



Australian Government
Department of Immigration and Citizenship

SECRETARY

30 January 2013

Jeanette Radcliffe
Committee Secretary
Parliamentary Joint Committee on Human Rights
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Radcliffe

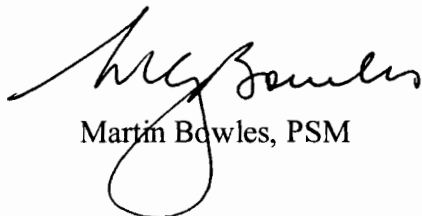
Examination of Migration Legislation Amendment (Regional Processing and other Measures) Act 2012 and related bills and instruments
Confirmation of Questions taken on Notice at Public Hearings

Thank you for your letter of 14 January 2013 seeking confirmation of questions taken on notice during the recent hearings on the matters above attended by officers of my department on 17 and 19 December 2012. Answers to the questions are at Attachment A.

Following consultation with the committee secretariat about issues with the 23 January 2013 response deadline, the department was granted an extension to 29 January 2013.

Should you require any clarification to any of the answers provided, please contact Ms Georgie Ryan on (02) 6264 4579 or georgie.ryan@immi.gov.au

Yours sincerely



Martin Bowles, PSM

Question taken on notice 1: Hansard page 3

Senator Stephens asked:

Can you indicate what proportion of the work has been subcontracted to Papua New Guinean and Nauruan companies?

Answer:

It is not possible to accurately provide the proportion of work subcontracted to local companies due to the fluctuating operational needs and logistical requirements involved in running the centres. However, wherever practical, local companies are engaged. Please see below for details relating to each Regional Processing Centre.

Nauru

Transfield, the company contracted by the Department to provide operational and maintenance services at the Nauru RPC, sub-contract to the following local businesses:

- Nauruan Sterling Security – Site security
- Rainbow Enterprise – for fresh fruit, veg and bottled water
- Capelle & Partner / Pacific & Occidental – provides all dry goods and meat and bulk water
- One-4-One Car Rentals
- Nauru Rehabilitation Corporation – provide skip bins
- Ronphos – Provides crane/forklift services
- Aiwo Town Ace Petrol Station – All vehicles fuel
- Oden Aiwo Hotel – Staff Accommodation
- Dei-Naoero Cleaners – Weekly Laundry services
- Nauru Utilities Corporation – Receive bulk diesel daily
- Department of Immigration & Border Control – Pay all customs and duties as necessary
- RoN Hospital – All pre-employment medicals for local staff
- Eigigu Holding Corporation – construction work on site and septic pumping truck
- Menen Hotel Nauru – Accommodation for staff
- Our Airline – flights in and out of Nauru for all staff

As at 16 January 2013, approximately 43% of service provider staff working on Nauru were Nauruan citizens.

Manus Island

G4S, the company contracted by the Department to provide operational and maintenance services on Manus Island, subcontract half of their security commitment to Loda Securities, a Manus Island business. G4S also subcontract cleaning to SpicNSpan, a local business.

G4S engages daily with PNG businesses for supplies on the island and do as much procurement as possible on the mainland either in Port Moresby or Lae.

As at 16 January 2013, 83% of the G4S staff and 70% of all service provider staff working at the Manus Island RPC were Papua New Guineans.

Question taken on notice 2: Hansard page 5

Senator Ruston asked:

What percentage of the people that come to Australia seeking refugee status would come by, as you refer to them, irregular means as opposed to more regular processes?

Answer:

In 2011–12, 51 per cent of asylum seekers admitted to a refugee status determination process in Australia arrived as irregular maritime arrivals (IMAs), while almost 49 per cent were non-IMAs arriving in Australia by air with a valid visa.

More information is provided in the table below

Program year	IMA asylum seekers*	Non-IMA asylum seekers**	Total asylum seekers	% IMA	% Non-IMA
2010–11	5 174	6 337	11 511	45%	55%
2011–12	7 379	7 036	14 415	51%	49%

*IMA screened into a refugee status determination (RSD) process. Excludes IMAs awaiting a screening decision or screened out.

**Non-IMA Protection Visa applications lodged.

Source: DIAC systems.

Question taken on notice 3: Hansard, page 7

Vicki Parker: ... But in terms of look at smuggling boats and whether they are complying with maritime law, I am not quite sure. We certainly would not have jurisdiction, I would have thought.

Senator Thistlethwaite: Even when they enter Australian waters?

Ms Parker: Possibly. We could perhaps take it on notice...

Answer:

The Department of Immigration and Citizenship does not have responsibility in respect of the seaworthiness of suspected illegal entry vessels. The Australian Customs and Border Protection Service, the Department of Infrastructure and Transport and the Australian Maritime Safety Authority have responsibility in relation to these issues.

Question taken on notice 4: Hansard page 8

Senator Thistlethwaite asked:

In respect of the Pacific solution, when Nauru was a processing centre and persons were found to be genuine refugees, what proportion of them returned to Australia?

Answer:

Under the former Government's so-called 'Pacific Solution', 1,637 people were sent to the Nauru and Manus Island Offshore Processing Centres. Of the 1,075 found to be refugees, 676 (63%) were resettled to Australia and 399 (37%) to other countries.

