

**Submission to the Senate Legal and Constitutional Affairs References Committee Inquiry into
Allegations of abuse, self-harm and neglect of asylum seekers in Regional Processing Centres**

Tim McKenna

Executive Summary

This paper contends that multiple other submissions to this inquiry will confirm the abuse and neglect of people on Nauru and Manus, the factors contributing to it and the deficiencies in the response of the Commonwealth to this situation. So the purpose of this submission is to recommend some initial actions, still within current policy guidelines, which would improve the situation for these people, but which are unlikely to risk the control of our borders.

The submission starts with the strong evidence from a recent paper by Brennan et al that it is the turning back of the boats that stops the boats, and that our unsafe and indefinite exile of people is now unnecessary. I suggest that without some change to the Government's approach, in three years time 1500 men, women and children will still be in PNG and Nauru in a worse condition. That change needs to start now.

I note that the Government rejects policy change such as that proposed by Brennan et al because it might encourage people smugglers to resume their trade. And I assume that the Government is reluctant to take any risks that might result in that outcome. However, I propose some first steps towards implementing Brennan et al's proposals that **remain within the existing policy** but address the urgent problems. These steps are low risk and are unlikely to re-start the arrival of boats, because the policy towards them remains the same. The boats will still be turned back, or if that is unsafe, the people will still be sent to Nauru.

In relation to the Provision of Support Services in Regional Processing Centres (TOR sub-para d), I request that the inquiry recommend:

1. the immediate release of all asylum seeker children (and their families) from Nauru into the Australian community where they can be properly cared for.
2. the establishment of a transparent, national statutory body of clinical experts, independent of government, with the power to investigate and report to the Parliament on the health and welfare of asylum seekers and refugees.
3. based on independent medical assessments, remove a small number of the most vulnerable people temporarily to Australia, noting that the most urgent psychiatric cases would almost certainly include those who have been separated from their families in Australia for over three years.

In relation to the Expediting Third Country Resettlement (TOR sub-para d), I request that the inquiry recommend:

4. as a trial, Australia accept New Zealand's offer to take 150 refugees this financial year, and review its implementation before considering further action.

These four suggestions, all within existing policy guidelines, will still go some small way to start reducing the unnecessary cruelty of indefinite offshore exile. But with a Government not ready to take any risks on a change in policy, this might allow it to take the first step. If, as expected, the boats remain stopped, there should be appetite for further improvements to be made towards all people on Nauru and Manus being provided with a safe place to settle, with a greater confidence that such changes would not lessen control of our borders.

Submission to the Senate Legal and Constitutional Affairs References Committee Inquiry into Allegations of abuse, self-harm and neglect of asylum seekers in Regional Processing Centres

Tim McKenna

It was indeed a welcome decision of the Senate to hold this inquiry into the abuse, self-harm and neglect of asylum seekers on Nauru and Manus Island. Since 2003 I have been providing support to asylum seekers and refugees in Canberra as a volunteer for the Saint Vincent de Paul Society (Vinnies), while also working as a senior public servant in Defence until 2007. Since 2007 I have continued my work in Vinnies and in 2015 I became sufficiently concerned about Australia's treatment of asylum seekers, that I reduced my paid workload as a contractor and devoted time working to achieve better outcomes for these vulnerable people. As part of that work I have joined a group working to directly support some of the men on Manus, by providing them with parcels and with phone credits (to enable them to communicate with their family, friends and supporters).¹ Although I have worked with this group and a number of other groups on this issue during the last eighteen months, I submit this paper as an individual citizen.

I am sure the inquiry will receive a mass of corroborated evidence on the abuse and neglect of people on Nauru and Manus, on the factors contributing to it and on the deficiencies in the response of the Commonwealth to this situation. The release of the Nauru files, and their verification by hundreds of former staff, is just the latest example of the unnecessary cruelty of this indefinite exile of innocent and vulnerable people. The purpose of my submission is therefore to recommend some initial actions, within current policy guidelines, which would improve the situation for these people, but which are unlikely to risk the control of our borders.

I will address these issues under two headings of the Terms of Reference (TOR) namely:

- d. the provision of support services for asylum seekers who have been alleged or been found to have been subject to abuse, neglect or self-harm in the Centres or within the community while residing in Nauru, and
- h. additional measures that could be implemented to expedite third country resettlement of asylum seekers and refugees within the Centres.

