



**Australian Government**  
**Department of Immigration  
and Border Protection**



**Australian  
CUSTOMS AND  
BORDER PROTECTION**

## Submission to the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru

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## Introduction

The Department of Immigration and Border Protection (the Department) welcomes the opportunity to make a submission to the *Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru*.

In late 2011 and early 2012, there were a number of incidents in which boats carrying asylum seekers to Australia sank or capsized, resulting in loss of life. The magnitude of the number of lives lost by would-be asylum seekers during the dangerous boat journey to Australia, overlaid with information regarding the number of people expected to embark on similar journeys and the likelihood of further loss of life, prompted prolonged, and at times, heated public debate.

In the first seven months of 2012 alone, 7,120 illegal maritime arrivals arrived in Australia. This exceeded the total number of arrivals in 2011 and 2010.

Following extended Parliamentary debate and the failure to secure the passage of a number of Bills regarding the implementation of regional processing of asylum seekers, on 28 June 2012, the then Prime Minister, the Hon Julia Gillard MP, and then Minister for Immigration and Citizenship, the Hon Chris Bowen MP, announced that the Government had invited an Expert Panel to provide a report on the best way forward for Australia to prevent asylum seekers risking their lives at sea on dangerous boat journeys to Australia.

Members of the Expert Panel were Air Chief Marshal Angus Houston AC AFC (Ret'd), Paris Aristotle AM, Director of the Victorian Foundation for Survivors of Torture Inc. (also known as Foundation House) and Professor Michael L'Estrange AO, Director of the National Security College at the Australian National University.

The report was released on 13 August 2012, making 22 recommendations and four sub-recommendations, all of which were accepted. In response to the report, the Australian Government announced the implementation of regional processing of 'irregular maritime arrivals' (as was the terminology at the time) who arrived in Australia on or after 13 August 2012, in Nauru and Papua New Guinea. The Nauru Regional Processing Centre accepted the first group of transferees in September 2012.

Regional processing and regional resettlement arrangements are an important aspect of the Australian Government's border policies, and are critical to saving lives of illegal maritime arrivals who attempt to travel illegally by boat to Australia. People arriving in this manner are transferred to a regional processing centre in Nauru and Papua New Guinea for their asylum claims to be assessed. The Department refers to these people as 'transferees' this term is used throughout the submission.<sup>1</sup>

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.

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

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<sup>1</sup> The Government of Nauru use the term 'asylum seekers.'

secure environment. The Department continues to work closely with service providers and Nauruan authorities to ensure allegations of criminal activity are fully investigated.

In accordance with the Select Committee's Terms of Reference, this submission provides an overview of the Nauru Regional Processing Centre, including Australia's undertakings under the Memorandum of Understanding (MOU) between the Australian and Nauruan Governments and the extent of Australia's involvement in the operation of the centre.

It also includes information pertaining to allegations raised at the Nauru Regional Processing Centre since its establishment in 2012 until current.

The Department is mindful that a number of transferees who participated in the Moss Review were concerned about disclosure of information which may identify them. With this in mind, requests for information on sensitive matters will need to be assessed against the need to ensure that individuals are protected from exposure or recrimination. Requests for information which may relate to current operations or investigations will also be assessed against the need to ensure operational integrity is maintained.

Whilst some historical information is referenced for context, the Department's submission focuses on the current environment and current service providers.

## Chronology of the Regional Processing Centre in Nauru

Date	Event
28 June 2012	Prime Minister the Hon Julia Gillard MP and Minister for Immigration and Citizenship, the Hon Chris Bowen MP, announce Expert Panel on Asylum Seekers
13 August 2012	Expert Panel on Asylum Seekers release report
13 August 2012	Prime Minister Gillard and Minister Bowen announce implementation of regional processing
18 August 2012	Australian Defence Force arrive on Nauru to establish the temporary accommodation to receive asylum seekers
18 August 2012	<i>Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012</i> comes into effect
29 August 2012	Australia and Nauru sign Memorandum of Understanding
10 September 2012	Nauru designated as a country for regional processing
14 September 2012	The first transferees from Christmas Island arrive on Nauru
14 December 2012	Commencement of construction works for the permanent facilities at Regional Processing Centre site 1
28 January 2013	Completion of first permanent accommodation building
24 April 2013	Habeas corpus application lodged in the Nauru Supreme Court seeking the release of ten transferees from the Nauru Regional Processing Centre on the basis they were unlawfully detained
21 May 2013	<i>Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013</i> comes into effect
6 June 2013	Nauru General Parliamentary election
11 June 2013	Habeas corpus case commences in Nauru Supreme Court, challenging the legality of transferees being detained at the Regional Processing Centre on Nauru
18 June 2013	Habeas corpus case dismissed on the grounds that the asylum seekers are being held on Nauru for the purpose of processing their claims for refugee status
19 July 2013	Prime Minister Rudd announces Regional Resettlement Arrangement
19 July 2013	Major disturbance on Nauru
20 July 2013	Commencement of Regional Processing Centre site 2 temporary accommodation facility
3 August 2013	Australia and Nauru sign a second Memorandum of Understanding

14 August 2013	Commencement of construction of Regional Processing Centre site 3
21 August 2013	First group of transferees in family groups arrive in Nauru
18 September 2013	Commencement of Operation Sovereign Borders, including the Offshore Detention and Returns Task Group under the Joint Agency Task Force
8 November 2013	Report completed by Keith Hamburger on 19 July 2013 incident
30 January 2014	A new writ of habeas corpus was served on the Government of Nauru and the Government of Australia, on behalf of 10 transferees who were facing criminal charges in relation to the disturbance of 19 July 2013
11 April 2014	Administrative arrangements for regional processing and settlement arrangements in Nauru signed
6 May 2014	Commencement of construction of Nibok settlement facility
20 May 2014	Government of Nauru delivers first Refugee Status Determination hand-down followed by settlement in the community
25 July 2014	Commencement of construction of Ewa settlement facility
26 September 2014	Memorandum of Understanding signed between Australia and Cambodia relating to regional resettlement
3 October 2014	Minister Morrison announces independent review into conditions and circumstances at the Regional Processing Centre in Nauru to be conducted by Philip Moss
7 November 2014	Completion of Nibok settlement facility
5 December 2014	<i>Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014</i> passed by Parliament
9 February 2015	Moss report received by the Secretary of the Department
25 February 2015	Open centre arrangements introduced
26 March 2015	Memorandum of Understanding signed between Australia and Cambodia relating to Border and Immigration control
8 March 2015	Completion of Ewa settlement facility
17 April 2015	Final transferee charged relating to the 19 July 2013 major disturbance transferred to Australia

## PART ONE: Framework and governance

### Framework of regional processing

Operation of the Nauru Regional Processing Centre and settlement on Nauru is supported by legislative frameworks in both Australia and Nauru.

#### Applicable Acts

On 18 August 2012, the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012* (Cth) (Regional Processing Act) commenced. The Regional Processing Act allows for the transfer of an irregular maritime arrival<sup>2</sup> to a designated regional processing country to have his or her protection claims processed independently by that country, where the irregular maritime arrival arrived at an excised offshore place.<sup>3</sup> The regional processing arrangements did not apply to persons who entered Australia at the Australian mainland because they were not classified as offshore entry persons. Consequently, there was an inherent risk that individuals would seek to travel to the Australian mainland and continue to risk their lives at sea to avoid being sent to a designated regional processing country.

This risk was addressed by the *Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013* (UMA Act), with effect from 1 June 2013. The UMA Act amended the *Migration Act 1958* in accordance with the report of the Expert Panel, which recommended that arrival anywhere in Australia by irregular maritime means should provide individuals with the same status. That is, any individual who arrived by irregular maritime means would be subject to transfer under the regional processing arrangements.

The amendments made by both the Regional Processing Act and UMA Act are described in Attachment A.

#### Memorandum of Understanding between Australia and Nauru

The Government of Australia signed an MOU with the Government of Nauru on 29 August 2012 titled *Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, Relating to the Transfer to and Assessment of Persons in Nauru, and Related Issues*. Among other things, the MOU contains a commitment by Nauru to make an assessment, or permit an assessment to be made of whether or not a transferee is a refugee. To enable processing to occur, the MOU provided for the establishment of a Regional Processing Centre. A copy of the MOU is at Attachment B.

A further MOU was signed by the Australian Government with the Government of Nauru on 3 August 2013, titled *Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, Relating to the Transfer To and Assessment of Persons in Nauru, and Related Issues* which expanded on the previous regional processing

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<sup>2</sup> The term 'irregular maritime arrival' was used at the time.

<sup>3</sup> The term in the Regional Processing Act was an 'offshore entry person' – a term defined in the *Migration Act 1958* (Cth) which has subsequently been replaced by 'unauthorised maritime arrival'.



arrangements to include settlement in Nauru of transferees who Nauru determines are in need of international protection. This MOU supersedes the previous MOU and reflects a change in policy which requires all illegal maritime arrivals to be transferred to a Regional Processing Centre for processing, with no ability to subsequently apply for settlement in Australia. A copy of the MOU is included at Attachment C.

## Administrative Arrangements

In accordance with and in support of the MOU, administrative arrangements were signed on 11 April 2014. These arrangements provide guidance for the transfer of asylum seekers to Nauru, management of the centre and refugee status determination processes.

Assisting the establishment of a Regional Processing Centre in Nauru, another sovereign country, involved a significant level of complexity to implement the required administrative arrangements. The Nauru election in June 2013 and changes to Nauru's legislative framework relating to regional processing arrangements contributed to a delay in implementing the administrative measures envisaged under the MOU.

In the interim, Government of Nauru and the Department agreed to the key logistical arrangements for transfers to Nauru, and continued to work closely to finalise the formal, detailed administrative arrangements which supplement the MOU.

## Legal Framework for transfer to Nauru

Under the provisions of the *Migration Act 1958* (Cth) the Minister for Immigration and Border Protection is required by legislative instrument to designate a country as a 'regional processing country' before unauthorised maritime arrivals can be transferred to that country. The only condition for the exercise of this power is that the Minister thinks it is in the national interest to do so.

Nauru was designated as a country for regional processing on 10 September 2012.

The Government of Nauru passed two pieces of legislation, the *Refugees Convention Act 2012* (Nr), and the *Asylum Seekers (Regional Processing Centre) Act 2012* (Nr). While the operation of the Nauru Regional Processing Centre is fully funded by the Australian Government, the legislation requires for the processing of the transferees to be conducted by the Government of Nauru.

Section 198AD of the Migration Act provides that an officer must, as soon as reasonably possible, take an unauthorised maritime arrival to whom the section applies (an unauthorised maritime arrival detained under section 189, subject to certain exceptions), to a regional processing country.

## Legal status of transferees in Nauru

The legal status of transferees in Nauru is set out in the relevant Nauruan domestic legislation. Each transferee is granted a 'Regional Processing Centre visa' by Nauru pursuant to Regulation 9 of the *Immigration Regulations 2014* (Nr) (the Immigration Regulations).

The Immigration Regulations set out the basis for the grant of a Regional Processing Centre visa, which permits the individual to reside in Nauru for a period allowing for:

- the processing of refugee claims and the determination, by the Government of Nauru Secretary for Justice and Border Control, Mr Lionel Aingimea (Secretary for Justice), of whether a transferee is a refugee, pursuant to s6 of the *Refugees Convention Act 2012* (Nr)
- any review or appeal in respect of such a decision by a transferee
- the making of arrangements for a transferee to be removed from Nauru, following the exhaustion of all avenues for review or appeal in respect of such a decision.

A new regulation was inserted into the Immigration Regulations by the *Immigration (Amendment) Regulations 2014* (Nr). The new regulation relevantly provides for the automatic conversion of a Regional Processing visa to a Temporary Settlement visa, upon notice to a transferee that they have been recognised as a refugee, or as a person in need of complementary protection. A Temporary Settlement visa is not subject to any statutory condition as to residence or leaving the Regional Processing Centre, but may be granted subject to any other reasonable condition considered necessary or desirable by the Secretary for Justice.<sup>4</sup>

Nauru is a party to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol.

## Governance Arrangements

### Forums

The Governments of Nauru and Australia have both established a number of governance forums either chaired by the Government of Nauru, or co-chaired, to consider various elements of the Nauru Regional Processing Centre. These forums include:

- Joint Ministerial Forum – held regularly to oversee the implementation of the regional partnership between Australia and Nauru.
- Joint Advisory Committee (and three subcommittees) – discussions relate to implementation and operation of the Nauru Regional Processing Centre.
- Nauru Joint Working Group – weekly meeting to discuss general issues, visas, staffing, and events/activities within the centre.
- Nauru Settlement Working Group – a forum for open communication between the Governments of Nauru and Australia regarding potential impacts on the local community resulting from refugee settlement.

Nauruan and Australian officials work cooperatively on the management and oversight of the Nauru Regional Processing Centre. Further information regarding membership and functions of the above fora are outlined in Annexure B.

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<sup>4</sup> Regulation 9A(3).

In addition to the governance forums, a range of operational meetings are held onsite between stakeholders to oversee the day-to-day functions of the Nauru Regional Processing Centre.

## Role of the Government of Nauru

As articulated in the MOU and Administrative Arrangements, the Government of Nauru manages and operates the Regional Processing Centre, hosts transferees, assesses their asylum claims and where such persons are determined to be in need of international protection, makes arrangements for their settlement.

The Secretary for Justice is responsible for the security, good order and management of the centre, including the care and welfare of persons residing in the centre. Control of the centre sits with the Government of Nauru. Under the MOU, the Government of Nauru agrees to conduct all activities in accordance with its Constitution and all relevant domestic laws.

The *Asylum Seekers (Regional Processing Centre) Act 2012* (Nr) provides a legislative framework for the operation of the Nauru Regional Processing Centre, including the appointment of Operational Managers. Under this Act, the Operational Manager is the 'person...who has been given responsibility...by the Minister for managing operations at the centre'<sup>5</sup> and is declared by the Secretary for Justice.

The Government of Nauru has appointed three Operational Managers. These Managers are responsible for Regional Processing Centre sites (known as RPC1, RPC2 and RPC3) and are assisted by Deputy Operational Managers. These officers are located at the respective centres.

Most notably under the *Asylum Seekers (Regional Processing Centre) Act 2012* (Nr), an Operational Manager has a range of duties including:

- to ensure that each protected person (a transferee) residing at the centre is treated in a fair and humane manner consistent with the law of Nauru
- to ensure that restrictions on the movement of a protected person residing at the centre are limited to the minimum necessary to maintain the security and good order of the centre
- to ensure that a protected person is protected from inappropriate forms of punishment
- to make rules for the security, good order and management of the centre and the care and welfare of protected persons residing there, these rules may extend to Open Centre arrangements.

Any arrangements with regard to the use of force to maintain the good order of the centre are made by the Government of Nauru under the domestic laws of Nauru.

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<sup>5</sup> Section 3(1).

The Operational Manager also has a duty to ensure that each person residing at the centre is provided with a range of things, including:

- information about the services available to him or her
- food that is adequate to maintain his or her health and well-being
- access to medical (including mental health and dental) care and treatment to the standard that he or she might reasonably have access to if he or she were living in the general community in Nauru
- any other item that the Secretary for Justice thinks ought to be provided to the person because of any special needs that he or she has.

## Role of the Department of Immigration and Border Protection

The Department and its contracted service providers support the Secretary for Justice and the Operational Managers in accordance with the MOU and Administrative Arrangements. Pursuant to the MOU, control of the Centre lies with the Nauruan Government which has undertaken to conduct all activities in line with its Constitution and all relevant domestic laws.

Under the MOU dated 3 August 2013, the Commonwealth Government undertakes to conduct all activities in respect of the MOU in accordance with the Constitution and domestic laws of Australia. In some cases, where no relevant Nauruan standard exists, services contracts require providers to adhere to Australian standards in the delivery of services.

The Department provides support to the Government of Nauru as agreed between the two parties.

Since the commencement of the Regional Processing Centre, the Department has worked closely with the Government of Nauru to build capacity. This has included gradual increases in both the number of Nauruans employed at the Centre as well as ensuring that the supply of goods and services is to the extent possible sourced from Nauruan companies. Specific expertise has been provided to mentor staff across the range of administration functions including refugee status determination, legislation and policy development, community liaison as well as the broader assistance provided by other Australian Government agencies including the Australian Federal Police.

In agreement with the Government of Nauru, the Department deploys officials to Nauru to provide support, mentoring and training. A small number of departmental staff are based in Nauru in support of the Operational Managers. Roles include the administration of service contracts, infrastructure coordination and community liaison. Mentoring and training in refugee status determination processing is provided, as requested, by the Government of Nauru. Attachment D shows the Department's current staffing structure on Nauru.

Within the Department, Detention and Regional Processing Centre operations are currently managed within the Immigration Status Resolution Group. These functions will transition to the Australian Border Force on its commencement on 1 July 2015. Detention operations functions will transition to the Operations Group and the Regional Processing Centre Support and Regional Settlement functions will transition to the Support Group. The differing

structural arrangements acknowledge the different legislative frameworks and operating basis of Australian detention centres and regional processing centres.

## PART TWO: Service provision

### Service provision

Whilst the Government of Nauru has responsibility for the Nauru Regional Processing Centre, the Department supports the Government of Nauru through the administration of contracts for service provision.

Services are provided by:

- Transfield Services Australia delivers garrison services across all sites at the Nauru Regional Processing Centre, as well as welfare services to single adult males.
- Save the Children Australia delivers specialised services for children, including unaccompanied minors across the centre, as well as welfare services to family groups and single adult females.
- International Health and Medical Services (IHMS) delivers health services for transferees and refugees settled in Nauru, including general practitioner, nursing and mental health care services.
- Connect Settlement Services (Connect) delivers refugee settlement services in Nauru.

Further information regarding service provision arrangements for transferees is outlined at Annexure C. Further information regarding service provision arrangements for refugees settled in Nauru is outlined at Annexure G.

Noting the particular interests of the Select Committee in relation to aspects of the Nauru Regional Processing Centre, detailed information regarding support for vulnerable transferees has been included below.

### Support services for vulnerable transferees, including children

The Government of Nauru is the key decision maker when determining transferee placements, and in the management of individual cases. There are a number of stakeholder forums in which the Operational Managers and the service providers collaboratively discuss and manage the care and wellbeing of transferees. The meetings include a daily Operational Management Meeting and the Supportive Monitoring and Engagement meetings. Weekly meetings include the Asylum Seeker Placement and Preventative meeting, Vulnerable Child, Programs and Activities and Complex Behaviour Management meetings. The following policies and procedures are in place to enhance the support of vulnerable transferees, including children.

### Supporting survivors of torture and trauma

The procedure for supporting survivors of torture and trauma has been developed to ensure a consistent and coordinated approach by staff to identify and support transferees who have experienced torture and trauma.

A transferee disclosing or displaying symptoms of a possible history of torture and/or trauma is offered referral to a specialist torture and trauma counselling service for further assessment and counselling. This referral may be taken up at any time.

In practice, most torture and/or trauma disclosures are made during mental health screening which occurs as part of a health assessment, prior to transfer to the Regional Processing Centre. Upon transfer to the Regional Processing Centre, IHMS arranges specialist counselling with a subcontracted counselling provider for those transferees who have accepted referral. More information about mental health screening is at Annexure C.

Identification and offers of torture and trauma counselling may also occur after arrival at the Regional Processing Centre, for example if a possible history of torture or trauma is revealed or suspected during further mental health screening or other assessment.

## Psychological support programme

All transferees at the Regional Processing Centre are supported under the psychological support programme policy, which is the key policy for managing self-harm risk. The policy is based on the psychological support programme in use at Australian immigration detention centres which in turn has been developed and refined over time using extensive input from clinicians.

The psychological support programme is an interdisciplinary approach that enhances communication and promotes integrated care between service providers.

The focus of the psychological support programme is on preventative and support strategies to reduce transferee self-harm risk through:

- coordinated and individual care planning
- providing meaningful activities
- providing a supportive environment
- supportive monitoring and engagement (where there is an elevated risk of self-harming behaviour).

The care of any transferee placed on supportive monitoring and engagement is led by an IHMS mental health clinician in their role supporting the Operational Manager.

## Child safeguarding protocol

Children and young people (being any person under the age of 18 years, whether accompanied or unaccompanied by a parent or guardian) require an extra level of care and support due to their increased vulnerability.

As part of the child welfare support services provided at the Nauru Regional Processing Centre, Save the Children developed a child safeguarding protocol (Protocol) to address the specific needs and vulnerabilities of children and young people at the Regional Processing Centre and to minimise risk by implementing best practice for working with vulnerable



children and young people. This Protocol operates as part of the Regional Processing Centre Guidelines (for further information on the Guidelines see Annexure D).

The Protocol and its accompanying code of conduct (at Attachment E) aim to ensure a child-safe environment is maintained at all times at the Regional Processing Centre. The code of conduct provides service provider personnel with clear guidelines on working safely and positively with children and young people, and helps to avoid misunderstandings. Signing of the code of conduct is a mandatory condition of employment or engagement at the Regional Processing Centre.

The child safety incident reporting process in the Protocol establishes the obligations and responsibilities for reporting and management of incidents that concern a child's safety or welfare. The reporting process prescribes direct reporting of all child safety concerns to the Child Safeguarding and Protection Manager, who handles the incident in accordance with the Incident Reporting Guidelines.

Where there are concerns or reports of harm or a reasonable suspicion of harm to a person under the age of 18 years, Save the Children report those concerns to the Nauru Police Force and the Nauru Department of Youth and Community.

## Working with children checks

Service providers are required under their contract to ensure that personnel have a current working with children check or equivalent certificate from an Australian jurisdiction. All service provider staff members are required to have completed an Australian Federal Police check or, in the case of Nauruan locally engaged personnel, a Nauru Police check.

All contract service provider staff members are required to sign the working with children code of conduct and to declare any criminal record.

The code of conduct provides service provider personnel with clear guidelines on working safely and positively with children and young people, and helps to avoid misunderstandings. Signing of the code of conduct is a mandatory condition of employment or engagement at the Regional Processing Centre.

## Departmental Initiatives

The Department is committed to identifying opportunities for improvement to process, practice, policy and cultural norms in response to incidents involving children in regional processing centres.

The Department has established a section within the Child Protection and Wellbeing Branch, which actively supports the implementation of practices that better protect and care for children, including ensuring that child protection is given due recognition in regional processing arrangements. This section will be engaging with the Government of Nauru, the Nauru Police Force and service providers to develop a child protection framework that upholds child protection in the Regional Processing Centre and in the refugee community.



Underpinning this framework will be improvements in the clear identification of roles and responsibilities in respect of child protection and consistent protocols for incident management and reporting.

This section will also drive implementation of relevant actions arising from the Moss review and address any identified gaps in this important area of policy.

## PART THREE: Incidents and allegations

The Government of Nauru is responsible for ensuring that transferees residing at the Regional Processing Centre are treated in a fair and humane manner consistent with the law of Nauru. The Government of Nauru is supported by the Department and service providers.

All allegations of inappropriate behaviour at the Regional Processing Centre are taken seriously and are appropriately investigated. Allegations can be raised in a number of ways, such as by a transferee through the complaint system, by a service provider through an information report or by reporting of an incident and in regular operational meetings.

Allegations of criminal behaviour are referred to the Nauru Police Force who is responsible for investigating contraventions of Nauruan law. Where an allegation is substantiated, charges are laid and perpetrators prosecuted. Reports of harm to a person under the age of 18 years are also reported to the Nauru Department of Youth and Community.

Alleged misconduct by service provider staff, where not criminal in nature, is referred to the relevant service provider to investigate. All service provider staff must abide by a code of conduct and undertake training that covers the standards of behaviour they are expected to demonstrate.

Service providers are contractually bound to report incidents<sup>6</sup> to the Operational Managers and Department in accordance with incident management and reporting guidelines. The guidelines have been in place since the commencement of operations at the Nauru Regional Processing Centre. Incidents are required to be reported regardless of a transferee's desire for that matter to remain unreported but service providers remain sensitive to the transferee's privacy.

### Follow up actions

In the event of an alleged assault, service providers ensure that the welfare and safety needs of the alleged victim are addressed in a timely manner. The welfare provider delivers ongoing case management support, whilst the health service provider offers alleged victims with immediate and ongoing medical and mental health care. The alleged victim, and their family if required, may be moved to alternative accommodation for additional support.

An alleged offender of physical or sexual assault may also be moved to alternative accommodation whilst the investigation is undertaken. The alleged offender may also be placed under a behavioural management plan.

There are a number of multi-stakeholder meetings where incidents are discussed to ensure ongoing adequate care and support is provided. These include:

- daily psychological support programme meetings
- weekly complex behaviour management meetings

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<sup>6</sup> This includes allegations.

- weekly asylum seeker placement and preventative meetings
- weekly vulnerable children meeting.

Other follow up actions may include increasing the number and frequency of patrols by security staff. Nauru Police Force undertakes community policing patrols to the Regional Processing Centre and the location, timing and frequency of these patrols may also be revised.

Further, commencing 20 April 2015, two Nauru Police Force officers have been permanently assigned to the Regional Processing Centre to work closely with service providers in the follow up and action of investigations. They also provide policing education sessions and avail themselves for one on one discussions with transferees.

## Reporting enhancements

The Department recognises that reporting of allegations is an area that requires improvement. The Government of Nauru and the Department are committed to improving the mechanisms in place to capture all allegations, with a view to encouraging reporting, and enhancing the effectiveness of current reporting systems to ensure information is readily accessible and accurate.

In particular, the Department will work with service providers to review processes to ensure that allegations that are not formally reported are recorded and tracked in a similar manner. This will ensure a comprehensive understanding of issues and enable follow up action to be transparently monitored.

## PART FOUR: Internal and external scrutiny

The operations of the Nauru Regional Processing Centre have been subject to scrutiny since re-establishment of the centre in late 2012. Various reviews and reports have been prepared over this time, either initiated by the Department or generated externally by scrutiny bodies, considering a range of issues and with varying terms of reference. The Commonwealth Ombudsman also has jurisdiction over complaints from transferees.

Reviews have focused on varying subject matters relevant to the Nauru Regional Processing Centre, including but not limited to:

- welfare and case management services
- humanitarian interests
- medical service delivery
- security and risk assessments.

Examples of reports stemming from these reviews include site visit reports (by UNHCR, International Committee of the Red Cross, the Department's Chief Medical Officer, as well as the Physical and Mental Health Subcommittee of the Joint Advisory Committee for Nauru Regional Processing Arrangements), the Hamburger Review into the 19 July 2013 incident, Joint Agency Task Force security review, and the KMPG regional processing centre risk analysis.

Noting the Terms of Reference for this Inquiry, detailed information regarding the Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru (Moss Review) has been included below, in addition to a broad consideration of other review and reports relevant to the Nauru Regional Processing Centre.

### The Moss Review

On 2 October 2014, the then Minister for Immigration and Border Protection, the Hon Scott Morrison MP, met with Lieutenant General Angus Campbell, then Commander of the Joint Agency Task Force and Mr Mark Cormack, the then Acting Secretary of the Department of Immigration and Border Protection. The meeting included a discussion regarding allegations included in letters to the then Minister and media reporting in the period leading up to 2 October 2014.

The attendees discussed their shared concern regarding allegations of physical and sexual assault of transferees and the conduct and behaviour of staff employed by contracted service providers. The attendees agreed that an independent review into the allegations and the actions taken by staff of contracted service providers would be an appropriate response and that the Department would be the appropriate entity to commission such a review.

On 3 October 2014, the then Minister announced that the then Acting Secretary of the Department had commissioned Mr Philip Moss, the former Integrity Commissioner and former head of the Australian Commission for Law Enforcement Integrity, to conduct an

independent review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru.

The terms of reference were made publicly available on the Department's website and a copy is provided at Attachment G. The review covered the period between July 2013 and October 2014 and identified two main aspects for investigation. The first was claims of sexual and other physical assault of transferees, and the second, conduct and behaviour of staff members employed by contract service providers.

Mr Moss provided a progress report to the Secretary of the Department, Mr Michael Pezzullo, on 28 November 2014. On 9 February 2015, Mr Moss provided his final report to the Secretary of the Department, entitled 'Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru.' A redacted report was made available on the Department's website on 20 March 2015. A copy of the redacted report is provided at Attachment H.

### Timing of the release of the Moss Report

Prior to release of the report, the Department considered the ongoing police investigations and the privacy of individuals who had provided Mr Moss with information, particularly with regard to those who had expressed concern for their safety should their identity become known. For this reason a decision was made to redact this information from the final report provided by Mr Moss before the report was made public.

The Department also believed it necessary to seek comment from key entities (Government of Nauru, individuals, service providers, other government agencies) named in the report in line with procedural fairness requirements. As a number of the recommendations contained in the Moss review require a joint approach, the Department engaged with the Government of Nauru as a partner in the provision of regional resettlement, as well as with relevant stakeholders before deciding to accept all the recommendations. With that process in mind, the report was released as soon as was practicable on 20 March 2015.

The timing of the release was based on the factors outlined above and no other factors.

### Circumstances precipitating the Moss Review

#### Protest activity

On 25 September 2014, a video message from the then Minister for Immigration and Border Protection, the Hon Scott Morrison MP, was shown to transferees in Nauru. The message re-iterated that people who had been transferred to either Nauru or Manus Regional Processing Centres would not be eligible for processing in Australia, which may include the granting of bridging visas and the re-introduction of temporary protection visas.

The message received mixed responses from transferees. Some expressed no surprise at hearing the message, whereas others expressed frustration at the perceived inequality of the

new processing direction, particularly with regard to those remaining on Christmas Island being eligible for temporary protection visas.

Commencing 25 September 2014, transferees conducted a series of daily peaceful protests at the Nauru Regional Processing Centre. Protest numbers peaked at approximately 200 people and all protest activity concluded on 21 October 2014. A number of transferees also attempted acts of self-harm during this period.

Refugees living in the community also participated in several protests, including a peaceful demonstration at the Australian High Commission on 29 September 2014. The protest was sanctioned by Nauruan authorities.

During this period in late September 2014, the Centre was operating at a heightened state of awareness and the Government of Nauru and the Department were particularly alert to potential escalation of protest activities and the identification of any risks that threatened the safety and security of the Centre.

## Allegations

In the month of September 2014, a number of information reports were submitted by service providers containing allegations of inappropriate sexual conduct. A number of reports relating to sexual assault were also reported in Australian media over the same period of time. Between 26 September 2014 and 10 October 2014 the Minister received correspondence containing allegations of sexual assault and other misconduct at the Regional Processing Centre in Nauru. These allegations are documented through the Moss report.

In the context of the protest activity in late September, intelligence reporting from the Nauru Regional Processing Centre included assessments of the protests being supported by Australian refugee advocacy groups and attempts to coordinate protest activities in Nauru between transferees and refugees. On 29 September 2014, an intelligence report prepared by a service provider indicated service provider staff may have been involved in facilitating a petition against regional processing and providing cameras to protesting transferees.

On 30 September 2014, an intelligence report collated by a service provider in Nauru reported the possible misconduct of contracted service provider staff, breaches of information security and unauthorised disclosure as well as concerns about the veracity of the allegations of mistreatment of transferees that had been reported in the media. The intelligence report also raised concerns for the integrity of service provider reporting, due to the inclusion of increasingly emotive language.

On 2 October 2014, the Department issued a notice to remove specified service provider personnel from duties at the Nauru Regional Processing Centre due to possible misconduct.

The Department also grew increasingly concerned about potential misuse of information and unauthorised disclosure of material following a number of information security breaches over the course of 2014. In particular, the Department became concerned about the perceived lack of responsiveness by one of the service providers to the issue of information security.

On 24 September 2014, the Department notified the Office of the Australian Information Commissioner of three matters of unauthorised disclosure. On 2 October 2014, the Department referred a range of matters pertaining to the unauthorised disclosure of information by service provider staff to the Australian Federal Police.

Some of the matters referred to the Australian Federal Police were the same as those that were reported to the Office of the Australian Information Commissioner. Advice from the Australian Federal Police at the time of writing this submission is that investigation of these matters and other subsequent referrals remain ongoing.

### Methodology of the Moss Review

Within the Terms of Reference the following areas were identified for investigation:

- claims of sexual and other physical assault of transferees
- conduct and behaviour of staff members employed by contract service providers (considered separately to claims of assault noting potential links between the two)
- reported allegations of orchestration and facilitation of transferees to engage in non-compliant or harmful behaviour and protest actions potentially endangering the safety and security of all persons at the Centre
- reported allegations of the misuse and unauthorised disclosure of sensitive and confidential information to undermine the proper management of the Centre.

At the review's invitation, a number of submissions were received. In addition, specific requests for information were made by the review team to key stakeholders including service providers at the Nauru Regional Processing Centre. Further, the review engaged with Departmental staff, service providers (Save the Children, IHMS, Transfield Services and other relevant subcontractors, Nauruan Minister and government officials, the Australian Federal Police, as well as transferees living in the Centre). Previous relevant reviews and their recommendations were also considered.

The review covered the period between July 2013 and October 2014, as well as incidents occurring and reported during the course of the Review.

### Key findings regarding allegations

The Moss review considered claims relating to sexual and other physical assault of transferees and the conduct and behaviour of staff members employed by service providers. Of concern were the possible exploitation of transferees, including minors, and sexual favours being sought from transferees in exchange for contraband. The review found insufficient evidence to support these claims, but concluded that in regards to access to marijuana it is possible that these behaviours are occurring. Three alleged incidents of the trading of cigarettes and marijuana for sexual favours have been referred to the Nauru Police Force.



Three specific allegations of sexual assault were investigated by the review, one of which the Department had been previously aware. The investigation by the Nauru Police Force in relation to this allegation is ongoing. The other two allegations have not been disclosed to the Department or other stakeholders at the Nauru Regional Processing Centre.

Two allegations of physical assault were investigated. One allegation was referred to the Nauru Police Force and the second has been referred to the service provider for internal review.

Allegations relating to lip-stitching by minors were partially confirmed, with three cases occurring by minors aged between 16 and 17 years of age. The Department was aware of these cases and the review considered service providers were providing appropriate support. The Moss review found no evidence to support the allegation that children of younger ages had participated in this practice.

Information gathered through the review does not substantiate the allegation that a guard at the Centre had forced minors to engage in sexual activity in front of him.

The review found that the allegation of women being asked to expose themselves in exchange for access to showers was likely to have been based on one incident involving one adult female transferee.

With regard to the second element of the Moss review, that of allegations of orchestration and facilitation of protest activity, and alleged encouragement of self-harm by service providers, the Department notes that there were no conclusive findings in the Moss review.

The Department will await the investigation by the Australian Federal Police with regard to the unauthorised disclosure of materials before considering further action. In the interim, the Department is reviewing existing provisions with regard to unauthorised disclosure to ensure that they are sufficiently clear and the expectations are understood by contracted service providers.

As recommended in the Moss Report, the Department is reviewing the decision to remove 10 service provider staff.

### [Response to the recommendations](#)

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.



## Implementation of the Moss Report recommendations

The central themes of the action plan 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.

Giving effect to the recommendations will require significant engagement with the Government of Nauru and involvement with the Australian Federal Police, the Department of Foreign Affairs and Trade and the Attorney-General's Department.

### Strengthening the delivery of services

The Government of Nauru and the Department are working with service providers to strengthen existing procedures for the personal safety and privacy of transferees. The existing guidelines that govern acceptable behaviour in relation to sexual harassment and relationships are being revised.

The Department is facilitating and participating in a workshop with the Operational Managers, service delivery staff and the Nauru Police Force to agree on a framework of responsibilities for incidents of sexual and physical assault, including the protection of children.

The service providers will review and amend corporate electronic communications policy including social media to ensure consistency with the Department's principles, with the consequences for breaches of the policy clear to staff. As agreed with the Operational Manager, the Department will review and approve the policy and require evidence that it has been communicated to all staff.

The Department's existing contractual provisions and guidelines are being reviewed and updated to strengthen existing contractual requirements relating to reporting data loss. This will be reflected in new arrangements with updates to existing arrangements where required.

The existing emergency management procedures and protocols will be reviewed in consultation with the Government of Nauru with the objective of achieving integrated emergency management arrangements. The Australian Federal Police will provide advice and support to the Department and the Government of Nauru as appropriate.

### Enhanced stakeholder communication

The Department is supporting the implementation of more collaborative and regular communications between the Operational Managers and service providers, including greater participation and involvement at regular meetings and improved governance for both parties

in following up issues. The Department will also be providing greater transparency about the role of the service provider and will work with the service provider to enhance training and development of Nauruan staff.

The Department will continue to facilitate regular information sessions for stakeholders to openly discuss their roles and responsibilities, review meetings currently held at the Regional Processing Centre and establish a joint service provider forum to encourage greater cooperation, collaboration and information sharing between service providers.

The Department will continue to work with the Operational Managers, Nauru Police Force, Transfield Services and Wilson Security to review the effectiveness of existing forums and practices. The Department will work with the Nauru Police Force to address the issue of underreporting of incidents.

