



Australian Government

Department of Immigration and Border Protection

Reference: 1406/01714

Mr Nathan Kennedy
President
Australian Lawyers for Human Rights
president@alhr.org.au

Dear Mr Kennedy

Children in immigration detention

Thank you for your email of 26 June 2014 to the Hon Scott Morrison MP, Minister for Immigration and Border Protection, concerning children in immigration detention. The Minister appreciates the time you have taken to bring this matter to his attention, and has asked that I respond on his behalf. I regret the delay in responding.

As a party to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol* (the Refugees Convention), Australia takes its international obligations seriously. Australia is committed to treating asylum seekers fairly and humanely and providing protection to refugees consistent with the obligations set out in the Refugees Convention and other relevant international treaties to which Australia is a party.

The Australian Government is committed to controlling Australia's borders by stopping illegal arrivals by boat. With the establishment of Operation Sovereign Borders on 18 September 2013, the government has focused on disrupting and deterring people smugglers, detecting and intercepting illegal maritime arrivals (IMAs), providing processing and resettlement of asylum seekers offshore and returns of those not found to be owed protection. These measures are intended to deny people smugglers a product to sell to often vulnerable people.

On 25 September 2014, the Minister introduced a package of measures to Parliament that, if passed, will allow the government to resolve the immigration status of the IMA legacy caseload of almost 30,000 people who arrived under the former government. A copy of the Minister's media release is attached for your information and includes visa details and information on access to services and support as well as subsequent visas. These measures do not include permanent protection visas, and do not provide a right to family reunion or to depart and re-enter Australia.

Contingent upon the legislation being passed, the legacy caseload will comprise those IMAs currently on Christmas Island and the mainland who arrived before 1 January 2014 and who have not been transferred to the Manus or Nauru Offshore Processing Centres (OPCs). Processing of these legacy cases is expected to take several years.

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The government has also announced its plans to reduce the detention population within this legacy caseload by giving consideration to placing IMAs in the community on bridging visas or in community detention whilst they await the resolution of their status. People are first assessed to ensure there are no adverse security, health, identity or significant behavioural issues that present a risk to the community. For those assessed suitable, community placements are expected to happen over a six month period.

These policy changes will significantly speed up the release of children from detention. With the success of stopping the boats, there are now fewer children in detention and those remaining will be moved out. Most children in the legacy caseload are already living in the community, either with family members or if they arrived unaccompanied, with specialised carers in group house arrangements.

Arrangements for anyone who comes to Australia illegally by boat have not changed. Under Operation Sovereign Borders, all IMAs entering Australian waters by boat without a visa will continue to be liable for offshore processing in Nauru or Papua New Guinea (PNG), without exception.

All IMAs who have already been transferred to the Manus or Nauru OPCs, post 19 July 2013, will remain subject to offshore processing, regardless of their arrival date. Anyone temporarily transferred to Australia for medical treatment will be returned to the OPC when their medical treatment is complete.

I can advise that all transferees are treated respectfully and humanely by service provider staff contracted by the Department of Immigration and Border Protection. The department has contracted service providers with the expertise to deliver a range of services to transferees, including garrison services, health and welfare, catering and cleaning services, programmes and activities and education, to ensure the well-being of transferees. The government continues to work cooperatively with the Governments of Nauru and PNG in relation to all aspects of OPC operations, and to ensure appropriate arrangements and support mechanisms are in place to meet transferees' needs.

The arrangements made for the transfer of children to OPCs are intended to ensure compliance with the domestic laws of the relevant country and with the international obligations of those countries. Relevantly, Nauru and PNG are signatories to the *1989 Convention on the Rights of the Child*, with no reservations. The Memorandum of Understanding signed with Nauru and PNG reaffirms the commitment of both countries to the Refugee Convention. Both countries commit to treat people transferred with dignity and respect in accordance with human rights standards.

Nauru and PNG Governments have commenced refugee status determinations. Transferees found to be refugees may be resettled in Nauru, PNG, or Cambodia. Transferees found not to be owed protection will be expected to return to their country of origin or to a third country where they have the right to reside.

In relation to your concern about the availability of information from the Interim Joint Advisory Committee on Nauru and Manus, the government and the respective Governments of Nauru and PNG established the Australia-Nauru and Australia-PNG joint ministerial forums in April 2014. These joint ministerial forums are held regularly to oversee implementation of the regional resettlement arrangement. Information on outcomes of the past joint ministerial forums, including progress with refugee status determination, is contained in the joint media releases of 3 and 11 April 2014 which can be accessed from: <http://www.minister.immi.gov.au/scottmorrison/media/media-releases/2014/>. Copies are attached for your information.


