



Refugee Council of Australia

SENATE SELECT COMMITTEE

RESPONSE TO THE INQUIRY INTO THE RECENT ALLEGATIONS RELATING TO CONDITIONS AND CIRCUMSTANCES AT THE REGIONAL PROCESSING CENTRE IN NAURU

The Refugee Council of Australia (RCOA) is the national umbrella body for refugees, asylum seekers and the organisations and individuals who work with them, representing over 200 organisations and more than 1000 individual members. RCOA promotes the adoption of humane, lawful and constructive policies by governments and communities in Australia and internationally towards refugees, asylum seekers and humanitarian entrants. RCOA consults regularly with its members, community leaders and people from refugee backgrounds and this submission is informed by their views.

RCOA welcomes the opportunity to make a submission to the Senate Select Committee's inquiry into the recent allegations relating to the conditions and circumstances at the regional processing centre in Nauru. RCOA's submission briefly addresses a few of the Select Committee's terms of reference and also outlines options for alternatives to the use of the offshore facilities on Nauru.

1. Memorandum of Understanding between Nauru and Australia

- 1.1. The MoU,¹ signed on 6 August 2013 and still in effect, states that both Australia and Nauru "will treat Transferees with dignity and respect and in accordance with relevant human rights standards." Sadly, this is not the case in operation, as there are several examples of breaches of human rights standards in the operation of the offshore processing facilities on Nauru. The Australian Human Rights Commission's 2014 inquiry into children in detention,² the recently released Moss Review³ and official monitoring visits from the UNHCR⁴ all uncovered evidence of asylum seekers being treated in a manner which does not accord with basic human rights standards, including a lack of safe and humane detention conditions, arbitrary detention of children and adults alike and reports of sexual and physical abuse.
- 1.2. The MoU also sets out a commitment to make "special arrangements ... for vulnerable cases, including unaccompanied minors." For unaccompanied minors and other children on Nauru, the aforementioned reports and investigations still found that issues of safety for children on Nauru were not being addressed appropriately. Indeed, there is no child protection legislation in Nauru, so it is unclear to RCOA how both parties to the MoU can guarantee that their commitment to protecting vulnerable asylum seekers and refugees, including children, can be effectively realised.
- 1.3. While the statements in the MoU purport to ensure the dignity and respect of people seeking protection in Australia who are transferred to Nauru, the reality does not fulfil this

¹ For the full MoU, see <http://dfat.gov.au/geo/papua-new-guinea/Pages/memorandum-of-understanding-between-the-government-of-the-independent-state-of-papua-new-guinea-and-the-government-of-austr.aspx>

² Australian Human Rights Commission 2014, *The Forgotten Children: National Inquiry into Children in Detention*, available at https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf.

³ Moss, Philip 2015, *Review into Recent Allegations Relation to Conditions and Circumstances at the regional Processing Centre in Nauru*, <https://www.immi.gov.au/about/dept-info/files/review-conditions-circumstances-nauru.pdf>.

⁴ UNHCR 2013, Monitoring Visit to the Republic of Nauru, <http://unhcr.org.au/unhcr/images/2013-11-26%20Report%20of%20UNHCR%20Visit%20to%20Nauru%20of%207-9%20October%202013.pdf>.

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commitment. These failures and the lack of safeguards in the offshore processing arrangements make the ongoing operation of the facility on Nauru untenable.

2. Response to allegations of abuse

- 2.1. It is the Refugee Council's view that the serious allegations of sexual assault and abuse on Nauru that precipitated the Moss Review were met with an inadequate response by the Australian Government. Then Immigration Minister Scott Morrison responded to the allegations by saying that the sexual abuse and assault allegations were of a "generalised nature" and then referred the allegations to the Immigration Department for an internal review.⁵
- 2.2. This response of an internal departmental review of the allegations on Nauru was completely inadequate given the serious nature of the complaints of abuse against women and children at an Australian-funded detention centre in a country that lacks a functioning child protection framework. While the Minister later initiated the Moss Review, this initial response was inadequate and inappropriate.
- 2.3. RCOA was also deeply troubled by the then Minister's response that offshore centre staff had been "allegedly engaged in a broader campaign with external advocates to seek to cast doubt on the Government's border protection policies." The Minister also responded to centre staff's allegations of abuse on Nauru by saying that the staff members were "headaching, [making] false claims and worse - allegedly coaching self harm and using children in protests".⁶
- 2.4. The Refugee Council finds this response both inappropriate and offensive. As the Committee will note, the Moss Review found that there was no evidence to substantiate the allegations of misconduct by the Nauru centre staff who were dismissed and accused of coaching self-harm. In fact, the Moss Review found that most staff were dedicated, professional and acted appropriately when presented with information about assaults or abuse.
- 2.5. The Government's inadequate response to the allegations of assaults and abuse is even more egregious when considered in light of the previous evidence that was made available to it via the Australian Human Rights Commission's Inquiry into Children in Immigration Detention earlier in 2014 and the many reports about the situations on Nauru conducted by reputable international agencies in 2013 and 2014.
- 2.6. The Australian Government's acceptance of the Moss Review's recommendations is welcome; however, RCOA is concerned about the Government's ability to implement these recommendations in full and in a timely manner.
- 2.7. The Moss Review identified deficiencies in conditions at the detention centre and noted that asylum seekers had raised concerns about their personal safety and privacy. It concluded that asylum seekers' safety should be considered paramount and that the Australian Government needs to do more in relation to infrastructure, policing and staffing, including ensuring that staff are properly trained on issues of personal safety and privacy for asylum seekers.
- 2.8. Given the limitations of the current offshore processing centre infrastructure, RCOA is concerned that the privacy and safety of all people detained there can never be genuinely prioritised. There are also legislative and regulatory deficiencies which will hamper the implementation of the Moss Review's recommendations, including the lack of a child protection framework in Nauru and the failure to conduct child protection checks for local staff employed by the Australian Government or by contractors on Nauru. This exposes asylum seekers to a higher risk of abuse.
- 2.9. Again, RCOA finds that these failures and the lack of safeguards in these arrangements make the offshore processing facility on Nauru untenable.