### Building robust frameworks

The Department is facilitating talks with representatives from the Government of Nauru, the Australian Federal Police, the Attorney-General's Department and Department of Foreign Affairs and Trade to discuss how to enhance capacity to manage and address sexual and physical assault in the Nauru Regional Processing Centre.

The Department is working with the Government of Nauru to progress inclusion of child protection elements in the relevant Nauruan legislation, as well as developing a child protection framework to accompany operational policies, procedures and the existing child safeguarding protocols. Specialised child protection training will be provided to all staff and service providers who interact with children.

A Government of Nauru-led Community Liaison Officer network has been established to provide further support for transferees participating in Open Centre arrangements and refugees in understanding and navigating Nauruan society. The Department will support the Nauru Police Force in the development of a proposal seeking agreement for an ongoing community policing presence within the Regional Processing Centre and refugee settlers being included in community policing and law enforcement roles. Consistent with their advisory role, the Australian Federal Police will provide advice and mentoring to the Nauru Police Force as requested.

### Enriched training and service provider capability

Training is being enhanced by providing assistance to the Nauruan Government to develop training modules on the Nauruan culture to be delivered by Nauruans, for all staff as a part of induction and refresher training. This is in addition to the existing cultural diversity training and cultural orientation awareness and training for staff.

The Department is working with service providers to develop strategies for building the capacity of Nauruan staff members, including expanding the formal training opportunities already offered by Transfield Services as a Registered Training Organisation.

## Other reviews and reports

The Department cooperates with review bodies in support of their respective independent oversight roles and activities, and has made good progress in implementing recommendations and initiating actions to improve processes across all areas. Further, aside from those reviews specific to operations of the Nauru Regional Processing Centre, the Department acknowledges other external reviews and works to transplant those 'lessons learnt' into operations across the detention network and at regional processing centres. For example, the Cornall Review was commissioned in 2013 to investigate allegations of sexual and other serious assaults at the Manus Regional Processing Centre. Whilst not specific to the Nauru Regional Processing Centre, the Department is responsive to allegations of assault and remains cognisant of improvements which can be mirrored to approve processes across both regional processing centres.

Most recently, on 15 April 2015, the Australian National Audit Office released a report on the Management of Interpreting Services. The report makes two recommendations, one of which refers to the support arrangements for interpreters before, during and after deployment to facilities in the detention network. The Department has already agreed to the recommendation and will implement improved support arrangements for interpreters before, during and after deployment to facilities in the detention network. The Department will consider this recommendation as broadly inclusive of regional processing centres.

## Response to recommendations

The Department is committed to working with all stakeholders to improve processes and address the recommendations made through review reports relevant to the Nauru Regional Processing Centre within the purview of the Department. A thematic exploration of the reports indicates recommendations pertain to a number of overarching themes:

- administration of the centre
- transferee well-being
- transferee health care
- government policies.

While not identified as a discrete theme, service delivery management is a major component of regional processing and recommendations for improvement have been identified across the themes of administration of centre, transferee well-being and transferee health care. We note that some of the themes are also replicated within the Moss review response.

### Administration of the centre

With regards to administration of the centre, improvements have been made through clarifying roles and responsibilities in safety and security management across service providers and local authorities, improved physical security measures and site control, regular

safety and security risk assessments, enhanced information sharing practices, and staff training.

### Transferee well-being

The Government of Nauru and the Department work closely with service providers to review and develop a range of programmes and activities for transferees, and to ensure they remain active and engaged. Shaded communal areas are provided and improvements have been made to facilities across the Nauru Regional Processing Centre. The Mental Health Screening Policy has been reviewed and is to be finalised in April 2015. The Psychological Support Programme and Torture and Trauma policies are also being updated and will be finalised shortly.

### Transferee health care

Enhancements have been made to health administration and service delivery. Service providers ensure transferees have access to clinically recommended care that is the best available in the circumstances and conduct regular service delivery audits. For example, whilst a dental facility is not available onsite at the Regional Processing Centre, transferees can access dental services after-hours and on weekends at the Nauru hospital.

A number of cleaning and sanitation plans have been developed by service providers at the centre, communal areas are regularly cleaned and vector control is undertaken to mitigate general health and safety risks.

### Government policies

Recommendations made by external scrutiny bodies for changes to policy on regional processing are a matter for the Australian Government.

Success of regional processing relies on the efficiency of processes for assessing asylum claims, resettling refugees and removing failed asylum seekers. These processes are managed by host governments under the laws of their countries. Australia's role is that of providing operational support and capacity building assistance to enable host governments to develop and mature their processes.

Assistance has been provided to Nauru by way of mentoring, logistical and operational support to develop their refugee status determination capability, settlement policy and removals framework. Australia has also encouraged host governments to progress specific legislative changes to support regional processing.

### Assurance

The Department has in place a number of discrete oversight mechanisms such as management initiated reviews, internal audits and quality assurance reviews. In particular, the newly formed Detention Assurance Team will provide proactive, ongoing assurance for Regional Processing Centre functions. The operation of the Detention Assurance Team

does not preclude specific independent reviews from being commissioned, where it is warranted in the circumstances.

## The Detention Assurance Team

On 10 November 2014, the Secretary of the Department established a 'Detention Assurance' function, subsequently announced by the Minister for Immigration and Border Protection on 11 November 2014. On 1 December 2014, the Detention Assurance function was embedded in the Risk and Assurance Branch as a discrete and independent Detention Assurance Team within the Portfolio Integrity, Security and Assurance Division. The Detention Assurance function was specifically set up in this division to ensure independence and objectivity from the operational areas that sit within the Immigration Status Resolution Group.

This structure improves accountability and transparency and provides a tool for generating recommendations around business process improvements. The Detention Assurance Team also allows for a more holistic view of detention and regional processing across the spectrum. The team works under an established Terms of Reference that focuses on assurance around the management and performance of immigration detention as well as regional processing support and provides advice direct to the Secretary of the Department.

The Detention Assurance Team works with key stakeholders to improve immigration detention processes and regional processing facilities, including undertaking reviews into allegations or incidents, monitoring recommendations to improve to detention related practices, managing contracts, reviewing detention practices and recommending strategies for improvement. The Detention Assurance Team has already completed a number of internal incident reviews and will lead the implementation of the recommendations coming from the Moss review.

The establishment of the Detention Assurance Team provides strengthened assurance of the integrity and management of immigration detention services and the management of contracts in regional processing centres. This is part of the Department's ongoing commitment to continuously monitor and improve the management of immigration detention in Australia and in assisting our regional partners in Nauru and Papua New Guinea.

## Conclusion

While the Department, in partnership with the Nauru Government and in consultation with stakeholders, has made significant improvements to the delivery of services at the Regional Processing Centre in Nauru, we remain committed and open to further opportunities to improve, and remain open to scrutiny. The proactive efforts made by the Department to commission and implement recommendations of independent reviews as well as those of external scrutiny bodies is indicative of the commitment to enhancing and improving upon the work that we do.

We look forward to any recommendations of the Select Committee that will assist us in strengthening the delivery of outcomes by the Department and its contracted service providers with respect the Regional Processing Centre in Nauru.

## Annexure A - Establishment of the Nauru Regional Processing Centre

In the first seven months of 2012 alone, 7,120 illegal maritime arrivals arrived in Australia. This exceeded the total number of arrivals in 2011 and 2010. The table at Attachment I provides the number of illegal maritime arrivals who arrived in Australia by month during in the period 1 January 2009 to 31 March 2014.

On 28 June 2012, then Prime Minister, the Hon Julia Gillard MP, and then Minister for Immigration and Citizenship, the Hon Chris Bowen MP, announced that the Government had invited an Expert Panel to provide a report on the best way forward for Australia to prevent asylum seekers risking their lives at sea on dangerous boat journeys to Australia.

Members of the Expert Panel were Air Chief Marshal Angus Houston AC AFC (Ret'd), Paris Aristotle AM, Director of the Victorian Foundation for Survivors of Torture Inc. (also known as Foundation House) and Professor Michael L'Estrange AO, Director of the National Security College at the Australian National University.

The full report (at Attachment J) was released on 13 August 2012, making 22 recommendations and four sub-recommendations. The recommendations sought to encourage asylum seekers to use regular pathways through the region rather than undertaking a dangerous boat journey to Australia. The two recommendations relevant to this submission are as follows:

### *Recommendation 7*

*The Panel recommends that legislation to support the transfer of people to regional processing arrangements be introduced to the Australian Parliament as a matter of urgency. This legislation should require that any future designation of a country as an appropriate place for processing be achieved through a further legislative instrument that would give the opportunity for the Australian Parliament to allow or disallow the instrument.*

### *Recommendation 8*

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

In response to the report, the Australian Government announced the implementation of a regional arrangement for the processing of 'irregular maritime arrivals' (as was the terminology at the time) who arrived in Australia on or after 13 August 2012, with implementation to be undertaken by the then Department of Immigration and Citizenship in conjunction with regional partners. The transcript of the Australian Government's announcement is at Attachment K.



## Location and Infrastructure

Nauru is a small island nation in the South Pacific. The population of Nauru as at July 2011 was 9,378. Nauru uses the Australian dollar as its official currency and in most cases, works as a cash economy.

Nauru previously hosted regional processing facilities for Australia between September 2001 and February 2008. The facilities were re-purposed by the Nauru government following the closure of the Regional Processing Centre in February 2008.

In August 2012, following the Australian Government's announcement of the implementation of Recommendation 8 of the Report by the Expert Panel on Asylum Seekers, Departmental officials visited the former regional processing centre sites at 'State House' and 'Topside' in Nauru. They noted that the 'State House' site was being utilised by the Government of Nauru in a number of ways, including accommodating a primary school, a women's refuge and administration offices for the Nauru Rehabilitation Corporation. As such, it was unavailable for use as a Regional Processing Centre.

The site known as 'Topside' was identified by the Nauruan Government as available for use, with landowners agreeing to lease the land to the Government of Nauru, for sublease to the Commonwealth of Australia for construction and operation of the Regional Processing Centre.

Once Topside was identified and secured, in an effort to ensure that transfers to Nauru could begin with as little delay as possible, the Australian Defence Force mobilised to refurbish existing structures, many of which had been stripped of plumbing and electrical services, and in some cases floors. In addition, the Australian Defence Force installed additional basic infrastructure, including tents for accommodation, a field kitchen, medical facility, ablutions and recreational areas as well as making arrangements to access utilities. They also supplied stretchers, blankets and mosquito nets. The facilities installed by the Australian Defence Force were progressively removed or improved as more permanent facilities were installed. A map of Nauru indicating the location of main infrastructure is at Attachment L.

The first transferees arrived in Nauru under the MOU on 14 September 2012. The group was made up of 20 single adult males. The table at Attachment M shows the population (and cohort) movements over the period 14 September 2012 to 31 March 2015. Transfers of asylum seekers took place regularly from that date, taking into account the availability of accommodation (for both transferees and staff), and supporting infrastructure and services, including kitchens, ablutions and water.

Installation of permanent modular accommodation, administration, recreation, medical and kitchen facilities began at Topside on 14 December 2012. The first accommodation building providing 100 beds was completed on 28 January 2013.

On 19 July 2013, the then Prime Minister, the Hon Kevin Rudd MP, announced a change in processing arrangements for 'irregular maritime arrivals' arriving on or after 19 July 2013 to be transferred to Regional Processing Centre for processing, with no ability to subsequently apply for settlement in Australia. On 3 August 2013, an MOU between the Commonwealth and the Government of Nauru was signed expanding on the previous arrangements to include settlement of transferees in Nauru. This superseded the previous MOU.



Also on 19 July 2013, a major disturbance took place at the Nauru Regional Processing Centre, resulting in damage to or the destruction of most buildings and other infrastructure at the site. It should be noted that no link between the announcement of policy change on 19 July 2013 has been established.

The Nauru Regional Processing Centre comprises three sites.

### Regional Processing Centre One (RPC1)

Following the destruction of buildings and other infrastructure at RPC1 (previously known as Topside) on 19 July 2013, transferees were relocated from the RPC1 site to a separate site known as RPC2.

The site at RPC1 was cleared and the process to rebuild commenced. RPC 1 is currently used to accommodate up to 850 staff and service providers in permanent modular accommodation. The site also provides for staff administration, catering facilities and a warehouse.

RPC1 is also used by transferees as it includes interview rooms, a medical building, a synthetic playing field (soccer), and an education facility providing curriculum-based education services to school-aged children. RPC1 also includes a managed accommodation area for high-risk transferees.

### Regional Processing Centre Two (RPC2)

Immediately following the disturbance on 19 July 2013, temporary facilities were erected at the RPC2 site, utilising the tents that had been dismantled and stored following construction of RPC1. These tents provided accommodation and recreational areas for transferees. Transfers were paused to allow for the erection the facilities and settling of the tensions following the disturbance. Once transfers resumed, there was a requirement to separate cohorts affected by different policies.

Over time, the facilities at RPC2 have been expanded and improved. RPC2 currently provides accommodation for single adult males in 10m x 12m vinyl marquees, in three separate compounds. Each accommodation marquee has capacity capped at 22 in dormitory style living arrangements.

The site also provides for staff administration, a medical facility, large dining area, multi-use recreational facilities such as multi-faith rooms, telecommunications, education spaces, a gymnasium and volleyball areas.

RPC2 is self-sufficient in water storage, power and sewerage treatment.

### Regional Processing Centre Three (RPC3)

A number of factors led to the establishment of the current RPC3 site. Originally, the intention was to establish a capability to accommodate illegal maritime arrival families and other vulnerable groups on the current RPC2 site. However, protracted negotiations relating to the RPC2 site, combined with the events of 19 July 2013, resulted in the RPC2 site being utilised to accommodate single adult males.

RPC3 provides accommodation in 10m x 12m vinyl marquees, in six separate accommodation compounds. This site is currently occupied by families and single adult females. Each accommodation marquee is segregated by vinyl walls to enable privacy for each family group. Families with children under four years of age are accommodated in air conditioned marquees.

There are currently no unaccompanied minors housed with the Nauru Regional Processing Centre. Should any future unaccompanied minor transferees require accommodation, they will be placed in air conditioned accommodation at RPC3.

The site also provides for staff administration, a medical facility, large dining area, children's playground and multi-use recreation facilities including multi-faith rooms, telecommunications, education spaces, gymnasium and synthetic playing field (soccer).

RPC3 is self-sufficient in water storage, power and sewerage treatment.

## Other infrastructure works in Nauru

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

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

The Department funded minor upgrades to Ward 4 and the dental area at the Nauru hospital to ensure these facilities are serviceable to transferees and refugees who require medical care at the hospital. The repairs to Ward 4 included painting, fly screen replacement, refurbishment of the toilet and shower area, new ceiling fans and gutter repairs. The repairs to the dental area included replacement of a mouldy ceiling, painting and new air-conditioning.

## Procurement of Services

Initial discussion regarding service provision was held between the Department and the International Organization for Migration (IOM), which had assisted with the running of the previous processing centres during the period 2001 to 2008. Given Nauru's experience with IOM and its status as a member state of IOM, the Government of Nauru held a preference for the engagement of IOM to provide services. However, after extended discussion, IOM indicated that it would not be willing to enter into a contract for the provision of services.

Given this, the Department and the Government of Nauru looked to identify alternative providers with the required expertise, experience and capacity to provide services within a short timeframe. This included assessing the capacity of existing providers, reviewing existing government panels for similar services and considering approaches and offers that had been made to the Department following the August 2012 announcement. All processes for procurement of these services were conducted in line with the Commonwealth Procurement Rules.

As a result, the Department, as agreed with the Government of Nauru, initially contracted the following providers in relation to the Nauru Regional Processing Centre:

- Transfield Services for operational and maintenance services.
- The Salvation Army (New South Wales) for client welfare and engagement services.
- IHMS for health services for transferees and staff.

The procurement of services was initially planned with the expectation that the centre would operate under 'open centre' arrangements as community living institutions with minimal security requirements. This would allow for transferees to come and go from the facilities and engage with local communities. It was envisaged that this would encourage good relationships between transferees and local communities and may even lead to the employment of transferees within local communities.

The service delivery model evolved throughout the period 13 August to 14 September 2012 as the Government of Nauru planned and drafted the legislation that would allow for the provision of visas and processing of transferees.

At the time of the first transfers, through to 25 February 2015, the centre operated as a closed facility, with all movement of transferees outside of the centre being escorted. Open Centre arrangements were introduced on 25 February 2015 for certain cohorts and have been incrementally expanded to include all eligible asylum seekers.

## Confidentiality agreements in contracts

The Department, as standard commercial practice, includes confidentiality requirements in its contractual arrangements, including those for consulting, IT, infrastructure and services type outputs including for whole of government panels and multi-use lists. The confidentiality requirements are intended to provide contractual rights and protection to both the Department and its contractors.

The Department's confidential information is typically limited to information that is explicitly identified in the contractual arrangement or, if not, information that is capable of being protected in law or equity as confidential. The contractor's confidential information, on the other hand, is limited to information that satisfies Commonwealth government policy about confidential information as set out in the Department of Finance's Confidentiality Test.

All potential contractors have the opportunity to review, negotiate and refine the confidentiality requirements, and request that certain information is treated as confidential information, prior to entering into contractual arrangements with the Department.

The Department also includes privacy requirements in its contractual arrangements, which ensures that contractors understand, and comply with, their obligations as set out in the *Privacy Act 1988* (Cth) and Australian Privacy Principles.

In the case of services contracts for regional processing centres, for example, the privacy requirements are intended to protect the privacy of individual transferees and refugees as well as their families and friends who remain in source or transit countries who may find

themselves in danger should the identity of a transferee be inappropriately disclosed. It also reduces the amount of information in the public domain potentially available for use by people smugglers in collecting debts or manipulation of information to try sell their business to potential illegal immigrants.

## Annexure B - Governance Forums

### Joint Ministerial Forum

The Governments of Australia and Nauru established the Australia-Nauru Joint Ministerial Forum in April 2014. The Joint Ministerial Forum is held regularly to oversee the implementation of the regional partnership between Australia and Nauru. The purpose of the forum is to provide regular updates on the delivery of projects in Nauru.

The Joint Ministerial Forum is co-chaired by the Government of Nauru Minister for Justice and Border Control and the Australian Minister for Immigration and Border Protection. The Government of Australia is represented by the Australian High Commissioner, Commander Operations Sovereign Borders Joint Agency Task Force, ministerial advisors and senior officers from the Department of Foreign Affairs and Trade and the Department of Immigration and Border Protection. The Government of Nauru is represented by the Secretary for Justice, the Operational Managers, Settlement Manager and senior government officials.

### Joint Advisory Committee

An interim Joint Advisory Committee was established to provide immediate advice to the Governments of Australia and Nauru, and to inform the scope, role, membership and establishment of the permanent Joint Advisory Committee. At the interim Joint Advisory Committee meeting of 13 December 2013, members agreed that the status of the committee become permanent and commence meeting regularly from March 2014. The Nauru Joint Advisory Committee convenes on a regular basis to discuss a range of topics relating to the implementation and operation of the regional processing centre. The terms of reference are at Attachment N.

Membership of the Joint Advisory Committee includes representatives from the Nauruan and Australian Governments, subject matter experts drawn from the Minister's Council on Asylum Seekers and Detention and a representative of the IOM. The Deputy Commonwealth Ombudsman and the UNHCR Regional Manager attend as observers.

There are three subcommittees that meet quarterly:

- The Refugee Status Determination and Claims Assistance Subcommittee.
- The Unaccompanied Minors and Families Subcommittee.
- The Physical and Mental Health Subcommittee.

### Nauru Joint Working Group

The Nauru Joint Working Group meets weekly to discuss Regional Processing Centre matters including construction, general updates on regional processing issues, visas, legal challenges, staffing statistics and training, activities for transferees/refugees, and events occurring inside and outside the centre.

The Joint Working Group is chaired by the Government of Nauru (the Minister for Justice and Border Control, or the Secretary for Justice). The Australian Government is represented

by the Australian High Commissioner and Departmental officers. Service provider Operational Managers also attend.

## Nauru Settlement Working Group

The Nauru Settlement Working Group, formerly known as the Community Consultative Committee, meets fortnightly and provides a forum for open communication between the Government of Nauru and the Government of Australia in relation to potential impacts on the Nauruan community resulting from refugee settlement. In consultation with other stakeholders, the Nauru Settlement Working Group:

- provides oversight and direction for community consultation activities
- determines the best means of engagement and delivering consistent messaging to the Nauruan community
- develops strategies/solutions to address emerging issues and/or community concerns
- considers community feedback, operational matters and associated risks as part of decision making processes
- monitors outcomes, emerging issues and risks and revise strategies if necessary
- reports progress, seeks advice and escalates unresolved issues to the Joint Working Group.

The Nauru Settlement Working Group is chaired by the Government of Nauru (usually the Minister for Justice and Border Control, the Secretary for Justice or the Solicitor General or, should none of those be available, a senior member of the Government of Nauru Settlement Team). The Australian Government is represented by officers from the High Commission and the Department. Settlement service provider managers also attend.

## Annexure C - Provision of services to transferees

### Garrison and Welfare

The Commonwealth has a contract with Transfield Services Australia for the provision of garrison services at the Nauru Regional Processing Centre. Services provided by Transfield Services include security, logistical support, procurement, catering, cleaning, maintenance and transport. Transfield Services also provides welfare services to single adult males accommodated in RPC2.

The Department has a contract with Save the Children Australia to provide specialised services for children, including unaccompanied minors at the Nauru Regional Processing Centre, and to provide welfare services to family groups and single adult females accommodated in RPC3.

The performance framework currently in place in both contracts requires “...a collaborative approach between the Department and the Service Provider. The performance assessment process is risk based, and focuses primarily on performance against the responsibilities of the Service Provider as described in the Statement of Work. Successful performance by the Service Provider is expected to be achieved through quality service delivery, addressing identified risks and providing the Department with evidence of performance.”

Both contracts expire on 31 October 2015 and a tender for future service delivery is underway.

Welfare services were previously provided by The Salvation Army. In seeking efficiencies at the Regional Processing Centre, the Department consolidated the delivery of welfare services for single adult males under one contract with garrison services. Welfare services were transitioned from The Salvation Army to Transfield Services on 21 February 2014 at RPC2 and from The Salvation Army to Save the Children at RPC3 on 22 February 2014.

A range of educational and recreational activities are available to all transferees at the Regional Processing Centre to support their physical and mental wellbeing including learning numeracy, English, history, art, and vocabulary, and participating in walking groups, sporting activity and watching movies.

Culturally identified festivals and special days are catered for within the Regional Processing Centre. The service providers work closely with local communities and transferees to develop activities for transferees, including movie nights, classes, sports, games and excursions. Excursions and visits outside the centre can be accessed by all transferees who have met Nauru customs clearance processes. Transferees have equitable access to internet and international dial telephones within the Regional Processing Centre.

On 25 February 2015, Open Centre arrangements were introduced at the Nauru Regional Processing Centre. Implementation has been undertaken incrementally, with all eligible transferees now able to access the arrangements. Shuttle bus transport for transferees to move around Nauru is provided through Transfield Services.



## Education services for Children

A curriculum based education programme for school-aged transferee children is delivered by Save the Children Australia, utilising expatriate teachers qualified to Australian standards. All children have educational goals tailored to their needs taking into account schooling background, level achieved and English language skills. A comprehensive after school and weekend schedule engages students in a variety of activities including arts, crafts, social interaction, sport, music and family group activities.

The Governments of Nauru and Australia have shared a commitment to the integration of all transferee and refugee children into the local Nauruan education system, which is planned to occur during term two, 2015. The Department has engaged with the Queensland Catholic Education Commission and Brisbane Catholic Education to design and deliver, in close consultation with the Nauru Department of Education, a series of administrative and pedagogical supports to the Nauruan education system to assist with the integration of the transferee and refugee children. These supports complement arrangements already in place to build the skills of local teachers and will directly benefit all school children in Nauru, locals, transferees and refugees alike.

## Health and Medical Services

Health services for transferees are provided through IHMS. The current IHMS contract for the provision of health services to transferees expires on 31 October 2015.

Transferees at the Nauru Regional Processing Centre have access to clinically recommended care that is broadly comparable with health services available within the Australian community. As with many remote communities within Australia, everyday services are supplemented by visiting health practitioners and a tele-health service.

General practitioner, nursing and mental health care clinics are open at the Nauru Regional Processing Centre seven days per week. There is also after-hours medical staffing to respond to medical emergencies. IHMS staffing levels at the Regional Processing Centre are adjusted as required for the number of transferees, taking into account the health needs of the cohort.

Where health services for a serious health condition are not available in Nauru through the IHMS or Nauru hospital, visiting specialists and tele-health, the person will be transferred to Australia to access treatment, along with family members, where appropriate. When the transferee is medically fit, they will be returned to the Regional Processing Centre.

Similar to garrison and welfare services, the performance framework currently in place in the contract requires “...a collaborative approach between the Department and the Health Services Manager. The performance assessment process is risk based, and focuses primarily on performance against the responsibilities of the Health Services Manager as described in the Statement of Work (Schedule 2). Successful performance by the Health Services Manager is expected to be achieved through quality service delivery, addressing identified risks and providing the Department with evidence of performance.”



## Mental Health

Mental health screening is provided by IHMS mental health clinicians at the Regional Processing Centre at regular fixed points and on an ad-hoc basis. Screening can be conducted at any time when 'triggered', for example, when concerns are raised about a person's mental health by any party, including through transferee self-referral.

## Perinatal and Child Health Services

Primary care for pregnant transferees and children is provided by IHMS medical professionals with support from the Nauru hospital.

As agreed with Nauru, pregnant transferees are currently moved to Australia before 28 weeks gestation, to give birth, and are cared for in-line with Australian community standards. Once clinically assessed as fit to travel, transferees and their babies are to be transferred back to Nauru. IHMS monitors the growth and development of children at the Regional Processing Centre and treats any health issues that arise.

A range of visiting specialists including a child and adolescent psychiatrist, a paediatrician, obstetricians and sonographers attend the Nauru Regional Processing Centre on a regular basis. These services are supplemented by a tele-health service.

## Birthing Capability on Nauru

The services and equipment that are required to allow pregnant women to deliver babies on Nauru are in place, with the exception of ongoing Nauru hospital obstetric and paediatric staff.

IHMS has recommended that pregnant transferees not give birth on Nauru until an ongoing obstetrician and paediatrician are available at the hospital.

Pending confirmation of suitable obstetric and paediatric arrangements by the Nauru hospital, pregnant transferees will continue to be transferred to Australia to give birth.

## Annexure D - Regional Processing Centre Guidelines

Each of the service provider contracts provides the foundation of responsibilities for each of the service providers. The contracts are supplemented by guidelines, developed by the Department in consultation with service providers, as agreed by the Government of Nauru. Service providers may also develop their own internal guidelines and practices to inform their staff. The objective of the guidelines is to ensure a shared understanding of roles and responsibilities and an integrated, efficient and effective level of service delivery to support the Government of Nauru to deliver regional resettlement outcomes.

### Operating Philosophy

The philosophy underpinning the operating environment and delivery of services at the Regional Processing Centre seeks to ensure that every individual is treated with dignity, equality, respect and fairness. The service providers facilitate a positive, safe and healthy environment by providing services to maintain the physical, emotional, social and spiritual wellbeing of transferees.

Transferees are expected to treat all others with dignity, respect, equality and fairness. Service providers also promote social interaction between the transferees, service provider personnel and visitors.

Services are to be managed cooperatively by the service providers ensuring an integrated, efficient and effective level of service delivery that targets the individual management of transferees.

Service providers have primary responsibility for day-to-day interaction with the transferees. For each transferee, the service provider will need to be fully aware of their health and security status and be proactive in managing needs.

In delivering regional processing services, service providers are guided by the following philosophy:

- the Regional Processing Centre arrangements are a component of Australia's strong border control
- transferees may consist of all cohorts that being single adult males, unaccompanied minors, families, children and single females
- the length and conditions of transfer, including the appropriateness of both the accommodation and the services provided, will be subject to regular review
- Regional Processing Centres will only be used for the shortest practicable time, but are not time limited
- transferees at the Regional Processing Centre will be treated fairly and reasonably
- conditions at the Regional Processing Centre will ensure the inherent dignity of the person.

In delivering regional processing services, service providers must not act in a manner contrary to the safety of transferees, staff and community, or the domestic laws of Nauru.

## Interaction with Transferees

The Operational Manager is responsible for ensuring that each person residing at the centre is treated in a fair and humane manner. In administering the contracts for service provision on behalf of the Government of Nauru, the Department requires each service provider to ensure all staff read, sign, and understand a Code of Conduct before they commence duty at the Regional Processing Centre. Senior service provider staff members are responsible for ensuring that all staff members apply these standards during interactions with transferees in the Regional Processing Centre. A copy of the Code of Conduct is at Attachment O.

Service provider management must ensure all staff members have completed initial training, incorporating cultural awareness and mental health awareness, before commencing duty and complete refresher training at the appropriate time(s).

Service provider staff must clearly identify themselves when communicating with transferees and other stakeholders. Service provider staff must also wear a name badge or other form of identification.

## Promoting positive interactions

Service providers promote positive interaction and encourage transferees to achieve greater independence and self-sufficiency through the delivery of services including case management and programmes and activities.

Examples of formal positive interactions with transferees include:

- the transferee/asylum seeker consultative committee provides a forum for consultation, awareness-raising and confidence-building, and to facilitate mutual understanding and trust
- establishment of the 'club' which is a small group based therapeutic approach to promoting self-agency and interaction between participants which is led by IHMS
- specially trained behavioural management personnel who provide an additional level of support to transferees identified as having behavioural difficulties
- one-on-one and family case management services
- targeted and flexible programmes and activities catering to a variety of cohorts including gender specific youth activities such as the girls club.

Service provider staff must ensure that all interactions with transferees promote well-being and are sensitive to the circumstances and culture of each transferee. In addition, service provider staff are required to ensure that transferees are regularly informed and provided with information and documentation in a language understood by the transferee.

## Behaviour of service provider staff

All individuals on Nauru are bound by Nauruan law. In addition, employees must demonstrate the values of integrity, honesty and fairness in their decisions, actions and behaviour. All service provider staff must maintain professionalism in all dealings with transferees and remain aware of the limits or boundaries of their relationships. Economic, personal or sexual relationships between service provider staff and transferees are unacceptable. This applies to both current and former transferees. It is the Operational Manager and the Department's expectation that relationships between staff and transferees are clearly defined to service provider staff through staff training and induction to their roles at the Regional Processing Centre.

Members of staff or employees may not make any unauthorised communication to any person, including any representative of the media, concerning knowledge they have acquired in the course of their duties at the Regional Processing Centre. In addition, no member of staff or employee may publish any material or make any public statement relating to the Regional Processing Centre without authorisation. To do so may constitute an unauthorised disclosure of material under the *Crimes Act 1914* (Cth).

## Feedback and Complaints Management

The service providers must provide transferees in their care access to a complaints management procedure whereby issues of concern can be resolved effectively, fairly and efficiently within procedural timeframes. Complaints made by transferees are delegated to the relevant service provider or local Nauruan authority as appropriate.

During the process of induction following arrival at the Regional Processing Centre, transferees receive an 'Induction handbook' (in a language they understand) which includes the complaints management procedure.

Copies of the complaints management procedure and complaint forms are available throughout the Regional Processing Centre. There is also an easily accessible complaint box in which they can place any confidential complaints.

The importance of the complaints management process is highlighted in the Regional Processing Centre Feedback and Complaints Guideline:

*The complaints management procedure is instrumental in fostering good staff/transferee communications by reducing tensions and reassuring transferees that their welfare is of high priority.*

*The complaints management procedure will be a contributory factor in highlighting and improving the RPC's operation. It is important therefore, that the confidentiality and integrity of the complaints management procedure is upheld at all times.*

*It must be clearly understood that no transferee will be prevented from making any complaint or complaints to any other agency including [the Department], the Red Cross or the UNHCR.*

## Reception and Induction

The provision of general assistance and support to transferees commences at reception and induction. The process explains to transferees how the Regional Processing Centre operates and aims to alleviate their concerns and stress.

The appropriate welfare service provider, Transfield Services in RPC2 and Save the Children in RPC3, is responsible for allocating support staff and care workers to each new transferee, as well as ensuring that a personal file is created for each new transferee on arrival.

Key service provider staff must ensure that the initial briefing to new transferees includes the following information:

- a description of domestic routines, facilities and services that are available
- the rights and responsibilities of transferees, including the facility rules
- the roles and responsibilities of service provider staff
- how to communicate with service provider staff, including access to translators and interpreters
- how to request information from the service provider
- how to access visa application forms and statutory declarations
- how to access legal advice or contact diplomatic or consular representatives
- how to submit requests and complaints and provide effective feedback
- access to Non-Government Organisations
- information on transferee committees and how to be involved
- photographs of key service provider staff
- details about illegal, excluded and controlled items
- details about services and amenities such as self-catering, health services and the individual allowance program
- other relevant information as determined by key service provider staff.

After the induction briefing, key service provider staff must:

- provide an induction booklet for each transferee in a language they understand
- ensure that each transferee has received, understood, and signed a copy of the transferee rights and responsibilities
- ensure that each transferee has received, understood, and signed a copy of the induction confirmation form.

The service provider, Transfield Services for RPC2 and Save the Children for RPC3, must assign a staff member to conduct a check of the processes within one working week of the completion of induction.

### Individual transferee support

An individual support plan is central to promoting the welfare of transferees as individuals, and as a group, and provides continuity of care while in the Nauru Regional Processing Centre. The plans assist the Operational Manager to fulfil their obligations to transferees in the centre. Support plans are dynamic and subject to continual update and improvement, and includes input from the transferee and staff from all service providers who interact with transferees.

### Behaviour Management Plan

The Government of Nauru, the Department and service providers recognise that transferees may experience various emotions whilst in the centre. Service providers must work collaboratively to address and support transferees through this period. Fundamental to this are service provider's abilities to offer an environment sensitive to the needs of the individual, whilst recognising that there must be standards of behaviour that apply to all who live, work or visit the facilities.

Transferees in a Regional Processing Centre may sometimes behave in a manner that does not support good order and may take part in activities which threatens, harms or effects good order, or has the potential to do so. In supporting the Operational Manager, it is the responsibility of all service provider staff to report and accurately record all instances when a transferee's behaviour is such that it threatens or undermines the good order of the centre.

Behaviour likely to threaten or undermine the good order of the centre includes but is not limited to any form of violence toward transferees, staff or visitors, wilful damage, and the misuse of drugs.

A Behaviour Management Plan must be developed to address such transferee behaviour.

### Development of a Behaviour Management Plan

All service providers are responsible for the creation of an appropriate Behaviour Management Plan, which takes into account the individual support plan, current individual security risk assessment, psychological support programme plan, and health advice. The lead coordinator service provider will have overall responsibility with each respective service provider contributing its particular area of responsibility and expertise.

When developing a Behaviour Management Plan, service provider staff must be cognisant of any issues that may have influenced or encouraged the negative behaviour by the transferee. All feedback from stakeholders should be included in the Behaviour Management Plan, where appropriate and applicable.

## Review of Behaviour Management Plans

The Behaviour Management Plan must be reviewed at the Complex Behaviour Management Committee, attended by the responsible service provider officer. The purpose of the review of the Behaviour Management Plan is to identify issues which prevent the transferee from meeting the agreed milestones, ensure the transferee is compliant in attending the agreed schedule of activities if applicable, take into account any issues that were not apparent when first developing the Behaviour Management Plan.

The consequences for behaviour of the type being addressed might result in one or all of the following: loss of access to amenities, removal to alternative accommodation, referral to the Nauru Police Force.

## Incident Reporting

Incidents are categorised as either Critical, Major or Minor. A copy of the incident category definitions is provided at Attachment F. The category of the incident prescribes the timeframe for both verbal and written reporting to the Department and the Government of Nauru Operational Manager.

The service provider staff member first discovering or observing the incident will complete and submit a report to the relevant manager. This is to be done within the incident reporting timeframes.

The receiving manager will collect all other relevant documentation, such as service provider's reports (from any service provider on site) and the health services manager report (if applicable); and ensure that appropriate entries are made in the nominated information technology system. A written report must be provided following the post incident debrief, in accordance with contract requirements.

Given an incident may continue for an extended period of time, it is required that incident reporting continues for the duration of the incident. All further escalation or de-escalation of the incident must be detailed in the incident report.



## Annexure E - Transfers

### Transfers to Nauru

Transfers to Nauru began on 13 September 2012 (arrival at the Regional Processing Centre on 14 September 2012) under the MOU dated 29 August 2012. Transfers of asylum seekers took place regularly from that date, taking into account the availability of accommodation (for both transferees and staff), and supporting infrastructure and services. The initial transfers to Nauru were single adult males. The first group of transferee families arrived at the Nauru Regional Processing Centre on 21 August 2013. This group was made up of 14 adults and 12 children aged between five and 15 years of age.

