

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
GOVERNMENT OF THE INDEPENDENT STATE OF
PAPUA NEW GUINEA AND THE GOVERNMENT OF AUSTRALIA,
RELATING TO THE TRANSFER TO AND ASSESSMENT OF
PERSONS IN PAPUA NEW GUINEA, AND RELATED ISSUES.**

The Government of Papua New Guinea and the Government of Australia (the Participants), wishing to build on their existing strong and cordial relations, have come to the following Memorandum of Understanding (the MOU) in relation to the assessment in Papua New Guinea of certain persons, and related issues.

Preamble

Noting that:

- The Participants are State parties to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, and acknowledge the importance of inter-country cooperation to undermine the People Smuggling industry;
- The Participants share a longstanding bilateral relationship of cooperation on migration and in combating transnational crime;
- Irregular Migration is a continuing challenge for the Asia-Pacific region;
- While border control and law enforcement measures are important, practical cooperative solutions that also address humanitarian needs are required; and
- The Government of Australia appreciates the offer made by the Government of Papua New Guinea to host an Assessment Centre for Asylum Seekers in Papua New Guinea.

Recalling that:

- At the Fourth Ministerial Conference of the Bali Process on People Smuggling, Trafficking and Related Transnational Crime (the MCBP) held in Indonesia on 29-30 March 2011, Ministers agreed:
 - to a regional cooperation framework that would provide a more effective way for interested states to cooperate to reduce Irregular Migration in the region;
 - that the framework would be operationalised through arrangements entered into between interested participating states on a bilateral or sub-regional basis (noting the cooperation that might be available from relevant international organisations regarding implementation);

- that those arrangements would be consistent with the core principles at paragraph 16 and guided by the considerations set out in paragraph 19 of the MCPB Co-Chairs' Statement;
- that any arrangements should seek to undermine the People Smuggling model and create disincentives for irregular travel, including through possible transfer and readmission arrangements in appropriate circumstances; and
- that due to the large scale of irregular movement it would be appropriate to focus arrangements on a selected caseload or caseloads.

Recognising:

- the need for practical action to provide a disincentive against Irregular Migration, People Smuggling syndicates and transnational crime and intended to promote orderly migration and humanitarian solutions;
- the need to take account of the protection needs of persons who have moved irregularly who may be seeking asylum;
- the impact that an arrangement could have in providing a disincentive for Irregular Migration and creating increased protection opportunities for those in need of international protection; and
- the need to ensure, so far as is possible, that no benefit is gained through circumventing regular migration arrangements;

the Participants have reached the following common understanding regarding a transfer arrangement, whereby Australia would Transfer persons to Papua New Guinea for processing of any asylum claims that Transferees may raise.

Interpretation

“Transferee” means a person transferred to Papua New Guinea under this MOU.

“Transfer” means transfer from Australia to Papua New Guinea under this MOU.

“Costs” refers to agreed direct costs arising out of the implementation of this MOU.

“Irregular Migration” means the phenomenon of people moving without proper authorisation to a country including for the purpose of seeking asylum.

“Refugee” means a person outside their country of nationality, or in the case of a person not having a nationality, who is outside their country of habitual residence, and who is unable or unwilling to return because of a well founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group.

“Asylum Seeker” means an individual who is seeking international protection or whose claim for international protection has not yet been finally decided.

“People Smuggling” means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a country of which the person is not a national or a permanent resident.

“Assessment Centre” means the relocation centre to be established in Papua New Guinea pursuant to this MOU and declared under section 15B of the Migration Act 1978 (Papua New Guinea).

Objectives

1. The Participants have determined that combating People Smuggling and Irregular Migration in the Asia-Pacific region is a shared objective. Transfer arrangements and the establishment of an Assessment Centre are a visible deterrent to people smugglers.
2. This MOU will enable joint cooperation, including the development of enhanced capacity in Papua New Guinea, to address these issues.
3. The Participants understand the importance of regional cooperation and have determined to continue discussions as to how the Assessment Centre might over time undertake a broader range of functions under the regional cooperation framework.

