

The Senate

Select Committee on the
Recent allegations relating to
conditions and circumstances at the
Regional Processing Centre in Nauru

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

August 2015

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Recommendations

Recommendation 1

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

Recommendation 2

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

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

Recommendation 3

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

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

Recommendation 4

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

Recommendation 5

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

Recommendation 6

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

Recommendation 7

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

Recommendation 8

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

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

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

Recommendation 9

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

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

Recommendation 10

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

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

Recommendation 11

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

Recommendation 12

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

Recommendation 13

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

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

Recommendation 14

5.91 The committee recommends that legislation be passed by the Australian Parliament requiring the mandatory reporting of any reasonably suspected unlawful sexual contact, sexual harassment, unreasonable use of force or other assault perpetrated against asylum seekers at the Regional Processing Centres, under similar

terms as the mandatory reporting provisions contained in existing Commonwealth, state and territory laws.

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

Recommendation 15

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

- a) conditions and treatment of asylum seekers and refugees at the Regional Processing Centre in the Republic of Nauru;
- b) transparency and accountability mechanisms that apply to the Regional Processing Centre in the Republic of Nauru;
- c) implementation of recommendations of the Moss Review in relation to the regional processing centre in the Republic of Nauru;
- d) the extent to which the Australian funded regional processing centre in the Republic of Nauru is operating in compliance with Australian and international legal obligations;
- e) the extent to which contracts associated with the operation of offshore processing centres are:
 - delivering value for money consistent with the definition contained in the Commonwealth procurement rules;
 - meeting the terms of their contracts;
 - delivering services which meet Australian standards; and
- f) any related matter.

Chapter 1

Introduction and background

Referral of the Inquiry

1.1 On 26 March 2015, the Senate resolved to establish the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, to inquire into and report by 15 June 2015 on the responsibilities of the Commonwealth Government in connection with the management and operation of the Regional Processing Centre in Nauru.¹ On 12 June the committee tabled an interim report,² and on 15 June the Senate extended the reporting date for the inquiry to 31 July 2015.³ On 31 July 2015, the committee reported that due to unforeseen circumstances it was unable to complete its work and would seek to be re-established on the next sitting day. The committee was re-established on 10 August 2015, with the same terms of reference, with a reporting date of 31 August 2015.

1.2 The committee's terms of reference required it to report on:

...the responsibilities of the Commonwealth Government in connection with the management and operation of the Regional Processing Centre in Nauru (the Centre), with particular reference to:

- a. how the Commonwealth Government is fulfilling its obligations under the Memorandum of Understanding between The Republic of Nauru and the Commonwealth of Australia relating to the transfer to and assessment of persons in Nauru, cost and related issues;
- b. the performance of the Commonwealth Government in connection with the Centre, including the conduct and behaviour of the staff employed at the Centre, to the extent that the Commonwealth Government is responsible;
- c. the Commonwealth Government's duty of care obligations and responsibilities with respect to the Centre;
- d. the circumstances that precipitated the Moss Review, including allegations made regarding conditions and circumstances at the centre and the conduct and behaviour of staff employed by contracted service providers, the timing of the Commonwealth Government's knowledge of the allegations, and the appropriateness of the response of the Commonwealth Government to these allegations;
- e. factors relating to the timing of the release of the Moss Review;

1 *Journals of the Senate* No. 90, 26 March 2015, pp 2466–2467.

2 *Journals of the Senate* No. 95, 15 June 2015, p. 2630.

3 *Journals of the Senate* No. 95, 15 June 2015, p. 2644.

f. the response of the Commonwealth Government to the recommendations of the Moss Review, including timelines for implementation; and

g. any related matters.

Conduct of the inquiry

1.3 In accordance with usual process, the inquiry was advertised on the website of the Australian Parliament, and the committee also wrote to relevant persons and organisations inviting submissions to the inquiry by 27 April 2015. A number of submissions were received and considered by the committee after the closing date for submissions.

1.4 The committee received 101 submissions to the inquiry, including a number of confidential submissions. The list of submissions received is at Appendix 1. The committee also received a large volume of correspondence, much of which was accepted on a confidential basis.

1.5 The committee held public hearings in Canberra on 19 May, 9 June, 20 July and 20 August 2015. The witnesses who appeared at the public hearings are listed at Appendix 2, and additional information received by the committee during and following the hearings is at Appendix 3.

1.6 The committee thanks all those who made submissions, gave evidence at its hearings, and otherwise assisted the inquiry. The committee recognises that for many submitters, particularly asylum seekers, staff and former staff and others directly involved with circumstances and events at the Nauru processing centre, it was difficult and for some, distressing, to provide evidence to the committee. The committee has benefited from their willingness to assist in its inquiry and expresses its gratitude to them.

Interim report

1.7 In its interim report, tabled on 12 June 2015, the committee noted the substantial volume of sensitive information received to that date, and that the committee required additional time to consider the evidence and prepare its final report.⁴

1.8 The committee made one initial recommendation, in relation to ensuring that Commonwealth expenditure on public works in the Republic of Nauru is appropriately considered by the Joint Standing Committee on Public Works in accordance with the *Public Works Committee Act 1969*.⁵ This issue is further discussed in Chapter 2, under 'Costs and prioritisation of resources'.

4 Select Committee on Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, *Interim report*, 12 June 2015, p. 1.

5 Select Committee on Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, *Interim report*, 12 June 2015, p. 2.

Structure of this report

1.9 The report is structured as follows:

- the remainder of this chapter provides background on the Republic of Nauru, the establishment and operation of the immigration detention centre on Nauru, jurisdiction over the centre, and allegations of sexual and other misconduct;
- chapter 2 examines evidence received by the committee in relation to the obligations and performance of the Commonwealth government in relation to the Nauru Regional Processing Centre, including questions of legal jurisdiction and Australia's role, the management and conduct of staff, systems of transfer and processing of asylum seekers and costs;
- chapter 3 sets out concerns raised over living conditions, and includes information on the provision of services and facilities;
- chapter 4 discusses issues relating to the protection of asylum seekers, including matters arising from the *Forgotten Children* and Moss Review reports, the evidence received by this committee in relation to sexual abuse, fear and safety, and particular concerns regarding the protection of asylum seeker children; and
- chapter 5 summarises the committee's conclusions and recommendations on the issues explored during the inquiry.

A note on terminology

1.10 The Australian Government refers to the immigration detention facility in Nauru as the Nauru Regional Processing Centre. Within the facility, the separate sites are referred to as Regional Processing Centre One (RPC 1), Two (RPC 2) and Three (RPC 3). Some submitters and witnesses have used other terminology for the centre and the sites such as OPC (offshore processing centre) or Nauru detention centre. Except where directly quoting others, this report generally uses the term Nauru Regional Processing Centre or RPC, and the site identifiers RPC 1, RPC 2 and RPC 3.

1.11 Individuals detained at the RPC are referred to by the Australian Government as 'transferees'. Other stakeholders variously use other terms, notably 'detainees' and 'asylum seekers'. Except where directly quoting others, this report generally refers to persons detained at the RPC as asylum seekers. Those persons who have been determined to have refugee status and resettled in the Nauruan community are referred to as refugees.

Background

Nauru

1.12 The Republic of Nauru is a small island state situated north east of Australia in the central Pacific Ocean, 42 kilometres south of the equator. Nauru consists of a

single coral atoll 21 square kilometres in size, and surrounding waters. The population is approximately 10,000 including a non-Nauruan population of 1,000.⁶

1.13 Nauru's executive government is comprised of its President and Cabinet, who are drawn from and collectively responsible to an elected parliament of 19 members. Nauru's judiciary consists of a Supreme Court, subordinate District Court, and Family Court. The High Court of Australia has jurisdiction to hear appeals from civil and criminal judgements of the Supreme Court, with certain exceptions.⁷

1.14 Under the control of various colonial and occupying powers from the late nineteenth century, Nauru was a United Nations trust territory under Australian administration at the time of its independence in 1968. At that time Nauru derived significant revenue from phosphate mining, and for a period after independence, Nauruans enjoyed enormous wealth. By the end of the twentieth century, however, declining phosphate royalties and financial mismanagement had virtually bankrupted the nation.⁸

1.15 Secondary phosphate mining commenced in 2005, and Nauru currently derives some revenue from licensing commercial fishing in its waters, but its economy remains limited and fragile. While reliable economic statistics are difficult to obtain, it is evident that the government of the Republic of Nauru has limited sources of internal revenue, very little local commercial activity and extremely high unemployment, with the public sector dominating employment on the island.⁹

1.16 The gross domestic product (GDP) of Nauru as at 2012 was estimated at \$121 million USD, a significantly higher figure than the estimate for 2010 which was \$62 million USD.¹⁰ The Asian Development Bank (ADB) reported that GDP grew by 10 per cent in 2014, with expected growth of eight per cent in 2015. According to the ADB this growth was largely attributable to externally funded infrastructure projects, particularly construction work following the recommencement of operations at the Regional Processing Centre.¹¹

6 *The Government of the Republic of Nauru*, www.naurugov.nr (accessed 27 May 2015).

7 *Nauru Courts System Information*, <http://www.paclii.org/nr/courts.html> (accessed 27 May 2015).

8 ABC Radio National, 'How Nauru threw it all away', 11 March 2014, <http://www.abc.net.au/radionational/programs/rearvision/how-nauru-threw-it-all-away/5312714> (accessed 19 May 2015).

9 See, for example, CIA World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/nr.html> (accessed 19 May 2015); Asian Development Bank, <http://www.adb.org/countries/nauru/main> (accessed 19 May 2015).

10 *UN Data*, <http://data.un.org/CountryProfile.aspx?crName=Nauru> (accessed 19 May 2015).

11 Asian Development Bank, <http://www.adb.org/countries/nauru/economy> (accessed 19 May 2015)

Establishment of an immigration detention facility on Nauru, 2001-2008

1.17 In response to a rising number of asylum seekers arriving in Australia by boat in 2001, the Howard government commenced discussions with a number of Pacific nations about the potential establishment of offshore processing centres, which became known as the 'Pacific solution'. Australia signed an Administrative Agreement with Nauru on 10 September 2001 for Nauru to accommodate asylum seekers for processing. This was replaced by a Memorandum of Understanding (MOU) signed on 11 December 2001.¹²

1.18 Between 2001 and 2008 a total of 1,322 persons were housed at the Nauru centre. The population at the centre peaked at 1,155 asylum seekers in early 2002, and there were 82 asylum seekers remaining by the time of the centre's closure in early 2008.¹³ The centre was managed and operated by the International Organisation for Migration.

1.19 From March 2005, the Nauru centre was maintained on an 'open centre' basis, under which residents were allowed free movement outside the centre between 8.00am and 7.00pm six days a week, subject to certain exclusions.¹⁴

1.20 Following its election in 2007, the Labor government announced that the 'Pacific solution' would cease. On 8 February 2008, the last asylum seekers were removed from Nauru, and the government announced that the Nauru centre would no longer be used.¹⁵

The recommencement of offshore processing in Nauru, 2012

1.21 In June 2012 the then government established an Expert Panel to provide it with advice and recommendations on policy options available to prevent asylum seekers risking their lives on dangerous boat journeys to Australia.¹⁶ This followed high numbers of asylum seekers reaching Australia by boat in the first half of 2012.

1.22 The Expert Panel's report was released on 13 August 2012, and made 22 recommendations and four sub-recommendations. The report recommended the reintroduction of regional processing arrangements:

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- 12 Janet Phillips, 'The "Pacific Solution" revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island', Parliamentary Library, *Background Note*, 4 September 2012, pp 2-3.
 - 13 Janet Phillips, 'The "Pacific Solution" revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island', Parliamentary Library, *Background Note*, 4 September 2012, pp 12, 14.
 - 14 Janet Phillips, 'The "Pacific Solution" revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island', Parliamentary Library, *Background Notes*, 4 September 2012, pp 4-5.
 - 15 Janet Phillips and Harriet Spinks, 'Immigration Detention in Australia', Parliamentary Library, *Background Note*, 20 March 2013, p. 11.
 - 16 Australian Government, *Report of the Expert Panel on Asylum Seekers*, August 2012, terms of reference, p. 9.

Recommendation 8:

The Panel recommends that **capacity be established in Nauru** as soon as practical to process the claims of IMAs [irregular maritime arrivals] transferred from Australia in ways consistent with Australian and Nauruan responsibilities under international law.¹⁷

1.23 The Panel proposed the establishment of processing facilities in Nauru as a short-term 'circuit breaker' to the surge in irregular migration to Australia, while '[o]ver time, further development of such facilities in Nauru would need to take account of the ongoing flow of IMAs to Australia and progress towards the goal of an integrated regional framework for the processing of asylum claims'.¹⁸

1.24 The Panel identified a number of conditions upon which processing in Nauru should take place, including 'protection and welfare arrangements consistent with Australian and Nauruan responsibilities under international law, including the Refugee Convention', and that '[d]ecisions in relation to how IMAs in Nauru would be processed would be determined by Australian officials in accordance with international obligations and in the context of prevailing circumstances'. The Panel also proposed that the involvement of the United Nations High Commissioner for Refugees (UNHCR) and International Organization for Migration (IOM) in the Nauru arrangements 'would be highly desirable and should be actively pursued as a matter of urgency'.¹⁹

1.25 Upon the release of the Expert Panel's report, the government announced that it accepted all of the recommendations and that it would commence arrangements immediately to resume offshore processing in Nauru. The *Migration Legislation Amendment (Regional Processing and other measures) Act 2012* took effect on 18 August 2012, Australia and Nauru signed a Memorandum of Understanding (MOU) on 29 August, and the Nauru Regional Processing Centre (RPC) received the first group of asylum seekers on 14 September 2012.²⁰

1.26 On 3 August 2013, a second MOU was signed between Australia and Nauru, providing for the resettlement of refugees in Nauru.²¹

The Nauru Regional Processing Centre

1.27 From its reopening in 2012 to June 2015, a total of 2,238 persons had been transferred to the RPC.²²

17 Australian Government, *Report of the Expert Panel on Asylum Seekers*, August 2012, terms of reference, p. 16 (original emphasis).

18 Australian Government, *Report of the Expert Panel on Asylum Seekers*, August 2012, terms of reference, p. 47.

19 Australian Government, *Report of the Expert Panel on Asylum Seekers*, August 2012, terms of reference, p. 48.

20 Elibritt Karlsen & Janet Phillips, 'Developments in Australian refugee law and policy (2012 to August 2013)', *Parliamentary Library Research Paper Series*, 25 September 2014, pp 4-5.

21 Elibritt Karlsen & Janet Phillips, 'Developments in Australian refugee law and policy (2012 to August 2013)', *Parliamentary Library Research Paper Series*, 25 September 2014, p. 7.

1.28 At 13 July 2015, there were 637 asylum seekers detained in the Nauru RPC. These comprised 551 adults and 86 children.²³

1.29 This group was composed of 167 asylum seekers from Iran (140 adults and 27 children), 123 from Sri Lanka (96 adults and 27 children), 74 from Pakistan, 42 from Bangladesh, 37 from Afghanistan, 21 from Iraq, 12 from Nepal, 17 from Burma (11 adults and 6 children), 14 from India (7 adults and 7 children), 9 from Somalia, 13 from other nations and 104 stateless persons, including 15 children.²⁴

1.30 The Department of Immigration and Border Protection (the department) advised that as at 30 April 2015, the average length of time asylum seekers spent in the RPC was 402 days.²⁵

1.31 The total operating and capital costs of regional processing and refugee settlement in Nauru from 1 July 2012 to 30 April 2015 were provided by the department as set out below:²⁶

Costs of Regional Processing and Settlement in Nauru	2012/13 \$	2013/14 \$	2014/15 (to 30 April 2015) \$
RPC Operational Costs	143,196,000	387,662,000	380,419,000
DIBP Staff Costs	7,064,000	11,013,000	7,999,000
Capital	132,648,000	207,060,000	56,582,000

1.32 Of this amount, the department reported that in the 2014-15 financial year, up to 30 April 2015, \$359,013,000 of the operational cost was for the operation of the RPC, with the remainder spent on settlement.²⁷

1.33 The RPC comprises three sites: RPC 1, RPC 2 and RPC 3. Site RPC1 consists of accommodation for staff and service providers in permanent structures, as well as some facilities used by both staff and asylum seekers. RPC 2 houses single adult male

22 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 43.

23 Department of Immigration and Border Protection, answer to question on notice, 10 July 2015 (received 17 July 2015).

24 Department of Immigration and Border Protection, answer to question on notice, 10 July 2015 (received 17 July 2015).

25 Department of Immigration and Border Protection, answer to question on notice, 7 May 2015 (received 13 May 2015).

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

27 Department of Immigration and Border Protection, answer to question on notice, 9 June 2015 (received 30 June 2015).

asylum seekers in vinyl marquees with dormitory style sleeping arrangements, and various communal facilities. RPC 3 accommodates single adult female asylum seekers and families in vinyl marquees internally divided for family groups, as well as a number of communal facilities. The department has advised that the accommodation facilities are self-sufficient in water storage, power and sewerage treatment.²⁸

1.34 The department advised the committee that it was originally planned that the RPC would operate as an 'open centre', comprising 'community living institutions' with minimal security, from which asylum seekers would come and go with relative autonomy, and engage with the local community. In ensuing consultation with the Government of Nauru, the model 'evolved' such that from its conception the centre operated as a closed facility, with movement outside the RPC only allowed on an escorted basis. On 25 February 2015, open centre arrangements were introduced at the RPC for certain cohorts of asylum seekers. The department advised that this was being 'incrementally expanded to include all eligible asylum seekers'.²⁹

1.35 Refugee status determination of asylum seekers detained at the RPC is undertaken by the Government of Nauru. As at 30 June 2015, 506 positive refugee status determinations had been made, and 89 had been declined.³⁰ The refugees had been resettled in the Nauruan community, while those whose applications were declined were still at the RPC, while judicial and merits review processes remained in train.

1.36 The 485 determined refugees from the RPC settled in the Nauruan community at 30 March 2015 comprised:

- 159 single adult males;
- 39 single adult females;
- 276 refugees in family groups;
- 11 unaccompanied refugee minors; and
- one unaccompanied minor who had yet to receive a refugee status determination.³¹

1.37 As at 30 June 2015, the department reported that two asylum seekers had voluntarily returned to their country of origin from the Nauru RPC, one to Iran and

28 Department of Immigration and Border Protection, *Submission 31*, p. 33.

29 Department of Immigration and Border Protection, *Submission 31*, p. 35.

30 Department of Immigration and Border Protection, *Operation Sovereign Borders monthly update: June 2015*, 10 July 2015, at <http://newsroom.border.gov.au/releases/operation-sovereign-borders-monthly-update-june> (accessed 15 July 2015).

31 Department of Immigration and Border Protection, *Submission 31*, pp 55–56.

one to Iraq. Four refugees had been resettled from Nauru to Cambodia.³² These reportedly included three single men and one woman.³³

Jurisdiction over and management of the Nauru RPC

1.38 The department characterises jurisdiction over the RPC as follows:

Nauru owns and administers the Nauru Regional Processing Centre, under Nauruan law. Australia provides capacity building and funding for Government of Nauru's operation of the centre and coordinates the contract administration process.³⁴

1.39 The department advises that under the terms of the two Memoranda of Understanding and related arrangements between the Governments of Australia and Nauru, Nauru's Secretary of Justice is responsible for the 'security, good order and management of the centre, including the care and welfare of persons residing in the centre'. The RPC is managed by three Operational Managers appointed by the Government of Nauru, assisted by Deputy Operational Managers.³⁵

1.40 According to the department, it and its contracted service providers support Nauru's Secretary of Justice and the Operational Managers in fulfilling their roles, as agreed between the two parties. The terms of the MOU require that activities undertaken by the Australian Government comply with Australia's Constitution and laws. 'In some cases, where no relevant Nauruan standard exists, services contracts require providers to adhere to Australian standards in the delivery of services'.³⁶

Previous reports

1.41 Two reports released in the first quarter of 2015 were key precursors to the establishment of this inquiry. The Australian Human Rights Commission (AHRC) released *The Forgotten Children* report in February 2015, detailing an inquiry undertaken over ten months in 2014 into children in immigration detention, both in Australia and offshore.³⁷ The report included a chapter specifically related to children detained at the Regional Processing Centre in Nauru.

1.42 In March 2015, the *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru* (the Moss Review),

32 Department of Immigration and Border Protection, *Operation Sovereign Borders monthly update: June 2015*, 10 July 2015, <http://newsroom.border.gov.au/releases/operation-sovereign-borders-monthly-update-june> (accessed 15 July 2015).

33 'First refugees from Nauru detention centre arrive in Cambodia', *ABC Online*, 4 June 2015, <http://www.abc.net.au/news/2015-06-04/refugees-from-nauru-detention-centre-arrive-in-cambodia/6521972> (accessed 4 June 2015).

34 Department of Immigration and Border Protection, *Submission 31*, p. 4.

35 Department of Immigration and Border Protection, *Submission 31*, p. 11.

36 Department of Immigration and Border Protection, *Submission 31*, p. 12.

37 Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, 2014. Tabled in the Senate on 11 February 2015: *Journals of the Senate* No. 77, 11 February 2015, p. 2148.

commissioned by the Department of Immigration and Border Protection in October 2014 and conducted by Mr Philip Moss, was partially published.³⁸ The Moss Review was commissioned following various reports of misconduct and abuse at the RPC, including sexual abuse, received by the department and aired in the media in September 2014, as well as concerns raised about the conduct of certain service provider staff.

1.43 *The Forgotten Children* report and the Moss Review, and evidence relating to safety and abuse received by this committee, are discussed further in chapter 4.

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

Chapter 2

Obligations and performance of the Commonwealth in relation to the Nauru Regional Processing Centre

2.1 This chapter examines evidence received by the committee in relation to its terms of reference about the obligations and performance of the Commonwealth government in relation to the Regional Processing Centre (RPC) on Nauru in general. The issues covered include questions of legal jurisdiction and Australia's role; arrangements for managing the conduct of staff; the systems of transfer and processing of asylum seekers; and costs.

Responsibilities of the Commonwealth in relation to the Regional Processing Centre on Nauru

Jurisdiction

2.2 Throughout the committee's inquiry, the department was careful to delineate between the Commonwealth's jurisdiction and responsibilities in relation to the RPC, and those of the Government of Nauru. As noted in Chapter 1, the department advised the committee in its submission that Nauru 'owns and administers' the RPC under Nauruan law, while Australia's role is one of funding, capacity building and support to Nauru in that endeavour.¹

2.3 The department reiterated this position repeatedly during the inquiry. At the committee's public hearing on 9 June, the secretary of the Department of Immigration and Border Protection, Mr Michael Pezzullo, reaffirmed the department's position:

The Australian government does not run the Nauru Regional Processing Centre, or RPC. It is managed by the government of Nauru, under Nauruan law, with support from the Australian government. The government of Nauru operates the RPC, assesses asylum claims and, where persons are found to be in need of protection, arranges settlement. The government of Nauru is specifically responsible for security and good order and the care and welfare of persons residing in the centre. On behalf of the Commonwealth, my department provides support services and advice, pursuant to an agreement between our two governments.²

2.4 While at the committee's public hearing on 20 July, the secretary stated that:

It is a matter of law. It would require a treaty level transference of sovereignty, an abrogation on the part of the government of Nauru and an acquisition of sovereignty on the part of the Commonwealth of Australia, for Australia to have sovereignty in relation to, for instance, the

1 Department of Immigration and Border Protection, *Submission 31*, p. 4.

2 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 43.

administration of criminal justice. It is a factual matter...It is just a matter of fact.³

2.5 A number of legal and human rights bodies made submissions to the inquiry, however, asserting a broader responsibility on Australia's part for conditions and events at the RPC. Professor William Maley from the Asia-Pacific College of Diplomacy at the Australian National University observed that '[m]odern theories of sovereignty...recognise that sovereignty is multidimensional and very rarely absolute'.⁴

Australia's obligations under international law

2.6 A number of submitters, particularly legal and human rights experts and refugee advocacy organisations, contended that Australia retained legal obligations to the asylum seekers in the RPC under international human rights law notwithstanding its location in another country.⁵

2.7 Submitters noted the established principle in international jurisprudence that if a country retained 'effective control' over a person or group of persons, it continued to be responsible for protecting their human rights, regardless of whether the physical location of that person was inside the responsible country's territory. As the Andrew & Renata Kaldor Centre for International Refugee Law explained:

The crucial question is not *where* a person is, but rather which State has (or which States have) sufficient control over a person to affect directly his or her enjoyment of rights.⁶

2.8 Similarly, the Australian Human Rights Commission (AHRC) stated that:

Australia cannot avoid its human rights obligations under international law by transferring asylum seekers to a third country. If Australia has 'effective control' over asylum seekers whom it has transferred to another country, or over a regional processing centre to which they have been transferred, then it is bound to continue to treat them consistently with human rights treaties to which Australia is a party.⁷

2.9 Many submitters cited the terms of the Memorandum of Understanding (MOU), and practical arrangements at the RPC, in support of the argument that

3 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 20 July 2015, p. 93.

4 Professor William Maley, *Submission 10*, p. 4.

5 See ChilOut, *Submission 13*; Immigration Advice & Rights Centre, *Submission 17*; Castan Centre for Human Rights Law, *Submission 18*; UNHCR, *Submission 19*; Australian Human Rights Commission, *Submission 25*; Law Society of South Australia, *Submission 34*; Law Society of New South Wales, *Submission 35*; Law Council of Australia, *Submission 57*; Human Rights Law Centre and UNICEF Australia, *Submission 58*; Andrew & Renata Kaldor Centre for International Refugee Law, *Submission 60*.

6 Andrew & Renata Kaldor Centre for International Refugee Law, *Submission 60*, p. 10.

7 Australian Human Rights Commission, *Submission 25*, p. 1.

Australia retained effective control over asylum seekers in Nauru. The Law Council of Australia, for example, identified the following factors in support of that assessment:

- the RPC was established at Australia's instigation, and Australia has arranged for its establishment and construction;
- Australia funds the operation of the RPC;
- Australia engages the contractors who conduct the day-to-day running of the RPC, and these companies are responsible to the Australian government through their contracts;
- the Australian government, through the department, controls the delivery of services and infrastructure at the RPC through its management of the service-provider contracts;
- Australia maintains a staff presence at the RPC, and the department has the power and capacity to cause or prevent any action or decision being made there;
- Australia is solely responsible for the placement of all asylum seekers at the RPC; and
- the Government of Australia has an extensive knowledge and awareness of the risks and dangers posed by immigration detention.⁸

2.10 The Human Rights Law Centre and UNICEF offered a similar list of considerations, concluding that:

From the moment they are received by Australian authorities and throughout their detention on Nauru, asylum seekers are effectively subject to Australia's jurisdiction and control. That practical reality translates under international law to a legal one, such that Australia retains human rights obligations to asylum seekers it transfers to detention on Nauru.⁹

2.11 The Castan Centre for Human Rights Law and the Law Council of Australia also noted that the Moss Review had highlighted the high degree of Australian control over the centre, to the extent that Nauruan managers told that inquiry that they were not sufficiently informed about day-to-day matters at the RPC because service providers reported directly to the department.¹⁰

2.12 Former Chief Justice of Nauru, the Hon Geoffrey Eames, recounted to the committee that following a visit to the RPC in November 2013, he raised concerns about the 'intolerable' conditions there with the President of Nauru. Mr Eames advised that the President proposed changes to improve accommodation arrangements for children at the RPC, and stated that he would 'ask Tony Abbott' whether these could

8 Law Council of Australia, *Submission 57*, p. 9.

9 Human Rights Law Centre and UNICEF Australia, *Submission 58*, p. 6.

10 Castan Centre for Human Rights Law, *Submission 18*, p. 3; Law Council of Australia, *Submission 25*, p. 14.

be made.¹¹ Mr Eames emphasised the 'symbiotic' relationship between Australia and Nauru in relation to the RPC: '[f]or every statement that this was a domestic matter that Nauru would look at, Nauru always had one eye to the larger country.'¹²

2.13 Making particular reference to Australia's obligations under the Refugees Convention,¹³ the United Nations High Commissioner for Refugees (UNHCR) reminded the committee of the assessment it had previously and publicly offered with respect to Nauru:

Under international law, Australia thus continues to have legal responsibility for the protection of those asylum-seekers, refugees and stateless persons who are transferred to Nauru. The extent of such responsibility can be assessed, inter alia, against the extent to which reception and/or processing of asylum-seekers is effectively under the control or direction of Australia as the transferring State. UNHCR has previously observed a high degree of effective control at the Centre, including Australia's financing and appointing of the service providers at the Centre and the numerous Australian Government officials who are present to assist with the management and day-to-day running of the Centre, as well as Australia's close involvement and mentoring of Nauruan officials in respect of refugee status determination (RSD) processing.

In summary, UNHCR is of the view that the physical transfer of asylum-seekers, refugees and stateless persons from Australia to Nauru does not extinguish the legal responsibility of Australia for their protection.¹⁴

2.14 It was pointed out to the committee that other parliamentary inquiries had similarly examined the question of RPCs and Australia's responsibilities. The AHRC drew attention to the finding of the Parliamentary Joint Committee on Human Rights in 2013, that Australia could be viewed as exercising effective control of the arrangements relating to persons transferred to Manus Island and Nauru, and that Australia retained responsibility under international law in relation to the treatment of asylum seekers in the RPCs, irrespective of whether Papua New Guinea or Nauru might also be jointly responsible.¹⁵

2.15 Examining the Commonwealth's legal responsibilities with respect to the RPC on Manus Island in 2014, the Senate Legal and Constitutional Affairs References Committee received and considered evidence offering the same lines of argument as those submitted to this committee, and concluded that:

...the degree of involvement by the Australian Government in the establishment, use, operation, and provision of total funding for the [Manus

11 Mr Geoffrey Eames, *Committee Hansard*, 20 July 2015, pp 69-70.

12 Mr Geoffrey Eames, *Committee Hansard*, 20 July 2015, p. 72.

13 *Convention relating to the Status of Refugees, 1951, and Protocol relating to the Status of Refugees, 1967.*

14 UNHCR, *Submission 19*, p. 4.

15 Australian Human Rights Commission, *Submission 25*, p. 2.

Island] 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.¹⁶

2.16 Several submitters made the secondary point that even if Australia did not exercise effective control, it could still be regarded as holding joint liability with the host government for any breaches of international human rights law which occurred at an RPC. Some further cited the statement of the UN Human Rights Committee that a state may be responsible for extra-territorial violations of the International Covenant on Civil and Political Rights (ICCPR) if it had exposed a person to a reasonably foreseeable 'real risk' that his or her rights would be violated.¹⁷

2.17 In its Explanatory Memorandum on legislation related to regional processing put before parliament in June 2015, the government elaborated its perspective on the application of its international legal obligations in the RPCs:

The Australian Government's long-standing view is that Australia's human rights obligations are essentially territorial. Persons in regional processing countries are outside Australia's territory. Australia has accepted that there may be exceptional circumstances in which the rights and freedoms set out under the ICCPR may apply to persons beyond the territory of a State party, and the extent of the obligations that a State may owe under international human rights law where it is operating extraterritorially will be informed by the degree of control exercised by the State. The Government's position is that Australia does not exercise the degree of control necessary in regional processing countries to enliven Australia's international obligations.

Australia does not restrain the liberty of persons in regional processing countries. To the extent that the liberty of persons taken to regional processing countries is restrained in those countries, this is done under the laws of that country.¹⁸

Obligations under Australian domestic law: duty of care

2.18 Legal experts also argued in a number of submissions that Australian domestic law imposed a non-delegable duty of care upon the Commonwealth in relation to asylum seekers at the RPC. The Law Council of Australia considered 'that there is a compelling argument that domestic case law supports the existence of a duty of care owed by the Commonwealth to detainees in OPCs'.¹⁹

2.19 In this respect, submitters emphasised the provision in the MOU that 'the Commonwealth of Australia will conduct all activities in respect of this MOU in

16 Senate Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*, December 2014, p. 151.

17 Immigration Advice & Rights Centre, *Submission 17*, p. 7; Law Society of New South Wales, *Submission 35*, p. 3.

18 Migration Amendment (Regional Processing Arrangements) Bill 2015, Explanatory Memorandum, p. 10.

19 Law Council of Australia, *Submission 57*, p. 7.

accordance with its Constitution and all relevant domestic laws'.²⁰ In a detailed submission, the Australian Lawyers Alliance (ALA) argued that under the terms of the MOU between Australia and Nauru, the Commonwealth retained duties of care both at common law and under Australian workplace, health and safety legislation, that were non-delegable in nature.²¹

2.20 Analysing the terms of the MOU, ALA assessed that:

...it appears that while the centre is on Nauruan soil, control is maintained by Australia, who continue to fund, have input into decisions, and the final say about whether a person will be detained inside the Centre. Further, the 2013 MOU establishes a direct line of reporting to the Australian Department of Immigration.²²

2.21 Both ALA and the Castan Centre also noted that the department's immigration detention standards, developed in consultation with the Commonwealth Ombudsman in 1997, included the following provision:

Ultimate responsibility for the detainees remains with [the department] at all times'.²³

2.22 While recognising that the High Court had not yet resolved the question whether the Commonwealth's duty of care to asylum seekers was non-delegable, ALA and the Law Council of Australia cited a number of common law precedents which established that where a legal person has undertaken the care, supervision or control of another, they assume a particular and non-delegable responsibility toward the other person, where that other person is not in control and is dependent on or vulnerable to the control of the first.

2.23 ALA cited cases establishing the legal responsibility of the state, through its prison authorities, to exercise reasonable care for the safety of detainees, and Australian courts' application of that principle to the immigration detention context, as authority that the department held an 'obligation of reasonable care to avoid harm to the detainee whether that harm be inflicted by a third person or by the detainee himself or herself'.²⁴ In the Federal Court, discussing the relevance of the isolated

20 *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*, 3 August 2013, clause 4; cited in Australian Lawyers Alliance, *Submission 14*, p. 14; Castan Centre for Human Rights Law, *Submission 18*, pp 2-3.

21 Australian Lawyers Alliance, *Submission 14*, p. 12.

22 Australian Lawyers Alliance, *Submission 14*, p. 14.

23 See Joint Standing Committee on Foreign Affairs, Defence and Trade, *A report on visits to immigration detention centres*, June 2001, pp 94-95 and Appendix H. Cited in Castan Centre for Human Rights Law, *Submission 18*, p. 3 and footnote 2; Australian Lawyers Alliance, *Submission 14*, p. 15.

24 *SBEG v Commonwealth of Australia* [2012] FCAFC 189, cited in Australian Lawyers' Alliance, *Submission 14*, p. 30.

location of the Baxter detention centre and its impact on the standard of health care services able to be provided, Finn J stated that:

Having made the choice of location, the Commonwealth, not the detainees, should bear the consequences of it insofar as that choice has affected or compromised the medical services that could be made available to meet the known needs of detainees.²⁵

2.24 In the area of legislative responsibility, two submissions drew particular attention to Australia's obligations under the Commonwealth *Work, Health and Safety Act 2011* (WHS Act) and their applicability to the RPC.²⁶ ALA noted that Comcare had carried out inspections and reporting in relation to the Nauru and Manus Island RPCs,²⁷ and the government's acceptance that for the purposes of the WHS Act, responsibility for providing a safe workplace at the RPCs rested with the department.²⁸

2.25 ALA and other submitters noted that the provisions of the WHS Act extended obligations to protect health and safety beyond employees to include 'other persons' and 'all persons' at a location of work, arguing that this imposed obligations on the Commonwealth to protect the health and safety of asylum seekers at the RPC.²⁹

2.26 ALA noted that although the WHS Act required the reporting to Comcare of all critical incidents, including sexual assault, no incidents had been reported in relation to Nauru since September 2013, and queried why this was the case.³⁰ Employment law experts Mr Max Costello and Ms Paddy McCorry believed this was because the department and Comcare had adopted a narrower interpretation of the application of the WHS Act at the RPCs, but they disputed this approach, arguing that the broad, extraterritorial and non-delegable nature of the provisions of the WHS Act created obligations from which the Commonwealth could not legally resile.³¹

2.27 Overall, ALA concluded that:

If allegations of [the kind cited in the Moss Review] occurred on Australian soil, there would be a Royal Commission, criminal charges would be laid, Comcare would appropriately investigate, and a raft of personal injury claims would be pursued.

25 *S v Secretary, Department of Immigration Multicultural and Indigenous Affairs* [2005] FCA 549, at 213; cited in Australian Lawyers' Alliance, *Submission 14*, p. 34.

26 Australian Lawyers' Alliance, *Submission 14*; Mr Max Costello & Ms Paddy McCorry, *Submission 26*.

27 Department of Immigration and Border Protection, *Annual Report 2013-14*, September 2014, p. 280.

28 Australian Lawyers' Alliance, *Submission 14*, p. 39 and attachment ('Document 1').

29 Australian Lawyers' Alliance, *Submission 14*, pp 40-41; Mr Max Costello and Ms Paddy McCorry, *Submission 26*, p. 11.

30 Australian Lawyers' Alliance, *Submission 14*, pp 43-44 and attachment ('Document 2').

31 Mr Max Costello and Ms Paddy McCorry, *Submission 26*, p. 35.

We submit that the fact that these incidents occur on Nauruan soil does not hold the Commonwealth immune from its responsibilities under the common law and statute. In fact, these duties remain.

We submit it cannot be a discharge of Commonwealth responsibility to place detainees in another country against their will.³²

2.28 ALA urged 'a greater role for Comcare to investigate the safety of workers and other persons in relation to Nauru regional processing centre', including their risks of both physical and psychological injury.³³

Australia's responsibilities under the MOU

2.29 Memoranda of Understanding are not legally binding and as such, the terms of the MOU between the governments of Australia and Nauru do not create legally enforceable obligations on Australia. However, many submitters pointed out that, in addition to the contribution the terms of the MOU may make to demonstrating Australia's effective control and therefore its legal obligations in respect of the RPC, the MOU itself created, at a minimum, moral obligations upon its signatories to fulfil its provisions in good faith.

2.30 In this respect, submitters drew attention in particular to two clauses of the MOU:

- Clause 4: The Commonwealth of Australia will conduct all activities in respect of this MOU in accordance with its Constitution and all relevant domestic laws;

and

- Clause 17: The Participants will treat Transferees with dignity and respect and in accordance with relevant human rights standards.³⁴

Capacity of Nauru's police and legal system

2.31 Challenges to the Republic of Nauru's ability to fulfil its responsibilities under the MOU and more generally in relation to the RPC were the subject of comment by many submitters, these challenges were seen to reinforce both the legal and ethical responsibility placed on Australia, as the instigator and effective controller of the Centre, to ensure that appropriate standards and processes were observed for the protection, safety and wellbeing of asylum seekers.

2.32 Law Students for Refugees argued that:

The Australian government has chosen to delegate its obligations to transferees under the *Refugees Convention* (as amended by the *Refugees Protocol*), to the Nauruan police and government as a designated alternative

32 Australian Lawyers' Alliance, *Submission 14*, p. 6.

33 Australian Lawyers' Alliance, *Submission 14*, p. 42.

34 *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*, 3 August 2013.

authority. However, if that alternative authority is incapable of properly ensuring that transferees are receiving sufficient protection, it is the responsibility of the Australian Government to either meet these obligations itself or ensure that structures in Nauru are capable of doing so.³⁵

2.33 The Law Council of Australia and the Victorian Bar went further, citing principles of international law relating to the responsibility of states for intentionally wrongful acts:

...when one State places its organs or assets at the disposal of another State, the conduct of the organ of the former State (such as Papua New Guinea (PNG) or Nauruan police or security forces) shall be considered to be the conduct of the latter State (such as Australia) if acting in the exercise of elements of governmental authority of the latter State...³⁶

Capacity of the Nauru Police Force

2.34 The committee received specific evidence regarding the capacity of the Nauru Police Force to investigate allegations made about incidents at the RPC which have been put to this inquiry.