On 3 August 2013, a new MOU was signed expanding on the previous arrangements to include settlement of transferees in Nauru, which superseded the previous MOU.

The Department takes advice regarding a person's medical suitability to be transferred to a Regional Processing Centre from IHMS.

In November 2013, IHMS provided confirmation that appropriate primary care was available for children four months and over. Prior to this, IHMS had recommended that children under the age of four not be transferred. The first child under four years of age was transferred on 13 February 2014 as part of a family group.

IHMS has since recommended that babies can be transferred to Nauru once they have reached three months of age, and if they do not have any significant health issues which cannot be managed at Nauru Regional Processing Centre. To date, 293 children have been transferred to Nauru as part of family groups.

On 14 February 2014, the Department transferred the first unaccompanied minors to the Nauru Regional Processing Centre. Since then, there have been a further three transfers of unaccompanied minors to the Nauru Regional Processing Centre.

Prior to 14 February 2014, the Department did not knowingly transfer unaccompanied minors to Nauru. However, there were some instances where transferees, who had previously been identified or claimed that they were adults, later claimed to be minors. These transferees were consequently transferred back to Australia.

Prior to being transferred, illegal maritime arrivals undergo a range of activities that support safe and secure transfer. The Department has formulated guidelines for assessment of persons prior to transfer pursuant to section 198AD(2) of the *Migration Act 1958* (Cth). The Department takes these matters seriously and does not compromise on completing precursor requirements prior to transfer. These include:

- Health Induction Assessment to determine immediate health needs, confirm fitness to travel and address the public health requirements of the Government Nauru. Detainees who are not medically fit to fly may be subject to transfer at a later time.
- Identity and security processing to identify risks to the safety and security of staff, transferees, facilities and aircraft.

- Pre-Transfer Assessment to determine if it is reasonably practicable to take individual detainees to a Regional Processing Country.

Blood tests and any other pathology test results, as applicable, are generally available within three to six days and are provided directly to IHMS staff at the Regional Processing Centre where necessary to inform ongoing treatment.

Where these results subsequently reveal the presence of a blood borne virus such as HIV, Hepatitis B or C, transferees are managed in accordance with appropriate clinical practice and may be returned to Australia.

The Department's Chief Medical Officer has confirmed that with the other elements of the health induction assessment, such as x-rays, nurse observations and general practitioner assessments, there is no additional public health risk from illegal maritime arrivals being transferred before blood test and other pathology results are finalised.

On commencement of Operation Sovereign Borders on 18 September 2013, the Department implemented a rapid transfer process, which ensured the transfer of illegal maritime arrivals to a Regional Processing Centre as soon as possible after arrival at the port of entry in Australia. This model continues to operate.

Since December 2013, transfers to Regional Processing Centre have occurred, with transferee passenger cohorts comprising post-19 July 2013 illegal maritime arrivals and pre-8 September 2013 illegal maritime arrivals that were not eligible to be transferred immediately after their arrival for medical, policy or other operational reasons.

Transfers to the Nauru Regional Processing Centre were suspended on 25 September 2014 when the former Minister introduced to the Parliament the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014*. On 5 December 2014, the Parliament of Australia passed the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014*. The former Minister announced that, among other things, people who arrived illegally by boat before 1 January 2014 and who have not been transferred to a Regional Processing Country would not be transferred to a Regional Processing Centre.

Departmental staff, the detention service provider (Serco) and the Australian Federal Police have all been involved on Christmas Island and Darwin in the transfer process.

Illegal maritime arrivals are advised that they will be transferred prior to the transfer taking place. They are provided general information about Nauru as well as being advised:

- the reason for the transfer
- that refugee claims will be processed under Nauruan law
- their options should they not wish to stay in Nauru
- where they will live while claims are processed
- how they will get to Nauru

- the services available at the Regional Processing Centre.

## Transfers from Nauru

Transfers from Nauru have included:

- transferees who have requested a voluntary return to a place where they have right of residence
- transfers for health reasons
- individuals who were subject to regional processing but not subject to regional settlement (post-13 August 2012 and pre-19 July 2013 arrivals) who have been transferred from Nauru to Australia.

The IOM provides return services to those non-citizens who want to voluntarily return to their home country from the Regional Processing Centre, but require assistance to do so.

Between 12 September 2012 and 31 March 2015, 132 transferees on Nauru have voluntarily returned to their home of country:

- Seventy-one departed directly from Nauru with the assistance of the IOM (including 24 under the rapid departure assistance programme)
- Two departed directly from Nauru with the assistance of the Department under the voluntary departure assistance programme
- Fifty-nine departed Nauru via Australia with the assistance of the Department and IOM.

On 30 May 2014, the rapid departure assistance service was implemented at regional processing centres. The service is only available to transferees who wish to return voluntarily from a Regional Processing Centre and is an element of existing voluntary return products offered by the IOM. Currently, IOM has case workers located at regional processing centres that manage and deliver returns assistance to transferees.

Rapid departure assistance packages are structured on a country-specific basis to ensure that the assistance provided adequately supports income generating, employment or educational activities for the transferee and their families in the country-of-return. These packages are provided as in-kind assistance and are payable on a per person basis for each returnee aged 18 or over. The in-kind assistance is increased by 20 per cent of a single adult rapid departure assistance package for each dependent child who is under 18 years old.

The total amount of available assistance is calculated in accordance with Gross Domestic Product per capita in the country-of-return.

On 11 July 2014, the Department, as part of the existing returns services programme, introduced the voluntary departure assistance service. This service facilitates departure from regional processing centres for those transferees who wish to return home but where IOM is unable to assist due to an absence of personnel or services in the country of return.

Voluntary departure assistance provides initial assistance to facilitate departure to these countries.

The difference in assistance between IOM-facilitated departures and non-IOM facilitated departures is due to the absence of IOM staff and services in the country of return to provide in-kind assistance.

IHMS delivers onsite emergency primary and mental health care to transferees at the Nauru Regional Processing Centre, and also organises the provision of specialist, allied and acute care. Some of these services are available at the Nauru hospital, and IHMS supplements available services, if required, through tele-health facilities and organising visiting practitioners.

Where health services for a serious health condition are not available at the Nauru Regional Processing Centre, the person will be transferred to Australia to access the treatment, along with nuclear family members. In such cases, IHMS provides a recommendation to the Department regarding transfer of the individual. Transfer recommendations are subject to the approval of the First Assistant Secretary, Infrastructure and Services Division, after consideration of the clinical recommendation. On occasion, the advice of the Department's Chief Medical Officer will be sought and IHMS may be asked to provide further advice regarding options for managing the condition. To date, no recommendations have been refused.

When the transferee is medically fit, they will be returned to the Regional Processing Centre.

Pregnant transferees are currently moved to Australia before 28 weeks gestation, to give birth, and are cared for in-line with Australian community standards. Once clinically assessed as fit to travel, it is expected that transferees and their babies will be transferred back to Nauru.

Transfers have also taken place due to policy changes. Following the 19 July 2013 announcement regarding regional settlement, a number of transferees that arrived in Australia prior to 19 July 2013 were transferred back to Australia. Due to outstanding charges to be heard by the Nauru court or sentences to be completed, the transfer of a number of transferees from Nauru to Australia was not completed until April 2015. At the time of preparing this submission, none of the transferees on Nauru arrived in Australia prior to 19 July 2013.

## Annexure F - Refugee status determination

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

The Nauru refugee status determination process determines whether an asylum seeker meets the criteria of a refugee, as defined in the Nauruan *Refugees Convention Act 2012* (Nr) which adopts the definition of the Refugees Convention. Under that Act, the Secretary for Justice is empowered to make the determination. To facilitate this, refugee status determination officers, working under the Secretary for Justice, assess the claims for asylum and make a recommendation on whether refugee status should be recognised. A person who is determined to be a refugee through the Nauru refugee status determination process cannot be returned to any country where he or she may face persecution.

Furthermore, where a person is found not to be a refugee, Nauru assesses whether such persons are otherwise in need of international protection, which accords with its international obligations under the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These assessments are also in line with its commitment under the MOUs with Australia, to not send transferees to another country where there is a real risk the person will be subjected to torture, cruel, inhuman or degrading treatment or punishment, arbitrary deprivation of life or the imposition of the death penalty.

The Department has provided assistance to the Government of Nauru to build its capacity to undertake the refugee status determination process including an assessment of whether a person is otherwise in need of international protection. This has included deployment of officers to assist in the conduct of refugee status determination assessments and to provide training and mentoring to Nauruan refugee status determination officers.

The Department also funds the provision of independent protection claim advice and assistance to transferees undergoing the refugee status determination process. The contracted claims assistance provider deliver group and individual protection claim advice through a shopfront style approach. The contracted service provider for Nauru is Craddock Murray Neumann Lawyers.

The Nauruan refugee status determination process commenced on 19 March 2013. The Government of Nauru handed down the first tranche of final refugee status determinations on 20 May 2014.

As at 31 March 2015, 563 Refugee Status Determinations had been made by the Government of Nauru, of which there were:

- 485 positive
- 78 negative.

Part 3 of the *Refugees Convention Act 2012* (Nr) establishes a Refugee Status Review Tribunal, which conducts merits review in accordance with Part 4 of the same Act.

The Tribunal is independent from the Department of Justice and Border Control, and reviews negative refugee status determinations made by the Secretary for Justice. Transferees have 28 days after notification of primary refugee status determination to lodge a merits review application and are eligible to receive claims assistance to lodge an application for review before the Tribunal.

A transferee whose negative refugee status determination has been affirmed by the Tribunal, and is considered not to be a person otherwise in need of international protection, who considers there has been an error of law in the refugee status determination decision making process, may request judicial review through the Nauruan Supreme Court within 28 days of receiving the negative Tribunal decision. Claims assistance extends to a review of whether a prospective judicial review application has merit and, where it is considered that it does, to lodgement of the judicial review application in compliance with the Supreme Court of Nauru application lodgement requirements. Claims assistance does not extend to support for the transferee to argue their case to the court, and any associated judicial review legal costs are at the transferee's own expense unless the Government of Nauru provides legal aid free of charge.

## Removal from Nauru of those found not to be owed protection

Under the MOU and the associated administrative arrangements, Australia made a commitment to provide necessary assistance to Nauru to develop a removals capability within its officials. A number of steps have already been taken in fulfilling this commitment.

Involuntary removal of failed asylum seekers from Nauru will be effected under domestic laws of Nauru. The *Immigration Act 2014* (Nr) provides legislative authority for removal of non-citizens from Nauru. A failed asylum seeker will become liable for removal only after they have exhausted all merits review and judicial appeal processes. The Nauruan legislation makes separate provisions for review and appeal entitlements. It may therefore take several months before all review and appeal matters are finalised and a person becomes liable for removal.

A number of asylum seekers have received a negative initial assessment which has been affirmed by the Tribunal. Until all available avenues for review and appeal have been exhausted, they will not be eligible for removal. Transferees remain accommodated in the Regional Processing Centre on their Regional Processing Centre visa throughout this process.

As at 31 March 2015 there were no transferees in Nauru who were subject to active removal processes as judicial and merits review proceedings were still underway.



## Annexure G - Settlement of refugees

The Australian Government is focused on helping the Government of Nauru and its community to realise the enduring social and economic benefits of becoming a refugee settlement country. Both Australia and Nauru remain committed to the regional processing and settlement arrangements in place on Nauru.

The Government of Nauru began handing down refugee status determinations decisions, including whether a transferee is otherwise in need of international protection, on 20 May 2014. A Refugee Status Review Tribunal commenced operation in Nauru and handed down its first decisions on 20 October 2014.

Those determined to be refugees are settled into the community for up to ten years pending permanent resettlement in a third country such as Cambodia.

Settlement services in Nauru are delivered in accordance with local Nauruan standards noting that not all services required by refugees exist in the Nauruan community. Refugees are provided with modest, self-catering accommodation that is functional, safe and clean in a mixture of purpose-built facilities and houses sourced on the open rental market. These services would also apply to persons otherwise in need of international protection.

Eligible refugees receive modest income support for basic food, clothing and living expenses. Payment rates for families with dependent children take into account additional costs associated with raising children, including school uniforms, nappies and infant requirements. Income support is reviewed on an ongoing basis with adjustments made according to current financial circumstances and employment status. Income support rates factor in that refugees do not pay for their accommodation, utilities or for healthcare delivered through the settlement clinic. These services would also apply to persons otherwise in need of international protection.

The Department is working with the Government of Nauru to enable all asylum seeker and refugee children to attend local schools.

### Provision of services to Refugees

The Department has a number of contractual arrangements in place to support the Government of Nauru to deliver refugee settlement in Nauru.

### Settlement case management and refugee support services

Refugee settlement support services have been delivered by Connect Settlement Services (Connect) since 17 December 2014. Connect is a consortium of Adult Multicultural Education Service and the Multicultural Development Association, two highly experienced Australian humanitarian settlement service providers.

As at 31 March 2015:

- 485 refugees had been settled in the Nauruan community, comprising:
  - 159 single adult males

- 39 single adult females
  - 276 refugees in family groups
  - 11 unaccompanied refugee minors
- one unaccompanied minor accommodated in the community who had yet to receive a refugee status determination.

Save the Children Australia provided settlement support services in Nauru for the period May 2014 to 5 January 2015.

Settlement services in Nauru are delivered in accordance with service standards experienced by the broader Nauruan community, while providing targeted support for refugees to build self-sufficiency and establish independent lives in Nauru. This approach promotes social cohesion and is consistent with settlement approaches in many countries.

Connect delivers needs-based case management support to refugees to assist them to address barriers to self-sufficiency. Refugees will generally be provided with support for the first six to 12 months of their settlement in Nauru. This includes support to find employment, such as resume development and job seeker assistance, and support to access healthcare, education and other community services.

Connect offer a number of volunteer opportunities to refugees, who have successfully facilitated aerobics and yoga classes, art group and women's group activities.

## Services for Unaccompanied Minors

Under the *Asylum Seekers (Regional Processing Centre) Act 2012* (Nr), the Minister for Justice and Border Control is the legal guardian of every unaccompanied minor who arrives in Nauru. The Minister has delegated most of his powers and functions as guardian to Connect.

Accommodation and supervision arrangements are sufficiently flexible to take account of factors such as the actual and developmental age of the minor (that is, considering the individual's social, emotional, physical and intellectual growth), as well as any cultural considerations or sensitivities.

Connect provides care and support arrangements appropriate to the needs of each unaccompanied minor, including 24 hour carer support, where required, and life skills training.

## Refugee health services

Refugees receive primary healthcare services to a standard consistent with those experienced by the broader Nauruan community through a settlement health clinic located in the Nauru hospital. The clinic is operated by IHMS and provides primary health care and mental health services including torture and trauma counselling.

The clinic is open on weekdays and Saturday mornings, and staffed by:

- a medical practitioner

- two registered nurses
- a mental health nurse
- an administrative officer.

Secondary, tertiary and emergency health care services are delivered in conjunction with the Nauru hospital.

To ensure the Nauru hospital and other local health services are able to meet the needs of refugees and the broader Nauruan community, the Department is working with Australian aid programme colleagues and the Government of Nauru on a range of capacity-building and infrastructure initiatives. This includes the establishment of a surgical and in-patient unit at the Nauru hospital, which will also be available for use by IHMS. It is expected that once this facility is completed there will be scope to arrange visiting surgeons to fulfil some surgery needs of transferees at the Regional Processing Centre, and also scope for undertaking some acute psychiatric care on Nauru.

The settlement services provider runs a number of health and wellbeing activities to promote socialisation and exercise opportunities for refugees.

IHMS also work directly with the Nauru hospital and the Nauru Department of Health across a number of areas. As at 31 March 2015, key focus areas were mental health, improving records management, and relationship building.

## Overseas medical referrals

The Government of Nauru overseas medical referrals programme provides for Nauruans to access treatment outside of Nauru that is not available at the Nauru hospital.

Overseas medical referrals are progressed in order of medical priority and regularly reviewed to ensure appropriate medical treatment is provided in all cases. The Government of Nauru has agreed to make the programme available to refugees, with all costs for refugees to be met by the Australian Government.

The Government of Nauru is continuing to work on providing an internationally recognised travel document for refugees to facilitate travel, including for medical treatment through the overseas medical referral process if required. As at 31 March 2015, no refugees had received treatment under overseas medical referral arrangements.

## Settlement accommodation

There is limited availability of rental accommodation within the Nauruan community, thus purpose-built refugee accommodation for settlement purposes is essential. The Government of Nauru has provided land for development of settlement accommodation in the Nibok and Ewa districts. The capacity at each of these sites has been capped by the Government of Nauru at 150 beds.

Accommodation at both sites is single storey, modular style (one, two and three bedrooms) self-catering units accommodating a mixture of family groups and single adults in sharing

arrangements. Each site is fully self-sufficient for water storage, power and sewerage treatment.

In addition, the site known as Flycamp, previously used as a Regional Processing Centre construction workers accommodation camp, has been re-allocated and modified for use as settlement accommodation for up to 120 single adult males. Flycamp accommodation is single storey, modular style, air-conditioned, single bedrooms. The site is fully self-sufficient in water storage, power and sewerage treatment. Recreational space at Flycamp is provided using marquees and the level of amenity is currently being improved with the addition of further living/dining areas and expansion of the kitchen facilities.

### Settlement logistics and facilities maintenance services

Logistics and facilities maintenance services to purpose-built settlement facilities are currently provided by Transfield Services.

### Medical transfers of refugees from Nauru (extraordinary circumstances)

While refugees have access to the Nauruan Overseas Medical Referrals programme, there have been three instances based on unique individual circumstances where arrangements have been made to transfer refugees to Australia to ensure that they are able to access the medical care required in their circumstances.

As at 31 March 2015, seven refugees in three family groups were in Australia having been transferred in December 2014 (five refugees) and February 2015 (two refugees) for medical treatment. As unlawful non-citizens, they have been accommodated in immigration detention whilst in Australia. Once all health care needs have been met and the refugees are clinically assessed as fit to travel, they will be returned to Nauru.

### Third country resettlement

In September 2014, the Governments of Australia and Cambodia reached agreement for the permanent settlement of refugees from Nauru in Cambodia. This agreement provides a durable settlement solution for Nauru-determined refugees and allows them to start their new lives in a safe country free from fear of persecution. The arrangement provides for the voluntary and permanent settlement of refugees determined by the Government of Nauru. The arrangement is not available to transferees or refugees processed in Papua New Guinea or Australia. A copy of the MOU is at Attachment P.

The IOM has been engaged to provide settlement support for refugees in Cambodia. Support will be delivered through a needs-based service delivery model tailored to individual circumstances. Support is designed to assist refugees commence their new lives in Cambodia and to provide them with every opportunity to successfully integrate into Cambodian society. Settlement assistance may include:

- orientation to life in Cambodia
- help finding employment
- income support

- language training
- access to education
- health services and health insurance
- family reunion assistance
- help finding permanent accommodation.

## List of referenced attachments

Referenced attachment	Document title
Attachment A	Summary of amendments made by the <i>Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012</i> and the <i>Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013</i>
Attachment B	Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, Relating to the Transfer To and Assessment of Persons in Nauru, and Related Issues signed on 29 August 2012
Attachment C	Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, Relating to the Transfer To and Assessment of Persons in Nauru, and Related Issues signed on 3 August 2013 and supporting administrative arrangements <sup>7</sup>
Attachment D	Department of Immigration and Border Protection's current staffing structure at the Nauru Regional Processing Centre
Attachment E	Child Safeguarding Protocol and Code of Conduct
Attachment F	Incident reporting category definitions
Attachment G	Moss Review – Terms of Reference
Attachment H	Moss Review – Redacted report released 27 March 2015
Attachment I	Table: The number of IMAs who arrived in Australia by month during the period 1 January 2009 to 31 March 2014
Attachment J	Report of the Expert Panel on Asylum Seekers
Attachment K	Australian Government announcement of the Regional Resettlement Arrangement
Attachment L	Map: Nauru Regional Processing Centre infrastructure
Attachment M	Table: Population and cohort movements during the period 14 September 2012 to 31 March 2015
Attachment N	Joint Advisory Committee Terms of Reference <sup>8</sup>
Attachment O	Service provider's Code of Conduct for Nauru Regional Processing Centre
Attachment P	Memorandum of Understanding between the Government of Australia and the Government of the Kingdom of Cambodia relating to the settlement of refugees in Cambodia signed on 26 September 2014

<sup>7</sup> For Official Use Only and not for release.

<sup>8</sup> *ibid.*

## Amendments made to legislation

***Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012******Act amended: Migration Act 1958***

## Amendments:

- inserted a statement that the Migration Act, to advance its object, provides for the taking of offshore entry persons from Australia to a regional processing country;
- affirmed that offshore entry persons, including offshore entry persons in respect of whom Australia has or may have protection obligations, should be able to be taken to any country designated to be a regional processing country, and the designation of a country to be a regional processing country need not be limited by reference to the international obligations or domestic law of that country;
- impose a duty on an officer to detain, subject to a limited exemption, any offshore entry person who enters Australia;
- provide that the Minister may personally, through a legislative instrument, designate that a country is a regional processing country.
- Provide that a legislative instrument may designate only one country and must not provide that the designation ceases to have effect;
- provide that a legislative instrument to designate a country commences at the earlier of the following times:
  - immediately after both Houses of the Parliament have passed a resolution approving the designation;
  - immediately after both of the following apply:
    - a copy of the designation has been laid before each House of the Parliament under section 198AC;
    - 5 sitting days of each House have passed since the copy was laid before that House without it passing a resolution disapproving the designation;
- provide that the only condition for the exercise of the power to designate a country is that the Minister thinks that it is in the national interest to designate the country to be a regional processing country and to provide what the Minister must have regard to in considering what is in the national interest;
- provide that if the Minister designates a country, he or she must cause a copy of the designation and a statement of reasons relating to the designation, a copy of any agreement with the designated country relating to the taking of persons to the country, a statement regarding the Minister's consultations with the UNHCR, a summary of any advice received from the UNHCR and a statement about any arrangements in the designated country for the treatment of persons taken to the country to be laid before each House of Parliament;
- provide that, subject to certain limitations, an offshore entry person detained under section 189 must, as soon as reasonably practicable, be taken from Australia to a regional processing country;
- provide that where there is a choice of regional processing countries, the Minister must direct to which country a person or class of persons is to be taken;
- allow the Minister to personally determine, in writing, that an offshore entry person is not to be taken to a regional processing country, if the Minister thinks that it is in the public interest to do so;
- provide that if an officer considers it necessary, an offshore entry person who is in the course of being taken to a regional processing country, can be returned to Australia without a visa that is in effect; and
- provide that if an offshore entry person has been brought to Australia from a regional processing country for a temporary purpose pursuant to section 198B and they no longer need to be in Australia for that purpose, they must as soon as reasonably practicable, subject to certain limitations, be taken from Australia to a regional processing country.



### **Act amended: *Immigration (Guardianship of Children) Act 1946***

#### Amendments:

- provide that, without limiting the meaning of the expression, a child “**leaves Australia permanently**” if the child is removed from Australia, or is taken from Australia to a regional processing country, or is deported, or is taken to a place outside Australia, under the Migration Act;
- provide that nothing in this Act affects the operation of the migration law (defined in the Bill as the Migration Act, regulations made under that Act and any instrument made under that Act or those regulations); or affects the performance or exercise, or the purported performance or exercise, of any function, duty or power under the migration law as defined in the Bill; or imposes any obligation on the Minister to exercise, or to consider exercising, any power conferred on the Minister by or under the migration law; and
- clarify that nothing in this Act affects the performance or exercise, or the purported performance or exercise, of any function, duty or power relating to the removal of a non-citizen child from Australia, the taking of a non-citizen child from Australia to a regional processing country, the deportation of a non-citizen child, or the taking of a non-citizen child to a place outside Australia under the Migration Act.

### **Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013**

#### **Act amended: *Migration Act 1958***

#### **Act amended: *Migration Act 1958***

#### Amendments:

- repeal the defined term **offshore entry person**;
- insert a new defined term **unauthorised maritime arrival**;
- provide that a person is an **unauthorised maritime arrival** if they entered Australia by sea at an excised offshore place at any time after the excision time for that place or at any other place at any time on or after commencement, became an unlawful non-citizen because of that entry and is not an excluded maritime arrival;
- replace references in the Act to **offshore entry person** with either the word “person” or the new defined term **unauthorised maritime arrival** as grammatically appropriate;
- amend the defined term **transitory person** so that a person does not cease to be a **transitory person** if a person has been assessed to be a refugee for the purposes of the Refugees Convention as amended by the Refugees Protocol;
- provide that a person will have entered Australia by sea if: (a) the person entered the migration zone except on an aircraft that landed in the migration zone; or (b) the person entered the migration zone as a result of being found on a ship detained under section 245F and dealt with under paragraph 245F(9)(a); or (c) if the person entered the migration zone after being rescued at sea;
- provide that a person is an **excluded maritime arrival** and therefore not an unauthorised maritime arrival if the person is a New Zealand citizen who holds and produces a New Zealand passport that is in force, or is a non-citizen who holds and produces a passport that is in force and is endorsed with an authority to reside indefinitely on Norfolk Island, or is included in a prescribed class of persons;
- amend subsection 189(2) of the Act to provide for discretionary immigration detention for some persons who are seeking to enter the migration zone (other than at an excised offshore place);
- amend paragraph 189(3A)(a) of the Act to provide for discretionary immigration detention of PNG citizens who are unlawful non-citizens and are in a protected area;
- amend section 198AE of the Act to include an express power for the Minister to revoke or vary a determination made under section 198AE if the Minister thinks it is in the public interest to do so;
- amend section 198AH of the Act to confirm that a **transitory person** can be taken to a regional processing country whether or not the **transitory person** has been assessed to be

## Amendments made to legislation

covered by the definition of **refugee** in Article 1A of the Refugees Convention as amended by the Refugees Protocol;

- insert section 198AI to require the Minister to report to each House of Parliament, as soon as practicable after 30 June in each year, on activities conducted under the Bali Process, and the steps taken and the progress made in relation to people smuggling, trafficking in persons and related transnational crime to support the Regional Cooperation Framework during the year ending on 30 June;
- repeal sections 198C and 198D of the Act so that a **transitory person** cannot seek an assessment of their refugee status from the Refugee Review Tribunal (RRT) and the subsequent lifting of the section 46B bar on making a valid visa application where the RRT considers the **transitory person** is covered by the definition of **refugee** in Article 1A of the Refugees Convention as amended by the Refugees Protocol;
- provide that an authorisation made under section 336D of the Act that was in force immediately before commencement is taken to authorise access to identifying information relating to **unauthorised maritime arrivals** to the extent that, immediately before commencement, the authorisation authorised access to identifying information relating to **offshore entry persons**;
- provide that an authorisation made under section 336F of the Act that was in force immediately before commencement is taken to authorise disclosure of identifying information relating to **unauthorised maritime arrivals** to the extent that, immediately before commencement, the authorisation disclosure of identifying information relating to **offshore entry persons**;
- provide that any reference in the access authorisation or disclosure authorisation to an **offshore entry person** is taken, after commencement, to be a reference to an **unauthorised maritime arrival**;
- make necessary consequential amendments; and
- provide for contingent amendments to paragraph 5AA(2)(b) and subsection 5AA(4) of the Act following the commencement of the *Maritime Powers Act 2012*.

**MEMORANDUM OF UNDERSTANDING BETWEEN THE REPUBLIC OF NAURU  
AND THE COMMONWEALTH OF AUSTRALIA, RELATING TO THE TRANSFER  
TO AND ASSESSMENT OF PERSONS IN NAURU, AND RELATED ISSUES**

The Republic of Nauru and the Commonwealth of Australia ('the Participants'), wishing to strengthen their friendly relations, have come to the following Memorandum of Understanding (the MOU) in relation to the assessment in Nauru of certain persons, and related issues.

**Preamble**

*Noting that:*

- The Participants are State parties to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol*, and acknowledge the importance of inter-country cooperation to undermine the People Smuggling industry;
- The Participants share a long-standing and close bilateral relationship;
- Irregular Migration is a continuing challenge for the Asia-Pacific region;
- While border control and law enforcement measures are important, practical cooperative solutions that also address humanitarian needs are required; and
- The Commonwealth of Australia appreciates the acceptance by the Republic of Nauru of the request made by the Commonwealth of Australia to host a Regional Processing Centre for Asylum Seekers.

*Recalling that:*

- At the Fourth Ministerial Conference of the Bali Process on People Smuggling, Trafficking and Related Transnational Crime (the MCBP) held in Indonesia on 29-30 March 2011, Ministers agreed:
  - to a regional cooperation framework that would provide a more effective way for interested states to cooperate to reduce Irregular Migration in the region;
  - that the framework would be operationalised through arrangements entered into between interested participating states on a bilateral or sub-regional basis (noting the cooperation that might be available from relevant international organisations regarding implementation);
  - that those arrangements would be consistent with the core principles at paragraph 16 and guided by the considerations set out in paragraph 19 of the MCBP Co-Chairs' Statement;
  - that any arrangements should seek to undermine the People Smuggling model and create disincentives for irregular travel, including through possible transfer and readmission arrangements in appropriate circumstances; and
  - that due to the large scale of irregular movement it would be appropriate to focus arrangements on a selected caseload or caseloads.

*Recognising:*

- the need for practical action to provide a disincentive against Irregular Migration, People Smuggling syndicates and transnational crime and intended to promote orderly migration and humanitarian solutions;
- the need to take account of the protection needs of persons who have moved irregularly who may be seeking asylum;
- the impact that an arrangement could have in providing a disincentive for Irregular Migration and creating increased protection opportunities for those in need of international protection; and
- the need to ensure, so far as is possible, that no benefit is gained through circumventing regular migration arrangements;

the Participants have reached the following common understanding regarding a transfer arrangement, whereby Australia would Transfer persons to Nauru for processing of any asylum claims that Transferees may raise.

**Interpretation**

“Participants” means the Republic of Nauru and the Commonwealth of Australia.

“Transferee” means a person transferred to Nauru under this MOU.

“Transfer” means transfer from Australia to Nauru under this MOU.

“Irregular Migration” means the phenomenon of people moving without proper authorisation to a country including for the purpose of seeking asylum.

“Refugee” means a person outside their country of nationality, or in the case of a person not having a nationality, who is outside their country of habitual residence, and who is unable or unwilling to return because of a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group.

“People Smuggling” means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a country of which the person is not a national or a permanent resident.

“Regional Processing Centre” means the facility to be established in Nauru pursuant to this MOU.

**Objectives**

1. The Participants have determined that combating People Smuggling and Irregular Migration in the Asia-Pacific region is a shared objective.

2. This MOU will enable joint cooperation, including the development of enhanced capacity in Nauru, to address these issues.
3. The Participants understand the importance of regional cooperation and have determined to continue discussions as to how the Regional Processing Centre might over time undertake a broader range of functions under the regional cooperation framework.

### **Guiding Principles**

4. The Commonwealth of Australia will conduct all activities in respect of this MOU in accordance with its Constitution and all relevant domestic laws.
5. The Republic of Nauru will conduct all activities in respect of this MOU in accordance with its Constitution and all relevant domestic laws.
6. The Commonwealth of Australia will bear all costs incurred under and incidental to this MOU as agreed between the Participants.

### **Operation of this MOU**

7. The Commonwealth of Australia may transfer and the Republic of Nauru will accept Transferees.
8. Administrative measures giving effect to this MOU will be settled between the Participants. Any further specific arrangements may be made, as jointly determined to be necessary by the Participants, on more particular aspects of this MOU, for the purpose of giving effect to its objectives.

### *Persons to be transferred to Nauru for processing*

9. Persons to be transferred to Nauru are those persons who:
  - a. have travelled irregularly by sea to Australia; or
  - b. have been intercepted at sea by Australian authorities or rescued in the course of trying to reach Australia by irregular means; and
  - c. are required by Australian law to be transferred to Nauru.

*The site*

10. The Participants will establish a processing centre at a site or sites to be jointly determined and agreed between the Participants.

*Timing*

11. The Commonwealth of Australia will make all efforts to ensure that all persons entering Nauru under this MOU will depart within as short a time as is reasonably necessary for the implementation of this MOU, bearing in mind the objectives set out in the *Preamble* and *Clause 1*.

*Commitments*

12. The Participants will ensure that Transferees will be treated with dignity and respect and that relevant human rights standards are met.
13. Special arrangements will be developed and agreed to by the Participants for vulnerable cases including unaccompanied minors.
14. The Republic of Nauru assures the Commonwealth of Australia that it will:
  - a. 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; and
  - b. make an assessment, or permit an assessment to be made, of whether or not a transferee is covered by the definition of *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
  - c. 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.

*Co-operation*

15. The Participants may jointly decide to vary this MOU in writing.
16. Communications concerning the day-to-day operation of activities undertaken in accordance with this MOU will be between the Department of Foreign Affairs & Trade of Nauru and the Australian High Commission Nauru.

17. The Participants will establish a Joint Committee with responsibility for the oversight of practical arrangements required to implement this MOU including issues relating to the duration of stay of Transferees. The Joint Committee will meet regularly no less than once monthly and will be co-chaired by mutually agreed representatives of the Australian High Commission Nauru and the Republic of Nauru. Participation in the Joint Committee will be as agreed but may include relevant non-government organisations and service providers where appropriate.
18. This MOU will come into effect on the date of signature by both Participants and will remain in effect until terminated by mutual agreement.

### **Settlement of Disputes**

19. The Participants will resolve any differences arising under or in relation to this Memorandum amicably and by consultation and as soon as reasonably practicable.

This Memorandum of Understanding is signed at ..... on the .....day of ..... in the year .....

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**For the Government of Australia**

**The Hon Richard Marles MP**  
**Parliamentary Secretary for**  
**Pacific Island Affairs**  
**Parliamentary Secretary for Foreign Affairs**

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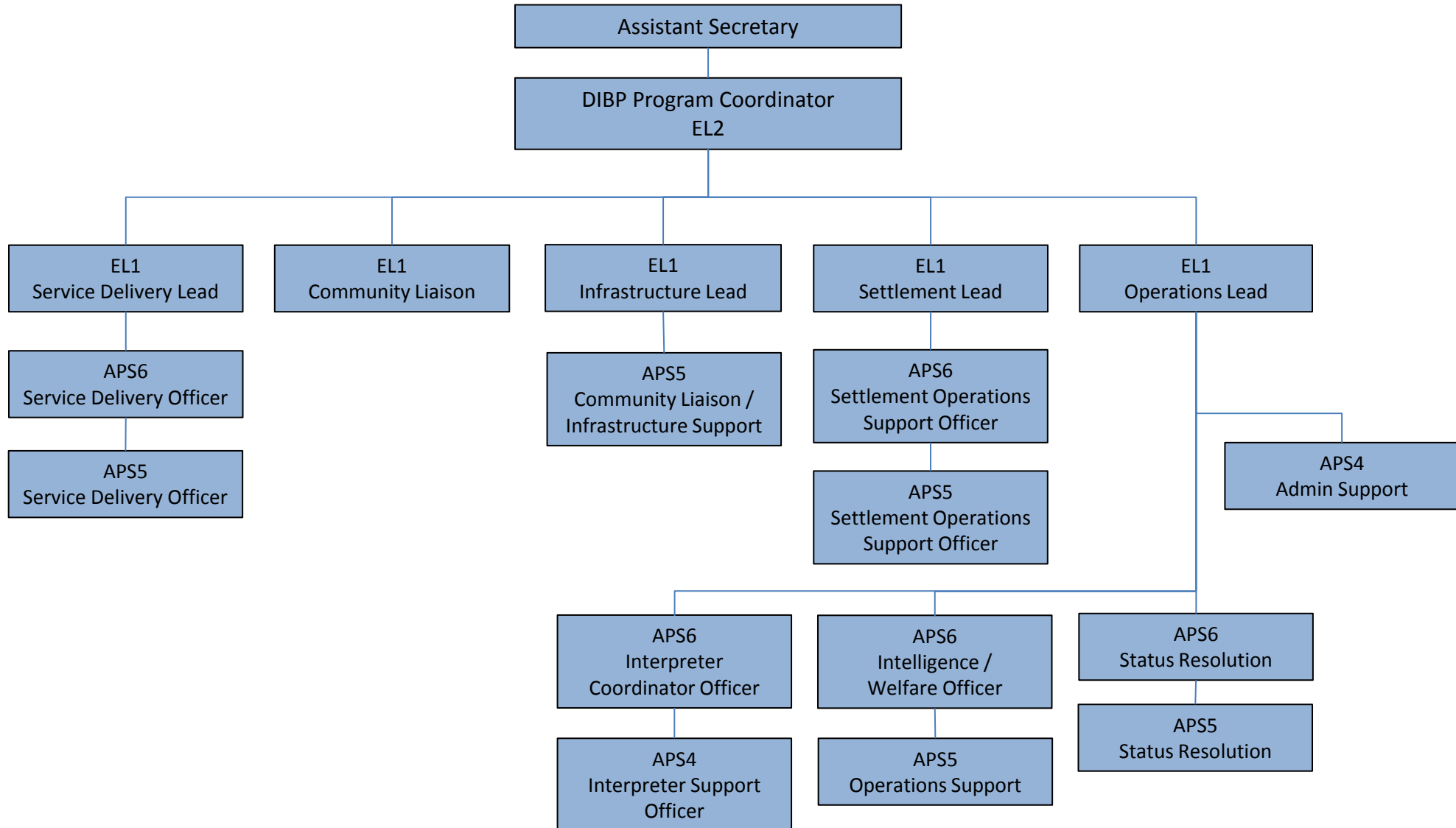
**For the Government of Nauru**

**Hon. Dr. Kieren Keke MP**  
**Minister for Foreign Affairs and Trade**



NOT FOR RELEASE

## Nauru Regional Processing Centre



# Regional Processing Centre Guidelines

## Service Provider – Child Safeguarding Protocol and Code of Conduct

### INTRODUCTION

Children and young people at the Regional Processing Centre (RPC) can experience complex emotions whilst in the centre, which may result in stress, trauma, anxiety or other psychological conditions. Recognising that children and young people (being any person under the age of 18 years, whether accompanied or unaccompanied by a parent or guardian) require an extra level of care and support due to their increased vulnerability, the Department has engaged Save the Children Australia (SCA) to provide child welfare support services at the RPC.

