



Australian Government

Department of Immigration
and Border Protection

Response to the Amnesty International report

Island of Despair – Australia’s ‘Processing’ of Refugees on Nauru

March 2017

Response

1. On 17 October 2016, Amnesty International published a report titled *Island of Despair – Australia's 'Processing' of Refugees on Nauru*, which was critical of regional processing arrangements in Nauru and made erroneous assertions that were not appropriately verified prior to publication.
2. The Department of Immigration and Border Protection (the Department) welcomes independent scrutiny of Australia's support of regional processing arrangements. Independent oversight is provided by a range of organisations, including the Office of the United Nations High Commissioner for Refugees, the International Committee of the Red Cross, and the Commonwealth Ombudsman – all of which have visited Nauru.
3. Many of the claims in Amnesty International's report had been raised previously and refuted by the Department, its service providers and the Government of Nauru. Amnesty International appears to have relied upon single-source testimony and unverified allegations, presenting them as fact and representative of the current situation in Nauru. A copy of the final report was not provided to the Department prior to its publication. Neither the Government of Nauru nor the Department were given sufficient time to respond to allegations raised in the report in a meaningful way.
4. The report also failed to outline the significant improvements to facilities in Nauru.
5. The Australian Government takes the health and safety of refugees and transferees in Nauru seriously, and continues to support the Government of Nauru to ensure people are treated humanely and have access to health, education and welfare services. The Department provides the following response to the matters raised.

Treatment of transferees and refugees

6. The Department categorically refutes any suggestion its staff or contracted service providers are engaged in or are responsible for overseeing 'systematic human rights abuses.' Claims that regional processing deliberately exposes people to harm are offensive and wrong. Regional processing is part of a larger suite of policies that deter illegal maritime arrivals by denying people smugglers the product of settlement in Australia. The Department's submission to the Inquiry sets out in considerable detail how it assists regional processing countries and service providers to support transferees and refugees.
7. The Government of Nauru treats transferees and refugees with dignity and respect, and ensures that relevant human rights standards are met, including respecting the principle of non-refoulement.
8. The Department calls on Amnesty International to provide the Department with specific information about alleged assaults and misconduct by staff working for contractors to the Australian Government, so these claims may be dealt with appropriately.

Prevalence of incidents

9. The Department notes that the sampling technique used by Amnesty International is unlikely to be reliable enough to draw sound conclusions about the prevalence of assaults and harassment in Nauru. Amnesty International states that it interviewed 58 transferees and refugees in Nauru in July 2016, which is where it drew many of the claims in relation to allegations of assault and harassment. On 31 July 2016, there were 1186 transferees and refugees in Nauru, meaning that Amnesty International has relied on interviews with less than five per cent of the overall cohort.
10. All allegations brought to the Department's attention are referred to the Nauru Police Force for investigation. The Australian Federal Police has provided capacity building, training and other support to the Nauru Police Force.

11. The Department also rejects the assertion that there is systematic hostility towards refugees. Indeed, in May 2016 the Nauruan Minister for Multicultural Affairs, the Honourable David Adeang, issued a statement that:

The Government of Nauru is continuing to provide facilities and services to make your time here as beneficial, as productive and as positive as possible...It is our hope and our prayer that we can work together to ensure that we can live safely and harmoniously together in Nauru, not as separate communities but as one community.

Cambodia settlement arrangement

12. Refugees who do resettle in Cambodia do so voluntarily.

Capacity building and service delivery in Nauru

13. The Department supports the Government of Nauru to deliver high-quality needs-based temporary settlement services for refugees that are consistent with the *Memorandum of Understanding between the Government of Nauru and the Government of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues*.
14. The Australian Government works collaboratively with the Government of Nauru on long-term capacity-building initiatives by providing practical and financial assistance. This includes the delivery of specialised settlement services in the areas of education, infrastructure, health services, refugee-status determination training, mentoring and case-management training.
15. Transferees and refugees at the Regional Processing Centre receive individualised health care to a standard broadly consistent with Australian public health standards seven days per week. Medical personnel are available to respond to afterhours medical emergencies. These services are supplemented by visiting health practitioners, a tele-health service and medical transfers when required.
16. Specialist torture and trauma counselling is offered to transferees as clinically indicated. Health care services in line with local community standards are also provided to refugees settled in the community.
17. The Department contracts Broadspectrum in Nauru to provide welfare services to refugees and transferees. School-aged children attend Nauruan schools and have access to a comprehensive after-school and weekend activity programme that includes arts, crafts, social interaction, sport, music and family activities.

Child protection and investigation of complaints

18. The Government of Nauru Child Protection Unit has lead responsibility for the care and protection of children in Nauru. It works closely with the Gender Violence Unit, which has implemented a 24/7 hotline (Victim Support Service) to assist victims of domestic violence and sexual assault.
19. The Government of Nauru released its Child Protection Policy, Practice and Reporting Procedures in March 2016. The Department continues to support the establishment and implementation of Nauru's Child Protection Framework, including through the contracted services of two specialist child protection social workers.

