



Australian Government

Response to the report of the Select
Committee on the Recent Allegations
relating to Conditions and
Circumstances at the Regional
Processing Centre in Nauru:

*Taking responsibility: Conditions and
circumstances at Australia's Regional
Processing Centre in Nauru*

Recommendation 1

5.22 The committee recommends that, consistent with the terms of the Memorandum of Understanding and related arrangements between the governments of Australia and Nauru, Australia ensure that support and assistance is provided to Nauru's police, judicial, prosecutorial and other law and justice entities to the extent necessary to ensure that Nauru's justice system meets the standards of accountability and probity required by Australian and international law.

Response

The Republic of Nauru is a sovereign nation and Australia does not exert control over Nauru's functions, including judicial system and law enforcement. Australia will continue to support Nauru to build its capacity to deal with police and legal matters through its courts and associated systems, but cannot ensure or proscribe standards.

Australian engagement in Nauru's law and justice sector, at the request of the Government of Nauru, includes the following support:

- Legal counsel (defence and prosecution) and a magistrate to assist with trials of the 2013 riots. Lawyers engaged by the Government of Nauru were funded by the Department of Immigration and Border Protection (the Department) under the MOU.
- Refugee status determination (RSD) lawyers, and magistrate and counsel to manage RSD judicial reviews. Legal personnel are employed by the Government of Nauru and funded by the Department under the MOU
- Contracting a claims assistance provider to assist transferees prepare their refugee claims and any subsequent reviews.

The Attorney General's Department (AGD) is working with Nauru's Department of Justice and Border Control to reform the Nauru Criminal Code of 1899. A new Crimes Bill will include revised offences and penalties to meet modern community expectations, with clear language to assist police and prosecutors to fulfil their roles. Following expected passage in early 2016, further support, including training for police and prosecutors, may be provided by AGD to help with implementation, if requested.

Nauru has also requested assistance to reform its Police Force Act 1972, which AGD expects to provide following passage of the Crimes Bill. Efforts to reform policing legislation will likely incorporate model forensics provisions, developed by AGD.

AGD also works with and provides capacity building assistance to Nauruan police, prosecutors and legal policy officers through Pacific regional law and justice organisations including the Pacific Island Law Officers Network, Pacific Prosecutors' Association, and Pacific Islands Chiefs of Police.

Australian Federal Police officers work with the Nauru Police Force to help it build capacity to manage complex investigations, including allegations of sexual assaults, with AGD providing support and assistance to Nauru's police, prosecutorial and other law and justice bodies.

Recommendation 2

5.26 The committee recommends that the Government of Australia, in consultation with the Government of Nauru, agree on and publicly commit to a model timeframe for refugee status determinations, and that Australia provide the Government of Nauru with the support necessary to achieve faster and more predictable processing of claims.

Response

RSD is a matter for the Government of Nauru. It is not appropriate for Australia to comment on the time it takes the Nauruan Government to complete this process, however it is important to note that a range of variables may impact the time it can take to process a protection claim, including:

- Complexity of cases
- Location of individuals (for example, processing may be suspended if a transferee is moved to Australia or PNG for medical treatment)
- Documentation and evidence to support claims (including proof of nationality or statelessness)
- Willingness and/or fitness (medical) of individuals to engage in the process
- Number of active cases under consideration at any one time

The RSD process and the matters listed above are regularly discussed at the Joint Advisory Committee for Nauru Regional Processing Arrangements. In addition, Australia has provided assistance, training and mentoring to the Government of Nauru to build its capacity to manage its RSD process.

The Government of Nauru announced on 30 September 2015 its intention to hand down all decision ready cases in October 2015. At 15 December 2015, the Government of Nauru has made 1104 refugee determinations (830 positive and 274 negative), representing 75 percent of the total caseload.

5.27 The committee further recommends that asylum seekers be informed about the steps being taken to process their claims, be regularly updated on the progress of the claim, and that an extension be provided to asylum seekers when model timeframes are not met.

Response

Messaging to transferees and the timeframes related to the Nauru RSD process is a matter for the Government of Nauru.

