

# Dissenting Report by Coalition Senators

## Introduction

1.1 The Government Senators require to place the context and conduct of the Committee on the record. It is their view the process and principles of due process and procedural fairness have not been adhered to as a result of the majority members of the committee being willing to accept untested and unsubstantiated submissions as fact. Large and complex submissions were received by committee late in the process preventing any proper testing as to veracity of the allegations therein contained. Indeed on one occasion when such a submission was tested it became very clear that many of allegations made were completely lacking in credibility.<sup>1</sup>

1.2 The Government has a determined and successful policy of ending the illegal trafficking of people into Australia and this policy is politically unacceptable to some Senators. This inquiry has sought in many respects to advance the political perspective of those opposing Senators should be viewed in that context.

1.3 Responsibility for the operation of the Regional Processing Centre (RPC) on Nauru lies with the Government of Nauru, with support provided by the Australian Government through the Department of Immigration and Border Protection (the department). The department works with the Nauruan Government to deliver services:

Nauru owns and administers the Nauru Regional Processing Centre, under Nauruan law. Australia provides capacity building and funding for Government of Nauru's operation of the centre and coordinates the contract administration process.<sup>2</sup>

1.4 The Department is committed to working with Nauruan authorities to ensure that people accommodated at the Nauru Regional Processing Centre are provided with a safe and secure environment. The Department continues to work closely with service providers and Nauruan authorities to ensure allegations of criminal activity are fully investigated.<sup>3</sup>

1.5 The Secretary of the department, Mr Michael Pezzullo, told the committee that the Nauruan Government has responsibilities towards those in the RPC:

The government of Nauru is specifically responsible for security and good order and the care and welfare of persons residing in the centre. On behalf of the Commonwealth, my department provides support services and advice, pursuant to an agreement between our two governments.<sup>4</sup>

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1 See for example claim of waterboarding by Mr Jon Nichols, *Submission 95*.

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

3 Department of Immigration and Border Protection, *Submission 31*, pp 4-5.

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

### ***Moss Review***

1.6 The Moss Review was instigated by the then Minister for Immigration and Border Protection, the Hon Scott Morrison MP, to address allegations that had been raised through letters to the minister and through the media. The Moss Review was an independent review undertaken by the former Law Enforcement Integrity Commissioner, Mr Philip Moss. The review was announced on 3 September 2014, one week after the allegations were received and publicised in the media.<sup>5</sup>

1.7 A progress report was given to the Secretary of the Department on 28 November 2014, and the final report was given to the Secretary on 9 February 2015. The Moss Review was published on the department's website on 20 March 2015.<sup>6</sup> The Moss Review made 19 recommendations for improving the delivery of services and addressing concerns within the Regional Processing Centre on Nauru.

1.8 The department advised that all 19 recommendations of the Moss Review were accepted by the Australian Government:

The Moss report made 19 recommendations, the implementation of which require significant participation and engagement between the Government of Nauru, a range of Australian Government agencies including the Department, the Australian Federal Police and the Attorney-General's Department as well as with service providers.

The Department, after consultation with the Government of Nauru, has accepted all 19 of the recommendations. The Department has, in conjunction with the Government of Nauru, developed a comprehensive action plan identifying specific deliverables required to satisfy the recommendations.<sup>7</sup>

1.9 The 19 recommendations have either been completed or are in progress, and include:

- efforts to strengthen the delivery of services to transferees.
- enhanced communication between stakeholders.
- more robust frameworks to underpin operations at the centre, including in the area of child protection.
- enriching training opportunities and the capability of staff.<sup>8</sup>

1.10 The department advised that as at 19 May 2015, implementation of 13 of the 19 recommendations were complete, with more to be completed in the weeks

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5 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 44.

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

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

8 Department of Immigration and Border Protection, *Submission 31*, p. 25.

following.<sup>9</sup> The department provided a response to a question on notice concerning the status of the recommendations made by the Moss Review.

1.11 The instigation of the independent Moss Review and the implementation of all of its recommendations demonstrate the seriousness with which the Australian Government takes the allegations of abuse of children and women. As the implementation of the recommendations is in progress, it is far too early to undertake an evaluation of the implementation.

1.12 In addition, the progress of implementation of the recommendations of the Moss review is already putting in place enhanced and strengthened service delivery, and better communications between stakeholders.<sup>10</sup> The Commonwealth government has taken the opportunity to strengthen contractual arrangements to ensure that service providers clearly understand and meet the relevant standards.<sup>11</sup>

1.13 Of note, over and above the Moss recommendations, earlier this year the Minister implemented the following:

1.14 The child protection panel. The Child Protection Panel provides independent advice on child protection in immigration detention and regional processing centres (RPCs). The Panel consists of three highly skilled and independent individuals in the fields of law enforcement, child protection and public sector accountability. The Panel will work to strengthen policies and procedures to ensure the ongoing safety and welfare of children in immigration detention and RPCs and will advise the Secretary on the response of the Department and its service providers in relation to their child protection frameworks. The Panel's work will include reviewing allegations back to 2008 to ensure they have been handled appropriately by the Department and service providers.

