

Third country processing of refugees and asylum seekers



Australian
Human Rights
Commission

Australia's third UPR | 2021

Background

Since 2012, it has been the policy of successive Australian governments to transfer people who arrive in Australia by boat without a valid visa to third countries (Papua New Guinea and Nauru) for processing of their asylum claims. From 19 July 2013, the government announced that all asylum seekers arriving in Australia by boat would not be resettled in Australia, even if they were found to be refugees.

Since 13 August 2012, [4183 asylum seekers](#) who arrived in Australia by boat have been transferred to PNG and Nauru for third country processing. [Government statistics](#) indicate that, as at 31 July 2020, a total of 361 refugees and asylum seekers remain offshore (180 on Nauru and 181 in PNG). There are currently no children in regional processing countries.

Key Issue – Third country processing

[The Commission](#) and other independent bodies have consistently documented the adverse human rights impacts of third country processing in PNG and Nauru including prolonged and arbitrary detention, inadequate living conditions, physical safety concerns,

limited access to health care and poor physical and mental health outcomes.

There have also been delays processing asylum claims, concerns about the quality of refugee status determination, and limited options for viable and durable resettlement of refugees. Some refugees have been [resettled in other countries](#) (as at 31 July 2020, 803 in the United States, 7 in Cambodia and 22 in other countries outside of Australia). The difficult living conditions and prolonged uncertainty faced by people subject to third



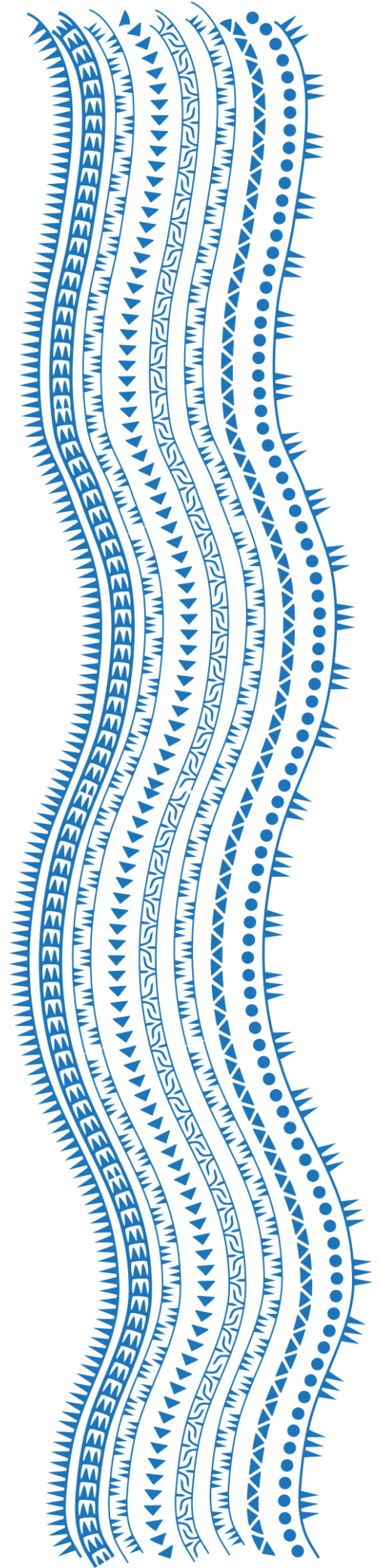
country processing may also give rise to constructive *refoulement*.

Transferring asylum seekers to PNG and Nauru does not release Australia from its obligations under international human rights law.

Australia must ensure that adequate safeguards are in place in those countries to protect the human rights of people transferred. Australia's current regime of third country processing in Papua New Guinea and Nauru is inconsistent with international human rights law.

Recommendation

Government immediately cease the current regime of third country processing and offer viable long-term protection for all refugees subject to third country processing, including those transferred to Australia, and confirm they will not be sent back to PNG or Nauru



Key Issue - Health care for refugees and asylum seekers in regional processing countries

The Commission continues to be concerned that refugees and asylum seekers in regional processing countries do not have access to timely and appropriate physical and mental health care when required.

Limited health care services, poor living conditions and ongoing uncertainty have been highlighted as key factors leading to complex physical and mental ill-health amongst people subject to third country processing.

The Commission has expressed serious concerns about the health and wellbeing of refugees and asylum seekers, particularly families and children, subject to third country processing.

As at 1 March 2020, around 1,220 refugees and asylum seekers had been transferred from PNG and Nauru

to Australia for medical assessment and/or treatment, and around 250 of those transferred are detained in closed immigration detention facilities, including hotel APODs, in Australia.

In March 2019 the 'medical transfer provisions' (commonly referred to as the 'medevac' legislation) established a statutory decision-making framework for the transfer of refugees and asylum seekers in PNG and Nauru to Australia for the temporary purpose of medical or psychiatric assessment or treatment.

The 'medevac' legislation ensured that medical transfer decisions were informed by independent medical opinion and made in a timely manner. The 'medevac' legislation was repealed at the end of 2019.

The Commission considers that the repeal of the medevac legislation was a retrogressive measure contrary to Australia's obligation of progressive realisation of the right to health.

Recommendation

Government ensure refugees and asylum seekers access timely and appropriate healthcare in Australia unless there is a medical reason why another destination is more appropriate

