

24 February 2023

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Committee Secretary

Migration Amendment (Evacuation to Safety) Bill 2023

The Asylum Seeker Resource Centre (ASRC) supports the Migration Amendment (Evacuation to Safety) Bill 2023 (Evacuation to Safety Bill) in full and welcomes the opportunity to contribute to the Committee's inquiry into this Bill.

The ASRC strongly urges the Committee to support the Evacuation to Safety Bill.

Founded in 2001, the ASRC is Australia's largest independent aid and advocacy organisation for people seeking asylum and refugees, supporting and empowering 7,000 people at the most critical junctures of their journey.

The ASRC continues to advocate alongside people subjected to offshore processing in Papua New Guinea (PNG) and Nauru for a humane and permanent solution. Notably, the ASRC works directly with people in PNG and Nauru via its Detention Rights Advocacy Program (DRAP). 550 people are supported on a triage basis by caseworkers, including over 100 still held offshore. Additionally, our Human Rights Law Program has represented people seeking urgent medical evacuation from Nauru and PNG to Australia.

Caseworkers at the ASRC have daily contact with people held offshore, as they resist and continue to expose the cruelty inflicted upon them and their rights that have been denied.

Also, in 2017 the ASRC visited PNG, including Manus Island, and witnessed first-hand the dire medical crisis facing people seeking asylum and refugees who had been abandoned by the Australian Government.

For years, national and international human rights and medical associations have raised their concerns regarding the physical and mental health conditions of people held offshore. The urgent need for medical care and evacuation is well documented, as is the lack of sufficient medical treatment in both Nauru and PNG.

Australia's offshore processing regime is a dark chapter of our history. Successive governments have shirked their moral responsibility and legal duty of care¹ to refugees and people seeking asylum in the name of political point scoring and turned a blind eye to the devastating consequences. **14 people subject to offshore processing have died**,² and many others have been subjected to human rights abuses and neglect.

People are now at breaking point after being held offshore against their will for **almost 10 years**. The Evacuation to Safety Bill is an opportunity for the Australian Government to demonstrate that leadership can be both humane and pragmatic. It is time for all refugees and people seeking asylum currently in Nauru and PNG to be evacuated in order to live in safety and access vital medical care in Australia whilst awaiting resettlement.

Current crisis in PNG and Nauru

Broken transfer process

The medical transfer process is broken. There are critically ill refugees and people seeking asylum in PNG and Nauru who are unable to access urgent medical treatment.

Routinely the mechanisms that are supposedly in place to facilitate transfer for medical treatment do not result in evacuation. Medical advice from the treating doctor and a Senior Medical Officer (SMO) of the Commonwealth has been provided as one avenue people may be evacuated. Another avenue is the Overseas Medical Referral (OMR) process in Nauru. Yet people who meet these processes are still not transferred without any explanation. Others have been told that they will be transferred for urgent medical treatment, only to wait years watching others leave. Currently, there is no coherent transfer process in place and refugees are suffering due to this broken system. This is why the Evacuation to Safety Bill is so urgently needed.

Further, the Bill is entirely in line with the Australian Labor Party's (ALP) current policy platform. The ALP National Platform states that it will:

“Improve the medical transfer process, establish an Independent Health Advice Panel to provide medical advice and maintain ministerial discretion in all decision making”.³

However, despite the change in government in May 2022, there have been no significant improvements to the transfer process, the advisory panel has not been established, and transfer requests are routinely delayed or ignored.

Since the Albanese Government came into power, 16 people have been transferred from Nauru to Australia for urgent medical care. Of this group, the ASRC submitted imminent risk notifications for 14 people and briefs to the Minister for Home Affairs for 6 people.

The ASRC has been continually advocating for each person to be transferred to receive critical care. The process has been time and labour-intensive, and people are subjected to protracted

¹ See *Plaintiff S99/2016 v Minister for Immigration and Border Protection* [2016] FCA 483; *FRX17 as litigation representative for FRM17 v Minister for Immigration and Border Protection* [2018] FCA 63.

² Human Rights Law Centre, *#9YearsTooLong*, 2022, <https://www.hrlc.org.au/timeline-offshore-detention>.

³ Australian Labor Party, *ALP National Platform*, 2021, <https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf>, 127.

delays and inconsistent information about whether they will be transferred, which causes increased anxiety and distress. The ASRC has submitted ministerial briefs for 12 people who are still awaiting transfer for urgent medical treatment.

The case studies throughout this submission are people for whom ASRC has submitted an imminent risk notification and/or ministerial brief; many have still not been evacuated. Many of these stories were shared confidentially and will differ in the public version of these submissions.⁴

Case study 1

Mohammad is a Hazara man from Afghanistan who is in PNG. He has been recognised as a refugee. He is currently under severe mental stress because he is worried about his family in Afghanistan who are living under Taliban rule. He is engaged in the Canadian resettlement process.

