SUBMISSION TO THE INQUIRY INTO STRENGTHENING AUSTRALIA’S RELATIONSHIPS WITH COUNTRIES IN THE PACIFIC REGION

The Refugee Council of Australia (RCOA) is the national peak body for refugees, people seeking asylum and the organisations and individuals who work with them, representing over 190 organisations. RCOA promotes the adoption of humane, lawful and constructive policies by governments and communities in Australia and internationally towards refugees, people seeking asylum and humanitarian entrants. RCOA consults regularly with its members, community leaders and people from refugee backgrounds and this submission is informed by their views.

RCOA welcomes the opportunity to provide feedback to the inquiry into strengthening Australia’s relationships with countries in the Pacific region. In this submission our primary focus will be on two countries that Australia’s refugee policies impacted the most: Nauru and Papua New Guinea (PNG). Since the re-introduction of offshore processing policies eight years ago, RCOA has been closely following their impact not only on refugees and people seeking asylum subject to offshore processing, but also on local communities, civil society, Australian and local service providers and advocates. A trip to PNG in late 2019 complemented our understanding of the impacts of offshore processing policies. In that trip, our team had the opportunity to engage with a significant number of refugees and people seeking asylum as well as church organisations, NGOs, advocates, government decision makers and international organisations based in Port Moresby. This submission focuses more on the situation in PNG because of our own first-hand experience and because of the relatively easier access to this country by journalists, advocates and NGOs, compared to Nauru.

The Terms of Reference of this inquiry are primarily focused on Australia’s Pacific Step-up. However, we believe that the Pacific Step-up cannot be analysed without considering the influence of offshore processing policies, given the length of the time these policies have been in place and the significance of their impact on the internal politics of Nauru, PNG and the Pacific region. We argue that Pacific Step-up is and will be undermined by continuation of these policies. The Pacific Step-up presents an opportunity for Australia to strengthen its leadership role in the Pacific region but we cannot do so if we continue to ask the poorest members of our Pacific family to do the hard work for us, disrupting their infrastructure, social cohesion and governance in the process. The continuation of offshore policies further damages our relationships with Pacific nations and our reputation in the region, creating the risk of other players filling the gap we have created.

1. **Offshore policies undermine the success of Pacific Step-up**

1.1. It has been reiterated that the Pacific Step-up is one of Australia’s highest foreign policy priorities. It seeks to respond to a range of challenges identified in the region and to take our engagement with the Pacific countries to a new level. The question we put forward to the Committee to consider is whether conditions necessary to strengthen Australia’s relationship with the Pacific countries can be fulfilled while maintaining offshore processing policies. Can we work together with our Pacific family to meet current and emerging opportunities and risks facing the region, when we are putting some of those countries in a position to manage issues that are clearly our responsibility?
1.2. As we explore in more detail later on, Australia’s offshore processing policies exposed Nauru and PNG to issues they did not need to deal with. They took away resources and attention from some of the significant internal issues that need urgent response. They created long-term social cohesion issues, created complex challenges for future generations, placed a significant burden on fragile infrastructure and harmed the most vulnerable sections of the population. They also eroded trust; both the trust of the local population in their own government and their trust in the Australian Government.

1.3. The damage, however, was not limited to the relationships with Nauru and PNG. They went beyond. Offshore processing policies caused considerable harm to our reputation in the region.

1.4. In the aftermath of the Pacific Islands Forum in August 2019, a number of current and former Pacific politicians assessed the performance of Australia in that Forum as less than ideal. The comments from countries like Tuvalu, Fiji and Kiribati showed that the shared sentiment amongst a number of strategic Pacific island countries was that Australia is dismissive of the issues that matter to the region the most and has been heavy-handed in its negotiations on the climate crisis.1 It is obvious that at such a strategic moment in our foreign relations history, especially considering the competition for influence in the region, Australia cannot afford to merely emphasise the foreign aid it provides to the region and ask the countries in the Pacific region to focus on what matters to Australia, while ignoring the significant concerns of those countries. The continuation of offshore processing policies does just that. By continuing those policies, Australia is placing a significant burden on countries with fewer resources than us, disregarding the impacts of those policies on the population and beyond. In response to criticism, Australia reminds everyone involved of the foreign aid it provides to the region and the financial support it provides to maintain offshore processing policies. As mentioned, this approach damages our reputation not just with Nauru and PNG but with the entire region that may see us as entirely self-interested. Reflecting on both iterations of the “Pacific Solution”, Professor Michael Wesley, Deputy Vice-Chancellor International at the University of Melbourne, observes:

