

Nauru
Submission 9

Labor for Refugees



NATIONAL CO-ORDINATING COMMITTEE

Select Committee on the recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru

APRIL 2015

TERMS OF REFERENCE OF THIS ENQUIRY

The Select Committee on the recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru is currently taking evidence and inviting submissions.

The committee is required to inquire into and report by 15 June 2015 on the responsibilities of the Commonwealth Government in connection with the management and operation of the Regional Processing Centre in Nauru, with particular reference to:

- a) how the Commonwealth Government is fulfilling its obligations under 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, cost and related issues;
- b) the performance of the Commonwealth Government in connection with the Centre, including the conduct and behaviour of the staff employed at the Centre, to the extent that the Commonwealth Government is responsible;
- c) the Commonwealth Government's duty of care obligations and responsibilities with respect to the Centre;
- d) the circumstances that precipitated the Moss Review, including allegations made regarding conditions and circumstances at the centre and the conduct and behaviour of staff employed by contracted service providers, the timing of the Commonwealth Government's knowledge of the allegations, and the appropriateness of the response of the Commonwealth Government to these allegations;
- e) factors relating to the timing of the release of the Moss Review;
- f) the response of the Commonwealth Government to the recommendations of the Moss Review, including timelines for implementation; and
- g) any related matters.

HEALTH CARE FOR ASYLUM SEEKERS ON NAURU

Labor for Refugees has long had concerns about the standard of health care and mental health care provided to refugees and asylum seekers in detention centres. IHMS is contracted to provide health services but their services are inadequate and in many cases negligent. Health services in detention centres need to be urgently upgraded or the centres closed down.

Some examples of poor care...

<http://www.abc.net.au/news/2014-07-31/detention-centre-inquiry-hears-claims-of-immigration-cover-up/5637654>

<http://www.abc.net.au/lateline/content/2011/s3381741.htm>

From the Forgotten Children Report of 2014
<https://www.humanrights.gov.au/publications/forgotten-children-national-inquiry-children-immigration-detention-2014/6-mothers-and>

Concern by the Medical Journal of Australia about standards of care in immigration detention
<https://www.mja.com.au/journal/2014/201/7/ethical-challenges-doctors-working-immigration-detention>

The Australian College of Nursing and the Maternal Child and Family Health Nurses of Australia express concern about children at risk in detention centres, Note their submission at the end of the Press Statement
http://acn.edu.au/sites/default/files/media/2014/child_detention_centers_risk.pdf

With respect to the provision of health services for asylum seekers on Nauru I draw your attention to the Paper written by Rebecca De Boer for the Parliamentary Library, 28 June 2013. The full pdf of this Paper is available on the following link and should be read by all members of the Enquiry.

<http://apo.org.au/research/health-care-asylum-seekers-nauru-and-manus-island>

As Rebecca De Boer states in her Introduction

“With the recent return to processing of asylum seekers in Regional Processing Centres (RPCs) on Nauru and Manus Island, a major concern for refugee advocates and human rights groups is the mental health status of asylum seekers being accommodated in these facilities. This concern stems from the perceived lack of specialist mental health resources available and the indefinite nature of detention. Previous experience has shown that offshore processing of asylum seekers can have serious consequences for both physical and mental health.

Amnesty International raised concerns about the physical health of asylum seekers in its November 2012 review of the Nauru Offshore Processing Facility, as conditions in the processing centres, such as heat, lack of shade and inadequate accommodation, were considered to be contributing to poor physical health. More recently, the ABC program Four Corners highlighted the conditions in the Nauru and Manus Island processing centres, and the concerns of former staff about access to health care and the health status of asylum seekers in this context.

As at 27 May 2013, there were 430 asylum seekers on Nauru and 302 on Manus Island. The combined total capacity of the facilities on Nauru and Manus Island is expected to reach around 2,100 by the end of 2013 (600 on Manus Island and 1,500 on Nauru). Current capacity is 500 on Manus Island and 528 on Nauru.

The provision of health care to asylum seekers on Nauru and Manus Island is governed by the 'Heads of Agreement' between the Commonwealth of Australia (represented by the Department of Immigration and Citizenship (DIAC)) and International Health and Medical Services (IHMS) (the contract). The contract was tabled in the Senate on 21 September 2012, with the payment schedule and financial details redacted. Despite this, some financial details are known, such as that IHMS will be paid \$22 million for the provision of health care for six months from 14 December 2012. The contract was not published online and is only available from the Senate Table Office. In the absence of an online document, this background note will set out the key clauses of the contract and examine their adequacy in providing for the mental and physical health needs of asylum seekers being detained in RPCs.