1.15 AFP Assistance. The Minister announced the deployment of four additional Australian Federal Police (AFP) officers to Nauru to advise local police. Two AFP investigators with extensive experience in investigating allegations of sexual assault will provide valuable advice to the Nauru Police Force (NPF) in the management of sexual assault investigations and the other two AFP members, at the request of the NPF, will provide guidance and advice in relation to the allegations of public disorder occurring in February and March 2015. In agreement with the Government of Nauru, the four additional AFP officers will deploy as advisors to the NPF only and will not exercise Nauruan policing powers. The total AFP commitment in support of the NPF now totals six officers.

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

10 Department of Immigration and Border Protection, *Submission 31*, p. 25.

11 See for example, evidence of Mr Neil Skill, First Assistant Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 20 August 2015, p. 39.

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*Evidence presented to this committee*

1.16 All members of the committee appreciate the seriousness of the allegations put to the committee; however it is important to note that the veracity of many of the allegations made was not able to be tested. In fact, a number of witnesses and submitters had spent very little time actually on Nauru and therefore were only able to provide limited anecdotal evidence. Some provided no time line of their visit at all, and others did not provide first-hand evidence, instead relying on unsubstantiated hearsay.

1.17 Government senators note that the allegations of mistreatment and abuse put to the committee are substantially similar to those considered by the Moss Review. On this basis Coalition Senators are confident that the Commonwealth Government has responded appropriately and provides a range of avenues for people to report allegations, and to have these allegations properly investigated:

The Department and service providers have taken ongoing incremental steps to improve a number of areas in relation to service delivery since the Moss Review. A number of actions have been implemented in relation to infrastructure and enhanced accessibility to assistance for transferees.

A recent example is the establishment of a drop-in centre/shopfront at the Regional Processing Centre Three (RPC3) site that is operated by culturally appropriate service provider staff, to provide a non-confrontational channel through which transferees can raise concerns and issues for prompt attention and action where possible. Additional programmes and activities are also being provided to transferees at RPC3. These initiatives have been well received.<sup>12</sup>

1.18 Coalition senators also note that the new allegations considered by this inquiry appear to be limited to allegations made by Mr Jon Nichols relating to waterboarding, 'zipping' and the inappropriate use of cable ties.<sup>13</sup>

1.19 Coalition senators note Mr Nichols' evidence to the committee in relation to his allegation of 'zipping', where he stated: 'I did not actually see the action occur...'<sup>14</sup>, and in relation to waterboarding, he stated: 'I have not personally witnessed the actual event...'<sup>15</sup>

1.20 When questioned whether he had actually seen waterboarding and other actions that would amount to torture occurring in the RPC, Mr Nichols advised the committee that he had not personally witnessed these actions, however he had:

...seen members of the ERT exit [tents] and later I have seen asylum seekers come out of the tents covered in water and coughing. I have heard

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

13 Mr Jon Nichols, *Submission 95*.

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

15 Mr Jon Nichols, *Committee Hansard*, 20 August 2015, p. 11.

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members of the ERT boast and brag about how they have water-boarded people, and it has never come out up until now.<sup>16</sup>

1.21 Coalition senators regard it as implausible that in an environment like the RPC, that asylum seekers can come out of tents in full view of many other asylum seekers and staff 'covered in water and coughing', and for this not to be reported. Mr Nichols appears to be first and only person making this allegation. Initially Mr Nichols suggested to the committee that waterboarding was occurring 'throughout the facility' but later clarified for the committee that his allegation related only to one out of eight or nine areas of the RPC, being Bravo compound.

Senator JOHNSTON: ...You have said 'Water boarding of asylum seekers throughout the facility'—that is clearly not true, is it?

Mr Nichols: In the sense of every single compound in that facility?

Senator JOHNSTON: That is right.

Mr Nichols: No, it would not be true...<sup>17</sup>

1.22 Coalition senators find it improbable that the events as alleged by Mr Nichols could have occurred. If events did take place as Mr Nichols alleges, Coalition senators question why Mr Nichols has waited until now to raise them, and questions why he did not make them known during the Moss Review, or report them via several other available avenues.

1.23 In the time available since this late submission was made, the committee sought to interrogate the new evidence and establish whether these very serious allegations could be proven or disproven. However, the committee was provided with several responses to the allegations provided by Mr Nichols by former and current employees of Wilson Security, who refute the claims.<sup>18</sup>

1.24 Further to this, Mr Nichols confirmed he was in dispute with his former employer which substantiated an ulterior motive in the nature and reliability of his evidence to the committee. Indeed given the wide range and number of agencies attending and providing services to the people held on Nauru over the period and that none of them mentioned "waterboarding" suggests that this witness was completely lacking in credibility. So much so that his testimony tends to cast a shadow upon the evidence of some of the other witnesses, who are also represented by the same legal counsel.