…nothing shredded Australia’s legitimacy more than the so-called ‘Pacific Solution’. The rhetoric of altruism and partnership was quickly deflated by the realities of transactional deals. This was nothing but pure Australian self-interest. Here in PNG, the Manus Island detention centre has become a weeping sore at the heart of the bilateral relationship.2

2. Impact of offshore policies on PNG and its relationship with Australia

2.1. The offshore processing policies and the presence of refugees and people seeking asylum, first on Manus Island and now in Port Moresby, continue to complicate the bilateral relationship between Australia and PNG. As Professor Wesley points out, those policies have harmed both countries:

For PNG, the deterrent rationale for detaining asylum seekers on its territory acts as a constant recycler of negative perceptions about this country, while for Australia Manus has become a source of dependence on another country that it has rarely had historically.3

2.2. There was no consultation with the local population on Manus Island before the transfer of hundreds of people seeking asylum to this island, when the offshore processing restarted in 2012. The Manusians were not given an opportunity to understand this group and, according to some, were given stereotypical and false information about them that incited fear and
mistrust from the beginning. In 2018 when RCOA remotely interviewed some of the locals (through the assistance of a trusted source), one of the community elders summarised this as not having access “to know the refugees in a humanitarian way”.4

2.3. Many of the locals told us they felt powerless and resented the top-down approach and how they were treated by the Australian Government. They told us:

They [Australia] did not respect the sovereignty of PNG and operating here on Manus under the veil of secrecy. The Manusians are getting the brunt of everything. Everyone comes to dump our friends here and forget about them and they think we, Manusians, can come with a magic wand and solve everything.5

2.4. The offshore processing policies also further eroded the trust in the central Government as the Manusians blamed the PNG Government for profiteering from offshore processing. They believed that much of the profit did not flow to the general community but only to the well-connected:

...a good number of Manusians know the centres in Lorengau only benefit a few and who are they, maybe people in higher circles.5

2.5. This was further evidenced in early 2019 when hundreds of local employees of the security company Paladin Solutions walked off their jobs on Manus Island. They protested the huge profit margin that Paladin was gaining after the revelations that the company was awarded $423 million by the Australian Government in a limited tender process but was paying the local staff $2 to $3 per hour and asked them to work long shifts of up to 12 hours without paying for overtime.6 It was also revealed that Paladin Solutions had strong business ties with one of PNG’s most powerful political families who were one of the key allies of the then Prime Minister Peter O’Neill.8

2.6. As proud Islanders, with a deep connection to the land and the ocean, the Manusians resented the negative press and their portrayal as violent and uncivilised. They were frustrated that they had no say and no meaningful way to respond. Many Manusians believe that the offshore policies and years of negative media coverage have irreparably damaged tourism on the island.

2.7. After the Supreme Court of PNG ruled in 2016 that the detention of people on Manus Island was illegal, people were permitted to visit the local town of Lorengau. While this helped mitigate, to some extent, the false information both locals and detention in Lorengau were given about each other, it created further complications.

2.8. Some of the men started relationships with local women. It was estimated in March 2019 that about 40 children have been fathered by the refugees and the men seeking asylum who were in PNG.9 However, it is believed that the unofficial number is much higher.

