australia*

<https://theconversation.com/glimmers-of-hope-for-detained-asylum-seekers-in-the-high-courts-nauru-decision-54036>



## 9. Richard Ackland: The high court, despite the law at its disposal, has let them get away with it

After the high court decision on Nauru, what we're left with are people who have no remedy, no rights and are at the mercy of someone like Peter Dutton

The Guardian  
Richard Ackland  
Thursday 4 February 2016 16.04 AEDT

The high court on Wednesday delivered a sad verdict to asylum seekers seeking to avoid transfer to the gulag of Nauru and those already there.

The only joy was being able to read Justice Michelle Gordon's judgment where she comprehensively demolished the commonwealth's legal arguments and found that the hastily scrambled retrospective amendment to the Migration Act, specifically designed to sink this very case, was beyond power and unconstitutional.

Those who hoped that the court would deliver a measure of justice, tempered by law, now have a hero in Justice Gordon and wonder why the six other judges doggedly chugged along swallowing the line that the executive power of the commonwealth and the Migration Act authorises all sorts of punitive cruelties.

After all, Gordon was an appointment to the court by the Abbott government, to fill the vacancy created by her husband Ken Haine's retirement. Her findings in the court's first judgment of the year must come as a surprise to her sponsors in cabinet.

Once those "unauthorised maritime arrivals" depart from Australia, where many of them have received medical treatment, and hit the shores of Nauru, our responsibility for them legally ceases.

It's the black hole argument that George W Bush's lawyers used as the legal justification for Guantanamo Bay, but not even the US supreme court would wear it, finding in *Rasul v Bush*, in which David Hicks was one of the petitioners, that habeas corpus extended as far as the camps on Cuba.

What Justice Gordon did was to take us to the substance of what is happening in Nauru, not just the form.

Australia is right into Nauru, up to its armpits. It was not something that could be shunted home to an offshore entity, which we had turned into a client state with the detention centre there effectively a branch of the Department of Immigration and Border Protection.

The pernicious amendment to the Migration Act (section 198AHA), after the M68 case was filed in the court, sought to retrospectively validate any prior illegalities and give the department power to take "any action" in relation to regional processing functions.

Any action? That could extend to depriving people of their liberty indefinitely, by force, subjecting them to assaults and cruel punishment.

All the judges recognised that Australia was intimately involved in and responsible for regional processing of asylum seekers on Nauru and for that matter Manus Island. It was just Michelle Gordon who found the validating amendment unconstitutional.

This is because parliament doesn't have power to indefinitely detain an "alien" – that had already been well decided by the high court. The detention of "aliens" has to be a condition of the deportation. Interestingly, it was Gordon's husband who in the 2004 case of *Al-Kateb* led the argument that it was all right to detain someone indefinitely, without charge, if there was no other country to which they could be deported.

But here, she said, the detention falls foul of the rule that the detention can only be for limited purposes.

In substance, the regional processing centre on Nauru is intrinsically bound-up with Australian government policy, and the underlying purpose of its operations is to punish those who arrived on boats, so as to act as a deterrent to further "unauthorised maritime arrivals".

Under the constitution punitive powers are the preserve of the courts, yet the majority judges dodged that by saying that nothing punitive is happening in Nauru with our asylum seekers because they are being processed for resettlement elsewhere.

Again, this is form over substance when you consider that some have spent years stranded in the processing mechanism. There was a cynical announcement from Nauru made in-step with the commencement of the M68 case, that processing would be speeded up.

Apart from last year's June amendment to the Migration Act, the other cynical ploy was Nauru's decision two days before the hearing in the high court commenced that the detention centre was now an "open" facility. Peter Dutton described this announcement as a coincidence. People could freely wander around the island to be raped, taunted and bashed.

To its eternal shame the Labor Party supported the retroactive validating amendment, thereby ensuring ongoing punishment to those detained for longer than is reasonable.

On occasions the high court has risen to the challenge of filling a policy vacuum. It did this in Mabo and in the Lange case on the implied constitutional right of political free speech. The detention of asylum seekers who sought our protection under international law has been a conspicuous failure of policy. Politicians have been unable or unwilling to articulate anything other than a punitive deterrence.

And the high court, despite the law at its disposal, has let them get away with it, spooked no doubt by being branded as "activist".

What we're left with are people who have no remedy, no law, no rights and are at the mercy of someone like Peter Dutton.

The political issue is spuriously framed around people smugglers and saving lives at sea, when the truth more immediately is about people in desperate circumstances, now being mistreated in the name of the Australian people.

Interestingly, the talented Madeline Gleeson from the Kaldor Centre for International Refugee Law sees "glimmers of hope" in the high court's reasons. The finding that Australia's involvement in Nauru was "indisputable" puts an end to the government's fiction that all these human rights abuses are not its responsibility.

Secondly, in finding the operation of the offshore regional processing centres to be lawful, the government has to tread carefully. It cannot support an offshore regime that goes beyond what is proportionate to the requirement of detention for processing, which means they had better get on with the task.

She has good insights. After all, it was her father the solicitor general Justin Gleeson, who argued the commonwealth's case.

<http://www.theguardian.com/commentisfree/2016/feb/04/the-high-court-despite-the-law-at-its-disposal-has-let-them-get-away-with-it>

## **10. Behrouz Boochani: Silence falls as Manus Island detainees' hopes for justice are dashed**

A detainee in the offshore "prison" tells the inside story of frustration, fear and hopelessness.

Sydney Morning Herald  
February 5, 2016 - 1:23PM  
Read later

It's Wednesday afternoon here in the Delta Prison, the compound where I am imprisoned in Australia's detention camp on Manus Island. Dozens of refugees with ill-fitting clothes and plastic thongs are gathered in the dirty canteen to watch the power of justice on the only TV monitor inside this prison. Many of them stayed awake the whole night and many others woke up very early in the morning.

The refugees fix their eyes on the monitor and the presence of the powerful and neatly dressed politicians wearing ties and elegant suits. These politicians keep talking and the refugees are following their speech with an excitement similar to watching a penalty shoot-out. However, the refugees look absolutely puzzled. No one can fully understand English.

Finally the High Court's decision is declared. After a few moments, a big argument erupts between the refugees. Nobody completely understands what has happened. One group thinks that the outcome was positive and the other group insists that it was negative. As their voices rise, an Australian officer resolutely and simply announces that the court outcome was in favour of the Australian government; offshore detention of asylum seekers is constitutional.

A deep silence falls over the prison. With a lump in their throats, the refugees return to their windowless rooms.

The decision on Wednesday that resulted in feelings of frustration, failure and hopelessness is rooted in an absurd and false hope for justice. The night before, the refugees imprisoned here assumed they would definitely win. We have languished here so long, and we believed in the Australian High Court. Nobody imagined that the dream of freedom would abruptly change to a horrible nightmare.

I distinctly remember that during the refugees' conversation the night before, they assured one another of victory. They could not, or were not willing to, consider that the court would rule against them. Not even the messages received from refugee advocates emphasising that there was a possibility that the government would win made us realistic. We believed the High

Court could not turn a blind eye to the deep trauma and suffering we had experienced through the past 31 months. We believed that the court's justice would condemn the government. We were all shocked.

It is now Wednesday afternoon, normally the busiest hours living in Manus prison, but everywhere is abnormally quiet. Everyone locks themselves up in their rooms. The sandy ground of the prison is empty. During previous days, dozens of people played soccer in this uneven field, but now there is not a living soul. Nobody has a motivation to play. This type of deathly silence spread across the Manus prison before, when the riot broke out in February two years ago and Reza Barati was killed. Now, after two years, in another February, a silence falls over everything.

In the corridors a few people are sitting in front of the rooms, doing nothing. No one is playing the common games of the prison such as chess, backgammon and dominoes. Even the English class under the tent is closed.

The number of officers has diminished. They had been on alert over the past few days, crowding the compounds and practising their handcuffing and manhandling skills. They had installed metallic fences under the wall of the prison to prevent the possibility that someone may dig the ground and escape. With cameras fixed on their bellies, the officers searched most of the rooms.

On Wednesday, however, they do not engage in any inflammatory behaviour; they avoid any aggressive treatment of the refugees. We ask ourselves where all these officers have gone? Is it that the security contractor has understood that no one would participate in a violent protest? Some officers try to express their regret to the refugees and some others seem content that the refugees will remain in their position for a longer period. It has always been similar: some officers offer their sympathy to refugees and some others seem to enjoy beating them.

A verbal argument arises between a young refugee and one of the officers. The officer taunts him by saying that he would not celebrate tonight. It makes him crazy. But all the refugees have come to conclusion that a protest or hunger strike would not have any good outcome for them, as a previous riot and a peaceful hunger strike had not brought any benefits, only beatings.

By Wednesday evening, the prison has become busier. As usual, lines have formed for using the toilets and eating food. Many refugees are waiting to get marijuana and smoke it at night in their small gatherings. Many people here are addicted to marijuana; they think that using it helps them to endure prison. Some are addicted to psychedelic, painkiller and sleeping pills. They go to the medical centre three times a day, in the morning, at noon and in the evening, to receive their pills. In the previous days, when they passed by each other, they started telling jokes and exchanging the immigration news. Sometimes they sang all together the song of "We heard that they want to give everyone to Guinea" to entertain themselves, but this time they pass by one another without whispering even one word.

Late at night, a message from Ben Lomai, the lawyer of the Manus case in the Papua New Guinea Supreme Court, spreads out all over the prison. The gist of this message is, "We are studying the outcome of the Australian High Court to use it in our case at Papua New Guinea court." Once again, hope springs up – but this time, the refugees are slightly fearful. They are now looking for justice in Port Moresby, as the sound of justice is not heard from Canberra.

As before, they drift into sleep while harbouring hope, fear, agony and nightmares. The Manus prison is dark, heavy and quiet, but the moon is visible behind the clouds – the beautiful moon is showing herself slowly, coming out of the clouds.

---->>>> *Behrouz Boochani is a Kurdish journalist and human rights defender from Iran and a co-founder of the Kurdish magazine Werya. He has been detained on Manus Island for 31 months. This article was translated by Farsi Moones Mansoubi.*

<http://www.smh.com.au/comment/high-court-ruling-silence-falls-as-manus-island-detainees-hopes-for-justice-dashed-20160205-gmmerg.html>

## **11. Editorial: End offshore detention of refugees now**

The Age  
February 4, 2016 - 12:15AM

Nothing changes with the High Court's latest decision on the legality of Australia's offshore detention regime. Nothing. And that is a dreadful shame of this government's making and those that preceded it.

