

# **a price too high: the cost of Australia's approach to asylum seekers**

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**The Australian Government's policy of offshore processing of asylum seekers on Nauru, Manus Island and Christmas Island - a research project funded by A Just Australia, Oxfam Australia and Oxfam Novib**

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## Executive Summary

In the six years since the Tampa crisis in August 2001, Australian taxpayers have spent more than \$1 billion to process less than 1,700 asylum seekers in offshore locations – or more than half a million dollars per person. Most, if not all, of these asylum seekers have paid a substantial personal toll through poor mental and physical health and wellbeing. There have also been detrimental impacts on Australia's democratic and legal system, Australia's regional relationships and the international system of protection of refugees and asylum seekers.

This report - a joint project of A Just Australia and Oxfam Australia, with support from Oxfam Novib in the Netherlands - analyses the costs of the policy known as the "Pacific Solution". It critiques government claims that the policy is an efficient and effective means of achieving refugee protection and immigration control.

The costs examined in the report are human costs, financial costs, cost to Australian rule of law and democratic system, costs to the region and the cost to the international system of protection.

### Human Cost:

- Detainees held in offshore locations often bear the brunt of the policies through poorer mental health and general well-being, both in the immediate and longer term.
- There are also higher costs borne by the broader Australian community as a result of having to integrate people who have been damaged by prolonged isolation in offshore processing centres. Longer processing times in more isolated locations tend to hinder the integration of asylum-seekers when they do finally resettle in Australia, and often cause loss of skills and livelihood opportunities and hence a heavier reliance on community and government care.
- Medical studies, figures from the Department of Immigration and Citizenship (DIAC), testimony from staff and former asylum seekers on Nauru all paint a shocking picture of psychological damage for the detainees - including 45 people engaged in a serious hunger strike, multiple incidents of actual self-harm and dozens of detainees suffering from depression and other psychological conditions each year and being treated with anti-depressants or anti-psychotic medication.
- In October 2005, Immigration Minister Vanstone agreed that 25 of the remaining 27 detainees on Nauru should be brought to Australia "on the expert advice of health professionals because of serious mental health concerns." The fact that their detention on Nauru had caused mental health problems was recognised to a limited degree by the Australian Government when it requested the Red Cross to deliver six weeks of initial settlement support including casework, information and referral, assistance with housing and referral to mental health support as required.
- A lack of hospital infrastructure and a lack of timely access to adequate physical health care saw at least 40 people airlifted to Australia from Nauru for medical treatment. A 26-year old asylum seeker with no known physical or mental health problems died on Nauru in August 2002.
- The detention of over 1,500 asylum seekers on Nauru has placed extra burdens on a community of only 10,000 people that was already facing major economic and political problems. The hunger strike on Nauru in December 2003 placed unacceptable burdens on Nauru's health system and medical staff. Similarly, the small Christmas Island community of 1,200 could not meet the complex physical and mental health needs of asylum seekers, nor did it have adequate resources to provide community detention and other services to the detainees.
- This section also documents the long delays in resettling people found to be refugees, with case studies of Palestinian Aladdin Sisalem in Papua New Guinea, and two Iraqis Mohammed Sagar and Muhammad Faisal on Nauru. The majority of detainees have spent two years on Nauru, with a smaller number being held for up to six years. As one Iraqi refugee told the authors: "Two years? It was 2,000 years. Every moment was like a year."

### Financial Cost:

- Offshore processing in Nauru, Manus Island and Christmas Island has amounted to **at least \$1 billion** since 2001. By comparison, the latest estimates from DIAC suggest that to process 1,700 asylum seekers for 90 days each at Villawood detention centre in Sydney would have cost around \$35 million – around 3.5 per cent of the cost of processing them offshore.

The final tally of financial costs is difficult to obtain as Australia's offshore processing policies are not neatly encapsulated as a single program, however they include:

- **Interception costs:** at least \$100 million on increased activities by the Defence Department related to intercepting boat arrivals, with plans to spend another \$51.6 million over the next four years. Australia has also made more than \$200 million in payments to the International Organisation for Migration (IOM), largely to manage offshore detention centres in the Pacific, but also to provide processing and other services in Indonesia to prevent asylum seekers coming to Australia.
- **Infrastructure, maintenance and operating costs:** including \$396 million for the construction of the Christmas Island detention centre, and at least \$253 million (to June 2006) for the management and operation of the Nauru and Manus centres. The average cost for maintaining the facilities on Nauru is \$2 million a month, while Manus Island (empty since 2004) is maintained in readiness for new asylum seekers at an annual cost of \$2 million. It costs \$1,830 per detainee per day to keep someone on Christmas Island, compared to \$238 per detainee per day at Villawood, according to the latest departmental estimates (Figures are not given for Nauru and Manus on this basis).
- **Transportation and Services costs:** There are many other additional costs, such as nearly \$5 million spent on charter flights to move asylum seekers offshore in 2005-06 alone. Millions have also been spent on other unreported costs like transporting asylum seekers to Nauru, Manus Island and Christmas Island by boat, flying asylum seekers to Australia for medical treatment, providing services to asylum seekers that are not covered by IOM and flying lawyers to Christmas Island to provide legal assistance, as was the case with the 43 West Papuan asylum seekers who arrived in 2006.
- **Cost to the aid program and other costs:** Since 2001 Australia has increased five-fold the amount of development assistance provided to Nauru, compared to the 1990s (providing over \$123 million in aid between 2001 – 06). It also established a \$1 million trust fund to meet the costs associated with setting up the Manus Island facility. The fourth MOU between Australia and Nauru for the offshore asylum program in 2005 – 07 pledges \$40.5 million in aid over the period.

### Cost to Australia's legal and democratic system

- A major motivation for the Pacific Solution policy was to keep asylum seekers "out of sight and out of mind." Interviewees for this report highlight major deficiencies in the policy, including a lack of legal representation for asylum seekers, a lack of independent scrutiny of offshore processing, a lack of transparency and accountability in the process and a lack of review of its outcomes.
- These deficiencies ultimately undermine Australians' ability to be confident that a fair and equitable application of the law will occur in their country and that governments can be held accountable for their decisions. The policies also potentially damage social harmony and cohesion.
- In the first few years of the "Pacific Solution", asylum seekers were denied access to legal advice about Australian immigration law and their rights of appeal. On occasions, the Nauruan government has gone to the length of denying visas for Australian lawyers or migration agents who sought to travel to Nauru to represent the asylum seekers.
- Positive changes in asylum seeker treatment and processing practices in Australia have not been implemented in offshore facilities.
- Government accountability has been damaged by the failure to provide the full costs of running the detention centres in Nauru, Papua New Guinea and Christmas Island.

### Regional cost – the cost to Australia's aid program:

- Since the Tampa crisis of 2001 the aid program to Nauru has ballooned. Between 1992 and 2001, Australia only gave \$24.6 million in aid to Nauru. From the establishment of the detention centres in late 2001 until mid-2006, Australia gave over \$123 million in aid.
- Increases in Australian Overseas Development Assistance (ODA) have been directly tied to the Pacific Solution on Nauru.
- The way in which the Australian government has transformed the aid program in Nauru since 2001 has been criticised by a former staff member of the official Australian aid agency, who described the aid payments as “an unmitigated bribe” to ensure the Pacific Solution continues.
- Nauru's Foreign Minister has stated that money provided in the early years of the Pacific Solution under the previous government of President Rene Harris, was “basically just money poured into Nauru in order to ensure that the processing centre remains on Nauru.”
- Analysis of the 2005-07 MOU raises serious questions about the focus and priority of Australia's aid program in Nauru, with serious imbalances in the allocation of aid. For example, from 2005 - 06, the aid program allocated \$6.6 million for the Police Development Program, but only \$2.1 million for health.
- The aid program to Nauru is tied to strict conditions requiring reform of economic and governance structures.
- Much of Australia's aid to Nauru is focused on covering costs and running services in the short-term rather than building for the future. Many of these same services are under pressure because of the extra burden placed on them by the detention facility on Nauru.

### Cost to international system of protection

- The Pacific Solution fails to uphold Australia commitment under international law to provide for non-refoulement of refugees – the principle under international law that forbids sending a refugee back to a place where s/he might face persecution – and for the principle of asylum. Australia's failure to respect these principles undermines the integrity of the international system.
- Under the Pacific Solution, there have been cases of refoulement of asylum-seekers to places where they faced danger and persecution, as documented in the report *Deported to Danger*.
- Australia's actions on asylum seekers violate the principle of burden-sharing - the idea that the global problem of refugees should be dealt with through international co-operation, with all nation-states contributing towards the solution. Australia is the first developed country to engage in a solution to the problem which effectively involves making other countries do the work - by off-loading asylum-seekers on poorer Pacific countries and expecting other resettlement countries or transit countries such as Malaysia or Indonesia to host the asylum-seekers.
- According to DIAC figures, 58 per cent of those found to be refugees or humanitarian cases on Nauru and Manus Island between September 2001 and February 2007 have been offered places in Australia (616 out of 1064 refugees and humanitarian cases). This does not adequately fulfil Australia's national responsibility towards those claiming asylum in Australia.
- Various member states of the European Union, notably the United Kingdom, have been considering moving toward an offshore processing regime premised on the Australian approach.

## Recommendations

Based on this study, A Just Australia and Oxfam Australia believe there is a need for urgent reform of Australia's asylum seeker policies.

We believe it is critical that the Australian government:

1. End the "Pacific Solution" and the offshore detention and processing of asylum-seekers on Nauru, Manus Island and Christmas Island. Instead, asylum-seekers reaching excised areas of Australia by boat should be processed in mainland Australia in the same way as other asylum-seekers.
2. Initiate an Australian National Audit Office (ANAO) performance audit into the full financial costs involved in offshore detention, processing and boat interception policies – including Christmas Island as well as Nauru and Manus Island - across all relevant Government departments.
3. Improve processing standards to ensure appropriate access to legal assistance, medical care and social support, consistent with previous changes to Australia's refugee determination system outlined in the Palmer, Comrie and Commonwealth Ombudsman's reports and inquiries by the Human Rights and Equal Opportunities Commission (HREOC) - for however long offshore processing does continue.
4. Ensure that asylum-seekers currently being held on Nauru have their claims processed quickly and be offered resettlement in Australia if they are successful in their claims, recognising that resettlement in the United States or other countries represents an evasion of Australia's responsibilities towards those seeking protection.
5. Transform the overseas development assistance program to Nauru, following the permanent closure of the detention centres, in order to address Nauru's long term development needs rather than Australia's domestic political interests. The aid program should focus on the priorities of the Millennium Development Goals, re-focussed on poverty alleviation, primary health and basic education needs in Nauru.
6. Engage in research to determine whether excision laws and offshore processing has impacted upon numbers of unauthorised arrivals. While there is a significant body of evidence to show the negative impacts of offshore processing, there has been no research conducted on the purported positive impacts claimed by both major political parties - that excision and offshore processing specifically reduces boat arrivals, thus reducing the number of people risking their lives in a boat journey to Australia. The evidence showing negative outcomes of this policy should be enough to urge policy makers to investigate whether this unsubstantiated policy goal is actually being attained.

We also call on the European Union and other developed countries contemplating the introduction of offshore processing regimes to reconsider introducing such policies, in light of the costs and inefficiencies of the Australian policy, the threats it poses to the international refugee protection regime and the challenges it presents to international burden-sharing of refugee protection.

## Acronyms

ACCC	Australian Competition and Consumer Commission
ADB	Asian Development Bank
AFP	Australian Federal Police
AHI	Aus Health International
ANAO	Australian National Audit Office
APG	Australian Protective Services
ASIO	Australian Security and Intelligence Organisation
AusAID	Australian Agency for International Development
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
DFAT	Department of Foreign Affairs and Trade
DIAC	Department of Immigration and Citizenship
DIMA	Department of Immigration and Multicultural Affairs
DIMIA	Department of Immigration, Multicultural and Indigenous Affairs
ECP	Enhanced Co-operation Program
EU	European Union
HREOC	Human Rights and Equal Opportunities Commission
IAAAS	Immigration Advice and Application Assistance Scheme
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
IOM	International Organisation for Migration
MDGs	Millennium Development Goals
MOU	Memorandum of Understanding
NPF	Nauru Police Force
NSDS	National Sustainable Development Strategy
NZAID	New Zealand Agency for International Development
ODA	Overseas Development Assistance
OPC	Overseas processing centre
PICs	Pacific Island Countries
PNG	Papua New Guinea
PRAN	Pacific Regional Assistance to Nauru
PTSD	Post-traumatic stress disorder
RACS	Refugee Advice and Casework Service
RANZCP	Royal Australian and New Zealand College of Psychiatrists
RILC	Refugee and Immigration Legal Centre
RONTEL	Republic of Nauru Telecommunications Corporation
RRT	Refugee Review Tribunal
SPC	Secretariat of the Pacific Community
TPV	Temporary Protection Visa
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
USP	University of the South Pacific

## 1. Introduction

***"We will decide who comes to this country and the circumstances in which they come."***

Australian Prime Minister, John Howard, Coalition election campaign launch, October 2001

Australia's tough approach to asylum seekers has come at a high price. In the six years since the Tampa crisis in August 2001, Australian taxpayers have spent more than \$1 billion to process less than 1,700 asylum seekers in offshore locations – or more than half a million dollars each.<sup>1</sup> Most, if not all, of these asylum seekers have paid a substantial personal toll through poor mental and physical health and wellbeing. There have also been detrimental impacts on Australia's democratic system, regional aid relationships and the international system of protection of refugees and asylum seekers.

This report is published as Australia prepares to revisit the charged atmosphere of a Federal election campaign. Echoes remain of the political frenzy that engulfed the country during the national elections in 2001, when 433 Afghans were rescued by the Norwegian ship, *MV Tampa*, on 26 August 2001. The Tampa entered Australian waters to bring the asylum seekers to Christmas Island, a humanitarian act that won the Tampa's captain and crew the UNHCR's Nansen refugee medal in 2002. However, the Australian government refused to allow the asylum seekers to land in Australia and instead implemented a policy dubbed the "Pacific Solution", which involved the creation of offshore processing centres in the Pacific island nation of Nauru and Manus Province in Papua New Guinea.<sup>2</sup> Much of this Tampa-inspired border protection policy is still in place and three recent events have highlighted the Australian government's continued high-cost approach to asylum seekers.

On 21 February 2007, a boatload of 83 Sri Lankan asylum-seekers was intercepted off Australia's north-west coast, 30 nautical miles from Christmas Island. The Navy picked up its occupants, who were fleeing renewed fighting between Sri Lanka's armed forces and Tamil Tiger guerrillas, and took them to the Christmas Island detention facilities. The Australian Government initially argued that the Sri Lankans should be sent back to Indonesia to be processed there as refugees. Despite ample space in the detention facilities on Christmas Island, and the near completion of the new Christmas Island facility which will be able to hold up to 800 people, 82 of the men were then moved to the processing facility on Nauru.

The arrival of the Sri Lankan asylum-seekers came after a significant period without boat arrivals, apart from eight Burmese asylum-seekers who arrived in Australia from Malaysia in August 2006. These Burmese men spent one month at Christmas Island before being transferred to Nauru.<sup>3</sup> As of August 2007, their cases had not yet been opened by the Department of Immigration and Citizenship (DIAC)<sup>4</sup>, which had offered to return them to Malaysia on two-year temporary work visas instead. The department argued the men would then be "free to apply" for refugee status and possible resettlement in Australia. The Burmese – members of the Muslim Rohingya minority - were told that if they were processed on Nauru then they would never settle in Australia. Seven of the Burmese asylum-seekers on Nauru took the Australian Government to the High Court for refusing to assess their applications for protection in Australia. In July 2007, after a hearing before Justice Hayne, the department of Immigration agreed to

<sup>1</sup> Most of these arrivals occurred between August and December 2001. DIAC Fact sheet 76 states that 1,547 unauthorised boat arrivals were intercepted en route to Australia from August 2001 to December 2001 and were processed in Papua New Guinea and Nauru. There have been less than 250 people arriving by boat since January 2002, according to DIAC. Parliamentary library records suggested there have only been 153 boat arrivals since the end of 2001, suggesting the total figure in the past six years may be 1,697 people.

<sup>2</sup> Details of the creation and early operation of the detention centres can be found in the Oxfam reports *Adrift in the Pacific* and *Still Drifting*, published in 2002: *Adrift in the Pacific – The Implications of Australia's Pacific Refugee Solution* (Oxfam, Melbourne, February 2002); *Still drifting - Australia's Pacific Solution becomes "a Pacific nightmare"* (Oxfam, Melbourne, August 2002). It is worth noting that this report refers to Christmas Island in the Indian Ocean, not Kiritimati (Christmas) Island in the Republic of Kiribati in the central Pacific.

<sup>3</sup> One of the Burmese asylum seekers eventually decided to return to Malaysia.

<sup>4</sup> Since 2001, the key Australian government department responsible for immigration and asylum seekers has been renamed three times, from Department of Immigration and Multicultural Affairs (DIMA), to Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) to Department of Immigration and Citizenship (DIAC). During that period, the responsible ministers in the government of Prime Minister John Howard have been Phillip Ruddock, Amanda Vanstone and Kevin Andrews. For reasons of clarity, this report refers to the Department of Immigration, unless directly citing a reference to DIMA, DIMIA or DIAC.



interview the men for the purposes of their refugee visa applications and agreed to pay the costs of the High Court case. The men have subsequently been interviewed for the purposes of their visa applications.

In April 2007, a bilateral 'refugee-swapping' arrangement was announced between Australia and the United States of America, whereby up to 200 asylum-seekers per year processed offshore on Nauru by Australia and found to be refugees can be resettled in the United States. In return up to 200 Haitian and Cuban refugees that the United States does not wish to resettle will come to Australia. This arrangement allows the Australian Government to avoid the political embarrassment of having refugees languishing on Nauru for many years and maintain its strong border protection stance that "queue-jumping" asylum-seekers reaching excised areas of Australia by boat will never reach the Australian mainland. A matching number of Haitians and Cubans will, however, be allowed to "jump the queue" and be brought to Australia. Some commentators have suggested that this arrangement will fuel rather than dampen the activities of people-smugglers.

In May 2007, Australian Immigration Minister, Kevin Andrews, announced that Australia would accept 120 Afghani and Iraqi asylum seekers who had been living in limbo in Indonesia for up to five years as a result of Australia's border protection policies. Most of these asylum seekers had attempted to come to Australia without documents, were intercepted in 2001 and 2002 and returned to Indonesia where the International Organisation for Migration (IOM) provided accommodation and basic living needs funded by the Australian Government. They did not qualify as refugees, yet were unable or unwilling to return to their homeland. Now, five years on, Australia will resettle these asylum seekers after all.<sup>5</sup>

It is the aim of this report to highlight costs and deficiencies in the approach Australia has taken to refugee policy and offshore processing. This report is based on a series of interviews with refugees, former asylum seekers, refugee advocates, lawyers, politicians, government officials, non-government organisations and community leaders, as well as a comprehensive examination of refugee data and research.<sup>6</sup> Throughout the report, we cite direct testimony from these interviews, as well as reports and data from government agencies and non-government and community organisations.

The report - a joint project of A Just Australia and Oxfam Australia, with support from Oxfam Novib in the Netherlands - analyses the costs of the 'Pacific Solution' and critiques government claims that the policy is an efficient and effective means of achieving refugee protection and immigration control.

- Section 2 gives a brief outline of the legal and political context under which offshore processing was introduced.
- Section 3 details the human costs of the program, including the effects on mental and physical health from detention and the long delays before people are resettled.
- Section 4 discusses the financial costs of offshore processing, from interception of asylum seeker boats, to transportation costs to construction and management costs of the offshore detention centres
- Section 5 details the cost to Australia's legal and democratic system, in part caused by a lack of accountability and transparency in the Pacific Solution.
- Section 6 discusses the cost to the region through a case study on the aid program to Nauru. It shows how Australia's aid program to Nauru has been transformed, with a five-fold increase in development assistance since 2001, and the introduction of strict conditions that link the aid to structural adjustment programs and the presence of Australian officials in in-line positions.
- Section 7 discusses how Australia's current policy on offshore processing has affected the international system of protection for asylum seekers and how it is affecting international attitudes to asylum seekers.

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<sup>5</sup> Australia has offered them safe-haven visas for a three-year stay. See Hansard, Senate estimates, Legal and Constitutional Affairs, 21 May 2007. <http://www.aph.gov.au/hansard/senate/commtee/S10246.pdf> [accessed 11 June 2007]

<sup>6</sup> See Appendix 8 for details on research methodology.

## 2. Legal and political background

There has long been debate over Australia's policy towards asylum seekers and refugees, and whether Australia is meeting its legal and moral obligations to the international community. This debate extends back to the period after the Second World War and the creation of the 1951 Refugee Convention<sup>7</sup>, but has heightened since the Tampa crisis of 2001.<sup>8</sup>

This report cannot cover all the complexities of Australian refugee policy, but this section highlights a few key issues of the legal and political context for our research.

### 2.1 Obligations to people needing protection

Respect for human rights should be measured by a country's actions toward the most vulnerable, not the most fortunate. It is people who have suffered violence and discrimination who need the protection of individual countries and the international community. Refugees and asylum seekers are individuals who are forced to flee their homes due to war, other forms of conflict, discrimination and persecution which threaten their safety and, in many cases, their lives. This group of people are classified as *forced migrants*, distinct from *voluntary migrants*, such as business migrants and people who wish to unite with family members.

A "refugee" is someone who has been assessed - by the United Nations High Commission for Refugees (UNHCR) or by a state - as requiring protection under the 1951 Refugee Convention. An asylum seeker is usually an individual who wants to apply for protection under the Refugee Convention, but whose claims have not yet been assessed.<sup>9</sup>

The Refugee Convention expects states to give an asylum seeker the benefit of the doubt; that they may well be a genuine refugee<sup>10</sup>; until such time as the veracity of their claim has been established one way or the other. If a country does not follow this formula, a process called *refoulement* may occur. *Refoulement* refers to the return of a person to a place of persecution. The Refugee Convention asks states to carefully guard against this possibility.

The nature of the violent conflicts that generate refugees and asylum seekers means that individuals who need to flee and ask for protection elsewhere cannot always get travel documents such as visas, nor travel through official channels. It is a fundamental pillar of international law and cooperation between states that individuals be allowed to ask for protection in another state, having arrived spontaneously, with or without travel documents. An asylum seekers' claim for protection is not affected or watered down by their mode of arrival.

Many individuals fleeing situations of violence, conflict and persecution cannot make their way with all their papers to a refugee camp or other 'safe haven' to apply in an orderly manner through the appropriate diplomatic channels for asylum in Australia. For others, such safe places and orderly processes simply do not exist. Often the situation is just too volatile or Australia has no diplomatic representation in their country or neighbouring countries or the Refugee Convention is not recognised in their country or neighbouring countries. These asylum seekers have no choice but to keep travelling to a third country to find protection.

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<sup>7</sup> A historical overview is provided in Klaus Neumann: *Refuge Australia* (UNSW Press, Sydney, 2004).

<sup>8</sup> There are dozens of books describing the Tampa crisis and its effect on refugee policy, but useful starting points include Peter Mares: *Borderline – Australia's response to refugees and asylum seekers in the wake of the Tampa* ((UNSW Press, Sydney, 2<sup>nd</sup> edition 2002); and Marion Wilkinson and David Marr: *Dark Victory* (Allen and Unwin, Sydney 2003).

<sup>9</sup> An asylum seeker may also be a person who is in need of international protection because they have a well-founded fear of being subjected to serious harm in their country – such as torture. Such a person may not quite fit the category of "refugee" as defined by the Refugee Convention, but instead falls under a separate safety net of international laws and treaties known as "complementary protection."

<sup>10</sup> or person genuinely in need of complementary protection

## 2.2 Australia's approach

### The birth of the Pacific Solution

On 26 of August 2001, a Norwegian container ship called the M.V. Tampa rescued 433 asylum seekers at sea, who had been en route to Australia. It was a humanitarian gesture that would later win the Captain a human rights medal, but in Australia it created political turmoil. First, the Australian Government refused permission for the Tampa to land on Christmas Island off Australia's Northwest coast. When that failed to deter the Captain from entering Australian waters, the Government threatened to have him arrested. Finally, it ordered the army SAS forces to board and seize control of the vessel. Relations with Norway, one of the world's largest maritime countries, quickly soured.

In order to live up to his electoral promise that no one on board the Tampa would set foot in Australia, Prime Minister John Howard approached Indonesia to take the asylum seekers, but was flatly refused, sparking a quarrel with Indonesia over whose responsibility it was to take the asylum seekers and souring relations with Indonesia's President, Megawati Sukarno Putri. Foreign Minister Alexander Downer then approached the UN administrator of newly independent East Timor, Sergio Vieira de Mello, but was again refused both by Vieira de Mello and by UN Secretary General Kofi Annan, who John Howard had approached separately. As the stand-off continued, New Zealand, in a compassionate gesture, offered to take 132 of the asylum seekers, mostly families, women and children who had been sweltering in the heat on the decks of the Tampa.

Trying to find secure support from a Pacific Island, Australia approached Fiji, offering to lift the sanctions it had imposed after Fiji's coup the year before. At first, it appeared that Fiji would agree and Australia lifted the sanctions, but then Fiji's Great Council of Chiefs rejected the plan. Tuvalu was also approached and agreed, but only if Australia granted visas to its citizens who were being made homeless by rising oceans levels that were engulfing the tiny Pacific atoll. Australia refused.

Finally, the Federal Government approached two countries it knew it could rely on; its former colony Papua New Guinea, which was still heavily dependent on Australian aid, and the tiny Pacific Island nation of Nauru, which was virtually bankrupt and desperate for Australian aid. Within days, Australia's navy was forcibly transferring the intercepted asylum seekers to PNG and Nauru.

