

Chapter 4

Protecting asylum seekers: personal safety and security, and allegations of harm

4.1 The establishment of this committee followed the release of the Moss Review into conditions and circumstances at the Regional Processing Centre in Nauru (Moss Review), and focussed on claims of sexual and physical abuse of asylum seekers, and the conduct of staff engaged to work in the Regional Processing Centre (RPC). The committee also notes the work of the Australian Human Rights Commission, whose report on children in detention pre-dates the Moss Review, and highlighted the conditions in the RPC on Nauru.

4.2 This chapter will set out information and evidence received relating to:

- the Australian Human Rights Commission (AHRC) report, *The Forgotten Children*;
- the Moss Review, with particular regard to its establishment, conduct and responses to it; and
- evidence received during the committee's work, including:
 - safety and security of women in the RPC on Nauru, with particular regard to sexual harassment, sexual exploitation and threat of sexual violence;
 - the safety and security of children, with particular regard to allegations of abuse and neglect, and the impact of the unnatural environment of the RPC on children; and
 - general safety concerns over conditions in the RPC.

The Forgotten Children report

4.3 On 3 February 2014, the President of the Australian Human Rights Commission (AHRC) launched an inquiry into children in enclosed immigration detention. Over several months the inquiry received 239 submissions, conducted five public hearings and 13 visits to 11 immigration detention centres, and conducted interviews with 1,233 current and former detainees.¹

4.4 The AHRC's report, *The Forgotten Children*, was provided to the government in November 2014, and tabled in the Senate on 11 February 2015.²

4.5 The AHRC made a number of findings and recommendations in relation to children in detention generally. Its overall conclusion was that '[t]he mandatory and prolonged immigration detention of children is in clear violation of international

¹ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, 2014, p. 42.

² *Journals of the Senate* No. 77, 11 February 2015, p. 2148.

human rights law', particularly the Convention on the Rights of the Child (CRC), because of the 'profound negative impacts on the mental and emotional health of children which result from prolonged detention'.³ The AHRC found that:

Despite the best efforts of the Department of Immigration and Border Protection and its contractors to provide services and support to children in detention, it is the fact of detention itself that is causing harm. In particular the deprivation of liberty and the exposure to high numbers of mentally unwell adults are causing emotional and developmental disorders amongst children.⁴

4.6 The AHRC went on to record a number of specific findings in relation to the situation of children in detention with regard to such matters as education, health, mothers and babies, unaccompanied children, trauma and abuse, and the continuing impacts of detention on children once released.

4.7 With specific reference to the detention of children on Nauru, the AHRC expressed concern that such detention was mandatory and was not time limited, observing that '[c]hildren on Nauru are suffering from extreme levels of physical, emotional, psychological and developmental distress'.⁵ The report canvassed a range of aspects of detention on Nauru, including physical conditions, education and health services including mental health, child protection and allegations of abuse.

4.8 The AHRC expressed particular concern about the regime governing the transfer of children to Nauru, including that Australia did not give paramountcy to the best interests of the child in decisions to transfer children, in contravention of Article 3(1) of the CRC.⁶

4.9 The AHRC found that 'the inevitable and foreseeable consequence of Australia's transfer of children to Nauru is that they would be detained in breach of article 37(b) of the Convention on the Rights of the Child'.⁷

4.10 The AHRC recommended that all children and their families in immigration detention be released into the Australian community within four weeks of the tabling of the report, and that the *Migration Act 1958* be amended to set strict limits on the detention of children.⁸

³ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, 2014, p. 29.

⁴ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, 2014, p. 30.

⁵ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, 2014, p. 195.

⁶ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, 2014, pp 192-193, 195.

⁷ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, 2014, p. 195.

⁸ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, 2014, Recommendations 1 and 2, p. 37.

4.11 The Commission also recommended that:

It is recommended that no child or parent be taken to a regional processing country where they will be detained unless that country can provide a rule of law based regime for their assessment as refugees and unless the conditions of detention meet international standards.⁹

4.12 Responding to the report upon its tabling, the Attorney-General said that the government was 'disappointed and surprised' that the review was not undertaken during the tenure of the previous Labor government, and stated the government's view that following 'significant progress and improvement in policies and practices since the inquiry was initiated...[a] substantial number of the recommendations from this Report simply reflect existing government policies and practice and therefore offer little in the way of new insights or initiatives'.¹⁰ The Attorney-General emphasised that the AHRC's concerns regarding the impact of prolonged detention on children were now being addressed by removing 'all eligible children' from detention.¹¹ The government did not accept the AHRC's findings that the Commonwealth's detention of children placed it in breach of the CRC, describing this analysis as a 'longstanding point of difference between the Government and the Commission'.¹²

4.13 With regard to the AHRC's observations about the detention of children in Nauru, the Attorney-General stated that:

To the extent that the Commission has sought to extend its inquiry to an evaluation of the regional processing arrangements occurring in the Republic of Nauru, it remains the position of the Government that these arrangements are beyond the jurisdiction of the Australian Human Rights Commission; a position that has been made clear to the Commission for the duration of the Inquiry. The Commission has not been invited by the Government of the Republic of Nauru to undertake any form of visit or inspection of its regional processing arrangements.¹³

⁹ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, 2014, Recommendation 4, p. 38.

¹⁰ Senator the Hon George Brandis QC, Attorney-General, *Tabling of the Australian Human Rights Commission Report, The Forgotten Children – National Inquiry into Children in Immigration Detention 2014*, statement, 11 February 2015, p. 1.

¹¹ Senator the Hon George Brandis QC, Attorney-General, *Tabling of the Australian Human Rights Commission Report, The Forgotten Children – National Inquiry into Children in Immigration Detention 2014*, statement, 11 February 2015, p. 2.

¹² Senator the Hon George Brandis QC, Attorney-General, *Tabling of the Australian Human Rights Commission Report, The Forgotten Children – National Inquiry into Children in Immigration Detention 2014*, statement, 11 February 2015, p. 2.

¹³ Senator the Hon George Brandis QC, Attorney-General, *Tabling of the Australian Human Rights Commission Report, The Forgotten Children – National Inquiry into Children in Immigration Detention 2014*, statement, 11 February 2015, p. 2.

4.14 The committee notes concerns that the visa fee for foreign journalists to visit Nauru increased from \$200 AUD to \$8,000 AUD, with the result that journalists have not been able to visit or inspect the Regional Processing Centre.

2014 allegations and the Moss Review

4.15 In the month of September 2014, a number of information reports had been submitted to the department by service providers alleging inappropriate sexual conduct at the RPC on Nauru. Between 26 and 30 September, the Australian media also carried a number of reports of alleged sexual assault, trading of sexual favours for marijuana, and acts of self-harm at the RPC. Between 26 September and 10 October 2014 the Minister for Immigration and Border Protection (the minister) further received correspondence from Senator Hanson-Young containing allegations of sexual assault and other misconduct at the RPC.¹⁴

4.16 On 30 September 2014 an intelligence report was provided to the department by a service provider in Nauru (Wilson Security), alleging the possible misconduct of contracted service provider staff including allegations of a breach in security and unauthorised disclosure of information, as well as concerns about the veracity of service provider reporting.¹⁵

4.17 The department advised that on 2 October 2014 the minister discussed these allegations in a meeting with the then Commander of the Joint Agency Task Force and the Acting Secretary of the department. The attendees agreed that an independent review into the allegations and the actions taken by staff of contracted service providers should be commissioned by the department.¹⁶

4.18 On the same date, the department issued a notice to Save the Children, pursuant to its services contract, to remove ten employees from the RPC, and referred material to the Australian Federal Police (AFP) in relation to an alleged unauthorised disclosure of information by a Save the Children staff member.¹⁷

4.19 The Moss Review into recent allegations relating to conditions and circumstances at the RPC in Nauru (the Moss Review) was announced by the then-Minister for Immigration on 3 October 2014.

4.20 The Moss Review covered the period between July 2013 and October 2014 and identified two main aspects for investigation:

- (a) claims of sexual and other physical assault of asylum seekers; and

¹⁴ Department of Immigration and Border Protection, *Submission 31*, p. 22.

¹⁵ Department of Immigration and Border Protection, *Submission 31*, p. 22.

¹⁶ Department of Immigration and Border Protection, *Submission 31*, p. 20.

¹⁷ Mr Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, 6 February 2015, p. 15.

(b) conduct and behaviour of staff members employed by contracted service providers.¹⁸

4.21 Mr Moss provided a progress report to the secretary of the department, Mr Michael Pezzullo, on 28 November 2014.¹⁹ The final Moss Review was provided to the secretary on 9 February 2015, and a redacted version of the report was published on the department's website on 20 March 2015.

4.22 The Moss Review made various determinations in relation to the allegations examined. Its key findings included the following.