The Australian Government, through a contracted service provider, funds the provision of a protection claims assistance service to assist asylum seekers to lodge a protection claim and any subsequent reviews. Claims assistance providers operate a shopfront service at the Nauru regional processing centre (RPC) to provide advice to transferees on their asylum claims.

Recommendation 3

5.37 The committee recommends that the Immigration Ombudsman undertake independent external review of all complaints involving the conduct of Australian-funded staff or contractors at the Regional Processing Centre, and that the government ensure that the office of the Ombudsman is adequately resourced to do so.

Response

The Ombudsman's office has visited Manus and Nauru RPCs six times in the past 18 months. In accordance with established practice, the Department considers any recommendations made by the

Immigration Ombudsman. Actions which do not relate to a matter of administration by an Australian Department, authority or service provider are outside the Ombudsman's jurisdiction, which cannot investigate or inquire into the actions of Nauruan (or PNG) officials or service providers or nationals of Nauru (or PNG) contracted directly with the host nations.

5.38 The committee further recommends that the Ombudsman report to parliament on an annual basis on the number and nature of the complaints received and the outcomes of the Ombudsman's assessment of them.

The Ombudsman reports annually to parliament on its investigations of Commonwealth agencies. Immigration complaints, including of RPCs, are reported in aggregated terms with analysis of trends. Delays in visa issuance are the most common immigration-related complaints made to, and investigated by, the Ombudsman.

Recommendation 4

5.39 The committee recommends that briefing be required to be provided to all asylum seekers on their rights to lodge complaints with independent bodies such as the Immigration Ombudsman, the Australian Human Rights Commission and the International Committee of the Red Cross, both generally and in specific response to any complaints made.

Response

On arrival, all transferees are made aware of their rights and responsibilities while they are in the RPC. Transferees are also made aware of how they can report any complaints, through safe, confidential channels.

In addition to the current complaints management process, Nauru has established shopfront style drop-in centres where transferees can lodge complaints, verbally or in writing. These centres provide an area for transferees to talk with others, seek advice and support from service providers, and engage in a range of activities.

Further, transferees have access to phones, email, social media and are able to communicate with a range of bodies. These bodies include: the International Committee of the Red Cross (ICRC); the UN High Commissioners for Refugees and for Human Rights; Amnesty International; and the Ombudsman.

The role of the ICRC is a matter for it in consultation with the Government of Nauru. The ICRC conducts regular inspections of the RPC with Nauru's permission.

Recommendation 5

5.43 The committee recommends that Australia increase the transparency of conditions and operations at the Regional Processing Centre, including by ensuring the provision of reasonable access, in negotiation with the Government of Nauru as necessary, by the Australian Human Rights Commission and by the media.

Response

Access and visitation to RPC is managed and administered by the Government of Nauru. Matters concerning transferees at the RPC are not within the Australian Human Rights Commission's jurisdiction.

Recommendation 6

5.45 The committee recommends that the Department of Immigration and Border Protection require, in its contracts with service providers, that comprehensive drug and alcohol testing be conducted on staff employed at the Regional Processing Centre on Nauru, including daily random tests for both alcohol and drugs.

Response

The Regional Processing Code of Conduct guidelines issued by the Department prescribe the behaviour that all Immigration and Border Protection (IBP) workers, as defined under the *Australian Border Force Act 2015*, must adhere to under their respective contracts, which includes expectations around drugs and alcohol.

The Department is currently negotiating the new contract with the Service Provider. The contract being negotiated requires the service provider to be compliant with the *Australian Border Force Act 2015* (the *Act*) and personnel will be subject to the *Act* and the Secretary's Directions 1, 2 and 3. As part of this Framework, IBP workers will be required to comply with additional requirements related to mandatory reporting, integrity testing, and drug and alcohol testing.

Recommendation 7

5.49 The committee recommends that the Department of Immigration and Border Protection provide full and disaggregated accounts in its Portfolio Budget Statements, annual reports and other relevant reports to Parliament and to the Australian public, of the expenditure associated with the Regional Processing Centre on Nauru. This accounting should include detailing costs specific to the Nauru RPC, as well as related support and assistance provided by the Australian Government to the Republic of Nauru.