### **The Pacific Solution, August 2002, Refugee Sunday Education Kit, Christian World Service, National Council of Churches in Australia.**

Since the Second World War, over 675,000 refugees and people in humanitarian need have been resettled in Australia.<sup>11</sup> In the 1970s and early 1980s, Australia's annual refugee programs were fairly generous, with 21,917 people accepted in 1981-82 under the refugee and humanitarian program.<sup>12</sup> By the end of the 1980s, this had dropped back to between 11,000 and 12,000 a year accepted under the refugee and humanitarian program.<sup>13</sup> In 2001, when the *MV Tampa* reached Australian shores carrying asylum seekers, Australia's program was set at 12,000 places. Soon after the 'Pacific Solution' was introduced, the Australian government announced an increase of 2,000 places in the program, arguing the success of the new policies in deterring boat arrivals had allowed for more 'genuine refugees' to be accepted. In 2006-07 the Australian government announced a program of 13,000 places a year – 6,000 of which was allocated to the refugee resettlement program and 7,000 for humanitarian entrants (which include asylum seekers arriving by boat in Australia).

<sup>11</sup> Fact sheet 60, DIAC and Fact Sheet 76, DIAC, <http://www.immi.gov.au/media/fact-sheets/>

<sup>12</sup> "Humanitarian" entrants are not necessarily refugees as defined by the Convention, but are people outside their home country who are subject to substantial discrimination amounting to a gross violation of human rights. They often have some connection to Australia, such as a family member who lives in Australia, and their application must be supported by a proposer who is an Australian citizen, permanent resident or eligible New Zealand citizen, or an organisation that is based in Australia. This category includes asylum seekers arriving by boat in Australia.

<sup>13</sup> DIAC: *Population flows 2005-06* edition, Department of Immigration and Citizenship, Canberra.

Those arriving under the resettlement program come from overseas refugee camps and arrive in Australia with a visa and other travel documents. Asylum seekers who arrive in Australia spontaneously – either by plane or boat – and then ask for protection often have no visa or other travel documents. In recent years, Australia has highlighted the distinction between those who arrive with and without authorisation such as visas and travel documents. This distinction is at the heart of arguments that the Australian government has used to justify its tougher approach to asylum seekers. Yet this distinction is not recognised by international law and does not diminish the obligations a state has to refugees and asylum seekers.

Since 1996, Australia has linked the resettlement and humanitarian categories, leaving some of the annual quota for resettlement of refugees unfilled in case asylum seekers arrive in Australia. In such a case, an individual who made it to Australia would 'take' a place originally set aside for resettlement of a person "waiting in line" outside Australia. This new approach is the background of the myth of the asylum seeker as "queue jumper", used prominently from the late 1990s by the then Immigration Minister, Philip Ruddock.

***I have never heard any member of this government explain how an Hazara or any one else in Afghanistan follows the proper process to apply for refugee status in Australia. There is no such thing. There is no proper process for those people to follow, so the whole suggestion that these people in some way circumvented the proper process is just farcical.***

Bruce Henry, lawyer for several refugees on Nauru

This mischievous process of labelling asylum-seekers "queue-jumpers" and those who profited from their desperation as "people-smugglers" has increased negative public perceptions of asylum seekers. In the 1990s, asylum seekers who came by boat came to be seen as a dangerous group, perceived as threatening to the Australian public, to resources and to a way of life, because they had entered Australian territory without authorisation. The Australian Government did little to dispel such myths, instead fuelling prejudice and misinformation.

In this context, the Tampa incident of 2001 - which occurred just weeks before the attacks on September 11 - allowed the Australian Government to engage in a symbolic pulling up of a drawbridge around the island nation of Australia, to safeguard it from danger. Subsequent legislative changes have resulted in what we now know as the "Pacific Solution" and offshore processing, including the current detention facilities on Nauru, Manus Island and Christmas Island (For a more detailed explanation of the legislative changes, see Appendix 1).

The policy came at a time when a large number of Afghani and Iraqi asylum seekers had been reaching Australian shores by boat. These boat arrivals peaked in 1999 - 2000 when there were 4,175 boat arrivals and began to fall back again to 4,137 the following year and 3,649 in the year after. While this represented a significant increase in asylum seeker numbers for Australia, it only represented less than 4 per cent of around 100,000 Iraqi and Afghani asylum seekers making applications in developed countries each year at the time.<sup>14</sup> In 2002-03 there were no boat arrivals at all and there have been fewer than a hundred in each year since then.

<sup>14</sup> See "Asylum Levels and Trends in Industrialised Countries", 2006, UNHCR , <http://www.unhcr.org/statistics/STATISTICS/460150272.pdf> , pages 7-8 [accessed 29 June 2007].

**Table One: Number of unauthorised boat arrivals**

YEAR	Number of arrivals
1997-98	157
1998-99	926
1999-00	4175
2000-01	4137
2001-02	3649
2002-03	0
2003-04	82
2004-05	0
2005-06	50
2006-07	94

Source: DIAC Fact Sheet 7, "Managing the Border"; Immigration compliance, 2004-05, Chapter 4, DIAC; Parliamentary Library data.

***Their argument is that Nauru is a deterrent, but if you ask the men who are there at the moment if they had heard about Nauru before they went they will tell you 'no'. They didn't know about Nauru and I would think that even if they did know about Nauru, that if their circumstances are quite severe then Nauru is probably a preferable option to being persecuted wherever they are.***

Susan Metcalfe, refugee advocate doing PhD research on Nauru

***People smugglers aren't going to give a shit about what happens to the people. It's like people who are shipping sheep off overseas and they're dying in the hulls. Who cares about the sheep if they're dying except if they're not going to get paid at the other end? If they get paid first, then does it matter what happens to the sheep? ...The people smugglers get the money and they don't care what happens, so you're not deterring people smugglers and you're not even deterring people themselves, because if people are desperate they will do anything to get out.***

Marion Le, Migration agent working on Nauru cases

The Australian government sees the fall in boat arrivals as a testament to the success of the Pacific Solution. However, the fall comes against a backdrop of lower asylum seeker applications around the world. UNCHR figures<sup>15</sup> showed that in the five years to 2006, applications to developed countries have more than halved and the global refugee population had decreased by a third. Between 2001 and 2006 Canada and the United States experienced a 47 per cent decrease in asylum seeker numbers and Europe experienced a 54 per cent decrease over the five year period.

In 2006, a number of countries without a "Pacific Solution" experienced the lowest level of applications in decades. Denmark experienced its lowest level of asylum seeker applications since 1983, New Zealand recorded its lowest level since 1988, the United Kingdom recorded its lowest level since 1989, Norway recorded its lowest level since 1997 and France its lowest level since 1998. UNHCR suggested the big fall in asylum seekers in the five years to 2006 was due to "improved conditions in some source countries" such as the easing of conflicts in Afghanistan and the Balkans<sup>16</sup>, as well as more restrictive refugee policies in some destination countries, particularly in Europe.

<sup>15</sup> "Asylum Levels and Trends in Industrialised Countries", 2006, UNHCR, <http://www.unhcr.org/statistics/STATISTICS/460150272.pdf> [accessed 29 June 2007].

<sup>16</sup> UNHCR said Afghani asylum seekers fell by 85 per cent over the five year period and there was also a major fall in numbers of Serbian and Montenegro, Bosnia and Herzegovina and Russian Federation refugees.

### 2.3 What is offshore processing?

***Diverting boat loads of people to detention centres in Nauru and Papua New Guinea in exchange for huge sums of money perpetuates the very trafficking of human misery that the Australian Government claims it is seeking to prevent.***

Irene Khan, Amnesty International Secretary General, 7 March 2002

***“Pacific church leaders were outraged. For them, it signalled the return of Australian neo-colonialism. The Pacific was again being used as a dumping ground. This time for human rather than nuclear waste. The reality that Australia was using its aid as leverage to encourage a system of arbitrary detention that cleared breached the spirit of the Refugee Convention and the Constitutions of Nauru and PNG left was atrocious.”***

James Thomson, National Council of Churches, 2007

“Offshore processing” allows asylum claims to be tested outside of the territory and legal system of the country in which protection was originally sought. Australia’s offshore processing policies, dubbed the “Pacific Solution”, have been in place since the Australian government approached a handful of neighbouring countries to establish detention centres to take the Tampa refugees in 2001. These included the conflict-torn nation of Timor Leste, and the tiny island state of Tuvalu. Only Australia’s former colonies Papua New Guinea and Nauru agreed to assist.

The policy, which quickly gained legislative backing, was aimed at scaring off potential asylum seekers, specifically those arriving by boat with the help of people smugglers.

The new policy was enacted in law by making a number of fundamental changes to the operation of Australia’s *Migration Act 1958 (Commonwealth)*. The legislative changes were made for the express purpose of removing “unauthorised arrivals” to a declared third country, to be held for the processing of their claim for asylum and protection.<sup>17</sup>

Under the Pacific Solution, over 1500 asylum seekers were sent to the South Pacific island nation of Nauru and to Manus Province of Papua New Guinea between 2001 - 06. The bulk of these were Afghani and Iraqi refugees, including people taken from the *MV Tampa*, the *Aceng* and several other Indonesian boats intercepted during the naval Operation Relex in the weeks following the September 2001 *Tampa* incident.

The Australian government sent a team of Immigration officers to Nauru and Manus to process the asylum applications, based on a new policy document which governed the processing of unauthorised arrivals sent to a 'declared country'.<sup>18</sup> UNHCR began some processing on Nauru, but quickly ended its involvement. It refused to process applications on Manus (as Papua New Guinea is a signatory to the Refugee Convention, unlike Nauru).

**Table Two: Number of detainees in Nauru and Papua New Guinea (as at 30 June each year)**

February 2002 (Peak)	June 2002	June 2003	June 2004	June 2005	June 2006	June 2007
1,515	1,424	437	225	34 *	2	89

\* Two detainees had been relocated to Australian for medical treatment on 30 June  
Source: Department of Immigration Annual Reports 2002-03 to 2006-07

Relocating asylum seekers offshore meant they had no access to Australia’s legal system, which includes the right to independent merits review, such as the Refugee Review Tribunal (RRT), and rights of judicial review.<sup>19</sup>

<sup>17</sup> More details of these legislative changes can be found in Appendix 1

<sup>18</sup> DIMIA: *Onshore Protection Interim Procedures Advice, Refugee Status Assessment Procedures for Unauthorised Arrivals Seeking Asylum on Excised Offshore Places and Persons taken to Declared Countries*, No 16 (September 2002)

<sup>19</sup> Other aims of the policy included removing the process from the public eye, media scrutiny and the oversight of bodies such as HREOC.



The creation of a two tiered processing system – one for people within Australia and one for people offshore – creates the possibility for discrimination and breaches of the Convention. According to Australia's Human Rights and Equal Opportunity Commission (HREOC) such a scheme: "creates an incongruous distinction between asylum seekers processed offshore and asylum seekers processed onshore, resulting in unequal access to independent merits review and judicial review."<sup>20</sup>

The importance of independent review of the department of immigration decisions is shown by the large number of decisions that were overturned on review – between 1 July 1993 and 28 February 2006, RRT overturned 7,885 primary decisions by immigration officers. In recent years, this has been very apparent for refugees from conflict zones in Iraq and Afghanistan (who made up the bulk of Pacific solution cases): in 2003-06, the RRT overturned 92 per cent of the department of immigration rulings on protection visa applications by Iraqis and Afghanis. This means that, on review of the initial adverse decision, 3,200 people were granted protection from returning to the conflict zones in Iraq and Afghanistan for a well-founded fear of persecution.<sup>21</sup>

***One concern is that you have, within the same sovereign territory, two different types of processing taking place. So from an international perspective, one would have to question the integrity of such a system. The only reason for differentiating between people is the mode of arrival, which under other human rights law one could suggest was, in fact, a breach of human rights.***

Mark Green, Coordinator, Refugee Advice and Casework Service (RACS)

***The introduction of different systems for determination of refugee status for different asylum seekers depending on their location raises concerns. Having two different determination systems is discriminatory and in UNHCR's view undesirable. If lesser standards relating to procedures or lesser stature accorded under those procedures are envisaged due to the nature of arrival of asylum seekers, this would not be in accord with international protection obligations.***<sup>22</sup>

UNHCR

## 2.4 The High Cost of Offshore Processing

Offshore processing of asylum seekers has proven to be a costly and highly inefficient exercise. Many of the interviews conducted for this report highlight the heavy toll of the policy on individuals (Section 3). Others highlight significant damage done to the rule of law in Australia (Section 5). The policies have also come with a hefty price-tag for the Australian taxpayer (Section 4) and had a major impact on regional relations (Section 6), including completely transforming the aid program to Nauru. There are also mounting concerns about the impact of the Pacific Solution on the integrity of the international system of protection of refugees and asylum-seekers (Section 7), with similar off-shore processing models now being proposed by countries in the European Union.

As detailed in Section 4, lack of government transparency means that the full costs of the Pacific Solution are not available to the Australian public. However, an analysis of the available financial data suggests that the total outlay on the Pacific Solution over the past six years has been at least \$1 billion.

This financial cost is particularly high when compared to the costs of processing asylum applications within Australia and the limited "results" of the Pacific Solution. To process 1,700 asylum seekers for 90 days each at Villawood detention centre in Sydney would have cost around \$35 million, according to the latest estimates. In spite of the perception promoted that sending people offshore would keep them out of Australia – more than half – or 58 per cent of the 1,064 people resettled from Nauru and Papua New Guinea ultimately ended up in Australia. Another 36 per cent of the group went to New Zealand, with only 3.9 per cent of refugees resettled in other countries (see Appendix 2 for details).

<sup>20</sup> Senate Legal and Constitutional Committee, *Provisions of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006*, Final report, June 2006, Section 3.16, p16.

<sup>21</sup> Figures cited in speech by David Manne, Refugee and Immigration Legal Centre, "Boatloads of extinguishment?" Forum on the proposed offshore processing of boatpeople, Melbourne 5 May 2006.

<sup>22</sup> UNHCR submission to 2002 Senate Migration Excision Zone, Report, p4 ([www.aph.gov.au/senate/committees](http://www.aph.gov.au/senate/committees))

### 3. Human costs of the Pacific Solution

One of the harshest impacts of Australia's offshore processing policies, and the most difficult to measure, is the price paid by individuals subjected to the policy.

Detainees held in offshore locations often bear the brunt of the policies through poorer mental health and general well-being, both in the immediate and longer term. There are also higher costs borne by the broader Australian community as a result of having to integrate individuals who have been damaged by prolonged isolation in offshore processing centres. Longer processing times in more isolated locations tend to hinder the integration of asylum-seekers when they do finally resettle in Australia, and often cause loss of skills and livelihood opportunities and hence a heavier reliance on community and government care. Another cost that is often overlooked is the burden on the host communities in Christmas Island, Nauru and Manus Island, as a result of having to support detainees with scarce resources and without access to a broader community and non-governmental organisation structure.

#### 3.1 Impacts on mental health

In mainland Australia, the high rates of mental illness amongst people in detention facilities have been widely documented. Numerous inquiries undertaken by the Human Rights and Equal Opportunity Commission (HREOC)<sup>23</sup> have found that mental illness is a common problem for asylum seekers detained in Australia. In a comprehensive inquiry in 1998, HREOC found there were "a large number of detainees experiencing mental health problems."<sup>24</sup> Several clinical studies<sup>25</sup> have also found a link between detention and mental health issues and the Commonwealth Ombudsman has tracked numerous individual asylum seekers in the system with mental health problems, some of whom were found to have "profound depression" and were in need of hospitalisation.<sup>26</sup>

Medical studies specifically conducted on the impact of detention on the mental health of detainees in offshore locations are harder to come by, largely because of the more limited access for researchers to offshore detention centres. Furthermore, government bodies like HREOC do not have jurisdiction over asylum seekers and refugees in detention on Nauru or Manus Island.<sup>27</sup> Interviews conducted for this report emphasised that mental health issues are at least equally as prevalent among offshore asylum seekers as they are among onshore asylum seekers. This is supported by direct testimony from visitors to the camps on Nauru and former staff, which has highlighted the levels of depression and psychological ill-health amongst the detainees.

***"Discussions with mental health teams confirmed what is already well-known: the uncertainty and length of detention inevitably leads to mental health problems...there are still some people who have been in detention for years. But it does not take years of detention for mental health problems to begin. HREOC staff met some detainees who were starting to suffer symptoms after just months of detention."***<sup>28</sup>

HREOC report "Summary of observations following the investigation of mainland detention facilities, January 2007"

A central concern with the offshore detention of asylum seekers is the destructive mental and physical effects for people detained over an indefinite period. Many asylum seekers have already been through traumatic experiences, facing human rights violations and, in extreme cases, torture or the death of family

<sup>23</sup> Human Rights and Equal Opportunity Commission, "Those who've come across the seas: The report of the Commission's Inquiry into the detention of unauthorised arrivals" HREOC, 1998: 167, 153, 154, 218. Available at: [http://www.hreoc.gov.au/pdf/human\\_rights/asylum\\_seekers/h5\\_2\\_2.pdf](http://www.hreoc.gov.au/pdf/human_rights/asylum_seekers/h5_2_2.pdf)

<sup>24</sup> Human Rights and Equal Opportunity Commission (HREOC): *Those who've come across the seas: The report of the Commission's Inquiry into the detention of unauthorised arrivals*. HREOC, Canberra, 1998), pages 167, 153, 154, 218. Available at: [http://www.hreoc.gov.au/pdf/human\\_rights/asylum\\_seekers/h5\\_2\\_2.pdf](http://www.hreoc.gov.au/pdf/human_rights/asylum_seekers/h5_2_2.pdf) .

<sup>25</sup> Zachary Steel, Derrick Silove et al "Impact of immigration detention and temporary protection on the mental health of refugees", *The British Journal of Psychiatry* (2006) 188: 58-64.

<sup>26</sup> See Commonwealth Ombudsman Immigration Reports 126/07, 128/07 available at [http://www.comb.gov.au/commonwealth/publish.nsf/Content/publications\\_immigrationreports\\_tabled\\_070509](http://www.comb.gov.au/commonwealth/publish.nsf/Content/publications_immigrationreports_tabled_070509) [accessed June 2007]

<sup>27</sup> See section 6.5 for more detail.

<sup>28</sup> HREOC: *Summary of observations following the investigation of mainland detention facilities* (HREOC, Sydney, January 2007) [http://www.hreoc.gov.au/pdf/human\\_rights/HREOC\\_IDC\\_20070119.pdf](http://www.hreoc.gov.au/pdf/human_rights/HREOC_IDC_20070119.pdf)



members, in their home country or while escaping overseas. Their psychological ill-health can be exacerbated by their placement under mandatory and indefinite detention, according to medical studies.<sup>29</sup>

As a 2001 study in the *Medical Journal of Australia* noted:

“A critical issue is therefore the extent to which the detention environment itself is a direct contributor to psychological distress, either *de novo* or as a re-traumatising influence. There is growing evidence that refugees rendered psychologically vulnerable by past trauma are at greater risk of PTSD [post-traumatic stress disorder] if they are exposed to further trauma or adverse conditions.”<sup>30</sup>

The mental health issues can even continue for a prolonged period after the person has left detention, with a 2006 study in the *British Journal of Psychiatry* reporting:

“Our study suggests that prolonged detention exerts a long-term impact on the psychological well-being of refugees. Refugees recording adverse conditions in detention centres also reported persistent sadness, hopelessness, intrusive memories, attacks of anger and physiological reactivity, which were related to the length of detention. Previous studies examining the effects of detention concur with our findings, although our study is the first to show that such mental health effects persist for a prolonged period after detention.”<sup>31</sup>

In Nauru and Manus Island, the Australian Department of Immigration has not directly investigated the instances or frequencies of mental ill-health, but has relied on information provided by IOM who manage the camps. However, even the figures collated by DIAC paint a shocking picture of psychological damage and self-harm. According to figures released by the Department:<sup>32</sup>

**In 2002**, there were 8 incidents of self-harm (including one threat of suicide).

**In 2003**, there was one suicide attempt, 3 incidents of actual self harm and 45 people engaged in a serious and debilitating hunger strike. That year, the camp's Mental Health Unit diagnosed the following conditions in the Nauru asylum seeker population (not mutually exclusive): 10 adjustment disorder; 2 acute stress reaction; 5 anxiety; 15 depression; 1 depression and somatisation; 1 depression and anxiety; 5 reactive depression; 2 severe depression; 4 post traumatic stress disorder; 2 insomnia; 1 obsessive compulsive disorder; 1 somatisation disorder.

**In February 2004**, 33 residents were being prescribed anti-depressants, with 25 residents prescribed sleep medication. By the middle of 2004, one adult was being treated for a chronic mental illness; 21 adults were prescribed psychotropic medication; 16 adults were prescribed sleeping medication and 17 adults prescribed anti-anxiety medication.

**By February 2005**, there were 19 cases with identified mental health condition, with 12 of the 19 prescribed anti-depressant medication or anti-psychotic medication.

**By late 2005** all remaining 27 detainees on Nauru had identified mental health concerns – four had suffered a psychotic episode and were at risk of self harm. Thirteen members of the group were being treated for insomnia and were taking anti-depressant medication (7), anti-psychotic medication (4), and anti-anxiety medication (10).

### From Manus to Baxter to Nauru

The ongoing suffering of asylum seekers is illustrated by the case of an Iraqi Christian who was detained on Manus Island between October 2001 and July 2003 under the “Pacific Solution”.

<sup>29</sup> Derrick Silove, McIntosh P, and Becker R: “Risk of re-traumatisation of asylum-seekers in Australia”, *Australian and New Zealand Journal of Psychiatry* 1993; 27, pp606-612; Becker R, Silove D. “Psychiatric and psychosocial effects of prolonged detention on asylum-seekers”, in Crock M, editor: *Protection or punishment: the detention of asylum-seekers in Australia* (Federation Press, Sydney).

<sup>30</sup> Zachary Steel and Derrick Silove: “The mental health implications of detaining asylum seekers”, *Medical Journal of Australia* 2001; 175, pp596-599.

<sup>31</sup> Zachary Steel, Derrick Silove et al: “Impact of immigration detention and temporary protection on the mental health of refugees”, *The British Journal of Psychiatry* (2006) 188: pp58-64.

<sup>32</sup> Figures provided in response to Questions on Notice, Senate Legal and Constitutional hearings into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, 26 May 2006.

In May 2002, after suffering from depression, he was diagnosed with post-traumatic stress disorder. After another 10 months on Manus, he was transferred to Baxter detention centre in South Australia for medical review. His condition worsened, and in November 2003, still in detention in Baxter, he attempted to commit suicide by ingesting glass fragments from a broken fluorescent tube and by attempting to electrocute himself.

After six months in Australia, this man would have been able to appeal his asylum application through the Refugee Review Tribunal (RRT). But on 21 January 2004, just eight days short of the six month deadline, he was handcuffed, forcibly removed from Baxter and sent to Nauru.

Eventually, the detainee was recognised as a refugee and was resettled in Sweden.

*Source: Amnesty International: "The impact of indefinite detention – the case to change Australia's mandatory detention regime." ASA 12/001/2005. p37.*

The serious problems in supporting detainees located offshore are highlighted by specialist agencies such as the Victorian Foundation for Survivors of Torture:

"Detention and failure to find a speedy and durable settlement solution will have adverse mental health effects for those who have escaped persecution and human rights abuses. Amongst the causal factors of such adverse effects are isolation from community support, the ongoing deprivation of freedom, the profound sense of injustice associated with being subjected to the deprivation of liberty in the absence of a crime being committed, the almost complete sense of powerlessness, and the pain of seeing the health and well-being of children deteriorate in detention and/or conditions of prolonged uncertainty... In this context, restricting asylum seekers who have prior experiences of trauma and torture and in particular those found to be refugees, to living on Nauru indefinitely would have deleterious psychological consequences whether they were held within the confines of the off shore processing centre or allowed to move freely around the island during the days."<sup>33</sup>

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) confirmed that serious problems exist in relation to mental health care in Nauru:

"Nauru currently has major problems with mental health services and has already been subject to a Commonwealth review pointing to infrastructure problems and staffing difficulties. There are issues with ensuring access to specialist review and transfer to appropriate health facilities. In addition, it will be hard for offshore centres to provide for an emergency mental health response if this is needed. Given that Nauru has chronic difficulties in maintaining functional mental health services for its own residents, having no resident psychiatrist and experiencing an urgent need to train mental health nursing staff, the mental health needs of immigration detainees could not be met."<sup>34</sup>

<sup>33</sup> Final report, Senate Legal and Constitutional hearings into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, June 2006, section 3.51, pp24-25.

<sup>34</sup> Final report, Senate Legal and Constitutional hearings into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, June 2006, section 3.52, p25.

***There were numerous cases of mental illness on Nauru that were not diagnosed initially. I know of people who told me they fell apart when they were being interviewed. They were there for a very long time. I don't think they could cope.***

Susan Metcalfe, refugee advocate doing PhD research on Nauru

***What it has done to the victims, the people who were detained, is incredible. In the past year I have visited ten immigration detainees in a private mental hospital in Brisbane - a lucrative government contract. All were long time detainees, up to five and six years without freedom, and were suicidal at the time they were transferred from another hospital or a detention centre and one from Nauru who was a patient for six months. None were "cured" by hospital. All became dependant on medicines while in the care of the Australian Government.***

Frederika Steen, refugee advocate

In 2002, the head psychiatrist of the camps on Nauru, Dr Martin Dormaar, prepared reports about the faltering mental health of the asylum seekers, stating:

"I seldom or never encounter an asylum seeker who still sleeps soundly and is able to enjoy life. Mental health or psychiatry for that matter is basically not equipped to improve their situation in any essential respect."

Dr. Dormaar resigned in November 2002, claiming his reports of ill-health were ignored by the camp managers and the Australian Government.