4.23 The Moss Review became aware of two specific allegations of rape of adult female asylum seekers, one of which had been reported to Nauru police. The other, made by an asylum seeker against a contracted service provider staff member was made only to the Moss Review and the alleged victim requested that it not be referred to the authorities.

4.24 Other allegations of indecent assault, sexual harassment and physical assault were made to the Moss Review, some against contracted service provider staff members, and some of which had been reported to authorities. The Moss Review found that an allegation of women being asked to expose themselves to sexual exploitation in exchange for access to showers and other facilities was likely to have been based on one particular incident involving an adult female asylum seeker. The Moss Review found that there was insufficient evidence to confirm claims of sexual favours being sought from asylum seekers in exchange for contraband, but it was possible that these behaviours were occurring in relation to access to marijuana.

4.25 The Moss Review concluded that there was a level of under-reporting by asylum seekers of sexual and other physical assault, generally for family or cultural reasons but also due to concerns about the consequences of reporting complaints for their asylum claims, or due to a belief that nothing would be done about their complaints. Despite this lack of confidence, the Moss Review assessed that when formal reports were made, they were appropriately dealt with for the most part by contracted service providers. The Review concluded, nonetheless, that the arrangements for identifying, reporting, responding to, mitigating and preventing incidents of sexual and other physical assault at the RPC could be improved.

4.26 The Moss Review found that many asylum seekers were apprehensive about their personal safety and privacy, which was heightened by the living arrangements at the RPC. The Moss Review concluded that ensuring asylum seekers are, and feel, safe is important and should be a primary consideration in decisions about facilities, infrastructure, policing and staffing, as well as training and supervision of contractor staff, particularly Nauruan staff.

¹⁸ Mr Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, 6 February 2015, p. 3.

¹⁹ Department of Immigration and Border Protection, *Submission 31*, p. 21.

4.27 The Moss Review observed that the protection of minors in the RPC was of the highest importance and priority.

4.28 In relation to claims that some allegations of abuse had been fabricated or exaggerated by asylum seekers, the Moss Review found the asylum seekers it interviewed generally credible and their accounts convincing, but said it could not establish the veracity of their allegations, or discount the possibility of fabrication.

4.29 The Moss Review found no information indicating conclusively that contracted service provider staff members had facilitated protest activity, encouraged self-harm or fabricated or manipulated allegations of abuse, nor any information substantiating the specific allegations of misconduct against Save the Children staff members. The Moss Review drew no conclusion in relation to allegations of unauthorised disclosure of information, noting the AFP investigation underway into these matters. The Moss Review recommended that the department should review its decision to require the removal of the Save the Children employees from the RPC.

4.30 The Moss Review observed more broadly that the RPC would operate more effectively if there were greater partnership and integration between the Nauruan Operations Managers, the department, and its contracted service providers. The Moss Review recommendations included that the department should enhance its coordination role, improve training and supervision of all contracted service provider staff members, strengthen the role of and cooperation with the Nauruan police as distinct from the contract security presence, and build the capacity of the Nauruan workforce at the RPC as well as perceptions and understanding of the Nauruan staff and community.

4.31 The Moss Review made 19 specific recommendations in response to the above issues, including those noted above and also addressing *inter alia*:

- improving decision-making in terms of taking into account the personal safety and privacy of asylum seekers;
- review of relevant policies and guidelines including in relation to sexual harassment and relationships, reporting and responding to allegations of abuse;
- supporting the Government of Nauru to enhance its legal and policy framework, and the capability of relevant authorities, to investigate and respond to cases of sexual and other physical assault, and for child protection;
- enhancing operation and management of the RPC through a more joined-up approach and better working relationships between relevant Nauruan authorities and contracted service providers; and
- enhanced efforts by the department and contracted service providers to ensure that Nauruan staff members are treated with respect and that there is courteous regard for the Republic of Nauru.²⁰

²⁰ Mr Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, 6 February 2015, pp 3–11.

4.32 The recommendations of the Moss Review are attached to this report at Appendix 4.

4.33 The committee notes that it asked for an unexpurgated, unredacted copy of the Moss Review, but the department declined to provide it.²¹

Claims that the Department of Immigration and Border Protection was aware of abuse

4.34 The committee was presented with evidence from a number of submitters, particularly former service provider employees at the RPC that the government was aware of the abuse of children well before it publicly acknowledged the allegations, and launched the Moss Review, in September 2014.

4.35 Several submitters raised an incident which occurred in November 2013, in which an asylum seeker child was allegedly indecently assaulted by a cleaner engaged by Transfield Services at the RPC. Ms Kirsty Diallo, at that time engaged as a child protection worker by Save the Children Australia at the RPC, submitted that her manager confirmed to her in December 2013 that the incident had been reported to then Minister for Immigration and Border Protection, the Hon Scott Morrison.²² She described the government's failure to protect the child or take action to mitigate potential threats to children at the Centre, along with the minister's continued approval of the transfer of children to the RPC, as 'gross negligence', expressing her belief that '[i]t seems in Nauru...that the Australian Government has been complicit through inaction in the institutional abuse of children'.²³

4.36 In relation to the allegations relating to the trading of contraband for sexual favours, Transfield Services confirmed that those allegations had become known to the company in January 2014, and would have been reported to the department, as well as the Nauruan police, at that time.²⁴

4.37 Dr Peter Young, former IHMS director of mental health services, told the committee that the department was informed of instances of sexual abuse of children by a contractor in Nauru in early February 2014.²⁵ One Save the Children Australia child protection worker cited a case study involving serious concerns about the sexual abuse of an adolescent female, which was made known to the department from March 2014: while the matter was investigated, the Save the Children Australia expert believed that insufficient action was taken to protect the asylum seeker for many months.²⁶ A Save the Children Australia case manager submitted that allegations of

²¹ Department of Immigration and Border Protection, answer to question on notice, 18 May 2015 (received 5 June).

²² Ms Kirsty Diallo, *Submission 64*, p. 3; *Committee Hansard*, 9 June 2015, p. 29.

²³ Ms Kirsty Diallo, *Submission 64*, p. 3.

²⁴ Ms Angela Williams, Commercial, Strategy and Systems Director, Transfield Services, *Committee Hansard*, 20 July 2015, p. 10.

²⁵ Dr Peter Young, *Committee Hansard*, 9 June 2015, p. 4.

²⁶ *Submission 81*, 'Case Study Two – F', pp 6-10.

sexual harassment of minors by staff at the RPC had been reported in April 2014, and would have been known to the department within hours of the reports being made.²⁷

4.38 A number of other submitters referenced the 'Open Letter to the Australian people', publicly released on 7 April 2015 by a group of 24 current and former RPC employees.²⁸ The authors state that the government and the department had been aware of the sexual and physical assault of women and children for at least 17 months, 'long before the Moss Review was ever commissioned'.²⁹

4.39 At the committee's public hearing on 9 June 2015, Mr Pezzullo confirmed that 'going back to September of 2012, we have incident reports that are germane' to the matter of alleged abuse at the RPC.³⁰ Queried as to why a formal review was not commissioned by the department until October 2014, Mr Pezzullo stated:

I will have to give you somewhat of a second-hand account because I was not the secretary until 13 October [2014] but I have certainly seen the chronology and the matters that were in the mind of the then secretary. For a period of time after he vacated the office, there was an acting secretary between Mr Bowles and myself of roughly a month or so—I would have to check the detail. There was a concerted period from mid-September to mid-October whereby written allegations were coming in, some directly to the minister, some directly to [the] department, some to a combination of both. The then minister, Mr Morrison, and the then acting secretary, Mr Cormack, thought it prudent to ask me as the incoming secretary: how do you think it should be handled? You are going to be the secretary.

It was certainly the acting secretary's call. He was the person in office, but I must say with my very strong support and endorsement, to commission someone with Mr Moss's background, reputation and series of accomplishments to look into these allegations that had come forward in that concerted period. I do not have the date in my mind. It was from early to mid-September 2014 to early October 2014. You asked the question why was that not done before? The answer is: I do not know. I can ask some questions and speak to people but I just do not know. Perhaps the concentrated nature of the allegations or perhaps the fact that they all came in a short period of time might have focused people's minds; I just do not know.³¹

²⁷ *Submission 84*, p. 5.

²⁸ *An Open letter to the Australian People*, 7 April 2015, <https://www.aasw.asn.au/document/item/7290> (accessed 1 July 2015).

²⁹ *An Open letter to the Australian People*, 7 April 2015, p. 1, <https://www.aasw.asn.au/document/item/7290> (accessed 1 July 2015).

³⁰ Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 59.

³¹ Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 67.

