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# SUBMISSION TO SELECT COMMITTEE

## Conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea

**Submitted by**

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### INTRODUCTION

This submission is presented on behalf of the Josephite Justice Office, a ministry of the Congregations of the Sisters of St Joseph. The Sisters of St Joseph and our Associates (numbering over two thousand women and men) were founded in the mid- nineteenth century by Mary MacKillop and Julian Tenison Woods to work with those suffering from poverty and social disadvantage. We educate, advocate and work for justice for earth and people, and especially for those pushed to the margins of our world.

Our submission to the Select Committee has been developed out of concern for those individuals and families who have been driven to the edge, and whose lives are being damaged and destroyed by the Australian Government's legislation and policies regarding asylum seekers and refugees. These policies, we believe, contradict the values we profess to be at the heart of the Australian character – justice, a fair go for all, and the right of every person to dignity and a full life. The harsh and unjust conditions in the offshore detention centres contravene all of these values, and as such have been condemned by the U.N., as well as by political, religious and community leaders in Australia.

There is little doubt that those affected by the harsh conditions in Nauru and on Manus Island have had their health and lives placed in severe jeopardy. It is on their behalf that we present this analysis and submission.

### PURPOSE OF CONSULTATION

The Government has identified the purpose of this consultation as being to examine:

- conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea;
- transparency and accountability mechanisms that apply to the regional processing centres in the Republic of Nauru and Papua New Guinea;
- implementation of recommendations of the Moss Review in relation to the regional processing centre in the Republic of Nauru;

- the extent to which the Australian-funded regional processing centres in the Republic of Nauru and Papua New Guinea are operating in compliance with Australian and international legal obligations;
- the extent to which contracts associated with offshore processing centres are:
    - delivering value for money consistent with the definition contained in the Commonwealth procurement rules,
    - meeting the terms of their contracts, and
    - delivering services which meet Australian standards; and
    - any other related matter.

Consequently, this submission will focus on:

- The conditions and treatment of people held in detention on Manus Island and Nauru.
- The lack of transparency and accountability mechanisms
- The prohibitive costs of offshore detention
- The Commonwealth Government's failure to implement the recommendations of the Moss Report
- The urgent need for reform in Australia's responsibility to asylum seekers.

**THE CONDITIONS AND TREATMENT OF PEOPLE HELD IN DETENTION ON MANUS ISLAND AND NAURU.**

The Memorandum of Understanding between The Republic of Nauru and the Commonwealth of Australia, and between Papua New Guinea and Australia states an unambiguous commitment to:

- a process by which transferees will be treated with dignity and respect and in accordance with relevant human rights standards.
- The development of special arrangements for vulnerable cases, including unaccompanied minors.

It is undeniable that these commitments have not been honoured. In fact, the Moss Review and later reports from medical, technical and administrative staff have been scathing in their indictment of the level of care of asylum seekers in Nauru. Harsh conditions, and physical, emotional, mental and sexual abuse of vulnerable people, reinforced by ongoing refusals to accept complaints of mistreatment, have created a situation which shames Australia and undermines the rights and the dignity of individuals and families.

The UN Subcommittee on the Prevention of Torture who visited Nauru in 2015, was unable to discuss the team's findings for confidentiality reasons. The chair, Malcolm Evans said however that there are "grave concerns around the entire set-up" for asylum seekers: *'The idea of holding all of those seeking asylum in closed institutions ... of this nature — with no real understanding of what their long-term future is likely to be — is bound to be a cause of great distress.'*

**THE LACK OF TRANSPARENCY AND ACCOUNTABILITY MECHANISMS**

Human Rights advocates, U.N. representatives, lawyers, and religious and community leaders have condemned unequivocally the lack of transparency and accountability mechanisms on Nauru and Manus Island. Outsourcing has enabled governments (of Australia, Nauru and PNG) to evade scrutiny for even the most alarming instances of maladministration and abuse.

Following their 2015 visit, the U.N. torture prevention team called for greater transparency on conditions and systems governing the immigration detention centre in Nauru.

Even in the face of such urging, political leaders in Australia refuse to disclose what is happening in these detention centres, citing both security considerations and the fact that the Governments of Nauru and PNG are responsible for the operation of the centres. This means of course that accountability is minimised and the Australian community is left in ignorance regarding the realities being experienced by asylum seekers. Secrecy and lack of transparency, as a consequence, cloud the views of ordinary Australians about what is being done in our name to some of the most vulnerable people in the world today – people fleeing violence, torture and death from places such as Iraq and Syria.