By late 2004, one person who was in daily contact with asylum seekers on Nauru noted the serious psychological and health impacts on the detainees:

"Depression, anxiety, relentless physical and emotional pain and other serious mental illnesses are commonplace. Many spend their days and nights crying, families are falling apart, children are losing their youth coping with the despair of their parents as well as their own. Many cannot sleep because of recurring nightmares."<sup>35</sup>

In April 2005, journalist Michael Gordon visited the camp in Nauru and reported the despair of those remaining on the island, saying that many had told him they had all but given up hope of a positive outcome, and were surviving by taking sedatives.<sup>36</sup>

In September 2005, former Immigration Minister John Hodges and mental health experts Paris Aristotle and Ida Kaplan visited Nauru to investigate the mental health and well-being of the remaining detainees and reported the situation required urgent attention. Aristotle noted: "It had reached a point where none of those interventions were going to prevent a rapid decline in their mental health."<sup>37</sup>

In October 2005, Immigration Minister Vanstone agreed that 25 of the remaining 27 detainees on Nauru should be brought to Australia "on the expert advice of health professionals because of serious mental health concerns."<sup>38</sup> The group included 13 Iraqis, eight Afghans, one Iranian, two Bangladeshis and a Pakistani. All the Afghans and five Iraqis had been recognised as refugees, but had not been successful in finding another country to take them for resettlement. In a case of scandalous neglect, the two remaining refugees, Mohammed Sagar and Muhammad Faisal, were to remain on Nauru as their mental health deteriorated further (for details, see section 3.7 below).

For the 25 people brought to Australia, the fact that their detention on Nauru had caused mental health problems was recognised to a limited degree by the Australian Government when it contracted the Red Cross to source appropriate agencies with mental health expertise to deliver six weeks of trauma

<sup>35</sup> Susan Metcalfe: "Caveat Emptor: European governments should resist the Howard Government's efforts to sell the 'Pacific Solution'", *Arena*, No.74, December 2004 – January 2005.

<sup>36</sup> Michael Gordon: "Detainees to cast off from Nauru", *The Age*, 14 October 2005.

<sup>37</sup> Michael Gordon: "Detainees to cast off from Nauru", *The Age*, 14 October 2005.

<sup>38</sup> Refugee Council of Australia submission to Senate Committee inquiry on Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, 15 May 2006.

counselling to them. The Red Cross then continued to support those whose initial settlement needs were unmet after the six weeks.

Another Australian contractor that has received contracts from the Australian government to operate on Nauru is Aus Health International (AHI). AHI was established in 1996 as a contracting arm of NSW Health - its shareholders are the NSW Premier Morris Iemma and the NSW Treasurer Michael Costa. Between 2002 and 2007, AHI managed a contract from AusAID for health sector planning, coordination and advice in Nauru, and also received funding from the Department of Immigration in 2006 to run a mental health program. AHI provided a mental health nurse and psychiatrist to develop a mental health policy and clinical treatment guidelines, assess mental health needs and assess, diagnose and treat patients.

### 3.2 Access to Health Care

The Department of Immigration has argued that IOM has maintained a high standard of health care for asylum seekers on Nauru, with a ratio of doctors to asylum seekers of 1:230 compared to 1:800 in the general Australian population.<sup>39</sup>

However, this does not take account of a lack of adequate hospital infrastructure to support these doctors. Nor is the claim that a higher standard of health care has been delivered than in the general population borne out by the experiences of health practitioners and others involved with asylum seekers on Nauru, Manus and Christmas Island. Many of those interviewed for this report emphasised the difficulty in ensuring asylum seekers received adequate physical health care and the problems they faced in gaining timely access to general health care services. For example, one woman suffering from a fractured pelvis was not diagnosed for months, because the X-Ray machine in Nauru wasn't operating.<sup>40</sup>

The government has argued that seriously ill patients can be flown to Australia for treatment, but the placement of asylum seekers on Nauru adds significantly to the cost of transport if people suffer from illness that cannot be treated on the island. DIAC acknowledges that:

"Medical evacuation from Nauru can be carried out in numerous ways depending on available transport. Nauru to Cairns in one flight would require a charter but medical evacuation to Brisbane might occur by commercial carrier or charter. The total costs could range between \$20,000 for non-charter flights and \$100,000 depending on arrangements."<sup>41</sup>

In questions raised during Senate estimates on 11 February 2003, the Department of Immigration revealed that 15 asylum seekers had already been transferred to Australia for medical treatment from Nauru since the facility was opened two years earlier and on Manus Island there had been at least 12 confirmed cases of malaria among asylum-seekers and five among staff at that stage. Reasons for medical transfers to Australia from Nauru have included heart surgery, severe mastoiditis, pneumonia, liver abscess, juvenile rheumatoid arthritis, diabetes, kidney problems and child birth, according to DIAC. In August 2002, Mohammed Sarwar, a 26 year old Afghan asylum seeker with no known physical or mental health problems, died on Nauru of natural causes.

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<sup>39</sup> Questions Taken on Notice, Additional Estimates Hearing: 11 February 2003, question (88) and (90).

<sup>40</sup> Interview with staff of the Asylum Seeker Resource Centre in Melbourne, June 2007.

<sup>41</sup> Response to Questions on Notice, Senate Legal and Constitutional hearings into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, 26 May 2006.

Grant Mitchell, of the Hotham Mission told us:

*"Some people have care needs that cannot be provided in that institution. So people will be transferred to places for care, usually hospitals...there were some Iraqi women who had very serious health needs and they had to be treated in Australia. The Australian government would argue that we ensured the provision for treatment; we didn't leave them stranded there. For me you have to unpack that further because firstly there is a huge issue of time delay, there is a huge issue of logistics of how you get people from Nauru here for treatment before they die. There is the issue of who is assessing their health on their island, and when they are on the navy boat on the way."<sup>42</sup>*

**... An Afghan man was medivaced from Nauru, in severe pain, on crutches, and they didn't know what was wrong with him because the medical services and facilities were too poor. He was brought to Brisbane where his brother was living on a TPV. Our Department of Immigration did not advise his brother that he was coming here and the man was too sick to tell his brother. He was treated here in the Wesley hospital and we got wind of him being here. So his brother came to visit and other members of the community came to visit. We slipped a lawyer in to get legal help for his case. When Immigration knew about that they sent him back to Nauru, smuggled him out the back of the hospital, even though he had been diagnosed with blood clots. It was to get him out of Australian jurisdiction fast so that there could be no legal action. It endangered the man's life.**

Frederika Steen, refugee advocate

A Christmas Island community member, Jo Doble, also raised the issue of complex physical and mental health care needs being jeopardised by the remoteness of Christmas Island. She said that when issues were addressed it was often done at the expense of keeping families together:

*"Families get split up for medical treatment. When a very elderly Vietnamese woman was in detention she was sent to Perth for medical reasons and a young woman had to go as her companion. Families are being split up like that for medical treatment."<sup>43</sup>*

### 3.3 Hunger strikes

Detainees who engaged in hunger strikes and other desperate acts sometimes became the centre of political point-scoring, rather than being treated through the health care system. As a result, some suffer longer-term mental and physical consequences.

Former Afghani asylum seeker, Chaman Shah Naseri, who was detained on Nauru during the hunger strike said:

*"Physically, some of the people had kidney problems and problems with their lips, they were using crutches. Every day when I was speaking to the media, there was someone going to hospital because in the beginning they did not like to go to the hospital. There were people speaking here, refugee supporters from Australia, speaking to other people, trying to make them break the hunger strike because that's what people said: We are caring about you. We know what's happening with you. We understand why the people were doing it but they were scared that something would happen to their lives and they knew the government was not going to care about that. The first time the hunger strike started the government spokesman or John Howard said: 'They are the people the blacks who are trying to harm themselves just to get into Australia and it's not going to work.' That was their first statement...all the people who were on the hunger strike have come to Australia."*

The hunger strike on Nauru which began on 10 December 2003 also highlighted a major failing of offshore processing and health care, placing unacceptable burdens on Nauru's health system and medical staff, which is designed for a population of only 10,000 people. Nauru's sole hospital provided extra care for the asylum seekers when there were cases that could not be handled by the medical practitioners and paramedics employed by IOM at the camps.

<sup>42</sup> Interview with Grant Mitchell, 2007.

<sup>43</sup> Interview with Jo Doble, 2007.

At a time when there were 45 asylum seekers engaged in the hunger strike, Nauru's hospital had only a 4-bed capacity for emergency cases, and a usual bed occupancy between 5 – 25. Although it has a range of surgical and medical facilities, there was no blood bank or blood fridge at the hospital. Yet at the peak of the hunger strike the hospital had 118 admissions as patients were admitted for IV treatment and discharged, with some later re-admitted for further treatment.<sup>44</sup>

As the hunger strike dragged on, Nauru's chief medical officer at the time, Dr. Kieren Keke<sup>45</sup>, expressed his concern about the lack of support from the Australian government:

"It's been a little bit concerning to me that, apart from the assistance that IOM is giving us directly, Australia hasn't been very forthcoming in providing assistance to the Nauru Health Department, and providing for the care of the asylum seekers especially if more were to join. There has been a, I'll say a degree of reluctance on the part of the Australian Government to offer the assistance that we need... There is a prospect that someone could die, especially if resources, our resources in the Health Department and between IOM are stretched beyond capacity."<sup>46</sup>

The provision of health services in offshore detention centres raises ethical issues for medical staff. The practice of non-consensual medical treatment of hunger-striking asylum seekers in detention needs closer inquiry, especially as the Declaration of Tokyo (1975) and the Declaration of Malta (1991) both prohibit the use of non-consensual force-feeding of hunger strikers who are mentally competent:

"From an ethical perspective, the practitioner caring for hunger strikers confronts the tension between, on the one hand, the imperative to preserve life and, on the other, respect for the autonomy of the individual. Australian practitioners face the added complexity of reconciling ethical and medical issues with the priorities of government policy, particularly the state's interest in maintaining order and security in detention centres during a period of political controversy about detention."<sup>47</sup>

### 3.4 Impact on host communities and broader Australian community

The detention of over 1,500 asylum seekers on Nauru placed extra burdens on a community of only 10,000 people that was already facing major economic and political problems. Nauru's health system faced significant pressures during the period where there were several hundred detainees in the camps, but the mental health problems continued even when there were smaller numbers.

Researcher Marianne van Galen, who visited the camps on Nauru in 2003 and 2004, reported on the poor conditions:

"The conditions on Nauru in general were quite shocking. The island is small and infrastructure was completely broken down. On my first trip, power was not consistently available, nor was access to water. The desalination plant had not been working for over a month. The residents of Nauru had not been paid wages by the government for months before we had arrived and the main source of income for families on the island was the work that had resulted from the establishment of the detention centre."<sup>48</sup>

At the peak of Nauru's economic crisis in 2004, there were claims that Nauruans were suffering more than the asylum seekers, according to one leading Nauruan politician:

"The people who are residents in the so-called offshore processing centres are well treated I can tell you, especially in relation to our people who have to host these centres. The facilities that they provide in those centres are better than we can provide for our own people and one thing is for

<sup>44</sup> A medical team from Australia assessed the capacity of the hospital after the hunger strike – the "Report of healthy team on health services for asylum seekers in Nauru 12-14 January 2004", dated 29 January 2004, is available at: [www.aph.gov.au/senate/committee/legcon\\_ctte/migration\\_unauthorised\\_arrivals/submissions/sub118b.pdf](http://www.aph.gov.au/senate/committee/legcon_ctte/migration_unauthorised_arrivals/submissions/sub118b.pdf)

<sup>45</sup> Dr Keke is now the Nauru Minister for Health, Transport and Sports.

<sup>46</sup> "Nauru health services in crisis as hunger strike continues", ABC Radio 'AM' Wednesday, 24 December 2003.

<sup>47</sup> Mary Kenny, Derrick Silove and Zachary Steel: "Legal and ethical implications of medically enforced feeding of detained asylum seekers on hunger strike", *Medical Journal of Australia* 2004; 180 (5): pp 237-240. See also Derrick Silove, Curtis J, Mason C, et al: "Ethical considerations in the management of asylum seekers on hunger strike", *JAMA* 1996; 276: pp410-415.

<sup>48</sup> Submission to Senate Legal and Constitutional Committee inquiry, May 2006

[http://www.aph.gov.au/senate/committee/legcon\\_ctte/migration\\_unauthorised\\_arrivals/submissions/sub122.pdf](http://www.aph.gov.au/senate/committee/legcon_ctte/migration_unauthorised_arrivals/submissions/sub122.pdf)



certain – they eat better than us. For a lot of us we are going by with one meal a day and I can tell you that that one meal does not represent the five groups, the five food groups you should be getting in one day. They do. We don't.”<sup>49</sup>

***In some cases, the local people treated us with kindness, as they were horrified by how we were being treated. I remember some young PNG boys giving us fish through the wire – they were so shocked that we were locked up, that they went out in their boat to bring us something to eat. In contrast, I'll never forget the IOM guard who stood there eating an ice cream in front of my kids – how can you be a parent when you have to tell your children that they can't have the simple pleasures of life?***

Iraqi asylum seeker detained with his family on Manus Island and then Nauru<sup>50</sup>

On Christmas Island, several individuals within the community volunteered to undertake activities such as teaching English lessons to detainees and providing care and assistance to them. However, the population of Christmas Island is only 1,200 and many of the volunteers interviewed for this report recounted feeling isolated from the wider community support and organisations that exist onshore, such as non-governmental organisations, legal assistance and advocacy centres and refugee service provision organisations.

This isolation became a particular problem in light of implementing community detention models on Christmas Island, with local resources stretched to the limit to meet needs of asylum seekers in the community. One Christmas Island resident who did not wish to be named said:

*“This community is by and large relatively receptive to the issue of the refugees' plight - that's a positive. But by the same token there are broader types of community care, social welfare, professional assistance, mental and psychological problems, health problems; they have a very small resource to draw on here. So detention in the community here places a real problem on the community and it's not fair on them.*

He continued that in an on-shore context:

*In a bigger community you've got more people who can come in and fill the void, but here you felt you had a responsibility to keep going even though you really needed a break or time off. There was no external support coming in. It was up to you to motivate yourself. It is just wearing. You wear out after a time. You can't do it forever.*

***It definitely affected the island. It was dreadfully divisive, just immediately post-Tampa...and for years after Tampa, many of us felt a sense of communal post-traumatic stress – it affected some people hugely, they had no support or debriefing.***

Virginia Jealous, refugee advocate and former Christmas Island resident

Successful asylum seekers who gain visas and leave Nauru, Manus Island or Christmas Island for Australia do not leave their experiences behind them. They carry with them a cost that they bear not only personally, but also share with the whole community, in the form of a reduced ability to become fully-participating and functional members of Australian society. Many of those interviewed for this report recounted tales of former asylum seekers having difficulty adjusting, finding work and reuniting with family members. They have long term mental and physical health problems and often must rely more heavily on community and government care.

<sup>49</sup> Interview with David Adeang - see “Howard's Pacific Solution winds down”, ABC Radio ‘AM’, Thursday, 9 September 2004.

<sup>50</sup> Interview with family of Iraqi refugees resettled in Australia, April 2007. The family requested not to be identified by name.

James Thomson of the National Council of Churches in Australia said:

*“Charities in Sydney and Melbourne are still dealing with the last group of Nauruan asylum seekers brought to Australia because of their declining mental health. Most of them were young single men. Now they’re traumatised shadows of their former selves. It will take years for them to get back on their feet. The worst thing is that Australia knew all along that it would have to resettle them. The international community had made it quite clear that refugees intercepted en route to Australia were our responsibility. But Australia waited it out. It made an example of them. It made them suffer in remote detention centres to deter others. As a nation, we scared them for life and now we spend our lives helping them to recover?”*

Refugee advocate Frederika Steen of Queensland said:

*“If the people who have been damaged in detention ever get the Royal Commission that they deserve to tell their stories safely, it would be a truth and reconciliation process. Out of that would come compensation payments for lives destroyed. ...damage to society and to individuals. That human cost is translated into ill health and pharmaceutical use and I reckon our bills for antidepressants and sleeping tablets have gone up enormously. Certainly the population I work with are regular users. There is also the cost to our society of the alienation.”*

### 3.5 Left in limbo – delays in resettlement of refugees

***Two years? It was 2,000 years. Every moment was like a year.***

Iraqi refugee who asked not to be named who spent two years on Nauru

During the initial negotiations to establish the detention centres on Nauru, the Nauruan public were told that the asylum seekers were only expected to remain in the Pacific islands “for up to two to three months.”<sup>51</sup>

Then, the host government was promised that the establishment of the detention centres was a temporary measure and the asylum seekers would only be held there for six months. Interviewed in January 2002, the then Immigration Minister Phillip Ruddock stated that Australia had no plans to ask Nauru to keep asylum seekers beyond May 2002. At the time, Mr Ruddock stated that there was no need to ask Nauru for an extension on the agreement.<sup>52</sup>

In spite of these commitments, the Pacific Solution has continually been extended. There have been numerous extensions of the MOUs governing the asylum seekers<sup>53</sup>. At the time of writing, there are 89 new asylum seekers detained in Nauru and the fifth MOU extending the Pacific Solution was signed by the governments of Australia and Nauru on 16 July 2007.

Paragraph 4 of the first Australia - Nauru MOU signed in 2001 obliges Australia to “ensure that each person will be processed and have departed Nauru within as short a time as is reasonably possible, and that no persons will be left behind in Nauru.”<sup>54</sup> The fourth MOU, covering the current period, contains a similar provision.

The same principles were clear with Papua New Guinea. The initial Memorandum of Understanding (MOU) between Papua New Guinea and Australia states that “all persons entering Papua New Guinea under this arrangement will have left after six months of entering Papua New Guinea *or as short a time as is reasonably necessary.*” According to the MOU: “In the event that the time period referred to needs to be extended beyond six months, the parties may jointly decide to do so through further written arrangements... Additional persons can be accommodated and processed by joint determination of both parties.”<sup>55</sup>

<sup>51</sup> See for example, quotes from unnamed Nauru officials in “Asylum seekers will be in Nauru for 2-3 months”, Radio Australia, 4 September 2001.

<sup>52</sup> “Nauru deal finite” ABC Radio Australia News, 14 January 2002.

<sup>53</sup> See Appendix 4 for an overview of the MOUs signed for Nauru and Manus Islands.

<sup>54</sup> Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia for Co-operation in the Administration of Refugees and other Issues, 11 December 2001.

<sup>55</sup> ‘Manus - NO to more refugees’, *Post Courier*, 13 November 2001; ‘Australia assures PNG, Nauru it will honour refugees’ pact’ *Post Courier*, 15 November 2001 [emphasis added].



The initial vision of a 6-month process has been ignored, with the majority of detainees spending two years on Nauru, and a smaller number being held for up to six years. Even two years is a long time, as one Iraqi refugee told us: "Two years? It was 2,000 years. Every moment was like a year."<sup>56</sup>

In spite of the government's stated intention that refugees on Nauru and Manus should be processed and then promptly resettled in third countries (but not in Australia), this has not occurred. Apart from New Zealand's generous support, very few countries were willing to bail out the Australian government by resettling refugees. Of the 1,064 refugees resettled between September 2001 and February 2007, only 3.9 per cent went to other countries – in Scandinavia and Canada – and most of those who did had family connections in those places (see Appendix 3 for details).

The evidence of the last five years shows that there are many reasons why people may not be quickly relocated, for those refused refugee status:

- Their country of origin may be too dangerous for them to return to
- Their country of origin may refuse to accept them
- Statelessness
- There are legal or technical delays in their claims being processed by DIAC.
- No third country will prioritise them for resettlement

As UNHCR has approximately 9 million refugees "on the books" seeking third country resettlement, many countries are reluctant to take the relatively small number of people from Nauru, believing that Australia should have taken them in the first place.

Extended periods of detention on Nauru caused many detainees to accept return to conditions they knew were not safe<sup>57</sup> and caused significant anguish and frustration at the process for others, sometimes resulting in actions such as hunger strikes that had further negative impacts on mental and physical health. Chaman Shah Naseri, an Afghani asylum-seeker who was detained on Nauru for nearly three years said:

"I can't understand that some of the people who got accepted by DIMIA were saying exactly what I said in my first interview. Now, after spending three years in the camp, you have accepted me. Why you have wasted my life?"

Refugee advocate, Susan Metcalfe said:

"Many who initially received negative decisions were eventually found to indeed be refugees in need of protection. But these revised decisions were far too long coming when many had already wasted years of their life in Nauru without access to a legal process. If people had been processed in Australia they would have gone to the Refugee Review Tribunal or the courts and incorrect decisions could have been revealed much earlier. We took away years of those people's lives for no reason - a politically driven policy was more important than humanity."<sup>58</sup>

In 2003-04, Australia organised a *voluntary* scheme for Afghani families who had been refused refugee status, and were stranded on Nauru. The government offered \$2,000 payments to families to voluntarily return to Afghanistan, in spite of the ongoing conflict in that country and the persecution of the Hazara minority. The Governments of Australia and Afghanistan signed an MOU on 17 May 2005 to allow for the return of rejected asylum seekers, even though some Afghans (including members of the minority Hazara community) faced security threats on their return. 480 people returned "voluntarily" from Nauru and Manus, including 420 Afghans, 16 Iranians and 24 Iraqis. There were 20 children in the group who returned to Afghanistan from Nauru after being refused refugee status, including 7 unaccompanied minors.<sup>59</sup>

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<sup>56</sup> The refugee, who asked not to be named is now living in Australia and spoke to two of the authors in April 2007.

<sup>57</sup> See reports by the Edmund Rice Centre: *Deported to Danger* and *Deported to Danger II*: [http://www.erc.org.au/index.php?module=documents&JAS\\_DocumentManager\\_op=viewDocument&JAS\\_Document\\_id=1](http://www.erc.org.au/index.php?module=documents&JAS_DocumentManager_op=viewDocument&JAS_Document_id=1)

<sup>58</sup> Interview with Susan Metcalfe.

<sup>59</sup> Figures provided in response to Questions on Notice, Senate Legal and Constitutional hearings into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, 6 June 2006.

In interviews with returnees in Afghanistan, Iraq and Iran, researcher David Cortlett found that the return was not always voluntary, as shown with an interview with Afghani returnee Reza Khan:

“Reza maintains that he was forced to return to Afghanistan. Every week on Nauru there were meetings with the leaders of the camp encouraging people to return and telling that if they didn't, Australia would use force. If they didn't believe that Australia would do this, there was a precedent, they were told. In the mid-1990s, 53 Chinese nationals had their hands and feet bound and were carried onto a plane and sent back to China. ‘At that time we became compelled’, Reza said. ‘A lot of people signed.’”<sup>60</sup>

NGO and church organisations, like the Edmund Rice Centre in Sydney, have continued to monitor the fate of returnees from Nauru, and have documented cases where returnees have been killed or injured after their return.<sup>61</sup>

In 2006, a delegation from the Edmund Rice Centre visited Afghanistan and reported claims that as many as nine men returned from Nauru may have been killed. They reported that three children of people sent back from Nauru can be confirmed as having been killed. The delegation spoke with family members of Mohammed Moussa Nazaree and Yacoub Baklri who confirmed that both men had been killed by local militias after returning from Nauru. The only children of Abdul, his daughters Yolanda (9 years) and Rona (6 years) were killed when their house was bombed. The only child of Mohammed Amin, his son, was also killed.<sup>62</sup>

The emotional and financial absurdities of the offshore processing program are best illustrated by the fate of three men – Aladdin Sisalem, Mohammed Sagar and Muhammad Faisal - who were marooned on Manus Island and Nauru, long after other refugees had been processed and resettled.

### 3.6 Aladdin Sisalem

In 2003, as the remaining Iraqi and Afghani asylum seekers were transferred to Nauru from the Lombrum detention centre in Papua New Guinea's Manus Province, one lone detainee remained in PNG, living in detention by himself for another 10 months.

Palestinian refugee Aladdin Sisalem fled Kuwait on 15 November 2000, in the aftermath of persecution of Palestinians following Saddam Hussein's invasion of Kuwait and the Gulf War – as a Palestinian living outside his place of residence, he qualifies as a refugee under UNHCR principles.

Arriving in Indonesia on a forged tourist visa, he trekked through the bush to Papua New Guinea where he was arrested and jailed. After 10 months of waiting for news of an asylum application, in December 2002 he took a small boat to Australia, landing on Australian territory in the Torres Strait Islands. Instead of transferring him to detention on the Australian mainland, Immigration officials sent him to the Australian-funded processing centre on Manus Island, claiming that his request to claim asylum whilst in Australia was invalid because he had not asked for the protection visa application form by its correct number. Even though Sisalem was rejected by Australia and Papua New Guinea, the United Nations High Commission for Refugees interviewed him on Manus and declared him to be a refugee.<sup>63</sup>

On 28 July 2003, the then Immigration Minister Phillip Ruddock announced the “wind down” of the centre at Manus, though “the centre, managed by the IOM will be maintained in a secure state, ready to reactivate at short notice.”<sup>64</sup> But Sisalem was left behind when other asylum seekers had their claims either accepted or rejected, and were moved out. From late July 2003, he was the sole remaining detainee on Manus Island, and remained the sole occupant of the camp for ten months until May 2004.

<sup>60</sup> David Cortlett: *Following them home – the fate of the returned asylum seekers* (Black Inc, Melbourne, 2005).

<sup>61</sup> See for example reports by the Edmund Rice Centre: *Deported to Danger* and *Deported to Danger 11*.

<sup>62</sup> Edmund Rice Centre: “Rejected asylum seekers killed after being sent back to Afghanistan from Nauru and 3 children dead” Media Release, Monday 7 August 2006.

<sup>63</sup> This is a summary of a complex chain of events - for full details of the legal complexities of the case, see Sarah Stephen: “Horror on Manus Island”, *Green Left Weekly*, 20 August 2003.; and articles collated at: <http://www.safecom.org.au/sisalem.htm>

<sup>64</sup> “Pacific Strategy Success” Media Release MPS 51/2003, by Phillip Ruddock, Former Minister for Immigration and Multicultural and Indigenous Affairs (1996 - 2003).