1.25 The Coalition Senators also found it curious that Mr Nichols declined to answer any questions as to whether he had been in contact with any members of the Committee, leaving the clear inference that he had been in contact with one or more of the Committee members and discussed his evidence and submission prior to it being received by the Committee.

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

17 *Committee Hansard*, 20 August 2015, p. 12.

18 Wilson Security, response 4 to Submission 95, p. 2; Additional information provided by Mr Louis Davies.

1.26 Other examples of witnesses to the inquiry who had either not spent long on Nauru, or did not have firsthand knowledge or had witnessed events prior to the present Government taking office in September 2013 included:

- Mr Tobias Gunn, who was on Nauru for less than one month and not during the periods he was testifying about.<sup>19</sup>
- Professor David Isaacs, who states that he was on Nauru for a 'short time'<sup>20</sup> and Ms Alanna Maycock, who was in Nauru for five days.<sup>21</sup>

1.27 Some witnesses to this inquiry did not take the opportunity to provide evidence to the Moss Review.<sup>22</sup>

1.28 One clear theme of evidence given by many of the witnesses was that during and prior to 2013 the management and practices in the detention centre on Nauru were of concern but that they began to improve in 2014. This is no doubt due to the greater interest taken by the Ministers Morrison and Dutton in instigation and then seeking to implement the recommendations of the Moss Review.

1.29 The committee was presented with evidence which clearly sets out steps that the Commonwealth Government has been taking to deliver improved facilities and infrastructure:

In recent months, additional lighting has been installed in common areas and an amount of fencing has been removed from RPC3, allowing greater use of space for families and children. Some additional fencing has been installed to more clearly delineate areas and to provide greater security to cohorts.

Additional privacy screening has been installed in accommodation areas, and the accommodation density has been lowered, providing more space to transferees.

The Australian Government is also delivering further infrastructures projects to support transferees, refugees and Nauruans including, a school building and teacher's accommodation.<sup>23</sup>

1.30 Similarly with respect to the number of children in detention, this situation has improved markedly since the change of Government.

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19 Mr Tobias Gunn, *Submission 68*.

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

21 Ms Alanna Maycock, *Committee Hansard*, 9 June 2015, p. 37.

22 See for example, Mr Peter Law, *Committee Hansard*, 9 June 2015, p. 19; Ms Viktoria Vibhakar, *Committee Hansard*, 9 June 2015, p. 31; Ms Kirsty Diallo, *Committee Hansard*, 9 June 2015, p. 31; Professor David Isaacs and Ms Alana Maycock, *Committee Hansard*, 9 June 2015, p. 42.

23 Department of Immigration and Border Protection, *Submission 31, Supplementary Submission*, pp 7-8.

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### *Nauru is taking steps to improve governance*

1.31 The President of the Republic of Nauru, HE Baron Waqa MP, stated that Nauru is taking steps to improve governance and address past issues:

Nauru is progressing. In the last two years, as well as reforming the legal system and government-run companies, we have established a future fund with international oversight so that corruption can never again ruin our country. We have improved the economy and have established a new bank agency, offering Nauruans an opportunity to bank locally for the first time in over a decade.

The processing centre for asylum seekers is world class and far exceeds the standard of many refugee camps across the world. Asylum seekers enjoy an "open centre" policy and are regularly seen swimming, dining out and enjoying a lifestyle that is safe, far safer than the lands they left. These stories are ignored by agenda-driven media.

We value the contribution and co-operation of Australia, and there is no doubt that the regional processing centres have assisted our economy.<sup>24</sup>

1.32 Mr Waqa noted the strong regional relationship Australia has shared with Nauru.

#### **Recommendation 1**

1.33 The Government Senators support this recommendation in principle, however we note that all recommendations to this intent were captured in the Moss review and are being implemented.

#### **Recommendation 2**

1.34 The Government Senators do not support this recommendation as determinations of matters around the process of resettlement are matters solely for the Nauruan government.

#### **Recommendation 3**

1.35 The Government Senators do not support this recommendation as it is redundant. The intent of this recommendation is already satisfied by the Commonwealth through the Commonwealth Ombudsman who currently has oversight responsibilities and also through an existing reporting process that satisfies the intent of the recommendation. Current contractual arrangements between Australian and the service providers impose an obligation on all contractors to report assaults, of any kind, to the Department. The Department then provides this information to the relevant police force.

1.36 Additionally, the regional processing centre in Nauru is not run by the Australian Government. The RPC is run by the government of Nauru under its laws.