There is no authority under the *Australian Human Rights Commission Act 1986* to inspect the OPCs or to require any persons in Nauru or PNG produce documents or to give evidence. As a private citizen, a person/s is able to seek to visit the processing centres subject to the consent of the Nauru and PNG governments and subject to any conditions they may wish to impose. Arrangements for any such visit should be made directly with the governments of Nauru and PNG.

I would like to emphasize that services provided at immigration detention facilities (IDFs) are subject to parliamentary scrutiny and accountability. The immigration detention process is among the most closely scrutinised of all government programmes. IDFs, including those on Christmas Island, are regularly visited by the Australian Human Rights Commission, the Commonwealth Ombudsman's Office, the Australian Red Cross, pastoral care providers and representatives of community groups

In regards to the level of public reporting about asylum seeker arrivals, the government is committed to a policy of limiting regular public comment on operational matters under Operation Sovereign Borders. This policy is based on the advice of the Joint Agency Task Force (JATF) which has been established to ensure a whole-of-government effort to combat people smuggling. The JATF also aims to protect the security of the Operation Sovereign Borders and to ensure various operations can be conducted with maximum safety and effectiveness for all involved. People smugglers use official commentary on such matters to make dangerous assumptions about our maritime operations, which puts people's lives at risk.

Thank you for raising your concerns with the Minister. I trust this information is of assistance.

Yours sincerely



Kerry Rayner
Acting Assistant Secretary
Community Programmes Services Branch
15/11/2014



The Hon. Scott Morrison MP
Minister for Immigration and Border Protection

MEDIA STATEMENT

Thursday 25 September 2014

RESTORING TPVS TO RESOLVE LABOR'S LEGACY CASELOAD

The Coalition Government has secured support of the Palmer United Party to reintroduce Temporary Protection Visas (TPVs) to assist resolving Labor's legacy caseload of 30,000 Illegal Maritime Arrivals (IMAs).

"We are stopping the boats, with just one venture having arrived this year, and we are now seeking to resolve the backlog of 30,000 IMAs who arrived under the previous government by restoring TPVs," Minister Morrison said.

"TPVs were foolishly abolished by Labor and the Greens in 2008 in their pursuit of weaker borders, providing a product for people smugglers to sell.

"The support of the Palmer United Party to restore TPVs through legislation to be introduced this week after they were abolished by Labor and the Greens following the last election is welcome.

"We will continue to engage other crossbenchers on our proposals. The discussions we have had to date have been very positive.

"Denying permanent protection visas to IMAs has been Coalition policy for over a decade and was overwhelmingly backed by the Australian people at the election.

"Under new legislation – the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014* – two new temporary visas will be established. These visas will not provide a pathway to a permanent protection visa in Australia.

"IMAs found to be owed protection will be offered a TPV for up to 3 years. TPVs do not include family reunion or a right to re-enter Australia. Holders will have access to targeted support arrangements including: work rights, access to employment services and mutual obligation, access to Medicare and income support, torture and trauma counselling, translating and interpreting services, complex case support and access to education for school aged children.

"A further temporary visa, a Safe Haven Enterprise Visa (SHEV) – where holders work in a designated self-nominated regional area to encourage filling of job vacancies – will be introduced as an alternative to a TPV.

"SHEVs will be valid for 5 years and like TPVs will not include family reunion or a right to depart and re-enter Australia.

"SHEV holders who have worked in regional Australia without requiring income support for three and a half years of their visa period will then be eligible to apply for other onshore visas to be granted where they satisfy the relevant criteria. They will not be eligible for a permanent protection visa.

"If a SHEV holder was to access government assistance to study for a degree, diploma or trade certificate in a designated regional area, this would not be classified as accessing social security benefits for the purposes of calculating the period required before the holder becomes eligible to apply for other onshore visas.

"The new visa arrangements will allow the government to commence processing asylum claims of the legacy caseload. More rapid processing and streamlined review arrangements, as detailed at the election, will be implemented.

"Any further delays in processing or repeated processing of claims simply adds to cost and uncertainty and prevents people getting on with their lives.

"Upon passage of the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014* and the *Migration Amendment (Protection and Other Measures) Bill 2014* the government will agree to process IMAs currently on Christmas Island and the mainland who arrived last year and who have not been transferred to Nauru or Manus Island, as part of the legacy caseload.