But first I will discuss the starting point for my analysis

Starting Point

That starting point is a recent article, *A Solution to Our Refugee Crisis* by Frank Brennan et al which concludes that:

“there is no reason why the Turnbull government cannot do now what the Howard government previously did – maintain close intelligence co-operation with Indonesian authorities, and maintain the turn-back policy, while emptying the offshore processing centres and restoring the chance of a future to those we sent to Nauru or Manus Island three years ago or more by settling them either in Australia or, if any are willing, in other developed countries. Like Howard, Turnbull could maintain the offshore processing centres in case of an emergency.”²

For two years the Government has stopped all boats carrying asylum seekers by turning them back. While I consider this policy to be immoral, I accept it has ‘stopped the boats’. Similar to the early 2000s Australian experience, Europe has stopped the boats coming from Turkey to Greece, also without indefinite exile in a third country. So there is strong evidence that it is the turning back of

¹ Manus Live Matter <https://sisterjaneseeksasylum.wordpress.com/get-involved/> sighted on 3 Oct 16.

² *A Solution to Our Refugee Crisis* by Frank Brennan, Tim Costello, Robert Manne & John Menadue, Comment in The Age, 12 Aug 16. <http://www.theage.com.au/comment/a-solution-to-our-refugee-crisis-20160812-gqqvhl.html>

the boats that stops the boats, and that our unsafe and indefinite exile of people is now unnecessary.

Furthermore, events in the last few months show increasing problems for our offshore regime:

- The PNG Supreme Court is forcing the closure of the Manus centre, but the current options (to go home or stay in PNG) are unworkable, particularly for the majority who are refugees.
- On Nauru, the psychiatric and other medical problems, particularly for children and their families, are insoluble with indefinite exile, where the secrecy imposed encourages abuse.
- Under public pressure the current contractors for the facilities will not re-tender for this work. The risks to other reputable companies taking on the work will be high.
- The three year search for countries to take these people has failed and New Zealand's offer to take refugees has been rejected. With bigger problems in Europe it is not likely other Western countries will help without a lot of convincing, and settlement in South East Asia is also unsafe.

Without some change to the Government's approach, in three years time 1500 men, women and children will still be in PNG and Nauru in a worse condition. Change needs to start now.

The Government rejects policy change such as that proposed by Brennan et al (and most recently by the Australian Catholic Bishops³) because it believes it might encourage people smugglers to resume their trade. And it is reasonable to assume that the Government is reluctant to take any risks that might result in that outcome.

However, I propose some first steps towards implementing Brennan et al's proposals that **remain within the existing policy** but address the urgent problems. These steps are low risk and are unlikely to re-start the arrival of boats, because they will still be turned back. The current policy, and its implementation for any new boat arrivals, would not be changed. So any new boats would be still be turned back and, as now, if this is not considered safe, then the occupants would still be sent to Nauru. If these first steps are successful, then further improvements could be made towards all people on Nauru and Manus being provided with a safe place to settle, with a greater confidence that such changes would not lessen control of our borders.

Provision of Support Services in Regional Processing Centres (TOR sub-para d)

The most fundamental problem with support services to the traumatised exiles in Nauru and Manus is inadequate health support due to the isolated location and primitive conditions on the two islands, with any move of people to Australia for the necessary sophisticated care controlled by the Government not by medical professionals. This is made worse by the traumatised state of most of the exiles as a result of both the experiences in the countries from which they have fled and as a result of three years in limbo, mostly spent in detention, but always confined to small islands unable to leave and with no hope of ever leaving for anywhere safe.

Evidence presented in February this year, by the then President of the Australian Medical Association (AMA) Professor Brian Fowler, demonstrated that this detention is harmful to children and "the same psychological consequences occur for adults, particularly when detention is prolonged and seemingly indefinite". Furthermore he concluded that asylum seekers do not enjoy appropriate health care, and that for this to occur it is "imperative that medical practitioners working with asylum seekers and refugees put their patients' health needs first. And, to do this, we must have professional autonomy and clinical independence without undue outside pressure".⁴

³ *It Is Time To Bring Them Here*, Archbishop Denis Hart, President, Australian Catholic Bishops Conference, 13 Oct 16. http://mediablog.catholic.org.au/it-is-time-to-bring-them-here/?link_id=0&can_id=4465066a8af420ac84bfb59fad0ec91&source=email-october-bulletin&email_referrer=october-bulletin_123410&email_subject=latest-news