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24 HE Baron Waqa MP, President of the Republic of Nauru, 'Nauru mocked by media bullies', *The Daily Telegraph*, 3 August 2015, <http://www.dailytelegraph.com.au/news/opinion/nauru-mocked-by-media-bullies/story-fni0cw15-1227466977325>.

To impose a mandatory reporting scheme in Nauru would require Nauru to legislate such laws. As Nauru is a sovereign nation, Australian laws are not applicable.

#### **Recommendation 4**

1.37 The Government Senators do not support this recommendation as it is redundant. It is redundant because multiple mechanisms through multiple agencies are already in place to lodge and action complaints. Asylum-seekers have access to phones, email, social media and a range of agencies, The agencies include, but not limited to, Transfield Services, IHMS, the DIBP, Save the Children, advocacy groups, the International Red Cross, the UN Commissioner for Refugees, Amnesty International, the Commonwealth Ombudsman, members of the Senate and the Moss Review.

#### **Recommendation 5**

1.38 The Government Senators do not support this recommendation as it is redundant. It is redundant because a range of independent agencies already have access, which includes the International Committee for the Red Cross, UNHCR, the Commonwealth Ombudsman, the Joint Advisory Committee, COMCARE, the Ministers Committee on Asylum Seekers and Detention, the IOM and the Australian Red Cross. All visit requests are subject to approval by the Government of Nauru.

#### **Recommendation 6**

1.39 The Government Senators support the intent of this recommendation however it is redundant. It is redundant because Wilson Security have confirmed that drug and alcohol testing is occurring at RPC Nauru.<sup>25</sup>

#### **Recommendation 7**

1.40 The Government Senators do not support this recommendation because it is redundant. It is redundant because the Government already provides detailed disclosure of expenditure for all contract and support services related to RPC Nauru.

#### **Recommendation 8**

1.41 The Government Senators do not support this recommendation because it is redundant. It is redundant because Senators already have the opportunity to seek this information through the Estimates processes.

#### **Recommendation 9**

1.42 The Government Senators do not support this recommendation as it is redundant. It is redundant because the government is currently negotiating the expansion of the open centre arrangements with the government of Nauru, whilst also ensuring adequate support services are available for these expanded arrangements. The Department is also in the process of implementing, in conjunction with the government of Nauru, all applicable Moss Review recommendations.

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



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**Recommendation 10**

1.43 The Government Senators do not support this recommendation as it is redundant. It is redundant because the cited facility enhancements are already planned, underway or completed. Additionally, the cited services are already provided at RPC Nauru, through independent organisations including *Save the Children*.

**Recommendation 11**

1.44 The Government Senators do not support this recommendation as it is redundant. It is redundant because the process of expanding open centre arrangements, as outlined in recommendation 9, is already underway. Additionally, the ongoing hand-down of refugee determinations as outlined in Recommendation 2, is ongoing, as is the construction of additional community infrastructure to support both children and parents, found to be refugees.

**Recommendation 12**

1.45 The Government Senators support the intent of this recommendation; however we do not support the substance, as it is redundant. It is redundant because in conjunction with the Nauruan Government, the Australian government is in the process of substantially upgrading the educational infrastructure and services provided to refugees and to the Nauruan community.

**Recommendation 13**

1.46 The Government Senators do not support this recommendation as it is redundant. It is redundant because a Child Protection Panel has already been established, which consists of three people drawn from the Australian community and selected because their skills, experience and standing is relevant and appropriate to such work. The Panel provides independent advice on child protection in immigration detention and in relation to Australia's involvement in regional processing.

**Recommendation 14**

1.47 The Government Senators do not support this recommendation as it is redundant. It is redundant because, in conjunction with the Government of Nauru, the Australian government has already implemented reporting requirements.

**Recommendation 15**

1.48 The Government Senators do not support this recommendation as not only is it redundant, it will be waste of Senate and Government resources. The issues proposed for this additional inquiry have already been extensively canvassed and addressed in this inquiry. No new issues, substantiated by evidence, have arisen in the course of this inquiry that cannot be addressed by the multiple complaint and oversight organisations that current exist.

1.49 Additionally, these issues have all been extensively reviewed by the Moss Review which is being fully implemented by the Australian Government and many are also now subject to review by the Child Protection Panel and the Nauruan authorities.

1.50 Implementation of another Senate Inquiry on the back of this inquiry makes as much sense as this current inquiry did, coming in at the start of implementation of the Moss Review recommendations. None.

### **Concluding Remarks**

1.51 The Government Senators wish to thank and acknowledge the professionalism of the Committee Secretariat for the manner in which these difficult terms of reference have been administered.

**Senator Linda Reynolds CSC  
Liberal Party Senator for  
Western Australia**

**Senator the Hon. David Johnston  
Liberal Party Senator for  
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