2.35 Mr Peter Law, a former Chief Magistrate on Nauru, expressed his concerns about the capacity of the Nauru police, particularly following the removal of the Australian-seconded police commissioner in July 2014:

It is regrettable that the Nauru police force has limited resources and capacity to investigate serious allegations. There is very limited forensic evidence available to the police force. They were very reliant on support from the Australian Federal Police. During my tenure there, I found that the role of the Australian Federal Police was extremely positive. I could not speak more highly of them in terms of the logistical support and training that was provided. Most importantly, they provided the commissioner through an officer of the AFP. They filled the position of commissioner of the Nauru police force. It was more than just symbolic in filling that position by the AFP. It provided a sense of independence and integrity. The subsequent departure or termination of the contract of Richard Britten, the then commissioner, on 19 July, was a very regrettable fact. I say that because, through him and his predecessor, Commissioner Ced Netto, they were able to offer their expertise and their assurances of independence and proper investigation. It was my observation that after their departure those factors were missing from the Nauru police force.³⁷

2.36 Similarly, former Chief Justice Eames expressed the view in relation to the police that 'there is a serious question about their independence and about their willingness to investigate allegations against Nauruans who are charged with assaults of non-Nauruans'.³⁸

35 Law Students for Refugees, *Submission 23*, p. 2.

36 Law Council of Australia, *Submission 25*, p. 10.

37 Mr Peter Law, *Committee Hansard*, 9 June 2015, p. 15.

38 Mr Geoffrey Eames, *Committee Hansard*, 20 July 2015, p. 73.

2.37 When queried by the committee, a senior Wilson Security officer with 16 months experience as a security manager on Nauru declined to offer an assessment as to the level of competence of the Nauru Police Force.³⁹ Save the Children Australia's head of Nauru programs assessed that the small size and limited training level of the Nauruan police, particularly in relation to working with trauma issues and sexual assault, gave rise to questions about the appropriateness of relying on the Nauru Police Force to investigate alleged crimes at the RPC.⁴⁰

2.38 The department advised the committee in June 2015 that since September 2012, a total of 50 matters had been referred to the Nauru Police Force for investigation, in relation to alleged incidents at the RPC. Of these, five had resulted in charges being laid, two convictions had been recorded and two sentences handed down.⁴¹

2.39 The department also advised the committee that in response to the recommendations of the Moss Review, it had deployed four Australian Federal Police (AFP) officers to Nauru on 6 May 2015 for a period of four to six weeks. Two of these would assist the Nauru Police Force in reviewing and strengthening its processes and investigations in relation to sexual assault, child abuse and associated crimes, while the other two were to advise and mentor the Nauruan Police Force in relation to the investigation and prosecution of public disorder incidents. These officers were in addition to two AFP officers deployed to Nauru on a long term basis to provide general mentoring and advice to the Nauru Police Force. Relevant training courses and assistance were also being offered to the Nauru Police Force and the Government of Nauru by the AFP and Attorney-General's Department.⁴²

Nauru's judicial system and the rule of law

2.40 Former Chief Justice Eames expressed related concerns about the ability of Nauru's judiciary to cope with the workload generated by incidents at the RPC:

Following two major incidents of riotous behaviour by some detainees it was apparent that the resources of the judiciary would be severely stretched by the more than 120 prosecution cases that had to be heard. The courthouse itself is tiny and not secure; it could not easily cope with trials involving multiple defendants.⁴³

2.41 The observance of the rule of law more generally in Nauru was an issue of serious concern to a number of expert submitters. Mr Law described a 'history of failure by the Nauruan prosecuting authorities to act independently of the

39 See *Committee Hansard*, 19 May 2015, p. 24.

40 Mr Lee Gordon, Head of Nauru Programs, Save the Children Australia, *Committee Hansard*, 19 May 2015, p. 53.

41 Mr Michael Pezzullo and Ms Cindy Briscoe, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 45.

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

43 The Hon Geoffrey Eames AM QC, *Submission 70*, p. 6.

government'.⁴⁴ Mr Law's evidence cited concerns about the independence from political influence of the police, the office of public prosecutions and even the judiciary, following the removal of himself and the Chief Justice by the Government of Nauru in 2014. In his submission, Mr Law observed that '[t]he issue of capacity is overshadowed by motivation. The lack of action suggests the Nauruan Government is less than interested to see these incidents [at the RPC] investigated and prosecuted because such action may reflect adversely on Nauru as a place to process and settle asylum seekers'.⁴⁵

2.42 Mr Eames stated that from his experience 'the concept of separation of powers was not well understood or accepted by some members of the government'. In relation to police investigations, Mr Eames observed that:

If Australia is to take responsibility for the welfare of people transferred by the government to Nauru then the Nauru and Australian public must be assured that allegations of assault and other criminal conduct will be genuinely and thoroughly investigated. Where such thorough investigations might be seen by Nauru police to be unwelcome, so far as the Nauru government is concerned, it is unlikely that they will be undertaken.⁴⁶

2.43 In relation to the operation of the judiciary, Mr Eames discussed the refusal of the police to implement orders of the judiciary, and ministers overriding laws protecting the independence of the judiciary, on the basis of government's 'right' to decide who would hold judicial posts.⁴⁷ Mr Eames expressed the view that following the events surrounding his removal, 'no one appearing in the Nauru courts can be confident that the system is fair and open'.⁴⁸

2.44 A number of submitters also highlighted broader political developments in Nauru as evidence of the breakdown of respect for human rights and the rule of law in the country. These include the parliament of Nauru's suspension of five opposition members for criticising the government, and the subsequent arrest of three members of parliament who participated in a protest, as well as the passage of laws limiting court review of immigration decisions, and restricting media freedom and freedom of speech, including a ban on Facebook. Mr Law offered the committee his perspective that 'there is a lack of accountability of the government on all fronts'.⁴⁹

2.45 Professor Maley offered a similar assessment of the rule of law and governance problems in Nauru, stating that '[i]n practice, only the shell of a Westminster system of accountable government and the rule of law is left in Nauru'.

44 Mr Peter Law, *Submission 28*, p. 2.

45 Mr Peter Law, *Submission 28*, pp 1-2.

46 The Hon Geoffrey Eames AM QC, *Submission 70*, p. 8.

47 The Hon Geoffrey Eames AM QC, *Submission 70*, p. 1, 2, 3-4.

48 The Hon Geoffrey Eames AM QC, *Submission 70*, p. 6.

49 Mr Peter Law, *Committee Hansard*, 9 June 2015, p. 18.

2.46 Professor Maley's view was that:

The location of a refugee processing centre on Nauru has...allowed the Australian government to benefit from the weaknesses in accountability associated with poor governance and the collapse of the rule of law on Nauru.⁵⁰

2.47 On 2 July 2015, the parliament of New Zealand unanimously passed a motion:

That this House express its concern regarding the Government of Nauru's alleged interference with the judiciary, the suspension of Opposition members of Parliament, the cancelling of passports of Opposition members of Parliament, and the removal of civil and political rights.⁵¹

2.48 On 10 July 2015, New Zealand's Foreign Minister the Hon Murray McCully and the Australian Foreign Minister the Hon Julie Bishop both stated publicly that they had raised concerns about the rule of law in Nauru with the President of Nauru, the Hon Baron Waqa, who was visiting Sydney for a meeting of the Pacific Islands Forum. Ms Bishop told the media that:

I have raised our concerns directly with the president...We want an update on the prosecution of the opposition members of parliament and we want to ensure that this is all done openly and transparently and in a way that is accountable to the international community.

These are domestic matters, but we urge there to be an adherence to the rule of law, that the justice system operates properly, that people are not denied natural justice, that they're given an opportunity to present their case...

If it were purely a domestic issue and Australia had no interest in it, I wouldn't have raised it with him, but we do have a concern.⁵²

2.49 Ms Bishop stated that other Pacific leaders had also raised concerns with the President, and that she and President Waqa had agreed 'to remain closely engaged on this matter'.⁵³

Absence of a child protection framework in Nauru

2.50 A number of submitters drew attention to the lack of a child protection framework in Nauru as a key lacuna rendering it untenable for Australia to rely on Nauru's legal and judicial arrangements in transferring responsibility for asylum seekers. The department advised the committee that in response to the recommendations of the Moss Review, it was working with the Government of Nauru

50 Professor William Maley, *Submission 10*, p. 4.

51 New Zealand House of Representatives, *Parliamentary Debates (Hansard)*, Uncorrected Daily, Volume 706, Week 21, 2 July 2015, p. 5059.

52 'Australia seeks update on prosecution of Nauru opposition MPs from visiting president, Julie Bishop says', *ABC Online*, 10 July 2015.

53 'Foreign minister Julie Bishop "seeks assurances" from president Baron Waqa that Nauru adhering to rule of law', *ABC Online*, 11 July 2015.

to progress inclusion of child protection elements in relevant Nauruan legislation, as well as developing a child protection framework.⁵⁴

2.51 This issue is discussed further in Chapter 4.⁵⁵

Managing the conduct and behaviour of staff of the Regional Processing Centre

2.52 A large number of the allegations made to the *Forgotten Children* and Moss Review inquiries, and to this inquiry, have related to inadequate conduct and improper behaviour on the part of staff employed by contractors to the Commonwealth to provide services at the RPC. Evidence received by this committee on the matter of contractor staff has ranged from suggestions of poor training and understanding on the part of staff, inadequate provision of services and lack of responsiveness to the needs of asylum seekers, through to serious allegations of physical and sexual abuse. The latter are discussed further in Chapter 4.⁵⁶

2.53 At the most serious end of the spectrum, in response to queries from the committee, principal contracted service provider Transfield Services reported that 30 formal allegations of child abuse had been made against RPC staff, 15 allegations of sexual assault or rape, and four allegations relating to the exchange of sexual favours for contraband.⁵⁷ Of the 30 child abuse allegations, 24 involved alleged physical contact, two related to sexual assault, and single allegations were made of sexual harassment, inappropriate relationship with a minor, excessive use of force, and verbal abuse. As a result of these, six employees had been dismissed, two removed from the RPC site and one employee was suspended.⁵⁸

2.54 Wilson Security provided details of eleven cases in which staff were terminated for misconduct including inappropriate relationships, alleged sexual assault, sexual harassment, excessive use of force toward an asylum seeker, trading in contraband including for sexual favours, and throwing a rock at an asylum seeker.⁵⁹

Examples of allegations regarding conduct and behaviour of Transfield Services and Wilson Security staff

2.55 The specific allegations and incidents reported to this committee about the conduct and behaviour of contractor staff are too numerous to set out in detail in this report. Some reflect matters already raised elsewhere, including in the Moss Review

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

55 This issue is discussed at paragraph 4.85.

56 This issue is discussed at paragraph 4.52.

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

58 Ms Angela Williams, Commercial, Strategy and Systems Director, Transfield Services, *Committee Hansard*, 20 July 2015, pp 5-6.

59 Wilson Security, answer to question on notice, 19 May 2015 (received 2 June 2015).

and in the media, while some were acknowledged by contractors as matters not previously reported. The following paragraphs provide a few examples of the behaviours reported in submissions and evidence to this committee.

2.56 A former employee of Wilson Security alleged that incident reports relating to the use of unreasonable force had been 'shredded' by Wilson Security management, and that he had witnessed a range of misconduct by locally-employed security staff including trading in contraband, threatening and sexually harassing asylum seekers and refugees.⁶⁰ Wilson Security stated that action had been taken with the Nauru Police Force to investigate allegations of staff trading contraband for sexual favours, as a result of which one employee was terminated.⁶¹

2.57 Allegations of documents being shredded by Wilson Security were made by former employees, who told the committee that documents were frequently destroyed by placing them into 'File 13', a codename for the shredder.⁶² Mr Jon Nichols, a former employee of Wilson Security, told the committee that incident reports filed by third parties such as Save the Children Australia and Transfield Services were shredded before being electronically logged.⁶³

2.58 However, Wilson Security advised that the electronic logging system is tamper-proof, and that the incident reporting process has two strands:

...even if an incident comes from another service provider, there are still two parts to our requirements under the department guidelines. The first one is a verbal notification, and the second one is the written report. Even before we receive the written report, there would have been verbal notification to each of the stakeholder service leads or managers notifying them of that incident, and then the written report is subsequent to that. The concept that a written report is shredded would have to be explained in some way, because we would have made a verbal notification.⁶⁴

2.59 A former employee of The Salvation Army, Save the Children Australia and International Health and Medical Services (IHMS) on Nauru submitted that staff were verbally abusive to asylum seekers at RPC 3, and despite reporting, no staff were disciplined or dismissed for such behaviour.⁶⁵ Another former RPC worker described clients reporting to him several cases of sexual and verbal harassment.⁶⁶ Ms Charlotte Wilson, a former Save the Children Australia employee, stated her 'belief that both Australian and Nauruan security guards frequently abused their positions of power

60 *Submission 62*, pp 2-4.

61 Wilson Security, response to *Submission 62*, p. 5.

62 *Submission 62*, p. 3; Mr Jon Nichols, *Submission 95*, p. 1.

63 Mr Jon Nichols, *Committee Hansard*, 20 August 2015, p. 2.

64 Mr Brett McDonald, Security Contract Manager, Wilson Security, *Committee Hansard*, 20 August 2015, p. 18.

65 *Submission 69*, p. 3.

66 *Submission 82*, p. 6.

within RPC3', citing verbal abuse, and 'common knowledge' of such misconduct as bartering of sexual favours for contraband items such as cigarettes.⁶⁷ Another former Save the Children Australia employee cited 'multiple allegations' of excessive force and assault by security personnel against minor asylum seekers in RPC3, describing it as the use of 'undue force' to subdue 'normal childhood behaviour'.⁶⁸

2.60 Ms Alanna Maycock, a nurse visiting the RPC as a consultant for IHMS, described the RPC as a place where a cycle of human rights abuse existed and was 'continuing and intensifying'. She reported the assault of the father of a sick child by a security guard in her presence, which was 'accepted by all that witnessed it'.⁶⁹ Transfield Services stated that it 'denies that this is a fair representation of the environment at the centre',⁷⁰ and that neither Transfield Services nor its subcontractor Wilson Security held any record of the specific incident alleged by Ms Maycock.⁷¹

2.61 A former employee of The Salvation Army, Mr Mark Isaacs, described a 'culture of silence and cover up and a lack of accountability in the Nauru RPC', describing as one example an incident where a Nauruan security guard aggressively confronted an asylum seeker in the presence of himself along with a number of other security guards, but the other security guards did not endorse his reporting of the incident, in what he described as 'a collaborative attempt to blame the asylum seeker rather than the Nauruan guard'.⁷²

2.62 Former Save the Children Australia worker Ms Samantha Betts submitted that '[f]requent staff reports of sexual, physical and emotional abuse' were made to the department and Wilson Security, but these 'became known as "paperwork"...with little investigation or consequences'.⁷³ Transfield Services rejected this characterisation, maintaining that all reports of assault or abuse were treated seriously and investigated promptly.⁷⁴

2.63 More than one submission provided the example of an incident reported in April 2014 in which two adolescent female asylum seekers had been subjected to sexual innuendo and harassment from male security guards, including attempts to hug and kiss them and inviting them to a 'sexy party'.⁷⁵ Wilson Security responded that the

67 Ms Charlotte Wilson, *Submission 79*, p. 7.

68 *Submission 81*, pp [12, 14].

69 Ms Alanna Maycock, *Submission 66*, p. 1.

70 Transfield Services, response to *Submission 66*, p. 3.

71 Transfield Services, response to *Submission 66*, pp 7-8.

72 Mr Mark Isaacs, *Submission 67*, p. 4.

73 Ms Samantha Betts, *Submission 85*, p. 2.

74 Transfield Services, response to *Submission 85*, p. 10.

75 See Ms Viktoria Vibhakar, *Submission 63*, p. 21; *Submission 84*, pp 2-3.

incident was 'thoroughly investigated', but the matter was closed in the absence of further evidence when the asylum seekers declined to make a formal complaint.⁷⁶

2.64 In her submission and in oral evidence to the committee, Ms Viktoria Vibhakar, a former senior child protection worker with Save the Children Australia, raised a large number of cases of alleged misconduct by staff of Commonwealth contractors, including the example of a 16 year old female asylum seeker who experienced 'multiple episodes of sexual harassment over several weeks from several Commonwealth contracted employees'.⁷⁷

2.65 A number of former employees commented on a generally intimidating appearance and demeanour among security staff, and that asylum seekers were 'scared and intimidated' by them.⁷⁸ The use of asylum seekers' boat identification numbers in place of their names was raised by submitters with concerns about the dehumanising impact of this, and the unwillingness of security guards in particular to learn and use asylum seekers' names.⁷⁹ Wilson Security and other service providers repeatedly assured the committee that their policies did not endorse the primary reference to asylum seekers by boat numbers.

2.66 One Save the Children Australia employee submitted to the committee that she herself had been subject to sexual harassment by contractor staff during screening at security checkpoints.⁸⁰ Wilson Security responded that it was unaware of such incidents.⁸¹

Recording of events of 19 July 2013

2.67 In a submission to the inquiry, a former employee of Wilson Security on Nauru stated that he had seen video footage showing security guards preparing for the July 2013 disturbance at the RPC, 'planning to use unreasonable force and assault the asylum seekers even before the riot started'.⁸² Wilson Security responded that it was 'concerned' about the reported video footage—of which it was unaware—and that any officer engaged in excessive use of force was subject to 'a strict disciplinary process, and may be subject to criminal charges'.⁸³

76 Wilson Security, response to *Submission 84*, p. 1.

77 Ms Viktoria Vibhakar, *Committee Hansard*, 9 June 2015, p. 27. See also *Submission 63*.

78 *Submission 83*, p. 4.

79 See *Submission 83*, p. 5; Mr James Harris, *Submission 93*, p. 7; *Submission 94*, p. 12.

80 *Submission 94*, p. 7.

81 Wilson Security, response to *Submission 94*, p. 2.

82 *Submission 62*, p. 2.

83 Wilson Security, response to *Submission 62*, p. 4.

2.68 Mr John Rogers, Executive General Manager from Wilson Security, told the committee at the public hearing on 20 July 2015 that body-worn cameras were not used at that time:

I do not believe that we had any kind of individual video cameras in place at the time of the July 2013 riot. I believe there was one video camera that was there for the purposes of recording the events that occurred and it was destroyed during the [riot]. That was the only matter that I am aware of...There is none held by the company that I have been able to obtain.⁸⁴

2.69 On 13 August 2015, the ABC's 7.30 program aired a report which included the footage referred to in the submission received by the committee.⁸⁵ The footage bears a date mark of 3.00pm, 19 July 2013, and shows individuals who appear to be security staff making the comments referred to in Submission 62. Wilson Security and the department advised the committee that the staff visible in the footage were employed by Wilson Security.⁸⁶

2.70 At the committee's public hearing on 20 August 2015, Mr Rogers acknowledged that information previously provided to the committee had been incorrect: 'Clearly, I was mistaken in what I described to you. What I was describing to you was my reading of the post-incident reporting...'⁸⁷

2.71 Mr Brett McDonald, Security Contract Manager, Wilson Security, further clarified that although he was aware of the existence of body-worn cameras during the public hearing of 20 July, he did not hear Mr Rogers' evidence:

I did not pick it up at the time to think to correct it...but I can confirm that there were numerous officers wearing body cameras and also a Handycam during the incident on 19 July.⁸⁸

2.72 Wilson Security advised that:

All footage obtained by us during the incident on 19th July 2013 was saved to a network storage device. A copy of all footage was provided to the Department and the Nauru Police Force.⁸⁹

84 Mr John Rogers, Executive General Manager, Southern Pacific, Wilson Security, *Committee Hansard*, 20 July 2015, p. 42.

85 'Spying and abuse described by Nauru detention centre's former staff', 7.30, <http://www.abc.net.au/7.30/content/2015/s4293119.htm> (accessed 14 August 2015).

86 Wilson Security, answer to question on notice, 20 August 2015 (received 25 August 2015); Department of Immigration and Border Protection, answer to question on notice, 20 August 2015 (received 25 August 2015).

87 Mr John Rogers, Executive General Manager, Southern Pacific, Wilson Security, *Committee Hansard*, 20 August 2015, p. 33.

88 Mr Brett McDonald, Security Contract Manager, Wilson Security, *Committee Hansard*, 20 August 2015, p. 34.

89 Wilson Security, answer to question on notice, 20 August 2015 (received 25 August 2015).

2.73 However, the department advised that the footage has not been available to them, and that an investigation was underway:

An investigation has commenced in regards to the footage aired on the 7:30 report and is currently ongoing. This investigation will include the identification of persons featured in the footage and a review of all comments made.⁹⁰

2.74 The committee's view on this matter is outlined in Chapter 5.⁹¹

Incident of August 2014

2.75 It was put to the committee that an employee of Wilson Security had admitted fabricating an allegation of assault by an asylum seeker, with evidence existing to confirm the fabrication.⁹²

2.76 Wilson Security responded to this allegation, saying that conflicting allegations were made in August 2014:

This submission contains very serious and deeply concerning allegations that could be criminal in nature. If the allegation was substantiated, it would constitute serious misconduct and result in the termination of the employee...

Wilson Security investigated both allegations, and referred the matter to the Nauruan Police Force for review.

There was insufficient evidence to make a finding against either party involved.⁹³

2.77 Wilson Security subsequently advised the committee that the matter was heard in the Nauru District Court on 13 November 2014. Four witness statements were provided at the time which provided conflicting accounts of the incident:

Two of those witness statements outlined the fall to the ground and also where one of the staff members was struck to the head. The staff member who had the strike to the head also went to the medical clinic and submitted an injury report following that. The other two witness statements observed the fall but did not observe the actual strike to the head. All that information was provided or reported to the department at the time in the normal incident reporting process. It was then referred to the police. The matter was subsequently dealt with in then Nauru District Court in November 2014 where each of those four people gave evidence.⁹⁴

90 Department of Immigration and Border Protection, answer to question on notice, 21 August 2015 (received 25 August 2015).

91 This issue is discussed at paragraph 5.32.

92 *Submission 71*, p. 1.

93 Wilson Security, response to *Submission 71*, p. 1.

94 Mr Brett McDonald, Security Contract Manager, Wilson Security, *Committee Hansard*, 20 August 2015, p. 19.

2.78 Wilson Security told the committee that they received information on 31 December 2014 which alleged that the incident had not occurred as reported, and an internal investigation was initiated. It appears that the recording of the employee admitting to having fabricated the allegation of assault was made during that internal investigation, with Wilson Security advising that the audio recording was made in January 2015. At the conclusion of the internal investigation, there was 'insufficient evidence to make a finding against the individual involved'.⁹⁵ Wilson Security advised the committee that the employee has been suspended during an independent review commissioned by Wilson Security to 'review all investigations involving staff misconduct at the Regional Processing Centre'.⁹⁶ It is not known to the committee who is undertaking the review or when it will conclude.

2.79 It is unclear to the committee whether the audio recording was made before or after the decision of the Nauru District Court, and whether any investigation has been undertaken into the employee who provided a witness statement which corroborated the initial allegation of assault.

2.80 The committee heard that the asylum seeker against whom the allegation was made attempted suicide three times and spent time in custody, before the Nauru District Court handed down a verdict finding the asylum seeker not guilty.

2.81 In April 2015, the asylum seeker was brought to Australia and is currently at the Melbourne Immigration Transit Accommodation site.⁹⁷

2.82 Although the audio file has been in Wilson Security's possession since January 2015, the department was only made aware of the fabrication of an assault allegation on 20 August 2015, after it was reported in the media. Mr Neil Skill, First Assistant Secretary, Department of Immigration and Border Protection, told the committee that neither Wilson Security nor Transfield Services had made the department aware of the incident:

...the first time that we were formally notified by Transfield of the range of actions that have come to light today in relation to Wilsons and the detail that they put on the record today was this morning. We have formally requested advice from Transfield as to what occurred and why that was not referred to us in a more formal and more timely manner. We have also referred it to our internal detention assurance team for investigation, because, quite frankly, it is not satisfactory, and I have made those views quite clear to Transfield. We expect there to be a full investigation as to what actually occurred and where the fall-down was in the reporting regime so that we were not made aware of these allegations and subsequent actions

95 Wilson Security, response to *Supplementary Submission 71*, p. 2.

96 Wilson Security, answer to question on notice, 20 August 2015 (received 25 August 2015)

97 Mr Neil Skill, First Assistant Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 20 August 2015, p. 39.

by Wilsons and, even later, in May, by Transfield. We should have known about them.⁹⁸

2.83 The Secretary of the department, Mr Michael Pezzullo, echoed that the department was unsatisfied with the lack of reporting:

...it is not satisfactory, and we have made our views known—we would have then immediately, given the operation of the jurisdiction, ensured that the Nauruan prosecutorial authorities...were seized with this...the principle is that their contractor [Wilson Security] should more diligently acquit its responsibilities.⁹⁹

2.84 Contracting arrangements mean that the department is unable to deal directly with Wilson Security. Wilson Security advised that Transfield Services had been 'verbally notified' of the potential fabrication of an allegation in January 2015, and that Wilson Security had notified Transfield Services of the outcome of the internal investigation in March 2015.¹⁰⁰

2.85 The committee's view on this matter is detailed in Chapter 5.¹⁰¹

Concerns regarding conduct and behaviour of other contractors and their staff

2.86 While the vast majority of concerns about the conduct and behaviour of contractors raised with this committee related to the principal providers of staff and services at the RPC, Transfield Services and its security subcontractor Wilson Security, there was also criticism raised by some submitters about the conduct of other service providers.

2.87 Some submissions were critical of the level and character of health and medical services provided by IHMS. One former Save the Children Australia employee, for example, stated that her experiences with IHMS were 'not very positive', and recounted an incident in which she was upbraided by IHMS staff at an interagency meeting for raising concerns about a traumatised asylum seeker on suicide watch.¹⁰² Citing his interaction with IHMS staff on Nauru in relation to an asylum seeker who alleged that she had been raped, former IHMS consultant Professor David Isaacs said that 'I felt that the staff at times acted as if the detainees deserved to be treated with less respect than they would have for someone from their own country'.¹⁰³

2.88 Former employees of The Salvation Army, which provided welfare services at the RPC from its opening in 2012 until February 2014, generally painted a picture of an organisation with positive intentions but which struggled to meet the challenges

98 Mr Neil Skill, First Assistant Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 20 August 2015, p. 38.

99 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 20 August 2015, p. 38.

100 Wilson Security, answer to question on notice, 20 August 2015 (received 25 August 2015).

101 This issue is discussed at paragraph 5.33.

102 *Submission 94*, pp 7-8.

103 Professor David Isaacs, *Committee Hansard*, 9 June 2015, p. 39.

before it, and was insufficiently supportive of its staff. Mr Mark Isaacs, employed as a 'mission worker' at the commencement of the RPC in 2012, stated that he was given no orientation or introduction and he and colleagues were unable to address the concerns and demands of highly distressed asylum seekers.¹⁰⁴ Another former employee similarly described 'sub-par recruitment and employment' procedures followed by The Salvation Army. He believed that this reflected the rushed reopening of the RPC in 2012, which 'meant that The Salvation Army had no room to follow best practice for recruitment and employment'.¹⁰⁵

2.89 Mr Isaacs described a 'culture of fear' among his colleagues about disclosing anything that happened at the RPC, increasing the pressure and trauma on staff.¹⁰⁶ Another former employee stated that management of The Salvation Army 'specifically directed staff not to show empathy to "transferees" in either a written or verbal capacity'.¹⁰⁷ The same employee submitted that during her employment, The Salvation Army, Transfield Services and Save the Children Australia all instructed staff to censor negative information about asylum seekers' mental or psychosocial health in official reporting, at the department's request.¹⁰⁸ These claims were denied by the contractors involved.¹⁰⁹

2.90 The work of current welfare provider Save the Children Australia was generally described in positive terms but Save the Children Australia also attracted some criticism from its former employees. Mr Tobias Gunn submitted that he received no formal or informal training in cultural issues when deployed to Nauru, and that he was also concerned about the lack of policies regarding teamwork and coordination.¹¹⁰ Another former child protection worker reported that a Save the Children Australia Operations Manager had admitted to having little knowledge about child protection.¹¹¹

2.91 Former manager for The Salvation Army on Nauru, Ms Caz Coleman, offered the assessment that both organisations engaged to provide welfare services had been consistently 'underprepared and undereducated' in issues of asylum seeker care and protection which, along with shortages of time and resources and the department's frequent policy changes, led to inevitable failures to fulfil the necessary roles.¹¹²

104 Mr Mark Isaacs, *Submission 67*, p. 1.

105 Mr James Harris, *Submission 93*, p. 3.

106 Mr Mark Isaacs, *Submission 67*, p. 3.

107 *Submission 69*, p. 1.

108 *Submission 69*, pp 2-3. See also Dr Peter Young, *Committee Hansard*, 9 June 2015, p. 4.

109 Transfield Services, response to *Submission 69*, pp 2-3; The Salvation Army, response to *Submission 69*, p. 1; Save the Children Australia, response to *Submission 69*, p. 2.

110 Mr Tobias Gunn, *Submission 68*, p. 1.

111 *Submission 84*, p. 5.

112 Ms Caz Coleman, *Submission 56*, pp 14-16.

2.92 Describing her own resignation in May 2013, Ms Coleman stated that:

It was my conclusion that the ongoing mismanagement of the centre was likely to be tested in one or more critical incidents that would damage clients and staff and the relationship with Nauru itself. Within a few months the entire structure of the Nauru centre was burnt down as a result of client frustration and anger. Whilst saddened, I was not surprised when these events occurred.¹¹³

Alcohol and drug testing

2.93 In light of the allegations made to the committee about misconduct by intoxicated staff at the RPC, use of drugs including marijuana and steroids by RPC staff, and trading of contraband for sex, the committee queried key contractors Transfield Services and Wilson Security about drug and alcohol testing of employees at the RPC.

2.94 The committee was advised that while random alcohol testing was conducted on staff on a daily basis at the RPC,¹¹⁴ similar testing for drug use was not undertaken. Transfield Services and Wilson said that while pre-deployment drug testing was done on expatriate staff, drug testing could not be undertaken on Nauru because laboratory facilities were not available on the island to conduct follow-up urine testing.

2.95 Mr Brett McDonald from Wilson Security explained that:

We have the capability to do saliva drug testing on the island; we have the tests on the island and the training and the policy, and we rolled that out. Where we came unstuck was simply that in the event that somebody was detected, the union objected to us being able to then take any disciplinary action with that person because we could not get a secondary blood test to a laboratory within a certain period of time...This is where we are stuck and we have not been able to resolve this.¹¹⁵

Relations between contracted service providers

2.96 Some former staff of the RPC highlighted poor relations and communication between service providers as exacerbating many of the problems at the RPC. Ms Coleman described relationships between stakeholders during her time there in 2013 as 'very poor. The result was a lack of trust, poor communication, poor collaboration' and even 'hostility and non-cooperation', leading to a heightened risk to asylum seekers and staff.¹¹⁶

2.97 Former Save the Children Australia worker Ms Natasha Blucher believed that a key problem with the operation of the RPC was what she described as a 'conflict that

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

114 Wilson Security, answer to question on notice, 20 August 2015 (received 25 August 2015).

115 Mr Brett McDonald, Security Contract Manager, Wilson Security, *Committee Hansard*, 20 July 2015, p. 34.

116 Ms Caz Coleman, *Submission 56*, p. (5).

exists between service providers...in their basic objectives'.¹¹⁷ Ms Blucher submitted that:

I believe that the prevailing focus of the RPC is on maintaining order of the RPC, through a security framework. This exclusive focus undermined the operational framework that SCA operated within – a welfare framework.¹¹⁸

2.98 At a public hearing, Ms Blucher further explained her view that:

There is an emphasis on behaviour and compliance from a security framework as opposed to an understanding of the trauma impacts and deterioration of mental health that...is the primary presenting issue and must be addressed through a specialised trauma informed welfare framework. There is overall mistreatment and lack of respect and dignity afforded to asylum seekers by stakeholder staff due to the toxic workplace culture in the Nauru RPC and a lack of accountability for all of these issues due to the excessive secrecy and lack of external oversight and complaints mechanisms in the regional processing system.¹¹⁹

2.99 Save the Children Australia's Chief Executive Officer Mr Paul Ronalds acknowledged that such tensions existed, although his view was that these were generally resolved by being 'escalated until we come to a compromise' that satisfied Save the Children Australia in relation to the interests of asylum seekers.¹²⁰ Wilson Security rejected the suggestion that welfare services were subservient to security at the RPC, stating that '[b]oth service types are essential to ensure the health and safety of asylum seekers'.¹²¹

2.100 Ms Coleman observed that:

The security role and the welfare role are not inimical to each other when understood properly and performed with trust and respect. Furthermore, this can be achieved if management embody such collaboration, model it to staff and constructively work through the occasions where it falls down to learn from and improve future operations.¹²²

Response from contracted service providers

2.101 Transfield Services and Wilson Security both assured the committee that they had rigorous processes in place for the recruitment, training and management of both Australian and Nauruan staff employed at the RPC.¹²³ Both organisations expressed confidence that their systems and processes were robust enough to ensure competent

117 Ms Natasha Blucher, *Submission 83*, p. 1.

118 Ms Natasha Blucher, *Submission 83*, p. 15.

119 Ms Natasha Blucher, *Committee Hansard*, 20 July 2015, p. 55.

120 Mr Paul Ronalds, Chief Executive Officer, Save the Children Australia, *Committee Hansard*, 19 May 2015, p. 47.

121 Wilson Security, response to *Submission 83*, p. 10.

122 Ms Caz Coleman, *Submission 56*, p. 6.

123 See Wilson Security, *Submission 21*, pp 5-8; Transfield Services, *Submission 29*, pp 9-15.

and appropriate behaviour among their staff, and to respond to incidents of misconduct when they arose.

2.102 Transfield Services advised the committee that since it commenced services in September 2012, it had 'terminated' 289 staff from the RPC Nauru, although these figures included transfers and resignations.¹²⁴ Transfield Services observed that abandonment of duty was one of the most frequent reasons for termination of staff.¹²⁵ The department had separately advised the Senate's Legal and Constitutional Affairs Legislation Committee that across the Nauru and Manus Island RPCs, Transfield Services had dismissed 179 staff in the first six months of 2015, 13 of those for misconduct.¹²⁶

2.103 Wilson Security reported to the committee that since it commenced services in Nauru, 25 of its expatriate employees had been terminated for misconduct, while 15 disciplinary warnings had been issued to expatriate staff. Wilson Security stated that only two of the terminations arose from matters involving asylum seekers, while the remainder were 'internal disciplinary matters'. Wilson Security's two local subcontractors had terminated 18 staff for misconduct.¹²⁷ Transfield Services advised that three staff of Wilson Security had been dismissed at the request of Transfield Services, one for inappropriate behaviour at the Nauru airport, and two for breaches of relevant codes of conduct and policies.¹²⁸ It was not clear whether this was additional to, or a subset of, those reported by Wilson Security.

2.104 At the committee's public hearing, Mrs Kate Munnings from Transfield Services defended the professionalism and integrity of contractor staff:

I highlight the Moss Review and his comments about the staff being dedicated and professional. That has been my experience on the island every time I have visited. I have been taken aback by the commitment that our staff have to the wellbeing and care of the asylum seekers.¹²⁹

2.105 Mrs Munnings further commented that:

Moss identified that on every occasion we had been willing to take disciplinary action in relation to allegations [against staff], and we do not expect things to be proved beyond a reasonable doubt. If we feel that the risk warrants it we have always taken disciplinary action and removed

124 Ms Erin O'Sullivan, Commercial and Strategy Manager, Transfield Services, *Committee Hansard*, 20 July 2015, p. 31.

125 Ms Angela Williams, Commercial, Strategy and Systems Director, Transfield Services, *Committee Hansard*, 20 July 2015, p. 7.

126 Department of Immigration and Border Protection, answer to question on notice (BE15/023) from Senate Legal and Constitutional Affairs Legislation Committee Budget Estimates, 25 May 2015 (received 16 July 2015).

127 Wilson Security, answer to question on notice, 19 May 2015 (received 2 June 2015).

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

129 Mrs Kate Munnings, Chief Executive Operations, Logistics, Construction and Consulting, Transfield Services, *Committee Hansard*, 19 May 2015, p. 14.

anyone from our employment who we believe is not acting in accordance with our values, not acting in accordance with our expectations and not working with the best interests of the asylum seekers at heart.¹³⁰

2.106 Mr John Rogers, Executive General Manager of Wilson Security, said that:

I can assure the committee of this: where an allegation is made with conclusive supporting evidence, the company has taken entirely appropriate action regarding the safeguarding of those in our care, and this is well documented. Allegations in this category are a minority. Far more common are allegations where, after thorough investigation, insufficient evidence is found to enable us to take decisive action against an individual. To characterise such unsubstantiated or unproven allegations as a systemic problem is inaccurate and unhelpful, particularly given the range of motivations that may be behind them. It is particularly harmful to the reputations of the many staff who have performed exceptionally in complex and demanding conditions and whose efforts to fulfil their responsibilities under our contract should be commended. We have no tolerance for individuals who are unable to uphold our exacting standards of conduct, and we do not hesitate to remove such individuals from our organisation. I can assure the committee that all allegations are taken extremely seriously and investigated with rigour to attempt to determine the full facts, in order to take appropriate action where necessary.¹³¹

2.107 Transfield Services advised that following the recommendations of the Moss Review, it had reviewed its corporate policies and practices both independently and in collaboration with the department, and was 'confident that our existing policies and guidelines appropriately inform staff about expected behaviours'.¹³² Similarly, Wilson Security told the committee that it had reviewed its corporate policies and '[w]e are absolutely confident that our code of conduct reflects the values of the company and meets the requirements that Mr Moss was looking for'.¹³³

2.108 In response to recommendations made in the Moss Review that the supervision and training provided to Transfield Services and Wilson Security staff needed to be enhanced, particularly in relation to Nauruan staff, Transfield Services advised the committee that:

Transfield Services takes these comments very seriously. We have invested considerable time and effort in ensuring that training programs in place within the RPC in respect of all employees are of the highest quality and demonstrate our commitment to ensuring the competency and continuous

130 Mrs Kate Munnings, Chief Executive Operations, Logistics, Construction and Consulting, Transfield Services, *Committee Hansard*, 19 May 2015, p. 15.

131 Mr John Rogers, Executive General Manager, Southern Pacific, *Committee Hansard*, 20 July 2015, p. 32.

132 Transfield Services, answer to question on notice, 19 May 2015 (received 16 June 2015), Annexure 1.

133 Mr John Rogers, Executive General Manager Southern Pacific, Wilson Security, *Committee Hansard*, 19 May 2015, p. 29.

improvement of our and our subcontractor's staff. However, we are committed to continuous improvement and we are building on the existing programs so as to ensure the training and support offered to our staff is enhanced in response to the concerns raised by the Moss Review. Specifically, in combination with the Department we have revisited the relevant training programs and materials and made a number of enhancements in direct response to those concerns.¹³⁴

2.109 In relation to the Moss Review's recommendation that cooperation between contract service providers needed to be improved, Transfield Services advised that while it considered it already had an appropriate understanding of the responsibilities of respective service providers at the RPC, steps had been taken to enhance the effectiveness of meeting processes between the department, the (Nauruan) Operations Managers and service providers.¹³⁵

Complaints procedures and management

2.110 In relation to the efficacy of Commonwealth contractors' processes for reporting and handling complaints about staff misconduct, Transfield Services drew the committee's attention to its internal investigations policies, including its 'whistleblower hotline', operated by an external service provider, under which

...employees can confidentially and anonymously raise serious concerns without fear of reprisal, dismissal or discriminatory treatment. Prompt and appropriate action is taken to investigate each report received to ensure inappropriate conduct is detected and addressed appropriately.¹³⁶

2.111 At the committee's public hearing on 19 May 2015, Transfield Services explained that 'we actually encourage people to raise any concerns through the line [of management] before going to the hotline', and that raising complaints to any persons or bodies other than the 'whistleblower hotline' would constitute a breach of employees' contractual obligations.¹³⁷

2.112 Transfield Services advised the committee in June 2015 that between September 2012 and April 2015, no person identified as presently or formerly engaged at the RPC (by Transfield Services or otherwise) had made use of the hotline, and therefore no investigations in relation to the RPC had resulted from the operation of the hotline.¹³⁸ At the committee's public hearing on 20 July, Transfield Services advised that since the provision of that advice, the hotline had been used twice by staff

134 Transfield Services, answer to question on notice, 19 May 2015 (received 16 June 2015), Annexure 1.

135 Transfield Services, answer to question on notice, 19 May 2015 (received 16 June 2015), Annexure 1.

136 Transfield Services, *Submission 29*, p. 4.

137 Mrs Kate Munnings, Chief Executive Operations, Logistics, Construction and Consulting, Transfield Services, *Committee Hansard*, 19 May 2015, p. 5.

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

members from the RPC Nauru, while one further complaint had been raised directly with management.¹³⁹

2.113 Transfield Services advised the committee that it assumed management of the complaints process for asylum seekers in February 2014.¹⁴⁰ Between 21 February 2014 and 30 April 2015, a total of 834 written complaints were received by Transfield Services from asylum seekers. Thirty-one of these related to accommodation and 78 to amenities and facilities, while 725 complaints were received in relation to staff. Transfield Services advised that most of these related to provision of services, alleged inappropriate conduct (non-physical), alleged unfair treatment (non-physical), or alleged verbal abuse or threat. Of these:

- 96 complaints were received against Transfield Services employees or relating to Transfield Services's provision of services. This group comprised 17 Nauruan staff and 79 expatriate staff;
- 403 complaints were received against Wilson Security employees or relating to Wilson Security's services. Seventy-five of these were against Nauruan staff, 276 against expatriate staff and 2 against both local and expatriate staff. The remaining 50 were unclear as to the nationality of the staff member complained about;
- 75 complaints were received against IHMS staff, all expatriate;
- 136 complaints were received against staff of Save the Children Australia, while one complaint was made against both Wilson Security and Save the Children Australia;
- 11 complaints were received against employees of the department; and
- 3 complaints were made against employees of another organisation; two Nauruan and one expatriate.¹⁴¹

2.114 Transfield Services advised the committee that all of these complaints were notified to the department. Eighteen complaints were also notified to the Nauru Police Force, 15 involving Nauruan staff and three against expatriates. Seven of these had been finalised, and eleven remained under investigation. No other complaints reported to the department had been escalated to any further form of review.¹⁴² Transfield Services was unable to inform the committee how many of the 11 staff involved in complaints under investigation by the police remained working at the RPC.¹⁴³

139 Mrs Kate Munnings, Chief Executive Operations, Logistics, Construction and Consulting, Transfield Services, *Committee Hansard*, 20 July 2015, p. 4, 23.

140 Prior to 21 February 2014, the complaints management framework was managed by the Salvation Army. Transfield Services, answer to question on notice, 20 May 2015 (received 16 June 2015).

141 Transfield Services, answer to question on notice, 20 May 2015 (received 16 June 2015).

142 Transfield Services, answer to question on notice, 20 May 2015 (received 16 June 2015).

143 Ms Angela Williams, Commercial, Strategy and Systems Director, Transfield Services, *Committee Hansard*, 20 July 2015, pp 18-19.

2.115 Many submitters believed that the complaints procedures in relation to RPC staff were fundamentally flawed, particularly because they amounted to contractors investigating their own behaviour. Former Save the Children Australia employee Ms Charlotte Wilson stated her view on the inefficacy of the internal reporting mechanisms:

It is my belief that information was withheld by asylum seekers who were fearful of retribution from security staff over any complaints. Any incident report or information report that was submitted went through the Wilson's chain of management to investigate. This was also the case if the matter involved inappropriate behaviour by Wilson's staff...