IHMS has provided health care services in immigration detention facilities in Australia since 2006. As at March 2012, the value of the two contracts with IHMS (one for a six year period covering services for Christmas Island and one for a five year period covering the mainland) was estimated to be \$769.3 million. In 2010–11 more than 100,000 individual health services were delivered in immigration detention facilities. The number of IHMS community-based health service providers increased by 40 per cent to more than 700 in 2010-11. These providers deliver services to the community detention network on behalf of IHMS. There is no provision in the contract to penalise the organisation for underperformance.

In May 2013, the Government announced that families who arrive by boat would be considered for bridging visas in the community, but would be subject to the same 'no advantage' principle as those held on Nauru and Manus Island. It is likely that these asylum seekers will not have the same access to health care services as those on Nauru and Manus Island, as they will not have access to Medicare and it does not appear that DIAC has a specific contract for the provision of health care services to this group in Australia. Exploration of this issue is outside the scope of this paper."

LABOR FOR REFUGEES ALSO DRAWS THE ATTENTION OF THIS SENATE ENQUIRY TO THE FOLLOWING STATEMENTS OF THE ROYAL AUSTRALIAN COLLEGE OF PHYSICIANS AND THE AUSTRALIAN COLLEGE OF EMERGENCY MEDICINE IN THEIR STATEMENT ISSUED AUGUST 2013...

Statement on the health of people seeking asylum

Key points

The Royal Australasian College of Physicians believes that:

- Health is a basic human right of all people, including those seeking asylum.
- Conditions in off-shore detention facilities and regional processing centres compromise the right to health of asylum seekers.
- Prolonged detention has severe detrimental effects on health that can be long term.
- Detaining children can have profound negative impacts on the health and development of an already highly vulnerable group.
- Urgent attention to the health of people seeking asylum is required.

The Royal Australasian College of Physicians (RACP) considers unequivocally that the right to health is a fundamental human right. Health is defined by the World Health Organization as “a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity”.¹

The United Nations Committee on Economic, Social and Cultural Rights’ recognises that health is influenced by many determinants, including food, nutrition, housing, water and sanitation and a healthy environment.²

The RACP is concerned that Australia is in breach of its obligation to respect health as a human right, as provided for in the relevant international instruments to which Australia is a signatory, by prolonged detention of people seeking asylum.³ This is especially relevant with respect to the health of those detained in off-shore detention facilities and the regional processing centres located on Manus Island in Papua New Guinea (PNG) and Nauru. This is an increasingly urgent issue, with 8521 people, including 1731 children, in Australian immigration detention facilities or alternative places of detention at 31 May 2013.⁴

The RACP is particularly concerned that detention of children seeking asylum is contrary to Australia’s human rights obligations. Australia is a signatory to the United Nations *Convention on the Rights of the Child*, which notes specifically the rights of children to be protected from discrimination based on their parents opinion, that the best interests of the child will be a primary consideration, and that children have rights to health, education, play, and rights to protection from physical and mental violence, injury, abuse, neglect and maltreatment.⁵

While the Australian Government has committed to providing health care services that are “broadly comparable with health services available within the Australian community”,⁶ the RACP is concerned that this standard is often not met due to environmental factors in regional processing centres located in PNG and Nauru. People seeking asylum who are detained in these facilities are exposed to a number of environmental and infrastructural deficiencies which adversely affect their health, such as:

- A lack of adequate health services in remote and offshore detention facilities.^{7,8}
- A limited capacity to receive adequate psychiatric care, which is especially important given many people seeking asylum are survivors of torture and/or trauma^{9,10} and that detention is proven to have a detrimental impact on the mental health of detainees.¹¹⁻²⁰
- A lack of engaging and meaningful activity, such as education and employment opportunities.
- An increased risk of many communicable diseases including multi-drug resistant tuberculosis, typhoid and hepatitis A in PNG.²¹ The increased risk of tuberculosis is particularly problematic for a population group with high levels of latent tuberculosis infection, with evidence indicating that 27 to 55 per cent of refugee/asylum seeker background cohorts in Australia have latent tuberculosis infection.²² Latent infection increases the chance of reactivation and development of active tuberculosis disease, and close living conditions will only amplify this risk.
- Malaria is of particular concern as reports indicate that 94 per cent of the PNG population is at high risk of transmission of malaria.²³ The most common form of malaria in PNG, plasmodium falciparum, has a high mortality rate. There is therefore a potential risk of death for pregnant women and young babies for whom preventive treatment is unsafe.²⁴ Standard environmental avoidance measures such as repellent sprays, treated mosquito nets and staying inside after dusk are challenging in temporary accommodation settings such as tents.
- A lack of access to clean drinking water, particularly on Nauru.²⁵ The health consequences of an inconsistent supply of clean water are especially concerning.

