THE HON PETER DUTTON MP
MINISTER FOR IMMIGRATION AND BORDER PROTECTION

Ref No: MS15-000025

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

Dear Dr Jensen

Pursuant to Standing Order 209(b), relating to referring a petition to a Minister for response, please find response to Petition Number 956/1425.

This petition on the Plight of Asylum Seekers within Australia's Jurisdiction was submitted by the Standing Committee on Petitions for a response from the Minister for Immigration and Border Protection, in writing, on 1 October 2014:

The petition raises concerns about the treatment of asylum seekers in Australia.

As a party to 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 Government's anti-people smuggling policies are working and have led to a reduction of boat arrivals since September 2013. There is no intention to scrap these policies.

The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill passed through Parliament on 5 December 2014.

Prior to its passage, the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) *Act 2014* was referred for inquiry to the Senate Legal and Constitutional Affairs Legislation Committee. A large number of submissions from both private citizens and organisations were lodged with the Committee regarding the Bill. On 24 November 2014 the committee recommended the Bill be passed.

The Parliamentary Joint Committee on Human Rights (PJCHR) also released their Fourteenth Report of the 44th Parliament which considered all Bills introduced into Parliament between 30 September 2014 and 2 October 2014. The PJCHR examines a Bill's compatibility with human rights. The PJCHR put forward several questions regarding the Bill to which the Department of Immigration and Border Protection responded to in December 2014. A further inquiry is unnecessary given these opportunities.

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One amendment made to the *Migration Act 1958* and the *Migration Regulations 1994* by the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* is the introduction of the Fast Track assessment process which addresses the issue of providing quick and efficient processing of asylum claims from irregular maritime arrivals (IMAs) (referred to in the Migration Act as unauthorised maritime arrivals (UMAs)). All applicants will continue to have their claims assessed on an individual basis against Australia's *non-refoulement* obligations with reference to up-to-date information on conditions in the applicants' home country.

Australians have a legitimate expectation that those seeking access to this country will do so through the appropriate processing channels. The Australian Government has determined that places in the Humanitarian Programme will be reserved for those who engage Australia's protection obligations through these appropriate processing channels. IMAs found to engage Australia's protection obligations will be provided temporary visa options, including Temporary Protection Visas and the new Safe Haven Enterprise visa (SHEV). The bar will be removed on applications by IMAs who are lawful non-citizens who hold or have held a SHEV, who have met the SHEV work/study/social security requirements and who are applying for a visa specified in a prescribed list of visas, which includes skilled and family visas

Under Operation Sovereign Borders, all IMAs entering Australian waters by boat without a visa will remain liable for offshore processing in Nauru and Papua New Guinea (PNG). Nauru and PNG are both parties to the Refugees Convention. The *Memoranda of Understanding* (MOU) these countries have signed with Australia regarding the offshore processing arrangements reaffirm their commitment to the Refugees Convention and to treating people transferred with dignity and respect in accordance with human rights standards.

Concerning the use of the term "illegal" in "IMAs", Australia has a universal visa system requiring most people who are not Australian citizens to hold a visa on entry to Australia. People who have entered Australia and do not hold valid visas are unlawful non-citizens according to the *Migration Act 1958*. Non-citizens who enter Australia's migration zone without a valid visa do so unlawfully, irrespective of whether they seek asylum or not.

A period of detention is required for all IMAs, including women and children, so that health, security and character checks can be undertaken. Women and children in onshore detention are treated respectfully and humanely by service provider staff contracted by the department. The department has contracted service providers with the expertise to deliver a range of services including health and welfare services, catering and cleaning services, programmes and activities, and education to ensure the well-being of these vulnerable detainees. The Government is especially committed to providing appropriate conditions for vulnerable groups such as children and families. The Government continues to use the community detention programme for unaccompanied minors, families with young children and other vulnerable people, given the additional support that this programme provides.

Health services, including mental health services, are provided or coordinated by the department's health services provider at a standard broadly comparable to the health care available to the Australian community through the public health system. Pregnant detainees in particular have access to GPs, specialists and antenatal services. Arrangements are in place for all children in detention, including community detention, to attend schools in the community in line with state and territory legal requirements. The same arrangements also apply to children granted bridging visas.

On 19 August 2014, the former Minister for Immigration and Border Protection, the Hon. Scott Morrison MP, announced new measures that will enable more children to be released from detention onto bridging visas. The new arrangements provide greater protection and support for young children, aged under ten, and their families that will enable them to be released from detention if they arrived prior to 19 July 2013.

In addition, on 25 September 2014, Mr Morrison announced that, contingent upon the above legislation being passed 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 will be included in the asylum legacy caseload and processed in Australia. This includes giving consideration to placing this caseload in the community on bridging visas or in community detention whilst they await the resolution of their status. People will first be assessed to ensure there is 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.

IMAs who arrived in Australia on or after 13 August 2012 and are released into the community on bridging visas will be allowed to study, access Medicare and Torture and Trauma counselling, receive mainstream Centrelink and employment services as well as some settlement services such as complex case support and translating and interpreting assistance. Permission to work will also progressively be granted.

Yours sincerely

PETER DUTTON 4/6/15