Responses to the Moss Review

4.40 On 21 March 2015, the day after the public release of the Moss Review, the Prime Minister the Hon Tony Abbott MP told the media that:

...we welcome the Moss Review. We've accepted all of the recommendations and we make the point that there is absolutely no place in any institution with which the Australian Government has any association whatsoever for the kind of activities that were found. That's why we've accepted all of the recommendations.³²

4.41 The Minister for Immigration and Border Protection and the secretary of the department told the media that the government was working with its contracted service providers and with the Government of Nauru to examine and implement the recommendations of the Moss Review.³³

4.42 In its submission to this inquiry the department confirmed that, after consulting with the Government of Nauru, the government had accepted all 19 of the Moss Review's recommendations, and had developed a 'comprehensive action plan' for their implementation. The central themes of the action plan included:

- efforts to strengthen the delivery of services to asylum seekers, including through the revision of relevant guidelines, procedures and policies;
- enhanced communication between stakeholders, including greater transparency about the role of the service provider and enhanced training and development of Nauruan staff, and working with the Nauru police force to address the issue of under-reporting of incidents;
- more robust frameworks to underpin operations at the RPC, including for child protection, by adding child protection provisions into relevant Nauru legislation, developing a child protection framework to accompany existing policies, and the provision of specialised child protection training to all staff and service providers who interact with children; and
- strengthening training opportunities and staff capability, including development of more specialised training on Nauruan culture, and expanding training opportunities offered to Nauruan staff.³⁴

4.43 In their respective submissions to the committee Transfield Services, Wilson Security and Save the Children Australia all stated their support for the findings and

³² The Prime Minister the Hon Tony Abbott MP, 'Joint Press Conference, Hamilton Island', 21 March 2015, <https://www.pm.gov.au/media/2015-03-21/joint-press-conference-hamilton-island> (accessed 1 July 2015).

³³ The Hon Peter Dutton MP, Minister for Immigration and Border Protection, 'Moss Review: Press Conference with Michael Pezzullo - Secretary of Department of Immigration and Border Protection', 20 March 2015, <http://www.minister.immi.gov.au/peterdutton/2015/Pages/moss-review.aspx> (accessed 30 June 2015).

³⁴ Department of Immigration and Border Protection, *Submission 31*, pp 24–26.

recommendations of the Moss Review, and their commitment to contribute to their implementation as appropriate.³⁵

The removal of and allegations against Save the Children staff

4.44 In its submission, Save the Children stated that it was 'pleased, but not surprised' that the Moss Review found no evidence that Save the Children staff on Nauru encouraged self-harm, fabricated abuse allegations or orchestrated protests.³⁶

4.45 At the committee's public hearing on 19 May 2015, Save the Children Australia Chief Executive Officer Mr Paul Ronalds outlined the events surrounding the removal of the Save the Children Australia staff from Nauru on 2 October 2015. He stated that no reasons were provided by the department for the order to remove the staff, and that Save the Children Australia's offer to temporarily stand the staff down, conduct an internal investigation and consult further with the department, in line with previous practice, had been flatly refused. Mr Ronalds also said that the department repeatedly refused to provide Save the Children Australia with any documentation of the allegations against the staff.³⁷

4.46 Mr Ronalds further advised that at no time were the staff members in question approached or questioned about the alleged misconduct prior to the order to dismiss them:

There was absolutely no degree of procedural fairness involved in this at all. The allegations were not put to our staff; staff did not have a chance to answer any of the allegations or anything like that.³⁸

4.47 One of the removed Save the Children staff, former senior caseworker Ms Natasha Blucher, described the personal impact of these allegations:

At that time I was distraught at the allegation, because you can imagine that I and my colleagues were terrified and we were desperately attempting to convince people not to harm themselves. I attempted to convince seven men who had stitched their lips to unstitch their lips and write a letter to the Refugee Council in lieu of that and had explained to them that stitching their lips was not in their interest, that the department would not listen to them if they did that and that there were more appropriate ways to do that. I was signing incident reports desperately supporting caseworkers to try to give them strategies to talk their clients down from self-harm or from suicidal ideation, and I was going to bed at night terrified that I would wake up in the morning and find that more clients had harmed themselves. And then to be told that I was accused of having tried to facilitate that was beyond comprehension.³⁹

³⁵ Transfield Services, *Submission 29*, p. 2; Wilson Security, *Submission 21*, p. 3; Save the Children Australia, *Submission 30*, p. 3.

³⁶ Save the Children Australia, *Submission 30*, p. 3.

³⁷ Mr Paul Ronalds, *Committee Hansard*, 19 May 2015, pp 48-49.

³⁸ Mr Paul Ronalds, *Committee Hansard*, 19 May 2015, p. 50.

³⁹ Ms Natasha Blucher, *Committee Hansard*, 20 July 2015, p. 59.

4.48 Mr Ronalds offered this assessment of the circumstances surrounding the allegations:

The Moss report is very clear. I have read it through and on a number of occasions in detail. Neither Wilson Security nor Mr Moss found that this so-called intelligence report constituted evidence. On that basis there is no evidence of wrongdoing by Save the Children staff. Having said that, clearly there was a view, and it is documented again in the Moss report, by the department and some departmental officials that Save the Children was acting beyond a purely professional capacity in this way. I refute that. I have only seen the most professional behaviour by our staff in relation to their activities. If I am asked as to why that is the case, I think Mr Moss's recommendation goes to one of those. There is a misunderstanding about what it means to provide professional welfare services in a context like Nauru. Absolutely I expect our staff to be advocating on behalf of individual asylum seekers for improvements in the way they are being engaged with that would ameliorate the harm. That is absolutely what I expect and I think that is what the department would expect.⁴⁰

4.49 The department's submission described the Moss Review as having made 'no conclusive findings' in relation to the allegations against Save the Children Australia staff. While advising that the government accepted all of the recommendations of the Moss Review, the department did not provide any information on how it would implement Mr Moss' recommendation that the department review its decision to order the removal of the staff, including providing them with the information the department relied upon and offering them an opportunity to respond. The submission stated that the department would await the outcome of Australian Federal Police investigations into alleged unauthorised disclosures by Save the Children Australia personnel before 'considering further action'.⁴¹

4.50 In a supplementary submission to the committee on 13 July 2015, Ms Blucher advised that following some months of communication with the department about the implementation of the Moss Review's recommendation, she was advised by the department in May 2015 that it had commissioned a review of its decision in regard to the removal of the SCA employees, which was being conducted by Mr Christopher Doogan, a former Registrar of the High Court. Following further correspondence, in June 2015 the department advised Ms Blucher's lawyers that Mr Doogan would not be making any adverse findings against the Save the Children Australia staff and therefore they would not be interviewed by him, nor would they be provided with the terms of reference for his review.⁴²

4.51 In a response to a question from the committee, the department stated on 17 July 2015 that Mr Doogan's report, *Review of Recommendation Nine from the*

⁴⁰ Mr Paul Ronalds, Chief Executive Officer, *Committee Hansard*, 19 May 2015, p. 52.

⁴¹ Department of Immigration and Border Protection, *Submission 31*, p. 24.

⁴² Ms Natasha Blucher, *Supplementary to Submission 83*, pp 3-4.

Moss Review, had been delivered to the department on 29 June 2015. The department said it was 'considering the findings and recommendations contained in the report'.⁴³

4.52 At the committee's public hearing on 20 July 2015, the secretary of the department advised that it was his intention to publicly release Mr Doogan's report, subject to any necessary redactions, once the department's consideration of its response was completed.⁴⁴ The secretary declined to confirm whether Mr Doogan's report contained any adverse findings against the Save the Children staff. When queried as to whether they were entitled to an apology, the secretary said '[t]hey are certainly entitled to any due process that arises as a result of my consideration of the Doogan report, and they will be afforded that due process'.⁴⁵

Post-Moss Review evidence received by the committee

4.53 The committee received a substantial amount of evidence which both referred to and provided information beyond the evidence considered by the Moss Review.

4.54 Specifically, this section will address the concerns raised by submitters and witnesses regarding the safety and security of women and children, and will discuss allegations made regarding sexual harassment, sexual exploitation and threat of sexual violence against women in the RPC, the safety and security of children, and general safety concerns.

4.55 Many of the submissions received referred to unsafe conditions, with fear for personal safety and the safety of others a significant issue for asylum seekers.⁴⁶ The committee heard evidence that safety fears were pervasive throughout the RPC, with women particularly afraid of sexual harassment and sexual violence.⁴⁷

4.56 The committee received a substantial amount of evidence in submissions and correspondence relating to safety and security concerns, which was accepted on a confidential basis.

4.57 While many submitters were still concerned about publicly reporting these concerns, the Darwin Asylum Seeker Support and Advocacy Network (DASSAN) told the committee that the release of the Moss Review resulted in reports of abuse being put forward which had not previously been heard:

Following the release of the Moss Review, DASSAN advocates have received a dramatic spike in reports of sexual and physical abuse at Nauru.

⁴³ Department of Immigration and Border Protection, answer to question on notice, 2 July 2015 (received 17 July 2015).

⁴⁴ Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 20 July 2015, p. 90.

⁴⁵ Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 20 July 2015, p. 91.

