

The Senate

Legal and Constitutional Affairs
References Committee

Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre

April 2017

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Chair's foreword

Australia's policy of offshore processing has been the subject of a number of Senate inquiries. These inquiries have been highly critical of many aspects of the Regional Processing Centre (RPC) policy.

The evidence which this committee has received has fallen primarily within three main areas:

- the operation and administration of RPCs, including service delivery, incident reporting, and health, safety and welfare;
- the offshore processing policy itself, including whether it is effective, lawful, and/or represents 'value for money'; and
- looking to the future, including how Australia can expedite third country resettlement options.

A substantial part of this report is devoted to recording the high number of incident reports made public through the publication of 'the Nauru files',¹ and supported by evidence from submitters to this inquiry. While evidence of this nature is not new, and reflects evidence which has been presented to previous inquiries, it is the first time that this volume and detail of information has been publicly available. Some of the reports are recordings of allegations made by refugees and asylum seekers, and many contain information which workers have observed first hand. The content is deeply concerning. Collectively, these reports paint the picture of a deeply troubled asylum seeker and refugee population, and an unsafe living environment—especially for children. Even more troublingly, these reports *only* record those incidents which have actually been reported to workers, or which workers have themselves observed. Undoubtedly, they do not reflect the true prevalence of such incidents.

In its current manifestation, Australia's policy of offshore processing is deeply affected by structural complexity. Despite the efforts of the Department of Immigration and Border Protection (the department), its contractors and sub-contractors, and other related stakeholders, there are clear failures by the department in administering the current policy in a safe and transparent manner. The policy structure is complex, and it relies heavily on the private sector to administer the day-to-day management of the scheme. This structural complexity has led to a lack of accountability and transparency in the administration of the policy, and a failure to clearly acknowledge where the duty of care lies in relation to those asylum seekers and refugees. For a policy which represents such a significant investment of Australian public funds, this lack of accountability is disturbing.

1 The Guardian Australia, *The Nauru files*, www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive (accessed 20 April 2017).

For the Australian Government to continue to facilitate the processing of asylum seekers who have claimed or attempted to claim protection from Australia, significant changes to the administration of the policy are necessary.

First and foremost, the Australian Government must acknowledge that it controls Australia's RPCs. Through the department, the Australian Government pays for all associated costs, engages all major contractors, owns all the major assets, and (to date) has been responsible for negotiating all third country resettlement options. Additionally, the department is the final decision-maker for approving the provision of specialist health services and medical transfers (including medical evacuations) and the development of policies and procedures which relate to the operation of the RPCs. Incident reports are also provided to the department so it cannot claim that it was not aware of incidents that occurred in RPCs outside of Australia.

The Australian Government clearly has a duty of care in relation to the asylum seekers who have been transferred to Nauru or Papua New Guinea. To suggest otherwise is fiction.

Secondly, the secrecy surrounding RPC operations must cease. Refugees and asylum seekers are highly vulnerable, and this vulnerability is exacerbated where they are housed in distant and remote locations. The Senate, international human rights bodies, and indeed all Australians, must be in a position to scrutinise the running of Australia's RPCs. While Australia continues to manage concerns about asylum seekers making the dangerous journey to Australia by boat, the day-to-day management of RPCs has little connection with this. It is difficult to see how transparency about the provision of medical and education services, the Refugee Status Determination processes and Deportation Risk Assessments would have any bearing on the future success of these efforts.

Thirdly, a much greater degree of transparency is needed in relation to the costs of administering this policy and the services provided as part of any contracts. Australian taxpayers bear all the costs of offshore processing. They are entitled to know how public funds are being spent. The Senate is likewise entitled to this information.

For Australia to continue facilitating the processing of claims for asylum offshore, the major faults which mar the current manifestation of the policy of offshore processing must be acknowledged and rectified.

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Abbreviations

AASW	Australian Association of Social Workers
AAT	Administrative Appeals Tribunal
ABF	Australian Border Force
ACEM	Australasian College of Emergency Medicine
ACFID	Australia Council for International Development
AHRC	Australian Human Rights Commission
AFP	Australian Federal Police
ALHR	Australian Lawyers for Human Rights
AMA	Australian Medical Association
ANAO	Australian National Audit Office
APS	Australian Psychological Society
ASRC	Asylum Seeker Resource Centre
AWSWN	Australian Women in Support of Women on Nauru
BCEO	Brisbane Catholic Education Office
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment
CMO	Chief Medical Officer
CPR	Commonwealth Procurement Rules
CRC	United Nations Committee on the Rights of the Child
CSS	Connect Settlement Services
DFAT	Department of Foreign Affairs and Trade
DFR	Doctors for Refugees
DIBP	Department of Immigration and Border Protection
ERC	Edmund Rice Centre
FCA	Federal Court of Australia
FCC	Federal Circuit Court
FOI	Freedom of Information
HREOC	Human Rights and Equal Opportunities Commission
HRLC	Human Rights Law Centre
HRW	Human Rights Watch
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights

ICJ	International Court of Justice
IHMS	International Health and Medical Services
ILO	International Labour Organization
IMA	Irregular Maritime Arrival
JSS	Jesuit Social Services
LCA	Law Council of Australia
LGBT	Lesbian, gay, bisexual and transgender
MOU	Memorandum of Understanding
MYEFO	Mid-Year Economic Fiscal Outlook
NGO	Non-Government Organisation
OAIC	Office of the Australian Information Commissioner
ODA	Official Development Assistance
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
OSSTT	Overseas Services to Survivors of Torture and Trauma
PBS	Portfolio Budget Statement
PCBU	Person conducting a business or undertaking
PNG	Papua New Guinea
POMS	Planning and Operational Management System
PRC	Peoples Republic of China
PTSD	Post Traumatic Stress Disorder
RACP	Royal Australasian College of Physicians
RACGP	Royal Australian College of General Practitioners
RANZCP	Royal Australian and New Zealand College of Psychiatrists
RCA	Refugee Council of Australia
RPC	Regional Processing Centre
RPNGC	Royal Papua New Guinea Constabulary
RSD	Refugee Status Determination
SKM	Sinclair Knight Mertz
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
UNLC	University of Newcastle Legal Centre
USA	United States of America
WHO	World Health Organisation

Recommendations

Recommendation 1

7.31 The committee recommends that the Department of Immigration and Border Protection, as a matter of urgency, commission an external review of its medical transfer procedures in offshore processing centres.

Recommendation 2

7.38 The committee recommends that the Australian Government undertake to seek advice in relation to whether improvements are required to the medical treatment options available to asylum seekers and refugees in the Republic of Nauru and Papua New Guinea, particularly mental health services.

Recommendation 3

7.41 The committee recommends that the Australian Government recognise the impacts of long-term immigration detention, including by commissioning an independent assessment of its impacts on physical and mental health.

Recommendation 4

7.46 The committee recommends that an external audit and investigation be conducted into all incident reports over the life of the Transfield Pty Ltd and Broadspectrum Australia Pty Ltd contracts at the Manus Island and Nauru Regional Processing Centres, including an analysis of:

- (a) incidents which were downgraded in severity; and**
- (b) any inconsistencies in relation to incidents being downgraded in severity; and**
- (c) evidence of follow-up activities in relation to reported incidents.**

Recommendation 5

7.51 The committee recommends that the Australian Government undertake to work with the Government of the Republic of Nauru to establish an independent children's advocate who would have both the jurisdiction and authority to advocate for the rights of children being held in the Republic of Nauru.

Recommendation 6

7.55 The committee recommends that the Department of Immigration and Border Protection confirm publicly that any asylum seeker or refugee who has been transferred to Australia for medical or other reasons, or who remains in Australia pursuant to domestic legal action, can apply to participate in the US refugee resettlement arrangement, and that they will not need to return to either the Republic of Nauru or Papua New Guinea to do so.

Recommendation 7

7.57 The committee recommends that the Australian Government give serious consideration to all resettlement offers it receives, including the Government of New Zealand's offer to resettle refugees from Papua New Guinea and the Republic of Nauru. Further, if particular resettlement offers are considered unsuitable, the Government should clearly outline the reasons.

Recommendation 8

7.59 The committee recommends that the Australian Government give consideration to supporting refugee and asylum seeker family members to pursue options to resettle together.

Recommendation 9

7.60 The committee recommends that the Australian Government increase Australian funding to the United Nations High Commissioner for Refugees.

Recommendation 10

7.61 The committee recommends that the Australian Government commit to increasing Australia's annual refugee intake.

Recommendation 11

7.64 The committee recommends that the Australian Government undertake to work with Australia's Asia-Pacific neighbours to establish a regional framework for the processing of claims for asylum.

Recommendation 12

7.70 The committee recommends that the Australian Government review the *Work Health and Safety Act 2011* to ensure that Comcare can exercise its regulatory powers in relation to Australian workplaces outside Australia's geographical jurisdiction, in a timely and straightforward manner.

Chapter 1

Introduction and background

Referral of the Inquiry

1.1 On 12 September 2016, the Senate referred the following matter to the Senate Legal and Constitutional Affairs References Committee (the committee) for inquiry and report by the final sitting day of March 2017: serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre.

1.2 The terms of reference in this matter are:

- (a) the factors that have contributed to the abuse and self-harm alleged to have occurred;
 - (b) how notifications of abuse and self-harm are investigated;
 - (c) the obligations of the Commonwealth Government and contractors relating to the treatment of asylum seekers, including the provision of support, capability and capacity building to local Nauruan authorities;
 - (d) the provision of support services for asylum seekers who have been alleged or been found to have been subject to abuse, neglect or self-harm in the Centres or within the community while residing in Nauru;
 - (e) the role an independent children's advocate could play in ensuring the rights and interests of unaccompanied minors are protected;
 - (f) the effect of Part 6 of the Australian Border Force Act 2015;
 - (g) attempts by the Commonwealth Government to negotiate third country resettlement of asylum seekers and refugees;
 - (h) additional measures that could be implemented to expedite third country resettlement of asylum seekers and refugees within the Centres;
 - (i) any other related matters; and
- (2) the committee be granted access to all inquiry submissions and documents of the preceding committee relating to its inquiry into the conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea.¹

1.3 On 20 March 2017, the Senate granted an extension of time to report until 21 April 2017.²

Conduct of the inquiry

1.4 In accordance with usual practice, the committee advertised the inquiry on its website, and also wrote to various organisations and individuals inviting written

1 *Journals of the Senate*, No. 4, 12 September 2016, p. 129.

2 *Journals of the Senate*, No. 31, 20 March 2017, p. 1054.

submissions. The committee requested that submissions be provided by 7 November 2016 but accepted a number of submissions after this date.

1.5 The committee received 61 submissions, some of which were accepted as wholly or partially confidential. A list of submissions received is at Appendix 1.

1.6 The committee held six public hearings and heard from a number of witnesses:

- 11 November 2016 in Canberra;
- 15 November 2016 in Melbourne;
- 8 February 2017 in Canberra;
- 14 March 2017 in Brisbane;
- 15 March 2017 in Canberra; and
- 20 March 2017 in Canberra.

1.7 References to Hansard transcripts are to the proof transcript. Page numbers may vary between the proof and the official transcript.

1.8 In the course of this inquiry the committee had access to all evidence taken by the committee during previous inquiries into these matters. The committee also had access to all evidence published by other committees inquiring into related matters. These inquiries are discussed in further detail in this Chapter.

1.9 The committee encountered some difficulties taking evidence during this inquiry. These difficulties arose because the committee was charged with inquiring into matters taking place outside Australian territory. A committee cannot travel outside Australia's jurisdiction to take evidence, as it cannot formally meet as a committee outside Australia. The committee was unable to visit the RPCs, make an assessment as to the facilities, or meet with individuals who are directly affected by these matters. Many individuals who may have provided primary evidence would not have been able to do so with the protection of parliamentary privilege. Parliamentary privilege does not extend to people located outside Australia. Some RPC workers may have risked prosecution under Australian law by providing evidence. The application of Australian laws to RPC workers will be discussed in Chapter 4.

1.10 The committee thanks the individuals and organisations who gave evidence during this inquiry, especially those who bravely gave evidence in camera. Many had already given evidence to a previous inquiry into related matters. The committee recognises that the inquiry deals with sensitive issues, and thanks witnesses and submitters for continuing to engage with the inquiry process.

A note on terminology

1.11 A range of terms have been employed to describe the people living in the Republic of Nauru (Nauru) and Papua New Guinea (PNG) after having sought asylum

in Australia. These include 'illegal maritime arrival', 'unauthorised maritime arrival', and 'transferee'.³

1.12 The term 'refugee' is defined in article 1 of the *Refugee Convention 1951* to include a person who:

...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.⁴

1.13 An 'asylum seeker' is a person who seeks protection as a refugee, and whose claim for such protection is still being assessed. As the Department of Immigration and Border Protection (the department) explained to the committee, 'Not all asylum seekers are necessarily refugees, but all refugees have at some point been asylum seekers'.⁵

1.14 Australia's RPCs were established for the purposes of holding individuals in immigration detention while their claims for protection were processed, pursuant to Australia's obligations under international law. As such, this report will refer to individuals held in Nauru and PNG, or held there at any time in the past, as either 'refugees' or 'asylum seekers'.

Report structure

1.15 The remainder of Chapter 1 will summarise developments relating to matters associated with the RPCs.

1.16 Chapter 2 will set out the allegations of abuse, neglect and self-harm among refugees and asylum seekers in Nauru and PNG.

1.17 Chapter 3 will analyse the factors which have contributed to the allegations of abuse and self-harm being made, including concerns about the support services available to individuals who allege that they have been subject to abuse, neglect or self-harm. It will also address concerns about the manner in which notifications of abuse and self-harm are investigated.

1.18 Chapter 4 will outline attempts by the Commonwealth Government to negotiate third country resettlement of refugees and asylum seekers, and additional measures which could be implemented to expedite this process.

1.19 Chapter 5 will analyse the public spending associated with the administration of offshore processing of asylum seekers.

3 Department of Immigration and Border Protection (DIBP), *Submission 23*, p. 7.

4 Refugee Convention 1951, article 1(2).

5 DIBP, *Submission 23*, p. 7.

1.20 Chapter 6 will discuss Australia's obligations in relation to refugees and asylum seekers in Nauru and PNG, including obligations under international law.

1.21 Chapter 7 will set out the committee's conclusions and recommendations.

Background

Global refugee crisis

1.22 The world is in the grip of a global refugee crisis. It is estimated that approximately 65 million people are displaced around the world,⁶ 21.3 million of whom are refugees.⁷ The United Nations High Commissioner for Refugees (UNHCR) estimates that nearly 34,000 people are forcibly displaced every day as a result of conflict or persecution.⁸

1.23 Australia processes claims for asylum via its humanitarian programme.⁹ The majority of offshore applicants are identified by the UNHCR as potential applicants, and referred to Australia for consideration of their claim. From 2015-2016, 17,555 visas were granted under the humanitarian programme.¹⁰ Of these, 2,003 were granted to onshore applicants who were recognised as refugees, 7,268 were 'Special Humanitarian Programme' visas, and 8,284 refugee category visas. Of those visas granted to offshore applicants, 3,790 were granted to individuals displaced by the conflicts in Syria and Iraq, as part of the Government's commitment to an additional 12,000 Humanitarian Programme places for such applicants.¹¹

Australia's policy of offshore processing

1.24 The history of Australian offshore processing has been outlined in previous inquiries about these and related matters and therefore will not be restated here.¹² The

6 International Crisis Group (ICG), *What's Driving the Global Refugee Crisis*, 15 September 2016, <https://www.crisisgroup.org/global/what-s-driving-global-refugee-crisis> (accessed 13 January 2017).

7 United Nations High Commissioner for Refugees (UNHCR), www.unhcr.org/en-au/figures-at-a-glance.html (accessed 13 January 2017).

8 UNHCR, www.unhcr.org/en-au/figures-at-a-glance.html (accessed 13 January 2017).

9 DIBP, Fact sheet – Australia's refugee and humanitarian programme, <https://www.border.gov.au/about/corporate/information/fact-sheets/60refugee> (accessed 13 January 2017).

10 DIBP, 2015-16 Humanitarian Programme Outcomes, <https://www.border.gov.au/ReportsandPublications/Documents/statistics/humanitarian-programme-outcomes-offshore-2015-16.pdf> (accessed 13/01/2017).

11 Australian Government, Joint Media Release, *The Syrian and Iraqi humanitarian crisis*, 9 September 2015, www.formerministers.dss.gov.au/15738/the-syrian-and-iraqi-humanitarian-crisis/ (accessed 5 April 2017).

12 Select Committee, Recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru ('Select Committee'), *Taking responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru ('Nauru RPC')*, August 2015, pp. 3–6.

Refugee Council of Australia (RCA) has also published a detailed timeline of major events in the history of Australia's refugee and humanitarian programme.¹³

The findings of previous inquiries

1.25 The findings of three recent Senate inquiries into related matters are summarised below.

Incident at the Manus Island Detention Centre from 16 February to 18 February 2014

1.26 In 2014 the Legal and Constitutional Affairs References Committee conducted an inquiry into the incident at the Manus RPC in February that year which resulted in the death of Mr Reza Berati.¹⁴ The committee examined and reported on a range of issues related to the governance and management, legal obligations, physical conditions, refugee status determination and resettlement arrangements at the Manus RPC.

1.27 The report noted evidence of:

- inhumane and cramped accommodation with a lack of privacy;¹⁵
- unhygienic toilet and shower facilities in very poor condition, many with moss and fungi on the walls;¹⁶
- very long queues for meals, low quality food and regular cases of diarrhoea and food poisoning;¹⁷
- a very high demand for medical services generally, regular cases of skin infections, widespread mental health problems including suicidal ideation, and poor facilities for transferees who were mentally ill;¹⁸ and
- animosity between PNG locals and asylum seekers.¹⁹

1.28 The committee found that:

13 Refugee Council of Australia, *Timeline*, <http://www.refugeecouncil.org.au/getfacts/timeline/> (accessed 13 January 2017).

14 Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014 ('Incident at Manus')*, December 2014, p. 40.

15 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 40.

16 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, pp. 42-43.

17 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, pp. 43-44.

18 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, pp. 45-46.

19 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, pp. 51-54.

- a significant number of local service provider staff, and some expatriate staff, were involved in violence against asylum seekers;²⁰
- detainees had not been given a clear pathway for the assessment of their asylum claims, and this may have contributed to the violent riots which took place in the Manus RPC in February 2014;²¹
- conditions in the RPC were 'harsh and inhumane', and this was a significant factor increasing the volatility in the centre;²²
- the Australian Government had failed in its duty to protect asylum seekers (including Mr Barati) from harm;²³
- the Australian Government exercised 'effective control' over the Manus RPC and the men held there, and even if it did not, Australia would still be liable for breaches of international human rights law there under the doctrine of joint liability;²⁴ and
- as the 'architect of the arrangements with PNG', the Australian Government has a 'clear and compelling moral obligation' to ensure asylum seekers are treated in accordance with international human rights law.²⁵

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

1.29 In 2015, the Senate established the Select Committee into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru (select committee). The select committee's report was broad in scope, covering a range of issues including questions of legal jurisdiction and Australia's responsibilities, management and governance of the RPC, living conditions, services and facilities, and the protection of detainees at the RPC from abuse and harm.

1.30 The committee noted evidence of:

- the Nauruan police forces' limited resources and capacity to investigate serious allegations, and questionable independence and willingness to

20 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 147.

21 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 145.

22 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 146.

23 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 146.

24 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 151.

25 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 151.

investigate allegations against Nauruans charged with assaults on non-Nauruans;²⁶

- concerns about the capacity of Nauru's judiciary to cope with the workload generated by incidents at the RPC, and the independence of the judiciary;²⁷
- staff being verbally abusive, engaging in sexual harassment, supplying contraband items in exchange for sexual favours, and engaging in otherwise aggressive conduct;²⁸
- a culture of fear among staff about disclosing anything that happened at the RPC;²⁹
- a lack of communication between the department and asylum seekers being resettled in the Nauruan community, and the granting of shorter term Nauruan visas than those originally discussed;³⁰
- concerns with regards to mould, access to water, a lack of privacy, the provision of clothing and footwear, toilet facilities, food, education services, recreation activities, and access to medical care;³¹ and
- sexual harassment, threats of sexual violence against young girls and women, and sexual exploitation.³²

1.31 The committee found that:

- the conditions in the Nauru RPC at that time were 'not adequate, appropriate or safe' for asylum seekers. The Commonwealth must accept ultimate responsibility for this;³³
- there is a strong argument that Australia bears the primary obligation to protect the human rights of asylum seekers under international law;³⁴
- the committee had not been afforded full and transparent access to information, and regarded that the Australian Government in particular had sought to avoid full accountability to the Senate;³⁵
- the steps for refugee status determination in Nauru at that time were unknown, and the processing time was lengthy;³⁶ and

26 Select Committee, *Nauru RPC*, August 2015, p. 19.

27 Select Committee, *Nauru RPC*, August 2015, pp. 20–23.

28 Select Committee, *Nauru RPC*, August 2015, p. 25.

29 Select Committee, *Nauru RPC*, August 2015, p. 31.

30 Select Committee, *Nauru RPC*, August 2015, p. 49.

31 Select Committee, *Nauru RPC*, August 2015, pp. 64–85.

32 Select Committee, *Nauru RPC*, August 2015, pp. 99–116.

33 Select Committee, *Nauru RPC*, August 2015, p. 120.

34 Select Committee, *Nauru RPC*, August 2015, p. 121.

35 Select Committee, *Nauru RPC*, August 2015, p. 120.

- a pervasive culture of secrecy cloaked most of the department's activities in relation to the RPC, and far greater transparency, scrutiny and accountability was required.³⁷

Conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea

1.32 In the 44th Parliament, this committee inquired into the conditions and treatment of asylum seekers and refugees at the RPCs in Nauru and PNG. This inquiry lapsed and an interim report was published in May 2016.

1.33 The report noted evidence:

- of a generally poor standard of living at the RPCs including substandard health facilities, and facilities which were hot, humid, dirty and 'prison-like', and lacked privacy;³⁸
- of incidents between June 2014 and July 2015, including 134 incidents of actual self-harm including some by children, 75 instances of the use of force against asylum seekers, 26 major disturbances of various kinds, 34 instances of serious assault requiring medical treatment, and other incidents including electrocution and disease outbreak;³⁹
- from submitters who believed that harsh and indefinite conditions in RPCs represented a deliberate policy on the part of the Australian Government to deter others from attempting to come to Australia by boat;⁴⁰
- from medical experts indicating the prevalence of mental health concerns in children at RPCs (including Post Traumatic Stress Disorder, depression, anxiety, learning difficulties, bed wetting, nightmares, behavioural regression, memory loss, separation issues, and some suicidal ideation);⁴¹
- of concern regarding the standard of education provided to children on Nauru, including a lack of play and recreational activities;⁴²

36 Select Committee, *Nauru RPC*, August 2015, p. 123.

37 Select Committee, *Nauru RPC*, August 2015, p. 124.

38 Legal and Constitutional Affairs References Committee, *Conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea ('Nauru and PNG RPCs')*, Interim Report, May 2016, pp. 5–6.

39 Legal and Constitutional Affairs References Committee, *Nauru and PNG RPCs*, Interim Report, May 2016, pp. 6–7.

40 Legal and Constitutional Affairs References Committee, *Nauru and PNG RPCs*, Interim Report, May 2016, p. 8.

41 Legal and Constitutional Affairs References Committee, *Nauru and PNG RPCs*, Interim Report, May 2016, p. 11.

42 Legal and Constitutional Affairs References Committee, *Nauru and PNG RPCs*, Interim Report, May 2016, p. 12.

- of concerns about lesbian, gay, bisexual and transgender (LGBT) people held in RPCs, particularly noting that male homosexual conduct remained a criminal offence in both Nauru and PNG, and severe discrimination in the RPCs and host countries against LGBT people;⁴³ and
- of concerns about a lack of transparency and accountability with regards to management and contracting at the RPCs,⁴⁴ a climate of oppressive secrecy surrounding the operation of RPCs,⁴⁵ and calls for independent oversight.⁴⁶

Recent developments relating to this policy

1.34 On 26 April 2016 the Supreme Court of PNG held that detention of asylum seekers at the Manus RPC was unconstitutional and illegal, and ordered that their detention cease.⁴⁷ The following day the Manus RPC was declared to be an 'open centre'.⁴⁸ Three months later, on 17 August 2016, the Minister for Immigration and Border Protection the Hon Peter Dutton MP was reported to have advised that the Manus RPC would be closed, and that both countries would work towards the closure 'as quickly as possible'.⁴⁹ On 13 March 2017 it was reported that the Chief Justice of the PNG Supreme Court, Sir Salamo Injia, found that the Manus RPC had in fact been 'closed', and that the refugees and asylum seekers living within the RPC were 'now accommodated at the naval base the centre was built on'.⁵⁰ However, as at 31 January 2017 the department still listed the RPC as an operational RPC facility housing 861 men.⁵¹ In addition, on 9 April 2017 the Government announced that the Manus RPC will be closed by 31 October 2017.⁵²

43 Legal and Constitutional Affairs References Committee, *Nauru and PNG RPCs*, Interim Report, May 2016, pp. 12–13.

44 Legal and Constitutional Affairs References Committee, *Nauru and PNG RPCs*, Interim Report, May 2016, pp. 13–14.

45 Legal and Constitutional Affairs References Committee, *Nauru and PNG RPCs*, Interim Report, May 2016, pp. 14–16.

46 Legal and Constitutional Affairs References Committee, *Nauru and PNG RPCs*, Interim Report, May 2016, pp. 16–17.

47 *Belden Norman Namah MP v Hon Rimbink Pato, National Executive Council and the Independent State of Papua New Guinea*, SCA No. 84 of 2013, Supreme Court of Justice (Papua New Guinea), 26 April 2016.

48 Department of Immigration and Border Protection (DIBP), *Submission 23*, p. 68.

49 ABC News, *Manus Island detention centre to close, Peter Dutton and PNG Prime Minister confirm*, 18 August 2016.

50 ABC News, *PNG Chief Justice finds Manus Island detention centre is actually closed*, 13 March 2017.

51 DIBP, *Immigration Detention and Community Statistics Summary*, 31 January 2017, <https://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-31-jan-2017.pdf> (accessed 20 March 2017).

52 The Hon Peter Dutton MP, *Interview with Peter Van Onselen and Paul Kelly, Sky Sunday Agenda*, 9 April 2017, www.minister.border.gov.au/peterdutton/2017/Pages/sky-sunday-agenda-09042017.aspx (accessed 18 April 2017).

1.35 On 13 November 2016, the Australian Government announced that refugees located on Manus Island and Nauru would be offered resettlement in the United States of America (US) under a 'one off' arrangement.⁵³ At the date of this report, no refugees in either Nauru or PNG have been resettled in the USA. This announcement will be discussed further in Chapter 4 of this report.

1.36 On 13 September 2016 the Australian National Audit Office (ANAO) released an audit report on the procurement of garrison support and welfare services at Australia's offshore processing centres.⁵⁴ On 17 January 2017 the ANAO released an audit report of the contract management of those garrison support and welfare services.⁵⁵ These two audit reports were extremely critical of both the procurement of services at the RPCs, and the management of the contracts for those services. These reports will be discussed further in Chapter 5 of this report.

1.37 A number of contractors engaged to provide services in Nauru and PNG have announced that when their current contracts end they will not retender:

- Broadspectrum has provided garrison and/or welfare services in Nauru since September 2012, and in PNG since March 2014.⁵⁶ On 20 April 2016, Broadspectrum was acquired by a Spanish company called Ferrovia, which attained a majority shareholding in Broadspectrum. Ferrovia announced that RPC services would not form part of its service offerings in the future.⁵⁷ It stated that the services which Broadspectrum had been providing on Nauru and Manus (garrison and support services) were not 'a core part of the valuation and the acquisition rationale of the offer' and 'not a strategic activity in Ferrovia's portfolio'.
- Wilson Security is subcontracted by Broadspectrum to provide security services in Nauru and PNG. On 1 September 2016, Wilson Security announced that its contract with Broadspectrum would conclude at the same time as Broadspectrum's head contract.⁵⁸ Wilson Security also stated that it will 'not tender for any further offshore detention services' and noted that the

53 See, www.minister.border.gov.au/peterdutton/Pages/Refugee-resettlement-from-Regional-Process-Centres.aspx.

54 Australian National Audit Office (ANAO), *Offshore Processing Centres in Nauru and Papua New Guinea: procurement of garrison support and welfare services*, Audit Report No. 16 2016–17.

55 ANAO, *Offshore processing centres in Nauru and Papua New Guinea – contact management of garrison support and welfare services*, ANAO Report No. 32 2016–17.

56 DIBP, *Submission 23*, p. 34.

57 Ferrovia, *Ferrovia reaches 59% of Broadspectrum*, media release, 29 April 2016, www.ferrovia.com/en/press-room/press_releases/59-per-cent-offer-broadspectrum/ (accessed 19 January 2017).

58 Wilson Security, *Wilson Security to conclude RPC services in 2017*, media release, 1 September 2016, <https://uploads.guim.co.uk/2016/09/01/245T1041.PDF.pdf> (accessed 19 January 2017).

provision of security services at RPCs is 'not in line with Wilson Security's long term strategic priorities'.

- On 19 September 2016 it was reported that Connect Settlement Services (CSS) would not reapply for its contract to provide settlement services on Nauru once its existing contract expired on 7 December 2016.⁵⁹

1.38 On 1 April 2017 it was reported that the company responsible for the provision of medical services at both the Nauru and Manus RPCs, International Health and Medical Services (IHMS), had been required to cease providing services at the Manus RPC from midnight on 31 March 2017.⁶⁰ It was reported that this was due to the staff members having been practicing medicine without a licence from the PNG Medical Board. The Guardian Australia later reported that IHMS had been replaced by a PNG company called Paradise, which was providing only basic and emergency medical care, and that asylum seekers and refugees with chronic conditions requiring medication had been unable to access such medication during the changeover.⁶¹

1.39 It was further reported that IHMS had characterised this event as a 'temporary' stop in operations, and expressed a hope to resume services soon. It was also reported that IHMS were concerned about having been targeted by the local PNG healthcare sector for commercial reasons:

Overlaying the licensing issue, as a result of competing commercial interests within the healthcare sector in PNG, IHMS has been the target of multiple unfounded accusations including that IHMS has not complied with PNG labour, immigration and taxation laws. IHMS provided the PNG government all the information required to refute these allegations.⁶²

1.40 On 7 April 2017, Mr Behrouz Boochani, a refugee on Manus Island, tweeted that IHMS would be returning to Manus Island.⁶³

59 Sydney Morning Herald, *Refugee welfare service provider Connect abandons Nauru*, 19 September 2016.

60 RNZ, *Embattled healthcare provider leaves Manus*, 1 April 2017.

61 The Guardian Australia, *Manus healthcare provider forced to leave for practicing unlicensed*, 3 April 2017.

62 The Guardian Australia, *Manus healthcare provider forced to leave for practicing unlicensed*, 3 April 2017.

63 Mr Behrouz Boochani, Twitter, <https://twitter.com/BehrouzBoochani> (accessed 7 April 2017).

Chapter 2

Allegations of abuse, neglect and self-harm

2.1 This chapter examines the abuse, neglect and self-harm alleged to have occurred at the Regional Processing Centres (RPCs) in the Republic of Nauru (Nauru) and Papua New Guinea (PNG).

2.2 These allegations are not new. Numerous allegations of misconduct and neglect, both minor and major, have been made since the establishment of the RPCs. Many of these allegations have been outlined, in detail, in previous inquiries into these and related matters.

2.3 This report is not intended to duplicate the evidence presented to previous inquiries, and should be read in conjunction with those previous reports. However, this chapter will set out the range of allegations of abuse, self-harm and neglect, and discuss the new corroborative evidence from both primary and secondary sources in regards to historical claims of abuse, as well as claims of ongoing abuse and neglect.

The Nauru files

2.4 On 10 August 2016, The Guardian Australia published over 2,000 incident reports from the Nauru RPC.¹ These de-identified reports, referred to by the Guardian Australia as 'the Nauru files', detail incidents which were recorded between 2013 and 2015. At the time of their release, the Department of Immigration and Border Protection (the department) stated that the reports detailed 'unconfirmed allegations or uncorroborated statements and claims' and not proven facts.² Some of the reports contain allegations made by asylum seekers and refugees, as reported to RPC staff. Many contain accounts of incidents which staff members witnessed first-hand, or in which they were personally involved.

2.5 Many of these incident reports, both individually and collectively, corroborate much of the evidence presented to the committee from secondary sources. This report will refer to the incident reports and, where appropriate, will quote the words of asylum seekers and refugees (as recorded by the reporting staff member) directly.

Allegations of abuse and self-harm among refugees and asylum seekers

2.6 The committee heard evidence about widespread allegations of abuse and neglect both within RPCs, and in the Nauruan and Papua New Guinean communities. The committee also heard that self-harm and suicidal ideation among refugees and asylum seekers of all ages is extremely common.

1 The Guardian Australia, *The Nauru files*, <https://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive> (accessed 16 January 2017).

2 Department of Immigration and Border Protection (DIBP), *The 'Nauru files'*, 10 August 2016, <http://newsroom.border.gov.au/releases/the-nauru-files> (accessed 16 January 2017).

2.7 This evidence presented to the committee was largely from secondary sources. However, the committee has noted particular incident reports contained in the Nauru files, where those reports further illustrate an allegation made by a secondary source. The committee has also noted that other organisations, including Amnesty International, have conducted their own first-hand confidential interviews with refugees and asylum seekers, and has made reference to those interviews where the subject matter further illustrates allegations made by a submitter.³

Nauru

2.8 The allegations of abuse, self-harm and neglect among refugees and asylum seekers on Nauru relate to the facilities provided to refugees and asylum seekers, staff conduct, harassment and attacks in the Nauruan community, widespread poor mental health, the provision of healthcare services, and the protection of children.

RPC living and recreational facilities

2.9 Many submitters raised serious concerns about the living and recreational facilities at the Nauru RPC. Some of these submitters discussed first-hand experiences of difficult living conditions, while others recounted evidence provided to them by refugees and asylum seekers detained within the RPC.

2.10 As outlined in previous inquiries, the natural environment on Nauru presents challenges. The RPC is located at the centre of a phosphate plateau, with little natural shelter from the heat.⁴ Temperatures regularly exceed 30 degrees Celsius,⁵ and humidity levels can reach between 70 and 90 per cent.⁶

2.11 The Human Rights Law Centre (HRLC) submitted that the RPC facilities do not provide relief from the weather conditions.⁷ Human Rights Watch (HRW) stated that heat levels in the crowded tent accommodation can reach 45–50 degrees Celsius, and explained that in the high humidity environment, mould grows quickly on tent walls and ceilings, and torrential rain fall pools water on the floor.⁸ It noted that approximately one third of the total number of refugees and asylum seekers currently on Nauru remain in RPC tent accommodation.⁹

3 Amnesty International, *Submission 6*, Attachment 1, *Island of despair: Australia's "processing" of refugees on Nauru*, October 2016.

4 United Nations High Commissioner for Refugees (UNHCR), *UNHCR monitoring visit to the Republic of Nauru 7 to 9 October 2013*, p. 13.

5 Weatherzone, *Nauru Coastal Radio Station Climate*, www.weatherzone.com.au/climate/station.jsp?lt=site&lc=200245 (accessed 16 January 2017).

6 Human Rights Watch (HRW), *Submission 22*, p. 3.

7 Mr Daniel Webb, Director of Advocacy (DA), Human Rights Law Centre (HRLC), *Committee Hansard*, Tuesday 15 November 2016, p. 2

8 HRW, *Submission 22*, p. 3.

9 HRW, *Submission 22*, p. 4.

2.12 In February 2015, the then-service provider Transfield Pty Ltd advised the department that tented accommodation in the Nauru RPC failed to meet Australian Mould Guidelines, with more than 10 metres square of visible mould growth in all tents.¹⁰ The department agreed that mould is a persistent problem in tented accommodation.¹¹

2.13 In May 2016, the International Human Rights and Conflict Resolution Clinic of Stanford Law School (Stanford Law Clinic) interviewed a number of individuals who had formerly been detained at the Nauru RPC.¹² These interviews were conducted for the purpose of gathering evidence to provide to the Prosecutor of the International Criminal Court (ICC) in support of a request that the Prosecutor prosecute Australia for crimes against humanity.¹³ Interviewees described a lack of air conditioning or fans for many months, and the subsequent installation of just one fan per tent, as well as personal belongings being repeatedly damaged by flooding.¹⁴ An incident report contained within the Nauru files similarly notes concerns from a Save the Children Australia worker about children with rashes on their necks, chests and arms consistent with heat rash.¹⁵

2.14 The committee heard evidence of both historical and ongoing overcrowding within the RPC. The United Nations High Commissioner for Refugees (UNHCR) advised the committee that accommodation facilities remain overcrowded.¹⁶ Stanford Law Clinic interviewees described that they had at times been required to sleep on a blanket on the ground, or a military style cot.¹⁷ Several others described being held in

10 Australian National Audit Office (ANAO), *Offshore processing centres in Nauru and Papua New Guinea – contract management of garrison support and welfare services ('contract management')*, January 2017, ANAO Report No. 32 2016–17, p. 53.

11 ANAO, *Contract Management*, January 2017, ANAO Report No. 32 2016–17, p. 53.

12 De-identified interviews conducted by the International Human Rights and Conflict Resolution Clinic of Stanford Law School (Stanford Law School) in May 2016, Communique to the Office of the Prosecutor of the International Criminal Court under Article 15 of the Rome Statute (Communique to the ICC), *The situation in Nauru and Manus Island: liability for crimes against humanity in the detention of refugees and asylum seekers (The situation in Nauru and Manus)*, 14 February 2017, p. 29, <https://law.stanford.edu/publications/communique-to-the-office-of-the-prosecutor-of-the-international-criminal-court-under-article-15-of-the-rome-statute-the-situation-in-nauru-and-manus-island-liability-for-crimes-against-humanity/> (accessed 4 March 2017).

13 At the date of this report, no public information is available in relation to that request.

14 Stanford Law School, de-identified interview, 13 May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 28.

15 The Guardian Australia, *The Nauru files*, information 'health', 31 March 2014, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca140152.pdf> (accessed 3 April 2017).

16 Ms Claire O'Connor SC, Australian Women in Support of Women in Nauru (AWSWN), *Committee Hansard*, Tuesday 15 November 2016, p. 18; UNHCR, *Submission 43*, p. 8.

17 Stanford Law School, de-identified interview, 16 May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 28.

overcrowded tents with multiple families, with up to 50 people in one tent.¹⁸ They also alleged that bathroom facilities were inadequate, with less than 10 toilets and showers available for approximately 100 people.¹⁹

2.15 There were also allegations that food and water supplies on Nauru are restricted, and not in adequate supply. In October 2016, the UN Committee on the Rights of the Child (CRC) commented on the limited access to basic services in Nauru, including a lack of safe and clean drinking water in a high humidity environment, leaving children and families 'vulnerable to dehydration and other serious health problems'.²⁰ Former detainees have also reported these concerns, alleging that water shortages could last up to one week during their detention, and that this would prevent showering and lead to water rationing.²¹ One detainee also alleged that at times, contractors would replace the fresh water in the showers with salt water.²² In March 2017, the department advised that domestic water on Nauru is provided through 'reverse osmosis of sea water' and 'imported bottled water', both of which are 'freely available to all staff and all [refugees and asylum seekers]'.²³ Discrepancies remain between evidence by the department and witnesses about how much clean drinking water was available to refugees and asylum seekers.

2.16 The Australia Director of HRW, Ms Elaine Pearson, argued that RPC facilities are not sufficient to provide either privacy or security (particularly at night).²⁴ Several leaked incident reports reflect this argument, and indicate that a lack of personal space contributes to a feeling of being unsafe. These include families accused of bullying one another,²⁵ individuals accused of threatening other detainees,²⁶ a single mother who advised that a man kept entering her tent,²⁷ and

18 Stanford Law School, seven de-identified interviews, May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 28.

19 Stanford Law School, de-identified interviews, May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 28.

20 UN Committee on the Rights of the Child (CRC), *Concluding observations on the initial report of Nauru*, 28 October 2016, CRC/C/NRU/CO/1, p. 13.

21 Stanford Law School, de-identified interview, 16 May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 35.

22 Stanford Law School, de-identified interview, 13 May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 36.

23 DIBP, answer to question on notice, 20 March 2017 (received 4 April 2017).

24 Ms Elaine Pearson, AD, HRW, *Committee Hansard*, Tuesday 15 November 2016, p. 8.

25 The Guardian Australia, *The Nauru files*, minor incident 'complaint', 15 January 2014, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca140018.pdf> (accessed 3 April 2017).

26 The Guardian Australia, *The Nauru files*, information (downgraded from minor incident of 'bullying and harassment'), 13 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150401.pdf> (accessed 3 April 2017).

27 The Guardian Australia, *The Nauru files*, incident 'abusive or aggressive behaviour', 18 September 2013 (no link to the incident report is provided where none was available).

women who stated that they had been the victims of harassment,²⁸ and sexual harassment.²⁹

RPC staff

2.17 Allegations of poor staff conduct have also been addressed in previous inquiries into these matters. In 2015, Mr Phillip Moss AM concluded that it was likely that guards had exploited adults and children in exchange for access to shower facilities, that women had been raped, and that adults and children had been physically and sexually assaulted.³⁰

2.18 The committee heard allegations of unprofessional conduct by some members of RPC staff, including conduct designed to deliberately antagonise and taunt asylum seekers and refugees. The allegations from secondary sources and confidential interviews are reflected in many of the incident reports contained in the Nauru files.

2.19 Amnesty International reported that some RPC service providers would call asylum seekers by their boat or refugee identification numbers, and alleged that some Wilson Security guards called asylum seekers 'rubbish'.³¹ In its response to this submission, the department noted that this issue had been dealt with by the select committee in August 2015, and that the service provider in question had apologised.³² The department stated that there is no evidence that this practice currently exists.

2.20 Stanford Law Clinic interviewees likewise described physical altercations with security staff (as well as locals and fellow detainees), an environment that permitted rape, and sexual blackmail perpetrated by guards (as well as locals and fellow detainees).³³ Others described exchanging sexual favours for longer shower times or goods like cigarettes, and one man alleged that he had been gang raped by men wearing Wilson Security uniforms.³⁴

2.21 RPC staff members have reported hearing other staff members making disparaging comments about asylum seekers, including saying that they should 'go

28 The Guardian Australia, *The Nauru files*, minor incident 'bullying and harassment', 14 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150340.pdf> (accessed 3 April 2017).

29 The Guardian Australia, *The Nauru files*, information (downgraded from a major incident of obscene behaviour), 15 August 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150534.pdf> (accessed 3 April 2017).

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

31 Amnesty International, *Submission 6*, Attachment 1, p. 29.

32 Amnesty International, *Submission 6*, Attachment 1, DIBP response, p. 7.

33 Stanford Law School, de-identified interviews, May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 29.

34 Stanford Law School, de-identified interviews, May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 30.

back to their country and get out of Nauru'.³⁵ The Nauru files also contain allegations of Wilson Security staff swearing at asylum seekers,³⁶ grabbing and pushing them,³⁷ and subjecting them to invasive security measures.³⁸

2.22 In November 2014 a Save the Children worker recorded that a female detainee alleged that a Wilson Security cultural advisor had spoken improperly to her about her recent rape, causing her to feel sick and want to hit her head. The worker recorded that the woman had described the cultural advisor stating the following:

- 'Why? Things that happen to you are as common as going to the bathroom or eating food'
- 'Rape in Australia is very common and people don't get punished'
- 'If that happened to you why didn't you scream at the time? '
- 'You have to take it out of you head if you go to Nauru then he [the perpetrator] could be your neighbour or if you go to [redacted] then he could be on the plane next to you. You also have to teach your son to treat this man nicely'
- 'There are no charges being brought against this man, this was something very normal and very common'.³⁹

2.23 Extremely serious allegations of serious criminal conduct by staff members, including against children have also been made. These allegations spread across the available incident reports, from 2013 through to 2015. The reports detail troubling allegations, including staff members allegedly sexually assaulting a child,⁴⁰ choking a child,⁴¹ hitting a child across the face,⁴² spitting at a child,⁴³ asking a child to lift their

35 The Guardian Australia, *The Nauru files*, minor incident 'abusive or aggressive behaviour', 10 September 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150585.pdf> (accessed 3 April 2017).

36 The Guardian Australia, *The Nauru files*, minor incident 'abusive/aggressive behaviour', 4 August 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150510.pdf> (accessed 3 April 2017).

37 The Guardian Australia, *The Nauru files*, major incident 'assault on a minor', 13 October 2015.

38 The Guardian Australia, *The Nauru files*, minor incident 'threat of self-harm', 19 August 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150541.pdf> (accessed 3 April 2017).

39 The Guardian Australia, *The Nauru files*, 'information', 26 November 2014, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca141111.pdf> (accessed 5 March 2017).

40 The Guardian Australia, *The Nauru files*, major incident 'sexual assault', 16 November 2013, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca131116.pdf> (accessed 3 April 2017).

41 The Guardian Australia, *The Nauru files*, information 'concern for minor', 31 January 2014, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca140042.pdf> (accessed 3 April 2017).

42 The Guardian Australia, *The Nauru files*, minor incident 'complaint', 6 March 2014, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca140096.pdf> (accessed 3 April 2017).

43 The Guardian Australia, *The Nauru files*, minor incident 'abusive or aggressive behaviour' (changed to information by Wilson Security), 27 April 2015.

shirt and display her stomach,⁴⁴ pulling a child's hair,⁴⁵ otherwise physically assaulting children,⁴⁶ and physically removing a child from a tent and then later threatening to assault the child.⁴⁷ One incident report details a staff member having to be physically restrained by other staff members as they tried to hit a child in the RPC canteen.⁴⁸

2.24 In September 2015, a Save the Children Australia staff member reported that they had found a child who was crying and shaken, and who alleged that a Wilson Security guard had become angry at him, grabbed him around the throat, and hit his head against the ground twice.⁴⁹ The worker recorded observing the child then asking the guard repeatedly 'why did you hit me?' Further incident reports alleged that a security guard had deliberately cut down a shade cloth upon which children were sitting, causing them to fall to the rocky ground.⁵⁰ In another incident, a Save the Children Australia teacher recorded that her assistant had asked a guard for a four minute shower, to which the guard replied that he would do so in return for sexual favours, and also expressed a desire to watch a boy or girl showering.⁵¹ In another, a child alleged that a security guard had threatened to call the Nauruan Police about him, and have him locked in a cell forever, and then pretended to call the police.⁵²

2.25 Doctors for Refugees (DFR) raised concerns about the conduct of staff members in Australia. They submitted that an adult woman who had been hospitalised in Australia for depression and suicide attempts during her pregnancy told the

44 The Guardian Australia, *The Nauru files*, minor incident 'anti-social behaviour', 21 May 2015.

45 The Guardian Australia, *The Nauru files*, information (downgraded from major incident of assault on a minor), 24 February 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150173.pdf> (accessed 3 April 2017).

46 The Guardian Australia, *The Nauru files*, information (downgraded from major incident of assault on a minor), 13 June 2015, <https://interactive.guim.co.uk/2016/08/nufiles/pdf/sca150398.pdf> (accessed 3 April 2017); information (downgraded from major incident of assault on a minor), 26 April 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150304.pdf> (accessed 5 March 2017); major incident, 'assault on a minor', 11 June 2015.

47 The Guardian Australia, *The Nauru files*, major incident 'assault on a minor', 30 September 2015.

48 The Guardian Australia, *The Nauru files*, unclassified incident 'concern for minor', 20 November 2013.

49 The Guardian Australia, *The Nauru files*, critical incident 'assault on a minor', 3 September 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150574.pdf> (accessed 3 April 2017).

50 The Guardian Australia, *The Nauru files*, minor incident 'abusive or aggressive behaviour', 11 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150336.pdf> (accessed 4 April 2017); minor incident 'misbehaviour', 13 May 2015 <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150338.pdf> (accessed 3 April 2017).

51 The Guardian Australia, *The Nauru files*, 28 September 2014, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca140808.pdf> (accessed 4 March 2017).

52 The Guardian Australia, *The Nauru files*, minor incident 'complaint', 27 January 2014, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca140037.pdf> (accessed 3 April 2017).

organisation that she was forcibly returned to Nauru five months after giving birth.⁵³ DFR stated that the patient provided the following account of her transfer:

Woke at 6am in bed and officers in the room. She was wearing undergarments and officers would not allow her to put on her clothes prior to driving to the airport. Officers took video footage of her during the drive. Dragged onto the plane sustaining scratches on elbows, knees and back of neck. Photographs demonstrate an abrasion to one knee, bruising above the right elbow and three large bruises on the upper back. She was not permitted to breastfeed her son between 6am to 5pm. Her husband was transferred in a different vehicle.⁵⁴

2.26 DFR also submitted that an unaccompanied minor who had been detained in the Brisbane transit centre and placed on 'high security check' was forcibly transferred to Nauru against her will.⁵⁵ DFR stated that 'witnesses have reported to DFR that she was dragged across the courtyard of the detention facility screaming in protest'. DFR noted that soon after the woman returned to Nauru she set herself on fire.

2.27 The committee also heard allegations of unprofessional conduct at senior management levels. Amnesty International stated that it had conducted a confidential interview in September 2016 with a managerial-level service provider who stated that being privy to conduct at the higher levels of office 'really ate at my soul'.⁵⁶ The staff member described the 'gut-wrenching' feeling of hearing Australian Border Force personnel speaking about asylum seekers and refugees as 'pieces of meat—like cattle', and laughing at suicide attempts.⁵⁷

2.28 The department provided a response to Amnesty International's October 2016 report, *Island of Despair—Australia's 'Processing' of Refugees on Nauru*.⁵⁸ The department stated that it had reviewed the circumstances of the individual cases described in the report. It asserted that a wide range of the claims were false, and that some had been aired previously and had either been refuted or addressed.⁵⁹

Harassment and attacks

2.29 The committee heard evidence of refugees and asylum seekers being afraid of venturing from the camp into the local Nauruan community because of alleged assaults and harassment. From February to October 2015, asylum seekers and refugees at the Nauru RPC could leave at a designated exit point during agreed

53 Doctors for Refugees (DFR), *Submission 56*, p. 18.

54 DFR, *Submission 56*, p. 18.

55 DFR, *Submission 56*, p. 18.

56 Amnesty International, *Submission 6*, Attachment 1, p. 29.

57 Amnesty International, *Submission 6*, Attachment 1, p. 29.

58 Amnesty International, *Submission 6*, Attachment 1, DIBP response.

59 Amnesty International, *Submission 6*, Attachment 1, DIBP response, p. 7.

hours.⁶⁰ Since October 2015, the centre has been designated as being open 'all the time'.⁶¹ The department described the arrangement in its submission to this inquiry, as one which enables refugees and asylum seekers to 'venture beyond the RPC without restriction'.⁶²

2.30 A number of submitters outlined concerns about physical attacks towards asylum seekers and refugees by local residents, as well as antisocial and aggressive behaviour including throwing bottles, spitting, swerving vehicles towards refugees and asylum seekers, and causing property damage.⁶³ Amnesty International submitted that refugees had been viciously attacked in the Nauruan community, including one man who reported being attacked by a group of local men in mid-2016, kicked from his motorbike and beaten, suffering serious head trauma.⁶⁴

2.31 Both HRW and Australian Women in Support of Women on Nauru (AWSWN) submitted that female refugees and asylum seekers have reported widespread sexual assault and harassment, including groping, touching, explicit threats, and attempted rape.⁶⁵ Several incident reports in the Nauru files reflect these allegations, including reports of sexual harassment at the hands of fellow refugees and asylum seekers,⁶⁶ rape,⁶⁷ and sexual propositions and harassment from local Nauruan men in public places.⁶⁸ Ms Pamela Curr of AWSWN stated that in May 2015 a woman in Nauru had been gang raped by a group of local men who had attacked her, doused her with petrol and burned her. Ms Curr stated that the woman in question fell

60 Minister for Immigration and Border Protection, the Hon Peter Dutton MP, Media Release, *Australia welcomes Nauru open centre*, 5 October 2015, www.minister.border.gov.au/peterdutton/2015/Pages/australia-welcomes-nauru-open-centre.aspx (accessed 9 January 2017).

61 Minister for Immigration and Border Protection, the Hon Peter Dutton MP, Media Release, *Australia welcomes Nauru open centre*, 5 October 2015.

62 DIBP, *Submission 23*, p. 41.

63 Ms Elaine Pearson, Australia Director (AD), HRW, *Committee Hansard*, Tuesday 15 November 2016, p. 1; Ms Pamela Curr, AWSWN, *Committee Hansard*, Tuesday 15 November 2016, pp. 11-12; Amnesty International, *Submission 6*, Attachment 1, p. 5.

64 Amnesty International, *Submission 6*, Attachment 1, p. 5

65 Ms Elaine Pearson, AD, HRW, *Committee Hansard*, Tuesday 15 November 2016, p. 1; Ms Pamela Curr, AWSWN, *Committee Hansard*, Tuesday 15 November 2016, p. 11.

66 The Guardian Australia, *The Nauru files*, information, 4 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150323.pdf> (accessed 3 April 2017).

67 The Guardian Australia, *The Nauru files*, major incident 'sexual assault', 12 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150394.pdf> (accessed 3 April 2017); major incident 'sexual assault', 16 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150444.pdf> (accessed 3 April 2017).

68 The Guardian Australia, *The Nauru files*, information, 18 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150405.pdf> (accessed 3 April 2017).

pregnant as a result of this rape, and had to be transferred to Australia for an abortion.⁶⁹

2.32 In April 2016 it was reported that a refugee who had been settled on Nauru was raped while suffering an epileptic seizure, and had since attempted suicide.⁷⁰ The report, which noted that abortion is illegal in Nauru and only sometimes legal in PNG, stated that the woman had been transferred to PNG. On 7 May 2016 it was reported that the Federal Court of Australia (FCA) had ordered that the Minister for Immigration and Border Protection not to organise an abortion procedure in PNG.⁷¹

2.33 HRW explained that in response to this harassment and violence, refugees and asylum seekers on Nauru have tried to alter their behaviour in order to alleviate the risk of attacks. Ms Pearson advised that women and young girls reportedly rarely leave the RPC alone.⁷²

2.34 There are allegations of misconduct by Nauruan police. Amnesty International advised that service providers and refugees had both confidentially disclosed instances where police had torn up a refugee's written statement, forcing them to sign a statement the police had pre-written, robbed asylum seekers, and assaulted them.⁷³ Amnesty International also outlined the case of a man who had allegedly been arbitrarily arrested and incarcerated for over three months, after which time he was harassed and bullied by local police who placed him in a dark room for over four hours and eventually placed him in solitary confinement on the charge of 'threatening a Nauruan citizen'.⁷⁴ It also stated that a service provider had confidentially disclosed an instance in 2016 where local police were called and entered the RPC after a woman had taken her dessert away from the designated eating area. The police allegedly dragged the woman out of the RPC and to the police station.⁷⁵ In an incident report recorded in May 2015, a man alleged that he had been assaulted by local police for refusing to submit to an alcohol breath test. He reported that he was beaten, his clothes were torn off, and he was placed in a cell in only his underwear.⁷⁶

2.35 Amnesty International also submitted that an Australian Federal Police (AFP) Officer had dealt improperly with a minor.⁷⁷ It submitted that an asylum seeker was jailed in June 2016 for allegedly 'threatening a Nauruan citizen', and had been taken to the local police station together with his eight year old son. The father alleged that the

69 Ms Pamela Curr, AWSWN, *Committee Hansard*, Tuesday 15 November 2016, p. 12.

70 Sydney Morning Herald, *Refugee battles for abortion after rape on Nauru*, 15 April 2016.

71 ABC News, *Refugee raped on Nauru flown to Papua New Guinea for abortion*, 7 May 2016.

72 Ms Elaine Pearson, AD, HRW, *Committee Hansard*, Tuesday 15 November 2016, p. 1.

73 Amnesty International, *Submission 6*, Attachment 1, p. 40.

74 Amnesty International, *Submission 6*, Attachment 1, pp. 40–41.

75 Amnesty International, *Submission 6*, Attachment 1, p. 40.

76 The Guardian Australia, *The Nauru files*, major incident 'assault', 9 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150330.pdf> (accessed 3 April 2017).

77 Amnesty International, *Submission 6*, Attachment 1, pp. 40–42.

an AFP officer at the station questioned his son alone for 20 minutes, and then declined to provide him with a copy of his son's statement, stating that he would be contacted about it later. The father alleged that when he was contacted one week later and advised to leave the RPC and collect the statement, he was subsequently arrested outside the RPC by a group of fifteen Nauruan police officers and approximately five AFP officers.⁷⁸ Amnesty International stated that the man was held in prison for 96 days, including a period in solitary confinement. The man alleged that during his imprisonment he attended court several times, but was never permitted to speak. Amnesty International stated that the man was eventually found not guilty, and released on 7 September 2016.

Widespread poor mental health and persistent high levels of self-harm

2.36 The committee heard evidence that refugees and asylum seekers on Nauru express serious and persistent mental health concerns.

2.37 After visiting Nauru in July 2016, Amnesty International reported that almost every person with whom its researchers spoke reported a mental health issue of some kind, and that almost every person said those problems began once they were transferred to Nauru.⁷⁹ High levels of anxiety, mood swings and trouble sleeping have been widely reported.⁸⁰ Amnesty International reported that a woman had watched a man set himself on fire one week after giving birth to her child. After this, she lost her breastmilk, barely spoke, and stopped leaving the family home.⁸¹ HRW, which also visited the RPCs, echoed this, noting that nearly all asylum seekers and refugees interviewed by HRW expressed concern about their mental wellbeing.⁸²

2.38 Media reports note that two detainees have self-immolated while in the Nauru RPC. Mr Omid Masoumali, 23 years old, was filmed pouring petrol on himself and setting himself alight. He was transferred to Australia for medical treatment but died of his injuries. His wife alleged that prior to being airlifted, he went without medical care for two hours, and it was a further eight hours before pain relief was administered to him.⁸³ Ms Hodan Yashin, a 21 year old Somali woman, also set herself alight and was airlifted to Australia for treatment. She was reported to have suffered severe burns to her upper body and face.⁸⁴

78 Amnesty International, *Submission 6*, Attachment 1, pp. 40–42.

79 Amnesty International, *Submission 6*, Attachment 1, p. 5.

80 Ms Elaine Pearson, AD, HRW, *Committee Hansard*, Tuesday 15 November 2016, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 5.

81 Amnesty International, *Submission 6*, Attachment 1, p. 5

82 HRW, *Submission 22*, p. 7.

83 ABC News, *Omid Masoumali, refugee who died after setting himself on fire, 'suffered without medical care*, 2 May 2016.

84 The Guardian Australia, *Somali refugee in critical condition after setting herself alight on Nauru*, 3 May 2016.

2.39 Several individuals interviewed by the Stanford Law Clinic also described widespread self-harm, alleging that self-harm was 'everyday business' in the RPC, and depression was a constant battle.⁸⁵ One interviewee described to the Clinic how he attempted to kill himself on seven different occasions, revealing the large scars on his stomach where he had slit himself open.⁸⁶

2.40 Numerous incident reports contained in the Nauru files reflect these allegations of widespread poor mental health and self-harm. Although it is unclear whether the database of leaked reports represents *all* incident reports during the relevant periods of time, the reports which have been included indicate that:

- from January to October 2015 there were 25 recorded incidents of actual self-harm (six of which were categories as 'critical' incidents, and 19 'major' incidents);
- from February to December 2014 there were 37 recorded incidents of actual self-harm (3 'critical', 10 'major', 14 'minor', and 10 'information'); and
- between 2014 and 2015 there were 62 recorded instances of actual self-harm (ranging in classification).

2.41 The reports of self-harm included in this database, and as referenced by secondary sources, include instances of people self-harming by pouring petrol over themselves,⁸⁷ drinking insect repellent,⁸⁸ swallowing screws,⁸⁹ drinking cleaning fluids,⁹⁰ swallowing stones,⁹¹ ingesting baby bottle sterilising tablets,⁹² hanging,⁹³ and cutting themselves.⁹⁴

85 Stanford Law School, de-identified interviews, May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 34.

86 Stanford Law School, de-identified interviews, May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 34.

87 Amnesty International, *Submission 6*, Attachment 1, p. 5.

88 The Guardian Australia, *The Nauru files*, major incident 'actual self-harm', 29 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150451.pdf> (accessed 4 April 2017).

89 The Guardian Australia, *The Nauru files*, major incident 'self-harm', 21 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150461.pdf> (accessed 4 April 2017).

90 Amnesty International, *Submission 6*, Attachment 1, p. 5; The Guardian Australia, *The Nauru files*, critical incident 'actual self-harm', 26 June 2015; major incident 'actual self-harm', 30 June 2015.

91 The Guardian Australia, *The Nauru files*, major incident 'actual self-harm', 8 October 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150704.pdf> (accessed 4 April 2017).

92 The Guardian Australia, *The Nauru files*, major incident 'actual self-harm', 28 April 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150442.pdf> (accessed 4 April 2017).

93 Amnesty International, *Submission 6*, Attachment 1, p. 5.

94 The Guardian Australia, *The Nauru files*, information 'threatened self-harm' (despite stating that the worker observed the man in question cutting himself), 12 March 2014.