The above systems created an environment where both asylum seekers and SCA staff were intimidated to not take action against security services. Asylum seekers held the valid fear that if they received refugee status and entered the community there would be retribution from Nauruan security officers. Asylum seekers were aware that it was possible that any complaint they made against a security officer could be seen by that person.¹⁴⁴

2.116 Mr Ronalds of Save the Children Australia expressed the view that underreporting of incidents and complaints, as noted in the Moss Review, was to be expected 'where highly vulnerable people are coming from the sorts of contexts that they are', with little confidence in institutions of authority and justice:

The asylum seekers on Nauru are already coming to Nauru with a concern about whether, if they reported things like sexual assault, they would be taken seriously and properly investigated. I think that the environment only exacerbates that.¹⁴⁵

2.117 However, Wilson Security did not believe that these views were generally held by asylum seekers at the RPC, emphasising the integrity of its complaint management processes, and that all complaints involving allegations against service providers were monitored by the department.¹⁴⁶

Commonwealth and external oversight of contractors

2.118 In relation to the level of Commonwealth oversight of its contractors' work at the centre, both the department and Transfield Services confirmed that recruiting, screening and contracting of staff were not directly supervised by the department. Transfield Services noted that while the contract enabled the Commonwealth to veto the deployment of staff at the RPC, in terms of general recruitment and training 'the Commonwealth allows us to run that process'.¹⁴⁷

144 Ms Charlotte Wilson, *Submission 79*, p. 6.

145 Mr Paul Ronalds, Chief Executive Officer, Save the Children Australia, *Committee Hansard*, 19 May 2015, p. 53.

146 Wilson Security, response to *Submission 79*, pp 2-3.

147 Mrs Kate Munnings, Chief Executive Operations, Transfield Services, *Committee Hansard*, 19 May 2015, p. 2.

2.119 Transfield Services advised the committee that in addition to its own internal audit processes, it was subject to audit by the department, and it also mentioned visits by other authorities such as the Commonwealth Ombudsman, and various reviews conducted including the Moss Review, which examined contractors' policies and performance.¹⁴⁸ For its part, Wilson Security advised that it was audited both internally and by Transfield Services as its contracting authority, and that in certain areas such as emergency management it also commissioned independent external auditing.¹⁴⁹

2.120 By contrast, Ms Natasha Blucher told the committee that in her experience 'there appears to be a significant disconnect between the understanding of management who are located in Australia and the actual implementation of policy on the island', wherein the policies and guidelines put in place by contractors were not observed in practice.¹⁵⁰

2.121 At the committee's public hearing on 19 May, Mr Ronalds of Save the Children Australia advised that initial responses to incidents and concerns were discussed between stakeholders on Nauru, including the department, but at times Save the Children Australia had found it necessary to directly escalate matters because they were not receiving sufficient attention:

...in some cases, it would be escalated by me directly either to the secretary or to the minister...

There have been situations that we have wanted to bring to the notice of the secretary or the minister that we did not feel were getting sufficient attention or sufficient traction, yes.¹⁵¹

2.122 Reflecting on the allegations against contractor staff brought to light through the Moss Review, Mr Pezzullo stated that:

Whether this reflects a systemic issue, whether it is chronic or whether it is an acute set of episodes that have now been dissipated through stronger management attention, I do not offer an analytical opinion about. You have heard the department talk about strengthening protocols post Moss and you have heard, I think, some evidence from Transfield and Wilson to that effect.¹⁵²

2.123 In its submission, the department drew attention to the establishment of its Detention Assurance Team (DAT) on 1 December 2014, stating that the DAT

148 Mr Derek Osborn, Executive General Manager Logistics and Facilities Management, Transfield Services, *Committee Hansard*, 19 May 2015, p. 15.

149 Mr John Rogers, Executive General Manager Southern Pacific, Wilson Security, *Committee Hansard*, 19 May 2015, pp 28-29.

150 Ms Natasha Blucher, *Committee Hansard*, 20 July 2015, p. 55.

151 Mr Paul Ronalds, Chief Executive Officer, Save the Children Australia, *Committee Hansard*, 19 May 2015, p. 46.

152 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 68.

'provides strengthened assurance of the integrity and management of immigration detention services and the management of contracts in regional processing centres' through such functions as reviewing detention practices and generating recommendations to the Secretary, managing contracts, reviewing incidents and allegations, and leading the department's work to implement the recommendations of the Moss Review.¹⁵³

Allegations of contractor staff 'spying' on a senator

2.124 One issue that arose during the committee's inquiry was the allegation, made in a submission from a former employee of Wilson Security, that staff of Wilson Security had conducted surveillance of a senator and member of the committee during her visit to Nauru in December 2013.¹⁵⁴

2.125 The submission alleged that:

When Senator Sarah Hanson-Young visited Nauru, Wilson Security organised a team from [its Emergency Response Team] ERT to spy on her while she was on Nauru. This included following her around the island while she was outside of the OPCs and setting up an observation post to watch her room at the Menen hotel. The briefing was given by ERT supervisor [*name redacted*] in which he gave orders to spy on the senator. This briefing included her room number, vehicle registration and even using code name "Raven" over the radio to make reference to her.¹⁵⁵

2.126 In its written response to the submission, Wilson Security stated that it 'strongly rejects' the allegation that it authorised this action, and offered the following explanation:

Wilson Security is aware of individuals who attended the Menen Hotel at the same time as Senator Hansen-Young [*sic*]. We understand that their primary motivation was the security of the Senator.

This activity was not authorised by Wilson Security, and is not a part of our scope of works...The matter was immediately investigated by Wilson Security and the individuals involved were subject to disciplinary action for acting beyond their brief.¹⁵⁶

2.127 Transfield Services (as Wilson Security's contracting principal) later advised the department that Wilson Security did not regard it as necessary to inform Senator Hanson-Young about the incident at any stage, because she 'was not personally observed at any time during the unauthorized monitoring of [her] parked vehicle'.

153 Department of Immigration and Border Protection, *Submission 31*, p. 29.

154 *Submission 62*.

155 *Submission 62*, p. 1.

156 Wilson Security, response to *Submission 62*, pp 1-2.

2.128 Wilson Security also reported that no notes, sound, video or other records were made during the monitoring.¹⁵⁷

2.129 The submission and Wilson Security's response to it were published simultaneously on the committee's website on 4 June 2015, and the matter was reported in the media the same day. In response to queries from reporters over the following 24 hours, the Prime Minister, the Hon Tony Abbott MP rejected the allegation of spying, stating that 'she was being, in fact, looked after while she was there', while the Minister for Immigration and Border Protection, the Hon Peter Dutton MP described the allegations as 'completely unfounded'.¹⁵⁸

2.130 On 5 June Senator Hanson-Young told the media that she had been contacted by an employee of another contractor on Nauru, who told her that staff of other service providers had been briefed in advance on the surveillance to be conducted on her, suggesting that this had not been the unauthorised conduct of a few 'rogue' Wilson Security employees.¹⁵⁹

2.131 The department informed the committee that it first became aware of the accusations of spying on Senator Hanson-Young on 4 June 2015,¹⁶⁰ that is, the day that it was made public by the committee and the media. The department stated that it had no incident reports or records of being notified about the incident, and that it had conducted no internal investigation into the matter.¹⁶¹

2.132 In evidence to the committee, the department advised the committee that it had 'received assurances from Transfield and Wilson that the activities that were undertaken were not authorised' and that 'the officer involved' had been subject to disciplinary action the day after the incident.¹⁶² Wilson Security subsequently advised the committee that the ERT supervisor who had directed the surveillance was demoted from his supervisory role, and remained in a more junior role within the organisation

157 Department of Immigration and Border Protection, answer to question on notice, 9 June 2015 (received 26 June 2015).

158 'Hanson-Young wasn't spied on, Dutton says', *Sky News*, 5 June 2015, <http://www.skynews.com.au/news/politics/national/2015/06/05/hanson-young-wasn-t-spied-on-dutton-says.html> (accessed 12 July 2015).

159 'Abbott Response 'Creepy' As More Evidence Emerges Nauru Contractors Spied on Sarah Hanson-Young', *New Matilda*, 5 June 2015, <https://newmatilda.com/2015/06/05/abbott-response-creepy-more-evidence-emerges-nauru-contractors-spied-sarah-hanson-young#sthash.0pRBt2RI.dpuf> (accessed 12 July 2015).

160 Department of Immigration and Border Protection, answer to question on notice, 9 June 2015 (received 26 June 2015).

161 Department of Immigration and Border Protection, answer to question on notice, 9 June 2015 (received 26 June 2015).

162 Mr Neil Skill, First Assistant Secretary, Infrastructure and Services Division, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 52.

for nine months, after which he was re-appointed as ERT supervisor due to his 'excellent record' over that period.¹⁶³

2.133 Mr Pezzullo emphasised that there was 'absolutely no policy implied or otherwise that visiting Australian parliamentarians will be put under any form of scrutiny or surveillance or be monitored otherwise',¹⁶⁴ and that he would expect that any such incident involving a contractor should have been reported to the department and 'escalated to various senior levels of management'.¹⁶⁵ While Mr Pezzullo was not secretary of the department in December 2013, he expressed confidence that any suggestion of surveillance such as occurred would have been instantly quashed if it had been raised with the department: 'It would have taken no more than a nanosecond to think about it'.¹⁶⁶

2.134 At the committee's public hearing on 20 July 2015, the department advised that following the public release of the allegations on 4 June, it had conducted a 'fairly comprehensive review' of the circumstances of the incident.¹⁶⁷ While it was satisfied that the incident was a one-off unauthorised action and that Wilson responded appropriately to it, the department had held 'robust discussions' with its contractors about the reporting of such incidents, and had also made 'significant improvement' to its documentation and policies in relation to visits to the RPC. First Assistant Secretary Mr Skill expressed his confidence that it was now 'very clear to people on the ground as to what is and what is not acceptable. I am confident it cannot happen again'.¹⁶⁸

2.135 The committee received several submissions from former employees of Wilson Security which alleged that the surveillance was more extensive and had been planned to a greater extent than previously advised. For example, Mr Jon Nichols, a former Wilson Security employee, told the committee that members of the ERT had been instructed by 'Wilson Security Management' to monitor the movements of Senator Hanson-Young throughout her visit.¹⁶⁹ Mr Nichols told the committee that he had seen footage recorded on a mobile device which appeared to show the senator:

He [an ERT member] was quite open about the fact that they had filmed Senator Hanson-Young, and was more than happy to show people the

163 Wilson Security, answer to questions on notice, 10 July 2015 (received 17 July 2015).

164 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 54.

165 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 63.

166 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 64.

167 Mr Neil Skill, First Assistant Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 20 July 2015, p. 84.

168 Mr Neil Skill, First Assistant Secretary, Infrastructure and Services Division, Department of Immigration and Border Protection, *Committee Hansard*, 20 July 2015, p. 86.

169 Mr Jon Nichols, *Submission 95*, p. 2.

footage that he had on his phone. I viewed that footage and firmly believe that it was Senator Hanson-Young walking across the car park at the Menen Hotel and in the front door.¹⁷⁰

2.136 Another submitter told the committee that the operation was extensive and that footage was recorded:

This operation involved approximately 6-8 ERT members and consisted of recording her every movement both in and out of the camps, they were also to report on whom she spoke with and if possible they were to ascertain what was said. Staff were requested to compile reports on her movements, contact with employees or Stakeholders. These reports and video surveillance footage were to be handed to the Intelligence unit for collation and dissemination... A considerable amount of video surveillance footage was taken of Sarah Hanson Young, both inside and out of the processing centres by tasked Emergency Response Team members. This was then provided to the Wilson Security Intelligence unit for dissemination.¹⁷¹

Committee view

2.137 While the committee notes the department's evidence in relation to this matter, it is difficult to entirely reconcile this evidence with the public statements of the Prime Minister and the Minister for Immigration and Border Protection on 5 June 2015. It is also of serious concern to the committee that Commonwealth funded contractors did not view it as their primary obligation to support transparency and openness in relation to the visit of an Australian Senator to the Nauru RPC and instead viewed her presence as a potential security threat to be managed. The committee considers that this incident is a striking example of gaps in the discipline and professionalism of contractor staff and their management, indicative of a culture of secrecy, and demonstrates inadequate Commonwealth oversight of the relevant contractors.

Transfer, assessment and resettlement of asylum seekers

2.138 This section will outline aspects relating to the transfer, assessment and eventual resettlement of asylum seekers with regard to the RPC on Nauru.

2.139 Evidence from submitters focussed on:

- the arbitrary nature of selection for transfer;
- slow and inadequate refugee status determination procedures; and
- unsafe conditions for resettlement in the Nauruan community.

Transfer

2.140 The Memorandum of Understanding between the republic of Nauru and the commonwealth of Australia, which sets out the arrangement for the operation of the RPC, states with regard to transfer:

170 Mr Jon Nichols, *Committee Hansard*, 20 August 2015, p. 6.

171 *Submission 99*, p. 1.

Persons to be transferred to Nauru for processing

9. Persons to be transferred to Nauru are those persons who:

- a. have travelled irregularly by sea to Australia; or
- b. have been intercepted by Australian authorities in the course of trying to reach Australia by irregular maritime means; and
- c. are authorised by Australian law to be transferred to Nauru; and
- d. have undergone short health, security and identity checks in Australia.¹⁷²

2.141 The first transfers of asylum seekers from Christmas Island occurred on 14 September 2012.¹⁷³

2.142 Information on the selection of asylum seekers for transfer to the RPC on Nauru is not readily available. The Castan Centre for Human Rights Law noted that asylum seekers are selected for transfer without their consent.¹⁷⁴ The committee heard from submitters that the selection of asylum seekers is arbitrary, with the Darwin Asylum Seeker Support and Advocacy Network (DASSAN) writing that asylum seekers 'see others who arrived in Australia on the same boat transferred into the community while they await return to Manus or Nauru'.¹⁷⁵

2.143 The Australian Human Rights Commission (AHRC) told the committee that the pre-transfer assessments which are undertaken by the department before asylum seekers are transferred were 'inadequate':

The Commission reviewed a number of the pre-transfer assessments conducted in relation to children as part of the Inquiry. The Commission concluded that Departmental officers do not assess the care and welfare needs of an individual child and consider whether those needs can be met in the RPC in Nauru before recommending the child's transfer. The Commission found that Australia transferred children to Nauru regardless of whether the transfer was in those children's best interests, in breach of Australia's obligations under international law.¹⁷⁶

2.144 The AHRC reiterated to the committee its finding in the *Forgotten Children* report that in the case of children, transfers were approved regardless of whether this

172 *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*, 3 August 2013, clause 9.

173 Department of Immigration and Border Protection, *Submission 31*, p. 6. The first asylum seekers to be transferred to the Regional Processing Centre were single adult males, with families and single adult females transferred from 21 August 2013.

174 Castan Centre for Human Rights Law, *Submission 18*, p. 6.

175 DASSAN, *Submission 61*, p. 4. See also: Australian Churches Refugee Taskforce, *Submission 32, Attachment 1*, p. 11.

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

was in the children's best interests, in breach of Australia's obligations under international law.¹⁷⁷

2.145 The department advised the committee that in conducting individual best interest assessments for all children before they were transferred to Nauru, 'the Department considers the best interests of the child as a primary consideration'.¹⁷⁸

2.146 DASSAN told the committee that asylum seekers they had been in contact with in Wickham Point in Darwin had relayed concerns about transfer:

...it is important to note that most (if not all) asylum seekers who have been in offshore processing centres have the same central complaint: that their placement in an offshore centre is arbitrary.¹⁷⁹

2.147 DASSAN told the committee that the process for transfer from Wickham Point in Darwin to the RPC on Nauru is highly stressful to the asylum seekers undergoing transfer:

When people are to be returned offshore, they are taken to the property office or summoned to a meeting with immigration, detained incommunicado in a confined area and have their possessions collected by Serco. They are offered no opportunity to communicate with legal or community representatives, and no opportunity to rebut the presumption that they are fit for return offshore. They are returned offshore within a matter of hours, usually on a flight leaving Darwin at approximately 3am on a Friday morning.

2.148 DASSAN continued that there is a clear lack of communication between the department and asylum seekers selected for transfer, and that there is no appeals mechanism:

Asylum seekers are not told they will be sent offshore before the removal takes place. There is no system in place to counsel them about the move, or give them the opportunity to rebut the presumption that they are fit to travel or reside in Nauru or PNG. Those decisions are made for them by DIBP, Serco and IHMS. Asylum seekers often report that people are transferred back to Nauru while they have outstanding medical appointments in Darwin.

Asylum seekers are instead issued with a slip to see immigration staff, to pick up an item at Property, or to visit IHMS on a Thursday afternoon. If they attend the appointment (sometimes they hide around the centre), they never return to the compound. Their personal belongings are packed by Serco staff and they are held incommunicado in the Property area until they leave the centre under guard after midnight.¹⁸⁰

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

178 Department of Immigration and Border Protection, answer to question on notice, 29 June 2015 (received 17 July 2015).

179 DASSAN, *Submission 61*, p. 4.

180 DASSAN, *Submission 61, Attachment 1*, p. 4.

2.149 The Refugee Action Collective Queensland (RAC-Q) echoed that asylum seekers had told them of the distressing nature of transfer:

This distress is compounded by the fact that they can be sent back at a moment's notice; they cannot pack their own belongings, they have no right to appeal the decision or seek help, and there is no explanation given. Many detainees comment that they don't understand why the decision is made to return one detainee and not another.¹⁸¹

Assessment and processing

2.150 The department advised that the processing of asylum seekers within the RPC is conducted by the Nauruan Government:

While the operation of the Nauru Regional Processing Centre is fully funded by the Australian Government, the legislation requires for the processing of the transferees to be conducted by the Government of Nauru.¹⁸²

2.151 The committee sought clarification from the department as to the steps involved in a refugee status determination. The department responded that '[t]he refugee status determination (RSD) process in Nauru is managed and implemented by the Government of Nauru'.¹⁸³ The department did note, however, that '[s]pecific expertise has been provided to mentor staff across the range of administration functions including refugee status determination'.¹⁸⁴

2.152 The department advised that Nauru has legislation in place which requires a refugee status determination to be carried out whenever a person enters Nauru and seeks protection:

On 28 June 2011, Nauru acceded to the 1951 Convention relating to the Status of Refugees and has incorporated its international obligations under this Convention into Nauruan legislation, through the Refugees Convention Act 2012 (Nr). This means that Nauru has binding domestic legal obligations to make a refugee status determination when a person in Nauru makes an application for asylum. Determining whether an asylum seeker is a refugee therefore, is not only an obligation that Nauru has undertaken through its agreement with Australia, it is a statutory obligation that arises in relation to any person who enters Nauru and seeks protection.¹⁸⁵

181 RAC-Q, *Submission 73*, p. 10.

182 Department of Immigration and Border Protection, *Submission 31*, p. 9.

183 Department of Immigration and Border Protection, answer to question on notice, 21 May 2015 (received 9 June 2015).

184 Department of Immigration and Border Protection, *Submission 31*, p.12.

185 Department of Immigration and Border Protection, *Submission 31*, p.52.

2.153 According to the department, the Nauruan Government delivered its first refugee status determinations on 20 May 2014.¹⁸⁶ The Nauruan Secretary for Justice is empowered to make such determinations.¹⁸⁷

2.154 The department advised that the average length of time for asylum seekers to be in the RPC on Nauru was 402 days.¹⁸⁸ The committee sought clarification as to why such a lengthy period was required to process claims. The department noted that there may be various factors:

There are a range of variables that impact the time it may take to process a refugee claim, including:

- complexity of cases;
- documentation and evidence to support a claim such as proof of nationality or statelessness;
- willingness to engage in RSD process;
- medical fitness to engage in RSD process; and
- the number of active cases at any one time.¹⁸⁹

2.155 As at 30 June 2015, 595 refugee status determinations had been made, with 506 positive and 89 negative determinations delivered.¹⁹⁰ Where a negative refugee status determination has been made, a judicial review may be requested through the Nauruan Supreme Court within 28 days of the decision being made. The department advised that:

Claims assistance extends to a review of whether a prospective judicial review application has merit and, where it is considered that it does, to lodgement of the judicial review application in compliance with the Supreme Court of Nauru application lodgement requirements. Claims assistance does not extend to support for the transferee to argue their case to the court, and any associated judicial review legal costs are at the transferee's own expense unless the Government of Nauru provides legal aid free of charge.¹⁹¹

186 Department of Immigration and Border Protection, *Submission 31*, p. 7.

187 Department of Immigration and Border Protection, *Submission 31*, p. 52.

188 Department of Immigration and Border Protection, answer to question on notice, 7 May 2015 (received 13 May 2015).

189 Department of Immigration and Border Protection, answer to question on notice, 21 May 2015 (received 9 June 2015).

190 Department of Immigration and Border Protection, *Operation Sovereign Borders monthly update: June 2015*, 10 July 2015, <http://newsroom.border.gov.au/releases/operation-sovereign-borders-monthly-update-june> (accessed 15 July 2015).

191 Department of Immigration and Border Protection, *Submission 31*, p.53.

2.156 Amnesty International wrote that the slow processing times have created uncertainty and stress for asylum seekers:

While a number of asylum seekers have had their refugee status determined, long-term plans for their settlement remain unclear. The combination of lengthy delays and uncertainty combine to create a serious risk of individuals returning to places where their lives or freedom is likely to be threatened or where they are at risk of torture and other ill-treatment.

In addition, the prolonged periods of detention violate the right to freedom from arbitrary detention, prohibited by customary international law and by treaties to which both Australia and Nauru are party.¹⁹²

Fears around reporting incidents

2.157 Ms Vibhakar told the committee that asylum seekers were afraid that reporting incidents of abuse or making complaints would adversely affect their refugee status determination:

They expressed fear that if they complained about Commonwealth contracted employees or about DIBP in particular, it would negatively affect their ability to receive asylum, or delay the processing of their claim forcing them to remain in detention for longer. At times, this view was reinforced by some Commonwealth contracted employees.¹⁹³

Resettlement

2.158 The resettlement of asylum seekers is set out in the MOU:

Outcomes for persons Transferred to Nauru

12. The Republic of Nauru undertakes to enable Transferees who it determines are in need of international protection to settle in Nauru, subject to agreement between Participants on arrangements and numbers. This agreement between Participants on arrangements and numbers will be subject to review on a 12 monthly basis through the Australia-Nauru Ministerial Forum.
13. The Commonwealth of Australia will assist the Republic of Nauru to settle in a third safe country all Transferees who the Republic of Nauru determines are in need of international protection, other than those who are permitted to settle in Nauru pursuant to Clause 12.
14. The Commonwealth of Australia will assist the Republic of Nauru to remove Transferees who are found not to be in need of international protection to their countries of origin or to third countries in respect of which they have a right to enter and reside.¹⁹⁴

192 Amnesty International, *Submission 33*, p. 7.

193 Ms Viktoria Vibhakar, *Submission 63*, pp 28-29.

194 *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*, 3 August 2013, clauses 12-14.

2.159 Submitters told the committee that the resettlement procedures in place for asylum seekers granted refugee status and resettled in the Nauruan community were chaotic and confusing.¹⁹⁵ Submitters argued that the confusing practices contributed to stress and anxiety for asylum seekers.

2.160 One submitter told the committee that there was minimal information and communication between the department and asylum seekers being resettled in the Nauruan community:

It became clear early that, only very limited planning from DIBP and the Nauruan Government had gone into the 'settlement' of Asylum Seekers found to be refugees on Nauru. Refugees were released from the [RPCs] with very limited information on what to expect in the Nauruan community. Some Asylum Seekers, especially the SAFs [single adult females], were very scared about leaving the [RPC] to go into the Nauruan community, as there were many rumours on how refugees in the community would be treated particularly around being raped or being attacked by dogs.¹⁹⁶

2.161 Further, the submitter told the committee that asylum seekers were initially informed that they would be granted visas valid for five years, but were in reality granted visas with a validity of six months.¹⁹⁷

2.162 Submitters told the committee that they held concerns that the Nauruan community was not safe for the resettlement of refugees, particularly unaccompanied minors. ChilOut told the committee that unaccompanied minors had been released into the Nauruan community into an unsafe situation:

On 1st October 2014, 29 unaccompanied children (UACs) were released into the community on Nauru following fears for their safety while held in the family compound within the RPC.

In the following weeks, the teenage boys were subjected to a series of physical and verbal attacks by a group of locals, with several of the boys requiring hospitalisation as a result of their injuries.¹⁹⁸

2.163 The committee heard that the Nauruan community is not a safe place for resettlement to occur, in addition to the allegation made that minors have been assaulted, it was also argued that there is a culture of resentment towards asylum seekers and refugees in the community:

Children were attacked by local citizens at an alarming rate. There was no mitigation or community development initiated by DIBP or the GoN [Government of Nauru] Police were not supportive and no effective investigation was conducted. There was a growing resentment in the community of refugees, with threats of violence made via an anonymous letter and verbal threats on various occasions.

195 *Submission 82*, p. 8.

196 *Submission 82*, pp 7-8.

197 *Submission 82*, p. 8.

198 ChilOut, *Submission 13*, p. 6.

UAMs [unaccompanied minors] were assaulted and went to hospital as a result. This was a serious assault yet no action was taken in prevention or education in the community. There was growing resentment as refugees were released and transitioned into the community yet no community action taken for this process to succeed.¹⁹⁹

2.164 The committee received evidence on a confidential basis which supported the view that asylum seekers and refugees continue to face challenges once resettled in the community.

Costs and prioritisation of resources

2.165 This section will address the cost of the RPC on Nauru, with particular attention drawn to the significant investment of Australian taxpayers' money which has been made with little detail reported to the Australian Parliament.

2.166 The cost of detention on Nauru is high, with minimal evidence of value for money in the operation of the RPC. The committee heard that there is a lack of transparency on the spending of significant amounts of Australian taxpayers' money, and an inefficient prioritisation of resourcing.

2.167 This section will discuss:

- the costs associated with the operation of the RPC on Nauru; and
- concerns that parliamentary approval for public works on Nauru was not sought or gained.

Costs associated with operation of the Regional Processing Centre

2.168 Costs including establishment and ongoing maintenance of infrastructure, contracts, visa and processing costs have contributed to the very high overall cost of operating the RPC on Nauru.

2.169 The MOU sets out that all costs for the operation of the RPC will be met by the Australian Government:

6. The Commonwealth of Australia will bear all costs incurred under and incidental to this MOU as agreed between the Participants.²⁰⁰

2.170 The department provided the following table of operational costs for the RPC and settlement on Nauru for three financial years:

199 *Submission 80*, p. 4.

200 *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*, 3 August 2013, clause 6.

Costs of Regional and Processing and Settlement in Nauru	2012/13 \$	2013/14 \$	2014/15 \$
RPC Operational Costs	143,196,000	387,662,000	380,419,000
DIBP Staff Costs	7,064,000	11,013,000	7,999,000
Capital	132,648,000	207,060,000	56,582,000

Source: Department of Immigration and Border Protection, answer to question on notice, 18 May 2015 (received 5 June 2015).²⁰¹

2.171 The department advised the committee of the following contract values for the financial year 2013-14:

- IHMS - \$20,922,459;
- Save the Children Australia - \$6,142,596; and
- Transfield Services - \$259,182,780.²⁰²

2.172 Information available on published spending on Nauru via the AusTender website sets out that during the 2013-14 financial year \$2.97 billion was spent on contracts associated with the RPC on Nauru.²⁰³ The contracts generally relate to accommodation for staff, construction, legal and audit services, and provision of services.

2.173 The department advised that various projects were planned for completion in 2015 and 2016 on Nauru which directly or indirectly related to the RPC:

Project	Estimated cost	Target completion
Republic of Nauru Hospital upgrade works	\$23,307,000	June 2016
Nauru Primary School development	\$17,350,000	January 2016
Teachers' accommodation	\$27,979,000	June 2016
Community Resource Centre	\$9,245,000	May 2016

²⁰¹ Reporting period is Year to Date to 30 April 2015.

²⁰² Department of Immigration and Border Protection, answer to question on notice, 18 May 2015 (received 9 June 2015).

²⁰³ AusTender, *Senate Order on Confidentiality in Procurement Contracts by Agency*, <https://www.tenders.gov.au/?event=public.senateOrder.list> (accessed 27 May 2015).

Repurpose RPC 3 – Settlement Accommodation Project 1	\$15,944,000	December 2015
Repurpose RPC 3 – Settlement Accommodation Project 2 (includes warehouse - \$3,861,084)	\$16,066,848	February 2016
Repurpose RPC 3 – Settlement Accommodation Project 1	\$8,212,000	July 2016
Courthouse	\$168,640	July 2015
Correctional Centre	\$17,006,803	February 2016
TOTAL	\$135,279,291	

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

2.174 Detailed information regarding the purpose and outcomes anticipated on the above projects was not readily available.

2.175 An answer provided by the department to a question on notice from Additional Estimates sets out additional costs for visas for asylum seekers in the RPC, which are paid by the Australian Government:

The current cost for visas for transferees and refugees in Nauru is \$1,000 per month per person. An amount of \$27,893,633 has been paid to 30 March for transferee visas (paid quarterly) and an amount of \$1,008,000 to 23 February 2015 for refugee visas.

There are no visa charges imposed for department staff travelling on official business.²⁰⁴

Open centre model

2.176 Evidence provided to the committee relating to costs associated with the RPC on Nauru highlights the very high cost of offshore detention where security is a priority.

2.177 With a significant amount of money dedicated to security arrangements, the committee believes that an open centre model could provide an alternative pathway for offshore detention.

204 Department of Immigration and Border Protection, answer to question on notice, 23 February 2015 (received 21 April 2015).

2.178 Ms Caz Coleman, former Transitional Contract Manager for The Salvation Army, told the committee that she had proposed and advocated for an open centre model as a means to ease potential tensions between the refugee and local populations:

In 2013 it was blatantly clear that any pathway for economic or educational advancement for refugees or centre clients must involve opportunities for local Nauru community members also. To establish no pathways would lead to idleness and resentment on both sides and to establish refugee only pathways would lead to conflict and potential violence due to perceived favouritism.²⁰⁵

2.179 In February 2015, the Hon Peter Dutton MP, Minister for Immigration and Border Protection, announced that the RPC would move toward an open centre model:

An open centre will give transferees more opportunities to engage with the Nauruan community before their refugee processing has been completed, allowing genuine refugees to ultimately integrate seamlessly into the community.

I expect open centre arrangements to be finalised very soon.²⁰⁶

2.180 The Nauruan Government announced the operation of a partial open centre model from 25 February 2015:

The Government of Nauru has commenced its Open Centre arrangement today...which allows a select number of asylum seekers from the Regional Processing Centre (RPC) access across the community for certain hours of the day.

Initially this access will be for three days a week, from 9am to 5pm.

Twenty asylum seekers will be involved with the new program today and another 40 on Saturday and 60 on Monday. The number of asylum seekers participating each week will be determined as the weeks progress.²⁰⁷

2.181 The Nauruan Government said that the move toward an open centre model had resulted from 'discussions about the effects of extended time spent in the camps':

...the Government of Nauru will trial the Open Centre in the hopes it will ease some of the tension and frustration and prepare the asylum seekers for a future in the Nauru community if they are to be deemed genuine refugees through the status determination process.²⁰⁸

205 Ms Caz Coleman, *Submission 56*, p. 13.

206 The Hon Peter Dutton, MP, Minister for Immigration and Border Protection, 'Nauru visit reaffirms regional processing partnership', Media release, 19 February 2015.

207 Government of Nauru, 'Nauru commences open centre arrangements', Media release, 25 February 2015.

208 Government of Nauru, 'Nauru commences open centre arrangements', Media release, 25 February 2015.

Public Works on Nauru

2.182 During the course of the inquiry, the committee became concerned that public works projects on Nauru had not gained Parliamentary approval through the Parliamentary Standing Committee on Public Works (the Public Works Committee). The Public Works Committee calls to account the planning decisions and capital expenditure of the Executive through Commonwealth departments and agencies.²⁰⁹

2.183 Under the *Public Works Committee Act 1969* (the Act), the Public Works Committee is required to consider the need, scope, cost, purpose and value-for money of proposed works, and report to Parliament on whether or not it is advisable that works proceed.²¹⁰

2.184 Section 5 of the Act prescribes the definition of a public work. A work can be architectural or engineering work and includes:

- the construction, alteration, repair, refurbishment or fitting-out of buildings and other structures (including demountable buildings);
- the installation, alteration or repair of plant and equipment designed to be used in, or in relation to, the provision of services for buildings and other structures;
- the undertaking, construction, alteration or repair of landscaping and earthworks (whether or not in relation to buildings and other structures);
- the demolition, destruction, dismantling or removal of:
 - buildings and other structures;
 - plant and equipment; and
 - earthworks;
- the clearing of land and the development of land for use as urban land or otherwise; and
- any other matter declared by the regulations to be a work.²¹¹

2.185 A public work can be located in Australia or its external territories, or outside Australia, as in the case of a diplomatic mission.²¹² If work is not being undertaken for the Commonwealth, it is not considered a public work but a 'private' work.²¹³

209 Parliamentary Standing Committee on Public Works, *Procedure Manual-Edition 8*, March 2010, p.1.

210 Parliamentary Standing Committee on Public Works, *Procedure Manual-Edition 8*, March 2010, p.v.

211 Parliamentary Standing Committee on Public Works, *Procedure Manual-Edition 8*, March 2010, p.4.

212 Parliamentary Standing Committee on Public Works, *Procedure Manual-Edition 8*, March 2010, p.4.

213 Parliamentary Standing Committee on Public Works, *Procedure Manual-Edition 8*, March 2010, p.4.

2.186 All public works proposed to be undertaken by or on behalf of the Commonwealth with an estimated cost of in excess of a threshold amount must not commence until the work has been referred to the Public Works Committee.²¹⁴ Under Section 18(9)(a) of the Act, the current threshold amount is \$15 million.²¹⁵

2.187 Further, the Public Works Committee must be advised of all works with an estimated cost between \$2 million and \$15 million, known as medium works, and they may be referred for inquiry by either House of Parliament.²¹⁶

2.188 Under Subsections 18(8) and 18(8A) of the Act, a work or an organisation may be exempted from committee scrutiny on the grounds of:

- urgency;
- defence purposes where scrutiny could be contrary to the public interest; or
- if the work is of a repetitive nature.²¹⁷

2.189 Exemption on the ground that work is of an urgent nature requires a resolution by the House of Representatives.²¹⁸

2.190 On 2 June 2015, the committee wrote to the Chair of the Public Works Committee, Senator Dean Smith, seeking advice in relation to works conducted in the Republic of Nauru.

2.191 The Public Works Committee advised the committee that:

The secretariat has advised DIBP representatives on several occasions to write to the Committee documenting any works that have been undertaken in Nauru, providing reasons why these would not have been referred to the Committee for inquiry... To date no correspondence has been received.²¹⁹

2.192 On 9 June 2015, the committee asked the department how many referrals had been made to the Public Works Committee in relation to works conducted in the Republic of Nauru from 2012 to present. The committee also asked the department how they are meeting their obligations under the Act in relation to works conducted in the Republic of Nauru.

214 Parliamentary Standing Committee on Public Works, *Procedure Manual-Edition 8*, March 2010, pp 4-5.

215 *Public Works Committee Act 1969*, s18(9)(a).

216 Parliamentary Standing Committee on Public Works, *Procedure Manual-Edition 8*, March 2010, p.6.

217 Parliamentary Standing Committee on Public Works, *Procedure Manual-Edition 8*, March 2010, p.8.

218 Parliamentary Standing Committee on Public Works, *Procedure Manual-Edition 8*, March 2010, p.8.

219 Senator Dean Smith, Chair, Parliamentary Standing Committee on Public Works, letter to Senator Alex Gallacher, Chair, Select Committee on Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, 11 June 2015.

2.193 The department responded by saying that while an initial exemption from the requirements of the Act was sought, subsequent funding was considered to be aid to a foreign government:

The initial builds for the RPCs were provided with an exemption, I understand, from the PWC process due to the urgency associated with the works. We have also received further legal advice quite recently with regard to some of the additional works that we are doing on Nauru now that they can be considered to be aid to a foreign government, and therefore they are not captured by the PWC process. Notwithstanding that, however, we have been engaging with the PWC secretariat and the Department of Finance on an ongoing basis since December 2013—providing briefings to PWC about what is going on.²²⁰

2.194 In an answer to a question on notice, the department advised that formal and informal briefings have been given to the Public Works Committee, but did not refer to the classification of any public works in Nauru as aid:

In addition to the initial regular reporting on the Works, the department has maintained regular contact with the PWC Secretariat on various aspects of the Nauru Programme of Works, with the last formal communication to the PWC being a Private Brief to the Committee on Manus Island and Nauru Works on 27 March 2014.²²¹

2.195 At the additional estimates hearings held by the Senate Standing Committee on Foreign Affairs, Defence and Trade, Mr Daniel Sloper, First Assistant Secretary, Pacific Division, Department of Foreign Affairs and Trade, told the committee that 'there is no ODA [official development assistance] being used for public works in Nauru'.²²²

2.196 The committee notes that the budget handed down for the 2015-16 financial year did not include a separate statement on international development assistance, as has been provided in previous budgets. The lack of availability of this information makes it difficult to clarify whether the works on Nauru are being consistently treated as aid to a foreign government by the Commonwealth.

2.197 In its interim report of 12 June 2015, the committee recommended further examination of Commonwealth expenditure on Nauru:

The committee draws the attention of the Standing Committee on Public Works to Commonwealth expenditure on public works in the Republic of Nauru, not confined to the Department of Immigration and Border Protection but across the Commonwealth, and recommends that the Department of Immigration and Border Protection ensures that all future

220 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 65.

221 Department of Immigration and Border Protection, answer to question on notice, 9 June 2015 (received 26 June 2015).

222 Mr Daniel Sloper, First Assistant Secretary, Pacific Division, Department of Foreign Affairs and Trade, *Committee Hansard*, 3 June 2015, p. 52.

public works in the Republic of Nauru are referred to the Standing Committee on Public Works in accordance with the Public Works Committee Act 1969 (Cth).²²³

2.198 Given the apparent inconsistency in the evidence available on this issue, the committee again draws the department's attention to the requirements of the *Public Works Committee Act 1969*.

223 Select Committee on Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, *Interim Report*, 12 June 2015.

Chapter 3

Living conditions at the Regional Processing Centre on Nauru

3.1 The committee received substantial evidence during its inquiry concerning living conditions in the Regional Processing Centre (RPC). Asylum seekers presently or formerly in the RPC related their concerns at the low standard of conditions afforded to them. Submissions received from former contractors also detailed concerns over the living conditions.

3.2 This chapter will address the evidence received by the committee regarding living arrangements for adults, children and families; and the provision of services and facilities.

3.3 As noted in Chapter 2, the Secretary of the Department of Immigration and Border Protection, Mr Michael Pezzullo, advised the committee that the care and welfare of asylum seekers within the RPC was the responsibility of the Nauruan Government, noting that the Nauruan Government manages and runs the RPC.¹

3.4 While the department advised that they neither run nor manage the RPC on Nauru, the evidence shows that the department has in-depth involvement in oversight of contracted service providers, including funding and complaints handling, and exerts a significant amount of control over the daily operations of the RPC on Nauru.

Department of Immigration and Border Protection responses to questions

3.5 A series of questions asked of the department regarding the facilities, amenities and accommodation at the RPC failed to elicit informative responses. The committee considers the answers provided to these questions to be inadequate.

3.6 For example, the department was asked by the committee to provide information on the accommodation at the RPC, including specific data relating to type and size. The department's response did not provide any information to the committee:

Asked:

Please provide the following information:

The accommodation capacity at the Nauru Detention Centre and any subsequent changes to that capacity since 1 January 2014, including accommodation type and average square metre allocation for each asylum seeker.

¹ Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 43.

Answer:

There is sufficient accommodation capacity at the Regional Processing Centre on Nauru.²

3.7 Further, the department declined to provide the committee with plans of the RPC which included staff quarters on the grounds of 'operational security reasons'.³ The department also declined to provide the committee with documents relating to the decision to halt construction on RPC 2 and RPC 3, citing that they were deliberations of the government and could not be provided.⁴

3.8 The committee sets out the conclusions it has drawn in relation to these matters in Chapter 5.⁵

Provision of and responsibility for marquees

3.9 Throughout its inquiry, the committee has sought to determine where the ultimate responsibility lies for the provision and maintenance of the white vinyl marquees currently used for accommodation in the RPC.

3.10 In a response to a question on notice, the department noted that the white vinyl marquees used for accommodation and facilities in the RPC were procured and installed by Transfield Services, that the department does not have oversight of Transfield Services' sub-contractual arrangements, and that Transfield Services purchased the marquees on the department's behalf.⁶

3.11 However, Transfield Services put to the committee that the provision of infrastructure, including marquees, was a matter for the department, and that the 'decisions on specifications were made by the department'.⁷ Transfield Services further noted that while they procured the majority (120 of 140) of the marquees, twenty were purchased directly by the department.

Transfield Services procured the marquees from Barlens to replace the army style tents that were erected following the destruction of the demountable buildings in July 2013. Other quotes were sought at the time though only Barlens could supply the required quantity in the timeframe requested by the Department.

² Department of Immigration and Border Protection, answer to question on notice, 18 May 2015, (received 5 June 2015).

³ Department of Immigration and Border Protection, answer to question on notice, 18 May 2015, (received 5 June 2015).

⁴ Department of Immigration and Border Protection, answer to question on notice, 18 May 2015, (received 5 June 2015).

⁵ This issue is discussed at paragraph 5.11.

⁶ Department of Immigration and Border Protection, answer to question on notice, 27 May 2015 (received 9 June 2015).

⁷ Mrs Munnings, Mr Osborn, Transfield Services, *Committee Hansard*, 19 May 2015, pp 9-10.

The remaining twenty marquees were procured directly by the Department. Our understanding is that these were purchased from Toll.⁸

3.12 When the discrepancy in these answers was brought to the department's attention, the department reiterated that it considered Transfield Services best placed to provide all advice relating to the 'procurement, provision, installation, maintenance and oversight' of the marquees at the RPC. The department stated that '[w]hile the Department advised Transfield that marquees could be used for accommodation, Transfield undertook the procurement and installation of the marquees and associated infrastructure'. The department confirmed that it had, separately, purchased 20 marquees from Toll in August 2013.⁹

3.13 The committee considers this to be evidence that the provision of infrastructure, and responsibility for it, is unclear, with both the department and Transfield Services referring the committee to the other to seek further information. The committee notes that the twenty marquees purchased directly by the department were not referred to in the department's initial answer about procurement of marquees. The committee has sought to clarify responsibility for the marquees in order to establish important facts around the standard of living provided to asylum seekers in the RPC, but this has been frustrated by a lack of clear lines of responsibility.

