

Submission to the Senate Legal and Constitutional Affairs Legislation Committee

The Migration Amendment (Evacuation to Safety) Bill 2023

We support the Migration Amendment (Evacuation to Safety) Bill 2023. We have long been extremely concerned about the inhumane policy of transporting people seeking asylum who arrived in Australia by boat to offshore sites of detention. The harms that this policy has caused, under various governments, are profound. Some people have lost their lives,¹ and many have suffered the enormous mental and physical health consequences of many long years remaining in detention and detention-like conditions on Nauru and Manus Island, awaiting protracted third-country resettlement opportunities. Delays in securing options for third-country resettlement remain. The resistance and struggle of all who have been subjected to this inhumane system must be recognised, and the people remaining in Nauru and Papua New Guinea should be allowed to come to Australia while they await resettlement options.

The United Nations High Commissioner for Refugees has been clear that despite transferring people to regional processing countries, Australia remains responsible at international law for these individuals.² There is also a large and growing body of evidence that the impact of many years of uncertainty combined with difficult conditions on Manus Island and Nauru has been harmful and violates Australia's international human rights obligations. It has been the subject of criticism of United Nations human rights organisations,³ media reports,⁴ parliamentary inquiries,⁵ and the many accounts from people who have been left in limbo on those islands.⁶

We have also borne witness to the harmful impacts of long term, indefinite detention through our visits to various Australian sites of immigration detention, and through the experiences that have been shared with us over the past twenty years by people from asylum seeking backgrounds.⁷

It is clear from the experiences of those who were brought to Australia under the Medevac legislation, which the Australian Labor Party supported, that being released from long term detention into community detention and receiving medical care in Australia is critical for people to be able to commence mental and physical health healing processes. However, while community detention in Australia is seen as an improvement on the conditions faced in Nauru and Manus Island, restrictions

¹ As of 19 July 2022, the number of people who have died in Australia's care in offshore detention on Papua New Guinea and Nauru was 14, see <https://www.hrlc.org.au/timeline-offshore-detention>.

² See <https://www.unhcr.org/en-au/news/briefing/2018/10/5bc059d24/unhcr-urges-australia-evacuate-off-shore-facilities-health-situation-deteriorates.html>

³ See <https://www.unhcr.org/en-au/united-nations-observations.html>

⁴ For example, see <https://www.theguardian.com/news/series/nauru-files>

⁵ For example, see Parliament of Australia, Legal and Constitutional Affairs Committee, 'Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre', 21 April 2017, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/NauruandManusRPCs/Report

⁶ For example, see <https://www.theguardian.com/profile/behrouz-boochani>

⁷ For example, see C. Fleay, 'Repeating Despair on Nauru: The Impacts of Offshore Processing on Asylum Seekers', 2012; C. Fleay & L. Briskman, 'The Hidden Men: A Report to the Minister for Immigration and Citizenship on Visits to the Curtin Immigration Detention Centre', November 2012.

on peoples' liberties are still enforced, including a lack of access to study and work rights.⁸ Reports highlight the negative psychological impact of people being in long-term community detention, as well as the challenging transition process for unaccompanied children in community detention who reach the age of 18.⁹ Community detention should only be used as a short-term solution.

The remaining 150 refugees and people seeking asylum in Nauru and Papua New Guinea must be brought to Australia and receive the medical and psychological care they urgently need while awaiting a third country resettlement option. This will enable people to take the first step to rebuilding their lives. The Migration Amendment (Evacuation to Safety) Bill 2023 will allow this to happen.

Associate Professor Caroline Fleay, Centre for Human Rights Education, Curtin University

Associate Professor Mary Anne Kenny, Murdoch School of Law, Murdoch University

Associate Professor Lisa Hartley, Centre for Human Rights Education, Curtin University

24 February 2023

⁸ Hartley, L., Fleay, C., Baker, S., Burke, R., & Field, R. People seeking asylum in Australia: Access and support in higher education. National Centre for Student Equity in Higher Education, Curtin University, Perth: Western Australia, 2018, 14. https://www.ncsehe.edu.au/wp-content/uploads/2018/11/Hartley_PeopleSeekingAsylum.pdf

⁹ Australian Human Rights Commission, Lives on hold: Refugees and Asylum Seekers in the 'Legacy Caseload', 2019, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>; Hartley, L. & Fleay, C. Policy as Punishment: Asylum Seekers in the Community without the Right to Work, *Australian Policy Online*, 18 February 2014, <http://apo.org.au/research/policy-punishment-asylum-seekers-community-without-right-work>