Mohammad has suffered in offshore detention in PNG for over 9 years. He has a multitude of untreated health conditions which makes it difficult for him to eat. He also suffers from depression. His doctor suggests he exercises, but Mohammad does not want to leave his house for fear of his safety.

“My hopes are to be with family, find work, stand on my own feet, feel independent and feel like a human. To have a peaceful life. Just do not forget us and hopefully, you can help us get out of this situation. We are stuck and cannot do anything to change our life for the better”.

There are numerous examples of refugees not being medically evacuated despite the advice of International Health and Medical Services (IHMS) medical professionals in Nauru, or people who have received approval by the Australian Border Force (ABF) and via the OMR process in Nauru.

ASRC’s DRAP team has seen cases of people being approved in 2018 for medical evacuation for critical health issues, yet they were only evacuated in 2022. During this time other refugees have been evacuated through different processes. Some have been told they will be on the ‘next plane’, only to watch their friends leave with little explanation, follow up or next steps.

The guidance from the Albanese Government regarding the mechanisms for evacuation are opaque and even contradictory. The Bill will remove the uncertainty and chaos around the current transfers, preventing conflicting information and unclear approvals from various bodies like IHMS, SMOs, OMR and ABF.

Case study 2

Qarar was hospitalised in Nauru earlier this year after he experienced severe pain. He has been approved for transfer, but has still not been evacuated or received the medical treatment needed.

“My brother is in Australia, I need to go to Australia for treatment, it is easier for me in Australia. I have been to Australia 3 times – had an operation in Brisbane in 2014 for kidney stone removal, good hospital, I stayed for 2 weeks, with a lot of facilities, proper doctors and professionals, there is a lot of humanity, human being’s health

⁴ The names of some people in the case studies have been replaced with pseudonyms.

is important in Australia, it is nothing here ... Australia is spending a lot of money and could have spent it in a better way.

In February 2021, 14 people were on a flight to Sydney, the ABF that night called me, [saying] 'you are not on this flight, you will be on the next flight,' and then nothing happened. I cannot tolerate this situation anymore, I am suffering, please help me. It's beyond toleration anymore, all lies, beyond toleration anymore, patience is over, so many promises and lies. 10 years is more than enough, very cruel to be kept here with no treatment, even 2 weeks is too long ... I have a right to be transferred, I am frustrated mentally and physically tired, my patience is over."

Qarar's brother came to Australia in 2012, he has been living in Australia since this time. He has been separated from his brother for over 10 years.

"I am so worried about my brother all the time. My family is also very stressed because Qarar is sick. Is it too hard for me and my family. I am working here and I pay tax and have been doing the right thing. My brother is still there and it is totally wrong. It is hard for me to sleep because I am so worried about him"

As noted in the case study above, several family units have been split between PNG, Nauru and Australia and separated from each other for years on end, which has exacerbated people's mental health conditions. A government with a genuine concern for family unity would choose the obvious solution - to bring remaining family members to safety in Australia in order for families to explore resettlement options together. Below is a further example of the cruel and inconsistent policy applied to families seeking asylum.

Case study 3

Said is a refugee who spent over 9 years in Nauru. His brother is an Australian citizen. In 2021, several of Said's family members were evacuated to Australia, including his wife and three children. However, Said remained in Nauru.

Said has severe mental and physical health issues. He could not receive the necessary medical treatment in Nauru and was recommended for transfer to Australia in 2018 and July 2022.

He was finally transferred to Australia in December 2022 and reunited with his wife and children.

"In Nauru, I needed to take sleeping tablets in the morning and night. In Australia, I can sleep without tablets and I am feeling much better. When I was in Nauru, it closed my mind and brain. Now in Australia, my brain has started working again. I didn't know the taste of life and future until I came to Australia.

My life didn't feel important in Nauru – people die. All we do is eat and sleep. People in Nauru need help - they are faced with a problem, they don't have a future. People are stitching their lips because they don't have hope. Give them life and hope by passing this law. Be kind to us because we have no hope and future when we are far away from our family – we all have families, kids, wives."

While almost all people currently held offshore are on some resettlement pathway, these processes are plagued with delays and onerous applications. Some refugees have been waiting years after a permanent resettlement pathway has been approved and receive no communication for months about their application. In some cases, people's health has

deteriorated to an extent where they are unable to travel to their permanent resettlement country.

In addition to the lack of medical treatment and the impact of delays, many of the people offshore face difficult living conditions and safety concerns in Nauru and PNG, which make them unsuitable places for people to await resettlement to a third country.⁵ In May 2022, leaked emails from the Nauruan Police demonstrated their disregard for the safety of refugees and people seeking asylum who were at risk of suicide and self-harm.⁶ Also, in August 2022, two Iranian refugees in PNG were robbed at gunpoint after armed attackers broke into their unit.⁷ The Australian government has the primary responsibility in ensuring the rights and safety of refugees held offshore - this cannot be shifted onto our Pacific neighbours.