2.9. The future of these children remains unclear with respect to a number of issues. In a society that land and assets are passed down through fathers, there is lack of clarity about the legal rights and even citizenship status of these children whose fathers were ‘transitory persons’ on Manus Island, some of whom even stateless. Even when the fathers are offered a chance to resettle in the United States of America, reunion with their Manusian wife and children is complicated and depends on whether they are married and how the marriage was registered. When the Medevac law passed, the Department of Home Affairs indicated that these

5 Ibid.
6 Ibid.
children, which it called “legacy minors”, would be eligible for medical transfer to Australia. However, the complicated legal situation and ongoing difficulty in obtaining birth certificates made this extraordinarily difficult as well. RCOA is not aware of any child who was transferred as part of this arrangement, despite some needing treatments that were not readily available in PNG. The fate of these children shows that the negative impacts of our offshore policies on the population of PNG has become intergenerational.¹⁰

2.10. At the end of April 2018, International Health and Medical Services (IHMS) handed over the medical care of refugees and people seeking asylum to a local provider, Pacific International Hospital (PIH). Torture and trauma counselling services ended in October 2017 and was not handed over to any new provider. On Manus Island, PIH operated a small clinic during business hours and on Saturday mornings. Lorengau General Hospital was to treat any after-hours cases and to provide a surge service in the event of any major health crisis. The Lorengau General Hospital had no reliable ambulance service, no interpreter and was grossly under-resourced.¹¹

2.11. In a submission to the Senate Standing Committee on Legal and Constitutional Affairs in August 2019, we highlighted the issues that emerged as a result of significant spike in the number of self-harm and suicide attempts in the aftermath of the May 2019 election. In that period, PIH clinic referred an increasing number of people in serious conditions to the Lorengau General Hospital. The hospital often ran out of space, with all four emergency beds being occupied by refugees, and had to turn people away. There were instances where people had to sleep outside of the hospital due to a lack of capacity.¹²

2.12. Not only the hospital did not have the capacity to respond to such a high level of distress and need, those referrals created significant issues amongst the local community who could not access the hospital as a result. Dr Michelle Nayahamui Rooney, a Research Fellow at the Development Policy Centre who grew up on Manus Island, considers the rise of mental health issues and self-harm among the refugee and asylum seeking population, not just an issue for this group but a “public health crisis for the small town of Lorengau”.¹³

2.13. The above example shows the extraordinary impact that offshore policies have had on local fragile infrastructure and a glimpse into our approach and expectations that unsurprisingly created deep frustration for the local population who were left with little to no benefits and a huge burden. Various reports suggested that PNG mental health services did not have the capacity and expertise to address severe Post Traumatic Stress Disorder (PTSD) and a surge in depression.¹⁴ The number of clinical psychiatrists in the country was reported to be only seven in 2015.¹⁵ Australia expects a country with such deficiencies in resources, structure and expertise, when it comes to the treatment of mental health issues, to manage a group that has been assessed by the United Nations High Commissioner for Refugees as having “the highest recorded rates of any surveyed population” of depression, anxiety and PTSD.¹⁶ Australia expects that PNG deals with this population only through the financial support we offer, that based on evidence and testimonials has not often translated to better

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equipment and expertise and in the case of Manus Island made the local hospital unavailable for a vulnerable population.

2.14. When we travelled to Port Moresby in November 2019, we observed first-hand the toll these policies have taken on a country that is struggling to meet the needs of its own citizens. At the time of our trip, due to growing pressure from Manus Island leaders, almost all of the refugees and people seeking asylum had been transferred from Manus Island to Port Moresby. What we saw were significant gaps in the provision of welfare and healthcare support by contracted organisations that were receiving millions of dollars from the Australian Government. Lack of welfare and casework support resulted in ongoing confusion about the future. The few men who were interested in living in PNG were facing significant issues with registering their marriages, getting birth certificates for their children, receiving healthcare and setting up businesses. The rules that applied to the people living across a number of hotels and motels varied and were inconsistent, without any explanations as to why this was the case. The above gaps, especially in terms of welfare support, prompted the Catholic Church to step in, using its own resources and staff to try to assist.

