

The Senate

Legal and Constitutional Affairs
References Committee

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

December 2014

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List of abbreviations

AEDT	Australian Eastern Daylight Time
ALA	Australian Lawyers' Alliance
CAPS	Claims Assistance Provider Scheme
CCTV	Closed Circuit Television
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
DIBP	Department of Immigration and Border Protection
DIAC	Department of Immigration and Citizenship
ECO	Emergency Control Organisation
HRP	Humanitarian Research Partners
HRLC	Human Rights Law Centre
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICSA	Papua New Guinea's Immigration and Citizenship Service Authority
IHMS	International Health and Medical Service
IMA	Irregular Maritime Arrival
IOM	International Organization for Migration
IRT	Incident Response Team
JATF	Joint Agency Task Force
MOU	Memorandum of Understanding
OSB	Operation Sovereign Borders
PNG	Papua New Guinea
PNG CMO	Papua New Guinea's Chief Migration Officer

OPC	Offshore Processing Centre*
RPC	Regional Processing Centre*
RPNGC	Royal Papua New Guinea Constabulary
RRA	Regional Resettlement Arrangement (signed by Australia and Papua New Guinea in July 2013)
RSD	Refugee Status Determination
SAM	Single Adult Male
SAS	Special Air Service
SSO	Safety and Security Officer (job title of G4S's general security officers)
STTARS	Survivors of Torture and Trauma Assistance and Rehabilitation Service
TPV	Temporary Protection Visa
TSA	The Salvation Army
UNHCR	United Nations High Commissioner for Refugees

* Both these terms are used to describe the centre at Manus Island.

Recommendations

Recommendation 1

8.26 The committee recommends that the Australian Government ensure an adequate and effective investigation into the criminal assaults perpetrated against individuals detained at the Manus Island Regional Processing Centre during the events of 16 to 18 February 2014, including by assisting the Papua New Guinea authorities in any ongoing investigations and facilitating the taking of witness testimony from individuals present at the incident who are now in Australian territory.

Recommendation 2

8.35 The committee recommends that the Australian Government acknowledge its responsibility to respect, protect and fulfil the human rights of individuals detained at the Manus Island Regional Processing Centre.

Recommendation 3

8.39 The committee recommends that, in accordance with the right to an effective remedy and right to health in international human rights law, the Australian Government:

- acknowledge and take responsibility for violations of human rights in relation to the incident at the Manus Island Regional Processing Centre from 16 to 18 February 2014; and
- provide compensation to those who have suffered human rights violations, including to Mr Reza Barati's family and to asylum seekers who were injured during the incident.

Recommendation 4

8.40 The committee recommends that the Australian Government ensure that all asylum seekers injured in the violence at the Manus Island Regional Processing Centre from 16 to 18 February 2014 receive adequate professional assistance, including medical treatment, full rehabilitation and mental health services, as well as independent legal advice.

Recommendation 5

8.49 The committee recommends that, in the interests of transparency and accountability, the governments of Australia and Papua New Guinea take measures to facilitate appropriate access to the Manus Island Regional Processing Centre, including:

- **allowing United Nations representatives full access to the centre and transferees;**
- **permitting qualified lawyers, including lawyers certified to practice in Australia, access to the centre in order to meet with transferees and provide legal assistance;**
- **allowing the Australian Human Rights Commission to regularly inspect the centre and meet with centre staff and transferees; and**
- **permitting journalists to visit the centre and speak freely with centre staff and transferees.**

Recommendation 6

8.52 The committee recommends that Transfield Services and the Australian Government ensure that service provider staff employed at the Manus Island Regional Processing Centre be provided with sufficient workplace training to perform their roles, in line with the standards applicable to employees working in detention environments in Australia, and accounting for the particular difficulties associated with working in remote conditions.

Chapter 1

Introduction and background

Referral of the inquiry

1.1 On 5 March 2014, the Senate referred the following matter to the Legal and Constitutional Affairs References Committee for inquiry and report by 26 June 2014:

An inquiry into the incident at the Manus Island Detention Centre from 16 February to 18 February 2014, with particular reference to:

- (a) the chronology of events;
- (b) the sequence of events and factors that gave cause to the incident;
- (c) the sequence of events that led to, and the cause of, Reza Berati's death;
- (d) contractor, subcontractor and service provider involvement and response;
- (e) Department of Immigration and Border Protection involvement and response;
- (f) Papua New Guinean police, military and civilian involvement and response;
- (g) the Minister for Immigration and Border Protection's conduct before, during and after the incident;
- (h) protocols and procedures observed by agencies in the detention centre;
- (i) any documents, including incident reports and emails as well as briefings involving staff, employees, contractors and subcontractors involved in or responding to the incident;
- (j) any communications between the Minister for Immigration and Border Protection and the Government of Papua New Guinea, the Department of Immigration and Border Protection, contractors, sub-contractors and service providers regarding the incident;
- (k) the Australian Government's duty of care obligations and responsibilities;
- (l) refugee status determination processing and resettlement arrangements in Papua New Guinea; and
- (m) any other related matters.

1.2 The reporting date for the inquiry was subsequently extended to 5 December 2014.¹

1 *Journals of the Senate*, 26 June 2014, p. 1017; *Journals of the Senate*, 2 September 2014, p. 1390; *Journals of the Senate*, 28 October 2014, p. 1629; *Journals of the Senate*, 3 December 2014, p. 1965.

1.3 On 5 December 2014, the committee tabled a short interim report stating its intention to present a final report by 11 December 2014.²

Conduct of the inquiry

1.4 In accordance with usual practice, the committee advertised the inquiry on its website. The committee also wrote to relevant organisations inviting submissions due by 2 May 2014. The committee received 37 submissions. These are listed at Appendix 1.

1.5 The committee held public hearings in Canberra on 10, 11, 12 and 13 June and 11 July 2014. Details of these public hearings are at Appendix 2.

Site visit to Manus Island Regional Processing Centre

1.6 Early in the inquiry, the committee formed the view that making a site visit to Manus Island Regional Processing Centre would greatly benefit the inquiry by enabling senators to inspect the centre and gain a firsthand appreciation for conditions and other factors that may have contributed to the incident in February 2014.

1.7 Overseas travel is not standard practice for Senate committees both in terms of available resources but more specifically because an Australian Senate committee does not have any powers to conduct proceedings outside of Australia. Given the incident that was the subject of this inquiry, this committee was also particularly sensitive to the limitations of parliamentary privilege outside of Australia and the lack of any protection for witnesses located and evidence given extraterritorially.³

1.8 On account of the committee's inability to make a site visit to the centre under its own powers, the committee sought the support and assistance of the Commonwealth Government to do so. On 28 April 2014, the committee wrote to the Prime Minister, the Hon Tony Abbott MP, as well as the Minister for Immigration and Border Protection, the Hon Scott Morrison MP, and the Minister for Foreign Affairs, the Hon Julie Bishop MP, seeking the government's approval and assistance.

1.9 The committee did not receive any response.

Acknowledgements

1.10 The committee would like to thank the organisations and individuals who contributed to this inquiry. The committee appreciates that for many witnesses who were present at Manus Island Regional Processing Centre at the time of the incident it was difficult, and at times distressing, to recount their experiences for the committee. The committee has benefited from their willingness to do so and expresses its particular gratitude to them.

2 Senate Legal and Constitutional Affairs References Committee, *Interim Report into the incident at Manus Island Detention Centre from 16 February to 18 February 2014*, 5 December 2014.

3 Dr Rosemary Laing, Clerk of the Senate, *Advice sought by the committee in relation to evidence from witnesses overseas*, 21 March 2014.

A note on terminology

1.11 The Australian Government refers to the immigration detention facility on Manus Island as the Manus Island Regional Processing Centre (Manus Island RPC). The facility is also commonly referred to as Manus Island detention centre, or the Manus Island Offshore Processing Centre (OPC). This report generally uses the term Manus Island RPC, except where directly quoting from submissions and witnesses and these have referred to the centre by another name.

1.12 Individuals held at the Manus Island RPC have been described by stakeholders to the inquiry as 'transferees', 'detainees' and 'asylum seekers', with these terms sometimes used interchangeably. All three usages appear in this report, but ultimately describe the same groups of individuals; those who have arrived in Australia by boat without a visa, and who have been subsequently flown to Papua New Guinea (PNG) and detained at the Manus Island RPC.

Report structure

1.13 The remainder of this chapter provides background on the policies of mandatory detention in Australia and offshore processing as well as a summary and timeline of the incident which occurred at Manus Island RPC between 16 and 18 February 2014.

1.14 Chapter 2 outlines the administrative arrangements in place at the Manus Island RPC, including the role of PNG authorities, Australian authorities and service providers at the centre.

1.15 Chapter 3 examines evidence received about the physical conditions for transferees at the Manus Island RPC and the services provided at the centre.

1.16 Chapter 4 explores the arrangements in place for refugee status determination and resettlement for individuals at the Manus Island RPC.

1.17 Chapter 5 describes the sequence of events that led to the violent unrest at the Manus Island RPC, and canvasses the chronology of what occurred during the events of 16 to 18 February 2014.

1.18 Chapter 6 outlines the responses to the incident at the Manus Island RPC, including the response of the department and the minister, and criminal investigations in PNG. Subsequent developments at the centre in the months since the events occurred are also discussed.

1.19 Chapter 7 discusses the human rights and duty of care obligations of the Australian Government in relation to the Manus Island RPC.

1.20 Chapter 8 contains the committee's conclusions and recommendations in relation to the incident itself and the ongoing operation of the Manus Island RPC.

Background

1.21 This section of the report provides background to Australia's policies of mandatory detention and offshore processing, the geography and climate of Manus Island, as well as a summary and timeline of the incident which occurred at Manus Island Regional Processing Centre between 16 and 18 February 2014.

Mandatory detention and offshore processing

*From 1992 to 2012*⁴

1.22 The policy of mandatory detention of non-citizens without a valid visa was introduced by the Keating (Labor) government, with bipartisan support, in 1992 through the enactment of the *Migration Amendment Act 1992*. At the time, mandatory detention was envisaged as a temporary and exceptional measure to manage a particular cohort of Indochinese unauthorised boat arrivals.

1.23 The policy was extended to all 'unlawful non-citizens' with the enactment of the *Migration Reform Act 1992* (which came into effect on 1 September 1994).

1.24 Between 1999 and 2001, the number of unauthorised boat arrivals increased to approximately 9500 over that period. These asylum seekers were predominantly from the Middle East. In response, the Howard (Coalition) government introduced a range of measures, including Temporary Protection Visas (TPVs) and the 'Pacific Solution', intended to discourage further boat arrivals and reduce the number of people in detention.

1.25 The 'Pacific Solution' was a policy of offshore processing introduced in response to the events of August 2001 when 433 asylum seekers en route to Australia were rescued from their sinking boat by the Norwegian freighter *Tampa*. The *Tampa* was refused entry to Australia, however, the ship's master defied this order and upon entering Australia territorial waters the ship was forcibly boarded by the Special Air Service (SAS). The asylum seekers on board were subsequently transferred to Nauru.

1.26 Under the Pacific Solution, Christmas Island, Ashmore and Cartier Islands and the Cocos (Keeling) Islands were excised from Australia's migration zone. This meant that non-citizens arriving unlawfully at one of these Australian territories were unable to make a valid application for an Australian visa, including protection visas, unless the bar on the visa application was removed by ministerial discretion. Instead, these asylum seekers were transferred to Offshore Processing Centres which were established at Nauru and Papua New Guinea (Manus Island) where they were detained while their claims for asylum were assessed.⁵ Asylum seekers found to be refugees were resettled in Australia or in a third country, with a preference for resettlement in a third country rather than Australia.

1.27 Between 2001 and 2008, a total of 1637 asylum seekers were detained in the Nauru and Manus Island Regional Processing Centres. Of these 1637, 1153 (approximately 70 per cent) were found to be refugees, with 61 per cent resettled in Australia and the remainder resettled in countries such as New Zealand, Sweden, Canada, and the United States of America (USA).

1.28 During February 2008, under the Rudd (Labor) government, the Pacific Solution was formally ended. The Rudd government announced that the processing

4 Information in this section has been referenced from Janet Phillips and Harriet Spinks, *Immigration detention in Australia*, Background Note, Parliamentary Library, 20 March 2013.

5 Some asylum seekers were also processed on Christmas Island.

centres on Nauru and Manus Island would no longer be used and that future unauthorised boat arrivals would be processed at Christmas Island.

1.29 However, in 2012, in response to an increase in boat arrivals the Gillard (Labor) government reversed this decision and reintroduced the policy of transferring asylum seekers to offshore processing centres in Nauru and Papua New Guinea. The Gillard government stated that offshore detention would be a 'last resort' and that unauthorised arrivals would be detained for identity, health and security checks but once these were completed, it would be up to the then Department of Immigration and Citizenship to justify an asylum seeker's continued detention. Ongoing detention was considered appropriate for people who posed a security risk or who did not comply with their visa conditions.

1.30 Coinciding with the reintroduction of offshore processing of asylum seekers was a government campaign warning asylum seekers that they would be transferred to Nauru or Manus Island if they arrived in Australia by boat and that they would be afforded 'no advantage' over those seeking asylum in Australia whilst in overseas refugee camps.

1.31 Some public commentary around the decision to re-establish offshore processing was critical, describing Manus Island as 'depressing and its only purpose is a jail', citing research demonstrating the negative impact of lengthy detention on mental health.⁶ Archbishop Jeffrey Driver, head of the Anglican Church in Adelaide, described the government's policy as 'inhumane and prohibitively expensive' and argued it was 'punishing the victims in order to discourage the perpetrators'.⁷ The media also reported the limited capacity and lack of readiness of the facility on Manus Island at the time the policy announcement was made.⁸

From 2012 to 2014

1.32 On 8 September 2012, the Australian and Papua New Guinean governments entered into a memorandum of understanding (MOU) relating to regional processing arrangements in Papua New Guinea. The Australian Government described the MOU as 'a significant step towards establishing a regional processing centre on Manus Island' and paving 'the way for processing on Manus Island, subject to the designation of PNG as a regional processing country under Australian law'.⁹

1.33 About one month later, Papua New Guinea was designated as a regional processing country by an instrument signed by the then Minister for Immigration and Citizenship, the Hon Chris Bowen MP under the *Migration Act 1958*.

6 Greg Barns, 'Island "jails" not the answer', *Hobart Mercury*, 20 August 2012.

7 Adam Hegarty, 'Church boss raps asylum law: long wait "inhumane"', *Adelaide Advertiser*, 27 August 2012.

8 Cameron Stewart, 'Few hear the policy on boats', *Weekend Australian*, 1 September 2012.

9 The Hon Chris Bowen MP, Minister for Immigration and Citizenship, 'Australia and Papua New Guinea sign updated memorandum of understanding', *Media release*, 8 September 2012.

1.34 On 21 November 2012, the Gillard government confirmed the first transfer of asylum seekers (a group of seven families of Sri Lankan and Iranian nationalities) from Christmas Island to Manus Island. At the time, the Minister for Immigration and Citizenship stated:

The first transfer to Manus Island has now taken place – and will be the first of many – sending the clear message that people arriving by boat risk being sent to a regional processing centre in either Nauru or Papua New Guinea...To those contemplating the dangerous journey to Australia by boat: people smugglers are lying to you, don't waste your money and don't risk your life – it's just not worth it.

There is no visa on arrival, there will be no special treatment, no speedy outcome and certainly no advantage given to those who come by boat.

On arrival in PNG, the group has undergone local immigration clearance processes before being moved into the regional processing centre at Manus Island, which is currently a combination of temporary and refurbished structures.

Operations at the centre will be overseen by both the Australian and PNG governments, with welfare services provided by the Salvation Army, health services by IHMS and operational support services by G4S. Local Manus Island residents have also been employed at the processing centre.¹⁰

1.35 On 20 June 2013, the Gillard government removed a group of 70 asylum seekers, comprising families with children and vulnerable men, from Manus Island. A spokesperson for the then Department of Immigration and Citizenship stated that the transfer had been made for 'operational reasons'; however, refugee activists believed it was a 'signal that the government was ending detention of families and children on the island'.¹¹ According to G4S, the contractor managing the Manus Island RPC at that time, the decision to remove families from the centre and make the centre a single adult male (SAM) only facility occurred on 15 June 2013.¹²

1.36 On 19 July 2013, the Australian Rudd (Labor) government and the Papua New Guinean Government entered into a Regional Resettlement Arrangement. The arrangement outlined 'further practical measures Australia and Papua New Guinea will pursue together to combat people smuggling' including:

...any unauthorized [sic] maritime arrival entering Australian waters will be liable for transfer to Papua New Guinea (in the first instance, Manus Island)

10 The Hon Chris Bowen MP, Minister for Immigration and Citizenship, 'First transfer to Papua New Guinea', *Media Release*, 21 November 2012.

11 Oliver Laughland, 'Government transports children from detention on Manus Island', *The Guardian*, 20 June 2013, <http://www.theguardian.com/world/2013/jun/20/manus-island-children-removed> (accessed 8 August 2014). See also AAP, 'Asylum families removed from Manus Island: DIAC', *SBS News*, 21 June 2013, <http://www.sbs.com.au/news/article/2013/06/21/asylum-families-removed-manus-island-diac> (accessed 8 August 2014).

12 *Submission 29*, pp 2–3.

for processing and resettlement in Papua New Guinea and in any other participating regional, including Pacific Island, states. Papua New Guinea undertakes for an initial twelve month period to accept unauthorised maritime arrivals for processing and, if successful in their application for refugee status, resettlement.¹³

1.37 The arrangement continued:

Transferees would be accommodated in regional processing centres. Papua New Guinea will undertake refugee status determination. The regional processing centre will be managed and administered by Papua New Guinea under Papua New Guinean law, with support from Australia.

What is unique about this Arrangement is that persons found to be refugees will be resettled in Papua New Guinea and any other participating regional, including Pacific Island, state. Persons found not to be refugees may be held in detention or returned to their home country or a country where they have right of residence.¹⁴

1.38 The arrangement acknowledged the commitment to non-refoulement required under the refugee conventions, as well as Australia and Papua New Guinea's 'obligations for the welfare and safety of any persons transferred to Papua New Guinea under this arrangement'.¹⁵ The arrangement also outlined the assistance and funding Australia would provide to Papua New Guinea in giving effect to the arrangement. In particular, the arrangement stated 'Australia will bear the full cost of implementing the Arrangement in Papua New Guinea for the life of the Arrangement'.¹⁶

1.39 At the time of announcing the Regional Resettlement Arrangement, the then Prime Minister described the policy as 'a hard-line decision' and one intended:

...to make sure that the message is delivered loud and clear to people smuggling networks around the world, and those criminal elements within Australia who may be supporting them that the hopes that they offer their customers for the future are nothing but false hopes.¹⁷

13 Government of Papua New Guinea and the Government of Australia, *Regional Resettlement Arrangement between Australia and Papua New Guinea* (Regional Resettlement Arrangement), 19 July 2013, <http://www.dfat.gov.au/geo/png/regional-resettlement-arrangement-20130719.pdf> (accessed 8 August 2014).

14 Regional Resettlement Arrangement, 19 July 2013.

15 Regional Resettlement Arrangement, 19 July 2013.

16 Regional Resettlement Arrangement, 19 July 2013.

17 The Hon Kevin Rudd MP, Prime Minister, 'Regional Resettlement Arrangement', *Transcript of joint press conference*, 19 July 2013.

1.40 At the same press conference, the then Minister for Immigration, Multicultural Affairs and Citizenship the Hon Tony Burke MP, stated:

In the last couple of weeks, I've removed children and a number of family groups from Manus Island because the facilities, as they are right now, are not appropriate for some of those different groups.

The intention here though, is that we will now bring the quality of those places back up to standard for the processing centre.

So that, where at the moment, we will not be transferring women and children immediately across to Manus Island, the intention is that as the temporary facility moves to a permanent facility, anybody who arrives from now on will be subject to the new rules.

People who are currently within the detention network, within Australia on Manus or on Nauru do not have these rules applied to them.

But from now on, vessels that are intercepted will have the new rules apply to them.¹⁸

1.41 On 6 August 2013, the governments of Australia and Papua New Guinea entered into a new MOU, supporting the Regional Resettlement Arrangement and superseding the MOU of 8 September 2012.¹⁹

1.42 Under the terms of the revised 2013 MOU:

Persons to be transferred to Papua New Guinea are those persons who:

- a. have travelled irregularly by sea to Australia; or
- b. have been intercepted at sea by the Australian authorities in the course of trying to reach Australia by irregular means; and
- c. are authorised by Australian law to be transferred to Papua New Guinea; and
- d. have undergone a short health, security and identity check in Australia.²⁰

1.43 The MOU also stated that Papua New Guinea would host a processing centre (or centres) in Manus Province and that the Papua New Guinean Government would

18 The Hon Tony Burke MP, Minister for Immigration, Multicultural Affairs and Citizenship, 'Regional Resettlement Arrangement', *Transcript of joint press conference*, 19 July 2013.

19 Government of Papua New Guinea and the Government of Australia, *Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to, and assessment and resettlement in, Papua New Guinea of certain persons, and related issues* (2013 MOU), 6 August 2013, <https://www.dfat.gov.au/geo/png/joint-mou-20130806.pdf> (accessed 7 August 2014).

20 Government of Papua New Guinea and the Government of Australia, 2013 MOU, 6 August 2013.

undertake 'to enable Transferees who enter Papua New Guinea under this MOU who it determines are refugees to settle in Papua New Guinea'.²¹

1.44 During September 2013, the Abbott (Coalition) government took office following the 7 September federal election. Prior to the election, the Coalition had announced its 'Operation Sovereign Borders' policy which included the following undertakings:

- establishing a military-led response to combat people smuggling and to protect Australia's borders (Operation Sovereign Borders or OSB);
- treating the border protection crisis as a national emergency; and
- appointing a senior military commander of three-star ranking to lead OSB.²²

1.45 On 19 September 2013 the Abbott government implemented its pre-election commitments, appointing Lieutenant General Angus Campbell DSC AM as Commander of the Joint Agency Taskforce (JATF) with responsibility for OSB.²³ JATF comprises representatives of the Australian Defence Force, Australian Customs and Border Protection Service, the Australian Federal Police and the Department of Immigration and Border Protection (department) and is tasked with ensuring 'a whole-of-government effort to combat people smuggling and protect Australia's borders'.²⁴

1.46 In October 2013, the Joint Agency Task Force initiated a security risk assessment of the Manus Island RPC, with the intent of assessing the capabilities and security limitations of the centre and identifying risks that required mitigation.²⁵ The classified report from this force protection review was provided to the Minister in November 2013, and an unclassified summary of the report's recommendations and their implementation at the centre was provided to the committee at a public hearing on 11 July 2014.²⁶

1.47 The report made recommendations in areas including service provider staffing, security and other infrastructure at the centre, and engagement with the local

21 Government of Papua New Guinea and the Government of Australia, 2013 MOU, 6 August 2013.

22 Liberal Party of Australia, *The Coalition's Operation Sovereign Borders Policy*, July 2013, http://electionwatch.edu.au/sites/default/files/docs/Operation%20Sovereign%20Borders_1.pdf (accessed 11 August 2014), p. 2.

23 Department of Defence, 'Major General Angus Campbell, DSC, AM promoted to Lieutenant General', *Media release*, 19 September 2013.

24 Australian Customs and Border Protection Service, *Operation Sovereign Borders*, <http://www.customs.gov.au/site/operation-sovereign-borders.asp> (accessed 11 August 2014).

25 Lt Gen. Angus Campbell, DSC, AM, Commander, Joint Agency Task Force, *Committee Hansard*, 11 July 2014, p. 18.

26 Lt Gen. Angus Campbell, DSC, AM, *Committee Hansard*, 11 July 2014, p. 33; Document tabled by Lieutenant General Angus Campbell, DSC, AM at a public hearing on 11 July 2014 – Operation Sovereign Borders Manus OPC Force Protection Review.

community. The implementation of recommendations from the Force Security Review is discussed further in chapter 3.

Manus Island

1.48 Manus Island is part of Manus Province in northern Papua New Guinea. It is the largest island in the Admiralty Islands archipelago and is located in the north of the Bismarck Sea, approximately 800 kilometres due north of Port Moresby.

1.49 Manus Island is covered with lowland tropical rainforest. On average, the temperature ranges between 27 and 30 degrees Celsius.

1.50 The population in Manus Province (including Manus Island) is approximately 50,000 people. Lorengau, the capital of Manus Province, is located on Manus Island and has a population of approximately 6,000 people.

Manus Island Regional Processing Centre

1.51 The Manus Island RPC is located on the north of Manus Island at Lombrum on the site of a PNG Naval base.²⁷ The centre is approximately a 40 minute drive from Lorengau town, and about 30 minutes from the local airport.²⁸ A map of the facility provided by G4S is at Figure 1.1.²⁹ It is a 'closed facility', that is, asylum seekers are not free to come and go from the RPC as they choose.

1.52 The area of the Manus Island RPC is approximately 600 metres (east to west) by 150 metres (north to south). A G4S official described the layout of the centre to the committee:

To the north of the Manus Island [RPC] is the coastline, running parallel. To the south is a road called Route Pugwash, which was used by us and the PNG Navy, as they transited, plus civilian traffic. There is dense foliage to the [south], which is part of the PNG Navy land on which the processing centre was based. To the east we had the PNG Navy accommodation and officers' mess and the Navy sports field, which we used during the incident. To the west, there is local residential area which started immediately within 20 metres of the Mike compound and extended outwards to the west, which contained married quarters for Navy personnel as well as other civilian housing.³⁰

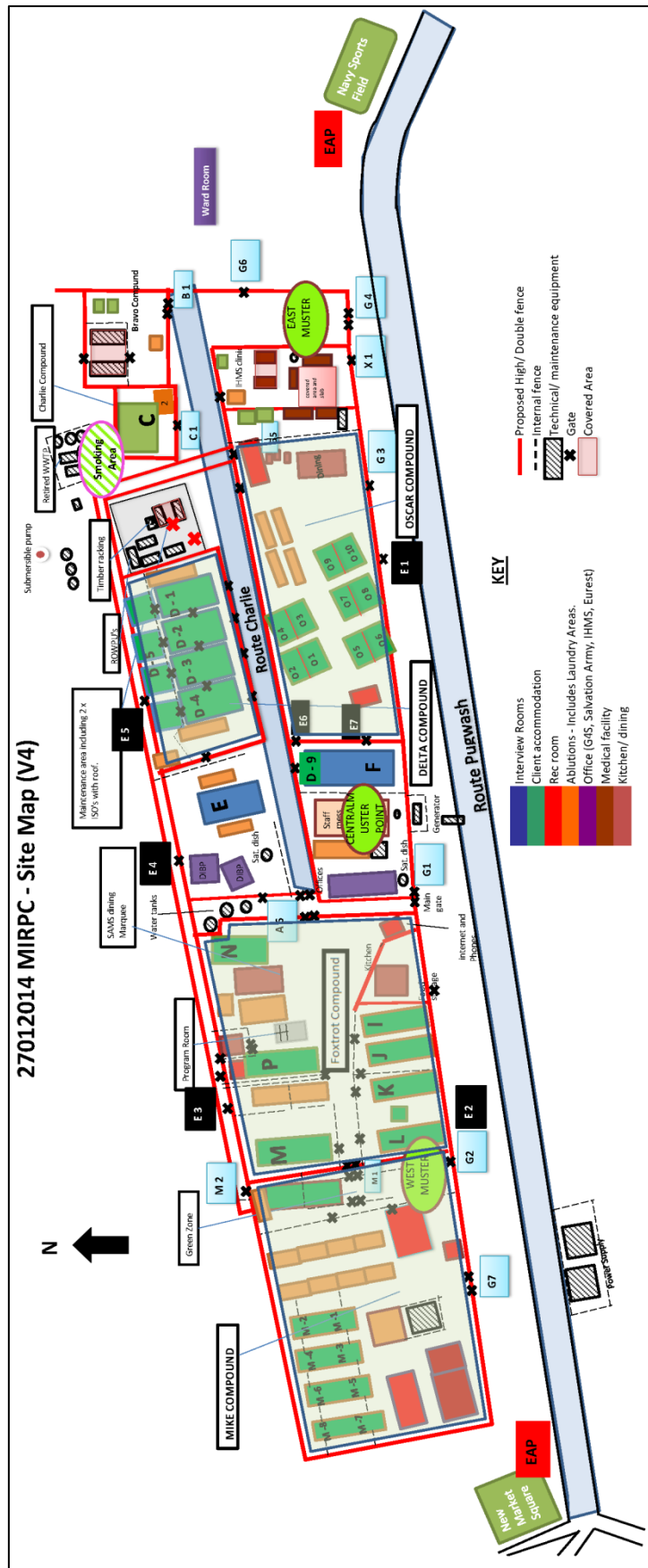
27 Amnesty International, 'This is breaking people: human rights violations at Australia's asylum seeker processing centre on Manus Island, Papua New Guinea', December 2013, (included as *Submission 22*, Attachment 1), p. 36.

28 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, 23 May 2014, p. 20.

29 G4S, *Submission 29*, Attachment 2.

30 Mr Kevin Pye, G4S, *Committee Hansard*, 10 June 2014, p. 38.

Figure 1.1: Manus Island Regional Processing Centre site map



1.53 The Lombrum facility was established in 2012 as a temporary facility, with a site at East Lorengau earmarked for the construction of a permanent facility.³¹ The department explained:

From its inception in November 2012, the Manus site at Lombrum was intended to be a temporary facility right up until the then Prime Minister's announcements of the regional resettlement arrangement in July 2013. From that point it was apparent that the facility at Lombrum would be needed for some time, as well as an intended permanent facility in East Lorengau.³²

1.54 Under the 2012 MOU signed between Australia and PNG, the indicative capacity of the Lombrum facility was about 500 persons.³³ With the RPC changing to a single adult male (SAM) only facility and the introduction of the Regional Resettlement Agreement (RRA) in July 2013, the nature and capacity of the Lombrum centre changed:

It was originally envisaged that the centre would accommodate families, as well as single adult males. With the introduction of RRA—in fact, just prior to that—the government decided to change the mix, and families were taken out of the centre while construction work was progressing towards building the permanent centre much closer to the township of Lorengau. What was there at Lombrum was only ever intended to be a temporary centre. With the introduction of RRA, however, the government, given the commitments that it had made there, effectively transformed Lombrum into a centre which was going to have a longer lifespan and a significant increase in its capacity to its current numbers, which are around 1,200.³⁴

1.55 The implications of these changes for subsequent events at Manus Island RPC are discussed in greater detail in chapter 3.

1.56 Transferees at the centre are accommodated in four main compounds. G4S stated that, at the time of the disturbances in February 2014, Mike compound housed about 420 men; Foxtrot compound housed approximately 320 men; Oscar compound housed 320 men; and Delta compound housed a further 240 men.³⁵

1.57 Oscar and Mike compounds are more recently built facilities than the other compounds; Oscar compound was constructed after July 2013 and completed by

31 The Hon Rimbik Pato OBE, LLB, MP, Papua New Guinea Minister for Foreign Affairs and Immigration, *Update to Parliament on Regional Resettlement Arrangements*, 18 September 2013, p. 4, <http://www.immigration.gov.pg/minister/67-update-to-parliament-on-regional-resettlement-arrangements.html> (accessed 12 August 2014).

32 Mr Mark Cormack, Deputy Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 19.

33 Mr Kenneth Douglas, First Assistant Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 27.

34 Mr Kenneth Douglas, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 27.

35 Mr Kevin Pye, G4S, *Committee Hansard*, 10 June 2014, p. 38.

November 2013, while accommodation in Mike compound was still under construction in late 2013,³⁶ and was housing transferees by early 2014.

Local community reaction to Manus Island RPC

1.58 Initial reports indicated that PNG locals welcomed the Gillard government's 2012 announcement that it would re-open the detention centre. On 23 August 2012, *Radio National* reported that the majority of people on the island were happy with the announcement and that residents expected that the local economy would benefit from the decision. However, reservations about the centre were apparent at this early stage:

There's not a lot of industry or business on Manus, it's a very remote and underdeveloped part of PNG, so everyone sees it here as a massive boost for business...But they're worried, they're concerned that they want to see the benefits, the direct benefits, they want to be intimately involved in setting up any new processing centre.³⁷

1.59 A representative of traditional landowners at Lombrum described the arrangement as a 'boomerang' system where 'Australia contracted their own companies and when the money comes in it bounce[s] back [to Australia]'.³⁸

1.60 By mid-September 2012, local opinion had become more hostile towards the RPC with residents dissatisfied with the lack of consultation. A group of landowners from Lombrum demanded compensation to the value of AU\$45 million before repairs began on the centre. Mary Handen, a community leader, said that the money would allow locals to benefit from the centre by setting up businesses to provide catering, security and transport services.³⁹

1.61 In another report, landowner Mr Chawi Konabe expressed his disappointment and the disappointment of other landowners that they had not been included in the construction of the centre. He threatened that:

[T]he asylum seekers project will use the airport that is on traditional land, will use the roads that passes the communities, you know, the power supply that passes across our areas. You know, worst come to worst, we may stop the services.⁴⁰

1.62 The Australian Broadcasting Corporation (ABC) also reported that discontent amongst local residents and ill-feeling towards the Australian Government were further aggravated by the PNG Government's poor communication with the population of the island.⁴¹

36 Amnesty International, *Submission 22*, Attachment 1, p. 37.

37 Liam Fox, 'Locals welcome refugee centre', *ABC Radio*, 23 August 2012.

38 Liam Fox, 'Manus Islanders want spin-offs from re-opened asylum centre', *ABC Radio*, 23 August 2012.

39 Liam Fox, 'Landowners want \$45m for Manus Island processing centre', *ABC Radio*, 21 September 2012.

40 Liam Fox, 'Manus locals threaten detention camp sabotage', *ABC Radio*, 20 October 2012.

41 Liam Fox, 'Manus locals threaten detention camp sabotage', *ABC Radio*, 20 October 2012.

1.63 In November 2012 it was reported that Salvation Army staff on Manus Island had been withdrawn due to the ongoing dispute between the PNG government and local residents. The Salvation Army's Major Paul Moulds stated: 'Our staff did leave Manus because clients didn't arrive. The land owners of Manus have a dispute with the government, there have been ongoing negotiations'.⁴²

1.64 Mr Konabe's threats materialised in November when a group of landowners blocked the runway at Manus Island's airport. The group also blocked the road to the RPC and the island's naval base. One of the landowners, Porou Papi, sent a petition to the local government asking:

[T]hat the security contracts should be given to landowners. They should be given seven or eight land contracts. There should be a round table discussion with the national government, the Australian Government and the landowners.⁴³

1.65 The Australian Government tried to reassure locals that they would be involved in the building of the permanent facility at Lorengau. The Governor of Manus Island, Mr Charlie Benjamin, also expressed his confidence that negotiations with landowners would prevent further closures.⁴⁴

1.66 In response to local protests and the closure of the airport, the PNG Government increased security on Manus Island by flying in two police riot squads to assist with the arrival of the first group of asylum seekers (in November 2012). Mr Ron Knight MP told *The Australian* that he did not think the landowners would disrupt access to the centre with the riot squads in the area. However, Mr Knight was concerned for other infrastructure on the island that landowners had threatened to target, such as the main power station, and he noted that the centre had mostly employed PNG military personnel instead of local people.⁴⁵

1.67 In July 2013, the ABC's 7.30 current affairs programme visited Manus Island to report on residents' attitude towards the plan to expand the island's processing centre. It was reported that since establishment of the centre, residents had raised concerns regarding: the accumulation of waste from the centre; the proximity of the permanent centre's location to a school; and the recent death of a local resident, Raymond Sipaun, who died after being beaten, allegedly by two PNG police officers. It was also reported that residents were concerned with social and cultural impacts that may arise from sharing the island with the asylum seekers.⁴⁶

42 Gemma Jones, 'Nauru waiting to explode', *Daily Telegraph*, 7 November 2012.

43 Liam Fox, 'Angry landowners sabotage Manus Island processing centre', *ABC Radio*, 13 November 2012.

44 Liam Fox, 'Angry landowners sabotage Manus Island processing centre', *ABC Radio*, 13 November 2012.

45 Rowan Callick, 'Threat to shut down PNG site', *The Australian*, 22 November 2012.

46 Liam Fox, 'Manus Island processing plans raise concerns for locals', 7.30, ABC, 29 July 2013.

Establishment and initial operation of the Manus Island Regional Processing Centre

1.68 The following summary of events relates to the establishment and initial operation of the Manus Island RPC:

Date	Event
August 2012	Gillard government announced the re-commencement of offshore processing in Nauru and Papua New Guinea.
October–November 2012	Protests by Papua New Guinean landowners over 'perceived lack of benefits for Manus Island' from the re-establishment of the RPC. ⁴⁷
21 November 2012	First transfer of asylum seekers to Manus Island following the re-commencement of offshore processing in Nauru and Papua New Guinea.
15–17 January 2013	The United Nations High Commissioner for Refugees (UNHCR) visited the Manus Island RPC. The UNHCR was critical of the detention of children and stated that asylum seekers were 'distressed and confused about their situation. They are in closed detention, without a process in sight'. ⁴⁸
April 2013	G4S had concerns about contraband in the RPC, as well as the conduct of local guards and the PNG Police mobile squad. ⁴⁹
20 June 2013	Australian Government removed families with children from the RPC on Manus Island.
23 June 2013	G4S submitted a revised risk assessment to the then Department of Immigration and Citizenship highlighting 'inadequate security infrastructure' and requested improved fencing and security fencing. ⁵⁰
19 July 2013	Australian and Papua New Guinean governments entered into a Regional Resettlement Arrangement.
After 19 July 2013	Manus Island RPC became a 'single adult male' (SAM) only facility.

47 G4S, *Submission 29*, p. 3 and Liam Fox, 'Angry landowners sabotage Manus Island processing centre', *ABC Radio*, 13 November 2012.

48 UNHCR, 'UNHCR finds significant legal and operational inadequacies at Manus Island', 4 February 2013, http://unhcr.org.au/unhcr/index.php?option=com_content&view=article&id=284:unhcr-finds-significant-legal-and-operational-inadequacies-at-manus-island&catid=35:news-a-media&Itemid=63 (accessed 8 September 2014).

49 *Submission 29*, p. 3.

50 *Submission 29*, pp 2 and 3.

Date	Event
6 August 2013	Australian and PNG governments entered into a memorandum of understanding in support of the RRA which superseded the MOU of 8 September 2012.
7 September 2013	Coalition won the Federal Election.
13 October 2013	G4S submitted a formal proposal for improved security lighting and fencing to the Department of Immigration and Border Protection.
30 October 2013	The number of asylum seekers at Manus Island RPC reached 1100. ⁵¹
October 2013	Force Protection Review conducted by Lt Gen. Campbell and the Joint Agency Task Force to assess security arrangements and risks at the centre.
December 2013	Amnesty International released its report 'This is Breaking People: Human Rights Violations at Australia's Asylum Seeker Processing Centre on Manus Island, Papua New Guinea' ⁵² following a six day site visit to the RPC.
12 December 2013	G4S was advised that the contract for ongoing management of the RPC had been awarded to Transfield Services from 28 March 2014.

Other relevant inquiries and investigations

1.69 In addition to this inquiry, several other inquiries and investigations are worth noting, which deal with the events of 16 to 18 February 2014 at the Manus Island RPC or the operations of the centre more generally.

The Cornall Review

1.70 In the immediate aftermath of the events of 16 to 18 February 2014, the Minister for Immigration and Border Protection announced that a full review of what had occurred would be initiated by the department.⁵³ On 21 February 2014, the minister announced that this independent review would be undertaken by Mr Robert Cornall AO.⁵⁴ The terms of reference provided for the review to investigate

51 *Submission 29*, p. 3.

52 Amnesty International, *Submission 22*, Attachment 1.

53 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island incident', *Press conference*, 18 February 2014, Canberra, www.minister.immi.gov.au/media/sm/2014/sm211891.htm (accessed 24 September 2014); Mr Robert Cornall AO, *Committee Hansard*, 12 June 2014, p. 9.

54 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 14; The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island incident, Operation Sovereign Borders, joint review', *Press Conference*, 21 February 2014, Canberra, <http://www.minister.immi.gov.au/media/sm/2014/sm212027.htm> (accessed 30 October 2014).

and report on the key issues surrounding the incidents and leading up to the events, with the report to be made to the Secretary of the department by April 2014.⁵⁵

1.71 The methodology of the review included:

- conducting interviews with a range of service provider personnel;⁵⁶
- reviewing documentation including intelligence reports, incident reports and daily reports provided to Mr Cornall;
- meeting with senior PNG officials and ministers in Port Moresby;
- conducting interviews with four asylum seekers in the presence of an interpreter;
- conducting several two-hour question-and-answer meetings with asylum seekers who Mr Cornall 'was told were leaders of their communities in each compound';
- obtaining information from asylum seekers provided by way of 270 'Transfield Services feedback forms'; and
- conducting a walkthrough of Mike compound with transferees in order to examine 'bullet marks and so forth in the buildings' which the transferees said had occurred on the night of 17 February 2014.

1.72 The report of the Cornall Review is dated 23 May 2014, and was released publicly on 26 May 2014 and published on the department's website.⁵⁷ The report made 13 recommendations addressing aspects of the operation of the Manus Island detention centre including refugee status determination processing, physical infrastructure and risk management, interactions with local police and the local community more broadly, and measures in relation to service providers' interactions with transferees.⁵⁸

1.73 In relation to the death of Mr Reza Barati, the report set out information from an interview conducted with a witness to Mr Barati's death, but did not make recommendations with respect to assigning individual responsibility for Mr Barati's death. It did recommend, however, that certain information be provided to the PNG police investigation.⁵⁹

55 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 2.

56 Mr Robert Cornall AO, *Committee Hansard*, 12 June 2014, p. 1.

57 Mr Martin Bowles PSM, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 2. The Cornall Review is available at <https://www.immi.gov.au/about/dept-info/files/review-robert-cornall.pdf> (accessed 2 October 2014).

58 Mr Robert Cornall AO, *Review of the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 12-13.

59 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 87-88.

1.74 The department informed the committee that all 13 recommendations of the Cornall Review had been accepted by the government.⁶⁰ The implementation of these recommendations is discussed further in chapter 6.

Criminal investigation

1.75 PNG authorities instigated a criminal investigation into the death of Mr Barati in the aftermath of the events of 16 to 18 February 2014. Two individuals have now been arrested and charged with murder as a result of this investigation; this is discussed further in chapter 6.

60 Mr Martin Bowles PSM, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 2.

Chapter 2

Administrative arrangements at the Manus Island Regional Processing Centre

2.1 This chapter examines the administrative arrangements that underpin the operation of the Manus Island Regional Processing Centre (RPC), including the role of PNG and Australian officials at the centre and the role of service providers engaged at the centre. Issues raised by submitters and witnesses in relation to service provider training at the centre are also discussed.

2.2 Mr Mark Cormack, a Deputy Secretary at the Department of Immigration and Border Protection (department), provided the committee with an overview of the administrative arrangements in place at the Manus Island RPC:

The centre is managed by an administrator, supported by contracted service providers. Most of the delivery is...contracted out. It is very similar in that sense to Australian detention centres where most of the service delivery is done by contractors. The service providers under the agreement are managed by Australia through a contracting arrangement. The roles are clearly defined. The administrator of PNG's ICSA, the Immigration and Citizenship Service Authority, is responsible for the centre. There is an operational manager who is also an officer of PNG ICSA and controls the day-to-day operations of the centre. Then there is a coordinator who was appointed by the Australian government and assists the operation manager through the provision of reports and information from service providers to manage the various contracts.¹

Role of PNG authorities in relation to the centre

2.3 As noted by the department, the head of PNG ICSA has overall administrative responsibility for the centre, while a PNG operations manager is also employed at the centre.² From the evidence presented to the committee, it does not appear that other PNG government officials play a regular role at the centre, although some PNG staff appear to be involved in refugee status determination interviews, along with Australian departmental staff.

2.4 At the committee's public hearing, the department was questioned how regularly the Administrator of the centre, the PNG Chief Migration Officer, visited the centre on Manus Island. Mr Cormack responded as follows:

I do not know his diary, but he is up there very frequently. He also has his own staff base there. He has the centre manager and another staff member there, plus staff members coming and going; so he would be there simply as

1 *Committee Hansard*, 11 July 2014, p. 26.

2 The PNG operations manager was responsible for addressing transferee representatives at a key meeting on the afternoon of 16 February 2014, which is seen as a key trigger to the subsequent protests that ensued on the evenings of 16 and 17 February (see chapter 5).

the responsible, accountable administrator to make an appropriate and timely assessment—in the same way we had to for our government—for his government.³

2.5 The department declined to provide further information in relation to the frequency of the Chief Migration Officer's visits to the centre, but confirmed that these visits involved meetings with departmental officials and service provider heads to discuss a range of topics in relation to the centre.⁴

Role of PNG police

2.6 Maintenance of law and order at the Manus Island RPC is the responsibility of the PNG police. The local branch of the Royal Papua New Guinea Constabulary based at Lorengau deals with any day-to-day matters inside the centre requiring police involvement, for example investigation of offences, arrests and charging those suspected of committing an offence.⁵

2.7 In addition to the local police force, a PNG police mobile squad was deployed outside the centre in 2012 to protect against external threats to the centre. The service provider G4S explained:

[T]he PNG police mobile squad was deployed in October 2012 to deal with unrest from local land owners demanding greater economic benefits from the Centre for local people. These matters were settled through negotiation within 10 to 14 days, but the police mobile squad continued thereafter to maintain its presence in close proximity to the Centre. G4S raised concerns with the Department about the suitability of the police mobile squad given its propensity to use disproportionate force to maintain order.⁶

2.8 The role the PNG police mobile squad played during the events of 16 to 18 February 2014 are discussed in further detail in chapter 5.

Funding for policing services at the centre

2.9 The Australian Government provides funding to the PNG police force for their operations relating to the Manus Island RPC. The Minister for Immigration and Border Protection explained that PNG authorities determine how that funding is allocated:

[T]he arrangement with the PNG police is that the Australian Government makes a payment to the PNG Police in Port Moresby. The process of who and what force is deployed to Manus Island is a matter for the PNG Police, not the Australian Government and their remittances and other things are

3 Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 46.

4 Department of Immigration and Border Protection, *Answers to questions taken on notice at public hearing on 11 July 2014, and written questions* (received 15 August 2014), [p. 12].

5 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, 23 May 2014, p. 78.

6 *Submission 29*, p. 6.

made by the PNG Police in Port Moresby...[W]here they are deployed and how closely they're deployed, they're matters that are determined under the jurisdiction of the PNG Police.⁷

Contractual arrangements between the department and service providers

2.10 The Australian Government provides capacity building and funding for the Manus Island centre and, by agreement with PNG, coordinates the contract administration process for the provision of services at the centre.⁸ Various providers have entered into contracts with the department, representing the Commonwealth, in order to provide services in the areas of garrison and security services, health and medical services, welfare support, and interpreting services. The contractors engaged by the department and their roles are as follows.

G4S

2.11 Garrison support services (including security) at the centre were contracted in October 2012 to G4S Australia, part of the global G4S group. G4S describes itself as 'the world's leading international security solutions group', with more than 618,000 employees operating in over 120 countries.⁹ G4S outlined its approach to providing garrison services at the Manus Island centre in its submission to the inquiry:

G4S has extensive experience in operating detention facilities and immigration processing facilities, which embodies an approach to treat transferees with dignity and respect and to be responsive to their personal and cultural situations. This is reflected in G4S's management plans and policies and in the training given to security staff at the Centre.