SCA has developed this Child Safeguarding Protocol (Protocol) to address the specific needs and vulnerabilities of children and young people at the RPC and to minimise risk to the Department and to service providers by implementing best practice for working with vulnerable children and young people. This Protocol is intended to operate as part of the RPC Guidelines.

This Protocol and the attached Code of Conduct (Code) (as set out in Appendix 1) is designed to ensure that a child safe environment is maintained at all times at the RPC. Maintaining a child safe environment reduces the risk of harm to children and young people at the RPC and protects service provider personnel whose positions involve contact with children.

The Code provides service provider personnel with clear guidelines on working safely and positively with children and young people, and helps to avoid misunderstandings. Signing of the Code is a mandatory condition of employment or engagement at the RPC.

The Child Safety Incident Reporting Process in the Protocol (set out in Appendix 2) outlines obligations and responsibilities for reporting and management of incidents that concern a child's safety or welfare. The Reporting Process prescribes direct reporting of all child safety concerns to the SCA Child Safeguarding and Protection Manager, who will handle the incident in accordance with the Incident Reporting Guidelines.

### **Scope**

The Protocol should be followed by all service providers. The Code and the Child Safety Incident Reporting Process must each be signed by all service provider personnel. People visiting the RPC for **less than one day** (i.e. senior service provider personnel visiting for compliance purposes) are not required to sign the Protocol, however they must be escorted at all times and their visitor's pass must be clearly displayed.

It is a requirement that the Child Safe Screening and Recruitment Procedures (set out in Appendix 3 to this Protocol) are followed by service providers when employing personnel who may have regular and ongoing contact with children. It includes rigorous screening of personnel to minimise the risk of a person who poses a risk to children being employed in relevant positions and to reduce the risk of inappropriate behaviour by personnel.

Summary of requirements for service providers and personnel:

1. All RPC personnel to sign the Code of Conduct (at Appendix 1).
2. All RPC personnel to comply with the Child Safety Incident Reporting Process (at Appendix 2).
3. Child Safe Screening and Recruitment Procedures followed by service providers when recruiting for positions involving regular and ongoing contact with children (at Appendix 3).

## PROCEDURES

### *What should be reported?*

- Any observation, suspicion or concern about the behaviour, actions or words of personnel at the RPC that indicates or may indicate that a child or young person is being abused or harmed (i.e. physical, emotional or sexual abuse, bullying, exploitation or violence).
- Suspicion that a child or young person is being abused or harmed by their parent or guardian or another transferee including by another child or young person.
- Inappropriate communications (written or verbal) between asylum seekers.
- A child or young person tells you that they are being abused or harmed.
- You witness a child or young person being harmed, or suspect they may be at risk of immediate danger.
- You suspect or have been informed that a child or young person is self-harming or has suicidal intent.
- Inappropriate behaviour witnessed between a staff member and minor. Parents/guardians are at risk of, or engaging in family violence and are unable to protect their child/ren.
- You suspect a child or young person has been emotionally harmed after witnessing a traumatic event such as a riot or hunger strike.
- The compound is at risk of an emergency (i.e. riot).
- You have identified that parents/guardians are unable to carry out their parental responsibilities due to the parent/guardian experiencing a mental or physical health emergency.
- Any other concern you have for the safety or welfare of a child or young person.

### *How to report child safety incidents*

The Child Safety Incident Reporting Process outlines obligations and responsibilities for reporting and managing any concerns regarding the safety or welfare of children. It also protects personnel from unfair processes should an allegation about them be made.



All child safety incident reports should first be made to the SCA Child Safeguarding and Protection Manager. The exception to this is where the child is seriously injured or in immediate danger of being seriously injured. The SCA Child Safeguarding and Protection Manager will be responsible for assessing the report and managing it in accordance with the RPC Guidelines.

SCA and the Department will also involve police or other authorities as required, with the assistance of the witnessing or reporting personnel.

The official step-by-step Reporting Process can be found at Appendix 2. All personnel are required to follow this Reporting Process when raising a concern about the safety or wellbeing of a child or young person. It is mandatory for all personnel to immediately report any concerns (irrespective of how minor the incident is perceived to be) in accordance with this Reporting Process.

### Unaccompanied Minors (UAMs)

UAMs at the RPC are provided 24-hour care and support by SCA Carers. SCA personnel may also be delegated powers and functions by the legal guardian of all UAMs, the Nauruan Justice Minister.

Service provider personnel should deal with incident reports that involve a UAM in accordance with the Reporting Process. The SCA Child Safeguarding and Protection Manager will liaise with the child or young person's Carer, the Justice Minister and/or his delegate as appropriate.

SCA will ensure that all reports of child safety incidents are handled in accordance with the following principles:

- All concerns raised will be taken seriously. All parties will be treated fairly and the principles of natural justice will be a prime consideration.
- All reports will be handled professionally, confidentially and expediently. All reports made in good faith will be viewed as being made in the best interests of the child regardless of the outcomes of any investigation.
- The interests of anyone reporting child abuse in good faith are protected. Any personnel who intentionally make false and malicious allegations may face disciplinary action from the employing service provider.
- The rights and welfare of the child is of prime importance. Every effort must be made to protect the rights and safety of the child throughout the investigation.
- The rights and welfare of any accused person will also be upheld during the investigation process.
- Storage of reports will be securely filed.

In following the Reporting Process there is no expectation that personnel need to be child safety experts or make a conclusive judgement about a situation before making a report. It is important that an incident is reported regardless of whether it appears to be a minor, major or critical incident. The SCA Child Safeguarding and Protection Manager will make an assessment of the report and escalate or manage the incident accordingly. You do not need obtain evidence or investigate the incident.

**GENERAL*****Child Protection Principles***

All service providers must demonstrate a commitment to child protection that is based on the following principles:

- Promoting and protecting the best interests of children at all times.
- Zero tolerance of child abuse – mandatory reporting of confirmed or suspected child abuse.
- Child protection as a shared responsibility between all service providers.
- No discrimination by service providers based on ethnicity, gender, disability or status as accompanied or unaccompanied by a guardian.

***Application of laws***

All personnel must comply with relevant Australian and Nauruan laws (a list of local laws can be found here [http://ronlaw.gov.nr/nauru\\_lpms/index.php](http://ronlaw.gov.nr/nauru_lpms/index.php)). Compliance with local laws may be required when responding to an incident concerning children in conjunction with the Child Safety Incident Reporting Process contained in this Protocol.

Australian law may also be applicable to service provider personnel at the RPC. Australians can be prosecuted for (without limitation):

- sexual activity with persons under 16 years while overseas;
- exploiting a position of trust or authority or taking advantage of a child's mental impairment to commit sexual abuse overseas; and
- offences relating to child pornography.

Various international instruments exist in regard to protection of children. The most relevant is the United National Convention on the Rights of the Child (UNCRC), which both Nauru and Australia have ratified.

- Article 19 of the United Nations Convention on the Rights of the Child (UNCRC) requires:  
*[s]tate parties [to] take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*

***Child Safeguarding Protocol Implementation Strategy***

The Protocol and the Code will be implemented at the RPC through:

- The SCA Child Safeguarding and Protection Manager enhancing awareness of child protection issues among personnel through the provision of technical advice and working collaboratively with other service providers.
- Child Safeguarding Training for all personnel provided onsite including clear step-by-step processes for reporting.

- All service providers ensure their personnel have signed the Code and comply with the Child Safety Incident Reporting Process contained in the Protocol. Each service provider should maintain a record of signatories to the Code. People visiting the RPC for **less than one day** (i.e. senior service provider personnel visiting the RPC) are not required to sign the Protocol however they must be escorted while at the RPC and their visitor's pass must be clearly displayed.
- Requirement that each service provider adheres to the Child Safe Screening and Recruitment Procedures for relevant positions.

## DEFINITIONS

**Carer:** An SCA employee who is delegated guardianship powers and/or functions by the Nauruan Justice Minister in respect of UAMs in their care.

**Child Abuse:** the deliberate act of ill treatment that can harm or is likely to cause harm to a child's safety, wellbeing, dignity and development. Abuse includes all forms of physical, sexual, psychological or emotional ill treatment.

**CSPM:** The Child Safeguarding and Protection Manager is SCA's child protection expert and provides in-house technical advice, support to all programs, service providers, staff and associates, and advocacy for children and young people.

**Exploitation:** refers to the use of children for someone else's advantage, gratification or profit often resulting in unjust, cruel and harmful treatment of the child. These activities are to the detriment of the child's physical or mental health, education, moral or social-emotional development. Also, Commercial Sexual Exploitation of Children where a child is sexually abused in return for cash or 'in kind' favours or goods.

**UAM:** Unaccompanied Minor – a person under the age of 18 years who when brought to Nauru was not accompanied by his or her parent or legal guardian.

This document is managed by the child welfare support service provider in consultation with other service providers.



**APPENDIX 1: WORKING WITH CHILDREN CODE OF CONDUCT**

I, ..... (insert name) acknowledge that I have read and understand the Working with Children Code of Conduct, and agree that whilst employed/engaged by ..... (insert name of service provider) at the Nauru Regional Processing Centre, I will:

- treat all children and young people with respect regardless of race, colour, sex, language, disability, religion, political or other opinion, national, ethnic or social origin, property, birth, status as accompanied or unaccompanied or other status;
- provide an inclusive and safe environment for all children, young people and parents/guardians;
- talk to children about their contact with staff or others and encourage them to raise any concerns;
- not use physical or humiliating punishment on children or young people;
- immediately report concerns or allegations for the safety or wellbeing of a child or young person, or breach of this Protocol and Code of Conduct in accordance with the Child Safety Incident Reporting Process;
- observe and comply with the laws of Nauru;
- ensure that, whenever possible, another adult is present when I am working with children or in contact with children and young people unless it is in the defined context of providing a specific service (e.g. health consultation);
- speak with my Manager about any concerns I have of my involvement in any situation where my words, actions or behaviour may be misinterpreted;
- immediately disclose all charges, convictions and other outcomes of an offence which occurred before or occurs during my employment/engagement with my employer that relates to child exploitation or abuse; and
- use any computers, mobile phones, video cameras, cameras or social media appropriately, and never to exploit or harass children or young people or access child exploitation materials through any medium.

I will not:

- use language that is offensive, discriminatory, demeaning, shaming, culturally inappropriate, abusive or of a sexual nature when speaking with or in the presence of a child or young person;
- engage in behaviour to shame, humiliate, belittle or degrade a child or young person or otherwise emotionally or psychologically abuse a child or young person;
- act in a sexually provocative manner or engage children in any form of sexual activity, including paying for sexual services regardless of the age of majority/consent or custom locally. I understand that mistaken belief in the age of a child is not an adequate defence;
- physically abuse a child or young person;
- use social media to contact, access, solicit or befriend a child or young person at the RPC and not place images of those children or young people on personal social media sites;
- hold, kiss, cuddle or touch a child or young person in an abusive, unnecessary or culturally insensitive way;
- condone or participate in behaviour with children or young people which is illegal or abusive;
- discriminate against or act in favour of particular children or young people to the exclusion of others;



- hire children for domestic or other labour which is inappropriate given their age or developmental stage, which interferes with their time available for education and recreational activities, or which places them at significant risk of injury;
- do things for children of a personal nature that they can do for themselves such as toileting or changing their clothes;
- sleep in close proximity to children or young people that I am working with or in contact with unless it is absolutely necessary and in which case I will keep my Manager informed and ensure another adult is present;
- make physical contact with a child or young person against their will, except when as part of an approved physical restraint procedure in order to protect the child or young person from harm;
- take a child outside of the RPC without permission from a guardian and designated authority;
- offer or purchase contraband including pornography, alcohol, drugs or tobacco for children or young people;
- offer any gifts, inducements or money to a child or young person without the permission of the relevant service provider or designated person, as well as the permission of the parent or guardian;
- exchange personal information with children or young people unless it is in the context of carrying out a specified service; and
- speak with or engage with any media outlet about any child or young person's story nor provide names without the consent of the parent or guardian, the relevant service provider and relevant host government officials.

This is not an exhaustive or exclusive list. Personnel should at all times avoid actions or behaviour that may allow behaviour to be misrepresented, constitute poor practice or potentially abusive behaviour.

Any breach of the Working with Children Code of Conduct may result in performance management or disciplinary action including immediate suspension from service pending an investigation. The service provider will be responsible for investigation in conjunction with the designated Child Safeguarding and Protection Manager, Program Manager, host government and the Department, and will either take appropriate disciplinary action, dismiss the employee, or show reason why the employee should remain in service.

### **Working with Children Statement**

I confirm that I have read and understood the Working with Children Code of Conduct and Child Safety Incident Reporting Process. I agree to comply with the Code of Conduct and Reporting Process.

I understand that a breach of the Code of Conduct may provide grounds for my employment at the RPC to be terminated. I also understand that an action that breaches of the Code of Conduct may also result in criminal prosecution.

I understand that it is my responsibility as a person engaged in service at the RPC to use common sense and avoid actions or behaviours that are abusive or exploitative of children or young people, or which could be construed as such.

I confirm my willingness to participate in RPC training modules on child protection.

**Full Name:** .....

**Position and Organisation:** .....

.....

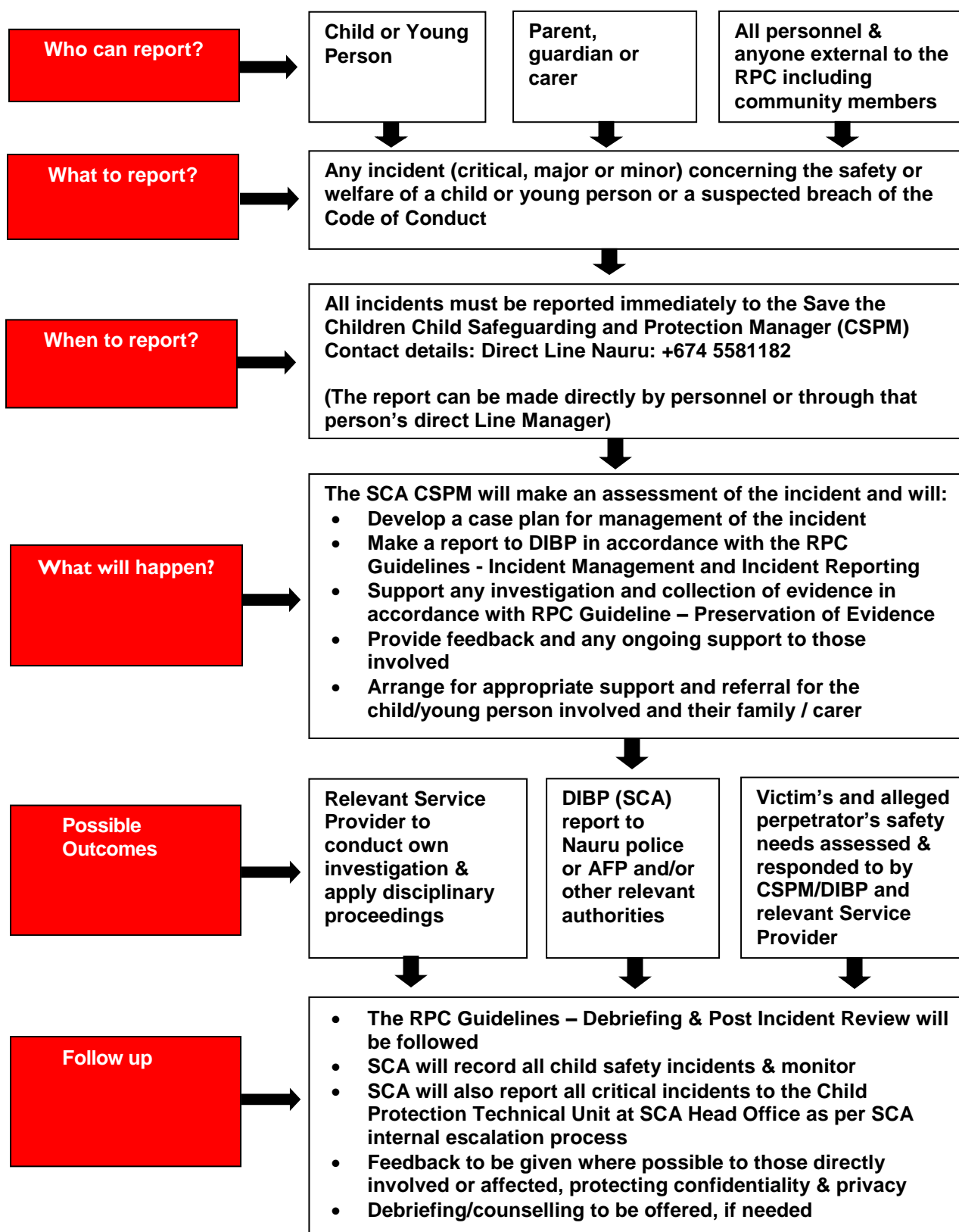
**Signed:** .....

**Date:** ...../...../.....

**A copy of this Statement must be kept on file by the person's employer.**



## APPENDIX 2: REPORTING PROCESS AND CONTACTS



**APPENDIX 3: CHILD SAFE SCREENING & RECRUITMENT PROCEDURES**

The following procedures are best practice in child safe screening and recruitment to ensure service providers do not employ or retain people who pose a risk to children. It is recommended that all service providers meet these standards in child safe screening and recruitment for positions that involve regular and ongoing contact with children.

- National criminal record checks (police checks) conducted prior to commencement of employment at the RPC.
- Working with Children Checks are conducted where available (for Australian personnel residing in a state or territory where Working with Children Checks are performed, and UK and NZ citizens as appropriate).
- For personnel from countries where a police/working with children check is not available, the Declaration of Criminal Record is completed (set out in Annexure 4).
- Child protection interview questions (set out in Appendix 3).
- Child protection reference check questions (set out in Appendix 3).
- Two verbal reference checks - including question relating to the applicant's general conduct. One reference must be from the person's current or most recent employer.
- All personnel sign the Code prior to engagement.
- Complete the Child Protection training module and record attendance (to be facilitated by SCA at the RPC).

**Suggested child safe interview and reference check questions**

The following are a number of example interview and reference questions that should be included as part of the recruitment process for positions which may involve contact with children. Questions should be structured to elicit the following from the applicant:

- their attitude and values in regard to children and young people;
- their motivation for wanting to work with children and young people residing (if relevant);
- illustrations of their past behaviour as it provides an indication of future behaviour.

*Suggested Interview Questions*

- Are you willing to sign the Working with Children Code of Conduct?
- Have you ever reported a matter concerning a colleague or supervisor? How did you handle it?
- If you were aware of a child protection concern or breach by a colleague of the Code of Conduct within the context of your work how would you respond?
- A child has become quite friendly with you in the family centre. One day they approach you and ask you if they can tell you a secret. What do you do in this scenario?
- Two children are pushing and shoving each other. How do you handle this situation?
- A number of children are running around unsupervised in the kitchen area and helping themselves to food. What do you do to manage this situation?
- Have you ever been subject to investigations in relation to inappropriate conduct towards a minor?

*Suggested Reference Check Questions*

**Version 1**

- What is your relationship with the applicant?
- Have you managed/supervised this person directly? How did they respond to direction/feedback?
- Explain the nature of the position to the referee and the work they will be doing that places them in direct contact with children.
- Tell me about the applicant's work with children? Have you directly observed this work? Do you have any concerns in relation to the applicant's work with children? If so please explain.
- Describe the applicant's ability to work with and relate to others?
- Would you employ this person again?



## APPENDIX 4: DECLARATION OF CRIMINAL RECORD

### Declaration of Criminal Record Form

This form should be supplied to all staff with their contract and collected prior to the new staff member commencing work with SCA. This form **DOES NOT** replace a Police Check and a full Police Check should be undertaken for all staff members.

Applicant's Name:		Role applying for:	
Have you ever been charged or convicted of any offence?	I.I.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please provide details:			

**Please note:** if you are applying for a position where you will have regular contact with children, (this may be frequent or infrequent), you are required to give details of all convictions or criminal offences and cautions, bindovers or pending prosecutions.

Have you ever been dismissed from employment or had any disciplinary action taken against you which may be related to work with a child/children under 18 years of age?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please provide details:		
Have you received any formal reprimands, final warnings , or cautions from the police?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please provide details:		
Is there any other information which may be relevant to your application e.g. pending prosecutions	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please provide details:		
Signature:	Date:	
Actioned by HR:	Date:	



### Contractual timeframes for internal incident reporting

Category	Verbal Report	Written Report
Critical	Immediate up to 30 minutes	Within 3 hours
Major	As soon as possible – no later than 1 hour	Within 6 hours or by the end of the shift
Minor	Not required	Within 24 hours

#### Definition of a Critical Incident

A Critical incident is an incident that seriously affects the security or safety of the facility or where there is serious injury or threat to life.

Critical incidents include:

- Death: staff, visitor or a transferee
- Serious accident/injury
- Actual self-harm
- Attempted serious self-harm
- Serious assault
- Serious public health risk
- Escape
- Mass Breakouts
- Hostage situation
- Riot
- Unplanned use of Force resulting in bodily harm (personnel or transferee)
- Bomb, biological or chemical threat
- Serious damage to a facility, including fire
- Use of emergency response equipment
- Use of a weapon by a transferee
- Withdrawal of labour
- High profile visitor refused access
- Protest action outside a facility
- A Force Majeure event that has an impact on the operation of the facility or the welfare of a transferee
- Unauthorised media presence at an RPC
- Any known complaint about any of the above incidents

#### Definition of a Major Incident

A major incident is an incident or event that seriously affects, or has the potential to threaten or harm the security and safety of the facility, the welfare of transferee, or the success of Escorts/Transfer/Removal activities. Major incidents include:

- Infection / Contamination of a facility
- Epidemic
- Planned use of force (Personnel or a transferee)
- Food / Fluid Refusal (over 24hrs)
- Food / Fluid Refusal by minor
- Hazardous waste contamination
- Attempted or threatened self-harm
- Electronic security system failure
- Sabotage

- Sit-in or barricade
- Notification by welfare authorities
- Demonstration – onsite
- Other major disturbance
- Attempted escape
- A transferee found in possession of a weapon or means of escape
- Use of an observation room (over 24hrs)
- Incidents likely to attract media attention
- Aborted Removal
- Strip search
- Emergency – medical – offsite
- Assault causing minor bodily harm
- Any known complaint about any of the above incidents

**Definition of a Minor Incident**

A Minor incident is an incident or event which affects, but to a lesser degree than a Major incident, the safety and security of the facility, the welfare of a transferee, or which threatens the success of Escorts/Transfer/Removal activities. Minor incidents include:

- Food / Fluid Refusal (less than 24 hours)
- End of Food / Fluid Refusal
- Less serious public health risk
- Clinical depression
- Substance abuse
- Birth of a child
- Threatening/aggressive behaviour by transferee
- Contraband/prohibited article found
- Assault not causing bodily harm
- Relocation of transferees between facilities
- Minor industrial action by staff
- Minor disturbance
- Failure of main systems/power failure
- Failure of Service Provider IT system for 6hrs or more
- Less serious damage to facility
- Theft
- Missing money
- Missing property
- Contraband brought in by visitors
- Media approach to staff or transferee
- Food poisoning
- Transferee denied a visitor during visiting hours
- Other visitors refused access
- Where complaints or feedback received by service providers is not resolved within required timeframe, or are escalated to an external third party
- Transferee denied information from their file, and
- Any known complaint about any of the above incidents

**Review into recent allegations relating to conditions and circumstances at the  
Regional Processing Centre in Nauru**

**TERMS OF REFERENCE**

A number of allegations have been made recently regarding conditions and circumstances at the Regional Processing Centre in Nauru (also known as ‘the centre’). These allegations include issues relating to the conduct and behaviour of staff employed by contracted service providers, claims of sexual and other physical assault of transferees, the orchestration and facilitation of transferees to engage in non-compliant or harmful behaviour and protest actions potentially endangering the safety and security of all persons at the centre, and the misuse and unauthorised disclosure of sensitive and confidential information, including to undermine the proper management of the centre.

The purpose of this review is to provide a complete and accurate account of the circumstances, to determine the substance (if any) of the allegations and to provide recommendations to relevant authorities to strengthen arrangements at the Regional Processing Centre in Nauru.

The Acting Secretary of the Department of Immigration and Border Protection has initiated a review to investigate and report on the key issues, in particular:

- to determine exactly what the facts are;
- to ensure that those facts are available to any authorities for any action required as a result;
- to ensure that the department is provided with clear recommendations on any improvements that can be made to support the Republic of Nauru with the ongoing management of the Regional Processing Centre in Nauru.

Consistent with the *Memorandum of Understanding between The Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru and related issues* (dated 3 August 2013), the security, good order and management of the centre, including the care and welfare of persons residing in the centre, remain the responsibility of the sovereign Government of Nauru.

In relation to service providers, the scope of this review is limited to an examination of those service providers and staff engaged by the Commonwealth of Australia for the purposes of providing services of any kind at the Regional Processing Centre in Nauru. Should it become apparent in the course of the review that there is information of concern in relation to service providers engaged by the Republic of Nauru, this information will be provided to the Government of Nauru.

The Government of Nauru has indicated its full support for the review.

The review will involve, but is not limited to, assessing:

- the accuracy of the allegations;
- the adequacy of arrangements identifying, reporting, responding to, mitigating and preventing incidents of sexual and other physical assault at the centre;

- the conduct and behaviour of service providers and their staff at the centre;
- the adequacy and secure management of information by service providers and their staff;
- the extent of any prior indicators or intelligence that would have assisted in the prevention of unsatisfactory professional conduct and/or professional misconduct by service providers and their staff;
- breaches of security, including information security;
- the clarity of roles and responsibilities, including the adequacy of training and supervision of service provider staff;
- the ability of service providers to appropriately and professionally manage protest and other activity within the centre;
- any other issues deemed necessary by the Secretary of the Department of Immigration and Border Protection.

Any material obtained by the review that may be of assistance to relevant authorities in managing actual or possible criminal charges or activity will be made available to relevant authorities.

The review may make recommendations to strengthen relevant arrangements relating to the provision of services at the centre, and the conduct of service providers and staff.

The review is to commence immediately and report to the Secretary of the Department of Immigration and Border Protection by the end of the year, or other such dates as may be negotiated, with a progress report to be provided by approximately mid-November 2014.

**Review into recent allegations relating to  
conditions and circumstances at the Regional  
Processing Centre in Nauru**

**FINAL REPORT**

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## Executive Summary

### Background

1. On 3 October 2014, the then Minister for Immigration and Border Protection, the Hon Scott Morrison MP (the then Minister), announced a Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru. The allegations were reported in letters, which Senator Sarah Hanson-Young wrote to the then Minister, and in media articles.
2. Following consideration of the Terms of Reference, the Review identified two main aspects for investigation. They were:
  - claims of sexual and other physical assault of transferees; and
  - conduct and behaviour of staff members employed by contract service providers.
3. The Review looked separately at these two aspects noting the links between them since some allegations of sexual and other physical assault relate to the conduct and behaviour of contract service provider staff members.
4. The Review relied on interviews with transferees, contract service provider staff members, Departmental (Department of Immigration and Border Protection) officers, Australian Federal Police (AFP) officers and Nauruan officials and perusal of documents and submissions. Transferees were given with the opportunity to provide written information in their own language to the Review.
5. The Review's Terms of Reference state that "[a]ny material obtained by the Review that may be of assistance to relevant authorities in managing actual or possible criminal charges or activity will be made available to relevant authorities". Information about incidents, which the Review considered required further investigation, was provided to the Department with a recommendation that the information be referred to the relevant authorities. Such referrals are noted throughout this report.
6. The Review travelled twice to Nauru. During the second visit, a child protection practitioner from the Australian Capital Territory Community Services Directorate accompanied the Review team.

### *Sexual and other physical assault of transferees*

7. The Review considered the allegation that "*on occasions women have been forced to expose themselves to sexual exploitation in exchange for access to showers and other facilities*" and concludes that it is likely to be based on one particular incident, which the transferee related to four Save the Children staff members, who all reported it in accordance with Centre guidelines. Separately the transferee reported the incident to Senator Hanson-Young.
8. The Review became aware of two specific allegations of rape of two adult female transferees occurring at the Centre. One allegation had already been reported to the Nauruan Police Force. The other allegation, according to the transferee concerned, was

made only to the Review and involved a contract service provider staff member. The transferee requested that, for family and cultural reasons, the Review not reveal her identity or refer the matter to the relevant authorities.

9. The Review also became aware of allegations of indecent assault, sexual harassment and physical assault occurring in the Centre. Some of these allegations had been reported and the relevant authorities are investigating or have investigated. Contract service provider staff members are/were the subject of some of these allegations.
10. In relation "*access to cigarettes being traded for sexual favours*", the Review concludes that this allegation appears to relate to a time when cigarettes were not openly available in the Centre. The Review was unable to obtain any specific information to substantiate this allegation.
11. In relation to the allegation "*Nauruan guards have been trading marijuana with detainees in exchange for sexual favours*", the Review concludes that this activity is possibly occurring. The Review was unable to obtain many specific details because transferees were not prepared to provide them. The details obtained about transferees who allegedly deal in marijuana were provided to the Department for referral to the relevant authorities.
12. The Review concludes that many transferees are apprehensive about their personal safety and have concerns about their privacy in the Centre. Some transferees expressed their apprehension about other transferees and some about contract service provider staff members. Several married couple transferees raised concerns about their privacy. The perception of a lack of personal safety and privacy is heightened by high density accommodation in mostly un-air-conditioned, soft-walled marquees in a tropical climate.
13. The Review also concludes that ensuring transferees are, and feel, safe is important and requires consideration of such factors as infrastructure, policing and staffing.
14. The Review further concludes that the training and supervision of contract service provider staff members, particularly locally engaged Nauruans, need to be improved and should focus on the personal safety and privacy of transferees.
15. The Review considers that all decisions about facilities and infrastructure should be made with the personal safety and privacy of the transferees as a prime consideration. The Review encourages the Government of Nauru and the Department to ensure that these factors are considered in any decision-making, particularly as the Centre transitions to an open facility in early 2015.
16. Some allegations of sexual and other physical assault of transferees have been formally reported and others, disclosed only to the Review, had not been formally reported. The Review concludes that there is a level of under-reporting by transferees of sexual and other physical assault.
17. This under-reporting is generally for family or cultural reasons. Transferees also told the



Review that they were concerned that making a complaint could result in a negative impact on the resolution of their asylum claims. In some cases, transferees told the Review that they had not reported particular incidents because they had lost confidence that anything would be done about their complaints.

18. Despite this lack of confidence, the Review concludes that, when formal reports or complaints have been made, contract service providers, in the most part, have acted appropriately in dealing with them and have, when required, referred matters to the Nauruan Police Force. In some instances, the lack of timeliness in reporting and referral or inadequate or inconsistent information have hampered the ability of contract service providers and/or the Nauruan Police Force to investigate. This situation is particularly true in relation to allegations relating to sexual assault.
19. The Review concludes that the arrangements for identifying, reporting, responding to, mitigating and preventing incidents of sexual and other physical assault at the Centre could be improved. For instance, there are limited resources for sexual assault to be investigated by Nauruan authorities. Work also needs to be done to improve the existing arrangements at the Centre.
20. The Review became aware of claims that some allegations of abuse have been fabricated or exaggerated by transferees. The Review cannot discount this possibility. The transferees who were interviewed were generally credible and their accounts convincing. Yet, the Review could not establish the veracity of allegations. For this reason, information about some reported incidents was sent to the Department for referral to the relevant authorities for further investigation.
21. The protection of minors in the Centre is of the highest importance and priority. The Review found that, in relation to this group, there were both reported and unreported allegations of sexual and other physical assault. When the Review obtained information that would assist relevant authorities to investigate these allegations, it was provided to the Department.

#### *Conduct and behaviour of contract service providers*

22. The Review received allegations from transferees about misconduct by staff members of contract service providers. When the Review obtained such information, it was provided to the Department for referral to the relevant authorities.
23. The Review notes that all contract service providers have been prepared to take disciplinary action against staff members, when appropriate. The Review acknowledges that contract service provider staff members work in challenging circumstances and in the majority are dedicated employees who behave professionally.
24. In relation to whether any contract service provider staff member facilitated protest activity, encouraged self-harm or fabricated and manipulated allegations about sexual and other physical assault, the Review obtained information from Wilson Security intelligence reports,

interviews and other material. None of this information indicated conclusively to the Review that particular contract service provider staff members had engaged in these activities.

25. Given the AFP's current investigation, the Review does not draw any conclusion in relation to the misuse or unauthorised disclosure of sensitive and confidential information by contract service provider staff members. The limited information which the Review obtained was provided to the Department to assist the AFP's investigation.

*Removal of the Save the Children staff members from providing services in Nauru*

26. The Review notes the explanations which senior Departmental officers gave for acting to remove the Save the Children Australia (Save the Children) staff members from providing services to transferees in Nauru. Senior Departmental officers were concerned about the protest activity which followed the Ministerial announcement on 25 September 2014 regarding temporary protection visas. The senior Departmental officers read the signs as they saw them based on their previous experience and their responsibility for the safety of transferees and the implementation of Government policy.
27. Noting, however, that the intelligence information relied upon by the Department, in Wilson Security's view, required further investigation, the Review considers that a better course of action would have been to direct Save the Children to remove the ten employees, thereby alleviating any immediate threat, and conduct an investigation. Save the Children should have been afforded the opportunity to address the concerns raised about its staff members and Wilson Security could also have been given additional time to collect more information.
28. The Review notes that it has not obtained any information which substantiates the alleged misconduct in relation to the Save the Children staff members. Noting the current AFP investigation, the Review concludes that the Department should review its decision to have the Save the Children staff members removed. The Department's review of its decision would include providing Save the Children with the information it relied on.

*A more integrated approach*

29. The Review suggests that the Centre, which is a Nauruan facility, would operate more effectively if there were greater partnership and integration between the Nauruan operations managers and the Department and its contract service providers.
30. The Review recognises the effort which the Department and its contract service providers are making to ensure that Nauruan requirements and expectations are met. As the Centre evolves, the Department must maintain this focus, particularly at the middle and senior levels of management.
31. The Department needs to provide effective coordination and adopt a lead role in ensuring that contract service providers work effectively together. This role needs to be played not only at the Centre in Nauru, but also at the head office level.

