



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

Reference: 1402/00203

Dr Dennis Jensen MP  
Chair  
Standing Committee on Petitions  
Parliament House  
CANBERRA ACT 2600

Dear Dr Jensen

**Asylum seekers detained by the Australian Government in offshore and onshore detention centres**

Thank you for your letter of 2 January 2014 concerning a petition recently submitted for consideration by the Standing Committee on Petitions regarding various matters related to asylum seekers. Thank you for bringing these matters to my attention. I regret the delay in responding.

The Australian Government announced that under Operation Sovereign Borders, all illegal maritime arrivals entering Australian waters by boat without a visa will be liable for offshore processing and resettlement in Nauru or Papua New Guinea (PNG). This is one of the government's measures intended to deter people smugglers by denying them a product to sell to often vulnerable people.

The offshore processing centres (OPCs) are managed and administered under Nauruan and PNG law, with support from Australia. Asylum seekers transferred to Nauru and PNG OPCs will have their protection claims processed in accordance with the respective laws of Nauru and PNG. The government has provided a package of assistance to the governments of Nauru and PNG to build their capacity to assess protection claims and undertake refugee status determination.

Transferees found to be refugees will be resettled in Nauru, PNG and any other participating regional states. Transferees found not to be owed protection will be returned to their country of origin or to a third country where they have the right to reside.

Children, families, pregnant women, single adult males and unaccompanied minors will be transferred to offshore processing centres where there are appropriate support services to meet their needs. Education arrangements for children have been made.

The government is conscious of the need to ensure people are not held in immigration detention for long periods. The time taken to undertake relevant processing can be affected by a number of factors, including difficulty in satisfactorily determining a detainee's identity, complexity of claims, developments in country information and finalisation of other immigration related criteria such as the security clearance process.

Placement decisions are made with consideration to each individual's circumstances and risks, with a view to seeking a balance between the best interests of the individuals, particularly children and vulnerable persons, and operational and security factors. This may include:

- the individual's character, any identity and security issues, age and family composition, health and wellbeing;
- any unique or exceptional circumstances;
- their cooperation with immigration processes; and
- the likelihood of the persons compliance with any conditions (such as reporting regularly, staying at the specified address and not working).

The community detention programme is supported by peak welfare bodies, refugee, church and other community organisations. The Australian Red Cross is the main contracted agency for community detention services. In light of the growth in the community detention programme, the Department of Immigration and Border Protection has contracted a number of additional service providers to assist with accommodation and case support services for unaccompanied minors, families with young children and other vulnerable people. Support includes torture and trauma counselling and help to meet basic welfare needs.

These service providers are experienced in the administration of community care and welfare services for detainees. They are funded to provide housing, residential/out-of-home care for unaccompanied minors, case workers, an allowance to meet daily living costs and a range of activities. Activities may include volunteering opportunities as well as English classes. In line with community standards, children in the programme have access to schooling.

The department works and consults closely with other government agencies and organisations to ensure appropriate arrangements and supports are in place. We will continue to monitor these arrangements.

The government considers immigration detention to be an essential element of a managed migration system and effective border control. Those subject to mandatory detention include:

- unauthorised arrivals for management of health, identity and security risks to the community;
- unlawful non-citizens who present unacceptable risks to the community; and
- unlawful non-citizens who repeatedly refuse to comply with their visa conditions.

Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, are subject to regular review.

As you would appreciate, the management of asylum seekers who have been issued with adverse security assessments raises a number of complex policy issues, principal among which is ensuring Australia's national security balanced with its duty of care to the health and wellbeing of all people in immigration detention.

The government has determined that, as a matter of policy, people who have been assessed by the Australian Security Intelligence Organisation (ASIO) to be directly or indirectly a risk to security will remain in held immigration detention, until such time as resettlement in a third country or removal is practicable.

The department is working with other agencies to identify long-term outcomes for individuals issued with an Adverse Security Assessment (ASA); consistent with Australia's international obligations not to return a person to a country where they may be harmed. Third country resettlement may be an option for some individuals, however, due to the complex nature of these cases, securing durable outcomes is likely to be a lengthy process.

In accordance with the *Australian Security Intelligence Organisation Act 1979*, ASIO does not provide visa applicants with the information that underpins a security assessment because doing so would reveal details about ASIO's intelligence capability and modus operandi. However, individuals are advised of the outcome of their security assessment and are able to appeal to the Federal or High Court for judicial review of the assessment.

Additionally, ASIO is subject to oversight by the Inspector General of Intelligence and Security. The Inspector General of Intelligence and Security is an important accountability mechanism for ASIO which operates independently of the government and has extensive investigatory powers. Any individual can make a complaint to the Inspector General of Intelligence and Security about ASIO, including asylum seekers in detention.

The Hon Margaret Stone has been appointed by the Attorney-General as Independent Reviewer of ASAs. The Reviewer's role is to review ASIO ASAs given to the department in relation to people who remain in immigration detention and have been found by the department to:

1. engage Australia's protection obligations under international law; and
2. not be eligible for a permanent protection visa, or who have had their permanent protection visa cancelled.

The Independent Reviewer will examine the materials used by ASIO, including any submissions made by the applicant in support of their application. There will also be a regular 12 month periodic review of ASA for refugees in immigration detention. The Independent Reviewer will provide recommendations to the Director-General of Security and report these findings to the Attorney-General, the Inspector-General of Intelligence and Security and the Minister for Immigration and Border Protection.

The safety of the Australian community is the government's primary concern. It is not considered appropriate for individuals who have been assessed as a risk to security to be placed in the community.

I trust the information provided is helpful.

Yours sincerely

The Hon Scott Morrison MP

**Minister for Immigration and Border Protection**

7 / 3 / 2014