Response

The Department provides aggregated financial information against its agreed programme structure within its Portfolio Budget Statements and Annual Reports for IMA Offshore Management (Programme 1.5). In addition, contract specific information is available on Austender.

Assistance provided through the aid program to foreign governments, including Nauru, is reported on the DFAT website and the DFAT Annual report.

Recommendation 8

5.52 The committee recommends that a full and disaggregated account of all works conducted in association with the Regional Processing Centre to date be reported by the Department of Immigration and Border Protection to the Senate.

Response

Refer to Attachment A.

5.53 The committee recommends that a clarification be provided to the Senate by the Department of Immigration and Border Protection as to why exemptions on the grounds of assistance to foreign governments apply to expenditure associated with the Regional Processing Centre on Nauru.

Response

The Department provided this clarification in response to the committee's interim report; refer to Attachment B.

None of the works carried out on Nauru in association with the RPC are public works for the purposes of section 5AA of the *Public Works Committee Act 1969*.

The Department has carried out a number of works, at Nauru's request, to build capacity in the Nauruan community to support refugee settlement and for the community's long term and general benefit. These additional works were constructed by way of assistance to Nauru and, accordingly, that none of them is a 'public work' for the purposes of the Public Works Committee Act*.

Those works are the construction and/or renovation of the following facilities on Nauru:

- A court house
- A corrections facility
- Local education facilities and teachers' accommodation
- Upgrade to public water utilities
- Upgrade and renovation of the local hospital in collaboration with the Department of Foreign Affairs and Trade
- Upgrading and repair of local roads
- Refugee settlement housing

* *The Public Works Committee Act excludes from the definition of "public work", and thus from the scope of the Act, work that is proposed to be carried out by or for the Commonwealth by way of assistance to an overseas country. (Per section 5AA of the PWC Act explicitly states that "a public work does not include:*

- *(d) a work that is proposed to be carried out by or for the Commonwealth by way of assistance to an overseas country).*

5.54 The committee further recommends that all expenditure associated with the Regional Processing Centre on Nauru, including expenditure considered to be assistance to a foreign government, should be specifically reported to the Senate Legal and Constitutional Affairs Legislation Committee before each estimates round.

Response

This information is provided as part of the Senate Estimates process.

Recommendation 9

5.59 The committee recommends that the Australian Government continue to review the operation of the Regional Processing Centre with a view to expanding open centre arrangements. The committee recommends that the Regional Processing Centre on Nauru move toward becoming a more open, lower security living arrangement for all asylum seekers except where there is a compelling reason for an asylum seeker to be accommodated more securely.

Response

The Government of Nauru commenced open centre arrangements on 25 February 2015 and expanded arrangements to be fully open on 5 October 2015. A fully open centre means that:

1. There are no restrictions on the movement of transferees in and out of the RPC.
2. Transferees may remain out of the centre overnight.
3. Transferees no longer need to seek permission to leave the centre.

As at 16 December 2015, the Government of Nauru advises that there are 649 refugees living in the Nauru community and a further 179 refugees living in the open RPC, awaiting construction of hard-walled settlement accommodation.

5.60 The committee recommends that any savings resulting from the implementation of an open centre model be redirected toward improving the living conditions of asylum seekers in the Regional Processing Centre, with a focus on humane living arrangements, services and amenities, including improved access to communications. The committee recommends that the Department of Immigration and Border Protection report publicly and to the Senate within 12 months on progress in this regard.

Response

The full range of services, including but not limited to, accommodation, garrison, welfare and health, will continue to be provided to transferees whether or not they participate in the open centre arrangements. Transferees participating in open centre arrangements are provided with transport to and from the RPC, and around Nauru.

Recommendation 10

5.67 The committee recommends that the government commit to and publicly release a medium to long term plan for the completion of permanent infrastructure at the Regional Processing Centre on Nauru, including the construction of solid accommodation structures, and for tangible improvements to amenities for asylum seekers including lighting, water, toilets, air conditioning, cooking facilities and communications.

