



SENATE STANDING COMMITTEES ON LEGAL AND CONSTITUTIONAL AFFAIRS

INQUIRY INTO THE MIGRATION AMENDMENT (EVACUATION TO SAFETY) BILL 2023

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

The Refugee Council urges Federal Parliamentarians to support this Bill to evacuate people held in offshore processing to safety while they wait for a durable solution. This Bill sets out a constructive option, consistent with the policy settings of the Albanese Labor Government, which would ensure that people are able to get the medical treatment and mental health support that they require. This Bill will compel the Government to offer transfer to Australia to all persons subject to offshore processing still in Papua New Guinea (PNG) or Nauru who are not subject to an adverse security assessment by the Australian Security Intelligence Organisation (ASIO).

Those people who accept the Government's offer would be transferred to Australia and placed in community detention, where they will remain until they are provided with a durable third-country solution with a state party to the United Nations' 1951 Convention Relating to the Status of Refugees or the 1967 Protocol relating to the Status of Refugees.

The 140 people who remain on Nauru and in PNG have spent almost 10 years suffering in inhumane conditions, separated from their families and starved of hope for the future. We have been advocating constantly with the Australian Government to urgently transfer individuals with significant and serious medical conditions. The physical and mental health conditions of people in this situation present an overwhelming case for their transfer to Australia for urgent care.

The Bill ensures that people transferred would meet all security clearances and would be in Australia while third country resettlement options are progressed. This is in line with the ALP's position to negotiate third country resettlement options and its desire to reduce the number of people held in offshore processing places to zero by the end of 2023.

The legislation outlines a straightforward way in which the remaining people can be brought to Australia and supported while they continue to wait for a durable solution. Since July 2013, when the Australian Government announced that no one who arrived by boat would settle in Australia, 3,000 people have been subjected to this abhorrent policy. People subject to this have experienced assault, harassment, rape, abuse, and 15 people have died, including by murder, suicide and medical negligence.

Australia has spent over \$9.5 billion dollars in the past decade to warehouse people in remote islands, removed from our sight but not from the hearts of millions of Australians. It is time to bring them to safety and we urge all Parliamentarians to support this Bill.

1 The human and economic costs of Australia's offshore processing policy

Destructive impacts on people subject to the policy

[Hamid Khazaei] had an infection in his body for six months! Without his requests for proper treatment being acted upon, he became witness to the poisoning of his own body. One day he fell down and lost his balance. The day after that he had to sit in a wheelchair. On the third day he could not even sit in the wheelchair. On the fourth day he lost his ability to talk. On the fifth day he was on a plane and on the sixth day he lost his life - the doctors could not help him.

— Behrouz Boochani, *Freedom, Only Freedom*.

- 1.1 The violence linked to offshore processing — including medical neglect, sexual abuse, child abuse, inhumane treatment, suicide and murder — has been extensively documented. The Kaldor Centre Policy Brief 'Cruel, Costly and Ineffective: the failure of offshore processing in Australia' argued that there were “strong grounds to conclude that the cruelty, suffering, abuse and neglect experienced by which asylum seekers and refugees in Nauru and PNG [is] *deliberate and systemic*”. Rather than incidental, “exposure to harsh and cruel conditions [is] an inherent part of the implementation and purpose of the 'Australian model' of offshore processing”.¹
- 1.2 Of the 3,127 people sent to offshore processing arrangements after arriving in Australia from 19 July 2013 to seek asylum, only around 140 people currently remain in Nauru and Papua New Guinea. The physical and mental health conditions of people in this situation present an overwhelming case for their transfer to Australia for urgent care. Many of those who remain are too unwell to be able to make informed decisions about settlement in a third country as a result of witnessing and being subject to the persistent violence of the offshore processing system for over nine years. Evacuating them to Australia where they can access urgent support is necessary to end this violence and enable them to make future-focused decisions.

Economic cost

- 1.3 The Australian Government has spent over \$9.5 **billion** dollars in the past decade to maintain its offshore processing policy of warehousing people in islands in the Pacific. Figures published by the Department in its annual Portfolio Budget Estimates from 2013-14 financial year to the 2022-23 financial year total \$9.65 billion (*figure 1*).² This is likely to be an underestimate because it only counts costs that the government directly attributes to the offshore processing policy and not, for example, aid and development assistance that was promised to Nauru and PNG to secure the arrangements, or to Cambodia to resettle seven refugees.³

¹ Madeline Gleeson and Natasha Yacoub, 'Cruel, costly and ineffective: The failure of offshore processing in Australia', *Kaldor Centre for International Refugee Law*, 2021,

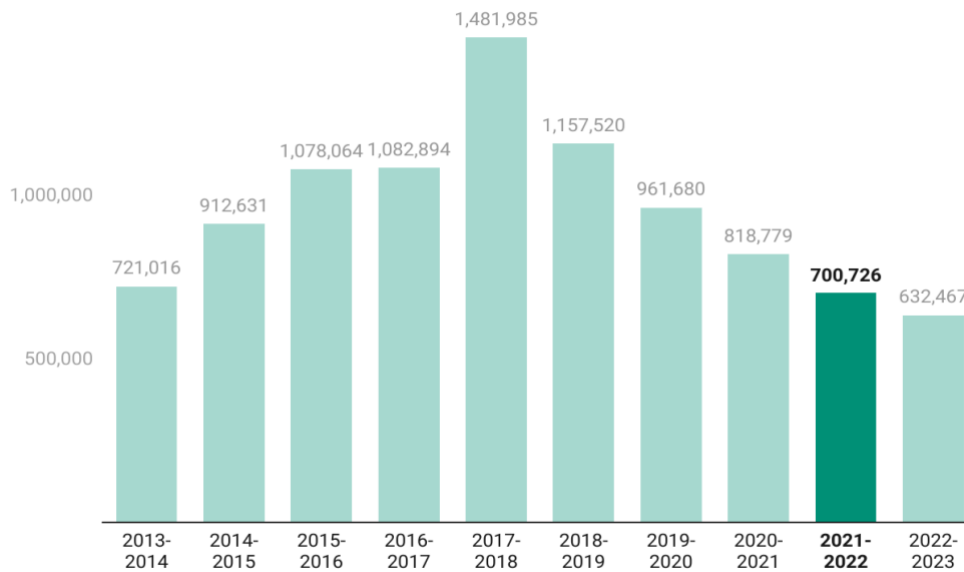
https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy_Brief_11_Offshore_Processing.pdf