Question taken on notice 5: Hansard page 43

Senator Wright: I would like to push a little further. I would like to ask: is the department's position [on extra-territoriality of human rights obligations] also the position of the Attorney-General's Department? I am not asking you about your legal advice. I am asking about the position of the Attorney-General's Department and is it consistent with your position?

Vicki Parker: I will take that on notice, if I may.

Answer:

The Department of Immigration and Citizenship, the Attorney-General's Department, the Australian Government Solicitor and the Office of the Solicitor-General regularly liaise on complex legal matters, including those involving international law.

The Australian Government is guided on the extraterritorial application of human rights obligations by the Attorney-General's Department.

There are a range of views within the international community on the issue the extra-territorial application of international human rights law.

The Australian Government has publically accepted that Australia's human rights obligations may apply extraterritorially where it is exercising 'effective control' over territory abroad (for example, where Australia is exercising the power to prescribe and enforce laws). Individual departments do not have separate policy positions on this point.

The Australian Government is transferring people to the sovereign states of Nauru and PNG for the processing of their asylum claims, having satisfied itself through the assurances given by those countries, and an assessment of the situation there, that such transfers do not breach Australia's non-refoulement obligations, including those under the ICCPR and CAT. The assurances given by Nauru and PNG include assurances as to chain refoulement - that is, that Nauru and PNG will not subsequently transfer persons to another country where there is a real risk of the relevant types of harm.

Question taken on notice 6: Hansard page 44

Senator Wright asked:

....what is the maximum capacity, what is the greatest number that are being accommodated at the moment in a tent and what is the average at the moment?

Answer:

There are currently two different sized tents being utilised at Nauru. The larger tents which are designed for 14 people currently have a maximum of 12 people allocated to a tent, and the tents that are designed for 5 people currently have a maximum of 4 people allocated to a tent.

However, it is important to understand that these figures can fluctuate, as transferees are free to move between tents.

Question taken on notice 7: Hansard page 45

Mr Jenkins asked:

Down the track, can you list the vaccinations [that clients receive when transferred to Manus Island]?

Answer:

Clients transferred to Manus Island are offered the following vaccinations (modified according to whether the client is already vaccinated for the disease). Some of the vaccinations are provided pre-transfer and others post-arrival on Manus Island, with boosters provided as required.

- Hepatitis B
- Diphtheria, Tetanus, Pertussis
- Polio
- Measles, Mumps and Rubella
- Influenza
- Malaria prophylaxis (Malarone)
- Hepatitis A
- Japanese Encephalitis
- Human Papillomavirus
- Typhoid

Additional vaccinations by age group:

18 years and under

- Varicella
- Meningococcal C

Medically at risk adults 65 years and older

- Pneumococcal

This vaccination schedule is in-line with the *Australian Immunisation Handbook* and includes the addition of vaccinations suitable for the RPC location.

A record of vaccinations is kept on client medical files.

Question taken on notice 8: Hansard page 45

Senator Wright asked:

[In relation to the strain of malaria which is resistant to antimalarial treatments.] I am not sure whether that means post the onset of malaria or whether it is a strain that is not able to be protected against. Do you know the answer to that question?

Answer:

Four species of malaria occur in Papua New Guinea. Most cases are due to the *P. falciparum* and *P. vivax* species.

In PNG resistance to the medication chloroquine occurs with both species and resistance to the medication sulfadoxine-pyrimethamine occurs with *P. falciparum*. Chloroquine and sulfadoxine-pyrimethamine are therefore not recommended for use in PNG, either for prophylaxis or treatment.

Three medications are considered by clinicians as suitable prophylaxis options for people transferred to Manus Island:

- atovaquone + proguanil (brand name 'Malarone')
- doxycycline
- mefloquine

Options for treatment include a number of oral and intravenous preparations, depending on the clinical situation.

The standard malaria prophylaxis being offered by IHMS to clients on Manus Island is Malarone.

Question taken on notice 9: Hansard page 45

Senator Wright asked:

...are there specific and explicit human rights standards included in the contracts of service providers and, if so, what are the procedures for administrative and other oversight of the implementation of those standards?

Answer:

The Australian Government has a number of interim arrangements for providing regional processing services to Transferees on Nauru and Manus Island, pending the finalisation of longer term and more detailed contractual arrangements.

These arrangements require the provision of services in a manner that reflects relevant human rights, without expressly referring to those rights.

For example, the Heads of Agreement with both Transfield Services (Australia) Pty Limited and the Salvation Army on Nauru require that services be delivered in accordance with the following standards:

- taking reasonable steps to ensure that Personnel and subcontractors treat Transferees equitably and fairly, with dignity and respect;
- facilitating activities to enhance the ongoing emotional and mental health of each transferee;
- support for religious activities including transport and appropriate equipment; and
- taking all reasonable steps to ensure that the best interests of any child/children are taken into account when performing or delivering services.

The Department is currently negotiating contractual arrangements for services on Manus Island with:

- G4S: operational and maintenance services;
- Salvation Army: care and support services; and
- Save the Children: care and support services for unaccompanied minors.