2.42 Incident reports outline numerous instances of people refusing food and water. The classifications associated with these recorded incidents varied from mere 'information', through to a 'critical' incident of a pregnant woman starving herself in September 2015.⁹⁵ In some of these recorded incidents it was alleged that individuals were deliberately doing this to try and force officials to bring them to Australia,⁹⁶ while others stated that individuals told staff members that they had no choice but to stop eating.⁹⁷

2.43 HRW explained that children and young people exhibit higher-than-normal levels of bedwetting, nightmares, and poor behaviour.⁹⁸ Mr Daniel Webb of the HRLC submitted that some children have been so traumatised that they have received inpatient psychiatric treatment.⁹⁹ One former teacher at the Nauru RPC stated that within 15 months, one of her former students who had been 'one of the brightest, bubbliest students' was taking psychotropic medication and would 'cry silently'.¹⁰⁰ Amnesty International submitted that one young girl, who had spent 18 months living in a tent, would vomit, wet her bed nightly, and wake up screaming.¹⁰¹

2.44 There are also numerous incident reports alleging self-harm on the part of children,¹⁰² and threats to harm themselves.¹⁰³ Save the Children teachers recorded a number of instances during which their students disclosed thoughts of self-harm and

95 The Guardian Australia, *The Nauru files*, critical incident 'voluntary starvation', 28 September 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150661.pdf> (accessed 4 April 2017).

96 The Guardian Australia, *The Nauru files*, major incident 'food or fluid refusal', 28 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150449.pdf> (accessed 4 April 2017).

97 The Guardian Australia, *The Nauru files*, major incident 'food/fluid refusal', 31 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150502.pdf> (accessed 4 April 2017); critical incident 'voluntary starvation', 28 September 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150661.pdf> (accessed 4 April 2017).

98 Ms Elaine Pearson, AD, HRW, *Committee Hansard*, Tuesday 15 November 2016, p. 2.

99 Mr Daniel Webb, DA, HRLC, *Committee Hansard*, Tuesday 15 November 2016, p. 2

100 Amnesty International, *Submission 6*, Attachment 1, p. 32.

101 Amnesty International, *Submission 6*, Attachment 1, p. 5.

102 The Guardian Australia, *The Nauru files*, unclassified incident 'concern for minor', 18 November 2013; unclassified incident 'concern for minor', 18 November 2013 (a separate incident); critical incident 'actual self-harm', 29 March 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150253.pdf> (accessed 4 April 2017); critical incident 'self-harm', 5 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150321.pdf> (accessed 4 April 2017).

103 The Guardian Australia, *The Nauru files*, minor incident 'threatened self-harm', 15 September 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150606.pdf> (accessed 4 April 2017); information, 30 March 2015 (the body of the incident lists the date as being 2015, while the date of incident is recorded as 2013), <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150257.pdf> (accessed 4 April 2017); information 'threatened self-harm', 13 March 2014, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150424.pdf> (accessed 4 April 2017); major incident 'threatened self-harm', 29 June 2015.

suicide.¹⁰⁴ The incident reports also indicate a concentration of threats to self-harm among students who were attempting to prevent the closure of their RPC school.¹⁰⁵

2.45 In one particularly concerning incident, a Save the Children Australia staff member recorded observing a child 'in a fit of screaming and flailing her arms', who had climbed onto the top of a store room and threatened to jump.¹⁰⁶ The worker recorded that three different staff members tried to calm the child down for fifteen minutes, but she continued scream, scratch her face (causing her head to bleed). The worker stated that the child appeared to be 'in a far off mental space'. Two witnesses were reported to have stated that the child had a meltdown when a security guard tried to pull a chair from her hands and she fell backwards, striking her head. This incident was initially reported by the Save the Children Australia worker as a minor incident of accident/injury and non-compliance. It was subsequently downgraded to 'information'.

Healthcare services

2.46 The committee heard significant concerns about the standard of healthcare provided to refugees and asylum seekers in Nauru, and the manner in which medical transfers to Australia and PNG take place. Incident reports also demonstrate a lack of faith in the provision of adequate medical services on the part of asylum seekers and refugees, especially in the case of pregnant women.

2.47 The Australasian College of Emergency Medicine (ACEM), the peak organisation for emergency medicine in Australasia, explained that asylum seekers and refugees have complex healthcare needs, which can arise due to the means by which they arrived at an RPC, and as a result of the conditions once they are housed in

104 The Guardian Australia, *The Nauru files*, unclassified incident 'concern for minor', 21 November 2013; minor incident 'self-harm threat', 19 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150347.pdf> (accessed 4 April 2017).

105 The Guardian Australia, *The Nauru files*, major incident 'threatened self-harm', 26 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150413.pdf> (accessed 4 April 2017); major incident 'threatened self-harm', 26 June 2015 (separate incident), <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150413.pdf> (accessed 4 April 2017); major incident 'threatened self-harm' (downgraded to 'information' at the request of the Department), 26 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150418.pdf> (accessed 4 April 2017); major incident 'threatened self-harm', 26 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150463.pdf> (accessed 4 April 2017); major incident 'threat of self-harm' (changed to minor incident 'threat of harm'), 28 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150421.pdf> (accessed 4 April 2017); major incident 'threat of self-harm', 1 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150427.pdf> (accessed 4 April 2017).

106 The Guardian Australia, *The Nauru files*, minor incident of 'accident/injury and non-compliance' (downgraded to information), 1 May 2015, <https://interactive.guim.co.uk/2016/08/nufiles/pdf/sca150308.pdf> (accessed 4 April 2017).

the RPC.¹⁰⁷ They may be vulnerable to infectious diseases, poor nutritional health, and developmental risks associated with poor mental health in the case of children.¹⁰⁸

2.48 In October 2016, the United Nations Committee on the Rights of the Child (CRC) raised concerns in relation to the care available to mothers and young children on Nauru.¹⁰⁹ It highlighted in particular the lack of health services available for asylum seeking and refugee children, 'many of whom have developed chronic conditions as a result of living in overcrowded and unsanitary conditions, and the fact that the main medical provider in the [RPC] has no paediatrician.'¹¹⁰ Amnesty International submitted that tuberculosis is widespread at the Nauru RPC, and that the dampness in the RPC and the phosphate in the air are particularly damaging for the illness.¹¹¹ It reported that an asylum seeker on Nauru stated that approximately 40 children at the Nauru RPC had tuberculosis.

2.49 The committee heard evidence from media reports and medical organisations which submitted to this inquiry of serious concerns about the healthcare services being provided to refugees and asylum seekers in Nauru. In 2017, a young woman and her premature son were medically evacuated to Australia in critical condition, following the performance of a caesarean section in Nauru.¹¹² In January 2017, DFR reported that it had requested the medical transfer of a pregnant woman from Nauru to Australia.¹¹³ DFR advised that the 37 year old woman was 35 weeks pregnant, and that the baby was in breech. It explained that the woman had previously had a miscarriage on Nauru and that she had a large tumour on the wall of her uterus, meaning that she faced a complex and potentially life threatening delivery. The report also alleged that the woman had been prescribed an antidepressant drug (citalopram) which may cause harmful effects on the human foetus, according to Australian guidelines. Following a period of intensive media scrutiny, on 3 February 2017 it was reported that the woman was going to be flown to Australia to give birth.¹¹⁴

2.50 The Australian Medical Association (AMA) submitted that it did not believe that asylum seekers and refugees in Nauru and Manus can access the same level of

107 Australasian College of Emergency Medicine (ACEM), *Submission 13*, p. 2.

108 ACEM, *Submission 13*, p. 2.

109 CRC, *Concluding observations on the initial report of Nauru*, 28 October 2016, CRC/C/NRU/CO/1, <http://www.refworld.org/docid/587ce6df4.html> (accessed 4 March 2017).

110 CRC, *Concluding observations on the initial report of Nauru*, 28 October 2016, CRC/C/NRU/CO/1, p. 11.

111 Amnesty International, *Submission 6*, Attachment 1, p. 42.

112 ABC News, *Nauru refugee critical after caesarean to deliver premature son, flown to Brisbane*, 13 May 2016.

113 The Guardian Australia, *Doctors plead for pregnant refugee on Nauru to be moved to Australian hospital*, 26 January 2017.

114 The Guardian Australia, *Pregnant refugee to be flown from Nauru to Australia to give birth*, 3 February 2017.

healthcare which a person in Australia would receive.¹¹⁵ It explained that a number of asylum seekers have sought medical intervention from the AMA, and that it has obtained medical records from those patients where the written consent of that patient has been obtained.¹¹⁶ Acknowledging that the information it provided could not be independently verified,¹¹⁷ the AMA expressed its concern in relation to the care being provided to certain individuals, citing the following case studies from Nauru:

- a woman who had engaged in self-harm, as well as allegedly having been the victim of verbal, physical and sexual abuse while in Nauru. The AMA stated that the woman had been prescribed Quetiapine, Lorazepam and Mirtazapine 'with severe side effects';¹¹⁸
- a woman whose weight had reportedly fallen by more than half, and whose kidneys were failing;¹¹⁹ and
- a man who was the victim of a physical assault in Nauru, including a strike to the head. The AMA stated that one month after the attack the man had a CT scan and was advised that he had a broken bone in the centre of his skull. The AMA stated that this diagnosis was later reviewed to 'suffering from a mental illness'. The patient's wife was allegedly told that no more could be done for his mental health and that the mental health doctor would recommend electric shock treatment. The AMA also stated that a doctor in the Nauru RPC placed the patient on 16 medications.¹²⁰

2.51 The AMA explained that it had experienced difficulties keeping in contact with asylum seekers and refugees who had approached them for assistance, and on whose behalf the organisation had made representations.¹²¹ For a third party to access a patient's medical records, a patient is required to provide a 'legally valid' signed consent form to IHMS.¹²² The AMA explained that this process posed problems, because some health concerns had been raised with the AMA by a third party, and, while the AMA could raise the matter with the department, it could not contact the patient directly.¹²³ It also explained that technological barriers could frustrate the process of obtaining records. It explained that it would receive signed consent forms via a mobile phone photograph which had been sent by text message.¹²⁴ It also argued

115 Australian Medical Association (AMA), *Submission 1*, p. 7.

116 AMA, *Submission 1*, p. 3.

117 AMA, *Submission 1*, p. 7.

118 AMA, *Submission 1*, pp. 5–6.

119 AMA, *Submission 1*, p. 6.

120 AMA, *Submission 1*, p. 6.

121 AMA, *Submission 1*, p. 3.

122 AMA, *Submission 1*, International Health and Medical Services (IHMS) response, p. 2.

123 AMA, *Submission 1*, p. 3.

124 AMA, *Submission 1*, p. 3.

that patients themselves would be prevented from viewing their own records where they were provided in a digital format, as access to computers was severely limited.¹²⁵

2.52 The AMA submitted that in each of the cases it cited in their submission, the AMA had no knowledge of the patient's current medical situation because they had not been provided with updated information, or had not been able to obtain the consent of the patient beyond the information originally provided.¹²⁶

2.53 IHMS explained that it has a client confidentiality and privacy policy, and does not comment on individual cases 'without being able to properly identify the patient and receive their consent to discuss their case in an open and transparent way'.¹²⁷ IHMS stated that it was concerned that AMA had 'chosen to use a series of emotive quotations to imply unsatisfactory medical treatment rather than providing a systematic, professional discussion of the cases as would normally be undertaken by medical professionals'. IHMS stated that they are willing to discuss cases which the AMA wishes to raise if it can provide a valid consent from the patient authorising IHMS to do so.¹²⁸

2.54 The committee noted that many of the concerns raised by the AMA were also raised by DFR. DFR explained that doctors who are members of the organisation conduct independent medical analysis of refugees and asylum seekers' cases, with their written consent, and make clinical recommendations which are submitted back to IHMS.¹²⁹

2.55 DFR advised that it currently has 188 active cases for individuals in Nauru and Manus who have self-referred to DFR for medical assistance, and 26 cases related to individuals in Australia.¹³⁰ DFR explained that in 26 per cent of its cases, 'severe and deteriorating mental health is the primary reason for the referral', and noted that this does not include cases where an individual is experiencing more than one condition, and the primary reason for the referral is not a mental illness.¹³¹ DFR stated that in more than 30 per cent of its cases the primary reason for the referral was a suicide attempt.

2.56 DFR expressed concern about the care being provided to certain individuals, citing the following case studies from Nauru:

125 AMA, *Submission 1*, p. 5.

126 AMA, *Submission 1*, pp. 4-7.

127 AMA, *Submission 1*, IHMS response, p. 2.

128 AMA, *Submission 1*, IHMS response, p. 3.

129 DFR, *Submission 56*, p. 1.

130 DFR, *Submission 56*, p. 2.

131 DFR, *Submission 56*, p. 7.

- a child whose mother suffered from severe depression and had attempted suicide multiple times, and was so disengaged from her son that she could not tolerate his touch or his presence;¹³²
- a Clinical Professor recommended that a child be transferred to Australia for testing as the diagnosis could be tuberculosis, syphilis, or yaws. The child was not transferred.¹³³
- a child who had been identified as suffering from a possible developmental delay three years earlier. A child and adolescent psychiatrist recommended that the child be transferred immediately to Australia to access specialist services. The child's medical records indicated that the child had not received specialist paediatric developmental assessment or treatment;¹³⁴
- a child who had been diagnosed with hyperactivity disorder, and was recommended for a formal developmental assessment for Autism Spectrum disorder in October 2015. In February 2016 another psychologist recommended a psychiatry referral. In April 2016 a further psychologist recommended a referral to a child psychologist. DFR stated that 'there is no evidence in his case file of these recommended referrals occurring and no developmental assessment has been done';¹³⁵
- a child with sinus pain who was placed under full sedation three times by a dentist for investigation, placed on six courses of antibiotics, and was taking daily medication. DFR questioned the testing which had been undertaken in relation to the child's care, and stated that it had corresponded with IHMS in relation to the diagnosis. DFR stated that 'IHMS insists that the diagnosis is dental abscess despite no response to multiple antibiotics', and four diagnoses of 'maxillary sinusitis' on four separate occasions;¹³⁶
- a child had sustained a fracture in the forearm of his dominant hand in May 2015.¹³⁷ DFR reviewed his X-ray and recommended that the child be referred to an orthopaedic surgeon. DFR stated that IHMS dismissed this recommendation and it was only after the X-rays appeared in the Australian media that the operation DFR had recommended, took place. DFR stated that 'notably this involved flying an Australian orthopaedic team to Nauru, at great expense, to perform surgery in June 2015, a delay of one month following the original injury'. DFR stated that in November 2015, a medical officer at the Republic of Nauru Hospital noted in the child's medical records, 'patient was not seen and evaluated by physiotherapist!! No physiotherapy was done since

132 DFR, *Submission 56*, p. 9.

133 DFR, *Submission 56*, p. 13.

134 DFR, *Submission 56*, p. 15.

135 DFR, *Submission 56*, p. 15.

136 DFR, *Submission 56*, p. 14–15.

137 DFR, *Submission 56*, p. 15.

my referral last August'. DFR stated that one year later the child was experiencing severe arm pain and impaired function of his dominant hand. DFR also stated that the child's mother informed them that an orthopaedic surgeon had been flown from Australia one month ago but the 'surgery room was not ready for operation'.¹³⁸

2.57 Amnesty International raised similar concerns, stating that asylum seekers and refugees reported that 'the principal response to their mental health issues has been the prescription of strong sedatives and anti-psychotic medication'.¹³⁹

2.58 The committee noted in particular the following compelling case from DFR, which the committee regards as an example of the difficulties associated with accessing adequate services on Nauru.

Case Study:

(Name redacted) was [a child] upon his arrival to Nauru in September 2013 and assessed as having 'mild PTSD symptoms.' His father took him to Torture and Trauma counselling and he initially coped well. In April 2014, IHMS doctor and psychologist noted he was being bullied because of a speech impediment. He was referred to a paediatric psychiatrist. The psychiatrist noted 'speech production disorder' and referred to an Ear Nose and Throat surgeon (ENT) for assessment of reduced tongue movement. In May 2014 the child presented with a dental infection and later that month represented after assault by another child at school. The psychologist noted 'he is teased daily about his speech impediment.' A 'high priority referral' unsigned in his case file is dated June 2014. His father presents to IHMS multiple times over 3 months to check this referral—psychologists and multiple general practitioners confirm an existing referral and note escalating this to the Senior Medical Officer on Nauru several times.

(Name redacted)'s father submitted a complaint through Transfield services regarding the delayed specialist review and received written reply from the Health Services Manager on the 13th of May: 'I do not have a date for specialist to visit Nauru at this time. (Name redacted) is on the waiting list and we will notify you when we have a date for this service.' On the 22nd of May 2014 the Senior Medical Officer for IHMS on Nauru submitted a Recommendation for Medical Movement from Nauru to Australia for oral surgery and speech therapy to the Area Medical Director. [DFR] does not have documentation following this to explain why no transfer occurred.

7 months later, in December 2014 an IHMS medical officer at the Republic of Nauru Hospital (RONH) documents 'advised no operation for tongue tie is indicated. There is clear evidence that tongue tie operation does not improve speech.' Unfortunately, while surgical management of tongue-tie is controversial, indications for possible surgery include articulation problems, psychological problems and periodontal disease—all present in

138 DFR, *Submission 56*, p. 15.

139 Amnesty International, *Submission 6*, Attachment 1, p. 25.

this case. Standard treatment for tongue-tie and speech problems is a collaboration between paediatric ENT specialists with speech pathologists (neither available on Nauru). [DFR] does not have clinical notes between this time and April 2015 when an IHMS psychologist wrote to the Health Services Manager on Nauru that '(name redacted) had a tongue untied not long ago.'

The psychologist also wrote in 2015 that 'his speech is very poor, due to this he reported being severely bullied by his peers and he is no longer attending school... communication difficulties, enuresis and suffering from bullying reinforced his self-hatred, as a result his self-esteem is non-existent in my opinion. Conceptually his sleep deprivation, social exclusion and detention fatigue create more anxiety, severe depression and suicidal ideations...at the moment I worry for his prognosis.' 11 months later, in March 2016 (name redacted) attempted to strike him-self with a knife and Nauru police noted knife slashes on the walls. Upon arrival to hospital (name redacted) stated 'I am tired of life...I want to die.' In May 2016 a psychologist documents '(name redacted) had disclosed suicidal ideations ... he would set himself on fire.'

In April 2016 the Nauru Settlement Clinic child and adolescent psychiatrist had a phone call with a psychiatrist at the RONH who reported 'a psychotic episode' and commenced him on anti-psychotic medication. The psychiatrist writes that he discussed this with the medical team who requested offshore management for close monitoring of suicidal ideation, and treatment by a speech pathologist. No documentation of a transfer request by senior medical officers is found in his file.

On the 4th of July 2016 (name redacted) is referred by an IHMS psychiatrist for transfer to Australia or a third country for inpatient treatment ('which has an accessible hospital providing child psychiatric specialist services with capability, expertise and experience with childhood psychosis') of a presumed first episode depressive psychosis (despite this being the second documented event). He writes that (name redacted) 'was found by his father having tried to hang himself from a fan with a computer cord' and hearing voices telling him to kill himself. This referral was updated further on the 7th of July and the psychiatrist writes that '(name redacted)'s mental condition is reported to have further deteriorated over the last day with ongoing psychotic symptoms...receiving psychiatric care requires time and forward planning to ensure bed availability. IHMS are requesting urgent approval to allow for forward planning of ongoing management.' He was finally transferred to Melbourne on the 9th of July 2016, three months after the first psychiatrist highlighted suicidal risk and need for inpatient treatment.¹⁴⁰

2.59 DFR argued that this case study demonstrates a child with a treatable surgical condition and preventable comorbid mental illness, whose care was 'not effectively

escalated so that he now suffers severe mental illness with psychosis and is of high suicide risk'.¹⁴¹

2.60 The committee considers that this is an example of a child with a treatable condition, whose circumstances have presumably worsened because of the lack of timely and appropriate care.

2.61 Like the AMA, DFR raised concerns about the process by which medical records could be obtained, in order to facilitate independent medical scrutiny.¹⁴² It explained that DFR requests medical records from IHMS pursuant to Freedom of Information legislation, and submitted that, 'Frequently these requests are not answered'.¹⁴³ It explained that the longest time DFR has waited to receive medical records has been 300 days, with two cases involving a wait of 270 days. It stated that DFR has made 50 complaints to the Office of the Australian Information Commissioner (OAIC) since 30 June 2013. DFR highlighted the following example of a significant delay in receiving a child's medical records:

One of the paediatric cases where [DFR] has not received the clinical file 135 days since the OAIC complaint was made, involves a child with an infectious disease (*Schistosoma Japonica*) which [DFR] was informed was inadequately treated. The infectious disease poses both a serious risk to the child's growth and the public safety of all those in close contact on Nauru. IHMS has been informed of this and has still not released the medical file.¹⁴⁴

2.62 IHMS submitted that in each of the complaints which DFR had referred to the OAIC, the Commissioner had found in IHMS' favour.¹⁴⁵

2.63 DFR also submitted that the department has recently denied a number of requests for medical records on the basis that the signatures on the consent forms did not match the signatures on departmental records. DFR stated that 'it has taken 70 days (10 weeks) for DIBP to review these signatures and inform [DFR] of their concerns'.¹⁴⁶

2.64 DFR argued that the manner in which healthcare services are provided to patients, particularly suicidal and other at-risk patients, is problematic.¹⁴⁷ It highlighted differences between the care provided to people in Australia who are deemed to be at risk of harming themselves or another person, and the care provided to the same individuals in RPCs. DFR explained that under the Australian mental health legislation, treatment options for patients who are at risk of harming themselves

141 DFR, *Submission 56*, p. 10.

142 DFR, *Submission 56*, pp. 12-13.

143 DFR, *Submission 56*, p. 12.

144 DFR, *Submission 56*, p. 13.

145 DFR, *Submission 56*, IHMS response, p. 2.

146 DFR, *Submission 56*, p. 13.

147 DFR, *Submission 56*, p. 19.

or others include involuntary detention and hospital admission. It also noted that the *Mental Health Act 2007* (NSW) 'explicitly outlines that individuals should receive effective care with the least restriction of their liberty, interference with their rights, dignity and self-respect'. It explained that those Australian patients would also have the right to appeal a decision made under the Act, and seek representations from a lawyer, psychiatrist and liaison or advocate. It argued that, by contrast, patients deemed to be at a high risk of self-harming in an RPC are often placed under 24-hour watch by security guards.¹⁴⁸

2.65 Stanford Law Clinic interviewees echoed concerns about health services in Nauru.¹⁴⁹ They alleged that, at the time of their detention, the Nauru local hospital was unsanitary and had no medical specialists, and that many requests for medical assessment would not be answered for months.¹⁵⁰ One interviewee said that he had been in detention on Nauru for 10 months and suffering from a hand condition. He alleged that the ailment went untreated, his muscles began to wither, and he eventually lost the use of his hand.¹⁵¹

Several incident reports in the Nauru files likewise indicate concerns on the part of refugees and asylum seekers about the healthcare services being provided at the Nauru RPC, including a lack of trust in those services. These include allegations of being turned away by health services,¹⁵² allegations of health service workers not providing assistance,¹⁵³ and concerns about IHMS showing pregnant families inaccurate images of PNG medical facilities.¹⁵⁴ Several reports indicate particular concerns about women giving birth in Nauru or PNG.¹⁵⁵

148 DFR, *Submission 56*, p. 19.

149 Stanford Law School, de-identified interviews, May 2016, in *Communique to ICC, The situation in Nauru and Manus*, 14 February 2017, p. 32.

150 Stanford Law School, de-identified interviews, May 2016, in *Communique to ICC, The situation in Nauru and Manus*, 14 February 2017, p. 32.

151 Stanford Law School, de-identified interview, 16 May 2016, in *Communique to ICC, The situation in Nauru and Manus*, 14 February 2017, p. 33.

152 The Guardian Australia, *The Nauru files*, major incident 'threatened self-harm', 21 February 2014.

153 The Guardian Australia, *The Nauru files*, minor incident, 'threat of self-harm', 10 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150390.pdf> (accessed 4 April 2017).

154 The Guardian Australia, *The Nauru files*, information, 1 October 2015.

155 The Guardian Australia, *The Nauru files*, minor incident 'self-harm threatened', 9 September 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150586.pdf> (accessed 4 April 2017); unclassified incident 'food and fluid refusal', 14 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150457.pdf> (accessed 4 April 2017); minor incident 'self-harm threatened', 9 September 2015, <https://interactive.guim.co.uk/2016/08/nufiles/pdf/sca150582.pdf> (accessed 4 April 2017); minor incident 'threat of self-harm', 28 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150492.pdf> (accessed 4 April 2017).

Child welfare and protection

2.66 As set out above, the committee noted extensive allegations of self-harm by children, and allegations of abuse towards children by RPC staff members. The committee also considered further evidence from both primary and secondary sources in relation to the safety and wellbeing of children in the Nauru RPC and the Nauru community.

2.67 In September 2013 there were 173 refugee and asylum seeker children living in Nauru.¹⁵⁶

2.68 Numerous allegations of improper conduct in relation to children in the Nauru RPC, and of an unsafe environment, have been detailed in evidence presented to the 2014 Australian Human Rights Commission (AHRC) *The Forgotten Children* report,¹⁵⁷ the 2015 Moss Review,¹⁵⁸ and the 2015 select committee.¹⁵⁹ The select committee concluded that 'the Nauru RPC is neither a safe nor an appropriate environment for children'.¹⁶⁰ The evidence received by this committee is consistent with this conclusion. In both the Nauru RPC, and the wider Nauruan community, the welfare of asylum seeker and refugee children falls well below an acceptable standard.

2.69 Amnesty International submitted that on several occasions, authorities on Nauru have engaged in inappropriate practices in relation to children. It alleged that in 2015 the Nauru Police Force hired a convicted paedophile as a reserve officer, and that a young girl had been questioned by police twice without a child protection specialist having been present.¹⁶¹

2.70 In May 2016, the department's Child Protection Panel (Panel) noted concerning incidents involving RPC staff and children. The Panel stated that in 2014 an employee driving a bus with school aged children pulled over, pointed a cricket bat at a teenage boy and told him to shut up and get off the bus. This incident ended when other staff physical intervened and escorted the employee off the bus and removed the

156 Government of Nauru, *Opening Statement Committee on the Rights of the Child*, 13-14 September 2016, p. 4.

157 Australian Human Rights Commission (AHRC), *The forgotten children: national inquiry into children in immigration detention*, 2014.

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

159 Select Committee into Recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru (Select Committee), *Taking Responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru ('Nauru RPC')*, August 2015, pp. 87–93.

160 Select Committee, *Nauru RPC*, August 2015, p. 132.

161 Amnesty International, *Submission 6*, Attachment 1, pp. 30-31.

bat.¹⁶² The Panel also noted an incident during which a security guard grabbed a child by the hair and collar and dragged them for 20 metres.¹⁶³

2.71 The Panel identified several areas of concern with regard to the involvement of staff in incidents involving children. These included opportunistic assaults on children, (particularly at night),¹⁶⁴ a failure to maintain professional boundaries (including exchanging personal details with children, attempting to connect with them on social media, and making explicit and unwelcome sexual overtures),¹⁶⁵ and staff reportedly under the influence of alcohol or other drugs.¹⁶⁶

2.72 Several incident reports contained in the Nauru files reflect these concerns, detailing allegations of physical, sexual and emotional abuse against children. These include allegations of physical and emotional abuse by parents towards their own children,¹⁶⁷ fears from parents about not being able to cope and hurting their children,¹⁶⁸ and children asking for their parents not to be told of particular incidents because they would be hit.¹⁶⁹ There are also incident reports detailing parents assaulting other children allegedly because the child in question had hurt their own

162 Child Protection Panel (CPP), *Making Children Safer*, May 2016, p. 24.

163 CPP, *Making Children Safer*, May 2016, p. 25.

164 CPP, *Making Children Safer*, May 2016, p. 24.

165 CPP, *Making Children Safer*, May 2016, p. 24.

166 CPP, *Making Children Safer*, May 2016, p. 24.

167 The Guardian Australia, *The Nauru files*, incident 'concern for minor', 28 October 2013; information 'family violence', 20 February 2014; minor incident 'family violence', 20 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150349.pdf> (accessed 4 April 2017); major incident 'assault on a minor', 14 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150403.pdf> (accessed 4 April 2017); major incident 'assault on a minor', 7 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150327.pdf> (accessed 4 April 2017); minor incident 'assault', 9 September 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150581.pdf> (accessed 4 April 2017).

168 The Guardian Australia, *The Nauru files*, minor incident 'family violence', 22 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150356.pdf> (accessed 4 April 2017).

169 The Guardian Australia, *The Nauru files*, major incident 'assault on a minor', 16 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150404.pdf> (accessed 4 April 2017).

child.¹⁷⁰ There are also allegations of children assaulting other children,¹⁷¹ and of sexual assault against children.¹⁷²

2.73 Further incident reports, in addition to those outlined previously, detail allegations of improper conduct by Wilson Security staff members towards children.¹⁷³ In one particularly concerning incident, a mother reported that her husband and son had been in a car with a security guard, and that her son said the guard had put his hand up his shorts and played with his bottom.¹⁷⁴ She reported that her husband 'removed [his child] from the middle of the car and placed [redacted] on his lap but did not say anything as he feared the two [security] officers in the car with him'.

2.74 One former teacher on Nauru outlined particular concerns about the care provided to a group of unaccompanied minors.¹⁷⁵ The teacher explained that 29 unaccompanied male children had been transferred to Nauru by February 2014, and were kept in isolated areas of the RPC with restricted mobility. They explained that a number of the boys had self-harmed and attempted suicide while in the 'closed detention environment'.¹⁷⁶ They submitted that in October 2014, the boys were released into the Nauruan community in three separate accommodation complexes, one of which was isolated. The teacher advised that the boys were immediately targeted, and the victims of theft and assault. The teacher also submitted that upon their release into the community, the boys were assured by the Nauruan Government that they would have access to the Nauruan education system. However, the teacher alleged that the boys were barred from enrolling in the local high school. The teacher alleged that despite approaching the department for assistance, 'none of the

170 The Guardian Australia, *The Nauru files*, minor incident 'fighting', 1 November 2013, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca131101.pdf> (accessed 4 April 2017).

171 The Guardian Australia, *The Nauru files*, minor incident 'assault', 23 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150360.pdf> (accessed 4 April 2017); minor incident 'assault', 1 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150370.pdf> (accessed 4 April 2017).

172 The Guardian Australia, *The Nauru files*, unclassified incident 'sexual assault', 21 October 2013; information 'concern for minor', 7 February 2014, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca140048.pdf> (accessed 4 April 2017); major incident 'sexual assault', 4 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150432.pdf> (accessed 4 April 2017).

173 The Guardian Australia, *The Nauru files*, major incident 'assault', 20 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150351.pdf> (accessed 4 April 2017).

174 The Guardian Australia, *The Nauru files*, 15 January 2015, critical incident 'sexual assault allegation (downgraded by Wilson Security from to a major incident)', <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150051.pdf> (accessed 5 March 2017).

175 *Submission 53*.

176 *Submission 53*, p. 2.

unaccompanied refugee minors were given the opportunity to obtain high school qualifications'.¹⁷⁷

2.75 The committee also heard concerns about a widespread lack of school attendance among refugee and asylum seeker children. Amnesty International submitted that when refugee and asylum seeker children were first transferred from the RPC school to the local Nauruan schools the rate of attendance was 60 per cent.¹⁷⁸ HRW submitted that within six months this had fallen to just 5 per cent,¹⁷⁹ with one service provider on Nauru confidentially advising Amnesty International that in September 2016 no refugee or asylum seeker children were attending local schools.¹⁸⁰ Bullying and harassment of refugees and asylum seekers in the local schools by both teachers,¹⁸¹ and students has been reported.¹⁸² Incident reports indicate that some children have threatened suicide if forced to attend the local schools.¹⁸³

2.76 Incident reports also indicate allegations of inappropriate conduct by local students.¹⁸⁴ In one incident, a child told a Save the Children worker that he and others at Nauru College did not want to attend school because the local boys were touching the girls, and had threatened them with a knife.¹⁸⁵

2.77 On 4 April 2017, in response to a question from the committee about school attendance in Nauru, the department advised that it does not have any data about the rates of school attendance at local Nauruan schools. It stated that:

177 *Submission 53*, p. 3.

178 Amnesty International, *Submission 6*, Attachment 1, p. 31.

179 Amnesty International, *Submission 6*, Attachment 1, p. 31.

180 Amnesty International, *Submission 6*, Attachment 1, p. 31.

181 The Guardian Australia, *The Nauru files*, major incident 'bullying and harassment', 16 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150473.pdf> (accessed 4 April 2017); major incident 'assault on a minor', 30 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150499.pdf> (accessed 4 April 2017).

182 HRW, *Submission 22*, pp. 5-7.

183 The Guardian Australia, *The Nauru files*, minor incident 'threatened self-harm', 2 September 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150571.pdf> (accessed 4 April 2017).

184 The Guardian Australia, *The Nauru files*, major incident 'sexual assault', 12 September 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150583.pdf> (accessed 4 April 2017); major incident 'sexual assault', 15 September 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150608.pdf> (accessed 4 April 2017); minor incident 'assault on a minor', 17 September 2015 <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150621.pdf> (accessed 4 April 2017); information, 20 March 2014, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca140135.pdf> (accessed 4 April 2017).

185 The Guardian Australia, *The Nauru files*, minor incident 'abusive/aggressive behaviour', 1 September 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150570.pdf> (accessed 4 April 2017).

The full integration of asylum seeker and refugee children in the local education system was agreed between the Department and the Government of Nauru in May 2015. This integration was designed to facilitate greater self-agency; and promote social connectedness for refugee and asylum seeker children and their families with the local community.

School attendance data is therefore a matter for the Government of Nauru.¹⁸⁶

2.78 The department advised that it would send a request to the Government of Nauru for information about school attendance rates.¹⁸⁷

2.79 The department also explained that it has expended \$8.4 million constructing a new facility at the Nauru Primary School, and has a contract with the Brisbane Catholic Education Office (BCEO) to provide education services on Nauru, at a total cost of \$10 million.¹⁸⁸

Papua New Guinea

2.80 While the committee heard a number of concerns about the Manus Island RPC, there is less information available when compared to the Nauru RPC.

RPC conditions

2.81 The committee heard evidence concerning the suitability of facilities and services at the Manus RPC, as well as allegations of widespread poor mental health, poor health services, and a lack of safety in the PNG community. The suitability of facilities and services at the Manus Island RPC were also discussed extensively by this committee in December 2014.¹⁸⁹

2.82 As set out in Chapter 1, since April 2016 the Manus RPC has been described as being an 'open centre',¹⁹⁰ and in March 2017 was declared to already be 'closed',¹⁹¹ (despite the fact that it is still operating, and the contracts of service with Broadspectrum, IHMS, Wilson Security and other contractors are still operational).

2.83 However, the UNHCR submitted that overcrowding, a high number of guards, perimeter fences, and the use of communal tents means that the conditions in the RPC remain indistinguishable from the previous detention arrangement.¹⁹² It reported that when it visited the Oscar and Delta compounds of the RPC in April 2016, recognised

186 DIBP, response to question on notice, 15 March 2017 (received 4 April 2017).

187 DIBP, response to question on notice, 20 March 2017 (received 4 April 2017).

188 DIBP, response to question on notice, 15 March 2017 (received 4 April 2017).

189 Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014 ('Incident at Manus')*, December 2014, Chapter 3.

190 DIBP, *Submission 23*, p. 68.

191 ABC News, *PNG Chief Justice finds Manus Island detention centre is actually closed*, 13 March 2017.

192 UNHCR, *Submission 43*, p. 8.

refugees were allocated just 1.68 square metres per person—being half the minimum amount of space required under international prison standards.¹⁹³ It cautioned that the risks to public health and mental health in these conditions were 'considerable', and submitted that the lack of personal space increased the possibility of abuse.¹⁹⁴

2.84 Stanford Law Clinic interviewees echoed these concerns about a lack of space, alleging that staff members had crowded 50 people into one tent.¹⁹⁵ One interviewee alleged that, while most men were required to sleep in bunk beds, the top bunk was so close to the roof of the tent that it would press against the ceiling and get so hot that most men would simply sleep on the floor.¹⁹⁶ The men also described food rotting quickly in the high heat, and the infestation of food with insects.¹⁹⁷ These claims reflect similar evidence presented to the committee in December 2014.¹⁹⁸ Interviewees also alleged that websites were blocked within the RPC, including blocking of websites which would offer legal services.¹⁹⁹

High levels of self-harm and poor mental health

2.85 The committee heard strong evidence indicating that asylum seekers and refugees in PNG experience poor mental health at an extremely high rate, and that rates of self-harm are similarly high.

2.86 HRW explained that when it visited the Manus RPC in 2015 it met individuals who cut themselves, hit their head against the wall, refused to go outside, and refused to speak to others for months.²⁰⁰ When the UNHCR visited later in April 2016, its medical experts interviewed 181 asylum seekers and refugees (being 76.8 per cent refugees).²⁰¹ At the time of the study, the median period of time in detention was 31 months.²⁰² The UNHCR found that 88 per cent of interviewees suffered from a depressive, anxiety and/or Post Traumatic Stress Disorder (PTSD),²⁰³

193 UNHCR, *Submission 43*, p. 8.

194 UNHCR, *Submission 43*, p. 8.

195 Stanford Law School, de-identified interview, 17 May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 41.

196 Stanford Law School, de-identified interview, 16 May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 41.

197 Stanford Law School, de-identified interview, 16 May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 41.

198 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, pp. 43-44.

199 Stanford Law School, de-identified interview, 16 May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 43.

200 HRW, *Submission 22*, p. 9.

201 UNHCR, *Submission 43*, p. 29.

202 UNHCR, *Submission 43*, p. 29.

203 UNHCR, *Submission 43*, p. 10.

and described the prevalence and severity of mental disorders among the refugee and asylum seeker population as 'extreme',²⁰⁴ commenting that:

The rates of caseness for depressive or anxiety disorders and/or PTSD in the asylum-seeker and refugee population in the Manus Island RPC or ELTC are amongst the highest recorded rates of any surveyed population. They are many-fold higher than in mainstream Australian populations and higher than that recorded in asylum-seeker populations living in the Australian community.²⁰⁵

Healthcare facilities and services

2.87 The committee heard evidence of serious concerns about the adequacy of health care services available to refugees and asylum seekers in PNG. Many of these concerns were reported on by this committee in December 2014.²⁰⁶

2.88 Both the AMA and DFR raised a number of concerns about health care treatment based on health records which they had scrutinised.

2.89 For example, the AMA provided a number of, what it described as, concerning case studies from patients on Manus.²⁰⁷ These included:

- a 70 year old Rohingya asylum seeker detained in the Manus RPC was a patient in the Port Moresby Hospital for seven months, where he received little treatment. He had been diagnosed with a heart condition and high blood pressure, with symptoms including swollen feet and legs, and an inability to walk or stand for longer than a few minutes. He was then returned to the RPC and waited 20 days for a doctor's appointment. The AMA advised the department's Chief Medical Officer Dr Brayley, that without treatment the patient was likely to die. The AMA was subsequently advised that a request for the man's medical transfer to Australia 'should have been put in train last week by IHMS'. At the date of writing the submission the AMA stated that it was not aware of where the man was located or any other details about his care.²⁰⁸
- a man who had undergone testing at the Port Moresby Hospital was returned to the Manus RPC because the hospital did not have the facilities to treat the patient further. The AMA was advised that a neurosurgeon had advised that the patient would require a blood test which could only be completed in Australia, as well as an investigation by a neurosurgeon. The AMA stated that it had been confidentially advised that the patient was provided with a teleconference with an endocrinologist located in Australia who, having not

204 UNHCR, *Submission 43*, p. 33.

205 UNHCR, *Submission 43*, p. 32.

206 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, pp. 44-48.

207 AMA, *Submission 1*.

208 AMA, *Submission 1*, pp. 3-4.

seen any of the patient's medical records and without asking him to explain his symptoms, prescribed the patient a twice weekly medication for two years.²⁰⁹

- a man allegedly sustained a head injury at the Manus RPC, and subsequently lost consciousness twice over the following 38 hours.²¹⁰ The AMA stated that a neurosurgeon advised that the patient required a brain scan and possibly an MRI. The AMA stated that the department advised it that the patient 'is not prescribed any regular medications [and] no recent health issues have arisen'.

2.90 DFR raised similar concerns in relation to a number of cases of which it was aware:

- a man who arrived in the Manus RPC with no documented pre-existing physical or mental illness who presented, over the following two years, with intermittent concerns about deteriorating health, including untreated dental pain, undiagnosed hand pain, and worries about his family back home. In August 2015 he was transferred to the transit centre and saw a series of doctors 'without formal diagnoses made for his physical ailments'. In May 2016 a psychiatrist recorded that he 'now suffers from reactive depression with self-harm intent'. An advocate made a referral to DFR on 17 May 2016, because the man had expressed a desire to self-immolate. On 26 May an urgent request was sent to IHMS for his medical file. DFR made multiple attempts to access his file, and then made a complaint to the OAIC pursuant to *Freedom of Information Act 1982*. After making the complaint, DFR received the man's medical file on 25 July 2016. The last documentations on the file following the psychiatrists report in May, were entries from 2 June to 14 July, where 'the mental health team report he did not attend his appointments'. DFR stated that 'there is no documented effort made by health workers to determine why despite a high risk of suicide'.²¹¹
- a man who developed PTSD following the Manus RPC riots in February 2014, and who witnessed the murder of Mr Reza Barati and was himself assaulted, developed nocturnal enuresis. DFR stated that this was attributed to the man's PTSD, and no investigation into possibly organic causes was conducted. DFR stated that in November 2015, an attending IHMS doctor noted a plan to arrange a urology teleconference. An external referral for a urology review was completed on 5 December 2015. DFR stated that, according to the man's medical record, 'he has not received further specialist assessment despite recommendations by IHMS doctors'.²¹²

209 AMA, *Submission 1*, p. 4.

210 AMA, *Submission 1*, p. 7.

211 DFR, *Submission 56*, p. 8.

212 DFR, *Submission 56*, p. 16.

- a man in PNG was experiencing chronic back pain. In 2015, an MRI indicated a 'significant abnormality'. A neurosurgeon recommended surgical treatment. On 22 February 2015 an Australian neurosurgeon recorded that he had discussed the man's situation with 'senior Neurology colleagues' in Melbourne, as well as 'senior administration'. He recorded that they were 'happy to provide the requisite high level of care needed' by the man given his 'medical and surgical circumstance'. DFR stated that it has been advised that the man did not receive surgery. DFR also stated that it requested the man's medical file in June 2016, and this request was rejected by the department on the basis that a signature was missing 'on a portion of the form unrelated to his consent'. DFR stated that it sought legal advice, that indicated the initial consent form was adequate under FOI laws. It stated that a further consent form was sent in August. It advised that three months later, in November, the records were received, however they only documented the man's records up to December 2015.²¹³

2.91 Stanford Law Clinic interviewees made similar allegations of wide ranging health problems, including widespread depression, physical degradation, weight loss and constant pain.²¹⁴ One described the poor treatment he received after contracting malaria,²¹⁵ and another described a spinal injury which he suffered in the riots of 2014, which he explained had impacted the use of his hands, and would limit his mobility and career prospects.²¹⁶

2.92 There have also been a number of deaths at the Manus RPC. In February 2014, Mr Reza Barati (aged 23) was beaten to death in the RPC by RPC staff members during a riot. His death was the subject of a substantial inquiry by the committee.²¹⁷ In August 2014, Mr Hamid Khazei (aged 24) died after having presented to the Manus Island medical clinic with a fever and chills. He had been first evacuated to Port Moresby for treatment, and then to Australia, where he died. His death is currently the subject of an inquest in the Queensland Coroner's Court. On 22 December 2016, Mr Faysal Ishak Ahmed (aged 27) collapsed in the Manus RPC. He was evacuated to Australia for treatment on Friday 23 December, and died the following day. Mr Ishak Ahmed's death is also the subject of an inquest in the Queensland Coroner's Court.²¹⁸

213 DFR, *Submission 56*, pp. 16–17.

214 Stanford Law School, de-identified interview, 16 May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 50.

215 Stanford Law School, de-identified interview, 17 May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 50.

216 Stanford Law School, de-identified interview, 16 May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 50.

217 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014.

218 Mr Cheryl-Anne Moy, Acting Deputy Commissioner Support, DIBP, *Committee Hansard*, Wednesday 8 February 2017, p. 1.

2.93 The department stated that Mr Ishak Ahmed had died 'from injuries suffered after a fall and seizure'.²¹⁹ There are, however, reports that Mr Ishak Ahmed had been unwell for some time. Mr Behrouz Boochani, an Iranian refugee on Manus Island, posted to Facebook on 23 December 2016:

Just now a plane took an injured Sudanese refugee to Australia. He was so sick for more than six months and IHMS did not care about his pain. Last night he collapsed in Oscar prison and injured his head seriously, it was not the first time that he had fainted. A few days ago the refugees wrote a complaint against IHMS about his situation.²²⁰

2.94 The following day, having been advised of Mr Ishak Ahmed's death, Mr Boochani posted:

Faysal wrote about his heart problem and headaches. Many times Faysal collapsed and all of us here knew that he was seriously sick for more than 6 months. More than 60 people wrote a letter to IHMS and explained to them how Faysal is sick and has constant headache and heart problem but they did not care. Every day Faysal went to medical asking for help. They did not help him. A few days ago a nurse in IHMS told Faysal that he was fine and didn't need medical treatment.²²¹

2.95 Another detainee, Mr Abdul Aziz Adam, was reported to have said that Mr Ishak Ahmed sought treatment every few days for ailments including stomach upsets, high blood pressure, fevers and heart problems, and that the staff would tell him 'you don't have anything'.²²²

2.96 The department advised the committee that a medical evacuation by Air Ambulance was recommended for Mr Ishak Ahmed at 1.10 am on 23 December 2016, and that Air Ambulance landed in Brisbane with Mr Ishak Ahmed at 11.36 pm that night.²²³

2.97 As discussed above, the UNHCR visited the Manus RPC in in April 2016 to conduct a mental health study, which concluded that the prevalence and severity of mental disorders was extreme.²²⁴ It stated that this study found that individuals who had previously sought medical treatment were finding the services to be unhelpful, and were disengaging.²²⁵ It also stated that individuals indicated that the Overseas

219 DIBP, *Death of a refugee*, 24 December 2016, <http://newsroom.border.gov.au/releases/death-of-a-refugee> (accessed 21 April 2017).

220 Mr Behrouz Boochani, Facebook post, 23 December 2016.

221 Mr Behrouz Boochani, Facebook post, 24 December 2016.

222 ABC News, *Manus Island detainees riot after death of refugee Faysal Ishak Ahmed*, 25 December 2016.

223 DIBP, answer to question on notice, 15 March 2017 (received 4 April 2017).

224 UNHCR, *Submission 43*, p. 33.

225 UNHCR, *Submission 43*, p. 32.

Services to Survivors of Torture and Trauma (OSTT) service was helpful, but only a small number of people could receive treatment because of capacity constraints.²²⁶

2.98 The UNHCR submitted that individuals who went untreated would experience 'significant morbidity and potentially mortality from suicide and it is likely will require considerable treatment to regain premorbid levels of functioning'. It argued that 'it is not apparent that currently health services recognise or are adequately treating these patients placing them at further risk of deterioration'.²²⁷ It also advised that 'such treatment services do not exist within the mainstream PNG health system':

[T]he type, extent and severity of these mental disorders is unprecedented within the Papua New Guinea health system...Papua New Guinea mental health services are structured to assess and treat low prevalence illnesses such as schizophrenia, bipolar disorder and substance related disorders. There is no current skills capacity within Papua New Guinea public mental health services to address severe-post traumatic stress disorder and current resourcing will not be able to cope with the surge of cases with major depression.²²⁸

Conduct of RPC staff

2.99 The committee heard allegations about abusive and improper conduct on the part of Manus RPC staff. Allegations of unlawful and improper conduct on the part of staff members were also outlined extensively by the committee in December 2014, in its inquiry into the matters surrounding riots in the Manus RPC in February 2014.²²⁹

2.100 The department explained that there are currently two service providers engaged by the department to provide services at the Manus RPC: Broadspectrum (which is contracted to provide garrison and welfare services until 31 October 2017), and IHMS (which is contracted to provide health services until 30 June 2017).²³⁰ Wilson Security then provides its own services and subcontracts to three further local providers. It advised that at 7 November 2016, it directly employed 283 expatriate safety and security personnel, and through subcontracting arrangements with three local security service providers, indirectly engaged 569 local personnel.²³¹

2.101 Ms Jessica Bloom, a former employee on the RPC, submitted to the committee that, in her experience, any staff members who deviated from using language which dehumanised the detainees was 'instantly suspect' and would be questioned and monitored by others for not having 'professional boundaries'.²³² She stated that despite attempts by management to ensure that staff referred to detainees

226 UNHCR, *Submission 43*, p. 32.

227 UNHCR, *Submission 43*, p. 33.

228 UNHCR, *Submission 43*, p. 33.

229 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014.

230 DIBP, *Submission 23*, pp. 34–35.

231 Wilson Security, *Submission 18*, p. 4.

232 Ms Jessica Bloom, *Submission 14*, p. 2.

by their names, they would generally be referred to by their boat identification number.²³³ She also alleged that refugees and asylum seekers would be taunted, provoked and humiliated by Australian staff members,²³⁴ pushed and subjected to verbal abuse including calling them 'rag heads' and 'sand niggers',²³⁵ and physically crowded by guards and sexually assaulted.²³⁶

2.102 The UNHCR similarly submitted that refugees and asylum seekers in PNG are the victims of bullying, intimidation and harassment.²³⁷ It explained that when its experts visited the Manus RPC in April 2016, most of the men interviewed described the impact of witnessing or having been involved in the assaults on refugees and asylum seekers at the RPC in 2014:

They described these experiences as 'terrifying' and 'horrific', resulting directly in post-traumatic stress disorder or catalysing pre-existing traumatic memories into post-traumatic stress disorder according to the medical experts.²³⁸

2.103 It explained that the medical experts had noted that a significant number of asylum seekers and refugees reported experiences of bullying and intimidation from staff members, which 'has resulted in them being frightened, withdrawn and submissive in their interactions' with staff.²³⁹

2.104 Interviewees of the Stanford Law Clinic likewise made allegations of physical abuse from staff members. Interviewees alleged that during the Manus RPC riots a man had been kicked repeatedly in the back causing his disks to fracture, and another man being beaten so severely on his arm that a bicep muscle broke.²⁴⁰ Another interviewee alleged that guards would punch and hit refugees and asylum seekers held in detention, without consequence.²⁴¹ Dr Barri Phatarfod of DFR, and Dr Steven Faux, described to the Clinic the case of a man with a broken cheekbone, who had been refused medical treatment for a number of days, which resulted in the—easily preventable—loss of his eye.²⁴²

233 Ms Jessica Bloom, *Submission 14*, p. 2.

234 Ms Jessica Bloom, *Submission 14*, p. 1.

235 Ms Jessica Bloom, *Submission 14*, p. 1.

236 Ms Jessica Bloom, *Submission 14*, p. 2.

237 UNHCR, *Submission 43*, p. 11.

238 UNHCR, *Submission 43*, p. 11.

239 UNHCR, *Submission 43*, p. 11.

240 Stanford Law School, de-identified interview, 16-17 May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 45.

241 Stanford Law School, de-identified interview, 17 May 2016, in Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 46.

242 Stanford Law School, Communique to ICC, *The situation in Nauru and Manus*, 14 February 2017, p. 45.

2.105 The department submitted that there is no evidence that the practice of referring to asylum seekers by their boat identification number 'exists currently'. It stated that a service provider had apologised for doing this, and asserted that the practice has not reoccurred.²⁴³

Safety in the local community

2.106 The committee heard evidence of concerns about the safety of refugees and asylum seekers on Manus Island, and the wider PNG communities.

2.107 HRW submitted that refugees and asylum seekers in PNG are very concerned for their safety, and rarely leave the Centre despite now having the freedom to do so.²⁴⁴ It also submitted that these fears were contributing to an unwillingness to consider settling in PNG, with some refugees describing settling in PNG as 'unthinkable' and 'terrifying'.²⁴⁵

2.108 Mr Daniel Webb of the HRLC witnessed a violent attack against two Afghan Hazara refugees on Manus Island, one of whom was beaten until he fell unconscious.²⁴⁶ Ms Elaine Pearson of HRW submitted that several of the 25 refugees who had moved to mainland PNG to work and live, had returned to Manus because they felt unsafe, were the victims of crime, or faced problems in the workplace.²⁴⁷ One man reportedly became homeless after settling in mainland PNG.²⁴⁸ HRW also submitted that refugees and asylum seekers on Manus Island are not allowed to engage in paid employment there, because PNG officials had only agreed to host the detention centre there, not integrate refugees.²⁴⁹

2.109 HRW also highlighted discrimination against gay asylum seekers and refugees, arguing that they are shunned, and have been subjected to assault and sexual abuse.²⁵⁰ Same-sex relationships between men are a criminal offence in PNG, being categorised as acts of 'gross indecency', punishable by imprisonment for up to three years.²⁵¹ PNG law also criminalises all sexual acts which are 'against the order of nature', the maximum penalty for which is imprisonment for up to 14 years.²⁵²

2.110 The committee also noted a number of widely reported incidents indicating instances of neglect among refugees living in local PNG communities.

243 Amnesty International, *Submission 6*, Attachment 1, DIBP response, p. 7.

244 Ms Elaine Pearson, AD, HRW, *Committee Hansard*, Tuesday 15 November 2016, p. 2.

245 HRW, *Submission 22*, p. 8.

246 Mr Daniel Webb, DA, HRLC, *Committee Hansard*, Tuesday 15 November 2016, p. 3.

247 Ms Elaine Pearson, AD, HRW, *Committee Hansard*, Tuesday 15 November 2016, p. 8; HRW, *Submission 22*, p. 9.

248 HRW, *Submission 22*, p. 11.

249 HRW, *Submission 22*, p. 11.

250 HRW, *Submission 22*, p. 8.

251 *Criminal Code Act 1974* (Papua New Guinea), s. 212.

252 *Criminal Code Act 1974* (Papua New Guinea), s. 210.

2.111 On 19 February 2016, it was reported that a young refugee named Mr Loghman Sawari, who had left the Manus RPC, had faced serious difficulties living in the local community.²⁵³ Mr Sawari, who had originally been wrongly transported to Manus Island as an unaccompanied minor, was reported to have been one of the first refugees to be released from RPC detention. It was reported that he moved to Lae (the second largest city in PNG),²⁵⁴ and provided with a construction job and housing.²⁵⁵ It was reported that Mr Sawari's employment and housing did not last, and he was found to be sleeping rough on the streets of the city. Mr Sawari reportedly alleged that he had been paid less than other workers, and that the medical expenses which he had been promised as part of his resettlement were not provided. One month later, it was reported that Mr Sawari had been taken into police custody for trying to climb the fence to return to the Manus transit centre, after having been refused re-entry to the centre.²⁵⁶ Mr Sawari reportedly advised that the following morning, PNG immigration officials offered to help him return to his home country.

Phosphate mining and cadmium exposure in Nauru

2.112 The committee received evidence of concerns about the implications of exposure to phosphate mining in Nauru, including exposure to cadmium.²⁵⁷

2.113 As set out in previous inquiries, the Nauruan environment was damaged by extensive phosphate mining throughout the twentieth century. In 2013, the Nauruan Government explained that phosphate mining had had serious impacts on the community:

In addition to the damage done to the land surface, the mining has created its own pollution, particularly cadmium residue and phosphate dust. The pollutants from the mine have infiltrated into the natural environment of Nauru. The phosphate dust pollutes the air and reduces the quality of water in certain residential areas which has had a negative impact on health.

253 The Guardian Australia, *Refugee left homeless in Papua New Guinea after being resettled from Australian-run detention*, 19 February 2016.

254 The Department of Foreign Affairs and Trade (DFAT) currently advises that travellers to PNG should exercise a high degree of caution, and notes that Lae in particular has a high rate of crime, an ever-present risk of car-jacking, and the dangers of walking in the streets, including at night. It advises that night travel should be by car with locked doors and windows, and suggests that travellers should also consider travelling in a convoy or with a security escort. http://smartraveller.gov.au/Countries/pacific/Pages/papua_new_guinea.aspx (accessed 15 February 2017). 255 The Guardian, *Refugee left homeless in Papua New Guinea after being resettled from Australian-run detention*, 19 February 2016.

255 The Guardian, *Refugee left homeless in Papua New Guinea after being resettled from Australian-run detention*, 19 February 2016.

256 Sydney Morning Herald, *Desperate refugees arrested trying to return to Manus Island centre*, 22 April 2016.

257 Australian Lawyers Alliance (ALA), *Second Supplementary Submission 24*; Hunter Asylum Seeker Advocacy (HASA), *Supplementary submission 28*.

The environmental disaster caused by the mining impacts all sectors of development. Rehabilitation of the mined phosphate lands is a prerequisite for improving food and water security and the well being of the people of Nauru.²⁵⁸

2.114 The Nauru RPC sits at the centre of a phosphate plateau, and is surrounded by ongoing phosphate mining operations.

2.115 Cadmium is an element found in the earth's crust and, to a lesser extent, in rocks and soil. The World Health Organisation (WHO) classifies cadmium as a human carcinogen, which has toxic effects on the kidneys, and the skeletal and respiratory systems.²⁵⁹ It explains that cadmium can be ingested through the consumption of contaminated foods, and inhaled by workers 'in the non-ferrous metal industry'.²⁶⁰ WHO also notes that in the human body cadmium has a half-life of between 10 and 35 years, and that accumulation of cadmium in the body may lead to:

- (generally irreversible) renal tubular dysfunction;
- disturbances in calcium metabolism and the formation of kidney stones;
- the possible development of Itai-Itai disease (which is characterised by osteomalacia, osteoporosis, the fracture of bones, and kidney dysfunction);
- potentially lethal acute pneumonitis with pulmonary oedema;
- potentially chronic obstructive airway disease;
- lung cancer; and/or
- the potential development of cancers of the kidney and prostate.²⁶¹

2.116 The WHO recommended a number of measures to decrease exposure to cadmium, including ensuring that cadmium emissions from mining and the use of phosphate fertilizers and cadmium-containing manure be reduced as far as possible.²⁶²

2.117 In 2005, Professor John Morrison and Dr Harley Manner conducted a study of Nauruan soil.²⁶³ This study explained that approximately 100 million tonnes of phosphate material has been removed from the Nauru atoll, leaving over 80 per cent

258 Government of the Republic of Nauru, *Nauru National Assessment Report for the Third International Conference on Small Island Developing States*, 17 May 2013, p. 9, <https://sustainabledevelopment.un.org/content/documents/1119224NAURU%20National%20Assessment%20Report%20for%20Third%20SIDS%20Conference%202013.pdf> (accessed 27 February 2017).

259 World Health Organisation (WHO), *International Programme on Chemical Safety – Cadmium*, www.who.int/ipcs/assessment/public_health/cadmium/en/ (accessed 27 February 2017).

260 WHO, *International Programme on Chemical Safety – Cadmium*.

261 WHO, *Exposure to Cadmium: a major public health concern*, 2010, pp. 3-4, <http://www.who.int/ipcs/features/cadmium.pdf?ua=1> (accessed 27 February 2017).

262 WHO, *Exposure to Cadmium: a major public health concern*, 2010, p. 3.

263 Professor John Morrison and Dr Harley Manner, *Pre-Mining Soil Patterns of Soils on Nauru, Central Pacific*, 2005, *Pacific Science* 59(4), pp. 523–540.

of the island 'a dolomite pinnacle-dominated karrenfeld'.²⁶⁴ The study found that cadmium levels in Nauruan soil were 'well above global averages'.²⁶⁵

2.118 In 2012, the department commissioned an environmental due diligence report to be prepared in relation to Nauru.²⁶⁶ On 24 July 2014, this report was partially published pursuant to a Freedom of Information request.²⁶⁷ The report, prepared by Sinclair Knight Mertz (SKM), assessed only the topside, black soil and staff housing sites on the island.²⁶⁸ It noted that:

- a report commissioned by the Republic of Nauru in 1996 found that 'further studies need to be carried out regarding the extent of the threat of cadmium disposal to human health and the environment';²⁶⁹
- in 2004, the Republic of Nauru had identified cadmium sludge as a threat to the quality of groundwater resources, among other threats including metals associated with blasting and mining, asbestos, ordinance compounds and other materials associated with historical bombing, and sewage overflow;²⁷⁰ and
- phosphate dust including cadmium was at risk of being deposited into clean water storage or storm water drains, or inhaled, contributing to possible health risks;²⁷¹

2.119 SKM recommended that the department maximise 'separation between sources of phosphate dust emissions and habitable areas within the regional processing centres and consider planting tall vegetative screening around project sites'.²⁷²

264 Professor John Morrison and Dr Harley Manner, *Pre-Mining Soil Patterns of Soils on Nauru, Central Pacific*, 2005, Pacific Science 59(4), p. 523.

265 Professor John Morrison and Dr Harley Manner, *Pre-Mining Soil Patterns of Soils on Nauru, Central Pacific*, 2005, Pacific Science 59(4), p. 536.

266 Department of Immigration and Citizenship (DIAC), *Nauru Regional Processing Centre: Environmental Due Diligence Report*, 15 November 2012 (the DIBP was called DIAC from 2007 to 2013).