² See Refugee Council of Australia, *Offshore Detention Statistics*, <https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/6/>

³ Nicole Hasham, 'Blow to Australia's \$55 million Cambodia deal as two more refugees quit', *The Sydney Morning Herald*, 2016, <https://www.smh.com.au/politics/federal/blow-to-australias-55-million-cambodia-deal-as-two-more-refugees-reportedly-leave-20160308-gnda8q.html>

Costs of offshore processing management (Budget)

\$'000.



Estimated actual expenditure under Program 1.4/2.4 Offshore Management, other than for latest financial year (projected)

Chart: Refugee Council of Australia • Source: Department of Home Affairs/Immigration • Created with Datawrapper

- 1.4 This not only demonstrates the high financial costs Australian taxpayers are paying to maintain this punitive policy but also the production of an industry which has been profitable for private security companies. Over \$2.5 billion has been paid to Broadspectrum alone, a contractor that previously supplied services on both Manus Island, PNG and Nauru. In January 2023, it was reported that the Australian government awarded a \$422 million contract to an American company, Management and Training Corporation (MTC), to ‘manage’ fewer than 70 people on Nauru for the next three years.⁴ Offshore processing continues to generate massive profits for companies invested in a system that has perpetuated harm and abuse.

2 Australia’s responsibility for those in PNG

- 2.1 Importantly, section 199A of the proposed Bill includes people who are subject to offshore processing and are either in Nauru or PNG for transfer to Australia. Despite what the Australian Government may claim, people who are still in PNG remain under the responsibility of Australia, both legally and morally. In October 2021, the Morrison Government announced that it was ending its Memorandum of Understanding with PNG for offshore processing in the country. In ending the offshore processing agreement with PNG, the Morrison Government argued any people remaining in country were the responsibility of the PNG Government.
- 2.2 However, we dispute this claim. Under international law, Australia still remains responsible for refugees sent to offshore processing in PNG. In its December 2022 report on Australia, the United Nations Committee Against Torture reiterated that Australia maintains responsibility for people transferred to PNG, ‘because, inter alia, they were transferred by the State party to centres run with its financial aid and with the involvement of private contractors of its choice.’⁵ For the same reasons, Australia also bears moral responsibility for refugees held in PNG.

⁴ Ben Doherty and Christopher Knaus, ‘US operator accused of ‘gross negligence’ wins \$420m contract to manage Australia’s asylum processing on Nauru’, *The Guardian*, 2023, <https://www.theguardian.com/australia-news/2023/jan/28/us-operator-accused-of-gross-negligence-wins-420m-contract-to-manage-australias-asylum-processing-on-nauru>

⁵ United Nations Committee Against Torture, *Concluding observations on the sixth periodic report of Australia*, 2022, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FAUS%2FCO%2F6&Lang=en

- 2.3 It is welcome to see this Bill acknowledge Australia's responsibility for those who remain in PNG, by including them as people who are eligible to be brought to Australia.

3 Consistency with the Australian Labor Party National Platform

- 3.1 The Australian Labor Party's National Platform sets out its commitment to a range of refugee policies.⁶ This Bill is entirely consistent with the ALP's commitments, and therefore should be seriously considered by the Labor Government. In its 2021 National Platform, the ALP stated that:

Labor recognises that successive Coalition Governments have failed to negotiate viable and timely regional resettlement arrangements, which has left refugees and asylum seekers including children languishing in indefinite detention. Labor believes that whilst these arrangements are negotiated, the Australian Government is not absolved of its obligation to provide appropriate health, security, and welfare services to asylum seekers. Labor will:

- *Work to negotiate on, and agree to, regional resettlement arrangements and **resettle eligible refugees as a priority**;*
 - *Continue to **support the United States Refugee Resettlement Agreement** and **accept New Zealand's generous offer** to resettle refugees by negotiating an agreement on similar terms as the United States Agreement; and*
 - *Ensure **appropriate health, security, and welfare services** for asylum seekers; and*
 - *Improve the **medical transfer process**, establish an Independent Health Advice Panel to provide medical advice and maintain ministerial discretion in all decision making.*
- 3.2 This Bill will assist in achieving this commitment. This Bill will support people to take up offer of third country resettlement (such as to the United States or New Zealand). People remaining in Nauru and PNG continue to suffer from mental and physical health concerns. These conditions inhibit their ability to engage in third country resettlement and consider resettlement options. Bringing them to Australia for healthcare will enable them to better engage with offers of resettlement elsewhere.

4 Recommendation

The Refugee Council of Australia recommends that Parliament pass this Bill.

⁶ Available at www.alp.org.au/about/national-platform/