

# OFFSHORE PROCESSING MYTH BUSTER



**MYTH: Offshore processing will discourage asylum seekers from arriving by boat.**

## FACT

People flee their homes because they are unsafe.

Migration experts and refugee organisations agree that the number of boat arrivals depends on conditions in the countries from which refugees flee rather than our domestic policy.<sup>1</sup> 'Push factors' including persecution, discrimination, ethnic conflict, human rights abuses and civil war affect the numbers fleeing at any one time.

It is too simplistic to claim that the Pacific Solution was the reason for the lull in boat arrivals to Australia over its duration (2001-2006). The decrease in boat arrivals during this time coincided with major external events such as the fall of the Taliban as the Coalition forces entered Afghanistan and the overthrow of Saddam Hussein in 2003.

In fact, UNHCR statistics confirms that at this time there was a *worldwide* decrease in asylum seeker movements, including to countries where deterrent policies such as offshore processing and mandatory detention were not implemented.

Andrew Metcalfe, former Secretary of the Department of Immigration (2005 -2012) agrees that Nauru was previously found to be ineffective in deterring asylum seekers from leaving Indonesia for Australia. This, he says, is "not just a view of my department; it is the collective view of agencies involved in providing advice in this area." Metcalfe goes on to note:

*"Detaining people for years has not deterred anyone from coming... We all know what happened with the people who were taken to Nauru [the majority were eventually resettled in Australia or New Zealand]. We know that Nauru filled up very quickly. We know that the government needed to establish new facilities at Manus because people kept coming. In fact, 1,700 people came after the Tampa arrived."*<sup>1</sup>

## FACT

Since the 'no advantage' and offshore processing policy announcement on the 13<sup>th</sup> of August, just over 7,000 asylum seekers have travelled by boat to seek protection by the Australian government as of the 22<sup>nd</sup> of November 2012<sup>2</sup>.

## FACT

Once found to be refugees, Australia still has the obligation, under the Refugee Convention to accept or resettle those held offshore. Under the Pacific Solution (2001-2006), almost two thirds of all applicants were accepted as refugees and were given permanent visas. 62% were resettled in Australia and New Zealand, and 3% were sent to Sweden, Canada, Denmark and Norway, where the refugees were found to have family living outside of their country of persecution<sup>3</sup>.

## FACT

In 2006 the Edmund Rice Centre tracked 41 Afghan failed asylum seekers who had been returned by Australia and found that 39 were in perilous conditions. *Deported Back to Danger II* details the return of more than half the asylum seekers on Nauru in 2003 by the Australian Government secured by a "mixture of inducements and threats". The report follows an earlier discovery by the Centre that up to nine asylum seekers and several of their children were killed on return to Afghanistan from Nauru<sup>4</sup>.

**MYTH: Offshore processing on Nauru and PNG is a humane and acceptable way to treat asylum seekers.**

## FACT

Around 1,500 asylum seekers were processed on Nauru under the Howard government's Pacific Solution.

Many of those previously detained on Nauru suffered serious mental health issues as a result of detention compounded by the conditions and trauma experienced in the countries they had fled. A number were assessed at "grave risk" and were transferred to Australia because of their deteriorating mental health, while numerous incidents of self harm, depression and psychological conditions developed amongst detainees.<sup>5</sup>

<sup>1</sup>Koser, K., 2010, 'Responding to Boat arrivals in Australia', <http://www.lowyinstitute.org/Publication.asp?pid=1477>, accessed 23/2/12.

<sup>2</sup>Grattan, M. <http://www.theage.com.au/opinion/political-news/new-crackdown-on-refugees-20121121-29qfc.html>

<sup>3</sup>[http://www.apf.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2012-2013/PacificSolution](http://www.apf.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/PacificSolution)

<sup>4</sup><http://www.erc.org.au/>

<sup>5</sup><http://news.smh.com.au/breaking-news-national/refugee-advocates-slam-nauru-plan-20100727-10t00.html>].

In 2012, when reintroducing Nauru as an offshore processing centre lessons from the past have not been accounted for. The Australian Government has only allocated only 1 part time psychiatrist to work with asylum seekers held at Nauru, who at peak times will service 1500 vulnerable people.<sup>6</sup>

**MYTH: Nauru is an appropriate place to set up an offshore detention centre and send asylum seekers.**

**FACT**

*"The situation on Nauru is unacceptable. The unlawful and arbitrary detention of these men in such destitute conditions is cruel, inhuman and degrading,"*

Amnesty International's refugee expert Dr. Graham Thom.<sup>7</sup>

In December 2012, Amnesty International reported that Nauru was a facility of leaking tents in a monsoon affected island that was full of people suffering from physical and mental ailments. Nauru as a facility for offshore processing is a unsuitable with inhumane conditions of vulnerable people and is ill equipped to continue as a place to set up offshore processing.<sup>8</sup>

**FACT**

Whilst Nauru is a recent signatory of the Refugee Convention and has neither the economic, social or legal capacity to uphold its responsibilities. Nauru has a population of 9,000 people in an area of 21km squared.<sup>9</sup> With the detention centre operating the Island's population will increase approximately 15% over a short space of time<sup>10</sup>.