⁴⁶ Australian Lawyers Alliance, *Submission 14*, p. 5; Refugee Council of Australia, *Submission 16*, p. 4; Human Rights Law Centre, *Submission 58*, p. 9; DASSAN, *Submission 61*.

⁴⁷ Professor David Isaacs, *Submission 11*, p. 1; Ms Viktoria Vibhakar, *Submission 63*;

Asylum seekers have stated that they finally feel their stories will be believed by the Department, and that they may now be kept safe from further harm.⁴⁸

Sexual harassment, sexual exploitation and threat of sexual violence

4.58 The committee received very concerning evidence relating to sexual harassment of young girls and women in the RPC.⁴⁹

4.59 Professor David Isaacs told the committee that living conditions for women and children 'are unsafe and put vulnerable women and children at considerable risk of assault'.⁵⁰ He further stated that there was a high level of risk in the design and provision of accommodation: 'The living conditions on Nauru put children at high risk of suffering physical or sexual abuse'.⁵¹ Reasons for the lack of safety for women and children are discussed below, but tended to include: lack of privacy, crowded accommodation, and the inability for vulnerable women and children to be removed from dangerous situations.

4.60 Ms Caz Coleman, the former Transitional Contract Manager for The Salvation Army at the RPC, told the committee that sexual harassment was a concern from the beginning of the centre's operation:

Despite having an adult male cohort, the issue of sexual harassment or assault was an obvious reality to be aware of in the early days of operation. It is not uncommon in such environments for sexual exploitation, harassment or assault to occur regardless of the cohort of clients.⁵²

4.61 Ms Coleman continued that:

...the issue of domestic and family violence, sexual exploitation, harassment and assault and child protection matters were obvious from the outset of the centre establishment in Nauru.⁵³

4.62 Former Save the Children employees told the committee that female asylum seekers regularly informed them of sexual harassment, with a number of examples provided to the committee of threats of sexual violence, ongoing sexual harassment and fear of abuse within the RPC.⁵⁴

4.63 Ms Viktoria Vibhakar, a former Save the Children Australia employee, outlined an instance where a female asylum seeker made allegations of sexual

⁴⁸ DASSAN, *Submission 61*, p. 7.

⁴⁹ DASSAN, *Submission 61, Attachment 1*, p. 2; Ms Viktoria Vibhakar, *Submission 63*; Refugee Action Collective – Queensland, *Submission 79*, p. 8; Ms Natasha Blucher, *Submission 83*, p. 19; *Submission 84*, p. 5.

⁵⁰ Professor David Isaacs, *Submission 11*, p. 1

⁵¹ Professor David Isaacs, *Submission 11*, p. 1

⁵² Ms Caz Coleman, *Submission 56*, p. 15.

⁵³ Ms Caz Coleman, *Submission 56*, p. 16.

⁵⁴ Ms Viktoria Vibhakar, *Submission 63*.

harassment by a particular group of men and said she felt unsafe. The woman requested a move to a different location away from that group. Ms Vibhakar told the committee that the request was denied:

DIBP had to approve all accommodation changes and...they would not approve such a request unless there were a series of incident reports documenting harassment. It is of concern that a woman is required to experience multiple episodes of sexual harassment before she can be moved to a safer location.⁵⁵

4.64 At a public hearing, Ms Vibhakar gave a further example of an instance of sexual harassment and the inability to remove the alleged victim from the situation. Ms Vibhakar told the committee that claims of sexual harassment made by a 16 year old girl were investigated by the Nauruan Police Force, but the harassment by Commonwealth contracted employees did not cease.⁵⁶ Ms Vibhakar said that the inability for vulnerable women and children to be removed from unsafe situations had a significant impact on mental health as well as personal safety:

It is notable that, despite reporting, police involvement and child protection intervention, Diana was subject to multiple incidents of sexual harassment. There was no option to remove her from this unsafe environment.

...

The children who have been assaulted and mentally harmed from detention in Nauru remain with no remedy or relief.⁵⁷

4.65 The inability for vulnerable women and children to be removed from unsafe situations is clearly at odds with best practice that would apply in an Australian domestic context. Similarly, Ms Kirsty Diallo told the committee that the process for dealing with sexual assault reports was inadequate, and different to the process conducted in Australia:

The process in Australia is that, when someone reports a sexual assault, they would initially be taken to a hospital, usually, and there would be a forensic examination offered. When they arrive at the hospital they would meet with a qualified social worker or psychologist who would provide assistance, support and crisis counselling in relation to the event of the assault. Then a specialist unit that investigates sexual assault would be called in if they wanted to follow through with a forensic examination. That is just not available in Nauru. Following that, most victims would be offered ongoing sexual assault counselling. Again, that is not available in Nauru.⁵⁸

⁵⁵ Ms Viktoria Vibhakar, *Submission 63*, p. 18.

⁵⁶ Ms Viktoria Vibhakar, *Committee Hansard*, 9 June 2015, p. 27.

⁵⁷ Ms Viktoria Vibhakar, *Committee Hansard*, 9 June 2015, pp 27-28. Note that the name used in this extract is pseudonymous.

⁵⁸ Ms Kirsty Diallo, *Committee Hansard*, 9 June 2015, p. 32. Ms Kirsty Diallo also drew the attention of the committee to the differences between the Australian and Nauruan legislative responses to child abuse. Ms Kirsty Diallo, *Submission 64*, p. 2.

4.66 Ms Vibhakar told the committee that the inability for parents to protect children from harm in the RPC was having a significant detrimental impact on parental and child mental health. Ms Vibhakar said that there was no option to avoid the alleged perpetrators of abuse within the RPC:

...in the detention facilities asylum seekers have no ability to avoid such individuals and therefore the ability to adequately protect themselves or their family members from abuse. This has contributed to the severe mental distress that parents experience as a result of their inability to remove their children from people who they believe to be unsafe.⁵⁹

4.67 The committee received evidence raising concerns about the capacity of the Nauruan legal system to provide protections against domestic or sexual violence, and effective investigation and prosecution of offences. This issue is discussed further below.

4.68 Evidence provided to the committee indicates that incidents relating to sexual assault have not been referred to Comcare.⁶⁰

Bartering of sexual favours

4.69 The committee received evidence concerning the alleged bartering of goods and or services in exchange for sexual favours.⁶¹ As noted above, the Moss Review investigated claims of sexual exploitation in exchange for access to showers and other amenities, and in exchange for cigarettes and marijuana. The Moss Review reported that although numerous references to this practice were made, the review was unable to obtain any 'specific or first-hand information or find any incident or information reports' or complaints to substantiate the allegations.⁶²

4.70 Wilson Security advised that a joint operation had been conducted into allegations that goods and services were being bartered for sexual favours, which resulted in one suspect being identified:

We participated in a joint operation with the Nauruan Police Force to investigate allegations of this nature in June 2014.

⁵⁹ Ms Viktoria Vibhakar, *Submission 63*, p. 33.

⁶⁰ Australian Lawyers' Alliance, *Supplementary to Submission 14*, p. 5; Comcare, answer to question on notice, 25 August 2015 (received 26 August 2015).

⁶¹ Professor David Isaacs, *Submission 11*, p. 1; DASSAN, *Submission 61*; *Submission 62*, p. 3; Ms Viktoria Vibhakar, *Submission 63*, p. 18; Ms Alanna Maycock, *Submission 66*, p. 2; Ms Charlotte Wilson, *Submission 79*, p. 7.

⁶² Mr Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, 6 February 2015, p. 25. The Australian Lawyers Alliance argued that the inability of the Moss Review to obtain evidence should not be taken 'as a lack of evidence, but should be viewed through the prism of the fact that individuals may be afraid to provide further details'. Australian Lawyers Alliance, *Submission 14*, p. 8.

Regrettably, as result of the investigation, one local staff member was identified as a suspect. The staff member was terminated on other performance grounds, prior to the investigation being concluded.

Apart from that incident, we are not aware of any other allegations of this nature.⁶³

4.71 Transfield Services advised that they were alerted to an allegation of sexual exploitation in exchange for services in June 2014, but were only aware of the incident reported in the Moss Review through the media:

Transfield Services became aware of allegations that contraband might be being exchanged for sexual favours in or about June 2014. Investigations were undertaken at that time by the Nauruan Police force in consultation with the AFP in respect of these matters.

The incident reported in the Moss Review relating to alleged sexual favours being sought from an asylum seeker in exchange for the provision of an extended period in the shower only became known to Transfield Services on or about the time that the media reports leading to the Moss Review were published.⁶⁴

4.72 The department declined to provide the committee with incident reports relating to allegations of the trade of sexual favours on the grounds that 'the amount of redaction required to protect privacy would be an unreasonable diversion of resources'.⁶⁵ Further, the department declined to provide Ministerial Submissions or Minutes to the Secretary relating to sexual abuse, rape, assault (sexual or otherwise), harassment, prostitution or solicitation of asylum seekers and the sexualised behaviour of minors, within the RPC, including:

- the presence or use of illicit drugs in the Nauru RPC;
- the trading of cigarettes, marijuana or any other commodity for sexual favours; and
- inappropriate, offensive or illegal conduct, attitudes or opinions expressed by employees or contractors working at the Nauru RPC.