⁴ Speech to AMA Forum on Health of Asylum Seekers by the then AMA President Brian Fowler, 21 Feb 16. <https://ama.com.au/media/ama-speech-prof-owler-ama-asylum-seeker-health-forum>

Professor Fowler then went on to recommend:

1. *the immediate release of all children from both offshore and onshore detention centres into the community where they can be properly cared for.*
2. *the establishment of a transparent, national statutory body of clinical experts, independent of government, with the power to investigate and report to the Parliament on the health and welfare of asylum seekers and refugees.*⁵

The new AMA President Dr Michael Gannon re-iterated these recommendations in August this year.⁶

I have seen many reports from other medical professionals supporting these AMA conclusions, but I have seen none that believe they are **not** justified. Therefore I ask the inquiry “to listen to doctors, nurses, and other health practitioners - particularly the experts in the fields of psychiatry and children’s health”⁷ and accept the AMA’s above two recommendations in relation to health services on Nauru and Manus.

But I would suggest adjustments to the first recommendation, to take account of the fact that the Government has already released all children from detention who are already in Australia and to specify points that I suspect were implied in the AMA’s original submission. I request that the inquiry therefore recommend:

1. *the immediate release of all asylum seeker children (**and their families**) from **Nauru** into the **Australian** community where they can be properly cared for.*

Releasing the children without their families would be counter-productive, with the possible exception of where one parent might have a security restriction limiting their release. Releasing children and their families into the Nauruan community is already happening and has not relieved their stress and neglect. They are still indefinitely trapped in limbo on an isolated island without access to effective medical care.

I would also add a further recommendation that would almost certainly follow from the establishment of the independent body of clinical experts to investigate health and welfare of asylum seekers. Dr Gannon in his August statement noted that “the AMA regularly receives reports from asylum seekers and their advocates – from within and outside the medical profession – detailing failures to provide proper physical and mental health treatment and services for asylum seekers.”⁸ So there are already a significant number of cases, including of adults, which need urgent independent assessment. High on this list would almost certainly be the unfortunate people who have family already in Australia and have been separated from them for three years and currently have no hope of reunion.⁹ I therefore ask the inquiry to recommend:

3. *based on independent medical assessments, remove a small number of the most vulnerable people temporarily to Australia, noting that the most urgent psychiatric cases would almost certainly include those who have been separated from their families in Australia for over three years.*

None of these recommendations should re-start the boats. They represent no change in the current policy. In relation to children, the Government has been reducing the number of children on Nauru on medical grounds to be held temporarily in Australia. Reducing this number further would not

⁵ *ibid*

⁶ Nauru Files Expose the Need for Independent Assessment of the Health of Asylum Seekers, 10 Aug 16.

<https://ama.com.au/sites/default/files/documents/100816%20-%20Nauru%20Files%20Expose%20Need%20For%20Independent%20Assessment%20of%20Health%20Conditions.pdf>

⁷ Fowler, *op.cit.*

⁸ Gannon, *op.cit.*

⁹ Naysen missed the boat ... and now he's being forced to miss his family, Nick McKenzie, Richard Baker, Michael Gordon, Sydney Morning Herald, 10 Sep 16. <http://www.smh.com.au/national/investigations/naysen-missed-the-boat--and-now-hes-being-forced-to-miss-his-family-20160909-grcodg.html>

encourage people smugglers, particularly since any new boats would still be turned back or, if that was not safe, the occupants (including any children) could still go to Nauru. In relation to the independent assessment mechanism that is just the best way to fulfil the duty of care the Government has to people it has placed in custody, again with no change in overall policy. And again allowing a small number of the most medical serious cases, including people with family in Australia, to be moved temporarily to Australia, is again within current policy guidelines.

Expediting Third Country Resettlement (TOR sub-para d)

The three year search for other countries to take asylum seekers has failed to move more than a handful of people to the dubious fate of life in Cambodia at enormous cost. In April this year the Government rejected New Zealand's offer to take 150 refugees per year, with the Prime Minister, Malcolm Turnbull, stating "settlement in a country like New Zealand would be used by the people smugglers as a marketing opportunity."¹⁰ At the same time the Immigration Minister, Peter Dutton, said the proposal would do nothing but encourage people smugglers to "get back into business" because people with New Zealand citizenship can settle in Australia,¹¹ with refugees able to obtain New Zealand citizenship after five years.