Case study 4

Hussain is a refugee who is currently on a resettlement pathway to Canada. He was recently evacuated to Australia for medical attention.

“When we go to the hospital they are tortured – they are pointing to each other - Republic of Nauru (RON) hospital say go to IHMS and IHMS say go to RON, they are pointing to each other. They treated us like animals they didn’t give chance to explain our problem, the nurse was not polite, she made a funny face at me and nearly chased me out – we are going with a problem to the hospital, not going for fun. I just recently arrived in Australia, freedom but not freedom, still suffering, at least I’m feeling a little better.”

“I arrived on the 15 of December 2022 and went to Gold Coast hospital – 5 days of treatment for food and fluid refusal, tests for head and eyes and jaw. I went to the doctor and discussed bladder issues – got a script for medication. We need to buy medication, but money is not enough for us. I was having a tooth problem and my case manager said I am not eligible – not included in community detention.”

Hussain in 2020 was approved for a transfer to Australia, however, his flight was cancelled twice with no reason provided before he finally received treatment.

“We want to live as humans, we don’t have a big goal, just want to live as normal people, go work, buy things. I want to have a normal life as a human...”

Further, LGBTI+ refugees and people seeking asylum have reported being harassed and subjected to violence in Nauru and PNG. Same-sex relationships remain illegal in PNG, and in Nauru there is no legal recognition of same-sex unions or protections against discrimination in employment or the provision of goods and services on the basis of sexual orientation.⁸ Indeed, Australia’s Department of Foreign Affairs and Trade has assessed that LGBTI+

⁵ SBS News, *Asylum seekers in PNG scared and devastated after reportedly being held at gunpoint*, 22 April 2021; Human Rights Watch, *Australia/PNG: Refugees Face Unchecked Violence*, 25 October 2017, <https://www.sbs.com.au/news/article/asylum-seekers-in-png-scared-and-devastated-after-reportedly-being-held-at-gunpoint/i7rgzed39>; The Guardian, *Refugees attacked on a daily basis on Nauru, human rights groups say*, 3 August 2016, <https://www.theguardian.com/australia-news/2016/aug/03/refugees-attacked-on-a-daily-basis-on-nauru-says-amnesty-report>; Al Jazeera, *Beyond the Park Hotel: Australia’s immigration detention network*, 13 January 2022, <https://www.aljazeera.com/news/2022/1/13/beyond-the-park-hotel-australias-immigration-detention-network>.

⁶ Crikey, *Appalling disregard: Australia’s offshore processing slammed after leaked emails show Nauru people mocking suicide, self-harm threats*, 5 May 2022, <https://www.crikey.com.au/2022/05/05/nauru-police-force-emails-refugees-asylum-seeker-self-harm-suicide/>.

⁷ RNZ Pacific News, *Refugees robbed at gunpoint in Papua New Guinea’s Capital*, 15 August 2022, <https://www.rnz.co.nz/international/pacific-news/472893/refugees-robbed-at-gunpoint-in-papua-new-guinea-s-capital>.

⁸ Human Dignity Trust, *Papua New Guinea*, 2021, <https://www.humandignitytrust.org/country-profile/papua-new-guinea/>; Equaldex, *LGBT Rights in Nauru*, 2022, <https://www.equaldex.com/region/nauru>.

individuals in PNG face a high risk of societal violence and discrimination, with gay men having been “raped, beaten, or even murdered”, with police as “frequent perpetrators of violence.”⁹

The current government policy of holding LGBTI+ refugees in Nauru and PNG is contrary to the ALP platform, which states “Labor will not detain, process or resettle lesbian, gay, bisexual, transgender or intersex refugees or asylum seekers in countries which have criminal laws against any of these communities as it makes these places unsafe environments for all of them”.¹⁰ It is alarming that the Australian Government is exposing people to severe harm in direct contravention of its policy.

Case study 5

Shariff is a refugee in Nauru awaiting urgent evacuation to Australia. He suffers from serious mental and physical health conditions, with doctors in Nauru and an Australian specialist recommending he is transferred for treatment.

“It is important to get evacuated because we do not get any treatment here in Nauru. Last year I had a fever, and I went to RPC1 to meet the doctor, it was very hot - they called the police, and not the doctor, they threw me in the car and tore my clothes.”

Shariff is on a resettlement pathway to New Zealand. It has been a decade since he has seen his family, including his two children.

“At the moment I cannot imagine being able to think about resettlement, I can only imagine after I have treatment. Better if I can make treatment first and then decide what to do.”