32. By appointing, in September 2014, a Senior Executive Service officer in Nauru, the Department has the basis to ensure that contract service providers achieve a more joined-up approach in the Centre. The Department needs to develop its function beyond mere contract management. This enhanced coordination role needs to be performed jointly with the Nauruan operations managers.
33. Inherent in a more integrated approach would be improved training and supervision of all contract service provider staff members. From the information which transferees provided to the Review, the supervision provided to the Transfield Services and Wilson Security staff members, particularly locally engaged Nauruans, needs to be enhanced.
34. The Nauruan Police Force has an important role at the Centre. Consistent with the need for the Nauruan operations managers to be more involved, the Nauruan Police Force needs to be increasingly engaged. To achieve this outcome, the relationship between Transfield Services / Wilson Security on one hand and the Nauruan Police Force on the other hand needs to be more structured. The Review acknowledges that, in an ever evolving and developing context, there needs to be balance between best practice and what can be practically achieved.
35. The Review notes the need for the Nauruan Police Force to have increased visibility at the Centre in a community policing role. Currently, the Nauruan Police Force is seen there when conducting investigations and undertaking walk-throughs. This later activity needs to be extended into the sphere of community policing. In doing so, the Nauruan Police Force would appear at the Centre without Wilson Security in attendance. The perception among transferees, and others, is that, at the Centre, the two organisations are inseparable and that the Nauruan Police Force is subordinate.
36. Transferees need the opportunity to develop understanding of, and trust in, the Nauruan law enforcement and criminal justice system. A regular Nauruan Police Force presence at the Centre with the potential, thereby, for trust and understanding to be developed could become a positive and important factor in asylum seekers' transition from being transferees to refugee settlers.
37. A strong intelligence capability within the Centre is important. The Review acknowledges the existing intelligence capability in the Centre through the intelligence unit operated by Wilson Security.
38. As with other aspects of the operation and management of the Centre, the intelligence capability would benefit from a more joined-up approach. The Review considers that the effective engagement of the Nauruan Police Force is lacking currently in the intelligence arrangements in the Centre.
39. Attention needs to be paid to: the way in which local Nauruan staff are regarded and treated; more structured education programs and positive messaging about Nauruan society; and improved training and supervision of local Nauruan staff members employed by contract service providers.

40. Building the capability of the contract service providers' Nauruan workforce would assist in the operation and management of the Centre.

41. Finally, the Review notes the AFP's submission which suggests that a protocol be established between the Nauruan Police Force, the Nauruan Department of Justice and Border Control and Transfield Services and Wilson Security. The purpose of the proposed protocol is to provide an improved operations interaction in response to incidents in the Centre. The AFP notes that the implementation of the draft protocol would not only enhance the current arrangements for managing critical events, but also provide more clarity and direction in the day-to-day roles and responsibilities of all stakeholders.

## Recommendations

**RECOMMENDATION 1:** The Department and the Nauruan Government take into account the personal safety and privacy of transferees when making decisions about facilities and infrastructure at the Centre.

**RECOMMENDATION 2:** Contract service providers review their guidelines relating to sexual harassment and sexual relationships to ensure that staff members understand what behaviour is acceptable in the context of a Centre with a diversity of cultures.

**RECOMMENDATION 3:** The Department give consideration to how it could support the Government of Nauru to enhance forensic services to investigate, record and prosecute incidents of sexual and other physical assault in the Centre.

**RECOMMENDATION 4:** Nauruan Government officials and the Department review and enhance the existing policy framework for identifying, reporting, responding to, mitigating and preventing incidents of sexual and other physical assault at the Centre. All staff members working at the Centre (Nauruan, Departmental and contract service provider) must understand the framework and their responsibilities under it.

**RECOMMENDATION 5:** The Department liaise with the Government of Nauru to ensure that child protection issues are reflected in the work currently being done on the Nauruan criminal code.

**RECOMMENDATION 6:** The Department and the contract service providers continue to work with the Nauruan Government to ensure that a robust child protection framework is developed.

**RECOMMENDATION 7:** All contract service providers review their existing policies in relation to social media to ensure that their staff members have a clear understanding of their obligations concerning its use.

**RECOMMENDATION 8:** The Department review contract provisions and other guidelines to ensure that the obligation on contract service providers to report any data loss is explicit.

**RECOMMENDATION 9:** Noting the current AFP investigation, the Department review its decision which required Save the Children to remove ten of its staff members from providing services in Nauru and in so doing consider the staff members individually. The review would include providing:

- a. Save the Children with the information the Department relied on; and
- b. the opportunity for Save the Children to address the allegations concerning its staff members.

In the event that the decision in relation to any of the ten Save the Children staff members is reversed, the Department make representations to the Government of Nauru about the Nauruan removal order and its consequences.

**RECOMMENDATION 10:** The Department ensure that Nauruan operation and management of the Centre is enhanced through a more joined-up approach between the Nauruan operations managers and the contract service providers.

**RECOMMENDATION 11:** Greater cooperation between the contract service providers be encouraged, including through the Department:

- a. ensuring that contract service provider staff members have a clear understanding of each other's roles and responsibilities;
- b. reviewing the range of meetings at the Centre to ensure that information is shared effectively; and
- c. taking a more proactive role to ensure that contract service providers are working cooperatively together and are responsive to each other.

**RECOMMENDATION 12:** The Department ensure that the relationship between Transfield Services/Wilson Security and the Nauruan Police Force becomes more structured and is based on cooperative and consistent interaction.

**RECOMMENDATION 13:** The Department consider the feasibility of assisting the Nauruan Police Force to increase its effectiveness through the appointment, on a limited term basis, of an AFP officer with executive authority.

**RECOMMENDATION 14:** The Nauruan Police Force have greater visibility in the Centre based on community policing and explore ways to include transferees and refugee settlers in community policing and law enforcement roles.

**RECOMMENDATION 15:** The Department ensure that there is a more joined-up approach between the Wilson Security intelligence unit and the Nauruan Police Force.

**RECOMMENDATION 16:** The Department work with the Nauruan Government to extend the Nauruan Police Force Community Liaison Officers Program to the Centre.

**RECOMMENDATION 17:** The Department and contract service providers review and enhance existing efforts to ensure that Nauruan staff members are treated with respect and that there is courteous regard shown for the Republic of Nauru. This requirement could be enhanced through:

- a. the induction programs for all non-Nauruan contract service provider staff members about Nauruan culture and Nauruan society be delivered by Nauruans;
- b. establishment of a framework to deliver positive messaging about Nauru;
- c. the Department taking the lead with its contract service providers to assist Nauruan authorities to continue to find ways to introduce transferees and Nauruans to each other's cultures and traditions.

**RECOMMENDATION 18:** The Department work with Nauruan authorities and contract service providers to develop new strategies and training programs to build the capacity of the contract service providers' Nauruan workforces.

**RECOMMENDATION 19:** The Department consider the draft protocol suggested by the AFP for protest and incident management to assess whether it adds value to existing emergency management plans.

**PART 1:**

**THE REVIEW**

**Terms of Reference**

A number of allegations have been made recently regarding conditions and circumstances at the Regional Processing Centre in Nauru (also known as 'the Centre'). These allegations include issues relating to the conduct and behaviour of staff employed by contracted service providers, claims of sexual and other physical assault of transferees, the orchestration and facilitation of transferees to engage in non-compliant or harmful behaviour and protest actions potentially endangering the safety and security of all persons at the centre, and the misuse and unauthorised disclosure of sensitive and confidential information, including to undermine the proper management of the centre.

The purpose of this Review is to provide a complete and accurate account of the circumstances, to determine the substance (if any) of the allegations and to provide recommendations to relevant authorities to strengthen arrangements at the Regional Processing Centre in Nauru.

The Acting Secretary of the Department of Immigration and Border Protection has initiated a Review to investigate and report on the key issues, in particular:

- to determine exactly what the facts are;
- to ensure that those facts are available to any authorities for any action required as a result;
- to ensure that the department is provided with clear recommendations on any improvements that can be made to support the Republic of Nauru with the ongoing management of the Regional Processing Centre in Nauru.

Consistent with the Memorandum of Understanding between The Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru and related issues (dated 3 August 2013), the security, good order and management of the centre, including the care and welfare of persons residing in the centre, remain the responsibility of the sovereign Government of Nauru.

In relation to service providers, the scope of this Review is limited to an examination of those service providers and staff engaged by the Commonwealth of Australia for the purposes of providing services of any kind at the Regional Processing Centre in Nauru. Should it become apparent in the course of the Review that there is information of concern in relation to service providers engaged by the Republic of Nauru, this information will be provided to the Government of Nauru.

The Government of Nauru has indicated its full support for the Review. The Review will involve, but is not limited to, assessing:

- the accuracy of the allegations;
- the adequacy of arrangements identifying, reporting, responding to, mitigating and preventing incidents of sexual and other physical assault at the centre;
- the conduct and behaviour of service providers and their staff at the centre;



- the adequacy and secure management of information by service providers and their staff;
- the extent of any prior indicators or intelligence that would have assisted in the prevention of unsatisfactory professional conduct and/or professional misconduct by service providers and their staff;
- breaches of security, including information security;
- the clarity of roles and responsibilities, including the adequacy of training and supervision of service provider staff;
- the ability of service providers to appropriately and professionally manage protest and other activity within the centre;
- any other issues deemed necessary by the Secretary of the Department of Immigration and Border Protection.

Any material obtained by the Review that may be of assistance to relevant authorities in managing actual or possible criminal charges or activity will be made available to relevant authorities.

The Review may make recommendations to strengthen relevant arrangements relating to the provision of services at the centre, and the conduct of service providers and staff.

The Review is to commence immediately and report to the Secretary of the Department of Immigration and Border Protection by the end of the year, or other such dates as may be negotiated, with a progress report to be provided by approximately mid-November 2014.

## Background to the Review

- 1.1 On 25 September 2014, the then Minister announced the re-introduction of temporary protection visas to resolve the status of Illegal Maritime Arrivals in Australia who were found to invoke Australia's protection obligations. Transferees in Nauru would, however, remain subject to regional processing arrangements and would not be eligible for a temporary protection visa and resettlement in Australia. Protest activity by transferees at the Centre followed the Ministerial announcement.
- 1.2 In announcing the Review on 3 October 2014, the then Minister referred to recent serious allegations that had been made regarding sexual abuse of transferees. These allegations were reported in letters, which Senator Sarah Hanson-Young wrote to the then Minister on 26 September 2014 and 30 September 2014, and in media articles.
- 1.3 In correspondence dated 26 September 2014, Senator Hanson-Young referred to allegations that *"on occasions women have been forced to expose themselves to sexual exploitation in exchange for access to showers and other amenities"*. Senator Hanson-Young's letter also stated *"[t]here are further reports that access to cigarettes is being traded for sexual favours. I am extremely alarmed that the reports also involve children and young girls"*.<sup>1</sup>
- 1.4 In correspondence to the then Minister dated 30 September 2014, Senator Hanson-Young referred to more information coming to her attention in *"recent days"*. This additional information was:
- *I have heard from multiple sources that children as young as 8 years old have been involved in lip stitching and other forms of self-harm following the introduction of last week's legislation.*
  - *Accusations of a rape taking place inside the centre and a young female detainee being threatened with rape upon her resettlement in the Nauruan community.*
  - *Accusations that Nauruan guards have been trading marijuana with detainees in exchange for sexual favours.*
  - *Accusations that a guard previously employed at the centre forced children to engage in sexual activity in front of him and that this guard has since been removed from working inside the family camp.*<sup>2</sup>
- 1.5 Some of the allegations of sexual and other physical assault of transferees<sup>3</sup> which were reported in the media, mirrored those referred to in Senator Hanson-Young's correspondence to the then Minister. There were also some additional allegations reported in the media (see [Attachment A](#)).

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<sup>1</sup> L253 - Letter from Senator Hanson-Young, 26 September 2014

<sup>2</sup> L254 - Letter from Senator Hanson-Young, 30 September 2014

<sup>3</sup> The Review refers to asylum seekers at the Regional Processing Centre in Nauru as transferees.

- 1.6 At a media conference on 3 October 2014, the then Minister said that he had been provided with reports indicating that some contract service provider staff members at the Regional Processing Centre at Nauru (the Centre) had allegedly engaged in a broader campaign with external advocates to seek to cast doubt on the Government's border protection policies. This reporting included allegations of:
- orchestration and facilitation to engage in non-compliant or harmful behaviour and protest activities, including the tactical use of children in those protests;
  - coaching and encouragement of self-harm;
  - fabrication of allegations as part of a campaign to seek to undermine operations and support for the offshore processing policy of the government; and
  - misuse and unauthorised disclosure of sensitive and confidential information.
- 1.7 The then Minister advised that the Department of Immigration and Border Protection (the Department) had invoked a provision under the service provider contract to direct Save the Children Australia (Save the Children) to remove ten of its staff members from delivering services in Nauru. The Department gave this notice on 2 October 2014.
- 1.8 On 2 October 2014, the Department referred to the AFP material about incidents concerning the unauthorised disclosure of information by a specific Save the Children staff member. *The Daily Telegraph* reported that the AFP had been asked to investigate, under section 70 of the *Crimes Act 1914*, alleged misuse by staff members of Save the Children of privileged information.
- 1.9 The next day, 3 October 2014, Mr Simon Benson, reporting in *The Daily Telegraph* (and other News Limited publications), cited an intelligence report provided to the Department stating that some Save the Children staff members "had been involved in a propaganda campaign to 'manufacture' conditions to embarrass the Abbott government"<sup>4</sup>.
- 1.10 The intelligence report was subsequently identified as having been compiled and distributed by the Wilson Security intelligence unit, and entitled "*Save the Children Staff on Nauru*". The report was dated 30 September 2014 and has not been officially released.<sup>5</sup>

## Methodology

- 1.11 Following consideration of the Terms of Reference and the background information noted above, the Review identified two main aspects for investigation. They were:
- claims of sexual and other physical assault of transferees; and
  - conduct and behaviour of staff members employed by contract service providers.
- 1.12 The Review looked separately at these two aspects noting the links between them since some allegations of sexual and other physical assault relate to the conduct and behaviour of contract service provider staff members.

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<sup>4</sup> *Claims of abuse on island go overboard*, *The Daily Telegraph*, 3 October 2014

<sup>5</sup> R248 - 30.9.2014 - Transfield intelligence report - allegations regarding Save the Children

- 1.13 The second aspect to the Review includes the reported allegations of: orchestration and facilitation of transferees to engage in non-compliant or harmful behaviour and protest actions potentially endangering the safety and security of all persons at the Centre; and the misuse and unauthorised disclosure of sensitive and confidential information to undermine the proper management of the Centre.
- 1.14 The Review covered the period between July 2013 and October 2014, as well as incidents occurring and reported during the course of the Review.
- 1.15 At the Review's invitation, the following persons or organisations made one or more submissions:
- Save the Children;
  - Transfield Services and its sub-contractor Wilson Security;
  - the AFP;
  - International Health and Medical Services (IHMS) and its sub-contractor Overseas Services to Survivors of Torture and Trauma (OSSTT); and
  - Senator Hanson-Young.
- 1.16 In addition, the Review received a number of other submissions. For the most part, these submissions were not relevant to the Review's Terms of Reference.
- 1.17 The Review also requested and obtained documentation and other information from:
- the Nauruan Police Force;
  - the Department of Immigration and Border Protection;
  - Save the Children;
  - Transfield Services;
  - Wilson Security;
  - IHMS; and
  - Senator Hanson-Young.
- 1.18 The Review interviewed staff members from the Department, Save the Children (including nine of the ten staff members who were the subject of the removal notice), IHMS, Transfield Services and Wilson Security. These interviews took place in Australia and Nauru. The Review met with the relevant Nauruan Minister and government officials and with the AFP. The Review also interviewed transferees currently living in the Centre. In total, the Review conducted 114 interviews, with the majority being recorded and transcribed.
- 1.19 The Review received, and acknowledges, the co-operation of the Nauruan Government, Departmental officers, the AFP and the contract service providers and their staff members in responding to requests for documentation and other information. The Review also acknowledges the transferees who participated in interviews.
- 1.20 The Review considered previous reviews relating to regional processing and, in particular, the recommendations which those Reviews made.

**Visits to Nauru: 25 October – 1 November 2014 and 12 – 19 November 2014**

- 1.21 The Review travelled twice to Nauru. During the second visit, a child protection practitioner from the Australian Capital Territory Community Services Directorate, [REDACTED], travelled with the Review team.
- 1.22 Before the first visit, transferees were told about the Review's Terms of Reference. The Review's first interaction with transferees was in group meetings, which were held by language group with interpreters present. At the group meetings, children were not present because the Review intended to deal separately with issues relating to minors. Nine group meetings were held in the Centre, with between five and ten transferees. All language groups were represented.
- 1.23 The Review spoke with transferees about the conduct and behaviour of contract service provider staff members at the Centre, allegations of sexual and other physical assault, orchestration and facilitation to engage in non-compliant or harmful behaviour and protest actions, coaching and encouragement of self-harm and misuse and unauthorised disclosure of sensitive and confidential information.
- 1.24 Generally speaking, transferees were prepared to discuss these topics. During the group meetings, some transferees asked to meet individually with the Review. Later, other persons came forward to request individual interviews. Due to the numbers, the Review team screened those requests for interview.
- 1.25 The Review received a strong response from the Iranian, Farsi speaking, cohort of transferees. The Review made every effort to ensure that it was available to all ethnic and language groups at the Centre.
- 1.26 At the Review's request, the Department distributed Centre feedback forms.<sup>6</sup> These forms gave transferees the opportunity to provide written information in their own language to the Review.
- 1.27 The feedback forms, which the Review received, helped the Review to identify transferees it might interview individually. The Review received 316 feedback forms during the first visit and 36 during the second visit. The Review interviewed 22 transferees as a result of receiving feedback forms.
- 1.28 The Review arranged translation, when necessary, of the feedback forms and identified the issues being raised. Issues not relevant to the Review were referred to the appropriate authorities.
- 1.29 During the second visit, the Review continued its interviews with individual transferees. Assisted by the child protection practitioner, the Review interviewed several minors who

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<sup>6</sup> Feedback forms are a proforma available at the Centre for transferees to make comment, raise a concern or lodge a complaint.

were 15 and 16 years of age. The Review also interviewed some parents of children<sup>7</sup> who were between five and eight years of age.

- 1.30 During the visits, the Review met with the Nauruan Minister for Justice, the Hon. David Adeang MP. The Review also met with senior Nauruan Government officials, including: the Secretary of the Nauruan Department of Justice and Border Control, Mr Lionel Aingimea; the Solicitor General, Mr Graham Leung; and the Director of the Nauruan Police Force, Commissioner Corey Caleb.
- 1.31 The Review also met the Australian High Commissioner, His Excellency Martin Quinn, and the Senior Adviser to the Nauruan Police Force, AFP Superintendent [REDACTED].

### **Referral to the relevant authorities**

- 1.32 The Terms of Reference require the Review to provide any material obtained that may be of assistance in managing actual or possible criminal charges or activity to the relevant authorities. The Review took the approach of providing the Department with such material as soon as practicable so that the Department could refer it to the relevant authorities.
- 1.33 On 25 November 2014, the Review provided the Department with information concerning allegations that four local staff members—identified by first name only (and not conclusively), and two unidentified, local staff members—had acted inappropriately in relation to minors. The alleged conduct came to light when five minors told the Review that various security staff members had: offered them marijuana; offered them marijuana in return for sexual favours; committed an assault; offered to obtain items in return for sexual favours; and been on duty while under the influence of alcohol. The minors provided this information on the condition their identities not be revealed. They said to the Review that they had not told their families about the alleged incidents.
- 1.34 On 27 November 2014, the Review team forwarded to the Department a number of feedback forms. These feedback forms raised issues relating to threats of self-harm or other vulnerability concerning individual transferees. Other issues raised in the feedback forms, not directly related to the Terms of Reference, such as requests for medical attention or concerns about living conditions, were also referred to the Department for follow-up with the relevant contract service provider.
- 1.35 On 10 December 2014, the Review provided the Department with information concerning another ten allegations which the Review considered needed to be brought to the attention of contract service providers at the Centre or the Nauruan Police Force. Of the ten allegations, two related to children. Five allegations involved possible sexual misconduct by contract service provider staff members: one allegation was a physical assault by a named contract service provider staff member; and two allegations related to possible criminal activity within the Centre.

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<sup>7</sup> The Review refers to any transferee less than 18 years of age as a child or as a minor.

- 1.36 Also on 10 December 2014, the Review provided the Department with some limited information which the Review had obtained on the misuse and unauthorised disclosure of sensitive and confidential information. The Review suggested that the Department pass this information to the AFP. Following consultation with the Secretary of the Department and the AFP, the Review decided to curtail its focus on this aspect of the Terms of Reference in order to avoid possible duplication of investigative effort and interference with an AFP investigation. This topic is mentioned again later in this report.
- 1.37 On 15 December 2014, the Review provided the Department with information for referral to the relevant authorities about the unauthorised disclosure of a sensitive Wilson Security intelligence document.
- 1.38 The Review did not obtain any other information which it considered needed to be referred. However, the Review did ask the Nauruan Police Force about the progress of an investigation into the alleged rape of a transferee. This matter is discussed later in this report.

<b>PART 2:</b>	<b>BACKGROUND INFORMATION</b>
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### **Brief history of the Nauru Regional Processing Centre**

- 2.1 On 13 August 2012, the Australian Government announced that asylum seekers who had arrived illegally in Australia on or after 13 August 2012 would be transferred to a regional country where their claims for asylum would be processed. Transferees determined as having refugee status could apply for settlement in Australia.
- 2.2 The Australian Government and the Government of Nauru signed a Memorandum of Understanding (MOU) on 29 August 2012 to establish a regional processing centre (RPC). The transfer of asylum seekers to Nauru commenced on 13 September 2012.
- 2.3 The policy changed on 19 July 2013, when the Australian Government announced a new Regional Resettlement Arrangement with Papua New Guinea, and then with Nauru. Consequently, all illegal arrivals in Australia would be transferred to a RPC. Transferees determined as refugees could not apply for settlement in Australia.
- 2.4 On 3 August 2013, the Australian Government and the Government of Nauru signed another MOU. The MOU is entitled *Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the Transfer to and Assessment of Persons in Nauru, and Related Issues*.
- 2.5 The MOU expanded the previous offshore processing arrangements to include the settlement in Nauru of transferees who were determined as having refugee status.
- 2.6 In support of the MOU, administrative arrangements were signed on 11 April 2014. These arrangements provided guidance for the transfer of asylum seekers to Nauru, management of the Centre and refugee status determination.
- 2.7 The Centre has facilities and services for transferees who are single adult males or single adult females, transferees with family members or transferee couples without children. As of 30 September 2014, there were no unaccompanied minors in the Centre. Nearly all of them had been determined as having refugee status and are living in the Nauruan community. Two minors whose refugee status is yet to be determined, also moved into the Nauruan community. In Nauru, unaccompanied minors are under the guardianship of the Nauruan Minister for Justice.
- 2.8 The Centre consists of three separate areas at different locations known as RPC 1, RPC 2 and RPC 3. RPC 1 provides staff accommodation, facilities (administration, medical and education) and short-term supported accommodation for transferees. RPC 2 accommodates single adult males and RPC 3 accommodates families, single women and couples without children.
- 2.9 The accommodation and some other facilities in both RPC 2 and RPC 3 consist of vinyl 10 x 12 metre canvas marquees. In RPC 2, each marquee can accommodate 40 transferees in



dormitory style configuration with bunk beds. In RPC 3, each marquee has the capacity for up to 22 transferees depending on the needs of family groups. Marquees for families with children under 4 years of age are fitted with air-conditioning and hand washing facilities.

2.10 Since the Centre was established, various transferee protests have occurred. These protests have usually coincided with significant Australian Government policy announcements. On 19 July 2013, protest activity turned into a riot. As a result, many of the buildings and other infrastructure at RPC 1 at that time, were destroyed. The extent of the loss was estimated to be over \$60 million. As a consequence, the Centre was rebuilt and RPC 2 and RPC 3 were constructed for their present purposes.

2.11 The events of 19 July 2013 provide relevant background in relation to the response to subsequent protests at the Centre.

### **Management of the Centre**

2.12 The Centre is a Nauruan facility and refugee status termination is a Nauruan function. The Secretary of the Nauruan Department of Justice and Border Control, with the support of the Department, and its contract service providers, is responsible for the operation and management of the Centre in accordance with the MOU.

2.13 Under the administrative arrangements, the Government of Nauru has appointed three Nauruan operations managers. These managers are responsible for RPC 1, RPC 2 and RPC 3 respectively and are assisted by Nauruan deputy managers. They are located at their respective RPCs.

2.14 The Department currently has 20 identified positions in Nauru. The senior Departmental position for all matters relating to the Centre is the Assistant Secretary, Nauru Operations. This position was established in September 2014 and reflects the need for a senior Departmental person to engage with the Government of Nauru and contract service providers in the day-to-day running of the Centre.

2.15 At the Centre, there are a number of contract service providers (contracted to the Department) and their sub-contractors. They include:

- Transfield Services;
- Wilson Security (sub-contracted to Transfield Services);
- International Health and Medical Services (IHMS);
- Save the Children Australia;
- Overseas Services to Survivors of Torture and Trauma (OSSTT) (sub-contracted to IHMS);
- Canstruct (which provides construction services).

2.16 There are also other contract service providers. For example, to meet its threshold of local staff employment, Wilson Security subcontracts to local security providers, Sterling Security and Protective Security Services.

- 2.17 Transfield Services provides support services, known as garrison services, relating to the Centre's operation, which includes escort and security services provided by Wilson Security. IHMS provides medical services (general practitioners, psychiatrists and psychologists and mental health nurses) and torture and trauma counselling (through OSSTT).
- 2.18 Transfield Services provides welfare services for the single adult males accommodated in RPC 2. Save the Children provides welfare and educational services for single adult females, families, children and couples without children in RPC 3. Transfield Services is not responsible for providing any welfare services in RPC 3.
- 2.19 Transfield Services and Wilson Security are required to engage specific minimum levels of local Nauruan personnel and sub-contractors. Their contracts mandate them to use local service providers and staff members as far as possible in all main service areas including security.
- 2.20 Information about incidents at the Centre is communicated through incident reports, information reports and a formal complaints process.
- 2.21 Contract service provider staff members who have witnessed, or become aware of an event (classified as minor, major or critical) are required to submit an incident report in writing. Such reports may be oral in the first instance. Reports must be made within a prescribed time frame. Transfield Services told the Review that all stakeholders, including the Government of Nauru, may receive major and critical incident reports as relevant to the incident that has occurred.
- 2.22 Contract service provider staff members must prepare an information report about a situation or issue which may be of interest and/or require follow up action, but does not necessarily involve a specific incident. Information reports are referred to relevant stakeholders.
- 2.23 There is a complaints process through which transferees can raise any concern. The aim is to achieve early resolution. Complaints are received by the welfare service provider (Transfield Services in RPC 2 and Save the Children in RPC 3) who refer them to the relevant contract service provider for investigation and response. In the case of complaints about contract service provider staff members, the complaint must be referred to the Department for it to refer and/or investigate.

**PART 3: SEXUAL AND OTHER PHYSICAL ASSAULT**

3.1 The “recent allegations” mentioned in the Review’s Terms of Reference originated either in the media or from Senator Hanson-Young’s correspondence to the then Minister. In some cases, what was reported was the same or similar. A number of themes emerged, namely:

- sexual exploitation in exchange for access to showers and other amenities;
- rape and threats of rape;
- trading of cigarettes and marijuana for sexual favours;
- indecent assault and sexual harassment;
- physical assault of transferees by service provider staff;
- lip stitching and self-harm by minors; and
- assault of minors.

**Sexual exploitation in exchange for access to showers and other amenities**

3.2 The Review notes that when there have been water shortages in Nauru, the water supply in the Centre has been restricted. The water supply has since been upgraded in the Centre.

3.3 On 26 September 2014, Save the Children staff members, [REDACTED] and [REDACTED]<sup>8</sup> were asked by [REDACTED] to sit with the transferee who was visibly upset. According to the information report, which [REDACTED] and [REDACTED] made on 28 September 2014, the transferee “*talked about several situations, some from Christmas Island and some from RPC 3.*” The transferee told them that she had asked for a longer shower, to which the “*male security person*” agreed on the condition he could “*...view a boy or a girl having a shower*”.<sup>9</sup>

3.4 On 29 September 2014, the transferee repeated her allegation to Save the Children staff members, [REDACTED] and [REDACTED]<sup>10</sup>. In the information report submitted by [REDACTED] and [REDACTED], there was no mention of the request to see a child having a shower. That information report says:

*During a discussion yesterday (29/9/2014) with [REDACTED] she disclosed that she asked a Nauruan Wilson Security guard if she could have 2 minutes extra in the shower to wash her [child’s] hair. The guard replied that for her to have this request, she would have to show him her naked body”.<sup>11</sup>*

3.5 On 2 October 2014, two Wilson Security investigators interviewed the transferee. According to the Wilson Security investigation report, the transferee stated that “*about four months ago, whilst she was in the female shower block, a local Nauruan male security guard turned off the water. She had not completed her showering and asked for more time. The guard*

<sup>8</sup> [REDACTED] and [REDACTED] were among the ten Save the Children staff members who were identified in October 2014 to be removed from delivering services in Nauru.

<sup>9</sup> R2949 - 28.9.2014 - Save the Children Information Report re [REDACTED]

<sup>10</sup> [REDACTED] and [REDACTED] were also among the ten Save the Children staff members.

<sup>11</sup> R2943 - 29.9.2014 – Save the Children Information Report re [REDACTED]

*allegedly said to her in reply 'Show me your body and I'll give you more time'. The transferee did not comply with this request."*<sup>12</sup>

3.6 On 2 October 2014, Wilson Security investigators obtained a signed witness statement from [REDACTED]. In that document, [REDACTED] stated that the transferee had told [REDACTED] *"The two minutes showers are not enough. We requested for four minute showers but the security guard said on one condition that if could see your kid's naked body"*. [REDACTED] also stated that the transferee had told [REDACTED] that, on 25 September 2014, she (the transferee) had telephoned Senator Hanson-Young about her concerns.<sup>13</sup>

3.7 The Review interviewed the transferee and also the Save the Children staff members who had submitted the incident reports.

3.8 In her interview with the Review, the transferee described the incident. The transferee said that she could not identify the contract service provider staff member and did not say that the security guard has asked to see a child showering. She told the Review that:

*I was dressed. My [REDACTED] was in the shower by [REDACTED]. So, [REDACTED] had put the shampoo in [REDACTED] hair and once the two minutes was up, [REDACTED] hadn't washed out the shampoo and it was burning [REDACTED] eyes. So, I went to the officer and I said, 'Is it possible for you to turn the shower on so [REDACTED] can wash the shampoo out of [REDACTED] hair? It's stinging [REDACTED] eyes.' And he said that, 'If you want me to turn it on for another two minutes, just take off your clothes, show me your body and then I will turn that on for you'."*<sup>14</sup>

3.9 The Review interviewed the Save the Children staff members who submitted the information reports ([REDACTED]). [REDACTED] told the Review that the transferee had recounted, *"[t]here had been times where she was wanted to wash her [REDACTED] hair or have two extra minutes in the shower for herself and a guard had said to her that to do that she had to show her body to him, her naked body to him"*.<sup>15</sup>

3.10 [REDACTED] told the Review:

*[The transferee] was talking about this phone call she made to Sarah Hanson-Young. She then told me what the main thing that she was talking to Sarah Hanson-Young about, and that was that she had requested a four-minute shower instead of a two-minute shower. She asked a security guard this. She said he granted that request upon condition that he be allowed to view a boy or girl having a shower. And it's at that point, because children were involved, that I felt very uneasy. I knew that as a*

<sup>12</sup> R2942 - 2.10.2014 - Investigation Progress Report re [REDACTED], at p.2

<sup>13</sup> S3013 - 2.10.2014 - Statement by [REDACTED], at pp.2-3

*duty of care I had to report that. Doesn't mean I agreed with it. It doesn't mean it was an allegation. It means I have to report that, or I'm going to lose my job ...*<sup>16</sup>

- 3.11 [REDACTED] – she wanted to have extra two minutes to wash her hair, and she said the guard said if you want extra two minutes then we want to watch you have a shower naked”.<sup>17</sup>
- 3.12 According to the Wilson Security investigation report dated 2 October 2014, the Nauruan Police Force was notified.<sup>18</sup> Transfield Services also informed the Review that Wilson Security had referred a series of allegations, which this female transferee had made, including the specific instance of alleged sexual exploitation in exchange for a longer shower, to the Nauruan Police Force.
- 3.13 In group interviews, transferees told the Review about similar incidents occurring regularly when female transferees (adults and children) were in the showers. None of the accounts relayed in the group interviews was first-hand and there were few specific details. Transferees in some of the group interviews told the Review that this form of sexual exploitation had been a “regular occurrence from the beginning”, although no specific details were provided.
- 3.14 The Review was unable to obtain any specific or first-hand information or find any incident or information reports or complaints or to otherwise substantiate the allegations related to the previous paragraph.

## **Rape and threats of rape**

### *Rape*

- 3.15 The Review is aware of two specific allegations of rape of two adult female transferees occurring at the Centre. One allegation had already been reported to the Nauruan Police Force. The other allegation, according to the transferee concerned, was made only to the Review and involved a contract service provider staff member.

### *Allegation 1*

- 3.16 The first allegation involved a female adult transferee ([REDACTED]). In an incident report dated 24 August 2014, the transferee alleged to a Transfield Services [REDACTED] approximately one month before, she was raped by [REDACTED]. The incident report recorded the transferee as saying that the rape had occurred in her tent and she named the person of interest ([REDACTED]). The incident report stated that the victim wanted to keep the

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<sup>18</sup> The referral to the Nauruan Police Force in relation to [REDACTED]

related to a series of allegations [REDACTED]

matter quiet for fear of retaliation from other transferees and had asked for the matter not to be referred to the police.<sup>19</sup>

- 3.17 Subsequently, [REDACTED], the transferee changed her mind and asked for the police to investigate.
- 3.18 Transfield Services told the Review (on 30 October 2014), that, in accordance with the requirements of the Centre's guidelines and rules, Wilson Security informed the relevant agencies, including the Nauruan Police Force. The Director (Commissioner) of Nauruan Police Force then referred the allegation to the Domestic Violence Unit for investigation. Nauruan Police Force officers interviewed the transferee a few days later.
- 3.19 On [REDACTED], the Nauruan Government granted refugee status to the alleged perpetrator and he was settled in the Nauruan community. On [REDACTED], the Nauruan Police Force informed the transferee that there was insufficient evidence to make an arrest. On 15 October 2014, the Nauruan Police Force advised Wilson Security of its recommendation to the Prosecutions Office that the case be closed.
- 3.20 The Review team interviewed the transferee on [REDACTED]. [REDACTED], the Nauruan Police Force reconsidered the case and reopened it. On [REDACTED], the Nauruan Police Force re-interviewed the alleged victim. The Nauruan Police Force investigation continues.
- 3.21 The Review notes that, although the transferee had reported the incident almost a month after it happened, Wilson Security and the Nauruan Police Force had commenced an investigation in a timely manner.
- 3.22 The Review also notes that the female adult transferee has access to psychological support from IHMS and is not pregnant as was reported in the media.<sup>20</sup>
- 3.23 This case appears to be the one referred to in *The Canberra Times* article, "Asylum seeker alleges she was raped twice in family compound in Nauru".<sup>21</sup> The Review notes that the female transferee has alleged one instance of rape.
- 3.24 As to *The Canberra Times*, article which reported that the Department immediately gave the alleged perpetrator a visa as a cover-up, the Review could obtain no information to substantiate that claim.

#### *Allegation 2*

- 3.25 The second allegation was made to the Review on [REDACTED]. A female transferee alleged that in [REDACTED] she was raped by a contract service provider staff member. For cultural and family reasons, she had not reported the rape previously.

<sup>19</sup> [REDACTED]

<sup>20</sup> *Female asylum seeker allegedly fell pregnant after being raped on Nauru*, *The Guardian*, 28 November 2014

<sup>21</sup> *Asylum Seeker alleged she was raped in family compound in Nauru*, *The Canberra Times*, 28 November 2014

[REDACTED]

- 3.26 The transferee requested that the Review not reveal her identity or refer the matter to the relevant authorities.

*Threat of rape*

- 3.27 As to the threat of rape, the Review was provided with information about two incidents.

- 3.28 The first incident was mentioned in *The Guardian* on 13 August 2014. *The Guardian* reported that an anonymous submission by Save the Children staff members to the Australian Human Rights Commission (AHRC) *National Inquiry into Children in Immigration Detention* had highlighted the case of a young female at risk of a “serious sexual assault” after “several adult males were overheard making plans” to attack her. The article said that the transferee was moved, with her family from RPC 3, to different housing, but was then moved back within a “few weeks”.<sup>22</sup>

- 3.29 The Review was unable to find any information that directly related to what had been reported. Through contract service provider documentation, the Review became aware of an allegation that a group of transferees had threatened to rape a mother and/or [REDACTED] child.<sup>23</sup> The transferee and her family were granted refugee status on [REDACTED]. In the light of this information, the Review did not pursue the matter further.

- 3.30 The second incident was reported to the Review on 10 November 2014 by Senator Hanson-Young’s office. A female transferee ([REDACTED]) had made contact to allege that she had received an anonymous letter threatening her with gang-rape. This transferee had spoken with the Review [REDACTED]

- 3.31 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] The transferee told the Review that she had destroyed the piece of paper. When asked whether she had made a complaint, the transferee said “So I’m done with

<sup>22</sup> “Child asylum seekers’ rights on Nauru ‘systematically violated’, inquiry told.” *The Guardian*, 13 August 2014

<sup>23</sup> E2800 - 21.11.2014 - Additional information from Transfield Services

*putting in complaints because I think that they're useless. (...) And I know that whatever I say might be held against me, or make my case more complicated".<sup>24</sup>*

- 3.32 As to allegation, which Senator Hanson-Young reported, about a "young female detainee being threatened with rape upon her resettlement in Nauru", the Review obtained no information which substantiated this claim.