Australian taxpayers continued to fund Manus' operation, including a small staff of guards and cleaners hired to look after the one detainee. According to figures from the Department of Immigration, between July 2003 and February 2004 the cost of operating the camp, including the housing, feeding and caring for Sisalem, was \$1.3 million (a monthly total of \$216,666 - in contrast, it costs an average of \$4800 a month to keep an asylum seeker in detention in Australia.)<sup>65</sup>

Sisalem's application to stay in Australia was finally approved in 2004, after living alone on Manus for 10 months. On 30 May 2004 he arrived in Melbourne.<sup>66</sup>

### 3.7 Mohammed Sagar and Muhammad Faisal

The Australian government's 2001 commitment that asylum seekers would be processed within six months, or as soon as reasonably possible, was well and truly broken in the case of two Iraqi men, Mohammed Sagar and Muhammad Faisal, who were in detention for nearly six years.

The two men arrived on Nauru in 2001, and after processing of their application for asylum, were both granted refugee status. They waited in limbo with other refugees for resettlement to a third country, as Faisal told a visiting journalist in 2005:

"I am enduring all this just to get freedom and be treated as a human being. If I didn't have a problem I would go back [to Iraq] and would not endure this terrible situation here. I don't want human rights to be given to me. I want animal rights."<sup>67</sup>

However both men were refused entry into Australia when the last group of asylum seekers left the island at the beginning of November 2005. Their bid for resettlement had reached a stalemate after an interview with the Australian Security and Intelligence Organisation (ASIO) in 2005. On 19 August, the two men were informed by letter that they had been "assessed by the relevant Australian authority to be a risk to Australia's national security." Although assessed as genuine refugees, they were considered to be a security threat for reasons ASIO will not disclose.

Faisal, a Sunni Muslim from Baghdad, and Sagar, a Shia Muslim from Najaf were well accepted by the local community even though they were deemed security threats to Australia. Nauru's Foreign Minister David Adeang stated:

"They're quite likeable gentlemen, they mix with the Nauruan community quite easily. They've stayed here in Nauru for the last four, maybe five years without any incidents arising between the Nauruan community and themselves. One of them [Sagar] is actually employed by the regional University of the South Pacific as a computer technician, he seems to be enjoying his job and mixing well with his employers, and offering computer workshops for the Nauruan community as well."<sup>68</sup>

The delays in finalising the situation caused enormous stress, and the psychological health of the last two refugees began deteriorating. After years of uncertainty awaiting resettlement, in mid-2006 Muhammad Faisal was placed on 24-hour watch because of suicide fears. In June 2006, ASIO agents and mental health experts re-interviewed the two men, after the Nauru Government expressed concern about their welfare. Foreign Minister David Adeang wrote to Immigration Minister Amanda Vanstone, seeking the urgent removal of Faisal to Australia for psychiatric care. The length of the process had dragged on to long, as he explained:

"Our problem essentially is that it's most unfair, and we don't think it's compassionate consideration of their case to be held uncertain for too long a time...the processing centre is that. It is a processing centre, not a residential facility, security assessment or not. And frankly speaking, it does not reflect on us very well as a government, as a country and as a people to be held responsible for somebody who, on our soil, turns out to be mistreated to the point he becomes suicidal."

<sup>65</sup> Andra Jackson: "Manus Island's \$1m man", *The Age*, 11 February 2004.

<sup>66</sup> Andra Jackson: "Aladdin Sisalem released from Manus Island", *The Age*, 1 June 2004.

<sup>67</sup> 'This is not detention, this is hell' *The Age*, 16 April 2005. See also Michael Gordon: "Last man standing" *Sydney Morning Herald*, 30 September 2006.

<sup>68</sup> "Migration bill will not affect Nauru's detention centre" – Interview with David Adeang, Radio Australia 'Pacific Beat', 14 August 2006.

In August 2006, Faisal was finally transferred to Australia for psychiatric care after becoming suicidal. While in hospital in Brisbane, his case was "re-assessed" by ASIO and he was not longer considered a threat.

Having arrived in late 2001, Sagar remained on Nauru until February 2007, when UNHCR found him a resettlement spot in an unnamed Scandinavian country.

In August 2006, in an attempt to avoid a repeat of this situation, the Nauruan government introduced visa charges for asylum seekers remaining on Nauru (with initial media reports suggesting figures of \$75 – 100,000, although Australia had reportedly refused to pay these amounts<sup>69</sup>). Foreign Minister David Adeang stated:

"We would not be welcoming a repeat of the situation that has arisen for these two gentlemen from Iraq. We would be looking to engage with the Australian government on perhaps substantial and significant improvements to the processing arrangements, whatever they may be, but we have our own ideas and I'm sure the Australian government has their own ideas about ensuring that these incidents do not occur again, and certainly that is our interest, our government's interest to ensure future residents of the camp are not treated in this manner ever again."<sup>70</sup>

He added: "We're not trying to be unreasonable here, but this is not a residential facility, it's a processing centre."<sup>71</sup>

This problem may arise again with the Burmese and Sri Lankan asylum seekers detained on Nauru in 2007. Given the potential human rights dangers for returnees to their homeland, any asylum seeker refused refugee status is likely to have a long wait on Nauru, unless they accept voluntary repatriation. At the time of writing there are 7 Burmese refugees on Nauru, who arrived in Australian waters in August 2006, as well as 82 Sri Lankans, who arrived in February 2007, one of whom was an unaccompanied minor when he arrived in Nauru.<sup>72</sup> For more details on the Burmese and Sri Lankan Asylum seekers see Appendix 6.

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<sup>69</sup> "Nauru demands \$75,000 per month to house refugee", Radio New Zealand International, 11 September 2006; "Australia Failed To Pay Refugee Visa Fee", Pacnews, 4 October 2006.

<sup>70</sup> "Migration bill will not affect Nauru's detention centre" – Interview with David Adeang, 'Pacific Beat' *Radio Australia*, 14 August 2006.

<sup>71</sup> Michael Gordon: "Nauru to raise charges for asylum seekers", *The Age*, 21 August 2006.

<sup>72</sup> Initially 8 Burmese and 83 Sri Lankans arrived in Australian waters, however one Burmese has since returned to Malaysia, and one Sri Lankan remained in Australia for medical treatment (as at August 2007).

## 4. Financial costs of offshore processing

This section outlines the cost of offshore processing in Nauru, Manus Island and Christmas Island, amounting to at least \$1 billion since 2001.

The final tally of the financial costs associated with the offshore processing regime is difficult to obtain. Australia's offshore processing policies are not neatly encapsulated as a single program. They entail not just the cost of keeping asylum seekers on Nauru, Manus Island and Christmas Island, but a long list of other costs such as the cost of border monitoring and boat interception, the cost of new infrastructure and the cost of providing legal, medical and other services to detainees.<sup>73</sup>

The policies are also spread across the Department of Immigration and Citizenship budget and some operations fall outside of the department and come under Department for Foreign Affairs and Trade, the Department of Defence or Department of Finance and Administration budgets.

Any attempt to arrive at a total sum would have to include the following aspects:

### Interception costs:

- Costs of Navy operations in relation to interception – Operation Relex & Relex II and Operation Resolute.
- Costs of maintaining IOM programs in Indonesia and elsewhere that seek to ensure that asylum-seekers do not make it to Australia.
- Costs of regional anti-people-smuggling surveillance and operations.

### Infrastructure, maintenance and operating costs:

- Costs of building and maintaining the new detention centre on Christmas Island.
- Costs associated with establishing and maintaining existing detention centre on Christmas Island, as well as previously mothballed centres on excised Australian territories such as that on the Cocos (Keeling) Islands, which was closed in 2002.
- Costs of infrastructure, maintenance and upgrading of detention centres on Nauru and Manus Island.
- Costs of operation of detention centres on Nauru, Manus Island and Christmas Island, including when the centres are empty.

### Transportation and Services costs:

- Costs of transporting asylum-seekers to Nauru, Manus Island or Christmas Island from point of arrival in Australian waters, and later back to Australia or a third country if accepted as refugees.
- Costs of transporting asylum seekers between Christmas Island and Nauru, where this has occurred.
- Costs of transport for asylum-seekers needing medical attention from Nauru, Manus Island or Christmas Island to mainland Australia for medical treatment and/or bringing medical services to them
- Costs of bringing lawyers and legal assistance to asylum-seekers on Christmas Island.
- Costs associated with providing legal assistance to asylum-seekers on Nauru and Manus Island (which have been borne by advocates and community).
- Costs of shipping food and other provisions to detention centre on Christmas Island from mainland Australia.
- Costs of mental health counselling for Afghani and Iraqi men who had spent three years in detention in Nauru.

<sup>73</sup> Some overseas analysts such as Professor Gregor Noll have suggested that the Australian government had already spent \$900 million on activities relating to the Pacific Solution by Fiscal Year 2005-06, yet there are still unreported costs for the Sri Lankan and Burmese asylum seekers on Nauru, and an ongoing aid program. Gregor Noll: *Law and the Logic of Outsourcing: Offshore Processing and Diplomatic Assurances*, Paper Prepared for the Workshop on "Refugee protection in international law: Contemporary Challenges," Oxford, April 2006

**Other costs:**

- Cost of aid packages to Nauru and Papua New Guinea, used as incentives for the countries to accept the asylum-seekers.
- Cost of voluntary repatriation of asylum seekers from Nauru, Papua New Guinea and Christmas Island – most notably that offered to Afghans to return home in 2002.
- Cost of legal advice and litigation in relation to High Court and other legal challenges to the Pacific Solution.
- Cost of newly introduced visa charges on Nauru.

These costs may be partially offset by some savings due to lower usage of domestic detention facilities, a reduced need to build new onshore detention facilities and other factors. In many cases, the Australian government has already included such savings in its budgeted cost estimates for offshore processing and given the low numbers processed through Nauru, Manus Island and Christmas Island since 2001, these savings are unlikely to have been significant. Professor of International Law Gregor Noll has argued that “savings from reduced onshore arrivals are consumed by the massive costs for offshore processing in the excised zones of Australian territory and in third countries.”<sup>74</sup>

**4.1 Interception**

Since the arrival of the Tampa, the Department of Defence has spent at least \$100 million on increased activities related to intercepting boat arrivals carrying asylum seekers. These operations were originally given the name “Operation Relex” before being succeeded by “Operation Relex II” in 2002 and finally “Operation Resolute” in 2006. Between 1 July 2001 and 30 June 2007, \$99.7 million was spent on these three operations, according to the 2007-08 Budget estimates, with plans to spend another \$51.6 million over the next four years, starting with \$12.6 million in 2007-08.

This \$99.7 million figure between 2001 and 2007 may not reflect the full cost of the Pacific Solution to the Defence Department, however, as it does not include any contribution of the policy to increased maintenance of fleets or the need to make more general increases in maritime surveillance. For example, other defence department operations, such as “Operation Cranberry” aimed at preventing illegal fishing and drug smuggling in Australian waters would also be likely to have borne some of the cost of increased surveillance of boat arrivals. Customs also make a contribution to interception of asylum seekers and would have incurred some increased costs as a result of the Pacific Solution policies.

Despite spending nearly \$100 million over six years, the Navy has only managed to intercept a small number of boats. Between September and December 2001, the Navy intercepted 12 boats, turning around 4 of them containing around 600 people.<sup>75</sup> A number of these 12 vessels sank, with their occupants requiring rescuing by the Navy. Another vessel, which was not intercepted by the Navy, known as the SIEV X, infamously sank in October 2001 drowning 353 asylum seekers. After that, the arrival rate of boats slowed significantly. Since 2002, the Navy has intercepted fewer boats than in those first few months, with a total of around 100 people on them, according to research from the Parliamentary Library.

Another key cost of Australia's asylum seeker policies is ensuring that the International Organisation for Migration (IOM) processes asylum seekers in Indonesia to prevent them being processed by Australia. IOM has also been paid to operate the camps for asylum seekers on Nauru and Manus Islands. Australia has spent more than \$200 million on these IOM services to date.

DIAC told a November 2005 Senate estimates hearing<sup>76</sup> that it had paid \$150.9 million to IOM between 2002-03 and 2004-05, with the vast majority of this (\$119.5 million) for offshore processing centres. Another \$18.6 million of that money was for transporting refugees, \$2.5 million was for medical expenses of asylum seekers under IOM care, \$6.5 was for reintegration and return packages and \$1.5 was for cultural orientation provision for refugees. The same hearing was told that the Department had given a further \$20.4 million to IOM in that time to provide “capacity building services” to other Governments in the

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<sup>74</sup> Gregor Noll: *Law and the Logic of Outsourcing: Offshore Processing and Diplomatic Assurances*, Paper Prepared for the Workshop on “Refugee protection in international law: Contemporary Challenges,” Oxford, April 2006, p.3.

<sup>75</sup> See Senate Inquiry into *A Certain Maritime Incident*  
[http://www.aph.gov.au/Senate/Committee/maritime\\_incident\\_ctte/report/c02.htm](http://www.aph.gov.au/Senate/Committee/maritime_incident_ctte/report/c02.htm)

<sup>76</sup> Question number (178) of Questions taken on Notice Supplementary Budget Estimates Hearing, Immigration, Multicultural and Indigenous Affairs, 1 November 2005.

region, presumably to help countries such as Indonesia prevent asylum seekers arriving on Australian shores.

The hearing was told prior to 2002, Australia paid a total of \$59.7 million to IOM (\$34.6 million for managing Nauru, \$21 million for Manus Island and \$4.1 million for regional cooperation).<sup>77</sup> According to Budget papers, the government paid \$732,000 to IOM in 2005-06, while in the latest budget the government has paid \$747,000 to IOM in 2006-07 and will spend an estimated \$762,000 on IOM services in 2007-08. The 2007-08 Budget also pledged a further \$7.7 million in that year to IOM to improve Indonesia's immigration management facilities.

## 4.2 Infrastructure, maintenance and operating costs

Figures relating to building, maintaining and operating detention centres as part of the Pacific Solution have varied significantly across different Australian government reports, Budget papers and other literature. The Australian Government does not collate the full costs of running the detention centres in Nauru and Papua New Guinea. The Federal Budget papers do not reflect the full costs of all departments operating in Nauru (AusAID, Australian Federal Police, etc), or extra costs outside the core departmental programs. Amounts reported in the annual May budget papers are routinely upgraded in supplementary estimates, and overseas development assistance (ODA) for Nauru is supplemented by an extra budget line "Nauru additional". In an unprecedented lack of transparency, the budget papers in 2006-07 and 2007-08 do not even reveal the amount for "Nauru additional", stating that the figure is "not for publication."

According to Department of Immigration officials, the cost of processing asylum seekers on Nauru and Manus was \$253.5 million between September 2001 and 31 May 2006.<sup>78</sup> The department said this amount includes departmental costs in Australia and constructing, maintaining and managing the centres, including payments to the IOM and AFP and the cost of key infrastructure support. Updated figures for 2006-07 have not yet been released, but in February 2007, Department of Immigration officials told Senate estimates that "the average cost for maintaining the facilities on Nauru is \$2 million a month", so the full cost may be heading towards \$280 million at the time of writing.<sup>79</sup>

**Table Three: Cost of managing offshore processing centres in Nauru and Papua New Guinea (Figures in AUD\$ millions)**

	2001-02	2002-03	2003-04	2004-05	2005-06
<b>Nauru</b>	48.5	45	33.5	34.4	23.7
<b>Manus</b>	29.4	20.6	6.2	1.8	2.2

Source: Reply to questions on notice by Senator Ludwig, Budget estimates hearing, 22 May 2006

The figures appear to have been revised down over time, with a 2002 Senate Inquiry into the "Children Overboard" incident finding the costs of operating Nauru and Manus Island in 2001-02 alone were \$114.5 million.<sup>80</sup>

<sup>77</sup> A 2002 Senate inquiry was told these figures were \$46 million for Nauru and \$28 million for Manus – or a total of \$74 million in 2001-02.

<sup>78</sup> Reply to questions on notice by Senator Ludwig from Budget estimates hearing, 22 May 2006.

<sup>79</sup> Senate estimates, Legal and Constitutional Affairs Hansard, 12 February 2007, p81.

<sup>80</sup> In October 2001, just two months after the Tampa and weeks before the Australian Federal election, the Australian Government claimed that asylum seekers on a boat known as the SIEV 4 had thrown their children overboard in an attempt to blackmail the Australian government into accepting them as refugees. Inquiries into the incident later found that it had not occurred and that the Australian government was aware that it had not occurred. In spite of this government officials proceeded to distribute photographs showing children in the water, who had actually been asked to enter the water by the Navy as a standard procedure to rescue them from their boat.

Gaining a clear picture of the cost involved in processing asylum seekers on Christmas Island (even temporarily before they are transferred to Nauru) is even more fraught, as it is rarely broken down from wider estimates of costs. DIAC Deputy Secretary, Mr Correll, has stated that in 2005-06 it cost \$6.8 million to operate the facility on Christmas Island and that "you could expect that the operating costs for the new facility would be of a significantly higher order than \$6.8 million per annum."<sup>81</sup> At this amount, it would have cost nearly \$40 million to run over the past six years. However the actual cost is likely to be significantly more than this given numbers of asylum seekers have dropped from a higher level in 2001-02. The 2002 Senate Inquiry found: DIMIA's budget for 2002-03 includes \$81.9 million for the reception and processing of asylum seekers at Australia's external territories (which included Christmas Island and the Cocos Islands), with \$122.8 million for 2003-2004, \$124.4 million for 2004-05 and \$126.0 million for 2005-06.

Despite very low levels of boat arrivals the Australian government is currently upgrading facilities on both Christmas Island and Nauru. Costs of the new detention centre being built on Christmas Island have exceeded the initial estimate of \$210 million, and the centre looks set to cost \$396 million, according to Senate Estimates hearings in May 2007. Interviews conducted on Christmas Island suggested the facility will include 800 beds, a children's compound with an eight cot nursery, a childcare centre, a play area and classrooms. The detention camp has high tech security, including "energised" (electric) fences and microwave probes as movement detectors, with CCTV linked to a Remote Control Room in Canberra.<sup>82</sup>

**People are being told the \$396 million includes a whole range of other costs, but it certainly doesn't cover costs such as accommodation and airfares to get people to and from the island.**

**And when you consider the cost to bridge the gap in Australian indigenous health funding is \$460 million, it is obvious where the government's priorities lie.**

Senator Andrew Bartlett, Australian Democrats.

There was also the expense involved in establishing the original Christmas Island detention centre which opened in 2001 and had a 200 person capacity and the temporary facility that was used on the Cocos (Keeling) Islands in 2001 (According to the Senate inquiry into the Children Overboard incident, the initial outlay on the original Christmas Island facility in 2001-02 and 2001-02 was \$195 million).

Both Manus Island and Nauru detention facilities had an initial establishment cost of around \$10 million each, according to estimates supplied to the 2002 Senate inquiry into a Certain Maritime Incident. It is unclear whether this cost is included in the latest available figure of operating costs, amounting to \$253.5 million up until 31 May 2006.

Immigration officials also told a May 2007 Senate estimates hearing that the facilities at the lower Statehouse camp on Nauru are also in the process of being refurbished, so it can accommodate up to 500 residents, with the Australian government spending \$6 million on the project (as of August 2007, the Topside camp is not housing people, but is being maintained for future operations). The \$6 million refurbishment and subsequent consolidation of the two detention centres on Nauru is projected to result in savings of \$33.8 million over four years. Although the centre on Manus Island is currently mothballed, it is costing about \$2 million a year to maintain, with the payment of security guards and other maintenance costs.

The Department has given various estimates of the cost per detainee per day at its detention facilities over the past few years. The latest figures given to a budget estimates hearing on 22 May 2006 suggest that it cost \$1,830 per detainee per day to keep someone on Christmas Island compared to \$238 per detainee per day at Villawood in Sydney. At this daily rate it would have cost around \$35 million for each of the 1,700 Pacific Solution asylum seekers to spend 90 days at Villawood – a fraction of the cost of processing them offshore (around 3.5 per cent).

However, according to a question on notice in February 2005, costs per detainee per day at Villawood Detention Centre in 2005-06 were \$190 per day, while they are \$2,895 per day on Christmas Island. It compares with an estimated cost of around \$63 a day to support asylum seekers living in the community

<sup>81</sup> Senate Estimates, Legal and Constitutional Affairs Committee, Hansard 21 May 2007, p121.

<sup>82</sup> Interview with CI Shire President.



rather than in detention.<sup>83</sup> Costs of maintaining asylum seekers on Nauru and Manus Island have not been made available on a per detainee per day basis.

***The cost of running these schemes is appalling and when you work it out per asylum seeker it is unbelievable.***

Rev. Elenie Poulos, National Director of Uniting Justice Australia

### 4.3 Transportation and Services Costs

The Australian government has also spent millions of dollars transporting asylum seekers to and from offshore locations. In 2005-06, the Australian government spent \$4,922,807 on charter flights to move asylum seekers offshore to Christmas Island, Nauru and Manus, according to Senate estimates.<sup>84</sup> A further \$2.06 million was spent in the first seven months of the 2006-07 financial year.

The cost of transporting asylum seekers to Nauru, Manus Island and Christmas Island by boat is not generally recorded by the Australian Government. Nor have separate estimates been made of the cost involved in flying asylum seekers to Australia for medical treatment or the costs involved in flying lawyers to Christmas Island to provide legal assistance, as was the case with the 43 West Papuan asylum seekers who arrived in 2006.

A 2002 Senate Inquiry into the "Children Overboard" incident<sup>85</sup> revealed the costs involved in transporting asylum seekers to Nauru and Manus Island in that financial year 2001-02 was \$3.5 million. It is unlikely that costs of transporting asylum seekers by boat to the offshore locations have been as high as that in any subsequent years, given the lower numbers of asylum seekers since then.

More recently, the Department of Immigration told a Senate Estimates Legal and Constitutional Committee hearing in May 2007, that the cost of transferring 82 Sri Lankans from Christmas Island to Nauru was \$316,500. Previously, the transfer of the eight Burmese asylum seekers from Christmas Island to Nauru cost \$225,000.

The department has estimated it costs between \$20,000 and \$100,000<sup>86</sup> for each medical evacuation from Nauru, suggesting it would have cost between \$300,000 and \$1.5 million to transport the 15 asylum seekers that the department has admitted to transferring for medical treatment between September 2001 and February 2003 and another half a million to \$2.5 million to transfer the 25 detainees brought to Australia in October 2005 on the advice of health professionals.

The cost of services provided to asylum seekers in offshore locations is also largely unknown. The Federal government's last budget suggests it spent \$4.6 million on the Asylum Seeker Assistance (ASA) Scheme, which provides financial assistance and health care to asylum seekers living in Australia through the Red Cross. The funding for the provision of initial settlement to the asylum seekers from Nauru was funded separate to the ASA scheme.

<sup>83</sup> Financial Analysis of Detention Centre Costs, Naomi Edwards, 21 January 2002, <http://www.spareroomsforrefugees.com/pages/costs.htm>

<sup>84</sup> Senate estimates, Legal and Constitutional Affairs, Hansard, 12 February 2007, p81.

<sup>85</sup> Final report, Senate Select Committee: *A Certain Maritime Incident* (October 2002). [http://www.aph.gov.au/Senate/Committee/maritime\\_incident\\_ctte/report/c02.htm](http://www.aph.gov.au/Senate/Committee/maritime_incident_ctte/report/c02.htm)

<sup>86</sup> Response to Questions on Notice, Senate Legal and Constitutional hearings into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, 26 May 2006.

#### 4.4 Cost to the aid program and other costs

Nauru and Papua New Guinea have both been given additional aid assistance to help establish and maintain Australia's "Pacific Solution". This has amounted to more than \$120 million since 2001.

In 2001, Australia established a \$1 million trust fund to meet the costs associated with Papua New Guinea's role in setting up the Manus Island processing centre. Nauru was initially promised a \$30 million aid package in 2001-02 directly tied to its agreement to locate detainees on Nauru.<sup>87</sup>

As discussed in detail in Section Six, since 2001 Australia has increased five-fold the amount of development assistance provided to Nauru, compared to the 1990s, providing over \$120 million in aid since 2001.

The Australian government has also increased funding to run a consulate on Nauru. In the late 1990s, Australia had removed its diplomatic presence on Nauru, but the creation of the Pacific Solution required the placement of an Australian diplomat on the island once again. Over the last three years, the Australian government has been funding new facilities for the Australian consulate, after paying for temporary quarters between 2001-04. In 2005-06, AusAID put \$400,000 towards the \$10 million upgrade of the consulate in Nauru. Setting up an office in Nauru to manage the aid package is costing \$3.4 million of AusAID money over four years.

Among other costs associated with the Pacific Solution, the Australian government has spent millions on defending itself against legal challenges to the offshore detention of asylum seekers in the High Court<sup>88</sup> and has provided up to \$4 million in funds to encourage asylum seekers to go home rather than pursuing refugee claims.<sup>89</sup>

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<sup>87</sup> For full details of the initial aid offers in 2001, see *Adrift in the Pacific – the Implications of Australia's Pacific Refugee Solution* (Oxfam Australia, February 2002).

<sup>88</sup> While offshore asylum seekers do not generally have access to Australian law, challenges to the High Court have been made on their behalf. The latest of these is the one taken on behalf of the 7 Burmese men currently on Nauru. A legal challenge to the Pacific Solution was also initially mounted in Papua New Guinea in 2001, challenging the validity of detention under PNG's constitution. In 2004, Australia bankrolled a challenge by the Nauru government against the Australian High Court being the final arbiter on asylum seeker decisions made in Nauru, after Melbourne lawyers took action in the same court on behalf of 81 asylum seekers still held on the island. According to DIAC fact sheet 9, litigation costs incurred by the department as a whole have risen from less than \$6.5 million in 1996 to more than \$42 million by 2004-05. In 2006-07, DIAC spent \$45.3 million on litigation. Most of this money would be spent on actions involving onshore asylum seekers.

<sup>89</sup> The Reintegration Assistance Package includes a cash grant of \$2,000 per asylum seeker up to a maximum of \$10,000 for family groups with dependants. By the end of 2003, 408 Afghans had taken up the package, according to DIAC fact sheet 80. This accounts for the vast majority of the total of 482 asylum seekers on Nauru and Manus Island who have been repatriated to their home country or a third country between 2001 and February 2007. This suggests that between \$1 and \$4 million would have been spent on encouraging asylum seekers to go home in this way.