Hundreds of asylum seekers, who came here seeking refuge from persecution, are still being held on Nauru and Manus Island years after their boats were intercepted. They have no prospect of real freedom, no certainty about their lives, no political enfranchisement, no voice and little hope of anything changing.

For a nation that purports to open its arms to refugees, Australia practises deadening hypocrisy. It deliberately subverts human rights principles and disregards its duties under international conventions, while assuming for itself a level of moral righteousness for having stopped boatloads of desperate people from drowning at sea.

That claim to moral rectitude is castrated by the government's unfair and inhumane policy of using other people – real refugees – as playthings to be pinned on remote islands so that their "wrong", in trying to come here by boat (which, in fact, is entirely legal), might be a "message of deterrence" for others.

Successive governments have contrived a macrame of legislative devices and bilateral memos of agreement with Papua New Guinea and Nauru in order to obscure the chain of responsibility over asylum seekers. A majority of the High Court has affirmed that the detention is, in a strict legal sense, in the hands of the foreign powers.

Most of the High Court judges found the restrictions on asylum seekers' liberty in Nauru were "to be regarded as the independent exercise of sovereign legislative and executive power by Nauru"; in short, it is Nauru that detains the asylum seekers, not the Commonwealth. But there was one stirring voice of dissent in this decision.

It came from the newest member of the bench, Justice Michelle Gordon. She said the government intended to, and did, exercise restraint over asylum seekers' liberty on Nauru, and that was evidenced by Australia's "acts and conduct", including – and this jumps off the page – that the Commonwealth "asserted the right by its servants or agents [Transfield Services etc] to assault detainees and physically restrain them".

Justice Gordon's main argument is that the detention function is "exclusively judicial in character" and the provision in the Migration Act that vests a detention function in the executive arm of government is not permitted. She says the common law principle regarding detention of foreigners was set out in a 1992 High Court decision, but that principle has been contravened by the government.

Australia causes asylum seekers to be on these islands. It funds and facilitates the arrangements, and contracts the services of the companies that detain them. It plucks asylum seekers off the islands when they require appropriate medical care here, then it deposits them right back in the sad, desolate state that hundreds have endured for years.

This cannot go on indefinitely. As we have said previously, the time has come for an amnesty. Asylum seekers want to be productive members of our community. They want hope. They deserve better than this wasteful and now aimless policy that promotes despair and human damage.

Principles of humanity demand an amnesty. Logic supports it. The government still has not articulated what it plans next for these people, and that is a failing in itself. Instead, Australia must help to devise practical and effective policies in Asia to thwart people traffickers at their source. No government should exploit the helpless circumstances of desperate people to further their own political aims.

<http://www.theage.com.au/comment/the-age-editorial/end-offshore-detention-of-refugees-now-20160203-gmkrsb.html>

## **12. Editorial: Church's lead on asylum seekers sanctuary a game changer**

Editorial  
February 4, 2016 - 6:47PM  
Canberra Times

The Federal Government's Herodian stance on asylum seekers affected by a High Court decision which has cleared the way to banish almost 270 people, including 37 babies, to off-shore detention needs a serious rethink thanks to the Christian churches.

By offering sanctuary the churches have set the Government on course for an international public relations disaster in the event it holds firm to the hard line taken to date.

Will a government led by Malcolm Turnbull sign off on orders that result in police or immigration officers entering churches to drag women and babies into detention under the eyes of the world's media?

We hope not. Australia would, quite rightly, be the subject of reproach and condemnation by people from around the world if this was to occur.

The issue, in a nutshell, is that there are currently almost 270 people on the Australian mainland who immigration authorities have reluctantly allowed in to access medical treatment due to the paucity of the facilities available on Nauru and Manus Island.

That 270 include 37 babies, many of whom drew their first breaths on the Australian mainland.

These people have, until this week, been in limbo pending the outcome of the High Court challenge against the legality of Australia's offshore asylum seeker processing system.

While the system, which even inquiries conducted on behalf of the Government have concluded led to children being held in conditions that caused them harm, has been credited with "stopping the boats", there have always been questions about its morality.

Those questions, regardless of the High Court's decision, remain in play and have now been highlighted by the principled stance being taken by church congregations which have, in many instances, worked closely with individual refugees concerned.

The burning question remains whether or not it is fair to subject people, including the sick, single women, and children in conditions on a par with those hardened criminals endure, simply to provide a form of deterrence to others?

While the Government has made much of the fact Nauru declared that island's facility an "open detention centre" late last year, even the High Court acknowledged the gates could be locked again at any time.

Contrary to what a succession of Australian Governments, both Labor and Coalition, have appeared to believe, the act of seeking asylum is not a crime.

It is a human right enshrined in the Convention relating to the Status of Refugees which dates back to 1951 and has its roots in the chaos and turmoil that left millions homeless and often stateless in the wake of World War II.

It is timely to note there are now apparently more refugees seeking safe places to begin their lives anew than there were after that conflict.

Coming at a time when the churches have been subject to scrutiny and criticism by a community that had begun to doubt their purpose or relevance, this stance is a refreshing reminder of what Christianity should, and frequently does, represent.

"We're a church, this is our core business," one Canberra religious leader said.

This is one instance where it is not right to render unto Caesar that which Caesar has claimed for his own.

<http://www.smh.com.au/comment/ct-editorial/churchs-lead-on-asylum-seekers-sanctuary-a-game-changer-20160204-gmlgy8.html>

### **13. The Saturday Paper: The lawful truth of the High Court's offshore detention decision**

The High Court's ruling that offshore detention is legal has cruelly condemned 37 Australian-born babies to a life of uncertainty on a bleak island. What was the government's 'sleight of hand' that protected our immigration policy?

The Saturday Paper  
Martin McKenzie-Murray  
Feb 6, 2016

Thursday, June 25, 2015, was a pivotal date for Australia's immigration policies. In Parliament House, it was the second and final night of a hasty debate about proposed legislation – legislation that would dramatically fortify our policy of offshore detention. Before then, the status quo was under attack – there were High Court challenges to its legality, and the gloomy precedent of the same jurisdiction ruling against the Gillard government's so-called Malaysia Solution in 2011.

The context of the parliamentary debate was simple: in May, the Human Rights Law Centre had started legal proceedings, founded on their contention that "there was no Australian law which gave the government the necessary power to fund and otherwise facilitate the current offshore detention arrangements". The HRLC legal advocacy director, Daniel Webb, led the challenge on behalf of a Bangladeshi woman – known only as Plaintiff M68 – who had been detained in Nauru, but was transferred to Australia for medical treatment late in her pregnancy. It was here that she gave birth.

The government was spooked. If the High Court ever ruled offshore processing to be unlawful, it would be disastrous. An amendment to the Migration Act – 198AHA – was drafted and entered both chambers for debate. In the senate, Labor's Kim Carr asked the following of Attorney-General George Brandis: "Can the minister confirm for the benefit of the senate that this bill does not change or in any way expand the current situation in regional offshore processing?"

Brandis could indeed confirm this. But the next question, and its response, would prove to be far more pertinent to this week's High Court decision. Carr asked: "In relation to proposed new sections 198AHA(2)(a) and 198AHA(2)(c) can the minister clarify exactly what is meant by the phrases 'any action' and 'do anything else'?"

Carr was highlighting the extraordinarily expansive language of the amendment, which would, of course, translate into extraordinarily expansive powers. Brandis responded: "The provision is intended to ensure that all aspects of the Commonwealth's actions in relation to regional processing arrangements are captured... The intention of section 198AHA(2)(a) and 198AHA(2)(c), therefore, is to ensure that clear statutory authority is provided to cover the full gamut of the Commonwealth's conduct in connection with regional processing arrangements, and the actions which the regional processing centre countries themselves take in connection with their regional processing functions."

In other words, the amendment was about conferring carte blanche statutory power to the government regarding its arrangements for offshore detention. This wording would survive parliamentary debate and, with the support of the Labor Party, be enshrined in law. It was empowered to be retrospective, also – granting the government protection back until 2012.

Full story at <https://www.thesaturdaypaper.com.au/news/immigration/2016/02/06/the-lawful-truth-the-high-courts-offshore-detention-decision>

## 14. Australia's right to send asylum seekers offshore faces dual challenges

High court of Australia to decide on power to send asylum seekers to Nauru as PNG challenge contends Manus Island regime unconstitutional

The Guardian  
Ben Doherty  
Tuesday 2 February 2016 16.07 AEDT

Australia's offshore detention regime faces the most serious challenge to its legal foundation since it was re-established in 2012, with two unrelated but coincident court challenges holding the potential to dramatically restrict – or affirm – Australia's right to send asylum seekers to detention offshore.

On Wednesday the full bench of the high court of Australia will decide on the government's power to remove 267 asylum seekers, including 39 children and 33 babies who were born in Australia, to Nauru.

The lead case in the high court challenge is a Bangladeshi woman – named in court documents as M68 – who was detained on Nauru but brought to Australia in the latter stages of her pregnancy.

The court challenge, brought by the Human Rights Law Centre, challenges the right of the Australian government to detain people on foreign soil.

The HRLC argues the Australian government's detention of asylum seekers in a foreign country infringes the constitutional limits imposed by the separation of powers.

The government argues it has the power to send people to Nauru and that it is not responsible for detention on the island. It also passed retrospective laws allowing it to fund and participate in the detention of people in foreign countries.

Two days before the case came before the high court, the Nauru detention centre became an "open" centre, allowing asylum seekers to move about the whole island. The Australian government then argued in court the people being sent to Nauru were not "in detention" there, so the question of the government's authority was moot.

The immigration minister, Peter Dutton, has declined to comment before the court's decision but said the court would assess all the specific facts of the case.

If the high court decides in favour of the government in M68, people could start being transported to Nauru as early as Saturday – the government is required to give 72 hours' notice of any move.

However, if the decision goes against the government, it may move people to Christmas Island, where the Phosphate Hill family detention centre has recently been refurbished, reportedly as a contingency.

Daniel Webb from the HRLC said the high court's decision had the potential to profoundly alter Australia's offshore detention regime. But, he said, regardless of the high court's decision, the government retained the power to release the asylum seekers into the Australian community.

"The high court could decide the future of the offshore detention arrangements but Malcolm Turnbull and Peter Dutton will need to decide the future of our clients," he said.

"Whatever the high court decides, the stroke of a pen is all it would take for Malcolm Turnbull or Peter Dutton to do the decent things and let these families start rebuilding their lives in safety."