### **Indecent assault and sexual harassment**

#### *IHMS staff members*

- 3.33 Female transferees told the Review about two allegations involving indecent assault by IHMS employees.

[REDACTED]

[REDACTED]

- 3.36 On 10 December 2014, the Review referred this allegation to the Department with a recommendation that the matter be investigated.

[REDACTED] The second allegation [REDACTED]  
[REDACTED]

- 3.38 The alleged incident occurred on [REDACTED]. The transferee made a complaint on [REDACTED] which Wilson Security investigated. The matter was then referred to the Nauruan Police Force on 13 October 2014 for investigation. The complaint was also referred to IHMS.<sup>26</sup>

- 3.39 [REDACTED], told the Review that [REDACTED] had spoken with the transferee who could not identify [REDACTED].<sup>27</sup> The Review interviewed the transferee, but no additional information came to light.

[REDACTED]



- 3.40 This incident was reported in *The Saturday Paper* on 15 November 2014 under the headline, *Fear and abuse: the Nauru letters*.<sup>28</sup> The transferee had written to the newspaper about the alleged incident. The Review obtained a copy of the letter from both the transferee and from [REDACTED] of the Asylum Seeker Resource Centre.

*Wilson Security staff members*

- 3.41 The same article in *The Saturday Paper* (mentioned above) reported another allegation which involved locally engaged contract service provider staff members employed by Wilson Security. *The Saturday Paper* reported having received a written account from a transferee. The Review was also given a copy of the letter by the transferee and [REDACTED]
- 3.42 The allegation was that, on [REDACTED], while waiting for the Centre shuttle bus, two female transferees were subjected to indecent exposure and lewd gestures by a Wilson Security staff member.
- 3.43 The Review interviewed the two female transferees, ([REDACTED]) who claimed they had made a written complaint on the evening of the incident. When they did not receive a response, a Save the Children case manager submitted a second complaint on their behalf, about two months later.<sup>29</sup> A Wilson Security behavioural team investigated the second complaint. The investigators showed the transferees photographs of Wilson Security staff members. The transferees told the Review that there was no photograph of any of the Wilson Security staff members concerned among them.
- 3.44 Wilson Security decided that there was not enough information to pursue the matter further. Although Wilson Security had no record of the first complaint, the Transfield Services complaints logbook showed that a complaint was received on 14 August 2014.<sup>30</sup>
- 3.45 On 10 December 2014, the Review provided this information to the Department with a recommendation that Transfield Services review the matter.
- 3.46 In a [REDACTED] interview, a transferee who did not want to be identified, alleged that [REDACTED] made sexual comments to her. [REDACTED]  
[REDACTED] He also allegedly started touching her. The transferee added "*I haven't reported because incidents like this happen very frequently.*"<sup>31</sup>
- 3.47 On 10 December 2014, the Review provided this information to the Department with a recommendation that Transfield Services review the matter.

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<sup>28</sup> *Fear and abuse: the Nauru letters, The Saturday Paper*, 15 November 2014

<sup>30</sup> S2946 - 24.10.2014 - Copy of Appendix 1 - Summary of Allegations – Transfield Services

3.48 On 30 September 2014, Save the Children staff members, [REDACTED] and [REDACTED], submitted an information report. In that report, the Save the Children staff members stated that a female transferee ( [REDACTED] ) had told them a contract service provider staff member had requested the female transferee's friend join him and his partner in a sexual relationship once she is residing in the Nauruan community.<sup>32</sup>

3.49 In response, Wilson Security investigated and produced a report dated 2 October 2014. The report noted:

*Whilst she was with her friend ( [REDACTED] ), they were approached by two Nauruan security guards [REDACTED]*

[REDACTED]<sup>33</sup>

3.50 On [REDACTED], Wilson Security investigators also spoke to the female transferee concerned, who stated: *"I was on my own and two Nauruan guards [REDACTED]*

[REDACTED]<sup>34</sup>

3.51 On [REDACTED], the Review interviewed the female transferee ( [REDACTED] ) mentioned in the paragraph above. She stated:

*So the topic of conversation was about an improper sexual proposition made by the Nauruan officers. [REDACTED]*

[REDACTED]<sup>35</sup>

3.52 The Wilson Security investigation report stated that this matter, together with other matters, had been referred to the Nauruan Police Force.<sup>36</sup> The Review notes this referral was recorded in a Transfield Services schedule, dated 13 November 2014.

3.53 An information report, which a Save the Children staff member, made on 31 October 2014, recorded a female transferee ( [REDACTED] ) as stating that [REDACTED]

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<sup>33</sup> R2942 - 2.10.2014 - Investigation Progress Report re [REDACTED], at p.2

<sup>36</sup> The referral to the Nauruan Police Force related to a series of allegations [REDACTED]

[REDACTED]  
[REDACTED] she was left alone with [same] security guard...who made further sexual advances towards her.<sup>37</sup>

3.54 Wilson Security referred the matter to the Nauruan Police Force. This referral is also confirmed by a schedule, dated 13 November 2014, which Transfield Services provided to the Review.

3.55 On [REDACTED], a female transferee ( [REDACTED] ) told the Review that:

*There is a...[female] Wilson Security officer, that when women exit the shower, she touches them or offers them or requests sexual favours. Some of the girls have complained about this situation. The way that she has expressed her wishes, they have complained about her.*<sup>38</sup>

3.56 The Review was unable to locate any incident or information reports, complaints or other details from any other source, about this allegation.

3.57 Some female transferees told the Review about other requests from Nauruans employed by contract service providers to form relationships once the transferees had settled in the Nauruan community. These transferees said that they regarded these requests as sexual harassment.

3.58 On [REDACTED], a female transferee, together with another female transferee ( [REDACTED] ), told the Review team that:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Once you come out into the community, we can get together'.<sup>39</sup>

3.59 The transferees provided the Review with the first name of the contract service provider staff member. On 10 December 2014, the Review referred this allegation to the Department for investigation.

3.60 On [REDACTED], Save the Children staff member, [REDACTED] [REDACTED]<sup>40</sup>, told the Review that a female transferee said she didn't feel safe in the camp. According to [REDACTED], he said that "it started when the authorities said about clients going into the community, and ever since then the attitude of the Nauruan security officers has changed, the Nauruan security officers approaching clients and saying things like it'd be nice when you go out we can meet and have a relationship, come and sit on my lap, and are talking to them as though they plan or are thinking that the women will be available to them or to anybody

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<sup>37</sup> [REDACTED]  
[REDACTED] - (followed by T117), at p.9

<sup>40</sup> [REDACTED] is one of the 10 Save the Children staff members

when they get into the community on Nauru”.<sup>41</sup> There was no information available to the Review to substantiate this particular disclosure, although a number of female transferees made comments in similar terms and expressed apprehension about their personal safety.

3.61 On [REDACTED], a female transferee, who does not want her identity to be revealed, alleged that a Wilson Security staff member, [REDACTED] [REDACTED], had a sexual interest in her, [REDACTED] [REDACTED]

3.62 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]<sup>42</sup>

3.63 On 10 December 2014, the Review referred this matter to the Department with a recommendation that Wilson Security assesses this allegation with a view to investigating it.

3.64 When in Nauru, the Review received other accounts of alleged sexual harassment. These accounts were generally not reported and did not result in any information that could be referred for investigation.

3.65 A female adult transferee ( [REDACTED] ) told the Review on [REDACTED], that a guard had allegedly offered to give her friend chewing gum and a lollypop if she allowed him to see her naked.<sup>43</sup>

3.66 On [REDACTED], two female transferees ( [REDACTED] ) recounted separately that a Nauruan driver and his assistant turned the vehicle’s headlights off, drove slowly and propositioned them with an offer of cigarettes and chewing gum.<sup>44</sup>

#### Trading of cigarettes and marijuana for sexual favours

3.67 Reports of allegations concerning “access to cigarettes being traded for sexual favours” and “Nauruan guards ...trading marijuana with detainees in exchange for sexual favours” were considered by the Review.

3.68 According to a Transfield Services schedule, three transferees ( ) r [REDACTED] complaints on [REDACTED] about an alleged trade of cigarettes and marijuana for sexual favours. Transfield Services and Wilson Security advised the Review that these matters had been referred to the Nauruan Police Force.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### Cigarettes

- 3.69 The Review spoke with transferees about the trade in cigarettes for sexual favours. The transferees were able to provide only limited information and the incidents reported possibly happened some time ago when cigarettes were prohibited in the Centre. The Review heard that, due to a change in Centre rules, cigarettes are now freely available to transferees. The Review was told that trade in cigarettes occurs because transferees can obtain them more cheaply than Nauruans. As a result, some transferees use cigarettes as a commodity in exchange for other items and for sale outside the Centre.
- 3.70 On [REDACTED], the Review interviewed a female transferee ( [REDACTED] ) who stated that *"[For] one year they've been addicted to this drug [marijuana]. Before, they used to say that because they couldn't obtain cigarettes, they used to tell them, 'Take off your clothes so we can touch you, and then we will give you the cigarettes.'"*<sup>45</sup>
- 3.71 In response to a question, which the Review asked, about how long this situation had existed, the transferee replied: *"About four months ago for the marijuana cases, but about 11 months ago about the cigarettes cases (...)"*<sup>46</sup>
- 3.72 On [REDACTED], the Review spoke with a group of [REDACTED] transferees. One transferee said that *"one of my friends told them that we need cigarettes and the Nauruan officer said, 'Tell your friend to take her clothes off and I will provide the cigarettes.' That guy [REDACTED] - entered my room at night time and he kissed me on the lips and he threw the cigarettes at me"*<sup>47</sup>.

### Marijuana

- 3.73 As to marijuana, the Review was unable to obtain many specific details. Information which transferees provided to the Review, and Wilson Security intelligence reporting, indicated that there is a trade in marijuana in the Centre and that sexual favours being exchanged for marijuana is possibly occurring.
- 3.74 A transferee ( [REDACTED] ) told the Review:

*Because they [some transferees] are suffering great depression here, and they feel relieved when they smoke the marijuana. The officers have made them addicted for their own reasons, but they feel more at peace by smoking the marijuana. Because the women do not get paid here, so what they need to obtain, they only have to offer sexual-- fulfil the requests of the men.*<sup>48</sup>

[REDACTED]

3.75 The same transferee said that *“There are [REDACTED] women that are addicted to it, and also they don't want the marijuana and the alcohol to be stopped for them, so they're not coming out to disclose the information [to the Review]”*.<sup>49</sup>

3.76 In a group interview on [REDACTED], [REDACTED] told the Review about the number of female transferees who were involved in sexual relations for marijuana, one female transferee said: *“It's one of those things that we would not even disclose to even each other whoever smokes it. Because we know that person who gives it to me, it's like a hidden thing that we don't disclose the information to even our best friends. Because it's like receiving...as in it's like marijuana is like receiving tranquilizer. We don't tell who supplied you.”*<sup>50</sup>

3.77 In an interview on [REDACTED], a minor female ([REDACTED]), referring to a Nauruan contract service provider staff member, told the Review:

*The first few times I thought that, because I was not familiar with the environment, so I thought that they were doing it out of friendship and they were not expecting anything in return.* [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>51</sup>

3.78 As noted (at paragraph 1.35), the Review referred this matter to the Department.

3.79 While the transferees would generally not reveal details relating to marijuana supply and use, the Review brought some information to the Department's attention for referral to the relevant authorities.

3.80 The Review became aware of an intelligence focus, now complete, into the “trafficking of contraband and illicit sexual activity”, [REDACTED]. The Wilson Security report states that:

[REDACTED] *was initiated on 6 June 2014 following reports of contraband use, including marijuana, within RPC 3. According to investigators, early in the collection phase it became apparent that organised prostitution was occurring in relation to the trading of contraband. Due to prostitution being a criminal offence in Nauru and also its potential negative media and political impacts, the decision was made to extend the scope of operation Aranda to include prostitution under its aegis.*<sup>52</sup>

- 3.81 The Review notes the findings of [REDACTED] that “...a number of female Asylum Seekers ... participate in providing sexual favours for personal gain” and that “There have been no reports or complaints in relation to females being coerced or harassed in this, however a certain amount of cultural coercion may be present and should not be dismissed as a possibility”.<sup>53</sup>
- 3.82 The Review also notes that the activity on which [REDACTED] focused was reported as being between transferees. Yet [REDACTED] told the Review that Wilson Security was aware of allegations that some contract service provider staff members may have been involved, but nothing could be substantiated.
- 3.83 The Review understands that some engagement with the Nauruan Police Force in relation to [REDACTED] has occurred.

#### **Physical assault of transferees by contract service provider staff members**

- 3.84 Two specific incidents of physical assault of adult transferees by contract service provider staff members were brought to the Review’s attention.
- 3.85 In relation to the first incident, a female transferee ( [REDACTED] ) alleged that an assault took place in [REDACTED] or [REDACTED]. The incident was described in terms of a [REDACTED] Wilson Security [REDACTED] members entering a marquee and the transferee’s friend yelling “they are killing me”.
- 3.86 While trying to reach her friend, the transferee alleged that a Wilson Security staff member, [REDACTED] pushed, kicked and punched her. [REDACTED]  
[REDACTED]  
[REDACTED]
- [REDACTED] [REDACTED]  
[REDACTED]
- 3.88 According to the transferee, Wilson Security did not take her complaint [REDACTED] seriously, or act on her request for a police investigation. [REDACTED]  
[REDACTED]<sup>54</sup>
- 3.89 On 10 December 2014, the Review provided this information to the Department with a recommendation that Transfield Services investigate the handling of this incident. Transfield Services has advised the Review that it is reviewing this matter.
- 3.90 A second physical assault allegation was brought to the attention of the Review. The incident involved a male transferee [REDACTED]  
[REDACTED]  
[REDACTED]

<sup>53</sup> [REDACTED] -Finalisation Brief, Transfield Services, 19 October 2014  
[REDACTED]

██<sup>55</sup> The Review did not investigate this allegation further because it is known to the Nauruan Police Force.

### **Lip stitching and self-harm by minors**

- 3.91 The Review sought information about minors engaging in self-harm. The allegation as reported by Senator Hanson-Young was *“from multiple sources that children as young as eight years old have been involved in lip stitching or other forms of self-harm”*.<sup>56</sup>
- 3.92 IHMS provided the Review with a schedule of the self-harm incidents which had occurred at the Centre between October 2013 and October 2014. During this period, 17 minors are recorded as having engaged in self-harm. The incidents ranged from an attempted hanging by a 16-year-old to the infliction of minor lacerations. The youngest child recorded as having self-harmed was an 11-year-old who swallowed a metal bolt and a rock.
- 3.93 Ten of the 17 self-harm incidents occurred during the 25-27 September 2014 period, immediately following the Ministerial announcement of 25 September 2014. These self-harm incidents included three cases of lip stitching by minors aged between 16 and 17 years, six incidents of wounds predominately to left forearms (the youngest by a 14-year-old) and one incident involving a 15-year-old who swallowed washing detergent. The Review obtained no information about lip stitching by minors younger than 16 years of age.<sup>57</sup>
- 3.94 One of the minors, who had engaged in lip stitching, told the Review that a local Wilson Security staff member had provided the needle. The minor told the Review: *“I got it from the Nauruan guards. You can get it from them.”*<sup>58</sup>
- 3.95 In addition to the self-harm incidents detailed in the IHMS schedule, the transferee father of a █████-year-old █████ (██████████) described to the Review how his █████ had placed a plastic fence tie around █████ neck. These items are used at the Centre in fencing and marquee construction and the Review observed them lying around.<sup>59</sup> The Review found no indication that this incident was ever reported.

### **Sexual and other physical assault of minors**

#### *Sexual assault of minors*

- 3.96 Claims of physical and sexual abuse of minors have appeared in the media and were also referred to by Senator Hanson-Young in her correspondence to the then Minister.
- 3.97 The Review became aware that, between 8 September 2013 and 30 October 2014, there were a number of formally reported allegations of sexual and other physical assault

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<sup>56</sup> L254 - Letter from Senator Hanson-Young, 30 September 2014

<sup>57</sup> R2132 - 22.10.2014 - IHMS table - Nauru OPC Self Harm cases 1 Oct 2013 to 15 Oct 2014  
██  
██



involving minors.

3.98 On [REDACTED], an alleged sexual assault of a male minor by a contract service provider staff member was reported.<sup>60</sup> ([REDACTED]). The victim and his family did not want to press charges because they were satisfied with the actions taken by Wilson Security and the Nauruan Police Force.<sup>61</sup> The locally engaged staff member was dismissed. This incident was reported in *The Guardian* on Friday, 6 June 2014 with a headline, "*Nauru cleaner sexually assaulted asylum seeker boy*."<sup>62</sup>

3.99 On [REDACTED], a Wilson Security staff member reported the alleged sexual assault of a male minor ([REDACTED]) by two male adult transferees. The staff member identified the alleged offenders ([REDACTED]). As a precaution, the alleged offenders, were relocated pending further investigation.<sup>63</sup>

3.100 On [REDACTED], the victim of the above alleged incident told Wilson Security, in the presence of a Save the Children staff member, that another male minor ([REDACTED]) had been allegedly sexually assaulted by a male adult transferee.<sup>64</sup> The victim was identified by photograph, as was the alleged perpetrator ([REDACTED]). As a precaution, the alleged offender was relocated [REDACTED].

3.101 The Review was advised that the above matters were referred to the Nauruan Police Force.

3.102 On [REDACTED], during a consultation with IHMS, a [REDACTED] minor ([REDACTED]) alleged [REDACTED] that was sexually assaulted by an older male minor.<sup>65</sup> Transfield Services advised the Review that the matter had been referred to the Nauru Police Force. [REDACTED]  
[REDACTED]

3.103 On [REDACTED], a female minor told the Review about the alleged rape of a female minor by a Nauruan contract service provider staff member.

*One of my underage friends has been raped, not for marijuana or not in exchange for anything. She's been raped but she's not [disclosing]. She doesn't want to come and talk about it because she's so afraid that her parents will find out. Her nationality is*

[REDACTED].<sup>66</sup>

3.104 The minor indicated that she had spoken with the alleged victim of the assault.

[REDACTED]  
[REDACTED]

<sup>60</sup> R1264 - 19.11.2013 - [REDACTED] - Incident report

<sup>61</sup> Ibid.

<sup>62</sup> *Nauru cleaner 'sexually assaulted' asylum seeker boy*, *The Guardian*, 6 June 2014

<sup>63</sup> R1380 - 6.2.2014 - SitRep #4 - Cat 2 - Nauru OPC - Allegation of Sexual Assault

<sup>64</sup> Ibid.

<sup>65</sup> R2531-28.10.2014-Sitrep [REDACTED] SexualAssault12.10.2014

<sup>66</sup> [REDACTED]

[REDACTED] <sup>67</sup>

- 3.105 Given the alleged victim's reported reluctance to come forward, the Review did not investigate or refer this allegation.
- 3.106 In a feedback form, a transferee ( [REDACTED] ) alleged that a Nauruan security officer had inappropriately touched his three-year-old [REDACTED]. On 19 January 2015, the Review provided this allegation to the Department with the recommendation that Transfield Services/Wilson Security assess this information and pass it to the Nauruan Police Force.<sup>68</sup>

*Sexual harassment of minors*

- 3.107 The Review became aware of two cases of alleged sexual harassment of minors by contract service provider staff members. Both cases have been formally reported.
- 3.108 On 20 March 2014, a locally engaged security staff member allegedly sexually harassed a female minor ( [REDACTED] ).<sup>69</sup>
- 3.109 On [REDACTED], two female minor transferees, ( [REDACTED] ) one of whom was the alleged victim of the above [REDACTED] incident, reported to a Save the Children staff member that an unknown locally engaged security staff member had sexually harassed them.<sup>70</sup> The two minors were not able to identify the alleged perpetrator and separately told Wilson Security that they did not wish to make a complaint. One of the alleged victims advised Wilson Security that she did not know why the Save the Children staff member had submitted the report.<sup>71</sup>
- 3.110 In addition, transferees told the Review of three further instances of alleged sexual harassment and assault of minors by contract service provider staff members. These allegations involved:
- a named Wilson Security staff member ( [REDACTED] ) who, while on duty, was under the influence of alcohol and sexually harassed a minor;
  - an unnamed Wilson Security staff member who attempted to sexually assault a minor ( [REDACTED] ); and
  - a named Wilson Security staff member ( [REDACTED] ) who asked a minor ( [REDACTED] ) for sexual favours.
- 3.111 The Review provided these three allegations to the Department with a recommendation that they be investigated.

[REDACTED]

<sup>69</sup> R2661 - Nauru Sexual Assault Sitreps

<sup>70</sup> E2375 - 24.10.2014 - Response from Transfield re Request for Information

<sup>71</sup> Ibid.

### *Sexualised behaviour of minors*

3.112 In her correspondence to the then Minister, Senator Hanson-Young reported the allegation that *“a guard previously employed at the Centre forced children to engage in sexual activity in front of him and that this guard has since been removed from working inside the family camp”*<sup>72</sup>. The Review did not obtain any information to support this claim.

3.113 The Review became aware of several cases of inappropriate sexual behaviour by minors.

- On [REDACTED], it was alleged that an older male minor ( [REDACTED] ) was engaged in a consensual sexual relationship with a young adult female transferee.<sup>73</sup>
- Three cases involved minors engaging in sexual acts with one another. On [REDACTED], two female transferees reported sexual acts between two unidentified male minors.<sup>74</sup>
- On [REDACTED], a female minor reportedly asked other minors to engage in a sexual manner.<sup>75</sup>
- On [REDACTED], a female transferee reported to a Save the Children staff member that minors were engaged in inappropriate sexual behaviour towards each other.<sup>76</sup>
- On [REDACTED], a minor ( [REDACTED] ) was reportedly exhibiting sexualised behaviour.<sup>77</sup>

3.114 One of these incidents was brought to the attention of the Review. In [REDACTED] 2014, [REDACTED] female transferees ( [REDACTED] ) told a Transfield Services [REDACTED] [REDACTED] and a Save the Children staff member that four male minors (aged from 10 to 13 years) had engaged in sexualised behaviour [REDACTED]. The Save the Children staff member submitted a written incident report which identified the witnesses and the [REDACTED]. The Save the Children staff member subsequently told a Save the Children colleague that Wilson Security had not followed up the matter. The colleague informed the Review about the reported lack of follow-up.<sup>78</sup>

3.115 When the Review asked about the incident, Transfield Services advised that a report had been compiled (on 3 May 2014), one of the children ( [REDACTED] ) had been placed on continual observation and the matter referred to Save the Children. Transfield Services advised also that *“we do not have any information to suggest that any Wilson Security officers witnessed the behaviour and allowed it to continue or were involved in the identification of the asylum seekers”*.<sup>79</sup>

3.116 Since it is unclear what follow-up did occur, the Review recommended to the Department, in

<sup>72</sup> L254 - Letter from Senator Hanson-Young, 30 September 2014

<sup>73</sup> R2999 - Attachment to E2998 - allegations of assault by transferee including [REDACTED], at p.2 and p20

<sup>74</sup> E2800 - 21.11.2014 - Additional information from Transfield

<sup>75</sup> R2357 - 16.10.2014 - Wilson report - Allegations of Sexual Assault [REDACTED], at item 1

<sup>76</sup> E2844 - 1.12.2014 - Follow up questions for Wilson Security re 30 September Intel Report

<sup>77</sup> R2094 - 8.10.2014 - Annex 1a to Transfield Analysis of Support Documentation - Save the Children reporting

<sup>78</sup> R2951 - 30.4.2014 - Save the Children Information Report re minors [REDACTED]

<sup>79</sup> S2911 - 3.12.2014 - Submission to Mr Moss – Transfield Services - intelligence management plan

a letter dated 10 December 2014, that Transfield Services review the investigation to ensure that all necessary action is/has been taken.

- 3.117 This incident was one of the cases referred to in the anonymous submission made by current and former Save the Children staff members to the AHRC Inquiry and also reported by *The Guardian* on 13 August 2014.<sup>80</sup>
- 3.118 The issue of sexualised behaviour was raised several times with the Review. While not within the Terms of Reference, the Review notes the reports about the sexualised behaviour of some children in the Centre.
- 3.119 The Review notes that, despite the welfare and education programs designed to assist and support individuals and families, sexualised behaviours in children have reportedly occurred at the Centre. When observed, these behaviours are reported and contract service provider staff members are available to respond with professional intervention.

#### *Physical assault of minors*

- 3.120 The Review became aware of a number of incidents of alleged physical assault of minors by contract service provider staff members. Two of these cases were brought to the attention of the Review.
- 3.121 On [REDACTED], a [REDACTED]-year old boy, ([REDACTED]), reportedly threw a rock at a Wilson Security staff member who allegedly chased the child, caught him by the hair and dragged him along the ground. Save the Children staff member, [REDACTED] [REDACTED]<sup>81</sup>, who had been told the details from the child's parents, reported the incident to the Review.<sup>82</sup>
- 3.122 On [REDACTED], the Review interviewed the boy's father, ([REDACTED]), who confirmed the incident. The father said that he made a complaint and had heard nothing back. According to the father, the child was "*so traumatised by the incident that he has nightmares and is terrified of security staff*".<sup>83</sup>
- 3.123 Wilson Security investigated the incident. According to a Transfield Services schedule, dated 24 October 2014, the investigation resulted in the matter being resolved and closed.<sup>84</sup> Yet the father told the Review that he has not been contacted regarding the outcome.
- 3.124 On 10 December 2014, the Review provided this information to the Department, with a recommendation that the matter be reviewed, a response provided to the family and an assessment made of the child for any treatment he may need.
- 3.125 This incident was referred to in an article in *The Guardian* on 24 April 2014 with the headline

<sup>80</sup>"Child asylum seekers' rights on Nauru 'systematically violated', inquiry told", *The Guardian*, 13 August 2014

<sup>81</sup>[REDACTED] was among the ten Save the Children staff members.

S2952 - 5.11.2014 - Statement by [REDACTED], Save the Children, further to [REDACTED], at p.1

<sup>84</sup>S2946 - 24.10.2014 - Copy of appendix 1 - Summary of allegations - Transfield Services

*"Nauru guards accused of assaulting children in detention camp".*<sup>85</sup>

- 3.126 In the same article, *The Guardian* also referred to an incident on 27 March 2014, when a Save the Children staff member saw a Wilson Security staff member chasing a female minor in the recreation area inside the Centre and *"hit her on the back of the head"*.
- 3.127 Two Save the Children staff members made a complaint alleging that they had witnessed a contract service provider staff member assault a four-year old female minor ( [REDACTED] ) by hitting her on the back of the head and causing her to fall.<sup>86</sup> When the matter was referred to the Nauruan Police Force, the alleged victim and her father were unable to provide any information or confirm injuries.
- 3.128 The Review interviewed the father who raised various concerns about the psychological welfare of his children (not just the child concerned), but did not mention this incident.<sup>87</sup>
- 3.129 An allegation of attempted assault was also reported in the submission by current and former Save the Children staff members to the AHRC Inquiry and reported in *The Guardian*. *The Guardian* reported that, in March 2014, a group of school children were subjected to an *"attempted assault"* by a Centre bus driver.<sup>88</sup>
- 3.130 The Review interviewed a female minor ( [REDACTED] ) who said that this incident occurred around March 2014 while one of her friends was in the bus.<sup>89</sup>
- 3.131 According to this account and other reporting of the incident, the bus driver was taking a busload of school-aged children from RPC 1 to RPC 3. Upset by the noise they were making, the bus driver pulled the bus over, took a wooden cricket bat which he pointed at a 16 year-old minor. The bus driver reportedly said: *"Get off the bus. Could you shut up, how many times do I have to tell you to shut up?"* The bus driver was replaced with another driver.<sup>90</sup>
- 3.132 A 16-year-old minor ( [REDACTED] ) described how, in October 2014, during a dispute on the soccer pitch, Wilson Security staff members ( [REDACTED] ) wrestled him and his friend to the ground. The minor sustained bruising on his back that he showed to the Review team. He said that this kind of treatment occurs on a regular basis. *"...because it happens very often, that whenever there is an incident or an argument or the situation is out of control, this is the treatment that we get"*.<sup>91</sup>

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<sup>85</sup> *Nauru guards accused of assaulting children in detention camp*, *The Guardian*, 24 April 2014

[REDACTED]

<sup>88</sup> *"Child asylum seekers' rights on Nauru 'systematically violated', inquiry told"*, *The Guardian*, 13 August 2014

[REDACTED]

<sup>90</sup> R2963 - 2.0 Review of incident reports, information, at p.1

[REDACTED]

- 3.133 The minor made a complaint, but withdrew it when Wilson Security came to investigate. When the Review asked why he withdrew the complaint, he responded *“nothing happens and we do not trust them”*.<sup>92</sup>

### Conclusions

- 3.134 The Review cannot be sure that it has become aware of every incident of sexual and other physical assault. For family and cultural reasons, some incidents are not reported. Yet, as has been observed by a contract service provider staff member, information usually flows freely about incidents and situations in the Centre.

### *Allegations of rape*

- 3.135 The Review became aware of three allegations of rape (two female adults and one female minor), one which the Nauruan Police Force is investigating and two which the victims do not want to pursue by making a complaint. These allegations are concerning. They are also concerning because two of the victims do not feel able to bring forward these allegations to the relevant authorities.

### *Indecent assault, sexual harassment and physical assault*

- 3.136 The Review was also made aware of allegations of indecent assault, sexual harassment and physical assault occurring in the Centre. A proper response is required at all times. Allegations should be investigated by the relevant authorities. In many cases, it will be the Nauruan Police Force. As noted already, the Review has made available to the Department any material it has obtained.
- 3.137 In relation to the allegations of sexual harassment, the Review notes that transferees have reported certain behaviours, for instance, physical contact while greeting or comments like *“you are beautiful”*, as misconduct or threatening behaviour. Transferees reported to the Review that these behaviours are not culturally acceptable or appropriate. As such, contract service provider staff members should be adequately trained to conduct themselves having regard to acceptable standards of behaviour and to the cultural expectations and perceptions of transferees.

### *Sexual exploitation*

- 3.138 In relation to the allegation *“on occasions women have been forced to expose them to sexual exploitation in exchange for access to showers and other facilities”*, the Review concludes that this allegation is likely to be based on one incident which the transferee related to four Save the Children staff members who all reported it in accordance with Centre guidelines. Separately, the transferee also reported the incident to Senator Hanson-Young.

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<sup>92</sup> *ibid*

*Trading of cigarettes and marijuana for sexual favours*

- 3.139 In relation to the allegation concerning cigarettes and marijuana, the Review concludes that *“access to cigarettes being traded for sexual favours”* appears to relate to a time when cigarettes were not openly available in the Centre. The Review was unable to obtain any specific information to substantiate this allegation.
- 3.140 In relation to the allegation *“Nauruan guards have been trading marijuana with detainees in exchange for sexual favours”*, the Review concludes that this activity is possibly occurring. The Review was unable to obtain many specific details because transferees were not prepared to provide them. The details obtained about transferees, who allegedly deal in marijuana, have been provided to the Department for referral to the appropriate authorities.

*Personal safety and privacy of transferees*

- 3.141 The Review concludes that many transferees are apprehensive about their personal safety and have concerns about their privacy at the Centre. These concerns were raised repeatedly with the Review both in interviews and in the feedback forms. Some transferees expressed their apprehension about other transferees and some expressed concerns about contract service provider staff members. Several married couple transferees raised concerns about their privacy. The apprehension about personal safety and the concern about privacy arises from high density accommodation in mostly non-air-conditioned, soft walled marquees in a tropical climate.
- 3.142 The following examples were provided to the Review in relation to apprehension about personal safety and concerns about privacy and contract service provider staff members:
- *One night I was going back to my room. I went to the bathroom and on the way back, I noticed that one of the Nauruan officers was standing right in front of our tent. He called me and he summoned me to just get closer to him and it was absolutely clear that he was even drunk or on drugs because he could not keep his balance properly.<sup>93</sup> Then he suddenly grabbed my arm and he said, "You are so sexy and you're so beautiful." Then I was so petrified that I just pulled my arm and I ran into my tent. Then ever since, whenever he sees me he addresses me as Sexy Lady.<sup>94</sup>*
  - *During the day, it was so hot in the tent that we were almost naked. We just had our underwear. I was lying on the bed studying some English, and there was a blue curtain that I had tucked under the fans to secure it, but after some time I noticed that someone was looking at me and watching me. I noticed that the curtain was drawn and two of the officers were looking at me and watching me.<sup>95</sup>*

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<sup>93</sup> The Review understands that water bottles are no longer able to be brought into the Centre in order to prevent alcohol being available within the Centre.



- *Sometimes they [Nauruan guards] stay over a bit longer, to just look at the girls and put us through more misery.*<sup>96</sup>

- 3.143 The Review concludes that the supervision of contract service provider staff members particularly at RPC 3 needs to focus on the personal safety and privacy of transferees.
- 3.144 The Review notes that some transferees had difficulty in identifying contract service provider staff members and suggests that clearer identification would be appropriate.
- 3.145 Ensuring the transferees are, and feel, safe is important. It requires consideration of such factors as infrastructure, policing and staffing. Policing and staffing are discussed later in the Report.
- 3.146 The Terms of Reference do not require specific consideration of the Centre's facilities and infrastructure. However, the Review considers that all decisions about facilities and infrastructure should be made with the personal safety and privacy of transferees as a prime consideration. The Review encourages the Government of Nauru and the Department to ensure these considerations are part of any decision-making.
- 3.147 The Review notes the significant personal safety and privacy issues that marquee accommodation presents.

*...the parts of the tent were open at night. I always had suspicions that someone from at the back of the fences is watching my room. Until last night I came and I was taking my clothes off, and the light was on and they were watching me from outside. And then when I turned the light off and went to bed, I felt like something has been caught in the fan. I thought that it might be some sort of insect or something. Someone was using a stick to kind of part the tent and I hanged my towel there, but they we're trying to move the towel and move the tent so they could see inside.*<sup>97</sup>

- 3.148 Transferee couples reported that the lack of privacy was affecting their relationships.

*We've been married for [redacted] years and I don't feel right to tell you that but we've been living together for [redacted] years back in [redacted]. We had a lot of hard time, but we had a good relationship with other. Since this incident happened [redacted], we don't feel safe here anymore and since that incident happened, we really didn't have a relationship with each other, like a husband and wife, because my wife is really scared.*<sup>98</sup>

- 3.149 The Review notes that lack of privacy may be a factor in the sexualised behaviour of some children in the Centre through observing adult sexual activity.
- 3.150 The Review encourages the Government of Nauru and the Department to consider any alternative accommodation options.

[redacted]



- 3.151 Adequate lighting and the use of CCTV may also enhance the personal safety and privacy of transferees. The Review encourages the Government of Nauru and the Department to consider both these measures as part of its infrastructure planning.
- 3.152 The personal safety and privacy of transferees will need due consideration as the Centre transitions to an open centre model in early 2015.

**RECOMMENDATION 1:** The Department and the Nauruan Government take into account the personal safety and privacy of transferees when making decisions about facilities and infrastructure at the Centre.

- 3.153 The Review notes that there is nothing explicit in the service provider contracts or guidelines relating to sexual harassment. The Review notes also that there must be no ambiguity in the minds of transferees or contract service provider staff members that any sexual contact between a contract service provider staff member and a transferee will lead to disciplinary action against the staff member concerned.
- 3.154 The Department has issued a guideline to all contract service providers and their staff members that deals with the issue of relationships with transferees. Relevantly, the guideline states *"All service provider staff must maintain professionalism in all dealings with transferees and remain aware of the limits or boundaries of their relationships. Economic, personal or sexual relationships between service provider staff and a transferee are unacceptable. This applies to both current and former transferees."*<sup>99</sup>
- 3.155 The Department advised the Review that when allegations or evidence of inappropriate relationships have emerged contract service providers have acted and in cases, when an inappropriate relationship has been proven, the staff member involved has been dismissed. The contract service providers also have their own corporate code of conduct, site rules and guidelines.<sup>100</sup>
- 3.156 Transferees must also understand that sexual harassment by contract service provider staff members is not acceptable. They should understand that, when such behaviour is reported, the Department and contract service providers will take appropriate action. A clear understanding amongst transferees may assist to address any issues of lack of confidence in dealing with complaints and under-reporting. The Review suggests that the Nauruan operations managers, the Department and contract service providers review the information provided to transferees about sexual harassment.