## 5. The cost to Australia's legal and democratic system

***I think what is wrong with sending people to Nauru is the reason behind it – the reason is getting them “out of sight, out of mind”. And I’m not in favour of that at all.***

Marion Le, Migration Agent

Australia's treatment of asylum seekers also has a significant cost in terms of its impact on Australian democracy and the rule of law. Many of those interviewed for this report suggested a major motivation for the policy was to keep asylum seekers “out of sight and out of mind.”

They highlighted major deficiencies in the policy, including a lack of legal representation for asylum seekers, a lack of independent scrutiny of offshore processing, a lack of transparency and accountability in the process and a lack of review of its outcomes. These deficiencies ultimately undermine Australians ability to be confident that a fair and equitable application of the law will occur in their country; they undermine their ability to be confident that governments can be held accountable for their decisions and they potentially damage social harmony and cohesion.

The Australian Government's operation of the Pacific Solution has been marked, from the beginning, by a lack of transparency and accountability. This is shown by actions such as:

- the lack of detail about the cost of operating the offshore detention centres and of the aid budget to Nauru.
- frustrating access to asylum seekers in offshore locations for lawyers, journalists and human rights workers.
- the lack of clarity in the visa status of asylum seekers in Nauru.<sup>90</sup>
- a refusal to acknowledge that the presence of asylum seekers on Nauru constitutes “detention.”<sup>91</sup>
- a refusal to acknowledge Australia's responsibility for the human rights of the asylum seekers while they are detained offshore.<sup>92</sup>

### 5.1 Damage to integrity of the legal system

***They walk into an interview with an official person from another country. They are terrified. Many have spoken to me about their hands, their whole body shaking. They didn't know what they were saying, they couldn't think. They need independent legal advice. They need someone to help them to deal with that sort of situation, particularly the younger men. Even if they are not underage minors, they may be eighteen or nineteen, never been away from family before in their lives. It's an incredibly overwhelming situation for them...***

***...I would say that for many years, Phillip Ruddock has been trying to deny asylum seekers access to the courts. I think that there are some legitimate points about that - that the processes can go on for many years. But if those processes are catching some people that have fallen through the cracks then we need them...without those processes we would be sending people back to persecution. So there have to be those safeguards.***

Susan Metcalfe, refugee advocate doing PhD research on Nauru

For many Australians, the Cornelia Rau and Vivian Alvarez Solon cases brought home the risk involved with the lack of openness in the area of immigration detention. It brought home that a lack of effective, transparent decision-making and rigorous judicial review potentially puts everyone at risk of being treated unfairly, even those who are already Australian citizens.<sup>93</sup> These glaring injustices occurred in the onshore

<sup>90</sup> This paper focuses on the first two of these points, for more details on asylum seekers visa status see Appendix 6 – Other Transparency and Accountability Issues.

<sup>91</sup> For more details on the Australian government's denial of detention see Appendix 6 – Other Transparency and Accountability Issues.

<sup>92</sup> For more details on the Australian government's denial of responsibility for human rights see Appendix 6 – Other Transparency and Accountability Issues.

<sup>93</sup> Ms Rau was a German born Australian resident and Ms. Solon was an Australian citizen – both were illegally held in immigration detention centres. Ms. Solon was deported to the Philippines. Their cases provoked public outcry,

context, where there are clear legal steps necessary for dealing with asylum seekers. In the offshore context, the procedures are much less clear and more discretionary. Charlie Powles from RILC said:

*"It is still completely unclear what exactly the department regards as the determination process for people in offshore processing. They claim that someone will come and do an interview and make an assessment and if they decide you are not a refugee you can seek an internal review. Someone else from the department will look at the assessment and if they decide you are not a refugee then you are not - end of story. That's the determination process. Even fewer records than you would get if you had done an application through the embassy in Islamabad."*

Many of those interviewed for this report suggested that because of the lack of transparency and ordinary legal procedure in relation to those subject to Australia's Pacific Solution, Australians cannot be confident that fair, transparent and equitable application of law and administration will occur in other areas of life.

***I think it flies in the face of democracy actually. And I think that there should be very few limits as to what we're not allowed to know... to actually stop people, the taxpayer, who is funding a huge facility like what's on Christmas Island and you can't go there and see who is in there and they never have to be brought before a court...I mean that to me flies in the face of democratic government and how dare these people get to be in a position of power and think that they can consolidate that power in a way that flies in the face of democratic beliefs and liberal beliefs and the rights that everybody as a human being has - a right to a fair trial. And what we're doing is incarcerating people without giving them a right to a fair trial.***

Marion Le, Migration Agent

## 5.2 Damage to government accountability, transparency and good governance

In itself, the offshore processing scheme is designed to avoid accountability. In the case of Nauru and Manus Island, the removal of the asylum seekers to a third country deprives them of access to judicial review of Department of Immigration decisions, and threatens some protections which apply to all refugees irrespective of their status under national law.<sup>94</sup> The sheer isolation of Nauru, Manus Island and Christmas Island, a lack of a media or community presence in these places, as well as visa problems and high costs faced by legal and media representatives wanting to visit or represent clients in these locations, all contribute further to a lack of accountability and scrutiny of off-shore processing.

Brisbane-based asylum-seeker advocate, Frederika Steen noted:

*"The bottom line is "out of sight out of mind..." It is to keep all the pesky lawyers and all the community advocates and supporters out...to remove and keep people out of the process. To have no critics, to have no people observing, reporting on or monitoring what was done."*

Elenie Poulos of Uniting Justice said:

*"Putting people in places like Nauru and Manus Island and Christmas Island means that they just don't have access to services, legal services, translation services, support services provided by the churches and other advocates. There is a lack of transparency in who would know what is going on."*

In the first few years of the "Pacific Solution", asylum seekers were denied access to legal advice about Australian immigration law and their rights of appeal. On occasions, Nauru has gone to the length of denying visas for Australian lawyers or migration agents who sought to travel to Nauru to represent the asylum seekers. When there were a number of Afghan Hazaras on Nauru, the president of the Hazara Ethnic Society in Australia, Hassan Ghulam, was refused entry in spite of requests for support from the Afghan families. Lawyers Julian Burnside QC and Eric Vardarlis were refused visas to travel to Nauru when they were undertaking a legal challenge to the detention of asylum seekers, even though they were

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government investigations, and the revelation that hundreds of Australian citizens had been mistakenly held for varying periods in immigration detention.

<sup>94</sup> These aspects of 'effective protection', which are drawn from the Refugees Convention, are freedom from detention (Article 31) and non-discrimination (Article 3), and the provision of adequate procedures to protect against *refoulement* (Article 33).

acting as lawyers on behalf of clients in Nauru. In 2003, the Government of Nauru also barred lawyers, health care professionals and independent observers from visiting the republic during the trial of 21 detainees allegedly involved in riots at the two detention centres on Nauru.<sup>95</sup>

***The main purpose of putting people into these detention centres or the people who are processed in offshore centres is to keep them away from the public and accessing no one. That they should not have any access to migration agents and no one should know what's happening with them. It's harming people physically and also mentally. They don't have anyone to talk to. The government might say that it's a fair process and this is what their policy is, but anyone who has been in a detention centre....wouldn't suggest it because it's terrible to live in that situation.***

Chaman Shah Naseri, Afghani refugee living in Australia, detained on Christmas Island and Nauru for nearly three years from 2001.

In 2004, HREOC published "*A Last Resort*", the results of its National Inquiry into the rights of children in detention. As part of its inquiry, HREOC had written to the Department of Immigration in 2002, asking the Department to facilitate a visit to the detention facilities in Nauru and Manus Island. However the Department rejected this request, arguing that since the HREOC Act 1986 "does not have extra-territorial effect, the Commission's inquiry does not extend to those facilities."<sup>96</sup> Even though HREOC had legal advice that the presence of Commonwealth officers in Nauru and Papua New Guinea enlivened the Commission's powers, the Department of Immigration refused to organise visits or even provide statistics to this official government inquiry.

The problem extends to other Australian officials, such as the Commonwealth Ombudsman. Under 2005 reforms to Part 8C of the Migration Act (1958), the Commonwealth Ombudsman is obliged to issue a report on all persons who have been in detention for longer than two years. However, this provision does not extend to people held in offshore processing centres.

This lack of access has largely resulted in Australians simply not being told what decisions are being made on their behalf. This in turn undermines the ability of Australians to hold their governments to account for the decisions it makes.

On Nauru, the situation of access has improved in recent years after the election of the Scotty government in 2004, with regular visits by lawyers of the Refugee and Immigration Legal Centre (RILC) in Melbourne to act for the Burmese and Sri Lankan detainees currently on Nauru. However RILC's visits are funded by public donations as they are not covered by funding from the Australian Government's Immigration Advice and Application Assistance Scheme (IAAAS) for asylum seekers which applies to all on-shore applicants. Australian journalists and politicians have made visits to the camps on Nauru<sup>97</sup>, although some visitors are still refused visas to travel to Nauru (including the authors of this report, who were unsuccessful in obtaining a visa in spite of repeated requests.)

Since 2005, the Australian Government has made a number of positive changes in asylum practices, in response to inquiries into immigration detention in on-shore facilities, such as the Palmer, Comrie and Commonwealth Ombudsman inquiries.<sup>98</sup> There has also been an effort to implement alternatives to detention for families and other vulnerable individuals. These improvements and reforms to the system have not been implemented in offshore facilities.

<sup>95</sup> R. Skelton, 'Nauru bars outsiders during riot trial', *The Age*, 25 August 2003, p3. In response to queries in the Senate, the Department of Foreign Affairs and Trade has stated that the refusal of visas is a matter for the Government of Nauru, and that DFAT has not communicated with the Nauru authorities "for discussing visa issues for Australian citizens with the Government of Nauru."

[http://www.apf.gov.au/senate/committee/legcon\\_ctte/migration\\_unauthorised\\_arrivals/submissions/sub137.pdf](http://www.apf.gov.au/senate/committee/legcon_ctte/migration_unauthorised_arrivals/submissions/sub137.pdf)

<sup>96</sup> Human Rights and Equal Opportunities Commission: *A last resort – National Inquiry into children in immigration detention* (HREOC, 2004), p37

[http://www.hreoc.gov.au/human\\_rights/children\\_detention\\_report/report/index.htm](http://www.hreoc.gov.au/human_rights/children_detention_report/report/index.htm)

<sup>97</sup> Journalist Michael Gordon describes his attempts to obtain a visa in M. Gordon: *Freeing Ali – the human face of the Pacific Solution* (UNSW Press, Sydney, 2005), pp59f. Senator Andrew Bartlett (Australian Democrats) has recorded his impressions of successive visits to Nauru, with the latest report from April 2007 on the web at:

<http://andrewbartlett.com/blog/?p=1452>

<sup>98</sup> The illegal detention of Australian resident Cornelia Rau was studied in Mick Palmer: *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* (July 2005); Australian citizen Vivian Solon's deportation in a report by Neil Comrie for the Commonwealth Ombudsman's Office: *Inquiry into the circumstances of the Vivian Alvarez matter* (Commonwealth Ombudsman, Canberra, Report 03/2005).

As lawyer Charlie Powles has stated:

*"The bizarre thing about offshore processing is that the Government is treating it as completely outside the reforms that were made after the reports that were made into the operations of the [immigration] department...that highlighted the grave deficiencies in the way the department operates. In response to these, there were a number of amendments in relation to the onshore processing – there is a requirement that if you lodge a protection visa application, you get a decision from the department within 90 days. And if you appeal to the tribunal you get a decision from the tribunal within 90 days...And yet the Australian Government's position is that none of this applies to offshore processing or to processing outside Australia. And if anything, the offshore processing mechanism is one where they are actually going further away, they are going in the opposite direction from what's happening onshore."*

***Our democracy is in deep doo doo. We don't give people freedom of speech. There is intimidation all around us. We joke in the refugee movement "is your phone tapped?" Ten years ago you wouldn't think of it...I've said it in public and certainly I back that up by explaining that the injustices and the delays, the justice delay for the men that you have interviewed here today, is an obscenity.***

Frederika Steen, refugee advocate

### 5.3 Lack of information on cost and policy

Damage to government accountability, transparency and good governance caused by the Pacific Solution is also demonstrated through the control of information in Australia.

Government budget figures do not collate the full costs of running the detention centres in Nauru and PNG. As detailed in Section 6.1, the 'Nauru' budget line in the overseas development assistance (ODA) budget does not include the full amount of ODA to Nauru, but since 2001 has been supplemented by an extra budget line called 'Nauru additional'. In a striking lack of transparency, the budget papers in 2006-07 and 2007-08 do not even reveal the amount for 'Nauru additional', stating that the figure is "not for publication."<sup>99</sup> This is unprecedented in the AusAID budget papers, and has come under direct orders from Foreign Minister Alexander Downer, as noted in this exchange during Senate Estimates in May 2007:

Senator Hogg: Are there any other such transactions in any of the documentation related to AusAID?

Mr. Scott Dawson [AusAID]: There are no other measures that I am aware of that have an instruction from ministers that they are to be presented with a "not for publication" annotation.

Senator Hogg: So there is nowhere else where this committee – if it pored over the documentation line by line – would be denied access to the appropriate figures. Is that a correct assessment?

Mr. Dawson: That is correct.<sup>100</sup>

The government is constantly engaged in media management over the offshore processing program, even though it is costly and difficult for journalists to visit the detention centres in Nauru. The level of media control is such that under Immigration Minister Kevin Andrews, the Department of Immigration's media unit has been ordered to cease issuing press releases, and all media inquiries are deflected from the Department to the Minister's media advisor. As the Secretary of the Department told Senate Estimates:

"The minister asked for it. It was not the arrangement with [the previous minister] Senator Vanstone, but different ministers have different ways of doing things; the minister has asked that that occur, so it is occurring."<sup>101</sup>

<sup>99</sup> Ministerial budget statements: *Australia's Overseas Aid Program, 2007-08*, p57 and footnote p63.

<sup>100</sup> Senate Estimates, Foreign Affairs Defence and Trade Committee, Monday 28 May 2007, p.86.

<sup>101</sup> Andrew Metcalfe, DIAC Secretary, Senate Estimates, Legal and Constitutional Affairs Committee, Monday 21 May 2007, p27.



Even obtaining information on the policy and rationale for offshore processing through Parliamentary committees has been dogged by lack of transparency. The Senate Legislative and Constitutional Affairs Committee indicated its frustration at the obfuscation by Departmental bureaucrats and government officials, in its report on proposed legislative reforms to offshore processing in 2006:

“The committee’s deliberations have been frustrated by the fact that crucial information relating to a number of key elements of the bill have not been made available by the Department or has only been made available after questioning. Moreover, the committee has not been assisted in its understanding of the full impact of the measures contained in the bill by the brevity and in some cases, contradictory or sophist nature of some of the information provided by the Department.”<sup>102</sup>

Minority members of the Senate Committee bluntly stated:

“Not only is the Bill highly deficient in terms of details about how its measures will be practically implemented, but the Department has also been particularly unhelpful in providing information and documents that apparently form the underlying basis for important aspects of the offshore processing regime. The Department has appeared reluctant to provide this information and when information was given, answers have been brief, legalistic, contradictory and obscure in relation to a number of matters relating to the operation of fundamental aspects of the bill.”<sup>103</sup>

#### **5.4 Damage to social harmony**

Many of those interviewed suggested that Australia’s offshore processing system could have long term impacts on social harmony in Australia. They argued that the cocktail of demonisation of “queue-jumping” refugees, a more generalised stereotyping of Muslims and the after-effects of lengthy detention was likely to result in problems in Australia down the track.

Brisbane-based refugee advocate, Frederika Steen said:

“I predict that this will be the greatest cost in terms of social harmony from our Middle Eastern refugees. It will be the angry children, especially from an Iraqi background, who have been pushed from pillar to post and suffered the greatest delays, who have been humiliated, who have been punished for their religion, for being Muslim...they are the ones in Sydney and Melbourne who can be our potentially most alienated next generation. We have done a great damage to our society. My friends and I say we fear for the harmony of our society, what the Government has done is set these racist hares running and we now tolerate intolerance and stereotyping.”

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<sup>102</sup> Final report, Senate Legal and Constitutional hearings into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, June 2006, section 3.198, p59.

<sup>103</sup> Ibid, p65.

## 6. Regional cost - the cost to Australia's aid program

Nauru's economy has been faltering since the early 1990s due to the decline of the export price of phosphate (the country's sole export commodity), reduced production by the Nauru Phosphate Corporation, exhaustion of reserves and mismanagement of the country's invested assets. The Asian Development Bank (ADB) has estimated that per capita income in the island state of just 10,000 people has dropped from US\$2000 in 2004 to US\$500 in 2005.<sup>104</sup>

Until independence in 1968, Nauru was administered by Australia under a UN Trusteeship, and the centre of the island was ravaged by phosphate mining.<sup>105</sup> The Nauru Phosphate Royalties Trust was established in 1968 to invest royalties from this key export commodity. However in 1988, Nauru took Australia to the International Court of Justice, seeking a declaration that Australia was responsible for the environmental and social damage suffered while it administered the trusteeship over Nauru. The case was averted with a pre-trial settlement, with a Compact of Settlement in August 1993 ending in a \$107 million payment.<sup>106</sup>

In spite of Nauru's relative wealth during the 1970s and 1980s, the capital and assets managed through the Phosphate Royalties Trust (including property investments in Australia and the Pacific and the resources of Air Nauru) were squandered by successive governments. Business deals went bad and politicians agreed to a host of uninformed investment decisions.<sup>107</sup>

Since the election of a new government in October 2004, led by President Ludwig Scotty, Nauru has been trying to redirect aid to targeted programs that benefit the Nauruan community, in line with its National Sustainable Development Strategy (NSDS). Overseas aid donors are playing a crucial role in this process. But this aim is at risk of being distorted by its chief donor, Australia, with an aid program that is being driven by domestic political considerations in relation to asylum seekers as much as the needs of the people of Nauru.

During the 1990s, Australia's only Overseas Development Assistance (ODA) to Nauru was a few education scholarships and the payment of an annual indexed grant of \$2.5 million under the Nauru Settlement Treaty. Since the Tampa crisis of 2001, however, the aid program to Nauru has ballooned, with five times more aid than the previous decade.

Between 1992 – 2001, Australia only gave \$24.6 million in aid to Nauru. From the establishment of the detention centres in late 2001 until mid-2006, Australia has given over \$123 million in aid – with more to come as the governments have recently agreed to extend the current arrangement. Foreign Ministers Alexander Downer and David Adeang signed a new MOU on 16 July 2007. According to Minister Downer, the new MOU “will provide a framework for continued cooperation on combating people smuggling and for Australian development assistance in support of Nauru's ambitious reform program, and is a strong model of successful development cooperation.”<sup>108</sup> The government has refused to reveal how much aid is included in the new MOU, though media reports have cited a figure of US\$15 million.<sup>109</sup>

The way in which the Australian government has transformed the aid program in Nauru since 2001 has been criticised by former staff of the official Australian Agency for International Development (AusAID). Mark Thomson, who headed the AusAID program for Nauru in 2003 and served on the Department of Immigration's co-ordinating committee for Nauru, has described the aid payments as “an unmitigated bribe” to ensure the Pacific Solution continues:

<sup>104</sup> Asian Development Bank: *Technical Assistance to Nauru for the reform of the Nauru Phosphate Corporation* (finance by the Government of Australia), May 2005 TAR: Nau 39072

<sup>105</sup> For discussion of the British Phosphate Corporation and Australia's role in the mining of Nauru, see C.G. Weeramantry: *Nauru - Environmental Damage Under International Trusteeship* (Oxford University Press, Australia, 1992).

<sup>106</sup> Under the Compact of Settlement which ended the case, the Australian government provided a one-off payment of \$57 million and also agreed to pay a further \$2.5 million each year, indexed for inflation under the Rehabilitation and Development Co-operation scheme.

<sup>107</sup> For details of the loss of key Nauru's assets, see the ABC TV Four Corners' program “Island Raiders”, broadcast 27 September 2004 <http://www.abc.net.au/4corners/content/2004/s1206183.htm>

<sup>108</sup> “Visit to Nauru by Australian Minister for Foreign Affairs, Alexander Downer” Media Release, 15 July 2007.

<sup>109</sup> “Nauru grateful for Australian aid renewal” *Radio New Zealand International*, 20 July 2007; Craig Skehan: “Canberra silent on Nauru aid”, *Sydney Morning Herald*, 18 July 2007.



"The whole thing's a farce because the whole aid component is there by virtue of the camp. It wouldn't be there otherwise. The only reason is because the Nauru Government will accede to the ongoing maintenance of the detention facility."<sup>110</sup>

While reluctant to criticise the current relationship between the Australian and Nauruan governments, Nauruan ministers have suggested that money "poured into Nauru" in the early years of the Pacific Solution under the administration of President Rene Harris. Nauruan Foreign Minister David Adeang said:

"Their [Australian] aid to Nauru under our government's administration is a worthwhile investment in ensuring that this country gets back on its feet, whereas before it's basically just money poured into Nauru in order to ensure that the processing centre remains on Nauru."<sup>111</sup>

## 6.1 Australian aid to Nauru

Since the Pacific Solution began in 2001, Australia has signed a series of Memoranda of Understanding (MOU) with Papua New Guinea and Nauru, which outline the roles and responsibilities of each partner in running the detention centres, and the aid that will be provided for development activities.

As mentioned above, Australia has provided a five-fold increase in overseas development assistance (ODA) to Nauru since the establishment of the detention centres in 2001, as detailed in table four. The smaller figure for "Nauru" includes cash payments for the Nauru Settlement Treaty and ODA through the AusAID country program; while "Nauru additional" includes extra ODA funds under successive Memoranda of Understanding between Australia and Nauru, which set out the agreement governing the presence of asylum seekers in Nauru. As can be seen in the table, the second figure dwarfs the first.

**Table Four: AusAID country program for Nauru (in millions of AUD\$)**

	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	Budget 2007- 08
<b>Nauru</b>	3.4	3.5	3.8	2.8	3.7	4.8	8.7
<b>Nauru additional</b>	18.8	21.3	15.5	13.5	12.6	"Not for publication" (estimated outcome 18.9)	"Not for publication"

Source: Ministerial statements: *Australia's Overseas Aid Program, 2001-02 until 2007-08*.

The fourth MOU between Nauru and Australia, covering 2005-2007, details the overseas development assistance that Australia will provide "to assist with realistic development planning, strengthening governance, broad economic reforms and the reform and development of key sectors." It states that Australia will provide \$40.5 million in ODA over the two years.<sup>112</sup>

Analysis of the MOU raises serious questions about the focus and priority of Australia's aid program in Nauru. Although the agreement talks about Nauru's "long-term viability" and the "sustainability" of development activities, there are serious imbalances in the allocation of aid. From 2005 - 06, the aid program allocated \$6.6 million for the Police Development Program<sup>113</sup>, but only \$2.1 million for health. \$1.7 million is allocated for education and training – at the same time, \$1.3 million is budgeted for housing, transport and other costs for Australian officials. Long term sustainability programs are given small amounts, such as \$800,000 for domestic programs on improved water security and \$400,000 for food security.

Much of Australia's aid is focused on covering costs and running services in the short-term rather than building for the future and many of these same services are under pressure because of the extra burden

<sup>110</sup> Debra Jopson: "Where did \$100m go? Not to the Nauruans", *Sydney Morning Herald*, 28 May 2007.

<sup>111</sup> Interview with David Adeang, Radio Australia 'Pacific Beat', 14 August 2006.

<sup>112</sup> The initial agreement, subject to negotiated revision, was \$23.4 million in 2005-06 and \$17.1 million in 2006-07.

*Schedule B, Memorandum of understanding between Australia and Nauru for Australian development assistance to Nauru and cooperation in the management of asylum seekers 2005-2007*, pp6-9. This is the 4<sup>th</sup> MOU between the two countries, signed on 20<sup>th</sup> September 2005 by Foreign Ministers Alexander Downer and David Adeang.

<sup>113</sup> For more details on the Police Development Program see Appendix 7.

placed on them by the detention facility on Nauru. At the beginning of the Pacific Solution, the Australian government provided millions of dollars to pay off Nauru's debts rather than promote long-term development activities. Australia provided funds to pay off the hospital bills of Nauru officials in Australia, and provided fuel oil and diesel to keep the country's electricity generators operating.<sup>114</sup> In mid-2003, AusAID paid \$137,924 for fresh water to be shipped to Nauru.

A major component of the ongoing aid program is infrastructure and financial support to operate the electricity generators and water desalination plant. In 2004-05 alone, AusAID paid \$17.83 million for power generation, of which \$7.75 million was for diesel fuel, sourced and shipped in by the contractor HK Shipping Pty Ltd. Between 2003 and 2005, more than \$4 million was spent on providing supplementary generators to Nauru. For 2005-06, there was a capped allocation of \$3.5 million for diesel supplies from a total "infrastructure reform" budget of \$6.7 million.<sup>115</sup>

The MOU also includes a major focus on "economic reform", in line with AusAID and ADB policies elsewhere in the region, involving the corporatisation and privatisation of public utilities, slashing the size of the public sector and introducing user pays principles for essential services. The MOU explicitly links the provision of aid to Nauru's implementation of the reform program proposed by overseas donors.<sup>116</sup> For more details on the impact of privatisation and public sector reform on Nauru see Appendix 7.