However, as well as M68 in the Australian high court, the supreme court of Papua New Guinea is hearing a challenge that contends the offshore detention regime that currently houses more than 900 men on Manus Island is unconstitutional.

The PNG constitution guarantees "liberty of the person", "right to freedom of movement" and "freedom from inhuman treatment", as well as the right to access PNG courts and have access to a lawyer.

A PNG lawyer, Ben Lomai, argues asylum seekers have been denied these fundamental rights and that the state is required to release the men back to their first port of entry, Australia. He will argue PNG is also liable to pay compensation to them.

The court's decision could have the power to close Manus.

Tension is building on both offshore detention islands before the court proceedings.

The Nauruan government issued a warning to asylum seekers and refugees that they are not allowed to protest.

The justice minister, David Adeang, said violence would not be tolerated and protests could not block roads. He said asylum seeker and refugee protests created tension between refugees and locals.

“We consider our refugee friends as guests in our country and we work hard to make their lives comfortable but sadly there is a small element of troublemakers who don’t care about Nauru and don’t value our hospitality,” Adeang said.

Meanwhile, in PNG, Wilson Security’s emergency response team has been conducting regular raids of the Manus detention centre, seizing asylum seekers’ phones and stripping rooms of anything they think could be used as a weapon, including clothes racks.

One asylum seeker said: “Everyone is scared and nervous about the high court decision. The ERT is marching in the compounds to build tension, they raid rooms and get people’s phones.

“Every one of us is mentally sick here, none of us even wants to do peaceful protest. Wilson’s are training every night in the field. They say ‘we are ready for everything’.”

A senior immigration department source in Canberra told Guardian Australia the government was “seriously worried about more unrest” and anxious to avoid a return to the violence of February 2014, when three days of rioting and an invasion of the detention centre by PNG police resulted in more than 60 serious injuries to asylum seekers, including a man having his throat slit, another being shot and the fatal beating of Reza Barati.

<http://www.theguardian.com/australia-news/2016/feb/02/australias-right-to-send-asylum-seekers-offshore-faces-dual-challenges>

## 15. Christmas Island braces for High Court detention judgment

The Australian  
February 1, 2016 12:00AM  
Paige Taylor

Preparations are almost complete for the return of children to detention on Christmas Island ahead of a High Court ruling that human rights lawyers say could have significant ramifications for the future of Australia’s offshore processing regime.

The High Court will on Wednesday deliver its judgment in the case of a Bangladeshi woman who was detained on Nauru but brought to Australia for medical treatment during the last stages of her pregnancy. Hers is the lead case linked to a series of challenges on behalf of 260 people who sought asylum in Australia by boat, were subsequently detained on Nauru but are now living on the Australian mainland after being brought here for urgent medical treatment or for mental health reasons.

There are 38 babies among them — some born in Australia — and the former Nauru detainees are currently in Brisbane, Melbourne and Darwin.

The case began as a challenge to the lawfulness of the Australian government spending money on offshore detention in a foreign country. After the Abbott government passed legislation that retrospectively gave it that authority, the case challenged whether Australia had the constitutional power to detain people on foreign soil. But two days -before that hearing it was announced that the centre on Nauru was now open and -asylum-seekers who were sent there were free to move around the Pacific Island.

There are now fears among refugee advocates that if Australia wins the case, it will send the 260 former Nauru detainees from mainland Australia to the Australian territory of Christmas Island where they first landed.

Others have predicted that, depending on the outcome, Australia may be compelled to take families from Nauru to Christmas Island while it adjusts its offshore processing policies.

The camp on Christmas Island that once held families has been vacant since December 2014. In recent months contractors have been employed by the Department of Immigration and Border Protection to carry out repairs, install new airconditioners and replace mattresses.

The adults and children affected by the High Court ruling have all suffered harm in detention, according to the Human Rights Law Centre, which ran the case, heard by the full bench of the High Court on October 7 and 8.

The HRLC director of legal advocacy, Daniel Webb, said his client, her husband and their one-year-old baby were terrified of being sent back to Nauru.

Immigration Minister Peter Dutton has the authority to send any of the 260 to Nauru if he gives 72 hours' notice. It was unclear whether any notice was required to send the families to Christmas Island.

Shine Lawyers special counsel George Newhouse, a refugee advocate who has taken many cases to the High Court, said: "This is a very important case because it challenges the validity of the offshore processing regime. If the plaintiff is successful then I would expect the government will need to reassess its entire offshore processing policy."

In December, Mr Dutton told Sky News he believed Australia was on "strong ground" in the High Court case but contingencies were being made just in case.

<http://www.theaustralian.com.au/national-affairs/immigration/christmas-island-braces-for-high-court-detention-judgment/news-story/0cdac228578d5898729647563af651c6>

## **16. MEDIA RELEASE: Manus intimidation steps up; phones confiscated as court decision looms**

Monday February 1, 2016  
Refugee Action Coalition  
Ian Rintoul  
mobile 0417 275 713

Broadspectrum (formerly Transfield) and Immigration intimidation of asylum seekers and refugees at Manus Island, has been stepped-up in the lead up to Australian and PNG court decisions that could see the detention centre closed.

The future of the detention centre, and the fate of 260 people from Manus and Nauru who are presently in Australia, will be affected by the Australian High Court decision to be handed down on Wednesday.

A PNG Supreme Court challenge to Manus that will also determine the legality of Manus detention centre according to PNG law, will also have its next directions hearing tomorrow, 2 February.

In the last few days, intimidating and violent raids by the Emergency Response Team have been carried out in at least two of the compounds in the Manus detention centre. The riot squad says it is 'looking for weapons' but seems to be more interested in seizing asylum seekers' phones.

At least four phones were taken following raids on rooms Oscar compound last Friday night (29 January). In some cases the guards have removed racks from the rooms on the grounds they could be turned into weapons.

The ERT is also openly marching around the compounds as an open show of force. The detainees have been told that the room searches and increased intimidation will continue to the end of February when the PNG Supreme Court Full Bench hearing of the constitutional challenge is expected to be convened.

Detainees have been threatened that anyone who complains or resists will be sent to jail or isolation units in the detention centre itself.

Meanwhile, Broadspectrum's preparation for an adverse court decision is resulting in deteriorating food quality and out of date food products being used as the company runs down stocks of food. Some Border Force staff have also been told that their future employment contracts cannot be guaranteed.

The PNG administration has also stepped up its refugee determinations ahead of the court cases. Around 400, almost half, of the Manus detainees have been found to be refugees, but are refusing to leave the detention centre to live in the transit accommodation at East Lorengau despite losing access to the canteen, activities and have restricted access to the internet.

"There is no excuse for the raids on Manus or the mistreatment," said Ian Rintoul, spokesperson for the Refugee Action Coalition. "The use of the ERT, the searches and confiscation of phones just add to the tensions at the detention centre. Immigration and Broadspectrum only take the phones because they don't want the truth getting to the outside world."

For more information contact Ian Rintoul 0417 275 713

The Refugee Action Coalition has called a snap protest to follow the Australian High Court decision -- "Don't Send Them Back" , Thursday 4 February, 12.30pm at Lee Street, Sydney Immigration offices, to call for the Immigration Department not to return any asylum seekers or refugees to Nauru or Manus Island.

## **17. Guards accused of building tensions on Manus**

Sydney Morning Herald  
February 1, 2016 - 6:41PM  
Michael Gordon



Asylum seekers at the Manus Island detention centre have accused guards of deliberately building tensions by escalating their presence and searches ahead of Wednesday's High Court decision.

Behnam Satah, an eye-witness to the killing of Reza Barati two years ago, also claims some guards who took part in the violence against detainees in February 2014 have returned to the centre.

Mr Satah, who is now receiving torture and trauma counselling, said he had reported the return of one of those who supervised guards who beat detainees during the 2014 riots.

"I asked him: 'What are you doing here after all this time?' And he said: 'It's our job'." Mr Satah said there were no plans for peaceful protests to coincide with Wednesday's judgment on a challenge to the lawfulness of the Australian Government's role in offshore detention on Nauru.

But he said the Emergency Response Team had stepped up its presence to intimidate detainees and that mobile phones were being confiscated.

"They want to build tension. We told them: 'We know that you have power. When you know we are weak, why you want to show us your power?' We are not violent people, we are not troublemakers. Our problem is not with you'.

"The only thing we want is freedom and 31 months we have been stuck here and no one tells us what is going to happen to us, what is our future."

Detainees are also in a heightened state of anxiousness because this month will see the anniversary of the 2014 riots, when scores of asylum seekers were injured and Mr Barati was killed, and the jailing of asylum seekers who took part in a peaceful protest last year.

"Australia made me hate the month I was born. It's very hard. Everyone is going crazy here. Everyone is depressed." Mr Satah said he had no hesitation in putting his claims on the public record, saying: "I have nothing to lose. I receive threats every day."

<http://www.smh.com.au/federal-politics/political-news/guards-accused-of-building-tensions-on-manus-20160201-gmj0z3.html>

## **18. The faces of the babies Australia wants to send back to 'hell' on Nauru**

Sydney Morning Herald  
February 1, 2016 - 5:56PM  
Michael Gordon, Nick McKenzie, Richard Baker

Samuel arrived into the world chubby; a miniature wrestler who, eight months on, has just produced his eighth tooth. Born at the Royal Darwin Hospital, his parents had him baptised as soon as they could and earmarked him for great things.

The dream is that their boy will become an Australian doctor or lawyer, but Samuel is unlikely to realise it. He is one of 37 babies the Turnbull government wants to put on a plane, as early as next week, and send to Nauru's offshore processing centre.

Also facing the prospect of removal are around 160 adults, including Samuel's parents, and another 50-odd older children. All were brought back to Australia from offshore centres in Nauru or Manus Island, mostly for medical treatment.

The group is party to a High Court case where the Human Rights Law Centre is challenging the government's policy of sending uninvited boat arrivals to life in limbo on two small islands run by foreign governments.

The decision by the court's full bench will be handed down on Wednesday morning and Immigration Minister Peter Dutton has flagged his intention to move quickly to send the asylum seekers to Nauru, saying this will reduce the number of children in detention on the mainland to just seven.

"This is a sleight of hand," says the President of the Australian Human Rights Commission, Professor Gillian Triggs, who says the babies and children will be simply transferred from mainland detention to an environment certain to do even more damage.

A team from the commission visited many of those who face removal to Nauru at the Wickham Point centre near Darwin before Christmas and Professor Triggs said a medical team reported they had never come across such traumatised children.

