

www.asrc.org.au



**Asylum Seeker
Resource Centre**

ABN 64114965815 • Incorporation Number: A0042918

214 - 218 Nicholson Street
Foolscray, Victoria 3011

t: 03 9326 6066
f: 03 9689 1063

Select Committee on the Recent Allegations relating to Conditions
and Circumstances at the Regional Processing Centre in Nauru
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By email to regionalprocessingnauru.sen@aph.gov.au

Dear Select Committee

Inquiry into Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru

The Asylum Seeker Resource Centre (ASRC) thanks the Select Committee for the opportunity to make a submission regarding the recent allegations relating to conditions and circumstances at the regional processing centre on Nauru.

The ASRC is deeply concerned for asylum seekers transferred to Nauru. The living conditions and treatment of asylum seekers, including reports of violence, neglect and sexual abuse are alarming.

The ASRC's Detention Program supports asylum seekers in detention in Australia through excursions and visits, including asylum seekers temporarily transferred from Nauru. During these visits people transferred from Nauru tell stories of distress, abuse and hopelessness.

The ASRC submission is based on these stories and firsthand accounts.

The ASRC's submission addresses the Select Committee's terms of reference point 1A, 1B and 1C.

For further information or for any questions, please contact jana.f@asrc.org.au or on 03 9326 6066.

Yours faithfully

/// |

Kon Karapanagiotidis OAM, CEO

Background

The Asylum Seeker Resource Centre (ASRC) protects and upholds the human rights, wellbeing and dignity of asylum seekers. We are the largest provider of aid, advocacy and health services for asylum seekers in Australia. Most importantly, at times of despair and hopelessness, we offer comfort, friendship, hope and respite.

We are an independent, registered non-government agency and we do not receive any direct program funding from the Australian Government. We rely on community donations and philanthropy for 95 per cent of our funding. We employ just 59 staff and rely on over 1000 dedicated volunteers. We deliver services to over 2,000 asylum seekers at any one time.

Our submission is based on 13 years of experience working with asylum seekers.

Executive summary

The ASRC is deeply concerned for asylum seekers transferred to Nauru. The living conditions and treatment of asylum seekers, including reports of violence, neglect and sexual abuse are alarming.

The ASRC's Detention Program supports asylum seekers in detention in Australia through excursions and visits, including asylum seekers temporarily transferred from Nauru. During these visits people transferred from Nauru tell stories of distress, abuse and hopelessness.

The ASRC submission is based on these stories and firsthand accounts.

Asylum seekers from Nauru are transferred to Australia for medical care. There are currently over 200 asylum seekers, including children, from Nauru in Australia for medical care.

People are transferred to Darwin, Brisbane and Melbourne and placed in either immigration detention or a hospital. Some families are split leaving fathers or mothers and some siblings on Nauru.

People come to Australia for varying periods of time depending on their condition. Their stay in Australia is temporary and once they have received treatment they are sent back. The policy is clear; no one sent to Nauru will ever be settled in Australia.

Families and single people from Nauru are very much traumatised. While in Australia, they want to talk about their experiences on Nauru. Parents tell us that their children are incontinent and talk in their sleep constantly. They say that the children have nightmares and refuse to sleep alone. One mother said that that the MITA (Melbourne Detention centre) is heaven compared to Nauru. Similar comments are made by all. These families are sleeping in 3 x 2.5 metre dongas in Melbourne so there is no luxury.

No one ever wants to return to Nauru.

The ASRC's submission addresses the Select Committee's terms of reference point 1A, 1 and 1C.

TERMS OF REFERENCE 1A – Fulfilling obligations under the MOU

The treatment of asylum seekers on Nauru is not only in breach of international human rights law, but also in breach of the clause 17 and 18 of the Memorandum of Understanding Between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues (the 'MOU').

Clause 17 - Treatment of transferees with dignity and respect and in accordance with relevant human rights standards

Asylum seekers on Nauru in the Australian-funded regional processing centre (referred to as the 'OPC') are not treated with dignity and respect and their treatment is in breach of a number of human rights treaties which Australia and Nauru are signatory to.