Response

The Department is consulting the Government of Nauru on the development of a medium to long term Nauru Estate plan, including proposals to install permanent or solid accommodation structures. The accommodation plan, land leases and works programme are a matter for Nauru, including whether to publicly release plans. Accommodation arrangements are discussed regularly by the Nauru Joint Advisory Committee.

5.68 The committee is convinced that welfare services must be provided by a dedicated welfare service provider with the required experience and accreditation to undertake such work. The committee recommends that a non-government organisation be contracted directly by the Department of Immigration and Border Protection to provide welfare services to all asylum seekers within the Regional Processing Centre on Nauru.

The Department is currently in negotiations with a preferred tenderer to contract services, including welfare services, at the RPC(s). The provision of these services is being captured under the statement of work of the Garrison and Welfare Services Contract. The Department approached the market in accordance with the Commonwealth Procurement Rules, which allowed non-government organisations to tender either in their own capacity or as part of a consortium.

Recommendation 11

5.76 The committee recommends that the government extend its current policy commitment to remove children from immigration detention to the maximum extent possible, to include the removal of children from the Regional Processing Centre in Nauru. The government should develop a plan for the removal of children from the Nauru RPC as soon as possible, with their families where they have them, to appropriate arrangements in the community.

Response

The Government of Nauru is responsible for the placement of transferees and refugees who have been transferred or settled under the MOU. Nauru provides accommodation in the RPCs for all transferees. Full open centre arrangements allow transferees to enter and exit the centre 24 hours a day. Transferees may independently seek alternative accommodation arrangements, but will not be assisted to do so.

Recommendation 12

5.79 The committee recommends that the Australian Government commit to and publicly state a specific plan for addressing the educational needs of asylum seeker and refugee children in Nauru.

Response

The education of asylum seeker and refugee children is a matter for Nauru, as it is in relation to Nauruan children. Australia supports Nauru by providing expatriate teaching staff and refurbishing schools, which benefits all children, and helping integrate transferee children into local schools. Australia is helping Nauru to finalise an education strategy to make such arrangements enduring.

Recommendation 13

5.85 The committee recommends that the Department of Immigration and Border Protection, in consultation with the Australian Federal Police, undertake a full audit of all allegations of sexual abuse, child abuse and other criminal conduct reported to the Australian Human Rights Commission, to the Moss Review and to this inquiry, seeking the agreement of these bodies to share confidential information where necessary to conduct such an audit.

Response

Alleged criminal conduct in Nauru is a matter for Nauruan authorities. The Department and its service providers refer all allegations of a criminal nature to the Nauru police force (NPF). While the Australian Federal Police has been providing general assistance to Nauru police, the AFP does not actively investigate matters as it doesn't have jurisdiction on Nauru.

Earlier this year, the Minister announced the formation of the Child Protection Panel (The Panel), which is formally reviewing reported incidents as part of its remit. The Panel's report will be finalised by the end of this financial year, which should provide more insight to any allegations of child abuse.

5.86 The committee further recommends that, taking into account the need to protect personal privacy, the minister should report to the Senate by the end of December 2015, and every six months thereafter, setting out all allegations of a criminal nature made in relation to the RPC, and the action taken by the department and other relevant authorities in response.

The Government of Nauru is responsible for the administration and management of the RPC. Allegations of a criminal nature made to the NPF are the responsibility of the Government of Nauru.

Recommendation 14

5.91 The committee recommends that legislation be passed by the Australian Parliament requiring the mandatory reporting of any reasonably suspected unlawful sexual contact, sexual harassment, unreasonable use of force or other assault perpetrated against asylum seekers at the Regional Processing Centres, under similar terms as the mandatory reporting provisions contained in existing Commonwealth, state and territory laws.

Response

Allegations of unlawful conduct in Nauru are a matter for Nauruan authorities. Nauruan statutes and legislative amendment are matters for the Government of Nauru. The Panel will provide guidance for the future management of abuse allegations relating to children.