"But they are partly traumatised because of the constant threat that they'll be going back to Nauru," she tells Fairfax Media.

Mr Dutton's office said there would be no comment in the lead up to the High Court decision. If the government loses the case, it's possible the people could be sent to Christmas Island -- which is believed to have been prepared for this contingency -- where they would be kept in detention.

So distressed are many of the parents at these events that they agreed to Fairfax Media publishing the pictures of their babies.

Supporters of offshore processing say conditions for those whose claims are yet to be finalised have improved dramatically since the decision by the Nauru government to allow asylum seekers to freely come and go from the fence-ringed centre.

But the asylum seekers who spoke to Fairfax Media from their current home, the Wickham Point centre near Darwin, say the island itself - a barren outcrop the size of Melbourne airport - is their jail.

Samuel's father and mother are devout Christians from Iran who spent a year on Nauru before complications prior to Samuel's birth forced the government to send them to Darwin Hospital.

Samuel's father, Matthew (not his real name), fears for his son's development if sent to Nauru, where Australian doctors say health problems are endemic.

"There is bad hygiene and facilities and life is very limited for a baby. There is no security. Women can get raped. There is not enough education or proper medical facilities," says Matthew, who spoke to Fairfax Media from a detention centre in Darwin.

Samuel's mother describes Nauru as "the end of the world".

"It is like hell," she says.

Asked about the prospect of Samuel spending at least some of his childhood on the island, his mother falters, then starts quietly crying. "I can't talk about his future," she says.

For Prime Minister Malcolm Turnbull, the pending removal of the children to Nauru looms as an act that will help define his leadership to different constituencies — to progressive voters, who are hoping for more compassion, and his party's conservative right wing, which sees Nauru and Manus as critical in stopping the flow of boats and the deaths at sea.

Along with the 37 babies set to be removed from Australia are at least 15 women whose lawyers allege they suffered sexual assault or harassment while previously in offshore detention. Others have serious medical conditions.

The mother of an 11-month-old baby girl suffers from type one diabetes, a condition that is hard to manage on Nauru. The father of an infant boy about to have his first birthday told Fairfax Media he fears his wife's mental health issues will be exacerbated by conditions on Nauru.

Being locked up in Darwin is bad enough, he says. For this father, the best escape from his families' grim predicament is the brief, daily moments of pure innocence and joy his shares with his son.

"When he wakes up in the morning, it is the best. He has a smile on his face."

<http://www.smh.com.au/federal-politics/political-news/the-faces-of-the-babies-australia-wants-to-send-back-to-hell-on-nauru-20160201-gmirsb.html>

## **19. 5yo boy allegedly raped on Nauru could be sent back to detention centre, doctor says**

ABC-TV 7.30 Exclusive

By medical reporter Sophie Scott and Alex McDonald

First posted Tue 2 Feb 2016, 11:18am

Updated Tue 2 Feb 2016, 1:12pm

A five-year-old boy who was allegedly raped on Nauru is facing the prospect of being returned to the offshore detention centre where his attacker remains.

The revelations come from paediatricians who have detailed their concerns to the ABC about the child and the wellbeing and safety of about 160 other children held in Australia's detention centres.

Paediatrician Karen Zwi said the young child suffered serious mental health problems after the alleged sexual assault.

"Like many other children who are very distressed he regressed, he began bed-wetting, he became very anxious about his mother's wellbeing, he actually began to self-harm, as I've seen several other children do as well and eventually he was transferred over to the mainland for treatment," Dr Zwi said.

She said the child's greatest fear was returning to Nauru.

"That is this huge cloud hanging over him. That he will be returned to an absolutely traumatic and devastating environment for him."

The boy's fate is likely to hang on the result of a High Court decision about a challenge to the Federal Government's policy of sending asylum seekers arriving by boat to detention at centres on Manus Island and Nauru, that will be delivered tomorrow.

If the court case fails, Immigration Minister Peter Dutton has flagged his intentions of sending the group of 160 adults, 37 babies and 54 other children back to Nauru.

### ***Detention 'breaking spirit' of young people***

In exclusive interviews, two young women spoke to the ABC, giving first-hand accounts of the horrific conditions children are enduring in offshore detention centres.

One of the girls, Jamilah, 20, from Somalia, said being in detention on Christmas Island had broken her spirit.

"My friends, all of them, they were harming themselves. I tried to be strong and say that was not the right thing I could do," she said.

"I was thinking killing myself was the last thing I could do in my life."

Another girl, Assiya, who was held on Nauru for more than 12 months, told the ABC how she attempted to kill herself after daily taunts from her captors and being physically assaulted by a guard.

"I used to be a very strong person and always tried to think positive but they really break me down. There was a point I couldn't think of life anymore," she said.

"Sometimes the guards bring video of the Prime Minister and they make us watch it, saying you will never call Australia home. Same thing that they tell us every day.

"The more you try to do something, the more you get upset and hurt and treated like animals."

She said she attempted to hang herself with a scarf and was saved by a friend from dying.

### ***'A mincing machine' of traumatic events***

After doctors raised concerns about the mental health of Assiya and Jamilah, both were transferred to the mainland for treatment.

But they face the prospect of being returned to detention at any time.

Dr Zwi said children kept in offshore detention had "been through a mincing machine".

"They've had one traumatic event after another. Sometimes I feel they are broken into little bits and it's really hard to put the pieces back together again," she said.

"It's almost impossible to help them to heal and recover if they know that they're going to go back to that environment."

### ***Average detention time for children stretches to 14 months***

Around 160 children are being held in detention by Australian authorities.

The figure has dropped from 2013, when the number of children detained reached almost 2,000. But children are being held for much longer, an average of 14 months.

On a visit to Nauru, paediatrician Hasantha Gunasekera said he was horrified to see how the children were suffering.

"We hardly ever see young children and adolescents so traumatised by life that they would want to take their own life," Dr Gunasekera said.

"But in Nauru and in detention centres where kids have been kept, sometimes for most of their life, we see very young children who just can't take it anymore and try to kill themselves or wanting to hurt themselves. Or saying things like, 'I may as well just jump off the roof'.

"There's no point anymore. I had one parent say to me, 'I brought my kids here for them to be safe, not to learn how to commit suicide'. What do you say to a parent like that?"

## ***Doctors speak out despite jail threat***

Dr Gunasekera and Dr Zwi know they could be charged and jailed for speaking out about what they have seen in Australia's detention centres.

Under the Border Force Act passed in 2014, anyone working in immigration detention, including doctors, faces two years' imprisonment for revealing details of what goes on there.

"Paediatricians have a responsibility to make sure the system stops damaging children and that's why many of us have chosen to speak out," Dr Zwi said.

Dr Gunasekera said if Australians knew what was happening in offshore detention, they would be shocked.

"If the Australian people knew actually what was happening, if they saw the trauma on the faces of the kids like we saw," he said.

"That's why there is secrecy around every part of this policy, it's because it's so shameful."

A spokesman for Mr Dutton said he would not be making any comments about the High Court challenge until after the announcement.

"We will wait to see what the court decides and make comment after that," he said.

The spokesman said \$11 million had been provided for the medical clinic on Nauru.

"There are 25 primary health staff, doctors, nurses and specialists, at the clinic at the processing centre," he said.

"There are 15 mental health staff, with 10 support and administrative staff."

He said funding of \$26 million had been provided for upgrades at the Nauru Hospital, with health care to an Australian standard.

<http://www.abc.net.au/news/2016-02-02/boy-allegedly-raped-on-nauru-could-be-sent-back-to-detention/7132608>

## **20. Medical advice to be considered in case of 5yo allegedly raped on Nauru, Peter Dutton says**

ABC News Online

By medical reporter Sophie Scott and political reporter Dan Conifer

First posted Tue 2 Feb 2016, 8:50pm

Updated Tue 2 Feb 2016, 9:04pm

The Government will consider medical advice before deciding whether to deport a five-year-old boy allegedly raped on Nauru back to the Pacific island, Immigration Minister Peter Dutton says.

Doctors have detailed their concerns about the child to the ABC, along with worries about the wellbeing and safety of about 160 other children held in Australia's detention centres.

The boy could be returned to Nauru, where his alleged attacker remains, after a decision is handed down by the High Court on Tuesday about the legality of detention on the island.

Paediatrician Karen Zwi, speaking out despite the threat of jail, said the boy suffered serious mental health problems after the alleged sexual assault and began to self-harm.

Mr Dutton told Lateline the paediatricians' concerns for the boy would be taken into account.

"We take all of that into consideration," he said.

"As I say, if people need prolonged support they receive it and we've provided significant support for a number of people who have come to Australia because they can't get the requisite medical needs in Nauru or in PNG.

"I won't tolerate any thought of people ... in particular children being abused by other refugees, by people otherwise."

Dr Zwi said the child's greatest fear was returning to Nauru.

"That is this huge cloud hanging over him — that he will be returned to an absolutely traumatic and devastating environment for him," she said.

But Mr Dutton said if the High Court case failed, 37 babies, 54 other children and 160 adults would be returned to the isolated nation.

"The Government's been very clear about the fact, and we remain absolutely resolute, that if you seek to come to Australia by boat we're not going to allow you to settle in this country," he said.

The High Court case was brought by lawyers for a Bangladeshi woman flown to Australia for medical treatment.

Her legal team argues it is not constitutional for the Australian Government to run and pay for detention in another country.

<http://www.abc.net.au/news/2016-02-02/doctors-fears-alleged-nauru-5yo-rape-victim-considered-dutton/7135054>

## **21. PM Malcolm Turnbull urged to have a heart regardless of High Court ruling on Nauru**

Sydney Morning Herald  
February 2, 2016 - 4:27PM  
Nicole Hasham

Prime Minister Malcolm Turnbull must find his compassion and refuse to return asylum seekers to a "devastating" fate at Nauru, regardless of whether a landmark court ruling finds offshore detention is lawful, a prominent child welfare group says.

The High Court is on Wednesday due to rule on whether the federal government has power under the constitution to detain people in Australian-funded detention centres at Nauru and Manus Island.

Should the court find in the government's favour, Immigration Minister Peter Dutton has signalled that about 250 asylum seekers presently in Australia, including 37 babies, would quickly be returned to Nauru. It has raised fresh concerns over the welfare of young children on the remote Pacific island, where asylum seekers and refugees have reported poor health care and living conditions, human rights abuses and regular sexual and physical assaults.