Living arrangements

3.14 The RPC comprises three sites which provide accommodation: RPC 1, which provides accommodation for staff and service providers; RPC 2, which provides accommodation to single adult male asylum seekers in dormitory style sleeping arrangements, and RPC 3, which provides accommodation to single adult female asylum seekers and families.¹⁰

3.15 Transfield Services advised that the marquees currently used for accommodation in RPC 2 and RPC 3 were made of flame retardant material, with particle board flooring:

The exterior of the marquees (the walls and roof) is made from Flame Retardant Vinyl, being a layered polyester yarn fabric coated on both sides with PVC flame retardant (Vinyl) and varnish. All marquees also have a solid floor made out of commercial grade particle board flooring, supported by treated pine bearers.¹¹

3.16 RPC 1 currently accommodates 'up to 850 staff and service providers in permanent modular accommodation', and has facilities for both staff and asylum

⁸ Transfield Services, answer to question on notice, 28 May 2015 (received 16 June 2015).

⁹ Department of Immigration and Border Protection, answer to question on notice of 29 June 2015 (received 17 July 2015).

¹⁰ Department of Immigration and Border Protection, *Submission 31*, p. 33. These facilities were noted in Chapter 1.

¹¹ Transfield Services, answer to question on notice, 19 May 2015 (received 16 June 2015).

seekers. The department advised that the site also includes a 'managed accommodation area for high-risk transferees'.¹²

3.17 Single adult male asylum seekers are currently accommodated in RPC 2, in white vinyl marquees measuring 10m x 12m in three compounds. The department advised that each marquee is capped at a capacity of 22.¹³

3.18 Much of the evidence received by the committee related to the conditions in RPC 3, which currently houses families and single adult female asylum seekers in white vinyl marquees measuring 10m x 12m in six compounds. The marquees are divided using vinyl walls. Families with children under the age of four are accommodated in air-conditioned marquees.¹⁴ According to a submission received by the committee, RPC 3 is located in a depression 'much lower in elevation than any of the surrounding areas'.¹⁵ Ms Natasha Blucher, a former Save the Children Australia employee, described the physical environment of RPC 3:

The effect of the topography of the area is such that heat is contained in the depressed area where the client accommodation is located. There is limited wind and breeze due to surrounding raised pinnacled areas. The result is a very intense and persistent heat with little reprieve.¹⁶

3.19 The committee sought clarification as to why children over the age of four were not able to be placed in accommodation with air-conditioning. The department provided the following response: 'With advice from service providers, the Government of Nauru determines operational matters'.¹⁷ The committee considers this to be an entirely inadequate response to the question.

3.20 The committee received a large volume of evidence that the living conditions in the RPC on Nauru were of a lower standard than would be accepted in Australia, and had an unacceptable lack of privacy and poor hygiene.¹⁸ For example, letters written by asylum seekers which were received by the committee referred to respiratory complaints arising from exposure to high levels of phosphate dust.¹⁹

¹² Department of Immigration and Border Protection, *Submission 31*, p. 33.

¹³ Department of Immigration and Border Protection, *Submission 31*, pp 33-34.

¹⁴ Department of Immigration and Border Protection, *Submission 31*, p. 34.

¹⁵ *Submission 82*, p. 3.

¹⁶ Ms Natasha Blucher, *Submission 83*, p. 4.

¹⁷ Department of Immigration and Border Protection, answer to question on notice, 21 May 2015 (received 9 June 2015).

¹⁸ NetAct, *Submission 20*, p. 3; Asylum Seeker Resource Centre, *Submission 27*, p. 3; Australian Churches Refugee Taskforce, *Submission 31, Attachment 1*; Darwin Asylum Seeker Support and Advocacy Network, *Submission 61*, p. 6; RAC-Q, *Submission 73*, p. 5; *Submission 80*, p. 3; *Submission 85*, p. 1.

¹⁹ Australian Churches Refugee Taskforce, *Submission 31, Attachment 1*.

3.21 The living conditions were noted by a number of submitters to be hot, humid and crowded.²⁰ The Darwin Asylum Seeker Support and Advocacy Network (DASSAN) informed the committee that asylum seekers were concerned about high levels of heat inside the marquees, and a lack of privacy and cleanliness.²¹ The presence of mice, rats and other pests such as mosquitos was also noted by submitters.²²

3.22 Transfield Services administers both scheduled and responsive cleaning programs.²³ They noted that the maintenance of the vinyl marquees and monitoring of mosquitoes is challenging owing to the tropical conditions experienced on the island.²⁴

3.23 Several submitters raised concerns that low standards of maintenance and hygiene in the accommodation areas were having a detrimental impact on physical and mental wellbeing.²⁵ The Refugee Action Collective of Queensland (RAC-Q) told the committee that substandard living conditions, stress and anxiety were leading to poor health, with high rates of 'diarrhoea, mosquito related illnesses, vaginal fungal infections, coughs [and] dizziness'.²⁶

3.24 Mr Lee Gordon, Head of Nauru Programs from Save the Children Australia, told the committee that the environment was a factor for physical and mental health:

I think it would be fair to say that, in the regional processing centre, we are dealing with a range of incredibly traumatised people who are often extremely stressed. I think conditions of hardship where tent conditions are hot, where there is a lack of privacy and where you may not be able to sleep contribute to stress and I think makes a situation where self-harm or other types of antisocial behaviours are very possible. So I do think it is a contributing factor.²⁷

²⁰ ChilOut, *Submission 13*, p. 4; Mr Lee Gordon, Head of Nauru Programs, Save the Children Australia, *Committee Hansard*, 19 May 2015, p. 52.

²¹ Darwin Asylum Seeker Support and Advocacy Network, *Submission 61*, p. 4.

²² Asylum Seeker Resource Centre, *Submission 27*, p. 4; Australian Churches Refugee Taskforce, *Submission 31, Attachment 1*, Darwin Asylum Seeker Support and Advocacy Network, *Submission 61*, p. 4; RAC-Q, *Submission 73*, p. 5; Ms Charlotte Wilson, *Submission 79*, p. 2.

²³ Transfield Services, response to *Submission 66*, p. 12.

²⁴ Transfield Services, answer to question on notice, 20 May 2015 (received 16 June 2015). In a response to a submission, Transfield Services drew to the attention of the committee the implementation of a mosquito eradication program and Vector Emergency Response plan which would be initiated in the event of an outbreak of a mosquito-borne disease. Transfield Services, response to *Submission 85*, pp 6-7.

²⁵ ChilOut, *Submission 13*, p. 4; Australian Churches Refugee Taskforce, *Submission 31, Attachment 1*, RAC-Q, *Submission 73*, p. 5.

²⁶ RAC-Q, *Submission 73*, p. 5.

²⁷ Mr Lee Gordon, Head of Nauru Programs, Save the Children Australia, *Committee Hansard*, 19 May 2015, p. 51.

3.25 Save the Children Australia recommended the installation of air-conditioning, saying that it would 'reduce family tensions, improve students' ability to learn and enable a range of recreation activities to be conducted safely'.²⁸

3.26 When asked what priority was being given to improving physical comfort for asylum seekers, such as the provision of air-conditioning, the department provided the following response: 'Such matters would be subject to agreement by the Government of Nauru and the appropriation of additional capital funding'.²⁹

Presence of mould

3.27 The presence of mould on the inside of the white vinyl marquees used for accommodation was raised by submitters, some of whom linked its presence with eye infections and skin complaints.³⁰ One submitter said that:

Throughout the time that I was employed at the Nauru RPC, I observed large quantities of mould on tents, including the tents that asylum seekers lived in. The mould was black and so pronounced that people would actually write things on the outside of the tent in the mould, similar to the manner that some people write on dusty cars in Australia.³¹

3.28 Transfield Services advised the committee that all marquees in the RPC are affected by mould to varying degrees, which for a period was treated with 'bleach wash downs':

This improved the situation for a period though mould typically reappeared within a few months. In or about May – June 2014, it became clear that bleach wash downs were not a viable permanent solution.³²

3.29 Installation of air-conditioning units, improvements to ventilation and a more thorough cleaning regime are being carried out by Transfield Services and the department.³³ Three major avenues for the removal of mould are being pursued by Transfield Services, including a 'Procedure for Mould Decontamination' and a 'Mould Remediation Plan' including:

²⁸ Save the Children Australia, *Submission 30*, pp 26-27.

²⁹ Department of Immigration and Border Protection, answer to question on notice, 21 May 2015 (received 9 June 2015).

³⁰ For the presence of mould, see: Professor David Isaacs, *Submission 11*; p. 1; Ms Viktoria Vibhakar, *Submission 63*, p. 31; Ms Alanna Maycock, *Submission 66*, p. 2; Ms Charlotte Wilson, *Submission 79*, p. 2; *Submission 82*, p. 3. For submissions linking mould with infection, see: Asylum Seeker Resource Centre, *Submission 27*, p. 3; *Submission 81*, p. 3.

³¹ Ms Viktoria Vibhakar, *Supplementary Submission 63.1*, p. 14.

³² Transfield Services, answer to question on notice, 20 May 2015 (received 16 June 2015).

³³ Transfield Services, answer to question on notice, 20 May 2015 (received 16 June 2015); Ms Cindy Briscoe, Deputy Secretary, Immigration Status Resolution Group, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 51.

- a systematic interior and exterior cleaning regime using a 'specialised chemical', the cleaning or replacement of floor and roof panels and the application of a regrowth inhibitor;
- an industrial high pressure steam cleaner; and
- a dedicated supervisor for the Mould Remediation Plan.³⁴

3.30 Transfield Services told the committee on 20 July that 91 tents had been cleared of mould, but acknowledged that there was potential for the mould to return, 'probably [in] 12 months plus'.³⁵

Access to water

3.31 Access to water was raised as an area of concern by submitters, who noted that there is no running water in the accommodation marquees and that obtaining water was difficult for some asylum seekers.³⁶

3.32 The Nauruan Government have said that access to water and sanitation on the island is 'challenging', and noted that most households rely on rainwater storage. The Ministry for Commerce, Industry and Environment in Nauru said that the ability to sustain water demand during times of drought is an important goal.³⁷

3.33 The department advised that RPC 2 and RPC 3 are self-sufficient in water storage,³⁸ and that a major upgrade of water infrastructure on Nauru has been funded by the department:

In June 2014 the Department and the Government of Nauru reached agreement to enable the upgrade of the Nauruan Utilities Corporation water production infrastructure. The Department committed significant capital costs to upgrade the Nauru water supply to ensure water security for the Regional Processing Centre.

The arrangement includes the upgrade of infrastructure and the ongoing payment of all operational costs for the new units. As part of the scope, two new reverse osmosis water production units, a decant standpipe, new sea water intake pumps and backup generators were installed.³⁹

³⁴ Transfield Services, answer to question on notice, 20 May 2015 (received 16 June 2015).

³⁵ Mr Derek Osborn, Executive General Manager, Logistics and Facilities Management, Transfield Services, *Committee Hansard*, 20 July 2015, p. 21.

³⁶ ChilOut, *Submission 13*, p. 8; Asylum Seeker Resource Centre, *Submission 27*, p. 5; Australian Christian Refugee Taskforce, *Submission 32*, p. 1; Darwin Asylum Seeker Support and Advocacy Network, *Submission 61*; Ms Alanna Maycock, *Submission 66*, p. 2; *Submission 81*, p. 2; Ms Natasha Blucher, *Submission 83*, p. 10.

³⁷ Ministry for Commerce, Industry and Environment, Water and Sanitation in Nauru – Overview, <http://nauruenv.appspot.com/water-unit/watsan> (accessed 7 May 2015).

³⁸ Department of Immigration and Border Protection, *Submission 31*, p. 33.

³⁹ Department of Immigration and Border Protection, *Submission 31*, p. 34.

3.34 Submissions from asylum seekers formerly or presently in the RPC on Nauru referred to water restrictions impacting on their health and wellbeing through restricting access to drinking water and water for showers.⁴⁰ The committee received letters from asylum seekers formerly or currently in the RPC which referred to short shower times of two minutes or less, water restrictions, and a lack of warm water.⁴¹

3.35 A submission from Ms Alanna Maycock and Professor David Isaacs highlighted the health risks involved when drinking water cannot be accessed:

Gastroenteritis is common and potentially dangerous. Parents complain they have been unable to access water at night when their children have vomiting and diarrhoea. They are rightly concerned about the risks of dehydration.⁴²

3.36 Ms Cindy Briscoe, Deputy Secretary, Immigration Status Resolution Group, Department of Immigration and Border Protection, acknowledged that restrictions on water had happened when machine maintenance was occurring:

There are occasions where restrictions are placed on the water when maintenance is happening with those machines. At all times, there is ample bottled water made available... We have recently upgraded the water capacity from 300 kilolitres to 2.2 megalitres per day.⁴³

3.37 While the committee heard that bottled water was not allowed or provided inside the RPC,⁴⁴ the department has advised that bottled water is available every day to asylum seekers.⁴⁵

Lack of privacy

3.38 The Moss Review noted a number of concerns raised about the low level of privacy afforded to asylum seekers, and the detrimental effect that was having on mental health and relationships.

⁴⁰ Australian Churches Refugee Taskforce, *Submission 31, Attachment 1*, p. 11; *Submission 80*, p. 10.

⁴¹ Australian Churches Refugee Taskforce, *Submission 31, Attachment 1*, pp 8-9; Darwin Asylum Seeker Support and Advocacy Network, *Submission 61*, p. 6;

⁴² Ms Alanna Maycock and Professor David Isaacs, *Submission 66, Supplementary Submission*, p. 3.

⁴³ Ms Cindy Briscoe, Deputy Secretary, Immigration Status Resolution Group, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 50.

⁴⁴ Asylum Seeker Resource Centre, *Submission 27*, p. 5; Ms Natasha Blucher, *Submission 83*, p. 10. The Moss Review related evidence that bottled water was no longer available in an attempt to prevent alcohol being brought inside the RPC. Mr Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, 6 February 2015, p. 43, fn 93.

⁴⁵ Mrs Kylie Scholten, Acting Assistant Secretary, Offshore Operations Branch, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 50.

The apprehension about personal safety and the concern about privacy arises from high density accommodation in mostly non-air-conditioned, soft walled marquees in a tropical climate.⁴⁶

3.39 Issues relating to a lack of privacy were raised by submitters, who noted that tents housing multiple families were delineated by plastic sheeting walls, which afforded an inadequate level of privacy.⁴⁷ Much of the evidence related to RPC 3, which accommodates families and single adult females. The effects of a lack of privacy on mental health and personal safety and security were noted by submitters.⁴⁸

3.40 Ms Viktoria Vibhakar, a former social worker with Save the Children Australia, told the committee that the inability for asylum seekers to lock their accommodation led to a breakdown in privacy and security:

One of the difficult things in the Nauru detention facility is that people are held in extremely crowded conditions, they lack privacy and they have accommodation that cannot be locked. So parents are unable to keep intruders or people who would seek to do harm or sexually assault children from entering their accommodation whether it be at night time or during the day time—and that includes both Commonwealth contracted providers as well as anyone else in the detention facility.⁴⁹

3.41 One submitter told the committee that privacy and security could not be guaranteed owing to the nature of the marquees:

The board walls did not reach the top of the tent. Individual partitioned sections did not have doors, and in lieu of doors, had tarpaulin style coverings. Such an arrangement afforded little privacy and security, as tarpaulin style coverings could not be secured.⁵⁰

3.42 Transfield Services told the committee that, in conjunction with the department, the lack of privacy was currently being addressed as part of the response to the recommendations of the Moss Review.⁵¹

⁴⁶ Mr Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, 6 February 2015, p. 43.

⁴⁷ Save the Children Australia, *Submission 30*, p. 27.

⁴⁸ UNHCR, *Submission 19*, p. 4; Asylum Seeker Resource Centre, *Submission 27*, p. 3; *Submission 39*, p. 1; Darwin Asylum Seeker Support and Advocacy Network, *Submission 61*, p. 6; Ms Alanna Maycock, *Submission 66*, p. 2; Ms Charlotte Wilson, *Submission 79*, p. 2. The Moss Review noted that children may be able to observe adult sexual activity owing to the lack of privacy, which may have resulted in the sexualised behaviour of children. Mr Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, 6 February 2015, p. 44.

⁴⁹ Ms Viktoria Vibhakar, *Committee Hansard*, 9 June 2015, p. 30.

⁵⁰ *Submission 81*, p. 3.

⁵¹ The Moss Review made a recommendation around the need for a greater focus on privacy:

3.43 Transfield Services advised the committee that extra partitions were being installed as a means to increase privacy:

We acknowledge that concerns have been raised regarding the privacy of asylum seekers and Transfield Services is working with the Department to address these concerns.⁵²

Transfield Services are working with the Department in respect of the following improvements to accommodation which will enhance personal safety and privacy:

1. increased ventilation via the provision of central duct air conditioning, fans (ceiling fans for families and wall fans above the door for single adult males and single adult females) and insulation;
2. added screening (including floor to ceiling partitions) for families of 3 or more persons such that their accommodation is transformed into studio living;
3. added screening for single adult males and females such that marquee accommodation is transformed into 2 person rooms with floor to ceiling partitions;
4. additional lighting in walkways, open areas, toilets, ablution areas and laundries; and
5. additional lighting in accommodation areas.

Transfield Services has also installed privacy walls in response to specific privacy concerns where those have been raised from time to time by individual asylum seekers.⁵³

3.44 The department noted that as asylum seekers were resettled in the community, more space would be allocated to those within the RPC.⁵⁴

Provision of services and facilities

3.45 Services (other than medical care) and material goods are currently provided by Transfield Services to all asylum seekers in the RPC on Nauru. Although initially contracted to provide welfare services to single adult males, their role has expanded:

Since being engaged to provide welfare services to single adult males in February 2014, Transfield Services' service delivery model has expanded to a fully integrated, welfare led model. This means that all Transfield

'RECOMMENDATION 1: The Department and the Nauruan Government take into account the personal safety and privacy of transferees when making decisions about facilities and infrastructure at the Centre.' Mr Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, 6 February 2015, p. 9.

⁵² Transfield Services, response to *Submission 85*, p. 3.

⁵³ Transfield Services, answer to question on notice, 19 May 2015 (received 16 June 2015).

⁵⁴ Ms Cindy Briscoe, Deputy Secretary, Immigration Status Resolution Group, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 51.

Services' service lines, including security, are managed by the Transfield Services' Operations Manager and the application of welfare service principles underpin all aspects of service delivery.⁵⁵

3.46 Submitters told the committee that the provision of goods was minimal, and that the service providers were often slow to respond.⁵⁶

3.47 Ms Viktoria Vibhakar, a former Save the Children Australia employee, told the committee that the provision of material goods was considered to be a low priority at the RPC. She submitted that these lower priority issues included:

...adequate clothing and footwear, beds, changing out urine stained sheets for children with bedwetting problems, providing appropriate quantities of undergarments, a lack of toys for children, or addressing issues with bullying/harassment within the detention facility.⁵⁷

3.48 The committee notes that the Nauru Regional Processing Centre Rules as set out by the Nauruan Government prohibit the exchange of goods between asylum seekers within the RPC:

3. Responsibilities of Asylum Seekers

3.1. At all times, asylum seekers residing at the Centre must:

3.1.8. not participate in any form of exchange or bartering within the Centre. This includes the provision of gifts or any material goods or favours;⁵⁸

Provision of clothing and footwear

3.49 Access to clothing and footwear was referred to in a number of submissions as being sporadic and minimal, with submitters also referring to instances where clothing that was culturally inappropriate or an incorrect size was provided with no chance of exchange.⁵⁹

3.50 It was noted by submitters that access to clothing and footwear had been below acceptable standards during the period of The Salvation Army's management of the stores:

It was rare for children to have appropriate footwear in the RPC, and this was well known by all staff. Most children wore rubber thongs, which were

⁵⁵ Transfield Services, *Submission 29*, p. 8.

⁵⁶ *Submission 38*, p. 1; *Submission 80*, p. 10.

⁵⁷ Ms Viktoria Vibhakar, *Submission 63*, p. 35. Save the Children Australia advised the committee that they did not agree with the assessment that the provision of goods was a low priority. Save the Children Australia, response to *Submission 63*, p. 9.

⁵⁸ Transfield Services, *Submission 29, Attachment 2*, p. 5.

⁵⁹ Asylum Seeker Resource Centre, *Submission 27*, p. 4; Save the Children Australia, *Submission 30*, p. 24; *Submission 38*, p. 1; Ms Viktoria Vibhakar, *Submission 63*, p. 26; *Submission 81*, pp 2-3; *Submission 82*, p. 7; Ms Natasha Blucher, *Submission 83*, pp 8-9.

often broken or had holes in the sole. On occasion I witnessed children with wire strapping the thongs to their feet.⁶⁰

3.51 The Salvation Army advised the committee that delays in delivery of the goods were a problem, but noted that they were not responsible for procurement:

The Salvation Army notes that there were occasions on which goods would run out and due to the remoteness of the RPCs there would be a delay in the delivery of those goods to the RPCs. However, The Salvation Army was not responsible for procurement of goods. This responsibility rested with the security and garrison service providers.⁶¹

3.52 Transfield Services began to administer and manage the stores at RPC 2 and RPC 3 in February 2014, taking over the role from The Salvation Army. Transfield Services told the committee that since their management of the stores, they have tried to ensure fair and appropriate access to clothing. They acknowledged that a significant number of outstanding requests required attention when they assumed management:

...at the time of assuming responsibility for the stores in February 2014, Transfield Services was provided by the outgoing service provider [The Salvation Army] with a database of 571 outstanding requests for clothing and other material goods. We implemented a number of measures immediately to address these timeliness and efficiency of clothing distribution and to resolve this large number of outstanding requests.⁶²

3.53 Transfield Services advised the committee that measures they had taken included the establishment of a canteen in which 'items that had been incorrectly issued' could be exchanged.⁶³ Save the Children Australia acknowledged that until February 2014, issues concerning the provision of material goods had been 'particularly pronounced' until they began to provide welfare services in RPC 3.⁶⁴

3.54 The committee sought clarification in relation to the issues with procurement and provision of material goods. Save the Children Australia told the committee that when the backlog of requests was provided to them, they worked to improve the processes involved:

SCA prioritised the resolution of outstanding requests and worked hard with Transfield to resolve them as quickly as possible. However, it was clear that the process required significant improvement.⁶⁵

3.55 Save the Children Australia noted that Transfield Services is responsible for the procurement and distribution of material goods, and since July 2014, took up the

⁶⁰ Ms Kirsty Diallo, *Submission 64*, p. 5.

⁶¹ The Salvation Army, response to *Submission 69*, p. 1.

⁶² Transfield Services, response to *Submission 69*, p. 7.

⁶³ Transfield Services, response to *Submission 63*, p. 12.

⁶⁴ Save the Children Australia, response to *Submission 63*, p. 8.

⁶⁵ Save the Children Australia, answer to question on notice, 3 July 2015 (received 9 July 2015).

recommendation of Save the Children Australia to establish a canteen for asylum seekers to access material goods directly:

SCA urged Transfield to make material goods available to asylum seekers from its canteen at RPC3, so that people could obtain these goods directly. SCA considered that improving this service would remove SCA from the process entirely, which would help to restore some self-agency to asylum seekers, improve SCA's relationships with beneficiaries and free-up SCA employees to focus on their core duties, being the provision of welfare, education and recreation services.⁶⁶

3.56 The department declined to provide the committee with Ministerial Submissions or Minutes to the Secretary concerning, among other things, a lack of adequate clothing, footwear, sunglasses or sanitary products, advising that '[t]he Department may not divulge advice provided to Ministers as part of Government deliberations'.⁶⁷

3.57 Since November 2014,⁶⁸ Transfield Services have implemented a 'Clothing Distribution Procedure' to provide clothing and material goods to asylum seekers at various times:

The Clothing Distribution Procedure provides that asylum seekers are to receive the minimum material items at intervals as follows:

- Arrival allocation;
- Urgent needs;
- Stolen/Lost replacement;
- Three month;
- Six month.⁶⁹

3.58 Although the committee heard that access to basic material goods had improved since Transfield Services assumed management of the stores, submitters told the committee that the provision was still inadequate. One submitter noted that '[r]equests for clothing (from Transfield logistics) were often ignored or met with vague answers around lack of availability'.⁷⁰

3.59 Transfield Services advised the committee that asylum seekers who wish to report stolen property must fill out a Request Form, after which, a Wilson Security officer will undertake a search of the possessions of the asylum seekers making the claim:

⁶⁶ Save the Children Australia, answer to question on notice, 3 July 2015 (received 9 July 2015).

⁶⁷ Department of Immigration and Border Protection, answer to question on notice, 18 May 2015, (received 5 June 2015).

⁶⁸ Transfield Services, answer to question on notice, 3 July 2015 (received 13 August 2015).

⁶⁹ Transfield Services, response to *Submission* 85, p. 6.

⁷⁰ *Submission* 38, p. 1.

A Security Officer will conduct a search of the Asylum Seekers belongings and assess if the items have been stolen and submit the report...The Stores/Canteen Coordinator will review the Asylum Seekers property inventory and determine if they will be allocated additional items. If it is found that the Asylum Seeker has sufficient clothing still in their possession they will not be issued with a replacement for stolen items.⁷¹

3.60 Mr Tobias Gunn, a former Save the Children employee, told the committee that no new or replacement shoes were available for asylum seekers between February and June 2014 and that because of the physical environment, inappropriate footwear such as thongs would wear out quickly:

The gravel is too jagged to walk on in bare feet, and the thongs that were provided to asylum seekers wore out after only a few weeks. A female asylum seeker told me that she was sharing one pair of thongs with four women, and they would take turns wearing them to go to the toilet block or English classes.

...

Asylum seekers were repeatedly instructed to fill in a request form for shoes, when it was known there were none available. Clothes were also very limited during this time, and it was not uncommon for men and women to only have only one change of clothes.⁷²

3.61 Former Save the Children staffer Samantha Betts said that:

The issue of clothing is absolutely horrendous. There were parents who actually had to cut holes in their children's sneakers because their feet were growing too much and the shoes were too small. Children would often ask us to help fix their thongs, which we tried to do on several occasions—we got a bit ingenious with bread ties and bits of string.⁷³

3.62 The process for requesting and being granted appropriate and sufficient clothing and footwear was said to be inadequate by former employees of contracted service providers, who told the committee that the process was confusing and arbitrary. Ms Blucher told the committee that when appointments were given to asylum seekers to obtain clothing, the clothing was often inappropriate, and there was 'no recourse or ability to try them on'.⁷⁴ Ms Blucher gave an example of inappropriate clothing given to a female asylum seeker:

This woman had been sharing one pair of covered shoes with her daughter since her arrival on Nauru. I attended the appointment with her and she requested another pair of shoes. She was given a pair of large men's shoes that were too big, and informed that they had no shoes of her size.

⁷¹ Transfield Services, answer to question on notice, 3 July 2015 (received 13 August 2015).

⁷² Mr Tobias Gunn, *Submission 79*, p. 6.

⁷³ Ms Samantha Betts, *Committee Hansard*, 20 July 2015, pp 57-58.

⁷⁴ Ms Natasha Blucher, *Submission 83*, p. 9.

Transfield informed her that she should take these shoes and swap them at her next appointment a few weeks later.⁷⁵

3.63 One submitter told the committee that sun cream and hats were not available to asylum seekers,⁷⁶ however this was disputed by Transfield Services, who advised that these items were provided upon arrival and then monthly:

All asylum seekers are issued with sunscreen in their "Monthly hygiene pack". Extra sunscreen is available to purchase from the canteen for 5 IAP [Individual Allowance Programme]. Every asylum seeker is also issued with a hat and sunglasses when they first arrive in the centre in their "Welcome pack". They are able to exchange their hat, for free, if damaged. If their hat is lost or stolen, a request form can be submitted by the asylum seeker for a replacement hat. Extra sunglasses are available for purchase from the canteen for 10 IAP.⁷⁷

Toilet facilities

3.64 Unclean toilet facilities were noted by submitters, with references to toilets in a state of disrepair or with poor hygiene.⁷⁸

3.65 The Asylum Seeker Resource Centre told the committee that the lack of clean toilet facilities was having an impact on the health and wellbeing of asylum seekers, with long queues affecting the ability of all to use them:

Asylum seekers talk of the filthy toilets, which the children don't want to use. The toilets have no water and asylum seekers are not allowed cleaning agents to clean the facilities by themselves. They talk of the constant long queues for the toilet. Many women and children cannot wait and have become incontinent as a result. They wear pads when they can get them. Even the older children are wearing pads because they do not have enough clothes to change if they get soiled.⁷⁹

3.66 Allegations of abuse and harassment occurring in the toilet facilities are discussed in Chapter 4.

Food

3.67 Information concerning the provision of food in the RPC was not readily available from Transfield Services, although they did advise the committee of the process for provision of meals to those unable to attend the mess:

Asylum seekers can access the mess at any time, 24 hours a day, to access beverages and snacks, such as tea, coffee, cordial, and biscuits.

⁷⁵ Ms Natasha Blucher, *Submission 83*, p. 10.

⁷⁶ Ms Samantha Betts, *Submission 85*, p. 2.

⁷⁷ Transfield Services, response to *Submission 85*, p. 9.

⁷⁸ *Submission 81*, p. 2; *Submission 83*, p. 5.

⁷⁹ Asylum Seeker Resource Centre, *Submission 27*, p. 4.

Transfield Services provides meals for asylum seekers who are unable to attend during the scheduled mess hours. This may be due to an attendance at an offsite excursion, a medical appointment (as in the circumstances identified in the Submission), or other meeting at the site on RPC1.

Meals are facilitated by the Meal Request process. A meal request form is submitted and meals are provided as requested. Transfield Services addresses and actions ad hoc and urgent requests as required.⁸⁰

3.68 The committee notes the advice of the department that the Nauruan Government has engaged three Operational Managers, whose role, in part, is to 'ensure that each person residing at the centre is provided with a range of things, including...food that is adequate to maintain his or her health and well-being'.⁸¹

3.69 Submissions from former employees of the RPC provided further information about the process for food to be provided. Ms Blucher told the committee that food was provided three times a day in the mess:

Food was provided to clients three times a day in the mess. Upon entry, clients would queue and have their names ticked off.

Down the left hand side of the mess hall was a queue for meals, which were located in hot boxes and served by staff...

Food generally consisted of two types of meat dish, one vegetable dish and a dhal. There was generally rice available as well as a simple garden salad. The food did not change very frequently. Often the meat dishes were slices of some type of meat or sausages in thin gravy and some type of meat stew in thin gravy. I often observed the meat stew to be the same as the stew served at the staff mess the night before, but more watery. There was normally a box with fruit in it, generally apples or bananas.⁸²

3.70 A number of submitters told the committee that access to food of an acceptable standard was not provided, with submitters noting:

- that food provided to asylum seekers was substandard, unappetising and sometimes off; and
- that some asylum seekers were not always able to attend the mess at meal times or were required to queue for long periods.⁸³

3.71 Ms Charlotte Wilson, a former Save the Children employee, told the committee that '[i]t was forbidden to remove food from the mess and this was enforced by security'.⁸⁴ This rule was noted by other submitters.⁸⁵

⁸⁰ Transfield Services, response to *Submission 84*, p. 3.

⁸¹ Department of Immigration and Border Protection, *Submission 31*, p. 12.

⁸² Ms Natasha Blucher, *Submission 83*, p. 10.

⁸³ Australian Churches Refugee Taskforce, *Submission 32*, p. 1; Ms Alanna Maycock, *Submission 66*, pp 1-2; Ms Charlotte Wilson, *Submission 79*, p. 4; *Submission 80*, p. 10; *Submission 82*, p. 7; Ms Natasha Blucher, *Submission 83*, p. 7.

3.72 According to submitters who had been employed in the RPC, the food provided to asylum seekers differed greatly in quality to that provided to staff.⁸⁶ This claim was disputed by Transfield Services.⁸⁷

3.73 Submitters told the committee that food that was rotten was served to asylum seekers in RPC 3, with a former contracted service provider employee noting '...when eating in the [RPC] 3 mess at lunch, I encountered mouldy and rotten fruit being served many times. I never encountered this fruit in the [RPC] 1 mess'.⁸⁸ Similarly, a former Save the Children Australia employee told the committee that the food served to asylum seekers was unappetising and could be mouldy at times:

This has included wheels of processed meat cut into approx 2cm thick slices covered with red sauce as a protein option, staff being unable to advise what ingredients were in hot dishes (including if the dishes contained meat), sliced raw brown onions as a salad option, mouldy food in bain-marie and stale bread.⁸⁹

3.74 The former Save the Children Australia employee told the committee that the quality and appropriateness of the food was the subject of frequent complaints:

Asylum seekers would regularly complain that the food was of poor quality, flavourless and culturally inappropriate, these complaints would be made using the Transfield feedback mechanism, to visiting ICRC monitoring delegations and to case workers who documented the complaints in individual management plans.⁹⁰

3.75 Transfield Services advised the committee that culturally appropriate meals had been developed:

...we have developed specific Ramadan meal plans and service delivery methodology and modified the program times for programs and activities to take into account the religious customs during the Ramadan period;⁹¹

3.76 Transfield Services noted that between 26 February 2014 and 25 May 2015, 41 complaints were made by asylum seekers with regard to the food provided.⁹²

⁸⁴ Ms Charlotte Wilson, *Submission 79*, p. 4.

⁸⁵ Asylum Seeker Resource Centre, *Submission 27*, p. 3; Ms Natasha Blucher, *Submission 83*, p. 19.

⁸⁶ *Submission 82*, p. 7; *Submission 84*, p. 2.

⁸⁷ Transfield Services, response to *Submission 84*, p. 4.

⁸⁸ *Submission 82*, p. 7.

⁸⁹ *Submission 84*, pp 1-2.

⁹⁰ *Submission 84*, p. 1.

⁹¹ Transfield Services, *Submission 29*, p. 5.

⁹² Transfield Services, response to *Submission 84*, p. 4.

3.77 When asked about the reporting of cases of food poisoning, Transfield Services reported to the committee that they do 'not hold information relating to any medical services'.⁹³

Education

3.78 Education, recreation and welfare services to asylum seekers in the RPC are provided by Save the Children Australia to 'asylum seekers, including children and their families, childless couples and single adult women'.⁹⁴

3.79 The department advised that RPC 1 houses an education facility 'providing curriculum-based education services to school-aged children'⁹⁵ and education spaces in RPC 2 and RPC 3. A range of services are provided to all asylum seekers within the RPC:

A range of educational and recreational activities are available to all transferees at the Regional Processing Centre to support their physical and mental wellbeing including learning numeracy, English, history, art, and vocabulary, and participating in walking groups, sporting activity and watching movies.⁹⁶

3.80 With regard to education for children, the department advised that:

A curriculum based education programme for school-aged transferee children is delivered by Save the Children Australia, utilising expatriate teachers qualified to Australian standards. All children have educational goals tailored to their needs taking into account schooling background, level achieved and English language skills. A comprehensive after school and weekend schedule engages students in a variety of activities including arts, crafts, social interaction, sport, music and family group activities.⁹⁷

3.81 Save the Children Australia also provide educational programs for adults:

The establishment of an adult education program, including a library facility, that is providing asylum seekers with opportunities to build their English language and other vocational skills during their time in detention⁹⁸

3.82 Mr Lee Gordon, Head of Nauru Programs, Save the Children Australia, spoke of the success of the education facility in RPC 1:

A key improvement that has occurred is the school, which is located in compound 1. That is a dedicated educational facility which is air-conditioned, and our teachers do terrific work there with students. That is something which has been absolutely amazing, I think, for asylum seekers.

⁹³ Transfield Services, answer to question on notice, 26 May 2015 (received 16 June 2015).

⁹⁴ Mr Paul Ronalds, Chief Executive Officer, Save the Children Australia, *Committee Hansard*, 19 May 2015, p. 43.

⁹⁵ Department of Immigration and Border Protection, *Submission 31*, p. 33.

⁹⁶ Department of Immigration and Border Protection, *Submission 31*, p. 39.

⁹⁷ Department of Immigration and Border Protection, *Submission 31*, p. 40.

⁹⁸ Save the Children Australia, *Submission 30*, p. 19.

It has been a very positive, normalising influence on their experience in the centre.⁹⁹

3.83 However, ChilOut drew the committee's attention to low levels of educational materials and goods available to children in the RPC:

Basic educational items such as pencils, notebooks, pencil cases, school bags, water bottles and hats were not provided to children as part of funded services and Save the Children relied on donated goods;¹⁰⁰

3.84 The media has reported that asylum seeker children of school age will no longer be educated within the RPC, and will attend one of the four local schools.¹⁰¹

3.85 Concerns were raised in the media that asylum seeker children would be subject to corporal punishment in Nauruan schools, however, Save the Children Australia advised the committee that corporal punishment was banned by the Nauruan Government 'in or about March 2015'.¹⁰²

3.86 Save the Children Australia told the committee that they supported 'a renewed focus on the integration of asylum seeker or refugee children into the Nauruan educational system'.¹⁰³

3.87 Save the Children Australia recommended that specialist training be given to teachers in Nauruan schools to enable them to teach students who have experienced trauma:

To mitigate displacement trauma, as experienced by asylum seeker children in Nauru, **Save the Children recommends ongoing and intensive professional development for all Nauruan teachers on teaching students with trauma backgrounds, with a view to building skills of recognising and managing postsettlement behaviour in a positive and constructive way.**¹⁰⁴

3.88 The committee received evidence that, as the local schools are outside of the RPC, the reporting of incidents related to asylum seeker children was not required.¹⁰⁵ The committee also heard that conditions at local schools and treatment of asylum

⁹⁹ Mr Lee Gordon, Head of Nauru Programs, Save the Children Australia, *Committee Hansard*, 19 May 2015, p. 56.

¹⁰⁰ ChilOut, *Submission 13*, p. 4.

¹⁰¹ Paul Farrell, 'Nauru plan to move asylum seeker children to local schools sparks concern', *The Guardian Australia*, 30 June 2015, <http://www.theguardian.com/australia-news/2015/jun/30/nauru-plan-to-move-asylum-seeker-children-to-local-schools-sparks-concern> (accessed 1 July 2015).

¹⁰² Save the Children Australia, response to *Submission 63*, p. 8.

¹⁰³ Mr Paul Ronalds, Chief Executive Officer, *Committee Hansard*, 19 May 2015, p. 43.

¹⁰⁴ Save the Children Australia, *Submission 30*, p. 28 (original emphasis).

¹⁰⁵ Ms Viktoria Vibhakar, *Submission 63*, p. 26.

seeker children were areas of concern, and caused anxiety among the school attendees.¹⁰⁶

3.89 Save the Children Australia responded to claims that incidents of abuse occurring in Nauruan schools were not being reported:

...while reporting of incidents in the community is not strictly required by the RPC Guidelines, SCA's practice is to report all such incidents when it is made aware of them. It is important to note however that while SCA and security staff have been present at schools that are attended by asylum seeker children, those children are spread between a number of classrooms, so service providers will not necessarily be made aware of every incident that occurs.¹⁰⁷

3.90 The department advised the committee that an incident report would have to be filed if an incident occurred with an asylum seeker who had travelled outside the RPC.¹⁰⁸ This advice is at odds with the advice of Save the Children Australia, who, as noted above, told the committee that incidents occurring outside of the RPC are 'not strictly required' to be reported.

Recreation

3.91 The department advised that various recreation facilities are available in the three RPC sites. RPC 2 has 'multi-use recreational facilities such as multi-faith rooms, telecommunications, education spaces, a gymnasium and volleyball areas'. RPC 3 includes:

[a] children's playground and multi-use recreation facilities including multi-faith rooms, telecommunications, education spaces, gymnasium and synthetic playing field (soccer).¹⁰⁹

3.92 Transfield Services advised that a range of programs and activities were being developed and run:

Since being engaged to provide welfare services, we have undertaken a number of enhancements to programs and activities including an increase in frequency, incorporation of asylum seeker feedback in the design and delivery of programs and activities, new educational curriculums, the introduction of asylum seeker led activities (including, for example, 'open mic' poetry night) and more vocationally relevant programs and activities.¹¹⁰

¹⁰⁶ *Submission 80*, p.9. The committee also heard that there is no toilet at the school. *Submission 74*, p. 2.

¹⁰⁷ Save the Children Australia, response to *Submission 63*, p. 7.

¹⁰⁸ Department of Immigration and Border Protection, answer to question on notice, 21 May 2015, (received 5 June 2015).

¹⁰⁹ Department of Immigration and Border Protection, *Submission 31*, p. 34.

¹¹⁰ Transfield Services, response to *Submission 66*, p. 3.

3.93 They noted that the programs were developed to respond to the various needs of those attending:

The programs recognise the demographic, gender and cultural needs of the asylum seekers in the centre by including education, religious, recreational, sporting and excursion activities. In this way, we consider that these programs support asylum seeker's rights of education, expression and religion.¹¹¹

3.94 Transfield Services drew to the committee's attention the significant increase in engagement of asylum seekers that had occurred because of the increased focus on recreational activities.¹¹²

3.95 Save the Children Australia is responsible for the provision of recreation services at the RPC and submitted that they deliver:

...a range of recreational activities that allow asylum seekers to undertake sport, craft, excursions and a wide range of social activities which help to keep these people engaged, assist them to develop new skills and contribute to their overall health and wellbeing.¹¹³

3.96 However, submitters told the committee that recreation activities had been conducted in unsafe levels of heat,¹¹⁴ with Mr Tobias Gunn, a former Save the Children Australia employee, telling the committee:

The heat inside the recreation tent was of an unsafe level, this was brought to the attention of managers who then, according to Senior SCA management in Melbourne took the issue to Canberra, however it was rejected.

3.97 Mr Gunn further submitted that 'the department were knowingly putting children at extreme risk of heat related illness' and that 'no follow up to further investigate...the primary evidence the recreation team put forward was ever requested'.¹¹⁵ Another submitter also told the committee that '[t]his was reported to DIBP and recommendations were made to DIBP to install air-conditioning in the tent however this was never resolved and air-conditioning [was] never installed'.¹¹⁶ The effect of heat on the ability of asylum seekers to participate in recreation activities was noted by Save the Children Australia.¹¹⁷

3.98 The committee was also told that the location of the recreation tent was:

- unsafe;

¹¹¹ Transfield Services, response to *Submission 66*, p. 4.

¹¹² Transfield Services, response to *Submission 66*, pp 3-4.

¹¹³ Save the Children Australia, *Submission 30*, p. 19.