267 <https://www.border.gov.au/AccessandAccountability/Documents/FOI/FA140401092.PDF> (accessed 28 February 2017).

268 DIAC, *Nauru Regional Processing Centre: Environmental Due Diligence Report*, 15 November 2012, p. 5.

269 DIAC, *Nauru Regional Processing Centre: Environmental Due Diligence Report*, 15 November 2012, p. 49.

270 DIAC, *Nauru Regional Processing Centre: Environmental Due Diligence Report*, 15 November 2012, p. 45.

271 DIAC, *Nauru Regional Processing Centre: Environmental Due Diligence Report*, 15 November 2012, p. 52.

272 DIAC, *Nauru Regional Processing Centre: Environmental Due Diligence Report*, 15 November 2012, p. 52.

2.120 SKM also highlighted the inadequacy of waste management infrastructure in Nauru at the time of the assessment, stating that this:

...combined with extensive cavities associated with the karstic limestone landform is likely to have contributed to uncontrolled disposal of wastes, including potentially hazardous wastes such as asbestos building materials, fuels, oils, grease and possibly mining wastes (e.g. cadmium sludge). The type, quantity and location of such wastes is unknown but the presence of such wastes within the project sites cannot be ruled out at this stage.²⁷³

2.121 IHMS advised the committee that it had raised the question of cadmium exposure with the department. Dr Kalesh Seevnarain, Senior Health Adviser with IHMS, stated that IHMS had been made aware of 'high levels of cadmium on Nauru', and had been engaging with the department over the past few months in relation to this.²⁷⁴ He explained that IHMS' recommendation to the department 'would have been to further investigate what those levels really are and to then understand what the impact might be on health'.²⁷⁵ He also confirmed that a recommendation had been made to the department in relation to this.

2.122 The department characterised this contact as IHMS having provided 'information about the risk of cadmium exposure to human health', and stated that IHMS had advised that they were not aware of any environmental threat from cadmium to the 'island population'.²⁷⁶

2.123 The department submitted that 'Management of cadmium risks across the island is a matter for the Government of Nauru. The Department has no legal authority to act on this'.²⁷⁷ It also stated that in relation to the RPC it had incorporated 'dust suppression' measures in its construction program, and noted that domestic water on Nauru is provided via reverse osmosis of sea water, thereby alleviating the risk of cadmium contamination via water.²⁷⁸

273 DIAC, *Nauru Regional Processing Centre: Environmental Due Diligence Report*, 15 November 2012, p. 53.

274 Dr Kalesh Seevnarain, Senior Health Adviser, IHMS, *Committee Hansard*, Wednesday 15 March 2017, p. 50.

275 Dr Kalesh Seevnarain, Senior Health Adviser, IHMS, *Committee Hansard*, Wednesday 15 March 2017, p. 51.

276 DIBP, response to question on notice, 20 March 2017 (received 4 April 2017).

277 DIBP, response to question on notice, 20 March 2017 (received 4 April 2017).

278 DIBP, response to question on notice, 20 March 2017 (received 4 April 2017).

2.124 The committee received evidence of refugee housing located immediately adjacent to active phosphate mining activities.²⁷⁹ The committee asked the department whether any refugee or asylum seeker accommodation facilities, or any other RPC facilities, are located near active mining operations in Nauru. The department responded that no 'regional processing facilities' are located within the 'immediate vicinity of any active mining operations'.²⁸⁰

279 HASA, *Supplementary Submission 28*, p. 7.

280 DIBP, responses to questions on notice, 31 March 2017 (received 13 April 2017).

Chapter 3

Factors contributing to allegations of abuse, self-harm and neglect

3.1 This chapter deals with evidence received by this committee in relation to the factors which have contributed (and continue to contribute) to the allegations of abuse, neglect and self-harm among refugees and asylum seekers in the Nauru and Manus Island Regional Process Centres (RPCs).

3.2 The committee heard that a range of factors that contribute to the existence and persistence of the many allegations of abuse and self-harm among refugees and asylum seekers in Nauru and Papua New Guinea (PNG). Much of this evidence reflects evidence presented to the previous inquiries into matters associated with RPCs. The committee has observed that this seems to indicate that the quality of life and safety of asylum seekers and refugees in Nauru and PNG has not improved despite the passing of time, and a number of inquiries into these matters.

3.3 In this inquiry, the committee heard evidence of a number of factors which have contributed to the allegations of abuse, self-harm and neglect, including:

- a damaging living environment characterised by ongoing detention-like conditions, inadequate health services, and cultural and social barriers;
- a lack of oversight and appropriate regulation, including a developing child protection framework in Nauru, and a lack of faith in the authorities to investigate allegations of abuse and harm where required; and
- the significant average length of time spent at the RPCs, and the impact of long term family separation and uncertainty about the future.

3.4 The committee also heard compelling evidence as to the lack of transparency, accountability and scrutiny among all matters associated with the RPCs, and the relationship between this lack of accountability and transparency and the perpetuation of the allegations of abuse, self-harm and neglect over a number of years.

A damaging living environment

Detention-like conditions

3.5 A number of submitters and witnesses argued that detention (or effective detention) is the root cause behind widespread poor mental health and self-harm among refugees and asylum seekers, as well as the many allegations of abuse and neglect.

3.6 As set out in Chapter 2, both the Nauru and Manus RPCs are now described as being 'open centres'. From February to October 2015, asylum seekers and refugees

at the Nauru RPC could leave at a designated exit point during agreed hours.¹ Since October 2015, the centre has been designated as being open 'all the time'.² On 27 April 2016 PNG introduced open centre arrangements for asylum seekers and refugees in the Manus RPC.³ This came one day after the decision of the Supreme Court of PNG, finding the detention of asylum seekers and refugees at the RPC to be unconstitutional.⁴

3.7 However, many submitters argued that the move to 'open centres' has largely been in name only. The Office of the United Nations High Commissioner for Refugees (UNHCR) stated that conditions are indistinguishable from those of the detention centre, noting in particular the number of guards, the configuration of perimeter fences, the sub-compounds and overcrowding of accommodation, and the use of communal tents for extended periods.⁵ It described the levels of security at the Manus RPC as 'excessive' and argued that this created 'an institutionalised and punitive environment, wholly inappropriate for asylum seekers and refugees'.⁶

3.8 Amnesty International agreed, arguing that Nauru is effectively an 'open air prison' which people can move about, but cannot leave.⁷ The Royal Australian and New Zealand College of Psychiatrists (RANZCP) likewise highlighted intrusive surveillance and oppressive levels of security, arguing that these contribute to a lack of privacy, and undermine the capacity of refugees and asylum seekers to parent and maintain a family life.⁸

3.9 A number of incident reports from the Nauru RPC indicate that during 2015, when 'open centre' measures were being progressively introduced, there were still many restrictions associated with leaving and re-entering the RPC. Examples of incident reports relating to the restrictions of open centres include: a worker noting that an asylum seeker could not participate in the open centre arrangements because they had refused to attend the family RSD appointment;⁹ a woman not permitted to

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- 1 Minister for Immigration and Border Protection, the Hon Peter Dutton MP, Media Release, *Australia welcomes Nauru open centre*, 5 October 2015, www.minister.border.gov.au/peterdutton/2015/Pages/australia-welcomes-nauru-open-centre.aspx (accessed 9 January 2017).
 - 2 Minister for Immigration and Border Protection, the Hon Peter Dutton MP, Media Release, *Australia welcomes Nauru open centre*, 5 October 2015.
 - 3 Department of Immigration and Border Protection (DIBP), *Submission 23*, p. 68.
 - 4 *Belden Norman Namah MP v Hon Rimbink Pato, National Executive Council and the Independent State of Papua New Guinea*, SCA No. 84 of 2013, Supreme Court of Justice (Papua New Guinea), 26 April 2016.
 - 5 United Nations High Commissioner for Refugees (UNHCR), *Submission 43*, p. 8.
 - 6 UNHCR, *Submission 43*, p. 7.
 - 7 Amnesty International, *Submission 6*, Attachment 1, *Island of Despair: Australia's 'Processing' of Refugees on Nauru*, 2016, p. 5.
 - 8 Royal Australian and New Zealand College of Psychiatrists (RANZCP), *Submission 8*, p. 4.
 - 9 The Guardian Australia, *the Nauru files*, major incident 'threatened self-harm', 1 August 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150503.pdf> (accessed 4 April 2017).

leave the centre because she had not attended the 'open centre briefings', and was warned that 'absconding' was against the RPC rules;¹⁰ an individual was warned that if they arrived back to the RPC 'late', their open centre privileges could be suspended;¹¹ a child who had forged an open centre consent form was reported as having absconded from the RPC;¹² and asylum seekers reportedly being screened upon their return to camp and prohibited items such as Panadol being confiscated.¹³

3.10 A number of incident reports from the Nauru RPC also indicate that there are a number of restrictions on movement within the RPC itself. These reports suggest that individuals cannot relocate to different tents without approval,¹⁴ and asylum seekers may be found to be in breach of RPC rules if they enter certain areas of the camp after 'curfew'.¹⁵ In one of these incidents a woman allegedly described feeling humiliated when she was told that she could not move to another tent, despite there being space for her to do so.¹⁶ Another incident report described a woman who became so distressed at having a particular man housed in the Restricted Area accommodation with her that she barricaded herself in a tea room and drank insect repellent.¹⁷ Other incident reports detail instances of asylum seekers and refugees becoming angry and distressed at being told they were going to be moved to a different area of the RPC,¹⁸ with some threatening suicide.¹⁹

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- 10 The Guardian Australia, *the Nauru files*, minor incident 'threat self-harm', 5 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150378.pdf> (accessed 4 April 2017).
- 11 The Guardian Australia, *the Nauru files*, minor incident 'threatened self-harm', 23 April 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150300.pdf> (accessed 4 April 2017).
- 12 The Guardian Australia, *the Nauru files*, critical incident 'abscond', 18 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150481.pdf> (accessed 4 April 2017).
- 13 The Guardian Australia, *the Nauru files*, information, 23 September 2015 (no link to the incident report is provided where none is available).
- 14 The Guardian Australia, *the Nauru files*, minor incident 'self-harm threat', 11 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150335.pdf> (accessed 4 April 2017).
- 15 The Guardian Australia, *the Nauru files*, information, 13 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150399.pdf> (accessed 4 April 2017).
- 16 The Guardian Australia, *the Nauru files*, minor incident 'self-harm threat', 11 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150335.pdf> (accessed 4 April 2017).
- 17 The Guardian Australia, *the Nauru files*, critical incident 'actual self-harm', 27 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150496.pdf> (accessed 4 April 2017).
- 18 The Guardian Australia, *the Nauru files*, minor incident 'threat of self-harm', 1 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150366.pdf> (accessed 4 April 2017); minor incident 'aggressive behaviour', 9 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150389.pdf> (accessed 4 April 2017); minor incident 'assault', 16 April 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150280.pdf> (accessed 4 April 2017).
- 19 The Guardian Australia, *the Nauru files*, minor incident 'threatened self-harm', 20 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150407.pdf> (accessed 4 April 2017).

3.11 Several incident reports indicate that a lack of privacy and control is a source of concern for asylum seekers.²⁰ The committee noted evidence of certain items being prohibited within the Nauru RPC, or within particular areas of the RPC. Incident reports indicate that the consumption of alcohol is prohibited,²¹ as is the possession of knives.²² One incident report explained that as part of the Nauru School integration project students were given a pencil case, which included a pencil sharpener, however the razor element of the sharpener was contraband.²³ Several incident reports indicate that the consumption of meals outside the mess is restricted. One report alleged that when a woman had attempted to take food from the mess it was confiscated.²⁴ In another, an asylum seeker alleged that, while she was using crutches, she had placed her food in a plastic bag so she could carry it back to her room, but it was confiscated from her.²⁵ In a further example, two parents alleged that they were prevented from taking six bananas from the mess for their children to snack on, because this did not fit the definition of 'snacks between meals'.²⁶

3.12 A number of incident reports allege that RPC staff exercise a significant degree of control over the relationships between parents and their children in Nauru. While some reports merely record the behaviour of children, such as a child throwing a tantrum,²⁷ others describe RPC staff becoming involved in what would typically be regarded as areas of normal parental responsibility. These include security guards intervening when adults were having a verbal altercation about their children,²⁸ a staff member disciplining a child who had been accused of not sharing a ball and stating that this kind of behaviour would not be tolerated,²⁹ staff members approaching

20 The Guardian Australia, *the Nauru files*, minor incident 'abusive/aggressive behaviour', 29 June 2015; minor incident 'non-compliance', 8 August 2015; minor incident 'non-compliance', 10 August 2015 <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150517.pdf> (accessed 4 April 2017).

21 The Guardian Australia, *the Nauru files*, major incident 'assault', 9 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150330.pdf> (accessed 5 April 2017).

22 The Guardian Australia, *the Nauru files*, minor incident 'contraband', 4 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150433.pdf> (accessed 5 April 2017).

23 The Guardian Australia, *the Nauru files*, unclassified incident, 15 November 2013.

24 The Guardian Australia, *the Nauru files*, major incident 'assault on a minor (downgraded to information)', 3 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150317.pdf> (accessed 5 April 2017).

25 The Guardian Australia, *the Nauru files*, major incident 'bullying and harassment/ medical incident', 16 April 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150278.pdf> (accessed 5 April 2017).

26 The Guardian Australia, *the Nauru files*, information, 28 September 2015.

27 The Guardian Australia, *the Nauru files*, incident 'concern for minor', 31 August 2013.

28 The Guardian Australia, *the Nauru files*, unclassified incident 'abusive or aggressive behaviour', 30 August 2013.

29 The Guardian Australia, *the Nauru files*, incident 'accident or injury', 8 September 2013.

parents about their eating patterns,³⁰ and reprimanding parents who had not accompanied their children to breakfast.³¹ Further incident reports include staff members approaching parents who were perceived to not be intervening when their child was misbehaving,³² and a case worker speaking with a parent about how to discipline his children.³³

3.13 Several submitters raised concerns about the effect of ongoing detention or detention-like conditions on the capacity of parents to care for their children. The UNHCR submitted that such conditions have a significant impact on parents and children:

The impact of impaired parenting due to parental despair and mental illness, the absence of family or community support and the challenging physical environment place young children (zero to five years) at significant risk of compromised development from emotional, cognitive and physical perspectives. In this context, the intolerable situation for asylum-seekers and refugees, as well as the breakdown of normal family structures and intra-familial relationships may place women and children at heightened risk. Living in these conditions, as well as a physically hostile environment in poorly ventilated tents, is especially traumatizing to children, in the context of mandatory and open-ended detention that will exacerbate or precipitate mental and physical illness into the future for them.³⁴

3.14 Doctors for Refugees (DFR) agreed, stating that in detention, 'the disintegration of parents' authority and declining parental mental health profoundly undermine the parental role, leaving children with little protection or comfort'.³⁵ The UNHCR also argued that the retention of this detention-like environment had a detrimental impact on the mental health of individuals, as well as increasing the risk of abuse and self-harm.³⁶ Human Rights Watch (HRW) agreed, citing a comment made by a refugee who had experienced long periods of detention:

You become domesticated, like an animal inside a cage. You think they are fine. They look normal, they seem healthy but they could not survive in

30 The Guardian Australia, *the Nauru files*, unclassified incident 'abusive or aggressive behaviour', 31 August 2013; incident 'concern for minor', 1 September 2013.

31 The Guardian Australia, *the Nauru files*, unclassified incident 'concern for minor', 16 January 2014, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca140020.pdf> (accessed 5 April 2017).

32 The Guardian Australia, *the Nauru files*, major incident 'assault on a minor', 16 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150344.pdf> (accessed 5 April 2017).

33 The Guardian Australia, *the Nauru files*, information 'threatened self-harm', 13 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150440.pdf> (accessed 5 April 2017).

34 UNHCR, *Submission 43*, p. 23.

35 Doctors for Refugees (DFR), *Submission 56*, p. 9.

36 UNHCR, *Submission 43*, p. 8.

nature, and that is like us now. We become like that. Mentally, we are not fine.³⁷

3.15 The committee noted evidence of restrictions to internet and computer facilities. In 2014 it was reported that following an incident on Nauru in July of that year, the internet had been cut off for three months.³⁸ The same report alleged that asylum seekers on Manus Island had likewise been denied access to the internet and telephone. Several incident reports from Nauru reflect these concerns, including being denied access to computers³⁹ and refused access to the computer room because of a lack of identification.⁴⁰ The department has also advised that mobile phones with the capacity to record video are also prohibited.⁴¹

3.16 The committee also heard that access to Facebook in Nauru is heavily restricted. On 5 May 2015 it was reported that all Facebook users in Nauru had been denied access to the website.⁴² A public Facebook page called 'Refugees on Nauru', which states that it was administered by a refugee in Nauru, appears to have ceased posting to Facebook on 1 May 2015.⁴³ Ms Pamela Curr of the Asylum Seeker Resource Centre (ASRC) was reported to have stated that her contacts in Nauru told her this ban was put in place at the request of the Australian Government.⁴⁴ However, the department was reported to have stated that any internet restrictions were 'a matter for the government of Nauru'.⁴⁵ On 8 July 2016, a Nauruan public official who was interviewed acknowledged that the Facebook restrictions were still in place, but allegedly stated that they could be bypassed.⁴⁶

Health care service delivery

3.17 The committee considered evidence of concerns about the suitability and adequacy of health care services available on Nauru and Manus Island.

3.18 The committee received evidence from the department and health care service contractor IHMS explaining the type of health services which are provided to refugees

37 Human Rights Watch (HRW), *Submission 22*, p. 9.

38 Sydney Morning Herald, *We need to see Manus Island*, 24 February 2014.

39 The Guardian Australia, *the Nauru files*, minor incident 'information', 3 April 2014.

40 The Guardian Australia, *the Nauru files*, incident 'unclassified', 12 November 2013.

41 DIBP, *Latest Nauru claims false*, media release, 25 February 2016, <http://newsroom.border.gov.au/releases/latest-nauru-claims-false> (accessed 16 January 2017).

42 ABC News, *Nauru Facebook ban came 'at request of Australian Government', refugee advocates say*, 5 May 2015.

43 Facebook, *Refugees on Nauru*, <https://www.facebook.com/Refugees-on-Nauru-1018704628155583/> (accessed 2 March 2017).

44 ABC News, *Nauru Facebook ban came 'at request of Australian Government', refugee advocates say*, 5 May 2015.

45 ABC News, *Nauru Facebook ban came 'at request of Australian Government', refugee advocates say*, 5 May 2015.

46 Radio NZ, *Nauru candidate uses banned Facebook to campaign*, 8 July 2016.

and asylum seekers in Nauru and PNG. This evidence, which will be discussed in detail below, indicated that the applicable health service will depend on whether the individual is a recognised refugee or an asylum seeker, any medical recommendation in relation to the person's treatment, and the availability of required medical services in a range of potential treatment locations.

3.19 This evidence indicates that the health care service delivery scheme for refugees and asylum seekers is extremely complicated. The service delivery and duty of care in relation to patients appears to involve three different governments, hospitals in three countries, private contractors, both regular and ad hoc specialist medical services, and ultimately the department itself.

Health care service delivery scheme

3.20 The department advised that all RPC residents receive 'clinically-indicated health care, broadly consistent with Australian public health standards'.⁴⁷ RPC health clinics, which are operated by IHMS are open seven days per week, and afterhours medical staff are available for emergencies. These services are supplemented by visiting practitioners, tele-health services, and medical transfers. The department explained that where a health service cannot be provided on Nauru, asylum seekers and refugees may be temporarily transferred to Port Moresby, as recommended by IHMS. Where the individual is a recognised refugee this process will take place in consultation with the Republic of Nauru Hospital, with approval from the Government of Nauru.⁴⁸

3.21 The department advised that mental health care is provided by a number of medical professionals, and mental health screening is provided by RPC mental health clinicians.⁴⁹ It explained that a mental health treatment framework in Nauru is being developed, stating:

The Department is working with IHMS to enhance the provisions of mental health services to transferees and refugees in Nauru, including transition into settlement, and accessing local community health services...The Department is also working with the Government of Nauru to establish a systematic approach to develop and deliver mental health services for transferees and refugees in Nauru...In May 2016, the Government of Nauru passed an amendment to the Nauru *Mentally-disordered Person Act 1963* to enable compulsory treatment. The Government of Nauru is developing Mental Health Regulations and an Implementation Strategy that will support the amendments to the Act.⁵⁰

3.22 The department explained that refugees living in the Nauru community access health care services at the Settlement Health Clinic (situated in the Republic of Nauru

47 DIBP, *Submission 23*, p. 44.

48 DIBP, *Submission 23*, p. 44.

49 DIBP, *Submission 23*, p. 48.

50 DIBP, *Submission 23*, p. 49.

Hospital) six days a week, or at the hospital itself.⁵¹ The department submitted that the standard of health care provided here is 'in line with Nauruan community standards'.

3.23 The department advised that asylum seekers and refugees living in the Manus RPC or East Lorengau Refugee Transit Centre may be transferred to Port Moresby for treatment if this is required.⁵² It explained that health care services in PNG may be accessed in a range of ways:

IHMS provides a weekly medical clinic to refugees living at the East Lorengau Refugee Transit Centre. Settled refugees may access the Lorengau Hospital in Manus for care outside of the weekly clinic. The clinic is staffed by an IHMS registered nurse and general practitioner. Torture and trauma counselling is also provided as required. Refugees have been briefed about how to access emergency care via the Lorengau Hospital. Health care through the Papua New Guinea health care system is provided free of charge to refugees.

Refugees permanently settling outside of Manus Province have access to health insurance and may access health services at public hospitals in their settlement location. On leaving the RPC, IHMS provides refugees with a 28-day supply of all clinically-indicated medication and advises refugees on how to obtain their own medications from local pharmacies. Refugees receive a weekly subsistence allowance to purchase such items. Where a refugee has a chronic illness they can register at the Lorengau Lifestyle Clinic and receive free treatment and medication.⁵³

3.24 IHMS advised the committee that the provision of specialist services to refugees do not fall within its control.⁵⁴

3.25 The department claims that the only connection it has to the provision of health services in the Manus RPC is via the contractual relationship it has with IHMS. On 8 February 2017 the department submitted to the committee that it does not run the medical facility at Manus Island, which is 'provided to the Papua New Guinea government'.⁵⁵

3.26 The department explained the process by which a medical transfer of a refugee or asylum seeker to another location for treatment, may take place. It explained that medical transfers require the involvement of a number of parties:

51 DIBP, *Submission 23*, p. 51.

52 DIBP, *Submission 23*, p. 44.

53 DIBP, *Submission 23*, p. 51.

54 Australian Medical Association (AMA), *Submission 1*, International Health and Medical Services (IHMS) response, p. 3.

55 Ms Cheryl-anne Moy, Acting Deputy Commissioner Support, DIBP, *Committee Hansard*, Wednesday 8 February 2017, p. 2.

- medical transfers to Port Moresby from either Nauru or Manus are undertaken on medical advice from IHMS. The department will make the logistical travel arrangements for all medical transfer cases;⁵⁶
- for refugees in Nauru, the transfer process to PNG or another location is undertaken 'in consultation with the Republic of Nauru Hospital with approval from the Government of Nauru'.⁵⁷ The Government of Nauru 'is responsible for the health care of refugees residing in Nauru' and 'The Department **does not** receive recommended clinical timeframes for treatment for refugees from the Government of Nauru', although the Government of Nauru does advise the Department of 'urgent cases' and the department will action them accordingly;⁵⁸
- 'Transfers to Australia can only occur for compelling medical reasons including situations involving the risk of life-long injury or disability.' Transfers to Australia are 'supported by clinical advice', which is provided by a Commonwealth Medical Officer or the Department's Chief Medical Officer;⁵⁹ and
- the Government of Nauru and the Republic of Nauru Hospital manage and oversee the 'Overseas Medical Referral' processes for refugees. Where requested, the department and IHMS will assist these two parties to 'facilitate the medical transfer of refugees to Port Moresby'.⁶⁰

3.27 On 8 February 2017, DIBP Assistant Commissioner, Detention, Compliance and Removals Division Mr Kingsley Woodford-Smith explained that a request for medical movement will come to the department and be considered in a 'committee style format', and that committee will put a recommendation to him as to whether the request should be approved.⁶¹ He stated that he would make the decision as to whether the person comes to Australia. He also explained that the use of an air ambulance would also require funding approval.

3.28 IHMS stated that the 'transfer policy' does not fall within its control.⁶²

3.29 The department advised that between 1 July 2015 and 30 September 2016, a total of 171 medical transfers from Nauru and Manus to Port Moresby had taken

56 DIBP, *Submission 23*, p. 52.

57 DIBP, *Submission 23*, p. 52.

58 DIBP, response to question on notice, 20 March 2017 (received 4 April 2017).

59 DIBP, *Submission 23*, p. 52.

60 DIBP, *Submission 23*, p. 53.

61 Mr Kingsley Woodford-Smith, Assistant Commissioner, Detention, Compliance and Removals Division, DIBP, *Committee Hansard*, Wednesday 8 February 2017, p. 11.

62 AMA, *Submission 1*, IHMS response, p. 3.

place.⁶³ It explained that 'some' refugees have been transferred to Australia for medical care, but did not provide a figure.⁶⁴

3.30 The department explained that if RPC staff members require medical treatment they would be treated at the local IHMS clinic and receive the same standard of care at that clinic as would refugees and asylum seekers attending the clinic.⁶⁵ It also advised that where a staff member were to require urgent medical treatment they would 'normally be lifted to Australia under [departmental] insurance arrangements for staff', and if it was an emergency they may be treated at the Pacific International Hospital in Port Moresby.⁶⁶ When asked why these arrangements differed from those arrangements for the medical evacuation of refugees and asylum seekers, the department explained that:

It is because asylum seekers are managed by and under the care of other governments. The government of Nauru and the government of Papua New Guinea manage asylum seekers, refugees and regional processing. They ask us for support, and we provide support to them as they request. When it is a staff member, that person is under the care of the department, and the department takes responsibility for moving them if there is an injury or illness that they need to be moved for.⁶⁷

Concerns regarding health care services

3.31 The committee heard a substantial body of evidence from primary and secondary sources, including medical organisations, arguing that the standard of health care provided at the Nauru and Manus RPCs is inadequate, and highlighting a lack of trust in the services being provided. Many of the concerns raised by submitters to this inquiry, notably medical organisations, derived from examination of medical records which had been obtained with the consent of the patient, and discussed the difficulties which organisations faced in gaining timely access to those records.

3.32 The Australasian College of Emergency Medicine (ACEM), the peak organisation for emergency medicine in Australasia, explained that asylum seekers and refugees have complex health care needs, which can arise due to the means by which they arrived at an RPC, and as a result of the conditions once they are housed in the RPC.⁶⁸ They may be vulnerable to infectious diseases, poor nutritional health, and developmental risks associated with poor mental health in the case of children.⁶⁹

63 DIBP, *Submission 23*, p. 53.

64 DIBP, *Submission 23*, p. 53.

65 Ms Cheryl-Anne Moy, Acting Deputy Commissioner, Support, DIBP, *Committee Hansard*, Wednesday 8 February 2017, pp. 17-18.

66 Ms Cheryl-Anne Moy, Acting Deputy Commissioner, Support, DIBP, *Committee Hansard*, Wednesday 8 February 2017, pp. 17-18.

67 Ms Cheryl-Anne Moy, Acting Deputy Commissioner, Support, DIBP, *Committee Hansard*, Wednesday 8 February 2017, pp. 17-18.

68 Australasian College of Emergency Medicine (ACEM), *Submission 13*, p. 2.

69 ACEM, *Submission 13*, p. 2.

Dr Paddy McLisky of DFR explained that, based on the medical records which it had reviewed, it was evident that refugees and asylum seekers on Nauru exhibit a range of health concerns, with kidney stones being a common complaint, diagnoses of locally-contracted infections including schistosomiasis, and medical trends emerging from a diet lacking in fresh produce, as well as a trend of severe depression and anxiety.⁷⁰

3.33 The Royal Australian College of General Practitioners (RACGP) raised concerns about the lack of public health care data for refugee and asylum seeker patients. It argued that current publicly available datasets do not provide enough information to determine whether health services being provided are adequate, or to assess 'the true prevalence of conditions such as mental health diagnoses'.⁷¹ It argued that in a high risk environment like an RPC, 'this is completely inadequate'.⁷²

3.34 IHMS provided a response to the submission made by the RACGP.⁷³ This response did not directly address the RACGP's criticism about a lack of *publicly available* data, but explained that the manner in which IHMS provides the department with health data, the limitations on the health care data to which IHMS may have access, and outlined the health care services which it provides. IHMS explained that it provides the department with health data summaries four times per year, which include an analysis of 'general health trends and indicators' among the RPC population.⁷⁴

3.35 A number of submitters argued that the capacity of health care professionals to provide adequate health care in RPCs, is impeded. Dr Paddy McLisky of DFR submitted that by situating the RPCs on remote island in 'unsafe conditions' and 'far from necessary infrastructure' both 'radically impedes' the capacity of health care processing to provide adequate care, and denies refugees and asylum seekers the right to 'gain access to what we as Australians would see as a necessary level of health care'.⁷⁵ He explained that DFR's examination of medical records obtained with the consent of patients in Nauru and PNG, indicate that there may be delays in approving particular treatment options for patients.⁷⁶ He submitted that such delays are a 'predictable outcome of putting people on remote islands' considering the transport and visas which would be required.⁷⁷

3.36 The Australian Association of Social Workers (AAWS) likewise argued that the policy of offshore processing interferes with the ability of social workers to 'offer

70 Dr Paddy McLisky, Secretary, DFR, *Committee Hansard*, Tuesday 14 November 2017, p. 9.

71 Royal Australian College of General Practitioners (RACGP), *Submission 17*, p. 3.

72 RACGP, *Submission 17*, p. 3.

73 RACGP, *Submission 17*, IHMS response.

74 RACGP, *Submission 17*, IHMS response, p. 2.

75 Dr Paddy McLisky, Secretary, DFR, *Committee Hansard*, Tuesday 14 November 2017, p. 2.

76 Dr Paddy McLisky, Secretary, DFR, *Committee Hansard*, Tuesday 14 November 2017, p. 3.

77 Dr Paddy McLisky, Secretary, DFR, *Committee Hansard*, Tuesday 14 November 2017, p. 3.

appropriate professional assistance'.⁷⁸ The Australian Psychological Society (APS) also raised the capacity of workers to provide ethical services, arguing that detention in a remote and high security facility 'compromises the ethical and effective delivery of psychological and other support services'.⁷⁹

3.37 Submitters also argued that the standard of health care being provided to asylum seekers and refugees in Nauru and PNG is, in fact, inadequate. The AMA explained that it did not believe that people detained on Manus or Nauru, or living in the community, could access a standard of care which a person in Australia would receive.⁸⁰ Amnesty International likewise submitted that the health care available on Nauru is inadequate, citing delays of months to see visiting medical specialists and undergo necessary tests.⁸¹ It cited the example of a man who had suffered a heart attack and was sent to Australia for four months. Amnesty International alleged that upon his return to Nauru, a doctor examined his file and stated that he should not have been sent back because the doctor could not be responsible for him. Amnesty International submitted that the man had a further heart attack on Nauru, and that doctors have advised that the man requires specialist treatment which is not available on the island.⁸² It also highlighted the case of an asylum seeker on Manus Island who alleged that his diabetes was inappropriately managed, leading him to faint a number of times and experiencing persistently high blood sugar levels.⁸³ Ms Pamela Curr of Australian Women in Support of Women on Nauru (AWSWN) argued that the numbers of patients who have been transferred to Australia to access services indicates that the services being provided in Manus and Nauru are not adequate.⁸⁴ The UNHCR also submitted that asylum seekers and refugees cannot access appropriate mental health services in PNG.⁸⁵

3.38 The RANZCP expressed concern about the provision of training to RPC medical staff.⁸⁶ It noted a case reported by the media, which stated that on 29 January 2015 an asylum seeker had repeatedly told their case manager that they wanted to die. The case manager reportedly told the woman to 'think of something positive that she enjoyed prior to detention and to do this every day to improve her well-being'. The RANZCP noted that the same report stated that the incident report had been downgraded in classification from a 'minor incident' to 'information'. It argued that the clinic response to this patient's medical needs was poor:

78 Australian Association of Social Workers (AASW), *Submission 46*, p. 1.

79 Australian Psychological Society (APS), *Submission 49*, p. 4.

80 AMA, *Submission 1*, p. 7.

81 Amnesty International, *Submission 6*, Attachment 1, p. 5.

82 Amnesty International, *Submission 6*, Attachment 1, p. 6.

83 Amnesty International, *Submission 6*, Attachment 3, p. 52.

84 Ms Pamela Curr, Australian Women in Support of Women on Nauru (AWSWN), *Committee Hansard*, Tuesday 15 November 2016, p. 20.

85 UNHCR, *Submission 43*, p. 18.

86 RANZCP, *Submission 8*, p. 5.

Reminding an individual of 'positive' things in their past is not an appropriate way of managing someone's current risk of suicide. Furthermore, downgrading of an incident of suicidal ideation to 'information' only raises some questions about the capacity for regional processing centres to appropriately recognise and respond to mental health issues. The RANZCP finds unacceptable the apparent neglect of serious mental health incidents and the absence of an appropriate mechanism to ensure these kinds of incidents are immediately referred to an appropriately resourced staff of trained and qualified health professionals.⁸⁷

3.39 DFR explained that it was aware of claims of sexual assault and abuse against children, which had been disclosed to health care workers, where there was no evidence that the worker had escalated the claim.⁸⁸

3.40 The RANZCP highlighted that initial health assessments conducted within 48 hours of a boat arriving do not include a mental health or developmental status assessment, and noted that there is currently no 'routine mental health or developmental screening of children detained for prolonged periods of time'.⁸⁹

3.41 ACMHN likewise noted its concern that incomplete or inappropriate medical responses to such mental health concerns could be reported as being 'appropriate' responses, thereby skewing the data relating to health care treatment.⁹⁰ It stated that:

A person seeking asylum who has been provided with medication (e.g. sedative or antidepressant etc) for acute mental illness, but who is unable to access counselling services they need should not be reported as having received 'appropriate treatment'...

Identifying that a form of clinical treatment has been provided in response to psychological distress and trauma does not automatically indicate that the treatment was clinically appropriate, or proportionate to the psychological distress that an individual presented with. Nor does it indicate whether a treatment was clinically effective in resulting in a reduction in symptoms.⁹¹

3.42 IHMS rejected claims made by Amnesty International about the conduct of medical staff members.⁹² It expressed its concern about claims by Amnesty International that staff had failed to abide by professional medical ethics, calling such claims 'offensive to IHMS clinicians who are highly committed to providing high

87 RANZCP, *Submission 8*, p. 5.

88 DFR, *Submission 56*, p. 19.

89 RANZCP, *Submission 8*, p. 3.

90 ACMHN, *Submission 41*, p. 9.

91 ACMHN, *Submission 41*, p. 9.

92 Amnesty International, *Submission 6*, IHMS response.

quality health care services'.⁹³ It also stated that it believes all refugees and asylum seekers '...have the right to high quality health care'.⁹⁴

3.43 The RACGP questioned the methods by which health care services in Nauru and PNG are being 'enhanced', arguing that the current approach of adding infrastructure may not be appropriate.⁹⁵ It submitted that the capacity of a health system may not necessarily be enhanced in the long term by adding extra infrastructure because the addition of highly technical equipment imposes an ongoing obligation to maintain that equipment. It also noted that any plans to enhance Nauru's health care capacity must recognise that the health care needs of Nauruans and asylum seekers are extremely different. It emphasised that, while Nauruans face an epidemic of chronic diseases like diabetes, kidney disease and cardiovascular disease, asylum seekers face an epidemic of mental illness.⁹⁶

3.44 A number of submitters questioned the level of departmental involvement in medical decision making. As stated above, requests for medical movement outside Australia will ultimately come to the department, which considers the request in a 'committee style format', and makes a recommendation to senior staff for approval for travel.⁹⁷

3.45 This departmental involvement in medical decisions is currently the subject of scrutiny by the Queensland Coroners Court, in the inquest into the death of Mr Hamid Khazaei in 2014. To date, it has been reported that the following evidence has been presented to the Coroner in relation to the events leading up to Mr Khazaei's death:

- the initial email request for transfer was sent at 1.15pm. This email requested an 'urgent medical transfer' citing 'risk of...life-threatening widespread systemic infection'.⁹⁸ The department's director of detention health services did not reply until 6.01pm, at which time she asked whether the patient could be treated on the island. The director argued that the email outlining the medical transfer request did not 'paint a picture of urgency'.⁹⁹ Then-Chief

93 Amnesty International, *Submission 6*, IHMS response, pp. 2-3.

94 Amnesty International, *Submission 6*, IHMS response, p. 3.

95 RACGP, *Submission 17*, p. 5.

96 RACGP, *Submission 17*, p. 5.

97 Mr Kingsley Woodford-Smith, Assistant Commissioner, Detention, Compliance and Removals Division, DIBP, *Committee Hansard*, Wednesday 8 February 2017, p. 11.

98 The Guardian Australia, *Immigration department and health provider blame each other over Manus death*, 16 February 2017.

99 SBS News, *Inquest resumes into Manus asylum seeker Hamid Khazaei's death*, 13 February 2017.

Medical Officer of the department Dr Paul Douglas also argued that IHMS had failed to make the department aware of the urgency;¹⁰⁰

- the request from IHMS for Mr Khazaei's medical transfer was delayed because approvals had to be sought from up to five levels of bureaucrats who did not have medical qualifications;¹⁰¹
- then-Regional Director of IHMS, Dr Mark Parrish, stated that 'the continuing questioning of medical judgment [was] part of the reason for this gentleman's death'. He stated that IHMS was not asking for a clinical discussion of the patient, and were asking to move him.¹⁰² He stated that the department would regularly overrule recommendations by doctors to transfer sick patients;
- Dr Parrish stated that 'In an ideal world, we would have moved everybody to Australia for care that was greater than that which could be provided at Manus Island';¹⁰³ and
- Mr Khazaei was allegedly left lying in the sun on a stretcher at the Manus airstrip while awaiting the air ambulance.¹⁰⁴

3.46 It has also been reported that the Coroner has also heard evidence as to the sub-standard health care which was provided to Mr Khazaei when he was initially transferred to Port Moresby for treatment, including:

- local staff were not expecting Mr Khazaei's arrival;¹⁰⁵
- when the alarms on both Mr Khazaei's heart monitor and vital sign monitor were both signalling, a former nurse and team leader contracted to provide medical services to the Australian Federal Police in PNG observed 'a nurse stood on the other side of the bed, not attending to the patient';¹⁰⁶ and
- a nurse working for IHMS in a patient liaison administrative role intervened when local hospital staff failed to attend to the patient, having waited for an hour to intubate his trachea for ventilation after he was admitted, and then taking almost one hour to do this.¹⁰⁷ The nurse was reported to have agreed

100 The Guardian Australia, *Immigration department and health provider blame each other over Manus death*, 16 February 2017.

101 SBS News, *Khazaei inquest: Hamid's death linked to 'deficient' emergency evacuation policy*, 15 February 2017.

102 The Guardian Australia, *Immigration department and health provider blame each other over Manus death*, 16 February 2017.

103 The Guardian Australia, *Immigration department and health provider blame each other over Manus death*, 16 February 2017.

104 SBS News, *Khazaei inquest: Hamid's death linked to 'deficient' emergency evacuation policy*, 15 February 2017.

105 SBS News, *Khazaei inquest: Hamid's death linked to 'deficient' emergency evacuation policy*, 15 February 2017.

106 SBS News, *'Turning blue': Khazaei inquest hears of failing at PNG hospital*, 13 February 2017.

107 SBS News, *'Turning blue': Khazaei inquest hears of failing at PNG hospital*, 13 February 2017.

that the care Mr Khazaei received from hospital staff was 'woefully inadequate' and 'endangered his life'.

3.47 Dr McLisky of DFR raised concerns about refugees and asylum seekers who had been transferred to Australia for medical treatment being discharged from hospital too early. He submitted that there had been cases where the department had taken a person from hospital back to an onshore immigration detention centre, earlier than the doctors had recommended.¹⁰⁸ He explained that DFR regarded departmental involvement in medical decision-making as a 'dangerous practice':

[IHMS health professionals] are working in a system in which there are numerous impediments to their work, including the approval of specialist reviews, medical transfers, getting hold of medications which may not be available on the island. Anything that they cannot do that they need to appears to require approval by DIBP...[T]he officers approving this are often not medically trained so you are taking a clinical decision and putting it into the hands of a non-clinician.¹⁰⁹

3.48 Many of the medical organisations which provided submissions argued that detention (or detention-like conditions) means that health care outcomes will be poor, because detainees are being continually re-traumatised by their ongoing detention. The Royal Australasian College of Physicians (RACP) stated that detention has severe adverse health impacts on detainees.¹¹⁰ It argued that:

It is imperative to acknowledge that the mental health issues caused by or exacerbated by detention and by the offshore processing experience, cannot be addressed while people remain in detention and/or living in uncertainty, regardless of the extent or quality of services available.¹¹¹

3.49 The ACEM agreed, arguing that there is clear evidence to indicate that mandatory and indefinite detention places additional stress on mental and physical health.¹¹² The Australian Association of Social Workers (AASW) likewise submitted that 'any period of detention is potentially harmful'.¹¹³ The RANZCP likewise submitted that prolonged and indefinite detention 'violates basic human rights and contributes adversely' to the mental health of asylum seekers and refugees,¹¹⁴ arguing that:

Mental health conditions are unlikely to respond to treatment until key stressors are removed from the patient's life. There is clear evidence that harms to well-being accumulate during detention and that the longer a

108 Dr Paddy McLisky, Secretary, DFR, *Committee Hansard*, Tuesday 14 November 2017, p. 6.

109 Dr Paddy McLisky, Secretary, DFR, *Committee Hansard*, Tuesday 14 November 2017, p. 8.

110 Royal Australasian College of Physicians (RACP), *Submissions 5*, p. 1.

111 RACGP, *Submission 17*, p. 1 (emphasis in original).

112 ACEM, *Submission 13*, p. 1.

113 AASW, *Submission 46*, p. 2.

114 RANZCP, *Submission 8*, p. 1.

person is held in detention, the higher their risk of developing or worsening mental ill health...Prolonged immigration detention has been shown to worsen mental illness in those already suffering when detained and to result in the development of completely new conditions in those without mental illness on arrival....While people continue to be held in difficult, often (re-)traumatising conditions and with an uncertain future, mental disorders are likely to persist or worsen—and where they don't exist, they may be created.¹¹⁵

3.50 Dr Kym Jenkins, RANZCP President-elect, explained that trying to treat mental illness while somebody is in this situation, 'is like trying to fill the bath with the plug out'.¹¹⁶ She argued that it is not possible to provide effective mental health care in a setting where people are continuously being re-traumatised and exposed to things which have poor mental health outcomes.¹¹⁷

3.51 DFR explained that 'deprivation, despair and loss of hope' are recurring themes in the requests DFR receives from asylum seekers and refugees held in detention. It asserted that 'individuals categorically have not received adequate health care in offshore detention and continue to receive substandard care', arguing that the 'wall of secrecy and obstruction from IHMS and DIBP represents obscene negligence and a wilful denial of humane, economic and practical alternatives'.¹¹⁸

Detention as deterrence

3.52 Several submitters argued that RPC conditions must be harsh in order to achieve the aim of deterring any further asylum seekers from seeking asylum from Australia. The RANZCP argued that this extends to the provision of health care services:

One tension in allowing proper access to support services, including health and education, is that the stated purpose of detention include the notion of deterrence and coercion. Detention is designed to be aversive so that it is an effective deterrent to others who might arrive by boat, and to coerce compliance with repatriation. This lead to a tension between any positive experience or service provisions and the stated purpose of detention.¹¹⁹

3.53 The Refugee Council of Australia (RCA) agreed that the policy of offshore processing is the root cause of the abuse and self-harm, because it is a policy designed to deter vulnerable people from claiming asylum, and coerce them into repatriating.¹²⁰ Ms Claire O'Connor SC, of AWSWN, submitted that the Australian Government

115 RANZCP, *Submission 8*, p. 5.

116 Dr Kym Jenkins, President-elect, RANZCP, *Committee Hansard*, Tuesday 15 November 2016, p. 23.

117 Dr Kym Jenkins, President-elect, RANZCP, *Committee Hansard*, Tuesday 15 November 2016, p. 23; RANZCP, *Submission 8*, p. 10.

118 DFR, *Submission 56*, p. 23.

119 RANZCP, *Submission 8*, p. 11.

120 Refugee Council of Australia (RCA), *Submission 19*, 3.

would be aware that the RPC environment is one of punishment, given the research which has been conducted in relation to detention centres at Woomera, Baxter, Port Hedland, Curtin and Christmas Island, and due to the findings of related inquiries, including the 2005 Palmer Inquiry.¹²¹ DFR echoed these concerns, arguing that Australia's current immigration policy denies the right to seek asylum and enjoy liberty, safety and respect, and thereby denies fundamental human rights.¹²²

3.54 The UNHCR highlighted the causal nexus between ongoing detention (or detention-like conditions), alarmingly widespread poor mental health, and the inability of health services, even effective ones, to effectively address those worsening mental health concerns. It explained that when UNHCR medical experts visited the RPCs in April 2016, the evidence indicated that although most asylum seekers and refugees had been exposed to trauma prior to their detention at an RPC, the majority did not have a pre-existing psychiatric condition.¹²³ It argued that:

The prolonged, arbitrary and indefinite nature of immigration detention in conjunction with a profound hopelessness in the context of no durable settlement options has corroded these individual's resilience and rendered them vulnerable to alarming levels of mental illness.

In both locations, the medical experts noted that specific individual medical interventions are relatively ineffective due to the nature of the complex interplay of psychiatric and psychosocial factors, and poor adherence to standard treatment strategies.

Further, the medical experts found that there are inadequate services in place in both Nauru and Papua New Guinea to address the present health concerns of refugees, and that it will not be possible to establish appropriate systems in a reasonable timeframe.¹²⁴

Cultural and social barriers

3.55 The committee noted evidence of the cultural differences between refugees, asylum seekers, and their host nations; as well as evidence that the tensions between these groups are connected with some of the allegations of abuse and neglect.

Nauru

3.56 There are significant cultural differences between local Nauruans and the refugees and asylum seekers living in their community. The majority of asylum seekers and refugees are Iranian, Sri Lankan, or stateless. A smaller number come

121 Ms Claire O'Connor SC, AWSWN, *Committee Hansard*, Tuesday 15 November 2016, pp. 11-12.

122 DFR, *Submission 56*, p. 23.

123 UNHCR, *Submission 43*, p. 9.

124 UNHCR, *Submission 43*, p. 10.

from Bangladesh, Afghanistan, Iraq, Burma, India, Nepal, and Somalia.¹²⁵ The small Nauruan population, by contrast, is largely monocultural, and prior to the opening of the Nauru RPC the non-Nauruan population were primarily from Kiribati, Tuvalu, and the People's Republic of China.¹²⁶ Cultural differences have evidently presented a significant challenge to positive relationships between locals and asylum seekers and refugees. This is no doubt compounded by the fact that the asylum seekers and refugees did not choose to live in Nauru, and many have expressed their strong desire to leave. It is also apparent that some locals are unhappy with either the establishment of the RPC in their country, or with the opening up of the centre, allowing former detainees to mix with the local community. As set out in Chapter 2, there are many allegations of abuse from locals directed to asylum seekers and refugees, as well as hostility towards asylum seeker and refugee children attending local schools, and individuals starting businesses and living in the community. Additionally, the lack of clarity about if and when refugees will be resettled in a third country, and whether the jobs and income derived from the RPC will cease, contributes to this hostility.

3.57 The UNHCR submitted that settlement on Nauru is not an option, even temporarily.¹²⁷ It argued that the health, educational, child welfare and protection, social and vocational needs of refugees on Nauru 'grossly exceed the capacity of Nauruan services'. It also submitted that attempts to settle refugees in Nauru for more than a short time carries the risk of harm in the form of unmet health, educational and other needs.

3.58 The committee also regards that the relationship between Nauruans, refugees and asylum seekers, and the potential success of any long term resettlement options in Nauru, must take into account of Nauru's historical relationship with Australia—the country responsible for the establishment of the RPCs, and the consequent influx of refugees and asylum seekers into the community.

3.59 Nauru is a small nation of approximately 10,000 residents, most of whom are native to the country. As set out in a previous report relating to these matters, Nauru experienced an economic boom as a result of phosphate mining on the atoll, however the benefits were short lived. Between 1962 and 1963 the Australian government appointed a Director of Nauruan Resettlement to consider whether the Nauruan population could be moved to Australian territory, but this did not eventuate, with Nauru citing concerns about the loss of its culture in the context of the White Australia policy.¹²⁸ Nauru initiated a claim against Australia in the International Court

125 Parliamentary Library, *Australia's offshore processing of asylum seekers in Nauru and PNG: a quick guide to statistics and resources*, www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/Offshore (accessed 12 January 2017).

126 Secretariat of the Pacific Community and Nauru Bureau of Statistics, *Demographic Profile of the Republic of Nauru 1992-2002*, p. 54.

127 UNHCR, *Submission 43*, p. 19.

128 Professor Jane McAdam, *How the entire nation of Nauru almost moved to Queensland*, <http://theconversation.com/how-the-entire-nation-of-nauru-almost-moved-to-queensland-63833> (accessed 12 January 2017).

of Justice (ICJ) for phosphate lands mined prior to 1 July 1967 and Australia, which had purchased a significant amount of the mined phosphate, agreed to an out of court settlement totalling \$107 million, including an up front payment of \$57 million, with the remainder paid in instalments over twenty years.¹²⁹ In 2003 then-Foreign Minister the Hon Mr Alexander Downer again suggested that the Nauruan population be relocated due to the country's bankruptcy.¹³⁰ Nauru's then-President Mr Rene Harris dismissed the suggestion citing concerns about the move undermining the country's identity and culture.¹³¹

3.60 Today, Nauru is heavily reliant on revenue from Australia. Between 2014 and 2015 Australia's aid contribution to Nauru made up 15 per cent of the nation's domestic revenue.¹³² The Department of Foreign Affairs and Trade (DFAT) estimates that from 2016 to 2017 Australia will provide Nauru with \$25.5 million in aid.¹³³ The presence and operation of the RPCs and the associated services is currently Nauru's most significant revenue stream.¹³⁴

Papua New Guinea

3.61 Cultural and social barriers are also evident in PNG, and have been linked with some of the allegations of abuse and neglect among refugees and asylum seekers there. The vast majority of the all-male asylum seeker population in PNG are Iranian. Asylum seekers also come from Sri Lanka, Pakistan, Bangladesh, Afghanistan, Iraq, Burma, India, Nepal, Somalia, and Lebanon. There are also a number of individuals who are stateless.¹³⁵ The PNG population of approximately 7.2 million people,¹³⁶ by contrast, is characterised by diverse local groups speaking over 800 languages.¹³⁷ In 2015 the International Labour Organization (ILO) advised that PNG had a crude net migration rate of zero, although many individuals travel to PNG for short term visits

129 Department of Foreign Affairs and Trade (DFAT), *Aid performance report 2012-13 Nauru*, p. 4.

130 The Independent UK, *Australia moots radical future for bankrupt Nauru*, 20 December 2003.

131 The Independent UK, *Australia moots radical future for bankrupt Nauru*, 20 December 2003.

132 DFAT, *Overview of Australia's aid program to Nauru*, <http://dfat.gov.au/geo/nauru/development-assistance/Pages/development-assistance-in-nauru.aspx> (accessed 12 January 2017).

133 DFAT, *Overview of Australia's aid program to Nauru*.

134 DFAT, *Overview of Australia's aid program to Nauru*.

135 Parliamentary Library, *Australia's offshore processing of asylum seekers in Nauru and PNG: a quick guide to statistics and resources*, www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/Offshore (accessed 12 January 2017).

136 National Statistical Office, Papua New Guinea, *National Population and Housing Census 2011*.

137 The World Bank, *Papua New Guinea Overview*, www.worldbank.org/en/country/png/overview (accessed 27 March 2017).

(including for business and employment reasons).¹³⁸ PNG has also participated in the resettlement of refugees from West Papua, with the UNHCR explaining in 2005 that PNG hosted up to 10,000 mainly West Papuan refugees, with some cases dating back to the 1960s.¹³⁹ In 2016 it was reported that PNG would resettle hundreds of West Papuan refugees.¹⁴⁰

3.62 The committee observed, in December 2014, animosity between asylum seekers and locals on Manus Island,¹⁴¹ including an incident during which locals attempted to invade the RPC armed with machetes.¹⁴² The committee also noted evidence of misinformation about both locals and asylum seekers, including stories of locals being cannibals, and the prevalence of HIV in the population.¹⁴³

3.63 The UNHCR stated that it has advised the governments of Australia and PNG that the 'integration of transferred refugees to Papua New Guinea is not possible',¹⁴⁴ highlighting that:

- for approximately 30 years (and as recently as 2013), the UNHCR has consistently referred non-Melanesian refugees who had arrived in PNG previously for resettlement in third countries due to 'severe limitations and significant challenges of finding safe and effective durable solutions in Papua New Guinea itself', and the 'formidable challenges' to achieving the integration of non-Melanesian refugees in PNG;
- the widespread deterioration in the mental health of refugees and asylum seekers who have been transferred to PNG for processing compounds the existing concerns which the UNHCR has regarding integration;
- refugees have informed the UNCHR that they cannot settle in PNG because of a 'pervasive fear for their safety'; and
- refugees who have attempted to settle in the community have been the victims of several attacks, and have not been adequately protected.

138 International Labour Organization (ILO), *Labour Migration in Papua New Guinea*, 14 April 2015, www.ilo.org/suva/areas-of-work/WCMS_407377/lang-en/index.htm (accessed 27 March 2017).

139 UNHCR, *UNHCR Country Operations Plan 2006 – Papua New Guinea*, 1 September 2005, p. 1.

140 ABC News, *Papua New Guinea resettling hundreds of West Papua asylum seekers*, 18 March 2016.

141 Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014 ('Incident at Manus')*, December 2014, p. 51.

142 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 52.

143 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 52.

144 UNHCR, *Submission 43*, p. 16.

3.64 The UNHCR submitted that the measures intended to help facilitate integration in PNG have not worked, and that PNG's Refugee Policy in particular, has caused a number of difficulties for refugees.¹⁴⁵ It highlighted that, pursuant to this policy:

- refugees must receive support which is comparable to that made available to local people (and therefore does not take into account their inherent disadvantages); and
- a refugee must first establish 'effective settlement' and financial independence before they can sponsor their family to join them, disregarding the 'established fact that the unity of the family is a key facilitator of effective settlement'.¹⁴⁶

Lack of appropriate regulation

3.65 Evidence examined by the committee indicated that concerns about a lack of appropriate regulation and oversight both within RPCs and in local communities, contributing to the many allegations of abuse, self-harm and neglect, and to their persistence over the life of the Nauru and PNG RPCs.

Concerns regarding regulation within the RPCs

3.66 As set out in Chapter 1, the Select Committee on recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru (select committee) has previously noted concerns about a lack of appropriate regulation and oversight within RPCs, including concerns about the performance and accountability of Commonwealth contracted service providers, an inappropriate complaints mechanism, and a system in which contractors were expected to 'self-manage'.¹⁴⁷

3.67 The evidence to which this committee had regard, both echo and build on these concerns, including in relation to the Manus RPC.

3.68 As will be further discussed in Chapter 5 (the management of expenses associated with RPCs), the Australian National Audit Office (ANAO) has recently completed two audit reports regarding both contract procurement and contract management at offshore processing centres.¹⁴⁸ The ANAO made a number of findings in relation to the procurement of major contracts for services at the RPCs, and the management of those contracts. In the course of these audits, the ANAO highlighted

145 UNHCR, *Submission 43*, pp. 17–18.

146 UNHCR, *Submission 43*, p. 16.

147 Select Committee on recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru ('Select Committee'), *Taking responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru ('Nauru RPC')*, August 2015, pp. 123–124.

148 Australian National Audit Office (ANAO), *Offshore Processing Centres in Nauru and Papua New Guinea: procurement of garrison support and welfare services ('Procurement of garrison support and welfare services')*, Audit Report No. 16 2016-17; ANAO, *Offshore processing centres in Nauru and Papua New Guinea – contact management of garrison support and welfare services ('Contract management')*, ANAO Report No. 32 2016–17.

the casual nexus between a lack of regulation and oversight, consequent problems in both auditing the performance of those contracts, and ongoing failures to address recommendations to improve the safety of the RPCs.

3.69 In particular, the ANAO commented on:

- shortcomings in the department's record keeping systems;¹⁴⁹
- a heavy reliance on self-assessment of contractors for the purposes of performance measurement, combined with delays in the department's review of those self-assessments;¹⁵⁰
- shortcomings in record keeping relating to incidents at RPCs, including a significant variation between the numbers of records held by the department and those held by service providers;¹⁵¹
- a failure by the department to ensure that all digital records, which were held by Wilson Security (the subcontractor of Broadspectrum) were being appropriately held,¹⁵² including an inability to provide 'any details' as to the 'extent and nature' of digital records held on its behalf;¹⁵³
- delays in the development and departmental approval of 'management plans' for contractors;¹⁵⁴
- a failure to adopt a systematic approach to monitoring goods and services being delivered to the RPCs under contracts, and a failure to conduct regular audits of the contract performance;¹⁵⁵ and
- delayed responses to periodic reviews conducted by the department's Chief Medical Officer, including observations by the CMO in January 2015 that water pooling, excessive mould, and vermin were increasing the risk of infection and disease; as well observations of overcrowding, inadequate cleaning and poor food hygiene.¹⁵⁶

3.70 The ANAO concluded that the failure by the department to appropriately monitor the performance of these contracts, and the services being provided at RPCs, reduced the department's ability to verify that key welfare services were being delivered, facilities had been maintained, and work health and safety responsibilities

149 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016-17, p. 8; ANAO, *Contract management*, ANAO Report No. 32 2016-17, p. 11.

150 ANAO, *Contract management*, ANAO Report No. 32 2016-17, pp. 8-9.

151 ANAO, *Contract management*, ANAO Report No. 32 2016-17, pp. 1-12.

152 ANAO, *Contract management*, ANAO Report No. 32 2016-17, p. 12.

153 ANAO, *Contract management*, ANAO Report No. 32 2016-17, p. 59.

154 ANAO, *Contract management*, ANAO Report No. 32 2016-17, p. 40.

155 ANAO, *Contract management*, ANAO Report No. 32 2016-17, p. 50.

156 ANAO, *Contract management*, ANAO Report No. 32 2016-17, p. 52.

were being met.¹⁵⁷ The ANAO highlighted in particular the department's failure to respond to a recommendation regarding the removal of mould from RPC accommodation in Nauru, made in February 2015. At December 2016, during the course of the ANAO's audit, the department advised that mould remediation work had been completed in just four of 13 accommodation marquees.

3.71 The department and its contractors and subcontractors responded to the findings of these audit reports. The department emphasised that the procurement of garrison and welfare services at RPCs was undertaken in a 'highly complex and rapidly evolving environment', and one which remains extremely complex.¹⁵⁸ Broadspectrum likewise argued that the ANAO had failed to address the 'complexity of operations', 'dynamic and changing conditions', and 'flexibility and responsiveness' required of the department and contractors to respond to the requirements of the Nauruan and PNG Governments, which had 'ultimate control over the legal and operating environment'.¹⁵⁹ Wilson Security acknowledged 'the challenges that exist in maintaining data integrity in these operational environments', and noted that the environmental and infrastructure conditions at the RPCs meant that all organisations struggled to maintain 'the information and communication technology access and service continuity that would be experienced in a modern, developed nation'.¹⁶⁰

Changing incident report classification levels

3.72 The committee also heard evidence of incident report classifications being downgraded in the course of being initially drafted and then passed up the chain of command. Mr Paul Stevenson, a former psychologist at both the Nauru and Manus RPC from July 2014 to July 2015, submitted that he had observed systematic downgrading of incident classification from critical to major and minor at a rate of 30 per cent.¹⁶¹ He submitted that this took place due to the inclusion of 'abatement fees' in the contract between Transfield and Wilson Security, which involved the imposition of an \$80,000 abatement per incident, for any critical incidents which were not reported to Australian office of Transfield within three hours of the incident having occurred. Mr Stevenson further explained that an incident classified as being 'major' could be reported within 24 hours of having occurred, while a 'minor' incident could be reported within three days.¹⁶²

3.73 The Guardian Australia's interactive 'Nauru files' database indicates that 128 incidents were downgraded in classification from January 2015 to

157 ANAO, *Contract management*, ANAO Report No. 32 2016–17, p. 50.

158 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016–17, p. 16.

159 ANAO, *Contract management*, ANAO Report No. 32 2016–17, p. 17

160 ANAO, *Contract management*, ANAO Report No. 32 2016–17, p. 18

161 Mr Paul Stevenson, Psychologist, Brisbane Refugee and Asylum Seeker Support Network (BRASSN), *Committee Hansard*, Tuesday 14 March 2017, pp. 11–12.