Human Rights standards

The transfer of asylum seekers who arrive by boat in Australia seeking asylum is in breach of the Refugee Convention ('the convention'). The convention provides that asylum seekers should not be 'penalised for their mode of entry' (article 31) and lays down basic minimum standards for the treatment of refugees.

The Refugee Convention was founded on protection. The transfer of asylum seekers to Nauru breaches this fundamental principle of the convention by focusing on deterrence, punishment and removing access to justice.

By transferring children to Nauru, Australia is also in breach of the Convention of the Rights of the Child (CRC). Transferring children to a situation where their safety cannot be guaranteed and where reports of sexual abuse are common is not in the best interests of the child.

The conditions that children are living in on Nauru, and the lack of appropriate child protection framework, breaches a number of CRC articles including, but not limited to:

- Article 6 - Children have the right to live a full life
- Article 9 - Children should not be removed from their parents
- Article 19 - Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents or anyone else who looks after them
- Article 24 - Children have the right to good quality health care, clean water, nutritious food and a clean environment so they will stay healthy
- Article 34 - Governments should protect children from sexual abuse
- Article 36 - Children should be protected from any activities that harm their development

Additionally, the conditions on Nauru are in breach of the International Convention of Civil and Political Rights (ICCPR), specifically:

- Article 7 - No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment
- Article 9 - No one shall be subjected to arbitrary arrest or detention

Dignity and respect

The physical conditions in which asylum seekers live in the detention centre on Nauru do not provide for dignity and respect and do not uphold human rights standards.

In all daily activities, asylum seekers are faced with conditions that demean and shame them.

Tents and general living conditions

- 5-6 families live together per communal tent. The only privacy is afforded by a flimsy curtain.
- There is no air-conditioning in equatorial heat.
- The ceilings of the tents are filled with mould. At night, condensation causes the mould to drip onto the faces of people as they sleep on stretchers. This is causing fungal eye and skin infections.
- There is a lack of privacy for married couples meaning that children see intimate activities.
- One woman asked a Nauruan guard for chocolate and lollies for her daughter. When she received the goods, there was also a USB with pornography. The woman felt this was a test to see how she responded and if she responded positively then she may receive other goods.
- Male asylum seekers who stand up for their wives/children end up in Court (or in one case jail) in Nauru. There was an instance where a father was jailed after arguing to take food to his wife who was unable to walk.

- The tents are full of mice and cockroaches. Rats loiter outside the tents. Mothers have reported that every morning they get up and have to sweep a mound of mouse poo from the tent. One father reported that he woke up one night and found a mouse nibbling the fingers of his two year old son. Women report waking up with cockroaches running over their faces.
- Nauru police make tent searches on occasion. Asylum seekers have reported that they are told to leave the tents as they're searched and when they return personal valuable items and food are missing.

Showers

- The shower and toilet facilities are inadequate for the number of people in the centre. For many people, they have to walk hundreds of metres to access the toilets and showers.
- Women and children are too scared at night to go to the bathroom as a group of Nauruan and Australian guards group outside the toilets. This forces the women and children to wet their bed, have to wear pads or squat outside their tent.
- Nauruan male guards are in charge of the water supply outside the women's shower. Women are allocated 2-3 minutes of water. There is only a black plastic sheet separating those showering from the guards. We have had reports of guards offering to extend the shower time if women shower with the plastic sheet open.
- Guards offer single women additional showers at 11pm at night.

Toilets

The toilet compounds have 4 toilets for 400 people to share. These are cleaned sporadically. Asylum seekers talk of the filthy toilets, which the children don't want to use. The toilets have no water and asylum seekers are not allowed cleaning agents to clean the facilities by themselves. They talk of the constant long queues for the toilet. Many women and children cannot wait and have become incontinent as a result. They wear pads when they can get them. Even the older children are wearing pads because they do not have enough clothes to change if they get soiled.