¹¹⁴ Mr Tobias Gunn, *Submission 68*, p. 5; *Submission 80*, p. 3.

¹¹⁵ Mr Tobias Gunn, *Submission 68*, p. 5.

¹¹⁶ *Submission 80*, p. 3.

¹¹⁷ Save the Children Australia, *Submission 30*, p. 26.

- not child friendly;
- often unsupervised; and
- that single adult female asylum seekers were not able to access recreation space.¹¹⁸

Access to medical care

3.99 The Department has advised that medical care is provided by International Health and Medical Services (IHMS), who deliver health services for 'transferees and refugees settled in Nauru, including general practitioner, nursing and mental health care services'.¹¹⁹ They further advised that:

Transferees at the Nauru Regional Processing Centre have access to clinically recommended care that is broadly comparable with health services available within the Australian community. As with many remote communities within Australia, everyday services are supplemented by visiting health practitioners and a tele-health service.

General practitioner, nursing and mental health care clinics are open at the Nauru Regional Processing Centre seven days per week. There is also after-hours medical staffing to respond to medical emergencies. IHMS staffing levels at the Regional Processing Centre are adjusted as required for the number of transferees, taking into account the health needs of the cohort.¹²⁰

3.100 Within the RPC, medical facilities are located in RPC 1, RPC 2, and RPC 3.

3.101 IHMS advised the committee that they provide medical care throughout the detention network:

IHMS is contracted by the Department of Immigration and Border Protection (DIBP) to provide health services across the detention network, including at the RPC in Nauru. IHMS supplements this service with a specialist provider network which it calls upon to provide specialist care and advice where required.¹²¹

3.102 IHMS advised that the services they provide are 'broadly comparable' with services provided in Australia:

IHMS employs doctors, nurses, psychologists, counsellors and administrators as well as other specialist health care professionals to ensure that, as far as possible, the health care services received by Transferees are broadly comparable with that available in the Australian community. This means that transferees [are] reviewed at first by a nurse. They will give advice and treatment, or they may refer the Transferee to a doctor or other health care professional if required. If required, the Transferee makes an appointment to see a member of the health staff during the published clinic

¹¹⁸ *Submission 80*, p. 7; *Submission 82*, p. 6.

¹¹⁹ Department of Immigration and Border Protection, *Submission 31*, p. 14.

¹²⁰ Department of Immigration and Border Protection, *Submission 31*, p. 40.

¹²¹ IHMS, response to *Submission 66*, p. 1.

hours for any routine or non-urgent matters. If the matter is urgent the transferee will be seen more quickly or immediately. If the Transferee is referred to another health care professional, there is a waiting period which may be up to several weeks or longer.¹²²

Transfer to Australia for medical care

3.103 In the event of a serious medical condition, the person may be transferred to Australia for healthcare:

Where health services for a serious health condition are not available in Nauru through the IHMS or Nauru hospital, visiting specialists and tele-health, the person will be transferred to Australia to access treatment, along with family members, where appropriate. When the transferee is medically fit, they will be returned to the Regional Processing Centre.¹²³

3.104 Mr Pezzullo advised the committee that more services would be provided at the Republic of Nauru hospital when upgrades had occurred:

Health services on Nauru are being currently further expanded to reduce the number of medical transfers to Australia. The priority services to be provided are MRI and CT scanning capabilities, a full-time obstetrician and a strengthened multidisciplinary mental health team able to provide in-patient care. It is intended that all of these services will be provided at the Republic of Nauru Hospital.¹²⁴

3.105 The Human Rights Law Centre told the committee that by transferring asylum seekers to and from Australia for medical reasons, the department was exerting a high degree of control over the asylum seekers in the RPC. They went on to argue that this control could be interpreted to mean that Australia has jurisdiction and therefore human rights obligations in relation to asylum seekers.¹²⁵

3.106 DASSAN submitted that asylum seekers from the RPC in Nauru who are in Australia for medical treatment are fearful of their return to Nauru:

While in detention in Australia the major stressor on these people is an intense fear of being returned offshore and an abject lack of knowledge as to the time frame they will be in Australia.¹²⁶

3.107 Ms Viktoria Vibhakar told the committee that when asylum seekers are medically evacuated to Australia for treatment, children are often separated from parents.¹²⁷

¹²² IHMS, response to *Submission 79*, pp 1-2.

¹²³ Department of Immigration and Border Protection, *Submission 31*, p. 40.

¹²⁴ Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 45.

¹²⁵ Human Rights Law Centre and UNICEF Australia, *Submission 58*, p. 6.

¹²⁶ DASSAN, *Submission 61*, p. 4.

¹²⁷ Ms Viktoria Vibhakar, *Submission 63*, p. 29.

Claims of slow, inadequate provision of medical care

3.108 Evidence to the committee suggested that when medical care is required, it is often slow to be provided, and could involve asylum seekers queueing for long periods.¹²⁸ Submitters also told the committee that when medical care was provided, it was often inadequate.¹²⁹

3.109 Ms Alanna Maycock and Professor David Isaacs provided the committee with comments and recommendations made by them to IHMS after their visit to Nauru. In their submission, they referred to a culture of scepticism and mistrust of patients, lack of respect shown to patients, and use of a boat number ID to refer to patients instead of the patient's name.¹³⁰

3.110 The committee received evidence relating to the provision of:

- immunisation;¹³¹
- medical care and screening for tuberculosis cases;¹³² and
- general medical services.¹³³

3.111 Evidence relating to these concerns was also accepted by the committee on a confidential basis.

3.112 While these are clearly important matters, the committee considers that it has not had sufficient time to give detailed consideration to the evidence it received in order to report specific findings with respect to the provision of these services. As an indication of the type of evidence received in relation to medical services and the difficulties caused by the standard of medical care available on Nauru, the committee has set out some of the evidence related to the provision of perinatal and neonatal care below.

¹²⁸ DASSAN, *Submission 61*, p.10. Ms Alanna Maycock and Professor David Isaacs, *Submission 66, Supplementary Submission*, p. 7; Ms Charlotte Wilson, *Submission 79*, p. 3; *Submission 82*, p. 7.

¹²⁹ DASSAN, *Submission 61*, p.11.

¹³⁰ Ms Alanna Maycock and Professor David Isaacs, *Submission 66, Supplementary Submission*, p. 4. IHMS advised the committee that the majority of the recommendations made by Ms Maycock and Dr Isaacs have been implemented. IHMS, response to *Submission 66*, pp 2-3.

¹³¹ See: Labor for Refugees, *Submission 9*, p. 6; Ms Alanna Maycock and Professor David Isaacs, *Submission 66, Supplementary Submission*, pp 5-6.

¹³² See: Labor for Refugees, *Submission 9*, p. 5; Ms Alanna Maycock and Professor David Isaacs, *Submission 66, Supplementary Submission*, pp 6-7; *Submission 80*, p. 8.

¹³³ See: DASSAN, *Submission 61*; Ms Alanna Maycock and Professor David Isaacs, *Submission 66, Supplementary Submission*; Ms Charlotte Wilson, *Submission 79*; *Submission 82*; Dr Peter Young, *Committee Hansard*, 9 June 2015, pp 1 – 14; Professor David Isaacs and Ms Alanna Maycock, *Committee Hansard*, 9 June 2015, pp 37-42.

Perinatal and neonatal care

3.113 The committee was advised that primary care for pregnant women is provided by IHMS, and that pregnant asylum seekers are medically transferred to Australia to give birth:

As agreed with Nauru, pregnant transferees are currently moved to Australia before 28 weeks gestation, to give birth, and are cared for in-line with Australian community standards. Once clinically assessed as fit to travel, transferees and their babies are to be transferred back to Nauru. IHMS monitors the growth and development of children at the Regional Processing Centre and treats any health issues that arise.¹³⁴

3.114 DASSAN submitted that the transfer of pregnant asylum seekers to give birth in Australia, before transfer back to Nauru when the mother and baby are fit to travel, was a source of stress:

While in detention in Australia the major stressor on these people is an intense fear of being returned offshore and an abject lack of knowledge as to the time frame they will be in Australia...This stressor disproportionately affects asylum seekers who have been brought from Nauru to give birth.¹³⁵

3.115 The department confirmed in its submission that there were no provisions in place for pregnant asylum seekers to give birth on Nauru:

The services and equipment that are required to allow pregnant women to deliver babies on Nauru are in place, with the exception of ongoing Nauru hospital obstetric and paediatric staff.¹³⁶

3.116 The department subsequently advised the committee on 17 July 2015 that upgrades to neo-natal equipment had been made at the Republic of Nauru Hospital, but due to the absence of a full-time permanent obstetrician at the hospital, no asylum seekers had given birth there to date. The department intended to fund a full-time obstetrician at the hospital from August 2015, which would then provide for 'low risk transferee and refugee birthing on Nauru'.¹³⁷

Mental health services

3.117 Much of the evidence received by the committee which referred to conditions and circumstances within the RPC touched on mental health issues. The effect of difficult living conditions, poor resourcing, uncertainty about their future, and a lack of personal safety and security on the mental health of asylum seekers have been noted throughout the report.

¹³⁴ Department of Immigration and Border Protection, *Submission 31*, p. 41.

¹³⁵ DASSAN, *Submission 61*, p. 13.

¹³⁶ Department of Immigration and Border Protection, *Submission 31*, p. 41.

¹³⁷ Department of Immigration and Border Protection, answer to question on notice of 2 July 2015 (received 17 July 2015).

3.118 The department advised that prior to transfer to the RPC on Nauru, asylum seekers undergo a mental health screening which is part of a health assessment. Once in the RPC, IHMS provides services:

Upon transfer to the Regional Processing Centre, IHMS arranges specialist counselling with a subcontracted counselling provider for those transferees who have accepted referral.¹³⁸

3.119 A psychological support program is also offered:

All transferees at the Regional Processing Centre are supported under the psychological support programme policy, which is the key policy for managing self-harm risk. The policy is based on the psychological support programme in use at Australian immigration detention centres which in turn has been developed and refined over time using extensive input from clinicians.¹³⁹

3.120 The department noted that mental health screening may also be conducted on fixed and responsive bases, with responsive screening activated when concerns are raised through self-referral or through another party.¹⁴⁰

3.121 However, Ms Blucher submitted that the provision of mental health services placed a higher priority on security than on care:

The overwhelming impression that I had while working in the RPC was that issues stemming from mental health concerns, distress, confusion, lack of understanding or fear were treated as 'behavioural issues' and that managing the behavior from a security perspective took precedence over addressing the underlying welfare concerns that were causing the behavior.¹⁴¹

Republic of Nauru hospital

3.122 The Department has advised that, outside of the RPC, upgrades have been undertaken on a ward and dental area of the Nauru hospital, and that asylum seekers may access these services:

The Department funded minor upgrades to Ward 4 and the dental area at the Nauru hospital to ensure these facilities are serviceable to transferees and refugees who require medical care at the hospital. The repairs to Ward 4 included painting, fly screen replacement, refurbishment of the toilet and shower area, new ceiling fans and gutter repairs. The repairs to the dental area included replacement of a mouldy ceiling, painting and new airconditioning.¹⁴²

¹³⁸ Department of Immigration and Border Protection, *Submission 31*, p. 15.

¹³⁹ Department of Immigration and Border Protection, *Submission 31*, p. 15.

¹⁴⁰ Department of Immigration and Border Protection, *Submission 31*, p. 41.

¹⁴¹ Ms Natasha Blucher, *Submission 83*, p. 24.

¹⁴² Department of Immigration and Border Protection, *Submission 31*, p. 14.

3.123 The department further advised of upgrades to equipment and supplies at the hospital including a blood bank and neonatal equipment, in July 2015.¹⁴³

3.124 The capacity of the Republic of Nauru hospital to undertake surgery was questioned by Dr Peter Young, who told the committee about a surgical procedure conducted at the hospital which resulted in complications:

One of the most striking ones was a case of a botched surgery that occurred in Nauru. There was a patient who had a procedure done at the local hospital. There was a misdiagnosis in that case and there were very serious post-surgical complications that occurred that resulted in the person needing to be evacuated and spending time in an intensive care unit in Australia.¹⁴⁴

3.125 The patient in the example given by Dr Young was said to be an asylum seeker within the RPC. However, the department advised that they were aware of only one instance of a surgery which resulted in complications, where a staff member of a service provider underwent surgery on Nauru in which:

...a small piece of surgical glove was left in the wound and became infected. That officer was evacuated using commercial flight from the island and underwent corrective surgery in Australia. It is the only case that we are aware of.¹⁴⁵

3.126 A series of photographs of the Republic of Nauru hospital were provided to the committee which showed rooms and amenities in a state of disrepair, with inadequate safety precautions and unfinished renovations.¹⁴⁶ It is not clear whether these photographs were taken before or after the upgrades referred to by the department.

Overall living environment: prison-like conditions

3.127 A number of submitters and witnesses offered the observation that the overall living conditions and environment at the RPC were analogous to those of a prison.

3.128 Ms Samantha Betts, who had some experience of working in prisons in Australia, told the committee that:

From a standard prison experience of what I have experienced here in Australia, they are very similar. I found the points system used for the canteen strikingly similar to an incarceration, as was the physical nature of the standardised mealtimes and standardised shower times—that sort of regimented living, I guess you would call it.¹⁴⁷

¹⁴³ Department of Immigration and Border Protection, answer to question on notice of 2 July 2015 (received 17 July 2015).

¹⁴⁴ Dr Peter Young, *Committee Hansard*, 9 June 2015, p. 9.

¹⁴⁵ Mr Neil Skill, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 55.

¹⁴⁶ *Submission 91*.

¹⁴⁷ Ms Samantha Betts, *Committee Hansard*, 20 July 2015, p. 63.

3.129 Ms Betts observed that the one key respect in which the RPC was unlike a prison was that the detainees had no knowledge of the length of their stay.¹⁴⁸

3.130 In a similar vein, former Chief Justice Eames said that:

I have seen plenty of prisons and as much as they have physical constraints they have an atmosphere about them of control and removal of entitlements, and certainly in my walking around the camp, seeing the demeanour and the interaction between the security guards and the people detained in the centre, it just struck me like any number of prisons I have seen.¹⁴⁹

3.131 The committee's findings and recommendations regarding living conditions, including the provision of goods and services to asylum seekers, are set out in Chapter 5.¹⁵⁰

¹⁴⁸ Ms Samantha Betts, *Committee Hansard*, 20 July 2015, pp 63-64.

¹⁴⁹ Mr Geoffrey Eames, *Committee Hansard*, 20 July 2015, p. 70.

¹⁵⁰ This is discussed at paragraph 5.61.

Chapter 4

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

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

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

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

The Forgotten Children report

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.11 The Commission also recommended that:

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

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

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

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

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

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

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

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

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

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

2014 allegations and the Moss Review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁷ *Submission 84*, p. 5.

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

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

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

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

Responses to the Moss Review

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

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

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

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

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

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

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

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

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

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

The removal of and allegations against Save the Children staff

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Post-Moss Review evidence received by the committee

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

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

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

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

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

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

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

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

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

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

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

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

Sexual harassment, sexual exploitation and threat of sexual violence

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

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

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

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

4.61 Ms Coleman continued that:

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

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

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

⁴⁸ DASSAN, *Submission 61*, p. 7.

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

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

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

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

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

⁵⁴ Ms Viktoria Vibhakar, *Submission 63*.

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

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

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

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

...

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

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

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

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

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

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

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

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

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

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

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

Bartering of sexual favours

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Protection of children

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

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

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

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

Article 34

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

⁶⁷ This is discussed at paragraph 5.11.

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

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

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

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

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

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

...

Article 19

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

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

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

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

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

Child welfare support services, and the child safeguarding protocol

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

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

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

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

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

⁷⁴ DASSAN, *Submission 61*, p. 6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁸³ *Submission 84*, p. 4.

No legislative framework for the protection of children

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The CSPM will make an assessment of the incident including:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Unnatural environment for children and families

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

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

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

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

¹⁰⁴ DASSAN, *Submission 61*, p. 6.

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

¹⁰⁶ *Submission 84*, p. 4.

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

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

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

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

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

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

Access and distance to toilet facilities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.114 Wilson Security responded to this allegation, advising:

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

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

Mandatory reporting of abuse

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

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

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

6.10 Illegal and anti-social behaviour

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

For the purposes of this clause undesirable behaviours may include:

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

¹¹⁸ *Submission 84*, p. 3.

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

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

vi. possession of weapons or illegal drugs.¹²¹

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

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

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

Mandatory reporting in Australia

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

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

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

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

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

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

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

¹²⁴ This was discussed at paragraph 2.31.

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

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

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

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

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

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

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

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

Australian Border Force Act 2015

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cable ties

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

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

4.137 Wilson Security advised the committee that cable ties:

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

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

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

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

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

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

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

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

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

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

¹⁴² *Submission 82*, p. 7.

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

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

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

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

Chapter 5

Committee views and recommendations

5.1 This committee was established in the wake of the *Forgotten Children* report and the Moss Review, reflecting the belief of the Senate that the evidence uncovered in those reports was important but not complete, and that the situation at the Regional Processing Centre (RPC) in Nauru, as well as the implementation of the findings and recommendations of the Moss Review, required further scrutiny.

5.2 The inquiry conducted by this committee has vindicated that assessment. Despite its short timeframe, the committee has been inundated with evidence from a range of stakeholders in the RPC, including contractors and their current and former staff, and asylum seekers themselves. This evidence has served to corroborate the findings of the Moss Review, but has also gone beyond it, to raise a range of issues of concern in relation to the conditions and circumstances prevailing at the RPC, and the adequacy of efforts by the Australian Government to fulfil its responsibilities to the people detained there.

5.3 The committee has, wherever possible, published the submissions and evidence given to it, to enable further scrutiny by relevant authorities and transparency to the public. However, the committee has found it necessary to accept a certain amount of the evidence received on a confidential basis, mostly in order to protect the privacy of individuals. That information has informed, but is not directly reflected in, this report.

5.4 Throughout this inquiry the committee has also been conscious of the convention that parliamentary committees generally refrain from inquiring into matters which may prejudice ongoing law enforcement investigations or legal actions. The committee sought briefing from relevant authorities in determining its boundaries in that regard. At the same time, given the lack of transparency around events and circumstances at the RPC, and a lack of confidence expressed by many in the functioning of official systems to bring to light and resolve issues related to the RPC, the committee has given appropriate weight to the strong public interest in the disclosure of these matters in conducting its inquiry.

5.5 The volume, complexity and sensitivity of the evidence gathered during this inquiry is so great that the committee has been unable, within the time and resources at its disposal, to forensically examine all the specific claims and allegations made. Moreover, a Senate committee is not a law enforcement or judicial body, and it is not within the realm of this committee to verify or to resolve individual cases. Rather, the inquiry and this report have focused on the key systemic issues arising from the evidence, and the changes which this committee considers must be made by the Commonwealth government and its relevant agencies in relation to conditions and circumstances at the RPC.

5.6 Some of those who engaged with the inquiry expressed the strong view that offshore processing of asylum seekers in its entirety, or the operation of the RPC in Nauru in particular, was inherently condemnable, and that the committee should

recommend that the RPC be closed. Examination of the merits of the broader policy of offshore processing was not part of the terms of reference of this committee, and as such, the committee has formulated its findings and recommendations on the assumption of the continued existence of the RPC.

5.7 The committee is nevertheless of the overall view that the present conditions and circumstances at the Regional Processing Centre on Nauru are not adequate, appropriate or safe for the asylum seekers detained there. The committee believes that the Commonwealth must accept ultimate responsibility for conditions at the Centre, commit to a clear plan for its future as part of genuine regional arrangements for dealing with irregular migration, and make tangible improvements to living conditions. The committee believes there is a need for the government, in its oversight of the RPC, to adjust the relative prioritisation between enforcing a security environment and providing a decent quality of life for asylum seekers, and take measures to create a significantly better environment for these persons. The committee further regards increased transparency and accountability in relation to the RPC, including independent oversight of the conduct of service providers and staff, to be essential.

5.8 The committee emphasises that the very serious allegations of misconduct and abuse that were cited in the Moss Review, and those that have emerged during this inquiry, must be credibly and transparently investigated and dealt with by competent authorities, ensuring full respect for human rights and natural justice. The Government of Australia cannot and must not seek to abdicate that responsibility to another nation, nor to contracted entities.

5.9 The committee is deeply concerned that without this inquiry, the allegations heard and evidence received would not have been uncovered. There appears to be no other pathway for those affected by what they have seen and experienced in the Regional Processing Centre on Nauru to disclose allegations of mistreatment, abuse or to make complaints. The department has been unaware of serious acts of misconduct by staff of contractors, as those contractors have not adequately fulfilled their reporting obligations. The committee believes that no guarantee can be given by the department that any aspect of the RPC is run well, and that no guarantee of transparency and accountability can be given until significant changes are made and accountability systems are put in place.

5.10 Australia created the Regional Processing Centre in Nauru. It is Australia's responsibility and in its present form, it is insupportable. This committee is strongly of the view that Australia must take a number of actions to improve significantly the conditions and circumstances at the RPC. The committee's specific recommendations in this regard are set out below.

Provision of information to the inquiry

5.11 The committee wishes to record its concern that in the conduct of the inquiry it was not afforded full and transparent access to the information it requested from key stakeholders in relation to the management of the RPC. The committee remains of the view that the government in particular has sought to avoid the full accountability to which the Senate is entitled.

5.12 The committee wrote to Secretary of the Department of Immigration and Border Protection on 10 July 2015 to register its concern about the department's answers to a number of questions on notice asked by the committee. In some cases, the department declined to provide substantive responses on the grounds that the matters involved 'government deliberations' or 'advice to government', without fulfilling the requirement of Senate orders that it specify the harm to the public interest that would be caused by disclosure of the information to the committee. In other cases, the department sought to avoid substantive responses by reference to matters as being the responsibility of the Government of Nauru, or subject to consultation with the Government of Nauru, although it seemed clear that the department should have had access to information that could have been provided to the committee.

5.13 While the department did provide additional information to assist the committee in response to the committee's letter of 10 July 2015, the committee wishes to emphasise the importance of departments meeting their accountability obligations to the Senate and its committees, including the requirement for officials to provide full and accurate information to the parliament about the factual and technical background to policies and their administration.

5.14 Wilson Security gave information to the committee regarding the existence of footage of the riot of 19 July 2013 which, after questioning from the committee, was shown to be untrue. However, in the month between the giving of the evidence and the correction of the record, Wilson Security did not attempt to provide the committee with accurate information. This issue is further discussed below, but demonstrates the difficulty experienced by the committee in inquiring into allegations of abuse.

Responsibilities of the Commonwealth

5.15 The committee accepts the evidence from a range of legal and human rights experts that Australia holds obligations under international and domestic law, as well as responsibilities under the MOU with Nauru, in relation to asylum seekers at the RPC.

5.16 The committee agrees that the level of control exercised by the Government of Australia over the RPC supports a strong argument that the primary obligation rests with Australia under international law for protecting the human rights of the asylum seekers, and for compliance with the Refugees Convention. At a minimum, the committee is convinced that Australia holds joint obligations with the Government of Nauru in that regard.

5.17 The committee endorses the recommendation made by the Senate Legal and Constitutional Affairs References Committee in 2014 about the comparable situation at the Manus Island RPC, that the Australian Government should 'acknowledge its responsibility to respect, protect and fulfil the human rights of individuals detained' at the RPC in Nauru.¹

1 Senate Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*, December 2014, p. 151.

5.18 The committee also notes the evidence received about Australia's responsibilities to persons in immigration detention under domestic legislation and common law, and the real possibility of future litigation in Australian courts in relation to duty of care and workplace health and safety, should care not be taken to ensure that suitable conditions are maintained for both contracted staff and asylum seekers at the RPC.

5.19 In the committee's view, the Government of Australia's purported reliance on the sovereignty and legal system of 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.

5.20 The committee's view in this regard is strengthened by the evidence received about the significant challenges, both logistical and political, under which the law enforcement and justice systems of the Republic of Nauru are currently operating. Given the small size and limited capacity of institutions in Nauru, the present serious concerns about the state of the rule of law there, and the absence of a comprehensive legal and policy framework for child protection, the committee is of the view that Australia must assume greater responsibility for ensuring that the rights of asylum seekers at the RPC are protected and enforced to the standards required by Australian and international law.

5.21 The committee recognises that under the terms of the arrangements in place, certain matters are necessarily within the jurisdiction of the Government of Nauru and its relevant authorities. That is, nonetheless, the very reason why an MOU and a set of consultation measures are in place. Australia needs to use these mechanisms to engage in robust dialogue, as necessary, with the Government of Nauru toward greater adherence to the rule of law. Australia also needs to take responsibility for ensuring provision of the support and assistance necessary for Nauru's law and justice sector to meet the standards of Australian and international law to which the asylum seekers that Australia has placed in Nauru are legitimately entitled.

Recommendation 1

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

5.23 The 2012 expert report that recommended the reopening of the detention facility on Nauru proposed it as a short-term measure, pending further development of an integrated regional framework for processing asylum claims. Almost three years on, the government has failed to make meaningful progress on a genuine regional framework, and the RPC in Nauru and its inhabitants have been left in limbo: in a facility without permanent infrastructure, enduring long and uncertain processing times, and absent any clarity about the future of the RPC or their own fate.

5.24 The committee considers that the government should intensify its efforts to achieve a genuine regional framework for irregular migration and processing of asylum seekers, within which the future of the RPC, in line with regional and international norms, can be properly considered.

5.25 Meanwhile, the committee notes that the steps for a refugee status determination are unknown, and is concerned at the very long duration of the average stay in the RPC. The uncertainty of asylum seekers enduring an average processing time of 402 days and a vacuum of information about their status and future is not acceptable. The committee is of the view that there should be a greater focus on transparency and communication of the steps involved in processing claims, and an explanation given to asylum seekers as to why the process is so lengthy. Australia should ensure that the necessary support is provided to the Government of Nauru to ensure fair and comprehensive refugee status determination processes to be undertaken within accountable, publicised timeframes.

Recommendation 2

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

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

Management of contractors and staff

5.28 The high volume of evidence received in relation to the behaviour of staff engaged at the RPC indicated to the committee that there was cause for ongoing concern about the performance and accountability of Commonwealth contracted service providers. While the contractors themselves and the department sought to reassure the committee that the recruitment, training and management of contractors was of an acceptable standard, the weight of evidence submitted to this inquiry strongly suggested that there were significant problems.

5.29 Despite the likelihood of significant under-reporting of incidents and concerns, which was remarked upon in the Moss Review and endorsed by witnesses before this committee, the internal complaints mechanism managed by Transfield Services recorded 725 complaints about service provider staff over a 14-month period to April 2015.² The incidents and complaints recorded by Transfield since 2012 included some 45 allegations of child abuse and sexual assault.³ The committee is

2 Transfield Services, answer to question on notice of 20 May 2015 (received 16 June 2015).

3 Transfield Services, answer to question on notice from the committee's public hearing on 19 May 2015 (received 16 June 2015).

very deeply concerned about a situation in which this level of reported misconduct can occur and, at least until brought to light by the Moss Review, apparently be accepted.

5.30 The committee considers that a system in which contractors are essentially left to manage and report on complaints against their staff is inadequate. The committee recognises that the department receives reporting and is responsible for general oversight of its contractors, but given the pervasive culture of secrecy which cloaks most of the department's activities in relation to the Nauru RPC, the committee believes that a far greater level of scrutiny, transparency and accountability is required.

5.31 The absence of a Wilson Security IT server system for six months in 2013-14 was extremely concerning to the committee, as was the acknowledgement by Wilson Security that document storage during that time relied on 'people saving things to their actual desktop computers'.⁴ Wilson Security acknowledged that a document from this period of time and which related to a staff member who allegedly instigated unauthorised surveillance of a member of the committee has not been able to be located by Wilson Security. This data loss appears to be indicative of larger problems around recordkeeping and accountability. The committee believes that such a lengthy period of disruption to the IT infrastructure is inadequate and that the duration of the disruption was unacceptably long, with minimal assurance that other documents have not been lost.

5.32 The evidence provided by Wilson Security representatives regarding the recording of footage of the riot of 19 July 2013 was shown to be incorrect. Wilson Security representatives initially denied the existence of footage and told the committee that body-worn cameras were not in use during that time.⁵ Footage which contradicted that statement was, however, provided to the media and reported during the ABC's 7.30 program on 13 August 2015. At the committee's public hearing on 20 August 2015, after the release of the footage, Mr John Rogers, Executive General Manager, Wilson Security, acknowledged that his earlier evidence was incorrect. The committee is concerned that this error was not brought to the committee's attention earlier and was revealed only during questioning. The committee was also concerned that a representative present at the hearing who knew that the cameras were used during that time said he had not heard the evidence being given. The footage appeared to show security personnel planning to use unreasonable force against asylum seekers, and those visible in the footage used derogatory language to refer to asylum seekers. The footage revealed a workplace culture which is inconsistent with Wilson Security's role to provide safety and security to asylum seekers within the facility.

5.33 The giving of false or misleading evidence is a potential contempt of the Senate, and the committee was extremely concerned to learn that no attempt was made to advise them of the incorrect evidence in the month after it was given. The serious

4 Mr Brett McDonald, Security Contracts Manager, Wilson Security, *Committee Hansard*, 20 August 2015, p. 29.

5 Mr John Rogers, Executive General Manager, Southern Pacific, Wilson Security, *Committee Hansard*, 20 July 2015, p. 42.

nature of the allegations against Wilson Security personnel and the significant investment of Australian taxpayers' funds require the highest level of accountability. There appears to be a lack of transparency to the Australian Parliament and the community. The performance of the Department of Immigration and Border Protection has been called into question by their lack of knowledge of serious incidents such as the existence of footage of the riot in which security staff discuss asylum seekers in a disturbing manner, and the existence of an audio file allegedly recording a security staff member confessing to the fabrication of an allegation of assault against an asylum seeker. The department's ignorance of such events demonstrates the limits of Commonwealth control or oversight of the RPC on Nauru. The department acknowledged that they had only been made aware of the existence of the audio file on 20 August 2015, even though the audio file had been created by Wilson Security in January 2015.

5.34 Evidence revealed to the committee during its inquiry was put to the Department of Immigration and Border Protection for investigation and comment. Although numerous allegations were made against staff of Wilson Security and the head contract holder Transfield Services, responsibility ultimately rests with the department. The committee believes that there must be a direct relationship between the department and the security service provider in order to facilitate stronger accountability and transparency, where at present the department can only deal directly with Transfield Services. The department has effectively outsourced its accountability to Transfield Services and through them, to Wilson Security, with no penalty for non-compliance.

5.35 It appears to the committee that the Regional Processing Centre on Nauru is not run well, nor are Wilson Security and Transfield Services properly accountable to the Commonwealth despite the significant investment in their services. The committee has found that the Department of Immigration and Border Protection does not have full knowledge of incidents occurring on Nauru, owing to their inability to scrutinise their contracted service providers. A representative of the department acknowledged that 'the current contract does not provide as strong an abatement regime as the proposed contract',⁶ and told the committee that no financial abatements or penalties have been triggered under the current Performance Management Framework.⁷ The committee believes that the shortcomings of the current framework offer no reassurance that the department is fully aware of events on Nauru.

5.36 The committee notes that the Commonwealth Ombudsman holds powers, constituted as the Immigration Ombudsman, to scrutinise matters related to immigration detention and processing, including offshore, and has visited the Nauru RPC in that capacity. The Ombudsman is also able to scrutinise Commonwealth-contracted service providers. The committee believes that using the Ombudsman to

6 Mr Neil Skill, First Assistant Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 20 August 2015, p. 39.

7 Department of Immigration and Border Protection, answer to question on notice, 20 August 2015 (received 21 August 2015).

provide direct oversight and scrutiny of complaints about the conduct of Commonwealth-contracted staff at the RPC would provide a greater level of transparency and integrity in the handling of complaints and allegations, and would help increase the confidence of asylum seekers in the accountability of contractors which is presently lacking.

Recommendation 3

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

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

Recommendation 4

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

Surveillance of a member of the committee

5.40 The committee draws attention to the particular incidence of the allegedly unauthorised surveillance of a member of the committee by contractor staff while in Nauru. The committee finds the government's and the department's responses to this incident to have been contradictory and inadequate.

5.41 The committee regards this incident as providing an example of the shortcomings in the professionalism of service provider staff on Nauru, but also, importantly, in the effectiveness of Commonwealth oversight of the performance of those providers. The fact that the incident was not reported to the department, and that when it came to light the department accepted at face value the contractors' advice that it had been dealt with and did not conduct any further investigation or action, is of grave concern to the committee.

5.42 The committee observes 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. The committee strongly believes that greater transparency is an important prerequisite to improving accountability of all involved for the welfare and safety of persons at the RPC.

Recommendation 5

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

Alcohol and drug testing

5.44 The committee is concerned that, despite the serious allegations made to this committee and elsewhere about substance abuse and related misconduct by employees at the RPC, drug testing is still not being conducted at the centre. The committee acknowledges the advice from contractors that implementing on-site random drug testing presents logistical challenges. However, such difficulties can not justify compromising the safety of asylum seekers and others in the RPC. Moreover, the challenges are essentially the same as those faced by contractors on mining and construction work sites in remote parts of Australia, and the committee contends that solutions can and must be found. This matter can not be consigned to the 'too-hard basket': the department and its contractors must take the necessary measures to ensure that asylum seekers are not under the control of drunk or drug-affected staff at the RPC.

Recommendation 6

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

Costs and prioritisation of resources

5.46 The committee was struck by the difficulty it encountered in obtaining access to straightforward information about the costs Australian taxpayers are incurring to maintain the RPC on Nauru. While this information was eventually provided by the department, the committee considers there to be a lack of transparency and accountability surrounding the funding of the RPC and related expenditure in Nauru. For example, the department's annual Portfolio Budget Statement (PBS) conflates spending on regional processing, providing no means to distinguish between funds spent on Manus Island and Nauru. The committee also found it very difficult to assess the full range of spending taking place in relation to asylum seeker processing in Nauru between direct RPC and settlement costs, related assistance and support to the Government of Nauru, and other Australian whole-of-government spending including development assistance.

5.47 The committee notes that the costs it was able to obtain from the department in relation to the processing of asylum seekers on Nauru are extraordinary. As noted in chapter 1, the Australian taxpayer spent \$415.6 million in the first ten months of the

2014-15 financial year in capital and operating costs⁸ for a facility that housed 677 asylum seekers as at 30 April 2015.⁹ That is more than \$1.3 million per day. That is \$613,900 per asylum seeker in a ten month period, or over \$2,000 per asylum seeker per day. That amount does not include costs relating to the settlement of refugees in Nauru, or any related support to the Government of Nauru.

5.48 Given the significant investment of Australian taxpayers' money in the management and operation of the RPC, the committee considers that a much higher level of transparency should exist as a means of ensuring that taxpayers' money is being spent responsibly and in the best interest of Australia.

Recommendation 7

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

Public works and aid to Nauru

5.50 The committee is concerned that there is minimal oversight of expenditure on Nauru, whether it is a public work or assistance to a foreign government. As foreshadowed in its interim report, the committee believes that the department should undertake an audit on all expenditure for the RPC on Nauru and associated projects and provide an explanation as to why an exemption from oversight by the Public Works Committee applies.

5.51 The committee is of the view that clarification is required as to what expenditure associated with the RPC is classed as aid, given that there appears to have been a significant investment of Australian taxpayers' money in the RPC with no parliamentary oversight, including in the Estimates process.

Recommendation 8

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

5.53 The committee recommends that a clarification be provided to the Senate by the Department of Immigration and Border Protection as to why exemptions

8 Department of Immigration and Border Protection, answer to question on notice, 9 June 2015 (received 30 June 2015).

9 Department of Immigration and Border Protection, *Immigration Detention and Community Statistics Summary*, 30 April 2015, at: <http://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-apr2015.pdf>, p. 3.

on the grounds of assistance to foreign governments apply to expenditure associated with the Regional Processing Centre on Nauru.

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

Reprioritising resources: the open centre model

5.55 The committee believes that the very large amount of Australian taxpayers' money being spent on the RPC could and should be used more appropriately to ensure that asylum seekers are housed in humane conditions. In this regard, the committee observes that despite the employment of more than 800 security staff at the RPC, the department and its contractors appear to be unable to maintain a safe environment for asylum seekers.

5.56 The committee considers that the emphasis on creating and maintaining a high security environment is both unnecessary and counterproductive to the wellbeing of the people housed within it. They are not criminals, and they do not pose such a threat to the people of Nauru as to justify conditions of large scale security and confinement.

5.57 The committee noted in particular the evidence received from a range of submitters in relation to the relative advantages of an 'open centre' model over a high security one. The committee commends the Australian and Nauruan governments for their decision to move toward an open centre model, which commenced in February 2015.

5.58 The committee is of the view that an open centre model is a more humane and potentially more effective means of processing asylum seeker claims offshore; one that is likely to contribute to improving the mental health and wellbeing of the asylum seekers, and reduce tensions within the RPC. Importantly, the committee also endorses the view expressed by the Government of Nauru that open centre arrangements will help to build better relations between the asylum seeker and Nauruan communities, and serve as an important preparatory step in the ongoing resettlement of refugees in the Nauruan community.

Recommendation 9

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

5.60 The committee recommends that any savings resulting from the implementation of an open centre model be redirected toward improving the living conditions of asylum seekers in the Regional Processing Centre, with a focus on humane living arrangements, services and amenities, including improved access to communications. The committee recommends that the

Department of Immigration and Border Protection report publicly and to the Senate within 12 months on progress in this regard.**Living conditions and provision of services**

5.61 As noted in chapter 1, the 2012 Expert Panel recommended the reopening of a processing centre on Nauru as a short term measure, while progress was made toward the establishment of an integrated regional framework for the processing of asylum seekers. Almost three years on, the committee observes that the government has failed to secure agreement on a genuine regional approach, and has also failed to articulate any clear plan for the medium to long-term future of the RPC. Meanwhile the Centre continues to function with asylum seekers stuck in rudimentary, temporary living conditions.

5.62 While the committee recognises that the fire at the RPC in June 2013 resulted in the destruction of some permanent infrastructure, the committee considers that, two years on, the lack of commitment and clarity to rebuilding and improving living conditions only heightens the frustrations that contribute to continued tension and potential unrest. The committee believes that it is no longer acceptable for the RPC in Nauru to exist in a half-life between short-term stopgap and long-term home for several hundred people, including children.

5.63 The committee welcomed advice from Transfield Services that, in collaboration with the department, some steps were being taken to make improvements to accommodation facilities in response to the recommendations of the Moss Review, including installation of air conditioning or fans, added privacy screens and additional lighting.

5.64 The committee is nevertheless deeply concerned at the evidence provided which suggests that standards of living for asylum seekers in the Regional Processing Centre are unacceptably low in a range of areas, including exposure to the elements, lack of privacy, poor hygiene and insufficient access to water and sanitation.

5.65 These matters are of concern in and of themselves, but the committee is also cognisant of the connection drawn by many submitters, including health and welfare workers with direct experience of the RPC, between the very poor living conditions at the RPC and the high level of physical and mental health problems experienced by the asylum seekers resident there.

5.66 The committee was concerned to hear that measures in place around the provision of clothing were unnecessarily complex, and in particular, that Transfield Services' policy around reporting stolen clothing was punitive and harsh. The committee notes the current policy that a Wilson Security guard must search the possessions of an asylum seeker if a report is made of stolen clothing. The committee believes that such a response is unwarranted and fosters an unhealthy living environment.

Recommendation 10

5.67 The committee recommends that the government commit to and publicly release a medium to long term plan for the completion of permanent infrastructure at the Regional Processing Centre on Nauru, including the

construction of solid accommodation structures, and for tangible improvements to amenities for asylum seekers including lighting, water, toilets, air conditioning, cooking facilities and communications.

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

Food

5.69 As discussed in chapter 3, given that a significant investment of Australian taxpayers' money has been made into the provision of services, the evidence that mouldy or rotten food is provided is highly concerning. The committee is concerned that instances of food poisoning and gastroenteritis could be especially harmful to pregnant women, children and the elderly in the Regional Processing Centre.

5.70 The committee considers that instances of food poisoning should be reported to the provider of that service and that Transfield Services should compile and monitor statistics concerning this. The committee believes that Transfield Services should have been more forthcoming in its answers to questions concerning instances of food poisoning and needs to be more transparent about that issue. More broadly, the committee considers that there should be greater integration of reporting and monitoring of health and illness that directly relates to the provision of a service.

Protecting the safety of asylum seekers and responding to abuse

5.71 Based on the evidence received by this inquiry, the committee has reached the conclusion that the RPC in Nauru is not a safe environment for asylum seekers. This assessment is particularly acute in relation to women, children and other vulnerable persons.

Children

5.72 The committee is particularly disturbed by the evidence it has received about abuse of children, traumatised and mental illness among children, and the impact of the persistent, indefinite detention of children in the poor conditions which prevail at the RPC. These children are not only denied a reasonable approximation of childhood in the RPC, but often do not feel safe, and in fact often are not safe. Their extreme vulnerability is further exacerbated by their location in a country which lacks an adequate legal or policy framework for their protection.

5.73 The committee accepts the evidence provided by legal experts that the continued transfer of children to Nauru, and detention of them in the RPC, is likely to breach Australia's obligations under the Convention on the Rights of the Child.

5.74 The committee commends the government on the commitment it made in 2014 to remove children from immigration detention within Australia to the maximum extent possible. That said, given the evidence put before this committee, the committee fails to understand how, if immigration detention facilities in Australia are

regarded as inappropriate locations for children, the government could possibly regard as acceptable their continued detention in the far worse conditions of the Nauru RPC.

5.75 The committee concludes that the RPC Nauru is neither a safe nor an appropriate environment for children and that they should no longer be held there.

Recommendation 11

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

Education

5.77 The committee considers provision of a sound education to be an absolute priority for expenditure and management in relation to both asylum seeker children in the RPC and refugee children settled in Nauru. Plans for the education of asylum seeker and refugee children should be finalised and made public as soon as possible by the Department of Immigration and Border Protection and Save the Children Australia.

5.78 The committee further urges that teachers in Nauruan schools be provided with specialist training in order to enable them to teach asylum seeker and refugee students who have experienced trauma and may have special requirements.