Guiding Principles

4. All activities undertaken in relation to this MOU will be conducted in accordance with international law and the international obligations of the respective Participant.
5. The Government of Australia will conduct all activities in respect of this MOU in accordance with its Constitution and all relevant domestic laws.
6. The Government of Papua New Guinea will conduct all activities in respect of this MOU in accordance with its Constitution and all relevant domestic laws.
7. The Government of Australia will bear all Costs incurred under this MOU.
8. Separate to the Costs incurred for the specific operation of this MOU, the Participants (The Government of Papua New Guinea and Government of Australia) will develop a package of assistance focused on Manus Province and other bilateral cooperation, which will be in addition to the current allocation of Australian development cooperation assistance to PNG, and directed towards priorities which are consistent with the revised PNG-Australia Partnership for Development (endorsed by both Governments on 12 October 2011).

Operation of this MOU

9. Australia may Transfer and Papua New Guinea will accept Transferees from Australia under this MOU.
10. Administrative measures giving effect to this MOU will be settled between the Participants. Any further specific arrangements may be made, as jointly determined to be necessary by the Participants, on more particular aspects of this MOU for the purpose of giving effect to its objectives.

Persons to be transferred to Papua New Guinea for processing

11. Persons to be transferred to Papua New Guinea are those persons who:
 - a) have traveled irregularly by sea to Australia; or
 - b) have been intercepted at sea by the Australian authorities in the course of trying to reach Australia by irregular means; and
 - c) are required by Australian law to be transferred to Papua New Guinea.

The site

12. Papua New Guinea will host an Assessment Centre in Manus Province or elsewhere in Papua New Guinea for the purposes of this MOU.

Timing

13. The Government of Australia will make all efforts to ensure that all persons entering Papua New Guinea under this MOU will have left within as short a time as is reasonably necessary for the implementation of this MOU, bearing in mind the objectives set out in the Preamble and Clause 1.
14. Australia undertakes for the purposes of this MOU to arrange for the resettlement or transfer from Papua New Guinea of all persons entering Papua New Guinea under this MOU.

Commitments

15. The Participants will ensure that Transferees will be treated with dignity and respect and that relevant human rights standards are met.
16. Special arrangements will be developed and agreed to by the Participants for vulnerable cases including unaccompanied minors.

17. Consistent with the Participants' objective of combating People Smuggling and Irregular Migration, and noting the establishment of the Assessment Centre under this MOU, Australia will support the Government of Papua New Guinea in its management of nationals from third countries who are illegally entering Papua New Guinea. Such support could consist of the provision of appropriate technical and financial assistance, as well as advice, as jointly determined between the Participants.
18. The Government of Papua New Guinea assures the Government of Australia that it will:
- a. 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; and
 - b. make an assessment, or permit an assessment to be made, of whether or not a transferee is covered by the definition of refugee in Article 1A of the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees; and
 - c. 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.

Co-operation

19. The Participants may jointly decide to vary this MOU in writing.
20. Communications concerning the day-to-day operation of activities undertaken in accordance with this MOU will be between the Office of the Chief Migration Officer of Papua New Guinea and the Australian High Commission.
21. The Participants will establish a Joint Committee with responsibility for the oversight of practical arrangements required to implement this MOU including issues relating to the duration of stay of Transferees. The Joint Committee will meet regularly no less than once monthly and will be co-chaired by mutually agreed representatives of the Australian High Commission Port Moresby and the PNG Immigration and Citizenship Service. Participation in the Joint Committee will be as agreed but may include relevant non-government organizations and service providers where appropriate.
22. This MOU will come into effect on the date of signature by both Participants and will remain in effect until terminated by mutual agreement.

Settlement of Disputes

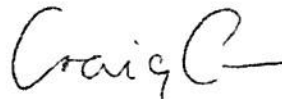
23. Any dispute arising with respect to the interpretation or implementation of this arrangement will be settled amicably through consultation between the Participants.

Signed on the ^{8th}..... of September 2012.



The Hon Rimbink Pato OBE MP
Minister for Foreign Affairs
and Immigration

FOR THE GOVERNMENT OF
THE INDEPENDENT STATE OF
PAPUA NEW GUINEA



The Hon Dr Craig Emerson MP
Minister for Trade and Competitiveness

FOR THE GOVERNMENT OF
AUSTRALIA