4.73 The department's response to this question, as noted with regard to the question on the provision of clothing and footwear in Chapter 2, was that '[t]he Department may not divulge advice provided to Ministers as part of Government deliberations'.⁶⁶

4.74 The committee notes that the department's answers to important questions about the safety of women and children within the environment of the RPC were

⁶³ Wilson Security, response to *Submission 79*, p. 5.

⁶⁴ Transfield Services, answer to question on notice, 19 May 2015 (received 16 June 2015).

⁶⁵ Department of Immigration and Border Protection, answer to question on notice, 18 May 2015 (received 9 June 2015).

⁶⁶ Department of Immigration and Border Protection, answer to question on notice, 18 May 2015 (received 9 June 2015).

inadequate. The committee considers these matters to be of vital importance in its inquiry into conditions and circumstances in the RPC on Nauru, and sets out its conclusions in this regard in Chapter 5.⁶⁷

Protection of children

4.75 The committee received disturbing evidence relating to conditions for children within the Regional Processing Centre. Evidence provided to the committee included claims of the RPC being unsafe for children, with troubling allegations of abuse (sexual or otherwise) and neglect, references to the RPC being an unnatural environment for families and the existence of complex and severe mental health issues.⁶⁸ The committee also heard that there is no legislative framework for the protection of children on Nauru. Much of the evidence received by the committee relating to the sexual or physical abuse of children was received on a confidential basis.

4.76 The Castan Centre for Human Rights Law noted that the Convention on the Rights of the Child (CRC) 'requires the Commonwealth to offer certain protections to children, who are defined by Article 1 of the Convention as 'human beings below the age of 18''.⁶⁹ Article 2 of the CRC sets out:

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.⁷⁰

4.77 The Castan Centre for Human Rights Law has suggested that obligations under the CRC have been violated by the detention and subsequent treatment of children within the RPC.⁷¹ They further highlighted Articles 34 and 19 of the CRC, which sets out:

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in

⁶⁷ This is discussed at paragraph 5.11.

⁶⁸ ChilOut, *Submission 13*; Immigration Advice and Rights Centre, *Submission 17*; Australian Human Rights Commission, *Submission 25*, p. 3; Australian Churches Refugee Taskforce, *Submission 32, Attachment 1*; DASSAN, *Submission 61*, p. 6.

⁶⁹ Castan Centre for Human Rights Law, *Submission 18*, p. 7.

⁷⁰ *Convention on the Rights of the Child*, Article 2.

⁷¹ Castan Centre for Human Rights Law, *Submission 18*, p. 7.

particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;⁷²

...

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.⁷³

4.78 DASSAN summarised the views put by submitters that the RPC was an unsafe place for children:

Many children talked to us about their fear of Nauru, of the guards, of the conditions, and of the fighting there. Parents talked with despair about the conditions they were trying to care for their children in, with nowhere to play, constant exposure to violence and anger, no privacy, and inadequate health care.⁷⁴

4.79 In addition to the immediate impact of conditions in the RPC on children, Human Rights Watch told the committee that there was a significant long-term impact of being held in detention:

The detention of children has serious long-term impacts, including developmental delays, anxiety, depression, post-traumatic stress disorder, memory loss, and other mental health consequences. Conditions in the Nauru detention center and the mandatory, indefinite nature of detention in the center compound these mental health consequences.⁷⁵

Child welfare support services, and the child safeguarding protocol

4.80 Save the Children Australia provide child welfare support services in the RPC. Save the Children Australia advised that:

To fulfil our contractual obligations and work towards our organisational goals to ensure the best possible care for asylum seekers, Save the Children employs well-respected professionals and experts, including:

- Specialised technical advisers in education, child protection, emergencies, health and wellbeing

⁷² *Convention on the Rights of the Child*, Article 34.

⁷³ *Convention on the Rights of the Child*, Article 19.

⁷⁴ DASSAN, *Submission 61*, p. 6.

⁷⁵ Human Rights Watch, *Submission 72*, p. 3.

- Qualified Australian teachers, social and recreation workers, and
- Project leaders with experience in management and administration across the government, business and legal sectors.⁷⁶

4.81 The department advised that a child safeguarding protocol was developed by Save the Children Australia, for use within the RPC on Nauru, with an accompanying code of conduct which 'provides service provider personnel with clear guidelines on working safely and positively with children and young people, and helps to avoid misunderstandings'. The department advised that it is mandatory to sign the code of conduct upon engagement at the RPC.⁷⁷

4.82 The child safeguarding protocol sets out that it, along with the code of conduct, has been:

...designed to ensure that a child safe environment is maintained at all times at the RPC. Maintaining a child safe environment reduces the risk of harm to children and young people at the RPC and protects service provider personnel whose positions involve contact with children.⁷⁸

4.83 The protocol states that it 'should be followed by all service providers. The Code and the Child Safety Incident Reporting Process must each be signed by all service provider personnel'.⁷⁹ It also sets out what types of observed or suspected behaviour should be reported, how to report incidents, general principles, the application of laws and an implementation strategy.⁸⁰

4.84 Transfield Services noted that the child safeguarding protocol was provided to them in December 2013 and has been incorporated into their induction program for new employees.⁸¹

4.85 However, Mr Tobias Gunn, a former Save the Children Australia employee, submitted that a code of conduct was inadequate, particularly if staff interacting with children have no prior employment or training to do so.⁸² Another submitter told the committee that although the code of conduct was mandatory:

...anecdotal evidence from conversations with staff across service providers would suggest that this practice is not adhered to as many staff advised that they had not signed such a document.⁸³

⁷⁶ Save the Children Australia, *Submission 30*, p. 20.

⁷⁷ Department of Immigration and Border Protection, *Submission 31*, p. 16.

⁷⁸ Department of Immigration and Border Protection, *Submission 31*, p. 71.

⁷⁹ Department of Immigration and Border Protection, *Submission 31*, p. 71.

⁸⁰ Department of Immigration and Border Protection, *Submission 31*, pp 71-75.

⁸¹ Transfield Services, answer to question on notice, 19 May 2015 (received 2 June 2015).

⁸² Mr Tobias Gunn, *Submission 68*, p. 4.

⁸³ *Submission 84*, p. 4.

No legislative framework for the protection of children

4.86 As noted in Chapter 2, the department has advised that a child protection framework in Nauru is under development. The department told the committee that they are working with the Nauruan Government to develop the framework, and insert child protection elements into relevant Nauruan legislation.⁸⁴

4.87 Submitters, including legal and human rights bodies highlighted the lack of existing child protection legislation in Nauru.⁸⁵ For example, the Human Rights Law Centre submitted that Nauru does not have capacity to provide protection:

Nauru does not have an existing child protection framework or functioning social services and is unable to respond to the complex protection and support needs of unaccompanied children and asylum seeker children and their families.⁸⁶

4.88 Ms Vibhakar echoed concerns that there is no existing capacity within Nauruan law to deal appropriately with allegations or incidents of child abuse:

Consequently, even when abuse against a child is substantiated, not only is there no statutory authority to intervene or to remove children from abusive situations, but there are not adequate laws or a functioning criminal justice system to bring the perpetrator to justice.⁸⁷

4.89 Mr Peter Law, former resident magistrate on Nauru, told the committee that there was an:

...apparent failure of the NPF [Nauruan Police Force] to properly investigate and charge perpetrators of incidents reported at the Processing Centre concerning allegations of physical and sexual assaults against women and children identified in the Moss Report.⁸⁸

4.90 Ms Diallo said that because there was no legislative framework concerning child protection, women and children were subjected to ongoing risk of assault and harassment:

As there is no child protection authority or legislation in Nauru, it is impossible to screen staff that work with these vulnerable children. Therefore there is no legislative or systemic strategies in place to reduce the access that sexual predators have to children in such an environment. As a result children and vulnerable women have been repeatedly exposed to

⁸⁴ Department of Immigration and Border Protection, *Submission 31*, p. 26; Department of Immigration and Border Protection, answer to question on notice of 18 May 2015 (received 9 June 2015).

⁸⁵ Asylum Seeker Resource Centre, *Submission 27*, p. 6; Human Rights Law Centre, *Submission 58*, p. 3; The Australian Council for International Development (ACFID) and the Australian Council of Social Service (ACOSS), *Submission 59*, p. 9; Dr Peter Young, *Submission 65*, p. 2; *Submission 81*, p. 10.

⁸⁶ Human Rights Law Centre, *Submission 58*, p. 3.

⁸⁷ Ms Viktoria Vibhakar, *Submission 63*, p. 5.

