Australian Government
Department of Immigration and Border Protection

Ref No: MC16-004618

Ms Deb Tsorbaris and co-signatories
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Dear Ms Tsorbaris and co-signatories

Thank you for your correspondence of 4 February 2016 to the Prime Minister, the Hon Malcolm Turnbull MP, on behalf of the child and family welfare sector in Victoria, concerning the return of transferees to the Nauru Regional Processing Centre (RPC). Your correspondence has been referred to the Minister for Immigration and Border Protection, the Hon Peter Dutton MP, as the matter raised falls within his portfolio responsibilities. The Minister appreciates the time you have taken to bring this matter to his attention and has asked that I reply on his behalf.

On 3 February 2016, the High Court of Australia upheld the Australian Government's regional processing and resettlement arrangements in place in Nauru.

The Nauru RPC operates as an open centre and transferees are free to come and go at any time without restriction. Transport is provided to assist transferees to move around Nauru.

Nauru is a signatory to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol*. The Government of Nauru is responsible for operating and managing all aspects of the RPC and providing appropriate support to meet the needs of transferees and refugees. The Australian Government provides assistance through funding and contract management for the delivery of services at the RPC, including security, accommodation, health care, welfare, programmes and activities, and education.

All transferees have access to a range of health services, including mental health care, broadly comparable to those available within the Australian community. If a transferee has a significant medical condition that cannot be treated locally, they may be transferred to Port Moresby, Papua New Guinea (PNG), for treatment.

The Government of Nauru is responsible for the management and administration of the refugee status determination process and has made determinations for most transferees.

Transferees found to be refugees by the Government of Nauru will be permitted to remain in Nauru for up to ten years, pending resettlement in Cambodia or any other third country. Transferees found not to be refugees are expected to return to their country of origin or to a third country where they have the right to reside.

There is a legal obligation under the *Migration Act 1958* to take a transferee temporarily in Australia back to a regional processing country when that person no longer needs to be in Australia for the temporary purpose for which they were brought to Australia. Accordingly, when an individual no longer needs to be in Australia for that temporary purpose, the Department of Immigration and Border Protection considers whether it is reasonably practicable for them to be taken to a regional processing country.
Any decision to return an individual to Nauru will be undertaken in a considered and compassionate manner.

Based on an assessment of individual circumstances, transferees in need of additional support may be accommodated in the Australian community for a period under community detention arrangements. They are still subject to return to Nauru once all medical or legal matters have been finalised.

The Australian Parliament has scrutinised the operations of the Nauru regional processing arrangements on a number of occasions and continues to do so. A number of independent organisations, including the Commonwealth Ombudsman and the International Committee of the Red Cross (ICRC), conduct regular monitoring visits of RPCs. Transferees are able to communicate with bodies, such as the Ombudsman, the ICRC and Amnesty International. The ICRC regularly inspects the RPCs with the permission of the Governments of Nauru and PNG.

As at 7 March 2016, there were 48 illegal maritime arrival children in held detention in Australia, compared with a peak of 1,992 children in July 2013. Of the 48 children, 41 are temporarily in Australia (usually to access specialist medical treatment) and these children and their families are subject to regional processing in Nauru and will be transferred there once they and their families are fit to transfer. The Australian Government is working to reduce the remaining small number of cases in Australia further, although national security or character issues with a parent might be a barrier to the placement of a family in the community. Cases are reviewed regularly.

Thank you for bringing your views to the Government's attention.

Yours sincerely

Signed

Director SG-ABF Ministerial Correspondence Section
Support Group – Australian Border Force
10 March 2016