**FACT**

The Solicitor General has previously confirmed that neither Nauru nor Papua New Guinea satisfies the legislative requirements for adequate protection of asylum seekers. As of August 2012, the Parliament amended Australian laws to override our international obligations under the United Nations Refugee Convention.<sup>11</sup>

Asylum seekers being processed on Nauru will have their cases assessed and determined under Nauruan law. Currently this means that they will only have access to appeal through the Nauruan Supreme Court, which comprises of 1 judge who lives in Melbourne. They will not have any access to Australia's legal system and the same fair and due process available to onshore asylum seekers.<sup>12</sup>

**FACT** The purpose of Nauru to act as a circuit breaker to the flows of irregular boat arrivals and to have a strict no advantage condition in its re-introduction it has failed before it even started. This premise is based upon the old Pacific solution being deemed a success where in fact it was far from the truth. During the period of the Pacific solution there was a significant decrease in the trend of Asylum seekers globally<sup>13</sup>. This 'solution' will not stop people getting on boats.

**FACT** Both Islands have reached over full capacity of their ability before anyone has even been sent there. The maximum capacity of Nauru and Manus Island are 1'500 and 600. However, in the time pasted since the announcement over 7'500 people have arrived<sup>14</sup>.

**MYTH: Malaysia is a good solution and should be reconsidered.**

**FACT**

Malaysia is not a signatory to the UN Refugee Convention and there is no guarantee that asylum seekers processed there would be safe.

Amnesty International reports that refugees and asylum seekers in Malaysia are abused, exploited, arrested and locked up – in effect, treated like criminals.<sup>15</sup> 6000 asylum seekers and refugees are caned annually in Malaysia<sup>16</sup> and once in detention commonly face overcrowding, malnutrition, and disease.<sup>17</sup>

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<sup>5</sup>(Bowen, C. DIAC. <http://www.minister.immi.gov.au/media/cb/2012/cb189747.htm> sited on the 27/09/2012).

<sup>6</sup>Bowen, C. INSTRUMENT OF DESIGNATION OF THE REPUBLIC OF NAURU AS A REGIONAL PROCESSING COUNTRY UNDER SUBSECTION 198AB(1) OF THE MIGRATION ACT 1958 [http://www.minister.immi.gov.au/media/media-releases/\\_pdf/designation-statement-reasons.pdf](http://www.minister.immi.gov.au/media/media-releases/_pdf/designation-statement-reasons.pdf) sited on the 27/09/2012)

<sup>7</sup>Amnesty International, Australia: Asylum camp cruel and inhumane. <http://www.amnestyusa.org/news/news-item/australia-asylum-camp-cruel-and-inhumane>

<sup>8</sup> <http://www.radioaustralia.net.au/international/radio/program/pacific-beat/amnesty-international-says-conditions-on-nauru-inhumane/1051522>

<sup>9</sup>CIA, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/nr.html> sited on the 27/09/2012.

<sup>10</sup>Burnside, J. Asylum seeker plan: *spending so much, achieving so little*. <http://www.abc.net.au/unleashed/4234912.html> sited on the 27/09/2012.

<sup>11</sup>Herald Sun, Sept 04, 2011. Offshore processing may be impossible, solicitor general says. <http://www.heraldsun.com.au/news/victoria/offshore-processing-ruled-out-minister/story-fn7x8me2-1226129064024> sited on the 06/12/2012.

<sup>12</sup>ABC News, Nauru responsible for asylum seekers: *Minister*. <http://www.abc.net.au/news/2012-09-15/an-nauru-arrival/4263370> sited on the 27/09/2012.

<sup>13</sup>Getup! Action for Australia. <http://www.getup.org.au/campaigns/refugees/go-back-sbs/share-this-infographic> sited on the 27/09/2012.

<sup>14</sup>Bowen, C. Minister for Immigration and Citizenship. <http://www.minister.immi.gov.au/media/cb/2012/cb189359.htm> sited on the 27/09/2012

<sup>15</sup>Amnesty International, 'Abused and Abandoned: Refugees Denied Rights in Malaysia.'

<http://www.amnesty.org/en/library/asset/ASA28/010/2010/en/2791c659-7e4d-4922-87e0-940faf54b92c/asa280102010en.pdf>, 16 June 2010.