⁸⁸ Mr Peter Law, *Submission 28*, p. 3.

sexual and physical violence and harassment in the RPC, as well as in the local community.⁸⁹

Abuse (sexual or otherwise), neglect and mental health issues

4.91 Submissions were received by the committee on a confidential basis which referred to specific allegations of historic and ongoing abuse of minors within the RPC. In addition, former employees of Save the Children Australia told the committee of numerous instances of abuse that they had witnessed or suspected. Ms Viktoria Vibhakar told the committee that the RPC had inadequate procedures in place for responding to abuse:

While I was employed at the Nauru detention facility, children and their families experienced physical and sexual assault, as well as extensive mental harm, as a result of their detainment. This harm could have been prevented.⁹⁰

4.92 The department advised that reporting of suspected or observed abuse of children is required, as set out in the RPC guidelines and the child safeguarding protocol. They advised that, for IHMS, reports are made to Save the Children Australia:

Where an IHMS staff member on Nauru becomes aware or reasonably suspects that a child has suffered, or is likely to suffer harm, they report such instances to Save the Children (as per their contractual obligations), and to the Nauruan Police Force and relevant Nauruan government departments.⁹¹

4.93 Further, the department advised that Save the Children Australia responds to incidents affecting the safety of a minor:

...any incident concerning the safety or welfare of a child or young person is referred to the Save the Children Child Safeguarding and Protection Manager (CSPM).

The CSPM will make an assessment of the incident including:

- Developing a case plan for management of the incident
- Reporting to the department
- Arranging for appropriate support and referral for the child/young person involved and their family/carer

Remedial action is followed up through supportive monitoring and engagement, individual management plans, joint stakeholder governance forums such as vulnerable person and complex behavioural management

⁸⁹ Ms Kirsty Diallo, *Submission 64*, p. 4.

⁹⁰ Ms Viktoria Vibhakar, *Committee Hansard*, 9 June 2015, p. 27.

⁹¹ Department of Immigration and Border Protection, answer to question on notice, 18 May 2015 (received 5 June 2015).

meetings and other actions as appropriate depending on the nature of the incident.⁹²

4.94 The committee put concerns to the department that children in abusive family environments within the RPC did not appear to be able to access the same protection mechanisms available to children in Australia. The department advised that Save the Children Australia work to, firstly, prevent child abuse:

Preventative measures include behavioural management strategies, education through training, programmes and activities, programmes for parents, case management services and communicating socially acceptable behaviours and expectations, including the centre rules.⁹³

4.95 In situations where a minor may be at risk of abuse, the department advised that the contracted service providers, along with the department and the Nauruan Government, discuss potential approaches at relevant forums. In an emergency:

- SCA may facilitate emergency temporary care for minors; and/or
- the abusive or other party may be removed to immediately deescalate the situation.

Any such instances must be immediately referred to the Government of Nauru (GoN) and Nauruan Police Force (NPF), where appropriate.⁹⁴

4.96 Submitters, including former employees of Save the Children Australia and other contracted service providers, told the committee of numerous instances of observed and suspected abuse of children.⁹⁵ Instances of sexualised behaviour of very young children were noted by former workers within the RPC.⁹⁶ Ms Vibhakar told the committee that, even when instances of abuse were reported and responded to by the contracted service providers, the minors were not removed from the situation.⁹⁷

4.97 Ms Vibhakar provided the committee with several examples of the failure of the department to appropriately respond to serious instances of sexual and physical abuse of minors. One example concerned a two year old boy who was physically assaulted by his mother within the RPC on multiple occasions. An incident report was filed, and the mother received case management services from Save the Children

⁹² Department of Immigration and Border Protection, answer to question on notice, 18 May 2015 (received 5 June 2015).

⁹³ Department of Immigration and Border Protection, answer to question on notice, 21 May 2015 (received 5 June 2015).

⁹⁴ Department of Immigration and Border Protection, answer to question on notice, 21 May 2015 (received 5 June 2015).

⁹⁵ Ms Viktoria Vibhakar, *Submission 63*; Ms Kirsty Diallo, *Submission 64*; *Submission 81*; Ms Samantha Betts, *Submission 85*.

⁹⁶ Ms Viktoria Vibhakar, *Submission 63*; Mr Tobias Gunn, *Submission 68*, p. 4; *Submission 80*, p. 4.

⁹⁷ Ms Viktoria Vibhakar, *Submission 63*, pp 12-13.

Australia. Ms Vibhakar told the committee that the mental health of the mother deteriorated significantly:

Despite intensive case management services, this mother's mental health was so poor that she later threatened to kill herself and her two children. The child protection and support worker assessed the risk posed to this child as serious however DIBP did not remove him from detention. Instead, they directed a Commonwealth contractor (SCA) to develop a "safety plan" for this child as he would be required to remain in the care of his mother.⁹⁸

4.98 A further example involved a minor who was indecently assaulted by a locally employed contractor within the RPC. Ms Diallo described the response to the incident:

I was the allocated Child Protection and Support Worker for this child, however I was not involved in the investigation. Those that conducted the interview were also neither trained nor qualified to conduct any type of sexual assault interview of [a] child or a parent.

...

I was advised that a security staff member needed to accompany me into the camp, and informed that there was no private space to talk with the child. As a result I had to speak to the boy under a tree in the open space of the camp. I had an interpreter and a security staff member also present. Such conditions would never be tolerated following a sexual assault in Australia.⁹⁹

4.99 Mr Tobias Gunn and Ms Charlotte Wilson, former employees of Save the Children Australia, noted a high level of self-harm incidents by minors.¹⁰⁰ Mr Gunn submitted:

I have worked with youth at risk where self-harm has been present, however, I have never seen it so prevalent and common, with young people in vicious cycles of mental health issues.¹⁰¹

4.100 Several submitters including Ms Diallo provided the committee with examples of neglectful and harsh treatment of children by departmental and contracted service provider staff. The examples Ms Diallo provided related to unnecessary deprivation of goods, restriction of access to excursions and treatment which, in her view, subjected young children to unnecessary trauma. Ms Diallo stated that she had provided these examples:

...to outline the day-to-day deprivation, cruelty and distress that children in the RPC were regularly subjected to as a result of the lack of appropriate

⁹⁸ Ms Viktoria Vibhakar, *Submission 63*, pp 15.

⁹⁹ Ms Kirsty Diallo, *Submission 64*, pp 2-3.

¹⁰⁰ Mr Tobias Gunn, *Submission 68*, p. 8; Ms Charlotte Wilson, *Submission 79*, p. 4. This was also noted in another submission, *Submission 80*, pp 3-4.

¹⁰¹ Mr Tobias Gunn, *Submission 68*, p. 8.

structure or facilities in the camp. They occurred with the full knowledge of the DIBP and seem to reflect an overall policy of punishment.¹⁰²

4.101 In relation to one of example of neglect, Ms Diallo noted that:

It was rare for children to have appropriate footwear in the RPC, and this was well known by all staff. Most children wore rubber thongs, which were often broken or had holes in the sole. On occasion I witnessed children with wire strapping the thongs to their feet. The Salvation Army were responsible to take any request for clothing and for providing these items. Clothing had to be shipped in, and there was always delays which meant that children were without appropriate footwear, clothing and underwear for months at a time. Salvation Army reported that they had regularly requested permission from DIBP to purchase items that had yet to arrive, from local shops, this was however refused by DIBP.¹⁰³

4.102 The committee also received evidence that children were suffering from extreme mental health issues, anxiety and stress, leading to behavioural problems such as anger, fear or generally being withdrawn.¹⁰⁴

4.103 The Australian Churches Refugee Taskforce provided the committee with letters from asylum seekers which detailed the difficult conditions experienced by families, the inability for parents to care for their children, and attempted suicides and self-harm by children.¹⁰⁵

Unnatural environment for children and families

4.104 Submitters argued that the RPC is an unnatural environment for children to be in owing to the closed nature of the facility, exposure to acts of violence, the low standard of living conditions and lack of resources. The inability of parents to properly care for their children in this environment was noted by submitters to be a further cause for concern, with one submitter writing that parents have no agency and in some cases have relinquished care of their children:

As the mental health of parents in the Centre has declined they have increasingly been unable to provide adequate care for their children for periods of time, resulting in increasing numbers of parents relinquishing care of their children while the parents address their mental health issues, this is particularly prevalent in the population of single parents in the Centre...As it stands there are no legal protections for staff or frameworks for providing supervision and care to these children, leaving both children and staff vulnerable.¹⁰⁶

¹⁰² Ms Kirsty Diallo, *Submission 64*, pp 5-6. See also Australian Association of Social Workers, *Submission 24*, p. 3; Asylum Seeker Resource Centre, *Submission 27*; Australian Churches Refugee Taskforce, *Submission 32*; Ms Viktoria Vibhakar, *Submission 63*.