Washing clothes

Washing machines are frequently broken or there is no water. People wash clothes secretly in the toilets. There is trouble if they are caught and then the toilet water is turned off as punishment. The queue for washing machine is long as they are only for a few hours. Many women and children are restricted in their clothing ration to only two pairs of underpants so washing is a priority.

Health care and personal hygiene

Medications are dispensed from OPC1. Asylum seekers are not allowed to walk between compounds, therefore people needing medication have to wait in the sun (with no shade) for a van to take them to OPC1. This journey takes about 5 minutes however the wait time for the van is up to an hour. People can spend an hour or more in queues at the medication dispensing counter and then wait again for the van to return them to their compound. Receiving medications can take up to half a day.

Medications are dispensed daily, including contraceptive pills. Women who are sick and who cannot stand in the queue for hours miss their contraceptive pills and risk getting pregnant. Women are flown to Australia for abortions because these are illegal on Nauru. Young women have told us of the awful decision they feel forced to take. Many of these are first babies but they say that it would be wrong to have a baby on Nauru and ask how they could keep a baby alive in such conditions.

Diabetic medication needs to be given before breakfast but is often not available so people are forced to take the medication when they can, in some cases making them ill.

Sanitary napkins are given out on a daily basis (as they are classified as a fire hazard), however they are issued in small numbers. The amount given out is insufficient for women with heavy periods.

In 2012, the issue of water was identified as a major problem by Transfield Services. This is still unresolved as a problem which is now causing severe health issues. Water is restricted and fluid intake is controlled (plastic bottles are not allowed to be used to fill up as they could be used as weapons). People are given plastic cups and can access 300mls of water after queuing, sometimes for up to half an hour. This is dangerous in equatorial heat. Many asylum seekers have been transferred to Australia for kidney stone medical treatment which is a result of insufficient fluid intake.

Case study – lack of dignity and respect and breach of the CRC

This is in breach of the Convention on the Rights of the Child – namely article 19 that Government's should ensure children are properly cared for and article 7 of the ICCPR.

Case study – exposure to sexual abuse

This is in breach of the Convention on the Rights of the Child – namely article 34 that Government's should protect children from sexual abuse and article 7 of the ICCPR.

Case study – lack of protection against sexual assault

This is in breach of the Convention on the Rights of the Child – namely article 34 that Government's should protect children from sexual abuse and article 7 of the ICCPR.

Case study – fear for safety of babies

These safety fears are well founded when we examine the statistical evidence – the maternal mortality ratio on Nauru is 35 times higher than the comparative value for Australia.

Asylum seeker children and families have been living in these conditions for over 18 months now and the Australian Government has been made aware of these claims and conditions, including the sexual abuse of children on multiple occasions¹.

Clause 18 – Special arrangements will be developed and agreed to by participants for vulnerable cases, including unaccompanied minors

There are no special arrangements for dealing with vulnerable cases in the Australian-run detention centre on Nauru. This is in breach of clause 18 of the MOU. Children who show extreme distress (withdrawal, depression, and incontinence) are not removed, even when medical recommendations are made that their removal is necessary.

In addition, Nauru does not have an adequate child protection framework meaning that even when reports of sexual abuse are made, children are not moved and are still surrounded by people suspected of abusing them.

There is a significant and ongoing risk of child abuse, including physical and sexual abuse, in the detention environment where large numbers of children and adults are held in crowded conditions without normal social structure or meaningful activities. There is a lack of staff experience in child protection and there is a lack of clarity on the IHMS, stakeholder, and local processes for managing and investigating child protection issues. Nauru does not currently have a child protection framework.

Arrangements on Nauru are failing vulnerable people in their treatment on Nauru and the lack of access to appropriate care and protection. People who can barely walk have been transferred to Melbourne after months of lying on stretchers in hot Nauru tents.

Families with babies and children under 4 years of age are in tents with air conditioners however this does not keep the tents cool due to the unreliable electricity supply. People report that power goes out daily for at least 2 hours, often more.

Pregnant asylum seekers are transferred to Australia to deliver their babies however are sent back to Nauru when the babies are from three months old.