162 Mr Paul Stevenson, Psychologist, BRASSN, *Committee Hansard*, Tuesday 14 March 2017, p. 18.

September 2015. Two of the downgraded incidents in January 2015 were initially reported as 'critical', and we subsequently downgraded by being struck out in pen to read 'major'. One of these incidents reported an allegation of the sexual abuse of a child by a security officer, and includes a notation in pen: 'rating changed by Wilsons'.¹⁶³

3.74 The department advised that it had conducted a review of 1814 incidents from the Nauru RPC. It submitted that it was satisfied that 'the classification of incidents is generally appropriate', and that 'there was no indication of systemic issues such as the deliberate downgrading of severity'.¹⁶⁴ The department also submitted that:

The Garrison and Welfare Service Provider will assess the incident against the incident categories provided by the Department, in conjunction with their own standard operating procedures. It is common practice for Service Providers, in consultation with the Department and other stakeholders, to review incidents and if necessary, reclassify these incidents, as further information becomes available. This may result in a discrepancy between what the Garrison and Welfare Service Provider initially reports, compared to what the department has recorded.¹⁶⁵

Concerns regarding Nauruan and PNG regulatory schemes

3.75 The opening up of the Nauru and Manus RPCs has meant that asylum seekers and refugees can move about the local communities, in some cases being housed in the community; and may be required to utilise local services rather than RPC services.

3.76 Several submitters and witnesses expressed their concern about the suitability of the regulatory frameworks present in Nauru and PNG, particularly in relation to police and the judiciary, and the Nauruan child protection framework.

Low confidence in local authorities

3.77 The committee heard evidence about poor treatment of asylum seekers and refugees in both Nauru and PNG by local authorities, and a low level of confidence in the capacity and propensity of some of those authorities to treat asylum seekers and refugees fairly and transparently.

3.78 These claims both reflect and build on evidence presented to previous inquiries into these matters. As set out in Chapter 1, in 2014 the committee heard evidence of animosity between detainees and locals in PNG, as well as a significant degree of fear and distrust in local PNG staff members and PNG police, arising out of the riots in February 2014, and the death of Mr Reza Barati.¹⁶⁶ The 2015 select committee likewise noted the limitations on the capacity of the Nauruan Police Force

163 The Guardian Australia, *the Nauru files*, critical (downgraded to major) incident, 'sexual assault allegation', 15 January 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150051.pdf> (accessed 3 April 2017).

164 DIBP, *Submission 23*, p. 31.

165 DIBP, response to question on notice, 15 March 2017 (received 4 April 2017).

166 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014.

to investigate allegations, as well as questionable willingness to do so where the complainant was a refugee or asylum seeker.¹⁶⁷

3.79 Amnesty International explained that the Nauruan justice system has experienced a number of controversies in recent years, some of which have stemmed from the exercise of government powers against the judiciary. In 2014 the Nauruan government expelled both its Magistrate and Police Commissioner, both of whom were Australian citizens.¹⁶⁸ The government also revoked the visa of the Chief Justice, the Hon Geoffrey Eames AM QC, who was consequently forced to resign from his position. Mr Eames advised the select committee that these actions constituted 'a series of flagrant breaches of the Rule of Law', and argued that they demonstrated that 'the concept of separation of powers was not well understood or accepted by some members of the government'.¹⁶⁹ Amnesty International argued that the expulsion of several individuals from Nauru, allegations of bribery, and the introduction of new legislation which criminalised statements which are 'likely to threaten public safety', raises 'questions about government corruption and authoritarianism'.¹⁷⁰ It also noted that in October 2015 the government and its public relations company published the name of a sexual assault complainant, along with a detailed description of the alleged attack.¹⁷¹

3.80 Several submitters raised particular concerns about the Nauruan Police Force. The department explained that the Nauru Police Force plays a key role in the investigation of alleged incidents involving refugees and asylum seekers. In August 2016, following the leak of the Nauru files, the department confirmed that all the alleged criminal incidents within RPCs had been referred to the Nauru Police Force for investigation, and that refugees living in the community are encouraged to report all criminal incidents to police.¹⁷² It explained that of the matters reported in the media, 14 incidents had been referred to the Nauruan police. Nine of the referred incidents had been closed due to insufficient evidence, one had closed following the withdrawal of the complaint, one investigation 'revealed no evidence committed', two investigations were ongoing, and one had resulted in a charge of assault which was before the court at the time.¹⁷³

167 Select Committee, *Nauru RPC*, August 2015.

168 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 12.

169 Select Committee, *Nauru RPC*, August 2015, the Hon Geoffrey Eames AM QC, *Submission 70*, p. 1.

170 Amnesty International, *Submission 6*, Attachment 1, p. 13.

171 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 39.

172 DIBP, media release, *The 'Nauru files'*, 10 August 2016, <http://newsroom.border.gov.au/releases/the-nauru-files> (accessed 14 February 2017).

173 Ms Justine Saunders APM, Acting Deputy Commissioner, Operations, DIBP, *Committee Hansard*, Monday 17 October 2016, p. 27.

3.81 The committee asked the department how many incidents had been deemed necessary to refer to Nauruan and PNG Police for investigation, and what the results of those referrals were. The department responded that the referral of incidents to police is the responsibility of 'host government officials'. It explained that all allegations of assault (for example) are reported to the Government of Nauru for referral to the Nauru Police Force for investigation, and that all refugees and asylum seekers are encouraged to report incidents. It stated that host governments are 'not obligated to provide the Department or Service Providers with information relating to their referrals to police or any subsequent investigation'.¹⁷⁴

3.82 Amnesty International highlighted several examples of alleged inappropriate conduct on the part of Nauruan Police, including allegations that police officers had posted derogatory comments about refugees on social media.¹⁷⁵ It submitted that in October 2015 the Nauru Police Force allegedly allowed a convicted paedophile to serve as a police reserve officer.¹⁷⁶ It also noted three instances where a child was allegedly interrogated by police without a child protection specialist present,¹⁷⁷ and claims that three refugee children were stripped naked and held overnight in a police cell in 2015.¹⁷⁸

3.83 Amnesty International argued that Nauruan Police have consistently failed to investigate alleged crimes, or hold perpetrators accountable.¹⁷⁹ It highlighted several claims made by de-identified refugees and asylum seekers who said that they had reported crimes which had not been investigated, and called police who did not attend,¹⁸⁰ and that police had forced asylum seekers to sign false pre drafted statements.¹⁸¹ Ms Laura Sawtell, a Save the Children employee at the Nauru RPC until November 2015, submitted that she had personally experienced several failures by the Nauru Police to respond to a report of abuse against a child, which she had witnessed:

I recall a rare time when the Nauruan police force did attempt to investigate an allegation of abuse of a child that I had witnessed. I arranged on three

174 DIBP, response to questions on notice, 31 March 2017 (received 14 April 2017).

175 Amnesty International, *Submission 6*, p. 2; *Submission 6*, Attachment 1, p. 39.

176 ABC News, *Nauruan police force face fresh scrutiny after convicted rapist allowed to join police reserves*, 15 October 2015.

177 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 30.

178 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 39.

179 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 5.

180 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 37.

181 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 40.

occasions an allocated time and place to meet the Nauruan police force member and provide a statement. On all three occasions the police force member did not present to the meeting and following this I did not hear from them again.¹⁸²

3.84 A former teacher at the Nauru RPC echoed this allegation, highlighting the case of an assault of a group of unaccompanied minors who had been housed in the Nauruan community in October 2014.¹⁸³ The worker stated that despite the incident having been reported to local police, to date the investigation had not been finalised.¹⁸⁴ The worker also stated that in some instances, the victims' statements had been lost.

3.85 Amnesty International also noted a number of confidential claims that police would arrest refugees and asylum seekers arbitrarily as a means of harassing and intimidating them, including arbitrarily arresting a person for self-harming:¹⁸⁵

In late May 2016, Nauru decriminalized suicide, as well as homosexuality. However, since that time, Amnesty International has received credible reports that people are still being jailed for threatening to or actually harming themselves, but on the basis of other provisions in the *Nauru Crimes Act*. Service-providers have also told Amnesty International that in May 2016, their managers instructed them to report self-harm incidents to the Nauru Police Force. This has resulted in some service-providers being forced to testify against their own clients in court. As a result, there has been a drop in reported self-harming, as several service-providers said they felt it was their ethical duty to not take action that would result in criminalizing behaviour requiring mental healthcare - not law enforcement. But even if suicide and attempted suicide are no longer criminal offences, Nauruan law still permits refugees to be prosecuted for actions that took place before May 2016.¹⁸⁶

3.86 HRW raised similar concerns in relation to the capability and propensity of Nauruan police to investigate crimes perpetrated against refugees and asylum seekers. Australia Director Ms Elaine Pearson told the committee that:

The people that we interviewed on Nauru described various cases of having rocks thrown at their head - in one case a Somali women witnessed her husband being beaten and hit on the head with a machete by local Nauruans. Despite efforts to get the police to investigate these cases, often the police would simply shrug their shoulders and refuse to file the complaints. In one case, as an example, where the refugee had diligently

182 Ms Laura Sawtell, *Submission 52*, p. 7.

183 *Submission 53*, p. 2.

184 *Submission 53*, p. 2.

185 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 39.

186 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 39.

written down the licence plate of the car after he was held up at knifepoint, he was told that that car belonged to a government official and was asked if he was therefore implying that the government official had committed the abuse against him. He said: 'That's not what I'm implying at all. It was a young man driving the car; I'm not saying that it was a government official.' It is this kind of pressure on the refugees that makes them give up and not want to report the cases to the authorities anymore. We found in a lot of these incidences that they have lost all faith in the police.¹⁸⁷

3.87 In February 2016 the Nauruan Police Force stated that it was 'sick of the lies told about them and the fabricated allegations of refugees—encouraged by Australian advocates and lawyers'.¹⁸⁸ Nauru Police Commissioner Mr Corey Caleb argued that refugees would regularly fabricate allegations of assault and sexual assault, stating:

They tell us they have been assaulted but their stories seldom add up; there is usually no physical evidence or witnesses or even any details...Not only do police have nothing to investigate except an allegation with no information but even if we had a suspect, no prosecutor can build a case when the only piece of so-called evidence is an unsubstantiated allegation...Even in Australia, these allegations would be dismissed and those making them would be charged with making a false complaint.¹⁸⁹

3.88 The department, in response to the submission by Amnesty International, asserted that the Nauruan Police Force 'does investigate alleged crimes', but that investigations can be difficult where asylum seekers or refugees 'fail to cooperate' or where there is insufficient evidence.¹⁹⁰

3.89 The committee noted evidence of concerns about a lack of fair treatment towards refugees and asylum seekers by PNG authorities, including local police. The department explained that the Royal Papua New Guinea Constabulary (RPNGC) may investigate matters involving refugees living in PNG, and noted that the RPNGC maintains a permanent presence at the RPC itself.¹⁹¹

3.90 A recent incident during which two refugees were arrested by local police raised a number of concerns about the conduct of local police. These included the arrest of two refugees in the community, reportedly for drunk and disorderly conduct,¹⁹² who alleged that they had been beaten by PNG police. The case of Mr Loghman Sawari, as set out in Chapter 2, also highlighted concerns about inappropriate conduct on the part of PNG immigration authorities and local police. On

187 Ms Elaine Pearson, Australia Director, Human Rights Watch (HRW), *Committee Hansard*, Tuesday 15 November 2016, pp. 3–4.

188 The Government of the Republic of Nauru, media release, *We won't cop it anymore – Nauru police*, 3 February 2016.

189 The Government of the Republic of Nauru, media release, *We won't cop it anymore – Nauru police*, 3 February 2016.

190 Amnesty International, *Submission 6*, Attachment 1, DIBP response, p. 4.

191 DIBP, *Submission 23*, pp. 29–30.

192 Radio NZ, *Manus Refugees self-harm and hunger strike in protest*, 17 January 2017.

28 January 2017 it was reported that Mr Sawari had boarded a plane using a false name and travelled to Fiji,¹⁹³ where he sought to claim asylum. On 3 February 2017 it was reported that Mr Sawari had been arrested by Fijian police,¹⁹⁴ and handed over to immigration authorities.¹⁹⁵ On his return to PNG, Mr Sawari was charged with giving false information in a passport application, arrested, and released on bail.¹⁹⁶ On 5 April 2017 it was reported that Mr Sawari had been re-arrested on similar charges.¹⁹⁷

The Nauruan child protection scheme

3.91 A number of submitters raised concerns about the capacity of Nauru's developing child protection framework to sufficiently meet the needs of refugee and asylum seeker children.

3.92 In 2016, the United Nations International Children's Emergency Fund (UNICEF) Pacific and the Nauru Ministry of Home Affairs conducted a joint review of Nauru's child protection system.¹⁹⁸ The review noted that the prevailing attitude towards and handling of allegations of child abuse and neglect in the Nauruan community differ significantly from that in Australia. Some forms of maltreatment against children (including neglect, corporal punishment, emotional abuse, and witnessing violence in the home) are not necessarily viewed as unacceptable or reportable in Nauru.¹⁹⁹ There appears to be reluctance on the part of local police to investigate allegations of child abuse, and prevailing Nauruan cultural norms against interference in family matters.²⁰⁰

3.93 The review stated that significant data reporting gaps and a lack of training also made an assessment of child maltreatment difficult. UNICEF stated that Nauruan police advised that they did not keep data on reported cases of child abuse in a readily accessible form.²⁰¹ Police also advised that they had little training in dealing with

193 Sydney Morning Herald, *Escape from Manus Island: Iranian refugee seeks asylum in Fiji*, 28 January 2017.

194 ABC News, *Iranian asylum seeker who fled Manus Island detained in Fiji, deported to PNG*, 3 February 2017.

195 ABC News, *Iranian asylum seeker who fled Manus Island detained in Fiji, deported to PNG*, 3 February 2017.

196 ABC News, *Iranian refugee Loghman Sawari moved from Port Moresby to Bomana prison ahead of bail application*, 10 February 2017.

197 The Guardian Australia, *Amnesty calls for release of refugee Loghman Sawari in Papua New Guinea*, 5 April 2017.

198 Ministry of Home Affairs and UNICEF Pacific, *Review of the Child Protection System in Nauru*, 2016.

199 Ministry of Home Affairs and UNICEF Pacific, *Review of the Child Protection System in Nauru*, 2016, p. 17.

200 Ministry of Home Affairs and UNICEF Pacific, *Review of the Child Protection System in Nauru*, 2016, p. 17.

201 Ministry of Home Affairs and UNICEF Pacific, *Review of the Child Protection System in Nauru*, 2016, p. 18.

child protection issues, and because there were limited legal options for responding.²⁰² UNICEF also found that medical staff have little training in identifying cases of child abuse, and so may treat injuries but offer no other support or follow up.²⁰³ The review also found that investigations may also be hampered by the lack of trained specialists and facilities to gather and analyse forensic evidence.²⁰⁴ The report recommended that the reporting of suspected cases of child abuse be mandatory for professionals working in the health, education, justice and social welfare sectors.²⁰⁵

3.94 The Nauruan Government adopted the *Child Protection and Welfare Act* in 2016.²⁰⁶ UNICEF Australia commended the introduction of this legislation, stating that it better aligns Nauru with international human rights standards.²⁰⁷ However, it argued that further systems development, capacity building and human and financial resourcing was required to ensure it can be implemented.²⁰⁸

3.95 In May 2016 the department's Child Protection Panel completed its report into the wellbeing and protection of children in detention and RPCs.²⁰⁹ The Panel found that responses to incidents of child abuse at the Nauru RPC were 'adequate or better' in only 30.5 per cent of cases reviewed, and noted that more than 20 per cent of all incidents could not be reviewed due to a lack of data available to the Panel.²¹⁰ The Panel also noted that the professional conduct of subcontractor staff was of concern.²¹¹

3.96 On 30 September 2016, the United Nations Committee on the Rights of the Child (CRC) stated that it had found 'persistent discrimination against asylum seeking children and refugee children in all areas', and highlighted the limited capacity of Nauruan Police to investigate allegations, lack of a 'child sensitive approach, inhumane and degrading treatment against children living in the RPC, and abuse and

202 Ministry of Home Affairs and UNICEF Pacific, *Review of the Child Protection System in Nauru*, 2016, p. 34.

203 Ministry of Home Affairs and UNICEF Pacific, *Review of the Child Protection System in Nauru*, 2016, p. 37.

204 Ministry of Home Affairs and UNICEF Pacific, *Review of the Child Protection System in Nauru*, 2016, p. 37.

205 Ministry of Home Affairs and UNICEF Pacific, *Review of the Child Protection System in Nauru*, 2016, p. 48.

206 *Child Protection and Welfare Act 2016* (Nauru), ronlaw.gov.nr/nauru_lpms/index.php/act/view/1186 (accessed 20 December 2016).

207 UNICEF Australia, *Submission 55*, p. 3.

208 UNICEF Australia, *Submission 55*, p. 3.

209 Child Protection Panel (CPP), *Making Children Safer*, May 2016, www.border.gov.au/ReportsandPublications/Documents/cpp-report-making-children-safer.pdf

210 CPP, *Making Children Safer*, May 2016, p. 23.

211 CPP, *Making Children Safer*, May 2016, p. 23.

threats against families living outside the RPC.²¹² The CRC also highlighted the failure of Australia's Memorandum of Understanding (MOU) with Nauru to take into account the best interests of the child.²¹³ The UNHCR, in its submission to this inquiry, likewise questioned the limited forensic capacity of the Nauru Police Force to investigate allegations of sexual-based violence against women and children, despite capacity building efforts by the AFP.²¹⁴

3.97 UNICEF Australia submitted that despite the steps taken to develop a formal child protection system in Nauru, there are still serious gaps.²¹⁵ It argued that:

The child protection in Nauru, at this stage, is developing and is currently not well positioned to respond adequately to the complex needs of refugee children and their families. Further efforts and investment is required to strengthen the basic building blocks of the child protection system, train skilled staff, improve the referral and case management systems and address incidents of gender-based violence and to support children with disabilities.²¹⁶

3.98 It concluded that, in light of this, offshore processing arrangements cannot reasonably be considered to be in the best interests of refugee children.²¹⁷

Uncertainty about the future

3.99 The committee received evidence indicating that the length of time being spent at the RPCs, and the family separation that can accompany this, is one of the causal factors in the prevalence of poor mental health among asylum seekers and refugees.

3.100 In July 2013, then Prime Minister Mr Kevin Rudd announced that asylum seekers who came to Australia by boat would be sent to PNG for assessment, and would never be settled in Australia.²¹⁸ In October 2016 Prime Minister Mr Malcolm Turnbull announced that refugees and asylum seekers on Manus and Nauru would be banned from ever coming to Australia, even on a tourist or business

212 UN Committee on the Rights of the Child (CRC), *Concluding Observations on the Initial Report of Nauru (Advance Unedited Edition)*, 30 September 2016, UN Doc. CRC/C/NRU/CO/1, para. 30.

213 CRC, *Concluding Observations on the Initial Report of Nauru (Advance Unedited Edition)*, 30 September 2016, UN Doc. CRC/C/NRU/CO/1, para. 52.

214 UNHCR, *Submission 43*, p. 24.

215 Ms Amy Lamoin, Head of Policy and Advocacy, UNICEF Australia, *Committee Hansard*, Tuesday 15 November 2016, p. 27.

216 UNICEF Australia, *Submission 55*, p. 6.

217 UNICEF Australia, *Submission 55*, p. 6.

218 Prime Minister, Attorney General, and Minister for Immigration Joint Press Release, *Australia and Papua New Guinea Resettlement Arrangement*, 19 July 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22media%2Fpressrel%2F2611771%22> (accessed 28 March 2017).

visa.²¹⁹ The legislation by which the government sought to enact this change, the *Migration Legislation Amendment (Regional Processing Cohort) Bill 2016*, is yet to pass through the Senate.²²⁰ It has also been the subject of inquiry by this committee.²²¹

3.101 The Government has sought to secure resettlement options for the refugees on Nauru and Manus. This will be discussed in more detail in Chapter 4. By way of summary, six refugees from Nauru accepted an offer to resettle in Cambodia, however by November 2016 four of those had elected to return to their country of origin.²²² In February 2016, it was reported that two refugees from Nauru had been resettled in Canada under a family reunification visa.²²³

3.102 On 13 November 2016, the Government announced that refugees located on Manus Island and Nauru would be offered resettlement in the United States under a 'one off' arrangement.²²⁴ This will be discussed in further detail in Chapter 4. However, at the date of this report few further details have been released and no refugees have been resettled in the US pursuant to the arrangement.

3.103 Several submitters argued that refugees and asylum seekers continue to experience uncertainty about their futures, and that this has contributed to widespread poor mental health and self-harm.²²⁵ The UNHCR submitted that, based on its interviews with asylum seekers and refugees in April 2016, it was clear that 'family separation resulted in a marked deterioration in mental health', and stated that 'it is critical for the mental health of refugees that separated families be reunited'.²²⁶

3.104 A number of incident reports from the Nauru RPC reflect this concern about uncertainty. Incident reports, particularly through the year 2015, indicate numerous instances where refugees and asylum seekers disclosed concern at having been detained on the island for years, their attempts to force authorities to progress their

219 ABC News, *Manus Island, Nauru refugees to be banned from entering Australia, Malcolm Turnbull says*, 30 October 2016.

220 See, www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5754 (accessed 28 March 2017).

221 Legal and Constitutional Affairs Legislation Committee, *Migration Legislation Amendment (Regional Processing Cohort) Bill 2016 [Provisions]*, 22 November 2016.

222 Mr David Nockels, Acting Deputy Commissioner, Support Group, DIBP, *Committee Hansard*, Friday 11 November 2016, p. 28.

223 ABC News, *Asylum seeker pair leave Nauru 'black hole' to be reunited with family in Canada*, 21 February 2016.

224 See, www.minister.border.gov.au/peterdutton/Pages/Refugee-resettlement-from-Regional-Process-Centres.aspx.

225 University of Newcastle Legal Centre (UNLC), *Submission 12*, p. 2; Dr Kym Jenkins, President-elect, RANZCP, *Committee Hansard*, Tuesday 15 November 2016, p. 21; Mr Daniel Webb, Director of Advocacy (DA), HRLC, *Committee Hansard*, Tuesday 15 November 2016, p. 2; RANZCP, *Submission 8*, p. 4; UNHCR, *Submission 43*, p. 5; Australasian College of Emergency Medicine (ACEM), *Submission 13*, p. 1.

226 UNHCR, *Submission 43*, p. 10.

claims and their resettlement, and their concerns about the RSD process.²²⁷ In May 2015, a worker reported that a man had expressed concern about whether he would be reunited with his wife and daughter, who had been medically transferred out of Nauru. He stated that he was experiencing suicidal thoughts and would stop taking the medication which he is required to take in order to stay alive.²²⁸ In June 2015 a child, who advised a Save the Children worker of an intention to kill themselves by jumping from a roof, explained that her extended family had recently been returned to Nauru after having been in Darwin for medical treatment for over a year.²²⁹ In July 2015, a case worker recorded meeting with a woman on Nauru who told her:

[T]hat she did not want to 'live in this situation anymore, two years in this life, I can't stand it, I want to die...I want to be with my fiancé in Australia, please I can't live like this...please help me, kill me, I can't live anymore'...[Reacted] stated that she did not want to pray or speak with her mother, reporting 'I don't want to do anything, I want to die here, let me die'.²³⁰

3.105 In a further incident in July, a man became distressed when he found out that his wife, who was located in the Melbourne Immigration Transit Centre, was unwell and being transferred to hospital. The Save the Children worker recorded:

[Redacted] began to get teary and began breathing very heavily. [Redacted] then stated that he is 'not going to take his medication and not going to eat anymore'. CM stated that she understands the news of his wife must be very hard for and also the stress of the prolonged separation of 9 months from his wife and daughter but ensured that he needs to look after himself as well as son [redacted] (who also resides in RPC3). [Redacted] sat quietly and sobbed. [Redacted] nodded and apologised to CM for getting upset and shook her hand and departed.²³¹

227 The Guardian Australia, *the Nauru files*, major incident 'food and fluid refusal' (downgraded to minor), 25 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150466.pdf> (accessed 5 April 2017); minor incident 'demonstration', 26 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150490.pdf> (accessed 5 April 2017); minor incident 'threatened self-harm', 28 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150492.pdf> (accessed 5 April 2017); major incident 'self-harm', 5 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150454.pdf> (accessed 5 April 2017); minor incident 'threat to self-harm', 7 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150384.pdf> (accessed 5 April 2017); minor incident 'threat to self-harm', 7 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150385.pdf> (accessed 5 April 2017).

228 The Guardian Australia, *the Nauru files*, minor incident, 'threat of self-harm', 2 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150315.pdf> (accessed 5 April 2017).

229 The Guardian Australia, *the Nauru files*, 29 June 2015, major incident 'threat of self-harm', <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150424.pdf> (accessed 4 April 2017).

230 The Guardian Australia, *the Nauru files*, minor incident 'threat of self-harm', 24 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150487.pdf> (accessed 5 April 2017).

231 The Guardian Australia, *the Nauru files*, major incident 'food and fluid refusal', 17 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150476.pdf> (accessed 3 April 2017).

3.106 In September 2015 a worker reported that a father had sought assistance for his son who had stopped eating, lost weight, and was isolating himself from his friends.²³² His father told the worker that his son had been separated from his mother for 11 months. When the worker spoke with the son, he said that he did not want to leave his room because 'it made him angry when he went to the mess and saw families eating together'.

A lack of transparency, accountability and scrutiny

3.107 The committee heard evidence indicating that a lack of accountability and transparency about RPC operations has contributed to the existence of the allegations of abuse, self-harm and neglect, and to their persistence over the life of the offshore processing centres.

3.108 The committee heard that this lack of accountability and transparency derives from:

- a legislative framework preventing disclosure without fear of prosecution;
- a pervasive culture of secrecy and mistrust around the RPCs; and
- structural barriers which prevent accountability.

3.109 The committee observed that these difficulties are compounded by a persistent unwillingness on the part of the department to speak openly about matters associated with the RPCs, including to this committee in the course of this inquiry.

The legislative framework

3.110 The committee heard that, in addition to restrictions contained within contracts of employment, codes of conduct, and any relevant professional standards,²³³ RPC employees are restricted in their capacity to speak about RPC operations because of the Australian Statutory framework. This framework includes:

- *Public Interest Disclosure Act 2013* (PID Act);
- *Crimes Act 1914* (Crimes Act);
- *Public Service Act 1999* (Public Service Act); and
- *Australian Border Force Act 2015* (Border Force Act).

The PID, Crimes and Public Service Acts

3.111 Workers who are covered by the Public Service Act are required to comply with the Australian Public Service (APS) Code of Conduct (the Code).²³⁴ The Code requires that, among other things, APS employees must comply with all applicable Australian laws.²³⁵ Breach of the Code may result in a number of sanctions, including

232 The Guardian Australia, *the Nauru files*, information, 15 September 2015.

233 Liberty Victoria, *Submission 26*, Attachment 1, pp. 30–32.

234 *Australian Public Service Act 1999*, s. 13.

235 *Australian Public Service Act 1999*, s. 13(4).

employment termination, reducing in classification, re-assignment of duty, salary reduction, a fine, or a reprimand.²³⁶

3.112 Section 70 of the Crimes Act states that it is an offence for a 'Commonwealth officer' to disclose any information which comes into their knowledge or possession by virtue of their being a Commonwealth officer where they have a duty not to disclose that information.²³⁷ This also applies to individuals who are no longer employed as a Commonwealth officer at the time of the disclosure. This offence is punishable by imprisonment for two years. The Crimes Act does not describe the types of information which will be prohibited from disclosure.²³⁸ In 2014, it was reported that then Minister for Immigration and Border Protection the Hon Scott Morrison MP had referred several Save the Children employees to the Australian Federal Police for allegedly breaching section 70 by misusing privileged information.²³⁹

3.113 The department explained that there have been eight matters involving a potential breach of section 70 of the Crimes Act relating to RPC operations.²⁴⁰

3.114 The PID Act provides a mechanism for current and former public officials, including contractors and subcontractors, to report suspected wrong doing and receive protections from reprisal action and immunity from criminal, civil and administrative liability for reporting the wrong doing. While the PID Act promotes the disclosure of possible wrong doing, a key element is that the disclosure is made to the agency in which the wrong doing relates. Additionally, the disclosure can only be made to certain people within the agency:

- the head of the agency;
- 'authorised officers' who have been formally appointed under the PID Act; or
- the public official's supervisor who is then required to pass the information onto an authorised officer to assess.

3.115 The PID Act requires that agencies ensure that its authorised officers are accessible,²⁴¹ and that public officials who belong to the agency are aware of the identity of each authorised officer.²⁴² While the PID Act is silent on the number of authorised officers that must be appointed to satisfy this accessibility requirement, the Commonwealth Ombudsman has provided guidance in this area. The Ombudsman

236 *Australian Public Service Act 1999*, s. 15(1).

237 *Crimes Act 1914*, s. 70.

238 Liberty Victoria, *Submission 26*, Attachment 1, p. 23.

239 Sydney Morning Herald, *Legal experts criticise Scott Morrison's use of 'draconian' law*, 9 October 2014, www.smh.com.au/federal-politics/political-news/legal-experts-criticise-scott-morrison-s-use-of-draconian-law-20141008-10rwn3.html (accessed 3 February 2017).

240 DIBP, responses to questions on notice, 31 March 2017 (received 13 April 2017).

241 *Public Interest Disclosure Act 2013*, s. 59(3)(b).

242 *Public Interest Disclosure Act 2013*, s. 59(3)(c).

notes that some factors that agencies should consider when appointing authorised officers includes the size of the agency, the nature of the work performed by the agency, areas with higher risk and opportunity for disclosable conduct, and the geographical location of staff.²⁴³ The department advised the committee that it currently has four such authorised officers, three of whom are located in the Australian Capital Territory, and one of whom is located in Victoria.²⁴⁴ It stated that a fifth authorised officer will soon be located in New South Wales.

3.116 Additionally, while supervisors must provide information they reasonably believe meets the definition of a public interest disclosure to an authorised officer, the Commonwealth Ombudsman has reported that there has been significant under reporting by supervisors across agencies subject to the PID Act.²⁴⁵

3.117 Australian Lawyers for Human Rights (ALHR) explained that for a public official to disclose the matter externally, to those outside of the agency, a number of additional hurdles must be overcome, including:

- the public official must have reported their concerns internally;
- the matter must have been assessed by an authorised officer to be a public interest disclosure and investigated;
- the public official has reasonable grounds for believing that the investigation conducted by the agency was inadequate;
- the disclosure of information cannot be contrary to the public interest
- no more information is disclosed than is reasonably necessary to identify the disclosable conduct; and
- the information does not consist of intelligence information or relates to the conduct of an intelligence agency.²⁴⁶

3.118 In limited circumstances disclosures can be made outside of this process, for example, in emergency situations where the public official believes on reasonable grounds that the information concerns a substantial and imminent danger to the health and safety of one or more persons or to the environment.²⁴⁷ Again, further requirements must be satisfied for a public official to make an emergency disclosure and receive the protections of the PID Act.

3.119 ALHR pointed out that in addition to these requirements, the PID Act contains exemptions so that a person cannot disclose information that relates to

243 Commonwealth Ombudsman, *Agency Guide to the Public Interest Disclosure Act 2013*, April 2016, p. 17.

244 DIBP, responses to questions on notice, 31 March 2017 (received 13 April 2017).

245 Commonwealth Ombudsman, *Annual Report 2014–15*, October 2015, p. 79.

246 Australian Lawyers for Human Rights (ALHR), *Submission 25*, p. 11; *Public Interest Disclosure Act 2013*, s 26, item 2.

247 *Public Interest Disclosure Act 2013*, s 26, item 3.

Government policy or proposed policy, or the actions or proposed actions of a Minister.²⁴⁸

3.120 Mr Julian Burnside, AO QC, of Liberty Australia, explained that whistleblower protections under the PID Act are only available once an individual has been prosecuted.²⁴⁹ He argued that the effect of this is that 'you have to go to lawyers and you live day to day wondering whether you will be convicted or not' He described this as 'the chilling effect, I think, that the government has worked on'.

3.121 ALHR argued that the limited protections under the PID Act, combined with the secrecy provisions in the Border Force Act, 'leave whistle blowers vulnerable to prosecution'.²⁵⁰ It argued that 'It is imperative for the rule of law that government actions—and those of its contractors—can be subject to public scrutiny'.

3.122 The department explained that since the Border Force Act was implemented in July 2015 there have been seven investigations into alleged potential unauthorised disclosures under the Act, and no prosecutions.²⁵¹ The department stated that it could not advise how many inquiries its authorised officers had received about contemplated public interest disclosures relating to RPC operation, because it does not record the relevant statistics.²⁵²

The Border Force Act

3.123 In addition to the above legislation, individuals who fall within the remit of the Border Force Act will *also* be limited by the secrecy and disclosure provisions contained in Part 6. Part 6 requires that:

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 service as an entrusted person or is required or authorised by law or by an order or direction of a court or tribunal.²⁵³

3.124 Where an entrusted person does make such a disclosure, they commit an offence punishable by imprisonment for two years.²⁵⁴ Section 14.2 of the *Criminal Code* applies to an offence under section 41(1), meaning that an individual can be located outside Australian territory and still be prosecuted for an offence under the Act.²⁵⁵ If a person is prosecuted for an offence under section 42(1) of the Act, they bear the evidentiary burden of proving that one or more of the exceptions to this

248 ALHR, *Submission 25*, p. 11; *Public Interest Disclosure Act 2013*, s 31.

249 Mr Julian Burnside, AO QC, Liberty Australia, *Committee Hansard*, 15 November 2016, p. 33.

250 ALHR, *Submission 25*, p. 11.

251 DIBP, responses to questions on notice, 31 March 2017 (received 13 April 2017).

252 DIBP, responses to questions on notice, 31 March 2017 (received 13 April 2017).

253 *Australian Border Force Act 2015 ('Border Force Act')*, s. 41.

254 *Border Force Act*, s. 42(1).

255 *Border Force Act*, s. 43.

offence apply in their case.²⁵⁶ Part 6 sets out a range of circumstances in which a disclosure may be permissible.²⁵⁷ These include where protected information is being disclosed by a person who 'reasonably believes that the disclosure is necessary to prevent or lessen a serious threat to the life or health of an individual' and the disclosure is to help prevent or lessen that threat.²⁵⁸

3.125 An entrusted person means the Secretary, Australian Border Force Commissioner, or 'an Immigration and Border Protection worker'.²⁵⁹ 'Immigration and Border Protection worker' is defined to include departmental employees, and people who have been engaged to provide services to the department (including as a contractor, consultant, or subcontractor).²⁶⁰

3.126 At the date of this report no prosecutions had been brought under Part 6 of the Act. As such, there is no judicial guidance as to the interpretation of these provisions.

3.127 When the Act was introduced in July 2015, a significant number of staff (including doctors, teachers, and youth workers) who had been employed at the RPCs expressed their strong opposition to Part 6 of the Act in an open letter.²⁶¹

3.128 In September 2015, the United Nations Special Rapporteur on the human rights of migrants, Mr Francois Crepeau, announced that he would postpone his official visit to Australia due to 'a lack of full cooperation from the Government regarding protection concerns and access to detention centres'.²⁶² Mr Crepeau stated that he had sought a written guarantee from the Government that no person who met with him during his visit would not be at risk of intimidation or sanction pursuant to the Act. This written assurance was not provided. Mr Crepeau also noted that since March 2015, he had repeatedly asked the Government to facilitate access to its offshore processing centres, but the necessary cooperation was not provided.

3.129 On 27 July 2016 Doctors for Refugees stated that it would be filing a constitutional challenge to the Act in the High Court of Australia, arguing that the secrecy provisions imposed an impermissible burden on the implied freedom of political communication.²⁶³ On 30 September 2016, the department's Secretary,

256 *Border Force Act*, s. 42(2).

257 *Border Force Act*, ss. 43-51.

258 *Border Force Act*, s. 48.

259 *Border Force Act*, s. 4.

260 *Border Force Act*, s. 4.

261 The Guardian Australia, *Open letter on the Border Force Act: 'We challenge the department to prosecute'*, 1 July 2015.

262 United Nations Special Rapporteur on the human rights of migrants, Mr Francois Crepeau, *Official visit to Australia postponed due to protection concerns*, 25 September 2015, <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16503&LangID=E> (accessed 3 February 2017).

263 Fitzroy Legal Service Inc, www.fitzroy-legal.org.au/doctors_for_refugees (accessed 1 February 2017).

Mr Michael Pezzullo signed an amendment to the Determination of Immigration and Border Protection Workers, which had originally been made on 29 June 2015.²⁶⁴ The Determination, in full, now indicates that people performing services for the department as a 'health practitioner' are exempt from the determination of 'immigration and border protection workers' for the purposes of defining an 'entrusted person' under the Act.²⁶⁵

3.130 Both the RANZCP and RACGP welcomed the amendment to Part 6 which excludes health practitioners from its operation,²⁶⁶ with the RACGP recommending that the exclusion of health care workers be extended to include other professionals such as teachers, social workers, and security staff.²⁶⁷ The RACP also raised concern about medical personnel not having been either consulted or notified about the amendments to Part 6.²⁶⁸ It called on the government to clarify the effect of the amendment, and to communicate this widely with the medical profession to ensure that professionals could be assured that they would not be risking a prison sentence for speaking about immigration detention conditions. ALHR expressed support for the exemption of health practitioners, but remained concerned that 'entrusted persons' were not exempt.²⁶⁹

3.131 A number of submitters to this inquiry indicated that, despite this amendment, they were still opposed to the operation of Part 6.²⁷⁰ The Edmund Rice Centre (ERC) argued that it had made it dangerous for workers to report about conditions there and 'garner action for the trauma experienced by transferees'.²⁷¹ The University of Newcastle Legal Centre (UNLC) argued that, as currently drafted, Part 6 puts a number of professionals at risk of prosecution, including teachers, lawyers, journalists and non-government organisation (NGO) representatives.²⁷² It also highlighted that while the provisions of Part 6 are retained, they criminalise behaviour 'that would

264 *Determination of Immigration and Border Protection Workers – Amendment No. 1*, 30 September 2016, www.border.gov.au/AccessandAccountability/Documents/determination-workers-c.pdf#search=determination (accessed 1 February 2017).

265 *Determination of Immigration and Border Protection Workers*, 29 June 2015, www.border.gov.au/AccessandAccountability/Documents/determination-workers.pdf (accessed 1 February 2017).

266 RANZCP, *Submission 8*, pp. 14-15; RACGP, *Submission 17*, p. 6.

267 RACGP, *Submission 17*, p. 6.

268 RACP, *Submission 5*, p. 2.

269 ALHR, *Submission 25*, p. 11.

270 RACP, *Submission 5*, p. 2; Edmund Rice Centre (ERC), *Submission 7*, p. 14; RANZCP, *Submission 8*, p. 2; Ms Tracie Aylmer, *Submission 10*, p. 4; University of Newcastle Legal Centre (UNLC), *Submission 12*, p. 8; RCA, *Submission 19*, p. 5; Australian Lawyers Alliance (ALA), *Submission 24*, p. 21; Australian Lawyers for Human Rights (ALHR), *Submission 25*, p. 11; Liberty Victoria, *Submission 26*, Attachment 1, p. 9;

271 ERC, *Submission 7*, p. 14

272 UNLC, *Submission 12*, p. 8.

otherwise be required of such persons'.²⁷³ UNICEF Australia, similarly, argued that Part 6 has the capacity to undermine Nauru's developing child protection system, and submitted that an effective child protection system depends on openness and transparency.²⁷⁴

3.132 AWSWN argued that the introduction of the Act, and notably Part 6, constitutes a deliberate attempt to make it harder for harm against children to be disclosed and acted upon.²⁷⁵ It argued that Part 6 went against recommendations made by the Human Rights and Equal Opportunities Commission (HREOC) in the 2004 report *A last resort: national inquiry into children in detention*.²⁷⁶ The RCA likewise argued that the Act has reduced the capacity and willingness of people to share information, and forms part of a 'concerted effort to suppress information coming out of Nauru and Papua New Guinea'.²⁷⁷ Liberty Victoria explained that, in the view of its members, section 70 of the Crimes Act already achieves what section 42 of the Border Force Act is designed to.²⁷⁸

3.133 Medical organisations in particular, highlighted their concerns about the capacity for medical professionals to speak freely about immigration detention conditions.²⁷⁹ The RANZCP argued that open discussion and debate is critical to scientific progress, and explained that 'advocacy in the context of psychiatric practice is a non-partisan activity integral to delivering quality health care'.²⁸⁰ It highlighted the importance of this free discussion in the context of immigration detention, noting that medical practitioners employed in such centres are increasingly speaking out about the ethical dilemma of providing medical care in an environment which is itself causing harm.

3.134 The department disagreed with much of the criticism of the Act. Australian Border Force (ABF) Commissioner Mr Roman Quaedvilieg, stated that Part 6 was designed to prevent 'the leaking of classified information that can compromise operational security of our sovereignty'.²⁸¹ The department argued that the Act does not prevent workers from sharing protected information with relevant parties, where it is 'appropriate' for those workers to do so in the course of their employment, or as

273 UNLC, *Submission 12*, p. 8.

274 UNICEF Australia, *Submission 55*, p. 7.

275 AWSWN, *Submission 16*, pp. 7–8.

276 AWSWN, *Submission 16*, p. 8.

277 RCA, *Submission 19*, p. 5.

278 Mr Matthew Albert, Liberty Victoria, *Committee Hansard*, Tuesday 15 November 2016, p. 33.

279 RACP, *Submission 5*, p. 2.

280 RANZCP, *Submission 8*, pp. 14–15.

281 Mr Roman Quaedvilieg, Australian Border Force Commissioner, News Release, 1 July 2015, <http://newsroom.border.gov.au/releases/d0e3ab05-52b6-47ce-Addd-762791fddbfc> (accessed 3 February 2017).

otherwise authorised by the Act.²⁸² It submitted that the Act was not designed to prevent individuals from raising their concerns about 'general conditions' in immigration centres via 'appropriate channels'. It also argued that the Act does not prevent workers from fulfilling mandatory reporting obligations, including reporting obligations relating to child abuse. It also emphasised that the Act does not apply to journalists, civil society organisations and other workers not employed by the department.²⁸³

3.135 However, the United Nations Special Rapporteur on the situation of human rights defenders, Mr Michael Forst, was critical of the overall environment in which human rights defenders operate in Australia, and the particular impact of Part 6. He concluded, in October 2016:

General observation from extensive discussions with human rights defenders across the country point to a 'chilling effect' of the combined measures including the lack of meaningful consultations on government decisions; funding cuts; general government's antipathy of advocacy; 'gagging clauses' in funding agreements; secrecy laws and the stifling Border Force Act; undermining the AHRC and vilifying human rights defenders. Many activists spoke of an atmosphere of fear, censorship and retaliation. Several defenders preferred not to meet with me because of the fear of retaliation or persecution for disclosing information.²⁸⁴

3.136 Mr Forst highlighted the department's attempts to curb information sharing, noting in particular the raid and allegations of misconduct directed towards Save the Children workers, and the corresponding 'psychological harm and sense of fear' which will follow the affected staff members as a result.²⁸⁵ He urged the government to urgently review the provisions of the Act, stating that although there had been no prosecutions to date, its existence was concerning:

During my discussions with government authorities, I was reassured that no prosecution has been executed under the Border Force Act to date. This may well be the case but the Act's existence and government actions aimed at censoring and intimidating advocates has had a chilling effect on the disclosure of information about violations in off-shore processing. And I have received evidence of significant consequences [for whistleblowers]. I met several doctors, teachers, lawyers and journalists, who either spoke out or covered conditions in offshore detention places and who have been under heavy surveillance. These concerted efforts to monitor and control any public disclosures about conditions on Nauru stand in sharp contrast to

282 DIBP, *Submission 23*, p. 18.

283 DIBP, *Submission 23*, p. 18.

284 UN Special Rapporteur on the situation of human rights defenders, Mr Michael Forst, *Visit to Australia end of mission statement*, 18 October 2016, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20689&LangID=E (accessed 2 February 2017).

285 UN Special Rapporteur on the situation of human rights defenders, Mr Michael Forst, *Visit to Australia end of mission statement*, 18 October 2016, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20689&LangID=E (accessed 2 February 2017).

weak and little-known protections provided to whistleblowers according to the Australian law.²⁸⁶

3.137 Submitters also noted the interaction between the PID Act, Crimes Act and Part 6 of the Border Force Act. ALHR argued that the Act offers limited protection to whistleblowers, and highlighted that any protection offered under the PID Act is only available once a person has overcome a number of significant hurdles.²⁸⁷ One of these hurdles is that an external public disclosure under the PID Act must not, on balance, be found to be contrary to the 'public interest', a term which is not defined in the legislation.²⁸⁸

3.138 Liberty Victoria provided the following case study to illustrate the difficult and confusing process which a potential whistleblower must navigate when contemplating making a disclosure:

A health practitioner working at a Detention Centre seeks to make a disclosure regarding the risk of children in detention developing serious mental health problems.

The person authorised to receive protected disclosures within an agency determines that the individual's disclosure is a disagreement with policy, and chooses not to allocate the disclosure for investigation on the basis that it is not a public interest disclosure.

The whistleblower considers that the agency's assessment of their disclosure is incorrect and that the agency has provided an inadequate response to the disclosure. In order to make an external disclosure, they must be confident that they have evidence capable of demonstrating:

- that they believed on reasonable grounds that the information relating to the conduct they want to disclose fits the definition of 'disclosable conduct' (for example, they will have to show that the conditions in offshore detention are unreasonably resulting in a danger to health and safety);
- their disclosure is not only a result of their disagreement with the policy of offshore detention;
- that the failure to allocate the disclosure for investigation by the agency to whom they made the internal disclosure was incorrect, and that the agency in question was required to undertake an investigation into their disclosure;

286 UN Special Rapporteur on the situation of human rights defenders, Mr Michael Forst, *Visit to Australia end of mission statement*, 18 October 2016, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20689&LangID=E (accessed 2 February 2017).

287 ALHR, *Submission 25*, p. 11.

288 *Public Interest Disclosures Act 2013*, s. 26.

- that external disclosure would be in the 'public interest'; and
- they have disclosed no more information than was reasonably necessary to identify the disclosable conduct.

The would-be whistleblower finds themselves in circumstances where they have been told by an authorised officer or principal officer who is not independent of the agency to which their disclosure relates, that their disclosure has been deemed not to constitute a protected disclosure.

They are also unsure of the degree to which any further disclosure will be protected, due to uncertainty regarding the threshold requirements for making an external disclosure.

In these circumstances, the individual would likely be strongly discouraged from making an external disclosure, even if they may have a legal basis to do so.²⁸⁹

3.139 The Ombudsman also expressed the view that the threshold requirements for making an external disclosure are complex and that public officials erroneously believe that after they have made an internal disclosure, they are free to disclose the same information elsewhere.²⁹⁰ The Ombudsman listed the six criteria that needed to be met for a public official to make an external disclosure—including that the internal disclosure must have been allocated for handling under the PID Act and the investigation was inadequate.²⁹¹ Arguably, the above case study would not meet this criterion as the internal disclosure was not allocated for investigation. The Ombudsman questioned the 'workability' of the provisions relating to making an external disclosure and noted:

There is a risk that the complexity of these very restricted circumstances in which an external disclosure may be made will result in a lack of awareness or misunderstanding. As a consequence, people may make what they think is an external disclosure in circumstances when it is not.²⁹²

3.140 Liberty Victoria argued that the scheme should be amended to address these concerns. It recommended that:

- Part 6 of the Border Force Act be repealed;
- a statutory defence to the Border Force Act, which protects public servants and contractors for loss or damage caused by their act of whistleblowing if it was done so in the public interest, be introduced;

289 Liberty Victoria, *Submission 26*, Attachment 1, p. 42.

290 Commonwealth Ombudsman, *Submission by the Commonwealth Ombudsman: Review of the Public Interest Disclosure Act 2013 (Cth)*, March 2016, pp. 15–16.

291 Commonwealth Ombudsman, *Submission by the Commonwealth Ombudsman: Review of the Public Interest Disclosure Act 2013 (Cth)*, March 2016, p. 16.

292 Commonwealth Ombudsman, *Submission by the Commonwealth Ombudsman: Review of the Public Interest Disclosure Act 2013 (Cth)*, March 2016, p. 17.

- section 70 of the Crimes Act be amended to restrict the offence to disclosure which harm, or are reasonably likely to harm, or intended to harm, an essential public interest;
- any provisions of the PID Act, which unnecessarily burden or create uncertainty for whistleblowers seeking to make an external disclosure, be repealed; and
- an independence oversight mechanism be established under the PID Act to provide advice in relation to the scope of protection available to individuals.²⁹³

3.141 It also recommended that the Government require that all detention centre or immigration policy-related employment contracts have a standard confidential clause to ensure consistency and clarity.²⁹⁴

A culture of secrecy

3.142 The committee heard evidence of a culture of secrecy around RPC operation, in addition to the secrecy provided for in legislation.

3.143 This evidence both built on and echoed evidence presented to previous committees. In 2015 the select committee commented on a pervasive culture of secrecy cloaking most of the department's activities at the Nauru RPC.²⁹⁵ At that time the committee concluded that:

...the lack of transparency regarding operations at the RPC, the effective media blackout on it, and the culture of secrecy which surrounds offshore processing, only serves to increase the risk of wrongdoing and abuse, and contribute to fear among asylum seekers that no-one will protect them, and that misconduct by staff will go unpunished.²⁹⁶

3.144 Liberty Victoria highlighted the policy of secrecy which surrounded and continues to surround Operation Sovereign Borders and 'on-water' border protection matters. It noted that in 2013 former Minister for Immigration and Border Protection the Hon Scott Morrison MP described the operation as being 'military-led', and declined to answer questions about the policy in the House of Representatives, on the basis that the information could be used by people smugglers.²⁹⁷ It also highlighted the comments of former Prime Minister the Hon Mr Tony Abbott MP, who stated in January 2014:

293 Liberty Victoria, *Submission 26*, Attachment 1, p. 9.

294 Liberty Victoria, *Submission 26*, Attachment 1, p. 9.

295 Select Committee, *Taking responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru*, August 2015, pp. 43; 124; 126; 133.

296 Select Committee, *Taking responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru*, August 2015, p. 126.

297 ABC News, *Immigration Minister Scott Morrison refuses to detail recent asylum seeker boat arrival in Question Time*, 13 November 2013, www.abc.net.au/news/2013-11-13/morrison-refuses-to-detail-asylum-seeker-boat-arrival/5089476 (accessed 7 February 2017).

If stopping the boats means being criticised because I'm not giving information that would be of use to people smugglers, so be it. If we were at war we wouldn't be giving out information that is of use to the enemy just because we might have an idle curiosity about it ourselves.²⁹⁸

3.145 Liberty Victoria argued that the effect of this rhetoric has been 'a sense that non-transparency is justified and necessary' and fosters the sense that 'speaking out is tantamount to treason'.²⁹⁹ It also highlighted the reduction in funding to the Office of the Australian Information Commissioner, arguing that the reduced capacity to review Freedom of Information (FOI) decisions made by departments provides individuals with fewer avenues for review where access to documents related to Australia's refugee and asylum seeker operations has been denied.³⁰⁰

3.146 The committee heard similar evidence about a culture of fear and suspicion among front line RPC staff. Former RPC employee Ms Jessica Bloom explained that when she was employed at the Manus RPC she was instructed to spy on her colleagues to help weed out 'negativity':

On my first day as a supervisor on Manus my manager told me that one of my tasks was to eavesdrop on staff, during private conversations and at meal times to help management stop the 'negativity'. Most of this 'negativity' was staff members processing by discussing in private the severe psychological or physical deterioration of men they worked with, or sharing accounts of some staff members who were engaging in abusive behaviours. This distancing language and toxic work environment further deepens the internal layers of secrecy on Manus, and enables further abuse. My manager was always asking me for 'positive' news to pass up to her manager.³⁰¹

3.147 The department rejected the claim that there is an excessive level of secrecy in relation to regional processing in Nauru.³⁰² It submitted that stated that the Border Force Act does not prevent individuals from speaking about 'general conditions in regional processing centres', or prevent them from fulfilling mandatory reporting obligations.

3.148 Jesuit Social Services (JSS) raised concerns about the lack of media access to RPCs, arguing that an 'effective media blackout' has been instituted in both Nauru and Manus Island.³⁰³ JSS noted a media release made by the Government of Nauru on 22 June 2016, which stated that:

298 Sydney Morning Herald, *Tony Abbott compares secrecy over asylum seekers to war time*, 10 January 2014, www.smh.com.au/federal-politics/political-news/tony-abbott-compares-secrecy-over-asylum-seekers-to-war-time-20140110-30lyt.html (accessed 7 February 2017).

299 Liberty Victoria, *Submission 26*, Attachment 1, p. 13.

300 Liberty Victoria, *Submission 26*, Attachment 1, p. 17.

301 Ms Jessica Bloom, *Submission 14*, p. 2.

302 Amnesty International, *Submission 6*, Attachment 1, DIBP response, p. 8.

303 Jesuit Social Services (JSS), *Submission 15*, p. 5.

The Government of Nauru has never enacted a media ban or blackout as has been reported by some media outlets...

It is for reasons of safety and security that we are not able to allow all media onto Nauru, and we will never allow media who we believe will intentionally incite violence and unrest to further their story.

We will, however...allow media outlets who will be respectful and objective, and who do not have a record of spreading untruths about our country...

The refugee advocates and extreme left activist-journalists will never be satisfied and spew vitriol in the direction of the journalists who have visited Nauru and report accurately, respectfully and objectively. This only proves that these people have no interest in reporting truth or respecting our country. They have their own agenda and Nauru refuses to be used by them to help them further their political campaign against the Australian Government.³⁰⁴

Structural barriers to scrutinising matters outside Australia

3.149 The location of Australia's RPCs outside Australian territory means that the capacity to scrutinise their operations in person, is severely restricted.

3.150 In order to visit Nauru or Papua New Guinea, individuals must find the funds to fly there, and obtain any required visas. Prior to January 2014, journalists who wished to travel to Nauru were required to pay \$200 for the relevant visa. In January 2014, the Nauruan Parliament voted to increase this fee to \$8000. Applicants must include a letter from their employer outlining the reason for their trip. Should the application be unsuccessful the \$8000 application fee will not be refunded.³⁰⁵ In the 18 months up to October 2015, the Nauruan Government did not approve any applications for a journalist visa.³⁰⁶ Lawyers must also apply for a Nauruan visa which includes a non-refundable application fee of \$6000.³⁰⁷

3.151 All foreign visitors to Papua New Guinea must apply for a visa.³⁰⁸ Journalists applying for a visa must provide a letter from their sponsoring organisation, obtain the approval of the International Organisation Branch of the Department of Foreign Affairs and Immigration, and pay a fee of \$435.³⁰⁹

304 Government of Nauru, *Statement from Government of Nauru*, 22 June 2016, www.nauru-news.com (accessed 17 February 2017).

305 The Government of the Republic of Nauru, www.naurugov.nr/about-nauru/visiting-nauru/visa-requirements.aspx (accessed 7 February 2017).

306 The Guardian, *Chris Kenny the first foreign news reported in 18 months to be granted Nauru visa*, 20 October 2015.

307 The Guardian, *Nauru to increase visa cost for journalists from \$200 to \$8,000*, 9 January 2014.

308 High Commission of the Independent State of Papua New Guinea, www.pngcanberra.org/visas/visitor.htm (accessed 7 February 2017).

309 High Commission of the Independent State of Papua New Guinea, www.pngcanberra.org/visas/visitor.htm (accessed 7 February 2017).

3.152 The committee noted evidence that physical access to the RPCs is restricted. The department advised that, at 31 August 2016, the following independent RPC visits had taken place.³¹⁰

Nauru Visits						
Organisation	2012	2013	2014	2015	2016	Total
Commonwealth Ombudsman	-	-	1	2	1	4
International Committee of the Red Cross	1	4	4	2	2	13
United Nations High Commissioner for Refugees	1	3	1	1	1	7
Amnesty International	1	-	-	-	-	1
International Organisation of Migration	-	1	-	-	1	2
COMCARE	-	1	1	1	-	3
Australian National Audit Office	-	-	-	1	-	1
Nauru Joint Advisory Committee	-	4	4	6	6	20

Manus Visits						
Organisation	2012	2013	2014	2015	2016	Total
International Committee of the Red Cross	-	3	2	3	2	10
Commonwealth Ombudsman	-	-	1	2	1	4
United Nations High Commissioner for Refugees	-	4	1	3	1	9
Amnesty International	-	1	-	-	-	1
International Organisation of Migration	-	-	-	1	-	1

310 DIBP, *Submission 23*, p. 25.

COMCARE	-	-	2	1	-	3
Manus Joint Advisory Committee	-	-	-	2	1	3
Australian National Audit Office	-	-	-	1	-	1

3.153 The department submitted that access to the RPCs is at the 'sole discretion' of the governments of Nauru and PNG.³¹¹ The committee, however, received evidence which contradicted this. Mr Daniel Webb of the HRLC and Ms Elaine Pearson of HRW recounted their attempts to secure access to the Manus Island RPC and transit centre in June 2015. Mr Webb explained that when he tried to enter the Lorengau Transit Centre, the guard at the gate asked him whether he had 'got permission from Australian Border Force'.³¹² Ms Pearson explained that after attempting to file an application for entry to the RPC via fax, attending PNG Immigration in person, and following up with a number of phone calls to PNG Immigration, she and Mr Webb were eventually given permission to visit the transit centre, but not the RPC, and that no reason for this was provided.³¹³ Mr Webb stated that he asked PNG Immigration Officials (who were accompanied by an Australian government representative) why access had been denied. He submitted that the response was, 'Because we thought you would criticise conditions'.³¹⁴

3.154 The committee also heard evidence from Comcare, which is the regulator of the *Work Health and Safety Act 2011*. Comcare, which has visited each RPC three times, explained that it could only do this in its official capacity because it had the consent of the department.³¹⁵ The capacity of Comcare to undertake investigations at the RPCs will be discussed further in Chapter 6.

Unwillingness to speak about operations

3.155 The capacity of this, and previous committees, as well as members of the public generally, to scrutinise the operation of Australia's RPCs have been frustrated by a persistent unwillingness on the part of the department to respond to requests for information.

3.156 In 2015 the select committee commented on the lack of access to transparent information about the management of the Nauru RPC. It stated that it was not given full and transparent access to the information it had sought, and concluded that, 'The

311 DIBP, *Submission 23*, pp. 24, 26.

312 Mr Daniel Webb, DA, HRLC, *Committee Hansard*, Tuesday 15 November 2016, pp. 8–9.

313 Ms Elaine Pearson, Australia Director, HRW, *Committee Hansard*, Tuesday 15 November 2016, p. 9.

314 *Committee Hansard*, Tuesday 15 November 2016, pp. 8–9.

315 Mr Anthony Blucher, Senior Director, Regulatory Operations Group, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 16.

committee remains of the view that the government in particular has sought to avoid the full accountability to which the Senate is entitled'.³¹⁶ It stated that the department declined to provide a number of substantive responses to questions on notice, stating that the questions related to 'government deliberations' or 'advice to government', without specifying the harm to the public interest which would have been caused by the disclosure of that information to the committee. The committee also stated that the DIBP had sought to avoid giving substantive responses to some questions by referring to matters as the responsibility of the governments of Nauru and PNG, although 'it seemed clear that the department should have had access to information that could have been provided'.³¹⁷

3.157 This committee likewise noted that responses to several questions posed by the committee were incomplete and inadequate, particularly in relation to questions about health care services. Examples of these include:

Senator Pratt: What are the lifestyle factors that contribute to poor mental health of asylum seekers?

Department: Lifestyle factors are a subset of potential aetiological factors that may lead to mental illness and will vary from person to person.

Senator Pratt: How would the health of asylum seekers improve if medical intervention was offered at the first advice?

Department: Medical services are readily accessible and available in both Nauru and Manus and interventions provided in a timely manner.

Senator Pratt: What are the most common health issues experienced by asylum seekers when they arrive at an offshore processing centre?

Department: This is a matter for the Governments of Nauru and Papua New Guinea.

Senator Pratt: Can you outline some of the common health issues of asylum seekers who have been on Manus Island and Nauru for more than two years?

Department: This is a matter for the Governments of Nauru and Papua New Guinea.

Senator Pratt: In your medical opinion, is this increase in health issues directly attributed to living conditions and the toll of indefinite detention?

Department: The Regional Processing Centre on Manus is operated by the Government of Papua New Guinea. As such, health issues of transferees are a matter for the Government of Papua New Guinea. The Regional Processing Centre in Nauru is operated by the Government of Nauru. As

316 Select Committee, *Taking responsibility conditions and circumstances at Australia's Regional Processing Centre in Nauru*, August 2015, pp. 120–121.

317 Select Committee, *Taking responsibility conditions and circumstances at Australia's Regional Processing Centre in Nauru*, August 2015, pp. 120–121.

such, health issues of transferees are a matter for the Government of Nauru.³¹⁸

3.158 Some responses by the department could be viewed as being deliberately obstructive. On 8 February 2017, the committee sought to establish what concerns the Chief Medical Officer (CMO) Dr John Brayley had communicated to the department about the medical services available at Manus Island. The department took, on notice, a question requesting that these written concerns be provided to the committee. The department then responded that this advice had taken 'a variety of forms' and was encapsulated in the principles contained in the department's 'Delivery of health care services to persons transferred to regional processing countries'.³¹⁹ The committee, having reviewed the principles contained in that document,³²⁰ considers that the department has not answered the question.

3.159 In another example, the department failed to provide the committee with vital statistical data from the RPCS:

Senator Pratt asked: On how many occasions was a staff member of a contractor or sub-contractor accused, or found to have harmed or abused an asylum seeker?