But more recently Mr Dutton appeared less resistant to the idea, in an interview on 16 September, when he said a deal between Nauru and New Zealand on refugees was an issue for those two countries.¹² The Opposition Leader Bill Shorten also remains open to the idea.¹³ And although both these statements were part of wide ranging interviews, the possibility may exist for a way to be found to allow resettlement in New Zealand, consistent with the policy that no one arriving by boat will be allowed to settle permanently in Australia.

I think it is a reasonable hypothesis that it is unlikely refugees released from three years of traumatic detention at Australia's hands would want to move here after a further five years of welcome and stability in New Zealand. These people just want a safe home. The only people who might seek to move to Australia after the five years would be those with family in Australia. But since these people would be repatriated to Australia under recommendation 3, they would not need to be included in this program. But it is only a hypothesis, as is that of the Government that it will be a marketing opportunity for people smugglers. I therefore suggest Australia tests these hypotheses with a trial.

I propose that Australia agree to a one-off transfer of 150 people from Manus and Nauru to New Zealand as soon as possible this financial year, as a trial of the concept. As with my other proposals there would be no change in policy. As a one-off transfer, such an option would not apply to any future arrivals, and any offer to others already on Nauru and Manus would depend on an assessment of the trial conducted in the first half of next financial year. I therefore request that the inquiry recommend:

4. as a trial, Australia accept New Zealand's offer to take 150 refugees this financial year, and review its implementation before considering further action.

Conclusion

¹⁰ Turnbull rejects New Zealand offer to take 150 refugees from detention, Helen Davidson, the Guardian 29 Apr 16. <https://www.theguardian.com/australia-news/2016/apr/29/turnbull-rejects-new-zealand-offer-to-take-150-refugees-from-detention>

¹¹ Ibid.

¹² Peter Dutton: No objection to Nauru-NZ deal on refugees, Al Jazeera, 16 Sep 16. <http://www.aljazeera.com/news/2016/09/peter-dutton-objection-nauru-nz-deal-refugees-160915080840192.html>

¹³ Bill Shorten says Labor 'open' to resettling refugees in New Zealand, Gareth Hutchens, The Guardian, 24 Aug 16, <https://www.theguardian.com/australia-news/2016/aug/24/bill-shorten-says-labor-open-to-resettling-refugees-in-new-zealand>

This paper contends that multiple other submissions to this inquiry will confirm the abuse and neglect of people on Nauru and Manus, the factors contributing to it and the deficiencies in the response of the Commonwealth to this situation. So the purpose of this submission is to recommend some initial actions, still within current policy guidelines, which would improve the situation for these people, but which are unlikely to risk the control of our borders.

The submission starts with the strong evidence from a recent paper by Brennan et al that it is the turning back of the boats that stops the boats, and that our unsafe and indefinite exile of people is now unnecessary. I suggest that without some change to the Government's approach, in three years time 1500 men, women and children will still be in PNG and Nauru in a worse condition. That change needs to start now.

I note that the Government rejects policy change such as that proposed by Brennan et al because it might encourage people smugglers to resume their trade. And I assume that the Government is reluctant to take any risks that might result in that outcome. However, I propose some first steps towards implementing Brennan et al's proposals that **remain within the existing policy** but address the urgent problems. These steps are low risk and are unlikely to re-start the arrival of boats, because the policy towards them remains the same. The boats will still be turned back, or if that is unsafe, the people will still be sent to Nauru.

In relation to the Provision of Support Services in Regional Processing Centres (TOR sub-para d), I request that the inquiry recommend:

5. the immediate release of all asylum seeker children (and their families) from Nauru into the Australian community where they can be properly cared for.
6. the establishment of a transparent, national statutory body of clinical experts, independent of government, with the power to investigate and report to the Parliament on the health and welfare of asylum seekers and refugees.
7. based on independent medical assessments, remove a small number of the most vulnerable people temporarily to Australia, noting that the most urgent psychiatric cases would almost certainly include those who have been separated from their families in Australia for over three years.

In relation to the Expediting Third Country Resettlement (TOR sub-para d), I request that the inquiry recommend:

8. as a trial, Australia accept New Zealand's offer to take 150 refugees this financial year, and review its implementation before considering further action.

These four suggestions, all within existing policy guidelines, will still go some small way to start reducing the unnecessary cruelty of indefinite offshore exile. But with a Government not ready to take any risks on a change in policy, this might allow it to take the first step. If, as expected, the boats remain stopped, there should be appetite for further improvements to be made towards all people on Nauru and Manus being provided with a safe place to settle, with a greater confidence that such changes would not lessen control of our borders.

Tim McKenna
2 Nov 16