The Site Safety and Security Management Plan for the operation of the [Manus Island] Centre sets out the philosophy for the management of safety and security in the Centre:

'The goal is to provide a safe and secure environment for Transferees, Service Provider Personnel, Department Personnel, and all other people at the Site, ensuring that each individual's human rights, dignity, and well-being are preserved.'¹⁰

2.12 G4S described its responsibilities at the centre as maintenance and operational services consisting of: security services; receiving, inducting and discharging transferees; managing and maintaining assets; cleaning services; environmental

7 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island incident, Operation Sovereign Borders, joint review', *Press Conference*, 21 February 2014, Canberra, <http://www.minister.immi.gov.au/media/sm/2014/sm212027.htm> (accessed 30 October 2014).

8 Mr Martin Bowles PSM, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 2.

9 G4S, *Submission 29*, p. 9.

10 *Submission 29*, p. 9.

management services; catering; logistics; transport and escorting of transferees; and providing access to communication services for transferees.¹¹

Security services

2.13 G4S made the following observations regarding the limitations on its staff in exercising search powers or the use of force in maintaining security at the centre:

In providing security services, G4S was contracted to maintain a secure environment and respond to security incidents in the Centre. G4S was not contracted to, and did not have legal power to, act as a police force, had limited ability to use force in the Centre, and no authority over transferees outside of the Centre environment...G4S's security duties in response to transferee violence were to contain and de-escalate the violence and prevent damage to the Centre. This was to be achieved within the strict limitations contained within PNG law, and in particular, the limitations on search powers and use of force. This differs significantly from the powers afforded to security services providers at on-shore Australian Immigration Detention Centres under the *Migration Act 1958* (Cth), which allows specific use of force and search powers.¹²

The Salvation Army

2.14 The provision of welfare services at the Manus Island RPC was undertaken by the Salvation Army between August 2012 and February 2014. The Salvation Army was also contracted to provide welfare services at the Nauru offshore processing centre for the same time period.¹³

2.15 The Salvation Army had responsibilities at the Manus Island centre in the following areas: providing programs and activities for transferees; facilitating the reception, transfer and discharge of transferees; and overseeing the individual management of transferees within the centre.¹⁴

2.16 In relation to programs and activities for transferees, the Salvation Army was obligated to 'develop, manage and deliver structured and unstructured programs and activities designed to provide educational and recreational opportunities, and provide meaningful activities that will enhance the mental health and wellbeing' of asylum seekers accommodated at the centre.¹⁵

11 *Submission 29*, p. 10.

12 *Submission 29*, p. 10.

13 Ms Sharon Callister, CEO Humanitarian Mission Services, Salvation Army, *Committee Hansard*, 11 June 2014, p. 19.

14 Part 2B (pp 46-54), 'Salvation Army – Contract for provision of services on Regional Processing Countries', *Additional Information provided by the Department of Immigration and Border Protection – contracts* (received 30 May 2014), [pp 521-529].

15 Part 2B, Paragraph 3.1.1.a (p. 47), 'Salvation Army – Contract for provision of services on Regional Processing Countries', *Additional Information provided by the Department of Immigration and Border Protection – contracts* (received 30 May 2014), [p. 522].

2.17 The programs and activities component of the Salvation Army's contract also required it to:

- ensure transferees were free to practice their religion of choice and provide religious and cultural liaison between transferees and the department and other service providers; and
- stock and manage a canteen shop that transferees could access using accumulated points to trade for items such as personal care products, telephone cards, stamps, writing paper, tobacco and snack food.¹⁶

2.18 The Salvation Army was responsible for the development and implementation of an individual management plan for each transferee accommodated at the centre. This obligation included:

- implementing a centralised transferee records management system for use by all service providers, and ensuring that all relevant information relating to a transferee was recorded in that system to assist with transferee welfare and management of the site;
- assisting and managing access of transferees to communication services, for private use and for use in the preparation of documents relating to transferees' refugee status determination outcome; and
- monitoring the health and behaviour of transferees and referring transferees for medical treatment where necessary.¹⁷

International Health and Medical Services

2.19 International Health and Medical Services (IHMS) is contracted to provide healthcare services to transferees at both the Manus Island and Nauru offshore processing facilities. The services contracted for include: preventive health care; emergency response; general practice health care; mental health screening and care; health education and advice; referral to hospitals; and arranging the transfer of patients to appropriate medical facilities for specialist services and referrals when required.¹⁸

2.20 Regional Medical Director for IHMS, Dr Mark Parrish, explained further to the committee the nature of IHMS's work at the Manus Island centre:

Services are broadly comparable with those available within the Australian community, taking into account the particular health needs of transferees and recognising the unavoidable limitations of the location of Manus Island. We are also responsible for vector control on Manus Island, which means that we are trying to eliminate mosquitoes. We have a

16 Part B, Clauses 3.2-3.3 (p. 48), 'Salvation Army – Contract for provision of services on Regional Processing Countries', *Additional Information provided by the Department of Immigration and Border Protection – contracts* (received 30 May 2014), [p. 523].

17 Part 2B, Section 5 (pp 50-53), 'Salvation Army – Contract for provision of services on Regional Processing Countries', *Additional Information provided by the Department of Immigration and Border Protection – contracts* (received 30 May 2014), [pp 525-528].

18 Dr Mark Parrish, Regional Medical Director, IHMS, *Committee Hansard*, 11 July 2014, p. 2.

comprehensive program for malaria management. Our team is multidisciplinary; it includes general practitioners, an emergency physician, paramedics, consulting psychiatrists, registered nurses, mental health nurses, psychologists and counsellors, and vector control officers. We have a number of specialists that also visit the centre.¹⁹

2.21 Dr Parrish also outlined contingencies in place for emergency scenarios:

One part of the emergency response capability of the health service, particularly in these remote settings, is a preparedness for a mass casualty event. We have the plans in place to ensure we are ready to respond to an increase in demand on the health service and the treatment of injuries. This includes close relationships with the local hospitals and other hospitals in Port Moresby and Australia, with detailed knowledge of their capabilities.²⁰

Transition of welfare and garrison functions to Transfield Services

2.22 In late 2013 the Australian Government took a decision to alter the service provider arrangements for the Manus Island RPC.

2.23 Transfield Services (Transfield), which had been providing garrison services at the centre on Nauru since September 2012, was awarded the ongoing contract to deliver garrison and welfare services at the Manus Island centre, replacing both G4S and the Salvation Army. G4S was informed by the department in December 2013 that its contract had not been renewed, and advised to transition out to Transfield by 28 March 2014.²¹

2.24 Changes that have occurred at the Manus Island centre as a result of the change of service provider to Transfield are discussed further in chapter 6.

Subcontracting arrangements

2.25 The contactors engaged by the department have the capacity to fulfil their contractual obligations by engaging subcontractors to perform specified functions.

2.26 G4S informed the committee that during its tenure, it subcontracted out functions relating to: managing and maintaining assets; cleaning services; environmental management services; catering; and logistics.²² G4S engaged a PNG security firm, Loda Securities, to provide local employees to work as security officers at the centre, in an arrangement approved by the department.²³

2.27 In relation to the work standards and requirements to be met by local subcontractors, the department's contract with G4S stated:

[T]he parties intend that [G4S] will engage some local entities as subcontractors. The parties recognise that it may not be possible for local

19 *Committee Hansard*, 11 July 2014, p. 2.

20 *Committee Hansard*, 11 July 2014, p. 2.

21 *Submission 29*, p. 2.

22 *Submission 29*, pp 9 and 10.

23 *Submission 29*, p. 10.

entities to meet all of the Requirements [placed on G4S]. The terms on which local entities will be engaged will be agreed between the parties.²⁴

2.28 Transfield has similarly engaged a number of subcontractors to assist in delivering elements of its contract. Wilson Security has been engaged by Transfield to provide security services and other support services at the centre.²⁵ Transfield stated that it has a 'comprehensive list' of subcontractors providing services on Manus Island, but declined to provide the committee with information regarding the identities of other subcontractors it has engaged at the centre.²⁶

Confidentiality obligations imposed on service providers and staff

2.29 Contracted service providers were required to sign confidentiality deeds with the department preventing them from disclosing information relating to their operations at the Manus Island RPC, and noting that such disclosure is punishable under the *Crimes Act 1914*.²⁷ The department stated that such confidentiality requirements are standard practice in Commonwealth contracts.²⁸

2.30 Service provider staff were also required to sign restrictive confidentiality agreements with both the department and their employer in relation to their employment at the centre.²⁹ Several former employees at the centre stated that staff were continually warned that breaches of these confidentiality requirements was punishable, including by prosecution.³⁰

Legal obligations of service providers

2.31 The contracts between the department and service providers impose obligations on service providers to comply with laws and policies.

24 Clause 6.7 (page 15), 'G4S – Contract for provisions of services on Manus Island (PNG)', *Additional Information provided by the Department of Immigration and Border Protection – contracts* (received 30 May 2014), [p. 20]. Similar provisions were included in the contracts of the Salvation Army and Transfield.

25 Mr Derek Osborn, Executive General Manager, Logistics and Facilities Management, Transfield Services, *Committee Hansard*, 1 June 2014, p. 60.

26 Transfield Services, *Responses to questions taken on notice at a public hearing on 11 June 2014* (received 23 July 2014), p. 2.

27 See, for example, Schedule 3 Confidentiality Deed, 'G4S – Contract for provisions of services on Manus Island (PNG)', *Additional Information provided by the Department of Immigration and Border Protection – contracts* (received 30 May 2014), [pp 85-88].

28 Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 32.

29 See: Mr Andrew Wilkie MP, *Submission 4*, p. 1; Ms Elizabeth Thompson, *Submission 19*, p. 3; Ms Kristi Moffatt, *Submission 36*, [p. 1]; Mr Darren Boyd, Regional Managing Director, G4S, *Committee Hansard*, 10 June 2014, pp 62-63.

30 Mr Simon Taylor, *Submission 6*, [pp 1 and 7]; Ms Kristi Moffatt, *Submission 36*, [p. 6]; Mr Steven Kilburn, *Committee Hansard*, 11 June 2014, pp 1-2; Ms Nicole Judge, *Committee Hansard*, 12 June 2014, pp 37-38.

2.32 For example, G4S's contract with the department stated:

[G4S] must, in performing its obligations in this Contract, comply, and ensure compliance by all its Personnel, with:

- a. all applicable laws, including those applicable in Papua New Guinea and those Australian laws that are applicable to the Services or the Site; and
- b. all applicable Commonwealth policies as notified to the Service Provider from time to time.³¹

2.33 Service provider contracts also explicitly provide that service provider employees and subcontractors engaged at the Manus Island centre must comply with Commonwealth Work Health and Safety legislation and develop and implement a Work Health and Safety plan.³²

2.34 The department's contract with IHMS provides that IHMS must conduct its duties in accordance with a list of specified Australian government and departmental policies, as well as comply with all Australia's obligations under any international agreements.³³

2.35 The contracts between the department and service providers are justiciable in Australia, enforceable in state jurisdictions as specified in the individual contracts.³⁴

Role of Australian departmental officials at the centre

2.36 Officers from the Department of Immigration and Border Protection play a central role in overseeing the management and operation of the Manus Island RPC. The department informed the committee that at the time of the incidents in February 2014, there were 15 departmental officers at the centre, comprising 11 operational staff and four transferee interviewers.³⁵

31 Clause 3.3.1 (page 9), 'G4S – Contract for provisions of services on Manus Island (PNG)', *Additional Information provided by the Department of Immigration and Border Protection – contracts* (received 30 May 2014), [p. 9]. An identical clause was included in the Salvation Army's contract with the Department, and a similar clause referring to both PNG and Nauru has been included in Transfield Services' contract.

32 See, for example: Schedule 1, Clause 17.3 (pages 28-29), 'G4S – Contract for provisions of services on Manus Island (PNG)', and clause 17.3 (page 29), 'Salvation Army – Contract for provision of services on Regional Processing Countries', *Additional Information provided by the Department of Immigration and Border Protection – contracts* (received 30 May 2014), [pp 33-34 and 504 respectively].

33 Schedule 15 – Australian Government and Department Policies, 'IHMS Regional Processing Countries Health Services Contract', *Additional Information provided by the Department of Immigration and Border Protection – contracts* (received 30 May 2014), [pp 466-468].

34 The department's contracts with IHMS, the Salvation Army and Transfield Services are all governed under the law of the Australian Capital Territory, while G4S's contract is subject to the law of Victoria.

35 Department of Immigration and Border Protection, *Answers to questions taken on notice at public hearing on 11 July 2014* (received 15 August 2014), [p. 6].

2.37 The department's contracts with the various service providers state that the key departmental personnel at the centre for the purposes of liaising with service providers are a Contract Administrator and a Department Operations Team Leader.³⁶

2.38 Departmental officials closely oversee the activities of service providers at the centre. This arrangement is formalised in a governance framework designed to 'support the effective delivery of services'. This framework includes senior management meetings (generally in Canberra) which deal with high level strategic/tactical issues, as well as local management meetings conducted by staff at the centre dealing with issues at the service delivery levels.³⁷

2.39 The committee received evidence from service provider employees confirming that they were given directions from departmental staff working at the centre, with the department viewed as being in charge of the centre overall.³⁸

Employment of local workers by contracted service providers

2.40 The potential for employment opportunities for local workers at the Manus Island RPC has been highlighted as one of the central benefits to PNG of hosting the centre. Mr Martin Bowles PSM, Secretary of the department, informed the committee that the 'vast majority' of the workforce at the Manus Island centre are PNG nationals, and 'the spin-off training, employment and local business impacts are highly significant'.³⁹

2.41 G4S's contract with the department specified that 50 per cent of security staff, and 75 per cent of cleaning and gardening staff engaged by G4S (either directly or through subcontracting arrangements with local businesses) to work at the centre must be 'local' (that is, either a resident of Manus Province or a business based in the Manus Province).⁴⁰

2.42 The percentages of local staff to be engaged by Transfield across each work area were redacted from the copy of Transfield's contract provided to the committee,

36 See, for example: Clauses 4.2-4.3 (page 10), 'G4S – Contract for provisions of services on Manus Island (PNG)', and clause 4.3, 'Salvation Army – Contract for provision of services on Regional Processing Countries', *Additional Information provided by the Department of Immigration and Border Protection – contracts* (received 30 May 2014), [pp 15 and 486 respectively].

37 See: Schedule 1, Clause 18.2.2 (pages 68-69), 'G4S – Contract for provisions of services on Manus Island (PNG)', and clause 8.2.2 (page 43), 'Salvation Army – Contract for provision of services on Regional Processing Countries', *Additional Information provided by the Department of Immigration and Border Protection – contracts* (received 30 May 2014), [pp 73-74 and 518 respectively].

38 Mr Christopher Iacono, *Submission 20*, [p. 3]; Ms Nicole Judge, *Submission 12*, pp 11-12.

39 *Committee Hansard*, 10 June 2014, p. 2.

40 Schedule 1, Clauses 1.2.2-1.2.3 (page 33), 'G4S – Contract for provisions of services on Manus Island (PNG)', *Additional Information provided by the Department of Immigration and Border Protection – contracts* (received 30 May 2014), [p. 38].

however representatives from Transfield did confirm that, in relation to security staff, its contractual requirement is for 45 per cent of staff to be locally employed.⁴¹

2.43 A fact sheet published by the Australian High Commission in PNG noted that, as at 15 July 2014, 67 per cent of Transfield staff employed at the centre were PNG citizens.⁴²

2.44 Further information published by the High Commission states that, as at 31 July 2014, approximately 1011 PNG citizens were employed to provide services at the Manus Island centre, of which 865 are from Manus. Additionally, 64 per cent of all service provider staff at the centre at that time were PNG citizens.⁴³ A comparison with the same statistics in January 2014 shows that the overall number of local employees increased significantly between January and July 2014; as at 10 January 2014, approximately 680 PNG citizens were employed at the centre, of which 580 were from Manus.⁴⁴

2.45 When asked how it recruits local workers for employment at the centre, a representative from Transfield explained to the committee that it used a team working directly on Manus Island:

[A]s I understand it, we had a team of recruitment specialists on the island. Their job was to get out there. We used some interpreters. We used some local people to help us spread the message. I understand we did some radio spots on the local radio. Clearly, there was, I guess, word-of-mouth activity going on around the centre as well. In some cases people came to us; in some cases we went to the people.⁴⁵

Other economic involvement by PNG businesses and employees

2.46 In addition to locals directly employed at the centre, many other PNG companies are involved in providing goods and services to the facility. The latest publicly released figures state that 18 PNG companies, including five Manus companies, have a direct business involvement providing goods and services to the centre, with an average worth of 1.4 million kina per week (approximately

41 Mr Derek Osburn, Transfield Services, *Committee Hansard*, 11 June 2014, p. 59. Transfield also noted that (unlike for G4S's contract) the definition of 'local' was not specified as Manus Island, see: Transfield Services, *Responses to questions taken on notice at a public hearing on 11 June 2014* (received 23 July 2014), p. 2.

42 Australian High Commission in Papua New Guinea, 'Regional Processing Centre: Economic Opportunities Fact Sheet 1 as at 15 July', p. 1, <http://www.png.embassy.gov.au/pmsb/media.html> (accessed 12 August 2014).

43 Australian High Commission in Papua New Guinea, 'Regional Processing Centre on Manus: Economic and Aid Update Fact Sheet 1 – Economic Opportunities as at 31 July 2014', p. 1, <http://www.png.embassy.gov.au/pmsb/media.html> (accessed 10 September 2014).

44 Australian High Commission in Papua New Guinea, 'Regional Processing Centre on Manus: Economic Opportunities Fact Sheet 1 as at 10 January 2014', p. 1, <http://www.abc.net.au/news/2014-02-27/who-is-responsible-for-asylum-seekers-detained-on-manus/5275598> (accessed 12 September 2014).

45 Mr Derek Osborn, Transfield Services, *Committee Hansard*, 11 June 2014, p. 61.

\$621,000 AUD).⁴⁶ There are currently also ongoing infrastructure construction projects of significant value,⁴⁷ both at the detention centre itself and at other sites in Manus Province, which are utilising local companies and employees.⁴⁸

Challenges associated with the requirement for locally engaged security staff

2.47 G4S representatives discussed with the committee the challenges associated with the requirement for 50 per cent of security staff to be locally engaged:

It presents large challenges from the point of view that Manus Island itself has a population of somewhere between only 40,000 and 50,000 people. There was not a large number of security firms available to us with a large amount of experience. We were actually assisting Loda to establish the company and go through the recruitment process, the selection process and then the training process of the guards who were then employed directly through Loda.⁴⁹

...It is very important to ensure we got this right, because we are working within a local community. It would be the PNG norm to ensure that the workforce reflected the local community, the local clans and the land owners and so on. If we had not got that right we could have set off another round of land owner protests, so we took this forward very carefully and used our PNG expertise to deliver that solution.⁵⁰

2.48 G4S confirmed that a 'high percentage' of the staff engaged through Loda Security would have had no prior experience doing security work.⁵¹

46 Australian High Commission in Papua New Guinea, 'Economic and Development Benefits to PNG of the Regional Resettlement Arrangement as at 7 November 2014', *Fact Sheet*, p. 2, <http://www.png.embassy.gov.au/pmsb/media.html> (accessed 24 November 2014).

47 The managing contractor for these projects, Decmil Australia, has reportedly had its contract with the Commonwealth to deliver these works upgraded to be worth a total of \$235 million AUD. See: Sonia Kohlbacher and Paige Taylor, 'Deal signed for significant Manus Island detention centre upgrade', *The Australian*, 8 September 2014, <http://www.theaustralian.com.au/national-affairs/immigration/deal-signed-for-significant-manus-island-detention-centre-upgrade/story-fn9hm1gu-1227050794419> (accessed 12 September 2014).

48 Australian High Commission in Papua New Guinea, 'Regional Processing Centre on Manus: Economic and Aid Update Fact Sheet 1 – Economic Opportunities as at 31 July 2014', pp 1-2.

49 Mr Darren Boyd, G4S, *Committee Hansard*, 10 June 2014, p. 50.

50 Mr Chris Manning, Managing Director of Immigration Services, G4S, *Committee Hansard*, 10 June 2014, p. 50.

51 Mr Darren Boyd, G4S, *Committee Hansard*, 10 June 2014, p. 50.

Adequacy of staff training for service provider employees

2.49 Training and induction processes for service provider employees were discussed at some length during the inquiry, particularly in relation to staff of G4S and the Salvation Army.

Training of G4S staff

2.50 Several submitters and witnesses commented on the level of training provided to G4S staff.

2.51 G4S's contract with the department placed several requirements on G4S staff, including that they: be appropriately skilled, trained and qualified to provide the services for which they are engaged; satisfy relevant background checks; and are of good character and conduct. Specifically in relation to staff training, there was a requirement that all personnel:

...undergo induction, orientation and ongoing training that complies with the Department requirements when commencing employment with the Service Provider or starting work in relation to the Services and during deployment, including training provided by other Service Providers.⁵²

2.52 G4S informed the committee that all its staff undertook a six day induction training course, generally in groups of five to 20, which involved topics including risk and hazard identification, dynamic and situational security awareness, emergency and incident response, defensive tactics, and cultural awareness. G4S also stated that all staff 'received ongoing refresher training in accordance with a designated training plan throughout their engagement'.⁵³

2.53 In relation to training for the G4S incident response team (IRT), the security team tasked with responding to incidents if a greater level of security was required than the baseline circumstances at the centre dictated, G4S advised:

IRT members not only undertook the induction training but an additional 4-day IRT training course which involved the following topics:

- Emergency and Incident Response
- Defensive Tactic, including use of force philosophy, tactical options, situational decision making, communication strategies and positional asphyxia
- Foot drills without shields
- Unit formations
- Annex/ Yard/ Compound clearance
- Arresting and surrendering

52 Clause 5.4.2 (page 12), 'G4S – Contract for provisions of services on Manus Island (PNG)', *Additional Information provided by the Department of Immigration and Border Protection – contracts* (received 30 May 2014), [p. 38].

53 *Submission 29*, Attachment 3, p. 2.

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- Barricade removal
 - Drills scenarios
 - Fire drills (fire truck)
 - First aid (ambulance).

The IRT also practised defensive shield drills on a daily basis.⁵⁴

2.54 G4S representatives expanded on the level of training provided to IRT members at a public hearing:

[The] IRT teams themselves were given four days intensive initial training. Then they were required to operate—preferably daily, but no less than three to five times a week, they were running ongoing drills in terms of tactical operations on how to deal with the different scenarios that they may face.⁵⁵

...They had their initial training. They were then under supervision of people who were trained to be trainers—train the trainers for that sort of training, be it police, military or prison service. They were then required daily to undertake day and night drills. Each shift was required to undertake drills and report on the efficacy of that training, because it was a training activity. That was logged and so on and so forth. It was a rolling, ongoing process of training.⁵⁶

2.55 G4S summarised its training programs for employees at the Manus Island centre as follows:

The G4S training program draws upon years of experience of G4S in similar situations both in Australia and in other countries around the world. It was also specifically tailored to the conditions and facilities on Manus Island. The Department was provided with the details of this training in February 2013. G4S was told by the Department that it considered G4S's training program to represent best practice.⁵⁷

2.56 The committee received submissions from former G4S employees who disagreed with this assessment of the training provided by G4S. These submitters argued that the level of training provided, both for expat staff and for PNG staff with little or no previous employment history engaged in security roles, was inadequate. Mr Steven Kilburn, employed as a G4S safety and security officer (SSO) from October 2013 to February 2014, stated:

Initial training provided at the [centre] was woefully inadequate. The training was supposed to take 6 days, but probably consisted of less than 16 hours of actual training. There were no dedicated training facilities and we moved from place to place looking for rooms and areas to conduct training.

54 *Submission 29*, Attachment 3, pp 2-3.

55 Mr Darren Boyd, G4S, *Committee Hansard*, 10 June 2014, p. 56.

56 Mr John McCaffery, Deputy General Manager Manus Island Detention Centre, G4S, *Committee Hansard*, 10 June 2014, pp 56-57.

57 *Submission 29*, Attachment 3, p. 3.

The training was inconsistent and often contradictory regarding what powers SSO's had and what actions they could take in relation to use of force. On our third day of training we were sent to the compounds to shadow more experienced SSO's. Approximately 1 hour after being placed in Foxtrot compound as a shadow my SSO was required to leave due to staff shortages. I was then left unsupervised for the remainder of the shift. I had no radio or other means of communication. Other newly arrived SSO's were placed in the same position. Training was stopped prior to the 6 days due to staff shortages and we were placed on shift. No other training was provided to me during my time at the MIRPC.⁵⁸

2.57 Another former G4S officer who declined to be identified commented:

On employment I arrived at the island and completed five days of training. This was conducted on board HMAS Choules and other locations on the island. A variety of training staff was used. I'd say it was the poorest form of instruction I've ever seen in my life. The staff always offered excuses as to where they were at on the training program and cut lessons short. The information provided seemed to be in close relation to one of their prison contracts in Australia. It was embarrassing for the officers trying to learn. Up to four staff were involved with the training. This was conducted in October. On most days towards 2pm we were informed we'd pick up the training later. This was not completed until the refresher training in January.⁵⁹

2.58 Mr Martin Appleby was an SSO who worked at the centre from August 2013 to December 2013 and was given responsibility for delivering training modules to other G4S staff at the centre. He commented:

After my initial training and when rostered on my 1st official day I was handed a training and assessment role in delivering training to both ex-pats and PNG nationals. After delivering the 1st week of training I found that the training lacked the in-depth training required to become [an] efficient SSO...I also warned the training Manager that the training package was insufficient to be able to deliver the correct training level to the PNG nationals...we could not even sufficiently communicate with the people let alone deliver a Australian designed training package to a foreign person in a foreign land in such a short space of time.⁶⁰

2.59 Particular concerns were raised in relation to the IRT training. Mr Paul Skillen, a security supervisor in charge of the IRT at the centre during late 2013, commented:

[A]lthough the PNG nationals were keen, and willing to learn, the level of training was woeful, and I was gravely concerned that the tension was

58 *Submission 18*, pp 1-2.

59 Mr Andrew Wilkie MP, *Submission 4*, p. 11.

60 *Submission 10*, p. 4. See also: Additional information provided to the committee, *Document tabled by Mr Martin Appleby at public hearing on 12 June 2014 – witness statement*, [p. 4].

rising within the centre and they would not be up to the task of dealing with a serious disorder.⁶¹

2.60 Mr Skillen escalated these concerns to G4S management at the centre in November 2013, including that IRT supervisors were often themselves not sufficiently experienced, and that the structure of the IRT system itself needed revising.⁶²

2.61 Mr Kilburn agreed that local security staff engaged at the centre did not have enough relevant experience to be able to deal with the challenges associated with any serious disturbances arising at the centre:

The local Loda staff do not have not only the training but just the experience to be put into that position. It is fine when everything is going fine—it is easy; anyone can do it. The training becomes important when it all goes wrong. That is where experience and training, as always, come to the fore. What we saw that night [17 February 2014] was an example of a lack of not only training but experience in dealing with those issues. Would we go and get people off the street—some people with only middle high-school education—give them six days training and put them into the riot squad at a prison in Australia? Is that something that we would think is a reasonable thing? Of course not. But that is what we have done up there.⁶³

2.62 G4S responded to the concerns raised about staff training by former employees in a supplementary submission to the inquiry:

G4S rejects these statements regarding the adequacy of training and submits that the training provided to expatriate and local PNG staff was appropriate...G4S employed several hundred employees to provide garrison and security services at the Centre. In any organisation of that size there will always be a difference in opinion amongst staff on matters such as training.

To ensure that there was overall satisfaction of the quality and level of training among staff G4S conducted a survey on 142 staff...The results of this survey, indicate that staff were satisfied with the level of training, including specifically experienced expat staff.⁶⁴

Training and standards for Salvation Army employees

2.63 The committee heard disturbing evidence that the Salvation Army deployed some employees offshore with little or no preparation. Ms Nicole Judge, a former Salvation Army employee who worked at the Nauru RPC from September 2012 to July 2013, and then at the Manus RPC from September 2013 to December 2013, stated that she was hired as a general support worker and stand-in case manager without an interview or any job training.⁶⁵ Ms Judge and Mr Christopher Iacono,

61 *Submission 2*, p. 1. See also: Mr Martin Applebly, *Submission 10*, pp 4-5.

62 *Submission 2*, Attachment 1, p. 1.

63 *Committee Hansard*, 11 June 2014, p. 16.

64 *Supplementary Submission 29.1*, p. 5.

65 Ms Nicole Judge, *Submission 12*, pp 2-3.

another former Salvation Army employee who worked at both Nauru and Manus Island, gave evidence to the committee that they had been recruited and deployed offshore solely on the basis of a Facebook post by the Salvation Army on a Macquarie University website. Ms Judge commented:

[The Facebook advertisement] described going to Nauru as like a holiday, and that it would be really fun. I called the phone number and they asked me when can I go and did I know anyone that could come along. I had two friends from school...I called them. Then I think it was two or three days later we were in Nauru. That is what happened.⁶⁶

2.64 Ms Judge told the committee that this process had not prepared her for the immense challenges of working at an offshore processing centre:

Senator HANSON-YOUNG: ...The work that all of the staff do [on Nauru and Manus Island], whether they are in the welfare officer roles, as both of you were, or the security officers, my impression is that it is hard yakka, physically and emotionally. The hours are long. I have spoken to many staff off duty after I have been in the centre and they talk about the constant change between the day and night shifts plays havoc with your own body clock. Were they all things that you expected?

Ms Judge: No. I did not expect anything like that. I honestly thought that going into this it would be some kind of fun experience. I hate to say that because it sounds so naive, but that is what I thought. I was not expecting the heat, the hours, the change in shifts, nothing like that.⁶⁷

2.65 The Salvation Army responded to the assertion that support workers were recruited for deployment to offshore processing centres without adequate skills and experience and without interviews being conducted:

By their very description, support workers roles typically do not require individuals to have particular skills or experience. The role of Support Worker was a very flexible role, which at times consisted of largely unskilled activities, such as sport and recreation activities, facilitating computer and telephone access, operating the kiosks and the provision of basic needs for clients. The Salvation Army maintains that those employees who were engaged in this role were, at all times, adequately skilled to discharge the duties required.

In the earliest stage of recruitment for work on Nauru and Manus Island OPCs, whilst an online application process was used at the first stage of application, this was followed by a telephone interview. Employees were also required to undertake a formal induction process at the commencement of their employment.⁶⁸

66 *Committee Hansard*, 12 June 2014, pp 36-37.

67 *Committee Hansard*, 12 June 2014, p. 37.

68 The Salvation Army, *Submission 34*, pp 7-8.

2.66 The Salvation Army also noted the challenges associated with commencing operations at the offshore processing centres at short notice:

In the early days of The Salvation Army's work on the Nauru and Manus Island OPCs, the [department] required an incredibly rapid start-up, which meant that a formal induction was not developed prior to The Salvation Army getting their first people on the ground. However, at all times (including from the first deployment) employees were briefed by The Salvation Army either prior to departure or immediately upon arrival at the OPCs.⁶⁹

2.67 Departmental officials also commented on concerns raised about inexperienced staff being employed at the Manus Island centre:

Under the contracts between the department, G4S and the Salvation Army, it was the responsibility of the service providers to ensure that staff were appropriately recruited, skilled, qualified and trained. We expect all of our service providers to meet their contractual obligations and we make every effort to ensure that our expectations are clear to service providers.

We were certainly very concerned to hear the accounts that were given here that the Salvation Army staff allegedly recruited people who were not properly assessed, according to the evidence that was given...

[F]rom time to time with contracts in our detention onshore and offshore, community detention, community providers, we received reports of either inappropriate behaviour or inadequate training amongst staff of service providers. When it comes to our attention, we bring that to the attention of the service providers. On a number of occasions that has resulted in the termination of those staff members. That is our normal practice. It did not happen in this instance, as I have acknowledged, and that is regrettable.⁷⁰

69 The Salvation Army, *Submission 34*, p. 8.

70 Mr Mark Cormack, *Committee Hansard*, 11 July 2014, p. 50.

Chapter 3

Conditions and service provision at the Manus Island RPC

3.1 The committee heard a significant amount of evidence throughout its inquiry in relation to the physical conditions and infrastructure in place at the Manus Island RPC, and how these factors affected transferees. Ms Nicole Judge, a former employee of the Salvation Army, gave the following account to the committee of the impact detention at the Manus centre had on transferees:

When I arrived on Manus Island during September 2013, I had previously worked on Nauru for one year. I thought I had seen it all: suicide attempts, people jumping off buildings, people stabbing themselves, people screaming for freedom whilst beating their heads on concrete. Unfortunately I was wrong; I had not seen it all. Manus Island shocked me to my core. I saw sick and defeated men crammed behind fences and being denied their basic human rights, padlocked inside small areas in rooms often with no windows and being mistreated by those who were employed to care for their safety.¹

3.2 This chapter examines the conditions and provision of services to asylum seekers at the Manus Island RPC, and how serious deficiencies created an environment that contributed to the unrest at the centre in February 2014.

Size and composition of the population of asylum seekers

3.3 As discussed in chapter 1, at its re-establishment in November 2012, the Manus Island RPC was intended to be temporary and had the capacity to house somewhere around 500 people, with the population of the centre including families with children. From mid-2013, the total number of asylum seekers detained at the centre increased rapidly. An official from the Department of Immigration and Border Protection (department) explained to the committee:

The build-up of transferee numbers in the middle of last year was sudden. In seven weeks, from 19 July 2013 to the election on 7 September 2013, the centre's population grew from 130 to 723—an increase of almost 600 per cent.²

3.4 In October 2013, the number of asylum seekers detained at the centre reached approximately 1100.³ By February 2014, at the time of the incident, there were 1338 asylum seekers⁴ at the centre of a range of nationalities, as shown in Figure 3.1.

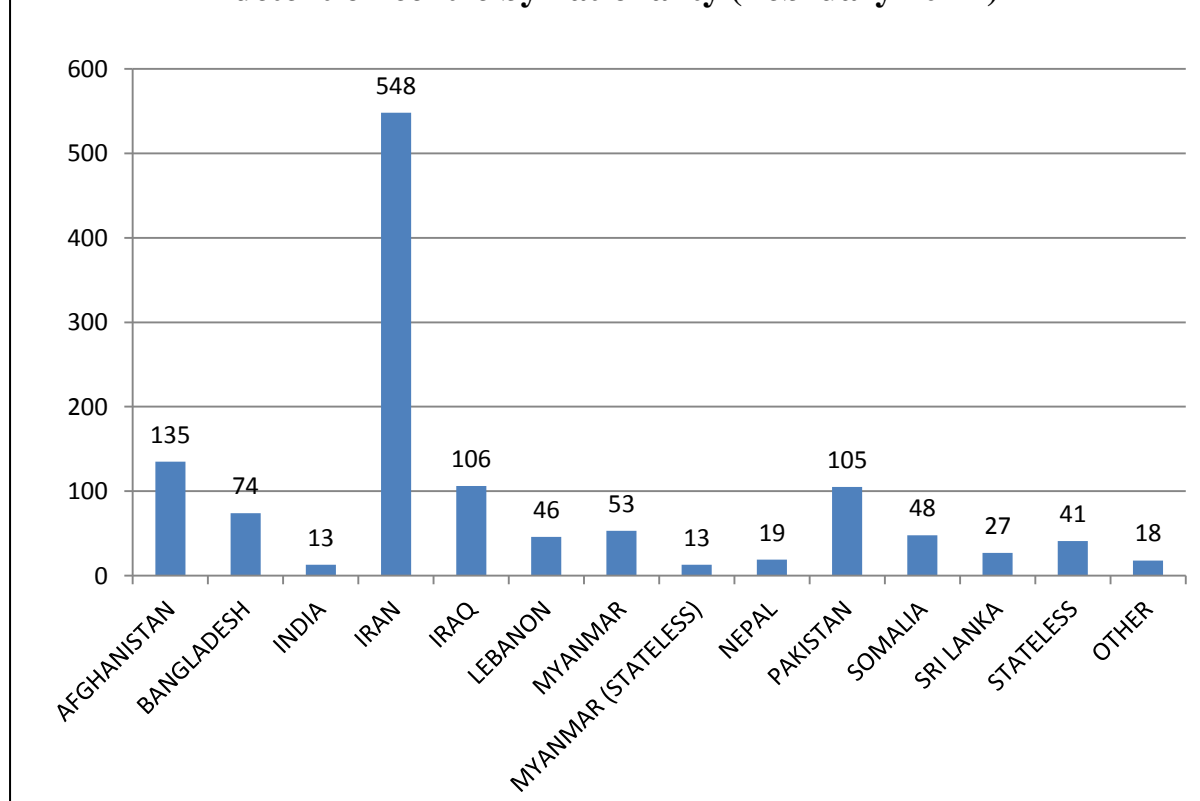
1 *Committee Hansard*, 12 June 2014, p. 31.

2 Mr Mark Cormack, Deputy Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 19.

3 G4S, *Submission 29*, p. 3.

4 *Additional Information provided by the Department of Immigration and Border Protection – population at Manus Island detention centre* (received 6 June 2014), p. 1.

Figure 3.1. Number of transferees at the Manus Island detention centre by nationality (February 2014)



Source: Information provided by the Department of Immigration and Border Protection.⁵

3.5 A representative from the department explained that the decision to remove families with children from Manus Island RPC and convert the centre to one only for detaining single adult males (SAMs) was made on the basis that accommodation at the centre was unsuitable for families.⁶

3.6 The contract between the department and Transfield Services (the contractor currently responsible for management of the RPC), signed in March 2014, indicates that the number of asylum seekers at facilities on Manus Island was intended to almost double from the February 2014 level:

The current focus for the Department is on rapidly increasing OPC infrastructure, operations and service capacity to support and effect an

5 Nationality groups of fewer than 10 individuals have been de-identified by the department due to privacy concerns.

6 Mr Kenneth Douglas, First Assistant Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 29.

increase in Transferee numbers. Manus Province is to accommodate 2400 Transferees[.]⁷

Changing security profile of the centre

3.7 The increase in the number of asylum seekers detained at Manus Island RPC coupled with the change in the composition of the population significantly increased security risks. G4S described the presence of families and children at the RPC as 'a moderating influence on the behaviour of the SAMs'⁸ and stated:

This change [to a SAM only facility] was implemented early in July 2013 and as a result, this increased the risk profile of the Centre significantly due to the increased likelihood of tensions leading to violence amongst a SAMs only group...This large number of adult males housed within a Centre intended for family use posed additional security risks.⁹

Impact on infrastructure and services

3.8 The Salvation Army suggested that the change in the composition of the population and the increased risk profile 'did not require a greater level of complexity in our service delivery' but 'it effectively required us to make sure the right staff were in the right place'.¹⁰ However, the Salvation Army stated that the rapid increase in overall numbers 'put incredible strain on existing infrastructure':¹¹

For example, there were insufficient telephones, computers and internet access for asylum seekers. Faith rooms for asylum seekers were inadequate to allow them to practise their religion. Recreation spaces were taken away to allow buildings for accommodation to be constructed.

There were insufficient dedicated education classrooms, which meant that classrooms had to be frequently undertaken in the hot, unsheltered, outdoor environment. There were insufficient dedicated interview rooms for case management...There were insufficient and, in some circumstances, no interpreters at all for certain cultural groups.¹²

7 Schedule 1, Clause 1.1.8 (page 35), 'Contract in relation to the provision of garrison and welfare services at Regional Processing Countries', *Additional Information provided by the Department of Immigration and Border Protection – contracts* (received 30 May 2014), [p. 634].

8 Mr Chris Manning, Managing Director of Immigration Services, G4S, *Committee Hansard*, 10 June 2014, p. 60.

9 G4S, *Submission 29*, p. 5.

10 Mr Luke Geary, Salvos Legal, *Committee Hansard*, 11 June 2014, p. 31.

11 Mr Luke Geary, Salvos Legal, *Committee Hansard*, 11 June 2014, p. 33.

12 Ms Sharon Callister, CEO Humanitarian Mission Services, Salvation Army, *Committee Hansard*, 11 June 2014, pp 21-22.

Physical facilities and environment at the RPC

3.9 The conditions and facilities at Manus Island RPC were variously described to the committee as harsh, inadequate and inhumane.¹³ Submitters and witnesses who had been employed at the RPC identified numerous concerns, and in some cases expressed their shock, about the poor living conditions including cramped and over-heated sleeping quarters, exposure to the weather, poor sanitation and sewage blockages, unhygienic meals and poorly managed service of meals. Concerns were also expressed about the provision of health—in particular mental health—services. These concerns are set out in greater detail below.

Adequacy of accommodation

3.10 After visiting the Manus Island RPC in December 2013, Amnesty International described the centre as 'resembling a combination of a prison and a military camp' comprising:

...a network of single-storey buildings, staff facilities and "compounds" that house asylum seekers, all divided by fences of about 2.4 metres in height and connected by uneven dirt tracks. The structures are a combination of World War II-era buildings with concrete walls and corrugated iron roofs, temporary structures such as marquees and "demountables" (similar to shipping containers), and basic buildings used as offices by staff.¹⁴

3.11 Amnesty International raised particular concerns about the sleeping quarters, describing them as 'cramped' and lacking privacy or private space.¹⁵ Mr Martin Appleby, a former G4S employee working at the centre, described the accommodation provided for asylum seekers as follows:

I was quite taken aback, as the accommodation set-up for them was much more primitive than I had imagined, particularly by Australian standards. Most were just in tents or old World War II huts that were made of tin with tightly packed double-bunk beds in them. Even at that point [August 2013] they were cramped and things got worse later on as the number of transferees rose significantly over the period I was there.

...

I have heard the word "inhumane" used about the conditions in which the transferees were expected to live at the MIRPC and I think that's probably the best description for them, especially those living in the old World War II sheds like the P Dorm. Expecting people to live packed like

13 See, for example: United Nations High Commissioner for Refugees (UNHCR), *Submission 21*, p. 4; Human Rights Law Centre, *Submission 17*, p. 8; Mr Martin Appleby, *Document tabled at public hearing on 12 June 2014 – Witness statement*, p. 5; Amnesty International, *Submission 22*, p. 3.

14 Amnesty International, 'This is breaking people: human rights violations at Australia's asylum seeker processing centre on Manus Island, Papua New Guinea', December 2013, (included as *Submission 22*, Attachment 1), p. 36.

15 *Submission 22*, Attachment 1, p. 38.

sardines into tin sheds in 35–40 degree heat with only four fans to cool the place down just shouldn't be allowed. It's just ridiculous. Some of the newer accommodations in Mike and Oscar were somewhat better, but the variation in the standard of the accommodation was itself a cause of tension between different groups of transferees.¹⁶

3.12 Mr Steven Kilburn, another former G4S officer, was also concerned about the sleeping quarters:

...one particular area in Foxtrot compound called Papa block, which was an absolute disgrace by any standard. I wrote an extremely long report to G4S about the fact that it breached every fire safety—I was a fireman, previously—regulation. It was a deathtrap and a hazard to everyone who lived in there. It was concrete; there was no air. It was just an appalling place to put people. There were 160 people living in there. The beds were [very close together]. They were not allowed to even put a sheet around their bed to get any privacy, so they never got any privacy at all. The whole time they are there, they are sleeping next to strangers.¹⁷

Exposure to the weather

3.13 Several submitters with experience working at the centre told the committee that asylum seekers were exposed to the elements and that there were insufficient outdoor shaded areas. In particular, the committee heard evidence that asylum seekers were often forced to queue for lengthy periods in unshaded outdoor areas during extreme heat or rain in order to receive meals, medication or to attend medical appointments. Mr Appleby told the committee '[t]here was virtually no shade in any of the compounds and despite the intense heat the guys weren't given any hats and very limited sunscreen'.¹⁸

3.14 Amnesty International raised concerns about the lack of shade and protection from the sun in its December 2013 report:

There is almost no shade to protect people from the sun, heat, or rain, particularly in Oscar compound. International Health and Medical Services (IHMS) staff reported that the lack of shade has led to numerous health issues, including people collapsing from heat stroke...no action has been taken to provide greater protection from the sun and rain despite repeated acknowledgement of those shortcomings.¹⁹

16 Mr Martin Appleby, *Document tabled at public hearing on 12 June 2014 – Witness statement*, pp 3 and 5.

17 *Committee Hansard*, 11 June 2014, p. 7.

18 Mr Martin Appleby, *Document tabled at public hearing on 12 June 2014 – Witness statement*, p. 5.

19 *Submission 22, Attachment 1*, p. 41.

3.15 In response to concerns raised by Amnesty International about protection from the elements at the centre, the Australian Government stated in June 2014:

At meal times, transferees may be required to queue for a short period of time for their meals in the air-conditioned dining room. Transferees may also wait for a short period of time for medication in shaded areas.

Shaded communal areas are provided in each compound for use by transferees. The design of the Manus OPC expansion works also includes large outdoor covered recreation areas for use by transferees.²⁰

Sanitation and hygiene

3.16 Several submitters and witnesses commented on the state of sanitary facilities at the centre. Mr Christopher Iacono, a former Salvation Army employee, described conditions as follows:

The toilets and showers were highly unhygienic and in poor condition. Most showers and toilets had moss and fungi growing on the walls and floors. Many of the showers in Oscar had, had their doors damaged and [were] not working limiting privacy greatly. The toilets were filthy with toilet paper constantly on the floor. The floors in all the facilities were constantly wet and there was a strong smell of sewage around the centre at all times...

Many times soap ran out in the centre. A G4S guard told me that "we ran out of soap two days ago and are waiting for the barge to come in". There were no washing facilities located near mess halls for asylum seekers to wash hands before eating ever.²¹

3.17 Mr Appleby made similar comments:

The toilets got filthy and weren't cleaned often enough. Most of the detainees weren't used to Western-style toilets, so that didn't help matters. Sewage was pumped out by small pumps and it didn't take long for the detainees to work out that if they dropped a cap into the toilets, it would cause grief and some of them did that I think as a way of protesting. The only hand sanitizer was for staff—the detainees didn't get any. We were only allowed to dole out very limited amounts of shampoo and soap to them, and even the toilet paper was given to them in individual sheets because management said they would just use it to block up the sewage system. So the detainees had to come and ask for toilet paper whenever they wanted it, which I found really demeaning and embarrassing. I've never seen anything like that—they were treated as less than children.²²

20 'Australian Government's Response to Amnesty International reports arising from visits to Manus Offshore Processing Centre', *Additional Information provided by Amnesty International* (received 23 July 2014), pp 3-4.

21 *Submission 20*, [pp 4 and 5]. See also: UNHCR, *UNHCR monitoring visit to Manus Island, Papua New Guinea 23 to 25 October 2013*, November 2013, p. 18.

22 Mr Martin Appleby, *Document tabled at public hearing on 12 June 2014 – Witness statement*, p. 5.

3.18 Mr Appleby also commented on the availability of fresh water at the centre:

There was limited running water at the facility, even when it worked, but it wasn't drinkable. All the detainees had to be given bottled water for drinking, but a lot of them were using that for cleaning themselves when they went to the toilet as well, because that was what they were used to, which meant that the quantity for drinking was inadequate. Plus it was always warm because the bottles were just left out on pallets in the sun, which meant they got really hot.²³

3.19 Amnesty International also raised these concerns in its December 2013 report. The Australian Government responded in June 2014:

Hand soap is supplied in all toilets in all compounds and is replenished as required...Toiletries are supplied for each transferee and are replenished as required. Transferees are also able to purchase additional products from the canteen.

...Remedial works have taken place to address the drainage issues adjacent to the ablutions in the Oscar compound. The department is working with Transfield Services to deal with drainage and other issues at the Lombrum OPC site.²⁴

Food services

3.20 The quality and service of food at the Manus Island RPC was also questioned by submitters. Ms Judge, a former Salvation Army employee, stated:

Food for transferees is of poor quality, I have personally found small worms and flies baked into bread and also in meat being offered to staff and transferees. I have found small dead flies in my bread on a daily basis, this was such a regular occurrence it was to be expected.²⁵

3.21 Mr Appleby agreed:

The quality of the food at the facility was also shocking and cases of diarrhoea and food poisoning were rampant...We had an isolation bay both for staff and for the detainees and both were constantly in use.