- A lack of medical accountability, exacerbated by the absence of performance measures to assess the appropriateness and standard of care being provided.²⁶
- Limited capacity for health care professionals to act autonomously and in the best interests of the patient.

There is a large body of evidence to suggest that prolonged detention, particularly in isolated locations with poor access to health and social services combined with an uncertainty as to the outcome asylum seeker claims, has severe and detrimental effects on health outcomes. These long term effects include damage to social and emotional functioning, especially in those who have experienced torture or trauma, and the worsening of existing mental health problems.

The RACP has particular concern for children and young people seeking asylum who are in detention. Children and young people have generally not made the decision to seek asylum independently, and are being deprived of their liberty as a result.

The RACP recognises that children and adolescents seeking asylum are particularly vulnerable to the effects of detention. Australia's Human Rights Commission has found that "many children in detention have suffered from a range of mental health problems including anxiety, bed-wetting, nightmares, emotional numbing, hopelessness, disassociation, and suicidal ideation".²⁷ There is also strong evidence to indicate that detention, especially for prolonged periods, has a profound negative impact on children's development.²⁸

Health problems will be exacerbated for those children held in off-shore detention facilities or the regional processing centres located on Manus Island and Nauru. The RACP is extremely concerned for the health and welfare of children seeking asylum who arrive in Australia without a visa, given recent announcements that they will be detained in regional processing centres on Manus Island and Nauru.^{29,30}

Child health screening is a specific area of concern. The detention health check is analogous to the offshore visa health assessment,³¹ which includes only a medical assessment (but no specific health screening) for children aged less than 11 years. In Australia, post arrival refugee health screening is recommended in addition to offshore screening.^{32,33} The limited nature of current detention health assessments is not appropriate for the long-term health care needs of asylum seekers, especially children.

Access to immunisation is a significant determinant of health, and children who are held in regional processing centres on Manus Island and Nauru will not have access to appropriate vaccinations as per Australia's immunisation schedule. The PNG and Nauru immunisation schedules do not include key vaccinations such as mumps, varicella, human papilloma virus or pneumococcal vaccines recommended by the Australian Immunisation Schedule.³⁴⁻³⁶ It is unclear how issues regarding access and cost will be addressed. The issue of vaccine delivery including maintaining a 'cold chain' is also a challenging one. Large numbers of people living in close proximity presents a real risk for transmission of vaccine preventable diseases.

Maternal, newborn and child health are additional areas of concern for those detained on Manus Island and Nauru. Significant resources will be required for antenatal, newborn and early childhood health care in countries where the under five years mortality is 40/1000 (Nauru)³⁷ and 58/1000 (PNG)³⁸ and the maternal mortality rate is 230/100,000 births (PNG)³⁹.

The health concerns for children seeking asylum are exacerbated for unaccompanied minors who experience the burden of detention without familial support.⁴⁰ A key issue impacting on the wellbeing of unaccompanied minors seeking asylum is the automatic appointment of the Minister of Immigration as their legal guardian. In this capacity, the Minister is responsible for protecting the child and their best interests, however the Minister is also responsible for placing children in immigration detention.

The RACP considers that immigration detention is not in the best interests of any child, and echoes concerns that there is a potential conflict between these dual responsibilities.⁴¹

To ensure Australia adheres to its international human rights obligations, the RACP calls for:

- An increase in the capacity for placing children or adolescents and their families in community residence, and for this to be the standard model of care for all children. Under no circumstances should children be separated from their families.
- No children to be held in regional processing centres on Manus Island and Nauru.
- The immediate transfer of children seeking asylum and their families to a community setting.
- The establishment of an independent mechanism for the oversight and management of health care services available in off-shore detention facilities and regional processing centres.
- The establishment of an advisory group within the Department of Immigration and Citizenship Detention Health Branch to review the health and rights of children seeking asylum.
- The appointment of an independent legal guardian to protect the best interests of unaccompanied minors.
- Immediate and sustained efforts to improve the efficacy and speed of the refugee status assessment process for all detainees to eliminate prolonged detention.