5.92 Such legislation should require that the reporting is made to the Department of Immigration and Border Protection and the Australian Federal Police, as well as any relevant state, territory or foreign police force and, where the matter relates to a child, child protection authorities in any relevant jurisdictions. The legislation should utilise Category C or D extraterritorial jurisdiction to apply in Nauru, and impose penalties for noncompliance comparable with those which apply in existing legislation within Australia.

Response

Allegations of unlawful conduct in Nauru are a matter for Nauruan authorities. Nauruan statutes and legislative amendment are matters for the Government of Nauru. The Panel will provide guidance for the future management of abuse allegations relating to children.

Recommendation 15

5.94 Given the committee's concerns about the level of accountability and transparency that currently applies to the operation of the regional processing centre in the Republic of Nauru, the committee recommends that the following matter be referred to the Legal and Constitutional Affairs References Committee for inquiry and report by 31 December 2016:

- a) conditions and treatment of asylum seekers and refugees at the Regional Processing Centre in the Republic of Nauru;
- b) transparency and accountability mechanisms that apply to the Regional Processing Centre in the Republic of Nauru;
- c) implementation of recommendations of the Moss Review in relation to the regional processing centre in the Republic of Nauru;
- d) Nauru is operating in compliance with Australian and international legal obligations;
- e) the extent to which contracts associated with the operation of offshore processing centres are

- delivering value for money consistent with the definition contained in the Commonwealth procurement rules;
- meeting the terms of their contracts;
- delivering services which meet Australian standards; and

f) Any related matter.

Response

Prior to the tabling of the Government's response to the Committee's report, the Senate resolved to refer the above matters to the Legal and Constitutional Affairs References Committee.

RESPONSE TO RECOMMENDATION 8 - 5.52 – WORKS CONDUCTED ON NAURU - AUGUST 2012 TO PRESENT

Description	Date	Comments
<u>Regional Processing Centre 1 (Topside) (RPC 1)</u>		
Establishment of temporary camp completed	September 2012	Works performed by DIBP and ADF. The facility originally comprised of military-style canvas tents for accommodation and hard-walled administration building, various recreation buildings, transferee ablutions and a number of offices. Temporary kitchen was set up in an air conditioned 24 x 12 marquee.
Permanent construction works at RPC 1	14 December 2012	Works performed by Canstruct. Construction of modular buildings commenced and accommodation was handed over progressively from January 2013.
Last military tent accommodation at RPC 1 decommissioned	16 April 2013	All transferees were relocated to permanent hard walled modular accommodation buildings at this time.
RPC 1 post fire reconstruction completed	17 October 2014	Works performed by Canstruct. All buildings destroyed in the fires were replaced.
<u>Regional Processing Centre 2 (RPC 2) and Regional Processing Centre 3 (RPC 3)</u>		
RPC 2 on-site civil works commenced	March 2013	Works performed by Canstruct. Mobilisation of machinery and initial site clearing activity commenced on site in preparation for permanent families facility.
Establishment of RPC 2 temporary accommodation facility commenced	20 July 2013	RPC 2 comprised military tents sourced from the Australian Defence Force (previously used at the initial RPC 1) installed by Transfield with assistance from Canstruct. Temporary ablutions installed initially, were later replaced with modular ablution blocks. Dining room, medical services and programs and activities were delivered from a mixture of military tents, marquees and modular buildings.
Construction of RPC 3 families accommodation completed	17 October 2013	Works performed by Transfield, engaged under separate contract to install a marquee style accommodation facility for persons of the family cohort. RPC3 facility initially comprised of vinyl marquee accommodation with all other support facilities, including mess, medical, administration and recreational facilities provided out of a mixture of vinyl marquees and modular buildings.
Construction of RPC 2 and 3 rapid expansion project completed	24 December 2013	Works performed by Canstruct, engaged under a separate contract to provide construction services to expand accommodation facilities at both RPC2 and RPC3.
<u>Staff Accommodation Site (The Village)</u>		
Construction of staff accommodation facility completed	31 October 2013	Works performed by Canstruct. The facility is accommodates staff in self-contained bedsits.