¹⁰³ Ms Kirsty Diallo, *Submission 64*, p. 5.

¹⁰⁴ DASSAN, *Submission 61*, p. 6.

¹⁰⁵ Australian Churches Refugee Taskforce, *Submission 32, Attachment 1*.

¹⁰⁶ *Submission 84*, p. 4.

4.105 The committee was provided with letters written by asylum seekers formerly or currently in the RPC on Nauru which detailed the effect of extreme stress and mental health issues on parenting. One asylum seeker wrote that they had attempted suicide because they were not fully able to care for their two children in the RPC.¹⁰⁷

4.106 The damaging effects of extreme anxiety and difficult circumstances on parent-child relationships was noted by Mr Gunn who told the committee that:

Children in desperation to play with toys often broke into the recreation storage room. This also links into an important indirect impact of this. This meant that we as SCA staff members were the only ones who had toys, this resulted in children devoting their time to us as we could give them toys to play with. Throughout my time in the centre you could see the breakdown of family units as parents had very limited contact with [their] own children.

The parents in the camp had very little control or input into their children's lives...This created an unhealthy disconnect between children and parents.¹⁰⁸

4.107 A letter written by an asylum seeker highlighted the effect that the environment in the RPC has had on children's play:

Children here are used to play with gravel on the ground and they try to imitate officers, ambulance drivers or crews, doctors and illnesses and fights.¹⁰⁹

Access and distance to toilet facilities

4.108 During the course of the inquiry, the toilet facilities in the RPC were continually noted by submitters as being unsafe and unhygienic. The toilets were said to be the frequent scene of harassment and assault, as well as a source of concerns over hygiene. In particular, the distance between the accommodation and toilet facilities was raised by submitters as being unsafe.¹¹⁰ Professor David Isaacs told the committee that the safety and security of asylum seekers was impacted by the distance between accommodation and toilet facilities, which could be between 30 and 120 metres and would mean that '[t]o go to the toilet at night involves crossing dark, open land, often under the gaze of large male guards'.¹¹¹

4.109 Ms Natasha Blucher, a former Save the Children Australia employee, also expressed concern at the distance to the toilets, with particular regard to the elderly or those with poor mobility:

¹⁰⁷ Australian Churches Refugee Taskforce, *Submission 32, Attachment 1*, p. 5.

¹⁰⁸ Mr Tobias Gunn, *Submission 68*, p. 6.

¹⁰⁹ Australian Churches Refugee Taskforce, *Submission 32, Attachment 1*, p. 6.

¹¹⁰ Asylum Seeker Resource Centre, *Submission 27*, p. 4; *Submission 80*, p. 7.

¹¹¹ Professor David Isaacs, *Submission 11*, p. 1.

The tents located closest to the toilets are still approximately 10m away across uneven ground. The toilets are up a few stairs as the buildings are slightly raised, and the floor is generally wet and slippery;¹¹²

4.110 The Asylum Seeker Resource Centre told the committee that access to the toilets was a source of concern to asylum seekers:

Women and children are too scared at night to go to the bathroom as a group of Nauruan and Australian guards group outside the toilets. This forces the women and children to wet their bed, have to wear pads or squat outside their tent.¹¹³

4.111 The committee received evidence in several submissions that toilet facilities were often the scene of harassment and abuse.¹¹⁴ Inadequate lighting of the exterior of the toilet facilities was also noted.¹¹⁵ Transfield Services advised the committee that additional lighting was being installed in the toilet facilities.¹¹⁶

4.112 The committee heard from Ms Alanna Maycock and Professor David Isaacs that the stress associated with using the toilets in the RPC was having an effect on mental and physical health:

Many children had nocturnal enuresis (wetting their beds at night), partly stress-induced and partly due to fear of walking to and from the toilets. Some of the mothers also suffered from nocturnal enuresis rather than run the gauntlet of a night-time visit to the toilets.¹¹⁷

4.113 One submitter told the committee that there were strict rules regarding access to toilet facilities, and gave an example of an incident reported by a female asylum seeker who was with her three year old daughter:

...while in area 1 her daughter had needed to go to the toilet, as the distance from area 1 to area 9 was a significant distance, especially for a 3 year old child, the mother attempted to take her daughter to the toilets in area 1. She

¹¹² Ms Natasha Blucher, *Submission 81*, p. 11. Save the Children Australia highlighted the difficulty pregnant women had in walking the distance to the toilets. Save the Children Australia, *Submission 30*, p. 37

¹¹³ Asylum Seeker Resource Centre, *Submission 27*, p. 4. This was echoed in other submissions, see: *Submission 81*, p. 11;

¹¹⁴ Professor David Isaacs, *Submission 11*, p. 1; Immigration Advice and Rights Centre, *Submission 17*, p. 4; Asylum Seeker Resource Centre, *Submission 27*, p. 4, p. 8; Save the Children Australia, *Submission 30*, p. 37; DASSAN, *Submission 61*, p. 8; Ms Viktoria Vibhakar, *Submission 63*, p. 24; Ms Alanna Maycock and Professor David Isaacs, *Submission 66, Supplementary Submission*, p. 1;

¹¹⁵ Ms Viktoria Vibhakar, *Submission 63*, p. 31.

¹¹⁶ Transfield Services, answer to question on notice, 19 May 2015 (received 16 June 2015).

¹¹⁷ Ms Alanna Maycock and Professor David Isaacs, *Submission 66, Supplementary Submission*, p. 1.

advised that the security staff person had refused her access to the toilets, telling her to go to area 9...¹¹⁸

4.114 Wilson Security responded to this allegation, advising:

The events to which the allegations in the submission relate have been subject to a detailed investigation...

The investigation did not find any misconduct or inappropriate behaviour by the female Wilson Security employee involved.¹¹⁹

Mandatory reporting of abuse

4.115 The term mandatory reporting is used to set out the legislative requirement for certain persons to report suspected cases of child abuse and neglect to government authorities. Laws concerning mandatory reporting set out 'those conditions under which an individual is legally required to make a report to the relevant government agency in their jurisdiction'.¹²⁰

4.116 The department and contractors frequently emphasised to the committee that, while legislative mandatory reporting requirements were not in place under Australian or Nauruan law in relation to the RPC, mandatory reporting was required under the policies and contractual terms applicable to stakeholders at the RPC.

4.117 The head of contract between the department and Transfield Services, and the contract for services with Save the Children Australia, set out that the service provider must develop and implement processes for managing illegal behaviour. For example, the head of contract for Transfield Services sets out:

6.10 Illegal and anti-social behaviour

(a) The Service Provider must develop and implement processes, in cooperation with the Department, local authorities and other service providers, for managing instances where Transferees are engaged in behaviour that is illegal, has breached the rules applicable at the Site or is anti-social in nature.

For the purposes of this clause undesirable behaviours may include:

- i. bullying;
- ii. verbal abuse;
- iii. sexual or other forms of harassment;
- iv. assault;
- v. malicious destruction of property; and

¹¹⁸ *Submission 84*, p. 3.

¹¹⁹ Wilson Security, response to *Submission 84*, p. 2.

¹²⁰ Australian Institute of Family Studies, Mandatory reporting of child abuse and neglect, CFCA Resource Sheet— August 2014, <https://aifs.gov.au/cfca/publications/mandatory-reporting-child-abuse-and-neglect> (accessed 12 July 2015).

vi. possession of weapons or illegal drugs.¹²¹

4.118 Transfield Services 'must immediately inform the Department and other relevant service providers' of identified or suspected undesirable behaviour, and Save the Children Australia 'must as soon as practicable inform the Department and the Operational and Maintenance Service Provider'.¹²²

4.119 As noted in both contracts, the department must involve the relevant authorities: 'The Department will be responsible for involving the police or other authorities as required, except where reporting is mandatory under the law'. The contract also sets out that Transfield Services and Save the Children Australia must comply with 'all applicable laws, including those applicable to Nauru and those Australian laws that are applicable to the Services or the Site'.¹²³

4.120 The capacity of the Nauruan Police Force to conduct investigations concerning sexual and physical assault was discussed in Chapter 2.¹²⁴

Mandatory reporting in Australia

4.121 Australian domestic legislation concerning the mandatory reporting of suspected child abuse varies between states and territories, but there are standard elements, including the mandatory reporting of *all* suspected cases of child sexual abuse. Awareness, or a belief or suspicion on reasonable grounds, of abuse of children activates the reporting duty of mandated persons.¹²⁵

4.122 Persons who are mandated to report vary between the states and territories:

The groups of people mandated to notify cases of suspected child abuse and neglect range from persons in a limited number of occupations (e.g., Qld), to a more extensive list (Vic.), to a very extensive list (ACT, NSW, SA, Tas.), through to every adult (NT).¹²⁶

4.123 The Australian Institute of Family Studies notes the benefits of mandatory reporting:

¹²¹ Department of Immigration and Border Protection, answer to question on notice, 18 May 2015 (received 9 June 2015).