2.15. After conflicting and misleading information was given to the refugees and people seeking asylum a number of times by PNG Immigration and Citizenship Authority (ICA), trust in ICA and any advice it provided about the future pathways and options was shattered.

2.16. We were in Port Moresby when a number of men were detained incommunicado in Bomana Immigration Centre, a newly built detention centre that was funded by the Australian Government. Not everyone who was classified as a ‘failed asylum seeker’ by ICA was detained and it was clear that the threat of imminent detention was being used to silence people.

2.17. The case of Bomana Immigration Centre needs further analysis which RCOA intends to do in the near future. While in Port Moresby, we had the opportunity to speak to the few people who were released from Bomana Immigration Centre after signing to return to their home countries. The reports about the conditions of detention were disturbing. From being held incommunicado in inhumane material conditions (insufficient food, small cells, lack of ventilation), to almost no access to external visitors and scrutiny bodies, these conditions would be unimaginable if these people were held in detention facilities in Australia.

2.18. While the Australian Government insisted that it had no involvement in the operation of Bomana Immigration Centre and referred all the questions to the PNG Government, evidence points to some level of Australian involvement. Those we spoke to who had been released from Bomana Immigration Centre reported that there were a number of Australian personnel who oversaw and supervised local PNG guards. It was reported that some of those staff used to work for previous Australian security providers on Manus Island. It is also understood that Australian officials were assisting with payments of Assisted Voluntary Return packages. Further, Fairfax Media published reports which showed that Controlled Outcome, the company that was granted the multimillion dollar contract to manage Bomana Immigration Centre is a PNG-based joint venture security business that was formed in 2015 when C5 (an Australian company owned by a former Federal Police agent) and Tactical Solutions International (a PNG security firm) combined.\(^{17}\) Fairfax also reported that, despite the claims of the Department of Home Affairs that they had no role in the tender process, officials from this Department were members of the Bomana tender evaluation committee.\(^{18}\)

2.19. While Bomana Immigration Centre was operational, the Australian Government managed to divert all the questions from national and international human rights bodies, United Nations, and the Australian Parliament to the PNG Government as it claimed the operation of that centre was solely a matter for PNG. While there is no doubt that PNG ICA and various service providers failed in providing adequate care to people in Bomana Immigration Centre, those


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men were in that detention centre because of Australia’s offshore policies and because it funded the construction of the centre. However, by outsourcing its responsibilities, the Australia Government managed to avoid proper scrutiny and point to PNG for any issues of concern. It was clear to us from the feedback we received while in Port Moresby that these actions were significantly undermining the bilateral relationship between Australia and PNG.

2.20. In August 2015, the then Secretary of the Department of Foreign Affairs and Trade, Peter Varghese said about PNG:

"PNG has the scale and the natural resources to be a wealthy country. Its stability matters to Australia and the Australian market has a large role to play in its prosperity. In the past our relationship has been dominated by aid. The future however will need to focus more on partnership. Perhaps more than any other single relationship the state of our relationship with PNG is seen as a barometer of Australian foreign policy success."

If our relationship with PNG is indeed seen as a “barometer of Australian foreign policy success”, we have to more rigorously scrutinise the impacts of offshore processing policies on that relationship, not just from a human rights perspective but from the foreign policy and strategic perspective. It is unthinkable that we continue to leave hundreds of refugees in PNG in the middle of a pandemic with significantly reduced chance of resettlement in the near future and still expect that PNG will manage this highly vulnerable population in such an unprecedented situation.

3. Impact of offshore policies on Nauru and its relationship with Australia

3.1. Many of the points raised above about the impact of offshore policies on PNG and its relationship with Australia are also valid in relation to Nauru. Similar to PNG, there was no consultation with locals prior to the transfer of hundreds of men, women and children to Nauru. Negative representation in the media increased the tensions between locals and refugees. Many of the Nauruans saw the refugees both as having better conditions than themselves and blamed the refugees for the negative international publicity Nauru was attracting. Those tensions also had roots in the false information that Nauruans were given about the refugee population. The presence of refugees and people seeking asylum on Nauru and their complex physical and mental health issues, as well as the specific health needs of the children detained there (many of which caused by long term detention and perpetual limbo), similarly put a strain on local infrastructure. However, it is arguable that the impact on Nauru was not as great as it was on PNG, as IHMS still operated on Nauru and torture and trauma counselling services continued.

