

## Migration Amendment (Evacuation to Safety) Bill 2023

### Second Reading Speech

Senator Nick McKim

The *Migration Amendment (Evacuation to Safety) Bill 2023* will compel the Government to offer transfer to Australia to all persons subject to offshore processing still in PNG or Nauru who have not had an adverse security assessment made against them by the Australian Security Intelligence Organisation (ASIO) under the *Australian Security Intelligence Organisation Act 1979*.

This will provide for people who are transferred under the provisions of this Bill to be supported in community detention in Australia until a durable solution is found for them, being resettlement in a third country which is a state party to the United Nations' 1951 Convention Relating to the Status of Refugees (the 1951 Refugee Convention) or the 1967 Protocol relating to the Status of Refugees (the 1967 Refugee Protocol).

Since 19 July 2013, when the Rudd Government announced its Regional Resettlement Arrangement between Australia and Papua New Guinea (the so-called PNG solution), with a Memorandum of Understanding containing similar terms with Nauru on 3 August 2013, all who arrived in Australia by boat to seek asylum without valid visas have had their claims for asylum processed in a regional processing country - either PNG or Nauru.

Under this offshore processing regime, almost all people seeking asylum arriving by boat were detained in Australia to undergo health, security, and identity checks before being forcibly transferred to either PNG or Nauru to undergo a refugee status determination (RSD), where they would remain in either held or community detention without the option of ever being provided a durable solution of permanent resettlement in Australia.

In all, over 4,000 people who arrived in Australia by boat seeking asylum - most of whom have been found to be genuine refugees - were sent to PNG or Nauru for offshore processing. These people are commonly referred to as the offshore cohort.

Other than roughly 1,000 of these people that the Australian Government forced back to their countries of origin, and the 14 people who have died in the offshore processing system, most of that cohort are now in Australia for medical reasons. This includes 192 people who were brought to Australia under the so-called medevac law that was enacted on 1 March 2019 and repealed on 8 December 2019, and 135 people that were brought to Australia in 2018 as a result of the #KidsOffNauru campaign.

There is overwhelming documentation of people within Australia's offshore processing system being subject to serious abuses, including rape, murder, child sexual abuse, medical negligence, which has led to significant and in some cases catastrophic physical and mental medical trauma in the cohort.

Of those in the offshore cohort that have already been brought to Australia, many have been resettled in third countries including the United States of America and New Zealand, both of which the Australian Government has entered into formal resettlement agreements with.

However, once these resettlement arrangements have completed, it is estimated that around 500 of the offshore cohort will be left without a durable solution. This will include many of the 159 people who, as at 1 January 2023, still remained in PNG (92) or Nauru (67).

The Bill will provide those people from the offshore cohort who are still in PNG or Nauru, many of whom are medically unwell, with an offer from the Minister to be evacuated to Australia until they are provided with a durable third-country solution with a state party to the 1951 Refugee Convention or 1967 Refugee Protocol.

The provisions within the Bill will only apply to persons who are in an offshore processing country when the Bill commences, and will not cover persons who are taken to an offshore processing country after the Bill commences. Nor will the Bill change any existing requirements for new arrivals to be taken to regional processing countries for offshore processing.

Furthermore, under the provisions of the Bill, the Minister cannot make an offer to a person who is the subject of an adverse security assessment by the Australian Security Intelligence Organisation (ASIO).

Once an offer has been made, a person accepting the offer will be evacuated to Australia as soon as practicable, to be placed in community detention under a residence determination until they are provided with a durable solution for their displacement.

Any person provided an offer is free to reject that offer at any time. This is to ensure that, unlike their initial transfer to PNG or Nauru, any transfers under this Act are undertaken on a voluntary basis only.

The Minister will be required to report to the Parliament if a person is not eligible for an offer due to an adverse security assessment, and to report detail regarding any potential delay to the ‘as soon as is practicable’ evacuation of people who have successfully accepted an offer.

While in Australia, a person evacuated under the Bill will reside in the Australian community, and be provided with medical, including psychiatric, assessment and treatment, and be able to access legal, and social support they need from community groups and non-government organisations.

Offshore detention on Manus Island and Nauru has been a humanitarian calamity. It has been one of the darkest and bloodiest chapters in our country’s story. It is time we wrote the ending, and this Bill will help us to do that.

People in the offshore cohort who currently remain in PNG or Nauru have been deliberately harmed for nearly a decade, for the purpose of sending a message to other desperate people

that they should not travel to Australia by boat to claim asylum. We should call it what it is, which is nothing other than torture. They have been subject to rape, murder, armed assault, child sex abuse, medical neglect, fear, danger, and uncertainty. For many of them, that uncertainty has no end in sight.

But the fear and danger need not persist. The Bill is designed to evacuate those people to safety here in Australia. It will restore their human rights and dignity while improving their access and capacity to secure long-overdue durable solutions to their displacements due to war, violence, conflict, or persecution faced in their countries of origin.

Australia can no-longer ignore its duty of care for the health and welfare of the refugees and people seeking asylum who have been left to languish in regional processing countries.

I commend the Bill to the Senate.

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