Save the Children's Lee Gordon, who directed the charity's child protection, welfare, education and recreation programs at Nauru for almost two years, said he knew first-hand the "devastating psychological and physical harm that is caused to asylum seekers and refugees living in detention".

While there had been some improvement following recent open-centre arrangements, which allow detainees to come and go from the facility, it "can't change the inescapable fact that these vulnerable people are living a life in limbo on a remote island, with little hope for their futures," Mr Gordon said.

"Prime Minister Turnbull must act with compassion, and refuse to return any asylum seekers who have been transferred from Nauru to Australia, regardless of the outcome of the High Court case."

Mr Gordon said the island's residents relied on cargo ships for the delivery of basic essentials such as clean water and nappies. Aside from the "obvious trauma" for parents and children of returning to Nauru, the nutritional needs of babies may not be met and they faced risks such as inadequate housing, safety and hygiene standards, he said.

Mr Dutton and Labor's Immigration spokesman Richard Marles refused to comment on the matter ahead of the court ruling.

Mr Turnbull is under pressure from the government's conservatives not to soften the Coalition's hardline stance on matters such as asylum seekers.

Soon after taking the leadership in September, Mr Turnbull said he was concerned about asylum seekers languishing in offshore detention and hinted the government may consider acting to relieve their plight. However, he later ruled out resettling in Australia any asylum seekers in offshore detention.

Asylum seekers granted refugee status at Nauru have only been granted temporary visas and their future is uncertain. A deal to resettle Nauru refugees in Cambodia has also been beset by problems and only a handful have taken up the offer.

In October last year, an expectant mother told of fears for her unborn child, saying: "I can't feel happy about this baby. In the tent it's hot, with the mice ... how can I look after a small baby?"

Greens senator Sarah Hanson-Young called on Mr Turnbull to guarantee that no children will be sent back to Nauru.

"The government is threatening these children, saying they can't wait to dump them back on the hellhole of Nauru," she said.

"Most of these children have been going to school here, making friends and trying to build a life in safety. These children are integrating into the community and the government wants to rip them out of it."

Refugee advocates told Fairfax Media that Nauru refugees were hopeful of a court ruling in their favour, and some had tried to sell their possessions in anticipation of being allowed to settle in Australia.

The High Court test case is being run on behalf of a woman from Bangladesh who was brought to Australia from Nauru in August 2014 for medical treatment. Cases for about 200 other people are linked to the court matter.

The case was run by the Human Rights Law Centre. The organisation's director of legal advocacy, Daniel Webb, said the woman, her husband and their one-year-old baby were terrified of being sent back to Nauru.

"This mother just wants what all mothers want – her child to have a good life somewhere safe," he said.

<http://www.smh.com.au/federal-politics/political-news/pm-malcolm-turnbull-urged-to-have-a-heart-regardless-of-high-court-ruling-on-nauru-20160202-gmj1i.html>

## **22. High Court throws out challenge to Nauru offshore immigration detention**

ABC News Online

By Elizabeth Byrne and Stephanie Anderson

First posted Wed 3 Feb 2016, 7:27am

Updated Wed 3 Feb 2016, 8:09am

The High Court has thrown out a challenge to the Australian Government's immigration detention centre on Nauru.

The case was launched by a Bangladeshi detainee on Nauru who was brought to Australia for treatment after she experienced health issues during pregnancy.

She gave birth to her daughter in Brisbane, and brought the challenge to avoid being returned to the detention centre.

Lawyers for the woman argued that it was illegal for the Australian Government to fund and operate detention centres in a third country.

During the case the Government changed the law to close a loophole in the funding arrangements, which it feared could be undermined by the challenge.

Today a majority of the court's bench found the current government arrangements were valid under the Constitution.

Before the decision, Immigration Minister Peter Dutton flagged his intention to send a group of 160 adults, 37 babies and 54 children currently in Australia back to Nauru, should the Government win.

One of the children facing return to Nauru is a five-year-old boy allegedly raped at the detention centre, but Mr Dutton has said he will take concerns from doctors about the boy's welfare into consideration.

The boy's alleged attacker remains at the centre.

A similar case questioning the validity of offshore detention also failed in 2014, however that case did not challenge the legality of Australian operation and funding of offshore detention centres.

Comment has been sought from Immigration Minister Peter Dutton.

Greens senator Sarah Hanson-Young has already responded to the judgement on Twitter, saying that "sending 90 children to dangers of Nauru is child abuse".

In a statement, Senator Hanson-Young called on Prime Minister Malcolm Turnbull to rule out sending children and their families back to Nauru.

"It's undeniable that Nauru is unsafe for women and children and sending them back would be torture," she said.

"This is the first major test for the Prime Minister. Will he keep these children safe, where they can thrive and prosper, or will he dump them back on the prison island of Nauru?"

<http://www.abc.net.au/news/2016-02-03/high-court-throws-out-challenge-to-offshore-detention/7135504>

## **23. High court upholds Australia's right to detain asylum seekers offshore**

Majority of full bench throws out challenge brought by Bangladeshi woman detained on Nauru and finds constitution gives power to detain asylum seekers offshore

The Guardian  
Daniel Hurst and Ben Doherty  
Wednesday 3 February 2016 10.54 AEDT

The high court has upheld Australia's right to detain asylum seekers in foreign countries, rejecting a challenge to the constitutionality of the offshore detention system.

Lawyers for a Bangladeshi woman argued that the Australian government had "funded, authorised, procured and effectively controlled" her detention on Nauru, but this was not authorised by a valid Australian law and infringed constitutional limits on the government's power.

In a decision announced in Canberra on Wednesday, the court found the commonwealth's conduct was authorised by law and by section 61 of the constitution.

A majority of the full bench found that section 198AHA of the Migration Act allowed for the commonwealth's participation in the plaintiff's detention in a foreign country.

"The plaintiff is not entitled to the declarations sought," the court said in its majority decision.

Most directly, the court's decision will have implications for the government's power to remove 267 asylum seekers, including 39 children and 33 babies who were born in Australia, to Nauru.

The government has given undertakings that it will give at least 72 hours notice before removing any of the asylum seekers involved in the case from Australia.

The Bangladeshi woman – known as M68 in court document and the lead plaintiff in the case for the 267 asylum seekers – was on a boat intercepted by Australian officers in October 2013 and was detained on Nauru from January 2014 until August 2014, when she was brought to Australia for medical treatment and subsequently gave birth to a child.

Two significant changes were made after the case was initiated. The government pushed retrospective legislation through the parliament to shore up its offshore processing powers.

The detention facilities on Nauru also moved to an "open centre" arrangement, allowing Australia to argue the woman bringing the case would not be being returned to detention if she was sent back to the island.

During the two-day hearing in October, Australia's solicitor general, Justin Gleeson SC, disputed assertions that Canberra was effectively responsible for the detention of people it transferred to Nauru because it paid for their temporary visas and funded the processing centre. But Gleeson argued that even if the high court made such a finding, the actions were authorised by the retrospective changes to the Migration Act in June.

The court was not unanimous in its decision.

<http://www.theguardian.com/australia-news/2016/feb/03/high-court-upholds-australias-right-to-detain-asylum-seekers-offshore>

## 24. High Court finds offshore detention lawful

Sydney Morning Herald  
February 3, 2016 - 10:55AM  
Nicole Hasham

The High Court has ruled that Australia's offshore detention regime at Nauru and Manus Island is lawful, dashing the hopes of asylum seekers that detention centres would be closed and they would be settled in Australia.

The full bench of the High Court on Wednesday ruled that the federal government has the power under the constitution to detain people in other countries, finding that the conduct was within the law.

The decision potentially clears the way for the government to return about 250 asylum seekers presently in Australia, including 37 babies, to Nauru. Prime Minister Malcolm Turnbull has been under pressure to allow the asylum seekers to stay in Australia regardless of the court's decision.

The test case was run on behalf of a woman from Bangladesh who was brought to Australia from Nauru in August 2014 for medical treatment, along with her baby daughter. Supporters said the mother was "terrified" of returning to Nauru, where asylum seekers say they have suffered physical and sexual abuse, poor health care and inadequate living conditions.

The woman argued that the Commonwealth's conduct, including restraining her liberty and entering into contracts to allow her detention, was not authorised by any valid Australian law.

In a majority verdict the court ruled that the woman was not entitled to declare that her past detention was unlawful. It said a memorandum of understanding between the Commonwealth and Nauru on the processing of asylum seekers was authorised under the constitution, and other government conduct fell under the Migration Act.

Cases have also been brought for about 200 people who have been detained offshore and are now in Australia temporarily, including men who have been victims of violence on Manus Island and women sexually assaulted on Nauru.

The case was brought by the Human Rights Law Centre, which had argued the Australian government asked Nauru to establish a detention camp, organised a perimeter fence to keep people inside and effectively controlled the detention of asylum seekers at the island - conduct it said was unlawful.

The case in October last year followed the Nauru government's decision to fling open the gates of the detention camp to create an "open centre" 24 hours a day.

Lawyers for the Commonwealth had submitted that the woman involved in the test case would be free to come and go from the detention centre should she return to Nauru. They said the detention centre was established under Nauruan law.

On Tuesday Save the Children's Lee Gordon, who directed the charity's child protection, welfare, education and recreation programs at Nauru for almost two years, said he knew first-hand the "devastating psychological and physical harm that is caused to asylum seekers and refugees living in Nauru".

While there had been some improvement following recent open-centre arrangements, which allow detainees to come and go from the facility, it "can't change the inescapable fact that these vulnerable people are living a life in limbo on a remote island, with little hope for their futures," Mr Gordon said.

"Prime Minister Turnbull must act with compassion, and refuse to return any asylum seekers who have been transferred from Nauru to Australia, regardless of the outcome of the High Court case."

<http://www.smh.com.au/federal-politics/political-news/high-court-finds-offshore-detention-lawful-20160202-gmk5q6.html>

## **25. MEDIA RELEASE: High Court maintains legal fiction: #LetThemStay protest Thursday**

Wednesday 3 February 2016  
Refugee Action Coalition  
Ian Rintoul  
mobile 0417 275 713

### **AFTER HIGH COURT RULING: SYDNEY PROTEST TO CALL ON GOVERNMENT TO LET NAURU AND MANUS ASYLUM SEEKERS STAY IN AUSTRALIA**

The High Court decision that detention of asylum seekers on Nauru and Manus is lawful has again revealed the fundamental flaws in the Australian law.