Harm and confusion upon transfer

Concerningly, many people who were medically transferred to Australia have been subjected to protracted periods in quarantine and closed immigration detention, including alternative places of detention such as hotel detention. This has hindered their ability to access the medical care for which they were brought to Australia and caused further deterioration to their mental health. According to the ASRC’s data, people who are transferred for medical treatment in Australia are currently spending an average of 26 days in closed detention.

Also, there is inconsistency regarding who is detained on arrival to Australia and their length of detention. **For example, an ASRC client spent 46 days in hotel detention, whereas another client was released onto a Bridging Visa E after a day.** The opacity and ambiguity regarding people’s detention on arrival to Australia has caused distress to refugees and people seeking asylum, as well as their families and friends in the community.

Case study 6

Hiren has been held in Nauru for over 9 years. He was transferred to Australia in February 2023 for urgent medical treatment for chronic pain conditions. Hiren has been held in closed hotel detention. He has not been told when he will be released from detention.

⁹ DFAT Country Information Report Papua New Guinea, 6 September 2022, available at <https://www.dfat.gov.au/sites/default/files/country-information-report-papua-new-guinea.pdf>, p 17.

¹⁰ Australian Labor Party, *ALP National Platform*, 2021, <https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf>, 127.

“Being held here in this hotel, it feels like a jail. I haven’t received any proper or major treatment so far. I have been told I will have an MRI and kidney tests will be done. Still waiting, however, I have done a blood test and am awaiting results. Now I am having pain in both kidneys. Having back pain as well. Doctors say they cannot do anything without doing an MRI first.

I have already lost many years, and cannot plan for the future. I applied for all the resettlement programs, but nothing happens. The future only makes sense if I have a pathway to resettle somewhere.

People are getting crazy. Health issues are worsening. People are scared for their safety. Locals swear at refugees. Get people out of this situation please. They are under a lot of stress and face a great uncertainty. Pay attention to the corruption and torture that is continuing to go on in offshore detention.

Stop wasting money and resources. Don’t send people to Taiwan or other places. Bring them to Australia for a proper treatment. Even Nauru does not send their citizens to Taiwan for treatment because they know it is useless.”

Without a transparent and efficient evacuation process, both the mental and physical health of refugees will continue to deteriorate. The misinformation and constant uncertainty regarding the transfer process has increased people’s distress. While critically ill refugees and even those approved for evacuation are still held offshore, despondency over the transfer system will persist. Incidents of self-harm, hunger strikes and protests are a result of the toxic offshore conditions and ineffective medical evacuation process. The Evacuation to Safety Bill will provide a clear and effective pathway to evacuate refugees and people seeking asylum.

Brief history of medical transfers from Nauru and PNG

To fully comprehend the current medical crisis for people subject to offshore processing in Nauru and PNG and why the Evacuation to Safety Bill is necessary, it is important to understand the history of medical transfers and the reasons why the evacuation process is still broken.

Case study 7

Rajah is a Tamil refugee held in Nauru. He suffers from excruciating pain due to kidney issues, which is increasing each day. Rajah worked at a warehouse until a few months ago. He was dismissed because of his health issues and status as a refugee. Rajah now spends most of his time at home. He applied for resettlement in Canada and has been waiting for over 15 months.

“I need both mental health and physical health care. I want to receive proper treatment and not go to Canada as a sick person. I will not be able to look after myself if my health issues are not resolved. I could get proper treatment in Australia. Every day is a struggle and suffering. We are here in offshore detention for 10 years now. We are also human and not from a different planet. Take one minute for us and think about our feelings and our families. We are separated from our children, siblings and parents. It is not easy. If we have done anything wrong, tell us.”

Before the Medevac Law

During 2012 and 2013, people seeking asylum were transferred to PNG and Nauru for offshore processing. Since this time, there has been a significant deterioration of people's mental and physical health due to a lack of appropriate medical treatment, indefinite separation from their families, and no permanent pathway to safety in sight.¹¹ Unsurprisingly, this potent combination of factors caused a deep sense of hopelessness in people.

14 people subject to offshore processing have died, and many of these deaths related to treatable illnesses. These deaths could have been prevented if the Australian Government had transferred people to Australia for urgent medical care. In 2018, an Australian coroner found that one young refugee man's death was directly related to inadequate medical care and the Australian Government's failure to transfer him for appropriate medical treatment in a timely manner.¹² The Coroner's observations on offshore healthcare state:

"19. As outlined in these findings, Mr Khazaei was entitled to receive care that was "the best available in the circumstances and broadly comparable with health services available within the Australian community"...

20. It would be possible to prevent similar deaths by relocating asylum seekers to other places, such as Australia or New Zealand, where better health care would be provided.