It is anticipated that the contractual arrangements will contain similar provisions in relation to the transferees.

Question taken on notice 10: Hansard page 46

Senator Wright asked:

I think we understand that there are reasons that some things are done, but there could be a balance achieved—if not as an issue of human rights then at least as a humanitarian issue—in the way in which people are dealt with.

Ms Parker: We probably need to take that on notice. I am aware of some of the evidence that was given before the committee, and I do not believe that all of it is accurate. I think we need to take it on notice.

Mr Jenkins: I accept that. I think that this is best handled by a considered view. In the handling of it, it will go to some of the issues that Senator Wright has raised about what our expectations are of the way in which asylum seekers, transferees—there are numerous titles we give to these people—are treated, so that their experience is not as it was characterised in the evidence given to us.

Answer:

The process for transfers to Regional Processing Centres (RPCs) has been developed in accordance with the Immigration Detention Values. The comments provided in the statements read by Major Moulds do not provide full context around the process and some elements of the transfer process are not appropriately represented. The operational timings for managing transfers to Manus RPC depend on flight schedules and the number and demographics of clients being transferred. The department aims to commence the operation as late as possible to minimise disruption to people being transferred. It is integral that these processes be undertaken to ensure the welfare of the person being transferred and enable full assessment of their situation.

In relation to the alleged separation of clients by different nationalities, this is only conducted for interpreting purposes and to ensure that clients understand messages and the procedures that will be undertaken on the day. This also enables them to ask any questions or raise any issues. This is to ensure the inherent dignity of the person and ensure that we are communicating effectively with people being transferred.

People being assessed for transfer to a regional processing centre are afforded many opportunities to ask questions during the day. The department also has welfare officers, activities officers, a mental health and physical health nurse present during the whole day to support any clients or assist them during this process.

Where operational risk indicates that people being assessed for transfer may not have the opportunity to pack their belongings, the detention services provider will pack them on their behalf. This process is all recorded by video and available for review should there be a complaint. All people transferred to regional processing centres have all their belongings reconciled in the presence of the detention services provider together with a DIAC staff member and an interpreter. Transferees also sign property receipts detailing all items being transferred with them. There are strict arrangements to ensure that all of the reconciled property is transferred with the client on the plane.

These processes, as well as transportation to the airport, are undertaken by the detention services provider. Detention service provider staff do not carry 'sticks' or 'spray' as described in the transferees' statements, or any other comparable equipment. All searches are done in a manner consistent with relevant legislation and search guidelines by appropriately trained service provider staff. These searches are conducted to ensure the safety of staff and transferees during the transfer process.

Once transferred to the airport, the Australian Federal Police force (AFP) take responsibility for the safety and wellbeing of the transferees during the course of their flight to the relevant regional processing country. The department cannot comment on matters relating to policies and practices of the AFP, other than to say that the claims made by the transferees remain unsubstantiated at present.

While the department disagrees with some of the statements provided to the Committee by Major Moulds, it has taken on board the comments and statements provided by the Salvation Army and continues to work on improving its processes based on this and other feedback.

The detention services provider, as well as service providers in RPCs, are required to provide services to transferees in a manner that reflect relevant human rights. This applies for all elements of service delivery, including during transfers between facilities.

Question taken on notice 11: Hansard page 46

Chair: Is the department aware of whether domestic legislation in both countries gives protection in regard to refoulement?

Answer:

The department can advise the following in respect of each country's domestic legislation relating to refoulement.

Nauru

Section 4 of the Republic of Nauru's *Refugees Convention Act 2012* states that:

The Republic must not expel or return a person determined to be recognised as a refugee to the frontiers of territories where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular special group or political opinion except in accordance with the Refugees Convention as modified by the Refugees Protocol.

This provision reflects the *non-refoulement* obligation contained in Article 33(1) of the *1951 Convention relating to the Status of Refugees*.

PNG

Section 15A of the *Migration Act 1978* states that the Minister may determine a non-citizen to be a refugee for the purposes of that Act.

A "refugee" for the purposes of the *Migration Act 1978* is defined under section 2 of the Act as a non-citizen:

- permitted to remain in Papua New Guinea pending his settlement elsewhere; or
- determined by the Minister to be a refugee.

The extent to which the definition of "refugee" as contained in the Refugees Convention is incorporated into the Minister's decision is a matter for the Minister.

MoUs

The governments of the Republic of Nauru and of the Independent State of Papua New Guinea have provided the Commonwealth of Australia with the following assurances outlined in the respective MOUs relating to regional processing. They have both undertaken to:

- Not expel or return a transferee to another country where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion;
- Make an assessment, or permit an assessment to be made, of whether or not a transferee is covered by the definition of a refugee in Article 1A of the *1951 Convention Relating to the Status of Refugees* as amended by the *1967 Protocol Relating to the Status of Refugees*; and
- Not send a transferee to another country where there is a real risk that the transferee will be subjected to torture, cruel, inhuman or degrading treatment or punishment, arbitrary deprivation of life or the imposition of the death penalty.