...

There was a lot of unnecessary grief and tension caused in my view by the way that the food was delivered to the transferees. In the Oscar compound for instance...often the line was 200 metres long and people had to queue

23 Mr Martin Appleby, *Document tabled at public hearing on 12 June 2014 – Witness statement*, p. 5. See also: Miss Nicole Judge, *Submission 12*, p. 4.

24 'Australian Government's Response to Amnesty International reports arising from visits to Manus Offshore Processing Centre', *Additional Information provided by Amnesty International* (received 23 July 2014), p. 4.

25 *Submission 12*, p. 4.

for hours to get each meal...Every day there were tensions and arguments about the queue and whether someone had taken someone else's place.²⁶

Concerns relating to the adequacy of healthcare services

3.22 As noted in chapter 2, International Health and Medical Services (IHMS) is responsible for the provision of healthcare services at the Manus Island RPC. IHMS's contract outlines performance standards for the delivery of health care to transferees, including a requirement that a transferee must have a consultation with a health care practitioner within 72 hours of a request for a medical consultation.²⁷

3.23 IHMS stated that the process for a transferee to request medical assistance was to complete a Medical Request Form and give this to a garrison or welfare provider staff member, who would then provide this to IHMS. An appointment would then be booked 'on the basis of clinical acuity and an appointment provided within 72 hours'. IHMS explained that a triage system was employed to assess the severity of cases:

[C]ases are referred to the clinic and a senior nurse performs the initial triage. More urgent or acute cases are brought to the resuscitation area and managed by the emergency physician. Less acute cases are seen in the consultation rooms by a GP...Critical cases are seen immediately. The response times for acute events occurring in the centre are within recommended timeframes and are clinically appropriate. This is due to the onsite presence of clinical staff and the proximity of the medical centre to the areas of accommodation.²⁸

3.24 IHMS's evidence that cases are treated appropriately and in a timely manner was disputed strongly by other stakeholders to the inquiry. Amnesty International expressed concern after its November 2013 visit to the centre that the medical facility within the camp was unable to cope with the growing demand for health and mental health services, stating:

IHMS receives around 110 appointment requests per day and cannot meet demand for appointments...

A number of detainees raised concerns that sometimes it takes between three and 10 days to receive a medical appointment after submitting a request. Some felt that they needed to make several requests in order to be taken seriously and many complained that water and paracetamol was common treatment. The lack of ability to self-administer paracetamol for headaches or antiseptic cream for minor cuts means asylum seekers...often have to seek many appointments for even basic medical care. One doctor

26 Mr Martin Appleby, *Document tabled at public hearing on 12 June 2014 – Witness statement*, p. 6.

27 Schedule 2, Clause 18 (page 37), 'IHMS Regional Processing Countries Health Services Contract', *Information provided by the Department of Immigration and Border Protection – contracts* (received 30 May 2014), [p. 321].

28 IHMS, *Responses to written questions on notice* (received 14 August 2014), [p. 1].

commented on the absurdity of requiring people to return to medical appointments several times to receive medication.²⁹

3.25 Mr Iacono contended:

Waiting times for IHMS appointments were extremely long. I was told by management to alert asylum seekers that waiting times were a minimum of three days at one point. Asylum seekers were told to fill in medical request forms and wait for an appointment. Most often no appointment ever arrived and the asylum seeker had to enter numerous requests.

Many asylum seekers had skin conditions caused by the constant wetness, humidity and aforementioned unhygienic cleaning facilities. While I was on Manus I witnessed cases of scabies, typhoid, regular gastroenteritis, rashes and skin infections...

At numerous times over my 5 months on Manus island anti-malarial drugs had been exhausted and could not be handed out. Asylum seekers were very concerned about mosquito born [sic] diseases and any side effects of the anti-malarial medication. Asylum seekers and staff also questioned the safety of breathing in the mosquito fogging fumes that were used every 2-3 days across all compounds all without receiving adequate answers.³⁰

3.26 Ms Judge also commented on the state of healthcare provision at the centre:

Transferees and staff suffer regularly from foot infections. I have seen small cuts turn into large infections over the matter of days before access to medical services is approved. Very often medical provisions is panadol and water. Transferees may have to wait several days to receive panadol for an ailment, prompting staff to hide medicinal products such as panadol in their pockets to treat transferees headaches and pain. Staff are threatened that they will lose their job for offering transferees panadol or hydralyte medication for dehydration.³¹

Vector control and 'fogging' practices

3.27 Some submitters and witnesses expressed concern that the 'fogging' practices used at the centre to control mosquito populations resulted in transferees suffering respiratory problems or asthma attacks.³² IHMS responded to these concerns as follows:

The risks associated with normal fogging operations is very minimal as the amount of insecticide used (concentration per unit of space) is actually no greater than what is contained in commercial household insecticide aerosols dispensers.

On occasion, there will be individuals who might be sensitive to the spray (more likely the hydrocarbon carrier than the insecticide), for example

29 *Submission 22*, Attachment 1, pp 53 and 54.

30 *Submission 20*, [pp 4-5].

31 *Submission 12*, pp 3-4.

32 See, for example: Mr Steven Kilburn, *Submission 18*, pp 3-4.

presenting with breathing problems or minor skin irritation. This might be more perceived than real and would normally be very transient in nature.³³

3.28 IHMS representatives contended that the fogging program at the centre had been very effective in limiting mosquito-borne disease:

We have had vector control now almost since we started on Manus. We have done a phenomenal job there, with the department's support. We have only had three cases of malaria in almost 18 months. That is extraordinary...Of those three cases, we think that two came in from outside—they were in PNGers. We think only one was actually caught inside.³⁴

Provision of mental health services

3.29 Evidence presented to the committee from individuals with experience working at the centre included accounts of transferees engaging in self-harm, suicide attempts and displaying symptoms of poor mental health. Ms Judge stated:

Mental health problems are widespread, transferees often speak of ending their life, and how they would like to end their life. I regularly engage with transferees to convince them that their life is still worth living. Transferees often self harm and attempt suicide. I personally saw a Iranian transferee cut his wrists in Delta compound, his injuries looked significant and there was a great deal of blood loss. Mentally ill transferees are held in 'Delta 9' where they are monitored by security guards. This area has no recreational facilities, poor lighting, it is cramped, and their rooms have no windows. The gate is boarded up so transferees cannot see outside this area. I have heard transferees screaming inside this area, and shaking the fence as I walked past.³⁵

3.30 IHMS representatives informed the committee that transferees undergo mental health screening three monthly while in immigration detention.³⁶ IHMS stated that, based on transferee screening at the Manus Island RPC from April to June 2014, 27 per cent of the transferee population reported high or very high levels of psychological distress.³⁷ Data provided by IHMS showed that between January and April 2014, there were on average 25 new cases each month of transferees being diagnosed with a mental illness by a psychiatrist or GP at the centre.³⁸

33 IHMS, *Responses to questions taken on notice at a public hearing on 11 July 2014* (received 1 August 2014), [p. 4].

34 Dr Mark Parrish, Regional Medical Director, IHMS, *Committee Hansard*, 11 July 2014, p. 10.

35 *Submission 12*, p. 6. See also: Mr Steven Kilburn, *Submission 18*, pp 4-5; Name Withheld, *Submission 33*, [pp 2 and 4].

36 Dr Mark Parrish, IHMS, *Committee Hansard*, 11 July 2014, pp 2-3.

37 IHMS, *Responses to questions taken on notice at a public hearing on 11 July 2014* (received 1 August 2014), [p. 4].

38 IHMS, *Responses to questions taken on notice at a public hearing on 11 July 2014* (received 11 July 2014), pp 1-3; and IHMS, *Responses to questions taken on notice at a public hearing on 11 July 2014* (received 1 August 2014), [p. 6].

Adequacy of services for dealing with mental health issues

3.31 Amnesty International's report stated that, as at November 2013, IHMS's mental health team at the Manus Island RPC consisted of seven staff.³⁹ IHMS noted that by the time of the incidents in February 2014, its mental health team on Manus Island comprised 11 staff, including six mental health nurses, one psychiatrist, one psychologist and three counsellors.⁴⁰ IHMS also confirmed that since the incident, the mental health team has increased by seven positions, being additional mental health nurses and psychologists.⁴¹

3.32 Dr Mark Parrish, IHMS's Regional Medical Director, expanded on the way IHMS's mental health team operates at the Manus facility:

It is very similar to a community mental health service in Australia. Our team does a lot of outreach clinics in the compounds. We have a number of classes that we run with groups and sometimes with individuals who we do outreach services to. For the percentage we have particular concerns with we will take a closer interest and manage them. If necessary they will be seen by a general practitioner and if necessary they will be seen by a psychiatrist and if necessary they will be on medication to help them with their conditions.⁴²

3.33 In relation specifically to psychiatric services available, the department provided the following information:

Full time psychiatric services have been available at the Manus OPC from 21 January 2014. There is a single full time position which is filled on rotation using the fly-in fly-out model, typically providing a five day per week service of approximately 38 hours each week. Since the end of February, there has been regular provision of psychiatric services although the health services provider has at times, found it difficult to recruit suitable staff. To further support health services on Manus, including psychiatric consultations, telemedicine infrastructure has been established on Manus and is currently [June 2014] undergoing testing.⁴³

3.34 IHMS provided additional information about the frequency of visits by the psychiatrist to the Manus Island RPC, stating that there were five visiting psychiatrist visits in the six months prior to the February 2014 disturbances at the centre, and there

39 *Submission 22, Attachment 1, p. 57.*

40 *IHMS, Responses to questions taken on notice at a public hearing on 11 July 2014* (received 1 August 2014), [p. 1].

41 *IHMS, Responses to questions taken on notice at a public hearing on 11 July 2014* (received 1 August 2014), [p. 4].

42 Dr Mark Parrish, IHMS, *Committee Hansard*, 11 July 2014, p. 3.

43 *Additional Information provided by the Department of Immigration and Border Protection – health services* (received 6 June 2014), p. 1.

has been an increase since the events with nine visits occurring in the subsequent six month period.⁴⁴

Security infrastructure at the centre and related issues

3.35 Given the violence that occurred during the disturbances at the Manus Island RPC in February 2014, the nature and adequacy of security infrastructure and services at the centre was a key issue discussed during the inquiry.

3.36 G4S representatives discussed the importance of security infrastructure at a facility such as the Manus Island RPC:

In a facility housing over 1,300 single adult males—and tensions rising—proper security infrastructure is essential. Fencing in particular is critical as it provides the first line of defence during any riotous behaviour. It prevents transferees from exiting the centre in a controlled manner. It protects transferees from external threats, and, when there is a large-scale unrest, internal fencing prevents the congregation of large groups of transferees into unmanageable numbers.⁴⁵

Risk assessments and requests for infrastructure upgrades from G4S

3.37 G4S informed the committee that it provided a risk assessment of the centre to the department in June 2013, highlighting that security infrastructure including internal and external fencing at the centre was inadequate for the facility.⁴⁶ The department did not act on this initial risk assessment by G4S. The department offered the following explanation about the lack of action in response to this request:

...the department's view at that time was that the centre under the then government's policy was a temporary centre pending the construction of the new centre, the permanent centre at East Lorengau, and that an appropriate response was not to make significant investment in infrastructure when there were alternative responses possible through the deployment of personnel to meet the security requirements.⁴⁷

3.38 The committee heard that G4S provided additional requests to the department in relation to the need to improve security infrastructure at the centre in October 2013, December 2013 and January 2014.⁴⁸ No construction work on security infrastructure upgrades had been completed at the time of the incidents in February 2014.

44 IHMS, *Responses to questions taken on notice at a public hearing on 11 July 2014* (received 1 August 2014), [p. 4].

45 Mr Darren Boyd, Southern Pacific Regional Managing Director, G4S, *Committee Hansard*, 10 June 2014, p. 37.

46 Mr Darren Boyd, G4S, *Committee Hansard*, 10 June 2014, p. 37.

47 Mr Kenneth Douglas, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 22.

48 G4S, *Submission 29*, pp 2-4.

3.39 G4S argued that, had proper security infrastructure been in place at the centre at the time of the disturbances, including appropriate fencing, 'the severe injuries and the fatality would probably not have occurred'.⁴⁹

Force protection review

3.40 The Minister for Immigration and Border Protection (minister) first visited the RPC in September 2013 and following that first visit commissioned the 'force protection review', which took place in October 2013.⁵⁰ An unclassified summary of the report's recommendations and their implementation at the centre was provided to the committee at a public hearing on 11 July 2014.⁵¹ The report summary noted nine issues requiring attention, namely:

- the need for service provider personal safety training;
- inadequate service provider staffing depth, requiring changes to ensure sufficient staff levels at all times;
- inadequate physical security fencing and lighting;
- personnel security and access procedures;
- search warrant processes at the centre;
- the need to relocate a logistics hub located within the centre to an external location;
- a review of the centre's incident management practices;
- community engagement to improve external facilities including provincial police accommodation, Lombrum hospital and road maintenance; and
- ensuring potable water self-sufficiency at the centre.⁵²

3.41 The report summary provided to the committee noted the progress made in each of these areas, both as at the time of the incident on 16 February 2014, and as at 23 June 2014. It states that as at 16 February 2014, only one of these issues had been completely addressed (access to potable water), with the other eight areas being 'partially complete'. By June 2014 a further three areas had been fully addressed (service provider safety training, staffing depth, and personnel security and access

49 Mr Darren Boyd, *Committee Hansard*, 10 June 2014, pp 37-38.

50 Lt Gen. Angus Campbell, DSC, AM, Commander, Joint Agency Task Force, *Committee Hansard*, 11 July 2014, p. 18.

51 Lt Gen. Campbell, *Committee Hansard*, 11 July 2014, p. 33; Lt Gen. Campbell, *Document tabled at a public hearing on 11 July 2014 – Operation Sovereign Borders Manus OPC Force Protection Review*.

52 Lt Gen. Campbell, *Document tabled at a public hearing on 11 July 2014 – Operation Sovereign Borders Manus OPC Force Protection Review*, pp 1-2.

procedures), with the remaining five areas having been progressed further but not yet fully completed.⁵³

3.42 The minister has stated that he approved construction of additional infrastructure including security fencing at the centre 'immediately' after he received the recommendations of the Force Security Review:

When I became Minister I visited Manus Island within the first fortnight and instructed General Campbell to undertake a security review. That again recommended that that security infrastructure fencing and lighting, CCTV be put in place. I authorised that immediately. In November [2013] the resources were made available through the cabinet process. It is a source of frustration that these things take longer frankly than I think they should but that was authorised and that was endorsed and the action was being taken.⁵⁴

Implementation of security infrastructure upgrades

3.43 Departmental officials stated that infrastructure projects at the Manus Island RPC can require a timeframe of up to six months to complete.⁵⁵ Mr Mark Cormack, a Deputy Secretary at the department, defended the time taken to commence and implement infrastructure upgrades at the centre:

It is important to note...that in any facility—onshore or offshore—building infrastructure takes time. This is further complicated when you are trying to build in another sovereign country, especially in tropical situations where little mainstream infrastructure already exists. There will be impacts on time frames due to local conditions such as weather and rising sea levels, and there are major logistical challenges in bringing in machinery, materials and specialist workers over long distances to largely unmaintained sea and air arrival infrastructure.⁵⁶

3.44 At a public hearing on 10 June 2014, Mr Martin Bowles PSM, Secretary of the department, explained that security infrastructure upgrades were still in progress at that time:

[E]nhancements to security are well underway with survey and design of an upgraded fencing solution completed and construction work commenced. Consultants and a contractor have been engaged to design and manage the construction of a new logistics hub; critical infrastructure such as water production, water storage, fuel storage and communications will be moved to this logistics hub. CCTV and improved lighting solutions are being

53 Lt Gen. Campbell, *Document tabled at a public hearing on 11 July 2014 – Operation Sovereign Borders Manus OPC Force Protection Review*, pp 1-2.

54 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island incident', *Press Conference*, Canberra, 26 May 2014.

55 Mr Martin Bowles PSM, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 17.

56 *Committee Hansard*, 11 July 2014, p. 19.

developed to provide coverage of critical areas. Lighting, including mobile lighting, is being continually enhanced.⁵⁷

3.45 The minister provided further information in relation to the progress of infrastructure upgrades at Manus Island on 10 September 2014:

On Manus, the Australian Government has delivered a significant upgrade to the Lorengau Hospital, including supply of a range of dental and medical equipment, including a digital x-ray device, a machine to test blood samples quickly and an incubator. We are upgrading security infrastructure. The exterior fencing upgrade has been completed and work continues on the interior fencing, lighting and CCTV. We are also currently refurbishing ablution blocks, staff housing, establishing a new medical facility and relocating the logistics block.⁵⁸

3.46 Representatives from Transfield informed the committee that Transfield was not responsible for delivering infrastructure upgrades, which were managed through separate contracts. Transfield did note that the department had requested comment from Transfield 'on a number of occasions on designs [and] other aspects of the infrastructure that they propose to deliver'.⁵⁹ Transfield also informed the committee that it had taken opportunities to provide suggestions to the department for 'minor operational improvements to infrastructure' at the centre.⁶⁰

Tension between PNG locals and asylum seekers

3.47 It was apparent as early as August 2012, when the then Australian Government announced it would be re-opening Manus Island RPC, that some PNG locals had concerns about the centre (see chapter 1). Poor communication by both the PNG and Australian governments with PNG locals together with their exclusion from the construction of the centre served only to exacerbate these concerns and resulted in blockades of the airport and the road leading to the RPC in November 2012.

3.48 In addition to these concerns known from the outset, during the course of the inquiry the committee heard that there was animosity between asylum seekers and PNG locals. It was suggested that this was based on cultural and religious differences,⁶¹ and appears to have been exacerbated by misinformation and misunderstanding on both sides. Ms Judge believed that the catalyst for the events of 16–18 February was 'significant anger towards the operations of the centre, its staff

57 *Committee Hansard*, 10 June 2014, p. 2.

58 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Restoring integrity and public confidence in Immigration and Border Protection' *Address to the National Press Club*, Canberra, 10 September 2014, at: <http://www.minister.immi.gov.au/media/sm/2014/sm217736.htm> (accessed 4 November 2014).

59 Mr Derek Osborn, Executive General Manager Logistics and Facilities Management, Transfield Services, *Committee Hansard*, 11 June 2014, p. 57.

60 Mr Fraser Douglass, Executive General Manager Government Business, Transfield Services, *Committee Hansard*, 11 June 2014, p. 58.

61 See for example: Mr Steven Kilburn, *Committee Hansard*, 11 June 2014, p. 7.

and asylum seekers' by the local community which she described as 'a direct threat to the centre's overall safety from outside, not from the inside'.⁶² Mr Iacono had a similar view:

The threat posed by the PNG nationals was very real and was often the source of intimidation used by G4S against asylum seekers. Stories of cannibalism being rampant, of high levels of criminal activity especially towards foreigners, as well as of the high level of HIV in the PNG population were told to asylum seekers constantly. In September the asylum seekers learnt of a fatal attack against a group of Australian trekkers in PNG. They had been attacked by locals armed with machetes. This scared the asylum seekers and reinforced the belief that they would not be safe anywhere in PNG.⁶³

3.49 Both Ms Judge and Mr Iacono described an incident on 18 October 2013 between PNG police and PNG navy personnel in which firearms were discharged and staff at the RPC were evacuated but 'asylum seekers were left to fend for themselves'.⁶⁴ Mr Iacono stated that 'the asylum seekers they were shaken and afraid at having been left alone. From this day forward, asylum seekers were very wary of PNG nationals and questioned their own safety'.⁶⁵ Ms Judge said of the incident:

This left me and my colleagues wondering how it would be possible to run from weapon fire inside a padlocked compound. After this event it was commonly and openly discussed that, in the event of a potential riot or protest, PNG police or nationals would fire weapons into the compounds, which would most likely result in deaths.⁶⁶

3.50 Ms Judge recalled another incident in which PNG locals armed with machetes attempted to invade the RPC. According to Ms Judge, this event heightened asylum seekers' fears about PNG locals:

Again, on my second rotation, an attempted invasion into Delta compound by locals armed with machetes occurred. I was told I could not evacuate. I was told by an expatriate G4S guard that I was safer inside with the asylum seekers as my security. At this time, the asylum seekers told me they would protect me from any threat from the outside. On top of these events and comments to transferees by staff that PNG nationals were cannibals and murderous people, local PNG nationals walked outside the facility daily carrying machetes, evoking fear into the transferees. PNG navy police regularly stood outside the centre in numbers chewing the stimulant betel

62 *Committee Hansard*, 12 June 2014, p. 31.

63 *Committee Hansard*, 12 June 2014, p. 33. See also Mr Steven Kilburn, *Committee Hansard*, 11 June 2014, p. 17.

64 *Committee Hansard*, 12 June 2014, p. 32. See also Mr Martin Appleby, *Committee Hansard*, 12 June 2014, p. 41.

65 *Committee Hansard*, 12 June 2014, p. 32.

66 *Committee Hansard*, 12 June 2014, p. 32.

nut, waiting for any form of disturbance, minor or not, for the opportunity to showcase their authority of numbers.⁶⁷

3.51 Miss Judge continued:

The attacks on asylum seekers [in February 2014] were not unpredictable and unforeseen. The attacks were not due to asylum seekers insulting PNG nationals in February or asylum seekers feeling discontent with their processing time frames. The attacks were due to the entire system. The attacks were due to the lack of due care for asylum seekers' safety and wellbeing, the acceptance by staff that PNG was just a dangerous place and that there was nothing we could do to change that. With reports going unheard and incidents being covered up, with no-one really to report to and the threat of danger being from outside, I am unsure of how anyone can guarantee the asylum seekers' safety. Regardless of how high fences are built around the centre, how many CCTV cameras are installed or how many extra guards are employed, I do not believe anything can change the fact that the key threat to the asylum seekers safety is, in fact, simply being detained on Manus Island.⁶⁸

3.52 Mr Steven Kilburn cautioned that improving conditions and the standard of living for asylum seekers detained at Manus Island RPC could be a further source of tension between PNG locals and asylum seekers,⁶⁹ and further warned that asylum seekers re-settled in PNG 'would never be safe':

Anyone who has ever spent any time in PNG understands that PNG is a bit different to Australia in that it is the landowners—the landholders—that really have the power. It is not all just government land and the government decides what it is going to do with it without negotiating with the landholders. There are a number of things that G4S wanted done, but they had to get permission from the landholders to do...

I had a conversation with a group of local people and Papua New Guinean guards. I said to them: "What's going to happen when these people are released from here and go and live in the community?" They said, "That's never going to happen." ...I said, "Okay, just imagine that it happens." Their words were—I do not want to use their actual words, but let us put it this way: they made it quite clear that those people will never be safe. They will have to watch over their shoulder the whole time they are there because they are not going to let them live in Manus Island. So when I hear the plan that, supposedly, we are going to put 13 in a compound closer to town and start the process, I will tell you now that is going to end in violence. We knew this was going to end in violence. I will tell you that what is going to end in even worse violence is when they try to impose those people into the

67 *Committee Hansard*, 12 June 2014, p. 32.

68 *Committee Hansard*, 12 June 2014, p. 32.

69 *Committee Hansard*, 11 June 2014, p. 17.

local community. Unless there is some massive payoff those people are in danger; there is nothing surer.⁷⁰

3.53 In addition to the animosity of PNG locals towards the RPC generally and cultural and religious tension between asylum seekers and PNG locals, Mr Kilburn identified environmental management in the RPC surrounds as a further source of friction. In particular, Mr Kilburn described resentment amongst locals as a result of waste from the RPC being inappropriately disposed of and dumped in the bush:

...People told me about the environmental damage that the site is doing. Everything is disposable—every knife, fork, cup. We go through thousands and thousands and thousands of disposable plates, knives, forks and bottles of water every day. There are no facilities on Manus Island for recycling. There is no proper transfer station. It all gets taken away and dumped in the bush. People are resentful about that...The locals are resentful of the fact that we are destroying their island basically and just turning it into a tip. There is bubbling tension going on the whole time, all the way through.⁷¹

Educational modules presented to asylum seekers at the Manus Island RPC

3.54 The Salvation Army was responsible for delivering educational modules to asylum seekers at the Manus Island RPC about life in Papua New Guinea, which were developed jointly with the department and PNG officials. These modules were delivered through a series of PowerPoint presentations, copies of which were provided to the committee, and covered topics including: the land and people of PNG; family life in PNG; public health issues; living, working and learning in PNG; public safety; and law and policing.⁷²

3.55 The module covering public safety in Papua New Guinea included information on criminal gangs, tribal wars, risks associated with going out after dark, and guidance on appropriate attire for women.⁷³ It was suggested at a public hearing of the committee that one module also included information to the effect that PNG police may request bribes, or commit crimes themselves in return for bribes, and that this information contributed to transferees' fear of PNG locals;⁷⁴ however, this was not corroborated in the PowerPoint versions of the modules provided to the committee.

70 *Committee Hansard*, 11 June 2014, p. 11.

71 *Committee Hansard*, 11 June 2014, p. 5.

72 *Additional Information provided by the Salvation Army – introduction to PNG presentation* (received 11 June 2014).

73 *Additional Information provided by the Salvation Army – introduction to PNG presentation* (received 11 June 2014), [pp 105-121].

74 See: *Committee Hansard*, 11 June 2014, p. 37.

Chapter 4

Refugee status determination processing and resettlement arrangements

Introduction

4.1 Term of reference (1) for this inquiry directed the committee to consider refugee status determination (RSD) processing and resettlement arrangements in Papua New Guinea (PNG). Evidence presented to this inquiry and other relevant reports consistently identified that transferees' uncertainty about RSD processes and resettlement arrangements was a significant contributing factor leading to the incident at the Manus Island Regional Processing Centre (RPC) in February 2014.

4.2 This chapter:

- sets out the RSD processes in Australia;
- examines the legal framework for RSD in PNG, noting that the 2013 Regional Resettlement Arrangement (RRA) between Australia and PNG sets out that it is PNG's responsibility to determine refugee status and ultimately resettle refugees;
- examines particular concerns around the establishment of the RSD process in PNG;
- considers issues around the perceived encouragement of asylum seekers at the Manus Island RPC to return to their own country; and
- considers the feasibility of resettlement in PNG.

Refugee status determination processes in Australia

4.3 As set out in chapter 1, on 13 August 2012, the Australian Government re-established offshore processing for asylum seekers who, having arrived in Australia by boat, are defined as 'irregular maritime arrivals' (IMAs). IMAs must be taken from Australia to a regional processing country, unless certain circumstances apply. Asylum seekers who arrive in Australia by plane have continued to have their claims for refugee status determined by the department.

4.4 Accordingly, since August 2012 Australia has maintained a dual-track approach to refugee status determination: offshore processing for those who arrive in Australia by boat (IMAs) and onshore processing for those who otherwise arrive in Australia. The dual-track approach to asylum seeker processing, effectively re-established by the reintroduction of offshore processing, was the subject of some criticism in evidence to the inquiry. For example, the Law Society of New South Wales submitted:

...the Government's policy of treating asylum seekers who arrive by boat differently from asylum seekers who arrive by other means is a contravention of the Refugee Convention at a fundamental level.

Article 31(1) of the Refugee Convention provides that refugees shall not be penalised solely by reason of their unlawful entry to a country. This clause has been interpreted by the [United Nations High Commissioner for Refugees] as not being limited to refugees coming directly from territories where their life is threatened, but also including those who have been unable to obtain effective protection in transit countries. This is significant since the majority of countries in the Asia Pacific region from which irregular maritime arrivals travel to Australia, such as Indonesia and Malaysia - are not parties to the Refugee Convention and offer very poor protection environments, with no durable solutions such as local integration.¹

4.5 The legislative basis for offshore processing is contained in Subdivision B of Division 8 of Part 2 of the *Migration Act 1958* (Migration Act). Under section 198AB, the Minister for Immigration and Border Protection (the minister) may, by legislative instrument, designate a country as a regional processing country. The minister may exercise this power if he or she thinks that the designation is in the national interest.² In considering the national interest, the minister must have regard to whether the country in question has given any assurances that:

- transferred asylum seekers will not be subject to refoulement, within the meaning of article 33(1) of the Refugee Convention; and
- it will make an assessment, or permit an assessment to be made, of whether transferred asylum seekers are refugees.³

4.6 The designation of a country 'need not be determined by reference to the international obligations or domestic law of that country'.⁴ Accordingly, the minister has broad discretion when designating a country as a regional processing country.

Current agreement between Australia and Papua New Guinea

4.7 As outlined in chapter 1, on 19 July 2013, the governments of Australia and PNG entered into a regional resettlement arrangement (RRA).⁵ This agreement provided that Australia would transfer any unauthorised maritime arrival entering Australian waters after 19 July 2013 to PNG for processing of their refugee claims.

4.8 However, unlike the 2012 MOU, PNG agreed to permanently resettle those determined to be refugees in PNG or in any other participating regional state. On

1 Law Society of New South Wales, *Submission 8*, p. 5.

2 *Migration Act 1958*, ss 198AB(2).

3 *Migration Act 1958*, ss 198AB(3).

4 *Migration Act 1958*, para 198AA(d).

5 Government of Papua New Guinea and the Government of Australia, *Regional Resettlement Arrangement between Australia and Papua New Guinea* (Regional Resettlement Arrangement), 19 July 2013.

6 August 2013, a new MOU (the 2013 MOU) between PNG and Australia was signed in support of the RRA.⁶

4.9 Accordingly, the RRA represented a new approach by the Australian Government to processing refugee claims, insofar as it proposed resettlement in PNG. Under the previous 'Pacific Solution', which operated between 2001 and 2008, 61 per cent of asylum seekers were resettled in Australia. Similarly, under the model of offshore processing established in 2012, it was expected that the majority of asylum seekers would ultimately be resettled in Australia.

4.10 The United Nations High Commissioner for Refugees (UNHCR) submitted that it does not generally support offshore processing:

UNHCR's general position is that asylum-seekers and refugees should ordinarily be processed in the territory of the State where they arrive, or which otherwise has jurisdiction over them, which is in line with State practice. The primary responsibility to provide protection rests with the State where asylum is sought.⁷

4.11 The UNHCR noted that, notwithstanding the RRA, it regarded Australia as maintaining responsibility for ensuring that the treatment of asylum seekers is compatible with its international human rights:

UNHCR maintains its longstanding position that the physical transfer of asylum-seekers from Australia to Papua New Guinea, as an arrangement agreed by the two 1951 Convention States, does not extinguish the legal responsibility of the transferring State (Australia) for the protection of asylum-seekers affected by the transfer arrangements. UNHCR's view is that the legality and/or appropriateness of any such arrangement needs to be assessed on a case-by-case basis, subject to its particular modalities and legal provisions.

Both Australia and Papua New Guinea have shared and joint responsibility to ensure that the treatment of all transferred asylum-seekers to Papua New Guinea is fully compatible with their respective obligations under the 1951 Convention and other applicable international instruments.⁸

4.12 Accordingly, the UNHCR, along with a number of witnesses and submitters, were of the view that Australia maintained responsibility under international law for the RSD process and the protection afforded those found to be refugees.

4.13 However, the Australian Government has maintained the view that, once individuals are transferred from Australia to PNG under the RRA, the RSD processes and the outcomes of those processes are solely the responsibility of

6 Government of Papua New Guinea and the Government of Australia, *Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to and assessment of persons in Papua New Guinea, and related issues*, 6 August 2013.

7 *Submission 21*, p. 2 [internal citations omitted].

8 *Submission 21*, p. 3 [internal citations omitted].

the PNG Government. In evidence to the inquiry, a departmental official characterised Australia's involvement as being merely supportive:

Australia, because of the very significant experience we have had in managing immigration matters for a very long period of time, has been assisting them [the PNG Government] by mentoring, training and supporting PNG staff.⁹

4.14 A fuller discussion of Australia's human rights obligations is contained in chapter 7.

Refugee status determination processes in PNG

4.15 The RRA provides for the processing and resettlement of asylum seekers transferred by the Australian Government to PNG. Accordingly, this section considers the processes for RSD in PNG.

Legal and regulatory framework in PNG

Legal framework

4.16 On 17 July 1986, PNG acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol relating to the Status of Refugees* (together, the Refugee Convention) with reservations.

4.17 The implementation of these treaty obligations is primarily given effect in the Papua New Guinea *Migration Act 1978* (PNG Act). The PNG Act contains provisions relating to the accommodation and processing of asylum seekers in PNG. Under section 15B, the PNG Minister for Immigration may declare a place to be a relocation centre for the accommodation of refugees or non-citizens who claim to be refugees. The minister may direct refugees or asylum seekers to reside in a designated relocation centre.¹⁰

4.18 Section 15D of the PNG Act provides that the minister may appoint an officer to be the administrator of a relocation centre, with authority for the control and management of the centre. In the case of the Manus Island RPC, the PNG Chief Migration Officer, who is the head of the PNG Immigration and Citizenship Service Authority (ICSA), has been appointed as the administrator of the centre.¹¹

4.19 The PNG Act also contains a regulation-making power, which permits the making of regulations governing, among other things, rules and procedures for the proper management and operation of relocation centres, and granting authority to an Administrator to issue written instructions concerning procedures in a relocation centre.¹²

9 Mr Mark Cormack, Deputy Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 26.

10 Papua New Guinea *Migration Act 1978* (PNG Act), section 15C.

11 Mr Kenneth Douglas, First Assistant Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 45.

12 PNG Act, section 23.

4.20 In relation to these arrangements, Mr Mark Cormack from the department explained:

PNG's own legal framework reflects its responsibilities [under the RRA]. Under the PNG migration act, the responsible PNG minister has directed that transferees who enter PNG under the terms of the RRA must reside at the Manus centre. Further under that same act, control and management of the Manus centre resides with an administrator who is appointed by the responsible PNG minister. Policing activities, for example, including those at the [offshore processing centre], are the responsibility of the PNG police.¹³

4.21 Under section 15A of the PNG Act, refugee status may be granted to individuals by ministerial determination. Under section 19, these determinations cannot be appealed.

Concerns expressed regarding legal framework in PNG

4.22 A number of witnesses and submitters raised concerns that PNG had attached seven reservations to its accession to the Refugee Convention.¹⁴ However, under the RRA, PNG agreed to 'immediately take steps to withdraw its reservations to the Refugee Convention, with respect to persons transferred by Australia to [PNG]'.¹⁵

4.23 On 18 September 2013, the PNG Minister for Foreign Affairs and Immigration confirmed that this requirement had been met.¹⁶ However, the committee notes that the UNHCR subsequently reported, on 26 November 2013, that PNG was '[still] in the process of arranging to lift the seven reservations in relation to all refugees in its jurisdiction'.¹⁷

4.24 A significant number of submitters and witnesses also expressed concern that there were serious deficiencies in the domestic legal and regulatory framework underpinning RSD processing in PNG.¹⁸ The Andrew & Renata Kaldor Centre for International Refugee Law (Kaldor Centre), for example, highlighted that '[t]he

13 Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 26.

14 These reservations stipulated that PNG did not accept the obligations in articles 17(1) (work rights); 21 (housing); 22(1) (education); 26 (freedom of movement); 31 (non-penalisation for illegal entry or presence); 32 (expulsion); and 34 (facilitating assimilation and naturalisation).

15 Regional Resettlement Arrangement, para [7].

16 Ministry of Foreign Affairs and Immigration (PNG), Office of the Minister, *Statement to Parliament by Hon. Rimbink Pato, OBE, LLB, MP, Minister for Foreign Affairs and Immigration, on the Regional Resettlement Arrangements (RRA) for asylum seekers transferred to Papua New Guinea*, 18 September 2013, p. 8.

17 See *UNHCR monitoring visit to Manus Island, Papua New Guinea 23 to 25 October 2013*, November 2013, p. 7.

18 UNHCR, *Submission 21*, p. 5; Human Rights Law Centre, *Submission 17*, p. 5; Federation of Ethnic Communities, *Submission 16*, p. 3; Asylum Seeker Resource Centre, *Submission 23*, p. 6; Mr Daniel Webb, Director of Legal Advocacy, Human Rights Law Centre, *Committee Hansard*, 12 June 2014, p. 60.

absence of a legal framework makes it very difficult to assess the quality and accuracy of RSD, and to challenge any determinations wrongfully made'.¹⁹

4.25 Similarly, UNHCR submitted that (as at 7 May 2014):

Section 15A of [PNG's *Migration Act 1978*] empowers the Minister of Foreign Affairs and Immigration (the Minister) to determine whether a non-citizen is a refugee, but provides no procedural or substantive guidance as to how a RSD should be made by the Minister.

In January 2013, [PNG] incorporated provisions into the Migration Regulation 1979 (Regulation), which provide the Minister with guidance in respect of determining the refugee status of non-citizens transferred under the 2012 MOU. These provisions are now redundant as the 2012 MOU has been superseded by the New MOU.

UNHCR understands that [PNG] officials conducting RSD of asylum-seekers transferred under the New MOU are authorized to act under s 15A of the Act and are guided, but not bound, by the Regulation (which refers to the 2012 MOU).

...UNHCR has been advised by [PNG] officials that steps are under way to amend the Regulation, so that it applies to asylum-seekers transferred to [PNG] under the New MOU and that a new *Migration Act* is being drafted to introduce comprehensive RSD procedures that will apply to all asylum-seekers.²⁰

4.26 A recent discussion paper by Diana Glazebrook, an academic whose work has focused on refugee resettlement, provides an instructive background on the development of refugee law in PNG:

The UNHCR began work with the PNG Government in 2002 to develop refugee legislation, drafting a refugee law Act which was subsequently abandoned in favour of a simplified model developed by the Pacific Immigration Directors Conference as an annex to the amended *Migration Act 2005*. At a 2010 roundtable on legal and practical challenges faced in addressing the protection of non-Melanesian asylum seekers and refugees in PNG, a working group was formed to review PNG domestic legislation and consider how the [Refugee Convention] can be implemented. At the time of the 2013 Arrangement, while much of the groundwork for developing refugee legislation for PNG had been done, codification had yet to take place.

Under the 2013 Arrangement, PNG is responsible for carrying out refugee status determination to be managed and administered by PNG, under domestic law, with support from Australia. Several provisions of the PNG Migration Act and Regulation are inconsistent with PNG's commitments under the 1951 Convention. The UNHCR advised amending the PNG Migration Act and Regulation governing the status determination of asylum

19 *Submission 9*, p. 14.

20 *Submission 21*, p. 4.

seekers; specifically, the detailing of asylum processes and procedures in PNG. For example, asylum seekers should be informed about their legal rights and entitlements, as well as the procedures to be followed to assess their claims for refugee status including the legal basis, the decision-making authority, and the indicative time frames for these various steps, as well as an independent merit review process.²¹

4.27 The committee received some evidence suggesting that processes should have been put in place to ensure effective RSD in PNG before asylum seekers were transferred to Manus Island RPC. Mr Daniel Webb, Director of Legal Advocacy at the Human Rights Law Centre, stated:

[O]ne thing that is clear is that, when it comes to transferring asylum seekers to Manus, the cart has been put a very long way before the horse in that over a 19-month period you have had more than 1,300 people sent to a processing centre without clear arrangements in place for their processing, under a resettlement agreement without clear arrangements in place for their resettlement. ...For that reason there is great ambiguity about what the real purpose of sending them there is.²²

4.28 In contrast, the department submitted that the legal framework for refugee determinations in PNG was well advanced and that the PNG government was taking the necessary steps to build capacity for effective RSD processing:

[T]he PNG government has developed and implemented legislation that governs [RSD]. It has developed guidelines and is now finalising settlement regulations.

...In March 2013 the PNG cabinet or national executive committee approved amendments to the migration act. In April 2013 [the department] attended a roundtable workshop...in Port Moresby to discuss the development of the RSD process. On 26 April 2013 the amendments were passed and became law.²³

Detailed assessment of RSD processes in PNG

4.29 The report of the Cornall Review set out the RSD process at the Manus RPC as at 23 May 2014, stating that the process for determining eligibility for the grant of a refugee entry permit consists of:

- an initial transferee interview;
- the provision of protection claims assistance to articulate and lodge a protection application;

21 Diana Glazebrook, *Papua New Guinea's Refugee Track Record and Its Obligations under the 2013 Regional Resettlement Arrangement with Australia*, SSGM Discussion Paper 2014/3, pp 5-6 [internal citations omitted].

22 *Committee Hansard*, 12 June 2014, p. 60.

23 Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 26.

- a refugee status determination interview to assess protection claims followed by an initial assessment of the claim;
- an initial assessment notification to the transferee by a PNG immigration officer;
- if the initial assessment is positive, it is referred to the PNG Minister for Foreign Affairs and Immigration for final determination; and
- if the initial assessment is negative, the transferee can seek merits review which is also referred to the PNG Minister for Foreign Affairs and Immigration for final determination.²⁴

4.30 This summary of the process is consistent with evidence from other submitters and witnesses, including the department.²⁵

Initial transferee interviews

4.31 The UNHCR has reported that initial transferee interviews at the Manus Island RPC 'are designed to elicit details about the asylum-seekers, their families, the route they took to Australia and some basic information about why they came to Australia'.²⁶ Following a monitoring visit to the Manus Island RPC in June 2013, the UNHCR reported:

Initially transfer interviews were undertaken by experienced DIAC officers with PNG ICSA [PNG Immigration & Citizenship Service Authority] officers observing. As at the time of the visit, the interviews were being undertaken independently by PNGICSA officers.

...UNHCR observed that the interviews were undertaken with professionalism, consistency and attention to detail. The interviews, however, were rigidly directed by use of a detailed template and script, leaving little scope for capture of information relating to individual circumstances of the applicant in his country of origin, or protection problems experienced in transit countries. In some instances, the observer noted that the nature of the interview template forced the interviewer to record information at variance from that being communicated by the applicant. A heavy focus on collection of information relating to routes, methods and persons involved in irregular migration was evident. In light of this focus, it was of concern that applicants were informed that details may

24 Mr Robert Cornall AO, *Review of the events of 16-18 February 2014 at the Manus Regional Processing Centre*, 23 May 2014, pp 88-89.

25 Mr Mark Cormack, Deputy Secretary, Immigration Status Resolution Group, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 20; Ms Elizabeth Thompson, *Committee Hansard*, 12 June 2014, p. 21.

26 *UNHCR Monitoring Visit to Manus Island, Papua New Guinea 11-13 June 2013*, July 2013, p. 7.

be shared with law enforcement agencies as appropriate, but were not offered access to legal advice or counselling.²⁷

4.32 In an answer to a question on notice, the department advised that people transferred to PNG were told that the information they provided may be used in the future by PNG authorities, but not disclosed to foreign governments unless the transferee was found not to be a refugee and the disclosure was necessary for the purposes of removal from PNG.²⁸

4.33 Following a monitoring visit to the Manus Island RPC in October 2013, the UNHCR reported that these 'initial transferee interviews' had 'ceased as a matter of practice'. It recommended that PNG reinstate these interviews as they enabled 'RSD officers to identify and assist persons with special needs and vulnerabilities'.²⁹ More recent evidence suggests that these interviews later recommenced.³⁰

Claims assistance

4.34 The Claims Assistance Provider Scheme (CAPS) was intended to assist transferees to compile evidence to support their claim for protection. Playfair Visa and Migration Services (Playfair) were contracted by the Australian Government to provide claims assistance at the Manus RPC. Mrs Petra Playfair, the Managing Partner of Playfair, described its role at the centre in the following way:

In 2013 Playfair was one of two independent firms contracted to provide protection claims assistance to asylum seekers held and transferred to regional processing countries. As with those previous task forces in detention centres I described, Playfair deployed its team to Manus Island at the request of the department of immigration. Our role is limited to providing assistance in the refugee status determination process—I will call it RSD.

We assist clients in preparing and submitting RSD applications. We represent clients at the government interviews that follow. We prepare applications for merits review and we represent clients through the review process and will do at their hearings if instructed to do so. We make detailed written legal submissions to support their applications where appropriate. We provide group information sessions to explain the RSD process. We also provide a shopfront service which allows clients to make an appointment for a face-to-face meeting with us to discuss any aspect of

27 *UNHCR Monitoring Visit to Manus Island, Papua New Guinea 11-13 June 2013*, July 2013, pp 7-8.

28 Department of Immigration and Border Protection, *Answers to questions taken on notice at a public hearing on 10 June 2014* (received 9 July 2014), p. [14].

29 *UNHCR monitoring visit to Manus Island, Papua New Guinea 23 to 25 October 2013*, November 2013, p. 9.

30 See Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 37; Diana Glazebrook, *Papua New Guinea's Refugee Track Record and Its Obligations under the 2013 Regional Resettlement Arrangement with Australia*, SSGM Discussion Paper 2014/3, p. 6.

their claim for protection. By providing these independent services to our clients, we lay the foundations for their claims to be documented and assessed.³¹

4.35 Mrs Playfair provided the following information in relation to Playfair's schedule at the Manus Island RPC:

Playfair was first requested to send staff to Manus on 8 July 2013 and following on from the Prime Minister's announcement on 19 July 2013 those clients left Manus Island and returned to Australia. Then Playfair was requested to send a team of eight to Manus Island on 1 August 2013. On 23 August two staff were requested for a deployment and the last person on this deployment left Manus Island on 19 September 2013. The next team to be requested arrived as a team on 6 February 2014 to assist preparing applications and to provide information sessions, and we were present during the incident of 16 and 17 February. During that deployment about 173 interviews were completed and lodged. That deployment ran over about a month...We were requested to provide one staff person to undertake shopfront duties and carry out group sessions on Manus between 19 December and 13 January and then from 22 January up to when the team arrived on 6 February. Since about March 2014 we have been requested to provide personnel on an ongoing basis, which we have done.³²

4.36 Playfair also noted that it had several planned deployments to the Manus Island RPC cancelled by the department at short notice in the second half of 2013:

Interestingly, we were requested to deploy staff on 14 August 2013, 28 August 2013 and 12 September. Two of these deployments were cancelled en route and the third was cancelled just prior to departure.³³

4.37 When questioned about these aborted deployments the department stated:

The department cancelled the Claims Assistance Provider (CAP) deployment of 14 and 28 August 2013 and postponed the deployment of 12 September 2013. These decisions were made for logistical reasons consistent with the PNG Government's advice.³⁴

4.38 The committee heard evidence that CAPS officials each aimed to complete two to three CAPS interviews a day when deployed to the Manus Island RPC, though

31 Mrs Petra Madge Playfair, Managing Partner, Playfair Visa and Migration Services, *Committee Hansard*, 11 June 2014, p. 43.