Recommendation 12

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

5.80 The committee also notes its concern about evidence it received indicating that there is no clear instruction relating to the filing of incident reports for incidents involving asylum seekers that occur outside of the RPC, including in schools. These guidelines should be clarified with all contracted service providers to ensure that the safety of all asylum seekers, including children, is protected and all incidents are appropriately reported whether or not they occur within the physical boundaries of the RPC.

Responding to allegations of abuse

5.81 The Moss Review began a process of shedding light on serious allegations of abuse and impropriety taking place at the RPC. The material received by this committee has corroborated and added to that evidence, and has also provided further indication that Mr Moss' suspicion of significant underreporting was well placed. The committee is burdened by the weight of reporting received by it as to possible cases of abuse, many of which it has not been able to make public.

5.82 The committee welcomes advice provided by the department that it is working to reconcile the allegations of which it is aware, including confidential

allegations, to ensure that all cases are appropriately referred for action. The committee acknowledges the secretary's observation that this is not an easy task.

5.83 The committee regards it as imperative, however challenging, that every effort be made to trace and follow up all serious allegations which have emerged in the various inquiries in relation to the RPC. It will be difficult and it will require a commitment of bureaucratic time and resources, but it is not optional.

5.84 The committee has throughout this inquiry been conscious of the restrictions which would prevent direct use of the evidence it has received of criminal conduct in future court proceedings.¹⁰ The committee therefore urges those persons who have made submissions containing allegations of criminal conduct to report them directly to the Australian Federal Police (AFP) for appropriate follow up. While investigation of alleged crimes on Nauru is the primary responsibility of the Nauru Police Force (NPF), Australian Federal Police officers have been deployed to Nauru specifically to assist the NPF with such investigations. The committee believes that this connection should be used more actively to provide the assistance and assurance of the AFP in cases where victims of crime may be reluctant to report it via contractors on Nauru or directly to the NPF. The committee acknowledges that this may require negotiation of expanded police assistance arrangements with the Government of Nauru, and investment of increased resources by the AFP but regards it as essential that this be done.

Recommendation 13

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

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

Mandatory reporting

5.87 The committee is gravely concerned that the culture of secrecy surrounding operations at the RPC, the lack of access for asylum seekers to information and support, and the lack of independent avenues of complaint and oversight, create a dangerous likelihood that the present incidence and apparent culture of abuse will continue and even intensify.

5.88 In addition to the recommendations made above relating to increased support to the law enforcement and justice sector in Nauru, and to the independent review of

10 Subsection 16(3) of the *Parliamentary Privileges Act 1987*.

complaints by the Immigration Ombudsman, the committee believes that increased transparency of reporting of serious allegations is required.

5.89 The committee believes that the Regional Processing Centre on Nauru should be made subject to mandatory reporting requirements for serious crimes including sexual and other physical assault, and crimes against children, comparable with the requirements that apply under various legislative provisions within Australia. This can be achieved, at least in part, through Australian Commonwealth legislation with extraterritorial application.

5.90 The committee considers that such legislation should require all persons who believe on reasonable grounds that such a crime has been committed against an asylum seeker in the RPC to report it. It should ensure that the alleged offender (or employer of the offender) is not the only recipient of the report, and should include proportionate penalties for non-compliance.

Recommendation 14

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

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

5.93 The committee reiterates its concern that without its inquiry, evidence of abuse received by the committee may not have been uncovered. Without the safety net provided by the Australian Senate, it is difficult to see how further allegations can be adequately dealt with as reliable options for reporting allegations and having them properly investigated seem to be limited at the present time.

Recommendation 15

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

- a) conditions and treatment of asylum seekers and refugees at the Regional Processing Centre in the Republic of Nauru;**
- b) transparency and accountability mechanisms that apply to the Regional Processing Centre in the Republic of Nauru;**

- c) implementation of recommendations of the Moss Review in relation to the regional processing centre in the Republic of Nauru;**
- d) the extent to which the Australian funded regional processing centre in the Republic of Nauru is operating in compliance with Australian and international legal obligations;**
- e) the extent to which contracts associated with the operation of offshore processing centres are:**
 - delivering value for money consistent with the definition contained in the Commonwealth procurement rules;**
 - meeting the terms of their contracts;**
 - delivering services which meet Australian standards; and**
- f) any related matter.**

**Senator Alex Gallacher
Chair**

Dissenting Report by Coalition Senators

Introduction

1.1 The Government Senators require to place the context and conduct of the Committee on the record. It is their view the process and principles of due process and procedural fairness have not been adhered to as a result of the majority members of the committee being willing to accept untested and unsubstantiated submissions as fact. Large and complex submissions were received by committee late in the process preventing any proper testing as to veracity of the allegations therein contained. Indeed on one occasion when such a submission was tested it became very clear that many of allegations made were completely lacking in credibility.¹

1.2 The Government has a determined and successful policy of ending the illegal trafficking of people into Australia and this policy is politically unacceptable to some Senators. This inquiry has sought in many respects to advance the political perspective of those opposing Senators should be viewed in that context.

1.3 Responsibility for the operation of the Regional Processing Centre (RPC) on Nauru lies with the Government of Nauru, with support provided by the Australian Government through the Department of Immigration and Border Protection (the department). The department works with the Nauruan Government to deliver services:

Nauru owns and administers the Nauru Regional Processing Centre, under Nauruan law. Australia provides capacity building and funding for Government of Nauru's operation of the centre and coordinates the contract administration process.²

1.4 The Department is committed to working with Nauruan authorities to ensure that people accommodated at the Nauru Regional Processing Centre are provided with a safe and secure environment. The Department continues to work closely with service providers and Nauruan authorities to ensure allegations of criminal activity are fully investigated.³

1.5 The Secretary of the department, Mr Michael Pezzullo, told the committee that the Nauruan Government has responsibilities towards those in the RPC:

The government of Nauru is specifically responsible for security and good order and the care and welfare of persons residing in the centre. On behalf of the Commonwealth, my department provides support services and advice, pursuant to an agreement between our two governments.⁴

1 See for example claim of waterboarding by Mr Jon Nichols, *Submission 95*.

2 Department of Immigration and Border Protection, *Submission 31*, p. 4

3 Department of Immigration and Border Protection, *Submission 31*, pp 4-5.

4 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 43.

Moss Review

1.6 The Moss Review was instigated by the then Minister for Immigration and Border Protection, the Hon Scott Morrison MP, to address allegations that had been raised through letters to the minister and through the media. The Moss Review was an independent review undertaken by the former Law Enforcement Integrity Commissioner, Mr Philip Moss. The review was announced on 3 September 2014, one week after the allegations were received and publicised in the media.⁵

1.7 A progress report was given to the Secretary of the Department on 28 November 2014, and the final report was given to the Secretary on 9 February 2015. The Moss Review was published on the department's website on 20 March 2015.⁶ The Moss Review made 19 recommendations for improving the delivery of services and addressing concerns within the Regional Processing Centre on Nauru.

1.8 The department advised that all 19 recommendations of the Moss Review were accepted by the Australian Government:

The Moss report made 19 recommendations, the implementation of which require significant participation and engagement between the Government of Nauru, a range of Australian Government agencies including the Department, the Australian Federal Police and the Attorney-General's Department as well as with service providers.

The Department, after consultation with the Government of Nauru, has accepted all 19 of the recommendations. The Department has, in conjunction with the Government of Nauru, developed a comprehensive action plan identifying specific deliverables required to satisfy the recommendations.⁷

1.9 The 19 recommendations have either been completed or are in progress, and include:

- efforts to strengthen the delivery of services to transferees.
- enhanced communication between stakeholders.
- more robust frameworks to underpin operations at the centre, including in the area of child protection.
- enriching training opportunities and the capability of staff.⁸

1.10 The department advised that as at 19 May 2015, implementation of 13 of the 19 recommendations were complete, with more to be completed in the weeks

5 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 44.

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

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

8 Department of Immigration and Border Protection, *Submission 31*, p. 25.

following.⁹ The department provided a response to a question on notice concerning the status of the recommendations made by the Moss Review.

1.11 The instigation of the independent Moss Review and the implementation of all of its recommendations demonstrate the seriousness with which the Australian Government takes the allegations of abuse of children and women. As the implementation of the recommendations is in progress, it is far too early to undertake an evaluation of the implementation.

1.12 In addition, the progress of implementation of the recommendations of the Moss review is already putting in place enhanced and strengthened service delivery, and better communications between stakeholders.¹⁰ The Commonwealth government has taken the opportunity to strengthen contractual arrangements to ensure that service providers clearly understand and meet the relevant standards.¹¹

1.13 Of note, over and above the Moss recommendations, earlier this year the Minister implemented the following:

1.14 The child protection panel. The Child Protection Panel provides independent advice on child protection in immigration detention and regional processing centres (RPCs). The Panel consists of three highly skilled and independent individuals in the fields of law enforcement, child protection and public sector accountability. The Panel will work to strengthen policies and procedures to ensure the ongoing safety and welfare of children in immigration detention and RPCs and will advise the Secretary on the response of the Department and its service providers in relation to their child protection frameworks. The Panel's work will include reviewing allegations back to 2008 to ensure they have been handled appropriately by the Department and service providers.

1.15 AFP Assistance. The Minister announced the deployment of four additional Australian Federal Police (AFP) officers to Nauru to advise local police. Two AFP investigators with extensive experience in investigating allegations of sexual assault will provide valuable advice to the Nauru Police Force (NPF) in the management of sexual assault investigations and the other two AFP members, at the request of the NPF, will provide guidance and advice in relation to the allegations of public disorder occurring in February and March 2015. In agreement with the Government of Nauru, the four additional AFP officers will deploy as advisors to the NPF only and will not exercise Nauruan policing powers. The total AFP commitment in support of the NPF now totals six officers.

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

10 Department of Immigration and Border Protection, *Submission 31*, p. 25.

11 See for example, evidence of Mr Neil Skill, First Assistant Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 20 August 2015, p. 39.

Evidence presented to this committee

1.16 All members of the committee appreciate the seriousness of the allegations put to the committee; however it is important to note that the veracity of many of the allegations made was not able to be tested. In fact, a number of witnesses and submitters had spent very little time actually on Nauru and therefore were only able to provide limited anecdotal evidence. Some provided no time line of their visit at all, and others did not provide first-hand evidence, instead relying on unsubstantiated hearsay.

1.17 Government senators note that the allegations of mistreatment and abuse put to the committee are substantially similar to those considered by the Moss Review. On this basis Coalition Senators are confident that the Commonwealth Government has responded appropriately and provides a range of avenues for people to report allegations, and to have these allegations properly investigated:

The Department and service providers have taken ongoing incremental steps to improve a number of areas in relation to service delivery since the Moss Review. A number of actions have been implemented in relation to infrastructure and enhanced accessibility to assistance for transferees.

A recent example is the establishment of a drop-in centre/shopfront at the Regional Processing Centre Three (RPC3) site that is operated by culturally appropriate service provider staff, to provide a non-confrontational channel through which transferees can raise concerns and issues for prompt attention and action where possible. Additional programmes and activities are also being provided to transferees at RPC3. These initiatives have been well received.¹²

1.18 Coalition senators also note that the new allegations considered by this inquiry appear to be limited to allegations made by Mr Jon Nichols relating to waterboarding, 'zipping' and the inappropriate use of cable ties.¹³

1.19 Coalition senators note Mr Nichols' evidence to the committee in relation to his allegation of 'zipping', where he stated: 'I did not actually see the action occur...'¹⁴, and in relation to waterboarding, he stated: 'I have not personally witnessed the actual event...'¹⁵

1.20 When questioned whether he had actually seen waterboarding and other actions that would amount to torture occurring in the RPC, Mr Nichols advised the committee that he had not personally witnessed these actions, however he had:

...seen members of the ERT exit [tents] and later I have seen asylum seekers come out of the tents covered in water and coughing. I have heard

12 Department of Immigration and Border Protection, *Submission 31, Supplementary Submission*, p. 4.

13 Mr Jon Nichols, *Submission 95*.

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

15 Mr Jon Nichols, *Committee Hansard*, 20 August 2015, p. 11.

members of the ERT boast and brag about how they have water-boarded people, and it has never come out up until now.¹⁶

1.21 Coalition senators regard it as implausible that in an environment like the RPC, that asylum seekers can come out of tents in full view of many other asylum seekers and staff 'covered in water and coughing', and for this not to be reported. Mr Nichols appears to be first and only person making this allegation. Initially Mr Nichols suggested to the committee that waterboarding was occurring 'throughout the facility' but later clarified for the committee that his allegation related only to one out of eight or nine areas of the RPC, being Bravo compound.

Senator JOHNSTON: ...You have said 'Water boarding of asylum seekers throughout the facility'—that is clearly not true, is it?

Mr Nichols: In the sense of every single compound in that facility?

Senator JOHNSTON: That is right.

Mr Nichols: No, it would not be true...¹⁷

1.22 Coalition senators find it improbable that the events as alleged by Mr Nichols could have occurred. If events did take place as Mr Nichols alleges, Coalition senators question why Mr Nichols has waited until now to raise them, and questions why he did not make them known during the Moss Review, or report them via several other available avenues.

1.23 In the time available since this late submission was made, the committee sought to interrogate the new evidence and establish whether these very serious allegations could be proven or disproven. However, the committee was provided with several responses to the allegations provided by Mr Nichols by former and current employees of Wilson Security, who refute the claims.¹⁸

1.24 Further to this, Mr Nichols confirmed he was in dispute with his former employer which substantiated an ulterior motive in the nature and reliability of his evidence to the committee. Indeed given the wide range and number of agencies attending and providing services to the people held on Nauru over the period and that none of them mentioned "waterboarding" suggests that this witness was completely lacking in credibility. So much so that his testimony tends to cast a shadow upon the evidence of some of the other witnesses, who are also represented by the same legal counsel.

1.25 The Coalition Senators also found it curious that Mr Nichols declined to answer any questions as to whether he had been in contact with any members of the Committee, leaving the clear inference that he had been in contact with one or more of the Committee members and discussed his evidence and submission prior to it being received by the Committee.

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

17 *Committee Hansard*, 20 August 2015, p. 12.

18 Wilson Security, response 4 to Submission 95, p. 2; Additional information provided by Mr Louis Davies.

1.26 Other examples of witnesses to the inquiry who had either not spent long on Nauru, or did not have firsthand knowledge or had witnessed events prior to the present Government taking office in September 2013 included:

- Mr Tobias Gunn, who was on Nauru for less than one month and not during the periods he was testifying about.¹⁹
- Professor David Isaacs, who states that he was on Nauru for a 'short time'²⁰ and Ms Alanna Maycock, who was in Nauru for five days.²¹

1.27 Some witnesses to this inquiry did not take the opportunity to provide evidence to the Moss Review.²²

1.28 One clear theme of evidence given by many of the witnesses was that during and prior to 2013 the management and practices in the detention centre on Nauru were of concern but that they began to improve in 2014. This is no doubt due to the greater interest taken by the Ministers Morrison and Dutton in instigation and then seeking to implement the recommendations of the Moss Review.

1.29 The committee was presented with evidence which clearly sets out steps that the Commonwealth Government has been taking to deliver improved facilities and infrastructure:

In recent months, additional lighting has been installed in common areas and an amount of fencing has been removed from RPC3, allowing greater use of space for families and children. Some additional fencing has been installed to more clearly delineate areas and to provide greater security to cohorts.

Additional privacy screening has been installed in accommodation areas, and the accommodation density has been lowered, providing more space to transferees.

The Australian Government is also delivering further infrastructures projects to support transferees, refugees and Nauruans including, a school building and teacher's accommodation.²³

1.30 Similarly with respect to the number of children in detention, this situation has improved markedly since the change of Government.

19 Mr Tobias Gunn, *Submission 68*.

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

21 Ms Alanna Maycock, *Committee Hansard*, 9 June 2015, p. 37.

22 See for example, Mr Peter Law, *Committee Hansard*, 9 June 2015, p. 19; Ms Viktoria Vibhakar, *Committee Hansard*, 9 June 2015, p. 31; Ms Kirsty Diallo, *Committee Hansard*, 9 June 2015, p. 31; Professor David Isaacs and Ms Alana Maycock, *Committee Hansard*, 9 June 2015, p. 42.

23 Department of Immigration and Border Protection, *Submission 31, Supplementary Submission*, pp 7-8.

Nauru is taking steps to improve governance

1.31 The President of the Republic of Nauru, HE Baron Waqa MP, stated that Nauru is taking steps to improve governance and address past issues:

Nauru is progressing. In the last two years, as well as reforming the legal system and government-run companies, we have established a future fund with international oversight so that corruption can never again ruin our country. We have improved the economy and have established a new bank agency, offering Nauruans an opportunity to bank locally for the first time in over a decade.

The processing centre for asylum seekers is world class and far exceeds the standard of many refugee camps across the world. Asylum seekers enjoy an "open centre" policy and are regularly seen swimming, dining out and enjoying a lifestyle that is safe, far safer than the lands they left. These stories are ignored by agenda-driven media.

We value the contribution and co-operation of Australia, and there is no doubt that the regional processing centres have assisted our economy.²⁴

1.32 Mr Waqa noted the strong regional relationship Australia has shared with Nauru.

Recommendation 1

1.33 The Government Senators support this recommendation in principle, however we note that all recommendations to this intent were captured in the Moss review and are being implemented.

Recommendation 2

1.34 The Government Senators do not support this recommendation as determinations of matters around the process of resettlement are matters solely for the Nauruan government.

Recommendation 3

1.35 The Government Senators do not support this recommendation as it is redundant. The intent of this recommendation is already satisfied by the Commonwealth through the Commonwealth Ombudsman who currently has oversight responsibilities and also through an existing reporting process that satisfies the intent of the recommendation. Current contractual arrangements between Australian and the service providers impose an obligation on all contractors to report assaults, of any kind, to the Department. The Department then provides this information to the relevant police force.

1.36 Additionally, the regional processing centre in Nauru is not run by the Australian Government. The RPC is run by the government of Nauru under its laws.

24 HE Baron Waqa MP, President of the Republic of Nauru, 'Nauru mocked by media bullies', *The Daily Telegraph*, 3 August 2015, <http://www.dailytelegraph.com.au/news/opinion/nauru-mocked-by-media-bullies/story-fni0cw15-1227466977325>.

To impose a mandatory reporting scheme in Nauru would require Nauru to legislate such laws. As Nauru is a sovereign nation, Australian laws are not applicable.

Recommendation 4

1.37 The Government Senators do not support this recommendation as it is redundant. It is redundant because multiple mechanisms through multiple agencies are already in place to lodge and action complaints. Asylum-seekers have access to phones, email, social media and a range of agencies, The agencies include, but not limited to, Transfield Services, IHMS, the DIBP, Save the Children, advocacy groups, the International Red Cross, the UN Commissioner for Refugees, Amnesty International, the Commonwealth Ombudsman, members of the Senate and the Moss Review.

Recommendation 5

1.38 The Government Senators do not support this recommendation as it is redundant. It is redundant because a range of independent agencies already have access, which includes the International Committee for the Red Cross, UNHCR, the Commonwealth Ombudsman, the Joint Advisory Committee, COMCARE, the Ministers Committee on Asylum Seekers and Detention, the IOM and the Australian Red Cross. All visit requests are subject to approval by the Government of Nauru.

Recommendation 6

1.39 The Government Senators support the intent of this recommendation however it is redundant. It is redundant because Wilson Security have confirmed that drug and alcohol testing is occurring at RPC Nauru.²⁵

Recommendation 7

1.40 The Government Senators do not support this recommendation because it is redundant. It is redundant because the Government already provides detailed disclosure of expenditure for all contract and support services related to RPC Nauru.

Recommendation 8

1.41 The Government Senators do not support this recommendation because it is redundant. It is redundant because Senators already have the opportunity to seek this information through the Estimates processes.

Recommendation 9

1.42 The Government Senators do not support this recommendation as it is redundant. It is redundant because the government is currently negotiating the expansion of the open centre arrangements with the government of Nauru, whilst also ensuring adequate support services are available for these expanded arrangements. The Department is also in the process of implementing, in conjunction with the government of Nauru, all applicable Moss Review recommendations.

25 Wilson Security, answer to question on notice, 20 August 2015 (received 25 August 2015).

Recommendation 10

1.43 The Government Senators do not support this recommendation as it is redundant. It is redundant because the cited facility enhancements are already planned, underway or completed. Additionally, the cited services are already provided at RPC Nauru, through independent organisations including *Save the Children*.

Recommendation 11

1.44 The Government Senators do not support this recommendation as it is redundant. It is redundant because the process of expanding open centre arrangements, as outlined in recommendation 9, is already underway. Additionally, the ongoing hand-down of refugee determinations as outlined in Recommendation 2, is ongoing, as is the construction of additional community infrastructure to support both children and parents, found to be refugees.

Recommendation 12

1.45 The Government Senators support the intent of this recommendation; however we do not support the substance, as it is redundant. It is redundant because in conjunction with the Nauruan Government, the Australian government is in the process of substantially upgrading the educational infrastructure and services provided to refugees and to the Nauruan community.

Recommendation 13

1.46 The Government Senators do not support this recommendation as it is redundant. It is redundant because a Child Protection Panel has already been established, which consists of three people drawn from the Australian community and selected because their skills, experience and standing is relevant and appropriate to such work. The Panel provides independent advice on child protection in immigration detention and in relation to Australia's involvement in regional processing.

Recommendation 14

1.47 The Government Senators do not support this recommendation as it is redundant. It is redundant because, in conjunction with the Government of Nauru, the Australian government has already implemented reporting requirements.

Recommendation 15

1.48 The Government Senators do not support this recommendation as not only is it redundant, it will be waste of Senate and Government resources. The issues proposed for this additional inquiry have already been extensively canvassed and addressed in this inquiry. No new issues, substantiated by evidence, have arisen in the course of this inquiry that cannot be addressed by the multiple complaint and oversight organisations that current exist.

1.49 Additionally, these issues have all been extensively reviewed by the Moss Review which is being fully implemented by the Australian Government and many are also now subject to review by the Child Protection Panel and the Nauruan authorities.

1.50 Implementation of another Senate Inquiry on the back of this inquiry makes as much sense as this current inquiry did, coming in at the start of implementation of the Moss Review recommendations. None.

Concluding Remarks

1.51 The Government Senators wish to thank and acknowledge the professionalism of the Committee Secretariat for the manner in which these difficult terms of reference have been administered.

**Senator Linda Reynolds CSC
Liberal Party Senator for
Western Australia**

**Senator the Hon. David Johnston
Liberal Party Senator for
Western Australia**

Additional comments by the Australian Greens

Introduction

1.1 The establishment of the Select Committee on Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru was, in part, a reaction to the findings of the Moss Review, including that:

- asylum seekers had concerns about their personal safety and privacy;
- it was possible that sexual favours were bartered for access to marijuana and access to amenities;
- there was likely to be under-reporting of sexual abuse by asylum seekers; and
- there was no substantiating evidence to support allegations of misconduct by Save the Children Australia (STC) employees.¹

1.2 When first asked about the findings of the Moss Review, the Prime Minister the Hon Tony Abbott MP responded by saying on 20 March 2015 'occasionally, I daresay, things happen.'²

1.3 This committee was also established because the Moss Review raised more questions than it answered, including:

- (a) why are assaults going under-reported in Nauru? How many assaults and abuses have not been reported?
- (b) if incidents are not being reported because of concerns about the impact this may have on the processing of asylum claims, or due to a belief that nothing would be done about complaints, as suggested by Mr Moss, what is the cause of these fears and what can be done to redress this?
- (c) what has the Nauruan Police Force done with the numerous cases that have been referred to them?
- (d) are the Nauruan government and the Nauruan police force capable of upholding the basic human rights of asylum seekers and refugees in their care in the face of a deteriorating rule of law situation in Nauru?
- (e) why are Wilson Security staff carrying out investigations into misconduct that were in many cases alleged to have been perpetrated by Wilson Security staff?
- (f) if there was no evidence to substantiate any wrongdoing by the ten STC employees who were summarily dismissed and deported from Nauru, why was this action taken?

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

2 Interview with Ben Fordham, 2GB Radio, 20 March 2015.

- (g) if these dismissals were directed by the department with the Minister's foreknowledge, why was Philip Moss commissioned by the department to investigate this matter?

1.4 Further, the Moss Review did not adequately address the breakdown of the rule of law in Nauru. This included the lack of independence of the police force, as outlined in chapter 2 of the majority report, which has continued to deteriorate during the course of the committee's inquiry. In fact, many of the Moss Review recommendations assumed that the Nauruan Police Force (NPF) is capable of functioning as an independent and professionally competent law enforcement body. This committee process has shown that this is not the case.

1.5 Dozens of recommendations further to those set out in the Moss Review in relation to the above and other matters have been made to this committee by numerous submitters.

1.6 Prior to the Moss Review, the *Forgotten Children* report by the Australian Human Rights Commission (AHRC) raised concerns over children being held in detention, finding that:

Children on Nauru are suffering from extreme levels of physical, emotional, psychological and developmental distress. The Commission is concerned that detention on Nauru is mandatory for children and that there is no time limit on how long they will be detained.³

1.7 The AHRC concluded their findings regarding detention on Nauru by putting the Australian Government 'on notice':

Given the well documented evidence regarding the negative impacts of lengthy detention on Nauru, the Australian Government can be considered to be on notice as to the risk of serious harm to the children and families that are detained there.⁴

1.8 Successive reports, including the *Forgotten Children* report and the Moss Review, and the substantial evidence published by this committee, have brought into focus the conditions in the Regional Processing Centre (RPC) on Nauru.

1.9 The committee has received a large body of evidence from asylum seekers currently or formerly detained on Nauru, former staff members of contracted service providers, legal and human rights bodies and advocacy groups. This evidence has relayed disturbing allegations of sexual and physical abuse of women and children, assault, sexual harassment, neglect and very low standards of living.

1.10 While the committee endeavoured to publish as much material as it could, a large amount of evidence was received in confidence owing to its sensitive or

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

4 Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014*, p 187.

identifying nature. This evidence has been used to inform views on the main issues raised in connection with the RPC on Nauru. The sheer volume of this evidence demonstrates the systemic problems with the operation and management of the RPC, with information provided alleging assault, corruption, ineptitude and mismanagement of contracts.

1.11 The Australian Greens agree with the majority report of the committee that conditions must be improved, accountability strengthened and transparency be made a focus of the ongoing operation and management of the RPC. However, the Australian Greens believe that no amount of oversight or funding can overcome the fundamental damage done to vulnerable people that occurs through mandatory and indefinite detention. The Australian Greens further believe that this damage is exacerbated in the particularly harsh, abusive and lawless environment of Nauru. Ultimately, the Nauru RPC must be shut down.

Circumstances precipitating Moss Review

1.12 One of the terms of reference of this Committee was as follows:

d. the circumstances that precipitated the Moss Review, including allegations made regarding conditions and circumstances at the centre and the conduct and behaviour of staff employed by contracted service providers, the timing of the Commonwealth Government's knowledge of the allegations, and the appropriateness of the response of the Commonwealth Government to these allegations;

1.13 The Moss Review was commissioned on 3 October 2014. As noted in the majority report, the Moss Review was commissioned with the dual purpose of investigating claims of sexual and other physical assault of asylum seekers in Nauru and the conduct and behaviour of staff members employed by contracted service providers. The Moss Review made it clear that the contracted service providers in question were the ten STC staff stood down and deported from Nauru, at the department's direction, without notice and without the opportunity to respond to any allegations of wrongdoing, on 2 October 2014.

1.14 Prior to this on 26 September 2014, Senator Hanson-Young wrote to the former Minister for Immigration, the Hon Scott Morrison MP, raising claims that asylum seekers were being sexually exploited by guards in exchange for access to showers, cigarettes and marijuana. Subsequently Senator Hanson-Young raised further claims of mistreatment of asylum seekers in Nauru with the Minister. No response was received from the Minister to these letters.

1.15 Shortly after these claims were raised with the Minister, the Australian media also published these claims. These claims had already been reported to case managers by asylum seekers in Nauru and ought to have been known by the Minister and the department through the RPC complaints and reporting processes. The department confirmed to this committee that it did in fact have this knowledge prior to the commission of the Moss Review. Or, perhaps more importantly, prior to these matters being raised in the Australian media, as early as November 2013.

1.16 On 3 October 2014, *The Daily Telegraph* published an article carrying the headline *Truth overboard: Claims of asylum seeker abuse on Nauru were 'fabricated'*. This article stated that:

An intelligence report provided to the federal government has revealed that staff from the Save The Children organisation based at Nauru had also been involved in “encouraging and coaching” self-harm to “achieve evacuations to Australia”.

1.17 On the same day this article was published, Mr Morrison announced the commission of the Moss Review, saying:

If people want to be political activists, that's their choice, but they don't get to do it on the taxpayer's dollar and working in a sensitive place like Nauru ... The public don't want to be played for mugs.

They are employed to do a job, not to be political activists. Making false claims, and worse allegedly coaching self-harm and using children in protests is unacceptable, whatever their political views or agendas.

1.18 The department gave evidence to this committee that:

- (a) it was provided with an intelligence report regarding possible misconduct by STC staff by Wilson Security on 30 September 2014; and
- (b) Minister Morrison met with the department on 2 October 2014 to discuss their mutual concerns over the actions of STC.

1.19 On the same day as this meeting, the department ordered STC to remove ten staff.

1.20 The 30 September 2014 intelligence report relied on by the department to order the removal of the ten staff was tabled by Senator Hanson-Young in the Senate on 5 March 2015. The intelligence report simply contains a series of vague allegations without any actual evidence of inappropriate action by any STC staff member in the centre.

1.21 The above facts and timeline leaves one with the strong impression that:

- (a) the former Minister commissioned the Moss Review in October 2014, despite first being made aware of claims of child sexual abuse in November 2013, in response to negative press coverage on the conditions for asylum seekers in Nauru;
- (b) the order to remove staff without any evidence of wrongdoing, without putting any allegations of wrongdoing to the staff and without investigating these allegations was an attempt to counter this negative press. They did this by putting these allegations of wrongdoing on an equal footing with the more serious and credible allegations of harm to asylum seekers, with the intention to cast doubt on the harm experienced by asylum seekers and to distract from these allegations of harm; and

- (c) either the former Minister or the department leaked the Wilson intelligence report to *The Daily Telegraph* as part of the government's strategy to counter this negative press.

1.22 This committee provided Minister Dutton and the department with the opportunity to disabuse the public of these conclusions if they are wrong. This opportunity was not taken up. Senator Hanson-Young asked several specific questions regarding why the intelligence report was prepared, who requested it to be prepared, how the decision to remove the STC staff was reached and how the report ended up on the front page of *The Daily Telegraph*. None of these questions were answered directly.

1.23 For example, the following question on notice was put to the department:

Asked: Please provide a timeline of events and actions and all high level documents regarding the ...deportation from Nauru of all SCA staff for alleged misconduct. The timeline requested should include who made recommendations and when, who made decisions and, who was consulted in making decisions, what directions were given, by whom and when, and when SCA staff were informed of decisions.

1.24 The answer the committee received was as follows:

Answer: Any deportation notices are matters for the Government of Nauru.

1.25 At the committee's public hearing on 19 May 2015, representatives from Wilson were asked on a number of occasions who requested the intelligence report and why. Wilson provided a number of written answers to these questions on notice which skirted around these questions, and ultimately failed to answer them directly.

1.26 The committee heard evidence from Ms Natasha Blucher, one of the ten STC staff ordered to be removed from Nauru by the department. Her evidence was that a spate of self-harm incidents, mass suicide pacts and protests by the asylum seekers was a direct result of a video message delivered to them in Nauru from Minister Morrison in September 2014.⁵

1.27 The Australian Greens support a hard line being taken against illegal people smuggling activities. However, too often this government has blurred this line in both its rhetoric and actions to vilify vulnerable and desperate asylum seekers, as well as people smugglers. This misdirected vilification is not only unfair and misleading, it is also counter-productive. This was clearly demonstrated in the reaction to Mr Morrison's harshly-worded video message, a message which came as a shock to many on Nauru. Putting aside the Australian Greens' opposition to the policy being announced in this message, had the messaging itself been softened, taking into account the sensitivities, vulnerabilities and desperation of the audience it was being delivered to, the unrest that followed may have been avoided.

1.28 The Australian Greens consider that greater and more open communication with asylum seekers regarding the status of their claims process and their rights

5 *Committee Hansard*, 20 July 2015, p 59.

generally, as described in recommendations 2 and 4 of the majority report, would go some way to redressing these issues.

1.29 Ms Blucher also gave evidence to the committee on how STC staff dealt with the unrest caused by Minister Morrison's message and her shock at the allegation that she was acting inappropriately in doing so:

Ms Blucher: We were desperately trying to talk people out of harming themselves and out of these suicide plans.

Senator Hanson-Young: That is very different to what the intelligence report suggests.

Ms Blucher: That is correct.

Senator Hanson-Young: That report was obviously leaked to The Daily Telegraph and suggested that in fact you were coaching self-harm.

Ms Blucher: At that time I was distraught at the allegation, because you can imagine that I and my colleagues were terrified and we were desperately attempting to convince people not to harm themselves. I attempted to convince seven men who had stitched their lips to unstitch their lips and write a letter to the Refugee Council in lieu of that and had explained to them that stitching their lips was not in their interest, that the department would not listen to them if they did that and that there were more appropriate ways to do that. I was signing incident reports desperately supporting caseworkers to try to give them strategies to talk their clients down from self-harm or from suicidal ideation, and I was going to bed at night terrified that I would wake up in the morning and find that more clients had harmed themselves. And then to be told that I was accused of having tried to facilitate that was beyond comprehension.⁶

1.30 Understandably, the department's decision to summarily stand down ten staff, and the emotional, reputational and financial consequences of this decision, have had a profound effect on these staff. As a result of the department's order, STC terminated the employment of these ten staff on 9 January 2015.

1.31 The staff were given no notice of the decision, but were intercepted on their way to work and removed from Nauru on the same day, without the opportunity to properly hand over their clients' cases to remaining colleagues, in an extremely sensitive environment. As Ms Blucher stated in evidence:

One of the most upsetting things—one of them—was not being able to work with our clients anymore. We were all working very hard to the best of our ability to protect our clients, to advocate for our clients and to provide the best service that we could to them.⁷

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

7 Ms Natasha Blucher, *Committee Hansard*, 20 July 2015, p 61.

1.32 The staff may have believed their ordeal was coming to an end when the Moss Review found no evidence to substantiate the allegations against them and recommended the department review its decision to remove them and the government announced it would accept all recommendations of the review. However, the department's ineptitude and callousness towards them has continued since this time.

1.33 The Moss Review recommendation for a department review stated:

The review would include providing:

- a. Save the Children with the information the Department relied on;
- b. The opportunity for Save the Children to address the allegations concerning its staff members.⁸

1.34 Ms Blucher provided evidence to the committee that neither of the above two aspects of the Moss Review recommendation were followed by the department, despite her lawyers making numerous requests of the department for this information and opportunity.

1.35 Further, despite the Moss Review recommendations being accepted by the government on 20 March 2015, as at the time of writing this report in late August 2015 the review of the removal of staff from Nauru has still not been released. This is obviously distressing for the staff, as Ms Blucher stated:

It is now over 10 months since my colleagues and I were removed from Nauru and still no allegations have been put to us so as to give us the opportunity to respond to the insinuation and inference of wrongdoing. As a result, our reputation has been smeared and the Department has allowed this to continue for over 10 months without redress.⁹

1.36 The department appointed former Registrar of the High Court, Christopher Doogan, to conduct the review of the department's decision. Mr Doogan has informed Ms Blucher's lawyers that he would not be making any adverse findings against the ten STC staff. At the public hearing on 20 July 2015, Secretary Pezullo informed the committee that Mr Doogan's report had been provided to him and would be released by the department in due course.

Recommendation 1

1.37 The department release Mr Doogan's report immediately.

1.38 If no adverse findings are made in Mr Doogan's report against the ten Save the Children staff who are the subject of the review, the department and Minister Morrison issue an apology to the staff and the Commonwealth offer compensation to the staff for the financial, reputational and psychological damage caused to them by the removal decision and the associated allegations in the Minister Morrison's public statements on the matter.

8 Mr Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, 6 February 2015, Recommendation 9.

9 Ms Natasha Blucher, Supplementary to Submission 83, p. 4.

Children

1.39 Submitters put to the committee that there is no existing child protection framework in operation on Nauru. For example, Mr Paul Ronalds, Chief Executive Officer of STC, told the committee that:

...there are laws on Nauru that go to issues of assault and sexual assault. What I am advising is that there is no child protection framework, as we would understand it in Australia, which is much broader and goes beyond that.¹⁰

1.40 Ms Kirsty Diallo, a former STC employee, told the committee:

There is no child protection legislation that would protect children from harm. There are no specialist police that could investigate allegations of child sexual abuse that would occur in Australian detention centres.¹¹

1.41 The committee heard that there was a disparity in engagement procedures followed between expatriate and locally engaged staff who work with children. For example, working with children checks cannot be conducted for locally engaged Nauruan staff. Mr Brett McDonald, Security Contract Manager at Wilson Security, advised:

There is not a currently a jurisdiction in Nauru to conduct working-with-children checks. What we do in substitute of that is we have some specific behavioural questions, we have a specific statutory declaration that employees sign during the recruitment process and we also have a code of conduct that we go through. We also undertake a local police check in Nauru.¹²

1.42 STC submitted that prolonged detention in the RPC has had a negative impact on the mental and physical health of children:

Save the Children has observed and is concerned by developmental regression and mental ill-health amongst children, as well as instances of family violence and the effects of family breakdown and separation from family members and close relatives. These observations together with the documented incidents, very clearly and comprehensively demonstrate how prolonged immigration detention threatens the physical, mental and emotional wellbeing of asylum seekers, particularly children.¹³

10 Mr Paul Ronalds, Chief Executive Officer, Save the Children Australia, *Committee Hansard*, 19 May 2015, p. 44.

11 Ms Kirsty Diallo, *Committee Hansard*, 9 June 2015, p. 29.

12 Mr Brett McDonald, Security Contract Manager, Wilson Security, *Committee Hansard*, 19 May 2015, p. 21.

13 Save the Children Australia, *Submission 30*, p. 15.

1.43 Ms Samantha Betts, a former STC worker, told the committee that she observed 'distress markers' in children, during her period as a recreation officer in the RPC:

These markers included predominately unpredictable behaviour, outbursts and emotional collapse, disturbing depictions in artworks relating to their trauma, rapid and very extreme mood swings. They included children becoming mute and refusing to talk, being clingy and wanting to stay close to us Save the Children workers. They also included significant changes in friendship groups and relationships, very short attention spans and regression in children up to the age of 13, with behaviours such as thumb sucking, sleepwalking and bedwetting.¹⁴

Best interests of the child

1.44 According to the Convention on the Rights of the Child (CRC), Australia has an obligation to consider the best interests of the child. The CRC sets out that:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.¹⁵

1.45 ChilOut argued that detention can never be in the best interests of the child:

The ongoing detention of children in the Nauru RPC where serious and credible allegations of sexual and other physical abuse arise cannot be in the best interests of the child.¹⁶

1.46 Similarly, the Andrew & Renata Kaldor Centre for International Refugee Law (Kaldor Centre) submitted that:

...the current process of transferring children to Nauru appears to breach Australia's human rights obligations with respect to those children, including the obligation to make the best interests of the child a primary consideration in any decision affecting them; to refrain from detaining children except as a measure of last resort; and to make adequate provision for the protection of children.¹⁷

1.47 The Kaldor Centre wrote that while the concept of the best interests of the child can be 'flexible and dynamic', there were guidelines for how the assessment might be undertaken and:

14 Ms Samantha Betts, *Committee Hansard*, 20 July 2015, p. 54.

15 *Convention on the rights of the child*, Article 3.

16 ChilOut, *Submission 13*, p. 7.

17 Andrew & Renata Kaldor Centre for International Refugee Law, *Submission 60*, p. 2.

...neither international law nor Australian law prescribes what is in the best interests of a particular child in a given situation. However, they do provide guidance on how the best interests of a child should be assessed.¹⁸

1.48 They further set out the function of a 'best interests assessment', which should occur according to the following criteria:

- the best interests assessment should be performed on a case-by-case basis; and
- the decision maker must identify the best interests of the child, and consider any flow-on consequences.¹⁹

1.49 The AHRC found that although the department's best interests assessment explicitly acknowledges the obligation, the assessment was not undertaken on a case-by-case basis:

...the Department's Best Interest Assessment appears to be irrelevant in the decision to transfer a child to Nauru. This is because the Australian Government has made a blanket decision that, in every case, the best interests of the child are outweighed by other primary considerations...²⁰

1.50 The department's *Best Interests Assessment for transferring minors to an RPC (forming part of the Pre-Transfer Assessment)* sets out:

...the Australian Government's view is that in making the transfer decision, the best interests of such children are outweighed by other primary considerations, including the need to preserve the integrity of Australia's migration system and the need to discourage children taking, or being taken on, dangerous illegal boat journeys to Australia.

Accordingly, while this assessment considers a range of factors to ensure that care, services and support arrangements are available to meet the needs of the individual child, it does not consider whether the best interests of the child would be served by the individual child being transferred to an RPC.²¹

1.51 Further to this acknowledgement by the department that the best interests of the child is outweighed by other 'primary considerations', a submission from Ms Viktoria Vibhakar (former Child Protection Worker with STC) argued that there were gaps in the ability for STC to also provide welfare services which were in the best interests of the child:

Although [STC] was contracted by the Commonwealth to provide child protection services to children on Nauru, they were not given authority by

18 Andrew & Renata Kaldor Centre for International Refugee Law, *Submission 60*, p. 7.

19 Andrew & Renata Kaldor Centre for International Refugee Law, *Submission 60*, pp 7-9.

20 Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014*, p 192.

21 Department of Immigration and Border Protection, *Best Interests Assessment for transferring minors to an RPC (forming part of the Pre-Transfer Assessment)*, February 2014, p. 1.