Just as the High Court has found that indefinite detention in Australia is lawful, the High Court has found that Australian law allows the government to send asylum seekers to be detained on Nauru and Manus Island.

The High Court decision hides behind a legal technicality. It avoided the substance of the challenge by finding that the asylum seekers on Nauru are detained by the Nauruan government.

This is a legal fiction. Detention on Nauru only exists because of the Australian government. It is maintained at the behest of the Australian government. Its funding and management is maintained by the Australian government.

The UN Committee on Torture last year declared that under international law, Australia could not escape its responsibility for the offshore detention centres it maintains on Nauru and Manus.

The High Court also maintained the legal fiction that the asylum seeker would not be sent back to detention because of the "open centre" arrangements put in place by the Nauru government.

But the so-called open centre arrangements have changed little in practice. Asylum seekers are still searched going in and out of the camp. They are still not allowed to bring anything, even food, back into the camp.

In any case, Nauru itself is a prison.

"The government cannot hide its responsibility for Manus and Nauru behind the High Court decision. In the higher court of public opinion, everyone knows that Australia is responsible. The fate of the 260 people presently in Australia is with the



Minister for Immigration. The government has always had the power not to send asylum seekers back to offshore detention," said Ian Rintoul, spokesperson for the Refugee Action Coalition.

Protest: The Refugee Action Coalition has called a protest, 12.30pm Thursday 4 February, Immigration Office, Lee Street, City, as part of national mobilisations (details below) to call on the government to let the asylum seeker and refugees stay in Australia.

Speakers include: NSW Greens MP Mehreen Faruqi; Gaby Judd, Grandmothers Against Detention of Refugee Children; refugee speaker, others to be announced.

For more information contact Ian Rintoul 0417 275 713

Other cities:

MELBOURNE | THURS FEB 04 || 5:30pm, State Library of Victoria  
<https://www.facebook.com/events/907459779369725/>

CANBERRA | THURS FEB 04 || 5:30pm, Cnr Northbourne Avenue and Barry Drive  
<https://www.facebook.com/events/1665817080357729/>

PERTH | THURS FEB 04 || 6:30pm, Perth Immigration Residential Housing (PIRH)  
<https://www.facebook.com/events/1588568718056611/>

BRISBANE | FRI FEB 05 || 12:00pm, DIBP, 299 Adelaide St  
<https://www.facebook.com/events/1245663552126787/>

DARWIN | MON FEB 08 || 5:30pm, Nightcliff Pool

## **26. Turnbull unmoved by calls to spare 267 asylum seekers from deportation to Nauru**

Human rights groups, Unicef and the Greens say Nauru cannot provide a safe place for refugee claims to be processed in wake of high court ruling, but PM backs Coalition's hardline border policies

The Guardian  
Daniel Hurst and Ben Doherty  
Wednesday 3 February 2016 15.10 AEDT

Malcolm Turnbull has forcefully affirmed the Coalition's hardline policies on asylum seekers, declaring a "steadfast" resolve to prevent people smugglers from "prevailing over our sovereignty" after the high court dismissed a challenge to offshore processing.

The prime minister signalled that the government would not soften the Tony Abbott-era policies because it was determined to ensure that "this pernicious, criminal trade of people smuggling cannot succeed".

The Turnbull government is facing calls to spare 267 asylum seekers from being moved to Nauru, despite the high court confirming Australia's right to send people to detention in other countries.

Human rights groups, lawyers, a UN agency and the Australian Greens responded to the ruling on Wednesday by renewing their concerns about the capacity of the tiny Pacific nation to provide a safe place for refugee claims to be processed.

Turnbull welcomed the high court's 6-1 decision, saying the government would consider its implications carefully. But in a strongly worded message to his colleagues and the community more generally, Turnbull said the government would maintain robust deterrence policies.

"Nobody should ever doubt the resolve of this government to keep our borders secure, to prevent the people-smuggling racket, to break their business model and keep lives safe, to prevent drownings at sea and to protect vulnerable people from being exploited by ruthless criminal gangs," he told parliament.

"Our commitment today is simply this: the people smugglers will not prevail over our sovereignty. Our borders are secure. The line has to be drawn somewhere and it is drawn at our border."

The high court rejected a challenge brought by a Bangladeshi woman, who was on a boat intercepted by Australian officers in October 2013 and was detained on Nauru before being brought to Australia for medical treatment in August 2014. She was pregnant and subsequently gave birth to a child in Australia.

The majority of the full bench found the Australian government's participation in the woman's detention on Nauru was authorised by a valid law and the deal between the two countries did not breach the constitution.

The decision paves the way for the government to return 267 asylum seekers, the majority of whom were moved to Australia because of serious medical conditions that could not be treated on Nauru. Of this group, more than 30 are babies who were born in Australia to asylum-seeker mothers.

One of the lawyers involved in bringing the case, Daniel Webb, said the government should make a political decision not to return the "very vulnerable" group to Nauru.

"The legality is one thing; the morality is another," said Webb, the director of legal advocacy at the Human Rights Law Centre.

"It is fundamentally wrong to condemn these people to a life in limbo on a tiny island. The stroke of a pen is all that it would take our prime minister or our immigration minister [Peter Dutton] to do the decent thing and let these families stay."

Amnesty International said the secrecy over Nauru – journalists and rights groups are almost universally refused visas to visit the island – meant it was not an appropriate place to send vulnerable people for processing.

Amnesty's Australia refugee coordinator, Graham Thom, said there was an established record of physical and sexual abuse of children on the island.

"Despite the high court decision in this case, Amnesty International calls on Prime Minister Turnbull to do the right thing and permanently close the centre on Nauru and relocate the asylum seekers held there into our community," he said.

"The Nauru processing centre puts vulnerable people at risk and operates with an unacceptable lack of transparency."

The UN's children's rights agency said Nauru was ill-equipped to assist refugees. It argued that maintaining the offshore detention centre would "place undue stress on Nauru's developing social and welfare systems" and take resources from Nauruan children.

"It's unreasonable for the Australian government to shift this responsibility to one of its nearest neighbours," Unicef Australia's chief technical adviser, Amy Lamoin, said.

"Nauru is a developing nation working to improve the education, child health and child protection outcomes for its own children.

"The additional pressure of Australia's offshore detention program shifts our responsibility on to a developing country with its own existing needs."

Lamoin said the most vulnerable children and families must be allowed to stay in Australia. "We cannot disrupt children and parents' recovery processes and we cannot return them to a situation where they may experience serious harm."

The Greens senator Sarah Hanson-Young, a vociferous critic of offshore processing, urged the government to allow the asylum seekers affected by the decision to stay in Australia.

"Sending these children to Nauru would be child abuse and Malcolm Turnbull needs to decide whether he is willing to authorise that," Hanson-Young said.

"The evidence is clear and it's undeniable that Nauru is unsafe for women and children and sending them back would be torture. Keeping families on Nauru is untenable and we need to find a better way to protect people who are seeking asylum."

Labor, which maintains its support for offshore processing, called on the government to swiftly secure proper third-country settlement options for refugees.

The opposition's immigration spokesman, Richard Marles, said the Abbott and Turnbull governments had "failed abysmally in securing any meaningful resettlement plan with a viable third country".

"All the while, people have been left to languish in processing centres without any certainty for their future," Marles said.

"Without an urgent resolution this government will be doing enormous damage to this refugee population."

Save the Children's Lee Gordon, who directed the charity's child protection, welfare, education and recreation programs at Nauru for nearly two years, said the Australian government's own inquiries into Nauru had found it was unsafe for children and vulnerable people.

"I know from experience the devastating psychological and physical harm that is caused to asylum seekers and refugees living on Nauru," Gordon said.

“While families seeking asylum on Nauru now have freedom of movement their lives are in still limbo.”

Gordon said the Australian government should quickly process the asylum claims of those affected by the high court ruling. If found to have valid protection claims, they should be offered protection in Australia, he said.

Before the high court decision was handed down, Dutton said he would consider the individual cases when deciding whether to send the people back to Nauru and would “provide medical support to families that are in need”.

“I’ve also seen the photos of the kids who drowned at sea and it’s a terrible, terrible confronting image and I just don’t want the trade to start back up,” Dutton told the Nine Network early on Wednesday morning.

“If people smugglers can say that if you’ve got women and children jump on a boat, pay your money and you’ll come to Australia because you’ll stay there, we just can’t allow that to restart.”

<http://www.theguardian.com/australia-news/2016/feb/03/coalition-faces-calls-to-spare-267-asylum-seekers-from-deportation-to-nauru>

## **27. Nauru, Manus ruling no blank cheque as court signals limits to detention**

More legal challenges likely after judgment says government doesn’t have power to hold people offshore indefinitely

The Guardian

Ben Doherty

Wednesday 3 February 2016 16.26 AEDT

High court decisions are not football matches: it’s not always clear who has won and by how much.

The full bench’s decision in M68 does uphold the government’s right to send asylum seekers to foreign countries to be detained. The court found the action is lawful under the constitution and empowered by the extraordinary breadth of a newly inserted provision in the Migration Act.

But the court’s decision is no blank cheque. All seven judges explicitly ruled that the commonwealth can’t simply detain people offshore for as long as it likes.

Nor can it ask a foreign government to incarcerate people indefinitely on its behalf.

In a forecast of a likely area of future legal challenge, the joint decision from French CJ, Kiefel and Nettle JJ said explicitly that “the commonwealth may only participate in that [offshore processing] regime if, and for so long as, it serves the purpose of processing”.

“The commonwealth is not authorised ... to support an offshore detention regime which is not reasonably necessary to achieve that purpose.”

The court is telling the government it cannot create a regime of indefinite detention offshore, that there are limits to its power to hold people and that it cannot allow people to languish in detention while interminable “processing” drags on.

This is not a hypothetical consideration. The governments of Australia and Nauru maintain that nobody is detained on the island anymore, given the centre is now “open” and people are free to come and go. But the justices point out that there is nothing to stop Nauru reintroducing a locked camp (perhaps citing security reasons), or from forcibly detaining any new arrivals.

As well, asylum seekers and refugees on Nauru point out they are not free to leave the island and many have said they regard the 21 sq km of that country as their “prison”.

The question is even more pertinent in Australia’s other offshore detention centre, on Papua New Guinea’s Manus Island. More than half of the 900 men held there have still not been “processed”, some of them have been waiting in detention more than 900 days.

Could that length of time be considered “reasonably necessary” to assess someone’s claim to refugee status?

The justices were not unanimously agreed on everything. The strongest concern over Australia’s offshore detention regime came from Gordon J, who disagreed with the notion, put by Australia, that Nauru alone was responsible for detention on the island.