32 Mrs Petra Playfair, Managing Partner, Playfair Visa and Migration Services, *Committee Hansard*, 11 June 2014, p. 43.

33 Mrs Petra Playfair, Managing Partner, Playfair Visa and Migration Services, *Committee Hansard*, 11 June 2014, p. 43.

34 Department of Immigration and Border Protection, *Responses to questions taken on notice at a public hearing on 11 July 2014, and written questions* (received 10 October 2014), [p. 2].

this was not always possible.³⁵ These officials did not provide advice to transferees about resettlement options or timeframes for the RSD process following the completion of a CAPS interview, primarily because this was outside the knowledge and control of CAPS providers.³⁶ Accordingly, the Asylum Seeker Resource Centre submitted that:

While there is a contracted agency, Playfair, that has intermittently assisted asylum seekers compile evidence of their claims...[T]his is a futile exercise given the inability of these workers to act as lawyers or provide any legal advice or advocacy assistance to asylum seekers.³⁷

4.39 Miss Elizabeth Thompson, a former subcontractor engaged by Playfair, was deployed to the Manus Island centre for two weeks in August 2013 and again in February 2014, before resigning on 19 February 2014. Miss Thompson provided a significant volume of evidence to the committee on the role and experience of the CAPS officials. Importantly, she alluded to interference by the department in the CAPS process, suggesting that the department exercised 'very firm control'.³⁸ Miss Thompson indicated that she and other CAPS officials had been instructed by the department and Playfair officials to avoid conversations with clients about resettlement, and that leaflets provided to transferees contained misinformation about this issue. She submitted that misinformation or lack of information about the RSD process made it very difficult to advise her clients. Finally, her evidence indicated that the number of CAPS officials was insufficient given the number of transferees, placing great strain on resources.³⁹

4.40 Playfair strongly rejected the allegations made by Miss Thompson,⁴⁰ reiterating that it was independent of the Australian and PNG governments and that it alone made the decision not to discuss resettlement issues with clients, due to conflicting information on the matter. Further, while the department provided Playfair with talking points on some occasions, Playfair indicated that these points were already going to be covered, and inferences that the department was influencing Playfair were incorrect.⁴¹

35 Miss Elizabeth Thompson, *Committee Hansard*, 12 June 2014, p. 22; Mr John McCaffery, Deputy General Manager, Manus Island Detention Centre, *Committee Hansard*, 10 June 2014, p. 59; Mr Nicholas Adler, Registered Migration Agent, Playfair Visa and Migration Services, *Committee Hansard*, 11 June 2014, p. 45.

36 Mr Nicholas Adler, Playfair Visa and Migration Services, *Committee Hansard*, 11 June 2014, pp 45-46.

37 Submission 23, p. 2.

38 *Committee Hansard*, 12 June 2014, p. 21.

39 Miss Elizabeth Thompson, *Submission 19*; Miss Elizabeth Maree Thompson, *Committee Hansard*, 12 June 2014, pp 21-30.

40 See Playfair Visa and Migration Services, *Answers to questions on notice* (received 1 July 2014), [p. 1]; Mr Nicholas Adler, *Submission 32*, pp 1-2.

41 See *Committee Hansard*, 11 June 2014, pp 45-47.

RSD interviews and assessments

4.41 Several submissions indicated that guidelines on the RSD process were never complete or available, that PNG officials lacked the capacity and capability to undertake the RSD process, and that transferees had little opportunity to prepare their cases given the lack of resources and the unavailability of clear guidelines on the RSD process in their language.⁴²

4.42 The department stated that RSD guidelines are now in place,⁴³ although their content does not appear to be publically accessible. To this extent, it has not been possible for the committee to thoroughly examine the actual RSD interview and assessment process.

4.43 Miss Thompson gave the following evidence on the conduct of the RSD interviews:

My understanding of the RSD process is that a person who is an employee of the Department of Immigration and Border Protection in Australia sits and conducts the interview while a PNG counterpart sits quietly, listening in. That is how the process has been described to me.⁴⁴

4.44 In response to a question about whether it is the PNG government official that ultimately makes the decision on refugee status, Miss Thompson responded:

My understanding is that it is probably their name on the decision record, but in terms of who conducts the interview, controls the interview and asks the questions, it has been made very clear to me by both interpreters and transferees that that person is an Australian DIBP employee.⁴⁵

4.45 The department maintained that RSD interviews and decisions are a matter for the Government of PNG. It stated that, '[i]n practical terms, this has meant mentoring, training and assisting PNG staff in the development and operation of the PNG RSD process'.⁴⁶

4.46 As to the final decision about a transferee's refugee status, the department stated that transferees would receive either a positive or negative 'interim assessment notification', before a final determination being made by the PNG Minister for Foreign

42 See, for example, Miss Elizabeth Thompson, *Submission 19*; UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea 11-13 June 2013*, July 2013, pp 6-7; Asylum Seeker Resource Centre, *Submission 23*, p. 6; Andrew & Renata Kaldor Centre for International Refugee Law (Kaldor Centre), *Submission 9*, p. 10.

43 Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 26.

44 *Committee Hansard*, 12 June 2014, p. 29.

45 *Committee Hansard*, 12 June 2014, p. 29.

46 Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 20.

Affairs and Immigration.⁴⁷ It has been noted that there is currently no avenue for appeal or judicial recourse once the PNG Minister has made a determination.⁴⁸

RSD processing framework in PNG and delays in determinations

4.47 The Refugee Convention does not prescribe a particular procedural framework for determining a person's refugee status. However, there are various minimum standards that have been recommended by states and the UNHCR. Importantly, the UNHCR has stated that '[f]air and efficient procedures are an essential element in the full and inclusive application of the Convention'.⁴⁹

4.48 A significant number of submitters discussed Australia's obligations in relation to the RSD process.⁵⁰ The submission of the Kaldor Centre outlined the minimum standards for RSD processes, stating that fair procedures should be based on the following principles of procedural fairness:

- the right to be informed about the procedure;
- the right to a reasonable opportunity to prepare your case;
- the right to be heard;
- the right to an unbiased decision-maker;
- the right to know the case against you, answer it, and for your answer to be considered a decision is made; and
- the right to have the decision made by the person who heard the evidence.⁵¹

4.49 The Kaldor Centre stated that other core elements of RSD processes that are of special relevance to asylum seekers include:

- officials should have clear instructions on handling claims, be required to observe the principle of non-refoulement...and refer cases to a higher authority;
- the primary decision should be made by a clearly identified and (wherever possible) single central authority;

47 Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, pp 37-38.

48 See: Paul Farrell, 'PNG grants refugee status to Manus asylum seekers for the first time', *The Guardian Australia*, 12 November 2014, at: <http://www.theguardian.com/australia-news/2014/nov/12/png-grants-refugee-status-to-manus-asylum-seekers-for-first-time> (accessed 14 November 2014).

49 UNHCR, *Asylum Processes (Fair and Efficient Asylum Procedures)*, EC/GC/01/12, 31 May 2001, paras. [4]-[5].

50 See, for example: United Nations High Commissioner for Refugees, *Submission 21*, pp 4-5; The Law Society of New South Wales, *Submission 8*, p. 9; Kaldor Centre, *Submission 9*, p. 11; Immigration Advice and Rights Centre, *Submission 14*, p. 2; Civil Liberties Australia, *Submission 5*, p. 7; Amnesty International, *Submission 22*, p. 2; Asylum Seeker Resource Centre, *Submission 23*, p. 6.

51 *Submission 9*, p. 12.

- asylum seekers should have access to UNHCR representatives;
- asylum seekers should have access to interpreters;
- asylum seekers should have access to advice and assistance from organizations providing advice or counselling; and
- there should be procedures to identify and assist vulnerable asylum seekers.⁵²

4.50 The Kaldor Centre submission highlighted the difficulty of establishing a RSD process at the Manus Island RPC:

RSD is a complex fact-finding exercise, which requires training, expertise and judgement. Decision-makers need to be able to identify and assess relevant country information, be familiar with the use of interpreters, and be able to reason logically and apply the appropriate procedural and substantive principles.

This exercise is even more difficult given the circumstances in PNG, where asylum seekers are not assisted by legal representatives, may not have access to interpreters, and are likely to have complex health needs that impact upon their ability to participate fully in the RSD process. This is not helped by the fact that the PNG government is essentially building an RSD system from scratch and in haste.⁵³

4.51 A number of submitters questioned the appropriateness of sending asylum seekers from Australia to PNG in the absence of an established RSD process. For example, the Asylum Seekers Resource Centre submitted:

Asylum seekers should never have been transferred to Manus Island DC without a legislative...RSD process in place. It was completely foreseeable that asylum seekers were to be detained for extended periods given the lack of a legal framework or trained people to undertake a proper assessment of refugee applications.⁵⁴

4.52 Evidence before the committee was that there were two key elements of concern regarding the procedures for RSD in PNG: a lack of timeliness (particularly where individuals are detained whilst their applications are determined) and a lack of clarity around the RSD process.⁵⁵ These are discussed below.

Timeliness of RSD processing

4.53 The UNHCR submitted that '[s]ince 19 July 2013, following the transfer of asylum-seekers under the New MOU...asylum-seekers have been scheduled for processing in order of their arrival at [Manus Island]'.⁵⁶ The committee heard that

52 *Submission 9*, p. 12.

53 *Submission 9*, pp 15-16.

44 *Submission 23*, p. 2.

55 UNHCR, *UNHCR Revised Guidelines On Applicable Criteria And Standards Relating To The Detention Of Asylum Seekers* (February 1999).

56 UNHCR, *Submission 21*, p. 5.

there were no completed RSD processes prior to the incident of 16 to 18 February 2014.⁵⁷

4.54 A departmental officer gave the following chronology in relation to the commencement and progress of RSD processing in PNG:

- 8 July 2013 – the PNG RSD process commenced.
- July to late November 2013 – departmental mentors assisted the PNG Immigration and Citizenship Service Authority (ICSA).
- July to September 2013 – departmental officers conducted RSD interviews on behalf of the government of PNG. And CAPS delivered group and individual advice and assistance.
- November to December 2013 and February 2014 – PNG ICSA conducted transferee interviews.
- From December 2013 – CAPS personnel delivered group and individual protection claim advice.
- Early December 2013 to February 2014 – an Australian human resources expert assisted ICSA to build recruitment panel and recruitment processes.
- 6 February 2014 – six CAPS personnel delivered group advice sessions and individual advice and assistance to transferees.
- Late March 2014 – two further departmental officers observed the overall ICSA processing that was in place.
- 30 April 2014 – ICSA delivered the first initial assessment notice to an Iranian transferee.
- From 30 April to 5 June 2014 – 45 assessment notices were delivered to transferees.
- As at 5 June 2014 – 829 transferees had their initial entry interview. A further 385 had individual protection claim advice and assistance.⁵⁸

4.55 While the department acknowledged 'pauses in face-to-face activity' in processing,⁵⁹ it would not comment on claims by the security company G4S that, as at 30 January 2014, there was no RSD processing in place because all interviews had

57 Mrs Petra Playfair, Managing Partner, Playfair Visa and Migration Services, *Committee Hansard*, 11 June 2014, p. 43.

58 Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 13.

59 Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 13.

ceased 'due to lack of resources in PNG ICSA'.⁶⁰ However, it indicated that there was a mechanism in place 'for funding to flow for activities in PNG'.⁶¹

4.56 On 10 September 2014, the Minister for Immigration and Border Protection commented that '78 assessments have been undertaken in PNG, and more than 600 have commenced the formal assessment process'.⁶² Media reports in November 2014 stated that as of the end of October 2014, 104 Refugee Status Interim Determination assessments had been completed with 56 found to be positive and 48 negative'.⁶³

4.57 On 12 November 2014, the PNG Minister for Foreign Affairs and Immigration, the Hon Rimbink Pato MP, announced that he had made positive final refugee status determinations for ten transferees at the Manus Island RPC, who would be issued with initial 12-month visas to stay in PNG.⁶⁴ Minister Pato also stated that he expected to continue finalising refugee decisions for about 10 asylum seekers per week.

Lack of clarity of the RSD process

4.58 The committee heard concerns regarding a lack of clarity or knowledge generally about RSD processes among asylum seekers at the Manus Island RPC.

4.59 The importance of clear information about the RSD processes was emphasised by the UNHCR in a report following its October 2013 monitoring visit to the RPC:

[A]sylum-seekers have the right to be informed orally and [in] writing, in a language which they understand, of the processes and procedures to be followed, of their rights and obligations during the procedure and to consult in an effective manner with a legal adviser. The communication of these rights is essential in order for asylum-seekers to be able to exercise their rights, as rights are rendered ineffective if an asylum-seeker is unable to act on them due to a failure of being informed of what those rights are.⁶⁵

60 G4S, *Submission 29, Attachment 5*, p. 3.

61 Mr Martin Bowles PSM, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 12.

62 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Restoring integrity and public confidence in Immigration and Border Protection' *Address to the National Press Club*, Canberra, 10 September 2014, at: <http://www.minister.immi.gov.au/media/sm/2014/sm217736.htm> (accessed 4 November 2014).

63 Liam Cochrane, 'PNG prepares to give training, visas, job assistance to refugees detained on Manus Island', *ABC News Online*, 5 November 2014, at: <http://www.abc.net.au/news/2014-11-05/png-to-give-training-visas-jobs-to-refugees/5867764> (accessed 5 November 2014).

64 The Hon Rimbink Pato, LLB, OBE, MP, Papua New Guinea Minister for Foreign Affairs and Immigration, 'Refugees to start new lives in PNG', *Media Release*, 12 November 2014.

65 *UNHCR monitoring visit to Manus Island, Papua New Guinea 23 to 25 October 2013*, November 2013, p. 48.

4.60 Similarly, Dr Claire Higgins of the Kaldor Centre noted:

One of the components of that kind of [RSD] is to be conducted along principles of procedural fairness, which means that detainees have a sense of the time frame to be expected in the resolution of their claims, along with having a reasonable chance to prepare their case and other elements of procedural fairness in the sense that they would have an unbiased decision maker and a fair and transparent process...⁶⁶

Impact of RSD processes on detainees

4.61 The committee heard that the lack of timeliness and clarity around the RSD process caused detainees considerable distress. A number of submitters claimed that these were the central causes of the events of 16 to 18 February 2014. The UNHCR submitted that:

A specific concern widely voiced by asylum-seekers was that in addition to not being kept informed about the applicable RSD processes and procedures, they had not received any approximate timeframes in relation to the process, causing distress and a deep sense of helplessness. Some asylum-seekers advised that they had been told that the RSD process could take anywhere between two to five years and expressed despair at this prospect.⁶⁷

4.62 The department acknowledged that processes for the establishing of a RSD process in PNG began after the RRA was signed and asylum seekers were first transferred under this arrangement in July 2013. In addition, the department acknowledged that establishing a RSD process in PNG was a 'lengthy process' and a work in progress:

Preparation for processing transferees' refugee claims was also a lengthy process. It could not be done until PNG legislation and procedural guidelines were in place. PNG officers needed to be trained to consider claims. On-the-ground processes needed to be developed. Both PNG and Australian agencies worked closely on their development but, by necessity, they required considered time to execute, particularly as people's futures were at stake.

A status determination process is a staged process undertaken by a series of interviews with officers and claims-assistance providers. It is not a simple process, nor should it be. Though there have not been finalised claims, that is not indicative of a lack of work being undertaken.⁶⁸

4.63 Evidence presented by G4S also suggested that the delay and lack of information with regard to RSD caused unrest at the Manus Island RPC immediately before the incident. This is discussed further in chapter 5.

66 *Committee Hansard*, 13 June 2014, p. 26.

67 UNHCR, *Submission 21*, p. 5.

68 Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 20.

Encouragement of asylum seekers to return their country of origin

4.64 A number of witnesses and submitters raised concerns that the conditions at the Manus Island RPC were such that they were designed to encourage asylum seekers to return home.⁶⁹ The committee also heard evidence that any such encouragement may be a breach of Australia's non-refoulement obligations under international law.⁷⁰

4.65 Following its October 2013 visit to the centre, the UNHCR expressed the view that the Manus Island RPC was a 'return oriented environment'. It suggested that:

The challenge of determining true 'voluntariness' in the current conditions of the [Manus Island RPC] is likely to be increasingly difficult for those involved in assisted voluntary returns.

Pressure exerted by persons in authority to return, coupled with poor conditions, and/or the failure to correctly identify the 'voluntariness' of the asylum-seekers return, raises concerns about 'constructive *refoulement*' under Article 33 of the 1951 Refugee Convention.⁷¹

4.66 In similar evidence, Amnesty International submitted that:

The inadequate conditions and prolonged and arbitrary detention experienced by asylum seekers on Manus Island may compel them to return to their country of origin or to another country where their rights as refugees will not be respected, resulting in constructive refoulement.⁷²

4.67 Further, Mr Daniel Webb of the Human Rights Law Centre suggested:

It may just be that we are forcing them to choose between where they would like to suffer their human rights violations, and some say they can no longer take the uncertainty of Manus anymore and so return home. But it is a mistake in my opinion to call that return voluntary.⁷³

4.68 In evidence before the committee, Mr Kerry Murphy of the Immigration Advice and Rights Centre went further:

...the UNHCR refers to a 'return oriented environment'. We think that, whilst there may be an issue about constructive non-refoulement, there is a concern that the conditions on the ground could amount to inhumane treatment, which would be a more direct breach of the relevant international obligations that we have. That is one of the major concerns as well.⁷⁴

69 See Amnesty International Australia, *This is Still Breaking People*, May 2014, pp 8-9; UNHCR, *UNHCR monitoring visit to Manus Island, Papua New Guinea 23 to 25 October 2013*, November 2013, p. 24; Human Rights Law Centre, *Submission 17*, p. 8.

70 Australia's non-refoulement obligations are discussed in detail in chapter 7.

71 *UNHCR monitoring visit to Manus Island, Papua New Guinea 23 to 25 October 2013*, November 2013, p. 24.

72 *Submission 22*, Attachment 1, p. 86.

73 *Committee Hansard*, 12 June 2014, p. 54.

74 *Committee Hansard*, 13 June 2014, p. 27.

4.69 Amnesty International explained the factors that suggest direct or constructive refoulement in the following terms:

Numerous aspects of the Regional Resettlement Arrangement combine to create a serious risk of direct or constructive refoulement. Chief among these factors are the following:

- The deeply humiliating treatment most asylum seekers were subjected to upon their transfer to Papua New Guinea, which has coloured their further experiences of detention on Manus Island.
- For some detained asylum seekers, the lack of humane conditions of detention conditions that, for those housed in P Dorm, amount to prohibited ill-treatment.
- The profound uncertainty detained asylum seekers are left in about the nature and timing of the Refugee Status Determination process, coupled with the pressures of living in a closed detention centre with limited opportunity to contact family and friends or otherwise lead an ordinary life.
- Limited opportunities for employment and for continuing their education for those whose claims to refugee status are accepted.
- More generally, the unlikelihood of real integration into Papua New Guinean society for those whose claims are accepted.
- Fears about the dangers of life in Papua New Guinea, reinforced on a daily basis by detention centre practices.
- Actual or apparent pressure to accept return to home countries.
- Because Papua New Guinea criminalises same-sex sexual conduct between consenting adults, gay, bisexual, and transgender asylum seekers held on Manus Island may be deterred from pursuing their refugee claims or may face persecution in Papua New Guinea if they are eventually resettled there.⁷⁵

4.70 In specific evidence about actual incidents of encouragement to return home, a former employee of Playfair suggested that staff from the International Organization for Migration (IOM) were 'speaking to transferees, trying to convince them of the benefits of returning home'.⁷⁶

4.71 In contrast, government representatives re-confirmed their view that any returns from Manus Island RPC were strictly voluntary. For example Lieutenant General Campbell stated that '[i]t is really important to note these are voluntary returns'.⁷⁷

75 *Submission 22*, Attachment 1, p. 87.

76 Miss Elizabeth Thompson, *Submission 19*, p. 6.

77 *Committee Hansard*, 11 July 2014, p. 52.

4.72 In terms of the number of returns from the Manus Island RPC, the department provided information that:

As at 1 August 2014, 203 transferees have been voluntarily returned from an Offshore Processing Centre (OPC) and 174 transferees from the Manus OPC since 18 February 2014 with the assistance of the International Organization for Migration (IOM).⁷⁸

4.73 In relation to returns to Iraq and Syria, the department noted that:

There have been no returns to Syria in the period 22 December 2008 to 1 August 2014...The department is currently facilitating the return of transferees whom IOM are unable to assist, including Iraqis. There has been one Iraqi returned home from an OPC during the period 11 June 2014 to 1 August 2014.⁷⁹

Resettlement arrangements for refugees

4.74 As previously outlined, the 2013 MOU and RRA set out that asylum seekers determined to be refugees would be resettled permanently in PNG or a participating regional state. As at the date of this report, only 10 individuals at the Manus Island RPC had been confirmed to have received final refugee status determinations, and none have been granted permanent resettlement in PNG or a third state. Nevertheless, the committee heard that the prospect of resettlement in PNG rather than Australia was clearly a central concern of many asylum seekers at the centre before the incidents of 16 to 18 February 2014.

4.75 UNHCR noted that 'resettlement' 'is an established international process for the transfer of refugees whose safety or fundamental rights cannot be met in the country where they have sought asylum, to a third state which has agreed to admit them with permanent legal status'.⁸⁰ It submitted that 'integration support' had to be capable of 'giving refugees the opportunity to rebuild their lives in safety and dignity'. This, it was argued, required:

- a solid legislative and/or policy foundation;
- a shared commitment from key government and other support agencies (including civil society);
- an adequately resourced integration programme which will provide the services and support needed by refugees to adjust to a new society; and
- a welcoming and supportive host community.⁸¹

78 *Answers to questions taken on notice at public hearing on 11 July 2014, and written questions* (received 15 August 2014), [p. 13].

79 *Answers to questions taken on notice at public hearing on 11 July 2014, and written questions* (received 15 August 2014), [p. 13].

80 UNHCR, *Submission 21*, p. 6.

81 UNHCR, *Submission 21*, p. 7.

4.76 A great deal of evidence received by the committee highlighted that transferees were often misinformed about the exact nature of the resettlement arrangements. In relation to integration support and resettlement policy in PNG, the Cornall Review found that:

Settlement services in Papua New Guinea will provide early needs-based practical support to refugees to help them develop the knowledge and skills needed to settle successfully and become active and independent participants in PNG society.

The timing of the implementation of these initiatives is a matter for the PNG Government.

The PNG Government has decided that refugee settlement will proceed after a national refugee settlement policy has been finalised. That policy is being developed by an Expert Panel comprising PNG social policy experts.

Any significant settlement activity in PNG will be dependent on the findings reported by the Expert Panel and the PNG Government's finalisation of the national refugee settlement policy.⁸²

4.77 The UNHCR, drawing on its own experience in PNG, highlighted significant concerns pertaining to the resettlement arrangements in PNG:

From UNHCR's first-hand experience in supporting Melanesian and non-Melanesian refugees in Papua New Guinea over approximately 30 years, it is clear that sustainable integration of non-Melanesian refugees in the socio-economic and cultural life of Papua New Guinea will raise formidable challenges and protection questions. Indeed, UNHCR has consistently referred 'non-Melanesian' refugees who have arrived spontaneously in Papua New Guinea for resettlement to third countries, including to Australia, over a number of years and as recently as 2013, precisely because of severe limitations and significant challenges of finding safe and effective durable solutions in Papua New Guinea itself.

Particular concern is expressed in relation to refugees who may be lesbian, gay, bisexual, transgender or intersex individuals, as Papua New Guinea's *Criminal Code Act 1974* criminalises homosexuality, with penalties of between three and 14 years imprisonment. For such refugees, integration in a society which criminalises homosexuality may give rise to serious protection issues.

...The majority of asylum-seekers that UNHCR met during its October 2013 visit expressed serious concern and anxiety about the prospect of being settled in Papua New Guinea, with many expressing that they had fled conflict and insecurity to seek peace and safety in Australia and did not believe that Papua New Guinea was able to provide adequate protection and cultural acceptance.⁸³

82 Mr Robert Cornall AO, *Review of the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 90.

83 *Submission 21*, pp 7-8 [internal citations omitted].

4.78 Following its October 2013 visit to the Manus Island RPC, the UNHCR also noted:

Another concern is that the vast majority of PNG citizens are Christians, meaning that there is likely to be little community understanding of Islam and few places of worship available to Muslims. UNHCR also notes that currently, non-Melanesian refugees in PNG are unable to access State education and employment. Even if these barriers are overcome, in relation to finding employment, the PNG 'wantok' system of kinship and affiliation is not likely to provide any real measure of security for non-Melanesian refugees from outside the region. In PNG society, challenging economic conditions and a lack of support for the recognition of overseas qualifications is expected to make attainment of meaningful employment extremely difficult for refugees in PNG.⁸⁴

4.79 The Kaldor Centre echoed the concerns of UNHCR, and highlighted that 'there may be other groups at risk of persecution in PNG'. It noted that:

For example, PNG has very high rates of domestic violence, and Australia has accepted refugee claims from PNG women who have suffered such abuse. Transferring asylum seekers to PNG without assessing such risks means that Australia may directly breach its *non-refoulement* obligations.⁸⁵

4.80 Amnesty International stated that on both occasions it has visited the Manus Island RPC (in November 2013 and March 2014), it observed that many asylum seekers were concerned about security for themselves and their families if they were to be resettled in PNG, particularly given incidents with local police and the military in and outside the centre.⁸⁶

84 UNHCR monitoring visit to Manus Island, Papua New Guinea 23 to 25 October 2013, November 2013, pp 25-26.

85 Submission 9, p. 20.

86 Submission 22, Attachment 1, pp 67-72; Amnesty International, *This is Still Breaking People*, May 2014, pp 8-9.

Chapter 5

Sequence of events leading up to and during the incident of 16 February to 18 February 2014

Introduction

5.1 The terms of reference for the inquiry require the committee to examine the chronology of events relating to the incident at the Manus Island Regional Processing Centre from 16 February to 18 February 2014. In considering these events, the committee has relied both on the evidence presented to it as well as the Cornall Review of the incident. The committee has also been particularly mindful of the need to avoid any interference with the investigation and prosecution of the criminal offences associated with these events: these are properly matters for the Royal Papua New Guinea Constabulary (PNG Police) and the Papua New Guinean courts. As a result, while the committee received evidence regarding the criminal culpability of particular individuals, it has deliberately avoided discussion of those issues in this report.

Overview of events leading up to and during the incident from 16 to 18 February 2014

5.2 The following timeline of events leading up to and during the incident at Manus Island Regional Processing Centre (RPC) from 16 to 18 February 2014 is a summary and has been drawn together from various sources. The factors and events that directly contributed to the incident are discussed in greater detail later in this chapter and chapter 8.

Date	Event
December 2013	Rumours circulated in the Manus Island RPC that there would be an amnesty in offshore processing at Christmas resulting in asylum seekers being transferred to Australia. ¹
15 December 2013	G4S submitted a further proposal for improved security lighting and fencing to the department. ² The department entered a contract for security works including improved fencing in December. ³

1 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, 23 May 2014, pp 30-31.

2 This followed an earlier proposal submitted on 13 October 2013.

3 Mr Martin Bowles PSM, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, pp 7 and 17. The Secretary noted that these infrastructure improvements were also recommendations of the Force Protection Review. See also: Document tabled by Lieutenant General Angus Campbell DSC, *Joint Agency Taskforce - Operation Sovereign Borders Manus OPC Force Protection Review* (tabled 11 July 2014).

Date	Event
2 January 2014	G4S submitted a security risk assessment advocating the 'erection of more robust fencing, installation of [closed circuit television] and improved security lighting' to department. ⁴
26 January 2014	Protests started at the RPC, initially localised to Oscar compound. The protests were described as peaceful and ad hoc. ⁵ From this day onwards, protests occurred on a daily basis, becoming more organised and involving more compounds within the RPC.
30 January 2014	G4S requested an additional 30 guards. The request was approved by the department. ⁶
1 February 2014	G4S requested an additional 100 guards. The department sought additional information about this request but it was ultimately approved. ⁷
2 February 2014	G4S contacted the department urging it to open discussions with asylum seekers on refugee status determination (RSD). ⁸
4 February 2014	G4S sent a briefing note to Mr Martin Bowles PSM, Secretary of the department, requesting urgent reinstatement of RSD, and expedited action in relation to outstanding security issues previously raised by G4S with the department. ⁹
5 February 2014	A meeting between asylum seekers and the department occurs at the RPC during which asylum seekers issue the department with a series of questions, seeking answers within 12 days. ¹⁰
6/7 February 2014	G4S sent letters to the Secretary of the department and the Minister for Immigration and Border Protection outlining concerns about the handover to Transfield Services and other issues relating to the RPC. ¹¹
16 February 2014	During the afternoon, a meeting between asylum seekers, the

4 *Submission 29*, p. 4.

5 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 32-33.

6 *Submission 29*, p. 4.

7 *Submission 29*, p. 4; Mr Martin Bowles PSM, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, pp 10-11.

8 *Submission 29*, p. 4.

9 *Submission 29*, pp 4 and Attachment 8.

10 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 33.

11 *Submission 29*, pp 4 and Attachments 19 and 20.

Date	Event
	department and PNG immigration officials took place to respond to the questions put to the department on 5 February 2014. ¹²
	During the evening, 35 asylum seekers escaped from Oscar compound. All were captured and returned by G4S guards with the assistance of the PNG Police and other locals. Eight asylum seekers were detained in the custody of PNG Police (they were returned to the RPC several days later). ¹³
	Violent rioting occurred in Oscar compound. G4S guards and other locals entered Oscar compound. ¹⁴
	More than 200 asylum seekers engaged in protesting in Foxtrot and Mike compounds. The G4S Incident Response Team (IRT) was deployed to prevent protesting asylum seekers in Foxtrot compound entering Mike compound. ¹⁵
	Approximately 25 asylum seekers and five G4S staff were injured during these protests and required medical treatment. ¹⁶
17 February 2014	On the morning of 17 February, the Australian Minister for Immigration and Border Protection issued a media release confirming that 'there was a disturbance at the Manus Island centre last night.' The Minister later held a press conference at which he provided further details. ¹⁷
	During the morning, G4S and other service providers made contingency plans, including an assessment of available capacity in

12 Mr Mark Cormack, Deputy Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 20; Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 36-39.

13 G4S, *Submission 29*, p. 17.

14 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 44.

15 G4S, *Submission 29*, p. 17; Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 44-45.

16 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 45.

17 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Incident on Manus Island', *Media release*, 17 February 2014, at: www.minister.immi.gov.au/media/sm/2014/sm211827.htm (accessed 9 September 2014); 'Manus Island incident, Navy mistreatment allegations, Operation Sovereign Borders', *Press Conference*, 17 February 2014, at: www.minister.immi.gov.au/media/sm/2014/sm211855.htm (accessed 22 October 2014).

Date	Event
	the medical centre, in preparation for further possible disturbances at the RPC. ¹⁸
	Tension started to mount in Mike compound from approximately 1.45 pm. ¹⁹
	Protest activity commenced in Oscar compound at around 4.45 pm. ²⁰
	All non-essential staff were removed from the RPC by approximately 5.15 pm. ²¹
	At approximately 5.35 pm, some asylum seekers not engaged in the protests were moved from Oscar compound to Bravo and Charlie compounds. ²²
	From approximately 9.30 pm protest activity increased.
	Shortly after 9.30 pm the generator supplying power to Mike compound failed. ²³
	At around 9.45 pm the PNG Police mobile squad with a dog team is deployed in the 'Green Zone' (the area between Mike and Foxtrot compounds). ²⁴
	The G4S IRT is deployed to assist G4S staff located in the Green Zone who were subjected to rock and other missile attack. The staff were extracted at 9.59 pm. ²⁵
	At around 10.00 pm the IRT withdrew from the Green Zone. ²⁶
	Protestors destroyed the fence between Mike and Foxtrot compounds at 10.05 pm, enabling protestors from these two compounds to

18 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 48.

19 G4S, *Submission 29*, Attachment 4, p. 1.

20 G4S, *Submission 29*, Attachment 4, p. 2.

21 G4S, *Submission 29*, Attachment 4, p. 3.

22 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 50; Mr Kevin Pye, G4S, *Committee Hansard*, 10 June 2014, p. 39.

23 G4S, *Submission 29*, p. 18.

24 G4S, *Submission 29*, Attachment 4, p. 6; Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 36.

25 G4S, *Submission 29*, p. 18.

26 G4S, *Submission 29*, p. 18.

Date	Event
	<p>combine.²⁷</p> <p>At 10.37 pm the IRT withdrew completely from Mike compound.²⁸</p> <p>Between 11.00pm and 11.30 pm, injured asylum seekers including Mr Reza Barati were brought to the triage point established by IHMS at the Bibby Progress.</p> <p>At around 11.15 pm, the IRT entered Foxtrot compound to enable approximately 400 asylum seekers who were not involved in the protesting to evacuate to an oval.²⁹</p> <p>Gunshots were heard from 11.22 pm. It was alleged that about the same time, PNG Police officers and other PNG locals entered Mike compound and began fighting with rioting asylum seekers.³⁰</p>
18 February 2014	<p>G4S re-established control of the RPC at approximately 1.00 am.³¹</p> <p>Mr Barati died enroute to Lorengau hospital after departing from the Bibby in an ambulance at approximately 2.00 am.</p> <p>Investigations by PNG Police into the events of 17 February commenced.</p> <p>At 11.00 am AEDT the Minister for Immigration and Border Protection issued a statement in relation to the incident at Manus Island RPC on 17 February. The minister stated that he was advised 'that during the events PNG Police did not enter the centre and that their activities related only to dealing with transferees who breached the external perimeter'.³²</p>
21 February 2014	<p>The Minister for Immigration and Border Protection announced an independent review of the incident by Mr Robert Cornall AO, a former Secretary of the Attorney-General's Department.³³</p>

27 G4S, *Submission 29*, p. 18.

28 G4S, *Submission 29*, p. 18.

29 G4S, *Submission 29*, p. 19.

30 G4S, *Submission 29*, p. 19 and Attachment 4, p. 11.

31 G4S, *Submission 29*, Attachment 4, pp 12-4.

32 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Statement on further incident at Manus Island OPC', *Media release*, 18 February 2014, at: <http://www.minister.immi.gov.au/media/sm/2014/sm211867.htm> (accessed 9 September 2014).

33 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island incident, Operation Sovereign Borders, joint review', *Press conference*, 21 February 2014, at: www.minister.immi.gov.au/media/sm/2014/sm212027.htm (accessed 10 September 2014).

Date	Event
22 February 2014	The Minister for Immigration and Border Protection issued a media release confirming that 'the majority of the riotous behaviour...and the response to that behaviour to restore order to the centre, took place within the perimeter of the centre'. ³⁴

Events leading up to 16 February 2014

Build-up of protest activity in January 2014

5.3 During late 2013, rumours circulated amongst asylum seekers at the Manus Island RPC that there would be an amnesty in offshore processing at Christmas resulting in asylum seekers being transferred to Australia.³⁵

5.4 The Cornall Review noted that the Manus Island RPC remained calm over the Christmas period and early January 2014.³⁶ This view was confirmed in the evidence provided to the committee by the G4S Deputy General Manager of the Manus Island RPC, Mr John McCaffery:

...prior to the commencement of the peaceful protest on 26 January, over Christmas it had been extremely quiet. There had been a very good relationship between the transferees and the other stakeholders. The transferees had put together collections to give to the local school and the local hospital. At that stage, I left the island. I was there over Christmas and New Year's and I left about the 8th or 9th.³⁷

5.5 However, towards the end of January there was a further rumour about a possible amnesty and a build-up in tensions in the centre.³⁸ Mr Chris Manning, Managing Director of Immigration Services for G4S Australia explained:

...on 30 January, the intelligence suggested that we were entering a new phase in the mood of the centre. There was, for the first time, in that current range of protests, active intelligence coming through that there was a threat of violent action—pushing down fences, setting fires and generally causing

34 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island Update', *Media release*, 22 February 2014, at: www.minister.immi.gov.au/media/sm/2014/sm212031.htm (accessed 9 September 2014).

35 Mr Kenneth Douglas, First Assistant Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 11; Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 19; Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 30-31.

36 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 32. See also Mr Robert Cornall AO, *Committee Hansard*, 12 June 2014, p. 10.

37 *Committee Hansard*, 10 June 2014, p. 45.

38 Mr Martin Bowles PSM, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 11.

violent unrest. That is the time at which we escalated the level of communication to secretary and ministerial level.³⁹

Requests for additional security staff

5.6 The build-up in protest activity led G4S to request on 30 January 2014 approval from the department to engage 30 additional guards. Mr Manning, G4S, explained this request:

The reason we asked for 30 in the first place was that 30 January was the first day that intelligence suggested that the hitherto peaceful protests were likely to escalate to violence, pushing down fences or lighting fires. That is what triggered the request for additional guards.⁴⁰

5.7 The department agreed to this request straight away.⁴¹

5.8 On 1 February 2014, G4S emailed the department requesting an additional 100 guards. Mr Manning, G4S, indicated that this request had been foreshadowed with the department when the 30 additional guards were requested:

I made it clear in the initial response that 30 was just the first stage. The reason I did that is that it was easy to get 30 extra guards across from Port Moresby because they were almost immediately available. It was a kind of first-stage response—an immediate response—to the growing tensions, threat of violence at the centre. When we made that request [I indicated] that I may be coming to them ...for an additional 100, because that is what I felt was needed, we would not have been able to muster 100 extra staff at that kind of notice. That is why it came across as a staged approach...

It was a preliminary move... We were also obviously hoping that we would see some progress in terms of improved communication with transferees, because that is really what they were seeking, as other emails attest to. So I did not want to activate the extra 100, when it would not necessarily have been necessary.⁴²

5.9 G4S submitted that the department initially rejected this request.⁴³ However, the evidence from the department suggested that this was more an issue of the department seeking additional information about the request before agreeing to the

39 *Committee Hansard*, 10 June 2014, p. 53. See also: Mr Martin Bowles PSM, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 10; Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 5.

40 Mr Chris Manning, G4S, *Committee Hansard*, 10 June 2014, p. 44.

41 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 74.

42 *Committee Hansard*, 10 June 2014, p. 44. See also *Submission 29*, Attachment 16.

43 *Submission 29*, p. 4 and Attachment 7.

further 100 guards.⁴⁴ The Secretary of the department noted that the additional 130 staff were in place by 4 February 2014.⁴⁵

Tensions related to the refugee status determination process

5.10 In early February, G4S raised its concerns with the department about escalating tensions in the Manus Island RPC and suggested how they might be defused. On 2 February 2014, Mr McCaffery, G4S, emailed the department's centre coordinator, Mr Anthony Kneipp, urging the department to open discussions with detainees in relation to the refugee status determination process. Mr McCaffery stated that the protest action was fundamentally about communication from the department and PNG Immigration and Citizenship Services Authority (ICSA) regarding what was happening in relation to the asylum seekers' applications for resettlement:

...I do not believe any amount of [programs and activities] or excursions will reduce the Transferees ardour [sic] for a response to the simple question of when will they get out of here.⁴⁶

5.11 Similarly, Mr Sven Straub, Acting Managing Director, Southern Pacific Region, G4S sent a detailed briefing note to the Secretary of the department on 4 February 2014 requesting urgent reinstatement of refugee status determination processes and requesting expedited action on outstanding security issues previously raised with the department. The briefing note noted reliable intelligence suggesting that 'a serious event, including setting fires and pushing down fences for the purposes of escaping, is likely to take place in the next few days.'⁴⁷ In addition, Mr Straub advised the Secretary that:

We have repeatedly asked the Island Immigration Staff (both Australian and PNG) to engage with Transferees to little avail, although a series of Q&A sessions has now been agreed. G4S has raised this issue with DIBP. This situation is similar to that which prevailed in terms of stalled processing and general frustration with over-crowding on Christmas Island in March 2011 prior to a breakdown of order there. In short, it is our view that the situation could be easily defused if transferees can be provided reassurance on timelines for processing of their claims and if PNG ICSA commenced processing claims again.⁴⁸

5.12 A meeting was held on 5 February between asylum seekers and the department during which asylum seekers provided the department with a series of

44 Mr Martin Bowles PSM, *Committee Hansard*, 10 June 2014, pp 10-1.

45 Mr Martin Bowles PSM, *Committee Hansard*, 10 June 2014, p. 10. See also *Committee Hansard*, 10 June 2014, p. 29.

46 *Submission 29*, Attachment 12. See also Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 74-75.

47 *Submission 29*, Attachment 8, p. 3.

48 *Submission 29*, Attachment 8, p. 3. See also Miss Elizabeth Cruikshank, Regional Processing Centre Contract Manager, Salvation Army, *Committee Hansard*, 11 June 2014, p. 27; Salvation Army, *Submission 34*, Annexure A, [p.1] and Annexure B, [p.1].

questions and requested official answers within 12 days.⁴⁹ An officer of the department described the purpose of the meeting:

As a result of the rising tensions within the centre, there were a series of consultations and discussions involving the PNG immigration authorities, the welfare providers and G4S to, in many ways, articulate and specifically put down the concerns they had.⁵⁰

5.13 The department and PNG ICSA agreed to answer the questions put by the asylum seeker representatives within 12 days.⁵¹ In addition, six Claims Assistance Provider Scheme (CAPS) personnel were deployed to Manus Island on 6 February 2014 to deliver group advice sessions and individual advice to asylum seekers.⁵² Mr Nicholas Adler, Registered Migration Agent, Playfair Visa and Migration Services, explained how he understood the role of the CAPS personnel:

Our job was to provide information sessions to inform as many people as possible in the centre about the process that they were going to engage in, if they had not already engaged in it, and to conduct a full schedule of interviews to begin the RSD process for a number of clients. We would do three interviews per day per person. ...So there were 18 clients having their applications prepared and lodged per day.⁵³

5.14 In response to a question from the committee, Mr Adler confirmed that the CAPS personnel were not given any information regarding the timeframe for the RSD process nor about the resettlement process which might follow a determination that a client was a refugee.⁵⁴ He told the committee:

Resettlement was clearly not part of our remit and we were very careful not to engage in that subject because it was not part of our role. Our role was restricted to the RSD process. Resettlement can only occur when someone has been determined to be a refugee. Our role was to help in that assessment process. If there were a positive outcome, resettlement would be another question. I am aware that this was an important issue for our clients. Of course people were wanting information on this. But there was no reliable information available. There was a lot of conflicting information

49 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 33.

50 Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 20.

51 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 33.

52 Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 13; Mrs Petra Playfair, Managing Partner, Playfair Visa and Migration Services, *Committee Hansard*, 11 June 2014, p. 43.

53 *Committee Hansard*, 11 June 2014, p. 45. See also Miss Elizabeth Thompson, *Committee Hansard*, 12 June 2014, p. 22.

54 *Committee Hansard*, 11 June 2014, pp 45-6. See also Miss Elizabeth Thompson, *Committee Hansard*, 12 June 2014, pp 24 and 26-8.

circulating and a lot of rumour—unsubstantiated rumour and conflicting rumour.⁵⁵

5.15 Miss Elizabeth Thompson, who worked as a CAPS officer on Manus Island in August 2013 and February 2014, told the committee that there was a change in the RSD process between her first and second deployment to the island. She gave evidence that the department advised the CAPS providers during a phone hook-up on 5 February 2014 that there was no plan to proceed to the RSD interview to enable the completion of the refugee status determination:

...usually on a deployment like this you would have the CAPS...interview and then, a couple of weeks down the track, you would organise the schedule, ideally, so that for the person I do the CAPS interview with I also go to RSD...It was clear from the initial schedule we received in August that that was the plan for what should happen. We had a schedule that said, 'You'll do this and in a week's time you'll do the RSD.' So I would take a person through both the CAPS and RSD stages...By the second deployment, there was no suggestion that we would do CAPS then RSD. It was just CAPS, and that was made very clear on 5 February.⁵⁶

5.16 It was Miss Thompson's view that the process of considering claims to refugee status was being made up on the run in response to events:

It became very clear to me that there was not actually a documented process to take people through and that it was hard to provide information or claims assistance to someone. For example...if someone has what you might consider to be a weak convention claim it is impossible for that person to weigh up the pros and cons and the risks to themselves of either continuing with the process or deciding to take the risks associated with returning home if they do not know where they will end up, whether they will have work rights-⁵⁷

5.17 Miss Thompson's evidence was that the department intended that the deployment of CAPS providers would help to reduce the protests at the Manus Island RPC:

...[a departmental officer] made it clear that there were protests going on and they really wanted us to get onto the island because they thought that might stop the protests. I think the idea was to get something happening to calm things down.⁵⁸

5.18 If that was the intention of the department it did not come to pass: instead protest activity increased during the period asylum seekers were awaiting responses to

55 *Committee Hansard*, 11 June 2014, p. 46.

56 *Committee Hansard*, 12 June 2014, p. 23. See also pp 27 and 30.

57 *Committee Hansard*, 12 June 2014, p. 26. See also p. 29.

58 *Committee Hansard*, 12 June 2014, p. 23.

the questions posed at the 5 February meeting.⁵⁹ A G4S Safety and Security Officer described these protests:

The clients in Oscar, Foxtrot, Delta and Mike were doing protests of one hour a night...They were quite peaceful. The protesting consisted of chanting and singing mainly expressing that they wanted freedom, and they wanted to be processed quicker and get to Australia.⁶⁰

5.19 The committee was also provided with some video footage of these protests which supported this assessment.⁶¹ However, Mr Kevin Pye, Regional Managing Director of the Manus Island RPC for G4S, noted that intelligence reports were suggesting that there was an increasing risk of violent protest:

In the two weeks leading up to the riots, we received increased intelligence reporting of threats of violent protest over the period of 16 to 18 February. That coincided with the program for the delivery of answers to the community leaders from the department and PNG immigration. Because of this increased risk of unrest we conducted extensive preparations at both project level and communications at corporate level with the department.⁶²

Issues regarding possible deployment of the PNG Police mobile squad

5.20 On 10 February 2014, Mr McCaffery of G4S emailed Mr Kneipp of the department raising his concerns about various issues related to deployment of the PNG Police mobile squad in the event of an incident at the Manus Island RPC including whether the squad was adequately equipped and trained in relation to crowd control utilising non-lethal force. He specifically raised concerns that the escalation of force which would occur if the squad was deployed would be 'quick' and could result in very serious injuries or the death of protestors.⁶³ Mr Pye, G4S, explained these concerns in more detail:

When we started looking at the potential use of the mobile squad to assist the centre, which would have been in the December-January period, it was self-evident to us on the ground that because of how they were dressed, because of how they were trained...they did not have what you would call a conventional riot force capability—first defensive force and then escalating

59 Ms Elizabeth Thompson, *Submission 19*, Appendix 2, p. 44; Mr Nicholas Adler, Playfair Visa and Migration Services, *Committee Hansard*, 11 June 2014, p. 50; Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 33-4.

60 Mr Andrew Wilkie MP (submission on behalf of a G4S Safety and Security Officer), *Submission 4*, pp 9-10. See also Mr Christopher Iacono, *Committee Hansard*, 12 June 2014, p. 33.

61 Mr Andrew Wilkie MP, *Submission 4*, Appendices 9 and 10.

62 *Committee Hansard*, 10 June 2014, p. 38. See also Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 33.

63 Email from Mr John McCaffery, G4S, to Mr Anthony Kneipp, DIBP, dated 10 February 2014 (tabled 10 June 2014).

use of force, as described in using non-lethal capsicum or other things. They stood in uniforms and had weapons.⁶⁴

5.21 The department described how it responded to the concerns related to possible deployment of the PNG Police mobile squad raised by G4S including through the briefing note to the Secretary of 4 February 2014 and the email to Mr Kneipp of 10 February 2014:

The department raised concerns about the PNG Mobile Squad with the relevant PNG authorities on multiple occasions as appropriate, including in response to Mr McCaffery's email of 10 February 2014. In some instances, positive changes were realised through ongoing stakeholder engagement on these matters.⁶⁵

Meeting on the afternoon of 16 February 2014

5.22 On the afternoon of 16 February, a meeting was held involving asylum seekers representing all four compounds, departmental officials and PNG immigration officials so that answers could be provided to the questions put by the asylum seekers on 5 February. The department explained the context in which the meeting occurred:

The meeting was held as part of a commitment that had been given to a representative group of the transferees to respond to a series of questions that they had submitted 10 or 11 days earlier. ...This was a planned meeting. It was in response to a commitment that was given by the PNG immigration people to get back to the transferees with some specific answers to their questions.⁶⁶

5.23 The department gave evidence that a PNG immigration official had carriage of the meeting and, with assistance from interpreters, he provided responses on behalf of the PNG Government to the concerns raised by the asylum seekers:

The questions were crafted by the transferees. The answers were provided by the PNG immigration authority. We provided advice, because some of the questions were technical in nature. We assisted them to formulate the answers. Those answers were then agreed on by PNG ICSA and delivered by the senior PNG ICSA official.⁶⁷

5.24 The Salvation Army submission described the meeting in more detail:

...it was a big meeting with around 70 transferee representatives from all four compounds and interpreters. It was reported to [The Salvation Army] management through their representative at the meeting, the Centre

64 *Committee Hansard*, 10 June 2014, pp 44-5. See also Mr Steven Kilburn, *Committee Hansard*, 11 June 2014, p. 16.