<sup>99</sup> P3012 - 11.6.2013 - RPC Guidelines - Service Provider Staff Relationships with Transferees

<sup>100</sup> E3011 - 31.12.2014 - [REDACTED] to [REDACTED] - Guidelines re Service Provider staff relationships with transferees

**RECOMMENDATION 2:** Contract service providers review their guidelines relating to sexual harassment and sexual relationships to ensure that staff members understand what behaviour is acceptable in the context of a Centre with a diversity of cultures.

*Reporting and complaints*

- 3.157 Some incidents of sexual and other physical assault of transferees have been formally reported and others, disclosed just to the Review, had not been formally reported. The Review concludes that there is a level of under-reporting by transferees of sexual and other physical assault.
- 3.158 This under-reporting is generally for family and cultural reasons. Some transferees told the Review that they were also concerned that raising such complaints could have a negative impact on the resolution of their asylum claims. In some cases, transferees told the Review that they had not reported particular incidents because they had lost confidence that anything would be done about their complaints.
- 3.159 Both transferees and some contract service provider staff members raised concerns about the complaints process. Many transferees commented to the Review that they receive little feedback about complaints. This situation contributes to a lack of confidence in the complaints process.
- 3.160 Despite this reported lack of confidence, the Review concludes that, when formal reports or complaints have been made, contract service providers, in the most part, have acted appropriately in dealing with them and have, when required, referred matters to the Nauruan Police Force. In some instances, the lack of timeliness in reporting and referral or inadequate and inconsistent information have hampered the ability of contract service providers and/or the Nauruan Police Force to investigate. This situation is particularly true in relation to allegations relating to sexual assault.
- 3.161 The Review considers that community policing of the Centre is a missing element. Introducing it would enhance the present arrangements. This enhancement would also help to address the doubt raised in a number of instances, which the Review has referred to the Department, about the ability of Wilson Security to investigate its own staff members. This report deals later with the topic of community policing.

*Dealing with sexual and other physical assault*

- 3.162 The Review is aware that the Nauruan authorities have a limited capacity to investigate, record and prosecute incidents of sexual and other physical assault in the Centre and in Nauru.
- 3.163 In its submission to the Review, IHMS suggested that improvements could be made to enhance forensic services to investigate, record and prosecute incidents of sexual assault at the Centre and in Nauru. This suggestion includes the availability of sexual assault kits and trained forensic personnel and arrangements to preserve continuity of evidence. These

services are presently outside the scope of the Republic of Nauru Hospital, IHMS and the Nauruan Police Force. The Review supports IHMS's suggestion.

- 3.164 The November 2013 *Force Protection Review* recommended "*Ongoing assistance to Government of Nauru on the review of the Nauruan Criminal Code 1921*".<sup>101</sup> The Department advised the Review that this work has commenced and that the Australian Attorney-General's Department is providing assistance to the Government of Nauru. Offences against the person including assault and sexual offences form part of the review of the Nauruan Criminal Code.
- 3.165 The Review concludes that any support that the Department can give Nauru to improve its ability to deal with sexual and other physical assault would be of significant benefit to transferees.

**RECOMMENDATION 3:** The Department give consideration to how it could support the Government of Nauru to enhance forensic services to investigate, record and prosecute incidents of sexual and other physical assault in the Centre.

- 3.166 The Review is aware that each of the contract service providers has processes and procedures to manage complaints and report on incidents. What is not evident to the Review is the joined-up approach needed among contract service providers to ensure that allegations of sexual and other physical assaults can be dealt with in the most effective way possible.
- 3.167 In his review into allegations of sexual assault at the Manus Regional Processing Centre, Mr Robert Cornall made the following recommendation:

*The Department should establish a clear and well understood policy for dealing with any future allegations of sexual assault at the Manus RPC (which takes account of the best interests of the victim and the Papua and New Guinea criminal law) and appropriate operational procedures to implement that policy (including preventive strategies and staff training).*<sup>102</sup>

- 3.168 The Review supports this recommendation as it applies to the Centre.

**RECOMMENDATION 4:** Nauruan Government officials and the Department review and enhance the existing policy framework for identifying, reporting, responding to, mitigating and preventing incidents of sexual and other physical assault at the Centre. All staff members working at the Centre (Nauruan, Departmental and contract service provider) must understand the framework and their responsibilities under it.

<sup>101</sup> OR2961 - Force Protection Review Recommendation Table, Recommendation 11 at p.3

<sup>102</sup> OR2957 - 30.9.2013 - Cornall Report 1 - Manus RPC Sexual and other serious Assaults, Recommendation 2 at p.7

*Fabrication of allegations by transferees*

- 3.169 The Review became aware of a claim that some allegations of abuse had been fabricated or exaggerated. The claim was that some female transferees were overheard discussing strategies to discredit contract service provider staff members. The reported intention was to present Nauru as being unsafe for female transferees. The Review was unable to obtain any additional information about this claim.
- 3.170 There were claims that cameras had been smuggled into the Centre and that security staff members were being “set up” to fabricate evidence that would be provided to the Review.<sup>103</sup> The Review did not receive any photographs from transferees or obtain any information about cameras being brought into the Centre. The Review became aware of at least one camera in RPC 3.
- 3.171 On 28 September 2014, the Wilson Security Intelligence Unit in Brisbane issued a Security intelligence report entitled “*Protests at NRPC*”. It rated the information as F6 (Reliability cannot be judged: Truth cannot be judged). The intelligence report related to transferee protest action at RPC 3. Amongst other things, this intelligence report concluded that asylum seekers would attempt to embarrass staff members with accusations of cultural insensitivity, force changes in staff posture by having individuals removed from their post, bring children to the front of any situation to slow staff reactions, and make accusations of sexual misconduct by staff.<sup>104</sup>
- 3.172 The Review cannot discount the possibility that some claims made by transferees may have been fabricated or exaggerated. The transferees interviewed were generally credible and their accounts convincing. The Review cannot establish the veracity of the allegations. For this reason, the Review provided information about some reported incidents to the Department for referral to the relevant authorities for further investigation.
- 3.173 Despite the large number of interviews conducted and the feedback forms received, the Review notes that some of the most serious allegations emanate from a relatively small number of female transferees. The Review makes this note for completeness and draws no conclusion from it. Establishing the truth of each individual allegation is a matter for the relevant authorities. As has been noted, many transferees are apprehensive about their personal safety and have concerns about their privacy.
- 3.174 The Review also notes that some transferees, [REDACTED], were identified by Operation Aranda as being involved in “trafficking of contraband and illicit sexual activity”. While the Review does not discount their accounts based solely that basis, it is noted as adding to the complexity of the situation. An example is [REDACTED]  
[REDACTED]

<sup>103</sup> R248 - 30.9.2014 - Transfield intelligence report, *Allegations regarding SCA*, at p.2

<sup>104</sup> R2109 - 8.10.2014 - Annex M to Transfield Analysis of Support Documentation - SYINT Protests at NRPC

[REDACTED]  
[REDACTED] The transferee was unable to provide any specific details and a promised written account was never provided to the Review.<sup>105</sup> As such, the Review was unable to investigate this allegation any further.

- 3.175 In some cases, when claims cannot be substantiated, the intention behind the complaint may not be malicious. The Review became aware that some of the alleged victims have experienced elsewhere torture, trauma and sexual abuse which may make them susceptible to reliving past trauma through current events. Such events could otherwise be commonplace, but may trigger suppressed memories or cause hyper-vigilance. These factors may lead to distortion of facts or denial of actual abuse.
- 3.176 The Review found no information to support any suggestion that transferees, in particular minors, were being coached by any contract service provider staff members to make false allegations. This issue is discussed in greater detail in Part 4.

#### *Child protection*

- 3.177 The protection of minors in the Centre is of the highest importance and priority. An article in *The Guardian* “*Nauru detention: serious health risks to children revealed in confidential report*”, published on 30 May 2014, quoted from a report produced by five independent clinical experts:

*There is no clear child protection framework for children inside the centre and it is unclear what child protection checks are undertaken for Nauruan staff. This, according to the report, “places them [asylum seeker children] at significant risk of sexual abuse.”<sup>106</sup>*

- 3.178 When asked to comment on the child protection framework at the Centre, the Department provided the following response:

*The Department does not agree that there is no clear child protection framework at the Nauru Offshore Processing Centre (OPC). Service providers contracted to provide specialised services for children at the Nauru OPC – delivered by Save the Children Australia (SCA) – are responsible for child protection and welfare. SCA has established a range of processes and policies at the OPC in relation to child protection matters. SCA employs officers with child protection and child safeguarding responsibilities who provide care management services to meet the welfare needs of children. SCA has also developed an overarching Child Safeguarding Protocol and Code of Conduct, aimed to provide a child safe environment at all times at the OPC.*

*In addition, when a specific incident occurs, all relevant stakeholders are involved where required and/or appropriate, including Nauruan Government officials, police, staff and other service providers - particularly medical professionals – to ensure an*

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[REDACTED]  
*Nauru detention: serious health risks to children revealed in confidential report, The Guardian, 30 May 2014*

*integrated, multi-disciplinary approach is taken. Specific details or allegations of abuse (sexual, physical, emotional or neglect) or exploitation against children at the Nauru OPC are also referred to the Government of Nauru, the police, the Department and the relevant service provider(s) as a matter of urgency.*<sup>107</sup>

- 3.179 Children at risk assessments were recommended by the Force Protection Review in November 2013<sup>108</sup>. Following the recommendation, the Department amended the contracts to require all contract service provider staff members to complete a working with children awareness program aimed at improving understanding of risks, abuse indicators and what actions to take.
- 3.180 While the Government of Nauru does not have legislation requiring pre-employment screening, such as working with children checks (as Australian State/Territory jurisdictions do), the Save the Children *Child Safeguarding Protocol* and *Code of Conduct* are aimed at all staff members and contract service providers. These documents operate as part of the Centre's guidelines to reduce the risk of harm to children
- 3.181 The Protocol is followed by all contract service providers and the Code and the Child Safe Incident Reporting Process must be signed by all contract service provider staff members.
- 3.182 As noted previously, the Government of Nauru is revising its criminal code with the assistance of the Australian Attorney-General's Department. The Review recommends that the Department liaise with the Government of Nauru to ensure that child protection issues are reflected in the work being done on the Nauruan criminal code.

**RECOMMENDATION 5:** The Department liaise with the Government of Nauru to ensure that child protection issues are reflected in the work currently being done on the Nauruan criminal code.

- 3.183 A concern was raised with the Review that some contract service provider staff members involved in dealing with children are not appropriately trained and, as such, professional boundaries were sometimes blurred.<sup>109</sup>
- 3.184 IHMS expressed its concern to the Review about the ability to implement immediate action to remove minor transferees from harm.<sup>110</sup> [REDACTED]

<sup>107</sup> E3004 - 19.12.2014 - [REDACTED] - information on child protection – DIBP (Department of Immigration and Border Protection). The Review notes the terms offshore processing centre (OPC) and regional processing centre (RPC) are used interchangeably by Departmental staff

<sup>108</sup> OR2961 - Force Protection Review Recommendation Table, Recommendation 12 at p.4

<sup>109</sup> This was raised, for example, in the interview with [REDACTED] of Save the Children ([REDACTED]) - [REDACTED]

- 3.185 Despite the protocols already in place at the Centre, the Review notes the absence of a specific child protection framework or mandatory reporting requirement of all abuse allegations involving minors under Nauruan law. As such, the Review notes that, once the avenues in the Centre have been exhausted, issues involving child protection may not be escalated or actioned appropriately or in a timely manner and that there is limited expertise to conduct investigations into child protection issues. The Review also notes that the absence of relevant protections under Nauruan law is not a criticism of Save the Children. Save the Children provides support to all stakeholders including the Nauruan government in relation to child protection matters.
- 3.186 The Review further notes the Department's view that the child protection arrangements in place at the Centre are appropriate for the circumstances and context under the auspices of Save the Children, recognising that there are very limited resources available outside the Centre to support a different approach.
- 3.187 The Review further notes that, in November 2014, the Government of Nauru appointed an adviser to its Domestic Violence Taskforce. The Domestic Violence Taskforce also has access to the expertise of a psychologist and a lawyer. Collaboration which is occurring between Save the Children, IHMS and the Domestic Violence Taskforce will assist in dealing with cases of children at risk, not only at the Centre, but also for the time when transferees settle in the Nauruan community as refugees. The Review welcomes this recent development.
- 3.188 The Review acknowledges that the Government of Nauru, the Department, and the contract service providers are committed to ensuring the safety of the children in the Centre. The Department advises that its newly-formed Child Protection Section has been established to develop *"child safe cultures and build best practice approaches to the prevention of child abuse ... and has recently commenced training for departmental officials on child-centred practice and child protection, including to staff being deployed to the Nauru OPC"*.<sup>111</sup> The Review acknowledges the measures that have already been put in place.

**RECOMMENDATION 6:** The Department and the contract service providers continue to work with the Nauruan Government to ensure that a robust child protection framework is developed.

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<sup>111</sup> E3004 - 19.12.2014 - [REDACTED] to [REDACTED] - information on child protection - DIBP

#### PART 4: CONDUCT AND BEHAVIOUR OF CONTRACT SERVICE PROVIDER STAFF MEMBERS

4.1 The Terms of Reference require the Review to consider recent allegations regarding the conduct and behaviour of staff members employed by contract service providers. The Review has identified the following as the main issues:

- orchestration and facilitation of protest activity;
- coaching and encouragement of self-harm;
- fabrication of allegations;
- misuse and unauthorised disclosure of sensitive and confidential information;
- other conduct and behaviour issues; and
- removal of ten Save the Children Australia employees from Nauru.

4.2 The Review deals with each of these issues separately.

##### **Orchestration and facilitation of protest activity**

*July 2014*

4.3 Some Save the Children staff members were reported to be encouraging protest activity and/or failing to comply with the instructions of the security personnel during a protest on 28 and 29 July 2014 in RPC 3.

4.4 A confidential source report, which Wilson Security produced on 29 July 2014, documented the encouragement and non-compliance. The following day, on 30 July 2014, a Ministerial Submission noted that *“a number of Save the Children staff were observed to be engaging with or encouraging protesting transferees”*.<sup>112</sup>

4.5 On 31 July 2014, the Department directed Save the Children to remove five staff members from delivering services because they had engaged in improper conduct during the protest. The five Save the Children staff members ceased normal duties that day, yet remained in Nauru.

4.6 In response, Save the Children suggested that the allegations be dismissed. Save the Children noted that Wilson Security had recommended an investigation prior to any action being taken concerning the staff members.<sup>113</sup>

4.7 An investigation, which Wilson Security, Save the Children and the Department conducted, concluded that there was insufficient evidence in relation to the allegations of improper conduct. As a result, the five Save the Children staff members resumed their normal duties.

4.8 The Department told the Review that it was not satisfied with the investigation and noted, on 6 August 2014, that *“while there remains some ambiguity in relation to what may have actually transpired; there is insufficient evidence to substantiate the allegations of improper*

<sup>112</sup> B316 - 30.7.2014 - Signed Ministerial Submission regarding Nauru protests on 28 and 29 July 2014, at p.3

<sup>113</sup> S2675 - 25.10.2014 - Submission from Save the Children



conduct".<sup>114</sup> The Department also told the Review that, in its view, the need to maintain the highest standards of conduct and behaviour had been reinforced.

- 4.9 Save the Children noted that *"the view at the time was that there had been an overreaction to an unsubstantiated, unconfirmed report."*<sup>115</sup>

*September/October 2014*

- 4.10 Following the Ministerial announcement on 25 September 2014, the Wilson Security intelligence unit reported four separate protest actions, one on 25 September 2014, one on 26 September 2014 (with refugee settlers in Nauru also protesting) and two on 27 September 2014. The intelligence reporting referred to a series of self-harm related events which had taken place. The reporting also referred to the protests being supported from Australia by refugee advocacy groups and further referred to refugee advocates attempting to coordinate protest activities in Nauru between transferees and refugee settlers in Nauru.<sup>116</sup>
- 4.11 A report prepared by the Wilson Security intelligence unit on 28 September 2014 noted that *"[information] about the build up to last night's protest was Twittered from a number of sources and included information about 'academic staff on Nauru who work with AS [asylum seekers] confirm 7 suicide attempts' and 'Save the Children staff evacuated and 100 riot police in attendance' – this confirms the likelihood of operational information being leaked to advocacy groups and news media as well as the probable source of the leaks"*.
- 4.12 The report also noted that *"[i]t is considered likely that refugee advocates are engaged with asylum seekers, and refugees, to manufacture a situation where 'evidence' can be obtained of the unsuitability of Nauru for processing and resettlement to pursue a political and ideological agenda in Australia regarding TPVs [temporary protection visa] and regional resettlement arrangements" and further notes that "[i]n the light of the ... external influence, it is considered probable that there will be 'scripted' step changes, agreed with external elements, in the current situation as it develops and plays out over the initial four day period"*.<sup>117</sup>
- 4.13 On 29 September 2014, the Wilson Security intelligence unit reported that some Save the Children staff members had possibly facilitated the distribution and collection in RPC 3 of a petition against offshore processing. It was also reported that Save the Children staff members would take the petition to Australia and deliver it to an external entity. It was further reported that some Save the Children staff members had facilitated the provision of cameras to asylum seekers to document the protest activity.

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<sup>114</sup> E2928 - 6.8.2014 - [REDACTED] (DIBP) to [REDACTED] (Save the Children) - Lessons Learnt from SCA 5

<sup>115</sup> S2764 - 25.10.2014 - Save the Children submission

<sup>116</sup> R3016 - 28.9.2014 - Information report re current protest activity on Nauru - Wilson Security, at pp.1, 3

<sup>117</sup> "Overview of Asylum Seeker and Refugee Intentions and Outlook of Current Protest Activity on Nauru". Wilson Security, 28 September 2014

4.14 On 30 September 2014, the Wilson Security intelligence unit prepared a report entitled *"Save the Children staff on Nauru"*. This report, based on information [REDACTED] and previous reports (from July 2014 until 30 September 2014), made the assessment that there was a concerted effort on the part of asylum seekers and refugees assisted by advocacy and human rights groups in Australia to bring adverse attention to the processing of asylum seekers and the resettlement of refugees in Nauru. The report also made the assessment that allegations would be made concerning the misconduct of contract service provider staff members engaged at the Centre. According to the report, it was probable that Save the Children staff members were engaged in this effort in a facilitative role.

4.15 The 30 September 2014 intelligence report considered it *"probable that advocates and some service providers are engaged with asylum seekers and refugees to manufacture situations where 'evidence' can be obtained of the unsuitability of Nauru for processing and resettlement"*<sup>118</sup>.

4.16 Documents annexed to the 30 September 2014 intelligence report included:

- a newspaper article from *The Australian* dated 11 July 2014 entitled *"Advocates coaching asylum-seekers to self-harm for political reasons"*.<sup>119</sup> In the article, a former employee of the Department, Mr Greg Lake, referred to his belief that transferees were being encouraged to self-harm by advocates;
- an anonymous submission by Save the Children staff members to the Australian Human Rights Commission (AHRC) (undated);
- an ABC news article about the Save the Children staff members' AHRC submission;
- an intelligence report dated 2 August 2014 entitled *"Leak of NRPC Restricted Data to Australian Media"* on the publishing of the complaints register;
- an intelligence report dated 24 August 2014 entitled *"Imminent Potential for Save the Children Staff to Create Negative Media Coverage"*;
- a SBS News article dated 4 September 2014 entitled *"Concern over data breach at Nauru Immigration centre"*; and
- an email from the Department's Program Coordinator to the Wilson Security intelligence unit that referenced, in paragraph six, official material from the Centre being disseminated.

4.17 The Review spoke with a number of transferees about their protest actions, specifically about orchestration and facilitation. The transferees claimed that they did not receive assistance in organising protest activity.

*... nobody has actually encouraged us, or provoked us into doing anything. It is just an instant reaction to the news that we've been getting from the people, regarding self-harm or anything else, but nobody has encouraged us to protest.*<sup>120</sup>

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<sup>118</sup> R248 - 30.9.2014 - Transfield intelligence report - allegations regarding Save the Children

<sup>119</sup> R2086 - 8.10.2014 - Annex A to Transfield Analysis of Support Documentation - *The Australian*, 11 July 2014

*Actually, the protests, as we said, is a voluntary thing, just because of the treatment, the ones that remain on Christmas Island are treated differently from us, it is just an instantaneous reaction.*<sup>121</sup>

4.18 The Review also spoke with Wilson Security Emergency Response Team members, whose perception was that the protest action in RPC 3 in September and October was the result of transferee orchestration, in particular, [REDACTED].<sup>122</sup> Some transferees interviewed by the Review also confirmed this perception.

4.19 Information which transferees provided to the Review confirmed that direct communication occurs between transferees with a range of persons, advocacy groups and media organisations. Sometimes refugee settlers assist with this communication. One transferee told the Review that *"we don't have enough Internet access to carry out such tasks [transmission of photographs]. So, what we have done is, we have taken photos. We have given it to the refugees that are in the community, and they somehow got it across"*.<sup>123</sup>

4.20 [REDACTED] Wilson Security [REDACTED] provided the Review with the following observation:

*...when the Minister makes an announcement, if it's an announcement that isn't news that people particularly want to hear, then something happens subsequently ... [A]s soon as these protests started ...[reporting] started to appear on social media .... so it's picked up by advocacy outside, and then the communication starts to go backwards and forwards. ... [A]llegations start to appear about different things ... so it's being picked up in Australia and then subsequently reported in advocacy circles, which then is picked up by papers like The Guardian...But I guess where it becomes more problematic is they would protest for a few days and then would stop. The issue then is it's still being pushed in advocacy ... It creates an audience, which then means it goes into wider news media, then the film starts to get released from the Centre, I think on the 27th, of the protest, and there are photographs. Then [a protest] was organised outside of the Centre, and there was a film appeared on YouTube of a protest [of refugees] where police attended and snatched a banner off children...*<sup>124</sup>

4.21 Wilson Security told the Review that, as the protest action continued, a Save the Children staff member reported events on social media. The 30 September 2014 intelligence report stated *"research shows that [a Save the Children staff member],...posted a video taken of a refugee protest on 26 September 2014, at the Anabare Lodge, to [REDACTED] Facebook page on 27 September 2014...This video has appeared on a number of refugee advocacy websites and Facebook pages"*. The Review could not confirm this aspect of the reporting since Wilson Security was unable to provide a screenshot.

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<sup>121</sup>ibid

[REDACTED]  
[REDACTED]  
[REDACTED]

- 4.22 The Review located the footage on YouTube. It was posted on 26 September 2014 by a person with the username 'nauru'.<sup>125</sup> The Review was unable to obtain any information to confirm who had recorded the footage or posted it on YouTube.<sup>126</sup> For this reason, the Review does not reach a conclusion in relation to this particular matter.

#### Coaching and encouragement of self-harm

- 4.23 On 28 September 2014, the Wilson Security intelligence unit prepared a report entitled, *"Overview of Asylum Seeker and Refugee Intentions and Outlook of Current Protest Activity on Nauru"*. The report concludes that it is probable there is a degree of internal and external coaching, and encouragement, to achieve evacuation to Australia through self-harm actions.<sup>127</sup>
- 4.24 The Wilson Security intelligence report of 30 September 2014, which was described as the culmination of a number of intelligence reports and matters under consideration by Wilson Security,<sup>128</sup> concludes that it was probable that some contract service provider staff members were coaching and encouraging self-harm. The intelligence report cited an article from *The Australian*, dated 11 July 2014, entitled *"Advocates coaching asylum seekers to self-harm for political reasons."*
- 4.25 The Wilson Security intelligence unit quoted *The Australian* article which reported that *"a former director of offshore processing in Australia's immigration detention camps claims asylum-seekers are coached and encouraged to attempt self-harm by refugee advocates as political capital"*.<sup>129</sup> The article did not refer to any encouragement to self-harm by contract service provider staff members in Nauru or more specifically by Save the Children staff members.
- 4.26 Other than these two intelligence reports, the Review has been unable to obtain any other information supporting the allegation that contract service provider staff members coached or encouraged transferees to engage in self-harm.
- 4.27 When the Review asked transferees whether they had been encouraged by service provider staff members to engage in self-harm, they denied that any other parties had encouraged them. The overwhelming response from transferees was that self-harm was an individual transferee response to the Ministerial announcement in relation to temporary protection visas.
- 4.28 A [REDACTED] minor told the Review that [REDACTED] had sewed [REDACTED] lips because *"I thought it was a way to show that I'm not happy with the condition and I was to show my protest"*. When asked why [REDACTED] chose this form of protest, the minor responded *"because it's from Christmas"*

<sup>125</sup> [REDACTED]

<sup>126</sup> E2709 - 11.11.2014 - Response from Wilson Security re 30 Sept Intel Report

<sup>127</sup> R2108 - 28.9.2014 - Information Report - Transfield Services

<sup>129</sup> *"Advocates coaching asylum seekers to self-harm for political reasons"*, *The Australian*, 11 July 2014

Island".<sup>130</sup>

4.29 Information was provided to the Review, however, that suggested there may have been some encouragement from other transferees, particularly some [REDACTED] transferees.<sup>131</sup>

4.30 A [REDACTED] minor described how [REDACTED] and another minor had received assistance to sew their lips from a transferee who is [REDACTED].<sup>132</sup> [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>133</sup>

4.31 The suggestion that anyone responsible for the welfare of transferees would directly or indirectly encourage self-harm was rebutted by the Save the Children staff members. The submission from Save the Children stated that: *"SCA rejects in the strongest terms possible any suggestion that its employees would orchestrate or facilitate asylum seeker behaviour which would result in harm or danger the safety and security of any person at the RPC. Such behaviour would be completely inconsistent with SCA's organisational value, staff training, employee code of conduct and SCA's Nauru program principles"*.<sup>134</sup>

#### **Fabrication of allegations**

4.32 The Secretary of the Nauruan Department of Justice and Border Control, Mr Aingimea, expressed the view that some people were making false claims about sexual and other physical assault at the Centre. Mr Aingimea was concerned these *"false allegations"* have brought a great deal of harm to his country. Mr Aingimea noted that the evidence about such false claims was anecdotal.<sup>135</sup>

4.33 The 30 September 2014 intelligence report made the assessment that *"it is certain there will be further allegations made during the current period regarding the misconduct of staff engaged within the NRPC [Nauru Regional Processing Centre]. It is probable that there are SCA staff engaged in this effort in a facilitative role on Nauru"*.<sup>136</sup>

4.34 The Review considered a number of incident and information reports, focusing on those which Wilson Security identified as *"emotive"*. The Review also focused on any of those reports that were made by the ten Save the Children staff members who were subject to the

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

<sup>134</sup> S2764 - 25.10.2014 - Save the Children submission, at p.21

<sup>136</sup> R248 - 30.9.2014 - Transfield intelligence report - allegations regarding Save the Children

removal order under the contract. The 30 September 2014 intelligence report stated that:

*Incident reporting by SCA staff at the NRPC [Nauru Regional Processing Centre] has also been noted to be increasingly emotive in recent weeks. In some cases, this reporting is using language and descriptive imagery that seeks to paint service providers in a bad light. It is considered that this is because any subsequent leak of information from the NRPC can then be supported by Freedom of Information requests for service provider reporting around the topic of the leak using the aforementioned emotively written report which was subsequently requested and released under freedom of information legislation to support whatever agenda those in the media, or refugee advocacy, may wish to promulgate.*

*Two days ago, information report 280917 was written in such a manner by SCA employees, [REDACTED] and [REDACTED], and some of the allegations regarding sexually inappropriate behaviour by security guards contained within this report have been widely reported across Australian media today. [REDACTED] left Nauru yesterday and the allegations have appeared in the press today.<sup>137</sup>*

- 4.35 The Review asked the female transferee, who made the allegation about a request for sexual favours in exchange for a longer shower (outlined in Chapter 3), what led her to disclose this incident to Save the Children staff member, [REDACTED], some months after it occurred. The transferee told the Review:

*I talked to [REDACTED] the day after they came to the camps to announce the policy changes. On that very night, a 14-year-old [REDACTED] consumed laundry powder and attempted suicide. On that day and also the next day, I was very upset that, after tolerating the situation and the environment and the conditions here - the harsh conditions here - they have treated us that way. So, I was very, very upset the next day. So, I opened up. I wanted to talk to someone.<sup>138</sup>*

- 4.36 When the Review asked the transferee if [REDACTED] or any other Save the Children staff members what had encouraged her to make the allegation, the transferee responded that, "I decided to do so. [REDACTED] did not encourage me. I was very upset."<sup>139</sup> The Review notes that the transferee told three other Save the Children staff members. As a result, two information reports were submitted.

### **Misuse and unauthorised disclosure of sensitive and confidential information**

- 4.37 The Terms of Reference require the Review to consider 'the misuse and unauthorised disclosure of sensitive and confidential information'. Concurrent with this Review, the AFP is investigating the alleged misuse and unauthorised disclosure, pursuant to section 70 of the

<sup>137</sup> R248 - 30.9.2014 - Transfield intelligence report - allegations regarding Save the Children

<sup>138</sup> [REDACTED]  
<sup>139</sup> *ibid*

*Crimes Act 1914*, of sensitive and confidential information. On 8 December 2014, the Review briefed the AFP on the progress of its investigations.

- 4.38 On 10 December 2014, the Review referred to the Department, for forwarding to the AFP, the limited information which it had obtained concerning the misuse and unauthorised disclosure of sensitive information. The Review's Terms of Reference require any material obtained by the Review, which may assist relevant authorities in managing actual or possible criminal charges, to be made available.
- 4.39 The Review is aware that the Department has subsequently referred other material to the AFP.
- 4.40 Given the AFP's current investigation, the Review, with the agreement of the Secretary of the Department and the AFP, has not investigated further this aspect of the Terms of Reference.
- 4.41 In its written submission to the Review, Save the Children provided details of all the instances of data security breaches of which it was aware. Save the Children advised that it had reported those data losses to the Department and other instances of loss were not known about by management. The data security breaches reported involved:
- lost or stolen portable storage devices;
  - confidential and contract material stored and/or forwarded to unsecured systems; and
  - the suspected unauthorised disclosure of confidential material to external sources including the media.
- 4.42 Save the Children told the Review that, for some time, the rollout of information technology, equipment and infrastructure was affected by the short period of notice prior to initial employment, difficulties involved in assessing the previous contract service provider's case-management system and shipping delays concerning the delivery of IT equipment to Nauru. Save the Children noted that limited access to computers, additional issues such as frequent power outages, poor internet connectivity and a lack of secure storage also presented challenges. To manage these challenges, Save the Children staff members used personal laptops and hard-drives. USBs were used to store and back-up data.<sup>140</sup>
- 4.43 Save the Children acknowledged that, while this context and environment created some information management risks, Save the Children continues to work with the Department to address these shortcomings and improve and build the IT infrastructure at the Centre.
- 4.44 The Review notes that, on 17 September 2014, Save the Children implemented a Data Management and Security Standard Operating Procedure.
- 4.45 The Review notes that, due to the loss of storage devices and the unauthorised disclosure of data by Save the Children staff members, the Department was required to report three

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<sup>140</sup> S3032 – Response to 5 January 2015 consultation – Save the Children, atp20

possible privacy breaches to the Office of the Australian Information Commissioner. The first of these breaches was the loss of three hard drives, of which the Department became aware following a media enquiry on 28 August 2014. The second breach was the loss of a USB, which Save the Children confirmed on 19 September 2014, and the third breach was the forwarding of approximately 20 emails by a Save the Children staff member from a work email account to a personal email account.<sup>141</sup>

- 4.46 The Review was unable to establish the prevalence of data loss, but notes that it may not be confined to Save the Children.
- 4.47 The Review also notes that the Department and other contract service providers, particularly Transfield Services and Wilson Security, were concerned that some Save the Children staff members on Nauru were leaking information to the media and refugee advocacy groups in Australia and placing information on social media. Wilson Security intelligence reporting, particularly during August and September 2014, raised such concerns. These concerns arose when information about incidents at the Centre were reported in the media, an anonymous submission from current and former Save the Children staff members was made to the AHRC inquiry into children in detention and a significant amount of information, including video footage, appeared on social media.
- 4.48 The Review further notes that the loss or leaking of information by a contract service provider staff member, in the view of the Department, Save the Children and other contract service providers, undermines reputation and professional standing.
- 4.49 Because of the ongoing AFP investigation, it is not appropriate for the Review to comment further on the allegations of loss or leaking of information.
- 4.50 The Review spoke with Wilson Security about the use of social media by contract service provider staff members. The Wilson Security intelligence unit monitors the use of social media by staff members of all contract service providers. Certain liked pages and groups that a staff member is associated with on social media makes the user a person of interest to the Wilson Security intelligence unit because of the potential for conflict with employment conditions.
- 4.51 The Review was provided with screen-shots of Facebook pages which indicate that contract service provider staff members use social media. One contract service provider staff member's Facebook page had the post "*what a cruel shitty world we live in! Morrison sort your shit!!!!*" which captioned a newspaper article entitled "*Nauru asylum seekers reported sewing lips shut over visa denial*" with a photograph of transferee protest.<sup>142</sup>

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<sup>141</sup> Report to the Office of the Australian Information Commissioner, DIBP, 24 September 2014

<sup>142</sup> The Review notes that the contract service provider staff member who posted the above comments was not one of the ten Save the Children staff members who was subject to removal from providing services in Nauru.



### Other conduct and behaviour issues

- 4.52 Part 3 of this report details a number of allegations concerning contract service provider staff members in relation to misconduct.
- 4.53 Each of the principal contract service providers at the Centre (Transfield Services, Wilson Security, IHMS and Save the Children) informed the Review of instances of staff misconduct, which has warranted termination of employment. Each of the principal contract service providers has also provided information about the recruitment processes and training which staff members receive when they commence work at the Centre.
- 4.54 Transfield Services (welfare and security) has a strict policy of dismissal of staff members for serious misconduct, inappropriate interactions with transferees and breach of confidentiality.

- 4.55 Transfield Services (welfare) terminated the services of:

1. [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 2. [REDACTED]  
 [REDACTED]  
 [REDACTED]

- 4.56 Wilson Security terminated the services of:

Row	Small Bar Length (approx. %)	Large Bar Length (approx. %)
1	5	95
2	5	98
3	10	15
4	5	85
5	5	100
6	5	98
7	5	100
8	10	35
9	5	100
10	5	95
11	5	15
12	5	5

143 [REDACTED]  
144 [REDACTED]

4.57 The Review notes that in [REDACTED], Wilson Security stood down a [REDACTED] [REDACTED] at the Centre for not acting immediately on a minor's complaint about a staff member.

4.58 In its submission to the Review, Save the Children reported that it had dismissed:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

4.59 An IHMS [REDACTED]  
[REDACTED]

4.60 Transferees brought to the Review's attention a range of alleged behaviours by contract service provider staff members. The particular concerns, which transferees raised, included offensive language and drinking or being drunk on duty. As noted above, contract service providers have dismissed staff members for such behaviour. Transferees were unable to provide specific information in relation to these allegations and as such the Review can draw no conclusion as to their veracity.

#### **Removal of Save the Children staff members from providing services in Nauru**

4.61 On 30 September 2014, Wilson Security issued an intelligence report entitled "Save the Children Staff on Nauru." The executive summary is as follows:

*Information suggests that some Save the Children staff may be engaged in conduct which evidences conflicts of interest with their primary purpose and conditions of employment. Consequently, such behaviour is likely to be in breach of their employment contracts and may also evidence breaches of contract around the collection and onward transmission of information.*<sup>146</sup>

4.62 Three Save the Children staff members were named in the 30 September 2014 intelligence report. They were [REDACTED], [REDACTED] and [REDACTED].

4.63 Wilson Security advised that the report contained information on "possible subversive SCA activities, at the behest of external entities, at the Nauru RPC."<sup>147</sup>

4.64 One of the report's recipients was Departmental officer, [REDACTED], who forwarded the report to his supervisor, [REDACTED], [REDACTED] who is the Department's senior representative in Nauru, [REDACTED] recommended that a 'watching brief' be conducted over a 24 - 48 hour period to obtain more intelligence before proceeding.