The High Court of Australia confirmed in August 2011 that deporting asylum seekers to Malaysia would breach our obligations under both the international Refugee Convention and our own Migration Act, as it would place asylum seekers at risk of persecution or torture without guarantees of their protection.<sup>18</sup> The only way to subvert this was to amend the Migration Act, which Parliament did in August 2012.

#### **MYTH: Offshore processing is more cost effective**

##### **FACT**

Offshore processing is even more expensive than detention on the mainland because of the increased cost of delivering services to remote locations. The Pacific Solution, which saw asylum seekers detained on Manus Island and Nauru, cost more than 1 billion dollars over five years, or \$500 000 per person.<sup>19</sup> The Christmas Island detention centre will cost almost 1 billion dollars between 2009 and 2014.<sup>20</sup>

In January 2012 DIAC prepared an infrastructure report on Nauru for the Immigration Minister<sup>21</sup>. It projected that the costing for setup of a 500 bed facility on Nauru to be just under \$2 billion dollars over four years. At its maximum capacity under the Pacific Solution the government had up to 1500 asylum seekers held in detention on Nauru. The addition of Manus Island to the cost of off-shore processing will increase this figure

even further. This is just scratching the surface of the amount of money that will be needed to be spend in providing the quintessential needs for offshore processing.

#### **MYTH: Australia needs to protect our borders from asylum seekers**

##### **FACT**

Offshore processing and mandatory detention only apply to boat arrivals, whilst the vast majority of asylum seekers arrive by plane with a valid visa, applying for asylum at a later date while living in the community. None have ever posed a threat to Australia's national security and many are determined legitimate refugees and granted protection visas.<sup>22</sup>

#### **MYTH: Strong offshore processing policy reduces people smuggling**

##### **FACT**

The Australian government has in fact contributed to the creation of people smuggling by restricting the legal avenues for asylum seekers to find protection in Australia. As the world's leading authority on international refugee law, Professor James Hathaway explains:

The whole people-smuggling problem is a false issue. We created the market for human smuggling. If asylum seekers could lawfully come to Australia and make a refugee claim without the need of sneaking in by boat, they would do it. But we make it illegal and create the market that smugglers thrive on.<sup>23</sup>

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<sup>16</sup> Amnesty International, 'Case study: NianVung, a refugee caned in Malaysia after fleeing Myanmar,' <http://www.amnesty.org/en/library/asset/ASA28/015/2010/en/26559f81-7b42-49e9-a1a9-2fb33b2a15ad/asa280152010en.pdf>, 6 December 2010.

<sup>17</sup> [http://www.amnesty.org.au/images/uploads/ref/abused\\_and\\_abandoned-refugees\\_denied\\_rights\\_in\\_malaysia.pdf](http://www.amnesty.org.au/images/uploads/ref/abused_and_abandoned-refugees_denied_rights_in_malaysia.pdf), [http://www.amnesty.org.au/images/uploads/news/Malaysia\\_report.pdf](http://www.amnesty.org.au/images/uploads/news/Malaysia_report.pdf)

<sup>18</sup> Lawyer's Weekly, 'Law vs policy: What next after the High Court's ruling on 'Malaysia Solution'?', 7 September 2011

[http://www.lexisnexis.com/community/lwau/blogs/special\\_reports/archive/2011/09/07/law-vs-policy-what-next-after-the-high-court-s-ruling-on-malaysia-solution.aspx](http://www.lexisnexis.com/community/lwau/blogs/special_reports/archive/2011/09/07/law-vs-policy-what-next-after-the-high-court-s-ruling-on-malaysia-solution.aspx), accessed 23/2/12.

<sup>19</sup> Karlis Salna, 'Abbott unveils new Pacific Solution,' *The Sydney Morning Herald*, <http://news.smh.com.au/breaking-news-national/abbott-unveils-new-pacific-solution-20100527-wen3.html>, 27 May 2010.

<sup>20</sup> 'Cost of Christmas Island blows out to almost \$1b,' *The Sydney Morning Herald*, 11 May 2010,

<http://www.smh.com.au/business/federal-budget/cost-of-christmas-island-blows-out-to-almost-1b-20100511-uurg.html>.

<sup>21</sup> Infrastructure Report on Nauru. DIAC, 25 Jan 2012.

<http://www.minister.immi.gov.au/media/media-releases/pdf/infrastructure-report-nauru.pdf>

<sup>22</sup> Senate Estimates, Legal and Constitutional Affairs (17 October 2011), p. 29,

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=legcon\\_ctte/estimates/sup\\_1112/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/sup_1112/index.htm).

<sup>23</sup> <http://www.abc.net.au/radionational/programs/breakfast/asylum-seeker-policy-international-refugee-law/3585712>