65 Department of Immigration and Border Protection, *Answers to questions taken on notice at a public hearing on 10 June 2014* (received 9 July 2014), [p. 11].

66 Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 20.

67 Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p.21.

Manager, Jeffrey Kiangali, spoke softly and it was difficult to hear him. He changed the agreed messages in some ways and he was misunderstood or misinterpreted.⁶⁸

5.25 The central message of the meeting was that the processing of refugee claims was likely to take a long time, possibly up to four years, and that the other option available to the asylum seekers was to return to their home country or to another country where they held residency rights.⁶⁹ Amnesty International described what the asylum seekers were told at the meeting:

In the meeting, no new information was given to the asylum seekers and their questions were not answered. They were told that they would never be settled in Australia and that if they wished to settle in a third country, they would receive no support from Australia or PNG to do this. They were not told when they would be processed, released or resettled in PNG.⁷⁰

5.26 Mr Darren Boyd, Regional Managing Director Southern Pacific, G4S, submitted that the meeting was the trigger for riots later that day:

The riots were then triggered when the PNG immigration officials presented to the transferees, but failed to confirm a timeline for processing of refugee applications, suggesting the transferees may need to wait in the centre for several years before receiving determinations.⁷¹

5.27 The Secretary of the department disputed the view that the lack of information about the likely timing for completion of the refugee status determinations was the key contributing factor leading to the riots on 16 February.⁷² He argued that delays in delivering refugee status determination outcomes were a contributing factor but that there were a range of issues at play:

It is a contributing factor, but if you read the [Cornall] report it talks about anger at being brought to Papua New Guinea, it talks about anger that they are not going to be resettled in Australia, it talks about the processing of refugee status determinations, it talks about anger and frustration about uncertainty of their future, and it talks about frustration about lack of information.⁷³

68 *Submission 34*, Annexure B [p.1]. See also Miss Elizabeth Cruikshank, Regional Processing Centre Contract Manager, Salvation Army, *Committee Hansard*, 11 June 2014, p. 27.

69 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 5 and 36-40.

70 *Submission 22*, p. 5. Amnesty International stated that accounts in its submission reflected information obtained from detainees and contracted staff. See also: Ms Kate Schuetze, Pacific Researcher, Amnesty International, *Committee Hansard*, 12 June 2014, p. 56; Miss Elizabeth Thompson, *Submission 19*, Appendices 1 and 2, pp 43 and 44.

71 *Committee Hansard*, 10 June 2014, p. 37. See also: Mr Pye, G4S, *Committee Hansard*, 10 June 2014, p. 55; Mr Andrew Wilkie MP, *Submission 4*, pp 4 and 10; Amnesty International, *Submission 22*, p. 5; Mr Steven Kilburn, *Committee Hansard*, 11 June 2014, p. 7.

72 Mr Martin Bowles PSM, *Committee Hansard*, 10 June 2014, p. 29.

73 Mr Martin Bowles PSM, *Committee Hansard*, 10 June 2014, p. 30.

Protests and breakout of asylum seekers on 16 February 2014

Protest in Oscar compound

5.28 After the meeting between asylum seekers, the department and PNG immigration officials, protesting occurred in Oscar compound and some asylum seekers broke out of the compound. As they were returned to Oscar compound, some PNG G4S guards and other locals entered the compound and violent clashes occurred. Mr Kevin Pye, Regional Managing Director Manus Island Detention Centre, G4S described these events to the committee:

On the afternoon of 16 February, subsequent to the breakup of the meeting between PNG immigration, the department and the community leaders, there was a breakout from Oscar. Some 35 transferees exited through an open gate onto Route Pugwash. They were quickly rounded up and brought back in or came back into the compound under their own volition. Unfortunately, during that re-entry process some locals in this area entered the compound behind them—chased them back in. Some G4S PNG national staff, plus these additional locals, commenced fighting with the Oscar compound transferees. This was quelled by the intervention of our expatriate staff and other national staff. The ruckus in Oscar compound set off chants and rioting or protests in both Mike and Foxtrot compounds. This consisted of both obscene and threatening chants towards the local community who were gathered out [t]here.⁷⁴

5.29 Mr Manning, G4S, argued this incident illustrated a deficiency in the security infrastructure at Manus Island RPC:

That particular egress of 35 transferees from this centre relates directly to the lack of a proper security infrastructure. The opportunity to exit through that gate was because a vehicle was being driven in to deliver meals. In a normal immigration facility, which would have been more secure, you would have had an airlock or a sally port or something like that and there would not have been the opportunity for people to escape the centre and then put themselves at risk from local intervention by the mobile squad. That is another example of where the security infrastructure did not provide appropriate protection to the transferees.⁷⁵

5.30 A G4S Safety and Security Officer described the confrontations in Oscar compound between asylum seekers and PNG G4S guards which occurred during this incident:

I noticed clients had started to arm themselves with weapons in the form of metal bed support bars. Anything that was a solid object they grabbed to defend themselves - metal, wood, bins, anything. PNG guards were trying

74 *Committee Hansard*, 10 June 2014, p. 38. See also: Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 5-6, 42-44 and 77; Mr Steven Kilburn, *Submission 18*, pp 7-8; Mr Steven Kilburn, *Committee Hansard*, 11 June 2014, pp 12-13; Mr Andrew Wilkie MP, *Submission 4*, p. 4; Amnesty International, *Submission 22*, p. 5.

75 *Committee Hansard*, 10 June 2014, p. 55.

to attack the clients. The PNG guards dragged out a metal bunk bed and started to pull it apart to make their own weapons. Most clients started to run back to their accommodation and barricade themselves in. Expat G4S guards were trying to keep the clients inside their accommodation and stop the PNG guards going in and beating...the clients.⁷⁶

5.31 This G4S officer explained, that despite a lack of protective equipment, some G4S expatriate staff did their best to prevent the clashes between PNG guards and asylum seekers:

The expat guards were like mediators in the middle. We were without weapons or protection and looking back I think we were quite lucky we did not suffer any serious injuries. At one point two clients snuck behind the PNG guards. When they were eventually seen, five to six PNG guards dragged each client to the ground with head shots - as in head punches, knee thrusts. Once on the ground, the PNG guards started to kick the clients in the head, torso, legs and back. Another expat guard and I ran to assist the clients. We had to jump on the clients to stop the PNG guards kicking them. Initially the PNG guards didn't stop kicking. I remember being struck many times but my adrenalin level was quite high so I didn't feel pain until later that night.⁷⁷

Protests in Foxtrot and Mike compounds

5.32 There were also protests in Foxtrot and Mike compounds, reportedly involving chanting directed at local staff and stone throwing between asylum seekers and locals outside the perimeter fences.⁷⁸ The G4S incident response team (IRT) was deployed to prevent protesting asylum seekers in Foxtrot compound from entering Mike compound and was ultimately successful in forcing people back into the Foxtrot compound.⁷⁹

Injuries and arrests

5.33 Approximately 25 detainees and five G4S staff sustained injuries requiring medical treatment as a result of the protests on 16 February 2014.⁸⁰ The injuries included fractures, severe concussion, deep scalp lacerations and one man whose

76 Mr Andrew Wilkie MP, *Submission 4*, p. 5.

77 Mr Andrew Wilkie MP, *Submission 4*, pp 4-5.

78 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, May 2014, pp 44-45; Mr Steven Kilburn, *Submission 18*, pp 8-9; Amnesty International, *Submission 22*, p. 5.

79 Mr Kevin Pye, G4S, *Committee Hansard*, 10 June 2014, p. 38; Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 44; Mr Steven Kilburn, *Submission 18*, p. 9; Ms Elizabeth Thompson, *Submission 19*, Appendix 1, p. 43.

80 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 44 and 45. See also, Mr Steven Kilburn, *Submission 18*, p. 8.

throat was slashed though this injury was not as serious as it first appeared.⁸¹ A G4S Safety and Security Officer described assisting this man:

I noticed one expat security officer physically holding up a client at the gate's entrance. The client had his throat slashed. I ran straight to the client. We tried to put him on the ground to give him medical treatment. He would not go on the ground so we had to kick his legs out. We ripped his shirt off and put it round his neck as he was starting to bleed out. He went white in the face and I believe that if we'd waited for medical staff we would have lost him so we carried him straight to IHMS.⁸²

5.34 Eight asylum seekers were detained by PNG Police as a result of incidents which occurred during these protests and charged with criminal offences.⁸³

Events of 17 and 18 February 2014

Actions taken during the day of 17 February

5.35 On 17 February 2014, G4S and other service providers undertook contingency planning, including assessing available capacity in the medical centre, in preparation for further possible disturbances that evening.⁸⁴ G4S staff sought to remove rocks and other projectiles which had been thrown into the compounds the previous evening.⁸⁵ In addition, all PNG staff of the service providers were withdrawn from the compounds.⁸⁶ Mr Steven Kilburn, who was employed as a Safety and Security Officer with G4S at the Manus Island RPC, noted that:

There was a large number of local G4S guards on the roadway outside the compound because they had been removed from the compounds due to threats of violence. There was also a large number of PNG staff from Spick & Span, Eurest as well as PNG locals dressed in civilian clothes on the roadway outside the [Manus Island] RPC. Some were armed with sticks and metal bars and other weapons.

The transferees had armed themselves. They had broken metal braces off the beds, tied them together with sheets and had sharpened them up on concrete; we had seen them doing that during the day. It was too dangerous for Australian guards to enter the compounds and remove the weapons. The IRT did sweeps through the compound to try and remove weapons.

81 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 5- 6 and 46-47.

82 Mr Andrew Wilkie MP, *Submission 4*, p. 4.

83 Amnesty International, *Submission 22*, p. 6; Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 5- 6 and 44-47.

84 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 6 and 48.

85 Mr Kevin Pye and Mr John McCaffery, G4S, *Committee Hansard*, 10 June 2014, p. 62.

86 Mr Kevin Pye, G4S, *Committee Hansard*, 10 June 2014, pp 38-9. See also Amnesty International, *Submission 22*, p. 6; Miss Elizabeth Cruikshank, Regional Processing Centre Contract Manager, Salvation Army, *Committee Hansard*, 11 June 2014, pp 38-9.

PNG locals had also been stockpiling weapons outside the [Manus Island] RPC and during the day Australian staff had been removing as many weapons as possible.⁸⁷

5.36 Mr Kilburn gave evidence that G4S staff were told to advise asylum seekers that if G4S had to leave the RPC then their safety could not be guaranteed:

We were told to let the transferees know that if it kicked off again and there was a riot again, if it got to the point where we had to leave, that was it. We could not guarantee their safety—which is true. We could not guarantee their safety if we were forced to leave because of fears for our own safety.

That would not have taken much, because we had nothing. We had no protective equipment, no weapons...and we were stretched for staff. We were so short of people it was ridiculous...⁸⁸

Events of the night of 17 February

5.37 The night of 17 February 2014 saw the most serious events unfold at the Manus Island RPC. The situation on the ground was monitored by the Emergency Control Organisation (ECO), a group consisting of G4S staff and representatives from the department, the Salvation Army and IHMS, who met in the administration building at the centre.⁸⁹ G4S staff in the ECO were responsible for maintaining a log of events as they unfolded.⁹⁰

Build-up of protest activity

5.38 Tension began to build up in Mike compound from around 1.45pm and protest activity commenced in Oscar compound at approximately 4.45pm.⁹¹ All non-essential service provider staff were removed from the centre by approximately 5.15pm.⁹² In addition, some non-protesting asylum seekers were moved from Oscar to Bravo and Charlie compounds at approximately 5.35pm.⁹³

87 *Submission 18*, pp 10-11. See also *Committee Hansard*, 11 June 2014, p. 13.

88 *Committee Hansard*, 11 June 2014, p. 12. See also p.13.

89 G4S, *Answers to written questions on notice* (received 28 November 2014), p. 1. G4S noted that the ECO was stood down briefly during the worst of the riots during the night.

90 G4S, *Answers to written questions on notice* (received 28 November 2014), p. 1.

91 G4S, *Submission 29*, Attachment 4, pp 1-2; 'SitRep#7 - Cat 3 – Critical Disturbance - Manus OPC – 16 February 2014 as at 1820 hours AEDST Monday 17 February 2014', *Additional Information provided by the Department of Immigration and Border Protection – incident reports* (received 6 June 2014), [p. 9].

92 Mr Kevin Pye, G4S, *Committee Hansard*, 10 June 2014, p. 39; Mr Robert Cornall AO, *Committee Hansard*, 12 June 2014, p. 15; Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 49. See also Ms Sharon Callister, Chief Executive Officer, Humanitarian Mission Services, Salvation Army, *Committee Hansard*, 11 June 2014, p. 20; Name withheld, *Submission 37*, [p. 2].

93 Mr Kevin Pye, G4S, *Committee Hansard*, 10 June 2014, p. 39; Mr Andrew Wilkie MP, *Submission 4*, p. 8; Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 50.

5.39 Protest activities increased just after 9.30pm.⁹⁴ A G4S Safety and Security Officer described what he saw from Golf 2 (the main gate into Mike compound):

After the evening meal, the tension at the Centre escalated and I saw many transferees running around with items of clothing wrapped around their faces in the form of balaclavas.⁹⁵

5.40 Shortly after this, the generator providing power to Mike compound failed.⁹⁶ While it is not clear what caused the power failure, as the generator is located on the other side of the road to Mike compound, it seems unlikely that asylum seekers turned the power off.⁹⁷ Power failed and was restored a few times in Mike and Foxtrot compounds over the next hour.⁹⁸

5.41 The PNG Police mobile squad with a dog team was deployed into the 'Green Zone' (the area between Mike and Foxtrot compounds) at 9.44pm.⁹⁹ The department stated that the deployment of the dog squad was 'a matter that was ultimately authorised and determined through G4S and the PNG police'.¹⁰⁰ However, G4S gave evidence that the deployment of the dog squad was requested by the department.¹⁰¹ Mr Pye, G4S, explained the rationale for this decision:

That was done as a show of force, essentially. It was into the neutral zone; it was not into the compounds; it was in between the two compounds. This mobile squad was the first one to arrive with dogs and we wanted to make sure that the transferees understood there were dogs in the area so they were not to come outside because there were dogs. So it was a display. It was not meant to intimidate them or do anything else. It was meant to display. But they were quickly withdrawn as missiles were thrown at them.¹⁰²

5.42 Mr Kilburn stated that the dog squad also walked past Oscar compound and that this was intended to deter further protest activity:

The intention, I believe, was a show of force to try to demonstrate to the transferees: we have got more resources here tonight, there are more police

94 G4S, *Submission 29*, Attachment 4, pp 5-6.

95 Name withheld, *Submission 35*, [p. 1].

96 G4S, *Submission 29*, Attachment 4, p. 6. See also Mr Steven Kilburn, *Submission 18*, p. 13; Name withheld, *Submission 35*, [p. 1].

97 Mr Robert Cornall AO, *Committee Hansard*, 12 June 2014, p. 4; Mr Steven Kilburn, *Committee Hansard*, 11 June 2014, p. 15.

98 G4S, *Submission 29*, Attachment 4, pp 6-8.

99 Mr Kevin Pye, G4S, *Committee Hansard*, 10 June 2014, p. 39; Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 51.

100 Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 36.

101 Mr Chris Manning and Mr Kevin Pye, G4S, *Committee Hansard*, 10 June 2014, pp 47-8; *Submission 29*, p. 18.

102 *Committee Hansard*, 10 June 2014, p. 47. See also Mr Steven Kilburn, *Submission 18*, p.12; *Committee Hansard*, 11 June 2014, p. 14.

here tonight, it is a lot more serious; think before you do anything because we have now got all this extra force in here to deal with anything that goes on. So, yes, the dog squad did walk through and it did create quite a ruckus as they walked past Oscar compound. They stopped at the front of Oscar compound. A lot of the transferees were at the fence. The dogs started barking. The guys kicked the fence.¹⁰³

5.43 The G4S IRT was deployed to assist G4S staff located in the Green Zone who were facing rocks and missiles being thrown by asylum seekers. These staff were extracted and the IRT withdrew from the Green Zone at about 10.00pm 'under heavy attack' from asylum seekers.¹⁰⁴ Amnesty International gave evidence that several asylum seekers stated that people outside the centre started throwing rocks at them, not the other way round.¹⁰⁵ Mr McCaffery, G4S, described the intensity of the rioting:

At this stage, I was looking into the compound, observing violence of transferee on transferee. There was a hail of missiles of all sorts, from metal poles, pieces of glass and rocks that were the size of my fist and greater. I remember at one stage looking into the night sky and seeing the sky completely filled with missiles. That would ebb and flow through the evening, through the hours that we were there, from times when it was that level of violence to a lesser degree of stones being thrown.¹⁰⁶

5.44 Protesters destroyed the fences between Mike and Foxtrot compounds at 10.05pm, allowing protesters from these two compounds to link up.¹⁰⁷ Mr McCaffery gave evidence that, at this point, there was violence between asylum seekers which resulted in injuries.¹⁰⁸

5.45 At 10.37pm the IRT withdrew completely from Mike compound.¹⁰⁹ At around 11.15pm, the IRT entered Foxtrot compound to allow approximately 400 non-protesting transferees to evacuate to the naval base soccer oval.¹¹⁰ Mr Cornall AO gave a more detailed description of what he concluded had occurred at this point:

...the incident response team, led by a leader called Amy, entered Foxtrot compound during the course of the night of the 17th and pushed their way

103 *Committee Hansard*, 11 June 2014, p. 14.

104 Mr Kevin Pye, G4S, *Committee Hansard*, 10 June 2014, p. 39; G4S, *Submission 29*, p. 18 and Attachment 4, pp 6-8.

105 Ms Kate Schuetze, Amnesty International, *Committee Hansard*, 12 June 2014, p. 56.

106 *Committee Hansard*, 10 June 2014, p. 46. See also Mr Steven Kilburn, *Submission 18*, p.12; *Committee Hansard*, 11 June 2014, p. 15.

107 Mr Kevin Pye, G4S, *Committee Hansard*, 10 June 2014, p. 39. See also Mr Steven Kilburn, *Submission 18*, pp 12 and 13.

108 *Committee Hansard*, 10 June 2014, p. 58.

109 Name withheld, *Submission 35*, [p. 2]; G4S, *Submission 29*, Attachment 4, p. 10.

110 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 7; G4S, *Submission 29*, Attachment 4, p. 11. See also Name withheld, *Submission 33*, [p. 6]; Mr Martin Bowles PSM, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 9.

progressively, in three stages, to where the fence line had been between Foxtrot and Mike compounds. As they reached each of those forward points, the transferees who wanted to be taken away from the chaotic situation were taken out behind them. Then they moved forward to the next point and more transferees were taken out.¹¹¹

Involvement of PNG Police

5.46 According to media reports, Deputy Commissioner Simon Kauba of the PNG Police has stated that PNG Police did not enter the Manus Island RPC either before or during the unrest on 17 February.¹¹² However, the committee received convincing evidence that members of the PNG Police mobile squad did enter Mike compound and that as they did so they discharged their firearms.¹¹³

5.47 More specifically, gunshots were heard from 11.22pm and G4S stated that at this point the PNG Police mobile squad and other PNG nationals (including some G4S staff members) entered Mike compound and began fighting with rioting asylum seekers.¹¹⁴ Mr Boyd of G4S told the committee:

This small-arms fire signalled the break-in of the police and the local community. They forced in from the north and from the south, and in fact one of the photos you saw was the fence that was forced by the police and local communities coming in left and right. They commenced fighting with the transferees in [Mike] compound. These were Mike and Foxtrot transferees. This was witnessed by the IRT who was here. At this time this reinforced IRT who had been operating now for two hours had been hit with rocks, sticks and everything else that the transferees could throw at them. Some of those national staff members broke ranks and moved in to join the fracas.¹¹⁵

111 *Committee Hansard*, 12 June 2014, p. 8.

112 ABC News, 'PNG police slam Australian report into riots at the Manus Island detention centre' at: www.abc.net.au/news/2014-05-28/manus-riot-png-police-respond-to-report/5485116 (accessed 15 September 2014).

113 Mr Darren Boyd, G4S, *Committee Hansard*, 10 June 2014, p. 38; Mr Chris Manning, G4S, *Committee Hansard*, 10 June 2014, p. 52; Mr Steven Kilburn, *Committee Hansard*, 11 June 2014, p. 15. See also Mr Robert Cornall AO, *Committee Hansard*, 12 June 2014, p. 4; Ms Sophie Nicolle, Government Relations Advisor, Amnesty International, *Committee Hansard*, 12 June 2014, p. 50; Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 47.

114 *Submission 29*, pp 1 and 19. See also Name withheld, *Submission 35*, [p. 2]; Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 54, 57-8, 77 and 79. Some evidence to the committee suggested that gunshots were heard from 8.00pm onwards: see Amnesty International, *Submission 22*, p. 6.

115 Mr Darren Boyd, G4S, *Committee Hansard*, 10 June 2014, p. 40. See also Mr Robert Cornall AO, *Committee Hansard*, 12 June 2014, p. 8; Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 6-7, 58-9 and 79.

5.48 The committee received photographs of some of the bullet holes in Mike compound.¹¹⁶ Mr Cornall AO noted that several of the bullet holes he observed during an inspection of Mike compound 'were at about chest level for a man of medium height.'¹¹⁷ A G4S Safety and Security Officer estimated that:

Approximately 20 to 40 shots were fired from different locations in the vicinity of Mike Compound.¹¹⁸

5.49 Correspondence between G4S and the department indicates that on the night of 17 February, the PNG police force present at the centre was 46 officers, comprising 36 mobile squad members and ten dog squad members (with four dogs).¹¹⁹

5.50 There was some confusion at the time amongst G4S officers and other service provider staff about whether the PNG Police mobile squad had been asked to take over responsibility for restoring order inside Mike compound.¹²⁰ Mr Kilburn recalled that:

A message was given over the radio that there are non-combatants in the mess hall, that we had to withdraw the IRT and we could not guarantee their safety. The Police needed to do whatever they needed to do to ensure the safety of those people. The PNG police were then in charge and shortly after I heard the first shots. There were a number of what sounded like shotgun blasts and then some automatic weapon fire. A message come over the radio saying they're firing warning shots in the air, and not to panic, because the sound of gunshots had caused panic amongst the transferees in the other compounds.¹²¹

5.51 Similarly, another G4S Safety and Security Officer, submitted that:

It came over the radio the compound had been handed over to the PNG police, XXX asked for the last to be repeated and again I heard that all staff was to fall back to Golf 1 as PNG police has been given command of Mike compound.¹²²

116 Mr Andrew Wilkie MP, *Submission 4*, Appendices 4 to 8.

117 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 61. See also Mr Daniel Webb, Director of Legal Advocacy, Human Rights Law Centre, *Committee Hansard*, 12 June 2014, p. 58.

118 Mr Andrew Wilkie MP, *Submission 4*, p. 7. See also Amnesty International, *Submission 22*, p. 7; Name withheld, *Submission 33*, [pp 3 and 6].

119 Email correspondence, *Additional Information provided by the Department of Immigration and Border Protection – communications*, received 6 June 2014, [p. 121].

120 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 53. See also Mr Andrew Wilkie MP, *Submission 4*, p. 7; Miss Elizabeth Cruikshank, Regional Processing Centre Contract Manager, Salvation Army, *Committee Hansard*, 11 June 2014, p. 40; Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 47.

121 *Submission 18*, p. 13. See also *Committee Hansard*, 11 June 2014, p. 15.

122 Name withheld, *Submission 35*, [p. 2].

5.52 However, Mr Boyd gave evidence that G4S did not request the PNG Police to enter the compound:

The reaction of the PNG police, locals and some staff seems to have been a response to racist and obscene taunts by transferees directed at PNG locals, as well as the barrage of rocks and other projectiles from within the centre. At no stage did G4S request or invite the PNG police to enter the centre whilst the riots were taking place.¹²³

5.53 Some G4S staff, at considerable personal risk, sought to protect asylum seekers from attack.¹²⁴ Mr Pye of G4S told the committee:

A number of others, both national and expat, moved in because they could see what was happening, and uncommanded commenced, basically, rescue activity. These nationals and expats, at great risk to their own lives, intervened in the fighting. What they did was form a circle with their own bodies and shields, and they started pulling transferees into that to protect them from the police and the nationals. When the circle was full, they formed a human corridor, where they escorted them down to the dining room. Over 306 people were put in the dining room and guarded against what was going on outside.¹²⁵

Attack on Mr Barati

5.54 In terms of the specific attack on Mr Reza Barati, Amnesty International submitted that:

Numerous witness reports state that he was attacked using fists, feet and bats by a group of G4S staff and at least one local staff member employed by The Salvation Army. Several eyewitnesses reported that one attacker picked up a large rock and hit [Mr Barati] on the head with it several times.¹²⁶

5.55 A G4S Safety and Security Officer who witnessed the attack on Mr Barati provided a quite similar account:

...I looked up on the top floor of MA6 and saw a transferee on his hands and knees and then saw a national IRT member kick the transferee in the face. He fell down onto the floor. Whilst he was attempting to get to his hands and knees, another national IRT member ran up and also kicked him in the face, again sending the transferee the floor face first. I then saw a male PNG national come in from the other side of the accommodation

123 Mr Darren Boyd, G4S, *Committee Hansard*, 10 June 2014, p. 38. See also Mr Kevin Pye, G4S, *Committee Hansard*, 10 June 2014, p.41; G4S, *Submission 29*, Supplementary submission, pp 2-3.

124 Mr Steven Kilburn, *Submission 18*, p. 15.

125 Mr Kevin Pye, G4S, *Committee Hansard*, 10 June 2014, p. 40. See also Name withheld, *Submission 35*, [p. 3]; Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 55-6.

126 *Submission 22*, p. 7. See also Name withheld, *Submission 37*, [p. 3]; Mr Robert Cornall AO, *Committee Hansard*, 12 June 2014, p. 5.

block... During this time a transferee was helping the transferee who had been kicked in the face by grabbing him by the waist and putting his hand up (as if to say no don't hit him) towards the [PNG] national... The transferee who had been kicked in the face was still on his hands and knees facing downwards when I saw the national raise his arms above his head, he was holding the piece of wood that I had seen him with earlier. He brought this down on the back of the transferee's head.¹²⁷

5.56 G4S submitted that it had re-established control of the Centre by shortly after 1.00am on 18 February 2014.¹²⁸

Treatment of injuries

5.57 At least 51 asylum seekers sustained injuries, some of them serious, between 16 and 18 February 2014. Mr Barati sustained the most grievous injury and died a few hours after he was attacked. Other serious injuries included one asylum seeker who lost an eye and another who had a gunshot wound in the buttocks. There were also injuries to at least 18 staff members including one serious injury.¹²⁹ An officer of the department described the injuries:

There were: lacerations and abrasions, fractures, soft tissue injuries, contusions, sprains, dental trauma, ligament injuries, gunshot wounds to one person, head injury, an eye enucleation and haematomas. Treatment that was provided was appropriate to the nature and extent of each injury.¹³⁰

5.58 On 17 February 2014, IHMS had evacuated to the Bibby Progress vessel and set up a makeshift triage point there to deal with injured detainees, who started arriving between 11.00pm and 11.30pm.¹³¹ Mr Pye of G4S explained:

As the police and the other illegal entrants started to vacate, we commenced clearance of the accommodation blocks' primary triage and care. It was at this point, around this time, that Reza Barati and other injured transferees were identified, brought forward and evacuated. The triage in this area took a period of time, and they were evacuated down to the [Bibby] as quickly as possible.¹³²

127 Name withheld, *Submission 35*, [p. 3].

128 *Submission 29*, p. 20. See also See also Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 7 and 54.

129 Mr Martin Bowles PSM and Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 9; Name withheld, *Submission 33*, [p. 6]; Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 7-8, 60, 62 and 65-68.

130 Mr Mark Cormack, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 9.

131 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, pp 7, 53 and 60; Dr Mark Parrish, Regional Medical Director, International Health and Medical Services, *Committee Hansard*, 11 July 2014, p. 2.

132 Mr Kevin Pye, G4S, *Committee Hansard*, 10 June 2014, p. 40.

5.59 A Salvation Army employee described how service provider staff were woken up and asked to assist with the treatment of the injured who had been brought down to the wharf for treatment:

We were instructed by [The Salvation Army] to pair up, glove up and assist the medical team with whatever was required. Caring [sic] bodies, attending to the wounded, hold drip lines make up beds, clean up wounded and offer general support.¹³³

5.60 Dr Mark Parrish the Regional Medical Director of IHMS gave evidence that IHMS had in place plans to respond to a mass casualty event including by developing close relationships with the local hospitals and other hospitals in Port Moresby and Australia.¹³⁴ In relation to general level of care provided to asylum seekers and the specific response to the incidents of 16 to 18 February, he told the committee:

I certainly think that we provide a high level of health care to patients in our setting. As an example of that, the response around the incidents of the 16th, 17th and 18th was very good. We had a huge amount of support from the department with the ability to obtain their ambulances and, if necessary, supplies that we were looking at bringing in urgently should things continue.¹³⁵

5.61 However, Mr Kilburn submitted that the facilities available to treat the injured asylum seekers at the RPC were inadequate:

There were approx 20 people in Charlie compound a number were severely injured with injuries including broken bones, eye and other facial injuries. We did not have enough facilities to deal with the injured transferees and the medical attention was very limited until extra medical staff arrived on the island. I was given 2 boxes of Panadol and told to give it out as required. Transferees were moaning in agony throughout the night we had no access to clothing or basics such as soap shampoo, etc. for the transferees. Some transferees clothing was covered in blood.

One young injured man was so traumatized that he soiled himself. Expat staff members had to try and find something for him to wear...

Transferees with facial injuries could not eat the food provided so we attempted to find something for them to drink to keep their strength up; however, even simple things like a straw were not available. Expat staff obtained a tin of Sustagen and fed one transferee with a teaspoon.¹³⁶

133 Name withheld, *Submission 37*, [p. 2]. See also Ms Sharon Callister, Chief Executive Officer, Humanitarian Mission Services, Salvation Army, *Committee Hansard*, 11 June 2014, p. 20; Salvation Army, *Submission 34*, Annexure A, [p.3].

134 *Committee Hansard*, 11 July 2014, p. 2.

135 *Committee Hansard*, 11 July 2014, p. 10.

136 *Submission 18*, pp 14-5. See also *Committee Hansard*, 11 June 2014, p. 3; Mr Andrew Wilkie MP, *Submission 4*, p. 10.

5.62 The three most critically injured patients, including Mr Barati, were transferred to Lorengau General Hospital.¹³⁷ A G4S Security and Safety Officer described the evacuation of these asylum seekers from the Manus Island RPC:

...we used riot shields and carried three transferees down the stairs and put them in the back of vehicles (4x4 utes) so they could be evacuated for medical treatment.

I also helped staff put the transferee who was hit on the head [Mr Barati] onto a stretcher and carried him to the waiting ambulance. As I was carrying him I was shouting to him," to wake up and stay with us, talk to us".¹³⁸

5.63 Mr Barati died in the ambulance en route to Lorengau General Hospital.¹³⁹

Conclusion

5.64 There are a number of areas of factual dispute in relation to the events leading up to and during the incidents of 16 to 18 February 2014 at the Manus Island RPC. The committee is conscious that, particularly in traumatic and chaotic circumstances, recollections are bound to differ. The committee does not consider that it needs to form judgements on each matter where the evidence diverged or was contradictory. For the purpose of fulfilling the terms of reference for the inquiry, the committee considers it received evidence which gives a sufficiently clear factual picture to reach conclusions about the primary causes of the events in the Manus Island RPC.

137 Dr Mark Parrish, International Health and Medical Services, *Committee Hansard*, 11 July 2014, p. 9.

138 Name withheld, *Submission 35*, [p. 4].

139 G4S, 'Incident report number: MI 0585', dated 18 February 2014, *Additional Information provided by the Department of Immigration and Border Protection - incident reports* (received 6 June 2014), [p.45]; 'Email from Health Service Manager, IHMS, to Assistant Director, Operations Lead – Manus Island, Department of Immigration and Border Protection, dated 20 February 2014', *Additional Information provided by the Department of Immigration and Border Protection – communications* (received 6 June 2014), [p. 158].

Chapter 6

Response to the incident and subsequent developments

6.1 This chapter examines the response of service providers, PNG authorities, the department and the minister following the events of 16-18 February 2014 at the Manus Island RPC. It also discusses developments at the centre in the weeks and months following these events, including the transition of garrison and welfare service providers to Transfield Services (Transfield).

Response of service providers and immediately after the incident

6.2 The committee received evidence in relation to several issues and actions taken by service providers at the centre in the aftermath of the violent incidents at the centre.

Additional health practitioners

6.3 IHMS deployed nine additional mental health practitioners to Manus Island RPC to deal with the psychological impact of the events of 16 to 18 February on the asylum seekers, particularly an increase in the number of people suffering from post-traumatic stress disorder.¹ However, some evidence to the committee suggested that access to mental health professionals remained inadequate in the weeks after the incidents of 16 to 18 February 2014. A case worker who was deployed to the Manus Island RPC after the incidents and worked there until at least 9 March 2014 stated that:

To my knowledge, at the time I was on Manus Island there was only one psychologist or mental health nurse available to the 1300 detainees and one STTARS (torture and trauma) counsellor. Given the numbers of traumatised men this was totally inadequate.²

6.4 In response to questions on this issue, IHMS stated that, at the time of the disturbance in February 2014, its mental health team on Manus Island included: six mental health nurses, one psychiatrist, one psychologist, three counsellors.³

Additional security personnel

6.5 In response to the events of the night of 17 February, 100 additional security staff were placed on standby for possible deployment to Manus Island.⁴ 51 of these

1 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, 23 May 2014, pp 8 and 58. See also Dr Mark Parrish, International Health and Medical Services, *Committee Hansard*, 11 July 2014, p. 2.

2 Name withheld, *Submission 33*, [p. 4].

3 IHMS, *Answers to questions taken on notice at the public hearing 11 July 2014* (received 1 August 2014), [p. 1].

4 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island incident', *Press conference*, 18 February 2014, Canberra, at: www.minister.immi.gov.au/media/sm/2014/sm211891.htm (accessed 24 September 2014).

additional staff were subsequently deployed to Manus Island on 19 February 2014,⁵ and the remaining 50 had been deployed by 23 February 2014.⁶

Access to telephones and the internet

6.6 Several submitters and witnesses told the committee that asylum seekers' access to the internet was interrupted for several days after the incidents. For example, Amnesty International submitted that:

After the violence, access to the internet was turned off (one report claims from 17 February to 3 March), preventing the asylum seekers from contacting the outside world.⁷

6.7 The department submitted that the disruption to telecommunications services, including the internet, was a result of damage to telecommunications equipment which occurred during the incidents of 16 to 18 February and that repairs to this equipment were completed by 7 March 2014.⁸

PNG criminal investigation

6.8 In a press conference on the afternoon of 18 February 2014, the Minister for Immigration and Border Protection confirmed that Prime Minister Abbott had spoken with PNG Prime Minister O'Neill earlier that day in relation to the incident at the Manus Island RPC, and that Prime Minister O'Neill had given an assurance that appropriate investigations would be undertaken by PNG authorities wherever appropriate.⁹ On 20 February 2014 minister Morrison stated:

The Papua New Guinea authorities will be conducting an appropriate police investigation, particularly into the matter of the person who is deceased, which is entirely appropriate, and we've had those assurances from none less than the Prime Minister. And our Attorney-General will be liaising with PNG to provide whatever assistance they need, if they request it, to

5 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Visit by Malaysian Minister for Home Affairs, Manus Island', *Remarks and Press Conference*, 20 February 2014, Sydney, at: <http://www.minister.immi.gov.au/media/sm/2014/sm211967.htm> (accessed 30 October 2014).

6 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island incident, review into Nauru riot', 23 February 2014, Sydney, at: <http://www.minister.immi.gov.au/media/sm/2014/sm212047.htm> (accessed 30 October 2014).

7 *Submission 22*, p. 7. See also Ms Elizabeth Thompson, *Submission 19*, Appendix 2, p. 45; Name withheld, *Submission 33*, [p. 2].

8 Department of Immigration and Border Protection and the Joint Agency Taskforce, *Answers to questions taken on notice at the public hearing on 11 July 2014, and written questions* (received 25 August 2014), [p.8]; Mr Kenneth Douglas, First Assistant Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 36.

9 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island incident', *Press conference*, 18 February 2014, Canberra, at: www.minister.immi.gov.au/media/sm/2014/sm211891.htm (accessed 24 September 2014).

ensure those investigations are thorough and complete and get to the heart of those matters.¹⁰

Involvement of the AFP and service providers

6.9 As noted in chapter 5, the criminal investigation of the events of 17 February was the responsibility of the PNG police. However, the Australian Federal Police (AFP) made a broad offer of assistance to the PNG police in relation to the investigation. The AFP described the assistance which was requested and provided:

...on 21 February, the AFP received a request for assistance with respect to the capability of undertaking a post-mortem. Upon receipt of that we arranged for the deployment of two Victorian Institute of Forensic Medicine personnel to travel to Papua New Guinea to assist the PNG coroner with undertaking the post-mortem of the deceased. The VIFM personnel travelled to PNG on 23 February 2014. On 24 February 2014 a post-mortem of the deceased was completed. The following day, on 25 February, as part of normal practice the forensic pathologist travelled to Manus Island and met with the coroner and, I understand, also, consistent with undertaking the post-mortem, reviewed the site of the alleged incident.¹¹

6.10 An AFP officer indicated to the committee that it had also declined a subsequent request from PNG police in late March 2014 to be further involved in the investigation:

[A] request was made of the AFP to undertake what I would couch as being an independent witness during interview of some witnesses. The AFP declined and offered some alternative solutions... We offered a number of alternatives, noting that the AFP does not have operational jurisdiction and it would confuse the situation for the role of the AFP. That was understood and accepted by the [Royal Papua New Guinea Constabulary]. It was a matter for them to make arrangements. We suggested that they could use other sources of witnesses, such as social welfare providers, the IHMS or other diplomatic consular assistance, and the RPNGC accepted that advice.¹²

6.11 Transfield also indicated that it had been requested to facilitate access by PNG police to staff and transferees at the centre as part of their criminal investigations.¹³

10 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Visit by Malaysian Minister for Home Affairs, Manus Island', *Remarks and Press Conference*, 20 February 2014, Sydney, at: <http://www.minister.immi.gov.au/media/sm/2014/sm211967.htm> (accessed 30 October 2014).

11 Mr Clive Murray, Acting Assistant Commissioner, Australian Federal Police, *Committee Hansard*, 10 June 2014, pp 25-26.

12 Mr Clive Murray, Acting Assistant Commissioner, Serious and Organised Crime, Australian Federal Police, *Committee Hansard*, 10 June 2014, pp 25-26.

13 Transfield Services, *Responses to questions taken on notice at a public hearing on 11 June 2014* (received 23 July 2014), p. 1.

Arrests relating to the death of Mr Barati

6.12 The Cornall Review noted that, by the end of April 2014, 'some PNG police investigations, including interviews with transferees on Manus Island, were well advanced'.¹⁴

6.13 In August 2014, Australian media outlets reported that PNG police had arrested two suspects and charged them with murder in relation to the death of Mr Barati. The two individuals charged were reported to be a former Salvation Army employee, Joshua Kaluvia, and Louis Efi, another PNG national believed to have been a G4S employee at the time of the incident.¹⁵ It was also indicated that three more individuals were still wanted by police in relation to the incident, one Papua New Guinean and two expatriates.¹⁶ One of the suspects who was charged had reportedly fled Manus Island and travelled across PNG in an attempt to avoid capture before being arrested.¹⁷

6.14 In early November 2014 it was reported that the trial of the two suspects charged with the murder of Mr Barati had been delayed after the two suspects were not provided with a lawyer at a court appearance.¹⁸

Other assaults that occurred during the incidents

6.15 In his review of the incident, Mr Robert Cornall AO indicated that he had received 270 feedback forms from transferees in relation to the incident, and had compiled all of those forms which contained allegations by transferees that they were the subject of a criminal offence, as well as those forms containing statements by transferees that they witnessed criminal offences against other transferees. This and

14 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 87.

15 See: Liam Cochrane, 'Manus Island riot: Papua New Guinea police charge two men over Reza Barati's death, search for wanted expats', *ABC News Online*, 20 August 2014, <http://www.abc.net.au/news/2014-08-19/two-men-charged-over-reza-baratis-death-on-manus-is/5681882> (accessed 29 October 2014); David Wroe and Sarah Whyte, 'Reza Barati: Two men arrested over death of asylum seeker at PNG detention centre', *Sydney Morning Herald*, 19 August 2014, at: <http://www.smh.com.au/federal-politics/political-news/reza-barati-two-men-arrested-over-death-of-asylum-seeker-at-png-detention-centre-20140819-3dyf3.html> (accessed 1 November 2014).

16 Liam Cochrane, 'Manus Island riot: Papua New Guinea police charge two men over Reza Barati's death, search for wanted expats', *ABC News Online*, 20 August 2014.

17 Liam Cochrane, 'Reza Barati: Salvation Army suspect in Manus Island riot murder tried to fake own death to evade capture, police say', *ABC News Online*, 22 August 2014, at: <http://www.abc.net.au/news/2014-08-21/reza-barati-murder-suspect-tried-to-fake-own-death/5687550> (accessed 29 October 2014).

18 Liam Cochrane, 'Reza Barati murder trial delayed after suspects not provided with defence lawyers', *ABC News Online*, 3 November 2014, at: <http://www.abc.net.au/news/2014-11-03/barati-murder-trial-delayed-after-suspects-not-provided-lawyers/5862986> (accessed 3 November 2014).

other relevant material was provided by Mr Cornall to the RPNGC in Port Moresby on 7 May 2014.¹⁹

6.16 In relation to G4S employees that may have been involved in the violence against transferees, Mr Darren Boyd from G4S informed the committee that G4S had provided information to the PNG authorities in relation to the incidents, however it was largely unclear which individuals had been involved:

Mr Boyd: I think the efforts we have gone to have been twofold. One is that any information that we actually have received we have provided to the PNG police. But, on the second part of that, the accounts that we have actually got just seem to refer to G4S PNG locals or nationals. They do not name specifically who those PNG people are.

...

Mr Boyd: Before we departed the island, we have at different times had some accounts provided to us that potentially had some—I cannot say if they had names on them, but they certainly had information on them that we deemed relevant and we provided that directly to the police as the correct authority to investigate exactly what happened that night.

Senator SESELJA: But from an employer perspective, you obviously do not have enough information to even take disciplinary action against any of your staff, quite aside from any criminal potential action.

Mr Boyd: That is correct.²⁰

6.17 The committee is not aware of any arrests or charges being laid in relation to other assaults perpetrated on transferees during the incidents of 16-18 February 2014.

Response of the department and the minister following the incident

6.18 The terms of reference for the committee's inquiry include the involvement and response of both the department and the Minister for Immigration and Border Protection, the Hon Scott Morrison MP, in relation to the violent incidents that occurred from 16 to 18 February 2014 at the Manus Island RPC. This section of this chapter examines the public statements made by the Minister in the aftermath of the incidents, some of which were factually incorrect, with reference to the information available to the department during the incidents and in the days following.

Public statements by the Minister for Immigration and Border Protection

6.19 On the morning of 18 February 2014, the minister issued a statement in relation to the incident at Manus Island RPC on 17 February. The minister stated that he was advised that there had been a more serious incident overnight 'involving transferees breaching internal and external perimeter fences at the centre'. The minister further stated 'that during the events PNG Police did not enter the centre and

19 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 69.

20 Mr Darren Boyd, Southern Pacific Regional Managing Director, G4S, *Committee Hansard*, 10 June 2014, pp 40-41.

that their activities related only to dealing with transferees who breached the external perimeter'.²¹ This statement did not mention that a fatality had occurred during the incident.

6.20 The minister subsequently held two press conferences on 18 February 2014, one during the morning in Darwin, and a second on the afternoon of 18 February in Canberra following further briefings. At the first press conference in Darwin, the minister stated that one person was confirmed as deceased as a result of a head injury sustained during the incident, and that this 'injury was sustained outside the centre'. The minister also referred to another serious injury involving a gunshot wound to the buttock of a transferee, stating that the 'gunshot wound occurred also outside the centre itself'.²² The minister stated further:

This is a tragedy but this was a very dangerous situation where people decided to protest in a very violent way and to take themselves outside the centre and place themselves at great risk. In those situations our security people need to undertake the tasks that they need to undertake to restore the facility to a place of safety and equally those who are maintaining the safety of the security environment outside the centre need to use their powers and various accoutrements that they have available to them in order to restore in the way that is provided for under PNG law.

...clearly the outcome where someone has absconded, gone outside the safety of that facility and put themselves at risk, resulting in such a tragic outcome is terrible.²³

6.21 In relation to whether PNG police had entered the centre, the minister stated:

[M]y statement early today made it very clear there were no PNG police inside the centre last night. That is the report that was provided to me overnight. That is the information that I have available to me. So the suggestion that PNG police were in the centre is not correct on the information that I have.

G4S have advised that there was no one who came from outside and sought to disrupt or attack people on the inside which lead to the perimeter fence being breached.²⁴

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- 21 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Statement on further incident at Manus Island OPC', *Media release*, 18 February 2014, at: <http://www.minister.immi.gov.au/media/sm/2014/sm211867.htm> (accessed 9 September 2014). This inaccurate statement may have been based on: 'SitRep#13 - Cat 3 – Critical Disturbance and Death- Manus OPC – 16 February 2014 as at 0430 hours AEDST Tuesday 18 February 2014', *Additional Information provided by the Department of Immigration and Border Protection – incident reports* (received 6 June 2014), [p.6].
- 22 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island Incident', *Press Conference*, 18 February 2014, Darwin, at: <http://www.minister.immi.gov.au/media/sm/2014/sm211887.htm> (accessed 30 October 2014).
- 23 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island Incident', *Press Conference*, 18 February 2014, Darwin.

6.22 At the subsequent press conference in Canberra, later the same afternoon, the minister gave a more detailed chronology of events, noting:

The demonstration flared again at around 9.45pm local time with transferees pushing down internal fences between compounds...A number of transferees moved from the facility to the adjoining road where they had also pushed down fences...

Just after 11.20pm local time PNG police were reported to have fired shots. At around midnight local time, at the height of the disturbance, G4S staff withdrew to the internal perimeter and the PNG police intervened with those transferees who had breached the external perimeter. At 1am the PNG police were once again reported to have fired shots, at 2am order was restored to the centre.²⁵

6.23 When questioned whether he could guarantee the safety of transferees at the centre, the minister stated:

I can guarantee their safety when they remain in the centre and act co-operatively with those who are trying to provide them with support and accommodation. When people engage in violent acts and in disorderly behaviour and breach fences and get involved in that sort of behaviour and go to the other side of the fence, well they will be subject to law enforcement as applies in Papua New Guinea. But when people co-operate and conduct themselves appropriately within the centre then yes I can.²⁶

6.24 The minister rejected reports that individuals outside the centre had pushed down fences and entered the centre in order to attack transferees:

That's not consistent with the reports that I've received, in particular I'm aware that those reports say that the fence was pushed over from outside with people allegedly trying to come in to attack those who were inside. That is not how the fence went down, as I've been advised.²⁷

6.25 The minister acknowledged that there were 'conflicting reports' about where the deceased transferee had sustained his injuries. The minister also announced that a full review of the events would be initiated by the department.²⁸ On 21 February 2014,

24 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island Incident', *Press Conference*, 18 February 2014, Darwin.