DIBP to remove children from harm, to prevent additional incidents of harm, or to act to protect the best interests of children.²²

1.52 STC outlined their response framework to children who experience family violence, which confirms Ms Vibhakar's submission on this point:

[STC] does not have legal authority to remove a child from the care of parents or guardians on Nauru, and employs a collaborative and multi-stakeholder approach, to the extent possible, when supporting children and families who are at risk of family violence. This includes involving the Nauru Police Force where appropriate, as was the case with this particular family.²³

1.53 Ms Vibhakar told the committee that, in her view, government policy, rather than the best interests of the child, was the primary consideration of departmental staff:

The Department of Immigration and Border Protection employees that I interface with and that were on Nauru made it clear that their primary responsibility was to ensure that the government policy was implemented. What that meant was that, even though on numerous occasions they were always aware of assaults that had occurred to children, the children remained in situations of ongoing harm.²⁴

Legal guardianship

1.54 The department advised that the Nauruan Minister for Justice and Border Control is the legal guardian of unaccompanied minors in the RPC on Nauru:

Under the Asylum Seekers (Regional Processing Centre) Act 2012 (Nr), the Minister for Justice and Border Control is the legal guardian of every unaccompanied minor who arrives in Nauru. The Minister has delegated most of his powers and functions as guardian to Connect.²⁵

1.55 The Royal Australasian College of Physicians' statement on the health of people seeking asylum argues that there is a potential conflict of interest in the appointment of the Minister for Immigration as the legal guardian of unaccompanied minors in the RPC:

A key issue impacting on the wellbeing of unaccompanied minors seeking asylum is the automatic appointment of the Minister of Immigration as their legal guardian. In this capacity, the Minister is responsible for protecting the child and their best interests, however the Minister is also responsible for placing children in immigration detention. The RACP considers that immigration detention is not in the best interests of any child, and echoes

22 Ms Viktoria Vibhakar, *Submission 63*, p. 10.

23 Save the Children Australia, response to *Submission 63*, p. 5.

24 Ms Viktoria Vibhakar, *Committee Hansard*, 9 June 2015, p. 30.

25 Department of Immigration and Border Protection, *Submission 31*, p. 56.

concerns that there is a potential conflict between these dual responsibilities.²⁶

Lack of parental agency

1.56 The committee heard evidence of the impact the detention environment has on the family unit and relationships. This environment changes the interaction between parent and child, of provider and dependent, to the entire family unit being dependent on an external entity. The inability of parents to have direct influence over the care of their child places the parent in a state of stress, with no opportunity for them to change this. Being a parent on Nauru means not being able to parent at all.

1.57 One submission alleged that some parents had relinquished care of their children while they received treatment for mental health issues:

It has now occurred on a number of occasions that parents have relinquished care of their children, with the system unprepared for this, children are left to be cared for by Save the Children case managers and recreation staff in facilities for asylum seekers who are having extended medical treatment or being medically observed, including asylum seekers who have attempted suicide.²⁷

1.58 Children whose parents are not able to care for them within the RPC are especially vulnerable, and require a greater level of protection and a guarantee that they will be safe while in the RPC.

Children exposed to extreme violence

1.59 Submitters, including former employees of STC submitted that children in the RPC are routinely exposed to acts of extreme violence such as suicide attempts and physical assault.²⁸

1.60 Darwin Asylum Seeker Support and Advocacy Network (DASSAN) submitted that asylum seekers had reported to them the challenging conditions parents face in the RPC:

Parents talked with despair about the conditions they were trying to care for their children in, with nowhere to play, constant exposure to violence and anger, no privacy, and inadequate health care.²⁹

1.61 Mr Tobias Gunn, a former STC employee, submitted that he had witnessed a suicide attempt by a 15 year old boy who had threatened to jump from the roof of a toilet facility. Mr Gunn submitted that minors were witnesses to the incident, as:

26 Royal Australasian College of Physicians, *Statement on the health of people seeking asylum*, August 2013, p. 4.

27 *Submission 84*, p. 4.

28 RAC-Q, *Submission 73*, p. 7.

29 DASSAN, *Submission 61*, p. 7.

...security had not closed off the area and children were walking past, some sitting down to watch. I had a young girl under ten come up to me and ask if this boy 'would be coming to recreation tomorrow? Or do you think he will jump?'³⁰

Example of inadequate Commonwealth response to assault of a child

1.62 The alleged sexual assault of a minor was put to the committee by Ms Diallo.³¹ She submitted that:

On 16 November 2013 a child was sexually assaulted by a government contractor. That information was investigated by Wilson Security and an incident report was completed. That was forwarded onto the department of immigration and in December 2013 I asked the Save the Children director if that incident report had been forwarded on to the Minister for Immigration and Border Protection. I was advised that the minister had seen that incident report.³²

1.63 Ms Diallo was the Child Protection and Support Worker for the alleged victim. As a result of a lack of available private facilities, she was required to speak with the minor in an open part of the RPC.³³ Ms Diallo stated that she had 'offered the family counselling with the specialist torture and trauma services (STTARS), as there was no sexual assault counselling available on Nauru'³⁴:

The family expressed fear of attending this service as they had concerns about potential repercussions from local security staff that were present at the STTARS office. Both the boy and his Mother, also expressed fear of pursuing the matter with the local Police, and stated that they were scared the local Nauruan staff in the RPC would blame them and subsequently they would experience further threats and abuse.³⁵

1.64 Ms Diallo submitted that she 'would never advise a family to pursue criminal charges if they remained in an environment where they could still be subject to further abuse'.³⁶

1.65 The inability for alleged victims of assault and abuse to be removed from their surroundings or from the alleged perpetrators was discussed in the committee's report, and so will not be discussed further in these additional comments.

30 Mr Tobias Gunn, *Submission 68*, p. 7.

31 The committee understands that this is the same incident referred to in the Moss Review. Mr Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, 6 February 2015, p. 37.

32 Ms Kirsty Diallo, *Committee Hansard*, 9 June 2015, p. 29.

33 Ms Kirsty Diallo, *Submission 64*, p. 2.

34 Ms Kirsty Diallo, *Submission 64*, p. 2.

35 Ms Kirsty Diallo, *Submission 64*, p. 2.

36 Ms Kirsty Diallo, *Submission 64*, p. 2.

1.66 Ms Cindy Briscoe, from the department, advised that the 'incident was reported at the time, through the appropriate system, to the department. An investigation was conducted by the [Nauru Police Force (NPF)] and it was left in the hands of the NPF'.³⁷ Further, she notes:

My understanding is that the mother decided not to progress that complaint any further and the treatment that was provided was according to their wishes.³⁸

1.67 However, the committee received evidence on a confidential basis that alleged further incidents of assault and harassment against the family of the alleged victim occurred and that these were seen as retribution against the family for speaking out about the assault. It would seem more likely that these further assaults, rather than satisfaction at the way their complaints were handled, were behind the family deciding not to progress the complaint any further.

Recommendation 2

1.68 The Australian Greens recommend that as a matter of priority, children and their families be released from the Nauru Regional Processing Centre and be transferred into the community in Australia.

Recommendation 3

1.69 The Australian Greens recommend that a royal commission be established to investigate the detention of children, and the impact of detention on their mental and physical health, as previously recommended by AHRC in their *Forgotten Children* report.

1.70 This is not the first time that a royal commission into abuse in Australian-controlled immigration detention facilities has been called for.

1.71 Recommendation 15 of the AHRC's *Forgotten Children* recommended that a royal commission be established to examine, among other matters, the long term impacts of detention on the physical and mental health of children in immigration detention.

1.72 In an open letter dated 7 April 2015, a group of 24 current and former employees from the Nauru detention centre who have first-hand knowledge of the conditions in which children and adults are detained requested the Australian people to support a Royal Commission into abuse allegations in the Nauru detention centre and the government's response to those allegations.

1.73 One of the signatories to that letter was Dr Peter Young, the International Health and Medical Services (IHMS) medical director for mental health from 2011 to 2014.

37 Ms Cindy Briscoe, Deputy Commissioner, Australian Border Force Support, Department of Immigration and Border Protection, *Committee Hansard*, 20 July 2015, p. 77.

38 Ms Cindy Briscoe, Deputy Commissioner, Australian Border Force Support, Department of Immigration and Border Protection, *Committee Hansard*, 20 July 2015, p. 78.

1.74 In his evidence to this committee at the public hearing on 9 June 2015, Dr Young highlighted the “specific similarities of this institutional environment in immigration detention to other institutional environments in which abuses have occurred and which have been shown to cause abuse and abusive practices.”³⁹

1.75 Dr Young elaborated on these similarities:

Wherever there is a situation in an institution where there is a vulnerable group that is under supervision, and where there is a power differential between those who are being supervised and those who are supervising them, you create the conditions in which abuses tend to occur. The other factor that adds to that, in this situation particularly, is when there is non-transparency and when there is a lack of capacity for independent oversight. The final thing that really has a very powerful effect—and we have seen this in other institutions where abuse has occurred very regularly—is when there is this overriding concern that the interests of the institution, the preservation of the institutional interests, override everything else. We have seen this in the current royal commission that is occurring in relation to the reputation and the wealth of organisations overriding the concerns of duties of care, and we see it in this example where the policy position of stopping the boats and maintaining the offshore processing facility and its reputation is the overriding concern.⁴⁰

1.76 Dr Young has identified, in his evidence before this committee and elsewhere, numerous factors that make immigration detention, particularly in Nauru, prone to abuse on the same scale as the institutional abuses being investigated by the Royal Commission. Among these factors are:

- (a) Physical isolation of detention centres;
- (b) Lack of transparency;
- (c) Lack of independent oversight;
- (d) Power imbalance;
- (e) Pre-existing vulnerabilities by virtue of being asylum seekers;
- (f) Linguistic and cultural barriers;
- (g) Indefinite nature of the detention;
- (h) The nature of detention itself;
- (i) The institutional policy and reputational interests conflict with the interests of the welfare of individuals in their care.

1.77 While the institution of immigration detention makes child abuse prone to occur in Nauru, this committee has heard many incidents of child abuse that have actually occurred and are continuing to occur.

³⁹ Dr Peter Young, *Committee Hansard*, 9 June 2015, p. 2.

⁴⁰ Dr Peter Young, *Committee Hansard*, 9 June 2015, p. 2.

1.78 Transfield Services gave evidence that there had been 67 allegations of child abuse in Nauru.⁴¹ 12 of these were referred to the NPF, but the police had not charged anyone in relation to any of these alleged incidents as at 20 July 2015.⁴²

1.79 In only the last reporting period (February to May 2015) there have been two incidents of child sexual assault and 11 incidents of other assaults against children in immigration detention centres in Australia.

1.80 In the six months to May 2015, there were 48 incidents of self-harm by children in immigration detention centres in Australia and 26 incidents of self-harm by children in the Nauru RPC.

1.81 The *Forgotten Children* report found that there were 33 incidents of reported sexual assault (the majority involving children) and 233 total assaults involving children from January 2013 to March 2014.

1.82 Of course, the figures for Nauru do not take account of the under-reporting that the Moss Review found prevalent in Nauru.

1.83 These figures are also limited to the instances of sexual assault and violence occurring to children themselves and do not take account of the number of sexual assaults the children are witness to in Nauru. For example, Transfield Services gave evidence that there had been 33 allegations of sexual assault and 5 allegations of the exchange of sexual favours for contraband among adults in Nauru.⁴³

1.84 Further, the figures do not take into account the generalised sexualisation of children in Nauru, which is the inevitable result of the living conditions and number of sexual assaults occurring in Nauru. For example, Ms Vibhakar gave evidence in relation to a four year old girl named “Tiana” who had been sexually assaulted:

...there were ongoing concerns related to inadequate supervision of Tiana. Furthermore, concerns regarding the inappropriate boundaries observed in relation to touch/physical affection that she was receiving from Commonwealth contracted staff was noted in a multi-Commonwealth contractor meeting as early as January 2014. The DIBP detention centre manager was present at this meeting. Tiana also exhibited progressively alarming sexualised behaviours that were consistent with indicators of sexual abuse which included:

- Sexualised play with dolls
- Sexualised dancing inappropriate for her developmental level
- Often found wandering outside her tent with only her underwear

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

42 Ms Erin O’Sullivan, Commercial and Strategy Manager, Transfield Services, *Committee Hansard*, 20 July 2015, p. 6.

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

- An incident report was filed alleging that she entered the tent of another asylum seeker, pulled down her underwear and tried to get adults to insert their finger into her anus.⁴⁴

1.85 The figures for Nauru are also limited to incidents within the RPC. They do not take account of the spate of sexual assaults and rapes that have taken place in recent times outside of the RPC. This particular issue will be discussed further.

1.86 The department has stated that it has taken a number of steps to improve the situation for children in Nauru, beginning with the child safeguarding protocol it says was introduced in November 2013. But numerous cases of child abuse have occurred since this time and ongoing cases of child abuse continue to be reported to the committee. While the steps taken by the department may be well-intentioned, they are token measures that miss the point of the institutional nature of the problem; the conditions in Nauru make systematic child abuse an endemic problem and if removal of children who are at risk of abuse or already have been abused is not an option, other child protection strategies are meaningless.

1.87 An example of an ongoing case of child abuse reported to the committee is contained in the submission of Ms Katherine Cole, a former primary school teacher employed by STC who submitted that she had a seven year old female student named 'Charlie' who was sexually assaulted in early 2015. No details of this were given to Ms Cole, despite requests. The child remains in Nauru and according to Ms Cole her condition is deteriorating because she is not receiving the care she needs and cannot possibly recover while remaining in detention in Nauru.

1.88 As Ms Cole wrote in her submission:

As Charlie's classroom teacher I was spending up to six hours with her a day, five days a week. I was never told any solid information about Charlie's assault; where it took place, who was involved, any possible triggers that could occur or any other details that could have assisted me in the after care and prevention of further distress for this child.

The RPC1 school is located under 100 meters away from the R.A.A, where the alleged perpetrator to Charlie's assault was and still is being held. As none of the teaching staff were told any details of the assault in the weeks and months thereafter, we were unaware that every time Charlie was outside the classroom, there was every possibility that she would see the perpetrator, as he could often be seen sitting outside, next to the fence facing the school.

I believe that being in an environment where Charlie knew there was a possibility that he could see her, would have been a terrifying daily ordeal. The potential for this lurking presence to retraumatise Charlie on a daily basis for months after the alleged assault, I believe has caused significant re-traumatisation.

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

Charlie's emotional, social, intellectual, and physical state have all severely deteriorated since the alleged assault.

Charlie's overall resilience has dropped significantly since the alleged assault.

Academically Charlie is falling well below the outcomes of her peers.

Nothing seems to be able to remain a special or safe object to Charlie.

To the best of my knowledge most if not all scientific and physical evidence for the case would have been lost several months ago, so now the main sources for the case will be anecdotal evidence from three children under the age of ten, with English as a second language, numerous months after the alleged incident occurred.⁴⁵

1.89 Ms Cole's evidence was put to Transfield Services on 20 July 2015. They were asked if anything was done to make sure that the alleged perpetrator could not continue watching the child while she was in a learning environment.

1.90 Transfield Services responded that the alleged perpetrator's bail conditions prevented him from being within a certain distance of the child, but could provide no further details of the case and agreed to take further questions on notice.⁴⁶ Answers to these questions were due on 24 July 2015. As at the time of writing this report, that answer has still not been received.

1.91 On the basis of the evidence before the committee at this time, therefore, it seems there is a seven year old girl who was sexually assaulted in the Nauru RPC in early 2015 and who remains locked up in that facility, while her alleged perpetrator has been able to breach his bail conditions by watching her through a fence since this time. The impact of this on the seven year old girl cannot be overstated.

1.92 Several of the witnesses to the committee gave evidence that despite raising specific allegations through official channels, the situation had not improved over a long period of time. The below exchange at the public hearing of 9 June 2015 is representative of this evidence:

Senator KIM CARR: Have you raised your concerns with departmental officials?

Dr Young: The concerns that I had in my role over the time I was there were raised multiple times with departmental officials. Departmental officials were obviously aware of them from the publicly-available information that came through those other organisations also.

Senator KIM CARR: And were you satisfied with the response that you received?

Dr Young: No.

Senator KIM CARR: Why is that?

45 Ms Katherine Cole, *Submission 92*, pp 4-5

46 *Committee Hansard*, 20 July 2015, pp 44-45.

Dr Young: The conditions persist, and people continue to be harmed.⁴⁷

1.93 Not only do the harmful conditions persist in Nauru, there is evidence to suggest that the conditions are further deteriorating. The committee understands that six incidents were reported to the Moss Review that fell within the terms of reference of that inquiry, but that in the short period since this time, they have received reports of a further six incidents.

1.94 Further, during the 2014 calendar year, 223 Transfield workers in Manus Island and Nauru were dismissed. Eighteen of these were for misconduct towards transferees. But in the 2015 calendar year to May 2015, 179 Transfield workers in Manus Island and Nauru had already been dismissed, 13 for misconduct towards transferees.⁴⁸ The rate of dismissals and misconduct towards transferees is therefore increasing.

1.95 The Australian Greens support a Royal Commission into all abuse allegations in the Nauru detention centre, as called for in the open letter from the current and former employees of the Nauru RPC. The reason the Australian Greens have nonetheless limited their recommendation above to children is twofold:

(a) Children have a special status in society.

They are particularly vulnerable and innocent and all civilised societies accept that they are responsible to ensure their protection and provide for their development, education, health and well-being. Australians would overwhelmingly consider these principles to be self-evident and Australia has accepted as much in ratifying the *Convention on the Rights of the Child*.

Yet when it comes to asylum seeker children, Australians appear to be in a state of prolonged torpor. There are no circumstances that could possibly justify the indefinite detention of newborn babies, toddlers, infants and children of all ages. Even when a minor is charged, tried and convicted of a crime in Australia, that child is rarely given a custodial sentence. A custodial sentence is viewed as a last resort, and the conditions while serving that sentence ensure the continued development of that child, free from harm. Asylum seeker children have committed no crime and their detention is indefinite, lasting on average 402 days. The harsh physical and mental conditions they face in Nauru, including the high risk of sexual abuse and the ongoing trauma of the indefinite nature of their detention is inflicting long-term damage to their development. They are not safe and every additional day they spend there will make it that much more difficult to repair this damage.

A Royal Commission may go some way to addressing this state of torpor and motivate more Australians to put pressure on their representatives to remove these children from this dangerous situation, redress past wrongs and ensure that this never happens again in their name.

47 *Committee Hansard*, 9 June 2015, p. 3.

48 Budget Estimates 2015, Answers to questions on notice.

- (b) Focussing on child sexual abuse would allow the royal commission to build on the work of both the *Forgotten Children* report and this committee.

1.96 When asked about specific allegations, including in relation to child abuse, the committee received four common responses from the department and the service providers engaged in the RPC, as follows:

- (a) the matter has been referred to the Nauruan police force for investigation;
- (b) they have checked their records and could find nothing to support the allegation;
- (c) the matter was investigated and there was insufficient evidence to take further action; and
- (d) the family has withdrawn the complaint or expressed satisfaction at the outcome and requested that no further action be taken.

1.97 In relation to the first common response, simply referring matters to the NPF is patently inadequate to ensure justice is served or for the department and the service providers to fulfil their duty of care obligations to people in their care. These referrals are occurring in circumstances where the rule of law is currently absent in Nauru and the weight of evidence to this committee has shown that the NPF is generally incapable or unwilling to act on these referrals.

1.98 The response that the department or the service providers had checked their records and could find nothing to support the allegation is also unsatisfactory. It has been known at least since the Moss Review that assaults are going under-reported. Evidence provided to this committee suggests that the reasons for this under-reporting include that:

- (a) assaults are an everyday occurrence and when they have been previously reported, nothing has been done about them. As one submitter noted, these incidents are referred to as ‘paperwork’.⁴⁹
- (b) Wilson Security destroys evidence:
 - (i) Two submissions provided to the Committee raise the destruction of documents.⁵⁰ One submission details the existence of a code, “file 13”, an order to shred incident reports at the direction of Wilson supervisors.⁵¹ Wilson Security responded that it is unaware of this practice.⁵²

49 Ms Samantha Betts, *Submission 85*, p. 2.

50 Name Withheld, *Submission 62*, p 2; Name Withheld, *Submission 95*, p 9.

51 Name Withheld, *Submission 95*, p 9.

52 Wilson Security, *Response to Submission 62*, p 5; Wilson Security, *Response to Submission 95*, p 5.

- (ii) Wilson Security's own evidence provided to the Committee that it deletes video footage.⁵³
- (c) the fear of retribution prevents victims from lodging a report. As noted in the submission of Ms Vibhakar, there was a reluctance to report wrongdoing for fear it would negatively impact upon asylum claims.⁵⁴ In one particular case, a child, the victim of sexual assault, and his family were fearful of retaliation for reporting an assault.⁵⁵

1.99 The third common response (that there has been insufficient evidence to progress the investigation), does not take into account:

- (a) the inability of the Nauruan Police Force to conduct forensic investigations;
- (b) the inability of the Nauruan Police Force to appropriately interview alleged victims of child abuse or sexual assault;
- (c) the extent to which the culture of fear, secrecy, apathy and retribution prevents witnesses coming forward; and
- (d) the possibility that Wilson Security investigators have a conflict of interest in investigating their colleagues or that their techniques for collecting evidence are otherwise inadequate.

1.100 In relation to incidents in which the victim or the victim's family has withdrawn the complaint or expressed satisfaction at the outcome of an investigation, no mention was made by the department or the other organisations charged with the care of these children that the family's decision may have been influenced by a fear of retribution.

1.101 The serious allegations of child abuse presented to this committee, many of which cannot be published due to confidentiality, were put forward by dozens of professional doctors, nurses, teachers, social workers and security guards, with first-hand experience of the day to day conditions on the ground in Nauru. This is in stark contrast of the experiences of the senior executives from the department and service providers, only one of whom had spent any significant amount of time in Nauru.

1.102 The Australian Greens doubt that these individuals who have worked on the ground in Nauru would risk their professional reputations, invest time and energy in preparing evidence and risk retribution from their employers or non-renewal of their contracts by fabricating allegations, many of which are very specific and detailed. The Australian Greens consider it more likely that over-reliance on what is officially reported has led these senior executives to overlook the reality of what actually takes place on the ground in Nauru.

53 *Committee Hansard*, 19 May 2015, p. 36.

54 Ms Viktoria Vibhakar, *Submission 63*, p. 28.

55 Ms Viktoria Vibhakar, *Submission 63*, p. 10.

1.103 An instructive exchange on the different perspectives on this issue was held by the Australian Greens and the representatives of these organisations took place at the public hearing on 20 July 2015 between Senator Hanson-Young and John Rogers, Executive General Manager, Southern Pacific, Wilson Security:

Senator HANSON-YOUNG: Mr Rogers, obviously this allegation of the solicitation of sex and the filming of that is pretty serious. I hear from you that you have got nothing on your files that indicates this is correct. I put to you a new allegation in relation to footage of staff having sex with each other that has allegedly been circulated. You are saying you have got no file notes or incident reports in relation to this. Are you concerned that these kinds of rumours are coming out of the facility? And these are from staff. These are staff members who are coming forward to this committee. What interest do these people have in making this up?

Mr Rogers: I am sure people are acting from the best of intentions. I am sure they are making their own judgements on the information that they have had presented to them. I cannot really speak, apart from that, as to the motivation to make any of these allegations.⁵⁶

1.104 The Australian people and, more importantly, the children whom Australia has placed in the care of these organisations, deserve a better response to the numerous, grave allegations of child abuse that have been put to this committee. The appropriate forum for this response to be provided, through the thorough investigation of these allegations by experts in the field, with the resources and power to conduct these investigations, is a royal commission.

Surveillance of a member of the Australian Senate

1.105 During the course of the inquiry, evidence was received by the committee to the effect that a member of the Australian Senate had been monitored while visiting the Regional Processing Centre on Nauru in December 2013.

1.106 This evidence included submissions by two former Wilson guards that:

When Senator Sarah Hanson-Young visited Nauru, Wilson Security organised a team from ERT to spy on her while she was on Nauru. This included following her around the island while she was outside of the OPCs and setting up an observation post to watch her room at the Menen hotel. The briefing was given by ERT supervisor...in which he gave orders to spy on the senator. This briefing included her room number, vehicle registration and even using code name "Raven" over the radio to make reference to her.⁵⁷

and that:

Wilson Security Management [ordered] ERT members to follow and film Senator Hanson-Young during her entire visit to Nauru. Those that filmed then gloated to other workmates how the Senator was followed and filmed,

⁵⁶ *Committee Hansard*, 20 July 2015, p. 43.

⁵⁷ Name withheld, *Submission 62*, p. 1.

but she did not know, happy that she did not “twig”. The order to follow and film the Senator was given by “Ranger 1”...to the ERT who then carried out the order;

[the submitter] is aware of where the film/s of Senator Hanson-Young were once kept but does not know if they still exist – he viewed 20 to 30 seconds of film on a Wilson Security employee’s mobile phone that he believes to be the Senator at her Hotel.⁵⁸

1.107 On 5 June 2015 Minister Dutton commented on allegations of Senator Hanson-Young being spied upon at media conference:

My experience of Sarah Hanson-Young is that she gets most of the facts wrong most of the time... She makes these allegations which are completely unfounded.

I don't have any evidence that she's been spied on. I have evidence that Senator Hanson-Young over-states every issue. She gets her facts wrong most of the time.⁵⁹

1.108 It can be inferred from these comments that Minister Dutton did not find the allegations credible and had no intention of investigating them.

1.109 At the committee’s public hearing on 9 June 2015, Secretary of the department, Mr Michael Pezzullo, stated that his department had investigated the matter and found that one rogue Wilson employee instructed two other Wilson employees to monitor Senator Hanson-Young’s car overnight while it was parked outside her hotel and that is the extent of the spying that took place. According to the department, anything further to this that has been alleged did not happen. When the rogue employee’s manager found out what happened, he ensured that the monitoring ceased and stood down the rogue employee. The employee was suspended from his position but later re-applied for, and was granted the same position. Wilson did not report the incident externally because it was not a reportable incident. Mr Pezullo reiterated that the monitoring was for Senator Hanson-Young’s safety but did not explain why Senator Hanson-Young was not told and why the rogue employee was disciplined, if this was the case.

1.110 At the public hearing on 20 July 2015, Senator Scott Ludlam questioned the department, Wilson Security and Transfield Services in relation to these allegations. All parties denied the spying went any further than outlined by the department at the hearing on 9 June 2015. Representatives from Transfield Services and Wilson Security apologised to Senator Hanson-Young, while no apology was offered by the department.

58 Mr Jon Rogers, *Submission 95*, p.2.

59 'Sarah Hanson-Young labels Tony Abbott 'creepy' over his response to Nauru spying allegations', *Sydney Morning Herald*, 5 June 2015, <http://www.smh.com.au/federal-politics/political-news/sarah-hansonyoung-labels-tony-abbott-creepy-over-his-response-to-nauru-spying-allegations-20150605-ghhehb.html> (accessed 5 June 2015).

1.111 On 13 August 2015 a number of former guards reported to Australian Broadcasting Corporation (ABC) that:

- (a) the surveillance of Senator Hanson-Young involved up to eight members of the Emergency Response Team;
- (b) the surveillance continued for the full three days Senator Hanson-Young was in Nauru;
- (c) guards were ordered to photograph Senator Hanson-Young and make notes about who she met with; and
- (d) one guard witnessed shredding of all documents relating to surveillance operation, including photos and notes.

1.112 The Australian Greens understand from the ABC that its reports relied on the evidence of three former Wilson guards, none of whom gave evidence to this committee.

1.113 On 19 August 2015 the Committee received another submission which appeared to be from a former Wilson guard to the effect that:

This operation involved approximately 6-8 ERT members and consisted of recording her every movement both in and out of the camps, they were also to report on whom she spoke with and if possible they were to ascertain what was said.

Staff were requested to compile reports on her movements, contact with employees or Stakeholders. These reports and video surveillance footage were to be handed to the Intelligence unit for collation and dissemination.

Wilson investigations manager...and intelligence officer...met with Sarah hanson -young with the sole purpose of extracting and recording information from her with regards to her agenda while on Nauru.

The Emergency Response Team Supervisor...who Wilson Security management said conducted unauthorised surveillance on Hanson Young appears to have been a scapegoat. Management authorised, sanctioned and fully supported surveillance on Sarah Hanson Young while she was in Nauru.

I have spoken with ERT members involved in this operation and they have stated that their primary role was to obtain information that could assist Wilson's with negating, refuting allegations made by Hanson Young with regards to the security role conducted by Wilson's at the processing centres. Their secondary role was to ensure her safety.

The Senate has been misled and misinformed by Wilson Security Executive Management that this was the action of a lone wolf operator, management were fully aware of this operation. A considerable amount of video surveillance footage was taken of Sarah Hanson Young, both inside and out of the processing centres by tasked Emergency Response Team members.

This was then provided to the Wilson Security Intelligence unit for dissemination.⁶⁰

1.114 The purpose of Senator Hanson-Young's visit to Nauru from 15 December 2013 to 18 December 2013 was to inspect conditions for asylum seekers living in the detention camps and for refugees that would later be released into the community. Interference with the senator carrying out these parliamentary responsibilities may well constitute contempt of the Senate.

1.115 Allegations of spying on a Commonwealth member of parliament made by two separate Wilson Security guards and corroborated by three more Wilson Security guards to the ABC, raise very serious questions about whether a Commonwealth crime or contempt of the Senate has been committed. The evidence given to the committee by the department, Wilson Security and Transfield Services regarding the extent of this spying is at odds with the evidence of five separate Wilson Security guards with first-hand knowledge of these events, who have each separately approached this committee or the media, suggesting these organisations have misled the senate, either wilfully or as a result of inadequate investigations conducted by them into these matters. These issues need to be resolved.

Recommendation 4

1.116 The Australian Greens recommend the AFP conduct a full investigation into the matters surrounding the spying on Senator Hanson-Young to determine whether any Commonwealth offences have been committed and, if so, refer them to the CDPP.

1.117 The Australian Greens recommend these matters be referred to the Privileges Committee for investigation of a possible contempt of the senate.

1.118 The Australian Greens recommend an independent review be commissioned by the department to fully investigate these matters.

Offshore processing

1.119 Submitters to the inquiry told the committee that:

- offshore processing is harmful, regardless of the environment;
- offshore processing should be abolished; and
- offshore processing is a significant investment of Australian taxpayers' money with no guarantee of value for money.

60 Name withheld, *Submission 99*, p. 1.

Harmful effects of detention

1.120 Some submitters argued that detention is harmful regardless of the environment,⁶¹ with the Law Council of Australia submitting that there were 'foreseeable risks of prolonged and remote detention'.⁶² STC submitted that:

A significant body of research has emerged over the past decade demonstrating or confirming that immigration detention causes significant psychological harm to asylum seekers, with particular impact on children.⁶³

1.121 STC further submitted that the effects of detention could be ongoing:

Immigration detention can cause ongoing damage to children beyond the period of detention. Some experts have suggested that the negative impacts of immigration detention can be ongoing for years after their release and in some cases, risks having a lifelong impact on children. This can include educational and social difficulties, psychological trauma and a need for ongoing counselling.⁶⁴

1.122 Similarly, the Royal Australasian College of Physicians' statement on the health of people seeking asylum said:

There is a large body of evidence to suggest that prolonged detention, particularly in isolated locations with poor access to health and social services combined with an uncertainty as to the outcome asylum seeker claims, has severe and detrimental effects on health outcomes. These longterm effects include damage to social and emotional functioning, especially in those who have experienced torture or trauma, and the worsening of existing mental health problems.⁶⁵

1.123 Ms Charlotte Wilson, a former employee of STC, submitted that:

I firmly believe that the level of trauma that asylum seekers have been subjected to has caused profound damage to nearly every single man, woman and child who has been arbitrarily interned in Nauru.⁶⁶

1.124 Another former employee of STC wrote that:

...indefinite detention of children and their families, within the NRPC context, causes unacceptable emotional, psychological and physical harm to both children and adults.⁶⁷

61 See, for example: Human Rights Law Centre and UNICEF, *Submission 58*; Law Council of Australia, *Submission 57*.

62 Law Council of Australia, *Submission 57*, p. 9.

63 Save the Children Australia, *Submission 30*, p. 12.

64 Save the Children Australia, *Submission 30*, p. 13.

65 Royal Australasian College of Physicians, *Statement on the health of people seeking asylum*, August 2013, p. 2.

66 Ms Charlotte Wilson, *Submission 79*, p. 7.

67 *Submission 81*, p. 1.

1.125 The Refugee Action Collective Queensland (RAC-Q) submitted that:

Almost without exception, the detainees who have been at Nauru display signs of anxiety, despair, sadness or loss of hope, and this is compounded by the fact that they still live in a constant state of fear of being sent back there.⁶⁸

1.126 The observations and experiences of these workers within the RPC environment evidence a regime that further traumatises an already traumatised group of people.

Calls for the abolition of offshore processing

1.127 Submitters told the committee that using detention as a deterrent was fundamentally at odds with protecting asylum seekers and that the practice should be abolished.⁶⁹ For example, the Refugee Council of Australia (RCOA) argued against offshore processing:

While RCOA would certainly welcome any efforts to alleviate the suffering of the people currently subject to offshore processing in Nauru, we believe that objective of deterring asylum seekers is irreconcilable with the objective of protecting asylum seekers. As such, we see no viable way forward for offshore processing and strongly recommend that it be abolished entirely.⁷⁰

1.128 A number of submitters called for the transfer of children in particular to Nauru for detention to cease.⁷¹

1.129 DASSAN submitted that if a total ban on offshore processing could not be enacted, that there should be a 'moratorium on offshore transfers, including of transitory persons' until conditions are improved.⁷²

Offshore processing is an expensive model

1.130 Offshore processing is a much more expensive model than onshore or community-based processing.

1.131 The RCOA argued in favour of an alternative to offshore processing, submitting that '[c]ommunity-based support arrangements offer a humane and cost-effective alternative to offshore processing and closed immigration detention'.⁷³

1.132 Professor David Isaacs submitted that there is a disparity between offshore and community detention costs:

68 Refugee Action Collective Queensland, *Submission 73*, p. 9.

69 *Submission 81*, p. 16.

70 Refugee Council of Australia, *Submission 16*, p. 3.

71 ChilOut, *Submission 13*; Human Rights Law Centre and UNICEF, *Submission 58*, p. 1; Human Rights Watch, *Submission 72*;

72 DASSAN, *Submission 61*, p. 15.

73 Refugee Council of Australia, *Submission 16*, p. 4.

The human cost of our asylum seeker policy is enormous. But the economic cost is also astronomic: last year Australia spent over \$500,000 per person in detention on Nauru. In contrast, it costs only a few thousand dollars per person in community detention in Australia.⁷⁴

1.133 The department advised that for the first ten months of the 2014-15 financial year, \$415.6 million was spent on capital and operating costs. There are currently 655 asylum seekers in the RPC. It is difficult to justify this amount of money to detain that number of people.

1.134 Further, given this significant investment of taxpayers' money, the lack of transparency and accountability to the Australian public is concerning. Conflated figures for Nauru and Manus Island provided in the Portfolio Budget Statement, and direct and indirect costs also make the exact financial burden to the Australian taxpayer difficult to distinguish.

The Regional Processing Centre as a deterrent

1.135 It was put to the committee that, owing to the low standards of living and poor management, the RPC must have been designed to act as a deterrent. For example, Ms Blucher told the committee that in her view, the RPC was purposefully operated and managed to act as a deterrent:

The reason that it seems to me to be purposeful is that I do not understand how the Australian government could pay \$1.2 billion to a large logistics company that specialises in logistics—that is, provision of services and items and materials—and then children could not be supplied with shoes that fit them, or toys—really basic needs. It does not make any sense to me. I do not understand.⁷⁵

1.136 This view was echoed in other evidence provided to the committee which demonstrated the inability to deliver basic functions such as the provision of clothing, footwear and food, and clean amenities such as toilets. This is despite the significant amount of money invested in contracts with service providers.

1.137 The committee received evidence alleging that the RPC further acts as a deterrent through the dehumanising treatment of asylum seekers. Recurring themes raised in submissions concerned:

- standards of living which would not be accepted by the Australian community;
- the description of the RPC as 'prison-like'; and
- a general lack of respect shown to asylum seekers by contracted service provider staff, including the use of Boat Identification Number in place of a name.

74 Professor David Isaacs, *Submission 11*, p. 2.

75 Ms Natasha Blucher, *Committee Hansard*, 20 July 2015, p. 64.

Low standards of living

1.138 Evidence received by the committee shows that the standards of living afforded to asylum seekers within the RPC would not be accepted by the Australian community. Asylum seekers and refugees on Nauru submitted that difficult living conditions and attitude of contracted service provider staff were dehumanising. Although much of the evidence received by asylum seekers and refugees was accepted on a confidential basis, it often referred to the effects of low standards of living on mental and physical health.

1.139 For example, a letter provided to the committee by refugees on Nauru, and subsequently published, said:

We were patient when they sent us to Nauru like a criminal. We were patient when they dumped us in those tents like rubbish. We were patient when they treated us like animals. We were patient when they didn't give us water for days.⁷⁶

1.140 Dr Peter Young told the committee that a lack of adequate resources has a negative impact on peoples' behaviour:

Where the conditions are difficult, where people have been living in poor conditions, where there is a lack of availability of basic needs—even things like water and sanitary items—those things create a situation where there is competition. When people have to compete for basic needs that tends to affect their behaviour in negative ways.⁷⁷

1.141 Transfield Services advised that when they assumed responsibility for the provision of goods in February 2014, there were 571 outstanding requests for clothing and other material goods'.⁷⁸

Sanitary products

1.142 It was put to the committee that difficulty in obtaining access to sanitary products was an example of the dehumanising treatment of asylum seekers. Ms Betts told the committee that female asylum seekers had reported difficulties in obtaining access to sanitary pads because of 'security reasons':

There were several occasions where the asylum seekers, particularly the women, would come and ask me or another female worker who was in the camp at the time to go and ask the guards on their behalf because they did not feel comfortable asking a male for such items...I would have to bring the person with me so that the guard could witness me handing it over...I was informed that it was alleged that sanitary items, pads, were used to

76 Australian Churches Refugee Taskforce, *Submission 32, Attachment 1*, p. 11.

77 Dr Peter Young, *Committee Hansard*, 9 June 2015, p. 2.

78 Transfield Services, response to *Submission 69*, p. 7.

soak gasoline from the floodlights in the riots of 2013 and that was why they were not being handed out.⁷⁹

1.143 Wilson Security, however, advised the committee that sanitary pads were distributed by another service provider, saying that 'it is not a security matter'.⁸⁰

Shoes

1.144 Numerous submissions referred to the inadequate provision of shoes to asylum seekers, with examples given of children issued with thongs which break or wear out quickly. Submitters said that when the thongs broke, they were often fixed or held together with wire or cable ties, with one witness saying they had used a bread tie and string.⁸¹ The use of these makeshift materials for repairs was the source of discomfort and pain to the wearers, according to submitters.⁸²

1.145 Ms Wilson submitted that pairs of shoes could be shared by multiple persons:

A female asylum seeker told me that she was sharing one pair of thongs with four women, and they would take turns wearing them to go to the toilet block or English classes.⁸³

1.146 A former STC employee gave an example of a five-year-old girl with inadequate access to clothing and footwear:

Despite regular, multiple requests for clothing and shoe exchanges, she was not provided with additional clothing, underwear or shoes. The holes in the bottom of her Crocs exposed her feet to the sharp, hot gravel that covered [RPC 3].⁸⁴

Toys

1.147 Submitters told the committee that toys were not available to children in the RPC, and noted the damaging effect this can have on children's development. Submitters also highlighted the risk of potential 'grooming' behaviour allegedly displayed by RPC employees who distributed toys to children.⁸⁵

1.148 Professor Isaacs and Ms Alanna Maycock, former consultants for IHMS, submitted that toys were important for children's development:

There was not a single toy in the whole medical centre. This contravenes best paediatric practice...Toys are also a valuable tool used by paediatricians and child psychiatrists to observe a child's behaviour, and to

79 Ms Samantha Betts, *Committee Hansard*, 20 July 2015, p. 58.

80 Mr John Rogers, Executive General Manager, Southern Pacific, Wilson Security, *Committee Hansard*, 19 May 2015, p. 41.

81 Ms Samantha Betts, *Committee Hansard*, 20 July 2015, pp 57-58.

82 See, for example: *Submission 82*, p. 7.

83 Ms Charlotte Wilson, *Submission 79*, p. 6.

84 *Submission 81*, pp 2-3.

85 Ms Viktoria Vibhakar, *Submission 63*, p. 19.

watch them interact and socialise. Play can be essential when assessing development. Play can also be important when trying to differentiate whether a child's withdrawal is due to trauma or autism.⁸⁶

1.149 IHMS responded to the claim that there were no toys in the medical centre by noting:

Toys are readily available, however it is recognised that these are regularly stolen... IHMS also recommends that service providers are counselled on the concerns we have of local external service provider staff stealing toys within the clinic.⁸⁷

Description of the Regional Processing Centre as 'prison-like'

1.150 Some submitters argued that the presence of tall fencing, regimented meal and shower times, and lack of personal agency made the RPC seem 'prison-like'.⁸⁸ For example, a former STC employee submitted that:

A number of Asylum Seekers commented to me that they thought they felt like they had been imprisoned in the centre after the installation of this fence. Asylum seekers noted they had committed no crime and wondered why they had been imprisoned.⁸⁹

1.151 Mr Mark Isaacs, a former worker in the RPC, also argued that the RPC was like a prison:

The 'camp', as I call it, was also encircled by approximately two metre high temporary fencing. Within the RPC there were service provider offices, a staff mess hall, and a parking lot and a separately cordoned camp for the men, also enclosed by temporary fencing and the perimeter of which was patrolled by Australian Wilson Customer Service Officers (CSOs). It was clear they were not to leave these confines. And if people weren't being processed, as indeed they weren't – for months on end – then this was effectively their prison.⁹⁰

1.152 Former Chief Justice the Hon Geoffrey Eames AM QC submitted that '[t]he uniforms of guards and detainees, and their body language and activity, suggested that the camp was a prison, albeit without visible weapons'.⁹¹ Mr Eames elaborated on this view at a public hearing:

I know there was a big debate in Australia about whether it was right to call the detention centres a prison or not. I have seen plenty of prisons and as much as they have physical constraints they have an atmosphere about them

86 Professor David Isaacs and Ms Alanna Maycock, *Submission 66, Attachment 1*, pp 4-5.

87 IHMS, response to *Submission 66*, p. 4.

88 See, for example: Ms Alanna Maycock, *Submission 66*, p. 2;

89 *Submission 82*, p. 6.