Answer: The Department's Incident Reporting Protocols do not collect data differentiating between incidents involving asylum seekers or refugees residing in the centre. In order to calculate this data, a manual review of all reported incidents since the commencement of the contracts would be required.³²¹

3.160 The question above relates to harm or abuse by staff members. The department appears to have relied upon a strict reading of the question in an attempt to avoid answering it. The department has responded by explaining how it would go about obtaining this information, rather than actually conducting that review and providing the committee with this data (or providing the data for *all* occasions on which a staff member harmed or abused an asylum seeker *or* refugee). This response by the department, particularly when viewed within the context of many of its other incomplete and inadequate responses to question, does not assist the committee to form a view about the extent of allegations. The department's multiple failures to respond to reasonable questions have stymied the work of this committee.

3.161 This unwillingness to explain key aspects of RPC operations, and the care and welfare of refugees and asylum seekers exacerbate the effects of the legislative and structural barriers, which already prevent scrutiny of RPC operations.

318 DIBP, answers to questions on notice, 11 November 2016 (received 25 November 2017).

319 DIBP, answers to questions on notice, 8 February 2017 (received 3 March 2017).

320 The principles set out in this document relate to autonomy, justice, non-maleficence, beneficence and quality domains.

321 DIBP, answers to questions on notice, 11 November 2016 (received 25 November 2017).

Investigating notifications of abuse and self-harm

3.162 The various barriers to transparency and accountability also frustrate a thorough and meaningful assessment of the investigation of notifications of abuse and self-harm.

Departmental data

3.163 The department explained that the implementation of a departmental database of RPC incidents was gradual:

Prior to August 2014, there were limited processes in place for recording and collating RPC incidents reported to the Department. While the Department holds some information from service providers, the incidents were not compiled in a structured database. The Department is scoping requirements to collate known complaints and incidents before August 2014, how to best store this material, and what interrogation is possible over the short to medium term.

In mid-2014 the Planning and Operational Management System (POMS) was introduced by the Department to record incidents occurring in the Nauru and Manus RPCs that are reported by contracted service providers, and by September of that year the system was fully operational in the offshore environment. POMS provides a single data-collection point for the Department and issues situational reports as required. The introduction of POMS has improved the transparency and consistency of reportable incidents.³²²

3.164 The department explained that POMS is not a case management system and does not track the outcome of an incident, particularly when the management of the incident is transferred to the Nauru or PNG Police.³²³

3.165 The department also explained that it does not collect data in such a way as would enable the calculation of incidents involving refugees as compared with asylum seekers, for example.³²⁴

3.166 The department explained that, in response to the leaking of the Nauru files, it undertook a review of 2,123 incidents which took place between May 2013 and March 2016 to establish that 'actions were taken in response to these reports'.³²⁵ It explained that its review demonstrated that:

- Of the 23 reports categories as 'critical', the department 'confirmed that in all cases immediate and appropriate action was taken';

322 DIBP, *Submission 23*, p. 27.

323 DIBP, *Submission 23*, p. 27.

324 DIBP, answers to questions on notice, 11 November 2016 (received 25 November 2017).

325 DIBP, *Submission 23*, pp. 30-31.

- Of 281 incident reports categorised as being 'major', 'immediate and appropriate' action was taken in 270 cases, and in 11 cases there was 'insufficient information to determine whether action was taken or not'; and
- Of 1,819 incidents classified as 'minor', 'information', or unclassified, 'immediate and appropriate action' was taken in 1460 cases, there was insufficient information to make such a determination in 268 cases, and in 91 cases immediate action was taken but not information to assess whether that action was appropriate or not.³²⁶

3.167 The department did not explain what 'immediate and appropriate action' means.

Role of an independent children's advocate

3.168 The committee heard limited evidence about the potential appointment of an independent children's advocate in ensuring that the rights and interests of unaccompanied minors are protected.

3.169 A number of submitters raised concerns about the Minister for Immigration and Border Protection's role as legal guardian for asylum seeker unaccompanied minors. The RANZCP argued that the fact the Minister is responsible for both implementing immigration policies and being the legal guardian for asylum seeker unaccompanied children 'represents a serious conflict of interest'.³²⁷ It submitted that:

Whilst the Minister delegates most of the daily responsibilities to a 'delegated guardian' in each facility, this DIBP employee often has another role (e.g. Manager of Detention Operations) which is likely to equally limit their capacity to advocate for, or consider the best interests of, the children nominally in their care. This presents a particular conflict of interest when children are being harmed by prolonged and unnecessary detention. Independent guardianship is an imperative.³²⁸

3.170 UNICEF Australia agreed that the combination of these two roles created a conflict of interest.³²⁹

3.171 The committee heard views as to whether an independent children's advocate would be useful, and how such an advocate could operate. Where submitters did support the proposition, they did so with a number of caveats.

3.172 The UNLC supported the appointment of an independent children's advocate, and submitted that the advocate should have the same responsibilities as the New South Wales (NSW) Advocate for Children and Young People.³³⁰ Both the AMA and

326 DIBP, *Submission 23*, p. 31.

327 RANZCP, *Submission 8*, p. 14.

328 RANZCP, *Submission 8*, p. 14.

329 Ms Amy Lamoin, Head of Policy and Advocacy, UNICEF Australia, *Committee Hansard*, Tuesday 15 November 2016, p. 30.

330 UNLC, *Submission 12*, p. 7.

the RACP also supported the proposition, noting that it would be important for such an advocate to have jurisdictional oversight in both the Nauru community and the RPC, and that the advocate should be able to act on the advice of health staff.³³¹ The RACP also argued that children and young people should have an independent advocate present during age assessments, and that unaccompanied minors should be supported in health related decisions.³³² The ALA noted that an independent advocate would have to be able to visit places of detention, speak with children directly and privately, and be able to bring cases to court to protect and advance the interests of children.³³³

3.173 The RANZCP agreed that an independent children's advocate should be introduced,³³⁴ with the caveat that:

...the RANZCP continues to hold the view that the rights and interests of children including unaccompanied minors cannot be protected under the current system of mandatory and prolonged detention for children. Should an independent children's advocate be established, the RANZCP stresses the absolute importance of the role's independence as no children's advocate would be effective without the capacity to provide uncensored criticism to the Commonwealth and its contractors with regards to the care and treatment of detained children.³³⁵

3.174 AWSWN stated that if a children's advocate is introduced, the role should include the ability to investigate complaints, should be sufficiently staffed, and should include staff members who have been trained in child protective servicing.³³⁶ Save the Children argued that the role would have to be completely independent of both the Nauruan and Australian Governments, and suggested that an independent body such as the UNHCR or a UN rapporteur could potentially fulfil this role.³³⁷

3.175 Several submitters considered the proposition within the broader context of Nauru's developing child protection framework. The RACGP argued that given the state of the framework, there is a need for independent oversight such as an ombudsman. It suggested that the recently formed Child Protection Directorate, sitting within the Department of Home Affairs, could fulfil this role, but its 'effectiveness and independence' would need to be clarified.³³⁸ The RCA stated that 'any move that would facilitate independent scrutiny would be welcome', but argued that the establishment of an independent children's advocate would not be an adequate

331 RACP, *Submission 5*, p. 2; AMA *Submission 1*, p. 2.

332 RACP, *Submission 5*, p. 2.

333 ALA, *Submission 24*, p. 20.

334 RANZCP, *Submission 8*, p. 2.

335 RANZCP, *Submission 8*, p. 14.

336 AWSWN, *Submission 16*, p. 15.

337 Mr Mat Tinkler, Director, Policy and Public Affairs, Save the Children, *Committee Hansard*, Tuesday 15 November 2016, p. 31.

338 RACGP, *Submission 17*, p. 6.

response.³³⁹ It submitted that the government should instead extend the remit of the National Children's Commissioner to children on Nauru, and the Royal Commission on Institutional Responses to Sexual Abuse, arguing that:

These extensions would be more consistent with existing work done to protect children in Australia, and ensure better resourcing and less political interference than is likely with the role of an independent children's advocate.³⁴⁰

3.176 Some submitters, however, questioned the usefulness of appointing such an advocate. The APS argued that the detention environment is unsafe for children, and questioned what an independent advocate could actually achieve:

An independent children's advocate might be able to monitor the application of best interest of the child principles, and be more independent than the current arrangements, but it is difficult to see how children's safety and best interests could ever be guaranteed in an environment that has been linked to such detrimental health outcomes.³⁴¹

3.177 Similarly, Ms Amy Lamoin, while noting UNICEF Australia's support of an independent monitor for children on Nauru, likewise questioned the capacity to effectively advocate for children, arguing that:

...in that kind of environment, it is very difficult to see how anyone is able to make decisions genuinely based on children's best interests if children are not necessarily able to leave the island, they are not attending school and we are not able to keep them safe from day to day.³⁴²

3.178 Ms Claire O'Connor SC of AWSWN similarly submitted that:

It is all very well to have an advocate who will tell you exactly what we are telling you—that harm is occurring and is not being ameliorated. It is not an advocate you need; it is change. It is commitment to take on board what an advocate says. What is the point in having an advocate? We are all advocating. Where has that got us?³⁴³

339 RCA, *Submission 19*, p. 5.

340 RCA, *Submission 19*, p. 5.

341 APS, *Submission 49*, p. 5.

342 Ms Amy Lamoin, Head of Policy and Advocacy, UNICEF Australia, *Committee Hansard*, Tuesday 15 November 2016, p. 30.

343 Ms Claire O'Connor SC, AWSWN, *Committee Hansard*, Tuesday 15 November 2016, p. 14.

Chapter 4

Refugee Status Determination and Resettlement

4.1 The committee heard evidence of concerns raised in relation to the Refugee Status Determination (RSD) processes in Nauru and Papua New Guinea (PNG), and the resettlement options available to recognised refugees.

Refugee Status Determination

4.2 RSD is the legal or administration process by which governments, or the United Nations High Commissioner for Refugees (UNHCR), determine whether a person who claims international protection is a refugee, pursuant to international, regional or national law.¹ The UNHCR advises that, while RSD is the primary responsibility of states, the UNHCR may determine the status of asylum seekers where a state is either unable or unwilling to do so.

4.3 The RSD process in Australia involves the following steps:

- asylum seeker lodges an application with the Department of Immigration and Border Protection (the department);
- an officer of the department makes a primary decision as to whether or not the person is entitled to protection;
- if the officer refuses the application, the asylum seeker may apply for merits review from the Administrative Appeals Tribunal (AAT);
- if the AAT upholds the refusal, the asylum seeker can then appeal to the Federal Circuit Court (FCC), the Federal Court of Australia (FCA), or possibly the High Court of Australia, for judicial review of the decision (that is, examining whether a legal error was made in the decision making process, not examining the merits); and/or
- if the asylum seekers is still unsuccessful in their claim for asylum, they may ask the Minister for Immigration and Border Protection (the Minister) to intervene as a last resort, and grant him or her a visa.²

4.4 The department explained that, for asylum seekers in Nauru and PNG, RSD is the responsibility of the Governments of Nauru and PNG.³ The department supports both the Nauru and PNG RSD processes by funding an independent claims assistance provider to assist asylum seekers to prepare and lodge their primary, and if required (and provided for under domestic legislation), merits review and Supreme Court appeals applications. Departmental staff have also provided training and mentoring

1 UN High Commissioner for Human Rights (UNHCR), *Refugee Status Determination*, www.unhcr.org/en-au/refugee-status-determination.html (accessed 14 March 2017).

2 Andrew & Renata Kaldor Centre for International Refugee Law, *Factsheet: refugee status determination in Australia*, 3 June 2016.

3 Department of Immigration and Border Protection (DIBP), *Submission 23*, p. 63.

support to Nauruan and PNG protection claims assessors, and other support where required.⁴

4.5 The department advised that, at 31 January 2017, 1,204 RSDs have taken place in Nauru, 998 of which were positive, and 206 of which were negative.⁵

4.6 The department advised that, at 31 January 2017, 1,015 refugee status 'initial determinations' had been made at Manus Island, 510 of which were positive and 505 of which were negative.⁶ It explained that 689 refugees had been given a positive final determination, and 225 asylum seekers who had been given a negative final determination. It also advised that, at 31 January 2017, a total of 861 people remained in the Manus RPC.

4.7 The department also advised that, at 15 March 2017, 629 people (including 612 asylum seekers and 17 refugees) had elected to return to their country of origin.⁷

Nauru

4.8 The department explained that the RSD process in Nauru takes place pursuant to the *Refugees Convention Act 2012* (Nauru).⁸ The Nauruan Government has also developed a Refugee Status Determination Handbook.⁹

4.9 The *Refugees Convention Act 2012* (Nauru) states that:

- it gives effect to the *Refugee Convention 1951*;
- the Government of Nauru Secretary¹⁰ is the decision making delegate for refugee status determinations;¹¹
- an 'asylum seeker' is a 'person who applies to be recognised as a refugee' pursuant to the Act;¹²

4 DIBP, *Submission 23*, p. 20.

5 DIBP, media release, *Operation Sovereign Borders monthly update: January 2017*, <http://newsroom.border.gov.au/channels/media-releases/releases/operation-sovereign-borders-monthly-update-january-3> (accessed 2 March 2017).

6 DIBP, media release, *Operation Sovereign Borders monthly update: January 2017*, <http://newsroom.border.gov.au/channels/media-releases/releases/operation-sovereign-borders-monthly-update-january-3> (accessed 2 March 2017).

7 DIBP, response to questions on notice, 15 March 2017 (received 4 April 2017).

8 *Refugees Convention Act 2012* (Nauru), http://www.naurugov.nr/media/33059/refugees_convention_act_2012.pdf (accessed 23 February 2017).

9 Republic of Nauru, Department of Justice and Border Control, *Refugee Status Determination Handbook*, August 2013.

10 Secretary is defined to mean 'Head of Department', *Refugees Convention Act 2012* (Nauru), s. 3. The relevant department is the Nauru Department of Justice and Border Control.

11 *Refugees Convention Act 2012* (Nauru), s. 5(1).

12 *Refugees Convention Act 2012* (Nauru), s. 3.

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- upon application, the Secretary must determine whether an asylum seeker is a recognised refugee, and must do so 'as soon as practicable after a person becomes an asylum seeker under this Act';¹³
 - the Secretary must provide the reasons for their determination or decision;¹⁴
 - the Secretary may decline to make a determination if a negative determination has previously been made, and the Secretary is satisfied that the circumstances have not changed to such an extent that the application will be based on 'significantly different grounds';¹⁵
 - a Refugee Status Review Tribunal, which is not bound by technicalities, legal forms or rules of evidence,¹⁶ is established,¹⁷ and will sit 'from time to time as required';¹⁸
 - the Tribunal must hear applications for review in private,¹⁹ and decisions of the Tribunal may be published if it is a de-identified decision which 'the Principal Member thinks is of general interest';²⁰
 - applications for merits review of a decision relating to a RSD may be made, and must be received within 28 days after the person receives notice of the determination or decision;²¹
 - the Tribunal must complete such a review within 90 days from the day on which the Secretary provides it with documents relevant to the review;²²
 - the Tribunal may affirm or vary the determination or decision, remit the matter to the Secretary for reconsideration, or set the determination or decision aside and substitute a new determination or decision;²³
 - a person who, by a decision of the Tribunal, is not recognised as a refugee can appeal to the Supreme Court against that decision 'on a point of law' within 28 days of the Tribunal's decision;²⁴ and that

13 *Refugees Convention Act 2012* (Nauru), s. 6.

14 *Refugees Convention Act 2012* (Nauru), s. 9(b).

15 *Refugees Convention Act 2012* (Nauru), s. 8.

16 *Refugees Convention Act 2012* (Nauru), s. 22.

17 *Refugees Convention Act 2012* (Nauru), s. 11.

18 *Refugees Convention Act 2012* (Nauru), s. 22(1).

19 *Refugees Convention Act 2012* (Nauru), s. 23(1).

20 *Refugees Convention Act 2012* (Nauru), s. 27.

21 *Refugees Convention Act 2012* (Nauru), s. 31.

22 *Refugees Convention Act 2012* (Nauru), s. 33.

23 *Refugees Convention Act 2012* (Nauru), s. 34(2).

24 *Refugees Convention Act 2012* (Nauru), s. 43.

- the Supreme Court may either affirm the original decision of the Tribunal, or remit the matter back to the Tribunal for reconsideration in accordance with directions from the Court.²⁵

4.10 Pursuant to the *Refugees Convention Regulations 2013* (Nauru), a member of the Tribunal must have at least two years of experience in refugee merits review, and a 'thorough knowledge of UNHCR refugee status guidelines and standards'.²⁶

4.11 The Act also notes that, pursuant to section 44(c) of the *Appeals Act 1972* (Nauru), an appeal from the Republic of Nauru Supreme Court may be made to the High Court of Australia.²⁷

4.12 The Supreme Court of Nauru has handed down a number of judgements pursuant to this legislation, including the following decisions:

- a Bangladeshi man who appealed a negative RSD decision by the Tribunal, claiming that his interpreter was not sufficient (having allegedly only summarised translations of his evidence), and that the Tribunal did not consider current information about the political situation in his home country. The court dismissed the appeal on the basis that 'a perusal of the transcript [between the applicant and his interpreter] reveals that there was a fluent and coherent exchange', and found that the question of what information the Tribunal had relied upon in relation to the status of the applicant's home country was a question of fact, not of law;²⁸
- a decision by the Tribunal was remitted back to the Tribunal for reconsideration with the directions that the Tribunal determine whether the applicant was owed complementary protection because he would 'face harm on account of generalised sectarian and political violence'. This decision was made by the court 'upon hearing *amicus curiae* for the Appellant'.²⁹
- a decision by the Tribunal be remitted back for reconsideration, noting that the Tribunal had erred in law by failing to take account of two written statements made by the applicant in relation to their claim;³⁰ and

25 *Refugees Convention Act 2012* (Nauru), s. 44.

26 *Refugees Convention Regulations 2013* (Nauru), reg. 4, http://ronlaw.gov.nr/nauru_lpms/files/subordinate_legislation/f2b2fac000f377be2fa09865b36ba6ba.pdf (accessed 23 February 2017).

27 *Refugees Convention Act 2012* (Nauru), s. 43.

28 *ROD128 v Republic of Nauru* [2017] NRSC 8; Appeal Case 22 of 2015 (7 February 2017), www.pacii.org/nr/cases/NRSC/2017/8.html (accessed 23 February 2017).

29 *SOS 011 v Republic of Nauru* [2016] NRSC 30; Appeal 40 of 2015 (14 November 2016), www.pacii.org/cgibin/sinodisp/nr/cases/NRSC/2016/33.html?stem=&synonyms=&query=SOS%20011 (accessed 23 February 2017).

30 *SOS 005 v The Republic of Nauru* [2016] NRSC 26; Asylum Seekers Appeal 58 of 2015 (23 March 2016), www.pacii.org/cgibin/sinodisp/nr/cases/NRSC/2016/26.html?stem=&synonyms=&query=SOS (accessed 23 February 2017).

- that a decision of the Tribunal be quashed because the Tribunal had relied upon information contained in articles about Afghanistan which were published after the Tribunal hearing had concluded, and therefore not providing the applicant with the ability to respond to them.³¹

Papua New Guinea

4.13 The RSD process in PNG takes place pursuant to the *Migration Act 1978* (PNG).³² The *Migration Act 1978* (PNG) states that:

- a 'refugee' is a non-citizen who is either permitted to remain in PNG 'pending his settlement elsewhere', or a non-citizen determined by the Minister to be a refugee,³³
- the PNG Minister (for Foreign Affairs and Immigration) may determine a non-citizen to be a refugee for the purposes of the Act;³⁴ and
- the Minister may declare a place to be a relocation centre for the accommodation of a refugee or a non-citizen who claims to be a refugee,³⁵ and can direct a refugee or class of refugees or non-citizens claiming to be refugees to reside within a relocation centre,³⁶ and such a direction will be sufficient authority for a police officer to detain and take into custody, using 'such force as is reasonably necessary',³⁷ the refugee or class of refugees or non-citizen claiming to be a refugee for the purposes of taking them to that centre and keeping them there.³⁸

4.14 The Act does not define an asylum seeker.

4.15 The Act also operates in connection with the *Migration Regulation 1979* (PNG),³⁹ as amended in 2013,⁴⁰ and later in 2014.⁴¹ The 2013 amendment to this regulation introduced regulation 14, which explains how the Minister may determine a

31 *SOS054 v Republic of Nauru* [2016] NRSC 32; Case 103 of 2015 (17 November 2016), www.paclii.org/cgibin/sinodisp/nr/cases/NRSC/2016/32.html?stem=&synonyms=&query=SOS054 (accessed 23 February 2017).

32 DIBP, *Submission 23*, p. 20.

33 *Migration Act 1978* (PNG), s. 2.

34 *Migration Act 1978* (PNG), s. 15A.

35 *Migration Act 1978* (PNG), s. 15B.

36 *Migration Act 1978* (PNG), s. 15C(1).

37 *Migration Act 1978* (PNG), s. 15C(3).

38 *Migration Act 1978* (PNG), s. 15C(2).

39 *Migration Regulation 1979* (PNG), www.paclii.org/pg/legis/consol_act/mr1979209/ (accessed 27 February 2017).

40 *Migration (Amendment) Regulation 2013* (PNG), www.paclii.org/pg/legis/sub_leg/mr2013289/ (accessed 27 February 2017).

41 *Migration (Amendment) Regulation 2014* (PNG), www.paclii.org/pg/legis/sub_leg/mr2014289/ (accessed 27 February 2017).

non-citizen to be a refugee, and sets out a number of grounds upon which the Minister may exclude an individual from recognition as a refugee in PNG. These grounds for exclusion include where the non-citizen has 'during the period of his or her residency at the regional processing centre anywhere or within [PNG], exhibited a demeanour incompatible with a person of good character and standing'.⁴²

4.16 The department advised that pursuant to PNG's 'refugee determination guidelines', an asylum seeker who has received a negative initial refugee assessment can seek independent merits review of that decision from the Refugee Assessment Review Panel.⁴³ This Panel is not legislated for.

4.17 The department also explained that the PNG Minister for Foreign Affairs and Immigration is the delegate for all refugee determinations,⁴⁴ and noted that a decision by the Minister **cannot** be appealed to a court.⁴⁵ Indeed, the *Migration Act 1978* (PNG) provides that:

An act, proposed act or decision of the Minister relating to the grant or cancellation of an entry permit or to the removal of a person from the country, or any decision of a Committee of Review under Section 6, is not open to review or challenge in any court on any ground.⁴⁶

4.18 As the department explained, where the Minister has found that an asylum seeker is not in need of international protection, the Minister will issue a 'removal order and a detention order' and the asylum seeker will be deported, subject to a deportation risk assessment.⁴⁷

4.19 It has been reported that the PNG Government has commenced deporting asylum seekers from the Manus RPC. On 7 February 2017, it was reported that in the previous week five asylum seekers had accepted an offer of \$20,000 to voluntarily return to Nepal.⁴⁸ A few days later, Mr Behrouz Boochani, a refugee at the Manus RPC, was reported to have explained that asylum seekers had been offered more money to leave as a group, and were told that the financial incentives would reduce the longer it took them to deliberate.⁴⁹ It was reported that the following week, the PNG Government had sought travel documents for 60 men in PNG whose asylum claims had been detained, with a view to deporting them.⁵⁰

42 *Migration Regulation 1979* (PNG), reg. 14(2)(h).

43 DIBP, *Submission 23*, p. 20.

44 DIBP, *Submission 23*, p. 20.

45 DIBP, *Submission 23*, p. 20.

46 *Migration Act 1978* (PNG), s. 19(2).

47 DIBP, *Submission 23*, p. 20.

48 Sydney Morning Herald, *Papua New Guinea moves to deport up to 60 asylum seekers from Manus Island*, 7 February 2017.

49 Radio NZ, *Asylum seekers offered bribes to leave PNG*, 10 February 2017.

50 Sydney Morning Herald, *Papua New Guinea moves to deport up to 60 asylum seekers from Manus Island*, 7 February 2017.

4.20 On 9 February 2017, Mr Boochani was reported to have advised that PNG Police had arrived at the camp at approximately 4 am that day. He was reported to have stated that the police removed two Nepalese men, one of whom escaped from them. On 1 March 2017 it was reported that approximately 30 asylum seekers on Manus Island had voluntarily returned to their home countries after having been offered payments of up to \$20,000 from the Australian Government.⁵¹

Concerns raised by submitters

4.21 Several submitters raised concerns about the capacity of the Governments of Nauru and PNG to adequately process claims for asylum, and highlighted limitations built into both legal systems which prevent the same level of judicial review as would be available to an asylum seeker in Australia.

4.22 Amnesty International argued that PNG's RSD process is developing, and there was no refugee framework in place when refugees began arriving there in 2013.⁵² It cited the UNHCR findings from 2012, when the UNHCR concluded that PNG did not have an effective legal or regulatory framework to address refugee issues, had no laws or procedures in place to determine refugee status, and no immigration officers with the skills or experience to undertake the RSD process.⁵³

4.23 The UNHCR conducted a monitoring visit to Manus Island from 11 to 13 June 2013, after which time it outlined a number of criticisms about PNG's RSD system.⁵⁴ It concluded that several provisions of the *Migration Regulation 1979* (PNG) were inconsistent with the 1951 Refugee Convention in that they reinforced differential treatment of asylum seekers based on the manner of their arrival, incorrectly applied exclusion provisions for recognition of refugee status, and did not provide adequate procedural safeguards.⁵⁵ Consequently, the UNHCR urged the PNG Government to amend the law and regulations to cover complementary protection and non-refugee statelessness, and develop a framework which assessed international protection needs for asylum seekers regardless of the means of their arrival.⁵⁶ It also

51 The Huffington Post, *Dozens Of Asylum Seekers Agree To Leave Manus After \$20,000 Payments*, 1 March 2017.

52 Amnesty International, *Submission 6*, Attachment 3, (*This is Breaking People: Human rights violations at Australia's Manus Island Asylum Seeking Processing Centre, Papua New Guinea*, 2013), p. 90.

53 Amnesty International, *Submission 6*, Attachment 3, p. 90 (UNHCR, *Antonio Guterres' Letter to Chris Bowen, Minister for Immigration and Citizenship of Australia*, 9 October 2012, p. 2).

54 UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea 11-13 June 2013*.

55 UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea 11-13 June 2013*, p. 6.

56 UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea 11-13 June 2013*, p. 6.

assessed that it would take a period of at least six months before PNG officials would be able to undertake a RSD process 'with any degree of self-sufficiency'.⁵⁷

4.24 Amnesty International also noted comments made by the UNHCR at a further monitoring visit over 23-25 October 2013.⁵⁸ These comments highlighted that asylum seekers in the RPC at that time would have very complex cases, and argued that PNG RSD officers would 'have great difficulty in producing timely, accurate and fair assessments, unless DIBP decision makers are available to ensure adequate mentoring and quality assurance for the foreseeable future'.⁵⁹

4.25 The UNHCR raised similar concerns in relation to the RSD process in Nauru, observing in October 2013, that the legal framework, operational approaches and harsh physical conditions of the RPC did not comply with international law.⁶⁰ It also observed that, despite a sound legal framework, Nauru's policies did not provide for a fair, efficient and expeditious system for assessing refugee claims, and did not provide adequate and timely solutions for refugees.⁶¹

4.26 Amnesty International explained that in PNG, by the end of 2013:

- only 160 of more than 1000 asylum seekers in detention had been able to submit a claim for asylum;
- only 55 RSD interviews had been held since 2012; and
- no decision had yet been reached in any case in the 11 months since the initial Regional Resettlement Agreement between Australia and PNG was in place.⁶²

4.27 It recommended that all asylum seekers held in the Manus RPC be transferred back to Australian territory and given 'full access to asylum procedures in Australia'.⁶³

4.28 In May 2014, Amnesty International again raised these concerns, noting that no refugee assessments had been completed in the 18 months since the RPC opened.⁶⁴ It highlighted a failure 'to provide an individualised assessment of the need to detain asylum seekers pending the outcome of their refugee claims'.⁶⁵ It also submitted that the RSD process was placed on hold until children in detention turned 18, resulting in

57 UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea 11-13 June 2013*, p. 7.

58 Amnesty International, *Submission 6*, Attachment 3, p. 90.

59 UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea 23-25 October 2013*, p. 8.

60 UNHCR, *UNHCR monitoring visit to the Republic of Nauru 7 to 9 October 2013*.

61 UNHCR, *UNHCR monitoring visit to the Republic of Nauru 7 to 9 October 2013*, p. 1.

62 Amnesty International, *Submission 6*, Attachment 3, p. 90.

63 Amnesty International, *Submission 6*, Attachment 3, p. 4.

64 Amnesty International, *Submission 6*, Attachment 4, p. 22.

65 Amnesty International, *Submission 6*, Attachment 4, p. 22.

a 'punitive' policy which ensured that young people would remain in immigration detention for longer.⁶⁶

4.29 As stated above, the department advised that at 31 January 2017, 1,015 refugee status 'initial determinations', and 689 positive final determinations, had been made in PNG.⁶⁷

4.30 On 9 February 2017, Professor Jane McAdam of the Andrew & Renata Kaldor Centre for International Refugee Law stated that PNG's RSD process still 'falls far short of the standards required by international law'.⁶⁸ She argued that the definition of 'refugee' contained in the regulation 14 of the *Migration Regulations 1979* (PNG) 'goes well beyond the very strict grounds of exclusion under the Refugee Convention',⁶⁹ echoing the concerns raised by the UNHCR nearly four years earlier in June 2013.⁷⁰

4.31 As stated above, the department explained that it has assisted the governments of PNG and Nauru to establish 'robust refugee status determination and removal processes'.⁷¹

Resettlement

4.32 The department explained that the settlement options available to asylum seekers and refugees living in Nauru and PNG vary, and confirmed that asylum seekers who arrive by boat will not settle in Australia:

The transfer and processing arrangements with Nauru and Papua New Guinea are designed to provide transferees with a durable outcome, whether settlement in Papua New Guinea, third country resettlement, voluntary return to their home country or removal. Only persons found to be in need of protection by Nauru or Papua New Guinea will be provided durable settlement outcomes in those nations or in third countries. Persons found by Nauru or Papua New Guinea not to be in need of international protection are expected to return home, whether voluntarily or involuntarily.⁷²

66 Amnesty International, *Submission 6*, Attachment 4, p. 10.

67 DIBP, media release, *Operation Sovereign Borders monthly update: January 2017*, <http://newsroom.border.gov.au/channels/media-releases/releases/operation-sovereign-borders-monthly-update-january-3> (accessed 2 March 2017).

68 Professor Jane McAdam, *Manus deportation reports raise legal concerns*, 9 February 2017, <http://www.kaldorcentre.unsw.edu.au/news/manus-deportation-reports-raise-legal-concerns> (accessed 27 February 2017).

69 Professor Jane McAdam, *Manus deportation reports raise legal concerns*, 9 February 2017, <http://www.kaldorcentre.unsw.edu.au/news/manus-deportation-reports-raise-legal-concerns> (accessed 27 February 2017).

70 UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea 11-13 June 2013*, p. 6.

71 DIBP, *Submission 23*, p. 5.

72 DIBP, *Submission 23*, p. 63.

4.33 The department explained that 'Australia is actively working to assist Nauru and PNG to find appropriate, durable resettlement options for people determined by Nauru and PNG to be in need of protection'.⁷³

4.34 Refugees in Nauru can settle temporarily for up to 10 years,⁷⁴ (now revised to 20 years),⁷⁵ and have the option of pursuing settlement in the Kingdom of Cambodia (Cambodia). Refugees in PNG can permanently settle in PNG.⁷⁶ In October 2016, PNG Minister for Foreign Affairs, Mr Rimbink Pato was reported as stating that, at that time, just 24 of the 560 recognised refugees in PNG had been resettled in the country.⁷⁷

Resettlement in Nauru or Papua New Guinea

4.35 The UNHCR cautioned that neither Nauru nor PNG are suitable for long-term RPC refugee settlement. It submitted that 'long-term, viable solutions are not available in Nauru or Papua New Guinea, even on a temporary basis'.⁷⁸ In particular, the UNHCR argued that the health, educational, child protection and welfare, and social and vocational needs of refugees on Nauru 'grossly exceed' the capacity of Nauruan services.⁷⁹ It also argued that refugee settlements on Nauru hinder the integration of refugees into the community by 'projecting a continuation of the detention environment and separation from the local community'. It noted concerns about discrimination against refugees and asylum seekers based on sexual orientation and gender identity, as well as concerns about the lack of protections for torture and trauma survivors, and people with physical disabilities.⁸⁰

4.36 The UNHCR also highlighted its 'grave concerns about inadequate protection measures for woman and children in Nauru' and the long-term effects for children:

The impact of impaired parenting due to parental despair and mental illness, the absence of family or community support and the challenging physical environment place young children (zero to five years) at significant risk of compromised development from emotional, cognitive and physical perspectives. In this context, the intolerable situation for asylum-seekers and refugees, as well as the breakdown of normal family structures and intra-familial relationships may place women and children at heightened risk. Living in these conditions, as well as a physically hostile environment

73 DIBP, *Submission 23*, p. 63.

74 DIBP, *Submission 23*, p. 63.

75 Mr Andrew Goledzinowski, Ambassador for People Smuggling and Human Trafficking, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, Wednesday 15 March 2017, p. 38.

76 DIBP, *Submission 23*, p. 63.

77 The Guardian, *Papua New Guinea asks Australia for help resettling refugees from Manus Island*, 4 October 2016.

78 Office of the United Nations High Commissioner for Refugees (UNHCR), *Submission 43*, p. 1.

79 UNHCR, *Submission 43*, p. 19.

80 UNHCR, *Submission 43*, pp. 19-20.

in poorly ventilated tents, is especially traumatizing to children, in the context of mandatory and open-ended detention that will exacerbate or precipitate mental and physical illness into the future for them.⁸¹

4.37 PNG accepts refugees in accordance with its National Refugee Policy.⁸² Refugees who settle in PNG are expected to be self-sufficient, and compete for jobs as local workers do.⁸³ The Policy emphasises that in order for refugees to be 'accepted' within PNG they 'must not be perceived to be provided special treatment or distinct advantages over local people'. It also explains that once refugees have successfully established themselves and become self-sufficient, they can sponsor their families to join them.⁸⁴ It also states that where refugees have complex needs and cannot become self-sufficient, PNG will work with the UNHCR or other 'resettlement countries' to find durable solutions.⁸⁵

4.38 The UNHCR submitted that this policy 'does not take account of the inherent disadvantages faced by refugees', who may be isolated from their families and lack cultural support.⁸⁶ It also noted that refugees in PNG cannot own land, and are therefore required to cover the cost of housing and food on an 'ongoing basis', something which makes it difficult to meet basic needs.⁸⁷ The UNHCR further argued that PNG services would not receive the mental health care they require, leading to people going untreated, or receiving inadequate treatment. The UNHCR concluded that settlement in PNG is not a viable option because refugees do not have access to 'integration possibilities' and cannot return to their country of origin (leaving them in a 'state of limbo'), and that this uncertainty about the future is a major contributing factor to mental deterioration, and consequently a barrier to settlement.⁸⁸

Resettlement in Cambodia

4.39 At the date of this report, the only third country resettlement arrangement which has been formally agreed to, and resulted in the resettlement of any refugees, is the agreement between Australia and Cambodia relating to the resettlement of Nauru-determined refugees.⁸⁹

4.40 The department explained in its submission that since June 2015 only six refugees had settled in Cambodia. It also advised that, of those six refugees, four have

81 UNHCR, *Submission 43*, p. 23.

82 Government of Papua New Guinea, *National Refugee Policy*, www.immigration.gov.pg/images/PNG_National_Refugee_Policy_FINAL_ENDORSED_BY_CABINET.pdf (accessed 27 February 2017).

83 Government of Papua New Guinea, *National Refugee Policy*, p. 9.

84 Government of Papua New Guinea, *National Refugee Policy*, p. 10.

85 Government of Papua New Guinea, *National Refugee Policy*, p. 10.

86 UNHCR, *Submission 43*, pp. 17-18.

87 UNHCR, *Submission 43*, p. 18.

88 UNHCR, *Submission 43*, p. 18.

89 DIBP, *Submission 23*, p. 63.

subsequently decided to return to their home countries.⁹⁰ On 14 February 2017 it was reported that two more refugees had volunteered to resettle in Cambodia.⁹¹

4.41 The department stated that the funding for this agreement consists of two components: an aid component of \$40 million, and a settlement and support services component, capped at \$15 million.⁹² The department advised that, of that \$15 million allocated to pay for services, it has expended \$3.48 million in the 2014-15 and 2015-16 financial years on 'fees for the establishment and delivery of contracted support services' in Cambodia.⁹³ At 11 November 2016, it advised that it had already spent \$1.2 million in the 2016-17 financial year.⁹⁴

4.42 The Edmund Rice Centre (ERC) labelled the Cambodia arrangement an 'abject failure'.⁹⁵ Australian Lawyers for Human Rights (ALHR) highlighted comments by Mr Phay Siphon, a spokesperson for the Cambodian government and Cambodian Council of Minister.⁹⁶ Mr Siphon was reported to have described the agreement as a 'failure', and noted Cambodia's lack of social services and funding to support refugees.⁹⁷

4.43 Several Nauru RPC incident reports, which were contained in the leaked documents termed 'the Nauru files', seem to indicate distress among refugees when considering the prospect of settling in Cambodia, as well as unease at the prospect of being refused permission to go to Cambodia.⁹⁸

Third country resettlement negotiations

4.44 The committee experienced difficulty in obtaining complete and current information about third country resettlement negotiations. The department claimed that these negotiations involve 'sensitive discussions' with a number of countries, and

90 DIBP, *Submission 23*, p. 63.

91 The Cambodia Daily, *More Nauru refugees opt for Cambodia as Paths to US Narrow*, 14 February 2017.

92 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, Tuesday 11 November 2016, p. 28.

93 DIBP, response to question on notice, 11 November 2016 (received 25 November 2016).

94 Ms Clare Roennfeldt, Acting First Assistant Secretary, Children, Community and Settlement Services Division, DIBP, *Committee Hansard*, Tuesday 11 November 2016, p. 28.

95 Edmund Rice Centre (ERC), *Submission 7*, p. 4.

96 Australian Lawyers for Human Rights (ALHR), *Submission 25*, p. 14.

97 Sydney Morning Herald, *Australia's Cambodia refugee resettlement plan 'a failure'*, 3 April 2016.

98 The Guardian Australia, *the Nauru files*, minor incident 'threat to self-harm', 4 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150319.pdf> (accessed 2 March 2017); minor incident 'threat to self-harm', 5 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150324.pdf> (accessed 2 March 2017); minor incident 'self-harm threat', 14 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150341.pdf> (accessed 2 March 2017).

explained that the details of those discussions remain confidential.⁹⁹ On 7 January 2017, Minister the Hon Peter Dutton MP, made a public interest immunity claim (PII claim) in relation to questions about third country resettlement negotiations. Minister Dutton claimed that the disclosure of information relating to third country resettlement negotiations could damage international relations.

The United States of America

4.45 On 13 November 2016, the Commonwealth Government announced that it had negotiated a one off arrangement with the Obama Administration of the United States (US) Government, which would see refugees located in PNG and Nauru resettled in the US.¹⁰⁰ The department explained that any person currently in Australia (having been transferred from either Nauru or PNG) would have to return to either Nauru or Manus in order for their case to be determined by US Government officials.¹⁰¹

4.46 Since this announcement, US President Donald Trump has taken office, leading to speculation that this arrangement may not proceed. This speculation arose largely due to the President's stated immigration position, and the signing of executive orders relating to immigration.

4.47 On 27 January 2017, President Trump signed an executive order, stating that:

- the US Refugee Admissions Program shall be suspended for 120 days;
- the entry of Syrian nationals would be 'detrimental to the interests of the United States' and is therefore suspended;
- the entry of more than 50,000 refugees in the 2017 fiscal year would be similarly detrimental, and the President suspended such entry 'until such time as I determine that additional admissions would be in the national interest; and
- the Secretaries of State and Homeland Security can jointly determine to admit individuals as refugees on a 'case-by-case basis...only so long as they determine that the admission of such individuals is in the national interest'.¹⁰²

4.48 The order also stated that:

...immigrant and [non-immigrant] entry into the United States of aliens from countries referred to in section 217(a)(12) of the [Immigration and Nationality Act], 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United

99 DIBP, *Submission 23*, p. 63.

100 See, www.minister.border.gov.au/peterdutton/Pages/Refugee-resettlement-from-Regional-Process-Centres.aspx (accessed 10 April 2017).

101 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, Tuesday 15 November 2016, p. 25.

102 Office of the Federal Register, *Protecting the Nation from Foreign Terrorist Entry into the United States*, <https://www.federalregister.gov/documents/2017/02/01/2017-02281/protecting-the-nation-from-foreign-terrorist-entry-into-the-united-states> (accessed 22 February 2017).

States, as immigrants and [non-immigrants], of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas).¹⁰³

4.49 Both section 217(a)(12) of the Immigration and Nationality Act, and section 1187(a)(12) of the US Code provide the same information. They both describe any alien who is a national of either Syria or Iraq, or has been presented in either of those countries at any time on or after 1 March 2011.¹⁰⁴ The same sections also describe an alien who is a national of, or has been present in at any time on or after 1 March 2011, 'a country, the government of which has repeatedly provided support to acts of international terrorism', as well as 'any other country or area of concern designed by the Secretary of Homeland security'.

4.50 There has been some debate as to whether the Australia/US refugee resettlement arrangement will proceed, and how it could be reconciled with this new policy stance. On 1 February 2017, President Trump tweeted 'Do you believe it? The Obama Administration agreed to take thousands of illegal immigrants from Australia. Why? I will study this dumb deal'.¹⁰⁵ The following day, however, it was reported that the US Embassy in Australia had advised that President Trump would honour the deal.¹⁰⁶

4.51 This Executive Order, as well as revisions, has been the subject of Supreme Court challenges in the US. On Wednesday 15 March 2017 it was reported that US District Judge Derrick Watson issued orders halting President Trump's revised executive order to temporarily close American borders to refugees and nationals from six countries.¹⁰⁷

4.52 Also on 15 March 2017, the Department of Foreign Affairs and Trade (DFAT) advised the committee that:

The US administration has confirmed and reconfirmed that the arrangement is on foot, that it is progressing according to their own rules concerning the assessment of refugee protection claims and also the vetting on security grounds of applicants...[T]ime frames are a little bit hard for us to predict because these are the arrangements and the operations of another country and, like us, the US is very rigorous in its assessment both of refugee

103 Office of the Federal Register, *Protecting the Nation from Foreign Terrorist Entry into the United States*.

104 8 US Code 1187 – Visa waiver program for certain visitors, <https://www.law.cornell.edu/uscode/text/8/1187> (accessed 22 February 2017), section 1187(a)(12)(A); *Immigration and Nationality Act*, s. 217(a)(12), <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-4391.html> (accessed 10 April 2017).

105 President Donald Trump, Twitter, 2 February 2017 https://twitter.com/realDonaldTrump/status/827002559122567168?ref_src=twsrc%5Etfw, (accessed 22 February 2017).

106 SBS, *Trump to honour refugee deal with Australia: US Embassy*, 2 February 2017.

107 PRI, *A judge in Hawaii just blocked Trump's revamped immigration order*, 15 March 2017.

asylum status and on security grounds. But the good news is that those are progressing.¹⁰⁸

4.53 In relation to any numerical 'caps' on this agreement, DFAT further advised that:

...it was part of the understanding reached between Australia and the United States that 1,250 would be taken, but I would not think that it is correct to characterise it as an upper limit. The US administration has undertaken to take 50,000 this year globally. Whether they end up taking more than 1,250 from Manus and Nauru or significantly less is impossible to say at this stage. It will be a function of how many apply to go to the United States. It will be a function of how many are determined by the US to qualify for their refugee intake requirements and then of course there is security vetting on top of that. It could well be that the US eventually chooses to take more than 1,250.¹⁰⁹

4.54 DFAT also stated that the arrangement does not require the US to take any refugees.¹¹⁰ The department, by contrast, stated that it did not agree that the number taken could be zero, and explained that the number 1,250 is an 'aim' or 'goal'.¹¹¹

4.55 At the date of this report, the domestic legal challenges to President Trump's migration-related executive orders are ongoing. The effect of this and any further executive orders on the refugee deal with Australia is unclear. The department advised that, at 20 March 2017, US Citizenship and Immigration Services officers were at Nauru, and that they would travel to Manus from 4 April to 8 April 2017.¹¹²

4.56 The department confirmed, at 20 March 2017, that there were no other third country agreements being negotiated.¹¹³

New Zealand

4.57 The New Zealand Government has previously offered to accept up to 150 refugees from the Nauru and Manus RPCs each year. However, this offer has not resulted in a resettlement agreement.

4.58 In April 2016, it was reported that Minister for Immigration and Border Protection the Hon Peter Dutton MP described the proposal as a 'green light to people smugglers' that would create a 'back-door way to get into Australia'.¹¹⁴

108 Mr Andrew Goledzinowski, Ambassador for People Smuggling and Human Trafficking, DFAT, *Committee Hansard*, Wednesday 15 March 2017, p. 37.

109 Mr Andrew Goledzinowski, Ambassador for People Smuggling and Human Trafficking, DFAT, *Committee Hansard*, Wednesday 15 March 2017, p. 38.

110 Mr Andrew Goledzinowski, Ambassador for People Smuggling and Human Trafficking, DFAT, *Committee Hansard*, Wednesday 15 March 2017, p. 39.

111 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, Monday 20 March 2017, p. 2.

112 Ms Rachel Noble, Deputy Secretary, DIBP, *Committee Hansard*, Monday 20 March 2017, p. 6.

113 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, Monday 20 March 2017, p. 3.

4.59 ALHR explained that it wrote to the New Zealand Minister of Immigration, the Hon Michael Woodhouse MP, in September 2016 in relation to New Zealand's offer. It stated that, in response, the Minister reiterated to ALHR that New Zealand's offer to resettle refugees each year still stood, and emphasised that it was up to Australia to take up the offer.¹¹⁵ In February 2017, it was reported that the Prime Minister of Australia, the Hon Malcolm Turnbull, stated that the offer is one 'we appreciate' but stated that 'our focus is on completing the arrangements with the United States'.¹¹⁶

4.60 Both SHS Law and Mr Tim McKenna submitted that Australia should accept New Zealand's offer to take asylum seekers.¹¹⁷ Amnesty International recommended that the Australian Government not block any offers made by third countries to resettle refugees from Manus or Nauru.¹¹⁸ The ERC likewise recommended that the offer be taken seriously.¹¹⁹

Resettlement other than by a resettlement agreement

4.61 On 21 February 2016, it was reported that father and son Mr Ahmed Kharsa and Mr Ali Kharsa, who had been detained in Nauru for three years, were resettled in Canada pursuant to a family reunification visa.¹²⁰ The report stated that the father and son were believed to be the 'first offshore refugees given protection by a western country'.

Alternative proposals regarding resettlement

4.62 The committee heard a number of suggestions about alternative mechanisms by which to secure safe long term resettlement arrangements for the refugees and asylum seekers in Nauru and PNG, as well as future asylum seekers.

Resettlement in Australia

4.63 Several submitters argued that asylum seekers and refugees in Manus and Nauru should be resettled in Australia. ALHR argued that, pursuant to the *Refugee Convention 1951*, these refugees 'have the right to protection in Australia'.¹²¹ The ERC submitted that this would be the 'most efficient and practical means by which to resettle transferees', and noted that while the policy of not settling any such asylum

114 The Guardian Australia, *Turnbull rejects New Zealand offer to take 150 refugees from detention*, 29 April 2016.

115 ALHR, *Submission 25*, p. 15.

116 Sydney Morning Herald, *Turnbull rejects New Zealand's refugee offer to focus on US deal*, 19 February 2017.

117 SHS Law, *Submission 3*, p. 5; Mr Tim McKenna, *Submission 4*, p. 1.

118 Amnesty International, *Submission 6*, Attachment 1, p. 57.

119 ERC, *Submission 7*, p. 4.

120 ABC News, *Asylum seeker pair leaves Nauru 'black hole' to be reunited with family in Canada*, 21 February 2016.

121 ALHR, *Submission 25*, p. 12.

seekers in Australia has bipartisan support, no alternative durable solution has yet been proposed.¹²² The RCA similarly posited that resettlement in Australia would be much simpler and cheaper than the current approaches being taken.¹²³ SHS Law argued that Australia should resettle asylum seekers in Australia, describing such a move as 'the last opportunity for Australia to remit its errors from its previous dumping behaviours'.¹²⁴

4.64 The Royal Australia College of General Practitioners (RACGP) argued that Australia must be included as an option for resettlement because of the ongoing psychological harm being caused to those asylum seekers and refugees in detention. They submitted that, 'In the current international refugee crisis, ethical and fair settlement options must be expedited as a matter of urgency'.¹²⁵ The Royal Australian and New Zealand Society of Psychiatrists (RANZCP) noted that Australia bears the ultimate responsibility for refugees and asylum seekers in Nauru and PNG, arguing that:

In the absence of viable options for third country resettlement, Australia maintains its legal and ethical obligations to the protection of asylum seekers and refugees detained under its aegis. As such, the social and economic costs of current policies and practices will rest with the Commonwealth Government and the Australian people for many years to come.¹²⁶

4.65 The University of Newcastle Legal Centre (UNLC) submitted that Australia should bring every asylum seeker and refugee in Nauru and PNG to Australia for processing and/or resettlement, and should, where required, make third country resettlement arrangements in destinations where 'the human rights of refugees can be assured in a comparable manner to those available to members of the Australian community'.¹²⁷

4.66 The ERC noted the argument that reconsidering resettlement in places such as Australia or New Zealand could create a 'pull factor' for people smugglers in the Asia-Pacific. It disagreed that such a pull factor would necessarily eventuate, arguing that:

Firstly, past experience indicates that when people on Nauru and Manus were resettled in countries such as Australia and New Zealand between 2001 and 2008, the so-called pull factor did not eventuate. Secondly, even if a pull-factor did exist, its impact can be overcome through the

122 ERC, *Submission 7*, p. 4.

123 RCA, *Submission 19*, p. 2.

124 SHS Law, *Submission 3*, p. 6.

125 RACGP, *Submission 17*, p. 6.

126 Royal Australian and New Zealand Society of Psychiatrists (RANZCP), *Submission 8*, p. 16.

127 University of Newcastle Legal Centre (UNLC), *Submission 12*, p. 10.

establishment of a genuine and durable regional cooperation framework that helps people before they decide to come to Australia by boat.¹²⁸

4.67 A number of submitters submitted that Australia will continue to struggle to find third country resettlement options. The ERC posited that the ongoing failure to secure third country resettlement is not surprising, given that 'the global community is dealing with the highest number of displaced people than at any time since UNHCR records began'.¹²⁹ It argued that 'very few countries are willing to deal with Australia's challenges when they also face their own'.¹³⁰ The Refugee Council of Australia (RCA) echoed this sentiment, highlighting that the decision to not settle any of the asylum seekers or refugees in question is an Australian domestic political decision:

The reality is that, after more than three years, we have failed to find another country (other than Cambodia) to take these people. This is not surprising. The world is seeing unprecedented levels of forced displacement, and it is therefore not surprising that other countries are reluctant to help Australia with its extremely small, and entirely political, problem.¹³¹

4.68 ALHR further submitted that Australia should not call on other countries to resettle refugees within its responsibility, 'particularly those countries with less capacity to protect and support' them.¹³² It stated that, if further third country resettlement options were to be pursued, any refugees with family in Australia 'must be brought to Australia, pursuant to their right to family reunion', arguing that

The number of refugees that would be settled in Australia pursuant to family reunion is small. It would go unnoticed. Yet it would be consistent with the strong family values that most Australians hold.¹³³

A regional solution

4.69 A number of submitters discussed the development of a regional cooperation framework to help address the issue of asylum claims. The ERC was critical of the bilateral agreements Australia has entered into, as well as those it is currently negotiating. It submitted that 'ad-hoc bilateral deals do not constitute genuine regional cooperation frameworks' and are not a 'durable solution', particularly where the agreement would involve a 'people swap'.¹³⁴ The UNLC similarly argued that to date, Australia has 'only sought to make resettlement arrangements with third countries that are poorly resourced to protect the rights of refugees or enable their social

128 ERC, *Submission 7*, p. 5.

129 ERC, *Submission 7*, p. 4.

130 ERC, *Submission 7*, p. 4.

131 Refugee Council of Australia (RCA), *Submission 19*, p. 2.

132 ALHR, *submission 25*, p. 12.

133 ALHR, *Submission 25*, p. 16.

134 ERC, *Submission 7*, p. 6.

integration'.¹³⁵ As an example, it highlighted Cambodia's past poor human rights record and its forcible deportation of 20 Chinese refugees in 2009 who were subsequently sentenced to death in the Peoples Republic of China (PRC).¹³⁶

4.70 The ERC submitted that any attempts to negotiate a third country resettlement arrangement needs to reflect Australia's non refoulement obligations and be part of 'a genuine and durable regional cooperation framework'.¹³⁷ It argued that programs developed in response to the Indo-Chinese refugee crisis in the 1970s and 1980s provide a good model because they ensured that asylum seekers did not have to take a boat to try and claim asylum, but rather they could access a safe place close to their homeland where their refugee claim could be processed and an orderly resettlement process could take place.¹³⁸ It submitted that a regional cooperation framework in Australia should include:

- removal of barriers to RSD processes in countries like Indonesia, Malaysia and Thailand;
- establishment of 'protected spaces' for international agencies like the UNHCR, and non-government organisations (NGOs) to provide services to refugees and asylum seekers;
- cooperation between host countries, the UNHCR and resettlement states to provide durable solutions, which might include resettlement, integration into the country, or assisted voluntary repatriation;
- consistent asylum processes across the region based on the Refugee Convention (including legislation dealing with the RSD process, and independent rights review mechanisms); and
- improvement of conditions for refugees and asylum seekers in 'host and transit countries' (such as legal permission to be in the country, the right to work, and the right to access basic services).¹³⁹

4.71 Amnesty International submitted that Australia should increase its resettlement program significantly, and ensure that it is assisting those most in need by giving priority to individuals who had been referred for assistance by the UNHCR.¹⁴⁰ The ERC echoed these recommendations, and argued that increasing Australia's humanitarian intake and investment in UNHCR activities are affordable activities:

...if the Government is prepared to spend \$9.6 billion over three years preventing people from entering Australia by boat, it can invest even one-

135 UNLC, *Submission 12*, p. 8.

136 UNLC, *Submission 12*, p. 8.

137 ERC, *Submission 7*, p. 2.

138 ERC, *Submission 7*, p. 6.

139 ERC, *Submission 7*, p. 14.

140 Amnesty International, *Submission 6*, p. 2.

third of that funding on programs to help people before they need to get on a boat.¹⁴¹

4.72 The Law Council of Australia (LCA) noted that in 2016 the Australian Human Rights Commission (AHRC) recommended that Australia focus on improving access to effective protection within the Asia Pacific region to help prevent 'flight by sea'.¹⁴² The Australia Council for International Development (ACFID) similarly recommended an 'enhanced and well-targeted aid program that works with Australia's neighbours to better understand and address the root causes and increase in the number of forcibly displaced persons'.¹⁴³

Further third country resettlement options

4.73 ALHR argued that if Australia does pursue further third country resettlement arrangements, any host countries should, at a minimum:

- be party to the 1951 Refugee Convention;
- have an existing legal and policy framework which will provide refugees with a secure legal status on arrival, and the prospect of securing citizenship;
- have an institutional framework to support resettlement;
- have a reception and integration program to deliver services including reception, orientation, housing, financial assistance, medical care, language, employment preparation, education, and community engagement, and given the traumatic conditions which RPC refugees have already endured, 'appropriate psychological support'; and
- not be countries which may return refugees to their countries of origin.¹⁴⁴

4.74 ALHR submitted that neither Nauru, Cambodia nor PNG meet this description, and that as such, any refugees who have already accepted the offer to settle in PNG or Cambodia should have the opportunity to take up a third country resettlement option which does meet the description.¹⁴⁵

141 ERC, *Submission 7*, p. 6.

142 Law Council of Australia (LCA), *Submission 39*, p. 23.

143 Australia Council for International Development (ACFID), *Submission 45*, p. 2.

144 ALHR, *Submission 25*, p. 15.

145 ALHR, *Submission 25*, p. 15.

Chapter 5

The management of expenses associated with offshore processing

5.1 This chapter will outline both the costs associated with offshore processing, and some of the concerns which have been raised in relation to the management of public funds expended pursuant to the policy.

Offshore processing costs

5.2 The administration of Australia's offshore processing scheme represents a very significant taxpayer expense. In accordance with the Memorandums of Understanding (MOUs) between Australia, the Republic of Nauru (Nauru) and Papua New Guinea (PNG), the Australian Government bears all costs associated with the operation of the relevant Regional Processing Centre (RPC).

5.3 The MOU between the Governments of Australia and Nauru states that:

The Commonwealth of Australia will bear all costs incurred under and incidental to this MOU as agreed between the Participants. If this requires additional development of infrastructure or services, it is envisaged that there will be a broader benefit for communities in which those settled are initially placed.¹

5.4 The MOU between the Governments of Australia and PNG states that:

The Government of Australia will bear all Costs incurred under this MOU.

Separate to the Costs incurred for the specific operation of this MOU, the Participants will develop a package of assistance and other bilateral cooperation, which will be in addition to the current allocation of Australian development cooperation assistance to PNG, and taking into consideration priorities which are consistent with the revised PNG-Australia Partnership for Development (endorsed by both Governments on 12 October 2011). This includes specific measures agreed to by Participants through the Joint Understanding between Australia and Papua New Guinea on Further Bilateral Cooperation on Health, Education and Law and Order, agreed on 19 July 2013.²

5.5 In 2015, the Select Committee on recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru (select committee)

1 *Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues*, 29 August 2012, cl. 6.

2 *Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to, and assessment and settlement in, Papua New Guinea of certain persons, and related issues*, 6 August 2013, cl. 6–7.

undertook a detailed analysis of the costs associated with the operation of the Nauru RPC.³

5.6 The estimated future and actual expenses for the Department of Immigration and Border Protections (the department's) Irregular Maritime Arrival (IMA) Offshore Management program are outlined across the Portfolio Budget Statement (PBS) papers:

Financial Year	Estimated expenses \$	Estimated actual expenses \$
2013–14		721,016,000 ⁴
2014–15	826,713,000 ⁵	912,631,000 ⁶
2015–16	810,786,000 ⁷	1,078,064,000 ⁸

5.7 The department has a budget of \$880,509,000 for the IMA Offshore Management program in the 2016-17 financial year.⁹ The 2016–17 PBS indicates that in the 2017–18, 2018–19 and 2019–20 financial years, the costs associated with the program are expected to decrease significantly, with forward estimates of below \$400 million per year.¹⁰

5.8 Further expenses not categorised under the IMA Offshore Management program are nevertheless associated with offshore processing, and Australia's broader border defence policy. In the 2014–15 PBS, the department noted a number of government measures which had been announced since the 2013–14 Mid-Year Economic and Fiscal Outlook (MYEFO), including the allocation of:

- approximately \$71 million in additional funding for 'Regional Cooperation Arrangements' in the 2014–15 and 2015–16 financial years;¹¹

3 Select Committee on recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru (Select committee), *Taking responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru ('Nauru RPC')*, August 2015, pp. 50–57.

4 DIBP, *2014–15 Portfolio Budget Statement (PBS)*, p. 40.

5 DIBP, *2014–15 PBS*, p. 40.

6 DIBP, *2015–16 Portfolio Budget Statement ('2015-16 PBS')*, p. 34.

7 DIBP, *2015–16 PBS*, p. 34.

8 DIBP, *2016–17 Portfolio Budget Statement ('2016-17 PBS')*, p. 27.

9 DIBP, *2016–17 PBS*, p. 27.

10 DIBP, *2016–17 PBS*, p. 27.

11 DIBP, *2014–15 Portfolio Budget Statement ('2014-15 PBS')*, p. 17.

- approximately \$281 million in expense measures to support rapid transfers and Operation Sovereign Borders in the 2014–15 and 2015–16 financial years, with this amount reducing to approximately \$95 million across the 2016–17 and 2017–18 financial years;¹²
- approximately \$28 million in capital measures to support rapid transfers and Operation Sovereign Borders in the 2014–15 and 2015–16 financial years, with this amount reducing to approximately \$1.8 million in the 2016–17 financial year;¹³
- approximately \$64 million to renegotiate major service contract providers in the 2014–15 and 2015–16 financial years, with this amount reducing to approximately \$19 million across the 2016–17 and 2017–18 financial years.¹⁴

5.9 In September 2016, UNICEF Australia and Save the Children Australia asserted that, according to their analysis, the total financial cost from 2012–16 of the offshore processing, mandatory onshore detention, boat turn backs and other programs, was \$9.6 billion.¹⁵ They also submitted that the true cost is likely to be even greater, arguing that additional costs should be included, such as the cost of reviews and inquiries, the work of the Australian Human Rights Commission (AHRC), the cost of defending litigation, and any compensation payment made in relation to these policies.¹⁶

5.10 The department advised that, at March 2017, in the case of PNG, operating costs for the 2016–17 financial year (to date) were \$177 million, and \$165 million in the case of Nauru.¹⁷ Department Secretary Mr Michael Pezzullo advised that the department is funded to expend approximately \$1 billion per year to provide services at the RPCs, and that this cost had been 'fairly constant' since the asylum seekers in question were transferred to RPCs for processing.¹⁸ He also submitted that, had boats with asylum seekers continued to arrive in Australia, the department would have incurred approximately \$11 billion in costs.¹⁹

5.11 Submitters to this inquiry raised general concerns about the high level of expenditure associated with administering the RPC scheme. The Josephite Justice Office (JJO) echoed these concerns, arguing that the outsourcing of services 'has facilitated the expenditure of public money, and the implementation of public policy,

12 DIBP, *2014–15 PBS*, p. 19.

13 DIBP, *2014–15 PBS*, p. 20.

14 DIBP, *2014–15 PBS*, p. 19.

15 UNICEF Australia and Save the Children Australia, *At what cost? The human, economic and strategic cost of Australia's asylum seeker policies and the alternatives ('At what cost?')*, September 2016, p. 4.