About The Royal Australasian College of Physicians (RACP): The RACP trains, educates and advocates on behalf of more than 14,000 physicians – often referred to as medical specialists – and 6,000 Trainee members across Australia and New Zealand. The College represents more than 32 medical specialties including paediatrics & child health, cardiology, respiratory medicine, neurology, oncology and public health medicine, occupational & environmental medicine, palliative medicine, sexual health medicine, rehabilitation medicine and addiction medicine.

Beyond the drive for medical excellence, the RACP is committed to developing health and social policies which bring vital improvements to the wellbeing of patients. www.racp.edu.au

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LABOR FOR REFUGEES SUBMISSION

Labor for Refugees opposes mandatory detention of all asylum seekers arrivals for any longer than necessary to perform security and health checks.

Labor for Refugees opposes offshore processing of refugees and calls for **THE IMMEDIATE CLOSURE OF NAURU AND MANUS ISLAND.**

Labor for Refugees Policy to be presented to the National Conference of the ALP in 2015 that is relevant to the Terms of Reference of this Enquiry states as follows. Take note that this is the policy of Labor for Refugees not the Australian Labor Party or the Federal Parliamentary Caucus and refers to what Labor for Refugees believes national policy of the Australian Labor Party should be:

ONSHORE/OFFSHORE PROCESSING AND PREVENTION OF DROWNINGS

SECTION 154 ALP NATIONAL POLICY

LABOR IN GOVERNMENT WILL ENSURE THAT:

- *asylum seekers will not be punished for their mode of arrival*
- *asylum seekers who arrive by air or by sea will be treated the same when it comes to the processing of their claims and access to support while on bridging visas.*

Claims to protection made in Australia will be assessed by Australians on Australian territory.

(PLEASE NOTE these clauses above are taken from paras 153, 157 and 160 of the current ALP Platform, Chapter 9)

Labor will increase the humanitarian intake of refugees from source and transit countries.

Labor will establish pathways to resettlement from Indonesia and will assist with the processing of refugees in Indonesia and the region. To this end, Labor will create a new category of visa for humanitarian resettlement of refugees located in countries within our immediate region. This visa will be open for application by refugee claimants in those countries and will be processed by Australians in the Australian Embassy and will be processed in a manner consistent with processing protection visa applications in Australia.

Such visas may be subject to resettlement in suitable rural and regional areas and work on projects of public benefit for a specified period of time.

Labor will de-link the number of sponsored places for family reunion, including split family members, under the Refugee and Humanitarian quota, from the number of refugees accepted among irregular maritime arrivals.

Labor will work collaboratively and constructively with neighbours in our region to find solutions to refugee movement and protection. A process outside the Bali Process [noting that the Bali Process focuses on criminality and not humanitarian objectives] will be used to extend, through inter-country cooperation, access to protection and resettlement for refugees. This includes accelerated processing and support for refugees and asylum seekers living in the region, including access to housing, health, education and employment. Enduring solutions will be found which enhance protection and minimize harm to vulnerable people.

Labor will use the money saved by way of onshore processing of refugees for a range of other considerations, including funding to UNHCR, building facilities for processing and settlement of refugees in the community.

Labor will bring all asylum seekers who have been turned away from our country without having their claims assessed in Australia to Australia for processing and, if refugee status is granted, ensure their settlement in Australia.

PROTECTION AND HUMANITARIAN ASSISTANCE

156 Labor will treat people seeking our protection with dignity and compassion and in accordance with our international obligations and core Australian principles of fairness and humanity.

157 Australia will comply with the non-refoulement and all other protection obligations we have voluntarily assumed in signing the Refugee Convention and other relevant international instruments and actively engage in the work of the United Nations High Commission for Refugees and other relevant international and regional agencies.

Labor will dismantle the architecture of excision and end the associated non-statutory processing of applications for protection visas.....

(Section 157 cont'd)

Labor recognises that, under the Refugee Convention, asylum seekers have the right to seek protection and asylum.

Labor will ensure that asylum seekers who arrive by irregular means will not be punished for their mode of arrival.

IMMIGRATION DETENTION POLICY – HUMANITARIAN VISA APPLICANTS

DETENTION AS A LAST RESORT

164 Detention in an immigration detention centre is only to be used as a last resort and for the shortest practicable time. Therefore, Labor will only detain humanitarian visa applicants where a need is established. Labor is opposed to indefinite detention, including for those who are deemed to be stateless.