90 Mr Mark Isaacs, *Submission 67*, p. 1.

91 Mr Geoffrey Eames AM QC, *Submission 70*, p. 9.

of control and removal of entitlements, and certainly in my walking around the camp, seeing the demeanour and the interaction between the security guards and the people detained in the centre, it just struck me like any number of prisons I have seen.⁹²

1.153 Ms Betts also discussed the prison analogy:

I found the points system used for the canteen strikingly similar to an incarceration, as was the physical nature of the standardised mealtimes and standardised shower times—that sort of regimented living, I guess you would call it. In terms of the similarities of the actual experience of the detainees, it was quite dissimilar. The asylum seekers have no knowledge of the length of their stay. There are so many questions, and they do not know how long they are going to be there for. They do not see any hope of what is going to happen in the future.⁹³

Use of Boat Identification Number in place of name

1.154 Throughout the inquiry, former employees of contracted service providers told the committee that asylum seekers were routinely referred to by their boat Identification Numbers rather than by their names. Submitters told the committee that the routine use of boat ID as the only identifier of an asylum seeker throughout the RPC was having an effect on children and adults, with children signing drawings and self-identifying with a number rather than a name, and adults identifying themselves by number on forms.⁹⁴

1.155 Ms Wilson submitted that:

Although in our office and within Save the Children we identified clients by name, the system used on Nauru by all the other service providers was to identify asylum seekers by boat ID numbers...On countless occasions I observed children walking through and calling out their ID numbers to identify themselves, which were then recorded by Wilson's security staff. When asked for their name, both children and adults will respond immediately by reciting their boat ID number instead of their names. It is also typical that children will sign their pictures or drawings with ID numbers rather than names.⁹⁵

1.156 Mr Andrew Harris, a former worker in the RPC submitted that he 'was told by security staff that they are briefed to use boat IDs of asylum seekers and not names'. Mr Harris continued:

This means that the main contact asylum seekers have with staff is with people who are referring to them by a number. Asylum seekers noted this to

92 Mr Geoffrey Eames AM QC, *Committee Hansard*, 20 July 2015, p. 70.

93 Ms Samantha Betts, *Committee Hansard*, 20 July 2015, p. 64.

94 See, for example, Darwin Asylum Seeker Support and Advocacy Network, *Submission 61, Attachment 1*, p. 3; IHMS, response to *Submission 66*, p. 3; Ms Charlotte Wilson, *Submission 79*, p. 2; *Submission 82*, pp 4-5; Ms Natasha Blucher, *Submission 83*, p. 11, p. 18;

95 Ms Charlotte Wilson, *Submission 79*, p. 2.

me as a dehumanising experience that didn't uphold their dignity as a human being.⁹⁶

1.157 One former STC employee submitted that:

Their [Wilson Security] client lists did not even have a column for the client's names. Just Boat Id and corresponding tent allocation number. This was still common practice (despite conversations confirming that they had been told it must cease) in October 2014 during my last shift on the island.⁹⁷

1.158 Wilson Security advised that the department has issued guidelines against the use of boat IDs in place of names:

...there has always been a clear request or guideline by the department to ensure that we use names, and the clear reason is around the dignity and respect of the asylum seeker...that has not always been the case and there have been times when we have had to reinforce our correct procedure to people. There have been occasions when forms have been produced with just numbers on them and we have had to go about correcting those.⁹⁸

1.159 Ms Blucher refuted the claim by Wilson Security that instances in which boat ID had been used were in error, and told the committee:

...for the entire period of time that I was working in the Nauru RPC, the only Wilson paperwork that I saw—in the form of internal movement sheets, which officers would tick off at the gates as asylum seekers moved through—contained only numbers, only boat identification numbers, and there were no names on those sheets.⁹⁹

No guarantee of safety and security

1.160 Evidence received on a confidential basis from asylum seekers and refugees on Nauru alleged a culture of fear in the RPC with no guarantee able to be given around personal safety and security.

1.161 During the course of the inquiry, the committee sought to clarify whose responsibility it is to guarantee the safety and security of asylum seekers within the RPC. It became apparent that it is the responsibility of the Government of Nauru to guarantee the safety and security of asylum seekers, as discussed below.

1.162 Moreover, the committee sought to understand why, given the employment of a significant security personnel cohort and the involvement of the department at all levels of the operation of the RPC, there were so many allegations of sexual and physical abuse.

96 Mr Andrew Harris, *Submission 93*, p. 7.

97 *Submission 94*, p. 12.

98 Mr Brett McDonald, Security Contract Manager, Wilson Security, *Committee Hansard*, 20 July 2015, p. 36.

99 Ms Natasha Blucher, *Committee Hansard*, 20 July 2015, p. 55.

1.163 The lack of safety and security extends outside of the centre, to the entire island of Nauru. The committee heard from submitters that tension existed between Nauruan locals and refugees resettled into the community.¹⁰⁰ One submitter told the committee of multiple incidents in which refugees in the community had been targeted, and alleged that there was no protection available to them.¹⁰¹

1.164 ChilOut submitted that '[t]he settlement of refugees amongst the Nauruan population places them once again in proximity with the perpetrators of sexual abuse',¹⁰² and told the committee that unaccompanied minors released into the community had faced risks to their safety:

...29 unaccompanied children (UACs) were released into the community on Nauru following fears for their safety while held in the family compound within the RPC.

In the following weeks, the teenage boys were subjected to a series of physical and verbal attacks by a group of locals, with several of the boys requiring hospitalisation as a result of their injuries.¹⁰³

1.165 The department reported to Comcare an incident on 23 November 2014 in which two unaccompanied minors were assaulted, with the brief description: 'Assault of 2 unaccompanied refugee minors, superficial injuries'.¹⁰⁴ It was classed as a non-notifiable incident and was not investigated by Comcare. It is not known to the committee whether the incident referred to Comcare is the same incident referred to by ChilOut.

1.166 Professor Isaacs relayed an example of a female asylum seeker who disclosed an allegation of rape to him:

She told me that since the rape, one guard had offered her extra shower time in return for sexual favours (each person was restricted to two minutes a day because of water restrictions), and on another occasion a different guard offered marijuana in return for sexual favours. She wept uncontrollably for ten minutes when telling me her story...¹⁰⁵

1.167 Ms Diallo submitted an example of the threat of sexual violence: 'One particular 13 year old girl, had received threats while in the camp to her physical safety, and there had been threats of rape made to her older sister'.¹⁰⁶

100 See, for example: Soroptimist International (Brisbane Club), *Submission 22*, p. 3.

101 *Submission 71*, pp 1- 2.

102 ChilOut, *Submission 13*, p. 11.

103 ChilOut, *Submission 13*, p. 6.

104 Australian Lawyers' Alliance, Supplementary to *Submission 14*, p. 39. This is incident #339.

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

106 Ms Kirsty Diallo, *Submission 64*, p. 6.

Sexual assault of women and children outside the RPC

1.168 On top of the threats received while living in the RPC, it was put to the committee that asylum seekers had deep concerns about being settled in the community because of fears for their safety. One submitter stated:

It became clear early that, only very limited planning from DIBP and the Nauruan Government had gone into the ‘settlement’ of Asylum Seekers found to be refugees on Nauru.

Refugees were released from the OPCs with very limited information on what to expect in the Nauruan community. Some Asylum Seekers, especially the SAFs [Single Adult Females], were very scared about leaving the OPC to go into the Nauruan community, as there were many rumours on how refugees in the community would be treated particularly around being raped or being attacked by dogs.¹⁰⁷

1.169 DASSAN submitted multiple accounts of asylum seekers who had expressed fears of being released into the Nauruan community. Examples were given of instances in which female asylum seekers had been sexually harassed by RPC staff, who intimated that the harassment would continue once the asylum seekers were released into the community.¹⁰⁸ One example in particular reveals the level of threats women receive simply undertaking day-to-day tasks while in the RPC, and what they can expect if they are resettled:

When the women went to the office/ supplies area, to obtain goods, the guards harassed them about wanting to be with them in the local community when they were released. When this was ignored by the women, the guards said that they would show them what would happen to them on the outside.¹⁰⁹

1.170 A former Wilson Security employee submitted other examples of this harassment by Nauruan men when women are resettled in the Nauruan community:

I received a phone call from a refugee living in the community after receiving a positive RSD. She sounded deeply distressed and told me her friend had just called her saying a Nauruan is trying to break into her room. The Nauruan male was known to the female refugee in the room he was attempting to enter. Eventually the male broke the door handle and left. I saw the broken door handle the following day while walking to the Anibare boat harbor. I am aware that there are frequently drunk Nauruan males entering the refugee accommodation sites in the community calling for females to come out of their rooms.¹¹⁰

1.171 Ms Wilson submitted that she had witnessed a threat of rape made to female asylum seekers, saying: 'I have witnessed a Nauruan security guard telling a group of

107 *Submission 82*, pp 7-8.

108 DASSAN, *Submission 61*, p. 8,

109 DASSAN, *Submission 61*, p. 9.

110 *Submission 62*, p. 3.

single Somali women that if they run away 'you will get raped by the local boys'.¹¹¹ Another submitter wrote that an incident report was filed for this allegation, but with no outcome known.¹¹²

Incident of May 2015

1.172 Submissions to the inquiry related an incident in May 2015 in which a female asylum seeker participating in the 'open centre' was found disoriented and with injuries near a road on the island, after failing to return to the centre.¹¹³ The incident was also reported in the media. The submissions alleged that the asylum seeker had been sexually assaulted and beaten.

1.173 One submitter alleged that proper medical care had not been administered, and that proper police procedures were not followed.¹¹⁴ This was echoed in other evidence to the committee where the committee was advised that the police who had responded to the incident had stopped to 'watch a fireworks display for 45 mins' with the asylum seeker in the car before interviewing her at the police station.

1.174 It was put to the committee that the department had denied a request by IHMS to transfer the asylum seeker to Australia for medical treatment. This was also reported in the media.¹¹⁵ Subsequent media reports stated that the asylum seeker was experiencing kidney failure as a result of a hunger strike.¹¹⁶

1.175 The department advised on 20 August 2015 that the asylum seeker had been brought to Australia for treatment.¹¹⁷

1.176 Threats of sexual violence as a means of intimidation are disturbing allegations which have been made in multiple submissions to the inquiry, and only some of these examples are provided above. The allegations not only show the lack of security and safety that can be provided to asylum seekers in resettlement, they also go to evidencing the 'culture of fear' which submitters have referred to throughout the inquiry.¹¹⁸

111 Ms Charlotte Wilson, *Submission 79*, p. 7.

112 *Submission 82*, p. 6.

113 *Submission 71*, p. 1.

114 *Submission 71*, p. 1.

115 Alex McDonald, 'Nauru asylum seeker rape victim refused medical treatment in Australia, family says', *ABC News*, 12 August 2015, <http://www.abc.net.au/news/2015-08-11/asylum-seeker-allegedly-raped-denied-treatment-in-australia/6689192> (accessed 13 August 2015).

116 Ben Doherty, 'Nauru guard who ordered spying on Sarah Hanson-Young to face inquiry', *The Guardian*, 19 August 2015, <http://www.theguardian.com/world/2015/aug/19/nauru-guard-who-ordered-spying-on-sarah-hanson-young-to-face-inquiry> (accessed 20 August 2015).

117 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 20 August 2015, p. 40.

118 See, for example: Josephite Justice Office, *Submission 12*, p. 4; Ms Viktoria Vibhakar, *Submission 63*, p. 35; Mr Mark Isaacs, *Submission 67*, p. 3.

1.177 The inability for vulnerable women and children to be removed from situations of family violence, assault, abuse and harassment was noted in the committee's report to be at odds with best practice and not of the standard required in Australia. The Australian Greens believe that the protection of asylum seekers, particularly children, is limited by the inability for vulnerable people to be removed from situations of harm. The resettlement of asylum seekers in Nauru further does not meet this standard.

No oversight or responsibility

1.178 Throughout the inquiry, submitters and witnesses noted an apparent lack of oversight of staff employed within the RPC. Questions were raised regarding:

- responsibility for the safety of asylum seekers;
- the extent of Commonwealth oversight and accountability to the Australian public;
- oversight of decisions made by the Nauruan Government;
- the response of the department to allegations of abuse;
- Australia's human rights obligations; and
- the existence of an overly complicated management framework consisting of numerous contractors and subcontractors.

1.179 Ms Maycock submitted that:

Nauru has a dark, chilling feeling of lawlessness about it, a feeling that you can behave as inappropriately as you wish, with no respect or regard for anyone and there will be no one to answer to and no repercussions or punishment for your actions.¹¹⁹

Responsibility for the safety of asylum seekers

1.180 Transfield Services advised that responsibility for the security of asylum seekers resides with the Nauruan Government:

We are not contractually obliged to guarantee the security of the asylum seekers but we work together with other stakeholders to ensure that it is a secure environment. The centre is under the operation of the government of Nauru, so they have the overarching legal obligations that exist in that country to guarantee the safety of the citizens and the people in the centre.¹²⁰

1.181 The department also advised that the ultimate responsibility for the personal safety of asylum seekers within the RPC was with the Nauruan Government.¹²¹

119 Ms Alanna Maycock, *Submission 66*, p. 1.

120 Mrs Kate Munnings, Chief Executive Operations - Logistics, Construction & Consulting, Transfield Services, *Committee Hansard*, 20 July 2015, p. 31. Emphasis added.

121 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 20 July 2015, p. 93.

However, legal and human rights bodies submitted that Australia has a non-delegable duty of care to asylum seekers within the RPC on Nauru.¹²²

1.182 There is no capacity for inquiry or scrutiny by the Australian Parliament of the performance of the Nauruan Government against the legal and operational obligations they are purported to hold. Therefore, there are no means for the Australian Parliament and the Australian public to know whether the safety and security of asylum seekers can be guaranteed. This is a returning concern, and once again questions the significant investment of Australian taxpayers' money into Nauru RPC.

1.183 This lack of adequate Commonwealth oversight is discussed below.

Insufficient Commonwealth oversight

1.184 ChilOut submitted that they held concerns over the safety, health and wellbeing of children within the RPC:

We believe that the allegations that are the subject of the Inquiry are extremely concerning and are indicative of a failure by the Australian Government to safeguard the health and wellbeing of children detained in the Regional Processing Centre on Nauru.¹²³

No oversight of the Nauruan Government

1.185 Mr Eames told the committee that scrutiny of the decisions or steps taken by the Nauruan Government were not easily discerned:

The Nauru government had adopted a series of steps which very much invoked secrecy and withheld open discussion about the situation in Nauru generally. The Nauru government would not allow any media attention on the opposition, for example. The media unit in Nauru was told that they could not interview and publish the views of opposition members. That had been the case for quite a while. They passed legislation, which I refer to in my submission, which seems to me is likely to have quite a chilling effect on anyone who would want to be critical of government or government policies. It was not a situation where people would be confident about coming forward...There is a general atmosphere there that you cannot have an open discussion.¹²⁴

No capacity on Nauru

1.186 The Republic of Nauru occupies a small area of 21 square kilometres, and has a population of around 10,000.¹²⁵ The Nauruan Government-issued *Nauru Bulletin* for

122 See, for example: ACFID and ACOSS, *Submission 59*, p. 3.

123 ChilOut, *Submission 13*, p. 2.

124 Mr Geoffrey Eames AM QC, *Committee Hansard*, 20 July 2015, p. 70.

125 The Government of the Republic of Nauru, www.naurugov.nr (accessed 27 May 2015).

June 2015 announced that '[t]he major source of revenue for the Government now comes from the operation of the Regional Processing Centre in Nauru'.¹²⁶

1.187 The *Nauru Bulletin*, issued fortnightly, refers to a number of donations by foreign governments and indicates a reliance on donated goods in order to function. For example, 40 hospital beds and 10 sets of hearing aids were donated recently to the Republic of Nauru hospital by the Republic of China (Taiwan),¹²⁷ and two laptop and three desktop computers were donated by Thailand for use by Nauru's Department of Foreign Affairs and Trade, who said that 'the additional equipment is a great boost for the department and will now allow all the staff members to have access to a computer'.¹²⁸ The reliance on donated goods belies a nation with a severe lack of capacity to host, operate and run a facility like the RPC with fluctuating numbers of asylum seekers.

1.188 Submitters raised questions about:

- the capacity of the Nauru Police Force to investigate crimes;
- no hospital facilities or ongoing staff for pregnant asylum seekers to give birth;
- no laboratory facilities for carrying out secondary drug testing of contracted staff; and
- the collapse of the rule of law.

Capacity of the Nauru Police Force to undertake investigations

1.189 The Moss Review stated that there was a need for a more structured relationship between contracted service providers and the NPF:

At present, the relationship between Transfield Services/Wilson Security and the Nauruan Police Force relies more on individuals rather than a systematic approach.¹²⁹

126 Republic of Nauru, *Nauru Bulletin*, June 2015, http://www.naurugov.nr/media/45875/nauru_20bulletin_20_07_25jun2015_20_28125_29.pdf (accessed 9 July 2015).

127 Republic of Nauru, *Nauru Bulletin*, June 2015, http://www.naurugov.nr/media/45875/nauru_20bulletin_20_07_25jun2015_20_28125_29.pdf (accessed 9 July 2015). Other issues of the Bulletin indicated that the Republic of China (Taiwan) also donated a solar power system for the health centre, and 'will also do repairs this year to the solar street lights and this is valued at USD\$100,000'. Republic of Nauru, *Nauru Bulletin*, February 2015, http://www.naurugov.nr/media/44546/nauru_20bulletin_20_02_17feb2015_20_28120_29.pdf (accessed 9 July 2015).

128 Republic of Nauru, *Nauru Bulletin*, July 2015, http://www.naurugov.nr/media/46005/nauru_20bulletin_20_09_20_20july2015_20_28127_29.pdf (accessed 29 July 2015).

129 Mr Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, 6 February 2015, p. 76.

1.190 The Moss Review also noted the potential for under-reporting of incidences of abuse:

In some cases, transferees told the Review that they had not reported particular incidents because they had lost confidence that anything would be done about their complaints.¹³⁰

1.191 Serious questions were raised throughout this inquiry regarding the capacity of the NPF to adequately and appropriately investigate allegations of criminal activity, with particular attention drawn to their capacity to investigate sexual assault. One submitter alleged that, in the wake of a female asylum seeker being found naked and beaten, no forensic testing was undertaken, and no photographs were taken.¹³¹

1.192 The same submitter went on to allege numerous examples of the lack of capacity of the NPF to respond to incidents and investigate allegations of criminal activity.

1.193 Other submitters made allegations regarding the behaviour of Nauruan police officers, and alleged misconduct.¹³²

1.194 The Castan Centre for Human Rights Law submitted:

...in theory, the Nauruan police force should have primacy in investigations of criminal matters at the centre, the [Moss] report suggests that much of the 'policing' at the centre is in fact done by Transfield Services/Wilson Security, which are contracted by the Australian government and report to the Australian government.¹³³

1.195 The former resident magistrate on Nauru, Mr Peter Law, submitted that there was an:

...apparent failure of the NPF [Nauru Police Force] to properly investigate and charge perpetrators of incidents reported at the Processing Centre concerning allegations of physical and sexual assaults against women and children identified in the Moss Report. The issue of capability is overshadowed by motivation. The lack of action suggests the Nauruan Government is less than interested to see these incidents investigated and prosecuted because such action may reflect adversely on Nauru as a place to process and settle asylum seekers.¹³⁴

1.196 Mr Law also submitted that, in his view, there had been a breakdown in the relationship between the AFP and the NPF:

130 Mr Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, 6 February 2015, p. 46.

131 *Submission 71*, p. 1.

132 See, for example, *Submission 94*, p. 14.

133 Castan Centre for Human Rights Law, *Submission 18*, p. 4.

134 Mr Peter Law, *Submission 28*, pp 1-2.

Until July 2013 the Australian Federal Police (AFP) had performed a very important role in Nauru by providing a senior AFP officer to carry out the role of Commissioner of Police of Nauru, together with logistical and training support to police. The termination by the Nauruan Government of the appointment of Richard Britten as the Commissioner of the Nauru Police Force (NPF) on 19 July 2013, the night of the riots at the Processing Centre, has never been explained. From this time, I lost confidence in the capacity of the NPF to act independently or competently.¹³⁵

1.197 Mr Lee Gordon, Head of Nauru Programs for STC, told the committee:

There are some issues in relation to the police force and its capacity to undertake investigations. It is a small police service. It does not have a lot of detailed comprehensive training around working with people with trauma or even around sexual assaults. So if we were thinking of it in terms of whether that is a competent way to deal with something then I guess there would be a question there as to whether that would be the case.¹³⁶

1.198 The concerns raised by submitters and witnesses regarding the capacity of the NPF to properly undertake investigations reveal a nation that is unable to meet the standards of policing that asylum seekers need to feel protected in the Nauruan community, and a standard Australia has an obligation to ensure exists.

Conclusion

1.199 Throughout its inquiry, the committee received substantive evidence that the conditions of living in the RPC on Nauru are of an unacceptably low standard.

1.200 Evidence put to this committee demonstrates that the conditions within the RPC on Nauru can never be guaranteed to an acceptable standard to protect the human rights of asylum seekers.

1.201 While women continue to experience sexual violence, sexual harassment and sexual exploitation and while children continue to experience abuse at the hands of family members or staff of contracted service providers, with no option to be removed from danger, the onus is on the Australian Government to intervene.

1.202 The Australian Government provides funding for all aspects of the operation and management of the RPC, manages the contracts for service providers, provides funding for Nauruan infrastructure, and selects and transfers asylum seekers to the RPC. Significant amounts of taxpayers' money is invested in the RPC, but with minimal transparency and oversight by the Commonwealth.

1.203 The Australian Government has consistently said that the operation and management of the RPC on Nauru is a matter for the Government of Nauru. The argument that total funding, management of contracts and in-depth involvement in the daily running of the RPC does not amount to control of the RPC is not a compelling one.

135 Mr Peter Law, *Submission 28*, p. 2.

136 Mr Lee Gordon, Head of Nauru Programs, *Committee Hansard*, 19 May 2015, p. 53.

1.204 In asserting that the Nauruan Government has responsibility for the RPC, and therefore assumes the legal responsibilities regarding human rights obligations, the Australian Government is not able to assure the Australian public that their money is being spent wisely or in the best interests of Australians.

1.205 It is concerning that Australian taxpayers' money can be spent in large amounts with such limited reporting to the parliament and to the Australian public.

1.206 Throughout the inquiry, the department, along with head contracted service provider Transfield Services, have advised of the existence of high-level corporate guidelines and policies which they argue ensure an acceptable standard of living. Evidence put to the inquiry has indicated, however, that there is significant disconnect between these documents and the day-to-day running of the Regional Processing Centre. Some submitters even posited that the poor running of the RPC must be intentional, given the existence of these policies, the large amounts of money spent on contracts, and the reassurances of the department and Transfield Services.

1.207 The Republic of Nauru simply lacks the capacity to carry out the operation and management of the Regional Processing Centre in the face of a collapsing rule of law, lack of investigatory infrastructure and general inability to conduct the actual operation and management of the facility.

1.208 Nauru is not and cannot possibly fulfil its obligations under the MOU at present with the complete breakdown of rule of law in the country. The child protection framework in Nauru is inadequate and if removal from harm is not an option then meaningful child protection is impossible. The Nauruan community is just as unsafe for asylum seekers and refugees as the RPC. Removing victims of abuse from the RPC to the community in Nauru will not make them any safer.

Recommendation 5

1.209 The Australian Greens recommend the Nauru regional processing centre be closed and all refugees and asylum seekers living there be transferred to Australia.

1.210 If the regional processing centre is to continue to operate then, in addition to the recommendations in the main report, the Australian Greens recommend:

- (a) that Transfield Services and Wilson Security are disqualified from holding any ongoing contract for services;**
- (b) that the ongoing management of the RPC should be undertaken by the government itself or contracted only to qualified and professional welfare and social workers from a not-for-profit organisation, especially when it comes to the management of the welfare of asylum seekers;**
- (c) video footage recorded within the RPC should not be deleted at any stage. All footage should be provided to the department, which must retain it and make it available for FOI requests;**

- (d) all allegations of misconduct by RPC staff must be investigated by an independent investigator, such as the Immigration Ombudsman; and**
- (e) clothes, shoes, hats, sunglasses, sanitary products and all other basic necessities should be provided in a timely and suitable fashion.**

**Senator Sarah Hanson-Young
Australian Greens Immigration Spokesperson
Senator for South Australia**

Appendix 1

Submissions

1. Confidential
2. Confidential
3. Confidential
4. Confidential
5. Confidential
6. Confidential
7. Confidential
8. Confidential
9. Labor For Refugees
Attachment 1
10. Professor William Maley
11. Professor David Isaacs
12. Josephite Justice Office
13. ChilOut
14. Australian Lawyers Alliance
Attachment 1
Attachment 2
14.1 Supplementary submission
14.2 Supplementary submission
14.3 Supplementary submission
15. Dr Harvey Stern
16. Refugee Council of Australia
17. Immigration Advice and Rights Centre
18. Castan Centre for Human Rights Law
19. UNHCR
20. NetAct
21. Wilson Security

22. Soroptimist International (Brisbane Club)
23. Law Students for Refugees
24. Australian Association of Social Workers
25. Australian Human Rights Commission
26. Mr Max Costello and Ms Paddy McCorry
 - Attachment 1
 - 26.1 Supplementary submission
 - 26.2 Supplementary submission
27. Asylum Seeker Resource Centre
28. Mr Peter Law
29. Transfield Services
 - Attachment 1
 - Attachment 2
 - Attachment 3
30. Save the Children Australia
31. Department of Immigration and Border Protection
 - 31.1 Supplementary submission
32. Australian Churches Refugee Taskforce
 - Attachment 1
33. Amnesty International Australia
34. The Law Society of South Australia
35. The Law Society of New South Wales
36. Name Withheld
37. Name Withheld
38. Name Withheld
39. Name Withheld
40. Confidential
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 47. Confidential
 48. Confidential
 49. Confidential
 50. Confidential
 51. Confidential
 52. Confidential
 53. Confidential
 54. Confidential
 55. Confidential
 56. Ms Caz Coleman
 57. Law Council of Australia
 58. Human Rights Law Centre and UNICEF Australia
 59. The Australian Council for International Development (ACFID) and the Australian Council of Social Service (ACOSS)
 60. Andrew & Renata Kaldor Centre for International Refugee Law at UNSW
 61. Darwin Asylum Seeker Support and Advocacy Network (DASSAN)
 - Attachment 1
 - Attachment 2
 - Response by Wilson Security to this submission
 - Response by IHMS to this submission
 62. Name Withheld
 - Response by Wilson Security to this submission
 63. Ms Viktoria Vibhakar L.C.S.W
 - 63.1 Supplementary submission
 - 63.2 Supplementary submission
 - Response by Save The Children to this submission
 - Response by Wilsons Security to this submission
 - Response by Transfield Services to this submission
 - Supplementary response by Transfield Services to this submission

64. Ms Kirsty Diallo

Response by Save the Children Australia to this submission

Response by Transfield Services to this submission

65. Dr Peter Young

66. Ms Alanna Maycock

66.1 Supplementary submission

Response by Transfield Services to this submission

Response by IHMS to this submission

67. Mr Mark Isaacs

Response by Wilson Security to this submission

Response by Salvation Army to this submission

68. Mr Tobias Gunn

Response by Wilson Security to this submission

69. Name Withheld

Response from Save the Children to this submission

Response from Salvation Army to this submission

Response from Transfield Services to this submission

70. Hon Geoffrey Eames AM QC

70.1 Supplementary submission

71. Name Withheld

71.1 Supplementary submission

Response 1: Wilson Security to this submission

Response 2: Wilson Security to this submission

72. Human Rights Watch

73. Refugee Action Collective Queensland (RAC-Q)

74. Name Withheld

75. Confidential

76. Confidential

77. Confidential

78. Confidential

79. Ms Charlotte Wilson

Response by IHMS to this submission

Response by Wilson Security to this submission

80. Name Withheld

Response by Wilson Security to this submission

Response by IHMS to this submission

81. Name Withheld

Response by Wilson Security to this submission

Response by IHMS to this submission

82. Name Withheld

Response by Wilson Security to this submission

Response by IHMS to this submission

83. Ms Natasha Blucher

83.1 Supplementary submission

Response by Wilson Security to this submission

Response by IHMS to this submission

84. Name Withheld

Response by Transfield Services to this submission

Response by Wilson Security to this submission

Response by Save the Children to this submission

85. Ms Samantha Betts

Response by Transfield Services to this submission

Response by Wilson Security to this submission

Response by IHMS to this submission

86. Confidential

87. Confidential

88. Confidential

89. Confidential

90. Confidential

91. Name Withheld

92. Ms Katherine Cole

93. Mr James Harris

94. Name Withheld

Response by Wilson Security to this submission

Response by IHMS to this submission

95. Mr Jon Nichols

95.1 Supplementary submission

Response 1: Wilson Security to this submission

Response 2: Wilson Security to this submission

Response 3: Wilson Security to this submission

Response 4: Wilson Security to this submission

Response by the Department of Immigration and Border Protection

96. Name Withheld

97. Confidential

98. Mr Stuart Thompson

99. Name Withheld

Response by Wilson Security to this submission

100. Name Withheld

101. Confidential

Appendix 2

Public hearings and witnesses

CANBERRA, 19 May 2015

DONNINI, Ms Lara, General Manager, Human Resources, Wilson Security

GORDON, Mr Lee, Head of Nauru Programs, Save the Children Australia

Mc DONALD, Mr Brett, Security Contract Manager, Wilson Security

MUNNINGS, Mrs Kate, Chief Executive Operations, Transfield Services

OSBORN, Mr Derek, Executive General Manager, Logistics and Facilities Management, Transfield Services

ROGERS, Mr John, Executive General Manager, Southern Pacific, Wilson Security

RONALDS, Mr Paul, Chief Executive Officer, Save the Children Australia

WILLIAMS, Ms Angela-Margaret, Commercial, Strategy and Systems Director, Transfield Services

CANBERRA, 9 June 2015

BRISCOE, Ms Cindy, Deputy Secretary, Immigration Status Resolution Group, Department of Immigration and Border Protection

DIALLO, Ms Kirsty, Private capacity

DORRINGTON, Ms Jan, PSM, First Assistant Secretary, Integrity Security and Assurance Division, Department of Immigration and Border Protection

ISAACS, Professor David, Private capacity

LAW, Mr Peter, Private capacity

MAYCOCK, Ms Alanna, Private capacity

PEZZULLO, Mr Michael, Secretary, Department of Immigration and Border Protection

SCHOLTEN, Mrs Kylie, Acting Assistant Secretary, Offshore Operations Branch, Department of Immigration and Border Protection

SKILL, Mr Neil, First Assistant Secretary, Infrastructure and Services Division, Department of Immigration and Border Protection

VIBHAKAR, Ms Viktoria, Private capacity

WINDSOR, Mr Paul, Assistant Secretary, Detention Health Services Support Branch, Department of Immigration and Border Protection

YOUNG, Dr Peter, Private capacity

CANBERRA, 20 July 2015

BETTS, Ms Samantha June, Private capacity

BLUCHER, Ms Natasha Emily, Private capacity

BRISCOE, Ms Cindy, Deputy Commissioner, Australian Border Force Support, Department of Immigration and Border Protection

DORRINGTON, Ms Jan, PSM, First Assistant Secretary, Integrity, Security and Assurance Division, Department of Immigration and Border Protection

EAMES, Mr Geoffrey Michael, Private capacity

Mc DONALD, Mr Brett, Security Contract Manager, Wilson Security

MOY, Ms Cheryl-Anne, First Assistant Secretary, Children, Community and Settlement Services Division, Department of Immigration and Border Protection

MUNNINGS, Mrs Kate, Chief Executive Operations, Logistics, Construction and Consulting, Transfield Services

OSBORN, Mr Derek, Executive General Manager, Logistics and Facilities Management, Transfield Services

O'SULLIVAN, Ms Erin, Commercial and Strategy Manager, Transfield Services

PEZZULLO, Mr Michael, Secretary, Department of Immigration and Border Protection

QUAEDVLIEG, Mr Roman, Commissioner, Australian Border Force, Department of Immigration and Border Protection

ROGERS, Mr John, Executive General Manager, Southern Pacific, Wilson Security

SCHOLTEN, Mrs Kylie, Assistant Secretary, Immigration Compliance Branch, Department of Immigration and Border Protection

SKILL, Mr Neil, First Assistant Secretary, Detention Services Division, Department of Immigration and Border Protection

WHITE, Mr Daron, General Manager Logistics, Logistics and Facilities Management, Transfield Services

WILLIAMS, Ms Angela, Commercial, Strategy and Systems Director, Transfield Services

MUNNINGS, Mrs Kate, Chief Executive Operations, Logistics, Construction and Consulting, Transfield Services

OSBORN, Mr Derek, Executive General Manager, Logistics and Facilities Management, Transfield Services

O'SULLIVAN, Ms Erin, Commercial and Strategy Manager, Transfield Services

WHITE, Mr Daron, General Manager Logistics, Logistics and Facilities Management, Transfield Services

WILLIAMS, Ms Angela, Commercial, Strategy and Systems Director, Transfield Services

CANBERRA, 20 August 2015

BRISCOE, Ms Cindy, Deputy Commissioner, Department of Immigration and Border Protection

DAY, Mr Harry, Solicitor

Mc DONALD, Mr Brett, Security Contract Manager, Wilson Security

NICHOLS, Mr Jonathan, Private Capacity

PEZZULLO, Mr Michael, Secretary, Department of Immigration and Border Protection

ROGERS, Mr John, Executive General Manager, Southern Pacific, Wilson Security

SKILL, Mr Neil, First Assistant Secretary, Department of Immigration and Citizenship

Appendix 3

Additional information received by the committee

1. Correspondence: Correspondence received from Mr Michael Pezzullo, Secretary of the Department of Immigration and Border Protection, provided 20 July 2015.
2. Additional Information: Clarification of evidence received from Wilson Security, provided 25 August 2015.
3. Additional Information: Response from Mr Louis Davies, received 27 August 2015.

Answers to questions on notice

1. Answer to questions on notice, provided by the Department of Immigration and Border Protection, received on 13 May 2015.
2. Answer to questions on notice, provided by Save the Children, received on 29 May 2015.
3. Answers to questions taken on notice, provided by Wilson Security, received 02 June 2015.
4. Answers to questions taken on notice, provided by Transfield Services, received 02 June 2015.
5. Answers to questions taken on notice, provided by the Department of Immigration and Border Protection, received 05 June 2015.
6. Answers to questions taken on notice, provided by the Department of Immigration and Border Protection, received 09 June 2015.
7. Answer to question taken on notice 13.7 (Attachment A), provided by the Department of Immigration and Border Protection, received 09 June 2015.
8. Answer to questions taken on notice 13.7 (Attachment B), provided by the Department of Immigration and Border Protection, received 09 June 2015.
9. Answer to questions taken on notice 13.7 (Attachment C), provided by the Department of Immigration and Border Protection, received 09 June 2015.

10. Answer to questions taken on notice 13.7 (Attachment D), provided by the Department of Immigration and Border Protection, received 09 June 2015.
11. Answer to questions taken on notice 13.7 (Attachment E), provided by the Department of Immigration and Border Protection, received 09 June 2015.
12. Answer to questions taken on notice 13.7 (Attachment F), provided by the Department of Immigration and Border Protection, received 09 June 2015.
13. Answer to questions taken on notice 13.7 (Attachment G), provided by the Department of Immigration and Border Protection, received 09 June 2015.
14. Answer to questions taken on notice 13.7 (Attachment H), provided by the Department of Immigration and Border Protection, received 09 June 2015.
15. Answer to questions taken on notice 13.7 (Attachment I), provided by the Department of Immigration and Border Protection, received 09 June 2015.
16. Answer to questions taken on notice 13.7 (Attachment J), provided by the Department of Immigration and Border Protection, received 09 June 2015.
17. Answers to questions taken on notice, provided by Transfield Services, received 16 June 2015.
18. Answers to questions taken on notice, provided by Ms Kirsty Diallo, received 22 June 2015.
19. Answers to questions taken on notice, provided by the Department of Immigration and Border Protection, received 26 June 2015.
20. Answers to questions taken on notice, provided by Dr Peter Young, received 28 June 2015.
21. Answers to questions taken on notice, provided by the Department of Immigration and Border Protection, received 29 June 2015.
22. Answers to questions taken on notice, provided by the Department of Immigration and Border Protection, received 30 June 2015.
23. Answers to questions taken on notice, provided by Save the Children, received 09 July 2015.
24. Answers to questions taken on notice, provided by Ms Viktoria Vibhakar, received 13 July 2015.

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25. Answers to questions taken on notice, provided by Wilson Security, received 17 July 2015.
 26. Answers to questions taken on notice, provided by the Department of Immigration and Border Protection, received 17 July 2015.
 27. Revised answers to questions taken on notice, provided by the Department of Immigration and Border Protection, received 17 July 2015.
 28. Answers to questions taken on notice, provided by the Department of Immigration and Border Protection, received 20 July 2015.
 29. Answers to questions taken on notice, provided by the Department of Immigration and Border Protection, received 20 July 2015.
 30. Answers to questions taken on notice, provided by the Department of Immigration and Border Protection, received 23 July 2015.
 31. Answers to questions taken on notice, provided by Wilson Security, received 24 July 2015.
 32. Answers to questions taken on notice, provided by Transfield Services, received 27 July 2015.
 33. Answers to questions taken on notice, provided by Transfield Services, received 13 August 2015.
 34. Answers to questions taken on notice, provided by International Health and Medical Services (IHMS), received 24 August 2015.
 35. Answers to questions taken on notice, provided by the Department of Immigration and Border Protection, received 25 August 2015.
 36. Answers to questions taken on notice, provided by Wilson Security, received 25 August 2015.
 37. Answers to questions taken on notice, provided by Comcare, received 26 August 2015.

Appendix 4

Recommendations of the Moss Review

RECOMMENDATION 1: The Department and the Nauruan Government take into account the personal safety and privacy of transferees when making decisions about facilities and infrastructure at the Centre.

RECOMMENDATION 2: Contract service providers review their guidelines relating to sexual harassment and sexual relationships to ensure that staff members understand what behaviour is acceptable in the context of a Centre with a diversity of cultures.

RECOMMENDATION 3: The Department give consideration to how it could support the Government of Nauru to enhance forensic services to investigate, record and prosecute incidents of sexual and other physical assault in the Centre.

RECOMMENDATION 4: Nauruan Government officials and the Department review and enhance the existing policy framework for identifying, reporting, responding to, mitigating and preventing incidents of sexual and other physical assault at the Centre. All staff members working at the Centre (Nauruan, Departmental and contract service provider) must understand the framework and their responsibilities under it.

RECOMMENDATION 5: The Department liaise with the Government of Nauru to ensure that child protection issues are reflected in the work currently being done on the Nauruan criminal code.

RECOMMENDATION 6: The Department and the contract service providers continue to work with the Nauruan Government to ensure that a robust child protection framework is developed.

RECOMMENDATION 7: All contract service providers review their existing policies in relation to social media to ensure that their staff members have a clear understanding of their obligations concerning its use.

RECOMMENDATION 8: The Department review contract provisions and other guidelines to ensure that the obligation on contract service providers to report any data loss is explicit.

RECOMMENDATION 9: Noting the current AFP investigation, the Department review its decision which required Save the Children to remove ten of its staff members from providing services in Nauru and in so doing consider the staff members individually. The review would include providing:

- a. Save the Children with the information the Department relied on; and
- b. the opportunity for Save the Children to address the allegations concerning its staff members.

In the event that the decision in relation to any of the ten Save the Children staff members is reversed, the Department make representations to the Government of Nauru about the Nauruan removal order and its consequences.

RECOMMENDATION 10: The Department ensure that Nauruan operation and management of the Centre is enhanced through a more joined-up approach between the Nauru an operations managers and the contract service providers.

RECOMMENDATION 11: Greater cooperation between the contract service providers be encouraged, including through the Department:

- a. ensuring that contract service provider staff members have a clear understanding of each other's roles and responsibilities;
- b. reviewing the range of meetings at the Centre to ensure that information is shared effectively; and
- c. taking a more proactive role to ensure that contract service providers are working cooperatively together and are responsive to each other.

RECOMMENDATION 12: The Department ensure that the relationship between Transfield Services/Wilson Security and the Nauruan Police Force becomes more structured and is based on cooperative and consistent interaction.

RECOMMENDATION 13: The Department consider the feasibility of assisting the Nauruan Police Force to increase its effectiveness through the appointment, on a limited term basis, of an AFP officer with executive authority.

RECOMMENDATION 14: The Nauruan Police Force have greater visibility in the Centre based on community policing and explore ways to include transferees and refugee settlers in community policing and law enforcement roles.

RECOMMENDATION 15: The Department ensure that there is a more joined-up approach between the Wilson Security intelligence unit and the Nauruan Police Force.

RECOMMENDATION 16: The Department work with the Nauruan Government to extend the Nauruan Police Force Community Liaison Officers Program to the Centre.

RECOMMENDATION 17: The Department and contract service providers review and enhance existing efforts to ensure that Nauruan staff members are treated with respect and that there is courteous regard shown for the Republic of Nauru. This requirement could be enhanced through:

- a. the induction programs for all non-Nauruan contract service provider staff members about Nauruan culture and Nauruan society be delivered by Nauruans;
- b. establishment of a framework to deliver positive messaging about Nauru;
- c. the Department taking the lead with its contract service providers to assist Nauruan authorities to continue to find ways to introduce transferees and Nauruans to each other's cultures and traditions.

RECOMMENDATION 18: The Department work with Nauruan authorities and contract service providers to develop new strategies and training programs to build the capacity of the contract service providers' Nauruan workforces.

RECOMMENDATION 19: The Department consider the draft protocol suggested by the AFP for protest and incident management to assess whether it adds value to existing emergency management plans.