Because these acts are being done in Australia's name, and with a budget of more than a billion taxpayer dollars, it is in the public interest to have independent and transparent oversight, not only of our offshore processing centres, but also of the scapegoating mechanisms that operate in the 'stopping the boats' campaigns. This is not the case:

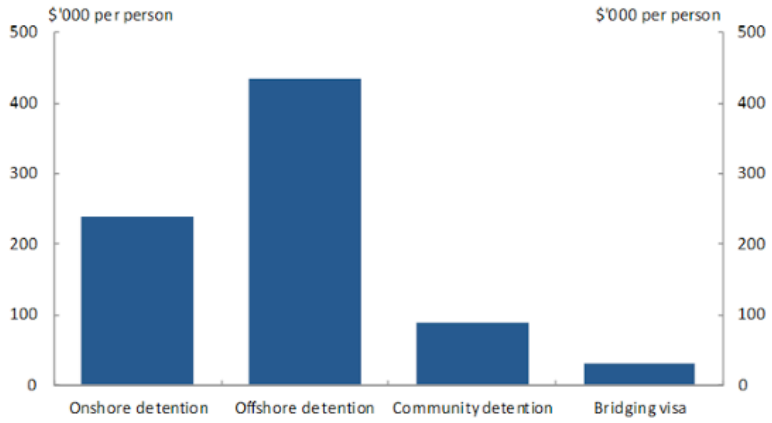
- Journalists and other citizens do not have access to the centres
- communication is restricted
- medical and other staff are threatened with legal action if they report abuse
- According to reports, Facebook, a major of method of communication on Nauru, has also been banned.

There is clearly a lack of information and transparency surrounding the entire process, not for the Australian community but also for asylum seekers themselves. No time frames are provided for asylum seekers and no hope is offered to them for their future. As advocates such as Turt point out, this to totally unacceptable.

***The fact is that most Australians do not like to see vulnerable people being wilfully mistreated. The oppressive secrecy surrounding the detention system suggests that the government understands this.***

**THE PROHIBITIVE COSTS OF OFFSHORE DETENTION**

The Refugee Action Coalition has pointed out that the costs of offshore detention are prohibitive. In the first half of 2015, detention on Manus Island and Nauru cost the government $1.2 billion, indicating that the policy of offshore detention is indeed politically motivated and a stark indication of the government's priorities. This enormous sum could be more valuably allocated to reverse government cuts and boost spending on critical areas such as health and education.




'Detaining a single asylum seeker on Manus or Nauru costs $400,000 per year. Detention in Australia costs $239,000 per year. By contrast, allowing asylum seekers to live in the community while their claims are processed costs just $12,000 per year, one twentieth of the cost of the offshore camps, and even less if they are allowed the right to work.' (RAC 2016)

***These statistics demonstrate clearly that the policy of offshore detention is not delivering value for money. As other submissions to this consultation indicate, even***

***with such economically self-serving and favourable contracts, the contractors are not meeting the agreed terms. Nor are they delivering services that meet Australian standards.***

**THE GOVERNMENT'S FAILURE TO IMPLEMENT THE RECOMMENDATIONS OF THE MOSS REPORT**

The Moss Review is a well-documented, careful and compelling analysis, leading to a disturbing condemnation of the treatment of Asylum seekers in Nauru. It confirms the earlier findings of the Human Rights Report, which expressed alarm at the conditions in Nauru and the particular mistreatment of children in detention.

Five areas are highlighted by the Moss Review as causes of serious concern:

1. The physical conditions in Nauru, characterised by over-crowded accommodation, in situations of extreme heat
2. Distressing incidents of physical and sexual abuse
3. Failure to report incidents of abuse because of justified concerns about damaging repercussions
4. A resultant culture of intimidation and fear
5. Failures in the operation and management of the Detention Centre

As far as can be ascertained, the concerns highlighted by the Moss report have not led to improvements in conditions at the detention centres, nor outside the detention centre on Nauru. According to medical, technical and managerial staff and those employed by churches, the asylum seekers in Nauru live with constant fear, in unsanitary and inadequate medical conditions and intolerable heat. There have been multiple reports of assault and sexual abuse. Self-harm and suicide attempts are common. Physical violence, sexual harassment, abuse and intimidation from guards, as well as from locals and other inmates, have been shown to be endemic to the centre. Combined with these indefensible hardships, people experience prolonged periods without processing, and little prospect of release, of family reunion or employment. All have led to the well-documented accounts of mental illness, self-harm and suicide.

After reports of repeated incidents of sexual assault and child abuse, the Department of Immigration admitted it had known of over 50 cases of assault and done nothing about them. Their argument has been that this is a matter for the Nauruan government and the

contractors who operate the facility. Moreover, the poor wording of the contract with Transfield makes follow-up very difficult.