25 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island incident', *Press conference*, 18 February 2014, Canberra, available at: www.minister.immi.gov.au/media/sm/2014/sm211891.htm (accessed 24 September 2014).

26 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island incident', *Press conference*, 18 February 2014, Canberra.

27 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island incident', *Press conference*, 18 February 2014, Canberra.

28 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island incident', *Press conference*, 18 February 2014, Canberra; Mr Robert Cornall AO, *Committee Hansard*, 12 June 2014, p. 9.

the minister announced that the independent review would be undertaken by Mr Robert Cornall AO.²⁹

6.26 It was not until late on 22 February 2014 that the minister issued a media release confirming that 'the majority of the riotous behaviour that occurred, and the response to that behaviour to restore order to the centre, took place within the perimeter of the centre'.³⁰ At a press conference in Sydney on 23 February 2014, the minister offered an explanation as to this change from his initial reports, stating that that he had received the updated information in relation to the incident the previous day, and 'over the course of the day...went through a process of when that information could be made available and I could be confident that when it was released it was accurate'.³¹

6.27 The minister further clarified on 24 February 2014 that:

...over the balance of the week, I received further information and on Saturday [22 February] I received information that made it clear that it was essential to correct the record, which I did on Saturday.³²

Information provided to the department and the minister

6.28 During this inquiry, the department provided the committee with situation reports and incident reports from the department and G4S as well as internal departmental correspondence, generated during the incidents of 16-18 February and in subsequent days.³³ G4S also provided the committee with a summarised version of its chronology of events for the afternoon and night of 17 February, based directly on the Emergency Control Organisation (ECO) log made during the incident.³⁴ These documents provide further context for the public statements made by the Minister in the days after.

29 Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 14; The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Man us Island incident, Operation Sovereign Borders, joint review', *Press Conference*, 21 February 2014, Canberra, at: <http://www.minister.immi.gov.au/media/sm/2014/sm212027.htm> (accessed 30 October 2014).

30 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island Update', *Media release*, 22 February 2014, at: www.minister.immi.gov.au/media/sm/2014/sm212031.htm (accessed 9 September 2014).

31 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island incident, review into Nauru riot', 23 February 2014, Sydney.

32 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 24 February 2014, p. 554.

33 *Additional Information provided by the Department of Immigration and Border Protection – incident reports* (received 6 June 2014); and *Additional Information provided by the Department of Immigration and Border Protection – communications* (received 6 June 2014).

34 *Submission 29*, Attachment 4.

6.29 The two main points of contention relate to:

- where the violence and riotous behaviour occurred on the night of 17 February (outside the centre, as first stated by the minister, or inside the centre as he later acknowledged); and
- whether the PNG police entered the centre and were involved in quelling the disturbance inside the centre.

6.30 It should also be noted that the written records provided to the committee do not represent the sum of communications between staff on Manus Island and departmental and service provider staff in Australia; the department noted that 'a number of teleconferences took place during the night of 17 February 2014 and early into the morning of 18 February 2014', involving members of the ECO at the centre, departmental staff in Canberra and G4S head office in Melbourne.³⁵

Departmental situation reports, G4S chronology and incident reports

6.31 Departmental officers filed at least 21 situation reports (SitReps) in relation to events on Manus Island at various times during 16-19 February 2014.³⁶ Two of these reports contained incorrect information relating to transferees breaching perimeter fences and the role of PNG police on the night of 17 February.

6.32 SitRep #12, made at 8.50 pm AEDT time (9.50 pm PNG time) on the evening of 17 February 2014, included information that transferees in Mike compound had begun to 'push the fences down' at 9.44 pm, and at 9.45 pm 'transferees breached the fences and moved onto Paugrash (sic) road', before being moved back into the compound by the emergency response team.³⁷

6.33 The ECO occurrence log made during the incident, provided by G4S, noted at 9.44 pm 'Mike Transferees rush low fence to Green Zone trying to breach fence between Mike and Foxtrot',³⁸ and contained no reference to transferees breaching an external fence and moving onto route Pugwash. The ECO log states that the fencing between Mike and Foxtrot compounds was subsequently broken through at 10.01 pm.³⁹

35 Department of Immigration and Border Protection, *Answers to questions on notice* (received 25 November 2014), pp 1-3. See also: G4S, 'Incident Report number: MI 0580', *Additional Information provided by the Department of Immigration and Border Protection – incident reports* (received 6 June 2014), [p. 22]; Mr Robert Cornall AO, *Committee Hansard*, 12 June 2014, pp 15-16.

36 See *Information provided by the Department of Immigration and Border Protection – incident reports* (received 6 June 2014), [pp 2-13].

37 'SitRep#12 - Cat 3 – Critical Disturbance - Manus OPC – 16 February 2014 as at 2050 hours Monday 17 February 2014', *Additional Information provided by the Department of Immigration and Border Protection - incident reports* (received 6 June 2014), [p. 7].

38 G4S, *Submission 29*, Attachment 4, p. 6.

39 G4S, *Submission 29*, Attachment 4, p. 7.

6.34 The next SitRep provided by the department, made at 4.30 am AEDT on 18 February 2014 (5.30 am PNG time), included information that:

- All staff were evacuated from the facility when the situation deteriorated about midnight. The PNG Police mobile squad took action to restore order to the site and encourage transferees to return inside the perimeter of facility.
- It is believed several hundred transferees were involved in the disturbance, with a number of those moving from the facility to the adjoining road.
- At the height of the disturbance at about lam, the PNG Police fired shots. PNG Police did not enter the facility at any time.⁴⁰

6.35 These SitReps give the impression that a significant proportion of the unrest and riotous activity had occurred outside the centre, as well as explicitly stating that PNG police were involved in returning transferees to the centre and taking other actions to attempt to quell the disturbance, without actually entering the centre.

6.36 In response to a question on these issues, the department stated that reports provided to it by G4S staff at the RPC during the incident formed the basis of the information used in the departmental SitReps, including that PNG police had not entered the centre and that transferees had breached the fences at the centre.⁴¹ The department stated further:

G4S led the teleconferences over the course of the evening of 17 February 2014 and morning of 18 February 2014 to discuss the unfolding situation on Manus... During the teleconferences held between 1:30 am and 6:00am on 18 February 2014, the information that RPNGC did not enter the centre was provided by G4S onsite.⁴²

6.37 G4S' chronology of events from the night, as well as a G4S incident report subsequently created on 18 February 2014, noted that PNG police units had been sighted in Mike compound by members of the G4S incident response team at 11.27 pm.⁴³

6.38 G4S noted that a departmental officer was present with G4S and other service provider staff in the Command Centre at the RPC on the night of 17 February, and as

40 'SitRep#13 - Cat 3 – Critical Disturbance and Death - Manus OPC – 16 February 2014 as at 0430 hours AEDST Tuesday 18 February 2014', *Additional Information provided by the Department of Immigration and Border Protection – incident reports* (received 6 June 2014), [p. 6].

41 Department of Immigration and Border Protection, *Answers to questions on notice* (received 25 November 2014), p. 3.

42 Department of Immigration and Border Protection, *Answer to questions on notice* (received 25 November 2014), pp 1-2.

43 G4S, 'Incident Report number: MI 0580', *Additional Information provided by the Department of Immigration and Border Protection – incident reports* (received 6 June 2014), [p. 32].

such as 'privy to all of the radio reports, verbal reports and discussions which took place in the Command Centre'.⁴⁴

Clarifying information relating to the events of 17 February

6.39 The veracity of some information in the departmental SitReps from the events at the centre was being questioned internally by the afternoon of 18 February. The department informed the committee that G4S provided it with a copy of the ECO occurrence log at 1.32 pm on 18 February 2014, information which alerted the department that the police mobile squad had entered the compound during the incident.⁴⁵

6.40 G4S told the committee that it had alerted the department that PNG police had entered the centre even earlier than this, stating that it informed departmental officials during a teleconference at approximately 10.30 am on the morning of 18 February that PNG police had breached the fence of Mike compound and entered the centre the night before.⁴⁶

6.41 Copies of communications provided to the committee by the department show that on 19 February, departmental officials in Canberra requested further information from staff on Manus Island in relation to the chronology of events for the incident on 17 February, noting that some information in the SitReps provided on the night conflicted with information in the G4S log of events.⁴⁷

6.42 The information provided by G4S and departmental staff on Manus Island in response to this request clarified that the G4S chronology stating that the police mobile squad had entered Mike compound during the incident was correct (contrary to SitReps #12 and #13 provided by departmental officials on the night).⁴⁸

6.43 Copies of communications provided to the committee by the department reveal that several requests for information were made by the minister's office in the days after the incidents at the Manus Island RPC. An internal departmental email on the afternoon of 19 February 2014 notes a request for information from the minister's office in relation to how many police were deployed on the night and how many G4S

44 G4S, *Answers to written questions on notice* (received 28 November 2014), pp 1 and 2.

45 Department of Immigration and Border Protection, *Answers to questions on notice* (received 25 November 2014), p. 2.

46 G4S, *Answers to written questions on notice* (received 28 November 2014), pp 1 and 2.

47 Email correspondence dated 19 February 2014, *Additional Information provided by the Department of Immigration and Border Protection – communications* (received 6 June 2014), [pp 119-124].

48 Email correspondence dated 19 February 2014, *Additional Information provided by the Department of Immigration and Border Protection –communications* (received 6 June 2014), [p. 119]. The advice provided at that stage was that 'it was identified that police mobile squad had entered Mike compound' at 11.37 pm on 17 February 2014.

guards were involved in the use of shields,⁴⁹ while a further email on the same afternoon notes an 'urgent request from the MO' (minister's office), asking how many sweeps and searches were undertaken of the Manus OPC in the preceding week, as well as how many walk throughs were undertaken by police and when those walk throughs started.⁵⁰

Submitter comments

6.44 Some submitters asserted that the minister's early statements in relation to the events at the centre had sought to unfairly blame asylum seekers for the violence ultimately perpetrated against them during the incidents of 16-18 February by emphasising riotous or aggressive behaviour on the part of transferees. For example, the Human Rights Law Centre argued:

[I]n the immediate aftermath of the incident the Minister of Immigration and Border Protection made comments which appeared to seek to shift blame for the violence to its victims...

The focus on asylum seekers' behaviour during that important period in the immediate aftermath of the events had the potential to colour subsequent investigations into the events and undermine their perceived independence. Equally, victim-blaming took the place of what ought to have been a comprehensive review by the Government of its own responsibility and the steps to be taken to ensure such events are never repeated.⁵¹

Transition to Transfield Services and subsequent developments

6.45 As noted in chapter 2, a decision was made in late 2013 to replace G4S and the Salvation Army as garrison and welfare service providers at the Manus Island RPC, with Transfield Services (Transfield) taking over those functions.

6.46 Transfield took over operational responsibility at the Manus Island centre on 28 March 2014 following a transition period with G4S and the Salvation Army, which occurred from 22 February 2014.⁵² Transfield representatives informed the committee that the initial stages of this transition was limited to the welfare aspects of the contract, and the Salvation Army's contract to provide services at the Manus Island centre officially finished on 20 March 2014.⁵³

49 Email correspondence dated 19 February 2014, *Additional Information provided by the Department of Immigration and Border Protection – communications* (received 6 June 2014), [p. 124].

50 Email correspondence dated 19 February 2014, *Additional Information provided by the Department of Immigration and Border Protection – communications* (received 6 June 2014), [p. 149].

51 *Submission 17*, pp 11 and 12. See also: Asylum Seeker Resource Centre, *Submission 23*, pp 4-5.

52 Transfield Services, *Responses to questions taken on notice at a public hearing on 11 June 2014* (received 23 July 2014), p. 1.

53 Mr Fraser Douglass, *Committee Hansard*, 11 June 2014, pp 56-57.

6.47 Mr Fraser Douglass, Executive General Manager, Government Business at Transfield, outlined to the committee Transfield's priorities in operating at the Manus Island centre:

It is a responsibility that we take extremely seriously, and for us there are two key priorities. The first is to take a humane and respectful approach to the provision of services. A strong set of values guides our behaviours and decisions, no matter where we are or what we do. This applies to all of our employees, particularly our front-line workers, who deliver services on our behalf.

Our second key priority is to provide the best possible environment for transferees in both centres, given the resources available and the scale of this large and complex support operation. We are highly experienced in efficiently and effectively managing facilities and remote locations around the world, and often at the end of complex logistics supply chains. With that in mind we do not take for granted the welfare and security challenges involved in this particular case.⁵⁴

Recommendations of the Cornall Review relating to Transfield

6.48 Several of the recommendations made by the Cornall Review of the events of 16-18 February 2014 were directed specifically to Transfield as the ongoing provider of garrison and welfare services at the centre. When asked about how it was implementing those recommendations relating to its activities at the Manus Island RPC, Transfield provided the following response:

Transfield Services can advise that as a part of normal business we are, by default, addressing various issues raised in the Cornall Report. All specific recommendations that Cornall has made are subject to Department of Immigration and Border Protection approval and direction. Accordingly Transfield Services is awaiting the Department of Immigration and Border Protection's approval and direction prior to implementing any specific action.⁵⁵

6.49 More specific information in relation to the implementation of some of these recommendations was provided by the department, as follows.

Role of security service provider, provincial police and police mobile squad

6.50 The Cornall Review recommended that Transfield Services (and its security services subcontractor, Wilson Security), the RPNGC provincial police and the mobile squad clearly establish and understand their respective roles and responsibilities in regard to the maintenance of law and order within the Manus RPC (including

54 *Committee Hansard*, 11 June 2014, p. 57.

55 Transfield Services, *Responses to questions taken on notice at a public hearing on 11 June 2014* (received 23 July 2014), pp 2-3.

agreement on a process for handover and handback of an incident that is beyond the control of the garrison security provider and the levels of force to be used).⁵⁶

6.51 In relation to advancing these arrangements, the then departmental Secretary Mr Martin Bowles PSM stated:

[This recommendation] has been progressed through a number of measures. These measures include regular engagement between stakeholders, weekly meetings of the joint intelligence group and desk-based exercises to name a few. I am also advised that Transfield have established a police liaison officer for the sole purpose of directly engaging with the PNG provincial police and mobile squad.⁵⁷

Interactions between service providers and transferees

6.52 The Cornall Review made several recommendations in relation to actions to be taken by the department and Transfield in order to improve interactions with transferees. These were:

- that the department encourage and support initiatives by Transfield Services to maximise the opportunity offered by the change of service providers to restore trust and cooperation between service providers and transferees;
- that the department and Transfield improve communication with transferees;
- that Transfield consider recommendations made in other reports about conditions and possible welfare improvements which can be made at the centre and, where practical, implement those welfare improvements it considers appropriate; and
- that Transfield assist transferees to replace personal items lost or stolen during the incidents.⁵⁸

6.53 Mr Bowles informed the committee in relation to some of these matters:

In keeping with Mr Cornall's recommendations to encourage and support initiatives to restore trust and cooperation between service providers and transferees, the department has supported Transfield to introduce a number of initiatives. These included opening the gates between compounds to provide transferees with greater access to friends in other compounds and the opportunity to engage in external excursions. Transfield have implemented a significant cultural shift in the way the security team engages and interacts with transferees, with a strong emphasis on the engagement in a respectful and considered manner. Similarly, Mr Cornall recommended improvements to communications with the transferees. I am pleased to advise the PNG's ICSA, which is their immigration service, my

56 Mr Robert Cornall AO, *Review of the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 13 (Recommendation 5).

57 *Committee Hansard*, 10 June 2014, p. 2.

58 Mr Robert Cornall AO, *Review of the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 13 (Recommendations 7, 9, 11 and 12).

department and Transfield continue to work collaboratively to enhance communication with transferees. For example, in developing a recent video presentation to transferees outlining the PNG refugee determination process. I understand this presentation was well received.⁵⁹

Engagement of staff involved in the violence between 16 and 18 February 2014

6.54 The Cornall Review recommended that Transfield carefully considers all the information provided to it by the Cornall Review to ascertain if it has unwittingly engaged employees who have been identified as assaulting transferees between 16-18 February 2014 and, if so, deal appropriately with them (including dismissal).⁶⁰

6.55 Transfield informed the committee that while it had not compiled a definitive list of people it believed to have been present at the centre during the incidents, it understood that 'at least 19 of its expat staff were previously employed by others and were likely to have been at the centre on the night' of Mr Barati's death.⁶¹ Transfield further advised the committee that it had not rejected any person's application for employment at the centre on the grounds that that person carried out an assault on the night of 17 February 2014.⁶² Mr Derek Osborn from Transfield explained:

We have worked very hard through a number of processes through our recruitment process to do everything we can to ensure that anyone who was involved in an assault has not been employed by Transfield Services... We have undertaken a range of things [to ensure that]. Obviously, we have got a range of witness information. We have been able to talk to a range of stakeholders on the island. We have been able to interview people. We have obviously conducted our own interviews and asked people to sign stat decs and those sorts of things. We have gone through a series of processes to ensure that we have done everything we can.⁶³

6.56 When asked whether its employment checks also covered subcontracted security staff employed by Wilson Security, Mr Osborn stated that Transfield has not overseen the recruitment of those staff directly, but that it has required Wilson Security 'to be absolutely certain that they have done everything possible to ensure that anyone who was involved in the assaults over the course of the nights is not to be employed'.⁶⁴

59 *Committee Hansard*, 10 June 2014, pp 2-3.

60 Mr Robert Cornall AO, *Review of the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 13 (Recommendation 8).

61 Transfield Services, *Responses to questions taken on notice at a public hearing on 11 June 2014* (received 23 July 2014), p. 2.

62 Transfield Services, *Responses to questions taken on notice at a public hearing on 11 June 2014* (received 23 July 2014), p. 2.

63 Mr Derek Osborn, Executive General Manager, Logistics and Facilities Management, Transfield Services, *Committee Hansard*, 11 June 2014, p. 58.

64 *Committee Hansard*, 11 June 2014, p. 60.

6.57 Other evidence presented to the committee contested the claim that no individuals involved in assaults on asylum seekers were now employed at the centre. Humanitarian Research Partners (HRP) contended that 'at least two of the alleged 17 February assailants are now back working in the centre and terrifying their victims by their mere presence'.⁶⁵ Mr Ben Pynt, Director of Human Rights Advocacy at HRP, told the committee that asylum seekers at the centre had reported to him on multiple occasions that perpetrators were still working at the centre.⁶⁶ Mr Pynt expanded:

[The transferees] do not feel that they are being adequately protected by the guards that are employed at the centre. In fact, they feel threatened by a number of the guards at the centre. I know of one story that chilled me to the bone. An asylum seeker contacted me shortly after he had been to medical. He was in Mike compound. From Mike compound you get in the back of a ute and they take you through to IHMS, because you are not meant to walk through. He got into the ute, screamed, and got out of the ute, because the person driving the ute was one of the people who attacked him. This is happening all the time. The mental harm that is created simply by having the attackers remain at the centre is unbelievable and unconscionable.⁶⁷

Community engagement and training

6.58 The Cornall Review made two recommendations in relation to community engagement and training, namely:

- that the department puts in place a comprehensive and continuing community liaison program to more fully inform the local population about the RPC and the direct benefits it brings to the Manus community; and
- that Transfield implements a comprehensive and ongoing training program for PNG national staff to develop their professional skills and improve their future employment prospects.

6.59 In relation to enhancing liaison with the local community, Mr Bowles informed the committee that the department already had a permanent community liaison officer in place at the Manus centre, and that the duties of this officer had been enhanced in line with Mr Cornall's recommendation.⁶⁸ In relation to providing training opportunities for PNG national staff, Mr Bowles stated:

Specific training and development obligations are part of the Transfield contract. In line with this obligation, I am informed that Transfield have been in discussions with the Lorengau TAFE to develop work placement opportunities. I also understand that Transfield are looking at opportunities to assist with agricultural type initiatives, which may include community projects or school-based projects. Additionally, Decmil, the managing

65 *Submission 26*, [p. 9]. See also: Refugee Rights Action Network WA, *Submission 28*, [p. 4].

66 *Committee Hansard*, 13 June 2014, p. 33.

67 *Committee Hansard*, 13 June 2014, p. 33.

68 Mr Martin Bowles, DIBP, *Committee Hansard*, 10 June 2014, p. 3.

contractor of the construction work, provides a professional development training program for PNG local staff employed on its sites, and IHMS, the health services provider, has initiated a range of training programs for local national staff.⁶⁹

RSD processing and resettlement arrangements

6.60 The Cornall Review recommended that current measures and any further initiatives which will expedite the finalisation of PNG refugee status determinations and resettlement and removal processes be implemented as quickly as possible with appropriate assistance.⁷⁰

6.61 Mr Bowles informed the committee that 'the department continues to work closely with the PNG government to expedite the finalisation of PNG refugee determinations and settlement and removal processes'.⁷¹

6.62 Despite these efforts, the Minister for Immigration and Border Protection noted on 10 September 2014 that 'there remain difficult and frustrating problems' in attempting to establish a resettlement program in PNG:

The resettlement plan has now been before the PNG Cabinet for several months, following the extensive consultations conducted by their Expert Panel...It is important that this now proceed.

We remain committed to working through the remaining issues with the government of PNG to ensure that the agreement delivers the resettlement of refugees in PNG in return for the increased aid and infrastructure funding that is being delivered.⁷²

6.63 On 20 October 2014, a statement from the Papua New Guinea Prime Minister, the Hon. Peter O'Neill CMG MP, noted that a refugee resettlement policy had still not been finalised:

[D]ue to lack of understanding and support for refugee resettlement in PNG communities [Prime Minister O'Neill] has instructed that a new policy be prepared with increased focus on consultations and building public awareness and support.⁷³

69 Mr Martin Bowles, DIBP, *Committee Hansard*, 10 June 2014, p. 3.

70 Mr Robert Cornall AO, *Review of the events of 16-18 February 2014 at the Manus Regional Processing Centre*, p. 12 (Recommendation 3).

71 Mr Martin Bowles, Department of Immigration and Border Protection, *Committee Hansard*, 10 June 2014, p. 2.

72 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Restoring integrity and public confidence in Immigration and Border Protection' *Address to the National Press Club*, Canberra, 10 September 2014, at: <http://www.minister.immi.gov.au/media/sm/2014/sm217736.htm> (accessed 4 November 2014).

73 The Hon Peter O'Neill, Prime Minister of Papua New Guinea, 'Papua New Guinea-Australia PM's Meeting on Manus Asylum Seekers', 20 October 2014, at: <http://www.officeofprimeminister.com/#!/october-2014/c1nq8> (accessed 5 November 2014).

6.64 Prime Minister O'Neill stated that this new policy would not be considered by cabinet until after comprehensive public awareness campaigns and consultations are completed.⁷⁴

6.65 As noted in chapter 4, the PNG Minister for Foreign Affairs and Immigration, the Hon Rimbink Pato MP, made final refugee status determination decisions for ten transferees on 12 November 2014, the first final decisions to be handed down for individuals detained at the Manus Island RPC. However these individuals have still not been offered permanent settlement in PNG, instead receiving a 12 month refugee visas and being moved from the Manus Island RPC to a newly constructed facility in East Lorengau. It was announced that these refugees would also be given language and cultural training and help finding jobs in PNG.⁷⁵

Comcare compliance inspections

Site inspection in December 2013

6.66 Prior to the events of February 2014, an official from Comcare had conducted a site inspection of the Manus Island RPC in December 2013 in order to review workplace health and safety arrangements at the centre. The Comcare inspector's report recommended several changes be implemented at the centre to manage health and safety risks to workers and third parties, including to:

- removal of an old kitchen facility and remediation of a surrounding area of ground contamination;
- construction of security fencing in the area of the kitchens;
- rectify an apparent design flaw in the new kitchen facility at the centre and removal of built-up mould in the kitchen;
- improve security capability at the RPC entry gate; and
- improve systems for tracking workers present at the Bibby Progress accommodation barge.⁷⁶

6.67 The report also observed that office and administration facilities at the centre were cramped and subject to high temperatures. Further, it observed that IHMS's capability to provide contracted health services seemed to be under strain due to the increase in transferee numbers without a proportionate increase in medical services

74 The Hon Peter O'Neill, Prime Minister of Papua New Guinea, 'Papua New Guinea-Australia PM's Meeting on Manus Asylum Seekers', 20 October 2014, at: <http://www.officeofprimeminister.com/#!/october-2014/c1nq8> (accessed 5 November 2014).

75 The Hon Rimbink Pato, LLB, OBE, MP, Papua New Guinea Minister for Foreign Affairs and Immigration, 'Refugees to start new lives in PNG', *Media Release*, 12 November 2014. See also: The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'More progress on PNG resettlement arrangement as first refugee determinations handed down', *Media Release*, 12 November 2014.

76 Comcare, 'Inspector Report', 8 January 2014 (pp 1-2), *Additional information provided by Comcare – documents relating to December 2013 site inspection* (received 10 July 2014), [pp 3-4].

provision capability, and in particular that IHMS's capacity to deal with a critical injury or mass casualty event was limited.⁷⁷

6.68 Documents provided to the committee also show that a staff member at the centre raised further WHS concerns with Comcare in January 2014, noting harsh conditions at the centre, lack of sanitation facilities and the risk of contracting infectious disease. Comcare responded by noting that it was monitoring the ongoing WHS environment at the centre and would take the concerns into account in future monitoring activities.⁷⁸

Compliance inspection following February incident

6.69 Following the incident of 16 February to 18 February 2014, Comcare initiated a compliance inspection to determine whether the department had breached the *Workplace Relations Act 2011* (which governs workplace health and safety requirements for Commonwealth employees) in relation to the incident. Comcare did not conduct a site visit to the centre as part of this inspection, but did inspect a range of material in relation to the incident, including documents provided by the department and G4S and the report of the Cornall Review.⁷⁹

6.70 Comcare finalised its inspection in June 2014, finding that:

- the department 'provided a safe workplace as far as reasonably practicable' at the RPC;
- the department 'exhibited no control over the events that transpired between 16-18 February that led to the death of Mr Barati'; and
- it was 'apparent that the injuries and death that occurred were the direct result of criminal actions, not as a result of inadequate WHS practices, processes or systems'.⁸⁰

6.71 The inspection report recommended that consideration be given to implementing the recommendations from the Cornall Review, particularly those recommendations with a direct or indirect relationship with workplace safety, and that a series of recommendations made in a 2013 review of the Nauru RPC be adapted and

77 Comcare, 'Inspector Report', 8 January 2014 (p. 4), *Additional information provided by Comcare – documents relating to December 2013 site inspection* (received 10 July 2014), [p. 6].

78 Email correspondence and Letter of Complaint dated 8 January 2014, *Additional information provided by Comcare – other documents relating to the Manus Island RPC* (received 10 July 2014), [pp 1-11].

79 Comcare, 'Inspector Report', 26 June 2014 (p. 3), *Additional information provided by Comcare – documents relating to 2014 compliance inspection* (received 10 July 2014), [p. 3].

80 Comcare, 'Inspector Report', 26 June 2014 (pp 1-2), *Additional information provided by Comcare – documents relating to 2014 compliance inspection* (received 10 July 2014), [pp 1-2].

implemented at the Manus RPC. It also recommended that Comcare inspectors undertake a further site visit to the Manus Island RPC prior to the end of 2014.⁸¹

Other developments in operations at the Manus Island RPC

6.72 Submitters and witnesses commented on several aspects of ongoing operations at the Manus Island RPC in the months after the events February 2014, including the ongoing impact on asylum seekers at the centre, and access to healthcare and other services at the centre.

Ongoing impact on asylum seekers detained at the Manus Island RPC

6.73 The committee heard evidence that re-traumatisation is a significant issue for asylum seekers held at the Manus Island RPC, particularly after the events of 16-18 February, for individuals who have previously experienced persecution in their home countries. Mr Ben Pynt of HRP commented:

Retraumatization is a huge problem at Manus Island. It occurs, as you rightly say, from the events that they experienced in their home countries that made them flee in the first place, from the trauma of the boat journey... Then there are the events of 16 and 17 February that left people with a profound sense that nothing they can do can make them safe. It is retraumatization on a daily basis when they see locals from outside the centre, through the fence making the sign of slitting their throat, or staff members who are within the centre threatening to kill them. I do not think I can describe how profoundly it affects the men. They are at breaking point.

Some research that we have recently conducted shows that about 60 per cent of asylum seekers have a history or trauma before they arrive in Australia. On Manus Island I would say, after the events that have occurred, it would be close to 100 per cent.⁸²

6.74 The committee heard further that many asylum seekers were not sleeping or had taken to keeping guard during the night out of fear of further attacks. Mr Pynt commented:

[P]eople are still keeping guard at night. There is somebody in each of the hard-shell tents and somebody in each of the rooms who stays awake at all times, because they are petrified of being attacked again.⁸³

6.75 Submitters and witnesses who claimed to be in contact with asylum seekers at the centre reported numerous instances of attempted suicides or serious self-harm at the centre in the weeks and months following the disturbances.⁸⁴

81 Comcare, 'Inspector Report', 26 June 2014 (p. 3), *Additional information provided by Comcare – documents relating to 2014 compliance inspection* (received 10 July 2014), [p. 3].

82 *Committee Hansard*, 13 June 2014, pp 33-34.

83 *Committee Hansard*, 13 June 2014, p. 33. See also: Ms Kristi Moffatt, *Submission 36*, [p. 2].

84 Refugee Rights Action Network WA, *Submission 28*, [p. 4]; Mr Ben Pynt, Humanitarian Research Partners, *Committee Hansard*, 13 June 2014, p. 36.

Allegations of mistreatment and interference with witnesses

6.76 Media reports in September 2014 detailed the use of a "managed behaviour area" outside the main centre by Transfield to isolate aggressive or non-compliant asylum seekers.⁸⁵ Further reports contained allegations from an asylum seeker held at the Manus Island RPC that he and another transferee had been forcibly held in this area for three days and subjected to beatings and threats, allegations which have been denied by the Australian Government.⁸⁶

6.77 It has also been reported that asylum seekers who wish to return home and have provided witness statements to PNG police in relation to the death of Mr Reza Barati have been told that they may not leave PNG until the investigation and judicial process is complete,⁸⁷ and that other witnesses have been either threatened or offered inducements in order to withdraw their statements.⁸⁸

Concerns relating to healthcare treatment at the centre

6.78 As discussed in chapter 3, concerns were raised by submitters and witnesses in relation to the adequacy of healthcare services at the Manus Island RPC, particularly in relation to delays in transferees receiving appropriate treatment. Amnesty International submitted that this is an ongoing issue for transferees who were injured during the protests:

Amnesty International continues to receive first hand testimony to the effect that injuries sustained during the violence are not being adequately cared for and detainees are not receiving sufficient or appropriate access to medical care. It is entirely unacceptable that months after this horrific event,

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- 85 Liam Cochrane, 'Asylum seekers on Manus Island sent to isolation units: leaked report', *ABC News Online*, 4 September 2014, at: <http://www.abc.net.au/news/2014-09-04/isolation-units-being-used-to-control-asylum-seekers-on-manus-i/5718084> (accessed 5 November 2014).
- 86 Michael Gordon, 'Human rights activist calls for investigation following reports of abuse at Manus Island detention centre', *Sydney Morning Herald*, 4 September 2014, at: <http://www.smh.com.au/national/human-rights-activist-calls-for-investigation-following-reports-of-abuse-at-manus-island-detention-centre-20140903-10bv83.html> (accessed 5 November 2014); Mandie Sami, 'Manus Island asylum seekers allegedly tortured, threatened with rape by guards in secret compound over Reza Barati death', *PM*, 4 November 2014, at: <http://www.abc.net.au/news/2014-11-03/asylum-seekers-on-manus-island-allegedly-tortured-and-threatene/5861120> (accessed 5 November 2014).
- 87 Mandie Sami, 'Manus Island asylum seekers allegedly tortured, threatened with rape by guards in secret compound over Reza Barati death', *PM*, 4 November 2014.
- 88 Michael Gordon, 'Human rights activist calls for investigation following reports of abuse at Manus Island detention centre', *Sydney Morning Herald*, 4 September 2014; Sue Lannin, 'Asylum seekers offered relocation if witness statements on Reza Barati's death withdrawn: Julian Burnside', *ABC News Online*, 6 November 2014, at: <http://www.abc.net.au/news/2014-11-06/julian-burnside-slams-federal-government-for-human-rights-abuse/5870280> (accessed 6 November 2014).

the victims may be forced to endure constant pain and suffering due to receiving little in the way of care.⁸⁹

Transparency and access to the Manus Island RPC

6.79 Several submitters and witnesses raised concerns in relation to the difficulty associated with access to the Manus Island RPC.

Limited access for lawyers and journalists

6.80 Amnesty International noted in its submission that on 27 February 2014, the National Court of PNG launched a human rights inquiry under section 57 of the PNG Constitution into conditions at the Manus Island RPC.⁹⁰ Under the auspices of this inquiry, Justice David Canning visited the Manus Island RPC on 21 March 2014, accompanied by representatives from Amnesty International, the Human Rights Law Centre (HRLC) and Australian journalists.⁹¹ This inquiry was subsequently challenged by the PNG government in the PNG Supreme Court, preventing the inquiry from continuing.⁹²

6.81 HRLC noted that the 21 March 2014 visit is the only instance of journalists being allowed inside the centre since the centre reopened in November 2012:

Prior to the grant of specific orders by the National Court of Papua New Guinea in a recent Court case, no Australian journalist had been granted access to the RPC. It also took court orders for lawyers from the PNG Public Solicitor's office to be granted access to speak to their clients inside the centre.

It is a matter of great concern that achieving this minimal level of access to an Australian built, funded and run facility has taken forceful orders from the National Court of another country.⁹³

6.82 Further orders from the National Court of PNG in March 2014 to allow access to the centre by an Australian barrister seeking to represent some asylum seekers held at the centre were also blocked, with the barrister refused entry to the Manus Island RPC and subsequently deported from PNG on the basis that he did not have a

89 *Submission 22*, p. 8. See also: Melissa Davey, 'Manus Island asylum seeker writes to UN in bid to access healthcare', *The Guardian Australia*, 27 October 2014, at: <http://www.theguardian.com/australia-news/2014/oct/27/manus-island-asylum-seeker-writes-to-un-in-bid-to-access-healthcare> (accessed 6 November 2014).

90 *Submission 22*, p. 7.

91 Amnesty International, *Submission 22*, p. 7. See also: 'Manus Island: Damage from riots visible during media's tour of detention centre', *ABC News Online*, 23 March 2014, at: <http://www.abc.net.au/news/2014-03-21/media-tour-of-manus-island-detention-centre/5337660> (accessed 6 November 2014).

92 Michael Gordon, 'Manus inquiry cruelled', *The Age*, 23 March 2014, at: <http://www.theage.com.au/national/manus-inquiry-cruelled-20140322-35adw.html> (accessed 6 November 2014).

93 Human Rights Law Centre, *Submission 17*, p. 10.

certificate to practice law in PNG.⁹⁴ Representatives from the Australian Lawyers Alliance (ALA) argued that access to the centre should be granted in such cases:

Mr [Jay] Williams was the barrister who went to PNG. That was particularly troubling. One would have thought that the Commonwealth ought to be making it very clear to the government of Papua New Guinea that properly qualified lawyers from Australia ought to be able to have access to clients on Manus Island and they should not be subjected to violence or threats of violence, as was the case with Mr Williams.⁹⁵

6.83 Dr Andrew Morrison from the ALA expressed particular concern that asylum seekers who had been injured in the violence in February 2014 had not been given adequate access to legal advice:

In relation to the individual rights of those who were injured, it is very troubling that there has not been access to lawyers even for those brought back to Australia. In some cases the most seriously injured have not been able to speak to someone who can tell them what their rights are... [P]eople should have access to legal advice and an opportunity to pursue any rights they might have.⁹⁶

6.84 The HRLC argued that the Australian Government should proactively work with PNG to increase transparency and access to the centre:

Transparency is vital to ensuring scrutiny and accountability for the conditions in which asylum seekers are being detained. It is also vital to the Australian people's ability to evaluate current asylum seeker policy and the manner of its implementation...

The Australian Government has maintained that access to the RPC is a matter for PNG. Australia built the centre and underwrites it at considerable taxpayer expense. Asylum seekers are only detained therein because Australia sends them there. Australia plainly has a responsibility to push for independent scrutiny of their treatment.

The Australian Government should work with PNG to ensure appropriate access, not hide behind PNG sovereignty when access is denied.⁹⁷

94 'Australian lawyer Jay Williams, who represents Manus Island asylum seekers, deported from PNG again', *ABC News Online*, 1 April 2014, at: <http://www.abc.net.au/news/2014-04-01/lawyer-jay-williams-deported-from-png/5359916> (accessed 7 November 2014).

95 Mr Greg Barns, Australian Lawyers Alliance, *Committee Hansard*, 13 June 2014, p. 6.

96 Dr Andrew Morrison RFD QC, Australian Lawyers Alliance, *Committee Hansard*, 13 June 2014, p. 6.

97 Human Rights Law Centre, *Submission 17*, pp 10-11.

UN Special rapporteur official visit to PNG

6.85 In addition to lawyers and journalists being barred from access to the Manus Island RPC, submitters also referred to the fact that the UN Special Rapporteur on extrajudicial, summary or arbitrary executions was denied access to the centre during a visit to PNG in March 2014, and was unable to meet with G4S or asylum seekers at the centre.⁹⁸

98 Human Rights Law Centre, *Submission 17*, p. 10. See also: 'Preliminary Observations on the official visit to Papua New Guinea by Mr. Christof Heyns, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions', *Press Statement*, 14 March 2014, at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14373&LangID=E> (accessed 6 November 2014).

Chapter 7

Australia's human rights obligations and duty of care responsibilities

Introduction

7.1 The committee's terms of reference included consideration of the Australian Government's duty of care responsibilities in relation to the Manus Island Regional Processing Centre. This chapter addresses both Australia's obligations under international human rights law and duty of care responsibilities under domestic law, including consideration of:

- Australia's obligations under international human rights law including their content and scope both within and outside of Australia;
- whether Australia's obligations under international law apply in respect of asylum seekers detained in the Manus Island RPC;
- Australia's compliance with its human rights obligations in respect to the incident from 16 February to 18 February 2014; and
- Australia's duty of care responsibilities under domestic law and its application.

Australia's international human rights obligations

7.2 This section sets out the content, scope and application of Australia's obligations under international human rights law in relation to the incident at the Manus Island RPC from 16 to 18 February 2014.

Source of Australia's human rights obligations

7.3 Australia has voluntarily accepted international obligations under a number of international human rights treaties. These include the:

- Convention on the Status of Refugees (Refugee Convention);
- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- Convention on the Rights of the Child (CRC); and
- Convention on the Rights of Persons with Disabilities (CRPD).

7.4 Under these treaties, states have an obligation to ensure that persons enjoy human rights. Australia's obligations under international human rights law as contained in these treaties are threefold:

- to respect – requiring government not to interfere with or limit human rights;
- to protect – requiring government to take measures to prevent others (for example individuals or corporations) from interfering with human rights; and
- to fulfil – requiring government to take positive measures to fully realise human rights.¹

Content of Australia's human rights obligations

7.5 Australia has a range of specific obligations under the above human rights treaties, including in relation to the treatment of refugees and asylum seekers. Some of these obligations, such as those contained in the Refugee Convention, are aimed at addressing the specific situation of asylum seekers and refugees, while others are of more general application.

7.6 Obligations that are specifically relevant to the committee's inquiry into events at the Manus Island RPC are as follows.

The Refugee Convention and Refugee Status Determination (RSD)

7.7 A person who has refugee status or satisfies the definition of 'refugee' is entitled to a range of specific rights under the Refugee Convention. These rights include, for example, the right not to be expelled (article 32), the right to freedom of movement within the territory (article 26), the right to public relief and assistance (article 23), the right to be issued identity and travel documents (articles 27 and 28) and an obligation of non-refoulement (article 33).² Further, individuals have a right to seek asylum and a right not to be punished for any illegal entry into Australian territory in order to seek asylum (article 31).³ Specific obligations in relation to refugee status determination processes have already been noted in chapter 4.

Non-refoulement obligations

7.8 One of the fundamental obligations under international human rights law is the obligation of non-refoulement. Australia has non-refoulement obligations under the Refugee Convention and under both the ICCPR and the CAT.⁴ This means that Australia must not return (refoule) an individual to a country where there is a real risk

1 Parliamentary Joint Committee on Human Rights, *Guide to Human Rights*, March 2014, p. 5.

2 Convention Relating to the Status of Refugees 1951, as amended by the 1967 Protocol Relating to the Status of Refugees (Refugee Convention), Articles 23, 26-28 and 32-33.

3 Refugee Convention, article 31; Universal Declaration of Human Rights, article 14. See also Law Society of New South Wales, *Submission 8*, p. 5.

4 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), article 3(1); International Covenant on Civil and Political Rights (ICCPR), articles 6(1) and 7; and Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty.

that they would face persecution, torture or other serious forms of harm, such as the death penalty; arbitrary deprivation of life; or cruel, inhuman or degrading treatment or punishment.⁵ Non-refoulement obligations are absolute and may not be subject to any limitations.⁶

7.9 Human rights law requires provision of an independent and effective hearing to evaluate the merits of a particular case of non-refoulement. Equally, the provision of 'independent, effective and impartial' review of non-refoulement decisions is integral to complying with non-refoulement obligations under the ICCPR and CAT.⁷

Torture, cruel, inhuman or degrading treatment or punishment

7.10 Article 7 of the CAT provides an absolute prohibition against torture as well as cruel, inhuman or degrading treatment or punishment. This means that torture and cruel, inhuman or degrading treatment or punishment cannot be justified under any circumstances. The aim of the prohibition against torture is to protect the dignity of the person, and in substance it relates not only to acts causing physical pain but also to acts that cause mental suffering. Prolonged indefinite detention without charge has been found to breach the prohibition on torture or cruel, inhuman or degrading treatment.⁸

7.11 The Andrew & Renata Kaldor Centre for International Refugee Law (Kaldor Centre) explained that, with reference to this prohibition, Australia is obliged not only to prohibit such treatment but also to take positive steps to prevent such treatment. This includes obligations:

- to educate and inform persons responsible for detention of the prohibition against torture or other cruel, inhuman or degrading treatment;
- to include the prohibition in any rules or instructions issued to such persons;
- to keep under systematic review arrangements for the custody and treatment of those detained with a view to preventing such treatment;
- to ensure authorities conduct a prompt and impartial investigation whenever there is reasonable ground to believe such treatment has occurred; and
- to ensure that individuals alleging such ill-treatment have the right to complain to, and have the case promptly and impartially examined by,

5 Refugee Convention, article 33. The non-refoulement obligations under the CAT and ICCPR are known as 'complementary protection' as they are protection obligations in addition to those under the Refugee Convention.

6 ICCPR, article 2.

7 See, for example, *Agiza v. Sweden*, Communication No. 233/2003, UN Doc. CAT/C/34/D/233/2003 (2005), para 13.7.

8 Parliamentary Joint Committee on Human Rights, *Guide to Human Rights*, March 2014, pp 13-14.

competent authorities, including protection of the complainant and witnesses from ill-treatment or intimidation as a consequence of any evidence given.⁹

7.12 In addition, as noted above, Australia is under an obligation to ensure that it does not send a person who is in Australia to a country where there is a real risk of torture or cruel, inhuman, degrading treatment or punishment (non-refoulement obligations). Additionally, article 10 of the ICCPR provides that all persons in detention must be treated humanely.

Prohibition against arbitrary detention

7.13 Article 9 of the ICCPR provides that no-one may be subjected to arbitrary arrest or detention, or deprived of liberty except on such grounds and in accordance with such procedures as are established by law. Article 9 of the ICCPR applies to all deprivations of liberty and is not limited to criminal cases. Detention must not only be lawful but also be reasonable and necessary in all the circumstances. The principle of arbitrariness includes elements of inappropriateness, injustice and lack of predictability.¹⁰

7.14 The only permissible limitations on the right to security of the person and freedom from arbitrary detention are those in accordance with procedures established by law, provided that the law itself and the enforcement of it are not arbitrary.¹¹ The UN Human Rights Committee has held in a number of cases, including cases brought against Australia, that prolonged mandatory detention of asylum seekers may violate the prohibition against arbitrary detention.¹²

Right to security of the person

7.15 The right to security of the person is protected under article 9(1) of the ICCPR, and requires Australia to take steps to protect people against interference with personal integrity by others. This includes protecting people who are subject to death threats, assassination attempts and harassment and intimidation.¹³

Right to life and the duty to investigate

7.16 The right to life is protected by article 6(1) of the ICCPR and article 1 of the Second Optional Protocol to the ICCPR. The right to life has the following three core elements:

- it prohibits the state from arbitrarily killing a person;

9 Andrew & Renata Kaldor Centre for International Refugee Law (Kaldor Centre), *Submission 9*, p. 9 [citations omitted], referring to UN Human Rights Committee, 'General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)' UN Doc HRI/GEN/1/Rev.9 (Vol. I) 200 [2].

10 Parliamentary Joint Committee on Human Rights, *Guide to Human Rights*, March 2014, p. 16.

11 Parliamentary Joint Committee on Human Rights, *Guide to Human Rights*, March 2014, p. 7.

12 See, for example: UN Human Rights Committee, *A v Australia*, Communication No 560/1993 (3 April 1997); *D and E v Australia*, Communication No 1050/2002 (9 August 2006).

13 Parliamentary Joint Committee on Human Rights, *Guide to Human Rights*, March 2014, pp 11-12.

- it imposes an obligation on the state to protect people from being killed by others or by identified risks; and
- it requires the state to undertake an effective and proper investigation into all deaths where the state is involved (duty to investigate).

The right to health

7.17 Article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR) recognises 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health', and requires steps to be taken to achieve the full realisation of this right.

Right to an effective remedy

7.18 Article 2 of the ICCPR requires states to ensure access to an effective remedy for violations of human rights. States are required to establish appropriate judicial and administrative mechanisms for addressing claims of human rights violations under domestic law. This includes the establishment of mechanisms to ensure the prompt, thorough and effective investigation of alleged violations by independent and impartial bodies.

7.19 Article 2 also requires that states are required to make reparation to individuals whose rights have been violated. Reparation can involve restitution, rehabilitation and measures of satisfaction—such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices—as well as bringing to justice the perpetrators of human rights violations. The right also involves a duty to prevent recurrences of violations, which may require measures effecting changes to institutions, laws or practices.

Scope of Australia's human rights obligations in and outside of Australia

7.20 Australia's human rights obligations apply to all people subject to Australia's jurisdiction, regardless of whether they are Australian citizens. This means Australia owes human rights obligations to everyone in Australia, as well as to persons outside Australia over whom Australia is exercising 'effective control', or who are otherwise under Australia's jurisdiction.¹⁴

7.21 The 'effective control' test in international law is essentially one of sufficient control. Therefore, whether Australia is exercising sufficient control and authority to amount to 'effective control' is a question of fact and degree in the particular circumstances.¹⁵ The Australian Government has accepted that it has human rights

14 Amnesty International, 'This is breaking people: human rights violations at Australia's asylum seeker processing centre on Manus Island, Papua New Guinea', December 2013, (included as *Submission 22*, Attachment 1), p. 83.