"If found to be refugees they will be provided a TPV or SHEV. They will not be eligible for a permanent protection visa. These visas only apply to those IMAs who are part of the legacy caseload.

"All IMAs already transferred to Nauru or Manus Island will remain subject to the offshore processing policy, regardless of their date of arrival. They will remain on Nauru or Manus Island, where their asylum claims will be assessed. Under this policy, they will not be resettled in Australia.

"Furthermore, any and all new illegal maritime arrivals will continue to be transferred to Manus Island or Nauru for offshore processing and resettlement, as was demonstrated by the recent 'Indian' venture where all 157 IMAs were sent to Nauru. This will apply in all such cases, without exception, as a necessary part of our border protection regime that is successfully stopping the boats.

"The Government will also continue to support Assisted Voluntary Return (AVR) packages for those in the legacy caseload, particularly as a mechanism to reunite unaccompanied minors with their families in their home countries.

"I thank the Palmer United Party for their support of temporary protection visas. The Coalition Government is stopping the boats, restoring integrity to our immigration programme and can now get on with the job of resolving Labor's legacy of failed border protection," Minister Morrison said.

Further information: Julian Leembruggen 0400 813 253, Kerri Griffiths 0417 617 482



The Hon. Scott Morrison MP
Minister for Immigration and Border Protection

The Hon. Rimbink Pato
Papua New Guinean Minister for Foreign Affairs and Immigration

**JOINT STATEMENT -
AUSTRALIA AND PNG INAUGURAL JOINT MINISTERIAL FORUM TO
OVERSEE IMPLEMENTATION OF THE REGIONAL RESETTLEMENT
ARRANGEMENT**

Thursday 3 April 2014

The first monthly Joint Ministerial Forum to oversee implementation of the Regional Resettlement Arrangement (RRA) was held in Port Moresby on 2 April between Papua New Guinean Minister for Foreign Affairs and Immigration, the Hon Rimbink Pato, and Minister for Immigration and Border Protection, the Hon Scott Morrison MP.

The outcomes of the meeting were as follows:

- Ministers welcomed the decision by the PNG Cabinet that allows the first tranche of initial assessments to be delivered to transferees within a month.
- The process of Refugee Status Determination is well advanced, with two-thirds of transferees having had initial interviews at the Regional Processing Centre.
- The development of a review process for those initially assessed not to be refugees was underway and due for completion in April.
- A refugee visa has been approved by the Government of PNG for those determined to be refugees. The visa will provide for work rights and freedom of movement.
- Ministers noted that the PNG Expert Panel on Settlement convened on 1 April with a scheduled report back to the PNG Government at the end of April on recommendations on implementing refugee resettlement.

- Australia reaffirmed its commitment under the RRA to meet costs relating to the settlement of refugees in PNG and would await the recommendations of the Settlement Expert Panel, which will influence the level of assistance required. It was anticipated the first refugees could be resettled in June 2014.
- Ministers reiterated that all persons transferred to PNG under the RRA who are found to be refugees will be resettled in PNG. No-one will be resettled in Australia.
- Those persons found not to be refugees will be held in detention in PNG pending removal to their home country or another country where they have a right of entry – no-one found not to be a refugee will be transferred to Australia.
- Improvements to infrastructure facilities at the Manus Regional Processing Centres for asylum seekers continue at pace.
- The transition of garrison and support services to Transfield Services Ltd from G4S is now complete and Ministers noted the transition process had proceeded smoothly.
- Ministers affirmed the urgency and need to complete the comprehensive investigations underway into the events that took place at Manus Island of 16-18 February.
 - Australian Government committed to continue to provide all assistance necessary, if requested by PNG authorities to finalise their official police investigation into the incident, including providing legal assistance for witnesses to alleged criminal acts.
 - Ministers also agreed to facilitate interviews of persons of interest who are no longer in PNG.
 - Ministers agreed that all relevant information from the independent administrative reviews would be handed over to the police investigation to enable swift prosecutions.
 - The outcomes of the investigations will inform a coronial inquiry in PNG.
 - Both Governments will expedite the implementation of recommendations arising from the investigations.
- Ministers received an update on the good progress of implementation of the Joint Understanding and additional assistance package for Manus.
- Ministers noted positive progress to deliver projects in Manus Province with the additional \$26m in Australian development assistance, including:
 - improvements to infrastructure and equipment at Lorengau Hospital

- infrastructure school kits for Manus schools
 - road and bridge maintenance rehabilitation works
 - renovation of the Lorengau Market roof and
 - community grants for youth activities.
- Ministers also noted the ongoing successful implementation of the \$420m broader Australian development assistance package under the Joint Understanding on Further Bilateral Cooperation on Health, Education and Law and Order, including:
- Angau Memorial Hospital – redevelopment on a 50/50 basis with Government of PNG;
 - Lower Courts Complex – design of a magistrates complex in Port Moresby;
 - Madang to Lae Road – design of the road;
 - University of PNG – infrastructure and twinning support.