21. The Australian Government retains responsibility for the care of persons who are relocated, for often lengthy periods, to offshore processing countries where standards of health care do not align with those in Australia. It is incumbent on the Australian Government to implement sustainable systems for the delivery of health care that meet the requisite standard. Those systems should also be subject to ongoing and independent scrutiny on behalf of the Australian community, which is required to meet the ongoing and considerable costs of the current arrangements."¹³

In September 2016, Australia and the United States (US) entered into an agreement for the US to resettle a certain number of refugees held in Nauru and PNG. To date, over 1,000 people have been resettled in the US, however, hundreds of people are awaiting final outcomes on their resettlement applications and living with constant uncertainty.¹⁴

Over time the availability of healthcare in offshore processing countries continued to diminish, and in October 2018, Medecins Sans Frontieres (MSF) was forced to leave Nauru, leaving over 200 patients on the island without specialist mental health services.¹⁵ Since this time, there have been no specialist mental health services in Nauru.

¹¹ Refugee Council of Australia & Asylum Seeker Resource Centre, *Australia's man-made crisis on Nauru: 6 years on*, September 2018, https://www.asrc.org.au/wp-content/uploads/2018/09/Nauru_Manmade_Crisis.pdf; Refugee Council of Australia & Amnesty International, *Until when: The forgotten men of Manus Island*, 21 November 2018, <https://www.refugeecouncil.org.au/manus-island-report/>.

¹² Inquest into the death of Hamid Khazaei by Queensland State Coroner, File 2014/3292, 30 July 2018, https://www.courts.qld.gov.au/__data/assets/pdf_file/0005/577607/cif-khazaei-h-20180730.pdf.

¹³ Ibid.

¹⁴ Refugee Council of Australia, *Offshore processing statistics*, 10 February 2023, <https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/>.

¹⁵ Medecins Sans Frontieres, *Nauru: New MSF report shows the disastrous mental health impact of Australia's offshore processing policy*, 3 December 2018, <https://www.msf.org.au/article/statements-opinion/nauru-new-msf-report-shows-disastrous-mental-health-impact-australia%E2%80%99s>.

During this period, the ASRC Detention Right Advocacy Program worked with people held offshore who suffered from a wide range of treatable physical illnesses such as cardiac and respiratory conditions, kidney stones, gastritis, joint conditions, gynaecological and urological conditions and chronic and acute pain conditions. The lack of appropriate medical treatment caused these illnesses to escalate and result in possible organ failure, blindness, repeated incidents of self-harm and suicidality, mood disorders and symptoms relating to ongoing trauma.

The transfer process for people to receive medical care in Australia relied heavily on the cooperation of the Department of Home Affairs (the Department) and the care that people received was determined by bureaucrats rather than medical professionals. During this time, sick refugees were waiting an average of at least two years, and some for up to five years, for medical transfer after it had been recommended by Australian government-appointed doctors.¹⁶ These protracted delays exacerbated people's medical conditions.

Ultimately, the majority of medical transfers were the result of legal intervention where people sought urgent injunctions in the Federal Court of Australia for their evacuation to Australia for critical medical care. Between December 2017 and February 2019, approximately 150 such matters were run by over 100 pro bono lawyers, resulting in 50 applications filed (with the balance settled out of court). These proceedings required an extraordinary amount of pro bono legal hours, there was a significant demand on court resources including frequent out-of-hours sittings. In all cases, the Federal Court ordered the urgent transfer of men, women and children to Australia for vital medical care. More than 340 people were transferred to Australia as a result of these legal proceedings.

Plainly, the medical transfer process was broken and there was a fear and probability that more people would die.

Introduction of the Medevac Law

In March 2019, the 'Medevac Law' amendments to the *Home Affairs Legislation Amendment (Miscellaneous Measures) Bill 2018* came into effect to introduce a framework into the *Migration Act 1958* (Cth) for the transfer of refugees and people seeking asylum held in offshore processing countries to receive critical medical care in Australia at the recommendation of medical professionals. At this time, several specialist refugee, medical and legal organisations, including the ASRC, came together nationally to form the Medical Evacuation Response Group (MERG) to facilitate and manage transfer requests under the Medevac Law (in the absence of any government process).

During the eight-month window when the Medevac Law was in place, approximately 192 refugees and people seeking asylum were transferred to Australia for urgent medical care.¹⁷ The Medevac Law provided a safe, orderly and timely process for sick refugees and people seeking asylum to access medical treatment. The Medevac Law also ensured that there was no political interference with the transfer system, and transfers were purely based on expert and unbiased advice from medical professionals.

¹⁶ The Guardian, *Australian government ignored refugee transfer advice from its own doctors for up to five years*, 7 February 2019, <https://www.theguardian.com/australia-news/2019/feb/07/australian-government-ignored-refugee-transfer-advice-from-its-own-doctors-for-up-to-five-years>.