⁵ See <http://www.smh.com.au/federal-politics/political-news/detention-centre-child-sex-abuse-claims-number-in-dozens-20140930-10o7pv.html>

⁶ See the Minister's statements at <http://www.abc.net.au/news/2014-10-03/morrison-announces-review-into-asylum-seekers-sex-abuse-claims/5787758>

3. Competing objectives and futile results

- 3.1. RCOA regularly receives feedback about offshore processing since its revival in 2012, and this information is alarming in its consistency. It is apparent that there have been few improvements in either the physical conditions of detention or efficiency of refugee status determination in Nauru and also in Papua New Guinea. Indeed, conditions appear to have deteriorated in some cases and the mental health impacts of prolonged indefinite detention under harsh conditions have become ever more pronounced. Significant uncertainty remains regarding the ultimate fate of people who are found to be refugees after having their claims processed offshore. The two options nominated to date as solutions for these refugees (permanent settlement in Cambodia or Papua New Guinea) are still yet to be tested in practice and it is highly questionable whether they will prove to be effective, workable or sustainable.
- 3.2. There are a number of measures that the Australian Government could implement to mitigate some of the harm caused by offshore processing. These include exploring alternatives to detention, expediting the processing of refugee claims, addressing shortcomings in physical conditions and establishing independent oversight and transparency. So long as offshore processing is intended to act as a deterrent, however, RCOA is concerned that even these modest improvements will be difficult to achieve.
- 3.3. The threat of being sent to an offshore processing centre can only “work” as a deterrent if asylum seekers believe that what they are seeking in Australia – safety, humane treatment, a fair hearing, an opportunity to rebuild their lives and a secure future – will not be available to them in Nauru (and Papua New Guinea). In RCOA’s view, this creates a perverse incentive to maintain inhumane conditions. Efforts to limit detention, expedite processing of claims, improve physical conditions and provide durable solutions would in fact work against the policy’s intention, as offshore processing operates most effectively as a deterrent when detention is prolonged, processing is slow, physical conditions are harsh and the future is uncertain. In essence, the success of offshore processing depends on human suffering.
- 3.4. While RCOA would certainly welcome any efforts to alleviate the suffering of the people currently subject to offshore processing in Nauru, we believe that objective of deterring asylum seekers is irreconcilable with the objective of protecting asylum seekers. As such, we see no viable way forward for offshore processing and strongly recommend that it be abolished entirely.
- 3.5. The bipartisan commitment to offshore processing as an effective means of stopping people arriving by sea is also not based on sound evidence. After the revival of offshore processing in August 2012, the number of people who arrived by sea seeking protection more than trebled. In the financial year July 2012 to June 2013, a total of 25,173 people arrived by sea seeking Australia’s protection. This was over a 300% increase to the 7,983 people who arrived by sea seeking protection in 2011-12 (prior to the implementation of offshore processing on Nauru and Papua New Guinea).⁷
- 3.6. The evidence clearly points to offshore processing being ineffective as a means to stop people attempting boat journeys to Australia to seek protection. Maintaining this policy in the absence of any evidence to suggest that it is operating as the Government intends is pointless, misguided and cruel. RCOA finds this policy not only in breach of Australia’s international obligations but also a short-sighted and insular response to a global situation for the millions of people displaced by persecution and conflict.