¹²² Department of Immigration and Border Protection, answer to question on notice, 18 May 2015 (received 9 June 2015).

¹²³ Department of Immigration and Border Protection, answer to question on notice, 18 May 2015 (received 9 June 2015).

¹²⁴ This was discussed at paragraph 2.31.

¹²⁵ Australian Institute of Family Studies, Mandatory reporting of child abuse and neglect, CFCA Resource Sheet— August 2014, <https://aifs.gov.au/cfca/publications/mandatory-reporting-child-abuse-and-neglect> (accessed 12 July 2015).

¹²⁶ Australian Institute of Family Studies, Mandatory reporting of child abuse and neglect, CFCA Resource Sheet— August 2014, <https://aifs.gov.au/cfca/publications/mandatory-reporting-child-abuse-and-neglect> (accessed 12 July 2015).

Mandatory reporting requirements reinforce the moral responsibility of community members to report suspected cases of child abuse and neglect. The laws help to create a culture which is more child-centred, and which will not tolerate serious abuse and neglect of vulnerable children.¹²⁷

4.124 The Australian Human Rights Commission submitted that Nauru does not currently have a mandatory reporting framework:

The Commission is deeply concerned that Australia has transferred children to Nauru where there is no child protection framework or mandatory reporting requirements for reporting allegations of child abuse.¹²⁸

4.125 Secretary of the Department of Immigration and Border Protection, Mr Michael Pezzullo, advised that while not all extraterritorial jurisdictions have mandatory reporting schemes, '[t]here is no contract that in a particular jurisdiction can ever void mandatory reporting'.¹²⁹ He further advised that:

Public servants, ...[and] contracted workers might well be covered by this, do have an avenue of disclosing matters that are of serious concern, either under public interest disclosure or indeed if there is a statutory scheme for mandatory reporting, in this case of child sexual assault, of course they are obliged under that scheme to provide such reports to the competent reporting authority—that is to say, the police, normally.¹³⁰

4.126 The department stated that it refers all crimes in relation to the RPC to the Nauru Police Force.¹³¹

Australian Border Force Act 2015

4.127 On 1 July 2015, the *Australian Border Force Act 2015* (the Act) came into effect to establish the statutory role of the Australian Border Force Commissioner, in order to enable the operation of the Australian Border Force.

4.128 Part 6 of the Act sets out provisions concerning secrecy and disclosure of protected information:

An entrusted person must not make a record of or disclose protected information unless the making of the record or disclosure is authorised by a provision of this Part, is in the course of the person's employment or

¹²⁷ Australian Institute of Family Studies, Mandatory reporting of child abuse and neglect, CFCA Resource Sheet— August 2014, <https://aifs.gov.au/cfca/publications/mandatory-reporting-child-abuse-and-neglect> (accessed 12 July 2015).

¹²⁸ Australian Human Rights Commission, *Submission 25*, p. 3.

¹²⁹ Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 59.

¹³⁰ Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 59.

¹³¹ Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 59.

service as an entrusted person or is required or authorised by law or by an order or direction of a court or tribunal.¹³²

4.129 The Act sets out that it is an offence if a person is, or has been, an entrusted person, and makes a record of, or discloses, protected information. The penalty for disclosure or making a record of protected information is 2 years' imprisonment.¹³³

4.130 Paragraph 42(2)(c) of the Act sets out an exception to this provision, where 'the making of the record or disclosure is required or authorised by or under a law of the Commonwealth, a State or a Territory'.¹³⁴

4.131 During its inquiry into the Australian Border Force Bill 2015, the Senate Standing Committee on Legal and Constitutional Affairs noted that:

The term 'a law of the Commonwealth' includes the *Public Interest Disclosure Act 2013* (Cth) that facilitates the 'disclosure and investigation of wrongdoing and maladministration in the Commonwealth public sector'.¹³⁵

4.132 The committee notes recent media articles on the operation of the secrecy and disclosure provisions on former and current employees of contracted service providers within the RPC on Nauru. The effect of these provisions is compounded by the difficulties journalists experience accessing the RPC on Nauru.

4.133 While concerns have been raised publicly on the impact of these provisions on reporting of child sexual abuse and other offences when they occur in the RPC, the recent implementation of the Act's provisions means it is not clear how it will interact with reporting of offences which might be required or authorised by foreign laws.

4.134 In evidence to the committee, the secretary of the department emphasised that the Act would not interfere with 'lawful disclosures in the public interest' by staff and contractors in relation to the operation of the RPC, and that in fact such workers remained under an 'unambiguous obligation' to report alleged criminality and/or misconduct to appropriate authorities, with serious consequences for failing to do so. The secretary added that lawful disclosures included those made in accordance with the *Public Interest Disclosure Act 2013*, while stating that it was 'wrong in law and in fact to assert that contractors have an unqualified right of disclosure to the media'.¹³⁶

¹³² *Australian Border Force Act 2015*, para. 41.

¹³³ *Australian Border Force Act 2015*, para. 42(1).

¹³⁴ *Australian Border Force Act 2015*, para. 42(2)(c).

¹³⁵ Senate Standing Committee on Legal and Constitutional Affairs, *Report on Australian Border Force Bill 2015 [Provisions], Customs and Other Legislation Amendment (Australian Border Force) Bill 2015 [Provisions]*, May 2015, p. 14.

¹³⁶ Mr Michael Pezzullo, *Committee Hansard*, 20 July 2015, pp 75-76.

Cable ties

4.135 A submission received from Mr Jon Nichols, a former Wilson Security employee, alleged that cable ties had been used in the RPC to restrain asylum seekers to metal framed beds, which were then moved in such a way as to injure the person restrained.¹³⁷ At a public hearing, Mr Nichols told the committee that during conversations with employees, references had been made to members of the ERT (Emergency Response Team) engaging in this practice, which was referred to as 'zipping': 'members of the ERT had secured asylum seekers to their beds with zip ties, cable ties, and thrown them into the air. This occurred after the riots'.¹³⁸

4.136 Mr Nichols said that although he had not personally seen asylum seekers tied to beds with cable/zip ties, he had seen 'an individual zip tied to a fence'.¹³⁹

4.137 Wilson Security advised the committee that cable ties:

...are not issued. There are cable ties that are used for some of the construction fencing during the time but no cable ties are issued...The plastic cable ties, at different times, were used to secure temporary fencing together in the centres, but they are not issued to staff members.¹⁴⁰

4.138 Mr Brett McDonald, Security Contract Manager, Wilson Security, further advised that plastic handcuffs, known as 'flexi cuffs' are used in the RPC 'on a very rare occasion'.¹⁴¹

4.139 The committee understands that flexi cuffs substantially resemble cable or zip ties, and are a form of single-use restraint which binds the hands of a person in a manner similar to cable or zip ties. It is the view of the committee that a person witnessing flexi cuffs may reasonably mistake them for cable or zip ties. The committee further believes that, given their visual similarity, discussions around the terminology detract from the very serious nature of the allegations made about their use on asylum seekers.

4.140 Other submissions received by the committee refer to the presence of cable ties in the RPC. For example, a submitter referred to the use of cable ties to repair footwear:

I was aware of one young girl who was wearing thongs that had broken and were cable-tied together. The cable tie was placed between her big toe and second toe.¹⁴²

¹³⁷ Mr Jon Nichols, *Submission 95*, p. 1.

¹³⁸ Mr Jon Nichols, *Committee Hansard*, 20 August 2015, p. 4.

¹³⁹ Mr Jon Nichols, *Committee Hansard*, 20 August 2015, p. 12.

¹⁴⁰ Mr Brett McDonald, Security Contract Manager, Wilson Security, *Committee Hansard*, 20 August 2015, p. 25.

¹⁴¹ Mr Brett McDonald, Security Contract Manager, Wilson Security, *Committee Hansard*, 20 August 2015, p. 25.

¹⁴² *Submission 82*, p. 7.

4.141 The committee received information concerning an incident in which a minor in the RPC had tied a cable tie around her neck which had then become fastened. The committee understands that this incident was reported to Save the Children Australia, who commenced monitoring of her behaviour and counselling. The incident does not appear to have been referred to Comcare.

4.142 Comcare was referred an incident from 30 September 2014, with the brief description: 'Client found with cable ties around neck, spouse reaction was unresponsive'. The incident was classified as 'Not notifiable- an incident occurred but it did not result from the conduct of the business or undertaking' and was not investigated by Comcare.¹⁴³

4.143 In the time available, the committee has not been able to form a view on the presence of cable ties, but it is concerned that cable ties are available to asylum seekers in the RPC, and that they are potentially dangerous, as demonstrated by the two incidents referred to above. The committee urges all contracted service providers and the department to refer relevant matters to Comcare.

¹⁴³ Australian Lawyers' Alliance, Supplementary to *Submission 14*, p. 98. This is known as incident #231.