20. On 12 May 2016, the Nauru *Crimes Act 2016* was amended to include provisions for offences causing or risking harm to children due to neglect, physical, emotional and sexual abuse. The *Child Protection and Welfare Act 2016* was then enacted on 10 June 2016. The Australian Federal Police placed a number of officers in Nauru in advisory roles, to provide capacity building, training and other support to the Nauru Police Force.
21. All allegations of abuse, bullying and harassment are taken seriously and appropriate action taken. As previously mentioned, any allegations of assault or other crimes are referred to the Nauru Police Force for investigation. The Nauru Police Force does investigate alleged crimes, including alleged assaults, however, the Government of Nauru has advised that investigations are at times made difficult when transferees or refugees fail to cooperate or where there is insufficient evidence to charge an alleged offender.

Open centre arrangements

22. It is not accurate that refugees and transferees are in detention and that they cannot leave Nauru.
23. The introduction of open centre arrangements for Nauru began in February 2015, and was completed by October 2015. Transferees are free to venture beyond the regional processing centre without restriction. Transport is provided for travel between the regional processing centres and other areas around Nauru.
24. Transferees are free to return to their country of origin, and refugees are free to resettle in Cambodia, or a third country where they have a right of residence.

Education

25. The Department rejects the claim that children in Nauru are denied the right to education. On the contrary, the Australian Government provides significant support to the Government of Nauru to assist with the provision of educational services to transferees, refugees and the Nauruan community.
26. All refugee and transferee children in Nauru of school age (7-18 years) are provided with access to free education in Nauruan schools. The Nauruan school curriculum is based on the same curriculum used in Queensland.
27. In addition to teachers, there is a ratio of one learning support staff member to 7.5 refugee and transferee students. This is calculated on the basis of 17 staff (11 teachers providing professional development, five other staff running programmes such as homework club and holiday programmes, and one guidance counsellor) to 129 school-aged children.
28. The Australian Government provides a range of education-related support to the Government of Nauru, including:
 - funding for the Nauru Department of Education to employ a guidance counsellor to promote engagement between transferee and refugee students, their parents and school teaching staff
 - \$8.4 million for the construction of eight classrooms, two IT classrooms, administration spaces and ablution blocks at the Nauru Primary School
 - provision of school uniforms to all school-aged transferee and refugee children
 - funding youth-specific support services
 - programmes and activities for residents living in the Regional Processing Centre, including school-aged and preschool aged educational activities, English lessons, music, art and recreational activities

- 11 Brisbane Catholic Education teachers, who provide professional development support in Nauruan schools
- funding of four school counsellors to support the integration of transferee children into the Nauruan school system
- support to school-aged refugee children and their parents in the Nauruan community through contracted child and youth workers
- offering a mix of educational and recreational activities for school-aged refugee and Nauruan children after school hours and during school holidays

Effective control

29. While the Government of Australia funds regional processing and settlement arrangements in Nauru, Australia's international obligations apply only to those who are subject to its jurisdiction. Nauru is a sovereign state which is responsible for acts within its jurisdiction.
30. The Government of Nauru is responsible for processing transferees' protection claims and the temporary settlement of refugees in Nauru. The Government of Nauru undertakes to treat transferees and refugees with dignity and respect, and ensures that relevant human rights standards are met, including the principle of non-refoulement.

Expenditure

31. The figure Amnesty International quotes as the estimate of operations in the regional processing centres per person, per year, of \$573,000 is drawn from an oversimplified calculation method. This figure does not reflect the true costs per person or take into account capacity building, contingency and other associated running costs.
32. Amnesty International has also quoted erroneous and inflated visa fees in its report.

External scrutiny

33. Independent oversight is provided by a range of organisations, including the Office of the United Nations High Commissioner for Refugees the International Committee of the Red Cross, and the Commonwealth Ombudsman – all of which have visited Nauru. Each oversight body provides recommendations to improve processes and service delivery, which the Australian Government supports the Government of Nauru to address, where appropriate.
34. The Department would encourage Amnesty International to engage with it on this report and the case studies outlined within it, so the Department can work with its service providers and oversight bodies to address any legitimate issues.

Health care

35. The report makes multiple claims that the health care available in Nauru is inadequate. The Australian Government provides significant support to the Government of Nauru to assist with the provision of health services to transferees, refugees and the Nauruan community.