16 Unicef Australia and Save the Children Australia, *At what cost?*, September 2016, p. 4.

17 DIBP, response to question on notice, 15 March 2017 (received 4 April 2017).

18 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, Monday 27 February 2017, p. 10.

19 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, Monday 27 February 2017, p. 10.

without any of the restraints and scrutiny that normally limit public sector behaviour'.²⁰ Amnesty International argued that the expenditure would be better directed towards measures which ensure that Australia's asylum system is 'an effective tool for the protection of refugee rights', rather than undermining those rights.²¹ The Australia Council for International Development (ACFID) considered the high cost of offshore processing policies in relation to the expenditure on Australian aid.²² It noted that, while \$9.6 billion was being expended on these policies, Australia's total ODA has fallen to \$3.8 billion, being equivalent to 23 cents per \$100 of Gross National Income.²³

The provision of aid to Nauru and PNG

5.12 While not directly connected to the operation of RPCs, the provision of Australian aid to both Nauru and PNG is a relevant consideration.

5.13 The Department of Foreign Affairs and Trade (DFAT) estimates that it will provide \$25.5 million in official development assistance (ODA) to Nauru in the 2016-17 financial year, and that this will include an estimated \$21.2 million in bilateral funding to Nauru.²⁴ It explained that aid provided to Nauru had helped to support improvements to public sector management, infrastructure, education, training and health, including the redevelopment of Nauru's hospital.²⁵ DFAT explained that Australia's aid commitments in Nauru remain irrespective 'of the work that might be underway in regard to resettlement'.²⁶

5.14 DFAT explains that it will provide an estimated \$558.3 million in ODA to PNG in the 2016-17 financial year, and that this will include an estimated \$477.3 million in bilateral funding to PNG.²⁷ It states that its aid program objectives include the promotion of effective governance, enabling economic growth, and enhancing human development.²⁸

20 Josephite Justice Office (JJO), *Submission 20*, p. 6.

21 Amnesty International, *Submission 6*, Attachment 1, p. 4.

22 Australia Council for International Development (ACFID), *Submission 45*.

23 ACFID, *Submission 45*, p. 2.

24 Department of Foreign Affairs and Trade (DFAT), *Overview of Australia's aid program to Nauru*, dfat.gov.au/geo/nauru/development-assistance/Pages/development-assistance-in-nauru.aspx (accessed 2 March 2017).

25 DFAT, *Annual Report 2015-16*, p. 26.

26 Mr Daniel Sloper, First Assistant Secretary, Pacific Division, DFAT, *Committee Hansard*, Friday 11 November 2016, p. 30.

27 DFAT, *Overview of Australia's aid program to Papua New Guinea*, dfat.gov.au/geo/papua-new-guinea/development-assistance/Pages/papua-new-guinea.aspx (accessed 2 March 2017).

28 DFAT, *Overview of Australia's aid program to Papua New Guinea*.

Audit of the procurement of garrison support and welfare services

5.15 In September 2016, the Australian National Audit Office (ANAO) published a performance audit of the department in relation to the procurement of garrison Support and welfare services in Nauru and PNG (Procurement Audit).²⁹ The purpose of this audit was to assess whether the department had appropriately managed the procurement of garrison support and welfare services at the RPCs on Nauru and Manus Island, and to assess whether the processes adopted met the requirements of the Commonwealth Procurement Rules (CPRs).

5.16 The report was highly critical of the department's management of the procurement of relevant services.

5.17 In relation to the tender and procurement process, the ANAO concluded that:

- the management of procurement activity for garrison support and welfare services at the RPCs fell 'well short of effective procurement practice', and there were 'serious and persistent deficiencies' in all three phases of procurement activities: establishing the centres, consolidating contracts, and achieving savings through an open tender process;³⁰
- the department used approaches which reduced competitive pressure and significantly increased the price of services without government authority to do so;³¹
- the department decided not to consider continuing with the existing provider of garrison services (G4S) but did not clearly document its reasons for doing so;³²
- the conduct and outcomes of the tender processes reviewed highlight procurement skill and capability gaps among departmental personnel at all levels;³³ and
- the outcome and conduct of the tender process suggest that the officers involved in the procurement process did not have the appropriate skills,

29 Australian National Audit Office (ANAO), *Offshore Processing Centres in Nauru and Papua New Guinea: procurement of garrison support and welfare services ('Procurement of garrison support and welfare services')*, Audit Report No. 16 2016–17.

30 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016–17, p. 8.

31 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016–17, p. 8.

32 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016–17, p. 49.

33 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016–17, p. 9.

experience and seniority to properly assess value for money in an open tender procurement and successfully manage a complex procurement.³⁴

5.18 In relation to assessing 'value for money', the ANAO found that:

- the department had, without authority, applied a benchmark model which was adjusted above historical costs;³⁵
- the department used separate benchmarks for Nauru and Manus Island, but determined 'value for money' and claimed savings on a combined basis. While Transfield's bid for Nauru was lower than historical costs, the bid for Manus Island exceeded historical costs by between \$200-300 million;³⁶
- under the consolidated contract, the person per annum cost of holding a person at the RPC in Nauru or Manus at the MYEFO 2015–16 in December 2015 was \$574,111. Prior to consolidation Finance estimated the cost at \$201,000;³⁷ and
- the department based the negotiated contract price on a high capacity scenario. However, there was a steady drop of in new asylum seeker arrivals (to a low of zero in March 2014). The contract was volume driven, and exposed the Commonwealth to the risk of locking-in a high price for services delivered at lower capacity levels.³⁸

5.19 The ANAO recommended that the department address the 'significant procurement skill and capability gaps' through staff training and selection, ensure officials have appropriate seniority and experience to undertake key procurement roles, and address persistent shortcomings in record keeping for procurement activities.³⁹ It also recommended that the department take steps to ensure that requirements of the resource management framework are met when undertaking procurements (including abiding by the CPRs, complying with Government approved scope and contract value, adopting a value for money assessment, ethical conduct, recognising conflicts of interest, and maintaining clear and complete records).⁴⁰

34 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016–17, p. 71.

35 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016–17, p. 47.

36 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016–17, p. 47.

37 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016–17, p. 48.

38 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016–17, p. 57.

39 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016–17, p. 14.

40 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016–17, p. 15.

Audit of contract management

5.20 In January 2017 the ANAO released a second audit report of the department's contract management of garrison support and welfare services (Contract Management Audit).⁴¹ This audit report noted that the combined value of these contracts at 6 December 2016 was \$3.386 billion.⁴²

5.21 This report was highly critical of the department's contract management and record-keeping practices. The ANAO concluded that the department's management of garrison support and welfare services contracts at both Nauru and PNG fell 'well-short of effective contract management practice'.⁴³ It also observed serious failings in the appropriate approval of payments made pursuant to the contracts, stating:

In respect of \$2.3 billion in payments made between September 2012 and April 2016, delegate authorisations were not always secured or recorded: an appropriate delegate provided an authorisation for payments totalling \$80 million; **\$1.1 billion was approved by DIBP officers who did not have the required authorisation; and for the remaining \$1.1 billion there was no departmental record of who authorised the payments.**⁴⁴

5.22 It also noted that contract variations totalling more than \$1 billion were made in 2016 'without a documented assessment of value for money'.⁴⁵

5.23 As in the previous audit report, the ANAO noted poor-record keeping within the department. It highlighted, in particular, the example of a failure to update the department's asset register and advise Comcover where a new facility was constructed at the Nauru RPC. This facility, which was valued at \$75 million, burned down shortly after being constructed. As a result of the failure to update the asset register, the building was uninsured when it was destroyed.⁴⁶

5.24 The ANAO further observed that when the department established the initial service contracts in 2013 it did not have a detailed view of what service it wanted to purchase, or of the standards which were to apply to the contracts. The ANAO noted that both of these factors are key considerations in achieving value for money.⁴⁷

41 ANAO, *Offshore processing centres in Nauru and Papua New Guinea – contact management of garrison support and welfare services ('Contract management')*, ANAO Report No. 32 2016–17.

42 ANAO, *Contract Management*, ANAO Report No. 32 2016-17, p. 7.

43 ANAO, *Contract Management*, ANAO Report No. 32 2016-17, p. 8.

44 ANAO, *Contract Management*, ANAO Report No. 32 2016-17, p. 9 (our emphasis).

45 ANAO, *Contract Management*, ANAO Report No. 32 2016-17, p. 9.

46 ANAO, *Contract Management*, ANAO Report No. 32 2016-17, p. 11.

47 ANAO, *Contract Management*, ANAO Report No. 32 2016-17, p. 8.

- shortcomings which were evident in the initial service contracts persisted in the later contracts, indicating that the contract consolidation process in 2014 was not informed by lessons learnt in the past;⁴⁸
- while the department developed a comprehensive and risk-based performance framework, the development of the framework was delayed and the framework itself was not applied consistently among different service providers;⁴⁹

5.25 The ANAO recommended that the department ensure contractors and supporting documentation clearly specify the goods and services to be delivered, implement a risk-based contract management plan to help manage contractor performance, contract deliverables and the retention of key records, and strengthen the control framework of current garrison and welfare services contracts.⁵⁰

5.26 The ANAO also noted that this audit was the sixth completed in relation to the department's management of detention centre contracts,⁵¹ and stated that 'taken together, these audit findings point to serious and persistent deficiencies in the department's administration'.⁵²

Departmental response

Procurement Audit

5.27 While the department agreed to both of the ANAO's recommendations in relation to the Procurement Audit,⁵³ it disagreed with aspects of the ANAO's findings.⁵⁴

5.28 Secretary Mr Michael Pezzullo stated that the department rejected the ANAO's conclusion that the department had operated without budgetary authority, explaining that the department was sanctioned by the government through cabinet and executive administrative decisions to proceed with arrangements which flowed from

48 ANAO, *Contract Management*, ANAO Report No. 32 2016–17, p. 8.

49 ANAO, *Contract Management*, ANAO Report No. 32 2016–17, pp. 8-9.

50 ANAO, *Contract management*, ANAO Report No. 32 2016–17, p. 15.

51 *Performance Audit Management of the Detention Centre Contracts - Part A*, Audit Report No.54 2003–04; *Management of the Detention Centre Contracts - Part B*, Audit Report No.1 2005–06; *Management of the Tender Process for the Detention Services Contract*, Audit Report No.32 2005–06; *Individual Management Services Provided to People in Immigration*, Audit Report No.21 2012–13; *Delivery of Health Services in Onshore Immigration Detention*, ANAO Report No.13 2016–17; and *Procurement of garrison support and welfare services*, ANAO Report No.16 2016–17.

52 ANAO, *Contract management*, ANAO Report No. 32 2016-17, p. 27.

53 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016–17, pp. 14–15.

54 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016–17, Appendix 1, entity response, DIBP, pp. 94–95.

the decision to re-establish regional processing.⁵⁵ The department acknowledged that its decision making processes had not been adequately documented at each stage of the procurement process, and stated that the absence of such records 'make it difficult to adequately demonstrate that the judgements made were appropriate and that due process was applied'.⁵⁶

5.29 The department explained that some officers may not have had the requisite 'dollar limit' to authorise particular payments, and that in some cases the ANAO could not find evidence of an officer having been appointed as a 'contractor administrator' in order to authorise payments due to be made over the course of a contract.⁵⁷ It argued that all payments were, nevertheless, made 'in accordance with the purpose of the contracts', and highlighted that the initial contracts were themselves approved by 'the appropriate spending delegates in the first instance'.⁵⁸ It further asserted that the payments made were within the context of an 'established contract' for a 'particular purpose', and submitted that 'As long as those contract management officers were satisfied that the goods and services were being delivered...the contract payments were made for the purposes of the contract'.⁵⁹ The department argued that by looking at what had happened 'in the field', one could conclude that contract deliverables had in fact been delivered.⁶⁰ The department also advised that through an internal investigation, it found no evidence of 'fraudulent or inappropriate payments', but noted that it had neglected to provide that information to the ANAO.⁶¹

5.30 Mr Pezzullo also stated that the department rejected the narrative of the ANAO's findings in relation to the scope of the services being provided. He explained that the department itself recognised that the services being provided (including school counsellors, home-based activity care, and refugees being settled in the Nauruan community), went beyond the original scope of the tender.⁶²

55 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, Friday 11 November 2017, pp. 23–24.

56 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016–17, p. 16.

57 Mr Steven Groves Chief Finance Officer (CFO), DIBP, *Committee Hansard*, Monday 27 February 2017, p. 14.

58 Ms Jenet Connell, Deputy Secretary, Corporate, Chief Operating Officer, DIBP, *Committee Hansard*, Monday 27 February 2017, p. 7.

59 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, Monday 27 February 2017, p. 17.

60 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, Monday 27 February 2017, p. 26.

61 Mr Stephen Hayward First Assistant Secretary (FAS), Integrity, Security and Assurance Division (Chief Audit Executive), DIBP, *Committee Hansard*, Monday 27 February 2017, pp. 7–8.

62 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, Friday 11 November 2015, p. 23.

Contract Management Audit

5.31 The department agreed to the three recommendations contained within the Contract Management Audit,⁶³ although it disagreed with a number of comments made by the ANAO.⁶⁴ It submitted to the ANAO that:

- the claim that \$2.3 billion in payments made from September 2012 to April 2016 were not appropriately authorised is not correct. The vast majority of those payments were 'fixed monthly contractual fees' dependent on the number of RPC residents. It acknowledged the lack of documentary evidence to support this;
- RPCs are administered in a rapidly changing environment, which requires 'immediate implementation and a need for flexibility in services', so the department has intentionally negotiated additional services requests into its contract with Broadspectrum. In many instances, Broadspectrum was the only service provider able to deliver additional services, and as such, the use of 'existing capability' was 'cost effective and efficient'. It noted the ANAO's finding that enhanced documentation of value for money considerations;
- the contract variations with Broadspectrum totalling more than \$1 billion in 2016 were made across two variations. In the first instance, the variation was made by an appropriate delegate with a 'clear statement to the effect that funding was available to execute the deed of variation'. In the second instance, the variation was approved by an appropriate delegate who had considered the available budget, and made a statement to this effect;
- the Contract Management Plan for the Broadspectrum contract was endorsed by the Contract Authority on 13 October 2016;
- the department disagreed that the delay in 2012 between establishing the heads of agreement in relation to the contracts, and finalising the contracts represented 'loose contract management'; and
- the department disputed the claim that no work had been progressed to remediate the problem of mould in the Nauru RPC. It stated that 'Mould is a persistent issue...due to high humidity conditions', and highlighted that such work requires specialist cleaners and the relocation of affected residents.⁶⁵

5.32 The department argued that it was important to acknowledge 'the complex environment in which these contracts were established and continue to operate'.⁶⁶ It submitted to the ANAO that the department had been under immense pressure to manage thousands of asylum seekers, negotiate with host governments, engage service

63 ANAO, *Contract management*, ANAO Report No. 32 2016–17, p. 15.

64 ANAO, *Contract management*, ANAO Report No. 32 2016–17, p. 16.

65 ANAO, *Contract Management*, ANAO Report No. 32 2016–17, Appendix 1, entity response, DIBP, pp. 100-101.

66 ANAO, *Contract Management*, ANAO Report No. 32 2016–17, Appendix 1, entity response, DIBP, p. 99.

providers, and 'operationalise all the logistics' for the RPCs.⁶⁷ It also noted that it continued to provide support to the Governments of Nauru and PNG, which retained 'effective control' over the RPCs, meaning that it was open to those Governments 'at any time to make decisions which effect immediate changes to the administration of the centres'. It explained that such decisions would have a flow on effect for contract management delegates who would have to make decisions and take action within very short timeframes.⁶⁸

5.33 The department explained to the ANAO that it has developed and implemented a 'comprehensive Contract Management Framework' for detention centre contracts over the previous eight months, and planned to further improve all major Departmental contracts over the following 12-18 months.⁶⁹

5.34 In relation to the ANAO's finding that the department had failed to insure a building worth \$75 million, the department advised the Legal and Constitutional Affairs Legislation Committee that at the time the building was destroyed it was still under construction. It explained that the department was, therefore, reliant upon the builder's insurance to protect the asset, but that the builder's insurance 'did not cover the riot risk that eventually manifested'.⁷⁰

Concerns about obtaining information relating to costs

5.35 Previous committees have raised concerns about the significant costs associated with the administration of the RPCs, and the lack of clarity and transparency in relation to the management of those costs.

5.36 In 2015, the select committee commented on the difficulty in obtaining access to 'straightforward information' about the costs associated with the RPCs.⁷¹ It stated that given the significant investment of taxpayer money, a much higher level of transparency should exist to ensure the money is 'being spent responsibly and in the best interest of Australia'.⁷² The committee recommended that the department provide full and disaggregated accounts of the expenditure associated with the Nauru RPC. The select committee also noted its concern about the minimal oversight of expenditure on Nauru, and stated that the department should audit all expenditure on

67 ANAO, *Contract Management*, ANAO Report No. 32 20126–17, Appendix 1, entity response, DIBP, p. 99.

68 ANAO, *Contract Management*, ANAO Report No. 32 20126–17, Appendix 1, entity response, DIBP, p. 99.

69 ANAO, *Contract Management*, ANAO Report No. 32 20126–17, Appendix 1, entity response, DIBP, pp. 99-100.

70 Ms Jenet Connell, Deputy Secretary, Corporate, Chief Operating Officer, DIBP, *Committee Hansard*, Monday 27 February 2017, p. 35.

71 Select Committee, *Nauru RPC*, August 2015, p. 127.

72 Select Committee, *Nauru RPC*, August 2015, p. 128

Nauru, and explain why an exemption from oversight by the Public Works Committee applies to this spending.⁷³

Future RPC and associated expenses

5.37 There are some difficulties associated with assessing future expenses associated with administering Australia's RPCs.

5.38 As set out in Chapter 1 of this report, the major contractor providing garrison and support services at both the Nauru and PNG RPCs, Broadspectrum, has indicated that it will not seek a renewal of its contracts of service. Broadspectrum's major subcontractor Wilson Security has likewise advised that its contract with Broadspectrum will end at the same time. These contracts are due to expire in October 2017. The department explained that it had been made aware of Broadspectrum's formal withdrawal from the tender process on 27 May 2016, and that the tender process itself was subsequently cancelled on 25 July 2016.⁷⁴ On 27 February 2017 the department advised the legislation committee that it had not commenced a process to select a new contractor to take over those services.⁷⁵ Acting Deputy Commissioner of Australian Border Force (ABF) Support, Ms Cheryl-Ann Moy, stated that:

The issue...is that the services that are required have changed over the time since those original contracts were undertaken. The requirement for services now may be considerably different, and that is up to the regional processing countries to advise as to what they require.⁷⁶

5.39 Ms Moy further explained that it is a question of 'defining the services and the quantum', and noted that the 'landscape had changed considerably' following the announcement of the United States (US) resettlement arrangement.⁷⁷ She also advised that, in relation to any future contracts for services may not be those of the Australian Government and may be contracts that the Governments of Nauru or PNG undertake.⁷⁸ When asked to clarify whether the Australian Government would nevertheless by paying for any subsequent contracts, Ms Moy stated that 'We will support the Government in that area'.⁷⁹ Mr Pezzullo further explained that any

73 Select Committee, *Nauru RPC*, August 2015, p. 128.

74 Mr David Nockels, First Assistant Secretary, Detention Services Division, DIBP, *Committee Hansard*, Monday 27 February 2017, p. 57.

75 Ms Cheryl-Ann Moy, Acting Deputy Commissioner, Australian Border Force (ABF) Support, DIBP, *Committee Hansard*, Monday 27 February 2017, p. 56.

76 Ms Cheryl-Ann Moy, Acting Deputy Commissioner, ABF Support, DIBP, *Committee Hansard*, Monday 27 February 2017, p. 57.

77 Ms Cheryl-Ann Moy, Acting Deputy Commissioner, ABF Support, DIBP, *Committee Hansard*, Monday 27 February 2017, p. 57.

78 Ms Cheryl-Ann Moy, Acting Deputy Commissioner, ABF Support, DIBP, *Committee Hansard*, Monday 27 February 2017, p. 58.

79 Ms Cheryl-Ann Moy, Acting Deputy Commissioner, ABF Support, DIBP, *Committee Hansard*, Monday 27 February 2017, p. 58.

subsequent involvement of the Commonwealth Government in relation to the provisions of services at the Nauru and PNG RPCs:

...will be the subject of an agreement between two sovereign nations as to the nature, extent and depth of our involvement, indirect or otherwise, in the residual elements that remain after the expiry of the contract period in October.⁸⁰

80 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, Monday 27 February 2017, p. 59.

Chapter 6

Obligations of the Commonwealth Government, and contractors, towards asylum seekers and refugees

6.1 The committee considered a significant amount of evidence about the adequacy of services made available to refugees and asylum seekers in the Republic of Nauru (Nauru) and Papua New Guinea (PNG), and addressed the work undertaken by the Australian Government to build capacity with local authorities. However, few submitters provided detailed information about the legal obligations which the Commonwealth Government (and its contractors) may owe to asylum seekers and refugees in Nauru and PNG. This may be because previous inquiries into matters associated with Australia's Regional Processing Centres (RPCs) have made a number of findings in relation to the obligations of the Commonwealth Government.

6.2 This Chapter will:

- summarise the evidence put to previous Senate inquiries about Australia's obligations to refugees and asylum seekers in Australia's RPCs, pursuant to international and domestic law;
- summarise the findings of those inquiries;
- set out the evidence provided by the Department of Immigration and Border Protection (the department) to this inquiry in relation to the duty of care owed to those asylum seekers and refugees;
- outline recent developments and alternative perspectives about Australia's obligations in these matters; and
- discuss the obligations of the department, and its contractors, pursuant to the operation of the *Work Health and Safety Act 2011*.

Evidence put to previous inquiries

Obligations of the Commonwealth pursuant to international law

6.3 In December 2014, this committee found that Australia has a range of general and specific human rights obligations which relate to the treatment of asylum seekers and refugees.¹ Broadly, these considerations include:

- obligations pursuant to the Refugee Convention, noting the right to seek asylum and a right not to be punished for any illegal entry into territory in order to seek asylum under article 31;²

1 Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014 ('Incident at Manus')*, December 2014, pp. 128-131.

2 Convention Relating to the Status of Refugees 1951, as amended by the 1967 Protocol Relating to the Status of Refugees (Refugee Convention).

- the obligation to not return (refoule) any person to a country where there is a risk that they would face persecution, torture or other serious forms of harm,³ noting that non-refoulement obligations are absolute and cannot be subject to any limitation;⁴
- the prohibition of torture, including cruel, inhuman or degrading treatment or punishment,⁵ noting that prolonged indefinite detention has been found to breach this prohibition;⁶
- the prohibition of arbitrary detention;⁷
- the right to security of the person,⁸ requiring Australia to take steps to protect people against interference with personal integrity by others (including protecting people who have been threatened with death, harassed or intimidated);
- the right to life, and a duty to investigate all deaths where the state is involved;⁹
- the right of every person to the enjoyment of the highest attainable standard of physical and mental health, and the requirement that steps be taken to help achieve this to the fullest possible realisation;¹⁰ and
- the obligation on states to ensure access to an effective remedy for the violation of human rights, and the requirement to make repatriation to individuals whose rights have been violated.¹¹

6.4 The committee stated that Australia owes human rights obligations to persons outside Australia over whom Australia exercises 'effective control', or who are otherwise under Australia's jurisdiction.¹² The committee also noted that, aside from exercising 'effective control', Australia could also have 'joint or concurrent

3 Refugee Convention, article 33; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), article 3.

4 International Covenant on Civil and Political Rights (ICCPR), articles 2, 6(1), and 7.

5 CAT, article 7.

6 Parliamentary Joint Committee on Human Rights (PJCHR), *Guide to Human Rights*, March 2014, pp. 13-14.

7 ICCPR, article 9.

8 ICCPR, article 9(1).

9 ICCPR, article 6(1); Second Optional Protocol to the [ICCPR] Aiming at the Abolition of the Death Penalty, article 1.

10 International Covenant on Economic Social and Cultural Rights (ICESCR), article 12.

11 ICCPR, article 2.

12 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 131.

responsibility' with another state 'in relation to conduct that occurs on the latter's territory'.¹³ It stated that, in relation to Australia's non-refoulement obligations:

[W]hile this obligation is not extraterritorial, it may involve conduct that becomes extraterritorial in the course of the transfer. For instance, if a person is present in Australian territory and then is removed from Australian territory by Australian authorities and transferred to a third state. The conduct that occurs outside of Australian territory is the extraterritorial element. The non-refoulement obligation requires Australia not to send a person who is in Australia to a country where there is a real risk that the person would face persecution...¹⁴

6.5 The committee noted that departmental officers, and human rights organisations and academics strongly disagreed as to whether or not Australia retained 'effective control' over the RPCs.¹⁵ The Office of the UN High Commissioner on Human Rights (UNHCR) submitted that the physical transfer of asylum seekers from Australia to PNG did not extinguish Australia's legal responsibility to protect them.¹⁶ Mr Daniel Webb, Director of Advocacy at the Human Rights Law Centre (HRLC), argued that 'It would defeat significantly the purpose of international human rights law if states could just do offshore things that it could not legally do onshore'.¹⁷ He submitted that Australia was not simply a link in the causal chain enabling human rights abuses to occur, but that it actively built the chain itself.¹⁸

Obligations pursuant to domestic law

6.6 The committee also heard that the Commonwealth Government owed a non-delegable duty of care under common law to ensure the safety of asylum seekers detained at the Manus RPC.¹⁹ The department provided a limited response to this matter, noting that the question was complex and was the subject of ongoing litigation.²⁰

13 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 132.

14 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 132.

15 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 133.

16 Office of the UN High Commissioner on Human Rights (UNHCR), Submission to the Legal and Constitutional Affairs References Committee, *Manus RPC*, December 2014, *Submission 21*, p. 1.

17 Mr Daniel Webb, Director of Advocacy (DA), Human Rights Law Centre, (HRLC), *Committee Hansard*, 12 July 2014, p. 59.

18 Mr Daniel Webb, DA, HRLC, *Committee Hansard*, 12 July 2014, p. 59.

19 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 143.

20 DIBP, answers to questions taken on notice, 11 July 2014 (received 17 September 2014).

The findings of previous committees in relation to Australia's obligations

6.7 In December 2014, the committee concluded that:

...the degree of involvement by the Australian Government in the establishment, use, operation and provision of total funding for the centre clearly satisfies the test of effective control in international law, and the government's ongoing refusal to concede this point displays a denial of Australia's international obligations.²¹

6.8 It found that, as the 'architect' of the offshore processing arrangement with PNG, the Australian Government had a 'clear and compelling moral obligation' to ensure that asylum seekers held on Manus Island were treated in accordance with principles and minimum standards according to international law.²² Additionally, the committee found that Australia did owe duty of care responsibilities under Australian law, and urged the Commonwealth to 'urgently address any potential breaches of this duty of care'.²³

6.9 The Select Committee on Recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru (select committee), likewise concluded in August 2015, that:

- Australia held obligations under both international and domestic law, as well as responsibilities pursuant to the relevant Memorandum of Understanding (MOU) between Australia and Nauru, in relation to the care of asylum seekers at the Nauru RPC;²⁴
- there is a strong argument that the primary obligation to protect the human rights of asylum seekers in Nauru rests with Australia and, at a minimum, Australia holds joint obligations with the Government of Nauru in this regard;²⁵ and
- the Australian Government needed to 'intensify its efforts to achieve a genuine regional framework for irregular migration and processing of asylum seekers'.²⁶

6.10 The select committee found that:

21 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 151.

22 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 151.

23 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 152.

24 Select Committee on recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru (Select Committee), *Taking responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru ('Nauru RPC')*, August 2015, p. 121.

25 Select Committee, *Nauru RPC*, August 2015, p. 121.

26 Select Committee, *Nauru RPC*, August 2015, p. 123.

The Government of Australia's purported reliance on the sovereign and legal system on Nauru in the face of allegations of human rights abuses and serious crimes at the RPC is a cynical and unjustifiable attempt to avoid accountability for a situation created by this country.²⁷

6.11 The committee also commented on the apparent lack of oversight of RPC contractors, and a disconnect between what the department was aware of on one hand, and what the contractors were aware of on the other, including in the case of extremely important video footage of a riot in the RPC.²⁸ It found that the Nauru RPC was 'not run well, nor [were] Wilson Security and Transfield Services properly accountable to the Commonwealth despite the significant investment in their services'.²⁹

Statements made by the department in relation to a duty of care

6.12 The department presented arguments to this committee about Australia's obligations pursuant to international law, Australia's obligations pursuant to domestic law, and when and how Australia may owe a duty of care in relation to refugees and asylum seekers in Nauru and PNG.

Obligations pursuant to international law

6.13 In relation to Australia's obligations under international law, the department noted that Australia is a party to a number of international treaties.³⁰ It submitted that 'Under those treaties, Australia has certain obligations **to all persons within its jurisdiction**',³¹ and argued that 'Australia's international obligations apply only to those who are within its jurisdiction'.³²

6.14 The department advised that a key relevant obligation pursuant to international law is non-refoulement, or the requirement to not send a person back to a country where they would be a real risk of persecution of other types of harm (such as the death penalty or torture). The department argued that Australia is protected from any breach of its non-refoulement obligations in two ways: first by virtue of the MOUs signed with the Governments of Nauru and PNG, and second by the conduct of 'pre-transfer assessments' to all persons liable to be transferred to an RPC.³³

6.15 The department submitted that, by virtue of the 'assurances' contained within the MOUs between Australia and the Governments of Nauru and PNG, Australia is protected from any breach of its non-refoulement obligation because they limit the

27 Select Committee, *Nauru RPC*, August 2015, p. 122.

28 Select Committee, *Nauru RPC*, August 2015, pp. 124-125.

29 Select Committee, *Nauru RPC*, August 2015, p. 125.

30 DIBP, *Submission 23*, p. 18 (our emphasis).

31 DIBP, *Submission 23*, p. 18.

32 DIBP, *Submission 23*, p. 19.

33 DIBP, *Submission 23*, pp. 18-19.

risk that a regional processing country will itself refoule an asylum seeker.³⁴ It explained that these MOUs contain assurances that asylum seekers will:

- be treated with dignity;
- not be expelled or returned to another country where their life or freedom would be threatened;
- be provided with a Refugee Status Determination (RSD) assessment; and
- not be sent to another country where there is a real risk of being subjected to torture, cruel, inhuman, or degrading treatment or punishment, arbitrary deprivation of life or the imposition of the death penalty.³⁵

6.16 The department explained that its 'pre-transfer assessments' ensure that Australia does not breach its non-refoulement obligations because they consider whether 'appropriate support and services' are available in a regional processing country, and confirm there is no barrier to the transfer occurring (for example, the absence of non-refoulement obligations).³⁶

6.17 The department also highlighted that Nauru and PNG are party to a number of international treaties, including the Refugee Convention, and Convention on the Rights of the Child (CRC). It noted that PNG is a party to the ICCPR, which Nauru has signed but is yet to ratify, and that Nauru is a party to the CAT.³⁷

6.18 In relation to the allegations by some submitters that the detention of asylum seekers in Nauru and PNG constitutes torture pursuant to international law,³⁸ the department stated that this did not constitute torture.³⁹

Obligations pursuant to domestic law

6.19 The department submitted to the committee that it has a duty of care to asylum seekers and refugees, but only within a 'tightly defined activity' pursuant to a contract to provide services to those refugees and asylum seekers:

...within a larger framework of responsibility in which we are not legally, jurisdictionally responsible, there are a number of specified activities, which are enumerated in intergovernmental agreements and contracts,

34 DIBP, *Submission 23*, p. 19.

35 DIBP, *Submission 23*, p. 19.

36 DIBP, *Submission 23*, p. 19.

37 DIBP, *Submission 23*, p. 19.

38 Amnesty International, *Submission 6*, p. 3; Dr Anna Neistat, Senior Director of Research, Amnesty International, *Committee Hansard*, Wednesday 15 March 2017, pp. 5-6; Ms Tracie Aylmer, *Submission 10*, p. 2; Ms Jessica Bloom, *Submission 14*, p. 2; Australian Lawyers Alliance (ALA), *Submission 24*, p. 12; Australia Council for International Development (ACFID), *Submission 45*, p. 3; and Ms Laura Sawtell, *Submission 52*, p. 1.

39 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, Monday 20 March 2017, p. 19.

whereby the Commonwealth delivers services principally through its contractors.⁴⁰

6.20 The department used the example of the provision of food to refugees and asylum seekers:

If the Commonwealth contracts anywhere for the provision of food to people, and that food makes them crook, in relation to that activity, pursuant to that undertaking, you have got a reasonably practicable duty to do everything within your directly contracted powers...

If the contract says we will provide garrison services and within garrison services we will provide a meal service then we cannot walk away and say, 'Well, bugger the quality of the food; if it poisons people, so be it.' We have a duty of care in relation to that very tightly defined activity.⁴¹

6.21 The department submitted that while it has a primary duty of care in relation to delivering food to people, this does not constitute 'running the centre'.⁴² The department characterised its duty of care as one which related to a 'very tightly defined scope of activities', which required the department to conduct themselves in a 'diligent, safe and...statutorily defensible manner'.⁴³

6.22 The committee asked the department what the duty of care owed by the Governments of Nauru and PNG towards refugees and asylum seekers required them to do, and what the relevant standard of care would be. The committee also asked how those governments would discharge such a duty of care when they do not have legal control over the services and amenities provided to RPC occupants (including food, water, clothing, shelter, medical services, and security services). The department responded that the 'nature or scope of a duty of care in this context is a complex legal question involving consideration of foreign laws', and submitted that this would normally entail judicial evaluation.⁴⁴ The department argued that it provides support and assistance to the Governments of Nauru and PNG, and that this assistance 'does not detract from or limit the ultimate control exercised by relevant authorities in these countries' in relation to RPCs.⁴⁵

Current claims against the Commonwealth

6.23 As stated above, the department submitted that it would only owe a duty of care to asylum seekers and refugees in Nauru and PNG in relation to tightly defined and discrete activities associated with the operation of the RPCs, and argued that Australia continues to meet its obligations pursuant to international law.

40 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, Monday 20 March 2017, p. 18.

41 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, Monday 20 March 2017, p. 18.

42 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, Monday 20 March 2017, p. 18.

43 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, Monday 20 March 2017, p. 19.

44 DIBP, response to questions on notice, 31 March 2017 (received 14 April 2017).

45 DIBP, response to questions on notice, 31 March 2017 (received 14 April 2017).

6.24 However, the committee noted that there are a number of claims which argue that this is not the case. A class action is currently on foot in relation to the Manus RPC, and several submissions have been made to the Prosecutor for the International Criminal Court (ICC) arguing that the Australian Government has engaged in crimes against humanity through the operation of its RPCs.

Class action in relation to the Manus RPC

6.25 In December 2014, Mr Majid Karami Kamasae brought a class action against the Commonwealth of Australia, G4S Australia Pty Ltd and Broadspectrum (Australia) Pty Ltd in the Supreme Court of Victoria.⁴⁶ The claim in this matter is negligence, pursuant to tort law.

6.26 The first statement of claim, filed in December 2014, alleged that the three defendants were negligent in the provision of food, water, accommodation, health care services, and security to persons held there between 21 November 2012 and 19 December 2014.⁴⁷ On 1 August 2016 an amended statement of claim was filed, including an additional allegation that the defendants had falsely imprisoned detainees at the Manus RPC between 21 November 2012 and 12 May 2016.

6.27 The amended statement of claim submits that in the period during which G4S was contracted to provide services at the Manus RPC, and later when Transfield Services (later known as Broadspectrum) was contracted to provide services:

- (a) the Commonwealth of Australia was in control of the Manus RPC;⁴⁸
- (b) the Commonwealth of Australia, directly and through its agents and contractors, owed a non-delegable duty;⁴⁹
- (c) this duty of care required it to take reasonable care to avoid foreseeable harm to detainees at the Manus RPC;⁵⁰
- (d) those foreseeable risks of harm arose from prolonged detention in difficult conditions, delayed remediation work, and a reliance on the local PNG police for international security;⁵¹
- (e) the Commonwealth of Australia breached that duty of care in relation to the provision of food and water, shelter and accommodation, health care treatment, internal security, and external security;⁵² and

46 *Kamasae v Commonwealth of Australia & Ors*.

47 Slater and Gordon Lawyers, *Manus Island Class Action*, www.slatergordon.com.au/class-actions/current-class-actions/manus-island-class-action (accessed 22 March 2017).

48 Third Amended Statement of Claim, 1 August 2016, p. 16.

49 Third Amended Statement of Claim, 1 August 2016, pp. 24; 41-41; 100; 113.

50 Third Amended Statement of Claim, 1 August 2016, pp. 29-30; 105-106.

51 Third Amended Statement of Claim, 1 August 2016, pp. 30-40; 107-114.

52 Third Amended Statement of Claim, 1 August 2016, pp. 44-79; 115-139.

- (f) there was a causal connection between that failure, and harm which the plaintiffs experienced.⁵³

6.28 The plaintiffs claim both exemplary and aggravated damages in relation to this alleged negligence.⁵⁴ Exemplary damages are a class of damages which focus on the conduct of a defendant rather than the loss of a plaintiff, and are intended to punish the defendant and deter similar future conduct.⁵⁵ Aggravated damages may be awarded 'when the harm done to [a plaintiff] by a wrongful act was aggravated by the manner in which the act was done'.⁵⁶

6.29 An application in relation to this matter was heard before Justice McDonald of the Supreme Court of Victoria on Wednesday 22 March 2017.⁵⁷ At the date of this report, this matter is ongoing.

Submissions to the International Criminal Court

6.30 Several submissions have been made to the Office of the Prosecutor of the ICC requesting that Australia be investigated for crimes under international law.

6.31 The ICC is a permanent institution which exists to complement national criminal jurisdictions.⁵⁸ The *Rome Statute of the International Court 1951* (the Rome Statute), which establishes the ICC, provides that a case will be inadmissible before the court if it is being investigated or prosecuted by a State with jurisdiction over the case, unless the State is 'unwilling or unable genuinely to carry out the investigation or prosecution'.⁵⁹

Submission from Mr Andrew Wilkie MP

6.32 On 23 January 2015, Mr Andrew Wilkie MP wrote to the ICC requesting that Australia be prosecuted for crimes against humanity pursuant to the Rome Statute, the Refugee Convention, the ICCPR, and the CRC.⁶⁰ Mr Wilkie highlighted the following issues in relation to RPC operation:

- deprivation of liberty in extreme physical conditions, including indefinite detention and the separation of families;⁶¹

53 Third Amended Statement of Claim, 1 August 2016, pp. 86-91; 139-141.

54 Third Amended Statement of Claim, 1 August 2016, pp. 79-86; 146.

55 *Xl Petroleum (NSW) Pty Ltd v Caltex Oil (Australia) Pty Ltd* [1985] HCA 12, 471 (per Justice Brennan).

56 *Uren v John Fairfax & Sons* (1966) 117 CLR 118, 149 (per Justice Windeyer).

57 Supreme Court of Victoria, Supreme Court List for Wednesday 22 March 2017, p. 4.

58 *Rome Statute of the International Criminal Court* ('Rome Statute'), 1951, article 1.

59 *Rome Statute*, article 17(1)(a).

60 Mr Andrew Wilkie MP, *Communique for the Office of the Prosecutor regarding Mr Andrew Wilkie's MP's application relating to crimes against humanity in Australia* ('Comminque'), 23 January 2015, <http://andrewwilkie.org/wp-content/uploads/2015/10/Brief-for-the-ICC-OTP-CR-322-14.pdf>.

61 Mr Andrew Wilkie MP, *Communique*, 23 January 2015, p. 6.

- the forcible transfer of asylum seekers to foreign detention facilities;⁶² and
- intentional acts causing great suffering and serious injury by means of inhuman conditions in detention;⁶³

Submission from Mr Julian Burnside and others

6.33 On 11 November 2016 a consortium of international lawyers, including Mr Julian Burnside AO QC, also requested that the Prosecutor of the ICC take action against Australia in relation to crimes against humanity.⁶⁴ The consortium submitted to the Prosecutor that they had provided sufficient evidence to warrant a preliminary investigation, and that the ICC was well-placed to investigate this matter because, as the Prosecutor of the ICC has stated:

Where national systems remain inactive or are otherwise unwilling or unable to genuinely investigate and prosecute, the ICC must fill the gap left by the failure of States to satisfy their duty.⁶⁵

6.34 The consortium argued that successive Australian Governments had contravened the Rome Statute by instituting a system of indefinite mandatory offshore detention, and the forcible removal of asylum seekers to Nauru and PNG.⁶⁶

6.35 In addition, the consortium posited that international case law supports the argument that Australia has control of the RPCs.⁶⁷ They argued that the Commonwealth has 'effective control' of the RPCs because the relevant conduct would have not occurred 'but for' Australia's involvement. They also argued that the circumstances would also constitute 'de facto control' pursuant to legal precedent, as well as satisfying the test of 'total and exclusive de facto, and subsequently also de jure control'.

Submission from a further group of lawyers

6.36 On 13 February 2017, another group of lawyers submitted a communique to the Prosecutor of the ICC requesting that the Prosecutor investigate the Australian

62 Mr Andrew Wilkie MP, *Communique*, 23 January 2015, p. 7.

63 Mr Andrew Wilkie MP, *Communique*, 23 January 2015, pp. 8-9.

64 Mr Courtenay Barklem, Mr Tony Fisher, Professor Bill Bowring, Ms Mary Johnson, Mr Julian Burnside AO QC, Mr Oliver Kidd and Ms Alison Battisson, *In the matter of a prosecution of the Australian Government in relation to indefinite detention and forcible removal of asylum seekers ('Prosecution of the Australian Government')*, November 2016, www.julianburnside.com.au/whatsinside/uploads/2016/11/Communique%C3%A9-to-ICC.pdf (accessed 20 March 2017).

65 The Office of the Prosecutor, *Policy Paper on Preliminary Investigations*, November 2013, p. 23, https://www.icc-cpi.int/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf (accessed 20 March 2017).

66 *Prosecution of the Australian Government*, November 2016, p. 6.

67 *Prosecution of the Australian Government*, November 2016, pp. 13-14.

Government for crimes against humanity.⁶⁸ The communique argued that Australia's immigration detention policy breaches Article 7 of the Rome Statute because it constitutes a widespread and systematic attack directed at a vulnerable civilian population, involving acts of legislative, administrative and physical violence.⁶⁹

6.37 The authors further argued that the Australian Government (and its agents) have imprisoned a civilian population in contravention of the right to be free from arbitrary detention, as defined under Article 9 of the ICCPR, and as interpreted by the UN Human Rights Committee.⁷⁰ They highlighted guidance provided by the Committee in relation to 'arbitrary detention' in the context of immigration detention:

...a detention may be authorized by domestic law and nonetheless be arbitrary. The notion of 'arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. Detention in the course of proceedings for the control of immigration is not arbitrary per se, but the detention must be justified as reasonable, necessary and proportionate in light of the circumstances and reassessed as it extends in time. Asylum seekers who unlawfully enter a State party's territory may be detained for a brief initial period in order to document their entry, record their claims, and determine their identity if it is in doubt. To detain them further while their claims are being resolved would be arbitrary absent particular reasons specific to the individual, such as an individualized likelihood of absconding, danger of crimes against others, or risk of acts against national security. The decision must consider relevant factors case-by-case, and not be based on a mandatory rule for a broad category; must take into account less invasive means of achieving the same ends, such as reporting obligations, sureties or other conditions to prevent absconding; and must be subject to periodic reevaluation and judicial review. The decision must also take into account the mental health condition of those detained. Individuals must not be detained indefinitely on immigration control grounds if the State party is unable to carry out their expulsion. The inability of a State party to carry out the expulsion of an individual does not justify indefinite detention.⁷¹

68 Professor James Cavallaro, Ms Diala Shamas, Professor Beth Van Schaack and others, *Communique to the Office of the Prosecutor of the International Criminal Court Under Article 15 of the Rome Statute: The situation in Nauru and Manus Island: Liability for crimes against humanity in the detention of refugees and asylum seekers ('The situation in Nauru and Manus')*, 13 February 2017, <https://www-cdn.law.stanford.edu/wpcontent/uploads/2017/02/Communiq%C3%A9-to-Office-Prosecutor-IntlCrimCt-Art15RomeStat-14Feb2017.pdf> (accessed 24 March 2017).

69 Professor James Cavallaro, Ms Diala Shamas, Professor Beth Van Schaack and others, *The situation in Nauru and Manus*, 13 February 2017, pp. 59-63.

70 Professor James Cavallaro, Ms Diala Shamas, Professor Beth Van Schaack and others, *The situation in Nauru and Manus*, 13 February 2017, pp. 63-73.

71 *F.J. v Australia*, Case No. CCPR/C/116/D/2233/2013, 18 April 2016, para 10.3, [https://uploads.guim.co.uk/2016/05/17/CCPR-C-116-D-2233-2013-English-cln-auv_\(1\).pdf](https://uploads.guim.co.uk/2016/05/17/CCPR-C-116-D-2233-2013-English-cln-auv_(1).pdf) (accessed 24 March 2017).

6.38 The authors argued that this conduct constituted torture within the meaning of Article 7(1)(f) of the Rome Statute,⁷² and persecution within the meaning of Article 7(1)(g).⁷³ The authors further submitted that the Australian Government, and its agents, had contravened article 7(2)(d) of the Rome Statute by forcibly deporting individuals who were 'lawfully present' on open water at the time they were stopped, and may have been lawfully present if they were in Australian waters at the time.⁷⁴

6.39 At the date of this report, there is no publicly available information in relation to any action taken by the Office of the Prosecutor of the ICC in response to any of these submissions.

Australia's ratification of the OPCAT

6.40 On 8 February 2017 the Australian Government announced its intention to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) by the end of this year.⁷⁵ The OPCAT was adopted by a General Assembly of the UN on 18 December 2002, and entered into force on 22 June 2006.⁷⁶

6.41 The OPCAT sets out a number of general principles, establishes a 'Subcommittee on Prevention' and sets out its mandate, and lays down national preventative mechanisms. It states that:

- the objective of the OPCAT is to establish a system of regular visits by independent international and national bodies to places where people are deprived of their liberty;⁷⁷
- 'deprivation of liberty' means
...any form of detention or imprisonment or the placement of a person in a public or private custodial setting in which that person is not permitted to leave at will by order of any judicial, administrative or other authority.⁷⁸
- at a domestic level, each state will establish one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (to be known as a 'National Preventative Mechanism');⁷⁹

72 Professor James Cavallaro, Ms Diala Shamas, Professor Beth Van Schaack and others, *The situation in Nauru and Manus*, 13 February 2017, pp. 74-83.

73 Professor James Cavallaro, Ms Diala Shamas, Professor Beth Van Schaack and others, *The situation in Nauru and Manus*, 13 February 2017, pp. 92-96.

74 Professor James Cavallaro, Ms Diala Shamas, Professor Beth Van Schaack and others, *The situation in Nauru and Manus*, 13 February 2017, pp. 87-92.

75 ABC News, *OPCAT: Australia makes long-awaited pledge to ratify international torture treaty*, 9 February 2017.

76 Office of the High Commissioner for Human Rights (OHCHR), *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*.

77 OPCAT, article 1.

78 OPCAT article 4(2).

- each state party will allow visits by these mechanisms 'to any place under its jurisdiction and control where persons are or may be deprived of their liberty';⁸⁰ and
- each state party undertakes to receive the Subcommittee on Prevention and grant it access to places of detention, provide all relevant information to the Subcommittee, and encourage and facilitate contacts between the Subcommittee and its national preventative mechanisms.⁸¹

6.42 Nauru signed the CAT on 26 September 2012, and became a State Party to the OPCAT in January 2013. The Subcommittee on Prevention visited Nauru for the first time in May 2015. Subcommittee members, who visited the RPC, noted that Nauru was yet to establish a National Preventative Mechanism, and commented on the importance of doing this 'given the number of people currently being held on the island'.⁸²

6.43 PNG is yet to ratify the CAT.

Obligations of the department pursuant to the *Work Health and Safety Act 2011*

6.44 The committee received a significant body of evidence dealing with the department's responsibilities pursuant to the *Work Health and Safety Act 2011* ('WHS Act'), the capacity of Comcare to investigate alleged breaches of this Act, and alleged failures on the part of the department to report incidents which are 'notifiable' pursuant to the Act.⁸³ The committee also received evidence from Comcare, the regulator responsible for administering this Act, as to the complexity applying the legislation in a workplace outside Australia, particularly one which involves a number of subcontractors. The committee heard that the department's obligations pursuant to the WHS Act relate to RPC workers, and may extend to refugees and asylum seekers.

The WHS Act

6.45 The WHS Act establishes a national framework 'to secure the health and safety of workers and workplaces'.⁸⁴ It establishes a number of duties relating to workplaces. A 'workplace' is defined to mean a place where work is carried out for a

79 OPCAT, article 3.

80 OPCAT, article 4.

81 OPCAT, article 12.

82 OHCHR, *UN torture prevention body urges Nauru to set up detention monitoring mechanism*, 6 May 2015.

83 DIBP, *Submission 23*, p. 72; ALA, *Submission 24*; Hunter Asylum Seeker Advocacy Service (HASA), *Submission 28*; Ms Paddy McGorry and Mr Max Costello, *Submission 47*; Mr Max Costello, *Submission 48*; and Doctors for Refugees (DFR), *Submission 56*, p. 21;

84 *Work Health and Safety Act 2011*, s. 3(1).

business or undertaking, and includes any place where a worker goes, or is likely to go, while at work.⁸⁵

6.46 The WHS Act states that 'persons conducting a business or undertaking' (known as a 'PCBU') owe a primary duty of care to workers and other people.⁸⁶ A PCBU must, 'so far as is reasonably practicable', ensure that the health and safety of workers which it has engaged, or caused to be engaged while those workers are at work in the business or undertaking.⁸⁷ A PCBU must also, 'so far as is reasonably practicable', ensure that the health and safety of 'other persons' is not put at risk from work carried out as part of the business or undertaking.⁸⁸

6.47 In 2012 the NSW Industrial Relations Commission indicated that 'other persons' includes 'persons put at risk from work carried out as part of the conduct of a [PCBU]'.⁸⁹

6.48 The WHS Act states that 'reasonably practicable' means 'that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety' taking in account (among other things) the likelihood of the hazard or risk, the degree of harm which might result from the risk or hazard, and what the person concerned knew or should have known about the risk and ways of eliminating or minimising it.⁹⁰

6.49 The WHS Act imposes obligations on a PCBU. A PCBU must advise Comcare when a 'notifiable incident' has taken place 'arising out of the conduct of the business or undertaking'.⁹¹ A notifiable incident means the death of a person, a serious injury or illness of a person, or a dangerous accident.⁹² The WHS Act provides that:

- a PCBU must notify Comcare of a 'notifiable incident' immediately after becoming aware that a notifiable incident 'arising out of the conduct of the business or undertaking has occurred'.⁹³ The penalty for failing to do this is \$50,000 in the case of a body corporate and \$10,000 in the case of an individual;
- a PCBU must also keep a record of each notifiable incident for at least five years from the day the notice of the incident was given to Comcare.⁹⁴

85 *Work Health and Safety Act 2011*, s. 8.

86 *Work Health and Safety Act 2011*, s. 5.

87 *Work Health and Safety Act 2011*, s. 19(1).

88 *Work Health and Safety Act 2011*, s. 19(2).

89 *Essential Energy (ACN 37 428 185 226) and WorkCover Authority of New South Wales* [2012] NSWIRComm 83 (3 August 2012), para. 23.

90 *Work Health and Safety Act 2011*, s. 18.

91 *Work Health and Safety Act 2011*, s. 38(1).

92 *Work Health and Safety Act 2011*, s. 35.

93 *Work Health and Safety Act 2011*, s. 38(1).

94 *Work Health and Safety Act 2011*, s. 38(7).

Failure to do this carries a penalty of \$5,000 in the case of individuals and \$25,000 in the case of a body corporate; and

- a person with management or control of a workplace at which a notifiable incident has taken place must ensure, so far as is reasonably practicable, that the incident site is 'not disturbed until an inspector arrives at the site or any earlier time than an inspector directs' (noting that matters associated with a police investigation are not to be prevented by this duty).⁹⁵

6.50 The limitation period for prosecutions under the Act is two years from the time the offence first came to Comcare's attention, or one year after a coronial report, coronial inquiry or inquest ended, or other official inquiry ended.⁹⁶

6.51 Section 15.1 of the *Criminal Code* (extended geographical jurisdiction – category A) applies to an offence under the WHS Act.⁹⁷ A person does not commit an offence to which section 15.1 applies unless (among other things) the conduct constituting the alleged offence occurred:

- wholly or partly in Australia; or
- wholly or partly outside Australia and a result of the conduct occurred wholly or partly in Australia; or
- wholly outside Australia and, at the time of the alleged offence, the person was an Australia citizen or a body corporate incorporated under Australian law.⁹⁸

6.52 Comcare inspectors have a number of powers under the Act, including the power to:

- obtain information (by serving a written notice on a person requiring that person to give the regulator particular information, produce documents required, and/or appear before the person to give oral or written evidence, or produce those documents);⁹⁹
- enter a workplace;¹⁰⁰ and
- require the production of documents or answer questions.¹⁰¹

6.53 Comcare explained that the extended geographical jurisdiction outlined above does not apply to the exercise of these powers.¹⁰²

95 *Work Health and Safety Act 2011*, s. 39.

96 *Work Health and Safety Act 2011*, s. 232(1).

97 *Work Health and Safety Act 2011*, s. 12F(3).

98 *Commonwealth Criminal Code*, s. 15.1(1).

99 *Work Health and Safety Act 2011*, s. 155.

100 *Work Health and Safety Act 2011*, s. 163.

101 *Work Health and Safety Act 2011*, s. 171.

Applying the Act to Australia's RPCs

6.54 Comcare explained:

- (a) that is regards the department as a PCBU in relation to its role in Australia's RPCs;¹⁰³
- (b) that as a PCBU, the department has 'duties that extend into overseas environments',¹⁰⁴
- (c) asylum seekers and refugees in Nauru and PNG are considered 'other persons' for the purposes of the WHS Act;¹⁰⁵ and
- (d) that the department owes a duty of care to its own employees working at the RPCs, contractors, subcontractors, and other persons to ensure that they are not put at risk from work carried out as part of the undertaking.¹⁰⁶

6.55 Comcare also explained that its capacity to investigate matters at the RPCs is unclear. Acting Chief Executive Office Ms Lynette MacLean advised the committee that, although it is clear that the department is a PCBU for the purposes of the Act:

What is less clear, however, is the extent to which the DIBP owes duties, and the extent to which they have control of the operations of RPCs, particularly as they relate to detainees. Understanding the extent of these duties is complex and needs to be assessed on a case-by-case basis, as it involves relationships with foreign governments, foreign and Australian contractors, and employees of DIBP.¹⁰⁷

6.56 Ms MacLean further described the issue of who owes duties to whom, and whether a worker works for the department or a foreign government as a 'complex web', and one which requires a case-by-case analysis of individual incidents or complaints.¹⁰⁸

6.57 Comcare advised the committee that a particular incident may be a notifiable incident for the purposes of the Act, but this requires consideration of 'who has been

102 Ms Lynette MacLean, Acting Chief Executive Officer (A/CEO), Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 10.

103 Ms Lynette MacLean, A/CEO, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 11.

104 Mr Justin Napier, General Manager, Regulatory Operations Group, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 11.

105 Ms Lynette MacLean, A/CEO, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 11.

106 Mr Anthony Blucher, Senior Director, Regulatory Operations Group, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 15.

107 Ms Lynette MacLean, A/CEO, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 9.

108 Ms Lynette MacLean, A/CEO, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 11.

involved, how they were involved, what the contractual arrangements were and who was responsible for what'.¹⁰⁹ It also requires consideration of whether the alleged conduct in question [meets] the threshold for a 'notifiable incident', as defined in section 35 and explained further in section 36. Comcare explained that an incident (for example, serious mental injury or illness, or the sexual assault of a child), may meet the description of a 'notifiable incident', but this will depend on the individual circumstances of the case.¹¹⁰ Comcare explained that since both RPCs have been reclassified as being 'open centres', the questions as to whether or not a duty is enlivened, remain the same.¹¹¹

Comcare's work relating to the RPCs to date

6.58 Comcare explained that it has undertaken some work on the RPCs in Nauru and PNG, including visiting the RPCs themselves and requesting information from the department.

6.59 Comcare has visited both the Nauru and Manus RPCs three times, with the last visits taking place in 2015.¹¹² It explained that its powers did not extend extra-territorially, and so it had to seek the consent of the department in order to do so, and this consent was provided.¹¹³ Comcare also advised that since 2012, it has commenced 17 inspections at the Manus RPC, as well as 17 inspections at the Nauru RPC.¹¹⁴

6.60 Comcare inspectors conducted inspections of the Manus RPC in September and October 2014, and November 2015; and the Nauru RPC in December 2014, and November 2015.¹¹⁵ The findings and observations of these inspections include:

- Inspection of the Manus RPC, September and October 2014
 - significant mould growth on timber shower doors,¹¹⁶ and a recommendation that these doors be replaced with more mould resistant material;¹¹⁷

109 Ms Lynette MacLean, A/CEO, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 15.

110 Mr Justin Napier, General Manager, Regulatory Operations Group, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 12.

111 Mr Anthony Blucher, Senior Director, Regulatory Operations Group, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 15.

112 DIBP, *Submission 23*, p. 25.

113 Mr Anthony Blucher, Senior Director, Regulatory Operations Group, and Ms Lynette MacLean, A/CEO, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 16.

114 Mr Justin Napier, General Manager, Regulatory Operations Group, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 14.

115 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017).

116 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Manus RPC Inspector Report, 30 September 2014, p. 3.

- the approval process to have patients medically evacuated from the Manus RPC was 'convoluted' and could 'unnecessarily delay an evacuation', and a recommendation that a 'more streamlined approach with less layers would have a direct impact on providing the best care';¹¹⁸
- Inspection of the Manus RPC, October 2015
 - where a detainee was placed in the Managed Accommodation Area (MAA) Wilson Security staff were required to notify the department of any stay longer than 24 hours;¹¹⁹
 - if there is an 'imminent risk of harm', Wilson Security will discuss this with the department immediately;¹²⁰
 - the IHMS Clinic is large and well equipped;¹²¹
 - IHMS staff identified that time and uncertainty were factors impacting the mental health of detainees;¹²²
 - shower doors and floors had been replaced with non-porous materials;¹²³
 - departmental staff viewed their role on-site as 'one of capacity building and contract management';¹²⁴
 - a recommendation that Comcare inspectors return in the next 6-9 months;¹²⁵
- Inspection of the Nauru RPC, October 2014
 - mould on the tents in RPC2 and RPC3 be treated;¹²⁶

117 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Manus RPC Inspector Report, 30 September 2014, p. 1

118 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Manus RPC Inspector Report, 30 September 2014, p. 4.

119 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Manus RPC Inspector Report, 21 October 2015, p. 5.

120 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Manus RPC Inspector Report, 21 October 2015, p. 5.

121 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Manus RPC Inspector Report, 21 October 2015, p. 6.

122 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Manus RPC Inspector Report, 21 October 2015, p. 6.

123 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Manus RPC Inspector Report, 21 October 2015, p. 7.

124 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Manus RPC Inspector Report, 21 October 2015, p. 8.

125 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Manus RPC Inspector Report, 21 October 2015, p. 1.

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- consider increasing bathroom facilities;¹²⁷
 - the department consider providing information and/or advice to staff and stakeholders regarding the 'health impacts, if any, as a result of being geographically located near phosphate mining activities (short, medium and long term) and the 'altered quality, if any, of bottled water after significant sun exposure';¹²⁸
 - Inspection of the Nauru RPC, November 2015
 - A significant issues with mould and consequent damage to accommodation blocks, including severe damage to the internal linings of individual accommodation pods;¹²⁹
 - IHMS advised that there is a 'high rate of workers that IHMS do not believe have the appropriate fitness for site' and that pre-deployment screening of such staff is not being conducted appropriately;¹³⁰
 - IHMS advised that department staff at an APS 4 to 6 level were being deployed for unreasonable periods (13 weeks), and this was leading to behavioural changes in some workers, including increased alcohol consumption and fatigue;¹³¹
 - The Republic of Nauru Hospital was, at the time of the inspection, 'very basic and generally in a state of poor repair';¹³²
 - School attendance is reported to be as low as 57 per cent;¹³³
 - in relation to previous recommendation that advice be given to workers about the potential risks of working close to phosphate mining activity,

126 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Nauru RPC Inspector Report, 27 October 2014, p. 1.