Ministers noted the recent successful visit to Papua New Guinea by Prime Minister Abbott, the longest visit by an Australian Prime Minister for twenty five years, during which Mr Abbott announced Australia's commitment to support Papua New Guinea's preparations to host the APEC Summit in 2018, and Australia's willingness to increase the Australian police presence in Papua New Guinea.

Ministers also noted the ongoing strong commitment of both Governments to strengthen the higher education sector in Papua New Guinea.

The next scheduled meeting is on 9 May 2014.

Further information: Julian Leembruggen 0400 813 253, Kerri Griffiths 0417 617 482



The Hon. Scott Morrison MP
Minister for Immigration and Border Protection

The Hon. David Adeang MP
Nauru Minister for Justice

**JOINT STATEMENT –
AUSTRALIA AND REPUBLIC OF NAURU JOINT MINISTERIAL FORUM TO
OVERSEE IMPLEMENTATION OF REGIONAL PARTNERSHIP BETWEEN
AUSTRALIA AND NAURU**

Friday 11 April 2014

A meeting of the Joint Ministerial Forum to oversee implementation of the regional processing and resettlement partnership between Australia and Nauru was held in Sydney yesterday led by Minister for Immigration and Border Protection, the Hon Scott Morrison MP and Nauru Minister for Justice, the Hon David Adeang MP.

The Australia/Nauru Joint Ministerial Forum offers clear direction and oversight of the implementation of the Nauru arrangement and provide a timely and accountable process to ensure that the arrangement is being converted into tangible and practical outcomes.

The outcomes of yesterday's meeting were as follows:

- Ministers noted the process of Refugee Status Determination is well advanced, with the Nauru Government due to hand down the first tranche of initial refugee assessments to a minimum of 60 transferees within a month.
- Ministers agreed to an ongoing commitment of handing down refugee assessments to a minimum of 60 transferees per month.
- Ministers restated commitment to resettlement arrangements in Nauru consistent with the arrangement agreed between the Governments of Australia and Nauru in 2013.
- Minister Adeang was briefed on Minister Morrison's recent visit to Cambodia to further discussions on regional cooperation issues, with the Ministers agreeing that the Government of Nauru will be engaged as a partner in future discussions with the Government of Cambodia.
- Confirmed that as a result of infrastructure upgrades across the Nauru centre, all transferee children are now regularly attending school in air conditioned class rooms.

- Noted that families with infants are now able to be accommodated in air conditioned marquees.
- Noted that a range of health practitioners are providing health services to transferees including general practitioners, nurses, psychologists, counsellors, paediatrician and a psychiatrist to support transferees. Medical equipment and health personnel for the provision of health care to children under 4 years is available onsite.
- Noted transferees had access to specialist IHMS staff at the centre including a dedicated midwife, a general nurse with midwifery qualifications, a paediatric nurse, and a Medical Officer and Senior Medical Officer both with paediatric emergency experience.
- Noted that transfers of detainees currently held on Christmas Island would continue to Nauru, including unaccompanied minors and families.
- Noted that a further site had been identified at Nibok for post assessment accommodation for families and that the site would now be developed. This family accommodation will be in addition to private leased accommodation on the Island and purpose built accommodation at Anibare Bay. Ministers agreed to prepare the recently rebuilt RPC1 as post assessment accommodation for single adult males.
- Noted that essential items for the care and welfare of infants have been procured and delivered. Items include appropriate equipment for children including prams, capsules, dummies, infant clothing, bedding, consumables, medical equipment and age-appropriate recreational items.
- Ministers noted the continuing successful implementation of Australian funded projects in Nauru, in addition to Australia's annual Nauru assistance package, that formed part of Australia's commitment to the partnership. Delivery of these commitments has already commenced, including around \$31 million of total assistance to Nauru.
- Ministers agreed to hold a minimum of three meetings per year under the Joint Ministerial Forum with the next meeting to be held in Nauru.

Further information: Julian Leembruggen 0400 813 253, Kerri Griffiths 0417 617 482