One mother reported that the IHMS clinic in OPC1 has just installed two humidicribs with lights for jaundiced babies. As yet no babies have been delivered in the Nauru Hospital but Immigration are constantly threatening to do so. There is one fly in/ fly out gynaecologist from New Zealand.

¹ <http://www.abc.net.au/news/2015-04-07/nauru-letter-of-concern-demands-royal-commission/6374680>

We understand that the policy is now that refuge women will deliver their babies on Nauru, despite medical opinion that no baby should be born in the Nauru hospital².

The 'Nauru Site Visit' report of the 'Physical and Mental Health Subcommittee of the Joint Advisory Committee for Nauru Regional Processing Arrangements', (published by the Guardian Australia on 30 May 2014³) provides an account from independent medical professionals of the conditions for children and other asylum seekers at the Nauru OPC.

The findings include inadequate protection for children from sexual abuse, and no paediatricians at the centre or paediatric life support on the island. The situation described in the report constitutes a failure of duty of care for vulnerable cases and a breach of basic human rights standards.

Case study – treatment of Unaccompanied Minors (UAMs)

This is in breach of the Convention on the Rights of the Child – namely article 16 that children have the right to privacy and article 34 that Government's should protect children from sexual abuse.

Case study – split families

This is in breach of the Convention on the Rights of the Child – namely article 9 that children should not be separated from their parents.

TERMS OF REFERENCE 1B – conduct and behaviour of staff

Lack of appropriate training of staff

As stated in objective 2 of the MOU, the Australian Government has joint cooperation in 'the development of enhanced capacity in Nauru to address these issues' (transfer arrangements and the establishment of Regional Processing Centres).

This includes the responsibility to train local staff to a level to ensure that the dignity and respect of transferees is upheld. No one has been able to provide evidence of any appropriate training provided to local staff to work with asylum seekers and refugees.

Of particular concern are reports that:

² https://www.mja.com.au/system/files/issues/201_05/dec01005.pdf

³ Physical and Mental Health Subcommittee of the Joint Advisory Committee for Nauru Regional Processing Arrangements, Nauru Site Visit Report, 16-19 February. Published by Guardian Australia, 30 May 2014 Available at <http://www.theguardian.com/world/interactive/2014/may/29/nauru-family-health-risks-report-in-full>

- Local staff use physical discipline on children in order to get them to comply to an order. The ASRC has received reports from three separate sources that a guard threw a rock at a child's face breaking her teeth and lip and requiring sutures.
- Parents are distressed by the way in which local staff pull the children onto their laps and rub and touch them.
- Local staff report for duty drunk. People have reported that they openly admit to being drunk. Women report that the drunken guards sit down behind the women's toilets at night. These reports have been consistently given from different groups of women for over a year.

It is apparent from the behaviour of the local staff that there is no discipline. People in the camp say that Wilson Security rarely corrects the local staff.

TERMS OF REFERENCE 1C – duty of care obligations

The Nauru Detention Centre is an Australian-run facility. It is managed, overseen and funded by the Australian Department of Immigration. The Australian Government exercises an extraordinary degree of control over the day-to-day running of the centre and as such they are clearly in effective control of the facility. The Australian Government therefore holds clear duty of care responsibilities.

This is further evidenced by the substantial responsibilities established in the MOU, as well as the practical and effective control the Australian Government exercises over key running and management of the centre. The Australian Department of Immigration and Border Protection is involved in decision-making, support to management and staff, resources and advice on the treatment of asylum seekers in the centre.

The Australian Government is accountable for the serious and disturbing details outlined in this submission.

Conclusion

The abhorrent conditions in the OPC on Nauru forces asylum seekers to live without dignity and respect and are in breach of basic human rights standards. Repeated medical advice has recommended that asylum seekers are removed from Nauru immediately for their physical and mental safety.

The accounts of sexual abuse, negligence and lack of appropriate protection safeguards for asylum seekers on Nauru are shocking. The safety of asylum seekers can only be guaranteed if they are all brought to Australia while their claims for protection are assessed.