



Australian Permanent Mission  
to the United Nations  
Geneva

21 December 2017

Mr Karim Ghezraoui  
Officer-in-charge  
Special Procedures Branch  
Office of the High Commissioner for Human Rights  
United Nations Office at Geneva  
Palais Des Nations  
1211 Geneva 10 Switzerland

Dear Sir

**Joint Communication from Special Procedures**

I refer to the Joint Communication dated 31 October 2017 sent by the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on the human rights of migrants.

I reiterate the Australian Government's longstanding commitment to cooperating with the United Nations and the Australian Government's strong human rights record.

Australia takes its international legal obligations under international refugee and human rights law seriously and is a longstanding party to the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol (Refugees Convention), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Australia is firmly committed to upholding its obligations under these instruments.

**1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations**

The Australian Government's border protection policies aim to disrupt and deter people from engaging people smugglers and attempting dangerous journeys to Australia by boat. Australia's policies were implemented in response to a dramatic increase in the number of people attempting illegal migration to Australia by boat between 2008 and 2013. Under Australia's current border protection policy, illegal maritime arrivals to Australia will be returned to their departure point or home, or transferred to a regional processing country. Illegal maritime arrivals will not settle permanently in Australia. These policies have

succeeded in stemming the flow of boats, disrupting the people smuggling business model and preventing loss of life at sea.

Consistent with the *Migration Act 1958* (the Act), illegal maritime arrivals who arrived in Australia after 13 August 2012 were taken to a regional processing country to enable assessment of their protection claims.

Australia supports the governments of Nauru and Papua New Guinea (PNG) to meet the health needs of persons transferred to their countries. Some individuals have presented with health issues that require medical treatment not available in Nauru or PNG. Some of these individuals were transferred to Australia as transitory persons for the temporary purpose for medical treatment. In some cases family or other support persons accompanied the person receiving treatment (also transitory persons). The Act requires that transitory persons be returned to a regional processing country as soon as reasonably practicable when they no longer need to be in Australia for the temporary purpose for which they were transferred.

Transitory persons are precluded from seeking protection in Australia. Rather their protection claims are assessed by the regional processing country to which they were transferred.

The Governments of Nauru and PNG are responsible for managing regional processing arrangements in their countries. PNG and Nauru undertake refugee status determinations in accordance with their domestic law, and both countries are party to the *1951 Convention Relating to the Status of Refugees* as amended by the 1967 Protocol.

The Government of Nauru encourages the reporting of all crimes, including sexual assault, to the appropriate authorities for investigation. The Government of Nauru has established a Gender Violence and Child Protection Unit. This service is accessible to all residents of Nauru. Where the Nauru Police Force (NPF) believes an allegation is substantiated, charges may be laid and the offenders prosecuted in accordance with the *Nauru Crimes Act (2016)*. Victims of any alleged assault, including sexual assault, are provided with appropriate medical treatment and mental health support, and are placed in an appropriate accommodation setting, pending further investigation.

The International Committee of the Red Cross, the Australian Commonwealth Ombudsman and the United Nations High Commissioner for Refugees all undertake regular scrutiny visits to Nauru at the invitation of the Government of Nauru.

On 31 October 2017, the Government of PNG closed the Manus Regional Processing Centre (RPC). All refugees and non-refugees previously residing in the former RPC have now relocated to alternative accommodation in the PNG community where they are provided with food, water, security and medical services, among other services.

**2. Could you please provide justifications for imposing the final departure BVE on asylum seekers in community detention in Australia?**

Persons transferred to a regional processing country who require medical treatment not available in that country may be temporarily transferred to Australia for treatment. Consistent with the transitory persons provisions in the Act, such persons are not required to hold a visa to travel to Australia. On arrival they become unlawful non-citizens and are detained under section 189 of the Act. Based on an assessment of individual circumstances, individuals in need of additional support may be accommodated in the Australian community for a period under residence determination placement arrangements (also known as community detention). Transitory persons under a residence determination are still detained under the Act.

Section 46B of the Act precludes transitory persons from having their protection claims assessed in Australia, and they are not able to validly apply for a visa to remain in Australia. Transitory persons who no longer need to remain in Australia for the temporary purpose for which they were brought are expected to return to a regional processing country or to depart to another country where they have a right to enter and reside.

Following careful consideration of individuals' circumstances, the Minister for Immigration and Border Protection has personally granted final departure BVEs under his personal non-compellable power under the Act to grant a visa to a person in detention.

The final departure BVE is granted to manage the immigration status of low risk transitory persons in the community while their matters are ongoing or while the individual resolves barriers to departure from Australia such as obtaining travel documents or ongoing legal proceedings.

The final departure BVE granted to these individuals is a short-term visa with conditions requiring ongoing engagement with a status resolution service, work rights and access to Medicare (Australia's universal health care system) to limit reliance on government financial support. There is also access to schooling for children. The BVEs also have conditions, stipulating a requirement for holders to behave consistently with Australian laws and community standards. Granting a final departure BVE in these circumstances ensures that the use of immigration detention is limited for the shortest practicable time while continuing to have regard to the management of certain non-citizens who pose an unacceptable risk to the Australian community.