3.2. There has been a continual undermining of the rule of law in Nauru about which Australia has been silent. When in 2014 the Nauruan government expelled the chief justice and resident magistrate (both Australian citizens), the Australian Government was silent. It remained silent when, in December 2017, Nauru secretly terminated the role of Australia’s High Court as Nauru’s final court of appeal, just in time to deny a group of Nauruan opposition MPs a chance to appeal the outcome of cases against them. Australia never criticised the government of Nauru for its ruthless treatment of that group of opposition MPs, known as “Nauru 19”. The passage of a new law by Nauru’s parliament in June 2019 to effectively block overseas lawyers, including Australian lawyers, from representing Nauruan citizens was again met with silence, despite the consequences for the people of Nauru, who could be left with no independent lawyer with the required expertise to represent them – another gross deviation from the rule of law.

3.3. As Professor of international law Dr Ben Saul argues, Australian foreign policy should care about the rule of law and independence of the judiciary in fragile democracies in the Pacific region. He argues that an independent judiciary not only protects the right of the individuals

but establishes a stable environment for business and trade.\textsuperscript{20}

3.4. Offshore processing policies and our dependence on Nauru to implement and continue those policies prevented Australia from criticising the demise of rule of law in Nauru. Further, Professor Saul argues that “Australian actions eroded the culture of legality there”. By significantly changing Nauru’s immigration laws to suit the offshore processing policies, Australia legalised the indefinite detention of refugees and significantly reduced the availability and accessibility of effective judicial review and legal aid. In Nauru, law is no longer an instrument of protection but an instrument of extensive government control and Australia has been complicit in this erosion of the rule of law.\textsuperscript{21} In this process and through unquestioning support for the Nauruan government, again our reputation in the Pacific region is taking a battering.

3.5. Australia has used its position of wealth and resources and Nauru’s economic struggles to impose the offshore processing arrangement on this country. Australia has now created a situation in which Nauru’s economic future is dependent on this arrangement. As the Guardian reported, in the financial year 2017-18, the Australian Government directly provided two-thirds of Nauru’s entire revenue either through direct aid or through the payments related to offshore processing, including the visa fees for refugees held on Nauru. Additionally, the only way to reach the Island is through flights operated by the government-owned Nauru Airlines.\textsuperscript{22}

3.6. This over-reliance on the continuation of offshore processing means Nauru will have no interest in allowing refugees and people seeking asylum on its island to leave. In fact it has blocked the medical transfer of a number of refugees. In February 2019, after the passage of the Medevac legislation, Nauru passed a law to frustrate its implementation by not allowing transfer recommendations to be made through diagnosis by telemedicine. Australia effectively created a situation in which a country has resorted to bargaining with people’s lives for its economic survival.

\textbf{Recommendation}

\emph{RCOA recommends that the Committee considers the damage that Australia’s offshore processing policies have caused to our relationships with Nauru and PNG and to our standing in the Pacific region. We recommend that these policies end, replaced with policies which comply with Australia’s obligations under the Refugee Convention.}

\textsuperscript{20} Ben Saul, ‘Constitutional crisis: Australia’s dirty fingerprints are all over Nauru’s system’ The Guardian (21 January 2014), <https://www.theguardian.com/commentisfree/2014/jan/21/constitutional-crisis-australias-dirty-fingerprints-are-all-over-naurus-system>

\textsuperscript{21} Ibid.

\textsuperscript{22} Anne Davies and Ben Doherty, ‘Nauru: a nation in democratic freefall propped up by Australia’ The Guardian (3 September 2018), <https://www.theguardian.com/world/2018/sep/03/nauru-a-nation-on-the-cusp-of-democratic-calamity>