The aid program is tied to strict conditions, with Nauru committing to implementing a range of economic, governance and law and justice reforms. The MOU states that "should Nauru fail to meet these reform commitments, then the level of development assistance provided by Australia may be reduced"<sup>117</sup>

To ensure that Nauru continues to follow the proposed development strategy, positions in the Nauru administration are being filled by seconded Australian staff, including key positions like Police Commissioner and Secretary of Finance. The July 2007 DFAT country brief for Nauru details these in-line placements:

An Australian finance team, comprising a Secretary of Finance and two advisers, working in-line for the Nauru Government, is responsible for the formulation of Nauru's budget, and providing technical advice on economic reforms needed to improve financial management. An Australian Federal Police officer is deployed as Commissioner of the Nauru Police Force, supported by Australian Federal Police officers in advisory positions who manage a program of police infrastructure development, training for the Nauru Police Force and provide advice to the Nauru Government on law and justice reforms. In addition, Australia funds the placement of an in-line Director of Education, a Secretary of Health, a Director of Nursing for Republic of Nauru Hospital and Central Utilities Manager for the Island.<sup>118</sup>

## 6.2 Aid support for detention centres.

The Australian government stresses that its overseas aid is being used for the benefit of Nauruans, and that the funds to manage and operate the detention centres comes from other departments and budgets, such as the Department of Immigration and the Australian Federal Police (AFP). AusAID has stated that:

"No part of additional development assistance funding under the MOU has been provided as direct support of the Offshore Processing Centres since 2001. Australian development assistance

<sup>114</sup> Oxfam Australia: *Still Drifting, Australia's Pacific Solution becomes a 'Pacific Nightmare'* (Oxfam, Melbourne, 2002)

<sup>115</sup> For details, see MOU 2005-07, Schedule B. The costs of aid to Nauru are detailed in Debra Jopson: "Where did \$100m go? Not to the Nauruans", *Sydney Morning Herald*, 28 May 2007.

<sup>116</sup> "Recognising the ambitious reform agenda of the Government of Nauru and the opportunity this presents for promoting sustainable development in Nauru, and given the commitment by Australia to support this reform agenda, both parties have mutually decided to work together in enhancing Nauru's long-term viability through a package of Australian development assistance to Nauru and *linked reform commitments* that will be implemented by Nauru." (Article 2)

<sup>117</sup> See Article 9, MOU. AusAID's website also noted in May 2007 that "there will be increasing emphasis on incentives and linking assistance to specific reforms." See AusAID website : Nauru country program, May 2007 <http://www.ausaid.gov.au/country/country.cfm?CountryID=21&Region=SouthPacific>

<sup>118</sup> Department of Foreign Affairs and Trade Republic of Nauru Country Brief (July 2007) [http://www.dfat.gov.au/geo/nauru/nauru\\_brief.html](http://www.dfat.gov.au/geo/nauru/nauru_brief.html)

indirectly supports the maintenance of the broad operating environment that is required for the effective functioning of temporary residential asylum seekers' facilities in Nauru."<sup>119</sup>

However the creation of a "broad operating environment" inevitably leads to the use of ODA funds to support the offshore detention program - the supposed distinction between "direct" and "indirect" support makes little difference on the ground. Some government statements acknowledge that there is no clear separation between the aid and other funds flowing into Nauru – in a recent statement, the Department of Foreign Affairs and Trade draws the link between AusAID funding for essential infrastructure and the operation of the camps housing the asylum seekers:

"Australia meets the costs of the centre and supports essential services associated with their operation such as health, power generation, water desalination and the maintenance of public infrastructure."<sup>120</sup>

One clear example of this link is the aid funds provided to strengthen Nauru's health sector. The Australian government, through its contractor IOM, is responsible for providing health and medical services for the detainees, including personnel, supplies and equipment. But the current MOU makes clear that:

"Where medical cases cannot be treated at the Facilities, Australia may seek the assistance of Nauru's Health Services or, where necessary, evacuate persons from Nauru for medical treatment." (Schedule A, Article A.4).

During crises like the 2003 hunger strike or the 2005 mental health crisis, there were significant extra burdens on Nauru's small hospital. Given the shocking level of mental health issues facing the detainees, it's no surprise that some aid money for the health system serves to support the detention program rather than Nauru's long-term needs. In 2006-07, the NSW contracting firm Aus Health International (AHI) was given an AusAID contract to work with the Nauru Ministry of Health "to assist in the development of capacity to deliver a mental health service"<sup>121</sup> – a service likely to be relied on more heavily by detainees than the general populous.

In 2006, Australia also made a separate \$1.7 million payment to "directly support the provision of essential services" for the camps<sup>122</sup>. These payments, outside the aid program, included \$450,000 to refurbish Nauru's prison, and audits and improvements at the Menen Hotel, where many overseas contractors are housed.

We also appeal to Pacific Island Governments to carefully consider the long-term impact and consequences of accepting Australian aid deals in connection to the refugees. To welcome and accommodate Australian refugees for the sake of money will add more problems and will have adverse impacts on our communal life as Pacific communities, as well as our sovereignty. Pacific island Governments need to focus on finding solutions to overcome political, social and economic problems at home.

We are also concerned that accepting the Australian aid deals will make Pacific Island Governments part of the process that solicits money/profits out of trade in human trafficking, and in this case the asylum seekers.

Joint statement by the Pacific Conference of Churches and Pacific Islands Association of NGOs October, 2001

<sup>119</sup> Article 7 of the current MOU notes: "Australian development assistance will also support the maintenance of the broad operating environment that is required for the effective functioning of the Facilities in Nauru." For discussion, see Debra Jopson: "Pacific solution gets a new coat of paint", *Sydney Morning Herald*, 29 May 2007.

<sup>120</sup> Department of Foreign Affairs brief for Nauru, March 2007, emphasis added.

<sup>121</sup> Full details of the Nauru health program on AHI website - [http://www.ahi.com.au/projects/1061943376\\_2636.html](http://www.ahi.com.au/projects/1061943376_2636.html)

<sup>122</sup> As detailed in MOU Schedule A, Article A.14

## 7. Breakdown of the international system of protection

The international human rights system relies on the goodwill of states to fulfil their duties, not just to their own citizens, but to all people. While not denying the right of a sovereign state to look after the rights and welfare of members, human rights instruments such as the Refugee Convention oblige states who are signatories to the Convention to ensure that refugees and those who may be refugees are protected persecution for the reasons of race, religion, nationality, membership of a particular social group or political opinion. In addition to the Refugee Convention, the 1948 Declaration on Human Rights, the Convention against Torture and other forms of degrading treatment, the Convention on the Rights of the Child, and the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) strengthen the obligations states have to vulnerable groups.

As a signatory of the Refugee Convention, Australia has a commitment under international law to provide for non-refoulement of refugees – the principle under international law that forbids sending a refugee back to a place where s/he might face persecution – and for the principle of asylum. The Pacific Solution fails to uphold these commitments and in doing so, undermines the integrity of the system of asylum in Australia and the international system of protection globally.

While Australia is certainly not alone in the world in implementing measures to deter asylum-seekers, such policies stand in stark contrast to Australia's history as a country of immigration and of refuge. Over the years, Australia has played a leading role in creating and supporting an international regime to protect those forced to flee their countries because of persecution, human rights violations and wars. It is truly sad to see the public debate in Australia now characterized by stereotyping, xenophobia and lack of compassion.

All of these developments have repercussions far beyond Australia's shores. When the government of such a democratic and prosperous country refuses landing privileges to a ship loaded with asylum-seekers rescued from peril at sea, other governments take notice. When the Australian government calls for changes in the 1951 Refugee Convention to prevent people from seeking asylum in other countries, the whole international regime of refugee protection is weakened.

World Council of Churches General Secretary, Konrad Raiser, November 2001.

### 7.1 Non Refoulement and the Principle of Asylum

There have been cases of refoulement of asylum-seekers to places where they faced danger and persecution, as documented in the report *Deported to Danger*.<sup>123</sup> Susan Metcalfe stated:

*"Although no-one in Nauru was 'officially' deported by force, there is no doubt that people were placed under pressure to return. I think there is enough evidence to say that people did not have their claims effectively dealt with in initial processes and it is highly likely that genuine refugees were sent back to where they had been persecuted. This will continue to happen because asylum seekers still do not have access to a fair process."*<sup>124</sup>

Magner argues that in Australia "non-refoulement has come to mean non-rejection at the border."<sup>125</sup> However, while refugees who were placed on Nauru and Manus Island may not have been rejected at the border, the fact that many were ultimately sent back to dangerous situations where they faced persecution falls under the category of refoulement.

There are also serious questions relating to Australia's adherence to the principle of asylum. The principle of asylum requires that refugees are able to find protection in countries where they seek asylum and be protected from refoulement. Under the Pacific Solution, asylum-seekers who are clearly travelling to Australia to seek asylum are denied the right to claim asylum in Australia. They are placed on Nauru or Manus Island, where the process of claiming asylum and the provisions for review are inferior to onshore

<sup>123</sup> Edmund Rice Centre: *Deported to Danger* (op.cit).

<sup>124</sup> Interview with Susan Metcalfe.

<sup>125</sup> Tara Magner, "A Less Than 'Pacific' Solution for Asylum-Seekers in Australia," *International Journal of Refugee Law*, 2004, 16(1), p.65.

asylum claims in Australia and even if they are found to be refugees under this system they are unlikely to be offered resettlement in Australia.

According to DIAC figures, only 58 per cent of those found to be refugees or humanitarian cases on Nauru and Manus Island between September 2001 and February 2007 have been offered places in Australia (616 out of 1064 refugees and humanitarian cases)<sup>126</sup>, with New Zealand, Sweden, Canada, Denmark and Norway taking 42 per cent of those found to be refugees and humanitarian cases (448 out of 1064). Despite the recent 'solution' of offering up to 200 asylum-seekers found to be refugees resettlement in the United States, this agreement does not provide for certainty that refugees will find a durable solution, and does not adequately fulfil Australia's national responsibility towards those claiming asylum in Australia.

As Grant Mitchell of Hotham Mission, has noted:

"Essentially what the excision legislation is trying to do is say you cannot seek asylum here in Australia. You have no right to do that. You will instead be processed offshore. So they are actually working outside an international framework there."<sup>127</sup>

***Why did you sign the convention in the first place? You either stick to the convention or you tear it up. Australia has in effect torn it up while pretending to comply with it. We don't comply at all any more, you can't physically exclude asylum seekers getting into your territory and say that you're complying with the convention for the refugees. That's the fundamental basis of it - you provide asylum and we are not.***

Bruce Henry, lawyer

***To put someone in another sovereign territory and say that they have all the rights that they are supposed to have under the articles is a little bit rich.***

Mark Green, Coordinator, Refugee Advice and Casework Service (RACS)

Professor Susan Kneebone, an Australian refugee law expert, states, off-shore processing is "grounded in denying the right to seek asylum in the country of choice."<sup>128</sup>

Professor Kneebone states that "it is recognised that the right to seek asylum amounts to a right to have access to a refugee status determination"<sup>129</sup> and the limitations of the refugee status determination process under conditions of off-shore processing in Australia is also a limitation on the quality of asylum offered in Australia. Kneebone continues that off-shore processing "has developed as a practice of states to deny asylum seekers access to national processes and to pass their responsibility onto another state. It is an attack on the fundamental principle of asylum which is vital to international refugee protection."<sup>130</sup>

The Australian Government has made the argument that the asylum-seekers need not be granted asylum in Australia, as they were able to enjoy "effective protection" in countries they were previously in, including Iran, Pakistan, Indonesia and Malaysia. It argues that asylum-seekers travelling to Australia by boat could have safely stayed in their countries of first asylum or transit countries where they have this "effective protection". Yet most of these countries are not signatories to the Convention and refuse to recognise refugee status. Refugees in these countries are often persecuted and they are frequently threatened with expulsion.<sup>131</sup> They also face an inability to secure any legal status without which they face regular harassment, imprisonment and discrimination and an inability to access medical care and legally earn income.

<sup>126</sup> If non-refugee resettlements are excluded, Australia has resettled 587 of 986 refugees (60 per cent or around 39 per cent of the total number of 1547 asylum seekers who have been processed on Nauru and Manus Island over the period.

<sup>127</sup> Interview with Grant Mitchell, 2007

<sup>128</sup> Susan Kneebone, "The Legal and Ethical Implications of Extra-territorial Processing of Asylum-seekers- the safe third country concept," Paper presented to "Moving On: Forced Migration and Human Rights" Conference, Sydney, 2005, p.5.

<sup>129</sup> Kneebone 2005, *ibid*, p.27

<sup>130</sup> Kneebone 2005, *ibid*, p.37.

<sup>131</sup> See Human Rights Watch: "By Invitation Only: Australian Asylum Policy" (HRW, 2002).

“Australia’s interpretation of ‘effective protection’ poses a formidable challenge for refugees who are subject to it. Australia defines effective protection as existing in a country where “the person will not face a real chance of being persecuted in the third country or returned to a country where his or her life or freedom would be threatened for a Convention reason.” Australia holds that it is unnecessary for the country in question to be a party to the Refugee Convention or for it to provide access to a secure legal status to refugees.”

“By Invitation Only,” Human Rights Watch, p.11.

## 7.2 Burden-sharing and responsibility

Australia’s actions on asylum seekers violate the principle of burden-sharing. Burden-sharing is the principle that the global problem of refugee flows and displacement should be dealt with through international co-operation, with all nation-states contributing towards the solution. That means each country must do its fair share. Unlike many developed countries, Australia is isolated from many of the world’s refugees and asylum seekers. This accident of geography means it receives a relatively low level of asylum seekers each year.

In 2006, Australia was ranked 19th out of 50 industrialised countries by the number of asylum claims submitted in that year, according to UNHCR figures. It received 3,510 claims compared to the United States’ 51,510, France’s 30,690 and the United Kingdom’s 27,850. This made Australia a more popular destination for asylum seekers in 2006 than countries such as the Czech Republic (20th), Hungary (23rd), Russia (26th), Ukraine (28th), New Zealand (35th), Lithuania (37th), Bosnia and Herzegovina (41st), Iceland (45th) and Serbia and Montenegro (47th). On a per capita basis Australia was ranked 25th out of those 50 countries in 2006.

**Table Five: Asylum applications submitted in 50 industrialised countries in 2006**

Country	No. Asylum seekers in 2006	No. asylum seekers 2002-2006	Rank out of 50 developed countries in 2006	Rank out of 50 developed countries 2002-2006	No asylum seekers per 1,000 population in 2006	Rank per 1000 pop. in 2006	No asylum seekers per 1,000 population in 2006	Rank per 1000 pop. in 2006
<b>United States</b>	51,510	326,690	1	1	0.2	26	1.1	25
<b>France</b>	30,690	257,710	2	3	0.5	15	4.2	15
<b>United Kingdom</b>	27,850	262,440	3	2	0.5	16	4.3	12
<b>Sweden</b>	24,320	129,380	4	7	2.7	3	14.2	3
<b>Canada</b>	22,910	139,590	5	5	0.7	13	4.2	13
<b>Germany</b>	21,030	207,240	6	4	0.3	21	2.5	21
<b>Netherlands</b>	14,470	68,670	7	10	0.9	12	4.2	14
<b>Austria</b>	13,350	132,150	8	6	1.6	4	15.8	2
<b>Greece</b>	12,270	39,630	9	13	1.1	10	3.6	16
<b>Belgium</b>	11,590	78,660	10	9	1.1	9	7.5	10
...			...					
<b>Australia</b>	3,510	20,070	19	21	0.2	25	1.0	27

SOURCE: “Asylum Levels and Trends in Industrialised Countries”, 2006, UNHCR

Despite this lower level of asylum seekers, Australia is the first developed country to engage in a solution to the problem which effectively involves making other countries do the work. The Australian Government’s actions of off-loading asylum-seekers on poorer Pacific countries in the region, and expecting other resettlement countries, or transit countries such as Malaysia or Indonesia, to host the asylum-seekers violates the principle of burden sharing.



***There are no easy answers to any of that, but I think that we have many more resources to deal with asylum seekers than Indonesia does.***

Susan Metcalfe, refugee advocate doing PHD research on Nauru

Burden-sharing in this context cannot be seen to be achieved simply through provision of funding for upkeep of detention centres and asylum-seekers in transit countries, but also requires setting an example as an international citizen that upholds the Refugee Convention. This is particularly the case in the context of being located in a region with many countries who are not signatories to the Refugee Convention and do not have adequate legal frameworks to recognise and protect refugees.

The recent announcement relating to the agreement between Australia and the United States further weakens Australia's burden-sharing responsibilities. This is a clear example of burden-shifting. 'Swapping' groups of refugees – at great financial cost - impacts on family unity and the length of the process and does not lead to greater refugee protection or strengthening of international co-operation for solving refugee problems. Instead, it is co-operation towards greater deterrence measures, at a higher cost to Australian taxpayers and to Australia's commitment to the principle of asylum and its role as an international citizen.

On a regional level, the policies lead to a break down of burden-sharing and diminishment of respect for refugee law and principles in the region. Moreover the practices can also have a significant impact on global burden-sharing, setting a precedent that responsibility-shifting is an acceptable way for signatories of the Refugee Convention to respond to asylum-seekers.

***Australia's 'Pacific Solution' set off a dangerous chain reaction. Despite Fijians pride in 'Island hospitality', Fiji's press began using Australia's anti-asylum rhetoric, branding refugees as 'illegals' and pushing stronger border protection. Pakistan cited Australia's tough stance when closing its border to Afghan refugees. UK Ministers began using Ruddock's rhetoric about just wanting an "orderly migration queue". Egged-on by Australia's claims that it had solved its problem, Europe began toying with the idea of a 'Mediterranean solution'.***

James Thomson, National Council of Churches in Australia.

### 7.3 The international response

Various member states of the European Union, notably the United Kingdom have been considering moving toward an offshore processing regime premised on the Australian approach. Many of these developed countries see themselves as 'overburdened' with asylum seekers. Yet, for well over a decade, it has been the countries of the global 'South', or developing world, which have borne the most substantial burden in meeting the day to day needs of refugees, asylum seekers and other groups needing protection such as displaced persons.

Three of the top five refugee hosting nations in 2006 were countries of the 'South'. The top five refugee hosting countries in 2006 were Pakistan (1.1 million<sup>132</sup>), Iran (716,000), Germany (700,000), Tanzania (549,000) and the United States (380,000) according to UNHCR figures.<sup>133</sup> Together these five countries hosted well over a third (41 per cent) of the world's 8.4 million refugees in that year. Of the 20.8 million refugees, asylum seekers, stateless and internally displaced people in the world in 2006, Asia hosted a massive 8.6 million of them or 41 per cent of the total, UNHCR said. Next came Africa, which hosted another quarter of them - or 5.2 million, Europe 3.7 million, Latin America 2.5 million, North America 716,000 and Oceania (including Australia) hosted less than half a per cent - or just 82,500 of these people.

<sup>132</sup> UNHCR figures for Pakistan only include Afghans living in camps who are assisted by UNHCR. There are an additional 1.3 million Afghans living outside the camps, some of whom may be refugees.

<sup>133</sup> "Refugees By Numbers", 2006 edition, UNHCR, <http://www.unhcr.org/basics/BASICS/4523b0bb2.pdf> [accessed 25 June 2007].

## 7.4 What are European states doing?

Proposals relating to offshore processing in the EU originated with the UK's proposals for transit processing centres, to be located outside of EU borders where asylum claims can be dealt with quickly, curtailing "the right of the asylum-seeker to choose his or her destination country"<sup>134</sup> while still maintaining some degree of adherence to international law principles of protection.

In 2003, a Home Office policy paper was leaked that outlined the UK proposals, which included proposals to process asylum seekers in centres located outside of Europe. Other EU countries responded in different ways to the proposals – some have supported the proposals (Denmark, the Netherlands) while others sought to distance themselves from the UK position (Sweden). The 2003 Thessaloniki Summit of the European Council rejected the UK's proposals. Arrangements that Italy and Spain have developed with North African transit states (Libya and Morocco) suggest that the concept is far from rejected in the EU context, however.

Italy and Libya have developed an agreement relating to asylum-seekers who arrive on the Italian island of Lampedusa, which is close to Libya, to return asylum-seekers to their country of origin, often without proper processing of asylum claims.<sup>135</sup> Spain has also developed similar arrangements with Morocco. Also, the German Interior Minister issued a renewed call for extra-territorial processing centres for the EU in late 2005. Kneebone, McDowell and Morrell argue that while "there are no concrete proposals for joint processing of asylum seekers, extraterritorial processing is very much on the EU agenda."<sup>136</sup>

European proposals for offshore processing models have explicitly drawn on the Australian model, and seen the 'successes' of the model in deterring boat arrivals and providing ways to export responsibility for asylum-seekers as reasons for adopting such methods in Europe. Betts found that the concept of third country processing centres was based on "the model that Australia has used on Nauru and Manus Island, as part of its Pacific Solution to deal with spontaneous arrival asylum-seekers. The UK's proposal explicitly drew its inspiration from that model that proposed a centre outside the EU's external borders to be managed by the International Organisation for Migration (IOM)"<sup>137</sup> Afeef found that the UK proposals were "partly inspired by the Australian policies."<sup>138</sup> Kneebone argues that in the context of concerns about flows of asylum seekers, "Europe and the UK have turned to Australia for inspiration."<sup>139</sup>

Graham Thom of Amnesty International noted that the Australian Government played a role in promoting the model overseas:

*"Amnesty International remains concerned that the Australian government appears to have spent a great deal of money from 2000 to 2004, sending officials and consultants to international forums, extolling the virtues of their system and defending their system against criticisms from organisations like Amnesty International. I think the UK has quite clearly picked up on the Australian initiatives, as seen in some of the options that the UK has flagged. I think Italy is the other country that is most likely to take up some of the government's suggestions."*

Professor Gregor Noll has argued that "the Spring 2003 UK debate reveals that the 'Pacific Solution' constituted a source of inspiration for the British and Danish governments."<sup>140</sup> While there are many factors that will impact how or if extra-territorial processing arrangements are developed in the EU, the Australian model has certainly provided 'inspiration' for EU member states wishing to develop models to deter asylum-seekers and externalise responsibilities for asylum. This is despite the numerous failures of the Pacific Solution, such that Noll argues that "the Pacific Solution may well serve as an indicator that European hopes for tangible reductions in costs and applications without protection grounds are wishful thinking."<sup>141</sup>

<sup>134</sup> Alexander Betts, "The Political Economy of extra-territorial processing: separating 'purchaser' from 'provider' in asylum policy," *New Issues in Refugee Research*, Working Paper No.91, 2003, p.3.

<sup>135</sup> Susan Kneebone, Christopher McDowell and Gareth Morrell, "A Mediterranean Solution? Chances of Success," *International Journal of Refugee Law*, 2006, 18(3-4), p.497.

<sup>136</sup> Kneebone, *ibid.*, p.7.

<sup>137</sup> Alexander Betts, "The International Relations of the "New" Extra-Territorial Approaches to Refugee Protection: Explaining the Policy Initiatives of the UK Government and UNHCR," at <http://www2.warwick.ac.uk/fac/soc/crer/fmsc04/abstracts04/bettspaper/?textOnly=true>

<sup>138</sup> Karin Fathimath Afeef, "The Politics of Extraterritorial Processing: Offshore Asylum Policies in Europe and the Pacific," *Refugee Studies Centre*, Working Paper No.36, 2006.

<sup>139</sup> Kneebone, *ibid.*, p.8

<sup>140</sup> Gregor Noll, "Visions of the Exceptional: Legal and Theoretical Issues Raised by Transit Processing Centres and Protection Zones," *European Journal of Migration and Law*, Vol 5, 2003, p.313.

<sup>141</sup> *Ibid.*, p.329



## 8. Conclusion

After six years, Australia's "Pacific Solution" has proven to be little more than a white elephant. As this report has shown, it has been a highly costly exercise with few tangible benefits. A long list of costs associated with Australia's offshore processing policies - including human costs, economic costs, the cost to Australia's legal and democratic system, the costs to regional relations and the cost to the international system of protection of asylum seekers, significantly outweigh any perceived benefit of them as a deterrent to people smugglers.

In the six years since the Tampa crisis in August 2001, Australian taxpayers have spent more than \$1 billion to process less than 1,700 asylum seekers in offshore locations – or more than half a million dollars each. Most, if not all, of these asylum seekers have paid a substantial personal toll through poor mental and physical health and wellbeing, both in the immediate and longer term.

There have also been detrimental impacts on Australia's democratic and legal system which undermine Australians' ability to be confident that a fair and equitable application of the law will occur and that governments can be held accountable for their decisions. Furthermore, the policies potentially damage social harmony and cohesion in Australia, have already destabilised Australia's regional aid relationships and are undermining the international system of protection of refugees and asylum seekers.

The price paid for this so-called 'solution' has simply been too high and Australia must urgently reform its asylum seeker policies and bring this expensive and ineffectual experiment to an end.

## APPENDIX 1 - The “Tampa” Legislation and Beyond

Legislation passed on 27 September 2001, with amendments to the Commonwealth Migration Act (1958), included the following elements:

### (i) Excision of areas from Australia's migration zone:

The new legislation excised areas of Australian territory – Christmas Island, Ashmore Reef, Cartier Island and Cocos Islands – from Australia's migration zone. Later regulations extended the excision zone to include almost all but mainland Australia.

Excision of territory has the following effect:

- it bars unauthorised arrivals at these places from applying for a visa (section 46A)
- allows Commonwealth officials to move those people to a declared safe country (section 198A), and
- provides officials with discretion on whether to detain these people when in, or about to enter that offshore place (subsections 189(3) and (4)).

Asylum-seekers arriving by boat at excised locations cannot apply for a refugee protection visa. Instead they can be granted a Secondary Movement Offshore Entry Subclass visa (XB447), which is valid for three years. They do not have the same rights as asylum-seekers who arrive by boat but reach mainland Australia, or asylum-seekers who arrive in Australia by air. They are unable to benefit from the usual Ministerial discretionary powers to overturn a visa rejection on public interest grounds and cannot exercise the right to review by the Refugee Review Tribunal. Officials from the Department of Immigration and Citizenship (DIAC) carry out refugee status determination for these asylum claimants, but resettlement to Australia is not guaranteed. For instance, the Burmese asylum seekers currently on Nauru have been encouraged to return to Malaysia by being told that they will not be allowed to settle in Australia if found to be refugees.