⁷ See the Parliamentary Library publication *Boat arrivals in Australia since 1976* at http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1314/BoatArrivals#_Toc347230719

- 3.7. The Refugee Council strongly urges the Senate Select Committee to recommend the abolition of offshore processing, as the facilities in Nauru and Papua New Guinea cannot be sufficiently improved to guarantee the safety and human rights of the people towards whom Australia has a duty of care.

4. Alternatives to offshore processing

- 4.1. RCOA rejects that the current policies are the only options available to the Australian Government. The Prime Minister responded to the Moss Review report of concerns about asylum seekers' safety and possible abuse by saying that "things happen". He also said that "the most compassionate thing we can do is stop the boats. That's what we've done and those centres on Nauru and Manus are an important part of that."⁸
- 4.2. The Refugee Council finds this response offensive and also rejects the notion that "stopping the boats" but subjecting people to inhumane conditions is the most compassionate approach. RCOA finds that the Government's practices are creating and sustaining unsafe conditions for children and other people subject to its policies.
- 4.3. There are many practical measures that the Australian Government could take to restore humanity and fairness to Australia's asylum seeker policies and address the shortcomings of our current policy approach. These alternatives include:
- a) **Building regional cooperation on refugee protection** – Australia's current deterrence-based approach cannot present a sustainable solution to dangerous sea journeys because it does nothing to address the root causes of the problem. Flight by sea is more accurately characterised as a symptom of a much broader and more serious problem, namely the limited (and diminishing) access to effective protection for people fleeing persecution across much of the world and particularly in the Asia-Pacific region. There is an urgent need for coordinated international action to ensure that people fleeing persecution are able to reach places of safety and receive the protection and assistance to which they are entitled. As a wealthy nation which has ratified the Refugee Convention and has a long history of providing protection and support to refugees, Australia is ideally placed to lead this action in the Asia-Pacific region.
 - b) **Ending Operation Sovereign Borders** – The practices of forcibly preventing asylum seekers from entering Australian waters, screening claims at sea and casting asylum seekers adrift in fully-enclosed lifeboats all prioritise deterrence and enforcement at the expense of protection, failing to ensure safety of life at sea and placing asylum seekers at high risk of being returned to situations where they could face persecution or other forms of serious harm. The Government has repeatedly emphasised the strength of its resolve in implementing Operation Sovereign Borders and other deterrence-based policies. Should such resolve be applied to implementing a search-and-rescue response and building regional cooperation on refugee protection, significant protection dividends could be achieved without placing asylum seekers at such grave risk.
 - c) **Supporting asylum seekers in the community** – Community-based support arrangements offer a humane and cost-effective alternative to offshore processing and closed immigration detention. These arrangements must provide asylum seekers with adequate support to ensure that they are able to live safely in the community and meet their basic needs without facing undue hardship. Not only is this support essential to upholding the human dignity of asylum seekers, it is also necessary to facilitate their participation in the status determination process.
 - d) **Reinstating a robust refugee status determination system** – A robust refugee status determination process is essential to ensuring that asylum seekers are not erroneously denied refugee status and returned to situations where their freedom, safety or lives could be under threat, as well as to ensuring public confidence in government decision-making. Recent changes to Australia's refugee status determination process, however, are likely to achieve the opposite: they will create a far higher risk of inaccurate decision-making (in turn increasing the risk of asylum seekers

⁸ See 2GB's Ben Fordham's interview with the Prime Minister on 20 March 2015, available at <http://webstore.2gb.com.s3.amazonaws.com/audio/ben-fordham---sydney-live/201503/20-prime-minister-tony-abbott.mp3>

being returned to danger) and undermine the integrity of the assessment process. RCOA believes that a quality refugee status determination system provides the most effective mechanism for making the necessary distinctions between credible and unfounded refugee claims, while protecting asylum seekers from being returned to danger.

- 4.4. These alternatives would prioritise the safety and dignity of asylum seekers and refugees while also addressing the global and systemic issues of displacement and security. RCOA strongly believes that if the Australian Parliament focused its efforts on these alternatives, then people's lives would be saved: both at sea and from unnecessary suffering while under the care of Australia in taxpayer-funded offshore processing centres.

5. Recommendations

Recommendation 1

RCOA recommends that:

- a) Offshore processing of asylum claims be abolished and the detention centres in Nauru and Manus Island be closed;*
- b) All asylum seekers currently subject to offshore processing be returned to Australia for processing of their claims; and*
- c) All asylum seekers who have been found to be refugees after having their claims processed offshore be returned to Australia and granted permanent Protection Visas.*

Recommendation 2

In the absence of all of the above recommendation being considered, RCOA recommends that the Senate Select Committee commence discussion on whether offshore processing:

- a) Can be conducted in a way that guarantees the human rights of people subject to it;*
- b) Has sufficient evidence to substantiate its efficacy for the Government's desired outcomes;*
and
- c) Is a justifiable use of Australian taxpayer money.*