This, Gordon J wrote in her dissenting judgment, was not true. Detention on Nauru was and is paid for and directed by Australia, and the operation of the detention centre remains under the ultimate control of the Australian government. The Australian government retains the right to “step in” and take over the detention centre at any time it chooses.

“The commonwealth occupies an office at the Nauru RPC, at which officers of the Australian border force of the commonwealth carry out functions in relation to transferees or the Nauru RPC,” she wrote.

“The officers wear official clothing bearing the insignia of the Australian border force of the commonwealth and the Australian coat of arms.”

Gordon J said Australia cannot legislate to allow itself to do something overseas that it cannot do in Australia and she found that section 198AHA of the Migration Act – on which the government relies for offshore processing – is not valid, because it is beyond the government’s power.

Section 198AHA is an extraordinary piece of retrospective legislation, only inserted into the Migration Act after this court challenge had begun.

It was rushed through parliament, with the support of Labor, in two days in June last year, in response to the court challenge, as a mechanism to shore up Australia’s legal right to participate in offshore processing.

Section 198AHA gives the commonwealth almost unlimited power to establish, pay for and participate in detaining people in any foreign country that will acquiesce to Australia doing it.

The legislation specially gives Australia the right to “do anything ... incidental or conducive” to restraining the liberty of people in foreign immigration detention.

The legislation might say the government can “do anything” but the court has firmly warned it cannot. More challenges will follow.

<http://www.theguardian.com/australia-news/2016/feb/03/nauru-manus-ruling-no-blank-cheque-as-court-signals-limits-to-detention>

## **28. Sri Lankan asylum seeker tells of terror on Nauru: 'If I am sent back, I will commit suicide'**

Durga, who has a two decade-long history of torture and trauma, was brought to a detention centre on the Australia mainland after allegedly being raped on Nauru. But a high court challenge on Wednesday could see her sent back to the place she fears

The Guardian  
Ben Doherty  
Wednesday 3 February 2016 06.14 AEDT

An asylum seeker brought to Australia after she was allegedly drugged and sexually assaulted on Nauru has spoken of her terror at the prospect of being sent back to the island.

Durga\* a Sri Lankan Tamil, has a two decade-long history of torture and trauma, including rape, both in Sri Lanka and while in the Australian-run detention on Nauru, but faces the possibility of being returned to the Pacific island’s detention centres pending a high court challenge on Wednesday.

“I am too scared to go back to that place, my life will not be safe,” she told Guardian Australia through an interpreter from immigration detention on the Australian mainland. “If I am sent back to Nauru, I will commit suicide.”

Durga is one of 267 asylum seekers – including 72 children and 33 babies born in Australia – who could be removed to Nauru on 72 hours’ notice, if the high court decides on Wednesday it is within the government’s constitutional powers to detain people offshore.

Several of the asylum seekers at risk of being sent back to Nauru have told Guardian Australia they fear going back to the island, regardless of the status of the centres, saying they will be attacked there, or sexually assaulted, or that they will not receive required medical care.

Durga is one.

In 1996 in the northern Sri Lankan city of Jaffna, she was arrested by military officers who suspected her of links to the separatist Liberation Tigers of Tamil Eelam (LTTE). Durga was 22 and had undergone, as almost all teenagers had, basic training with the LTTE. But she told Guardian Australia: “I was never a fighter, I was only involved in political activities.”

Durga says she was beaten and tortured, despite being pregnant, and gave birth to her son while in military custody. She was held for two years without charge or trial, before escaping to Colombo. Her husband disappeared while she was detained and has not been seen since. He is presumed dead, one of the tens of thousands “disappeared” during Sri Lanka’s civil war.

In Colombo, having been visited by friends from Jaffna, Durga was arrested again by military intelligence, interrogated and tortured. Even after being released, Durga says, she was almost routinely raped by the state's security personnel.

"The military officers would come to my house. Every time they would come two or three men, they would grab me and force me to have sex with them. They expected me to cooperate, but I never did. I would resist. So they would tear my clothes from me, they would tie my hands and they would push clothes in my mouth so I could not scream. Then they would rape me," she said.

"After they left, I would sit with my child and cry. They came back many times."

Friends helped Durga escape to India in 2007 where she lived in a quasi-legal camp in Tamil Nadu, but further harassment by authorities caused her to board a boat, with her son, bound for Australia in 2014.

Durga was one of 157 Tamil asylum seekers on board a boat that was intercepted by an Australian customs vessel in July 2014. They were held on board the Australian ship for a month while the Australian government tried to return the people to India.

India refused to accept them, because they were not Indian citizens, and Australia was forced to bring the people to the Australian mainland, from where they were transferred to Nauru.

On Nauru, Durga says she never felt safe.

"In the tents, there were no locks, there could come into my tent at any time, and guards would threaten me and grab me. I was scared all the time," she said.

"I was taking sleeping tablets because with my injuries from Sri Lanka, and my fear of being assaulted, I could not sleep. In the morning I woke up and my clothes were taken off me and things in my room had been moved. I felt like I had been raped.

"I was raped while I was taking the sleeping tablets I had been provided. I told the mental health nurse, who took my complaint seriously, and I was moved to Australia."

Durga has been in detention in Australia with her son, now 19, since January 2015. She says she could not face being returned to Nauru.

"If I am sent back to Nauru, I will commit suicide. I cannot go back to that place.

"I don't want any special treatment, I just want protection and freedom, that is all. I want to live without fear of being sent back to that place. I want to feel safe again."

In a statement, Nauru police commissioner Corey Caleb said refugees regularly fabricated allegations of assault in order to garner publicity.

"They tell us they have been assaulted but their stories rarely add up: there is usually no physical evidence or witnesses or even any details."

But the police force's independence and capacity to properly investigate has been questioned.

A senate inquiry heard that detention centre operators had referred 50 cases to Nauruan police in recent years, but charges had been laid in just five cases, and nobody successfully prosecuted.

Nauru's former resident magistrate, Peter Law, told the ABC last year Nauru's police force was "politicised".

Immigration minister Peter Dutton told Lateline on Tuesday night allegations of assault and sexual assault in detention centres were taken extremely seriously.

"The approach that we've taken and consistently is that if there are allegations that are being made we want those allegations to be properly investigated because, like any Australian, I won't tolerate any thought of people, in particular children, being abused, by other refugees, by people otherwise."

He said the government remained committed to its offshore processing policy, a key tenet of which is that any person who arrived in Australia by boat would not be settled in the country. Dutton said that policy had saved lives at sea.

*\* Name has been changed to protect the identity of her and her family*

<http://www.theguardian.com/australia-news/2016/feb/03/sri-lankan-asylum-seeker-tells-of-terror-on-nauru-if-i-am-sent-back-i-will-commit-suicide>

## 29. Sanctuary offered to asylum seekers facing removal to offshore detention by churches across Australia

ABC Radio CAF - AM

By Michael Edwards

First posted Thu 4 Feb 2016, 5:16am

Updated Thu 4 Feb 2016, 5:47am

Churches across Australia are invoking the historical concept of sanctuary, opening their doors to asylum seekers facing removal back to offshore detention centres.

The High Court has rejected a challenge to the legality of Australia's offshore detention centres, a ruling that means nearly 270 asylum seekers who came to Australia for medical treatment could be returned to either Nauru or Manus Island.

One of Australia's senior Anglican leaders said places of worship were entitled to offer sanctuary to those seeking refuge from brutal and oppressive forces.

Among the asylum seekers now at risk of being sent back to Nauru or Manus Island are 37 babies.

Advocates for the asylum seekers are running a public campaign to pressure the Government to let them stay in Australia, and now several religious leaders have come forward to offer them sanctuary in their churches and cathedrals.

Anglican Dean of Brisbane the Reverend Dr Peter Catt said he was opening up St John's Cathedral in Brisbane to the asylum seekers.

"Many of us are at the end of our tether as a result of what seems like the Government's intention to send children to Nauru," Dr Catt said.

"So we're reinventing, or rediscovering, or reintroducing, the ancient concept of sanctuary as a last-ditch effort to offer some sense of hope to those who must be feeling incredibly hopeless."

### ***'Sanctuary' yet to be tested under Australian law***

Sanctuary is a historical concept and Dr Catt said he would happily risk being prosecuted for offering it.

"Sanctuary was a concept that was certainly alive in the Middle Ages when people could go to a church, and particularly to a cathedral, and claim sanctuary and the church authorities could really grant them safety against the civic authorities," he said.

"It was a way of saying I'm entering into God's territory, away from the civic authorities that are oppressing me, and the oppressors generally accepted that the church could offer sanctuary to people."

Dr Catt said the concept of sanctuary had never been tested under Australian law.

"But my hunch is that if the authorities chose to enter the church and take people away, it would probably be a legal action," he said.

"So this is really a moral stand and it wouldn't be a good look, I don't think, for someone to enter a church and to drag people away."

The Australian Churches Refugee Taskforce said the offers of help were coming from across Australia.

Taskforce executive director Misha Coleman said logistically it would be a challenge for the asylum seekers to get to the sanctuaries.

"But if they do, the relevant priest or vicar will manage that situation in a very sort of confidential way," Ms Coleman said.

### ***'Alarming impacts of detention on children'***

Getup human rights director Shen Narayanasamy said there was considerable public support for the asylum seekers.

"We know the Australian public responds with compassion when they can see and hear the fact that human beings are affected by what we're doing," Ms Narayanasamy said.

The Australian Human Rights Commission's new report reveals what Ms Narayanasamy describes as the "alarming impacts of detention on children".

The report is based on interviews and medical testing of children at Wickham Point detention facility, many of whom spent time on Nauru.

<http://www.abc.net.au/news/2016-02-04/churches-offer-sanctuary-to-asylum-seekers/7138484>

## **30. Churches offer sanctuary to asylum seekers facing deportation to Nauru**

Anglican Dean of Brisbane says he is prepared to be charged with obstruction and calls conditions in offshore detention 'tantamount to state-sanctioned abuse'

The Guardian

Paul Farrell

Thursday 4 February 2016 08.42 AEDT

Churches and cathedrals in Australia are offering sanctuary to asylum seekers who have suffered trauma and abuse to prevent their return to Nauru.

On Wednesday the high court ruled Australia's offshore detention regime on Nauru had been lawfully established.

The decision means that up to 267 asylum seekers on the mainland could be sent back to the island nation, where a large number of serious sexual assaults have been reported. A Senate inquiry also raised serious concerns about conditions on Nauru, where infant children are being held.