¹⁷ Public Interest Advocacy Centre, *In Poor Health: Healthcare Denied: Medevac and the long wait for Essential Medical Treatment in Australian Immigration Detention*, 3 December 2021, 5.

Notably, the medical transfer of refugees and people seeking asylum under the Medevac Law occurred without any threat to Australia's national security or adverse impact on Australia's medical system. Despite what some politicians claimed, the transfers under the Medevac Law did not have any discernible impact on people seeking asylum by sea, despite this being used in a callous attempt to stoke fear and division as a reason to repeal the law.

One consequence of the Medevac Law was the detention of refugees upon arrival in Australia. Prolonged detention was not the intention of the law, however it was utilised in this punitive way by the Morrison Government. Almost all refugees transferred to Australia for medical treatment have now been released from closed detention after years. The years of trauma that people who were transferred experienced in detention centres and so-called 'Alternative Places of Detention' must not be repeated. The Evacuation to Safety Bill corrects this by clearly indicating that people who are transferred to Australia cannot be held in closed detention.

Repeal of the Medevac Law and the consequences

Despite the success of the Medevac Law, the re-elected Morrison Government sought its repeal as a political tactic and continued to play with the lives of refugees and people seeking asylum. In December 2019, the *Migration Amendment (Repairing Medical Transfers) Bill 2019* was passed, which removed the lifeline of vital medical care to refugees and people seeking asylum in PNG and Nauru.

Since the repeal of the Medevac Law, the only pathway for people subjected to offshore processing to access urgent medical care is via the previously broken, bureaucratic transfer process. As outlined above, this process is deeply flawed and protracted delays have resulted in people dying.

In 2019, the Independent Health Panel reported that "there is no access to high-quality inpatient psychiatric care in Nauru and patients with severe mental illness at high risk of suicide should be transferred to a hospital with appropriate inpatient psychiatric care".¹⁸ Despite inadequate treatment available for serious mental health conditions, many people remain in Nauru waiting for critical medical care.

From 2020 onwards, the COVID-19 pandemic has created further challenges for refugees and people seeking asylum in Nauru and PNG to access medical treatment. Medical evacuation became impossible at times due to Australia's stringent travel restrictions and quarantine requirements.

In October 2021, Australia and PNG announced that "regional processing contracts in PNG will cease on 31 December 2021", and that from 1 January 2022 "the PNG Government will assume full management of regional processing services in PNG and full responsibility for those who remain".¹⁹ However, PNG has made no commitments regarding permanent residence or citizenship for the men remaining in PNG, nor any assurances regarding their treatment, safety, access to healthcare and livelihood opportunities.²⁰ Without any durable

¹⁸ The Guardian, *Mental health conditions behind most Nauru and Manus refugee medical admissions*, 23 July 2019, <https://www.msf.org.au/article/statements-opinion/nauru-new-msf-report-shows-disastrous-mental-health-impact-australia%E2%80%99s>.

¹⁹ Australian Government, *Joint media release with the Hon. Westly Nukundj MP - Finalisation of the Regional Resettlement Arrangement*, 6 October 2021, <https://minister.homeaffairs.gov.au/KarenAndrews/Pages/finalisation-of-the-regional-resettlement-arrangement.aspx>.

²⁰ Senate Standing Committee on Legal and Constitutional Affairs, *Parliament of Australia, Estimates (25201, 25 October 2011)*, 111.

solutions, it is clear that PNG is not a suitable settlement country for most refugees; these concerns have also been raised by UNHCR.²¹

It is simply unacceptable that Australia purports to take no further responsibility for the men remaining in PNG, despite forcibly sending them there and funding their displacement for several years. Australia retains the power to transfer refugees and people seeking asylum in PNG back to Australia at any time, which indicates its continuing control over the lives of these men.

In March 2022, the Australian Government finally accepted a longstanding offer from the New Zealand Government to resettle up to 450 refugees from Australia's regional processing centres in PNG and Nauru over the next three years, at a rate of up to 150 per year. To date, over 10 people have been resettled in New Zealand.²²

The Evacuation to Safety Bill is a solution to the crisis

Who is covered by the Bill?

The Evacuation to Safety Bill only applies to the current cohort of people seeking asylum and refugees detained in PNG and Nauru. It does not apply to anyone who is not currently detained in these countries and future arrivals are not covered by the Bill. According to Department of Home Affairs data, 66 people remain in Nauru, and UNHCR estimates that 94 people remain in PNG.²³

Therefore, this Bill will result in a maximum of 160 people being transferred to Australia (noting that some people may not wish to be evacuated and have the option to decline transfer). This Bill is a humane and sensible measure to ensure that people who have endured torturous conditions for years, finally have a lifeline to vital medical treatment and safety while exploring durable solutions.