36. This support includes funding of:

- \$11 million for the medical clinic at the Regional Processing Centre
- \$26.5 million for upgrades at the Republic of Nauru Hospital
- \$2.7 million for the construction of a surgical facility

37. The upgrade to the Republic of Nauru Hospital includes:

- upgraded surgical facilities
- a six-bed inpatient ward
- primary and mental health consultation rooms
- enhanced imagery services including computed tomography (CT) and improved pathology capability

38. There is a significant level of health expertise available to transferees, refugees and other people in the Nauruan community, through the contracted health services provider. There are 65 health professionals delivering services across the Regional Processing Centre and the Settlement Health Clinic at the Republic of Nauru Hospital, including:

- medical officers
- nurses
- obstetrician/gynaecologist
- paramedics
- psychologists
- psychiatrists
- counsellors
- torture and trauma counsellors
- mental health nurses
- a radiographer
- a pharmacist
- a laboratory technician

39. There are also a number of specialists who visit Nauru to provide specialist health care on a regular and as-needs basis including:

- orthopaedic surgeon
- ear nose and throat surgeon
- podiatrist
- speech and language therapist
- optometrist
- ophthalmologist
- cardiologist
- gastroenterologist

- neurologist
 - physiotherapist
 - infectious disease physician
 - dentist and dental assistant
40. Decisions to transfer transferees are undertaken in consultation with International Health and Medical Services and the relevant Government of Nauru or Government of Papua New Guinea.
41. Decisions to transfer refugees settled in the community are undertaken in consultation with the relevant local hospital or local health services provider at the request of the Government of Nauru or Government of Papua New Guinea.

Medical transfers

42. Decisions around whether to undertake medical transfers are made using clinical information provided and interpreted by IHMS, the health services provider in Nauru. The Department has a Chief Medical Officer - Surgeon General who can provide clinical advice and expertise in relation to medical transfers and other matters. Given that the Department funds medical transfers from Nauru, it is required to document funding approval for such flights under the *Public Governance, Performance and Accountability Act 2013*.

Individual cases

43. The Department reviewed the circumstances of the cases described in the report. This review confirmed that the report contains a wide range of false claims. Moreover, where claims may have had some substance, the Department established that they had been aired previously and either refuted in previous inquiries, or had already been addressed. The Department is unable to make detailed comments about specific cases.

Referring to transferees by their Boat ID

44. There is no evidence that this practice exists currently. This issue was aired and dealt with at a Senate Inquiry in August 2015. The service provider responsible apologised and this practice has not reoccurred.

The Convention relating to the Status of Refugees 1951 and non-refoulement

45. The processing of protection claims or settling refugees in third countries is not in breach of international law, as long as there are adequate safeguards against non-refoulement. The assurances provided in a memorandum of understanding between Australia and the Government of Nauru, as well as Nauru's domestic laws and international obligations, provide these safeguards.
46. Under the memorandum of understanding with Australia, the Government of Nauru has committed to treating transferees with dignity and respect, and in accordance with relevant human rights standards. Nauru has assured Australia that it will:
- not expel or return a transferee to another country where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group, or political opinion;
 - assess whether transferees meet the definition of refugee under the Refugees Convention; and

- not send a Transferee to another country where there is a real risk that the transferee will be subjected to torture, cruel, inhuman or degrading treatment or punishment, arbitrary deprivation of life or the imposition of the death penalty.

These assurances, together with the pre-transfer assessment processes, protect Australia from breaching its non-refoulement obligations. Australia complies with its non-refoulement obligations, including those under the Refugees Convention, by conducting pre-transfer assessments in relation to all persons liable for transfer to a regional processing country. In Nauru, transferees who Nauru determines to be in need of international protection are permitted to settle in Nauru or seek third country resettlement options. Transferees who have been found not to be in need of international protection, have exhausted their review and appeal entitlements and are not willing to depart voluntarily, will be removed by the Government of Nauru. The Nauru *Immigration Act 2014* contains legislative provisions to authorise detention and removal of non-citizens who have no legal right to remain in Nauru.

Secrecy and the *Australian Border Force Act 2015*

47. The Department rejects the claim that there is an excessive level of secrecy in relation to regional processing arrangements in Nauru. Updates on refugee processing are provided monthly on the Operation Sovereign Borders Newsroom website and the Department reports on regional processing activities in Senate Estimates hearings.
48. It is a reflection of the Department's broad range of functions protecting Australia's border and managing the movement of people and goods, that it is privy to, and entrusted with, information that is sensitive and confidential. The provisions of the *Australian Border Force Act 2015* (ABF Act) that control the disclosure of information are designed to enable the Department to carefully manage the sensitive and confidential information entrusted to it. This means that all of the Department's stakeholders, including those who give us their sensitive and confidential information, can be confident in the Department's handling of that information.
49. The Department has consistently maintained its view that the ABF Act does not prevent, and has never prevented, individuals from speaking out about their concerns regarding general conditions in regional processing centres, or from fulfilling their mandatory reporting obligations, including in relation to child abuse. Claims to the contrary are misleading.
50. The Department has issued an amended determination to make it clear that health practitioners are not subject to the ABF Act, including its secrecy and disclosure provisions. This extends to health practitioners working in regional processing centres and immigration detention centres in Australia.
51. The Department and its service providers have robust internal policies, procedures and review mechanisms in place through which any concerns, including those relating to medical treatment, can be raised and addressed.
52. The *Public Interest Disclosure Act* (PID Act) also provides protections for officials, including contractors, who wish to make a disclosure in the public interest. Disclosures defined within the PID Act would not be subject to a criminal prosecution under the ABF Act.