127 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Nauru RPC Inspector Report, 27 October 2014, p. 1.

128 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Nauru RPC Inspector Report, 27 October 2014, p. 1.

129 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Nauru RPC Inspector Report, 15 November 2015, p. 4.

130 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Nauru RPC Inspector Report, 15 November 2015, p. 4.

131 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Nauru RPC Inspector Report, 15 November 2015, p. 5.

132 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Nauru RPC Inspector Report, 15 November 2015, p. 6.

133 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Nauru RPC Inspector Report, 15 November 2015, p. 6.

and any altered quality of bottled water, staff advised inspectors that this information is not provided in deployment preparation;¹³⁴

- the department consider providing information and/or advice to staff and stakeholders regarding the 'health impacts, if any, as a result of being geographically located near phosphate mining activities (short, medium and long term)' and the 'altered quality, if any, of bottled water after significant sun exposure';¹³⁵
- Comcare inspectors return to conduct an inspection in the next 6-9 months;¹³⁶

6.61 Comcare explained that in March 2016, it exercised its section 155 power to obtain information from the department because it was able to serve that notice at the department's headquarters in Australia.¹³⁷ Ms MacLean described the process as:

[An] ongoing dialogue, if you like, with Immigration in relation to their responsibilities as a business or undertaking of the Commonwealth. **We asked them to provide documents so we could ascertain the extent of the business or undertaking at the regional processing centres and the extent of their duties under the WHS Act, as far as reasonably practicable.** We asked for quite a breadth of material from them.¹³⁸

6.62 Comcare, which provided the committee with a copy of this notice,¹³⁹ requested a wide range of documents from the department, including copies of:

- all executed contracts, agreements, deeds or memoranda of understanding that the department entered into with all corporations, individuals and foreign States for the provision of services which refer to, affect or could reasonably be expected to relate (whether wholly or in part) to the health and safety of Transferees at all RPCs since 24 March 2014 to the date of the notice;
- all documents, which refer to, affect, or could reasonably be expected to relate (whether wholly or in part) to the health and safety of Transferees, relating to the establishment and operation of the Joint Committee for the practical arrangements required to implement the Nauru and PNG Memorandums of Understanding, including sub-committees relevant to health and safety;

134 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Nauru RPC Inspector Report, 15 November 2015, p. 9.

135 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Nauru RPC Inspector Report, 15 November 2015, p. 1.

136 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017), Comcare Nauru RPC Inspector Report, 15 November 2015, p. 1.

137 Mr Anthony Blucher, Senior Director, Regulatory Operations Group, Comcare, *Committee Hansard*, Wednesday 15 March 2017, pp. 15-16.

138 Ms Lynette MacLean, A/CEO, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 12 (our emphasis).

139 Comcare, response to question on notice, Wednesday 15 March 2017 (received 21 March 2017).

- information about the day-to-day operations of the RPCs since 24 March 2014 including details of the scope of responsibilities and duties of each of the PNG and Nauruan operations managers and their respective duty managers; and details of the roles and responsibilities of the department's employees;
- any complaints processes that employees of the department and contract service provider employees were expected to follow;
- any risk assessments relating to the risk of serious psychological illnesses to Transferees, or the risk of rape, assault, sexual assault or sexual harassment to Transferees;
- any work health and safety plans, and any documents associated with their development (including meeting minutes);
- any documents which set out or demonstrate the existing policy framework for identifying, reporting, responding to, mitigating and/or preventing incidents of sexual and other physical assault at the RPCs; and
- any documents relating to the development of, and content of, any child protection framework (however described) within the RPCs.

6.63 Comcare explained that the department has provided information in response, but 'there were gaps in the information which prevent [Comcare] from finding a definitive view of where some duties lie or do not lie'.¹⁴⁰

6.64 Comcare advised that it had received the following notifications of 'notifiable incidents'.¹⁴¹

Year	Nauru RPC	Manus RPC
2012-2013	0	1
2013-2014	7	8
2014-2015	13	17
2015-16	9	6
2016-2017 (year to date)	2	4

6.65 Comcare explained to the committee that it can access material from a range of sources in relation to potential notifiable incidents at the RPCs, and that 'having establishing that threshold question...about the jurisdiction', would make inquiries in

140 Mr Anthony Blucher, Senior Director, Regulatory Operations Group, and Ms Lynette MacLean, A/CEO, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 12.

141 Comcare, *Committee Hansard*, Wednesday 15 March 2017, pp. 13-14.

relation to that intelligence.¹⁴² It clarified that notifiable incidents are just one of several triggers for Comcare to commence an inspection.¹⁴³

6.66 Mr Justin Napier of Comcare explained that its approach to the application of the Act to the department, in relation to the RPCs has been:

...to establish whether, and the extent to which, DIBP has duties to detainees. Having established that threshold question, we issued the 155 notice. We have assessed that, we have sought legal advice and we are in a position, now that we have clarity as to whether the act extends to the risks related to detention...which we have established now—to ask those questions and seek further information.¹⁴⁴

6.67 Ms MacLean explained that, at this point, Comcare cannot be satisfied that all notifiable incidents have been reported to Comcare, or that the department or any of its contractors may or may not be in breach of the WHS Act.¹⁴⁵

6.68 Comcare explained that it plans to conduct a further visit to the Nauru and Manus RPCs, but is yet to establish either the scope or terms of reference in relation to this proposed visit.¹⁴⁶

6.69 Comcare explained that it, in its view, the section 232 period of limitation (of two years) for offences under the WHS Act, does not commence until Comcare is in possession of sufficient facts so as to make a determination.¹⁴⁷ It confirmed that it does not regard itself to be in such a position and, as such, does not believe that the limitation period 'clock' has started counting down.

142 Mr Justin Napier, General Manager, Regulatory Operations Group, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 19.

143 Mr Justin Napier, General Manager, Regulatory Operations Group, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 14.

144 Mr Justin Napier, General Manager, Regulatory Operations Group, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 20.

145 Ms Lynette MacLean, A/CEO, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 20.

146 Ms Lynette MacLean, A/CEO, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 19.

147 Ms Lynette MacLean, A/CEO, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 13.

Chapter 7

Committee views and recommendations

7.1 Matters documented in this report were referred to the committee on 12 September 2016, four months after the previous inquiry into these matters lapsed with the dissolution of both houses of Parliament on 9 May 2016.¹ That inquiry was also preceded by two other inquiries into matters related to the Nauru Regional Processing Centre (RPC), and with specific incidents at the Manus RPC.

7.2 Throughout this inquiry, this committee has reflected on the findings made during previous inquiries. Overall, those inquiries found that the RPC environments were unsafe generally—particularly for children—and regarded the mechanisms by which incidents were reported and investigated, to be inadequate.

7.3 In the committee's view, the Department of Immigration and Border Protection (the department) bears the onus of demonstrating that issues of concern identified by previous committees have been addressed. The committee does not believe that the department has done this. Rather, the evidence presented to this inquiry indicates that many of the problems identified during previous inquiries continue today, and that the re-classification of the RPCs as 'open centres' has in fact exposed refugees and asylum seekers to new risks. The evidence has also clearly demonstrated that the department has failed to implement a system of accountability among its contractors and sub-contractors.

The provision of information to this inquiry

7.4 As explained throughout this report, the normal processes by which this committee would conduct its inquiry have been frustrated. The committee has been charged with inquiring into matters which are taking place in foreign nations. The committee does not have the power to meet as a committee outside Australia, and was therefore unable to travel to the RPCs to make an assessment of the conditions, and to meet with the refugees and asylum seekers being directly affected by offshore processing.

7.5 The committee noted, as have previous committees, that individuals located outside Australia do not enjoy the protection of parliamentary privilege in relation to the provision of evidence. The effect of this was that if the committee were to accept and publish information provided by a person outside Australia, that person could be disadvantaged by that evidence, and the Senate would be powerless to assist them.

7.6 These issues were compounded by the fact that other would-be scrutineers including various UN rapporteurs, human rights organisations, journalists, and advocates, likewise face a number of structural barriers to entering either Nauru or PNG, and would then have to obtain permission to enter the RPCs themselves. The

1 Legal and Constitutional Affairs References Committee, *Conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea ('Nauru and Manus RPCs')*, 5 May 2016.

result has been that any recent or current evidence from these other sources, of which the committee could take note, was extremely limited. It also led to criticism by the department of many such accounts by human rights organisations about their failure to verify information, or the use of out of date images.²

7.7 The committee relied heavily on the willingness of the department (in particular) to provide thorough and transparent evidence about the running of Australia's RPCs. Viewed as a whole, this assistance was not provided. The committee is disappointed at the standard of assistance provided by the department through the course of this inquiry. This was particularly the case in relation to responses provided to questions either taken by the department on notice, or put on notice in writing. Many of these responses were obstructive. Examples of such responses were outlined in Chapter 3 of this report.

7.8 The committee also noted that some of the information provided by the department could itself be viewed as a misleading representation of the RPCs. This was particularly evident in the case of images of the Nauru RPC, which the department provided to the committee on 16 February 2017.³ The department stated that it provided these images, taken in August 2016, 'in light of some recent media reporting featuring outdated vision of defunct and superseded facilities'. These included images of the 'Nauru Hard-Walled Accommodation Anujo Settlement Site'. There were no images of any tented accommodation at the Nauru RPC. The committee is aware, however, that when those photographs were taken people were still living in vinyl tents on Nauru. The department's own submission also acknowledges that tents are still being utilised (because they need to be sprayed each month to assist in pest and vermin control).⁴ The department provided the committee with more than 100 images (still shots taken from video footage), including 12 images of Nauru RPC staff accommodation, but no footage showing the state of tent accommodation at that time. The ongoing use of tented accommodation in Nauru has been a source of sustained criticism over many years, particularly in relation to the lack of privacy, and the unsuitability of these facilities in such a humid climate. The department's omission is very concerning.

7.9 The committee noted with particular concern that some of the most instructive evidence in relation to these matters came from other sources, and merely happened to be released publicly during or around the time of this inquiry. This included the

2 Amnesty International, *Submission 6*, Attachment 1, Department of Immigration and Border Protection (DIBP) response; DIBP, correspondence, *Response to the 'Forgotten Children' report by ABC's Four Corners*, March 2017.

3 DIBP, *Supplementary submission 23*.

4 DIBP, *Submission 23*, p. 52.

release of leaked incident reports known as 'the Nauru files',⁵ and two major audits of the department by the Australian National Audit Office (ANAO).⁶

The allegations of abuse, self-harm and neglect

7.10 As the Select Committee into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru (select committee) previously noted when charged with inquiries into these matters,⁷ Senate committees are not in a position to investigate the veracity of individual claims of abuse. A Senate committee is not a judicial or law enforcement body, nor does it have official powers of inquiry which extend outside Australia's jurisdiction.

7.11 This committee has, however, had the benefit of reference to the findings of previous inquiries, as well as all the evidence presented to this committee during previous inquiries, and all evidence published by other committees inquiring into these and related matters. In this way, the committee's inquiry into the actual allegations of abuse, self-harm and neglect has examined both historical allegations, and current circumstances at the RPCs and the local PNG and Nauruan communities.

7.12 Some of the evidence to which the committee had regard (including from secondary sources, and the Nauru files), are historical in nature. The incident reports included in the Nauru files, numbering more than 2000, date only to October 2015. The committee has taken into account the department's assertion that many of these incident reports were 'allegations', and not statements of fact. The committee also identified, however, that many of these reports were records made by a staff member who had witnessed an event first hand. In the committee's view, these are first-hand accounts, and represent the closest insight into day-to-day events at the Nauru RPC that this committee has had. As this report has demonstrated, many of the incident reports reflect and build on the evidence presented by secondary sources, including former RPC workers. Taken together, these incident reports paint a grim picture of life within the Nauru RPC.

7.13 Unfortunately, the committee did not have access to such detailed information in relation to the PNG RPC.

7.14 This committee agrees with the findings of previous committees in relation to the allegations of abuse, self-harm and neglect among refugees and asylum seekers in Nauru and PNG. The allegations of abuse and neglect (which have been made

5 The Guardian Australia, *the Nauru files*, <https://www.theguardian.com/news/series/nauru-files> (accessed 3 April 2017).

6 Australian National Audit Office (ANAO), *Offshore Processing Centres in Nauru and Papua New Guinea: procurement of garrison support and welfare services ('Procurement of garrison support and welfare services')*, Audit Report No. 16 2016-17; ANAO, *Offshore processing centres in Nauru and Papua New Guinea – contact management of garrison support and welfare services ('Contract management')*, ANAO Report No. 32 2016-17.

7 Select Committee into 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*, August 2015, p. 119.

publicly available) are prevalent and sustained. They indicate that refugees and asylum seekers in RPCs are living in an unsafe environment. The causal nexus between this unsafe living environment, including instances of abuse and neglect, and corresponding widespread mental health problems and self-harm, is indisputable. Furthermore, the allegations of which this and previous committees are aware are unlikely to represent the true prevalence of incidents of abuse, self-harm and neglect. This is deeply concerning.

7.15 There is also strong evidence indicating that when the RPCs became open centres, the damaging living environment has not improved, and that refugees and asylum seekers became exposed to new risks. Refugees and asylum seekers in Nauru now make up a substantial percentage of the island population. Their presence, and that of the RPC, has altered the character of Nauru. It is clear that many refugees and asylum seekers feel unwelcome and unsafe, and do not want to remain on Nauru. The committee noted in particular the extremely disturbing allegations of women being raped in Nauru, and of children being bullied and ostracised after being required to attend local schools. There are also similar accounts of abuse and bullying in the PNG community, including the well-known case of Mr Longham Sawari who was settled in Lae (PNG's second largest city) at just 21 years old, and eventually tried to break back into the RPC because of his inability to live in the community.

7.16 The committee also noted concerns about the risks of exposure to phosphate mining and cadmium in Nauru. The committee recognises that prolonged exposure to phosphate mining, and to cadmium, can harm human health. The department was alerted to the need to conduct further studies about cadmium on Nauru in 2012,⁸ as well as the need to maximise separation between sources of phosphate dust, and habitable areas.⁹ The department was also alerted to concerns about cadmium exposure on Nauru by its health services provider, International Health and Medical Services (IHMS).¹⁰ The department told the committee that the management of cadmium risks on Nauru is a matter for the Government of Nauru.¹¹ The committee disagrees. Asylum seekers and refugees are detained on Nauru because of the Government's policy and as such, the management of cadmium risks to these refugees and asylum seekers is the responsibility of the department. Given that Nauru is very small, any further research commissioned by the department into cadmium levels and phosphate exposure on Nauru would undoubtedly be relevant to the entire island population.

8 Department of Immigration and Citizenship (DIAC), *Nauru Regional Processing Centre: Environmental Due Diligence Report*, 15 November 2012, p. 49.

9 DIAC, *Nauru Regional Processing Centre: Environmental Due Diligence Report*, 15 November 2012, p. 52.

10 Dr Kalesh Seevarain, Senior Health Adviser, International Health and Medical Services (IHMS), *Committee Hansard*, Wednesday 15 March 2017, p. 50.

11 DIBP, response to question on notice, 20 March 2017 (received 4 April 2017).

Factors contributing to this abuse, self-harm and neglect

7.17 The evidence indicates that a combination of factors have contributed to the allegation of abuse, self-harm and neglect among refugees and asylum seekers in the Nauru and Manus RPCs (and the respective local communities).

A damaging living environment and a lack of autonomy

7.18 As set out above, asylum seekers and refugees still living in the Nauru and PNG RPCs live in an unsafe environment, whether due to physical harm or health (including mental health) concerns. There is also very strong evidence to indicate that although the RPCs are now 'open', and residents may leave the facilities, they continue to live in a detention-like environment. RPC residents live behind high fences, under the authority of security guards, and in overcrowded shared accommodation. RPC residents have little autonomy over their lives. They are prohibited from possessing certain items, must pass through security to re-enter the RPC; they are restricted in their access to the internet and computer facilities; and are restricted in when and what they can eat and drink. Furthermore, due to the lack of fresh water on Nauru, and the reliance on desalinated water, Nauru RPC residents have very restricted use of showers. Parents have evidently faced serious challenges in maintaining a semblance of normal family life and parental authority, as well as the daily challenge of trying to keep their children safe.

7.19 As set out above, the people who choose to leave the RPCs, or who have been housed in the local communities, also live in a challenging environment, and have limited control over their lives. This is starkly apparent in Nauru. The Nauru atoll is tiny, at just 21 square kilometres. It is an isolated island surrounded by ocean. The only way a refugee or asylum seeker can leave the island is by agreeing to be resettled in Cambodia, indicating their interest in being resettled in the USA (and then being found eligible to do so), or by agreeing to return to their country of origin. Refugees may also live in Nauru on a 20 year visa. Employment opportunities on Nauru are extremely limited (with the RPC itself being the biggest source of employment); and the health, education and child protection systems are still developing. The presence of refugees and asylum seekers in the Nauruan community has clearly not been well-received. Refugee and asylum seekers have alleged that they have been the victims of assaults, sexual assaults, theft, and property damage. Children at local Nauruan schools have likewise reported bullying, and it has been suggested that few refugee and asylum seeker children have remained at school. It has also been alleged that local authorities (especially the police), despite capacity-building efforts by Australian authorities, have not demonstrated either the capacity or propensity to investigate allegations of abuse made by refugees and asylum seekers. The evidence considered by the committee strongly indicates that refugees and asylum seekers in Nauru feel unwelcome, and live in fear of their personal safety. On such a small island, and with limited confidence in local authorities to protect them, this is an unacceptable situation.

7.20 In the case of PNG, refugees who have left the RPC can only settle in PNG, express interest in the US resettlement arrangement, or agree to return to their country of origin. Very few refugees have agreed to settle in PNG, and the committee notes that some of those few have been reported to have faced serious challenges, with some becoming homeless.

A complicated and inadequate health care delivery system

7.21 The mechanisms by which health care services are provided to refugees and asylum seekers in the Nauru RPC, the Nauru community, the PNG RPC, and the PNG community, are extremely complicated. The manner in which an individual can access medical services will depend on their location and their status as either a refugee or asylum seeker. The health care services which are immediately available to refugees and asylum seekers in Nauru and PNG are limited: IHMS is contracted to provide only a particular range of medical services; and both Nauru and PNG have developing health care systems and limited health care infrastructure.

Complex medical transfer approvals process

7.22 The process by which an individual may be transferred for medical treatment is complex and confusing. The department's evidence in relation to the numbers of medical transfers, while limited, indicates that medical transfers are not uncommon. The department explained that from 1 July 2015 to 30 September 2016, 171 medical transfers from Nauru to Port Moresby had taken place.¹² It advised that from 1 January to 30 September 2016, five children had been transferred to Australia, and four to PNG, for health reasons.¹³ At 28 March 2017, the department advised that four people had been evacuated to Australia as a result of contracting Dengue Fever.¹⁴

7.23 The department stated that the decision to transfer asylum seekers or refugees settled in the community of either Nauru or PNG for medical reasons is undertaken in consultation with either the Government of Nauru or PNG.¹⁵ The department explained that in the case of asylum seekers IHMS will also be consulted. In the case of refugees settled in a local community the relevant local hospital or health services provider will be consulted.

7.24 The department explained that, upon receipt of a request for the transfer of an individual for medical treatment, the department would need to establish where the required treatment could occur, whether this be in Port Moresby, another third country or Australia.¹⁶ The department stated that the Government of Nauru does not provide

12 DIBP, *Submission 23*, p. 53.

13 DIBP, response to question on notice, 11 November 2016 (received 25 November 2016).

14 DIBP, response to written question on notice, 28 March 2017 (received 7 April 2017).

15 DIBP, response to question on notice, 8 February 2017 (received 3 March 2017).

16 Ms Cheryl-Anne Moy, Acting Deputy Commissioner Support, DIBP, *Committee Hansard*, Wednesday 8 February 2017, p. 16.

it with clinical timeframes for the treatment of refugees, but that it would advise the department of 'urgent cases'.¹⁷

7.25 The department explained that where IHMS has requested that an asylum seeker be transferred to Australia for medical treatment it will, in consultation with the local government,¹⁸ put this request to the department, which will then review the request to check whether the advice from IHMS is supported by 'appropriate specialist opinion', and that the relevant medical services would not be available offshore.¹⁹ The department explained that if it did decide to transfer an individual to Australia it would also have to locate an Australian hospital to accept them.²⁰

7.26 The department's evidence in relation to the decision to permit a patient to travel to Australia was confusing. The department advised the committee that a department staff member would never override a clinician's recommendation, and characterised the medical transfer process as one in which the clinician makes a 'decision' about medical treatment, and the department would merely 'effect that transfer'.²¹ However, the department also characterised a request for medical transfer of a patient to Australia as a request which would be considered by the department in a 'committee-style format'; and the committee would put a recommendation to the Assistant Commissioner of Detention, Compliance and Removals, who would decide whether that person could come to Australia.²² The committee noted the serious concerns from medical organisations in Australia about this non-medical interference in medical decision-making about refugees and asylum seekers.

7.27 While the department did not provide the committee with information about individual cases, the committee is very concerned that some clinical recommendations for medical transfer have not been actioned within a clinically recommended timeframe. This frustrates the work of health care providers in PNG and Nauru, which cannot override or bypass that departmental approval process. In some instances it may even compromise their professional medical ethics.

7.28 The death of Mr Hamid Khazaei in 2014 is a clear example of the department's medical approval process failing patients. The publicly available evidence presented to the Queensland Coroner in the investigation of this death, to date, suggests that the department did not respond to the request for medical transfer of Mr Khazaei fast enough, and that the department's five-layer internal bureaucratic

17 DIBP, response to question on notice, 20 March 2017 (received 4 April 2017).

18 Mr Kingsley Woodford-Smith, Assistant Commissioner, Detention, Compliance and Removals Division, DIBP, *Committee Hansard*, Wednesday 8 February 2017, p. 11.

19 DIBP, response to question on notice, 11 November 2016 (received 25 November 2016).

20 Ms Cheryl-Anne Moy, Acting Deputy Commissioner Support, DIBP, *Committee Hansard*, Wednesday 8 February 2017, p. 17.

21 Ms Cheryl-Anne Moy, Acting Deputy Commissioner Support, DIBP, *Committee Hansard*, Wednesday 8 February 2017, p. 16.

22 Mr Kingsley Woodford-Smith, Assistant Commissioner, Detention, Compliance and Removals Division, DIBP, *Committee Hansard*, Wednesday 8 February 2017, p. 11.

approvals process (of staff members with no medical training) exacerbated the delay in evacuating Mr Khazaei to a hospital. The evidence presented to the coroner also indicates that the hospital in Port Moresby was not prepared for Mr Khazaei's arrival, and did not provide him with sufficient care.

7.29 More recently, the death of Mr Faysal Ishak Ahmed, of the Manus RPC, indicates that the provision of health care services within RPCs is also problematic. While the department advised that Mr Ishak Ahmed was evacuated from Manus Island swiftly, the fall which appears to have contributed to his death took place after Mr Ishak Ahmed had attended the Manus RPC IHMS clinic multiple times over the previous weeks. The committee is not in a position to form any specific conclusions in relation to Mr Ishak Ahmed's death, and notes that his death is currently a matter before the Queensland Coroner. What is readily apparent is that Mr Ishak Ahmed died following ongoing health concerns, in relation to which he repeatedly sought assistance from IHMS.

7.30 While it appears that the department has, following the death of Mr Khazaei in 2014, made some improvements in speeding up the medical transfer process for refugees and asylum seekers, the processes around determining the provision of health care services to refugees and asylum seekers in Nauru and PNG, and whether medical transfer is required, remain inordinately complex.

Recommendation 1

7.31 The committee recommends that the Department of Immigration and Border Protection, as a matter of urgency, commission an external review of its medical transfer procedures in offshore processing centres.

Inadequate health care services

7.32 The committee was very concerned by the evidence of serious concerns from Australian medical organisations about the provision of health care services to refugees and asylum seekers in Nauru and PNG. A number of medical organisations suggested that the capacity of medical personnel to provide appropriate care in Nauru and PNG is severely affected by the remote locations of the RPCs, the limited health infrastructure, the delays in transferring people for medical treatment, and the requirement to seek departmental approval to transfer a patient.

7.33 Doctors for Refugees (DFR) provided the committee with a number of medical case studies for patients in Nauru and PNG, which identified serious shortcomings in the medical care provided to them. The case studies involving children are extremely concerning. DFR highlighted the examples of a child who was identified as potentially having a sexually transmitted disease and recommended for medical transfer, but was not transferred;²³ a young boy who was not transferred for inpatient mental health care for three months after a psychiatrist had identified a risk of suicide and the need for such treatment;²⁴ a child with a possible developmental

23 Doctors for Refugees (DFR), *Submission 56*, p. 13.

24 DFR, *Submission 56*, pp. 10-11.

delay who was identified by a doctor as needing specialist services but who was never transferred;²⁵ and a child who broke their arm and, despite a medical officer having recommended that the child be seen by a physiotherapist, was never referred and suffered from impaired function of his dominant hand.²⁶ DFR also explained that an Australian neurosurgeon had advised that a man being held in PNG, who suffered from chronic back pain, required surgery in Australia but the man did not receive this surgery.²⁷ In a further example, a former Nauru RPC worker alleged that a woman in the RPC, having suffered from tooth aches for more than a year, was referred to a dentist who extracted the wrong tooth.²⁸

7.34 The Australian Medical Association (AMA) also provided extremely concerning examples of inadequate medical treatment among refugees and asylum seekers on Manus Island. It highlighted the case of an elderly Rohingya asylum seeker who was in the Port Moresby Hospital for seven months being treated for a condition which prevented him from standing or walking for more than a few minutes, and who subsequently had to wait 20 days for a medical appointment upon being returned to the Manus RPC.²⁹

7.35 The committee is extremely concerned by allegations that refugees and asylum seekers who had been transferred for medical treatment had been transferred back to either Nauru or PNG too quickly. The committee noted, in particular, the allegation by Amnesty International that a man who had suffered a heart attack in Nauru and was sent to Australia for treatment, was sent back to Nauru after four months and advised by on-site medical staff that he should not have been returned because he required specialist treatment which they could not provide.³⁰ Amnesty International alleged that the man suffered a further heart attack on Nauru.

7.36 The committee noted concerns about mental health treatment in Nauru and PNG. The committee recognised that mental health concerns among refugees and asylum seekers in Nauru and PNG are widespread, and that effective treatment options are critical. The committee noted concerns from Australian medical organisations about the provision of medication to treat mental health concerns,³¹ as well as concerns about the capacity of local medical services to address the levels of poor mental health among refugees and asylum seekers when the health care needs of local residents differ so significantly.³²

25 DFR, *Submission 56*, p. 15.

26 DFR, *Submission 56*, p. 15.

27 DFR, *Submission 56*, pp. 16-17.

28 Ms Gabriella Sutherland, *Submission 59*, p. 3.

29 Australian Medical Association (AMA), *Submission 1*, pp. 3-4.

30 Amnesty International, *Submission 6*, Attachment 1, p. 6.

31 Australian College of Mental Health Nurses (ACMHN), *Submission 41*, p. 9.

32 Royal Australian College of General Practitioners (RACGP), *Submission 17*, p. 5.

7.37 The evidence outlined above indicates clearly that the health care services being provided to refugees and asylum seekers in Nauru and PNG, including within the RPCs, need to be reviewed.

Recommendation 2

7.38 The committee recommends that the Australian Government undertake to seek advice in relation to whether improvements are required to the medical treatment options available to asylum seekers and refugees in the Republic of Nauru and Papua New Guinea, particularly mental health services.

7.39 A number of medical organisations submitted that mental health conditions would be unlikely to improve while patients were continually exposed and re-exposed to stress and uncertainty, and that ongoing detention is a significant causal factor in poor mental health. Dr Kym Jenkins of the Royal Australian and New Zealand College of Psychiatrists (RANZCP) explained that trying to treat mental illness while somebody is in this situation, 'is like trying to fill the bath with the plug out'.³³ She explained that health care practitioners cannot provide effective mental health care in a setting where people are continuously being re-traumatised and exposed to things which have poor mental health outcomes.³⁴

7.40 The committee finds long term immigration detention can be seen to have a negative impact on both physical and mental health. This situation underscores the urgency of finding suitable long term resettlement arrangements for asylum seekers. The committee believes that there needs to be a greater recognition of the long term effects of immigration detention in Manus Island and Nauru.

Recommendation 3

7.41 The committee recommends that the Australian Government recognise the impacts of long-term immigration detention, including by commissioning an independent assessment of its impacts on physical and mental health.

The department's responsibility in the provision of health care services

7.42 The department's evidence indicates that it has the final say in any decision to arrange for all medical transfers, including urgent medical evacuations. The department's repeated assertions that it merely facilitates the provision of medical services to refugees and asylum seekers is untrue. Pursuant to the Memoranda of Understanding between the Australian Government and the Governments of Nauru and PNG, Australia has agreed to bear all costs associated with the presence of the RPCs. The department makes the final decisions in relation to the provision of critical medical services. The department contracts the health care service providers at both the Manus and Nauru RPC (although the ongoing provision of services by IHMS at the Manus RPC is currently uncertain). If health care workers believe that a patient

33 Dr Kym Jenkins, President-elect, Royal Australian and New Zealand College of Psychiatrists (RANZCP), *Committee Hansard*, Tuesday 15 November 2016, p. 23.

34 Dr Kym Jenkins, President-elect, RANZCP, *Committee Hansard*, Tuesday 15 November 2016, p. 23; RANZCP, *Submission 8*, p. 10.

needs to be medically evacuated for treatment elsewhere, that request must be put to the department for approval. It is the department which arranges the provision of an Air Ambulance, and covers the costs. If health care workers assess that a patient requires specialist treatment (either on or off-site), that request has to go to the department for approval. It is the department which would facilitate the procurement of specialist services, and pay for the cost of providing any specialist services on-site. As a result, the department bears the ultimate responsibility for the provision of health care services to refugees and asylum seekers in Nauru and PNG.

7.43 The department owes all refugees and asylum seekers within the Nauru and PNG RPCs (and living in the Nauru and PNG communities) a duty of care in relation to the provision of medical services.

Inadequate investigation of notifications of abuse and self-harm

7.44 Assessing the adequacy of investigations relating to notifications of abuse and self-harm is difficult. Many of the individual allegations to which the committee had regard (particularly those contained within 'the Nauru files') are historical. The department's only advice to the committee in relation to the allegations contained within those leaked incident reports was a vague assurance that it had reviewed more than 2000 incidents reported between May 2013 and March 2016, and that 'immediate and appropriate' action had been taken in the majority of cases.³⁵

7.45 Given the many shortcomings identified by the Australian National Audit Office in relation to the department's management of contracts, its own record-keeping, and its oversight of RPC incident reports,³⁶ it would not be prudent for the committee to accept this assurance. The committee believes that an external audit and investigation specifically in relation to incident reporting at the PNG and Nauru RPCs, should be undertaken.

Recommendation 4

7.46 The committee recommends that an external audit and investigation be conducted into all incident reports over the life of the Transfield Pty Ltd and Broadspectrum Australia Pty Ltd contracts at the Manus Island and Nauru Regional Processing Centres, including an analysis of:

- (a) incidents which were downgraded in severity; and**
- (b) any inconsistencies in relation to incidents being downgraded in severity; and**
- (c) evidence of follow-up activities in relation to reported incidents.**

35 DIBP, *Submission 23*, pp. 30-31.

36 Australian National Audit Office, *Offshore processing centres in Nauru and Papua New Guinea – contact management of garrison support and welfare services*, ANAO Report No. 32 2016-17.

Barriers to scrutiny

7.47 The committee recognises that there are a number of significant barriers to the scrutiny of RPC operations. In light of the concerns which have been raised in relation to the running of the RPCs themselves, and in relation to the resettlement of refugees in Nauru and PNG, external and independent scrutiny of policies and procedures is critical.

7.48 External scrutiny, including from non-government organisations (NGOs) and the media helps to bring problems to light, as well as better enable those with the responsibility for the health and welfare of refugees and asylum seekers to meet those responsibilities.

7.49 The department should, together with the Governments of Nauru and PNG, facilitate greater access to the RPCs for media and NGOs to generate greater public confidence in the operation of the RPCs.

7.50 The committee is very troubled by the evidence of inadequate medical treatment in relation to children, as well as concerns about the safety of children within the Nauru RPC and the wider community. The committee believes that an independent children's advocate would be well placed to advocate for the rights of those children, and advise the Government in relation to improving their care and protection. The committee recognises the difficulties in relation to jurisdiction and authority, as the relevant children are being held in a foreign jurisdiction. However, the committee believes that the Australian Government should work with the Government of Nauru to establish such an advocate, and ensure that any such advocate would have the requisite independence, jurisdiction and authority to be effective in that position.

Recommendation 5

7.51 The committee recommends that the Australian Government undertake to work with the Government of the Republic of Nauru to establish an independent children's advocate who would have both the jurisdiction and authority to advocate for the rights of children being held in the Republic of Nauru.

Third country resettlement

7.52 The committee recognises that third country resettlement negotiations involve sensitive diplomatic discussions, and that the evidence provided to the committee in relation to this has necessarily been limited.

7.53 The department advised the committee that 'resettlement will always be between the relevant jurisdiction—either Nauru or PNG—and the receiving country'.³⁷ The committee disagrees with this assessment. The responsibility lies with Australia. The only third country resettlement agreement which has (to date) resulted in the resettlement of Nauru-determined refugees, is an agreement between the Australian

37 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, Tuesday 11 November 2016, p. 29.

Government and the Government of the Kingdom of Cambodia. It is an agreement under which the Government of Australia agrees to 'bear the direct costs of the settlement agreements as mutually determined between the Participants'.³⁸ The Government of Nauru is not a party to the agreement. Similarly, the United States (US) refugee resettlement arrangement is also between the governments of the US and Australia. The Australian Government must acknowledge that it has the responsibility for resettling refugees located in Nauru and PNG.

7.54 It is vital that any asylum seeker or refugee who has been transferred to Australia for medical or other reasons, or who remains in Australia pursuant to domestic legal action, be able to apply to participate in the US refugee resettlement arrangement. If individuals have been transferred for medical treatment their health could be put at risk by being transferred back to a location with less or no capacity to treat them.

Recommendation 6

7.55 The committee recommends that the Department of Immigration and Border Protection confirm publicly that any asylum seeker or refugee who has been transferred to Australia for medical or other reasons, or who remains in Australia pursuant to domestic legal action, can apply to participate in the US refugee resettlement arrangement, and that they will not need to return to either the Republic of Nauru or Papua New Guinea to do so.

7.56 The Government of New Zealand has indicated that it is prepared to resettle refugees from Manus Island and Nauru. While the Australian Government is currently negotiating a resettlement deal with the US Government, it is unclear whether this arrangement will result in the successful resettlement of any refugees. The Australian Government has a clear offer from the Government of New Zealand to facilitate resettlement. The Australian Government should give consideration to all resettlement offers. If the Government considers particular resettlement options unsuitable, it should clearly outline why this is the case.

Recommendation 7

7.57 The committee recommends that the Australian Government give serious consideration to all resettlement offers it receives, including the Government of New Zealand's offer to resettle refugees from Papua New Guinea and the Republic of Nauru. Further, if particular resettlement offers are considered unsuitable, the Government should clearly outline the reasons.

38 Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of Australia, relating to the settlement of refugees in Cambodia, <https://dfat.gov.au/international-relations/themes/people-smuggling-trafficking/Documents/cambodia-australia-mou-and-operational-guidelines.pdf> (accessed 21 February 2017).

7.58 It is important that family members are able to pursue resettlement together. Not only is the preservation of family life critical to successful resettlement, it is a basic right.³⁹ This exact scenario of family separation is one currently facing refugees and asylum seekers in Nauru and PNG. These individuals deserve to have certainty about their future together. The Australian Government needs to assure refugees and asylum seekers in this situation that they will be supported to pursue options to reunite with family members.

Recommendation 8

7.59 The committee recommends that the Australian Government give consideration to supporting refugee and asylum seeker family members to pursue options to resettle together.

Recommendation 9

7.60 The committee recommends that the Australian Government increase Australian funding to the United Nations High Commissioner for Refugees.

Recommendation 10

7.61 The committee recommends that the Australian Government commit to increasing Australia's annual refugee intake.

7.62 The committee believes that Australia must address its role in the current refugee crisis from a regional perspective. The Australian Government should undertake to work further with countries in the Asia-Pacific region to establish a regional framework for processing claims for asylum. The Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime, set down in March 2016, while related, is focused primarily on addressing the criminal element of people smuggling. It is not directed towards the needs of asylum seekers, and the question of where and how their claims for asylum can be processed.

7.63 A regional framework which does focus on assisting asylum seekers could help to address both the needs of asylum seekers in the region and beyond. An effective framework could also consequently reduce the business of people smuggling by ensuring that asylum seekers do not need to attempt to reach Australia in order to have their claim for asylum processed in a safe location.

Recommendation 11

7.64 The committee recommends that the Australian Government undertake to work with Australia's Asia-Pacific neighbours to establish a regional framework for the processing of claims for asylum.

39 International Covenant on Civil and Political Rights (ICCPR), article 23.

Obligations of the Australian Government

7.65 The web of services provided to asylum seekers and refugees is extremely complex and confusing. The evidence presented to this inquiry indicates to the committee that:

- the Australian Government has an agreement with the Government of Nauru in relation to the establishment and management of the Nauru RPC;
- the Australian Government has a separate agreement with the Government of Papua New Guinea in relation to the management of the Manus Island RPC;
- pursuant to these agreements, the Australian Government is responsible for all costs associated with the running of these RPCs;
- the department has established contractual relationships with the major service providers charged with the running of the PNG and Nauru RPCs (including Broadspectrum and IHMS);
- Broadspectrum has subsequently engaged Wilson Security as a sub-contractor, to provide security services at both the Nauru and Manus RPCs;
- Wilson Security subsequently subcontracted three local security companies in each location;
- the department provides a number of 'capacity building' services to the Government of Nauru and PNG in relation to security, health care and Refugee Status Determination;
- the department is the final decision maker in any decisions to medically transfer a refugee or asylum seeker patient from either Nauru or PNG. Such a transfer cannot take place without departmental approval, noting that the Australian Government has agreed to bear all costs associated with the running of the RPCs;
- the Australian Government has broader aid commitments to the Government of Nauru and PNG, which involve the provision of both financial support and capacity-building and development measures; and
- the Australian Government is responsible for the negotiation of third country resettlement agreements.

7.66 The committee rejects the department's assertion that it does not bear ultimate responsibility for all aspects of the operation of RPCs (and the health and welfare of the asylum seeker and refugees in PNG and Nauru) and merely funds their operation. The department has ultimate decision making power as the contracting agency, makes final decisions in relation to the provision of specialist and emergency medical treatment, and (largely as a result of its capacity building measures) is the primary source of guidance and expertise to the Governments of Nauru and PNG in relation to the management of all matters associated with the presence of refugees and asylum seekers.

7.67 The committee is concerned that the department's failure to acknowledge this control (and the duty of care flowing therefrom), and failure to implement adequate controls over the provision of services, may have exposed the department to the risk of legal action for breach of this duty of care.

7.68 It is also clear that by having located RPCs outside Australia, the Australian laws relevant to regulation of those facilities are very complicated to apply. This was most starkly apparent in the case of the *Work Health and Safety Act 2011* (WHS Act). Comcare explained clearly that, although the WHS Act does apply to the department's undertakings in Nauru and PNG (to run the RPCs), Comcare is unable to exercise its regulatory responsibilities in the manner in which it does in Australia. While offences under the Act include offences outside Australia, Comcare inspectors who could actually investigate those alleged offences cannot exercise their powers outside Australia in the absence of the consent of the department. The department has previously given this consent to Comcare, and Comcare inspectors have attended the RPCs a number of times, however it is not appropriate that a regulator should have to rely on the goodwill of the department.

7.69 The committee believes that the WHS Act should be reviewed to examine whether extraterritorial application may be applied to further sections of the Act, particularly the powers of Comcare inspectors. Comcare has explained that it is currently required to devote significant time and resources to simply establishing whether or not it has the requisite jurisdiction to investigate particular incidents. Comcare has the capacity to investigate very serious incidents, which could include suicides and serious assaults. It is vital that the WHS Act can be applied in a straightforward manner in relation to incidents within the Nauru and Manus RPCs. The lack of clarity, to date, has led to significant time delays in Comcare's investigation of such incidents. This is highly undesirable for a Commonwealth regulator.

Recommendation 12

7.70 The committee recommends that the Australian Government review the *Work Health and Safety Act 2011* to ensure that Comcare can exercise its regulatory powers in relation to Australian workplaces outside Australia's geographical jurisdiction, in a timely and straightforward manner.

Concluding comments

7.71 As this report has found, the current policy of offshore processing has proven to be deeply affected by structural complexity and shortcomings in how the centres have been managed and operated. The department, its contractors and subcontractors, and other related stakeholders, have not been able to administer the policy in a safe and transparent manner. The structure of the policy is too complex, and it relies too heavily on the private sector to administer the day-to-day management of the scheme. This structural complexity has led to an unacceptable lack of accountability and transparency, and a failure to clearly acknowledge where the duty of care in relation to those asylum seekers and refugees lies. It has also contributed to the many allegations of abuse, self-harm and neglect among refugees and asylum seekers in Nauru and PNG. The culture of secrecy surrounding Australia's RPCs has also contributed to this

lack of accountability and scrutiny. For a policy which represents such a significant investment of Australian public funds, this lack of accountability is unacceptable. The Committee notes that the centres were never intended to become long term centres of detention, but this has been the result of the Government's inability to negotiate viable third country resettlement options.

7.72 For Australia to continue facilitating the processing of claims for asylum offshore, the major faults in the policy of offshore processing must be acknowledged and rectified as a matter of urgency.

Senator Louise Pratt
Chair

Dissenting Report from Government Senators

1.1 This inquiry has been a politically-motivated public-relations stunt on the part of the Labor Party and the Greens Political Party designed to tarnish the success of the Coalition's strong border protection policies by inference and hearsay. Government Senators condemn Opposition Senators for failing to support policies which have saved lives, secured the border and restored integrity to the immigration system. Their reckless actions also put into jeopardy Australia's strong relationships with Papua New Guinea and Nauru.

1.2 The committee's majority report (the report), by the Chair's own admission, relies heavily on evidence from previous inquiries—evidence that is in many cases no longer current, no longer relevant, or has since been disproven or otherwise clarified.

1.3 The report is highly speculative and relies consistently on anecdotal evidence, second- and third-hand reports, and on unsupported allegations that are presented as fact. The report also paraphrases evidence rather than providing direct quotes and uses this technique to introduce highly emotive and pejorative language that does not reflect the true state of affairs.

1.4 The report references media stories as 'evidence' and 'reports' of alleged incidents at the RPCs. Government Senators would suggest that the Australian people deserve a higher standard of veracity from Parliamentary inquiries. If stories from a media outlet are the basis of fact for the report, then this inquiry should have been abandoned completely and permanently following the dissolution of the 44th parliament.

1.5 One of the report's key themes relates to the financial impacts of operating RPCs, and claims that the Coalition Government has failed to properly manage or report on the costs of managing Illegal Maritime Arrivals (IMAs). Government Senators are astonished by the hypocrisy of these claims. Last September's ANAO Report into Regional Processing Centres exposed the dysfunctional establishment of the Regional Processing Centres under Labor. The chaos the Labor Party and Greens Political Party unleashed on our borders placed the Department of Immigration and Border Protection (the department) under immense pressure, resulting in significant process failures in that period.

1.6 The Coalition Government is committed to maintaining Australia's border security and managing hard-working Australian's tax revenue in a responsible and effective manner. It was the Labor-Greens Rudd-Gillard-Rudd Government that opened the Regional Processing Centres on Manus Island and Nauru. It was the Labor-Greens Rudd-Gillard-Rudd Government that perpetuated the people-smuggling trade and allowed a flood of illegal arrivals to enter Australia. And it was the Labor-Greens Rudd-Gillard-Rudd Government that wasted billions of dollars on a failed and broken system. In 2013 the Coalition Government committed itself to the task of repairing this broken system and has largely succeeded at the task.

1.7 Labor and the Greens completely lost control of Australia's borders, and every Australian continues to bear the burden of their disastrous legacy. Border

agencies were restricted by budget cuts, and control of our borders was handed over to people smugglers. The integrity of our migration programme was destroyed by 50,000 illegal arrivals on more than 800 successful people smuggling ventures. Under Labor and the Greens' failed border protection policies, over 8000 children were put into detention. This included almost 2000 children at the one time. Tragically, there were at least 1200 deaths at sea due to the Labor-Greens Rudd-Gillard-Rudd Government's arrogance and complacency.

1.8 The Coalition has been diligently working to clean up this mess through Operation Sovereign Borders. The Government will not waver in its commitment to keep Australia's borders secure. Regional processing is a key component of the Government's border protection framework which has stopped the boats and therefore the deaths at sea. The Government is operating the largest and most capable maritime surveillance and response fleet Australia has ever deployed. Any people smuggling boats that attempt to reach Australia are intercepted and turned back.

1.9 Under the Coalition Government there has not been a successful boat arrival in over 980 days which has put an end to the tragic deaths of asylum seekers at sea. Having stopped the boats, the Government had set about its next task: to empty and close detention centres. The Coalition Government removed *all* children from detention and closed 17 detention centres, contributing \$3 billion to Budget savings.

1.10 Having now disrupted the criminal people smuggling syndicates and removed the children from detention, the Coalition Government is acting decisively to resolve Labor's offshore legacy: the illegal maritime arrivals in regional processing centres on Manus Island and Nauru.

1.11 A dividend of the Coalition Government's strong control over Australia's borders has been the additional intake of 12,000 refugees from conflicts in Syria and Iraq.

1.12 Australia will continue to be a leader in the permanent resettlement of refugees. The Government has committed to increasing the number of places under the Humanitarian Programme to 16,250 in 2017-18 and then 18,750 places in 2018-19.

1.13 Responsibility for the operation of Regional Processing Centres (RPCs) in Nauru and Papua New Guinea (PNG) lies with the respective Governments of those sovereign nations. The department continues to support those Governments by funding the RPCs, and providing capacity-building support to local services. Coalition Senators commend these efforts.

1.14 Coalition Senators welcome the refugee resettlement arrangement with the United States of America.

The Committee Majority's Recommendations

1.15 **Recommendation 1** of the report recommends that recommends that the department, as a matter of urgency, commission an external review of its medical transfer procedures in offshore processing centres. Government Senators do not agree with this recommendation.

1.16 A robust process is in place for the timely medical transfer of transferees and refugees requiring medical treatment that is not available in Nauru or Manus. As the department noted in its submission to the inquiry:

Transferees and refugees requiring medical treatment not available in Nauru or Manus may be transferred to another location to receive treatment. Medical transfers to Port Moresby from both Nauru and Manus are undertaken on medical advice from IHMS. The Department makes logistical travel arrangements for all medical transfer cases. Emergency evacuations are undertaken by air ambulance as a priority, whereas commercial or charter aircraft are used to transfer more routine, non-urgent cases.¹

1.17 The department's response to QON RPC002 outlines the process for transfer to Australia:

1. For those patients where transfer to Australia is recommended, the health care provider, International Health and Medical Services (IHMS) will generate a Request for Medical Movement (RMM) form which states the reason for transfer and a recommended timeframe which can range from immediate or within 24 hours for an emergency to a few months for an elective matter.
2. The Departmental clinical review checks to see that advice is supported by appropriate specialist opinion, and that the necessary services are not presently available offshore or the capability to provide the service cannot be commissioned.
3. The decision to permit a person to travel to Australia as a transitory person, under the *Migration Act 1958*, is made by the Assistant Commissioner, Detention, Compliance and Removals, based on the clinical IHMS advice and Chief Medical Officer review.²

1.18 The department provided evidence that it considers a range of complex factors when an asylum seeker is recommended for specialist care that is not available on Manus or Nauru. This includes the availability of treatment options in third countries and the capacity of service providers to deploy enhanced capability to Manus and/or Nauru to provide clinical assessment and treatment in-country.³

1.19 The department gave further evidence to the Committee at the 15 March hearing that urgent transfers are undertaken when medically necessary:

CHAIR: But, if it is very urgent, you might need something quicker than 24 hours, surely? If it is urgent, it is like calling an ambulance; it needs to be immediate.

1 Department of Immigration and Border Protection (DIBP), *Submission 23*, p. 52.

2 DIBP, response to question on notice, 11 November 2016 (received 28 November 2016).

3 DIBP, response to question on notice, 11 November 2016 (received 25 November 2016).

Mr Woodford-Smith: Yes, and we will absolutely work in whatever that time frame is. So, if IHMS says, 'This person is absolutely critical and will die without intervention,' then we will make sure that the appropriate intervention—if it is a condition or an issue that cannot be dealt with on island, then we will make sure that we are getting an immediate response to that particular incident. That is without a doubt.⁴

1.20 **Recommendation 2** of the report recommends that the Australian Government undertake to seek advice in relation to whether improvements are required to the medical treatment options available to asylum seekers and refugees in the Republic of Nauru and Papua New Guinea, particularly mental health services. Government Senators disagree with this recommendation and are of the view the provision of health services to IMAs currently in the Republic of Nauru and Papua New Guinea is conducted to a high standard.

1.21 The Australian Government, through the department, has provided over \$1 billion dollars for infrastructure projects on Manus and Nauru, including hospital facilities in Nauru, the Nauru Primary School, a Community Resource Centre on Nauru and the East Lorengau Refugee Transit Centre on Manus. This includes almost \$500 million on Manus and more than \$550 million on Nauru.

1.22 The department gave evidence that, in 2014, a new multipurpose primary and mental healthcare facility that provides 18 separate consultation rooms was constructed at RPC1 in Nauru.⁵

1.23 The department gave further evidence that, in June 2015, a new medical centre was commissioned and handed over for use as part of the Manus RPC2 enhancement works. The medical centre provides a dental unit, x-ray facility, pharmacy, six-person in-patient facility, and mental health and general practitioner consultation rooms.⁶

1.24 Health care is provided to all transferees at the RPC's, consistent with Australian public health standards, with transferee health services provided in modern clinics at the RPCs, staffed by general practitioners, registered nurses, psychologists and counsellors. Healthcare clinics are open at the RPCs seven days per week, and after-hours medical staff are able to respond to any after-hours medical emergencies.

1.25 Mental health care, including torture and trauma counselling services, is provided by the department's Health Services Provider through general practitioners, mental health nurses, psychologists, counsellors and psychiatrists. Mental health screening is routinely provided by mental health clinicians at the RPCs, in line with the screening policies in operation in Australia

4 Mr Kingsley Woodford-Smith, Assistant Commissioner, Detention, Compliance and Removals Division, DIBP, *Committee Hansard*, Wednesday 15 March 2017, p. 58.

5 DIBP, *Submission 23*, p. 46.

6 DIBP, *Submission 23*, p. 50.

1.26 **Recommendation 3** of the report recommends that the Australian Government recognise the impacts of long-term immigration detention, including by commissioning an independent assessment of its impacts on physical and mental health. Government Senators disagree with this recommendation.

1.27 Incidences of physical or mental health impacts during immigration detention are actioned on a case-by-case basis. Expending taxpayers' resources on broad-based study will not, in the view of Government Senators, add value. For such a study to yield useful data it would need to be conducted over a prohibitively wide-ranging sample of detainees, detention sites, climates, and geographical conditions. The effectiveness of the Coalition Government's border-protection scheme means that a wide-ranging sample of this kind is simply no longer in existence to be studied.

1.28 The physical and mental health care services that are provided to immigration detainees reflect the extensive nature of the Department's engagement in this area. Conducting additional expensive and lengthy studies will not add value to service-delivery.

1.29 The Government has secured several pathways for refugees to resettle in third countries, including in the United States. This is the best possible outcome for refugees on Manus and Nauru.

1.30 **Recommendation 4** of the report recommends that an external audit and investigation be conducted into all incident reports over the life of the Transfield Pty Ltd and Broadspectrum Australia Pty Ltd contracts at the Manus Island and Nauru Regional Processing Centres, including an analysis of:

- incidences which were downgraded in severity;
- any inconsistencies in relation to incidents being downgraded in severity; and
- evidence of follow-up activities in relation to reported incidents.

1.31 Government Senators do not agree with this recommendation and do not believe that further investigation is necessary.

1.32 The department gave evidence that it does not allow offences to go unreported. Within the Regional Processing Centre (RPC), where the alleged victim consents or where mandatory reporting applies, all allegations of assault are reported to the Government of Nauru for referral to the Nauru Police Force (NPF) for investigation. All residents, refugees and asylum seekers involved in incidents are encouraged and supported to report incidents to the appropriate agency.⁷

1.33 The department continues to assist and support service providers, the Government of Nauru, and local Nauruan authorities to support continuous improvement to incident response and reporting practices, including referrals for additional services or to the Nauru Police Force in cases of possible criminal wrongdoing. These continuous improvement processes have seen a significant

7 DIBP, response to questions on notice, 31 March 2017 (received 14 April 2017).

strengthening of incident response and management capabilities, including how the department tracks incidents reported to it and appropriate response actions.⁸

1.34 Current service providers are contractually required to report and record all reportable incidents to the department that occur in RPCs. The department maintains a record of all reported alleged incidents. Robust reporting protocols govern the reporting of all incidents.⁹

1.35 **Recommendation 5** of the report recommends that that the Australian Government undertake to work with the Government of the Republic of Nauru to establish an independent children's advocate who would have both the jurisdiction and authority to advocate for the rights of children being held in the Republic of Nauru. Government Senators do not agree with this recommendation.

1.36 A Commonwealth Child Advocate would not have jurisdiction to operate in the sovereign nations of Nauru and PNG, which operate the respective regional processing centres in Nauru and Manus Island.

1.37 There are existing entities with similar responsibilities to what a Child Advocate would presumably hope to achieve. For example, the Government of Nauru has established a dedicated Child Protection Unit with a staff of 6 people. The Child Protection Unit has the lead responsibility for the care and protection of children in Nauru and has established systems and processes to respond to cases of child abuse and neglect.

1.38 The Coalition Government has worked determinedly to introduce measures that ensure the safety of children. The Coalition:

- established the Moss Review in 2014;
- established the Child Protection Panel;
- establish a departmental taskforce in 2016 to support the Child Protection Panel;
- funded the deployment of five Australian Federal Police officers to Nauru to support, mentor and train NPF officers dealing with the investigation of child abuse and sexual assault claims reported to the NFP; and
- assisted the Government of Nauru (GoN) in establishing its dedicated Child Protection Unit.

1.39 In addition, current oversight of the RPCs is undertaken by the Commonwealth Ombudsman and the International Committee of the Red Cross. These organisations separately conduct regular inspection visits of the RPC, and the post-visit reports are actioned by the Australian Government and service providers as appropriate.

8 DIBP, *Submission 23*, p. 31.

9 DIBP, *Submission 23*, p. 27.

1.40 **Recommendation 6** of the report recommends that the department confirm publicly that any asylum seeker or refugee who has been transferred to Australia for medical or other reasons, or who remains in Australia pursuant to domestic legal action, can apply to participate in the USA refugee resettlement arrangement, and that they will not need to return to either the Republic of Nauru or Papua New Guinea to do so. Government Senators disagree with this recommendation because it suggests that all asylum seeker cases are identical and do not need to be assessed on their individual merits.

1.41 The Coalition Government has entered into an arrangement with the United States to support the resettlement of refugees from Nauru and Papua New Guinea.

1.42 As two of the three leading countries in global humanitarian resettlement, Australia and the US have a long history of bilateral cooperation on mutual and respective humanitarian objectives.

1.43 US authorities will conduct their own assessment of refugees to determine which refugees are eligible for resettlement in the United States. Throughout the process of this Inquiry, Opposition Senators have been intent on attempting to undermine, and ultimately de-rail, this agreement. They do not care about the best interests of those on Manus and Nauru; they only care about playing politics.

1.44 This agreement is one-off and no-one who attempts to travel to Australia illegally in the future will be resettled in the US.

1.45 The orderly resettlement of UNHCR-referred refugees from regional processing countries will take time and will not be rushed. The arrangement entered into with the United States to support the resettlement of refugees from Nauru and Papua New Guinea is progressing.

1.46 As at 30 March, more than 1,500 people have registered their interest in being considered for US resettlement. US officials, including those from the Department of Homeland Security, have visited both Nauru and Manus to collect biometrics and conduct interviews. The priority remains the resettlement of the most vulnerable refugees, with an initial focus on women, children and families.

1.47 The arrangement is supported by the United Nations High Commissioner for Refugees and the Coalition Government continues to engage with UNHCR on its implementation.

1.48 **Recommendation 7** of the report recommends that the Australian Government give serious consideration to all resettlement offers it receives, including the Government of New Zealand's offer to resettle refugees from Papua New Guinea and the Republic of Nauru. Further, if particular resettlement offers are considered unsuitable, the Government should clearly outline the reasons. Government Senators do not agree with this recommendation because its premise – that the Government does not consider all resettlement offers – is mischievous and false.

1.49 The resettlement arrangement detailed in paragraphs 3.23 to 3.30 of this Dissenting Report amply demonstrates the Coalition Government's commitment to viable resettlement options that will result in good outcomes for IMAs, and the ultimate de-commissioning of the Nauru and Manus Island RPCs.

1.50 **Recommendation 8** of the report recommends that the Australian Government give consideration to supporting refugee and asylum seeker family members to pursue options to resettle together. Government Senators do not agree with this recommendation.

1.51 The committee majority has not provided enough detail about the proposed architecture or funding of such a scheme to allow Government Senators the opportunity to make a useful assessment of its merits. Government Senators are concerned by the recommendation's use of the word '*supporting*' which could be taken to be suggesting that the Australian taxpayer should bear the cost of making satisfactory familial arrangements for persons who are not Australian citizens. Government Senators do not believe that this would be a responsible use of taxpayers' dollars and think it unlikely that the wider community would support such an idea.

1.52 **Recommendation 9** of the report recommends that the Australian Government increase Australian funding to the United Nations High Commissioner for Refugees. Government Senators do not agree with recommendation.

1.53 Government Senators would point out that this recommendation is a generalised notion about the UNHCR. Once again the committee majority have strayed from the subject matter of the Inquiry, which relates to the operation of RPCs and the experiences of the IMAs who are detained there.

1.54 The Australian government is a generous contributor to the UNHCR. In the financial year 2015-16 the Australian government contributed \$57.98 million of funding. In the 2016-17 financial year, to 31 December 2016, the Australian government has already contributed \$32.92 million.

1.55 Australia's record of support and assistance for refugees is second-to-none and Government Senators find it offensive in the extreme for the committee majority to suggest that Australia is lacking in its commitment to humanitarian aid. The Australian taxpayer already performs a disproportionate amount of the heavy-lifting when it comes to refugee intakes and resettlements. What the Australian Government – and the Australian people - will not abide, however, is lax border security, a thriving people-smuggling trade, 50,000 illegal maritime arrivals, 8000 children in detention and 1200 deaths at sea. These things are all the legacy of the Labor and Greens Rudd-Gillard-Rudd Government. It is the Coalition Government that is rectifying this mess.

1.56 **Recommendation 10** of the report recommends that the Australian Government commit to increasing Australia's annual refugee intake. Government Senators disagree with this recommendation and refer to the above statements regarding Australia's refugee intake and humanitarian commitment. Australia will continue to be a leader in the permanent resettlement of refugees.

1.57 Government senators note that the Coalition government has committed to increasing the number of places under the Humanitarian Programme to 16,250 in 2017-18 and then 18,750 places in 2018-19.

1.58 **Recommendation 11** of the report recommends that the Australian Government undertake to work with Australia's Asia-Pacific neighbours to establish a regional framework for the processing of claims for asylum. Government Senators

disagree with this recommendation on the basis that it is their view that such cooperation already exists.

1.59 Australia is a leading state actor in the fight against people smuggling and human trafficking in the region. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime is the preeminent regional forum on people smuggling and human trafficking, and is co-chaired by Australia and Indonesia. The Australian government continues to work closely with other countries in the region to disrupt people smuggling ventures and, in the process, save lives at sea and preventing vulnerable people being exploited.

1.60 **Recommendation 12** of the report recommends that the Australian Government review the *Work Health and Safety Act 2011* to ensure that Comcare can exercise its regulatory powers in relation to Australian workplaces outside Australia's geographical jurisdiction, in a timely and straightforward manner. Government Senators do not agree with this recommendation.

1.61 Government Senators are of the view that there is no need for a review of the Commonwealth *Work Health and Safety Act 2011* as recommended by the Committee. Government Senators do not consider that any evidence provided to this inquiry indicates that Comcare is not appropriately exercising its regulatory powers in relation to Australian workplaces. Furthermore, this recommendation is beyond the scope of the inquiry.

Senator the Hon Ian Macdonald
Deputy Chair

Senator David Fawcett

Additional Comments by the Australian Greens

Referral

1.1 On 12 September 2016, the Senate referred the following matters to the Legal and Constitutional Affairs References Committee for inquiry and report.