The ASRC also commends the Bill for ensuring that once people are transferred to Australia for medical care, they will not be detained in closed detention facilities, including alternative places of detention. **It is paramount that no one is subjected to closed immigration detention after being transferred to Australia.**

The impact of rejecting this solution

The consequences of not passing the Evacuation to Safety Bill are life and death. The medical transfer system is still failing refugees and people seeking asylum. Without any legislative framework for transfers, people's medical care is in the hands of politicians and bureaucrats rather than doctors. This continues to cause unnecessary delays and increases the risk of further deaths. The only way to guarantee safety and medical treatment to people seeking asylum and refugees in PNG and Nauru while they await resettlement is to pass this Bill.

²¹ These concerns have been raised consistently by the UN High Commissioner for Refugees (UNHCR) since the reintroduction of offshore processing in 2012. See: UNHCR, UNHCR monitoring visit to Manus Island, Papua New Guinea, 23 to 25 October 2013 (Summary Report, 26 November 2013) [120]-[128]; UNHCR, Australia must secure solutions for refugees abandoned on Manus Island, UNHCR Briefing Notes (Online Article, 22 December 2017).

²² Refugee Council of Australia, *Offshore processing statistics*, 10 February 2023, <https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/>.

²³ The Australian Government has stopped publishing data on the men remaining in PNG since 31 December 2021.

Case study 8

Jamal is a refugee who applied for resettlement in the US and had been waiting 2 years. He also applied for resettlement in New Zealand, but they won't consider his case as he has applied for US resettlement. Jamal suffers from chronic pain and is unable to sleep.

“Everyone here in detention is ill and they need treatment in Australia before they are resettled to a third country. We may not be able to receive proper treatment in the country of resettlement as there may be issues with lost or inconsistent medical records. We need treatment immediately in Australia.

I came to Australia for safety, but I have never seen any safety. The Australian government has failed to give safety. I am not a criminal, but I am in jail. There are only a handful of people left here and we are suffering a lot, we are the victims. Please let us move forward so that we can live like other humans.

I am not hopeful about my future, my future depends on someone else's decision. Once I get my treatment I might be able to think about my future.”

The Evacuation to Safety Bill is also necessary to ensure people can effectively engage in resettlement processes and prepare for their resettlement journey. The Bill is premised on the fact that people who are evacuated to Australia are expected to pursue resettlement pathways with third countries. The overwhelming majority of people offshore are engaged in resettlement pathways, some waiting for years in protracted and exhausting processes as previously discussed. As of August 2022, 1,048 refugees subject to offshore processing have been resettled from Nauru and PNG to other countries, including the United States, Canada and New Zealand.²⁴

However, there is a limited group of people who are too unwell to engage in the resettlement process after being subjected to inhumane conditions in offshore processing for over 10 years. Providing access to medical treatment and a safe environment in Australia will provide people with the best possible chance for recovery and to be in a frame of mind to engage with the resettlement process. The Bill will allow people who were subjected to offshore processing to regain hope and prepare and plan for their resettlement journey.

Moral and financial blackhole

In addition, the economic imperative to pass this Bill is clear. The Australian Government has spent billions of Australian taxpayer dollars to fund the offshore processing regime in PNG and Nauru. The October 2022-23 budget committed \$632 million to hold refugees offshore, a steep increase of \$150 million from the previous government's funding on Nauru alone.²⁵

In January 2023, the Albanese Government contracted the US private prison company, Management and Training Corporation (MTC), until September 2025 to hold refugees in Nauru, costing \$422 million.²⁶ MTC, described in a recent US lawsuit as “a private corporation

²⁴ Refugee Council of Australia, *Offshore processing statistics*, 10 February 2023, <https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/>.

²⁵ Commonwealth of Australia, Budget October 2022-23, *Portfolio Budget Statements 2022-23, Home Affairs Portfolio*, October 2023.

²⁶ Australian Government, Aus Tender, 2023, <https://www.tenders.gov.au/Cn/Show/21154c20-2102-4e50-93fd-97a72d3c0d4c>. MTC is currently accused of pandemic profiteering and unlawful use of solitary confinement, amongst various other instances

that traffics in human captivity for profit”, is currently accused of pandemic profiteering and unlawful use of solitary confinement, amongst various other instances of negligence and unnecessary use of force.²⁷

In stark contrast, the annual average cost of a person seeking asylum living in the community with support services was \$54,798.²⁸ It is astounding that the Australian Government continues to choose to funnel billions of dollars to hold 160 refugees and people seeking asylum offshore, despite the moral, practical and humane alternatives.

Case study 9

Ishmael is a refugee in PNG. He suffers from physical and mental health conditions. Ishmael has spent the last 10 years without access to proper medical treatment for his conditions. He does not feel safe to leave his house. Ishmael applied for resettlement in New Zealand one year ago.