### (ii) Extended powers of interception:

DIAC states that the September 2001 laws “enhanced Australian authorities' existing powers to board boats carrying illegal travellers, search the boat, detain the passengers and remove them from the boat. Court challenges to these actions are not allowed.”<sup>142</sup> There are increased powers to intercept boats and refuse boats carrying asylum-seekers entry to Australian territorial waters. Numerous boats have been sent back to Indonesia under this law.

### (iii) Authority to detain asylum-seekers in ‘declared countries’ – Nauru and Papua New Guinea:

Following interception, asylum-seekers can be taken to a declared country for processing. If a person is found to be a refugee, Australia holds that it is under no obligation to resettle the refugee to Australia. Both Nauru and Papua New Guinea have agreed to act as declared countries. These asylum-seekers cannot access Australia's Migration Act.

### (iv) A new Temporary Protection Visa regime:

Legislative changes to introduce temporary offshore humanitarian visas were introduced as a part of the Pacific Solution. According to DIAC:

“These visas were designed to encourage asylum seekers to remain in their country of first asylum, rather than seek the assistance of people smugglers to abandon or bypass effective protection opportunities in order to gain a preferred migration outcome. The system provides a hierarchy of benefits equivalent to temporary protection visas depending on where a person has made their application and whether they have moved from a country of first asylum”<sup>143</sup>

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<sup>142</sup> DIAC Fact Sheet No 70

<sup>143</sup> DIAC Fact Sheet No 70

Other changes to Australia's visa regime and access to residency allowed it to discriminate against people on the basis of how they arrived in the country. Under the new law, those who are offered entry to Australia under the 'resettlement program' are offered immediate permanent residency and access to a range of resettlement services developed over many years. By contrast, those who arrive in an excised location without authorisation (asylum seekers) will never gain access to permanent residency and will have to apply for successive temporary visas so long as they are deemed in 'need of protection'. Those who arrived on the mainland or other non-excised areas or who arrived before excisions laws were introduced in 2001, were initially granted temporary protection visas. Recent changes have, however, allowed some of these visas to be renewed as permanent protection visas which grant permanent residency rights.

### **The Migration Amendment (Designated Unauthorised Arrivals) Bill 2006**

Following the scandal over the illegal detention of Australian citizen Vivian Alvarez Solon and German-born Australian resident Cornelia Rau, the Australian Government appointed the Palmer Inquiry into the detention system on 9 February 2005. Former Australian Federal Police commissioner Mick Palmer recommended "wide-ranging, systematic reform" of the department of immigration and changes to the system of mandatory detention.<sup>144</sup>

A series of reforms were entrenched in legislation put forward by Liberal backbencher Petro Georgiou, and by July 2005, all children were removed from detention centres in Australia (though only under Ministerial discretion rather than through enforceable legislation).<sup>145</sup>

However in 2006, even more stringent legislation was introduced to parliament following the arrival of 43 West Papuans asylum seekers by boat. The *Migration Amendment (Designated Unauthorised Arrivals) Bill 2006*, or the "Pacific Solution Mark II", was subsequently withdrawn, following significant pressure from the community and among backbench members of the Australian government. If passed, the Bill would have meant that all boat arrivals to Australia – including those who reached the mainland rather than just outer islands like Ashmore reef – would have been detained for processing on Nauru or Manus Island.

The new legislation was put forward as the government moved to tighten the border between the Island of New Guinea (including the independent nation of Papua New Guinea and the Indonesian-controlled provinces of Papua and West Papua). The then Immigration Minister Amanda Vanstone denounced the campaign for West Papuan self-determination as a "toxic cause" stating that one objective of the bill was to prevent successful applicants for protection from mounting political protest in Australia against Indonesia's human rights record, and especially military actions in West Papua. She argued:

"Separatism is a toxic cause that could, if encouraged, result in chaos, death and suffering on our doorstep. Such a human disaster would mean a flood of normal citizens fleeing homes they would otherwise have no desire to leave."<sup>146</sup>

The government also moved to negotiate and sign the *Agreement Between Australia and the Republic of Indonesia on the Framework for Security Cooperation*, with the clear intent of addressing Indonesia's concerns over the West Papua issue. Article 2(3) of the draft agreement notes:

"The Parties, consistent with their respective domestic laws and international obligations, shall not in any manner support or participate in activities by any person or entity which constitutes a threat to the stability, sovereignty or territorial integrity of the other Party, including by those who seek to use its territory for encouraging or committing such activities, including separatism, in the territory of the other Party."<sup>147</sup>

<sup>144</sup> M. Palmer: *Inquiry into the circumstances of the Immigration detention of Cornelia Rau: Report*. (Commonwealth of Australia, Canberra, July 2005).

<sup>145</sup> A detailed list of the 2005 reforms can be found in the Final Report of the Senate Legal and Constitutional Committee, *Provisions of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006*, June 2006, Section 3.5 pp13-14. [http://www.aph.gov.au/senate/committee/legcon\\_ctte/migration\\_unauthorised\\_arrivals/report/report.pdf](http://www.aph.gov.au/senate/committee/legcon_ctte/migration_unauthorised_arrivals/report/report.pdf)

<sup>146</sup> *Weekend Australian*, 29 April 2006.

<sup>147</sup> For discussion of the Lombok Treaty, see Joint Standing Committee on Treaties, Parliament of Australia: *Treaty tabled on 6 December 2006, Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation Report 84* (June 2007).

Another aspect of the policy response was the introduction of the proposed Migration Amendment (Designated Unauthorised Arrivals) Bill 2006. On 13 April 2006, then Immigration Minister Amanda Vanstone announced proposed changes to Australia's Migration Act. The bill proposed to remove all people without valid documentation arriving by boat in Australia to immigration in a designated place (most likely Manus Island or Nauru). The intent of the draft bill was a clear breach of Australian obligations under Article 33 (1) of the 1951 Refugee Convention:

“No contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

For the first group of mostly Afghani and Iraqi refugees on Nauru and Manus, the government's preference was to resettle them in third countries but it had not precluded their arrival in Australia (in reality, the vast majority were resettled in Australia and New Zealand). However, during the debate about the revival of offshore processing in 2006, the then Immigration Minister made it clear that “the government's intention is that people found to be refugees will remain offshore for resettlement to a third country.”<sup>148</sup>

The 2006 bill included a range of provisions to deny rights to asylum seekers arriving by boat:

- The bill purported to extend the excision zone for unauthorised arrivals to the whole of the Australian mainland, not just the islands excised from the migration zone since 2001 (though the notional excision of the whole of Australia does not apply to people arriving by plane)
- The bill was directed not at so-called “secondary movers” (people who have transited more than one country after leaving their homeland), but people fleeing *directly* from their country because of fear of persecution.
- It discriminated against a particular group of asylum seekers because of their means of arrival (boats rather than plane), in breach of Article 31 of the Refugee Convention which effectively prohibits State signatories from discriminating against refugees on the basis of mode of arrival.
- It proposed transfer to Nauru of asylum seekers where they will be denied the full benefits of the status determination system available to them in Australia, by processing applications for refugee status under a system which does not meet the standards Australia has set for its own domestic processes.
- Under the proposed legislation, children would once again be detained on Nauru or Manus as a first resort, in breach of the 2005 reforms following HREOC's inquiry into children in detention and subsequent legislation change initiated by Liberal backbencher Petro Georgiou, which saw detention of children as a last resort.
- Nauru is not a signatory to the Refugee Convention and is under no legal obligation not to refoule asylum seekers.

In a press briefing on 18 April 2006, the United Nations High Commissioner for Refugees also expressed concern that persons who should fall under the jurisdiction of Australian law and have their claims processed in Australia, will be taken offshore for assessment of their claims. The agency indicated that would set “an unfortunate precedent” for Australia to deflect elsewhere its responsibilities to asylum-seekers and refugees, particularly given that Australia has a fully functioning and credible asylum system and is not facing anything approximating a mass influx of asylum seekers.

On 11 May the Senate referred the bill to the Senate Legal and Constitutional Committee for an inquiry. In spite of the short time for submissions, the Senate Committee was flooded with submissions opposing the bill – indeed “with the exception of the Department of Immigration and Multicultural Affairs, all the 136 submissions and witnesses appearing before the committee expressed complete opposition to the bill”, and so the Committee issued a report recommending that the bill should not proceed.<sup>149</sup>

The government placed the bill before Parliament in August 2006 where it was debated in the lower house, with dissident Liberal backbencher Petro Georgiou MP stating: “The Migration Amendment (Designated Unauthorised Arrivals) Bill is the most profoundly disturbing piece of legislation I have encountered” and then opposition leader Kim Beazley describing the bill as “exceptionally bad foreign

<sup>148</sup> Senator Amanda Vanstone: “Strengthened border control measures for unauthorised boat arrivals”, Media release, 11 May 2006.

<sup>149</sup> Recommendation 1, Senate Legal and Constitutional Committee, *Provisions of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006*, Final report, June 2006, p9, p13.  
[http://www.aph.gov.au/senate/committee/legcon\\_ctte/migration\\_unauthorised\\_arrivals/report/report.pdf](http://www.aph.gov.au/senate/committee/legcon_ctte/migration_unauthorised_arrivals/report/report.pdf)

policy and exceptionally bad in terms of building a relationship with our neighbour – it is also exceptionally bad in humanitarian terms. This is so dumb and wrong.”<sup>150</sup>

Facing defeat in the Senate, the Government withdrew the legislation rather than deal with dissident Coalition senators crossing the floor.<sup>151</sup> The failure of the bill in 2006 was significant. It would have set an unfortunate and immoral precedent. As the UNHCR noted in response to the draft bill:

“If this was to happen, it would be an unfortunate precedent being for the first time, to our knowledge, that a country with a fully functioning and credible asylum system, in the absence of anything approximating a mass influx, decides to transfer elsewhere the responsibility to handle claims made actually on the territory of the state.”<sup>152</sup>

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<sup>150</sup> Hansard, House of Representatives 9 August 2006 - <http://www.aph.gov.au/hansard/rep/dailys/dr090806.pdf>.

Beazley at p33; Georgiou at p42.

<sup>151</sup> “Howard dumps Migration Bill”, ABC Radio ‘PM’, Monday, 14 August , 2006 -

<http://www.abc.net.au/pm/content/2006/s1714679.htm>

<sup>152</sup> UNHCR media release, 18 April 2006.

## APPENDIX 2 – Detainees on Nauru and Manus Island 2001-2007

Table Six: Detainees arriving between 2001 and 2003

Outcome Nationality	Present	Returned Voluntarily	Resettled Refugees	Resettled Non-refugees	Other	Total
Afghan	-	420	329	36	1*	786
Bangladeshi	-	4	-	3	-	7
Iranian	-	16	3	1	-	20
Iraqi	-	24	623	37	-	684
Pakistani	-	6	2	1	-	9
Palestinian	-	-	21	-	-	21
Sri Lankan	-	4	2	-	-	6
Stateless	-	-	4	-	-	4
Turkish	-	8	2	-	-	10
<b>Total</b>	<b>0</b>	<b>482</b>	<b>986</b>	<b>78</b>	<b>1</b>	<b>1547</b>

\*Deceased

Table Seven: Detainees arriving between September 2006 and March 2007

Outcome Nationality	Present	Returned Voluntarily	Resettled Refugees	Resettled Non-refugees	Other	Total
Burma (Myanmar)	7	1	-	-	-	8
Sri Lanka	82	-	-	-	-	82
<b>Total</b>	<b>89</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>90</b>

Source: DIMA Fact sheet No.76 (as at August 2007)

### APPENDIX 3 - Resettlement outcomes of Pacific Solution

Of the 1,547 asylum seekers processed on Manus Island and Nauru – from the arrival of the Tampa to the beginning of 2007 - nearly 40 per cent (616) ultimately resettled in Australia, while another 26 per cent resettled in New Zealand. Other countries such as Sweden, Canada, Denmark and Norway also took a small number of those asylum seekers. Just under a third of the 1,547 asylum seekers - 482 of them - were returned to their countries of origin or countries where they had right of entry or abode. One Afghani asylum seeker died in the detention centre on Nauru in August 2002.

**Table eight: Resettlement outcomes for Nauru and PNG detainees (as at 30 June 2007)**

	Number of asylum seekers	% of total asylum seekers
<b>Found to be refugees and resettled</b>	986	63.7
<b>Resettled without being found to be refugees</b>	78	5.0
<b>Repatriated voluntarily – after being rejected as refugees or without being processed</b>	483	31.2
<b>TOTAL</b>	<b>1547</b>	<b>100</b>

**Table nine: Resettlement countries for refugees and non-refugees from Nauru and Manus Island**

A total of 1064 people (986 refugees and 78 non-refugees) who were detained in the Manus and Nauru centres were resettled between 2001 and 2007, to the following countries:

	Number of asylum seekers resettled	% of total asylum seekers resettled	% of total asylum seekers processed
<b>Australia</b>	616 (587 refugees, 29 non-refugees)	57.9	39.8
<b>New Zealand</b>	401 (360 refugees, 41 non-refugees)	36.5	25.9
<b>Sweden</b>	21 ( 19 refugees, 2 non-refugees )	1.9	1.4
<b>Canada</b>	16 ( 10 refugees, 6 non-refugees )	1.0	1.0
<b>Denmark</b>	6 ( 6 refugees, 0 non-refugees )	0.6	0.4
<b>Norway</b>	4 ( 4 refugees, 0 non-refugees )	0.4	0.3
<b>TOTAL</b>	<b>1064</b>	<b>100</b>	<b>68.8</b>

Source: DIMA Annual report 2005-06, Output 1.5 figure 44 and DIAC report 2006-07



## **APPENDIX 4 - Agreements with Nauru and Papua New Guinea to establish asylum seeker processing centres**

### **Memoranda of Understanding with Nauru**

Two processing facilities in Nauru - at locations known as Topside and Statehouse - were established after 19 September 2001, with the arrival of people picked up at sea by the Norwegian bulk carrier *MV Tampa* and another group of asylum seekers who were found at Ashmore Island. The processing centres on Nauru were established following the signing on 10 September 2001 of an Administrative Agreement and Statement of Principles. This agreement provided for Nauru to accommodate asylum seekers for processing until 1 May 2002.

A MOU replacing the Administrative Agreement was signed on 11 December 2001, which allowed for up to 1,200 persons to be accommodated at any one time (this was later increased to 1500 people).

The initial agreement was renewed in 2002 with effect to 30 June 2003. Again, in March 2004, the governments of Australia and Nauru signed a third MOU for management of the offshore processing centre for asylum seekers and Nauru's long-term development. This third MOU expired on 30 June 2005. The Government of Australia signed the fourth Memorandum of Understanding for development assistance with Nauru in September 2005, scheduled to last until June 2007. This MOU was extended to run until the end of 2007. The latest MOU extending the program, worth a reported US\$15 million, was signed by Foreign Ministers Alexander Downer and David Adeang in Nauru on 16 July 2007. The MOU is part of four-year commitment by the Australian Government "to help Nauru to restore essential infrastructure and services and regain economic self sufficiency".

### **Memoranda of Understanding with Papua New Guinea**

The processing centre in Papua New Guinea (PNG) at the Lombrum Naval Base in Manus Province was established on 21 October 2001, after an MOU was signed with the PNG Government on 11 October 2001. This agreement established a processing centre to accommodate and assess the claims of asylum seekers on Manus Island. The agreement with Papua New Guinea provides for the facility at Manus Island to have a potential capacity of 1,000 places.

In 2003, the governments of Australia and Papua New Guinea extended the Memorandum of Understanding (MOU) on access to the camp in Manus Province until 21 October 2004. However the last refugee Aladdin Sisalem left the camp in May 2004. Since that time, the facility on Manus has not been officially closed, but has been maintained ready for further use at an annual cost of \$2 million.

## APPENDIX 5 – Burmese Rohingya and Sri Lankans

The Burmese asylum-seekers arrived by boat on Ashmore Reef (which is Australian territory the Federal Government has removed from the migration zone). Members of Burma's Muslim Rohingya ethnic minority, the men had been living in Malaysia for a number of years. They were issued with temporary identification papers by the UNHCR office in Malaysia, but they had not been given permission to settle there. The Rohingya are reluctant to return to Malaysia because of ongoing human rights concerns. An August 2007 Reuters article reported that 300 Rohingya were arrested in Malaysia as illegal immigrants, and faced caning.<sup>153</sup> The article found that "Illegal immigrants face a mandatory jail sentence of up to five years and up to six strokes of the cane." One 2007 research study of Malaysia's refugee policy has noted:

"After fleeing systematic discrimination, forced labour and other abuses in Burma, Rohingyas faced a whole new set of abuses in Malaysia. These include beatings, extortion and arbitrary detention. The refugees are forced to live in poverty and constant fear of expulsion from the country."<sup>154</sup>

After arriving in Australian waters, they were initially taken by the warship *HMAS Darwin* to Christmas Island. Rather than process their asylum applications there, six of the men were flown to Nauru on 16 September 2006, at a cost of \$225,000. The flight was initially kept secret for "security reasons", and they were accompanied by 19 Australian personnel, including private security guards from the detention facility contractor Global Solutions Ltd.<sup>155</sup>

With the arrival of Burmese asylum seekers, Nauru announced a new system of visa fees, "with the stated aim of encouraging the swift resettlement or return of asylum seekers once their claims for refugee status have been assessed."<sup>156</sup> The charges for the seven Burmese asylum seekers are \$2000 each for the first 90 days, with the fee increasing by \$500 every subsequent 30 days. By May 2007, Australia had paid \$2000 per person in visa fees for the first three months for the seven Burmese, but has not paid any fees for the Sri Lankans.<sup>157</sup>

In May 2007, the Burmese asylum seekers launched a case in the Australian High Court, arguing that the refusal of the Australian government to consider their applications for refugee visas is unlawful. According to the case, the department of immigration told the men in December 2006 they would be able to resettle with their families under Australia's offshore humanitarian program only if they returned to Malaysia to have their refugee status claims assessed. Alternatively, they could have their claims assessed in Nauru, but resettlement in Australia would not be an option. Lawyers for the asylum seekers have alleged that Immigration officials refused to interview the men about their visa applications when they visited Nauru in April 2007, in order:

- To pressure the asylum seekers to return to Malaysia, or
- To pressure them to accept being processed on Nauru, where they have no legally enforceable rights.
- To prevent them asking for their applications for refugee visas to be reviewed in an Australian court if they were knocked back.

In July 2007, after a hearing before Justice Hayne, the department of immigration agreed to interview the men for the purposes of their refugee visa applications and agreed to pay the costs of the High Court case. The men have subsequently been interviewed for the purposes of their visa applications.

The larger group of Tamil men from Sri Lanka on Nauru are also reluctant to return to their homeland. In the weeks before they were sent to Nauru in March 2007, the options for the Sri Lankans were uncertain when the newly appointed Immigration Minister Kevin Andrews made a series of confusing statements

<sup>153</sup> <http://www.theglobeandmail.com/servlet/story/RTGAM.20070807.wmalaysiacaning0806/BNStory/International/>

<sup>154</sup> Amarjit Kuar: *Refugees and refugee policy in Malaysia*, University of New England Asia Centre (UNEAC) Asia Papers No. 18, 2007 (<http://www.une.edu.au/asiacenter/No18.pdf>). For further details, see Human Rights Watch: *Living in Limbo – Burmese Rohingyas in Malaysia* (HRW, 2000).

<sup>155</sup> Craig Skehan: "Detainees put on secret flight to Nauru", *Sydney Morning Herald*, 18 September 2006.

<sup>156</sup> Michael Gordon: "Nauru sets record refugee visa fee", *The Age*, 4 October 2006.

<sup>157</sup> Senate estimates, Legal and Constitutional Affairs Committee, Hansard, 21 May 2007, p104.

about their future. The Minister mistakenly suggested that the asylum seekers should have sought asylum from the Australian High Commission in Sri Lanka – a misunderstanding of the core concept of the 1951 Refugee Convention. He also incorrectly claimed that the Sri Lankans would have their applications processed by UNHCR on Nauru, and that the IOM, which runs the camp, would play a role in processing the asylum seekers on Nauru.<sup>158</sup>

For three weeks after their arrival in Australia from Indonesia in February 2007, senior officials with the Australian Embassy in Jakarta, including the head of mission, were engaged in discussions with the government of Indonesia about their fate. Some refugee advocates were concerned that there was an attempt to send them back to Sri Lanka, although according to a DFAT official, it was not Australia's intention that they be returned to their home country:

"We explored possibilities for an arrangement which would have them returned to Indonesia but with a guarantee from the Indonesian government that they would have access to refugee determination processes, and those who were found to be in need of protection would not be returned to Sri Lanka against their will."<sup>159</sup>

However Sri Lankan diplomats actively lobbied Australia about the issue: the Sri Lankan High Commission in Canberra approached DFAT on several occasions as well as approaches to DIAC and at Ministerial level. The Sri Lankan ambassador in Jakarta also approached Australia's Ambassador to Indonesia.

The Sri Lankan asylum seekers made it clear that they did not want to be returned to Indonesia or Sri Lanka, with 57 of the 83 asylum seekers signing a letter stating:

"We the undersigned petitioners were apprehended by the Sri Lankan Government, through the military, and tortured. We have been sent by our elders through our parents' tears. We have come to your country as a result of physical and mental sufferings imposed by the military (of Sri Lanka) and several other evil sources. To conduct the inquiries in Nauru, the island which belongs to another country, is against our wishes and causes us disappointment and mental suffering."<sup>160</sup>

Their fears are justified, as shown in a series of recent reports on the conflict in Sri Lanka. A field trip to Sri Lanka by the Hotham Mission in October 2006 highlights the dangers for Tamil returnees:

"Asylum seekers returning to Sri Lanka face significant risks and concerns. There are reports of returned asylum seekers and refugees going into hiding after receiving death threats, being arrested on arrival and reported deaths both in police custody and by the army."<sup>161</sup>

In December 2006, a formal UNHCR report on protection needs for asylum seekers from Sri Lanka set out the deteriorating human rights situation and the danger of persecution for young Tamils:

"Harassment, intimidation, arrest, detention, torture, abduction and killing ... are frequently reported to be inflicted on Tamils from the north and east."<sup>162</sup>

In spite of these problems, all but one of the 83 Sri Lankan asylum seekers were flown to Nauru in March 2007, with one man remaining in Australia for medical treatment (for injuries he received after being caught in the crossfire during fighting between government forces and Tamil Tigers in Sri Lanka). In June 2007, the Australian government proposed to send this man to Nauru, in spite of ongoing medical problems including shrapnel embedded in his brain from an explosion. His lawyer, David Manne of the Refugee and Immigration Legal Centre (RILC), stated:

"[The Minister's] decision was tantamount to saying it is not in the public interest to allow a man who has suffered such profound trauma and damage and requires on going medical treatment to

<sup>158</sup> "Sending a message but abrogating responsibility" *The Age* editorial, 17 March 2007; Jewel Topsfield: "Boat people appeal to Minister not to be sent to Nauru", *The Age*, 17 March 2007.

<sup>159</sup> Senate Estimates, Foreign Affairs, Defence and Trade Committee, Tuesday 29 May 2007, p62.

<sup>160</sup> Letter from Sri Lankan asylum seekers to Australian Immigration Minister Kevin Andrews, March 2007 (photocopy).

<sup>161</sup> Security, protection and humanitarian concerns and implications for Sri Lankan asylum seekers in Australia - Hotham Mission field trip to Sri Lanka, October 2006 ([http://203.56.94.10/asp/Sri\\_Lanka\\_Report.pdf](http://203.56.94.10/asp/Sri_Lanka_Report.pdf)).

<sup>162</sup> UNHCR: *UNHCR position on the international protection needs of asylum seekers from Sri Lanka* (UNHCR, Geneva, 2006) <http://www.unhcr.org/publ/RSDLEGAL/4590f12a4.pdf>

remain in Australia but rather to cast him into indefinite exile in Nauru where there are real concerns he will not be able to access adequate medical treatment."<sup>163</sup>

At the time of writing, a number of the asylum seekers have had their applications processed but there has been no formal announcement of their refugee status. The Australian government has refused to say whether the Sri Lankans would be given visas to enter Australia if found to be refugees - on 15 May, Minister Andrews said the issue of future resettlement in Australia was "hypothetical":

"I don't need to address that at this stage except to say we will work with the UN as we have in the past to settle any genuine refugee claimants somewhere else in the world."<sup>164</sup>

In the light of the previous record on "prompt resettlement", the Nauru government has once again expressed its concern that they would be delays in processing and resettling the asylum seekers, with the Nauru Cabinet agreeing to a six-month time frame for processing the 82 Sri Lankans. In March, Acting Foreign Minister Frederick Pitcher stressed that the Nauruan Government does not want a repeat of past cases in which asylum seekers were left there for years, and was disappointed that Australia had taken so long to process previous asylum seekers:

"Our sincere hope that with the current batch of asylum seekers the process is expedited. We would rather see them processed and taken off the island as soon as possible. Six months would be the timeframe that our Cabinet has agreed to. Of course we're willing to extend that, given reasonable circumstance, but we would prefer to see them off the island within six to 12 months."<sup>165</sup>

The Australian government has continued to look at new ways to relocate refugees, at the cost of leaving people in limbo for years. The latest purported "solution" is to transfer offshore refugees to the United States of America.

The idea was first mooted in 2002, at a time the government was desperately seeking countries to take the first batch of refugees from Nauru, as revealed in a media story.<sup>166</sup> But the scheme came to fruition in 2007 after the senior Immigration officer in Australia's embassy in Washington approached the United States government, to develop a mutual assistance arrangement to swap up to 200 refugees from Nauru with Haitian and Cuban refugees held at Guantanamo in Cuba – according to Department of Immigration officials, there is an expectation of "a broad parity" in terms of resettlement numbers, but not necessarily a direct swap.<sup>167</sup> The Memorandum of Understanding with the United States for this scheme was signed on 3 April 2007.<sup>168</sup>

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<sup>163</sup> "Refugee advocacy group in Australia worried for Sri Lankan asylum seeker", *Radio New Zealand*, 19 June 2007.

<sup>164</sup> ABC Radio, *Australian Broadcasting Corporation*, 15 March 2007.