We also note that it is incorrect to suggest that the grant of the BVE has resulted in other services being restricted. These are independent decisions. Access to Government funded support services is based on individual circumstances, including assessment of vulnerability. The grant of the BVE and the conditions imposed upon that visa are governed by relevant legislation.



**3. Did the Government carry out any impact assessment of the final departure BVE on the human rights of the asylum seekers? If so, please provide details of the findings and recommendations.**

Australia's Department of Immigration and Border Protection (the Department) reviewed individual cases for any vulnerabilities and the appropriateness for possible referral to the Minister for the grant of a final departure BVE. Cases referred to the Minister were single adults who are not able to be returned to a regional processing country at this time, do not have specific vulnerabilities that require a higher level of care than that provided through a final departure BVE, and have no identified criminal or security issues.

Contrary to the allegations in your communication, individuals also have the opportunity at any time to raise changes to their circumstances or any other matter material to their situation and immigration status. Regular reporting to the Department is required to enable the Department to proactively monitor and review cases.

Individuals have been advised that they will not be permanently settled in Australia; that they are required to support themselves while residing in the Australian community until they return to a regional processing country or voluntarily depart to another country where they have a right to enter and reside. They have also been advised that voluntary return packages remain available.

**4. Please provide information with regard to the measures that have been taken to ensure that Australia meets its international human and humanitarian obligations to ensure the non-refoulement of asylum seekers who are forced to leave Australia as a result of the imposition of the final departure BVE.**

As holders of a valid final departure BVE, these individuals are not subject to removal from Australia nor are they liable to be transferred to a regional processing country under the Act during the validity of the visa. Persons departing Australia would be doing so of their own accord.

In respect of ICESCR rights, the Australian Government notes that the final departure BVE holders have work rights, access to Medicare and school aged children continue to have access to education.

**5. Could you please provide evidence demonstrating that the Government has considered all available alternatives to the final departure BVE scheme and has objectively determined that it was the least restrictive measure?**

Grant of a final departure BVE is the least restrictive measure for transitory persons in Australia consistent with the requirements of the Act. The alternative is for people to remain in immigration detention, either in an immigration detention facility or community detention. The final departure BVE enables individuals to reside lawfully in the community where they choose and to move freely. Final departure BVE holders, where relevant conditions are applied, are permitted to work, have access to Medicare and education for school-aged minors.

As holders of a valid visa, these individuals are not subject to removal from Australia nor are they liable to be transferred to a regional processing country under the Act during the validity of this visa.

- 6. Have any of the concerned asylum seekers been consulted or given an opportunity to express their views, before receiving the final departure BVE? Has the Government carried out any individualized assessment of their circumstances and health conditions in issuing the final departure BVE?**

The Department has reviewed individual cases for any vulnerabilities and the appropriateness for possible referral to the Minister for the grant of a final departure BVE.

Factors taken into consideration by the Department include physical and mental health conditions, the level of support and medication provided to any individual, family connections and circumstances, the capacity of individuals to undertake work, legal proceedings and community risk factors. Individuals also have the opportunity to raise at any time changes to their circumstances or any other matter material to their situation and immigration status. Regular reporting to the Department is required to enable the Department to proactively monitor and review cases.

- 7. Does the Government intend to issue the final departure BVE to the rest of the group, including families and children? If so, what factors has the Government taken into account in assessing the impact of the measure? What measures does the Government plan to implement in ensuring that their human rights are fully respected, particularly those of children?**

The Department is progressively assessing all transitory persons for possible referral to the Minister for consideration of the grant of a final departure BVE. The individual circumstances of each person and their capacity to live in the community are considered in the assessment process. Those people identified as most vulnerable or who represent a security concern will not be referred for consideration of a visa grant by the Minister.

- 8. Could you please explain what specific measures were taken by the Government to ensure that no individual would be rendered homeless? What alternative accommodation was offered by the Government or would be offered in response to the BVE?**

The final departure BVEs granted to these individuals allows permission to work, which gives each adult the capacity to financially support themselves. Medicare provides access to healthcare in line with Australian community standards.

To manage their transition from community detention to final departure BVEs, each transitory person is provided three weeks' transitional support, through the Status Resolution Support Services (SRSS) program. Transitional support is designed to link people into the services they need to live independently in Australia and bridge the gap between

support provided to people in community detention and the removal of that support. This support includes:

- a. Service provider case worker support including orientation and essential registrations support (for example, locating a new residence, registering with Medicare, arranging utilities connections, understanding and accessing public transport and employment);
- b. Transitional accommodation;
- c. Health and medical supports (equivalent to Medicare) and additional supports including PBS Pharmaceuticals, optometry, dental, and torture and trauma counselling;
- d. Education support for eligible families.

Contracted SRSS Providers also provided assistance to individuals granted the final departure BVE to seek alternative private accommodation at the conclusion of the transitional support period.

Yours sincerely

A handwritten signature in blue ink that reads "Elizabeth Wilde". The signature is written in a cursive style with a large initial 'E'.

Elizabeth Wilde  
Chargé d'Affaires  
Permanent Mission of Australia to the United Nations in Geneva