15 See, for example: *Al-Jedda v United Kingdom* [2011] ECHR 1092; and *Al-Skeini v United Kingdom* [2011] ECHR 1093.

obligations to persons outside its territory in circumstances where it exercises effective control over those persons.¹⁶

7.22 'Effective control' by Australia does not preclude the possibility of the joint or concurrent responsibility of another state in relation to conduct that occurs on the latter's territory.¹⁷ Under the international law of state responsibility, Australia will be liable for internationally wrongful acts which are attributable to it, or where it aids or coerces another state to commit an internationally wrongful act.¹⁸

7.23 As noted above, under international human rights law Australia also has specific obligations with respect to the transfer of persons to another country where there is a real risk of them suffering particular human rights violations (non-refoulement obligations). It should be noted that, while this obligation is not extraterritorial, it may involve conduct that becomes extraterritorial in the course of the transfer. For instance, if a person is present in Australian territory and then is removed from Australian territory by Australian authorities and transferred to a third state. The conduct that occurs outside of Australian territory is the extraterritorial element. The non-refoulement obligation requires Australia not to send a person who is in Australia to a country where there is a real risk that the person would face persecution, torture or other serious forms of harm (such as the death penalty or arbitrary deprivation of life) or cruel, inhuman or degrading treatment or punishment.¹⁹

Scope of Australia's human rights obligations in relation to individuals detained at Manus Island

Factual background

7.24 The factual background to the incident at the Manus Island RPC from 16 to 18 February 2014 has been described in detail in previous chapters. However, the following issues are of particular significance in assessing Australia's obligations in respect of asylum seekers held at Manus Island:

- asylum seekers arrived in Australia and were held in immigration detention in Australia;²⁰

16 Replies to the List of Issues (CCPR/C/AUS/Q/5) To Be Taken Up in Connection with the Consideration of the Fifth Periodic Report of the Government of Australia (CCPR/C/AUS/5), paras 16-17, UN Doc CCPR/C/AUS/Q/5/Add.1 (5 February 2009), referred to in Amnesty International, *Submission 22*, Attachment 1, p. 83.

17 *Issa v Turkey* [2004] ECHR 629. See also Dr Azadeh Dastyari, Castan Centre for Human Rights Law, *Committee Hansard*, 13 June 2014, pp 16 and 19.

18 International Law Commission, 'Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' (2001) articles 16–18; *Hirsi Jamaa v Italy* (2012) 55 EHRR 21, para 129, referred to in Kaldor Centre, *Submission 9*, p. 6.

19 CAT, article 3(1); ICCPR, articles 6(1) and 7; and Second Optional Protocol to the ICCPR Aiming at the Abolition of the Death Penalty.

20 Amnesty International, *Submission 22*, Attachment 1, p. 30.

- Australian authorities transferred asylum seekers from immigration detention in Australia to immigration detention in Papua New Guinea (PNG),²¹ where they were detained at the RPC;²²
- the establishment of the RPC and the transfer and detention of asylum seekers in that facility was pursuant to agreements between Australia and PNG;²³
- the RPC is entirely funded by the Australian Government;²⁴
- only asylum seekers transferred from immigration detention in Australia are held at the RPC;²⁵
- operational, maintenance, security and welfare support services are provided by service providers at the RPC under contracts with the Australian Government;²⁶
- Australian (departmental) officials managed or had significant involvement in the RSD processes in respect of individuals held at the RPC;²⁷ and
- no asylum seeker had received a final decision on their refugee status at the time of the incident from 16 February to 18 February 2014.²⁸

'Effective control'

7.25 A significant issue in this inquiry has been the extent to which Australia's obligations under international law apply in respect of asylum seekers detained in the Manus Island RPC, given its location outside of Australia.

7.26 As noted above, under international human rights law, a state has an obligation to respect, protect and fulfil its human rights obligations within its territory or in relation to persons or situations subject to its jurisdiction. A state has

21 Amnesty International, *Submission 22*, Attachment 1, p. 31.

22 Human Rights Law Centre, *Submission 17*, p. 13; Castan Centre for Human Rights Law, *Submission 7*, p. 3.

23 Australian Human Rights Commission, *Submission 30*, p. 5; G4S, *Submission 29*, p. 10.

24 Australian Human Rights Commission, *Submission 30*, p. 5; Human Rights Law Centre, *Submission 17*, p. 13.

25 *Additional Information provided by the Department of Immigration and Border Protection – population at Manus Island Detention Centre* (received 6 June 2014), p.1; Dr Dastyari, Castan Centre for Human Rights Law, *Committee Hansard*, 13 June 2014, pp 16 and 19.

26 *Additional Information provided by the Department of Immigration and Border Protection – contracts* (received 30 May 2014); The Salvation Army, *Submission 34*, p.3; G4S, *Submission 29*, p. 10.

27 Miss Elizabeth Thompson, *Committee Hansard*, 12 June 2014, p. 21; Amnesty International, *Submission 22*, Attachment 1, p. 62.

28 *Additional Information provided by the Department of Immigration and Border Protection – population at Manus Island detention centre* (received 6 June 2014), p. 1; Mr Robert Cornall AO, *Committee Hansard*, 12 July 2014, p. 11; Asylum Seeker Resource Centre, *Submission 23*, p. 6.

extraterritorial obligations (that is, obligations outside its territory) where it has 'effective control' over territory, persons or the situation.²⁹

7.27 Australia's obligations under international human rights law will therefore apply to circumstances where asylum seekers or the situation are outside Australian territory yet under the 'effective control' of Australian authorities. The committee heard evidence that if Australia had 'effective control' of the Manus Island RPC and/or the people detained there then this would mean that Australia has responsibility under international human rights law.³⁰ This question of whether Australia exercises 'effective control' over the Manus RPC was one of the central issues in dispute in the evidence of witnesses and submitters to the inquiry.

7.28 In evidence to the committee, a departmental officer rejected the argument that Australia has effective control of the Manus Island centre, stating:

[T]here has been a lot of focus and significant claims made that Australia runs this centre and has 'effective control'. It is a legal context; it is a legal term. We are very clear that we do not have 'effective control': we do not run the centre, we do not set the legal framework, we do not own the buildings, we do not employ the staff, we do not set the policy framework, we do not outline the labour laws under which people are employed, we do not have control over the occupational health and safety legislation, and we do not have control over the environmental legislation. What we do have is a contracting arrangement for service delivery consistent with the regional resettlement agreement...[It] needed to be clarified that the Australian government, through its arrangements there, does not exercise effective control. It manages contracts consistent with an agreement struck between the government of PNG and the government of Australia in July and August of 2013.³¹

7.29 This accords with other statements made by the Australian Government in relation to the operation of offshore processing centres and provided to the committee:

The consistent position taken by Australia is that while we are assisting PNG and Nauru in the management of the centres, this assistance does not constitute the level of control required under international law to engage Australia's international human rights obligations extraterritorially in relation to the persons concerned.³²

29 UN Human Rights Committee General Comment No 31, (2004), para 10; UN Committee against Torture, General Comment No 2 (2007) para 16.

30 Dr Dastyari, Castan Centre for Human Rights Law, *Committee Hansard*, 13 June 2014, pp 16 and 19.

31 Mr Mark Cormack, Deputy Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 28.

32 'Australian Government's Response to Amnesty International reports arising from visits to Manus Offshore Processing Centre', *Additional Information provided by Amnesty International* (received 23 July 2014), p. 2.

7.30 The view that Australia does not have effective control over asylum seekers held at the RPC (and consequently does not have concomitant obligations under international law) was strongly contested in the evidence of a number of legal and human rights organisations and academics to the inquiry.³³ For example, the United Nations High Commissioner for Refugees (UNHCR) stated in its submission:

As a matter of international law, the physical transfer of asylum-seekers from Australia to Papua New Guinea, as an arrangement agreed by the two 1951 Convention States, does not extinguish Australia's legal responsibility for the protection of asylum-seekers affected by the transfer arrangements.³⁴

7.31 A number of submitters and witnesses submitted that Australia has satisfied the test of 'effective control', and pointed particularly to the degree of Australia's involvement in the operation of the Manus Island RPC.³⁵ Specific factors identified as evidence of effective control included those outlined in the factual background at paragraph 7.24 above, such as Australia's integral involvement in the establishment, arrangements, maintenance, funding and operation of the centre.³⁶ For example, Mr Daniel Webb, Director of Legal Advocacy at the Human Rights Law Centre, concluded that Australia possessed the requisite degree of control to attract international human rights obligations:

...Australia's human rights obligations do not end at its borders. It would defeat significantly the purpose of international human rights law if states could just do offshore things that it could not legally do onshore. So for that reason international law is concerned with what states actually do, not just where they do it. Australia will be responsible for events on Manus if it can be shown that the arrangements are within Australia's effective control. The test has been described as being met where a state is a link in the causal chain that allows human rights violations to take place. In the context of Manus, Australia designed the arrangements, Australia built and funds the detention centre, Australia contracts service providers to provide services at the centre and Australia is involved in the processing of claims within the centre. So not only is Australia a link in the causal chain, Australia built the chain and underwrites the chain and is involved very closely in every link of that chain. So quite clearly Australia has sufficient control to be regarded

33 Human Rights Law Centre, *Submission 17*, pp 12-13; Australian Human Rights Commission, *Submission 30*, pp 4-5; Law Society of New South Wales, *Submission 8*, p. 3; Kaldor Centre, *Submission 9*, p. 4; UNHCR, *Submission 21*, p. 1; Castan Centre for Human Rights Law, *Submission 7*, p. 3; Immigration Advice and Rights Centre, *Submission 14*, p. 4; Civil Liberties Australia, *Submission 5*, p. 1; Kate Schuetze, Amnesty International, *Committee Hansard*, 12 July 2014, p. 51; Asylum Seeker Resource Centre, *Submission 23*, p. 5.

34 *Submission 21*, p. 1.

35 Human Rights Law Centre, *Submission 17*, pp. 12-13; Castan Centre for Human Rights Law, *Submission 7*, p.3; Ms Kate Schuetze, Amnesty International, *Committee Hansard*, 12 July 2014, p. 5; and Dr Azadeh Dastyari, Castan Centre for Human Rights Law, *Committee Hansard*, 13 June 2014, pp16 and 19.

36 Human Rights Law Centre, *Submission 17*, p. 12; Ms Kate Schuetze, Amnesty International, *Committee Hansard*, 12 July 2014, p. 51.

as having effective control, and for that reason Australia is responsible for any human rights violations that take place.³⁷

7.32 Dr Azadeh Dastyari, associate at the Castan Centre for Human Rights Law, similarly gave evidence that Australia is clearly exercising effective control. Dr Dastyari stated:

There is an incredibly strong case that Australia exercises effective control. You mentioned that PNG has not done this before. PNG would not be doing this, this time, were it not for the Australian government. Everything rests on decisions made the Australian government. All the transferees are chosen by the Australian government...[and] the centre is being paid for by the Australian government. But for the Australian government we would not have detention and we would not have the asylum seekers in the detention centre on Manus Island. So I think that Australian government's claims that it is not exercising control over the centre are very weak.³⁸

7.33 Amnesty International, in its December 2013 report into the conditions at Manus Island RPC, also stated that there is 'little question' that persons detained at the centre are under the effective control of Australia.³⁹

Obligations flowing from effective control

7.34 The committee heard that Australia has a range of human rights obligations in relation to the asylum seekers detained in the Manus Island RPC, arising from the conclusion that Australia exercises effective control of the centre and/or the individuals detained in it. As set out above, this includes obligations to respect, protect and fulfil the human rights of asylum seekers held at Manus Island, including but not limited to:

- the rights of refugees and asylum seekers as well as in relation to RSD;
- the prohibition against refoulement;
- the right not to be subject to torture or cruel, inhuman and degrading treatment or punishment;
- the right to humane treatment in detention;
- the right not to be arbitrarily detained;
- the right to security of person;
- the right to health;
- the right to life and the duty to investigate; and
- the right to an effective remedy.

37 *Committee Hansard*, 12 July 2014, p. 59.

38 *Committee Hansard*, 13 June 2014, pp 16, 19.

39 *Submission 22*, Attachment 1, p. 83. See also Ms Kate Schuetze, Amnesty International, *Committee Hansard*, 12 July 2014, p. 51.

7.35 The committee notes that a finding that Australia had 'effective control' of the Manus Island RPC at the relevant time would mean that Australia is liable for internationally wrongful acts, including breaches of its obligations under international human rights law, in respect of the incident at the centre from 16 February to 18 February 2014.⁴⁰

Joint liability

7.36 A number of submitters and witnesses argued that, whether or not Australia's involvement is sufficient to reach the level of effective control, Australia is liable for human rights breaches at the Manus Island RPC under international law, based on the concept of joint and several liability with PNG.⁴¹ The Amnesty International report on Manus Island RPC noted:

Even if there were some question as to whether Australia's involvement meets the test of effective power and control, its engagement certainly establishes that it has at least joint responsibility, together with Papua New Guinea, for human rights violations committed in the handling of asylum claims and the detention of asylum seekers in Papua New Guinea.⁴²

7.37 Similarly, Dr Joyce Chia, Senior Research Associate at the Kaldor Centre, gave evidence that:

We would certainly agree with the UNHCR that at any event there is clearly shared and joint responsibility. In that respect I think the exact details of who funds what is less relevant. Clearly there is sufficient [connection] to trigger our international obligations under the state responsibility doctrine.⁴³

7.38 Submitters noted that the concept of joint responsibility provides that, if Australia 'aids or assists, directs or controls, or coerces' PNG to commit a breach of PNG's human rights obligations, Australia will also be responsible if it has knowledge of the circumstances of the breach, and the conduct would have been in breach of Australia's human rights obligations if Australia had committed the breach itself.⁴⁴

40 International Law Commission, 'Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' (2001) articles 16–18; *Hirsi Jamaa v Italy* (2012) 55 EHRR 21, para 129, referred to in Kaldor Centre, *Submission 9*, p. 6.

41 Dr Joyce Chia, Kaldor Centre, *Committee Hansard*, 13 June 2014, p.19; Kaldor Centre, *Submission 9*, p. 4; Law Society of New South Wales, *Submission 8*, p. 3; Amnesty International, *Submission 22*, Attachment 1, p. 85. See also: International Law Commission (ILC), Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001; *Hirsi Jamaa v Italy* (App No 27765/09, European Court of Human Rights, Grand Chamber, 23 February 2012) para 129.

42 *Submission 22*, Attachment 1, p. 83. See also Ms Kate Schuetze, Amnesty International, *Committee Hansard*, 12 July 2014, p. 51.

43 *Committee Hansard*, 13 June 2014, p. 16.

44 Kaldor Centre, *Submission 9*, p. 4; Law Society of New South Wales, *Submission 8*, p. 3. See also International Law Commission (ILC), Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001.

Obligations under doctrine of joint responsibility

7.39 If Australia does not have effective control of the Manus Island RPC, its specific obligations under the doctrine of joint responsibility are likely to be different in scope to the obligations that would flow from a finding that Australia possessed 'effective control'. This is because the scope of Australia's potential liability under the concept of joint responsibility would largely be in reference to PNG's obligations under international human rights law.⁴⁵ Australia's liability in these circumstances would be based on the extent of contribution to any violation of these obligations under international human rights law.⁴⁶

Human rights assessment of the incident at the MIDC between 16 February and 18 February 2014*Breaches of human rights contributing to the incident*

7.40 As highlighted in chapters 3 and 4, the committee received evidence from organisations which had undertaken monitoring visits to the centre in the lead up to the incident expressing concern about the harsh physical conditions in the centre, the mandatory detention of asylum seekers, the return oriented environment at the centre, poor health care services and lack of certainty around RSD processes and resettlement.⁴⁷

7.41 The evidence of a number of legal and human rights organisations echoed such concerns, and suggested that breaches of Australia's obligation to respect, protect and fulfil human rights at the Manus Island RPC contributed to the distress of asylum seekers and, ultimately, to the unrest between 16 February and 18 February 2014.⁴⁸ The alleged breaches included:

- lack of progress and uncertainty with respect to RSD in breach of Australia's obligations;⁴⁹
- mandatory detention for long periods amounting to arbitrary detention in breach of Australia's obligations (article 9, ICCPR);⁵⁰

45 International Law Commission (ILC), Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, 2001, article 16 and 17.

46 International Law Commission (ILC), Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, 2001, article 16 and 17.

47 UNHCR, *Submission 21*, p. 3; Amnesty International, *Submission 22*, Attachment 1.

48 See, for example: Castan Centre for Human Rights Law, *Submission 7*, p. 7; Mr Daniel Webb, Human Rights Law Centre, *Committee Hansard*, 12 July 2014, p. 51; Amnesty International, *Submission 22*, p. 4; and Ms Sophie Kay Nicolle, Amnesty International, *Committee Hansard*, 12 July 2014, p. 50.

49 See, for example, Amnesty International, *Submission 22*, Attachment 1, p. 4.

50 Dr Joyce Chia, Kaldor Centre, *Committee Hansard*, 13 June 2014, p. 15; and Ms Natalie Young, Law Society of New South Wales, *Committee Hansard*, 13 July 2014, p. 9.

- harsh and dehumanising conditions at the Manus Island RPC which amounted to cruel, inhuman and degrading treatment or punishment and violations of the right to be treated humanely in detention in breach of Australia's obligations (article 7, CAT, articles 7 and 10, ICCPR);⁵¹ and
- inadequate access to health services in breach of Australia's obligations (article 12, ICESR).⁵²

Breaches of human rights in relation to the incident

7.42 Some submitters and witnesses argued that, in relation to the incident between 16 February and 18 February itself, a number of specific breaches of Australia's obligations under the ICCPR occurred, specifically: the right to life, the right to security of person, and the right to an effective remedy.

Right to life – duty to protect

7.43 A number of submitters and witnesses argued that the death of Mr Reza Barati involved a breach of the right to life by Australia, due to Australia's failure to protect him.⁵³ The Kaldor Centre explained that Australia's duty to protect Mr Barati may have been engaged in respect of acts done by employees or contractors at the Manus Island RPC:

If Reza Barati was killed by people acting on behalf of the State (whether by employees of G4S or PNG authorities), the State's obligations would be engaged under article 6 of the ICCPR. Under international law, the State remains responsible for the acts of persons acting on governmental authority, whether or not these are State officials as such, and whether or not the acts exceeded authority or contravened instructions...Furthermore, States have an obligation to take appropriate steps to safeguard the lives of those within their territory and/or jurisdiction. The same facts that may suggest negligence on the part of G4S suggest that there may have been a violation of this obligation.⁵⁴

7.44 Dr Dastyari, from the Castan Centre for Human Rights Law expressed the view that, in addition to breaching its obligation to protect life in respect of Mr Barati, Australia was in continuing breach of this obligation due to the continuing detention of people in the Manus Island RPC.⁵⁵

51 Ms Sophie Nicolle, Amnesty International, *Committee Hansard*, 12 July 2014, p. 49; UNHCR, *Submission 21*, p. 3.

52 Amnesty International, *Submission 22*, pp 3-4; Kaldor Centre, *Submission 9*, Attachment 1, pp 2-3.

53 Dr Azadeh Dastyari, Castan Centre for Human Rights Law, *Committee Hansard*, 13 June 2014, p. 14; Civil Liberties Australia, *Submission 5*, p. 2; Dr Joyce Chia, Kaldor Centre, *Committee Hansard*, 13 June 2014, p. 15; Amnesty International, *Submission 22*, p. 9.

54 *Submission 9*, p. 7.

55 *Committee Hansard*, 13 June 2014, p. 14. See also Dr Joyce Chia, Kaldor Centre, *Committee Hansard*, 13 June 2014, p. 15.

Right to life – duty to investigate

7.45 Some submitters further argued that Australia had not met its specific right to life obligation in respect of the requirement to initiate and conduct an effective and proper investigation of Mr Barati's death (duty to investigate).⁵⁶

7.46 Amnesty International, for example, called on the Australian Government to 'conduct an independent inquiry into the violence with the joint co-operation of the Australian and PNG governments'; and stated that '[p]erpetrators of the violence must face criminal prosecution in accordance with international laws and standards, without recourse to the death penalty'.⁵⁷

7.47 Under international human rights law, there are certain standards that an investigation needs to meet in order to be compliant with the duty to investigate. These standards include that the investigation be:

- brought by the state in good faith and on its own initiative;
- independent and impartial (including practically and institutionally);
- adequate and effective;
- carried out promptly; and
- open to public scrutiny and inclusive of the family of the deceased, with the family given access to all information relevant to the investigation.⁵⁸

7.48 The Kaldor Centre argued that investigations to date by the Australian authorities, including this committee's inquiry, may not be sufficient to fulfil these standards.⁵⁹ It noted that identifying and punishing those responsible for the breaches is a critical aspect of ensuring an investigation is adequate.⁶⁰

Right to security of person

7.49 As discussed in chapter 5, evidence to the inquiry is clear that a large number of asylum seekers were assaulted at the Manus Island RPC during the incident between 16 February and 18 February.

7.50 Some submitters claimed that these assaults represent a breach of Australia's obligations with respect to the right to security of person, to the extent that assaults

56 Human Rights Law Centre, *Submission 17*, p. 14.

57 *Submission 22*, p. 10.

58 See, for example: *McCann v United Kingdom* (1996) 21 EHRR 97, [3], [188], [194]; *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182; *Paul and Audrey Edwards v United Kingdom* (2002) 35 EHRR 19, [69]–[73]; *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC, 653, [19]–[20], [23]; *Osman v United Kingdom* (1998) 29 EHRR 245, [115]. The duty to investigate was referred to in a number of submissions, for example the Kaldor Centre, *Submission 9*, p. 7.

59 *Submission 9*, p. 8.

60 *Submission 9*, p. 8.

were committed by agents of Australia or that Australia failed to prevent the assaults or provide redress.⁶¹

Right to an effective remedy and preventing recurrences of violations

7.51 The right to an effective remedy requires not only holding perpetrators to account but also making reparation to individuals whose rights have been violated and preventing recurrences of human rights violations.

7.52 In relation to the type of remedies to be regarded as effective to address the violations of human rights at the Manus Island RPC, the Kaldor Centre suggested that:

Remedies that may be required in relation to the incident on Manus Island...are likely to include compensation for those injured, changes to procedures and practices, public acknowledgment of violations, and the institution of an effective complaints mechanism for those on Manus Island.⁶²

7.53 A number of submitters and witnesses from human rights organisations identified the necessity of preventing recurrences of violations, including continuing violations related to the death of Mr Barati and the injuries to other asylum seekers at the Manus Island RPC.⁶³

7.54 Ms Sophie Nicolle, Government Relations Advisor of Amnesty International, submitted that the most effective way to prevent further violence and ensure the rights of asylum seekers was to 'end offshore processing at Manus Island in order to guarantee the right to life and safety of the person for asylum seekers there'.⁶⁴

7.55 Similarly, Mr Daniel Webb of the Human Rights Law Centre stated:

Leaving people languishing indefinitely in harsh conditions with no certainty about their future will inevitably cause harm and lead to unrest. It [has] done so with tragic consequences...The Human Rights Law Centre's position is that the Manus detention centre should be closed: conditions remain inhumane; mandatory and indefinite detention and penalising asylum seekers on account of their unauthorised arrival continue to be breaches of international law; and, perhaps most importantly, asylum seekers remain at risk of harm.⁶⁵

61 Kaldor Centre, *Submission 9*, p. 8; Ms Sophie Nicolle, Amnesty International, *Committee Hansard*, 12 June 2014, p. 49.

62 *Submission 9*, p. 8. See also Amnesty International, *Submission 22*, p. 10.

63 See, for example: Australian Human Rights Commission, *Submission 30*, pp 10-11; Kaldor Centre, *Submission 9*, p. 10.

64 *Committee Hansard*, 12 July 2014, p. 50.

65 *Committee Hansard*, 12 July 2014, p. 51.

7.56 While expressing the view that the Manus Island RPC should be closed as the best way of preventing further human rights violations, the Human Rights Law Centre also made specific recommendations in the event that the centre remains open, submitting that the Australian Government should 'take urgent steps' to:

- ensure individuals responsible for acts of violence are held to account;
- ensure the safety of asylum seekers within the Manus RPC;
- address the inhumane conditions inside the RPC; and
- address the inordinate delays in processing and resettlement which underpinned the unrest.⁶⁶

7.57 Amnesty International also made a number of specific recommendations for ensuring the human rights of asylum seekers in relation to the incident at the Manus RPC. These recommendations included for the Australian Government to:

- immediately remove to Australia all asylum seekers who witnessed or were injured in the violence, for their safety and protection;
- ensure that all asylum seekers injured in the violence receive adequate professional assistance, including medical treatment, full rehabilitation and mental health services, as well as independent legal advice;
- ensure that asylum seekers have the right to access lawyers; and
- ensure access to the detention centre by lawyers and human rights organizations.⁶⁷

7.58 In response to concerns about possible human rights breaches in relation to the incident, the department maintained its position that Australia's obligations under international human rights treaties including the ICCPR do not extend to individuals held at the Manus Island RPC,⁶⁸ and that any such obligations rest with PNG. Mr Mark Cormack, a Deputy Secretary at the department, stated:

The responsibility for the operation and running of the Manus centre lies with the PNG government. Our responsibility is to provide support through the contracting arrangements that we have with service providers, but these centres operate under PNG law...

The PNG government is signatory to a range of conventions and that is where the accountability lies.⁶⁹

66 *Submission 17*, p. 15.

67 *Submission 22*, pp 9-10.

68 Department of Immigration and Border Protection, *Answers to questions taken on notice at a public hearing on 11 July 2014* (received 17 September 2014), [p. 3].

69 *Committee Hansard*, 11 July 2014, pp 38 and 40.

Duty of care responsibilities under domestic law

7.59 In addition to Australia's obligations under international law, the committee also received evidence in relation to Australia's duty of care responsibilities under Australian domestic law in respect to those held in the Manus Island RPC. A number of submitters argued that Australia has a non-delegable duty of care under common law to ensure the safety of asylum seekers at held at the centre.⁷⁰

7.60 The Australian Lawyers Alliance (ALA) stated that a non-delegable duty of care has the effect of fixing liability for negligent acts to a particular person, even if that person has delegated responsibility for performance of those acts to a third party, and that non-delegable duties of care typically arise where there is particular responsibility for a person due to issues of control or vulnerability.⁷¹

7.61 Dr Andrew Morrison QC of the ALA stated in evidence to the committee that the non-delegable duty of care means that the Australian Government, 'by employing an organisation such as G4S, does not cease to be responsible'.⁷² The Kaldor Centre similarly noted that in respect of responsibilities under a non-delegable duty of care:

...the Australian Government could not rely upon its employment of a qualified independent contractor to discharge its duty of care to the detainees. Rather, the Australian Government itself was required to ensure that care would be taken and is liable for any breach of that duty of care.⁷³

7.62 These submitters noted that the Australian Government may be in breach of this duty of care obligation due to the severe conditions in the Manus Island RPC leading up to the incident.⁷⁴ The Kaldor Centre noted that to assess whether there had been a breach of duty of care by the Australian Government it would be necessary to examine the 'foreseeability' of the risks and the 'reasonableness of care taken'.⁷⁵ The ALA submitted that factors indicating a breach included inappropriate fencing, inadequately trained staff, understaffing, inadequate monitoring, inadequate preparation in the event of emergency, allegations of sexual harassment, disease, poor hygiene, lack of access to appropriate quantities of water and inadequate mental health and medical care services.⁷⁶

70 See, for example: Kaldor Centre, *Submission 9*, p. 3; Australian Lawyers Alliance, *Submission 13*, pp 19-20.

71 *Submission 13*, p. 6.

72 *Committee Hansard*, 13 June 2014, p. 2.

73 *Submission 9*, p. 3.

74 See, Australian Lawyers Alliance, *Submission 13*, pp 19-20; Andrew & Renata Kaldor Centre for International Refugee Law, *Submission 9*, p. 3.

75 *Submission 9*, p. 3.

76 Australian Lawyers Alliance, *Submission 13*, pp 19-20.

7.63 The department noted the following in relation to any duty of care owed by Australia to transferees held at the Manus Island RPC:

The existence and nature or scope of a duty of care in the regional processing context is a complex question involving consideration of foreign laws and the roles played by a range of parties including foreign and Australian governments and their officers as well as non-government service providers and their employees. Such a question normally entails judicial evaluation of the relevant factors involved. As such issues are the subject of current litigation, it would not be appropriate to comment.⁷⁷

⁷⁷ Department of Immigration and Border Protection, *Answers to questions taken on notice at a public hearing on 11 July 2014* (received 17 September 2014), [p. 3].

Chapter 8

Conclusions and Recommendations

8.1 This inquiry has canvassed a broad range of issues relating to the operation of the Manus Island Regional Processing Centre (RPC), focusing on the events of 16 to 18 February 2014 in which at least 70 individuals were injured, many seriously, and Mr Reza Barati was killed.

8.2 As previously noted, the committee is not a judicial body, nor is it vested with the power to conduct criminal investigations, particularly in this case as the events in question occurred outside of Australia. As such, the committee has not sought to ascertain the identity of Mr Barati's killers or other specific individuals who assaulted transferees during the riots; indeed, the committee has been at pains throughout the inquiry to avoid prejudicing ongoing investigations in Papua New Guinea by naming individuals alleged to have been involved.

8.3 The committee has instead focused its attention on the broader questions arising from this incident. The most pertinent of these is how it came to be that an individual who arrived in Australia seeking its protection ultimately ended up being killed in a remote offshore detention centre, with many of his cohort suffering serious physical and psychological damage on the same night. Equally important are the questions of what has been done since the events to ensure the ongoing safety and wellbeing of those still detained on Manus Island, and how best to ensure that we do not see the likes of these events again in immigration detention facilities funded by the Australian Government.

8.4 By examining the legal and administrative arrangements undergirding the Manus Island RPC, the physical conditions and services provided at the centre, and the policy framework and processes in place for assessing detainees' asylum claims, the committee has reached some definitive conclusions regarding the causes leading to the riots that occurred in February 2014. The committee has also formed strong views in relation to the ongoing operation of the centre and changes that should be implemented to improve the treatment of asylum seekers currently subject to offshore processing in PNG.

8.5 In summary, the committee has found that the events of 16 to 18 February 2014 at the Manus Island RPC were eminently foreseeable, and may have been prevented if transferees had been given a clear pathway for the assessment of their asylum claims. Many of the problems at the centre had their origins in the events of July to October 2013, when the centre was transformed from a mixed facility into a single adult males facility and experienced a massive influx of new transferees, reaching more than double the initial intended capacity of the centre in the space of approximately 12 weeks. The inability of the centre's infrastructure to cope with this influx, combined with the complete absence of any clear refugee status determination and resettlement framework to deal with these asylum seekers, created an environment where unrest and transferee protests were the inevitable result.

8.6 It is clear from evidence presented to the committee that the Australian Government failed in its duty to protect asylum seekers including Mr Barati from harm.

Contributing factors leading to the violence of 16-18 February 2014

8.7 It is clear to the committee that a variety of factors gave rise to the incident from 16 to 18 February 2014. These were: the size and composition of the transferee population at the RPC; tension between asylum seekers and locals; the physical conditions and facilities at the RPC; inadequate security infrastructure at the centre; and uncertainty about refugee status determination and resettlement arrangements. All these issues have been discussed in greater detail in earlier chapters.

8.8 On the evidence before the committee, all of the factors giving rise to the incident were or should have been known to the Australian Government and contractors responsible for managing the RPC: for example, animosity towards the centre by PNG locals had its genesis as early as August 2012; the inadequacy of fencing and security lighting was identified in June 2013; and frustration amongst asylum seekers was apparent as tensions in the RPC increased from December 2013 onwards. In isolation, these factors should have alerted the government and contractors to problems requiring their expedient attention. Together, these factors were without doubt—and in the absence of remediation—going to lead to events of the serious and tragic nature seen on 16 to 18 February.

8.9 Of the factors that contributed to the events of 16 to 18 February, the committee is of the view that delay and uncertainty about refugee status determination and resettlement arrangements was the main cause which, if it had been addressed, would have been most likely to prevent the escalation of protest activity at the centre to the point where violence ensued. The committee believes that the hopelessness of the situation transferees found themselves in, with no clear path forward and no certainty for the future, was the central factor in the incident of 16 to 18 February.

8.10 These findings in relation to the contributing factors that led to the incident are largely consistent with those of the Cornall Review.¹ The committee notes, however, that the Cornall Review did not consider the difficult living conditions at the centre to be a significant factor leading to the unrest. The committee is of the view that harsh and inhumane conditions at the Manus Island RPC were a significant factor which, while not a direct cause, did increase the volatility of the centre and make protest activity more likely.

The events of 16 to 18 February 2014

8.11 Through the course of its inquiry, the committee heard some harrowing and traumatic accounts of the violent events that unfolded at the Manus Island RPC over two nights in February of this year. Witnesses to the events have described in graphic detail the violence perpetrated against asylum seekers. In particular, evidence of

1 See: Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, 23 May 2014, pp 81-82.

non-protesting individuals who were hiding in their rooms being dragged out and beaten has been especially disturbing to the committee.²

8.12 The committee expresses its appreciation to those submitters and witnesses who gave evidence in relation to such trying events. It is regrettable that the committee was unable to hear first-hand testimony from asylum seekers detained at the centre, however the committee hopes that this report will help shed light on the crimes perpetrated against them and ensure that their experience is not repeated.

Actions of service provider staff during the incident

8.13 It is clear that during the violent unrest at the Manus Island RPC from 16 to 18 February 2014, many service provider staff showed great courage and commitment in performing their duties under exceptionally difficult circumstances. On the night of 17 February G4S security staff, led predominately by Australian personnel and including many PNG national staff, were responsible for safely containing much of the protest activity that occurred in the initial stages of the evening, escorting non-participants to safety and preventing the various protesting groups within the centre from coalescing for as long as possible. As the riots grew uncontrollable and PNG police and locals entered the centre, these staff continued to defend transferees at great risk to their own safety, and were responsible for retrieving injured transferees from the fray. The committee agrees with G4S's assessment that without the courageous actions of these individuals, the outcome of these events would have been far worse.

8.14 The committee also commends the actions of other service provider staff who assisted in the treatment of injured asylum seekers at the makeshift triage site at the Bibby accommodation barge on the night of 17 February.

8.15 The committee did hear extremely troubling evidence, however, in relation to the actions of some service provider staff during these events. It is undeniable that a significant number of local service provider staff, as well as a small minority of expat staff, were involved in the violence against transferees. During the disturbance on 16 February, PNG national G4S staff, along with other local residents, used excessive force to bring transferees who had egressed from Oscar compound back into the centre, and then continued to assault transferees inside the centre. On the night of 17 February, G4S reported that some of its local security staff involved in the IRT broke ranks and entered the affray. Many other witness accounts provided to the committee alleged that service provider staff were responsible for some of the injuries incurred by asylum seekers, including allegations that service provider staff were among Mr Barati's attackers.

8.16 The committee notes that, during the protests, some transferees engaged in chanting offensive and racist comments at PNG nationals outside the centre, who likewise were engaged in similar behaviour towards transferees. It is clear that the hostility between PNG locals and transferees contributed to the severity of the

2 Humanitarian Research Partners, *Submission 26*, p. 6; Mr Andrew Wilkie MP, *Submission 4*, p. 14; Asylum Seeker Resource Centre, *Submission 23*, pp 4 and 9.

violence that occurred, and encouraged the involvement of local residents and service provider staff who subsequently engaged in criminal actions against transferees.

Actions of PNG police mobile squad

8.17 As noted in chapter 5, the majority of the violence that took place on the night of 17 February occurred when members of the PNG police mobile squad forcefully entered the centre, accompanied by some local service provider staff and Manus Island residents, and put down the protests with extreme and excessive force. Evidence to the committee indicates that the mobile squad did not simply fire warning shots into the air, but rather fired dangerously into the centre, possibly directly at transferees.³

8.18 The committee is satisfied with G4S's evidence that it did not request the mobile squad to enter the centre in order to quell the disturbance. Despite this, the committee considers that the involvement of the mobile squad was inevitable, due to the inability of G4S security staff to control the centre as the riots progressed. Both G4S and the Department of Immigration and Border Protection (department) were well aware that the mobile squad would intervene in circumstances where G4S was unable to maintain control of the centre, and G4S's Emergency Management Plan for the centre notes that in dealing with a major disturbance in the compound, the police mobile squad 'will deploy if illegal activity or risk to life is occurring as part of the disturbance'.⁴ As noted in chapter 6, G4S and the department knew that such a deployment would result in violence and possibly the death of protesters.

8.19 In the committee's view, the mere fact that G4S or the department did not specifically advocate for a handover of the centre to police or invite them in during the height of the protests does not absolve these parties of responsibility for the violence that occurred. It is a failing of both G4S and the department that the centre was not sufficiently resourced, in terms of both staffing and security infrastructure, to contain protest activity at the centre and prevent a situation occurring where the police mobile squad would intervene.

Failure of the department to resolve issues relating to the mobile squad

8.20 The department claimed that it had raised concerns about the police mobile squad with the relevant PNG authorities 'on multiple occasions as appropriate', and that in some instances, 'positive changes were realised through ongoing stakeholder engagement on these matters'.⁵ Given the outcomes of the intervention of the mobile squad on the night of 17 February, it is not clear what these 'positive changes' prior to

3 See chapter 5, paragraphs 5.47-5.48.

4 G4S, 'Manus Island OPC Emergency Management Plan', p. 32, *Additional Information provided by Comcare – documents relating to management of the Manus Island RPC* (received 10 July 2014), [p. 56].

5 Department of Immigration and Border Protection, *Answers to questions taken on notice at a public hearing on 10 June 2014* (received 9 July 2014), [p. 11] (See paragraph 7.21 of this report).

the events could have been. The department clearly failed to adequately respond to the strong concerns raised by G4S in relation to this issue.

8.21 The committee notes further that the Australian Government provides direct funding to the PNG police for the purpose of policing the Manus Island RPC. The committee considers that this means Australia was effectively financing the PNG police mobile squad deployed at the centre, both prior to and during the events in which its members assaulted transferees and enabled other locals and service provider staff to enter the centre and do likewise.

8.22 The committee notes the Cornall Review's recommendation that Transfield Services (and its security services subcontractor, Wilson Security), the RPNGC provincial police and the mobile squad clearly establish and understand their respective roles and responsibilities in regard to the maintenance of law and order within the Manus RPC. The committee agrees that this matter requires the urgent and ongoing attention of the Australian Government and Transfield to ensure that the events of 17 February 2014 are not repeated.

Responses to the incidents by Australian and PNG authorities

8.23 The inquiry heard a significant amount of evidence in relation to the response of relevant bodies to the incidents, including the PNG authorities, service providers engaged at the centre, and Australian authorities including the department and the minister.

Criminal investigations in PNG relating to the incident

8.24 The committee notes that criminal investigations in PNG have progressed to the point that two individuals have been charged with murder in relation to the death of Mr Barati. It is a matter of considerable concern, however, that it took six months from the events in question for these charges to be laid, and that there are three more suspects whom PNG authorities are still looking for in relation to the incident, including two expatriates. There have also been no arrests or charges laid in relation to the other criminal assaults perpetrated against asylum seekers between 16 and 18 February 2014, and the committee has received no evidence that suggests any arrests will be forthcoming.

8.25 The committee considers that the Australian Government should continue assisting the PNG authorities in furthering these investigations, to ensure that the perpetrators of attacks on asylum seekers at the Manus Island RPC are brought to justice.

Recommendation 1

8.26 The committee recommends that the Australian Government ensure an adequate and effective investigation into the criminal assaults perpetrated against individuals detained at the Manus Island Regional Processing Centre during the events of 16 to 18 February 2014, including by assisting the Papua New Guinea authorities in any ongoing investigations and facilitating the taking of witness testimony from individuals present at the incident who are now in Australian territory.

Conduct of the minister and the department after the events

8.27 As noted in chapter 6, the public statements of the Minister for Immigration and Border Protection in the immediate aftermath of the disturbances at the Manus centre contained untrue assertions, some of which were corrected four days later in a press statement released late on a Saturday evening.⁶

8.28 From the information provided to the inquiry, the committee considers that it is reasonable to assume that the Minister was relying on factually incorrect written reports from departmental staff on Manus Island when he asserted on 18 February 2014 that the incident on 17 February 2014 involved transferees breaching external perimeter fences, and that PNG police did not enter the centre and their activities related only to dealing with transferees who breached the external perimeter.

8.29 Information provided to the committee also shows that the department in Canberra had been provided with a copy of G4S's Emergency Control Organisation occurrence log of the incident early on the afternoon of 18 February.⁷ As such, it is still unclear to the committee why it was a further three and a half days until the Minister corrected the record by acknowledging that the riotous behaviour and subsequent actions to restore order at the centre took place within the perimeter of the centre.

8.30 Further, G4S stated that it verbally informed the department as early as 10.30 am on 18 February that PNG police had, in fact, entered the centre during the night of 17 February 2014.⁸ The chronology of events provided by G4S to the department on 18 February also included this information, which was reiterated to departmental staff in writing by G4S on 19 February. Despite this, the Minister did not take the opportunity to correct his initial statement that 'PNG police did not enter the centre', either on 22 February or at any subsequent time up until the release of the Cornall Review over three months later.⁹

8.31 It is the committee's view that, by giving the impression that events primarily occurred outside the centre, and that PNG police were not involved in the violence that occurred in the centre, the Minister sought to unfairly apportion blame to the asylum seekers themselves for the violence that was done to them on the night of 17 February 2014. The Minister was clearly selective in the facts he chose to use in his initial statements on the incident, and should have more quickly acknowledged

6 See chapter 6, paragraphs 6.19-6.27.

7 Department of Immigration and Border Protection, *Answers to written questions on notice* (received 25 November 2014), pp 1-2.

8 G4S, *Answers to written questions on notice* (received 28 November 2014), pp 1 and 2.

9 Note, for example, that in an interview on 24 February 2014, it was put to the Minister that it appeared that PNG police had entered the compound, however the Minister did not confirm or deny this. See: The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island incident', *Interview with Chris Uhlmann, ABC AM Program*, 24 February 2014, at: <http://www.minister.immi.gov.au/media/sm/2014/sm212067.htm> (accessed 30 October 2014).

that the violence occurred inside the centre. The Minister also failed to correct his initial statements with regards to the involvement of PNG police, despite clear evidence from quite soon after the events that they had entered the centre and been involved in the violence that occurred. At the very least, the Minister should have exercised greater care while events were still unclear before apportioning blame.

Responsibility of the Australian Government in relation to the centre

8.32 A significant question raised during the inquiry was whether Australia exercises 'effective control' over the Manus Island RPC, and consequently has obligations under international human rights law to respect, protect and fulfil the human rights of individuals detained at the centre.

8.33 The evidence provided to the committee by experts in international human rights law in relation to this issue was unequivocal in stating that Australia was, at the time of the disturbances in February 2014, and still is, exercising effective control with respect to the Manus Island RPC and the individuals held there. The committee considers that the degree of involvement by the Australian Government in the establishment, use, operation, and provision of total funding for the centre clearly satisfies the test of effective control in international law, and the government's ongoing refusal to concede this point displays a denial of Australia's international obligations.

8.34 The committee agrees with the view put to it by international human rights law experts that, even if Australia did not exercise 'effective control', Australia would still be liable for breaches of international human rights law that occur in respect of asylum seekers held at Manus Island under the doctrine of joint liability.¹⁰ The committee further considers that, questions of effective control aside, the Australian Government, as the architect of the arrangements with PNG,¹¹ has a clear and compelling moral obligation to ensure the treatment of asylum seekers held on Manus Island is in accordance with the principles and minimum standards contained in international human rights law.

Recommendation 2

8.35 The committee recommends that the Australian Government acknowledge its responsibility to respect, protect and fulfil the human rights of individuals detained at the Manus Island Regional Processing Centre.

Duty of care responsibilities under domestic law

8.36 The committee heard evidence from some submitters and witnesses that Australia also has duty of care responsibilities to the asylum seekers under domestic Australian law, and may be vicariously liable for any breaches of this duty.¹² These stakeholders argued that contractual arrangements with G4S or other service providers

10 See chapter 7, paragraphs 7.36-7.39.

11 See, Mr Mark Cormack, DIBP, *Committee Hansard*, 11 July 2014, p. 28.

12 See chapter 7, paragraphs 7.59-7.63.

would not discharge Australia from its non-delegable duty of care to asylum seekers. The committee considers that the duty of care responsibilities that the Australian Government owes under domestic Australian law are another compelling reason for Australia to take full responsibility for the treatment of asylum seekers held in the Manus Island RPC. The committee further considers that the Australian Government must act urgently to address any potential breaches of this duty of care.

Australia's human rights breaches in relation to the incident

8.37 The committee agrees with evidence presented to it that asylum seekers suffered numerous violations of their basic human rights during the violence perpetrated during the events of 16 to 18 February 2014, including the right to life (in relation to Mar Barati) and the right to security of person. The committee also received a range of evidence in relation to the specific requirements under international human rights law of the right to an effective remedy as it applies to the incident at Manus Island.

8.38 The committee considers that making reparations to individuals whose rights have been violated in the incident at the Manus Island RPC, and preventing recurrences of human rights violations, is essential from the perspective of Australia's international obligations. In the context of the physical and psychological injuries suffered by asylum seekers during the incidents from 16 to 18 February 2014, the committee is of the view that an effective remedy should include appropriate reparations for wrongs committed, as well as adequate medical treatment including mental health services. The committee is extremely concerned at evidence suggesting that medical treatment for those who were injured has been unsatisfactory in the months subsequent, and considers that this must be rectified as a matter of urgency.

Recommendation 3

8.39 The committee recommends that, in accordance with the right to an effective remedy and right to health in international human rights law, the Australian Government:

- **acknowledge and take responsibility for violations of human rights in relation to the incident at the Manus Island Regional Processing Centre from 16 to 18 February 2014; and**
- **provide compensation to those who have suffered human rights violations, including to Mr Reza Barati's family and to asylum seekers who were injured during the incident.**

Recommendation 4

8.40 The committee recommends that the Australian Government ensure that all asylum seekers injured in the violence at the Manus Island Regional Processing Centre from 16 to 18 February 2014 receive adequate professional assistance, including medical treatment, full rehabilitation and mental health services, as well as independent legal advice.

Ongoing issues in relation to the Manus Island RPC

8.41 Several other issues were raised during the inquiry in relation to the operation of the Manus Island RPC that the committee wishes to comment on, in particular: ongoing RSD processes for transferees; transparency at the centre, including access for relevant organisations and individuals; and the level of training provided to service provider staff.

Refugee status determination and resettlement processes

8.42 The committee has already noted that a lack of progress on transferees' refugee status determination processing was a critical causal factor leading to the events of 16 to 18 February 2014. The committee finds it alarming that these issues are still not well advanced months after these events occurred. As at November 2014, only ten asylum seekers out of a population of over 1,000 have received a final refugee status determination decision, and it is apparent that there is still a significant proportion of transferees who have not had their formal assessment process commenced at all. Based on comments from the PNG Immigration Minister about the timeframe for handing down the outstanding determinations,¹³ it is apparent to the committee that some asylum seekers could still be living in the Manus RPC for another 18 months to two years before their claims are finalised.

8.43 The committee notes that even the small number of asylum seekers whose claims have been finalised and who have been found to be refugees have not been granted permanent resettlement in PNG or elsewhere. Announcements by the PNG Government in November 2014 that a proposed resettlement policy has been scrapped and will be redeveloped after extensive consultations show that the prospect of any refugees being permanently resettled in Papua New Guinea in the foreseeable future is limited.

8.44 It is also a matter of significant concern to the committee that the current RSD process in place for transferees at the Manus RPC vests final decision making power in relation to granting a refugee visa in the PNG Immigration Minister, with no avenue for judicial review. Without independent judicial review of these ministerial determinations being available, the committee believes that there is still a high risk of genuine refugees being returned to harm as a result of incorrect decisions.