“We have been living in this situation for 10 years with no proper medical facilities. The Australian government is spending a lot of money on health care and security, but we are not getting the care and support we need, we are dying here and we are not getting the support we are supposed to have.

It is better for me to be in Australia for proper healthcare, it would help to facilitate a smooth transition for me to go to New Zealand.

I hope I will be going somewhere much better where I can recover from 10 years in detention, and I can study, learn and earn, and access proper healthcare. I have wasted 10 years here. I ask the Australian government to support us and help us out of this situation, there are other people who may not be able to express their ordeal, some impacted worse than me who are mentally disturbed and cannot express their situation.”

Without this Bill providing a pathway for people offshore to access critical medical treatment, it is very likely that court proceedings to secure urgent medication evacuation for refugees offshore will resume again by necessity.

Australia’s international standing

Lastly, the Evacuation to Safety Bill provides an opportunity for Australia to salvage its tarnished international reputation. There has been extensive international condemnation of Australia’s offshore processing regime. The United Nations has made no less than 70 statements since 2012 criticising these arrangements.²⁹ The Bill is a step towards Australia complying with its obligations under the Convention relating to the Status of Refugees, the Convention Against Torture and the International Covenant on Civil and Political Rights, and restoring its international reputation as a country that respects human rights and values

of negligence and unnecessary use of force. The company makes money from the US prison system and runs five notorious immigration detention centres for US Immigration and Customs Enforcement (ICE).

²⁷ *Carlos Murillo Vega v Management and Training Corporation*, US District Court for the Southern District of California, 14 October 2021, <https://lccrsf.org/wp-content/uploads/2021/10/2021-10-14-AB3228-Complaint.pdf>.

²⁸ 2022-23 Budget estimates, BE22-084, <https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-Committeeld6-EstimatesRoundld14-Portfoliold20-QuestionNumber84>.

²⁹ UNHCR, *United Nations observations on Australia’s transfer arrangements with Nauru and Papua New Guinea (2012-present)*, 11 October 2021, <https://www.unhcr.org/en-au/publications/legal/6163e2984/united-nations-observations-on-australias-transfer-arrangements-with-nauru.html>.

humanity. Given the demonstrated limited capacities of both PNG and Nauru to provide effective protection from refoulement, it is no answer for the Government to seek to rely on PNG and Nauru's compliance with its non-refoulement obligations under the Refugee Convention, in order to meet its own non-refoulement obligations.

The Albanese Government also cannot claim that Australia is "the partner of choice for the countries in the Pacific" while it continues to abdicate its responsibility to uphold human rights and hold refugees offshore, shifting this duty onto its neighbours.³⁰ Refugees currently held offshore have rights that the Australian Government is refusing to uphold. This not only damages refugees but also shows a lack of respect towards PNG and Nauru. Other countries in the region and around the world are watching closely to see how Australia treats both refugees and our Pacific neighbours.

Case study 10

Nur Mohammad is a refugee recently transferred to Australia from Nauru for medical treatment. He is currently in Brisbane.

"It was a very bad medical experience in Nauru, they are just wasting their time and doing nothing. Why am I sick now? It is because of the torture and the wrong medicine I got in my body for ten years in Nauru. For every pain I get paracetamol, every night I would get sleeping pills, it damaged my whole body. Still, now my friends are there in Nauru now not getting the proper treatment.

Australian immigration forced me to Nauru, and I did not want to go, but for 10 years I followed the rules. I am suffering, how many more months, how many more days? 10 years I have been suffering. It was a very dangerous life there, and no one was there to help me. When the US option came, I wrote my name. When the Canada and New Zealand options came, I wrote my name. But the mental and physical torture - no one was helping me. I am feeling better but I am suffering.

I come here now and I got the treatment, I feel a little better now. But do something, not just for me but for everyone else, for the next generation. We all have family, we have the same blood, we are human. For the next generation too. I want to see justice for my friends in Nauru and PNG. Open your hearts and minds and do something."

Successive governments have continued the punitive and damaging policy of holding refugees and people seeking asylum offshore, which has cost lives and irreparable damage to people. After almost 10 shameful years, it is time for the Australian Government to act reasonably and with compassion towards refugees and people seeking asylum. The Evacuation to Safety Bill provides the Government with a responsible and humane mechanism to transfer people to safety where they can access urgent medical care and recover while waiting for a pathway to permanent resettlement.

The ASRC strongly urges the Committee to support the Evacuation to Safety Bill.

³⁰ ALP "Labor's Plan for a Stronger Pacific Family" by Senator Penny Wong, Senator Kristina Keneally, Brendan O'Connor MP, Michelle Rowland MP, Julie Collins MP & Pat Conroy MP, 26 April 2022, <https://anthonyalbanese.com.au/media-centre/labors-plan-for-a-stronger-pacific-family>.