Terms of Reference

1.2 The serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre, with particular reference to:

- (a) the factors that have contributed to the abuse and self-harm alleged to have occurred;
- (b) how notifications of abuse and self-harm are investigated;
- (c) the obligations of the Commonwealth Government and contractors relating to the treatment of asylum seekers, including the provision of support, capability and capacity building to local Nauruan authorities;
- (d) the provision of support services for asylum seekers who have been alleged or been found to have been subject to abuse, neglect or self-harm in the Centres or within the community while residing in Nauru;
- (e) the role an independent children's advocate could play in ensuring the rights and interests of unaccompanied minors are protected;
- (f) the effect of Part 6 of the Australian Border Force Act 2015;
- (g) attempts by the Commonwealth Government to negotiate third country resettlement of asylum seekers and refugees;
- (h) additional measures that could be implemented to expedite third country resettlement of asylum seekers and refugees within the Centres;
- (i) any other related matters; and
- (2) the committee be granted access to all inquiry submissions and documents of the preceding committee relating to its inquiry into the conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea.¹

1 *Journals of the Senate*, No. 4, 12 September 2016, p. 129.

Executive Summary

1.3 This report comprises comments and recommendations made in addition to the Committee's majority report.

1.4 The Committee's majority report makes recommendations that would, if implemented, significantly improve conditions for detainees in Australia's offshore RPCs. However the Australian Greens believe that the preponderance of evidence presented to the committee supports a finding to close the detention facilities on Manus Island and Nauru and bring to Australia all detainees, including children born to detainees on Nauru.

1.5 The Committee heard shocking evidence from a range of submitters and witnesses of appalling and unacceptable conditions in Australia's offshore Regional Processing Centres (RPCs), and a systemic failure of the Australian government to adequately respond.

1.6 Evidence presented to the Committee confirms that the conditions in Australia's offshore RPCs amount to torture as defined in the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

1.7 Evidence presented to the Committee confirms significant levels of abuse, including sexual abuse, of detainees including children. Evidence was also presented that incident reports have been systemically downgraded, potentially to avoid financial penalties being levied on contractors.

1.8 Evidence was presented of numerous failures to meet medical recommendations for patient care, particularly regarding patient transfer.

1.9 The establishment and management of Australia's offshore RPCs are a shameful chapter in Australia's national story.

1.10 In order that adequate reparations are made, including a national apology, a Royal Commission should be held into the establishment, management and impact of Australia's offshore RPCs.

1.11 Australia's RPCs on Manus Island and Nauru are inhumane, non-compliant with Australia's international obligations, and should immediately be closed. All people there, including people currently living outside the centres, should be offered the opportunity to come to Australia immediately, provided with refugee status and offered adequate support help them try to repair the harm that has been done to them by Australia, and in Australia's name.

Recommendations

Recommendation 1

1.12 Regional Processing Centres on Manus Island and Nauru should be closed immediately and all detainees immediately brought to Australia and offered resettlement in Australia as refugees.

Recommendation 2

1.13 The policy of mandatory indefinite detention for people seeking asylum who have arrived in Australia by boat should end.

Recommendation 3

1.14 A Royal Commission should be held into the establishment and management of the Regional Processing Centres on Manus Island and Nauru, and the associated Australian government policy of boat turnbacks.

Recommendation 4

1.15 Children born on Nauru to detainees should be brought to Australia with their families and guaranteed the right to citizenship.

Recommendation 5

1.16 Further studies should be urgently conducted regarding the extent of legacy cadmium disposal on Nauru, and the threat to human health and the environment.

Recommendation 6

1.17 All detainees on Nauru should immediately be tested for elevated levels of cadmium and other heavy metals present at or near the site of the Nauru Regional Processing Centre, and appropriate medical advice sought and followed.

Recommendation 7

1.18 Comcare's investigation into alleged breaches of the *Work Health and Safety Act 2011* (Cth) (WHS Act) by the Minister of Immigration and Border Protection should be expedited.

Recommendation 8

1.19 The Senate Legal and Constitutional Affairs References Committee should conduct an inquiry to examine the merits of the government's claims of public interest immunity made during the course of this inquiry.

Recommendation 9

1.20 Given the committee's concerns about the level of accountability and transparency that currently applies to the operation of Australia's Regional Processing Centres in the Republic of Nauru and Papua New Guinea, the following matter should be referred to the Legal and Constitutional Affairs References Committee for inquiry and report by 28 March 2019:

- (a) conditions at the Regional Processing Centres in the Republic of Nauru and Papua New Guinea;**
- (b) the provision of support services for asylum seekers and refugees who have been alleged or been found to have been subject to abuse, neglect or self-harm in the centres or within the community while residing in Nauru and Papua New Guinea;**
- (c) the Department of Immigration and Border Protection's oversight of contractors, sub-contractors, healthcare services, and Regional Processing Centres' operation generally;**
- (d) attempts by the Commonwealth Government to negotiate third country resettlement of asylum seekers and refugees;**
- (e) additional measures that could be implemented to expedite appropriate third country resettlement of asylum seekers and refugees within the centres;**
- (f) the presence of cadmium in the Republic of Nauru, and the health risks associated with prolonged cadmium and phosphate exposure;**
- (g) the implications of Australia's intention to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;**
- (h) transparency and accountability mechanisms that apply to the Regional Processing Centres;**
- (i) measures Australia could take to develop and implement an appropriate and sustainable regional approach to how the arrival and settlement of asylum seekers is managed in the Asia-Pacific region;**
- (j) any other related matters; and**
- (k) the committee be granted access to all inquiry submissions and documents of the committee's previous inquiries relating to the conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea.**

Conditions

Torture

1.21 The conditions in Australia's Regional Processing Centres (RPCs) on Manus Island and Nauru for refugees and asylum seekers amount to torture.

1.22 Australia became a signatory to the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* in 1985, ratifying the Convention in 1989. Torture is defined in article 1 of the Convention against Torture as follows:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.²

1.23 The Convention against Torture places a duty on states to ensure that all acts of torture are criminalised, as well as any attempt to commit torture extending to persons who are complicit or who participate in the torture.

1.24 The Australian Greens agree with Amnesty International's position that the conditions on Nauru amount to torture as defined by the United Nations.

1.25 The Committee heard from Dr Neistat, a Senior Director of Research with Amnesty International that:

Essentially torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted to obtain information from, punish or coerce the person being subjected to the suffering of a third person.

One is that, as I described earlier, refugees on Nauru do experience severe mental and, in many cases, physical suffering. The second factor is that the suffering is being intentionally inflicted. The whole system is designed to inflict suffering, and the system is essentially set up, paid and fully provided for and designed by the government of Australia. It is done with a very clear purpose: to punish the individuals who are attempting to arrive in Australia, but, even more importantly—and, in some of the comments following our report, the government officials who did speak to the media did not even hide the fact—to deter others from seeking asylum in Australia.

So suffering is being inflicted. It is being inflicted systematically and it is being inflicted with a very specific purpose. These elements described in

2 *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, art 1.

quite a lot of detail in our report, allowed us to come to a conclusion that this amounts to torture.³

General Conditions

1.26 The Australian Greens share the deep concerns of the Australian College of Mental Health Nurses (ACMHN) who stated that:

While they may have left held detention, these individuals remain severely restricted in their movement - they cannot leave the Island, they cannot be re-united with their family and have little or no prospect of economic and/or social participation. Many have given up hope and openly talk of killing themselves as a way of bringing an end to their suffering and excruciating distress and despair.⁴

Violence and Sexual Assault

1.27 The Committee heard from multiple sources that refugees and asylum seekers living on Nauru are routinely exposed to violence, harassment and intimidation from local Nauruan communities and have limited recourse to justice through the Nauruan justice system.

1.28 The Committee heard evidence that refugees were being subject to the following forms of violence (this list is not exhaustive):

- throwing of bottles or stones;
- swerving vehicles in the path of refugees and asylum seekers as the walk or ride on motorbikes;
- breaking accommodation windows and destroying other property;
- sexual assault (including groping, touching, explicit threats, demands for sex);
- attempted rape;
- beaten with sticks;
- rape; and
- machete attack.

1.29 Ms Lamoin, head of Policy and Advocacy at UNICEF Australia highlighted serious concerns over the capacity for the Nauruan police to investigate incidents, especially in relation to '...gender-based violence claims and sexual assault'.⁵

1.30 Human Rights Watch told the Committee that refugees and asylum seekers have reported that '...local police make little or no effort to investigate attacks against them, even in cases where the victims were able to clearly identify the perpetrators'.⁶

3 Dr Anna Neistat, Senior Director for Research, Amnesty International, *Committee Hansard*, Wednesday 15 March 2017, pp. 5-6.

4 Australian College of Mental Health Nurses (ACMHN), *Submission 41*, p. 5.

5 Ms Amy Lamoin, Head of Policy and Advocacy, UNICEF Australia, *Committee Hansard*, Tuesday 15 November 2016, p. 29.

1.31 Refugees informed Human Rights Watch that '...settling in Papua New Guinea was unthinkable...even terrifying'.⁷

1.32 Human Rights Watch met men haunted by the deadly violence they experienced in February 2014 when security personal and local men armed with guns and machetes stormed the centre, threatening and beating the residents.⁸

1.33 Gay men and men who are perceived to be gay on Manus Island face greater discrimination and harm. Asylum seekers have informed Human Rights Watch that gay men are either shunned or sexually abused or assaulted and used by other men.⁹

1.34 Refugees and asylum seekers who have been brought to Australia for physical, surgical or mental health treatment or after rape or assault are required to return to Manus and Nauru to be considered for resettlement. This is creating severe fear and anxiety among these people.

Health and the Lack of Adequate Medical Care

Dengue fever outbreak

1.35 On 15 March 2017 the Committee heard evidence detailing an active outbreak of dengue fever on Nauru. At this time, 34 cases of dengue fever were reported as follows:

- five diagnosed cases of staff members of support organisations
- 16 diagnosed cases of refugees
- 13 diagnosed cases of asylum seekers.¹⁰

1.36 Figures may not represent refugees living in the Nauruan community who did not have access to International Health and Medical Services (IHMS) clinics.¹¹

1.37 The Committee heard evidence from Dr Rudolph, the Area Medical Director for IHMS, that dengue fever can lead to serious health complications and death. He stated:

It can be very serious. It can kill people. It is a febrile illness; it has fevers. It can affect the major organs, causing inflammation in major organs such as the brain, liver and so on. One of the serious things that happen is that it depletes the platelets in the blood, which are involved in clotting. It can deplete them so low that people can bleed spontaneously. They can either

6 Human Rights Watch, *Submission 22*, p. 6.

7 Human Rights Watch, *Submission 22*, p. 8.

8 Human Rights Watch, *Submission 22*, p. 8.

9 Human Rights Watch, *Submission 22*, p. 8.

10 Department of Immigration and Border Protection (DIBP), answer to question on notice, 29 March 2017 (received 7 April 2017).

11 Dr Peter Rudolph, Area Medical Director, International Health and Medical Services (IHMS), *Committee Hansard*, Wednesday 15 March 2017, p. 40.

bleed into the bowel or bleed into organs, and that can be a very serious situation.¹²

Cadmium contamination

1.38 The Australian Greens are highly concerned about the potential impact of elevated cadmium levels on the health of refugees and asylum seekers as well as on RPC staff.

1.39 It is clear the Australian Government was aware of the risk of elevated cadmium levels before the establishment of the Nauru RPC, yet they still chose to send asylum seekers and refugees to that site.

1.40 The 2012 Sinclair Knight Merz (SKM) Environmental Due Diligence Report for the then-Department of Immigration and Citizenship (DIAC) outlined the potential risks of establishing a Regional Processing Centre in Nauru. These risks included:

- the presence of a cadmium "slime" dump near Buada Lagoon which was identified by Nauru in their National Environmental Management Strategy (1996);
- phosphate dust containing cadmium being deposited into clean water storages or storm water drains;
- inhalation of phosphate dust particle containing cadmium and potentially other heavy metals by construction workers, operational staff and clients of the project; and
- a long term threat to ground water as a result of possible cadmium contamination.¹³

1.41 The SKM report further notes that the Nauruan National Environmental Management Strategy (1996) states 'further studies need to be carried out regarding the extent of the threat of cadmium disposal to human health and the environment'.

1.42 The Australian Greens are concerned that the studies recommended in Nauru's National Environmental Management Strategy (1996) and highlighted in SKM report were never undertaken.

1.43 The Australian Greens are highly concerned that the levels of cadmium remain unknown and refugees and asylum seekers on Manus are yet to be tested for elevated levels of cadmium in their bodies.

1.44 Dr McLisky the Secretary of Doctors for Refugees (DFR) gave told Committee that it is possible that cadmium could enter the bodies of refugees and asylum seekers living on Manus and Nauru. Dr McLisky stated:

12 Dr Peter Rudolph, Area Medical Director, IHMS, *Committee Hansard*, Wednesday 15 March 2017, p. 40.

13 Department of Immigration and Citizenship (DIAC), *Nauru Regional Processing Centre: Environmental Due Diligence Report*, 15 November 2012, <https://www.border.gov.au/AccessandAccountability/Documents/FOI/FA140401092.PDF>.

We do know that cadmium is a substance which can become toxic in humans and we do know that it can enter the body through the alimentary tract—through food—and also through inhalation of particles. So this is an area of concern.¹⁴

1.45 Dr McLisky also provided evidence that cadmium can adversely effect those exposed including kidney damage and bone problems. He stated:

Cadmium does deposit within the body and stay there for a very long time. It is excreted by a number of methods but, once you accumulate a lot of it, it is relatively difficult to get out of your body.¹⁵

1.46 The Australian Greens are extremely concerned that IHMS remain unwilling to test refugees and asylum seekers on Nauru for elevated cadmium levels:

Senator McKIM: Isn't it the case that the cadmium contamination on Nauru is because it was a phosphate mine and therefore the dust in the RPC may be a way which is leading to elevated cadmium levels in detainees?

Dr Seevnarain: Just to make it known, our recommendation has been for there to be extensive environmental studies to study the level of dust contamination in that setting. It is a very specific scientific process by which you go about determining the constituents of dust and stuff like that.

Senator McKIM: Have you recommended that every detainee be tested for their cadmium levels?

Dr Seevnarain: Not at this point.

Senator McKIM: Why not?

Dr Seevnarain: The aim of health surveillance is to try and understand the end organ disease or what the levels are at that point.

Senator McKIM: Isn't it just to keep people healthy?

Dr Seevnarain: Not if it has been the exposure but, yes, that maybe.

Senator McKIM: I will just be very clear here. If people are getting contaminated with cadmium simply because they are on Nauru, would that be concerning to IHMS?

Dr Seevnarain: As responsible medical providers, it is of concern but to jump to the assumption that everybody there is currently being exposed to cadmium and at a level—¹⁶

1.47 The Australian Greens have heard evidence that many refugees and asylum seekers are on Nauru are anxious about their potential exposure to high levels of cadmium.¹⁷

14 Dr Paddy McLisky, Secretary, Doctors for Refugees (DFR), *Committee Hansard*, Tuesday 14 March 2017, p. 7.

15 Dr Paddy McLisky, Secretary, DFR, *Committee Hansard*, Tuesday 14 March 2017, pp. 7–8.

16 Dr Kalesh Seevnarain, Senior Health Adviser, IHMS, *Committee Hansard*, Wednesday 15 March 2017, p. 55.

1.48 The Australian Greens believe that all refugees and asylum seekers on Nauru should be immediately tested for elevated cadmium levels and receive appropriate health care.

Delayed testing and treatment

1.49 Delayed medical testing and treatment is causing the unnecessary pain, suffering and anxiety among refugees and asylum seekers. Lives are being put at greater risk.

1.50 The Australian Medical Association (AMA) submitted a case study of a man who was hit on the back of the head with a machete and had to wait nearly a month to receive a scan as his condition worsened:

The AMA was told he has a background of torture in Iran but was functioning well on Nauru. Since arriving on Nauru he had married another asylum seeker. On Saturday, 5 March 2016 [name redacted], was apparently attacked by two locals and was hit on the back of his head with a machete, a wound that required stitching. The AMA was told [name redacted] suffers from worsening headaches, repeated vomiting, nausea, confusion, dizziness, tired eyes and weakness; that he does not sleep or eat properly and was urine incontinent. The AMA was later told remains in a foetal position on his bed, unable to be left alone.

On 9 April 2016 [name redacted] had a CT scan, and was told that there was a broken bone in the centre of his skull. The AMA was advised that this diagnosis was later revised to suffering from a mental illness. The AMA had been told [name redacted]'s condition continues to deteriorate and that his wife was advised by a mental health doctor that they could not help [name redacted] anymore and would recommend electric shock treatment.¹⁸

1.51 The AMA provided the Committee with case studies of other delayed treatment including the case of a refugee or asylum seeker who had been experiencing ever worsening pain and bleeding for two years before receiving medical testing. A polyp was found in his large intestine and there were indications it may have been carcinoma.¹⁹

1.52 The Committee heard that delays in medical transfer to Australia often occurred as a result the transfers needing to be 'facilitated by the Department of Immigration'.²⁰

1.53 Dr Rudolph the Area Medical Director for IHMS told the committee that four out of eight refugees and asylum seekers waiting for medical transfer from Manus Island to Australia waited for longer than medically recommended. Dr Rudolph also

17 Dr Paddy McLisky, Secretary, DFR, *Committee Hansard*, Tuesday 14 March 2017, p. 8.

18 Australian Medical Association (AMA), *Submission 1*, p. 6.

19 AMA, *Submission 1*, p. 7.

20 Dr Peter Rudolph, Area Medical Director, IHMS, *Committee Hansard*, Wednesday 15 March 2017, p. 47.

told the committee that 12 out of 20 asylum seekers and refugees from Nauru waited longer than medically recommended for medical transfer to Australia.²¹

1.54 The Australian Greens are concerned the Department of Immigration and Border Protection (the department) does facilitate transfers within a medically recommend timeframe and often has to be prompted or reminded to IHMS to transfer refugees and asylum seekers in need of medical treatment in Australia. Dr Rudolph told the committee:

What we tend to do is that after a particular time we resubmit the request as a sort of reminder to the department, and with some cases we discuss it at particular complex case meetings with the department's clinical team.²²

1.55 Confidential submissions to the committee also detailed wait times beyond form transfer to Australia beyond what was medically recommended. This often caused the asylum seeker or refugee seeking medical attention increased pain and anxiety.

Mental health

1.56 Depression and Post Traumatic Stress Disorder (PTSD) have 'reached epidemic proportions' among refugees and asylum seekers on Manus Island and Nauru.²³

1.57 The Royal Australian and New Zealand College of Psychiatrists (RANZCP) stated that, 'self-harm and suicidal behaviour have subsequently become endemic in immigration detention facilities'.²⁴

1.58 The Castan Centre for Human Rights Law submitted the following:

The death of Omid Masoumali and horrific injuries suffered by Hodan Yasin demonstrate the extremes of suffering borne of hopelessness and desperation in these environments.²⁵

1.59 The Committee heard extensive evidence proving that mental health outcomes worsen the longer a person is held in detention and that the longer a person is in detention the more likely they are to develop a mental illness.²⁶

1.60 The RANZCP highlighted that the 'prolonged uncertainty created by a system of indefinite detention is a major factor in increasing hopelessness and mental deterioration'.²⁷

21 Dr Peter Rudolph, Area Medical Director, IHMS, *Committee Hansard*, Wednesday 15 March 2017, pp. 47–48.

22 Dr Peter Rudolph, Area Medical Director, IHMS, *Committee Hansard*, Wednesday 15 March 2017, p. 48

23 Human Rights Watch, *Submission 22*, p. 1.

24 Royal Australian and New Zealand College of Psychiatrists (RANZCP), *Submission 8*, p. 5.

25 Castan Centre for Human Rights Law, *Submission 42*, p. 1.

26 RANZCP, *Submission 8*, p. 5.

1.61 The Australian Greens are deeply concerned that the involuntary separation of families increases the risk of, or exacerbates mental illness.

1.62 The Australian Psychological Society submitted that:

Family separation (involuntary) between the mainland and offshore detention facilities and in other countries further contributes to poor psychological outcomes in both parents and children, including risk of self-harm.²⁸

Trauma

1.63 Adults and children seeking asylum are likely to be recovering from significant instances of trauma before they enter a RPC. Past trauma and mental illness is a known risk of detention.

1.64 The Australian Greens hold grave concerns that refugees and asylum seekers are being forced to remain in locations where they experienced traumatic events. Traumatic events include rapes, assaults and witnessing traumatic incidents.

1.65 The AMA provided evidence of a case study of a man who had witnessed the murder of Reza Barati. His symptoms included the following:

- increasing chest pain;
- excruciating headaches;
- weakness and numbness in left arm and leg;
- inability to sleep; and
- a constant fear of being murdered.²⁹

1.66 The Australian Greens are deeply concerned that the trauma being experienced by refugees and asylum seekers on Manus and Nauru will continue to affect their health even decades after their experience in an Australian RPC.

1.67 The ACMHN submitted the complex trauma experienced by asylum seekers on Manus Island and Nauru is likely to have long-term impacts, they stated:

The term 'complex trauma' describes multiple kinds of adversity and overwhelming life experiences. The cumulative effects of this type of trauma are pervasive and represent major risk for lifelong physical and mental illness, poor quality of life and even premature death (MHPOD 2011)xi.³⁰

27 RANZCP, *Submission 8*, p. 4.

28 Australian Psychological Society, *Submission 49*, p. 3.

29 AMA, *Submission 1*, p. 5.

30 ACMHN, *Submission 41*, p. 6.

Treatment of and response to poor mental health

1.68 Refugees and asylum seekers commonly receive inadequate treatment and inappropriate responses when presenting with for mental health problems. This puts their lives and wellbeing at greater risk.

1.69 The Australian Greens are deeply concerned that the mental health of refugees and asylum seekers is not being accounted when they first arrive at the RPCs on Manus Island and Nauru. The RANZCP submit that:

The initial health assessments conducted in the 48 hours after boat arrival do not include assessment of mental health or developmental status.³¹

1.70 IHMS, who provide health services to Australia's RPCs have responded to the submission of the Royal Australian College of General Practitioners (RACGP) as follows:

We appreciate the care with which this statement has been made, and the difficulties drawing conclusions without firm data. However we would comment that we are not aware of any suicides in Nauru or Manus Island over the last three years. One death (which was reported as possible suicide in the media) was from unknown causes. The other was a man who set himself on fire as a form of political protest, with what appears to be an accidental death ensuing.³²

1.71 The Committee heard concerns as to whether incidents were being systematically downgraded to avoid fine or action. The Committee heard from Mr Paul Stevenson, a psychologist on Manus and Nauru from July 2014 to July 2015 as an employee of PsyCare that he:

...witnessed via email, transcripts of incident reports and personal experience a 30 per cent systematic downgrading of incidents categorised as critical to incidents categorised as major and minor.³³

1.72 The RANZCP's submission included a case example of an incidence being downgraded. They submitted the following:

On 29 January 2015, an asylum seeker on Nauru repeatedly expressed a desire to die to a case manager, who responded by encouraging the individual 'to think of something positive that she enjoyed prior to detention and to do this everyday to improve her well-being' (Guardian, 2016). The case was subsequently downgraded from a 'minor incident' to 'information' only. Reminding an individual of 'positive' things in their past is not an appropriate way of managing someone's current risk of suicide. Furthermore, the downgrading of an incident of suicidal ideation to 'information' only raises some questions about the capacity for regional

31 RANZCP, *Submission 8*, p. 3.

32 Royal Australian College of General Practitioners (RACGP), *Submission 17*, IHMS Response, p. 3.

33 Mr Paul Stevenson, Psychological, Brisbane Refugee and Asylum Seeker Support Network (BRASSN), *Committee Hansard*, Tuesday 14 March 2017, p. 11.

processing centres to appropriately recognise and respond to mental health issues.³⁴

1.73 While the Mr Grant Hehir, the Auditor-General, told the committee that they had not seen evidence of reports being systematically down graded, he did comment the department had poor record keeping methods, saying:

Poor record keeping was a feature of this audit. Record-keeping standards are set under the Archives Act as well as by the department's own policies. The department's performance in this regard was substantially below requirements. Quality records are essential for effective management, not only to ensure day-to-day operations are effective but also to allow lessons to be learnt and accountability frameworks to operate.³⁵

1.74 The Australian Greens are concerned with the inconsistency between the number of incident reports provided by the department, and Transfield. Dr Ioannou, Group Executive Director at the Australian National Audit Office told the committee 'Overall, DIBP held 8,009 records as incidents and Transfield held 12,104'.³⁶

1.75 Dr Loannou also told the Committee that:

...we did document in a factual way in appendix 2 of the report the various performance reporting measures around those various categories of critical, major and minor. Again, as we explained a moment ago, we documented what we observed on the basis of the departmental record and the relevant records that we acquired from the contractors. We did not do a further investigation to look behind the record, if I could put it that way.³⁷

Children

Introduction

1.76 Nauru has never been an appropriate or safe place for refugee and asylum seeker children. By placing refugee and asylum seeker children on Nauru the Australian government knowingly exposed and continues to expose children extremely elevated risk of assault, sexual assault, neglect, disease and injury.

1.77 The Royal Australasian College of Physicians (RACP) highlighted that despite the increased risk to children in detention there is no clear or consistent framework in place to protect them.³⁸

34 RANZCP, *Submission 8*, p. 5.

35 Mr Grant Hehir, Auditor-General, Australian National Audit Office (ANAO), *Committee Hansard*, Wednesday 15 March 2017, p. 27.

36 Dr Tom Ioannou, Group Executive Director, ANAO, *Committee Hansard*, Wednesday 15 March 2017, p. 32.

37 Dr Tom Ioannou, Group Executive Director, ANAO, *Committee Hansard*, Wednesday 15 March 2017, p. 32.

38 Royal Australasian College of Physicians (RACP), *Submission 5*, p. 3.

1.78 The Australian Greens are concerned that the conditions on Nauru limit the access of refugee and asylum seeker children to education and do not address the specific and complex needs of refugee and asylum seeker children.

1.79 The Committee heard that when the Regional Processing Centre ('RPC') at Nauru was first established there were no formalised or complete child protection frameworks on the island.

1.80 When the Nauru RPC was first established, the situation at the time was described by Ms Amy Lamoin, Head of Policy and Advocacy, UNICEF Australia as completely inadequate for the protection of both Nauruan and refugee and asylum seeker children.³⁹

1.81 The Australian Greens are concerned that asylum seeker children have been put at risk due to the Government's harmful actions and that the ability for child advocates such as Save the Children to operate on Nauru has been greatly restricted.

Senator McKIM: Okay, thanks. When your contract expired, were there changes in eligibility requirements that prevented you from reapplying?

Mr Tinkler: Yes, there were two things done. The first thing was the government grouped what was called 'garrison and welfare services', so that effectively meant that the contract for services to establish security and infrastructure run by Transfield Services and Wilson Security was grouped with child protection and education welfare support. In practice, that made Save the Children ineligible to apply because we do not run security.

Senator McKIM: Because you did not have capacity in that area?

Mr Tinkler: Right. The second thing, more substantively, was the tender requirements were changed so that only a company limited by shares could tender for the work. An NGO, by definition, is not limited by shares and therefore could not tender directly. So we could bid for contracts, and we did, with a private sector partner, but only as a subcontractor in that arrangement, which was far from ideal because we lost our direct reporting line to the government.

Senator McKIM: Are you able to inform the committee whether you were successful?

Mr Tinkler: We were unsuccessful.⁴⁰

Increased risk of assault, sexual assault and neglect

1.82 The Committee heard evidence that the conditions on Nauru placed children at higher risk of sexual assault. The RACP submitted:

In held detention, children cannot be protected from and are exposed to physical violence and mental distress in adults, including their parents.

39 Ms Amy Lamoin, Head of Policy and Advocacy, UNICEF Australia, *Committee Hansard*, Tuesday 15 November 2016, p. 27.

40 Mr Mat Tinkler, Director, Policy and Public Affairs, Save the Children, *Committee Hansard*, Tuesday 15 November 2016, pp. 27–28.

They are likely to be at significant risk of physical and sexual abuse and maltreatment, including neglect. These risks arise primarily as a result of the detention environment, yet despite the risk, there remains no clear or consistent child protection framework for children in Australian held detention.⁴¹

1.83 Human Rights Watch conducted interviews with refugees and asylum seekers and received information about multiple incidents of guards and other service providers committing acts of violence against children.⁴²

1.84 Ms McDonald, a volunteer at Love Makes a Way, told the Committee that a father in detention in Nauru expressed anxiety about the safety of his child as follows:

We always followed our toddler like a shadow to protect the child from being sexually abused. This is the thing we were always worried about. We heard that sexual abuse was happening in the compounds by guards. We did not leave our child alone.⁴³

1.85 The Committee heard evidence that complaints of abuse and neglect of refugee and asylum seeker children have been mismanaged or ignored by responsible authorities:

CHAIR: This touches on your characterisation of the child protection framework or lack of it. More broadly, how would either Save the Children or UNICEF characterise the complaints handling processes in relation to criminal allegations on Nauru

Mr Tinkler: Our experience is that it is very poor. It has been on the public record at numerous forums that there were a high number of allegations of abuse and sexual assault. Ultimately, allegations of that nature were referred to the Nauruan police. But our experience was that there was a very low capability and expertise to effectively prosecute those kinds of allegations. Indeed, there have been no successful prosecutions to date.

CHAIR: Is there any responsibility for the Department of Immigration and Border Protection in those processes at all? You are contracted to provide those services by Nauru who is in turn contracted to provide them by the Department of Immigration and Border Protection; is that correct?

Mr Tinkler: Yes, there are responsibilities. For example, the condition of detention—the living conditions and settings—lends itself to a high preponderance of these kinds of acts. There are steps that can be taken to prevent or mitigate these actions—for example, separation of offenders or potential offenders from children. So the department had a responsibility to follow up recommendations from child protection advisers inside the centre, for example.

41 RACP, *Submission 5*, Attachment 1, p. 3.

42 Human Rights Watch, *Submission 22*, pp. 4–5.

43 Ms Michelle McDonald, Volunteer, Love Makes a Way, BRASSN, *Committee Hansard*, Tuesday 14 March 2017, p. 13.

CHAIR: Did they follow those up?

Mr Tinkler: It varied. On occasion our recommendations were accepted and on occasion they were not.⁴⁴

1.86 The Australian Greens argue that given the evidence brought to the Committee the Australian Government has failed to follow its obligations when it comes to preventing child sexual abuse on Nauru.

1.87 The Castan Centre for Human Rights Law submitted that during the Royal Commission into Institutional responses to Child Sexual Abuse:

Counsel assisting the Royal Commission acknowledged that Australia is obliged to take all appropriate legislative, administrative, social and educational measures to protect children from sexual and other forms of abuse including measures for the prevention, identification, reporting, referral, investigation, treatment and follow up of incidents of child abuse.⁴⁵

Child health and development

1.88 The Committee heard evidence from multiple parties that holding children in detention results in ‘unacceptable and extreme’ negative outcomes for their health, mental health and development.⁴⁶

1.89 The RANZCP submitted:

Detention is particularly detrimental to children’s physical and mental health and has been shown to result in developmental regression and delays, with the potential to cause long-term damage to their physical, cognitive, social and emotional functioning.⁴⁷

1.90 The RANZCP also explained that:

More than a third of children in detention centres have serious mental health disorders compared with 2% in the Australian population.⁴⁸

1.91 Short periods of detention can create risk to children’s functioning. Long periods of detention create a ‘high risk of suffering mental illness and post-traumatic symptoms’.⁴⁹

1.92 Dr Anna Neistat, Senior Director for Research at Amnesty International, told the Committee that:

In some of our interviews with professionals we heard very clearly that so much damage has already been done that for many of these children it will

44 Mr Mat Tinkler, Director, Policy and Public Affairs, Save the Children, *Committee Hansard*, Tuesday 15 November 2016, p. 29.

45 Castan Centre for Human Rights law, *Submission 42*, p. 5.

46 RACP, *Submission 5*, p. 3.

47 RANZCP, *Submission 8*, p. 4.

48 RANZCP, *Submission 8*, p. 5.

49 RANZCP, *Submission 8*, p. 4.

take years to repair this damage, and that every further month—let alone every year—that is spent on the island adds to this trauma, and probably to the years that it will take to repair this trauma.⁵⁰

1.93 Ten refugee and asylum seeker children on Nauru tested positive to latent tuberculosis when given the Mantoux test for tuberculosis.⁵¹

1.94 The Committee heard that conditions on Nauru compound the risk of a public health crisis. This would have a significant impact on children's health. Dr McLisky, of DFR, detailed this as follows:

Tuberculosis spreads in close, cramped, living conditions. Children play together in close proximity, compounding the risk of a public health crisis. The parasitic infestation schistosomiasis and the viral illness dengue fever have also been diagnosed on Nauru. Transmission of these diseases is increased by substandard accommodation, including a lack of reliable plumbing on the island. There is a depth of literature detailing the long-term psychiatric harm seen in children in prolonged detention.⁵²

1.95 The Australian Greens agree with the proposition by the Commissioner for Children and Young People Western Australia, that the appointment of an Independent Legal Guardian ('ILG') for all children, including unaccompanied minors, in detention should be progressed with immediately.

Schooling

1.96 Severe bullying, violence and harassment prevent many students from attending local school in Nauru. Nauruan students commonly put students who do attend school in physical and sexual danger.⁵³

1.97 The Committee heard that transition of refugee and asylum seeker children from a school run by Save the Children within the RPC to a school in the Nauruan community was mismanaged.

1.98 Save the Children's school reported a 90% attendance rate.⁵⁴

1.99 Human Rights Watch estimate that, '85% of refugee and asylum seeker children on Nauru are not enrolled in school'.⁵⁵

1.100 Mr Tinkler, Director of Policy and Public Affairs at Save the Children has stated:

50 Dr Anna Neistat, Senior Director for Research, Amnesty International, *Committee Hansard*, Wednesday 15 March 2017, p. 6.

51 Dr Peter Rudolph, Area Medical Director, IHMS, *Committee Hansard*, Wednesday 15 March 2017, p. 52.

52 Dr Paddy McLisky, Secretary, DFR, *Committee Hansard*, Tuesday 14 March 2017, p. 1.

53 Commissioner for Children and Young People Western Australia, *Submission 9*, p. 5.

54 Mr Mat Tinkler, Director, Policy and Public Affairs, Save the Children, *Committee Hansard*, Tuesday 15 November 2016, p. 28.

55 Human Rights Watch, *Submission 22*, p. 6.

We support that ambition because it is good to have kids educated in the local community, but it is only useful if the appropriate support is provided.⁵⁶

1.101 Mr Tinkler argued that appropriate support for refugee and asylum seeker children attending school in the Nauruan community was lacking. He suggested the support that was missing to include:

- english as a second language, tuition and instruction;
- integration programs for students; and
- teachers and the community around people from different cultural backgrounds.⁵⁷

Unaccompanied minors

1.102 As of 15 November 2016 there were 19 unaccompanied minors on Nauru. All unaccompanied minors have been given an arbitrary date of birth of 31st of December and the immigration determines when they are no longer classified unaccompanied minors.⁵⁸

1.103 The Australian Greens are concerned that 'under the Immigration (Guardianship of Children) Act 1946 (Cth) the Minister for Immigration and Border Protection is appointed the guardian of "non-citizen" unaccompanied minors'.⁵⁹

1.104 The Australian Greens take the view that the Minister for Immigration and Border Protection is an inappropriate guardian for unaccompanied refugees and asylum seekers.

1.105 The Australian Greens agree with Australian Lawyers for Human Rights that:

- (a) the Minister has a conflict of interest in his role as a visa decision-maker and as the person responsible for administering the detention regime; and
- (b) it is concerning that neither the Minister, nor those to whom powers are delegated, are required to be equipped with specialist knowledge or experience in relation to children.⁶⁰

1.106 Australia is failing its duty to unaccompanied minors. The Commissioner for Children and Young People Western Australia submitted that:

56 Mr Mat Tinkler, Director, Policy and Public Affairs, Save the Children, *Committee Hansard*, Tuesday 15 November 2016, pp. 27–28.

57 Mr Mat Tinkler, Director, Policy and Public Affairs, Save the Children, *Committee Hansard*, Tuesday 15 November 2016, p. 28.

58 Ms Pamela Curr, Australian Women in Support of Women on Nauru (AWSWN), *Committee Hansard*, Tuesday 15 November 2016, pp. 11–12.

59 Australian Lawyers for Human Rights (ALHR), *Submission 25*, p. 9.

60 ALHR, *Submission 25*, p. 9.

Australia has an obligation under the UN convention to 'ensure alternative care' for children who arrive unaccompanied, especially to those seeking asylum. Australia must ensure children receive special protection and assistance.⁶¹

1.107 Australian Lawyers for Human Rights have emphasised that the UNHCR dictates that unaccompanied children should not be detained and their detention cannot be justified on the basis of their migration status.⁶²

Effect on families

1.108 Conditions on Nauru curtail the normal functioning of family life. The RANZCP submitted that:

There are reports that RPCs have oppressive levels of security that limit the freedom of detainees, undermine parenting and family life, and are not natural environments. Families are subjected to intrusive surveillance and monitoring limiting privacy.⁶³

Children and international law

1.109 Australia has specific obligations to under international law as signatories to UN Convention on the Rights of the Child ('UNCRC'). By failing to adequately protect the welfare of refugee and asylum seeker children on Nauru Australia is failing to meet its obligations under this convention.

1.110 Article 7 of the UNCRC states all children have 'the right to acquire a nationality'. And further that, 'parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless'.⁶⁴

1.111 As many as 12 children born on Nauru are stateless.⁶⁵ The Australian Greens are greatly concerned that these children are being denied their right to a nationality. Such a denial would contravene Australia's obligations under the UNCRC.

1.112 Australian Lawyers for Human Rights argue that Australia is failing to meet its obligations under the UNCRC regarding:

- the right to be free from abuse, neglect and violence by their parents or anyone else looking after them;
- the right to be free from torture or cruel, inhuman or degrading treatment or punishment;

61 Commissioner for Children and Young People Western Australia, *Submission 9*, p. 3.

62 ALHR, *Submission 25*, p. 7.

63 RANZCP, *Submission 8*, p. 4.

64 Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49.

65 Commissioner for Children and Young People Western Australia, *Submission 9*, p. 2.

- the right to special help and protection as refugees;
- the right to adequate health care, clean water, food and a healthy environment; and
- the right to be protected from activities that would harm their development.⁶⁶

International Law

1.113 Australia is obliged to protect the human rights of refugees and asylum seekers under international law.⁶⁷

1.114 The Australian Greens firmly believe that Minister Dutton should be answerable for Australia's ongoing breaches of international law.

1.115 In November 2013, the UNHCR held that Australia was acting inconsistently with international law. Their findings were summarised in their submission to the Inquiry as follows:

The 'policy and practice of detaining all asylum-seekers at the detention centre referred to as the 'Regional Processing Centre', on a mandatory and open-ended basis, without an individualised assessment as to the necessity, reasonableness and proportionality of the purpose of such detention amounts to arbitrary detention that is inconsistent with international law'.⁶⁸

1.116 The Australia Council for International Development's (ACFID) stated in their submission to the Inquiry that:

The current policies of maintaining offshore detention policies that have been shown to be in breach of international human rights law. These policies present a significant risk to Australia's international reputation and strategic interests by impairing Australia's ability to influence global human rights issues, to influence regional respect for human rights and for international law. Of timely importance, is the adverse impact of these policies on Australia's candidacy for a seat on the UN Human Rights Council.⁶⁹

1.117 The Australian Greens take seriously the international obligations owing to refugees and asylum seekers and agree with the Australian Lawyers for Human Rights submission that Australia 'cannot absolve itself of its responsibilities towards asylum seekers and refugees by contracting out services to a third party, nor can it absolve itself of responsibility by merely transferring asylum seekers to Manus Island and Nauru'.⁷⁰

1.118 The Australian Greens share the concerns of the UNHCR who submitted that:

66 ALHR, *Submission 25*, p. 7.

67 ALHR, *Submission 25*, p. 5.

68 United Nations High Commissioner for Refugees (UNHCR), *Submission 43*, p. 6.

69 Australia Council for International Development (ACFID), *Submission 45*, p. 3.

70 ALHR, *Submission 25*, pp. 3-4.

Since the Government of Australia's announcement in 2012 that it would recommence 'offshore processing', UNHCR has raised its concerns about the offshore arrangements and the detrimental impact for those individuals who would be affected by these arrangements, among other elements.⁷¹

1.119 Australia's approach to refugees and asylum seekers is uniquely cruel. The Australian Lawyers for Human Rights submission stated the following.

Australia is the only country to detain asylum seekers indefinitely in jail-like conditions, including adults and children with severe psychiatric impairment as well as those with identified developmental and cognitive disabilities.

This represents a clear breach of Australia's human rights obligations and of the rights of these individuals (Newman et al., 2013). Furthermore, the detention of children is in contravention of responsibilities under the UN Convention on the rights of the child (1989), ratified by Australia in 1990.⁷²

1.120 The Australian Greens are particularly concerned about the detention of minors on Nauru. The RANZCP submitted to the Inquiry that:

The Migration Act 1958 (Cth) contains a principle that a minor shall only be detained as a measure of last resort. It has, however, been a source of significant concern that children and their families and unaccompanied minors continue to be subject to routine, prolonged and indefinite detention, despite this legislation.⁷³

Work health and safety

Commonwealth workplaces

1.121 RPCs in Nauru and Manus Island are Commonwealth workplaces. Comcare has regulated RPCs for many years.

1.122 Section 8 of the Work Health and Safety Act 2011 (Cth) ('WHS Act') defines a Commonwealth workplace broadly to be:

A place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.

1.123 Submission 48 authored by Mr Max Costello and Ms Paddy McCorry states that the WHS Act applies to RPCs.⁷⁴ Application arises because:

- (a) all 'detention centres' (and other workplaces) of the department are Commonwealth workplaces; and
- (b) via section 12F(3), the Act has 'extended geographical jurisdiction' in counties such as PNG and Nauru, that don't have a law equivalent to the WHS Act.

71 UNHCR, *Submission 43*, p. 4.

72 ALHR, *Submission 25*, pp. 3-4.

73 RANZCP, *Submission 8*, p. 9.

74 Mr Max Costello, *Submission 48*, p. 1.

1.124 Comcare are notified of incidents that take place at RPCs. Submission 24 authored by the Australian Lawyers Alliance outlined that:

Due to the status of RPCs as Commonwealth workplaces, notifications of abuse and self-harm must be made to Comcare, which in turn can investigate the incidents and make recommendations to improve safety and prosecute offences against the Work Health and Safety Act 2011 (Cth) (WHS Act).⁷⁵

1.125 The Australian Greens agree with the submission of Mr Costello and Ms McCorry that the WHS Act should be amended to make certain the applicability of the Act to offshore Commonwealth workplaces. This would provide certainty and remove doubt.

1.126 Mr Costello and Ms McCorry suggest the adoption of a provision similar to that prescribed by section 7 of the *Border Force Act 2015* (Cth) which reads as follows:

This Act extends to acts, omissions, matters and things outside Australia.⁷⁶

Primary duty of care

1.127 All Commonwealth workplaces owe duties of care that are prescribed by the WHS Act.

1.128 The duties of care owed by the Commonwealth cannot be transferred or contracted out.⁷⁷ The Committee heard from Mr Costello, former prosecutor in health and safety law and a former university lecturer in employment law that:

This statement we often hear that the duty to look after the health and safety of the asylum seekers on Manus and Nauru belongs to the governments of Papua New Guinea and Nauru is legal falsehood, demonstrably so, prohibited by the act.⁷⁸

1.129 The Committee heard from Mr Costello that pursuant to section 19 of the WHS ACT the department has:

A primary duty of care to safeguard, so far as is reasonably practicable, the health and safety—and health includes psychological health—of both workers, that is section 19(1), and other persons, section 19(2). Those other persons, at detention centres onshore and offshore, are the asylum seekers.⁷⁹

1.130 Mr. Costello argued the department has a proactive and preventative duty to:

Look at all possible hazards and assess the risks, that is, how likely they are to occur and, if so, how harmful they might be, and then, if practicable,

75 ALHR, *Submission 24*, p. 8.

76 Mr Max Costello, *Submission 48*, p. 8.

77 Mr Max Costello, *Submission 48*, p. 16.

78 Mr Max Costello, *Committee Hansard*, Tuesday 15 November 2016, p. 38.

79 Mr Max Costello, *Committee Hansard*, Tuesday 15 November 2016, p. 38.

eliminate those risks or at least minimise them unless with a particular risk the cost is grossly disproportionate.⁸⁰

The scope of notifiable incidents

1.131 The Australian Greens have serious concerns that the current scope of notifiable incidents under the WHS Act is both out-dated and too restrictive.

1.132 Section 38 of the WHS Act provides a duty to notify the regulator of a defined number of 'notifiable incidents'. The section provides that:

A person who conducts a business or undertaking must ensure that the regulator is notified immediately after becoming aware that a notifiable incident arising out of the conduct of the business or undertaking has occurred.

Penalty

In the case of an individual--\$10 000.

In the case of a body corporate--\$50 000.

1.133 The Australian Greens agree with the submission of Mr Costello and Ms McCorry that the phrase 'incident arising out of the conduct of the business or undertaking' in section 38(1) of the WHA Act is too restrictive to adequately respond to the harmful incidence occurring to people on the RPCs' in Nauru and Manus Island.⁸¹

1.134 The submission of Mr Costello and Ms McCorry noted:

Section 38 restrictively limits what's notifiable.

For example, incident types... would presumably arise out of the conduct of intruders.⁸²

1.135 The Australian Greens agree with the position of the Australian Lawyers Alliance regarding widening the scope of matters relevant to health and safety reporting requirements.⁸³

1.136 The 'notifiable incidents' that must be reported are defined in section 35 of the WHS Act to include:

- (a) the death of a person;
- (b) a serious injury or illness of a person; and
- (c) a dangerous incident.

80 Mr Max Costello, *Committee Hansard*, Tuesday 15 November 2016, p. 38.

81 Mr Max Costello, *Submission 48*, p. 12.

82 Mr Max Costello, *Submission 48*, p. 3.

83 Australian Lawyers Alliance (ALA), *Untold Damage Workplace health and safety in immigration detention under the Work, Health and Safety Act 2011 (Cth)*, 16, www.lawyersalliance.com.au/documents/item/583

1.137 Mr Costello and Ms McCorry submitted to the Inquiry that the definition of notifiable incident is both narrow and industrial, stating:

The definition is relevant to (the shrinking proportion of) manufacturing/primary and secondary industry/blue collar workplaces, but much less so to (the steadily expanding proportion of) tertiary/service industry/white collar workplaces.⁸⁴

1.138 For example a 'dangerous incident' is defined by section 37 of the WHA ACT to include:

- an uncontrolled escape, spillage or leakage of a substance;
- electric shock;
- an uncontrolled escape of gas or steam; and
- the interruption of the main system of ventilation in an underground excavation or tunnel.

1.139 For example a 'serious injury or illness' is defined by section 36 of the WHA ACT to include:

- immediate treatment as an in-patient in hospital;
- immediate treatment for a serious head, eye or spinal injury etc; and
- medical treatment within 48 hours of exposure to a substance.

1.140 The Australian Greens are greatly concerned that psychological injuries, rapes or serious sexual assaults, or even deaths that take place in certain circumstances are not automatically or immediately notifiable.

1.141 The Australian Lawyers Alliance report *Untold Damage* argues that the WHS Act should be amended to ensure a wider scope of matters are recognised as relevant to health and safety reporting requirements.⁸⁵ Suggested matters include:

- all deaths, regardless of the circumstances in which the death occurred;
- serious sexual assault, sexual abuse and serious sexual harassment;
- all assaults of children;
- bullying giving rise to a fear for safety;
- psychological injury;
- self-harm incidents;
- series of serious injuries or illnesses that could be related;
- any failure to identify, mitigate and eliminate risks to health and safety posed by contractors, including failure to report incidents to the DIBP or Comcare; and

84 Mr Max Costello and Ms Paddy McCorry, *Submission 47*, p. 2.

85 ALA, *Untold Damage Workplace health and safety in immigration detention under the Work, Health and Safety Act 2011 (Cth)*, 16, www.lawyersalliance.com.au/documents/item/583

- the individual's age, sex and any other characteristics giving rise to vulnerability, with reporting requiring that these factors be identified.

Reporting

1.142 The Committee heard that reporting of incidents to Comcare was often haphazard, with incidents such as the self-immolation of two individuals not being reported to Comcare.⁸⁶

1.143 The Australian Greens share the concerns submitted to the inquiry by Mr Costello and Ms Paddy that, 'reporting assaults and sexual assaults to police is not required'.⁸⁷ The Australian Greens agree that certain incidents warrant the notification of police as well as the regulator.

1.144 The Australian Greens believe that amendments to the WHS Act are necessary and that a broad interpretation of the types of injuries, illnesses and incidents subject to investigation should be adopted.

Senator Nick McKim

86 Ms Anna Talbot, Legal and Policy Adviser, ALA, *Committee Hansard*, Tuesday 15 November 2016, p. 41.

87 Mr Max Costello and Ms Paddy McCorry, *Submission 47*, p. 2.

Appendix 1

Public submissions

- 1 Australian Medical Association (AMA)
- 2 Catholic Social Services Australia
- 3 SHS Law
- 4 Dr Tim McKenna
- 5 The Royal Australasian College of Physicians
- 6 Amnesty International
- 7 Edmund Rice Centre
- 8 The Royal Australian and New Zealand College of Psychiatrists
- 9 Commission for Children and Young People WA
- 10 Ms Tracie Aylmer
- 11 Ms Helen Stagoll
- 12 The University of Newcastle Legal Centre
- 13 Australasian College of Emergency Medicine (ACEM)
- 14 Ms Jessica Bloom
- 15 Jesuit Social Services'
- 16 Australian Women in Support of Women on Nauru (AWSWN)
- 17 The Royal Australian College of General Practitioners
- 18 Wilson Security
- 19 Refugee Council of Australia
- 20 Sisters of Saint Joseph
- 21 Confidential
- 22 Human Rights Watch
- 23 Department of Immigration and Border Protection
- 24 Australian Lawyers Alliance
- 25 Australian Lawyers for Human Rights
- 26 Liberty Victoria
- 27 Confidential
- 28 Hunter Asylum Seeker Advocacy (HASA)
- 29 Confidential
- 30 Confidential
- 31 Confidential

- 32 Confidential
- 33 Name Withheld
- 34 Confidential
- 35 Confidential
- 36 Confidential
- 37 Confidential
- 38 Mr Trevor Wilson
- 39 Law Council of Australia
- 40 Broadspectrum Legal
- 41 Australian College of Mental Health Nurses
- 42 Castan Centre for Human Rights Law
- 43 United Nations High Commissioner for Refugees
- 44 International Committee of the Red Cross (ICRC)
- 45 Australian Council for International Development
- 46 Australian Association of Social Workers
- 47 Ms Paddy McCorry Mr Max Costello
- 48 Mr Max Costello
- 49 Confidential
- 50 Confidential
- 51 Mr Tobias Gunn
- 52 Ms Laura Sawtell
- 53 Confidential
- 54 Confidential
- 55 Unicef Australia
- 56 Doctors for Refugees
 - IHMS Response
- 57 Confidential
- 58 Ms Sandra Bartlett
 - DIBP response
 - IHMS response
 - Wilson Security response
- 59 Ms Gabriella Sutherland
- 60 Confidential
- 61 Confidential

Tabled documents, answers to questions on notice and additional information

Additional information

- 1 Letter from Mr Kingsley Woodford-Smith, Assistant Commissioner of the Australian Border Force Operations Group
- 2 DIBP Response to the 'Forgotten Children' report by ABC's Four Corners, March 2017

Answers to questions on notice

- 1 Department of Immigration and Border Protection - answers to questions on notice from public hearing 11 November 2016 (received 28 November 2016)
- 2 Royal Australian and New Zealand College of Psychiatrists (RANZCP) - answers to questions on notice from public hearing of 15 November 2016 (received 7 November 2016)
- 3 Comcare - answers to written questions on notice (received 28 February 2017)
- 4 Department of Immigration and Border Protection - answers to questions on notice from public hearing 8 February 2017 (received 3 March 2017)
- 5 Department of Immigration and Border Protection - answers to written questions on notice (received 3 March 2017)
- 6 The Very Rev'd Dr Peter Catt - response to questions taken on notice - public hearing 14 March 2017 (received 31 March 2017)
- 7 Doctors for Refugees - response to a question about tuberculosis - public hearing 14 March 2017 (received 27 March 2017)
- 8 DFAT - answers to questions taken on notice - public hearing 15 March 2017 (received 23 March 2017)
- 9 Department of Immigration and Border Protection - answer to question on notice re IHMS contract - hearing 15 March 2017 (received 7 April 2017)
- 10 Department of Immigration and Border Protection - answers to written questions on notice from Senator Pratt
- 11 Department of Immigration and Border Protection - answers to questions taken on notice, public hearing 15 March 2017 (received 3 April 2017)

- 12 Comcare - answers to questions on notice from public hearing 15 March 2017 (received 31 March 2017)
- 13 Ombudsman - answers to questions on notice taken from public hearing 15 March 2017 (received 21 February 2017)
- 14 Department of Immigration and Border Protection - answers to questions on notice from public hearing 20 March 2017 (received 3 April 2017)
- 15 Department of Immigration and Border Protection - answers to written questions on notice from Senator McKim 29 March 2017 (received 7 April 2017)

Correspondence

- 1 Claire Roennfeldt, Department of Immigration and Border Protection - clarification of evidence provided at the public hearing 11 November 2016
- 2 Department of Employment, letter regarding the operation of the Work Health and Safety Act 2011 (Cth), February 2017
- 3 Correspondence received from Ms Jennifer Taylor, Chief Executive Officer, Comcare
- 4 Senator the Hon Michaelia Cash, letter regarding the operation of the Work Health and Safety Act 2011 (Cth), March 2017
- 5 Mr Paul Stevenson, clarification of evidence provided at hearing 14 March 2017

Tabled documents

- 1 Document tabled by RANZCP at public hearing on 15 November 2016 – opening statement
- 2 Document tabled by AWSWN at public hearing on 15 November 2016 - picture of an injury
- 3 Document tabled by Mr Max Costello at public hearing on 15 November 2016 - document
- 4 Document tabled by Mr Max Costello at public hearing on 15 November 2016 - document
- 5 Document tabled by Ms Michele Feinberg at public hearing on 14 March 2017 - opening statement
- 6 Document tabled by Ms Lynn Bocquee at public hearing on 14 March 2017 – opening statement

- 7 Document tabled by Mr Paul Stevenson at public hearing 14 March 2017
- 8 Document tabled by International Health and Medical Services at public hearing on 15 March 2017
- 9 Document tabled by Comcare at public hearing on 15 March 2017
- 10 Document tabled by Australian Churches Refugee Taskforce (ACRT) at public hearing on 14 March 2017
- 11 Document tabled by ACRT at public hearing on 14 March 2017 - Business in Abuse Report
- 12 Document tabled by ACRT at public hearing on 14 March 2017 - Protecting the Lonely Children Report
- 13 Document tabled by ACRT at public hearing on 14 March 2017 - submission to Guardian for Unaccompanied Children Bill 2014
- 14 Document tabled by ACRT at public hearing on 14 March 2017 - Submission to DFAT White Paper 2017
- 15 Document tabled by ACRT at public hearing on 14 March 2017 - UN Special Rapporteur on the human rights of migrants

Appendix 2

Public hearings and witnesses

Friday 11 November 2016—Canberra

BRAYLEY, Dr John, First Assistant Secretary, Health Services and Policy Division, Chief Medical Officer Surgeon General ABF, Department of Immigration and Border Protection

GOLEDZINOWSKI, Mr Andrew, Ambassador, People Smuggling and Human Trafficking, Department of Foreign Affairs and Trade

HAYWARD, Mr Stephen, Acting Deputy Secretary, Corporate Group, Chief Operating Officer, Department of Immigration and Border Protection

IOANNOU, Dr Tom, Group Executive Director, Performance Audit Services Group, Australian National Audit Office

MELLOR, Ms Rona, PSM, Deputy Auditor-General, Australian National Audit Office

NOCKELS Mr David, Acting Deputy Commissioner, Support Group, Department of Immigration and Border Protection

PEZZULLO, Mr Michael, Secretary, Department of Immigration and Border Protection

ROENNFELDT, Ms Claire, Acting First Assistant Secretary, Children, Community and Settlement Services Division, Department of Immigration and Border Protection

SLOPER, Mr Daniel, First Assistant Secretary, Pacific Division, Department of Foreign Affairs and Trade

WOODFORD-SMITH, Mr Kingsley, Assistant Commissioner, Detention, Compliance and Removals Division, Department of Immigration and Border Protection

Tuesday 15 November 2016—Melbourne

ALBERT, Mr Matthew, Liberty Victoria

BURNSIDE, Mr Julian, AO QC, Liberty Victoria

BUTTON, Ms Lisa, Asylum Seeker and Refugee Policy and Advocacy Adviser, Save the Children

COSTELLO, Mr Max, Private capacity

CURR, Ms Pamela, Australian Women in Support of Women on Nauru

FREW, Ms Amy Elizabeth, Lawyer, Human Rights Law Centre

JENKINS, Dr Kym, President Elect, Royal Australian and New Zealand College of Psychiatrists

LAMOIN, Ms Amy, Head of Policy and Advocacy, UNICEF Australia

LEIGH-DODDS, Ms Gemma, Policy Committee, Young Liberty for Law Reform, Liberty Victoria

O'CONNOR, Ms Claire, Australian Women in Support of Women on Nauru

PEARSON, Ms Elaine, Australia Director, Human Rights Watch

PHILLIPS, Dr Georgina, Fellow, Australasian College for Emergency Medicine

TALBOT, Ms Anna, Legal and Policy Adviser, Australian Lawyers Alliance

TINKLER, Mr Mat, Director, Policy and Public Affairs, Save the Children

WEBB, Mr Daniel, Director of Advocacy, Human Rights Law Centre

Wednesday 8 February 2017—Canberra

BRAYLEY, Dr John, First Assistant Secretary, Health Services and Policy Division, and Chief Medical Officer and Surgeon General, Australian Border Force, Department of Immigration and Border Protection

MOY, Ms Cheryl-Anne, Acting Deputy Commissioner Support, Department of Immigration and Border Protection

MURPHY, Professor Brendan, Australian Government Chief Medical Officer, Department of Health

NOCKELS, Mr David, First Assistant Secretary, Department of Immigration and Border Protection

WOODFORD-SMITH, Mr Kingsley, Assistant Commissioner, Detention, Compliance and Removals Division, Department of Immigration and Border Protection

Tuesday 14 March 2017—Brisbane

BOCQUEE, Mrs Lynn, Community Advocate, Brisbane Refugee and Asylum Seeker Support Network

CATT, Very Reverend Dr Peter, Chair, Australian Churches Refugee Taskforce

FEINBERG, Ms Michele, Advocate, Brisbane Refugee and Asylum Seeker Support Network

McDONALD, Ms Michelle, Volunteer, Love Makes a Way, Brisbane Refugee and Asylum Seeker Support Network

McLISKY, Dr Paddy, Secretary, Doctors for Refugees

STEVENSON, Mr Paul, Psychologist, Brisbane Refugee and Asylum Seeker Support Network

SUTHERLAND, Ms Gabriella, Member, Buddies Refugee Support Group, Brisbane Refugee and Asylum Seeker Support Network

Wednesday 15 March 2017—Canberra

BLUCHER, Mr Anthony, Senior Director, Regulatory Operations Group, Comcare

COUSINS, Ms Stephanie, Advocacy and External Affairs Manager, Amnesty International Australia

GIBB, Ms Doris, Acting Deputy Ombudsman, Office of the Commonwealth Ombudsman

GOLEDZINOWSKI, Mr Andrew, Ambassador for People Smuggling and Human Trafficking, Department of Foreign Affairs and Trade

HEHIR, Mr Grant, Auditor-General, Australian National Audit Office

HOLDAWAY, Dr Joanne, Medical Director, Mental Health Service, International Health and Medical Services

IOANNOU, Dr Tom, Group Executive Director, Australian National Audit Office

JOHNSTON, Mr Damien, Chief Operating Officer, International Health and Medical Services

MacLEAN, Ms Lynette, Acting Chief Executive Officer, Comcare

MELLOR, Ms Rona, Deputy Auditor-General, Australian National Audit Office

NAPIER, Mr Justin, General Manager, Regulatory Operations Group, Comcare

NEISTAT, Dr Anna, Senior Director for Research, Amnesty International

NOCKELS, Mr David James, First Assistant Secretary, Detention Services Division, Department of Immigration and Border Protection

RUDOLPH, Dr Peter, Area Medical Director, International Health and Medical Services

SEEVNARAIN, Dr Kalesh, Senior Health Adviser, International Health and Medical Services

SLOPER, Mr Daniel, First Assistant Secretary, Pacific Division, Department of Foreign Affairs and Trade

THOM, Dr Graham, Refugee Coordinator, Amnesty International Australia

WOODFORD-SMITH, Mr Kingsley, Assistant Commissioner, Detention, Compliance and Removals Division, Department of Immigration and Border Protection

Monday 20 March 2017—Canberra

MOY, Ms Cheryl-anne, Acting Deputy Commissioner Support, Department of Immigration and Border Protection

NOBLE, Ms Rachel, Deputy Secretary, Department of Immigration and Border Protection

NOCKELS, Mr David, First Assistant Secretary, Detention Services Division, Department of Immigration and Border Protection

PEZZULLO, Mr Michael, Secretary, Department of Immigration and Border Protection

QUAEDVLIEG, Mr Roman, Commissioner, Australian Border Force, Department of Immigration and Border Protection

WOODFORD-SMITH, Mr Kingsley, Assistant Commissioner, Detention Compliance and Removals, Department of Immigration and Border Protection