8.45 The committee considers that the current issues relating to refugee status determination and resettlement arrangements for asylum seekers held at the Manus Island RPC must be addressed as expeditiously as possible to ensure that the welfare of these individuals is upheld.

13 The Hon Rimbink Pato, LLB, OBE, MP, Papua New Guinea Minister for Foreign Affairs and Immigration, 'Refugees to start new lives in PNG', *Media Release*, 12 November 2014. See also The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'More progress on PNG resettlement arrangement as first refugee determinations handed down', *Media Release*, 12 November 2014.

Transparency surrounding operations at the centre

8.46 In examining the evidence presented to this inquiry, one consistent conclusion drawn by the committee is that there is a striking difference between the official statements and evidence provided by the department and service providers running the centre, and the first-hand testimony of individuals who have worked at and observed the centre. On issues including the provision of healthcare services to transferees, the adequacy of accommodation and facilities, and access to legal advice and other assistance for transferees, there are massive contradictions between the 'official' evidence given by the Australian Government and its contractors, and the evidence of other observers.

8.47 The committee considers that this situation is amplified by the excessively restrictive confidentiality agreements staff member must sign in order to work at the centre. Indeed, this inquiry presented the first opportunity for some of these employees to come forward and give evidence, under the protection of parliamentary privilege, without fear of being sued by their former employers for speaking out about the true nature of conditions on Manus Island.

8.48 The committee is also troubled by reports that UN observers, respected human rights organisations, Australian lawyers, the Australian Human Rights Commission and the media have all been denied access to the Manus Island RPC at various times since its reopening in 2012. Given the government's attempts to cover up or discredit evidence which exposes the true nature of conditions at the Manus Island RPC, the committee considers that it is imperative in the interests of transparency and public accountability that these groups be allowed appropriate access to the Manus Island RPC without interference.

Recommendation 5

8.49 The committee recommends that, in the interests of transparency and accountability, the governments of Australia and Papua New Guinea take measures to facilitate appropriate access to the Manus Island Regional Processing Centre, including:

- **allowing United Nations representatives full access to the centre and transferees;**
- **permitting qualified lawyers, including lawyers certified to practice in Australia, access to the centre in order to meet with transferees and provide legal assistance;**
- **allowing the Australian Human Rights Commission to regularly inspect the centre and meet with centre staff and transferees; and**
- **permitting journalists to visit the centre and speak freely with centre staff and transferees.**

Training for service provider staff at the centre

8.50 During the inquiry the committee heard concerning evidence in relation to the hiring and employment practices of the Salvation Army during its time administering welfare services at both the Nauru and Manus RPCs, with some employees recruited

on the basis of a Facebook advertisement and deployed offshore in a matter of days, without proper training or even a job interview.¹⁴ Salvation Army management defended these practices by arguing that no specific qualifications were required for staff performing general welfare roles, and that their recruitment practices improved over time. The committee considers that this amounts to seriously deficient workplace practices. In the view of the committee, it is essential that any employees being deployed to an offshore environment are given sufficient training to ensure not only that they have the qualifications necessary to perform their role, but that they are mentally prepared for working in a remote environment with vulnerable and traumatised individuals. On this count the committee considers that there have been clear failings in relation to the duty of care some service providers exercised in relation to their employees.

8.51 The committee also heard allegations that training provided by G4S for locally employed security staff, many of whom had no previous formal employment experience, was completely inadequate to equip them to deal with difficult situations like those encountered during the events of 16 to 18 February 2014. The committee considers that the fact that G4S staff broke ranks during the violence and were even involved in perpetrating assaults against asylum seekers shows that they had not been properly selected and adequately trained. Transfield and Wilson Security must ensure that it does not make the same mistakes in relation to its security staff currently employed at the centre.

Recommendation 6

8.52 The committee recommends that Transfield Services and the Australian Government ensure that service provider staff employed at the Manus Island Regional Processing Centre be provided with sufficient workplace training to perform their roles, in line with the standards applicable to employees working in detention environments in Australia, and accounting for the particular difficulties associated with working in remote conditions.

**Senator Penny Wright
Chair**

14 See chapter 2, paragraphs 2.63-2.67.

Dissenting report from Government Members of the Committee

Introduction

1.1 Government Senators note that the majority of problems identified by witnesses regarding Manus Island had their origin in the way the Manus Island Regional Processing Centre (MIRPC) was re-opened by the Rudd Labor government in the lead up to the 2013 federal election. The announcement by then Prime Minister Rudd regarding the re-opening of the facility was an attempt to fix a political problem caused by years of Labor government neglect, and by the porous state of Australia's northern borders at that time. The decision to re-open the facility was taken without sufficient planning, training, facilities upgrades or consideration of the challenges of administration and operation of the centre.

1.2 Government Senators are concerned by the nature and tone of elements of Chapter 8 of the committee report which appear to ignore the provenance of the problems that have occurred at the MIRPC, and overlook the significant works already completed to address these problems. The report is clearly an attempt by the Labor Party, and their parliamentary allies the Greens Political Party, to re-write history.

1.3 In particular the government members of the committee seek to clarify the actual position regarding the welfare and human rights of transferees, and to provide accurate information regarding logistic, infrastructure and service-delivery upgrades.

Background

1.4 The timelines and historical data presented in the committee report in Chapters 1-7 are not disputed and form a basically accurate record.

1.5 The government members note that the Commonwealth of Australia is now unambiguously committed to ensuring the safety and well-being of all persons at the MIRPC and at every other transfer and processing centre operated by or with the support of the Commonwealth of Australia.

1.6 This commitment to the safety of foreign nationals who are seeking asylum in Australia is evidenced by the Coalition government's commitment to stopping the boats, thus putting an end to the deaths at sea that had resulted from attempted illegal maritime entry to Australia.

1.7 Government Senators acknowledge that the MIRPC has faced a range of logistic and operational challenges. In the Departmental Opening Statement to the inquiry's 11 July, 2014 public hearing, Deputy Secretary Mr Mark Cormack remarked:

Many elements, such as negotiations with service providers, consultations with other agencies and governments, legislative considerations, timeframes and availability of resources, come into play. On Manus this process is further exacerbated by the logistical challenge of rapidly deploying and accommodating large numbers of people – both staff and transferees – and freight in short time frames, together with the need to work closely alongside and within another country's legislative, administrative and social frameworks.

In Manus, of course, there were more complex factors at work, with the OPC being located both in the province of Manus and also within an operational Papua New Guinea Defence Force base.¹

Mr Cormack further remarked:

The build-up of transferee numbers in the middle of last year was sudden. In seven weeks, from 19 July 2013 to the election on 7 September 2013, the centre's population grew from 130 to 723 – an increase of almost 600 per cent.²

1.8 It is noted that the government and the department have, since September 2013, largely overcome the bulk of these challenges.

1.9 According to the evidence before the committee many of these challenges resulted from the insufficient care and attention given by the former government to the decision to open the facility.

1.10 The government members note that the decision-making processes of the previous government in relation to the MIRPC facility were conducted to expedite a solution to a political problem, rather than with the health and safety of asylum-seekers and transferees in mind.

1.11 Government members further note that since September 2013 the Australian government has demonstrated its commitment to ensuring that the facilities at the MIRPC are of a standard that would satisfy the expectations of the Australian people. This standard is in sharp contrast to that inherited from the previous government and includes the significant regulatory, logistic, infrastructure and service-related enhancements that have been applied by the Coalition government since September 2013.

1.12 Evidence presented to the committee detailed that a number of investigations have been conducted into the events that occurred on Manus Island from 16 to 18 February 2014.

1 Mr Mark Cormack, Deputy Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 19.

2 *Committee Hansard*, 11 July 2014, p. 19.

1.13 Government members understand that the agencies that have conducted, and are conducting, these investigations are in a good position to effectively investigate and draw conclusions regarding conditions and events at the MIRPC. By contrast, a committee of the Australian Senate is limited by distance (physical and temporal) and by the completeness or otherwise of the evidence before it.

1.14 Government Senators note that investigations by the Royal Papua New Guinea Constabulary are ongoing and should be allowed to come to completion before any definitive conclusions are drawn.

1.15 Government Senators also caution that the committee's process of inquiry and report, which may include engagement with Australian media outlets, has the potential to prejudice ongoing investigations if not conducted with sensitivity and maturity.

1.16 It is further noted that on 21 February 2014 the Minister for Immigration and Border Protection the Hon Scott Morrison MP announced an independent review into events at the MIRPC by Mr Robert Cornall AO which was undertaken with the cooperation of the government of Papua New Guinea.

1.17 The Cornall Report, which has been made available to transferees and has been published on the Department's website, made thirteen recommendations all of which have been accepted by the government and the Department of Immigration and Border Protection. Two of these recommendations have been completed and the remaining eleven are well progressed. The recommendations of the Cornall report can be found at Annexure A of this dissenting report.

1.18 Following the Cornall Review there have been significant additional enhancements to the infrastructure, services and operations at the centre. The Department continues to work closely with the government of Papua New Guinea to implement the remaining recommendations.

Operation of the MIRPC

Employment and Training Standards

1.19 Government Senators note the concerns raised regarding the existing qualifications held by staff at the MIRPC, and regarding the additional training provided to these staff.

1.20 Creating employment opportunities for the local population at the MIRPC was a core benefit in the operation of the centre.³ Sourcing a proportion of MIRPC employees from the local Manus Island population did, however, present challenges in establishing and maintaining baseline capabilities.⁴

1.21 Government members of the committee are satisfied that, in addition to the core training that service provider staff receive as part of the discharge of their normal duties, under their contracts with the department service providers are also required to

3 *Committee Hansard*, 10 June 2014, p. 2.

4 Mr Darren Boyd, G4S, *Committee Hansard*, 10 June 2014, p. 50.

ensure that their staff undertake and adhere to a minimum set of training standards. This includes providing training to employees prior to commencing work at an Offshore Processing Centre.

1.22 The training that is provided includes training on human rights, cultural awareness, mental health awareness, abuse and trauma awareness, interacting and engaging with transferees and professional behaviour. In providing services across Offshore Processing Centres, service provider staff must behave in such a way that is consistent with the Offshore Processing Centre code of conduct, and other contractual guidelines and requirements, including that all transferees should be treated fairly and reasonably, ensuring the inherent dignity of the human person.

1.23 The Department of Immigration and Border Protection also provides its service providers with information to include in their training programmes regarding duty-of-care, international treaties and international obligations.

Access and Transparency

1.24 Government members note the difficulties that have been encountered by individuals and organisations attempting to visit and/or inspect the MIRPC.

1.25 Government Senators note that the granting or otherwise of permission to enter the facility – or indeed the country – remains solely within the ambit of the government of Papua New Guinea. The government members of the committee acknowledge that the decisions of the relevant authority are not always aligned with the preferences of those individuals and organisations seeking access to the MIRPC.

1.26 It is noted that:

- The UNHCR visited the MIRPC in January 2013;
- The UNHCR conducted a Monitoring Visit 11-13 June, 2013;
- The UNHCR conducted a Monitoring Visit 23-25 October, 2013;
- Amnesty International visited the MIRPC from 11-16 November 2013; and
- Amnesty International visited the MIRPC in March 2014 along with Justice David Canning, the Human Rights Law Centre, and Australian journalists.

1.27 It is also noted that Comcare conducted site inspections in 2013 and compliance investigations in 2014.

Refugee Status Determinations

1.28 Government members of the committee acknowledge the findings of the Cornall Review to the effect that uncertainty regarding the Refugee Status Determination process was a significant contributing factor to transferee frustration.

1.29 Government members note that responsibility for administration of the Refugee Status Determination process was vested in the relevant Papua New Guinean authority.

1.30 The Regional Resettlement Arrangement entered into between the Papua New Guinean government and the Rudd Labor government in July 2013 provided the

framework for cooperation between the two nations for processing illegal maritime arrivals. These measures included:

...any unauthorized [sic] maritime arrival entering Australian waters will be liable for transfer to Papua New Guinea (in the first instance, Manus Island) for processing and resettlement in Papua New Guinea and in any other participating regional, including Pacific Island, states.⁵

1.31 The Regional Resettlement Arrangement further provided:

Transferees would be accommodated in regional processing centres. Papua New Guinea will undertake refugee status determination. The regional processing centre will be managed and administered by Papua New Guinea under Papua New Guinean law, with support from Australia.

What is unique about this Arrangement is that persons found to be refugees will be resettled in Papua New Guinea and any other participating regional, including Pacific Island, state. Persons found not to be refugees may be held in detention or returned to their home country or a country where they have right of residence.⁶

1.32 The government of Papua New Guinea retains responsibility for the Refugee Status Determination process, however government Senators note that the process is complex and the implementation of robust procedures has taken some time.

1.33 Government Senators also note that the changes to the population at the MIRPC – from a mix of men, women and children to an entirely single adult male population – was the result of a decision taken by the then Minister for Immigration the Hon Tony Burke MP.

Health and Safety at MIRPC

1.34 Government members of the committee note that concerns have been raised regarding the provision of healthcare services at the MIRPC. In December 2013 a Comcare inspector characterised the provision of such services as 'under strain'.⁷

1.35 In answer to written question on notice, the department provided information that health services at MIRPC have been evolving since the commencement of Offshore Processing Centres. This evolution includes:

- implementation of a programme of visiting specialists;
- establishment of telemedicine capabilities;

5 Government of Papua New Guinea and the Government of Australia, *Regional Resettlement Arrangement between Australia and Papua New Guinea* (Regional Resettlement Arrangement), 19 July 2013, available at: <http://www.dfat.gov.au/geo/png/regional-resettlement-arrangement-20130719.pdf> (accessed 8 August 2014).

6 Regional Resettlement Arrangement, 19 July 2013.

7 Department of Immigration and Border Protection, *Answers to questions on notice* (received 7 November 2014), p. 4.

- installation of additional refrigerated containers for storage of medical supplies and pharmaceuticals; and
- adjustment of staffing levels appropriately to meet the requirements of the population of the OPC.⁸

1.36 Government Senators acknowledge that the MIRPC healthcare provider – International Health and Medical Services (IHMS) – characterised the facilities at the MIRPC as able to handle the emergency and non-emergency presentation caseload to an effective degree:

The ability of IHMS staff to manage a critical injury was commensurate with our scope as a primary care and basic pre-hospital emergency care facility. There would indeed have been limited capacity for higher level ICU type or inpatient management, which has always required off-island movement. Initial stabilisation and medevac [sic] was however adequate as was the ability to manage critical injury in an initial emergency medicine context.⁹

1.37 Mental health care and support is also delivered through IHMS.

1.38 As at 21 November 2014, there were 16 mental health clinicians at the MIRPC. This included 13 IHMS staff (Mental Health Team Leaders, Mental Health Nurses, Psychologists and Counsellors), two subcontracted torture and trauma counsellors and one visiting psychiatrist.

1.39 In keeping with the Australian government's commitment to ensuring the well-being of immigration transferees, the services provided to transferees by IHMS are broadly comparable with those delivered to the Australian community. A telemedicine capacity has also been established at the MIRPC and regular consultations with psychiatrists and other specialists are occurring.

Human Rights at Offshore Processing Centres

1.40 Government Senators acknowledge that the Australian government continues to work effectively with the Papua New Guinean government towards the operative and humane implementation of offshore processing. Both governments are clear in their commitment to ensuring appropriate arrangements and supports are in place to meet transferees' needs.

1.41 Government members of the committee reject the suggestion that transferees are not treated respectfully and humanely by the Papua New Guinean government, by the Department of Immigration and Border Protection, and by service provider staff.

1.42 It is noted that Papua New Guinea is a party to the Refugee Convention and that the Regional Resettlement Arrangement (RRA), signed by both the Papua New Guinean government and the Australian government, reaffirms Papua New Guinea's commitment to the Refugee Convention.

8 Department of Immigration and Border Protection, *Answers to questions on notice* (received 7 November 2014), p. 5.

9 IHMS, *Answers to questions on notice* (received 12 November 2014), p. 1.

1.43 It is also noted that the Department of Immigration and Border Protection has contracted service providers with the expertise to deliver a range of services to transferees, including health, catering and cleaning services, programmes and activities, and education to ensure the well-being of transferees.

Infrastructure

1.44 Government Senators note that the Coalition government has, since September 2013, made substantial investments in infrastructure at the MIRPC and more widely on Manus Island. These upgrades to facilities at the MIRPC and to surrounding supportive infrastructure acknowledge the sub-standard conditions that were inherited from the previous government.

1.45 Government members also note that Australia is providing additional aid to Manus Province valued at \$37 million. This is \$11 million more than originally committed. Additionally, under the terms of the Joint Understanding, Australia has committed \$420 million over four years in additional aid to Papua New Guinea for:

- the redevelopment of the Lae ANGAU Hospital;
- the deployment of Australian Federal Police;
- the rehabilitation of infrastructure at the University of Papua New Guinea;
- scoping and design work for the Lower Courts complex in Port Moresby; and
- upgrades to the Madang – Ramu highway.¹⁰

1.46 The Department of Immigration and Border Protection is spending an estimated \$513 million to upgrade infrastructure in Papua New Guinea which includes expanded office accommodation for Papua New Guinea's Immigration and Citizenship Services Authority in Port Moresby and new facilities at Lombrum and East Lorengau in Manus Province. Construction works at Lorengau are complete.¹¹

1.47 As at 31 October 2014 there were 314 persons working on the Lombrum project. Of these, 141 employees are from Manus. There are an additional 84 Papua New Guinean citizens employed on the project. There have been 52 subcontract packages awarded on the Lombrum project. Of these 23 have been awarded to Papua New Guinean companies.¹²

1.48 The Australian Government is funding upgrades to the Lombrum Naval Base that include the repair and grading of roads, repairs to the water supply, repair and upgrade of power and sewerage systems, new warehousing, and the erection of fencing. The renovation of existing buildings at the Lombrum Naval Base and the building of new structures in support of the Regional Processing Centre will provide

10 Economic and Development Benefits to PNG of the Regional Resettlement Arrangement, 7 November 2014, p. 1.

11 Economic and Development Benefits to PNG of the Regional Resettlement Arrangement, 7 November 2014, p. 1.

12 Economic and Development Benefits to PNG of the Regional Resettlement Arrangement, 7 November 2014, p. 3.

the Papua New Guinean Defence Force with infrastructure that will benefit the base and the Defence Force over the long-term.

1.49 Construction is expected to be completed in December 2014 on the upgrade and refurbishment of the Lorengau Market.

1.50 The Australian Government is also providing assistance in the form of substantial refurbishments and upgrades to the Lorengau Hospital and the Lorengau Police Station. Both facilities represent key capabilities that assist the daily functioning of the MIRPC.

Response to the committee's recommendations

1.51 The Government members of the Committee agree with Recommendation 1 of the Committee Report.

1.52 Evidence taken by the Committee over the course of the inquiry overwhelmingly supports the conclusion that current ongoing investigations are being conducted in the proper manner by the proper authorities: the Royal Pawa New Guinea Constabulary.

1.53 Government Senators note that Papua New Guinea is a sovereign nation responsible for law and order on Manus Island. In conducting its investigations, however, the Pawa New Guinea authorities have the ability to seek assistance both in Australia and on Manus Island as and when they consider it necessary. As and when such requests are received by the Department of Immigration and Border Protection and/or the Australian government, these requests will be treated with the greatest urgency and assessed in accordance with current government policy and legal advice.

1.54 Government Senators note that the findings of the Cornall Review have been provided to the Papua New Guinean authorities.

1.55 Government Senators also note that in the course of the investigation by the Royal Pawa New Guinea Constabulary of the events of 16 to 18 February 2014, two arrests have been made.

1.56 The Government members of the Committee agree with Recommendation 2 of the Committee Report.

1.57 Both the Australian and Papua New Guinean governments are signatories to the United Nations Refugees Convention. Government Senators note that the Australian Government is committed to meeting its obligations under the Refugee Convention and all other international treaties to which it is a signatory.

1.58 Government Senators agree with the departmental evidence provided to the committee that Papua New Guinea is in effective control of the MIRPC. While Australia is in partnership with the sovereign government of Papua New Guinea, the MIRPC operates under Papua New Guinea law, and is owned and administrated by the Papua New Guinea government.

1.59 The department's evidence provided:

The department does have influence but only in a supportive sense, as stated in the regional resettlement arrangement signed by the prime ministers of PNG and Australia on 19 July 2013. The regional processing centre will be managed and administered by Papua New Guinea under Papua New Guinea law with support from Australia. In practical terms, this has meant mentoring, training and assisting PNG staff in the development and operation of the PNG RSD process, providing advice on the running of the centre and administering service delivery contracts. None of these roles, in our opinion, constitutes effective control. While the department did and continues to provide advice as in any situation, such advice is not always acted upon as other factors may be more persuasive to the relevant decision-maker. One such example goes to the matter of police services at the centre. The decision to deploy the mobile squad was and continues to be the decision of the Royal Papua New Guinea Constabulary and the PNG government. While the department and the PNG Immigration and Citizenship Advisory Authority, or ICSA, have expressed views on the various policing options available for the centre, ultimately that decision was neither Australia's nor, indeed, ICSA's to make. We also categorically refute allegations raised in previous evidence that the department did not respond to warnings regarding the safety of the miners' facility, and we would be happy to provide evidentiary information to support this.¹³

1.60 Government Senators on the Committee do not agree with Recommendation 3 of the Committee Report.

1.61 Government members suggest that the premise of Recommendation 3 is flawed in that it pre-supposes that human rights have been violated.

1.62 As already noted, the Commonwealth of Australia is unambiguously committed to ensuring the safety and well-being of all persons at the MIRPC and at every other transfer and processing centre operated by or with the support of the Commonwealth of Australia.

1.63 Government members agree with Recommendation 4 of the Committee Report.

1.64 Coalition Senators are pleased that the committee has expressed its support for the government's program of providing a full range of on-going support and assistance for immigration transferees.

1.65 Government members disagree with Recommendation 5 of the Committee Report.

1.66 Papua New Guinea is a sovereign nation and it would not be appropriate, or in keeping with the spirit of regional cooperation, for Australia to seek to dictate who can visit their territory, on what terms, and how such people should be allowed to conduct themselves once there.

13 Mr Mark Cormack, Deputy Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 19.

1.67 Access to the Offshore Processing Centres on Papua New Guinea and Nauru is a matter for the respective governments of those two countries. The government Senators on the committee note that any person – be they a journalist, lawyer or human rights observer – is able to seek consent to enter from the governments of Nauru or Papua New Guinea. The granting of permission for such a visit will rest within the discretion of the governments of Nauru and Papua New Guinea, and remain subject to the imposition of any conditions those governments may deem appropriate.

1.68 Government Senators note multiple visits to the MIRPC by the UNHCR, Amnesty International and Comcare have occurred.

1.69 Government members agree with Recommendation 6 of the Committee Report.

1.70 Management of, and accountability for, garrison services has been consolidated with a single service provider – Transfield - for both the Nauru and Manus Island Offshore Processing Centres. Requisite qualifications and training standards for employees are detailed in the relevant service provider contracts.

1.71 Government members welcome the support of the Committee for the government's on-going commitment to maintaining standards and developing the skill-sets of service provider staff in relation to the specific challenges associated with operations at remote Offshore Processing Centres.

Senator the Hon Ian Macdonald

Deputy Chair

Annexure A to the Dissenting Report from Government Senators - Recommendations of the Cornall Report

Recommendation 1

To further and support the Royal Papua New Guinea Constabulary's investigations into the events which took place on 16 – 18 February 2014, the review recommends that the following information be provided to the RPNGC:

- The 145 transferee feedback forms containing allegations by transferees that they were the subject of a criminal offence or witnessed criminal offences taking place during the incidents under investigation
- The transcripts of interviews with transferees (redacted), and (redacted)
- The records of interview with IHMS medical staff.

Recommendation 2

To assist Transfield Services management of transferees welfare and, in some cases, the physical or psychological injuries they suffered during the events of 16 – 18 February 2014, the Review recommends that the following information be provided to Transfield on the basis that it protects the transferees' privacy and maintains the confidentiality of the personal information of individual transferees:

- The Review's *Summary of all Transferee Feedback Forms*
- All of the feedback forms the Review received from transferees
- The summaries of the question and answer sessions the Review conducted with community leaders from each of the four compounds, and
- The records of interviews with IHMS medical staff.

Recommendation 3

That the current measures and any further initiatives which will expedite the finalisation of PNG refugee status determinations and resettlement and removal processes be implemented as quickly as possible with appropriate assistance.

Recommendation 4

That the Government of Papua New Guinea be requested to enact similar statutory powers for the garrison and security provider as presently exist in Australia.

Recommendation 5

That Transfield Services (and Wilson Security), the RPNGC provincial police and the mobile squad clearly establish and understand their respective roles and responsibilities in regard to the maintenance of law and order within the Manus Regional Processing Centre (including agreement on a process for handover and handback of an incident that is beyond the control of the garrison security provider and the levels of force not to be used).

Recommendation 6

That the Department review risk involved in the conduct of the Manus Regional Processing Centre and continue to strengthen its risk management procedures and the Centre's physical security infrastructure.

Recommendation 7

That the Department encourage and support initiatives by Transfield Services to maximise the opportunity offered by the change of service providers to restore trust and cooperation between service providers and transferees.

Recommendation 8

That Transfield carefully consider all the information provided to it under Recommendation 2 to ascertain if it has unwittingly engaged employees who have been identified as assaulting transferees between 16 – 18 February 2014 and, if so, deal appropriately with them (including dismissal).

Recommendation 9

That the Department and Transfield Services improve communication with transferees, including implementing the several proposals set out in section 11.7 of this (the Cornall) Report.

Recommendation 10

That the Department put in place a comprehensive and continuing community liaison program to more fully inform the local population about the Regional Processing centre and the direct benefits it brings to the Manus community.

Recommendation 11

That Transfield consider the recommendations made in other reports about conditions and possible improvements which can be made at the Centre and, where practical, implement those welfare improvements it considers appropriate.

Recommendation 12

That Transfield assist transferees to replace personal items lost or stolen during the incidents.

Recommendation 13

That Transfield implement a comprehensive and ongoing training program for PNG national staff to develop their professional skills and improve their future employment prospects.

Additional Comments from the Australian Greens

1.1 The inquiry into the events of 16 to 18 February 2014 on Manus Island, in which 70 asylum seekers were seriously injured and Mr Reza Barati was killed, has revealed that the Australian Government failed in its duty of care to protect asylum seekers from harm and that the future operation of the centre is untenable.

1.2 Whilst the Australian Greens agree with many aspects of the majority report into the incident, there are a number of important recommendations that are integral to upholding Australia's obligations to those detained at the Manus Island detention centre which have not been included. Whilst the major parties continue to tout the successes of offshore detention, the evidence provided to the committee suggests the contrary. Offshore detention is not sustainable.

1.3 There is no doubt that the event that took place at the Manus Island Centre was foreseeable and avoidable. The committee heard that there were a number of significant factors that contributed to the event, in particular the dramatic increase in the population at the centre, the harsh and inhumane conditions endured by asylum seekers whilst detained, and the complete absence of refugee status determination and resettlement arrangements (these issues are extensively covered in the majority report). These combined elements fuelled a toxic and hopeless culture in the centre.

1.4 Mr Steven Kilburn, a former G4S Safety and Security Officer at Manus Island RPC, gave an eloquent summary of his experiences at the centre:

Within a week of arriving on Manus Island I had formed the opinion, and I made comments to my wife and people that I know that there is only one possible outcome on Manus Island and that is bloodshed.

I felt violence was inevitable because of the location of the centre, the poor conditions that transferees and staff were required to live and work under, the tension between local PNG guards and transferees, concerns about the MIRPC in the local community, the time being taken to process the transferees asylum application and the decision by the Australian Government to tell the transferees that they would never set foot on Australian soil, which took away their hope for a quick resolution to their asylum applications.¹

Responsibility of the Australian Government and Australia's human rights breaches

1.5 The Australian Government failed in its obligations to prevent the death of Mr Reza Barati and protect asylum seekers from the violence that ensued. The Australian Greens agree with the majority report that Australia was, at the time of the incident, and is still exercising effective control over the centre and the individuals held there.

1.6 It is clear that offshore processing at the Manus centre has allowed for multiple violations of the basic human rights of asylum seekers, in particular, the right

1 Mr Steve Kilburn, *Submission 18*, p. 4.

to life, the right to security of person, and the right to an effective remedy. As outlined in chapter 7 of the majority report, Australia is continuing to breach its obligations under international human rights law, breaches which may substantially increase the risk of further instances of violence at the Manus Island detention centre. In light of this evidence, serious questions must be asked about the viability of the centre.

1.7 The committee heard distressing evidence throughout this inquiry in relation to the harsh and degrading living conditions transferees are subjected to at the Manus Island detention centre. These conditions have been assessed as inhumane and in breach of our international obligations by UN human rights bodies and other respected human rights organisations such as Amnesty International.

1.8 It is the view of the Australian Greens that the future operation of the Manus Island RPC is untenable. There is a compelling moral case for the government to take action to prevent harm where it is fundamentally in the government's power to do so. To that end, the closure of the Manus Island RPC and the bringing of persons held there back to Australia is the best way to ensure that the human rights of asylum seekers are protected in accordance with Australia's human rights obligations under international law.

Conduct of the Minister

1.9 The Australian Greens depart from the majority reports view that it is 'reasonable to assume that the Minister was relying on factually incorrect information' when informing the Australian public about the incidents. The public statements made by the Minister for Immigration and Border Protection following the violent attacks were selective and completely irresponsible. The Department was well aware on 18 February that that the incident did not occur outside the centre and the PNG mobile squad had in fact entered the centre, prior to the Minister's statements.

1.10 The Minister sought to deliberately apportion blame to the asylum seekers themselves for the violence and the injuries they sustained instead of taking responsibility for deceiving the public as to the severity of the attacks.

Actions of PNG police mobile squad

1.11 Through the course of the inquiry, witnesses recounted the harrowing and traumatic events that resulted in the death of Reza Barati. Witnesses described incidents of asylum seekers being dragged from their rooms and viciously beaten with excessive force. It is clear from the evidence provided to the committee that Reza Barati was brutally murdered at the hands of service provider staff and on the watch of the Australian Government.

1.12 As noted in the majority report, the violence dramatically increased when members of the PNG police mobile squad entered the centre on the evening of 17 February. The Australian Greens depart from the majority reports conclusion that G4S did not invite the mobile squad into the centre. The evidence suggests that G4S were well aware of the consequences of withdrawing the IRT from the centre and that the attacks were imminent following their departure. There were a number of serious concerns raised in the inquiry about the suitability of the mobile squad, in particular the squad's ability to deal with incidents using non-lethal force.

1.13 The Australian Greens are of the view that the presence of the PNG mobile squad at the centre is unnecessary and they engaged in an excessive use of force against asylum seekers. If the issues raised are not dealt with further attacks are inevitable.

Criminal investigations in PNG

1.14 The Australian Greens acknowledge that charges have been laid against two individuals in relation to the murder of Mr Barati, however this took some six months. There are believed to be three more suspects who authorities are still looking for, including expatriates. There have also been no arrests or charges laid in relation to the other criminal assaults perpetrated against asylum seekers between 16 and 18 February 2014. This is completely unacceptable and the Australian Government should have done more to ensure that the perpetrators were brought to justice.

1.15 The Australian Greens believe that a complete and thorough investigation of Mr Barati's death, capable of bringing the full facts to light, including in relation to individual responsibility, is necessary to fulfil the requirements of Australia's obligations in accordance with the standards set out in international human rights law. Further to this, the Australian Government must do far more to assist the PNG authorities with the criminal investigations, and this means making the AFP available to PNG authorities. Australia cannot wash its hands of responsibility.

Refugee status determination and resettlement processes

1.16 As noted in the majority report, the lack of progress on asylum seekers refugee status determination processing was a major factor leading to the events. The Australian Greens find it alarming that these issues are still not well advanced months after these events occurred.

1.17 It is unacceptable that asylum seekers were sent to PNG without any clear legislative or administrative framework in place for their processing and resettlement, and remain in limbo nearly 18 months later, with further uncertainty ahead. It is important to note that the PNG government has announced a review of the resettlement arrangements and that an extensive public consultation is underway due to community unrest, suggesting that genuine resettlement will not be forthcoming.²

1.18 Given the harsh and arbitrary nature of the conditions endured by asylum seekers while these processes continue, an outer limit should be placed on the time which transferees must spend on Manus Island before their asylum claims are settled. Given that Australia has established processes in place for dealing with refugee status determination, asylum seekers should have their claims processed in Australia if timely processing in PNG cannot occur.

2 Papua New Guinea to rewrite policy for resettling refugees from Manus Island detention centre, <http://www.abc.net.au/news/2014-10-20/png-to-rewrite-policy-for-resettling-refugees-from-manus-island/5827926> (accessed 9 December 2014).

Conclusion

1.19 It is the view of the Australian Greens that the events of 16–18 February were imminent and the Australian Government failed to acknowledge the warning signs and act. As a result of this inaction a young man was murdered and dozens injured. The evidence clearly states that the Australian Government had, and continues to have, effective control over the centre and is responsible for protecting those held within it. The viability of the centre is shot and should be closed immediately.

Recommendation 1

1.20 The Australian Greens recommend that the Australian Government close the Manus Island Regional Processing Centre and transfer asylum seekers back to Australia.

Recommendation 2

1.21 The Australian Greens recommend that the Minister for Immigration and Border Protection apologise for misleading the Australian public in relation to the incident which led to the death of Mr Reza Barati.

Recommendation 3

1.22 The Australian Greens recommend that the Australian Government ensure an adequate and effective investigation into the death of Mr Reza Barati in accordance with the requirements of Australia's duty to investigate under international human rights law. This includes:

- **working in coordination with PNG authorities and providing appropriate support and assistance to PNG police with their investigation;**
- **as required, either separately or in coordination with the PNG police, conducting a police investigation that takes witness testimony from individuals present at the incident who are now in Australian territory;**
- **as appropriate, removing witnesses held at the Manus Island Regional Processing Centre from PNG to Australia to ensure their safety; and**
- **extraditing or prosecuting those accused of Mr Reza Barati's death who now reside in Australia and ensuring that criminal prosecution is in accordance with international laws and standards, without recourse to the death penalty.**

Recommendation 4

1.23 The Australian Greens recommend that the Australian Government direct the Australian Federal Police to assist PNG authorities with the investigations in order to bring the perpetrators to justice.

Recommendation 5

1.24 The Australian Greens recommend that the Australian Government work with the Papua New Guinea Government to ensure that Refugee Status Determination processes for all asylum seekers at the Manus Island detention centre are finalised by the end of March 2015 with a plan to resettle people safely in Australia.

Senator Sarah Hanson-Young

Australian Greens

Appendix 1

Public submissions

- 1 Foundation House
- 2 Mr Paul Skillen
- 3 Ms Marilyn Shepherd
- 4 Mr Andrew Wilkie MP
- 5 Civil Liberties Australia
- 6 Mr Simon Taylor
- 7 Castan Centre for Human Rights Law
- 8 The Law Society of New South Wales
- 9 Andrew & Renata Kaldor Centre for International Refugee Law
- 10 Mr Martin Appleby
- 11 National Council of Single Mothers & their Children
- 12 Ms Nicole Judge
- 13 Australian Lawyers Alliance
- 14 Immigration Advice and Rights Centre Inc
- 15 Mr Kendall Lovett
- 16 Federation of Ethnic Communities' Councils of Australia (FECCA)
- 17 Human Rights Law Centre
- 18 Mr Steven Kilburn
- 19 Ms Elizabeth Thompson
- 20 Mr Christopher Iacono
- 21 United Nations High Commissioner for Refugees (UNHCR)
- 22 Amnesty International
- 23 Asylum Seeker Resource Centre (ASRC)

- 24 Name Withheld
- 25 Confidential
- 26 Humanitarian Research Partners
- 27 Confidential
- 28 Refugee Rights Action Network WA
- 29 G4S
- 30 Australian Human Rights Commission
- 31 Labor for Refugees
- 32 Mr Nicholas Adler
- 33 Name Withheld
- 34 The Salvation Army
- 35 Name Withheld
- 36 Ms Kristi Moffatt
- 37 Name Withheld

Appendix 2

Public hearings and witnesses

Tuesday, 10 June 2014—Canberra

BOWLES, Mr Martin PSM, Secretary, Department of Immigration and Border Protection

CORMACK, Mr Mark, Deputy Secretary, Department of Immigration and Border Protection

DOUGLAS, Mr Ken, Offshore Detention and Returns Task Group, Department of Immigration and Border Protection

BOWLES, Mr Martin PSM, Secretary, Department of Immigration and Border Protection

CORMACK, Mr Mark, Deputy Secretary, Department of Immigration and Border Protection

DOUGLAS, Mr Ken, Offshore Detention and Returns Task Group, Department of Immigration and Border Protection

MURRAY, Mr Clive, Acting Assistant Commissioner, Serious and Organised Crime, Australian Federal Police

WHOWELL, Mr Peter, Manager Government Relations, Australian Federal Police

BOYD, Mr Darren, Regional Managing Director G4S, Southern Pacific

McCAFFERY, Mr John, Deputy General Manager, Manus Island Detention Centre

MANNING, Mr Chris, Managing Director of Immigration Services, G4S Australia

PYE, Mr Kevin, Regional Managing Director, Manus Island Detention Centre

Wednesday, 11 June 2014—Canberra

KILBURN, Mr Steven Andrew, Private capacity

CALLISTER, Ms Sharon, Chief Executive Officer, Humanitarian Mission Services, Salvation Army

CRUICKSHANK, Miss Elizabeth Joy, Regional Processing Centre Contract Manager, Salvation Army

GEARY, Mr Luke Patrick, legal representative, Salvos Legal

NOBLE, Ms Karen, Strategic Risk, Governance and Policy Manager, Salvation Army

ADLER, Mr Nicholas Robert, Registered Migration Agent, Playfair Visa and Migration Services

NANAYAKKARA, Mr Shanil, Practice Manager, Playfair Visa and Migration Services

PLAYFAIR, Mrs Petra Madge, Managing Partner, Playfair Visa and Migration Services

DOUGLASS, Mr Fraser, Executive General Manager, Government Business, Transfield Services

OSBORN, Mr Derek, Executive General Manager, Logistics and Facilities Management, Transfield Services

Thursday, 12 June 2014—Canberra

CORNALL, Mr Robert John Albert, AO, Private capacity

Thompson, Miss Elizabeth Maree, Private capacity

IACONO, Mr Christopher Robert, Private Capacity

JUDGE, Miss Nicole Louise, Private Capacity

APPLEBY, Mr Martin, Private capacity

NICOLLE, Ms Sophie Kay, Government Relations Advisor, Amnesty International

SCHUETZE, Ms Kate, Pacific Researcher, Amnesty International

WEBB, Mr Daniel John, Director of Legal Advocacy, Human Rights Law Centre

Friday, 13 June 2014—Canberra

BARNS, Mr Greg, Former National President and Spokesperson, Australian Lawyers Alliance

KLUGMAN, Dr Kristine, OAM, President, Civil Liberties Australia

MOJTAHEDI, Mr Ali, Member, Human Rights Committee, The Law Society of New South Wales

MORRISON, Dr Andrew Stewart, RFD, QC, Spokesperson, Australian Lawyers Alliance

ROWLINGS, Mr Bill, OAM, Chief Executive Officer, Civil Liberties Australia

YOUNG, Ms Natalie, Member, Human Rights Committee, The Law Society of New South Wales

CHIA, Dr Joyce, Senior Research Associate, Andrew & Renata Kaldor Centre for International Refugee Law, University of New South Wales

DASTYARI, Dr Azadeh, Associate, Castan Centre for Human Rights Law

EMERY, Ms Xanthe, Solicitor and Registered Migration Agent, Immigration Advice and Rights Centre Inc.

HIGGINS, Dr Claire, Research Associate, Andrew & Renata Kaldor Centre for International Refugee Law, University of New South Wales

MURPHY, Mr Kerry, Board Member, Immigration Advice and Rights Centre Inc.

PYNT, Mr Ben, Director of Human Rights Advocacy, Humanitarian Research Partners

Friday, 11 July 2014—Canberra

CAMPBELL, Lieutenant General Angus, Commander, Joint Agency Task Force, Operation Sovereign Borders

CORMACK, Mr Mark, Deputy Secretary, Immigration Status Resolution Group, Department of Immigration and Border Protection

DOUGLAS, Mr Kenneth James, First Assistant Secretary, Immigration Status Resolution Group, Department of Immigration and Border Protection

JOHNSTON, Mr Damien, Director of Operations, International Health and Medical Services

LYSAGHT, Ms Melissa, Director of Corporate Affairs, International Health and Medical Services

PARRISH, Dr Mark, Regional Medical Director, International Health and Medical Services

VINSON, Emeritus Professor, Tony, Private capacity

Appendix 3

Tabled documents, answers to questions on notice and additional information

Answers to questions on notice

- 1 Amnesty International - answers to questions taken on notice (received 23 June 2014)
- 2 Playfair Visa and migration Services – answers to questions on notice (received 1 July 2014)
- 3 Department of Immigration and Border Protection – answers to questions taken on notice at a public hearing on 10 June 2014 (received 9 July 2014)
- 4 Department of Immigration and Border Protection – answers to written questions on notice from Senator Seselja (received 9 July 2014)
- 5 IHMS – response to a question taken on notice at a public hearing on 11 July 2014 (received 11 July 2014)
- 6 Transfield Services – responses to questions taken on notice at a public hearing on 11 June 2014 (received 23 July 2014)
- 7 Department of Immigration and Border Protection – answers to questions taken on notice at a public hearing on 10 June 2014 (received 9 July 2014)
- 8 IHMS – responses to written questions on notice from Senator Bilyk (received 14 August 2014)
- 9 Department of Immigration and Border Protection and the Joint Agency Taskforce - answers to questions taken on notice at public hearing on 11 July 2014, and written questions (received 15 August 2014)
- 10 Department of Immigration and Border Protection and the Joint Agency Taskforce - answers to questions taken on notice at public hearing on 11 July 2014, and written questions (received 25 August 2014)
- 11 IHMS – responses to questions taken on notice at a public hearing on 11 July 2014 (received 1 August 2014)
- 12 Liz Thompson – answers to questions on notice (received 26 June 2014)
- 13 G4S – answers to questions on notice (received 1 July 2014)
- 14 Department of Immigration and Border Protection – answers to questions taken on notice at a public hearing on 11 July 2014 (received 17 September 2014)

- 15 Department of Immigration and Border Protection and the Joint Agency Taskforce - answers to questions taken on notice at public hearing on 11 July 2014, and written questions (received 10 October 2014)
- 16 The Salvation Army – answers to questions on notice (received 17 June 2014)
- 17 Department of Immigration and Border Protection – answers to written questions on notice (received 25 November 2014)
- 18 IHMS – answers to written questions on notice (received 17 November 2014)
- 19 G4S – answers to written questions on notice (received 28 November 2014)

Additional information

- 1 Advice from Dr Rosemary Laing, Clerk of the Senate - Received 21 March 2014
- 2 Information provided by the Department of Immigration and Border Protection - Cornall report (received 30 May 2014)
- 3 Information provided by the Department of Immigration and Border Protection - accommodation capacity (received 6 June 2014)
- 4 Information provided by the Department of Immigration and Border Protection - immigration detention and community statistics summary January 2014 (received 16 May 2014)
- 5 Information provided by the Department of Immigration and Border Protection - immigration detention and community statistics summary February 2014 (received 16 May 2014)
- 6 Information provided by the Department of Immigration and Border Protection - immigration detention and community statistics summary March 2014 (received 16 May 2014)
- 7 Information provided by the Department of Immigration and Border Protection - population at Manus Island detention centre (received 6 June 2014)
- 8 Information provided by the Department of Immigration and Border Protection - people currently undergoing age determination (received 16 May 2014)
- 9 Information provided by the Department of Immigration and Border Protection - interpreting service staff (received 16 May 2014)
- 10 Information provided by the Department of Immigration and Border Protection - staff rosters (received 30 May 2014)
- 11 Information provided by the Department of Immigration and Border Protection - confidentiality deeds and agreements (received 16 and 30 May 2014)

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- 12 Information provided by the Department of Immigration and Border Protection - training manuals (received 16 and 30 May 2014)
 - 13 Information provided by the Department of Immigration and Border Protection - manuals concerning emergency procedures and protocols (received 30 May 2014)
 - 14 Information provided by the Department of Immigration and Border Protection - contracts (received 30 May 2014)
 - 15 Information provided by the Department of Immigration and Border Protection - subcontracts (received 6 June 2014)
 - 16 Updated information provided by the Department of Immigration and Border Protection – subcontracts (received 9 July 2014)
 - 17 Information provided by the Department of Immigration and Border Protection - site map (received 16 May 2014)
 - 18 Information provided by the Department of Immigration and Border Protection - resignations (received 6 June 2014)
 - 19 Information provided by the Department of Immigration and Border Protection - health services (received 6 June 2014)
 - 20 Information provided by the Department of Immigration and Border Protection - removal for medical treatment (received 30 May 2014)
 - 21 Information provided by the Department of Immigration and Border Protection - injuries (received 6 June 2014)
 - 22 Information provided by the Department of Immigration and Border Protection - incident reports (received 6 June 2014)
 - 23 Information provided by the Department of Immigration and Border Protection - communications (received 6 June 2014)
 - 24 Document tabled by Senator Hanson-Young at public hearing on 10 June 2014 - email regarding Loda Securities subcontract
 - 25 Document tabled by Senator Hanson-Young at public hearing on 10 June 2014 - email from John McCaffery, G4S, to Anthony Kneipp, DIBP, dated 10 February 2014
 - 26 Document tabled by Mr Darren Boyd, G4S, at public hearing on 10 June 2014 - opening statement
 - 27 Document tabled by G4S at public hearing 10 June 2014 - map
 - 28 Document tabled by G4S at public hearing on 10 June 2014 - photographs
 - 29 Document tabled by The Salvation Army at public hearing on 11 June 2014 - Letter addressed to The Hon Scott Morrison MP dated 10 October 2013

- 30 Information provided by the Salvation Army – Opening Statement (received 11 June 2014)
- 31 Document tabled by The Salvation Army at public hearing on 11 June 2014 - Security Risk Assessment, Manus Island offshore Processing Centre
- 32 Information provided by the Salvation Army – introduction to PNG presentation (received 11 June 2014)
- 33 Information provided by the Salvation Army – Closing Statement (received 11 June 2014)
- 34 Document tabled by Mr Martin Appleby, at public hearing on 12 June 2014 - witness statement
- 35 Documents provided by Mr Steve Kilburn (received 13 June 2014)
- 36 Document provided by Mr Steve Kilburn - Affidavit (received 13 June 2014)
- 37 Document tabled by Lieutenant General Angus Campbell, DSC, AM at a public hearing on 11 July 2014 – Operation Sovereign Borders Manus OPC Force Protection Review
- 38 Document tabled by Lieutenant General Angus Campbell, DSC, AM at a public hearing on 11 July 2014 – Correspondence with the UNHCR dated 10 July 2014
- 39 Document tabled by Lieutenant General Angus Campbell, DSC, AM at a public hearing on 11 July 2014 – Opening Statement
- 40 Information provided by Amnesty International (received 23 July 2014)
- 41 Information provided by Comcare – documents relating to December 2013 site inspection (received 15 July 2014)
- 42 Information provided by Comcare – documents relating to the incident from 16-18 February 2014 (received 10 July 2014)
- 43 Information provided by Comcare – documents relating to 2014 compliance inspection (received 10 July 2014)
- 44 Information provided by Comcare – Other documents relating to the Manus Island RPC (received 10 July 2014)
- 45 Information provided by Comcare –Documents relating to compensation claim files (received 15 July 2014)
- 46 Information provided by Comcare – documents relating to management of the Manus Island RPC (received 10 July 2014)