<sup>165</sup> "Nauru sets asylum seeker deadline", ABC Radio 'PM', Monday, 19 March 2007.

<sup>166</sup> The story on the possibility of a swap agreement was printed in the *Weekend Australian* on 18 May 2002, but denied the next day by then Immigration Minister Phillip Ruddock.

<sup>167</sup> Senate estimates, Legal and Constitutional Affairs Committee, Hansard, 21 May 2007, pp70-74

<sup>168</sup> Immigration Minister Kevin Andrews: "War Crimes MOU and Asylum Agreement Signed" Media release, 17 April 2007.

## APPENDIX 6 – Other Transparency and Accountability Issues

### Visa status

The legal status of asylum seekers in Nauru has long been contentious. On the request of Australia's Consul General in Nauru in 2001, the asylum seekers were issued with a 'special purpose visa' permitting them to 'enter and remain' in Nauru. However the asylum seekers never personally applied for visas to stay in Nauru or requested them, and their initial terms of detention conflicted with provisions of Nauruan law.

The Australian Department of Immigration has argued that: "anyone lawfully in Nauru is free to leave. If they wish to return to their country of residence, they can."<sup>169</sup>

This legalism ignores the reality that most asylum seekers are terrified of returning to countries they have fled. It also ignores the documented fate of failed asylum seekers from Nauru who returned to Iraq and Afghanistan, as detailed by David Cortlett in his book *Following them home*.<sup>170</sup>

In 2005 a test case was lodged by one asylum seeker for habeas corpus on the ground that the visa issued to him by the Nauru government was unlawful, and that he was unlawfully detained.<sup>171</sup> The majority in that case accepted that he was an "involuntary arrival" and observed that there was "no evidence as to the basis...upon which he is in Nauru."<sup>172</sup>

The initial case was taken from Nauru's Supreme Court on appeal to the High Court of Australia, but in a bizarre twist, the Australian government paid for the costs of Nauru's appeal to the High Court and briefed two top Australia lawyers to appear in the case. At the same time, the lawyer for the applicant had been refused a visa to visit his client in Nauru.

Article 5 (1) of the Nauru Constitution states that "No person shall be deprived of his personal liberty, except as authorised by law in any of the following cases" – the cases listed in the Constitution, covering the spread of disease, criminal offences, do not appear to cover the asylum seekers. The Nauru Constitution, in section 5 (2), also guarantees the right of legal representation "to consult in the place in which he is detained a legal representative of his own choice."<sup>173</sup>

### Denying detention

The Australian government has gone to extraordinary lengths to argue that the asylum seekers on Nauru are not in detention, and has referred to the detention centres on Nauru as "temporary residential asylum seekers' facilities." In 2006, Immigration officials told a Parliamentary inquiry:

"OPCs [Overseas processing centres] are not detention centres and conditions of movement in Nauru and Papua New Guinea were determined by the respective governments. OPC residents in Nauru are not held in detention but reside legally in Nauru holding a visa granted by the Nauru Government. The particular visa held by the OPC residents is a Special Purpose visa. The legality of the Nauru Special Purpose visa granted to residents of OPCs has been tested in the Nauru Supreme Court and on appeal to Australia's High Court. Both Courts have upheld the legality of these particular visas, and as such, any holder is not considered to be in detention under either Nauru or Australian law. The OPC at Nauru is managed by IOM and is a processing centre, not a detention centre. Security services provided through IOM at the OPC are largely for safety

<sup>169</sup> Senate Legal and Constitutional Committee, Committee Hansard, 6 June 2006, p33.

<sup>170</sup> David Cortlett: *Following them home – the fate of the returned asylum seekers* (Black Inc, Melbourne, 2005)

<sup>171</sup> *Ruhani v Director of Police* [2005] HCA 43 (31 August 2005).

<sup>172</sup> For discussion, see Professor Susan Kneebone: "The Pacific Plan: The Provision of 'Effective Protection'?" *International Journal of Refugee Law* 2006, Vol. 18 No.3-4

<sup>173</sup> Details of the Nauruan Constitution and relevant legislation can be found on the USP Law School website at [http://www.vanuatu.usp.ac.fj/paclawmat/Nauru\\_legislation/Nauru\\_Constitution.html](http://www.vanuatu.usp.ac.fj/paclawmat/Nauru_legislation/Nauru_Constitution.html)

reasons and are present to prevent inappropriate or unnecessary access to the centre by residents of Nauru.<sup>174</sup>

Such statements are disingenuous and misrepresent the reality of the situation for asylum seekers. The majority of the High Court of Australia in the 2005 *Ruhani* decision accepted that the conditions of the centres amounted to a deprivation of liberty – even though they found it was authorised by law.

The political sensitivity of this issue is shown by the way that officials have gone to the farcical level of removing the word “detention” from the Department of Immigration’s own fact sheet on offshore processing (The original version of Fact Sheet No.76, ‘Offshore Processing Arrangements’ dated 2 January 2002, gave the number of asylum seekers “detained” on Nauru and Manus Island. Revised editions of the same fact sheet give updated numbers of those held in the camps, but stated they are “located” on Nauru and Manus, not detained).<sup>175</sup> DIAC officials restated the claim that asylum seekers are not in detention in an interview with researchers for this project.

DIAC has made the disingenuous claim that the guards are there to ‘keep Nauruans out of the camps’. Yet there is clear evidence that in the early years of the camps in Nauru and Manus, asylum seekers were restricted to the confines of the camps, except for special reasons such as trips to the hospital. At a time when hundreds of people were confined in crowded circumstances, this led to a range of mental health problems, as well as protests, hunger strikes and breakouts. In Nauru, there are cases of asylum seekers being arrested and placed in police cells when they left the camp confines. The conditions in the camps led to a hunger strike on Nauru in December 2003 which placed some detainees in severe medical trauma, with Nauru’s small hospital unable to cope with the situation (see section 3). In PNG in 2001, refugees chased their interpreters from their fenced-off camp, smashed lights and threatened to scale the fence and tear down the gates. They tied placards to the fence demanding to be dealt with by the UNHCR, and not the International Organisation for Migration.<sup>176</sup>

Since mid-2004, asylum seekers have been given a lot more freedom of movement and have been able to leave the camps on Nauru during the day for educational, vocational or religious purposes. Their movements are still controlled by the police and security forces stationed at the centre. They are not free to go near the airport or government offices and there is an evening curfew. There is anecdotal evidence that, after just a few months on Nauru under these conditions, the current group of young Sri Lankan men are facing difficulties with boredom as they move about in the community, in contrast to the family groups that made up the bulk of the previous intakes. This is causing concern amongst Nauruans.<sup>177</sup>

## Responsibility for human rights

The argument advanced by the Australian government that asylum seekers are not detained in Nauru, and that they are simply residing in Nauru under special purpose visas, has led to a situation where the Australian government refuses to take legal responsibility for their human rights. Department of Immigration officials have stated:

“Asylum seekers at the Nauru OPC will be lawfully in Nauru under Nauruan law. IOM is tasked with managing the welfare of the asylum seekers. *The human rights of asylum seekers are vested in Nauru law therefore Nauru is ultimately responsible for them.*”<sup>178</sup>

This legal fiction suggests that Nauru and Australia, as sovereign states, are equal partners in the Pacific Solution. But this ignores the fundamental imbalance of power in the relationship, with Nauru reliant on Australia for aid funding, and the whole process of offshore processing financed, managed and controlled by Australian officials or IOM staff under Australian authority.

<sup>174</sup> DIMIA Submission to Senate inquiry in Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, [http://www.aph.gov.au/senate/committee/legcon\\_ctte/migration\\_unauthorised\\_arrivals/submissions/sub118.pdf](http://www.aph.gov.au/senate/committee/legcon_ctte/migration_unauthorised_arrivals/submissions/sub118.pdf)

<sup>175</sup> ‘Offshore Processing Arrangements’ Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) Fact Sheet No.76, First version dated 2 January 2002, second version dated 21 May 2002.

<sup>176</sup> ‘Asylum seekers rebel at Manus Island, Papua New Guinea camp’, *Post-Courier*, 24 October 2001.

<sup>177</sup> Conversation by one of the authors with Nauruan community leader, 2007.

<sup>178</sup> Response to Questions on Notice, Senate Legal and Constitutional hearings into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, 26 May 2006, question 30. [emphasis added].

The Australian government refuses to acknowledge that it has effective control over the asylum seekers on Nauru, stating:

“The Australian government has effective control over any interception and transfer of persons to Nauru or Manus Island. The Government does not have effective control over such persons on Nauru and Manus, in the sense of controlling every day to day activity affecting them, given that they are within the territory of another state.”<sup>179</sup>

If Australian authorities truly believe that Nauru and Papua New Guinea are ultimately responsible for the detainees' human rights, this raises questions as to why Australia is sending asylum seekers to countries which are not parties to key human rights conventions.

Nauru is not yet a signatory to most key human rights Conventions, including the *1951 Convention on the Status of Refugees*, and has no expertise in processing applications for asylum. Nauru is not legally bound by the Refugee Convention's obligations for non-refoulement.

Papua New Guinea is not a signatory to the International Conventions on Civil and Political Rights (ICCPR), or Economic, Social and Cultural Rights (ICESCR) or the Convention Against Torture (CAT). While Papua New Guinea has signed the *1951 Refugee Convention*, it has placed on it significant reservations, and does not accept certain Convention obligations: “The Government of Papua New Guinea in accordance with article 42 paragraph 1 of the Convention makes a reservation with respect to the provisions contained in articles 17 (1), 21, 22 (1), 26, 31, 32 and 34 of the Convention and *does not accept the obligations stipulated in these articles.*”<sup>180</sup> These include: Wage-earning employment (Art.17); Housing (Art.21); Public education (Art.22); Freedom of movement (Art.26); Refugees unlawfully in the country of refuge (Art.31); Expulsion (Art.32); and Naturalisation (Art.34).

The Convention on the Rights of the Child (CROC), to which Australia and Nauru are both signatories, states “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.” (Article 37b). However the mandatory detention of children and unaccompanied minors on Nauru is a measure of *first* resort, not ‘last resort’. Even after the 2005 reforms in Australia which removed children from detention, an unaccompanied minor was sent to Nauru in 2007.

The Australian government is currently acting in an unaccountable way in regards to the costs, operation and the human rights of the detainees in its offshore camps. This lack of accountability and transparency creates a glaring hole in the government's efforts for accountability and good governance in the Pacific and will continue to undermine Australia's reputation in this area if the current poor practice continues.

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<sup>179</sup> Response to Questions on Notice, Senate Legal and Constitutional hearings into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, 6 June 2006, question 25.

<sup>180</sup> UN Treaties Database: *UN Convention on the Status of Refugees: Papua New Guinea*, p3 [emphasis added].



## APPENDIX 7 – Other issues relating to Australia's aid program to Nauru

### Privatisation and public sector reform

Nauru has 12 state owned enterprises that employed some 2,000 people when the new government came to power in October 2004 – the largest is the Nauru Phosphate Corporation with 1500 staff, which is involved in mining, power, water and port management.

Nauru currently faces a difficult economic situation, and there is a clear need for changes to government delivery of public services. The current government reform program in Nauru includes important initiatives in improving health, education and proposes the establishment of a new Trust Fund – an initiative that has been successful in managing the economies of other small island states like Tuvalu.

However the reform agenda is clearly tailored to the ADB's neo-liberal agenda of privatisation of public utilities and slashing jobs in the public sector. The current MOU sets out requirements for reform of the public sector, saying ongoing aid is conditional on "implementation of the public sector reform strategy, resulting in implementation of an affordable scale of salary payments and design of a strategy for a substantial reduction in the size of the Nauru public service." (Schedule C, MOU)

Australia has funded ADB research into the future of Nauru's Phosphate Corporation and other public utilities.<sup>181</sup> The Australian government has also placed personnel in key positions to ensure that the reform program stays on track, as described in the MOU:

"To assist Nauru implement its economic and financial reform commitments, as part of its development assistance program, Australia will continue to provide an in-line Secretary of Finance. The Secretary will have a clear mandate for the term of this MOU to assist with implementing the reforms, including those outlined in Schedule C, necessary to address Nauru's economic challenges, and full access to information on all Nauru Government accounts, both on and off-shore. To support the Secretary of Finance and broad capacity- building initiatives, Australia will provide up to two additional advisers to the Secretary of Finance." (Article 10, MOU)

Since the early 1990s, the "good governance" agenda being promoted by multilateral agencies such as the World Bank and ADB was adopted enthusiastically by AusAID and DFAT.<sup>182</sup> Around the Pacific, the ADB has financed "economic reform" programs in a process co-ordinated through donors' meetings and the Forum Economic Ministers' Meetings (FEMM).

The ADB has long been advocating cuts in public sector employment throughout the Pacific, with structural reform programs leading to massive job losses in the late 1990s, ranging from 33 per cent (Marshall Islands) to 57 per cent (Cook Islands).<sup>183</sup> There has been significant debate over the social impacts of these cuts, as public sector employment is one of the few sources of income for people in small island states.

The fourth MOU between Australia and Nauru sets out clear requirements that must be met if Nauru is to continue to receive aid, including a study on the privatisation of the RONTTEL telecommunications authority and "agreement to implement the preferred option identified through the ADB Technical Assistance on reforming power and water services." This includes the "phased introduction of a broader user pays system for power services." (Schedule C, MOU)

The decision to promote private sector control over public utilities across the Pacific is controversial, especially in small states where there is limited opportunity for competition between providers. Privatisation will mean the shift from public monopoly to private monopoly and, like other Pacific Island

<sup>181</sup> See for example Asian Development Bank: *Technical Assistance to Nauru for the reform of the Nauru Phosphate Corporation* (finance by the Government of Australia), May 2005 TAR: Nau 39072

<sup>182</sup> Peter Lamour: *Governance and good government – policy and implementation in the South Pacific* (NCDS, Canberra, 1995); Peter Lamour (ed): *Governance and reform in the South Pacific*, Pacific Policy Paper No.23 (NCDS Canberra, 1998).

<sup>183</sup> ADB: *Reforms in the Pacific – an assessment of the ADB's assistance reform programs in the Pacific*, Pacific Studies series No.17 (ADB, Manila, 1999).

Countries, Nauru does not have the regulatory capacity to control the behaviour of private sector operators - in most PICs, Ombudsman's offices and leadership codes are directed at public service and government operations, not the private sector, and there is limited capacity for the regulation provided by bodies like the Australian Competition and Consumer Commission (ACCC).

The privatisation of public services will place significant burdens on the community, through loss of employment affecting wider family groups, and increased "user pays" policies hurting the poorest sector of the community. Even the ADB has acknowledged the difficulties of promoting private sector investment in these areas: "Given the size of the economy of Nauru and the history of poor governance, potential private investors are likely to view the country as high risk. Options for privatising water and electricity services may be meagre, short term and require high returns to cover risk. The country also lacks the capacity to regulate and monitor a private sector monopoly."<sup>184</sup>

Given Nauru's desperate economic situation, there is an urgent need to improve the quality and efficiency of government provision of essential services like water, energy and telecommunications. But there is also a need to promote debate about the costs and benefits of the aid conditionality that Australia and other donors are enforcing, to ensure that the changes benefit all members of the Nauruan population.

There are fundamental questions of accountability in this process - it's uncertain that public sector reform will achieve the stated aims of efficiency and ending corruption. In the Fiji context, academic Satendra Prasad has argued that "public sector reforms increase, rather than reduce the potential for corruption", due to the reduction of government oversight and the lack of corporate accountability through the use of "commercial in confidence" secrecy.<sup>185</sup>

Above all, there is a need to promote a culture of governance that encourages citizens to hold governments, corporations and donors to account. To this end, the reform program in Nauru doesn't utilise techniques for improved accountability measures that are widely used in other regions (for example, Publish what you pay; the Extractive Industries Transparency Initiative; community programs of budgetary monitoring etc).

## Police Development Program

A major focus of the Australian government's strengthened engagement in the Pacific region has been the deployment of the Australian Federal Police (AFP) in a variety of roles, especially to target trans-boundary threats to Australia such as drug smuggling, money laundering, gun running and potentially terrorism.

As in Solomon Islands and Fiji, Australia has supported the appointment of an Australian officer as Police Commissioner in Nauru. The 2005-07 MOU states:

"To assist Nauru implement law and justice reforms, as part of its development assistance program, Australia will continue to provide an in-line Australian Commissioner of Police, with a mandate to implement reforms to the Nauru Police Force (NPF) for the term of this MOU. Reforms will include infrastructure development and the provision of training and professional development for the NPF. To support the Commissioner of Police and broad capacity development initiatives, two supporting positions and additional short-term support, either in-line or advisory, will be provided for human resource/strategic planning and training/community policing." (Article 11, MOU)

The focus of the Police Development Program is training and infrastructure support to strengthen the Nauru Police Force. Beyond this however, there is a broader agenda of ensuring that Nauru meets international obligations that have arisen since 2001 under the "War on Terror", especially on money laundering. According to Schedule C of the MOU, these include measures such as:

- "Meeting all requirements of the process for removal of [OECD Financial Action Task Force] FATF blacklist and taking all necessary steps to ensure Nauru's ongoing compliance."
- Minimum security upgrade at Nauru International airport.

<sup>184</sup> Asian Development Bank: *Technical Assistance to Nauru for the reform of the Nauru Phosphate Corporation* (finance by the Government of Australia), May 2005 TAR: Nau 39072, p2.

<sup>185</sup> Satendra Prasad, University of the South Pacific: "Tensions between economic reform and good governance in Fiji", Lecture at SSGM workshop on corruption and accountability in the Pacific. [http://rspas.anu.edu.au/papers/melanesia/conference\\_papers/1998/prasad.html](http://rspas.anu.edu.au/papers/melanesia/conference_papers/1998/prasad.html)

- Enter into negotiations with Australia on a Taxation Information Exchange Program.
- Continued cessation of issuing new “investor passports.”

The experience as police commissioners of AFP officers Shane Castles in Solomon Islands and Andrew Hughes in Fiji raise questions about the lines of command for the police deployed to Nauru. There are potential conflicts of interest if the public or politicians perceive that they are taking orders from Canberra rather than acting for and on behalf of the local authorities – a problem highlighted when AFP members of the Participating Police Force in Solomon Islands raided the office of Prime Minister Manasseh Sogavare during the Julian Moti affair.

Questions of immunity and jurisdiction were also raised in Papua New Guinea, when Morobe Governor Luther Wenge won a Supreme Court victory over the constitutionality of Australia's Enhanced Cooperation Program (ECP), which saw the deployment of 200 police and civilian personnel to Papua New Guinea. A full bench of the PNG Supreme Court ruled that several provisions of the ECP Act were invalid under the PNG Constitution, and that certain provisions undermined the authority of PNG's Police Commissioner and Public Prosecutor, and the rights of PNG citizens to redress under the law.

These issues may yet arise in Nauru, where the placement of Australian police and civilian personnel in Nauru government departments is governed by an agreement signed on 10 May 2004 with the previous government of President Rene Harris.<sup>186</sup> This Agreement makes clear that Australian police are governed by Australian, rather than Nauruan law:

- Under Article 3, the head of the Assisting Australian Police shall be responsible to the Commissioner of the Australian Federal Police (AFP).
- Under Article 4, “any tasks or orders carried out by Assisting Australian Police Personnel shall be consistent with the laws, procedures and standards of conduct applicable to them in Australia. Assisting Australian Police Personnel will be subject to Australian disciplinary laws and procedures.”
- Under Article 5, Assisting Australian Police Personnel shall not be subject to “the jurisdiction of any Nauruan disciplinary authority, court or tribunal.”
- Under Article 11.2 of the Agreement, the Australian Government is responsible for the salary, allowances, removal expenses, costs of transport to Nauru, and medical and dental expenses of Australian officials deployed to Nauru. Australia is also responsible for personnel accommodation and transport costs within Nauru.

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<sup>186</sup> *Agreement between Australia and Nauru concerning additional police and other assistance to Nauru* (Melbourne, 10 May 2004) [2004] ATNIA 14

## APPENDIX 8 – Research Structure

Qualitative data for this project was gathered by researchers who undertook more than 50 interviews in Australia from January to April 2007. Care was taken to interview a cross-section of individuals and organisations involved in these issues. As such, interviews were conducted with former asylum-seekers on Nauru and Christmas Islands, refugee advocates, lawyers, non-government organisations, officials from UNHCR and IOM, Government officials from DIAC and academic researchers. Interviewees were chosen to represent a wide variety of organisations – direct service, advocacy, legal – and perspectives – Government, academic or policy. While the research aimed at reaching as many organisations and people involved in the issues as possible, some logistical constraints limited the geographic spread of interviews and amount of people interviewed. Nonetheless, interviews were conducted on Christmas Island, in Perth, Sydney, Canberra, Brisbane and Melbourne. Researchers applied for a visa from the Government of Nauru to visit the detention centres in Nauru, but were not able to obtain the visa despite repeated requests.

Interviewers aimed to follow a research methodology that would allow the interviewers to gather accurate and pertinent information, while still allowing for changes in the question template according to the direction of the interview. Therefore, interviews were based on a semi-structured interview template, with open-ended questions. This flexibility allowed interviewers to follow up on specific points, or pursue a specific line of questioning with a particular expert or individual with a specialised experience of the issue. As such, many of the interviews focused on different themes or issues, but questions on the policy developments, impacts in Australia and international impacts were asked in all interviews. Interviews were taped and then transcribed (except with individuals or organisations who expressly requested they not be), to ensure accuracy of information. These transcripts were subsequently re-analysed by the researchers, in light of secondary literature and analysis of policy documents and media.

A unique element of the research was the interviews and field research on Christmas Island. One researcher spent a week on the Island, interviewing community members who had been involved with visiting detainees, Shire Council members and community leaders. These in-depth interviews provided insight into the impact of the detention centre and its related issues on the community from a number of perspectives. Previous research on extra-territorial processing has not included a field visit to Christmas Island, and these interviews added deeper understanding of the impact of the detention centre on the island and its inhabitants.

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Layla Gallagher, Kate Gauthier, Marc Purcell, Brendan Ross.

Andrew Bartlett, Bruce Henry, Charlie Powles, John Oakley of DIAC, Chaman Shah Naseri, Elaine Smith, Elenie Poulos, Francis Milne, Fredderika Steen, Graham Thom, Grant Mitchell, Hassan Ghulam, the International Organisation for Migration (IOM), James Thomson, Judith Quinliven, Kaye Bernard, Marion Le, Mark Green, Michaela Byers, Nicole Cunningham, Pamela Curr, Jack Smit, Paul Power, Carolina Gottardo, Sue Hoffman, Susan Metcalfe, Richard Towle and staff of the United Nations High Commission for Refugees (UNHCR), Virginia Jealous, David Holdcroft, Eileen Pittaway, Vanessa Lesnie, Jane McAdam, Kerry Murphy, Mary Crock, Julian Burnside, Richard Herr, Susan Kneebone, Damien Lawson (As always, none of the above are responsible for the recommendations or conclusions of this report).

The authors met and interviewed a number of refugees who were detained on Nauru and Manus Island since 2001 but now live in Australia on temporary visas. Most of them asked not to be named because of concern over their visa status.

## Appendix 9 - About the Authors

**Kazimierz Bem** is a lecturer in law at the Free University of Amsterdam. He has previously taught at Harvard Law School and worked for the Canadian Council for Refugees. He has published widely on legal and human rights issues relating to asylum-seekers and refugees in Europe. He has recently completed his doctorate on "Defining the Refugee" which explores US and Dutch case-law in asylum matters over the past 25 years.

**Nina Field** is a Melbourne-based, free-lance writer with a strong interest in human rights and development issues. Nina worked as a journalist at *the Australian Financial Review* newspaper for nearly a decade. Since leaving the paper, she has worked with a local NGO in Ghana, evaluated development projects in Papua New Guinea and taken on a number of advocacy projects at Oxfam Australia. Nina also conducts media training and has continued to contribute articles to various publications, including the *Herald Sun* and *Corporate Risk*.

**Nic Maclellan** is a journalist and researcher who has written on Pacific issues since the 1970s. He worked for nine years as a field officer for the Australian Volunteers Abroad program in Papua New Guinea and the Pacific Islands, including support for development programs for West Papuan refugees at East Awin in Papua New Guinea. Between 1997 and 2001 Nic lived and worked in Fiji with the Pacific Concerns Resource Centre (PCRC). He has written for a range of newspapers and magazines, including *Islands Business* (Fiji) and *Pacific Magazine* (Hawaii) and broadcast with Radio Australia's 'Pacific Beat' program. He is the co-author of three books on Pacific issues, and researched "Adrift in the Pacific" and "Still Drifting", two previous Oxfam reports on the Pacific Solution.

**Sarah Meyer** has a BA (Hons) in history and politics from Monash University, Australia, and an MPhil in Development Studies with distinction from the University of Oxford, where she was a Rhodes Scholar. Her interest in refugee-related issues emerges from community-based work in Melbourne, Australia with asylum detainees and Afghani temporary protection visa holders. Her research has focused on protracted refugee situations, particularly of Sudanese refugees in Uganda, and she conducted research at UNHCR Geneva, in Kampala and in two refugee settlements in Uganda for her thesis in 2005, which was published as a UNHCR New Issues in Refugee Research Working Paper. As a 2006-2007 Sauv  Scholar at McGill University, she conducted research on rights-based approaches to refugee aid and development and international responses to internal displacement. She has given presentations at the University of Montreal, University of Oxford, Concordia University and York University, Toronto.

**Dr. Tony Morris** is currently the principal trainer with the International Service for Human Rights based in Geneva, having worked in human rights, refugee issues and development for 20 years. He has extensive experience working in a range of universities, NGOs and community-based organisations. Tony has conducted training and education, capacity building and research work in Cambodia, Afghanistan, East Timor, Philippines, India, Papua New Guinea, Kenya, Sri Lanka, and the Middle East, as well as with Indigenous and low socio-economic communities in Australia. Tony's most well-known work relating to asylum-seeker issues was as the chief investigator in the first *Deported to Danger* report published by the Edmund Rice Centre in 2003.