Attachment A

<u>Fly Camp (construction camp)</u>			
Establishment of fly camp for construction workers accommodation completed	July 2013	Works performed by Canstruct.	
Modification of flycamp for use as settlement accommodation for single adult males completed	7 July 2014	Works performed by Canstruct and TSL. Construct construction crew relocated to RPC1 to enable re-allocation. Fly Camp facilities include, hard walled accommodation with shared ablutions, recreation facilities and communal kitchen and dining facilities.	
<u>Nauru Utilities Corporation (NUC) Potable Water Infrastructure Upgrade</u>			
Installation of 500KL Avanaale RO unit at NUC commissioned	October 2014	Works performed by Canstruct. In June 2014, Department of Immigration and Border Protection and the Government of Nauru reached agreement to enable the upgrade of the Nauruan Utilities water production infrastructure.	
Installation of 800KL Osmoflo RO unit at NUC commissioned	7 January 2015	Works performed by Canstruct.	
800KL Osmoflo RO unit at NUC commissioned	10 May 2015	Works performed by Canstruct.	
Potable water infrastructure (ROWPU) upgrade at NUC completed	13 May 2015	Works performed by Canstruct. Upgrade of water production infrastructure at the Nauru Utilities Corporation includes the supply and installation of new reverse osmosis water production units, decant standpipe, new sea water intake pumps and backup power generation. The work has significantly increased Nauru's daily water production capability from 300 kilolitres a day to 2.2 mega litres a day, ensuring water security for the RPCs and the Nauruan community. Handover of operation of this facility to TSL occurred on this day.	
<u>Nibok Settlement Accommodation Facility</u>			
Construction of Nibok settlement facility completed	7 November 2014	Works performed by Canstruct. The facility provides modular style, self-contained accommodation for family cohorts.	
<u>Ewa Settlement Accommodation Facility</u>			
Construction of Ewa settlement facility completed	8 March 2015	Works performed by Canstruct. The facility provides modular style, self-contained accommodation for family cohorts.	
<u>Security Fencing</u>			
Installation of RPC 2 & 3 security fencing	March 2015	Works performed by Canstruct.	

Attachment A

<u>Courthouse</u>		
Construction of Courthouse	March 2015 to 30 May 2015	Works performed by Canstruct. Courthouse built for use by the Government of Nauru.
<u>Regional Processing Centre 3 (RPC 3) Re-development</u>		
Redevelopment of RPC3 commenced	July 2015	Works performed by Canstruct. Australian Border Force is currently progressing the redevelopment of the RPC3 site to provide settlement accommodation.
<u>Nauru Primary School</u>		
Construction of NPS	22 July 2015	Works to be performed by Canstruct. Australian Border Force is to install a new building consisting of up to 15 additional classrooms, staff office and administration rooms and install new ablutions on the site. Anticipated completion date is July 2016.
<u>Republic of Nauru (RON) Hospital Re-development</u>		
Construction of RON Hospital	July 2015	Works to be performed by Canstruct. ABF, in conjunction with the Department of Foreign Affairs and Trade, is to replace infrastructure destroyed by fire at RON hospital, and install new capability at the hospital. This includes additional surgical facilities, a pathology lab and dental services unit, as well as inpatient facilities. Anticipated completion date is February 2016.
<u>Correctional Centre</u>		
Construction of correctional centre	5 August 2015	Works to be performed by Canstruct. In August 2013 the former Australian Government committed to building a new correctional centre for the Government of Nauru. On 5 August 2015, the Government of Nauru provided approval for commencement of works. Anticipated completion date is May 2016.



Australian Government

Australian Government response to the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru interim report:

Interim report of the Select Committee

The Department of Immigration and Border Protection is working with the Parliamentary Standing Committee on Public Works in meeting its obligations under the *Public Works Committee Act 1969* in relation to works conducted in the Republic of Nauru.

The Department provided a response to the Parliamentary Standing Committee on Public Works on 14 August 2015.

The Department will continue to ensure that future public works in the Republic of Nauru are referred to the Parliamentary Standing Committee on Public Works in accordance with the *Public Works Committee Act 1969* (Cth).

September 2015