But 10 Anglican and Uniting churches around the country have offered sanctuary to the asylum seekers who are at risk of being returned.

The right to sanctuary, while not now recognised under common law in Australia or other jurisdictions, is a biblical concept that had legal basis during the middle ages.

The Anglican Dean of Brisbane, the Very Reverend Dr Peter Catt, said he was prepared to be charged with an offence for obstruction by trying to prevent federal authorities from entering the cathedral grounds.

"We offer this refuge because there is irrefutable evidence from health and legal experts that the circumstances asylum seekers, especially children, would face if sent back to Nauru are tantamount to state-sanctioned abuse," he told ABC Radio National on Thursday.

There is an offence under Australian law for "concealing and harbouring non-citizens", which could potentially be used against the heads of churches seeking to prevent asylum seekers from being deported.

The federal government has continued to stress its support for offshore detention. The prime minister, Malcolm Turnbull, said on Wednesday he had a "steadfast" resolve to prevent people smugglers.

Other Anglican churches and affiliated chapels offering sanctuary are:

- St Cuthbert's Anglican church, Darlington, Western Australia
- Wesley Uniting church, Perth
- Gosford Anglican church, Sydney
- Pilgrim Uniting church, Adelaide
- St John's Uniting church, Essendon
- Paddington Anglican church, Sydney
- Pitt Street Uniting church, Sydney
- Wayside Chapel, Sydney

<http://www.theguardian.com/australia-news/2016/feb/04/churches-offer-sanctuary-to-asylum-seekers-facing-deportation-to-nauru>

## **31. Church leaders risk potential jail time by offering sanctuary to asylum seekers**

ABC Radio CAF - The World Today

By Courtney Wilson

First posted Thu 4 Feb 2016, 2:48pm

Updated Thu 4 Feb 2016, 2:58pm

Church leaders offering sanctuary to asylum seekers who face being sent to offshore detention could be risking 10 years' jail, an academic working in migration law says.

Anglican Dean of Brisbane, the Reverend Dr Peter Catt, said he was opening up St John's Cathedral in Brisbane to some of the 267 asylum seekers who are in fear of being returned to Nauru or Manus Island.

The Australian Churches Refugee Taskforce said offers of help were coming from across Australia.

There were also questions about how much legal protection asylum seekers would have by sheltering in a church.

Marianne Dickie, a senior academic at ANU working in the migration law program, said that there was a section within the Migration Act that made it an offence to harbour a person deemed an unlawful non-citizen, a removee or a deportee.

"So [the penalty for] that offence is imprisonment of 10 years or fine of \$180,000 or both," she said.

"But for us the problem arises with the term unlawful non-citizen, removee or deportee in determining what status the people that the church is saying that they'll look after, hold at that present time."

Misha Coleman, from the Australian Churches Refugee Taskforce, said the logistics of getting asylum seekers to the churches was difficult.

"To effectively provide sanctuary or to provide protection from harm you need to do that very quietly," Ms Coleman said.

"So it was a big decision for us to announce this publicly, but we wanted people to know that we are there for them."

### ***Asylum seekers at risk of deportation 'seeking desperate measures'***

Ms Coleman said the number of refugees who were in a position to even access the churches' offer of help is small.

She said there were 15 families living in the community across the four states that they were aware of, and they would be the people who could most easily enter one of the churches offering sanctuary.

"Those families that we're talking to, we're counselling them to get some really very in-depth advice from their own legal representatives about what the implications for them and their case and their application for a protection visa ultimately would be," Ms Coleman said.

She said she was unable to elaborate on how well those 15 families had been coping.

"I can say that people knew that the High Court case wasn't going to be something that would protect them," she said.

"Seventy-two hours' notice will be given, hopefully, of deportation to an offshore facility.

"So now that that prospect is really live ... people are absolutely in shock, devastated, and can I say, seeking desperate measures."

Providing sanctuary is a historical concept, but the legal risks involved for church members to offer it were real.

The Australian Churches Refugee Taskforce said they are hopeful the legal risks will not be put to the test.

However, Immigration Minister Peter Dutton told 2GB radio that churches were not above the law.

"Churches provide lots of assistance to refugees and they feel very strongly about this issue," he said.

"In the end, people have to abide by Australian law, regardless of who they are."

<http://www.abc.net.au/news/2016-02-04/legality-of-church-sanctuary/7140110>

## **32. Churches become potential flashpoint after offering sanctuary to asylum seekers in wake of High Court verdict**

Sydney Morning Herald  
February 4, 2016 - 9:53AM  
Adam Gartrell



Churches have taken the extraordinary step of offering sanctuary to asylum seekers facing deportation in the wake of a High Court verdict, raising the prospect of police raids on places of worship and possible charges for clergy.

Ten Anglican churches and cathedrals have invoked the ancient Christian tradition to offer protection to the 267 people - including 37 babies - facing imminent transfer to Nauru after the court on Wednesday upheld the legality of the government's offshore processing regime.

The movement is being led by the Anglican Dean of Brisbane, Dr Peter Catt, who has declared his St John's Anglican Cathedral a place of sanctuary.

Dr Catt said if any asylum seekers sought sanctuary in his church he would do his best to keep the authorities out. He said he fully accepts that he and other clergy could be charged with obstruction and potentially even face possible jail time.

"We are aware it's a high-risk strategy," he told the ABC.

Dr Catt called it an extraordinary step that would attract the attention of church communities around the world.

The sanctuary principle has its roots in the Old Testament and was once enshrined in English common law but its legality has never been tested in Australia.

"This is a hugely significant action for any Australian church to take. Historically churches have afforded sanctuary to those seeking refuge from brutal and oppressive forces," Dr Catt said on Thursday.

"We offer this refuge because there is irrefutable evidence from health and legal experts that the circumstances asylum seekers, especially children, would face if sent back to Nauru are tantamount to state-sanctioned abuse.

"This fundamentally goes against our faith, so our church community is compelled to act, despite the possibility of individual penalty against us."

Other cathedrals and churches offering sanctuary include Pitt Street Uniting Church, Gosford Anglican Church and the Wayside Chapel in NSW, St George's Anglican Cathedral, St Cuthbert's Anglican Church and Wesley Uniting Church in Perth, Pilgrim Uniting Church in -Adelaide, St David's Anglican Cathedral in Hobart and Christchurch Anglican Cathedral in Darwin.

Dr Catt called it a "fledgling movement".

"What we expect to happen in the course of the day and the next few days is that many churches from many denominations will sign up," he said.

The sanctuary offer came as the United Nations urged Australia to put the interests of children first.

The UN Committee on the Rights of the Child believes Australia has an inadequate understanding of the rights of asylum seeker children.

"This decision by the High Court greatly concerns us as these children and their families face a great risk in being sent to a place that cannot be considered safe nor adequate," said committee chair Benyam Mezmur.

But Immigration Minister Peter Dutton on Thursday said he would not put children in harm's way.

"I've said that we'll provide medical attention as we have in the past to those children that are in need but I also think there is a lot of hype and scare in this campaign in relation to what's happening on Nauru."

Prime Minister Malcolm Turnbull has vowed the government's hardline border stance is unshakable.

Deportations are expected to start occurring within days.

<http://www.smh.com.au/federal-politics/political-news/churches-become-potential-flashpoint-after-offering-sanctuary-to-asylum-seekers-in-wake-of-high-court-verdict-20160203-gml5qk.html>

### **33. Churches outside the law when offering sanctuary to asylum seekers**

Sydney Morning Herald

February 4, 2016 - 9:45PM

Michaela Whitbourn || with Tim Young, Marissa Calligeros and Adam Gartrell

Australian church officials offering sanctuary to asylum seekers have no legal basis for their actions and could face criminal sanctions. Ten Anglican churches and cathedrals have invoked the ancient Christian tradition to offer protection to the 267 people - including 37 babies - facing imminent transfer to Nauru after the High Court on Wednesday upheld the legality of the government's offshore processing regime.

The movement is being led by the Anglican Dean of Brisbane, Dr Peter Catt, who has declared his St John's Anglican Cathedral a place of sanctuary.

Legal experts said the image of fugitives seeking sanctuary in churches and abbeys has been popularised in literature and film but it is "more myth than legal reality" in modern times.

But University of Sydney professor Mary Crock, an expert on refugee law, said that, at a political and symbolic level, it was a "really powerful gesture" and she hoped the churches would follow through with their offer.

"The law can't help any more. We're down to getting out on the streets and using Twitter and modern media. We have to stand up," Professor Crock said.

"This gesture really highlights the gulf that has opened between the law in Australia and morality. We're just a country that is a human rights wasteland. Sadly, it is pointless to go to the High Court."

The institution of sanctuary was "swept away" in England in 1624 when a statute was passed banning the practice, English legal historian Sir John Baker has written.

But the practice was recognised even before the English common law. Professor Constant Mews, the director of the Centre for Studies in Religion and Theology at Monash University, said it pre-dated Christianity.

"Even the pagan temples of Greece and Rome had the sense of the sacred; that this was a space that was under the protection of the gods," Professor Mews said.

"In the Middle Ages, sanctuary developed as a way particularly of those seeking refuge from unjust imprisonment."

Professor Mews said the practice was "abused, in the eyes of the authorities".

"By the late Middle Ages, criminals and debtors were seeking sanctuary just as a way of escaping from the law.

"That led to the English government in the 16th and early 17th century clamping down on that abuse of the sanctuary, but there was a still a recognition that churches did constitute a sacred space. It was a place where armed guards [and] security forces could not go in with impunity."

In modern times, the concept has been invoked by churches and asylum seekers even though it does not have a legal basis.

Canada's National Post reported in 2012 that the practice was still alive, including in the case of two Nigerian students who sought sanctuary in a church in Regina, the capital of Saskatchewan.

University of NSW law professor George Williams said: "Many people seem to think they must have some legal basis for [sanctuary] ... because it's popularised in movies and all sorts of things.

"But it was abolished long before the British even arrived in Australia in 1788. It exists now more in the realm of myth than reality in law."

Australian churches were "really asserting a moral claim" and potentially calling the government's bluff following the High Court decision that found offshore detention was lawful.

But he said the government would be likely to take action against church officials because if it did not "it would be setting a very significant precedent for the churches being able to operate outside of the law".

<http://www.smh.com.au/federal-politics/political-news/churches-outside-the-law-when-offering-sanctuary-to-asylum-seekers-20160203-gmlagz.html>