165 Where adult humanitarian visa applicants are detained for the purposes of health, identity and security checks, detention will be capped at a maximum of 90 (ninety) days. After the expiration of their detention period, they will be granted bridging visas while the merits of their application are assessed.

Children in Detention

166 Children will not be placed in immigration detention centres on principle. They will be allowed into the community on bridging visas while their refugee status is assessed. Where possible, their families will also be granted bridging visas.

Where adult asylum seekers arriving by sea are detained for the purposes of health, identity and security checks, detention will be capped at a maximum of 30 days unless a Court determines otherwise. They, together with their families, will then be granted bridging visas while the merits of their application for refugee status are assessed.

Conditions of Detention

167 In compliance with our international human rights obligations, Labor will abolish indefinite and arbitrary detention.

168 Detained humanitarian visa applicants will have the right to a standard of living adequate for their health and wellbeing, including food, clothing, and medical care.

169 No person in immigration detention will be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

170 Recommendations of the Australian Human Rights Commission will be given serious consideration.

Review of Detention

The length and conditions of detention, including the appropriateness of both the accommodation and services provided, will be subject to regular review by an independent state judicial officer who independent of the Commonwealth Government.

Detention will not be excluded from judicial review.

Refugees will be detained for security reasons only if they are judged to be a threat to Australia's security and not because they have taken part in conflicts on foreign territory against foreign governments.

All such detention will be subject to regular judicial review.

Health and mental health

Labor is committed to the health, mental health and well-being of all refugees and asylum seekers and will not introduce policies or maintain policies detrimental to their well-being.

- Where a refugee or asylum seeker shows signs of mental illness, Labor will ensure that they receive treatment of the same standard accorded to Australian citizens*
- Labor will ensure that detention facilities maintain the health, mental health and well-being of all asylum seekers.*

The management of immigration detention centers will remain with private sector management only for the term of the current contracts. A government evaluation to determine the future form of detention facility and detention services management will be commenced no later than two years prior to the end of the term of the current contracts. The evaluation process must take into account the views of all stakeholders, including the relevant trade unions.

Recognising the inequities of the policy of charging immigration detainees a daily maintenance rate while in immigration detention, Labor has extinguished such detention debts and will oppose any attempts to reinstate this practice. Labor supports existing Specialized and tailored government services for those most in need to connect new arrivals to Australian society and to ensure that there is a seamless transition to mainstream services provided for by other levels of government.

Labor will review the financial and other assistance to people coming to Australia under the Special Humanitarian Program to better address instances of financial hardship.

- 1 World Health Organisation (1946) *Constitution of the World Health Organisation*
<http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf>
- 2 United Nations Committee on Economic, Social and Cultural Rights (2000) *General Comment 14: The right to the highest attainable standard of health*
[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/40d009901358b0e2c1256915005090be?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/40d009901358b0e2c1256915005090be?Opendocument)
- 3 Australia is a signatory to the United Nations Human Rights Commission's *Convention and Protocol relating to the Status of Refugees* and the *Universal Declaration of Human Rights*, both of which impart obligations on Australia to respect the right of all people to seek asylum and to respect and uphold the human rights of people seeking asylum.
- 4 Department of Immigration and Citizenship (2013) *Immigration Detention Statistics Summary 31 May 2013* <http://www.immi.gov.au/managing-australias-borders/detention/pdf/immigration-detentionstatistics-may2013.pdf>
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http://www0.health.nsw.gov.au/policies/pd/2011/pdf/PD2011_014.pdf
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http://www.humanrights.gov.au/sites/default/files/content/human_rights/children_detention_report/report/PDF/alr_complete.pdf
- 12 Human Rights and Equal Opportunities Commission (1998) *Those who've come across the seas: Detention of unauthorised arrivals*
<https://www.humanrights.gov.au/publications/those-who've-come-across-seas-detentionunauthorised-arrivals-1998>
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- 16 Robjant, K., Hassan, R. & Katona, C. (2009) Mental health implications of detaining asylum seekers: systematic review. *British Journal of Psychiatry* 194(4): 306-12
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- 36 Australian National Immunisation Program Schedule
<http://www.immunise.health.gov.au/internet/immunise/publishing.nsf/Content/nips-ctn>
- 37 World Health Organisation Country Profile: Nauru
<http://www.who.int/countries/nru/en/>
- 38 World Health Organisation Country Profile: Papua New Guinea
<http://www.who.int/countries/png/en/>
- 39 *ibid*
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