'Outsourcing thus facilitates the expenditure of public money, and the implementation of public policy, without any of the established restraints and scrutiny that normally limit public sector behaviour. Murder, rape and harassment of elected officials can be dismissed as an issue for contractors or other governments, despite occurring within Australian-funded facilities or being carried out by Australian-funded staff.'

These ongoing aberrations highlight the extent of the Government's failures

- to establish relevant human rights standards,
- to take action when complaints have been made,
- to oversee the behaviour of the company to whom it has outsourced the responsibility of the Detention Centre and the care of asylum seekers

***A clear and convincing conclusion has therefore emerged that abuse has occurred, that appropriate action has not been taken, and that by outsourcing its responsibilities for people fleeing for their lives, the Australian Government has failed to honour its obligations to the asylum seekers. Abuse has been institutionalised through bipartisan consensus.***

**THE URGENT NEED FOR REFORM IN AUSTRALIA'S RESPONSIBILITY TO ASYLUM SEEKERS, CLEARLY INDICATED IN CURRENT LEGISLATION.**

In February, the Australian High Court dismissed a claim that the detention of asylum seekers offshore in Nauru violated the Australian constitution. It upheld its policy to retain refugees at processing centres there. Last year, the Coalition, with Labor's support, had retrospectively changed laws to bolster the Commonwealth's ability to pay for the offshore facilities, and paved the way for this outcome.

The decision of the High Court triggered an outcry from the United Nations and human rights groups, as it made way for 267 asylum-seekers, including 37 babies, to be deported from Australia to Nauru. Advocates for asylum seekers have argued convincingly that the decision might be consistent with the newly created law, but that it contravenes Australia's moral responsibility and its obligations under international law.

It is maintained that it can never be moral

- to detain people for months and years without hope or future
- to abdicate responsibility for those seeking protection in Australia by shunting them to off-shore islands under the rule of foreign countries.
- to keep babies, children and their families in living conditions which threaten their health and security
- to violate systematically the UN provisions for the protection of asylum seekers, the care of children and the human rights of all people.

***Fifteen years of dishonest language, the establishment of questionable laws to support the ideologies of the Parties, and the secrecy surrounding the plight of those in detention, have all exacerbated an untenable situation, and resulted in deliberate cruelty to innocent women and men fleeing for their lives.***

**FUNDAMENTAL ISSUES FOR US AS THE AUSTRALIAN COMMUNITY**

The effects of Australia's failure to exercise justice and compassion in its treatment of asylum seekers are real and corrosive, and have been clearly demonstrated in the destructive and abusive situation that has developed in Nauru and on Manus Island. Both major parties, by maintaining politically expedient policies, must bear responsibility for this.

The evidence from the Moss Review, and reported instances of on-going abuses have reinforced the findings of the Human Rights Report, validating recent UN condemnation of Australia. This condemnation of Australia's asylum policy has found that aspects of Australia's protection policies have breached the International Convention against torture.

***The culture of fear, misinformation, and silence regarding the truth of the asylum seeker situation, here and in other asylum seeker centres, shames us as Australians, and undermines what is best in our national character.***

**RECOMMENDATIONS**

The Commonwealth Government has clearly failed its responsibilities in connection with the conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea. More fundamentally, it has failed in its duty to take reasonable care of asylum seekers. This failure has included both its responsibilities for asylum seekers who have fled to this country for refuge, and its

accountability for the centres to which it has outsourced its responsibilities.

The Moss Review and subsequent reports from medical, technical and administrative staff read like reviews of a failed prison. Here are people who have escaped from terror and torture in their own countries, being treated like criminals, although they have committed no criminal act, and have sought asylum in accordance with international law. For Australia to have exempted itself from that law is reprehensible. To have outsourced its responsibilities for asylum seekers is inexcusable.

There is no doubt that Royal Commissions in the future will hold Governments and their officials to account for the harsh cruelty of their policies, the abandonment of their international obligations, and their abuse of power. The recorded complaints of concerned Australians and of international bodies will hold them unequivocally to account. The role of Government is to protect its people. We know that any person, community or Government is judged by its care for the most vulnerable, and for this Australia needs to be held to account.

We urge all members of Parliament therefore to commit initially to an asylum seeker policy, which acknowledges the rights of each person seeking asylum, which demands careful administration of programs dealing with asylum seekers, and which honours its original contractual agreement with Nauru:

- To a process by which transferees will be treated with dignity and respect
- To the development of special arrangements for vulnerable cases, including unaccompanied minors.

More fundamentally, we urge Government and Opposition to put aside short-term political advantage and work together to solve this critical issue. The question for all of us must be faced. What sort of country and planet will our children, grand children and great grand children inherit, if current policies continue to be pursued?

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