<sup>145</sup> S2770 – 25.10.2014 – Save the Children submission at pp 22 & 24

<sup>146</sup> R2962 - 30.9.2014 - Intelligence Report - Save the Children staff on Nauru, at p.1

<sup>147</sup> E2823 - 30.9.2014 - Email - [REDACTED] - DIBP response to Save the Children

- 4.65 [REDACTED] in Canberra advising that the attached report *"raises serious concerns from a number of sources/events."* [REDACTED] expressed the need for [REDACTED] to be collected over a two-day period to *"build a better case."* Departmental Deputy Secretary, [REDACTED], responded *"my sense is that [REDACTED], and I will be seeking advice tonight."*<sup>148</sup>
- 4.66 On 30 September 2014, [REDACTED] advised [REDACTED] of Transfield Services that he wanted advice *"ASAP tomorrow of all identified STA [Save the Children] operatives."*<sup>149</sup>
- 4.67 [REDACTED]s pressure from the Department to obtain the names of the staff members involved in the activities described in the intelligence report.<sup>150</sup> This approach was confirmed by [REDACTED] who told the Review: *"I indicated that we needed to take action straight away."*<sup>151</sup>
- 4.68 At a meeting on 1 October 2014, [REDACTED] said that he advised the then Minister that he was *"going to get a list of names of people who were identified as orchestrating or participating in this kind of behaviour, I will get a list put to me, and I will exercise a right under our contract to have those people removed"*.<sup>152</sup>
- 4.69 On the evening of 1 October 2014, the Wilson Security intelligence unit commenced work on Transfield Services' request for the names of Save the Children staff members involved in the activities described in the 30 September 2014 intelligence report. The intelligence unit identified six names. [REDACTED], [REDACTED] and [REDACTED] had already been mentioned in the 30 September 2014 intelligence report. [REDACTED] also named [REDACTED], [REDACTED] and [REDACTED]. In the process of identifying names, [REDACTED] consulted a Wilson Security investigation section colleague, [REDACTED], who provided two more names ([REDACTED] and [REDACTED]). [REDACTED].
- 4.70 [REDACTED], on behalf of Wilson Security provided [REDACTED] (of Transfield Services) with the list of the ten Save the Children staff members who *"are of interest"*. [REDACTED] advised [REDACTED] that they had no firm evidence of Save the Children involvement at that stage and that they would continue to monitor the situation and report to Transfield Services.<sup>153</sup>
- 4.71 On 2 October 2014, a Ministerial submission noted that *"In an 'Intelligence Report' dated 30 September 2014...Transfield Services...assessed that some Save the Children staff in Nauru had engaged in conduct likely in breach of their primary purpose and*

<sup>148</sup> ibid

<sup>149</sup> E2822 - Email - 30.9.2014 - [REDACTED] - DIBP to [REDACTED] - Wilson Security

<sup>150</sup> I2888 - 2.12.2014 - [REDACTED] - Wilson Security, at p.3

<sup>153</sup> R2083 - 2.10.2014 - Email from [REDACTED] - Wilson Security to [REDACTED] and [REDACTED] - DIBP

*conditions of employment. The 'Intelligence Report' raised concerns – not yet verified – about the veracity of allegations of mistreatment towards transferees in the past few days, which was reported widely in the Australian press".* The intelligence report was attached to the submission.<sup>154</sup>

4.72 Also on 2 October 2014, [REDACTED] from Transfield Services forwarded to the Department the correspondence from [REDACTED], regarding the ten Save the Children staff members who were persons of interest. [REDACTED] advised that *"the intelligence report in itself is not evidence; however [it] does speculate on motive."*<sup>155</sup>

4.73 The Department's First Assistant Secretary, [REDACTED], signed the 'Notice to Remove Personnel from Work in Respect of the Services' on 2 October 2014. The Department directed Save the Children to remove ten employees under clause 5.7 of the contract.

4.74 [REDACTED] told the Review:

*I felt very comfortable about the decision to direct SCA [Save the Children] to remove the identified personnel because of the context. Whilst the evidence to substantiate the decision might be viewed in hindsight as being somewhat flimsy, it had to be viewed, in my view, in the context of a whole series of issues that had arisen under the contract, and the relationship that I saw that we had with Save the Children Australia. And what I would describe as a general reluctance on the part of the management of Save the Children Australia to bite the bullet on any issue that we regarded as being serious.*<sup>156</sup>

4.75 No details of any specific allegations concerning the ten Save the Children staff members were provided to the Department before it issued the Notice of Remove and the Department has confirmed that it did not request such details.

4.76 The Wilson Security intelligence unit thought that once the names were provided an investigation would follow. *"My understanding at the time of releasing this was that [REDACTED] was interested and they were going to look at just firming some of this stuff up, an investigation and that kind of thing as one would expect."*<sup>157</sup>

4.77 Departmental Assistant Secretary, [REDACTED], understood that the information about the conduct and behaviour of the ten Save the Children staff members was sourced in the intelligence reports compiled by Wilson Security. The information according [REDACTED] *"seemed pretty solid"* and was therefore, appropriately dealt with at the Department's National Office in Canberra.

4.78 [REDACTED] told the Review:

<sup>154</sup> B2332 - 2.10.2014 - Ministerial Submission - MS14\_000425 - Save the Children misconduct

<sup>155</sup> R2083 - 2.10.2014 - Email from [REDACTED] - Wilson Security to [REDACTED] and [REDACTED] - DIBP - regarding SCA personnel of interest

[REDACTED]  
[REDACTED]

*So the gist of the report, [intelligence report of 30 September 2014] ... is that the identified SCA [Save the Children] personnel ... in various ways appeared as aiding and abetting the protest activity then underway on the island. That was viewed quite seriously.<sup>158</sup>*

- 4.79 The Department's Acting Assistant Secretary, [REDACTED], [REDACTED], in discussing the removal clause under the contract, told the Review:

*[W]e have the clause to be, at our absolute discretion-- so I think that for us was a level of ... comfort that comes in the absolute discretion clause, is that at the time of making that decision you don't necessarily have to have 100% concrete evidence to support your decision, but if you think there's a big enough risk to impact on the delivery of service, or the government reputation, or departmental reputation or whatever, you can make a decision to resolve that.<sup>159</sup>*

- 4.80 [REDACTED] make a statement about how we handled this situation" – other mechanisms under the contract had been used to reinforce the seriousness of the issues with Save the Children.<sup>160</sup>

- 4.81 Save the Children was not provided with any specific details about the notice to remove its staff members. A copy of the intelligence report has not been provided to Save the Children or officially made public.

- 4.82 As already noted, the Wilson Security intelligence unit compiled the 30 September 2014 intelligence report from previous reports and from information provided by [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>161</sup>

- 4.83 When Save the Children received the Notice to Remove, not all of the relevant staff members subject to the Notice were in Nauru. One had previously resigned. [REDACTED]

[REDACTED]  
Three other staff members were not in Nauru. Save the Children issued letters dated 3 October 2014 to the staff members concerned advising of their removal from normal duties and departure from Nauru.

- 4.84 On 3 October 2014, the Nauruan Acting Minister for Justice and Border Control signed removal orders for the Save the Children staff members concerned to leave Nauru.<sup>162</sup> The Review notes that, under the removal orders, Save the Children staff members were

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

escorted to the airport by Nauruan Police Force officers when they were already scheduled to depart Nauru.

4.85 Subsequently, Save the Children conducted an internal investigation into nine of the ten staff members who remained in its employment. The findings of the investigation were sent to the Review and to the Department.

4.86 According to Save the Children, *"the Internal Investigation has not found any evidence to suggest that any of the SCA [Save the Children] employees has engaged in the activities or behaviours set out under the Allegations or any other activities or behaviours that would preclude their reinstatement to their positions in the Nauru RPC. To the contrary, the Internal Investigation finds that there is significant and compelling evidence demonstrating the integrity, professionalism and high quality of the work undertaken by the SCA Employees."*<sup>163</sup>

4.87 On 12 January 2015, Save the Children ceased the employment of the nine employees [REDACTED]

4.88 The circumstances of the removal of the ten Save the Children staff members from providing services highlight the complexity and dynamic nature of the environment in which the Department and its contract service providers were operating at the time. The situation in the Centre was tense and the Department's senior level officers were closely monitoring developments.

4.89 There was concern during late September and early October about the direction which the protest activity at RPC 3 might have taken. The thinking was informed by the experiences of a riot at RPC 1 in July 2013 and the events that occurred at the Manus RPC in February 2014. Significant property damage had occurred on both occasions, as well as the loss of life at the Manus RPC. There was particular concern about the safety of transferees, especially the children in RPC 3.

4.90 [REDACTED] told the Review:

*The July 13 [2013] event was very much front of mind as to what can happen, how quickly it can happen, how serious it can get. That was certainly an influence on the need to basically not mess about and say, "The evidence might be light, but it requires urgent and determined action in response to the report that we had." We essentially took it at face value. We had no reason to disbelieve the information. Having regard to the context that I outlined, it resonated. It resonated...[O]n the advice that we had, the need to take urgent action, the need to demonstrate as well that we were serious in responding to this matter quickly, we were prepared to simply accept that advice and get on with it."*<sup>164</sup>

<sup>163</sup> E2818 - 24.11.2014 - Email - SCA Internal Investigation of 10 Staff

<sup>164</sup> [REDACTED]

4.91 This perception was also in [REDACTED] comments to the Review.

*...when you live through these things, you not only take your responsibilities very seriously but you...prepare for what could happen, and you become extremely attentive to the quality of the advice that you're getting, and you are extremely attentive to any trigger points.*<sup>165</sup>

4.92 When the intelligence report dated 30 September 2014 came to hand, the Department's senior officers formed the view that some Save the Children staff members were actively involved in the protest activity. Accordingly, the senior Departmental officers decided to invoke the relevant clause of the contract to remove the ten Save the Children staff members.

4.93 Notwithstanding the fact that the Wilson Security intelligence unit advised that they had no firm evidence of Save the Children involvement and that the intelligence unit believed that once the names were provided, an investigation would follow, neither the Department, Transfield Services nor Wilson Security undertook an investigation before the Department issued the Notice to Remove to Save the Children on 2 October 2014. The Review was announced on 3 October 2014.

4.94 Departmental officers told the Review that the issuing of the removal notice in relation to the Save the Children staff members had the effect of ending the protest action and eliminating the potential for serious developments to occur. One expression used was that it acted as a "circuit breaker". [REDACTED]  
[REDACTED], expressed this view:

*Now, there are two ways you can look at that. Either the ten were ten who may have been doing things that were inappropriate or beyond their contract, and that was exactly what needed to be done. Or, the removal of ten people, irrespective of who they were and what they did ... created a shock and everybody - who may or may not have been involved in other things - sort of shut down.*<sup>166</sup>

4.95 The Review notes that the protest activity which was peaceful and involved on various occasions between 10-120 persons, continued. The last protest was on 21 October 2014 shortly before the Review's first visit to Nauru.

4.96 Departmental officer, [REDACTED] told the Review:

*On the island, we were talking about, "What can we do for a circuit breaker?" And on the island, we came up with a whole bunch of things that I think were successful. They weren't successful in ending the protest, but they were successful in reducing the interest in participation in them. What we saw was it shifted from a reasonably large number of fairly willing participants, to a dwindling number of willing participants who were intimidating others to join in...The Transfield guys have been*

[REDACTED]

*doing a lot of work around getting the cleaning improved... the infrastructure guys had done a lot of work to improve the level of water that was available. That meant that water restrictions on things like showers, washings, and those sorts of things were reduced, and then lifted completely... They set up two cinemas. They started running more nightly movies. There was a strong focus on just that improvement in the standard amenity of care that was not available... But then, I think they were still looking for something that would cut it off completely. And that was the announcement of the review and the removal of the nine.*<sup>167</sup>

- 4.97 The Review notes that in a situation with the potential to escalate quickly, there may not always be time to verify information.
- 4.98 Save the Children staff members told the Review that, as a result, they “*feel concerned about reporting incidents and information they've been given because they are concerned that this is what has led to the removal of those staff. They feel that they are placing their employment in jeopardy if they do that.*”<sup>168</sup>
- 4.99 The Review notes the Department’s view that its relationship with some, but not all, of its contract service providers in the welfare role has not been entirely satisfactory. The Review notes also that tension may exist for any advocacy organisation if the delivery of a welfare service or program, which it provides under contract, differs from the organisation’s underlying philosophy. The Review notes that any such organisation would have to make a consistent effort to keep its staff members aligned to their contractual obligations.
- 4.100 The Review notes that the welfare role in the context of regional processing centres (in Nauru and Manus) is recognised as challenging.

*Perhaps the hardest, most complex [are the jobs] ... closer to transferees and the human aspect of working with and supporting people who are in difficult circumstances. [T]his is true most particularly of [the] welfare provider.*<sup>169</sup>

- 4.101 The Review notes that the Department considers that, after a positive start, the relationship with Save the Children deteriorated.<sup>170</sup>
- 4.102 Save the Children notes that the Department did not act in a consistent manner in response to allegations concerning its staff members. In July, the allegations against each staff member were shared with Save the Children. Wilson Security with support from Save the Children and the Department in Nauru conducted an investigation. The staff members remained in Nauru, and performed administrative tasks at RPC 1 during the investigation.
- 4.103 The Review notes, that the Department:

[REDACTED]



*...made it clear to ... [the acting CEO of Save the Children] that the situation with the previous five would not be a precedent and they could not rely on that as a precedent. I said there were particular set of circumstances around that and, as we were relatively new under the contract, I was prepared to give them the benefit of the doubt. But they needed to do some things internally to instruct their staff better as to what was appropriate conduct and what wasn't, to look at their training issues - because there seemed to be people working for them who may have engaged in inappropriate activities - and they needed to do something systemically to address that. And they undertook to do that. So the second incident also has to be viewed in that light."*<sup>171</sup>

## Conclusions

### *Misconduct and disciplinary action*

- 4.104 The Review received allegations about misconduct in relation to staff members of contract service providers. The Review notes that, when appropriate, contract service providers have been prepared to take disciplinary action. The Review acknowledges that contract service provider staff members work in challenging circumstances and in the majority are dedicated employees who behave professionally.

### *Orchestration and facilitation of protest activity*

- 4.105 In relation to whether any contract service provider staff members orchestrated or facilitated protest activity, the Review obtained information from Wilson Security intelligence reports, interviews and other material. None of this information indicated conclusively to the Review that particular contract service provider staff members engaged in this activity.
- 4.106 In relation to the petition, the Review interviewed the contract service provider staff member who had told Wilson Security about its circulation. The staff member denied any knowledge. The Review was unable to obtain any other information that suggested a petition had been circulated and/or any involvement by Save the Children staff members.

### *Fabrication of allegations*

- 4.107 In relation to the allegation about sexual and other physical assault at the Centre being fabricated, the Review cannot disregard the possibility that some transferees may have fabricated or exaggerated some allegations. There is, however, no conclusive information to suggest that particular staff members of Save the Children or any other contract service provider were either colluding with transferees to fabricate allegations or were fabricating them of their own accord.

*Coaching and encouragement of self-harm*

- 4.108 The Review has also been unable to obtain any conclusive information to suggest that Save the Children staff members coached or encouraged transferees to self-harm. The transferees who spoke to the Review were very clear that they received no encouragement to self-harm from any contract service provider staff member.

*Use of social media*

- 4.109 The Review notes that contract service provider staff member use of social media has the potential to conflict with their employment conditions. The appropriate use of social media is something that all contract service providers and their staff members need to consider. The Review is aware that there are policies developed by the Department and by individual contract service providers that guide staff members' conduct and behaviour. This guidance needs to be reviewed to ensure that it is current and appropriate, fully understood and complied with.

**RECOMMENDATION 7:** All contract service providers review their existing policies in relation to social media to ensure that their staff members have a clear understanding of their obligations concerning its use.

*Misuse or unauthorised disclosure of sensitive information*

- 4.110 The Review does not draw any conclusions in relation to the misuse or unauthorised disclosure of sensitive and confidential information by contract service provider staff members, noting that any information, which the Review obtained, has been provided to the Department to assist the AFP's current investigation.

*Data loss*

- 4.111 The Review notes that deficiencies existed in the information management practices at the Centre with respect to Save the Children and that it notified the Department of data or information breaches of which it was aware.
- 4.112 The Review notes the contract provisions for the reporting of breaches relating to the *Privacy Act 1988* and other frameworks and procedures that require reporting of information data loss. The Review concludes that the Department should review the relevant contract provisions and other guidelines to ensure that the obligation on contract service providers to report any information or data loss is explicit.

**RECOMMENDATION 8:** The Department review contract provisions and other guidelines to ensure that the obligation on contract service providers to report any data loss is explicit.

*The removal of the Save the Children staff members*

- 4.113 In relation to the removal of the Save the Children staff members, the Review notes the explanations which senior Departmental officers gave for acting to remove the Save the

Children staff members. The Review appreciates that, in a potentially volatile situation, decisions have to be made based on the advice available and on the judgment and experience of those providing the advice. Senior Departmental officers read the signs as they saw them based on their experience and their responsibility for the safety of transferees and the implementation of Government policy.

4.114 Noting, however, that the information relied upon, in Wilson Security's view, required further investigation, the Review considers that a better course of action would have been to direct Save the Children to remove the ten staff members, thereby alleviating any immediate threat, and conduct an investigation. Save the Children should have been afforded the opportunity to address the concerns raised about its staff members and Wilson Security could also have been given additional time to collect more information.

4.115 In February 2014, the FairWork Commission considered in a similar issue in relation to a Serco employee removed under a similar contract provision. In that case, the FairWork Commission recommended:

*Given an exercise of the exclusion power against a detention officer will inevitably affect the officer's livelihood, the Department has a duty to afford procedural fairness to an affected officer. The Department should allow for an employee of a detention contractor who is to be made the subject of an exclusion direction under a contract to be afforded a hearing on whether that exclusion direction should be issued or allowed to stand. In particular, in order to correct the apparent injustice that has occurred in this case, the Department should afford Mr Tavae an opportunity to be heard (including an opportunity to respond to specific allegations against him), and revoke the exclusion direction in so far as it relates to him, unless there is acceptable evidence that Mr Tavae in fact engaged in the misconduct alleged against him.<sup>172</sup>*

4.116 The Department was aware of the case and noted that the FairWork Commission made no direction in relation to the Department. The Department expressed the view that there was nothing binding in the recommendation.

4.117 The Department does not agree that there is a need to provide procedural fairness and told the Review that "...any requirement for procedural fairness on the Department's part when making decisions under a commercial contract ...has potentially serious implications for our contract management and our obligations to service providers and their staff..."<sup>173</sup>

4.118 On 2 October 2014 the Department issued the "Notice to Remove Personnel from Work in Respect of Services" under clause 5.7 of its contract with Save the Children. The following day, the Nauruan Acting Minister for Justice and Border Control issued removal orders. By these actions, the ten Save the Children staff members were denied the opportunity to

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<sup>172</sup> *Nehemiah Tavea v Serco Australia Pty Ltd T/A Serco*, Recommendation, FairWork Commission 18 February 2014 at para 14

<sup>173</sup> L3035- 6 February 2015 - DIBP response regarding factual issues in draft report

know the allegations against them and to respond. This situation has had significant consequences for their employment.

- 4.119 Save the Children notes that individuals who have had removal orders issued against them may potential face limitations upon their ability to travel in certain jurisdictions or face additional scrutiny from security and border control personnel. Save the Children also notes that the mere revocation or withdrawal of the removal orders may not be sufficient to resolve the issue for the individuals concerned in terms of declarations required for entry to various countries. The Review notes that the Nauruan *Immigration Act 2014* allows seven days to appeal a decision relating to a removal order. The Review is not aware if any of the affected Save the Children staff members sought a review.
- 4.120 Whatever the merits of the exercise of these powers—an expression of Nauruan sovereignty on the one hand and on the other hand the Department’s entitlement to have contract service providers perform to its satisfaction—these powers are blunt instruments. The need to use these powers is symptomatic of an underlying problem in relationships and understanding. The theme of the Review’s recommendations is that the Department must be more proactive and take the lead to create the appropriate settings, be they relations with the Nauruan Government or relations with and between the various contract service providers at the Centre.
- 4.121 The Review notes that it has not obtained any information which substantiates the alleged misconduct in terms of inappropriate attitude, emotive reporting and links to refugee advocacy groups in relation to the ten Save the Children staff members. Noting the current AFP investigation, the Review concludes that the Department should review its decision to remove the Save the Children staff members. The Department’s review of the decision would include providing Save the Children with the information it relied on.

**RECOMMENDATION 9:** Noting the current AFP investigation, the Department review its decision which required Save the Children to remove ten of its staff members from providing services in Nauru and in so doing consider the staff members individually. The review would include providing:

- Save the Children with the information the Department relied on; and
- the opportunity for Save the Children to address the allegations concerning its staff members.

In the event that the decision in relation to any of the ten Save the Children staff members is reversed, the Department make representations to the Government of Nauru about the Nauruan removal order and its consequences.

**PART 5: OTHER ISSUES RELATING TO THE SECURITY, GOOD ORDER AND MANAGEMENT OF THE CENTRE**

- 5.1 The Terms of Reference require the Review to ensure that the Department is provided with clear recommendations on any improvements that can be made to support the Republic of Nauru with the ongoing management of the Centre.

**Nauruan leadership**

- 5.2 The Review suggests that the Centre, which is a Nauruan facility, would operate more effectively if there were greater partnership and integration between the Nauruan operations managers and the Department and its contract service providers.
- 5.3 The Nauruan operations managers play a key role as a link between the Centre and the Nauruan Government and community. Yet they told the Review that they are not receiving enough information about the day-to-day working of the Centre, or do they feel as if they are being sufficiently engaged.
- 5.4 The Nauruan operations managers attend a range of meetings and through that means participate in the operation of the Centre. The Nauruan operations managers told the Review that they did not always know when such meetings were occurring and/or were not invited. Their perception is that they receive invitations when the relevant Departmental officer or contract service provider thinks to include them.<sup>174</sup>
- 5.5 The Department provided the Review with the list of all regular meetings that occur at the Centre, including frequency and attendees. The Review notes the discrepancy between the meetings to which the Nauruan operation managers say they are invited and those to which they are said to be invited. The Review suggests that the Department clarify the situation.
- 5.6 The Nauruan operations managers told the Review that they do not have access to, or knowledge of, the contract provisions between the Department and its contract service providers. They expressed interest in knowing more.

*It's vital to us. We want to know what's in their contract, and what's outside their contract. We want to know if they're keeping up with their side of the contract.*<sup>175</sup>

- 5.7 The Review does not contemplate any change to the present arrangement whereby service providers contract with the Department. Transfield Services stated that “*we need the certainty of a commercial relationship with the Commonwealth*”.<sup>176</sup> What the Review suggests is more Nauruan observation of and participation in the Department’s interaction with its contract service providers.
- 5.8 One of the Nauruan Operations Managers told the Review:

■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]

*[It] feels like there's more information out there that we need to know. That it's just not coming to us. I think one of the reasons why is, because the services providers are contracted to DIBP, so they report to DIBP all the time. How do we get that information?*<sup>177</sup>

5.9 The Nauruan operations managers say they are not kept fully informed by some of the contract service providers. In most cases, the contract service providers have a large Nauruan component to their workforce and the Nauruan operations managers maintain situational awareness through their local networks. In the case of Save the Children, which reportedly employs 10 Nauruans, the Nauruan operations managers say they are least informed about the activities of that contract service provider.

5.10 The Nauruan operations managers also said that they were not receiving enough information directly from the Department. They expressed concern that while there was a regular meeting with the Department, the information they were receiving was not comprehensive.

*I think there's a lot more information, and I've also expressed my concern... that we need to open up our communication channels a lot more between us and DIBP.*<sup>178</sup>

5.11 [REDACTED]

5.12 While the Department and Transfield Services consider that there is already effective engagement in the running of the Centre, this view is not shared by the Nauruan operations managers. For this reason, the Review suggests that the issue be addressed.

5.13 The Review recognises the effort which the Department and its contract service providers are making to ensure that Nauruan requirements and expectations are met. As the Centre evolves, the Department must maintain the focus on supporting the Nauruan requirements and expectations, particularly at the middle and senior levels of management.

5.14 In order to achieve this outcome, the capability of Nauruan staff members needs to be enhanced through training and personal development. Secretary Aingimea said that he would like to see a Nauruan equivalent in every contract service provider organisation.<sup>180</sup> Transfield Services has noted issues related to capability and independence, yet expressed

[REDACTED]

<sup>180</sup> T294 - 16.11.2014 - Interview - L Aingimea and G Leung

its willingness in principle to commit to making more senior appointments of Nauruans.<sup>181</sup>

- 5.15 The Review notes that it is important for the Department to continue to select officers who can establish and maintain effective relationships to support the Nauruan operation and management of the Centre to achieve a more joined-up approach between Nauruan operations managers and contract service providers.
- 5.16 In Part 3, the report refers to the apprehension of many transferees about their personal safety and privacy in the Centre. The Review notes that, as a consequence, the supervision and training provided to the Transfield Services and Wilson Security staff members, particularly locally engaged Nauruans, needs to be enhanced. The Review concludes that, Nauruan leadership, at the middle and senior levels of the operation and management of the Centre, is essential to assist contract service providers to manage their workforces.

**RECOMMENDATION 10:** The Department ensure that Nauruan operation and management of the Centre is enhanced through a more joined-up approach between the Nauruan operations managers and the contract service providers.

#### **Greater cooperation between contract service providers and the Department**

- 5.17 The Government of Nauru, the Department and contract service providers have to work together to make the Centre function effectively.
- 5.18 The Review suggests that the Department continues to engage with contract service providers to establish clearly its requirements under the service provider contract (to the extent that the Department considers that any contract service provider is not compliant).
- 5.19 The Department needs to provide effective coordination and adopt a lead role in ensuring that contract service providers work effectively together. This role needs to be played not only at the Centre in Nauru, but also at the head office level. The Review notes the Department's intention to hold joint service provider governance meetings with its offshore contract service providers. This initiative would replicate well established arrangements in place with its onshore contract service providers.
- 5.20 By appointing, in September 2014, a Senior Executive Service officer in Nauru, the Department has the basis to ensure that contract service providers achieve a more joined-up approach at the Centre. The Department needs to develop its function beyond mere contract management. This enhanced coordination role needs to be performed jointly with the Nauruan operations managers.
- 5.21 The Review notes that various contract service provider staff members at the Centre say that they do not have sufficient understanding of each other's roles and responsibilities. A Save the Children staff member told the Review that, at the practitioner level, *"we've never sat down and talked about how the three – Wilson, IHMS and Save the Children were going*

*to work together. We've never asked each other what is it in your contract so that we can work together to deliver.*"<sup>182</sup> Save the Children advised the Review that, as a result of the events which occurred in October 2014, it reviewed and amended the asylum seeker interaction guidelines, which form part of the RPC Guidelines, to articulate the roles of contract service provider staff members. The amended Guidelines were submitted to the Department for approval in October 2014.<sup>183</sup>

- 5.22 The Review notes that a range of meetings occur at the Centre involving the Department, contract service providers and the Nauruan operations managers. Given the need to improve communication, it would be timely for the Department, in consultation with the Nauruan operations managers and contract service providers, to review the current meeting schedule. There is a need to ensure that the purpose and frequency of meetings suit requirements and that each is an effective forum for sharing information.

**RECOMMENDATION 11:** Greater cooperation between the contract service providers be encouraged, including through the Department:

- a. ensuring that contract service provider staff members have a clear understanding of each other's roles and responsibilities;
- b. reviewing the range of meetings at the Centre to ensure that information is shared effectively; and
- c. taking a more proactive role to ensure that contract service providers are working cooperatively together and are responsive to each other.

### Enhanced policing

- 5.23 The Nauruan Police Force has an important role at the Centre. Consistent with the need for the Nauruan operations managers to be more involved, the Nauruan Police Force needs to be increasingly engaged. To achieve this outcome, the relationship between Transfield Services / Wilson Security on one hand and the Nauruan Police Force on the other hand needs to be more structured. The Review acknowledges that, in an ever evolving and developing context, there needs to be balance between best practice and what can be practically achieved.

- 5.24 At present, the relationship between Transfield Services/Wilson Security and the Nauruan Police Force relies more on individuals rather than a systematic approach. As a result, gaps and inconsistencies may emerge when contract service provider staff members rotate off Nauru every two or three weeks or when the Nauru Police Force members take leave.

- 5.25 The AFP [REDACTED] expressed the need for engagement in a more structured way in the following terms.

*It's got to be ... a partnership and at the moment, if you talk to Wilson's they'll say the Police are fairly responsive but could do better and if you talk to the Nauru*

<sup>183</sup> [REDACTED]  
S3032 – Response to 5 January 2015 consultation – Save the Children, atp25



*Police, they say the response is okay but Wilson's could do better. And when I say better, I don't mean it's an issue of incompetence. It's just the engagement in a structured way, but make sure that everything is on the table somewhat so one, there's no surprises and two, any crime that even is suspected of occurring up here is referred to the NPF so they can choose to...investigate it...I just think they really need a more structured approach to it.*<sup>184</sup>

- 5.26 The Review notes that greater clarity between roles is needed. For example, the present situation may result in Wilson Security referring a matter to the Nauruan Police Force when the matter could or should have been referred sooner. Timely referral of matters ought to be the norm so that the Nauruan Police Force can consider whether its input is required. At present, the decision about when engagement with the Nauruan Police Force occurs rests primarily with Wilson Security. The Review acknowledges that meetings between Wilson Security and the Nauruan Police Force occur, yet this liaison could be improved if it were more regular. For example, *"the Wilson command structure [could] pick themselves up and go down there [to the Nauruan Police Force] to their environment and basically tell them what's going on so they can ask the questions"*.<sup>185</sup>
- 5.27 The Nauruan Police Force is responsible for the investigation of all criminal matters in the Centre. The relationship between Transfield Services/Wilson Security and the Nauruan Police must reflect the primacy of the Nauruan Police Force's role. The Review notes the AFP's view that such engagement might be *"... a bit overwhelming for the NPF [Nauruan Police Force] to start with in terms of they might get a lot of referrals..."*<sup>186</sup> but it is essential in ensuring that criminal matters are investigated properly.
- 5.28 The Review has noted previously a level of under-reporting by transferees of incidents and concerns. This situation needs to be addressed jointly with the Nauruan Police Force.
- 5.29 To address the issue of under-reporting, particularly of sexual and other physical assault, transferees need the opportunity to develop understanding of, and trust in, the Nauruan law enforcement and criminal justice system. Early and effective involvement of the Nauruan Police Force would enable such understanding and trust to be established. The Review notes that the Department's role should be to ensure that cooperative and consistent interaction becomes a feature of the relationship between Transfield Services/Wilson Security and the Nauruan Police Force.

**RECOMMENDATION 12:** The Department ensure that the relationship between Transfield Services/Wilson Security and the Nauruan Police Force becomes more structured and is based on cooperative and consistent interaction.

- 5.30 The Review notes that the Director (Commissioner) of the Nauruan Police Force reports to the President, whereas the Centre is the responsibility of the Nauruan Department of Justice and Border Control. From this perspective, the Department should regard itself as having a



role in assisting the Nauruan authorities to ensure that the Centre's operation and management is coordinated with law enforcement.

- 5.31 The AFP's [REDACTED] commented that "[the Nauruan Police Force] is dealing with things [it] never had to deal with before."<sup>187</sup> The AFP has two officers from its International Deployment Group attached to the Nauruan Police Force. The AFP officers do not exercise executive authority in Nauru and are not directly involved in Nauruan police investigations. Accordingly, although AFP officers in Nauru are broadly aware of any allegations of sexual and other physical assault in the Centre that have been referred to the Nauruan Police Force. The AFP members know the details of specific allegations only to the extent that they advise on investigative procedures and practices.
- 5.32 This situation could be improved if an AFP member were appointed to a Nauruan Police Force line position with the capacity to exercise executive authority. The Review notes that an AFP officer was the Director (Commissioner) of the Nauruan Police Force until July 2013. Notwithstanding this history, an appointment could be considered at the level of deputy commissioner, a position which is currently vacant. While the implementation of this proposal in the longer term would help to build the capacity of the Nauruan Police Force, its immediate effect would be to ensure appropriate law enforcement outcomes in relation to the Centre.

**RECOMMENDATION 13:** The Department consider the feasibility of assisting the Nauruan Police Force to increase its effectiveness through the appointment, on a limited term basis, of an AFP officer with executive authority.

#### *Community policing*

- 5.33 The Review notes the need for the Nauruan Police Force to have increased visibility at the Centre in a community policing role. Community policing is a strategy which forges relationships for mutual benefit between a policing service and the constituency it serves. Community policing is achieved through a networked approach, assigning community liaison officers to be the conduit point to and from sectors of the community most likely to have either a frequent or challenging interface with the police.
- 5.34 It is common, as part of community policing programs, for interaction to extend beyond law enforcement issues to broad social and welfare related interaction. For example, police officers and communities may share social, sporting and other events.
- 5.35 The importance of community policing was also recognised in the August 2014 KPMG review, when, in the context of the Manus Regional Processing Centre, the following recommendation was made:

*Continue to strengthen relationship between Manus OPC and provincial police, with a view to introducing routine walk-throughs and other activities in line with a*

*community policing model.*<sup>188</sup>

- 5.36 Currently, the Nauruan Police Force is seen at the Centre when conducting investigations and by undertaking walk-throughs. This later activity needs to be extended into the sphere of community policing. In doing so, the Nauruan Police Force would appear at the Centre without Wilson Security in attendance. The perception among transferees, and others, is that at the Centre the two organisations are inseparable and that the Nauruan Police Force is subordinate.
- 5.37 A revised approach is needed to give proper authority and standing to the Nauruan Police Force and to change its role at the Centre and how it is perceived there. Many transferees will become refugee settlers in Nauru. A regular Nauruan Police Force presence at the Centre, with the potential thereby for trust and understanding to be developed, could become a positive and important factor in asylum seekers' transition from being transferees to refugee settlers.
- 5.38 With a Nauruan population of 10,000 increasing by potentially 1,000 refugee settlers, community policing would be enhanced by refugee participation. The Nauruan Police Force should consider whether suitable refugee settlers could be included in community policing and law enforcement roles.
- 5.39 Refugee settlers could be given a role in policing, either as substantive members or as special or auxiliary police officers dedicated to dealing with their own community. They may not necessarily have full police powers, yet they could be given limited powers and training to equip them to make the connection between the Nauruan Police Force and the transferees in the Centre.
- 5.40 The Review notes that the AFP, through the Nauruan Police Force capability program, has provided various forms of training and/or equipment to the Nauruan Police Force since November 2004. The AFP may be able to assist the Nauruan Police Force to develop its community policing capability.
- 5.41 The Director (Commissioner) of the Nauruan Police Force says that police members enjoy a good rapport with transferees. This situation would develop as the Nauruan Police Force and transferees become better acquainted. The Police could use their interactions with transferees as a means of providing an informal induction into Nauruan society and its culture. For a start to be made, the Nauruan Police Force has to establish itself in its own right at the Centre.
- 5.42 The Review is aware that the Nauruan Police Force is supporting an initiative to establish a *Nauruan Police Force Community Liaison Officers Program*. One of the stated objectives of the program is to assist in ensuring the safe transition of asylum seekers to the status of

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<sup>188</sup> OR2960 - 29.8.2014 - KPMG Report 2 - Manus and Nauru OPC Risk analysis continuation work, Recommendation 3.6, at pp.9, 41

refugees in the Nauruan community.<sup>189</sup> The Review notes this initiative and encourages the Department and its contract service providers to provide support in whatever ways are requested by the Nauruan Government. The program is discussed in greater detail below.

**RECOMMENDATION 14:** The Nauruan Police Force have greater visibility in the Centre based on community policing and explore ways to include transferees and refugee settlers in community policing and law enforcement roles.

### Strengthening the intelligence capability

- 5.43 A strong intelligence capability within the Centre is important. Intelligence assists the department and contract service providers to ensure the personal safety of their staff members and transferees. Intelligence is also used to ensure that the conduct and behaviour of staff members in the Centre is appropriate and that the Centre is secure from external threats.
- 5.44 The Review acknowledges the existing intelligence capability in the Centre through the intelligence unit operated by Wilson Security. That intelligence capability was relied upon to identify possible risks to the Centre during the September/October 2014 protests and to identify the 10 Save the Children staff members.
- 5.45 From the Transfield Services/Wilson Security perspective, the information used to identify the ten Save the Children staff members required further investigation. The Review notes an apparent lack of understanding on the part of some Departmental officers about the weight that should be placed on such information.
- 5.46 The Department should review the way that it handles such information to ensure that officers, who make decisions based on intelligence, understand the extent to which it can be relied on.
- 5.47 The role of the Wilson Security intelligence unit is to gather information, provide analysis and pass it on for investigation. This role is clear in the increased focus by the unit on cohort trend analysis. For instance, work has begun on incidents by cultural group at the Centre, related to attempted suicide, self-harm, self-harm threats and medical incidents involving self-harm. This initiative should be encouraged, supported and developed in conjunction with the other contract service providers and the Nauruan Police Force because of its potential for direct application in relation to the operation and management of the Centre.
- 5.48 To provide greater clarity, it may be appropriate for Wilson Security to consider changing the name of its intelligence unit to reflect its role as an information collection and analysis unit. This naming would better reflect its purpose and function.
- 5.49 The Review notes that under the *Memorandum of Understanding between The Republic of*

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<sup>189</sup> *Nauru Police Force Community Liaison Officers Program*, Memorandum to Hon. David Adeang MP from Cory Caleb, Director of the Nauruan Police Force, 26 June 2014

*Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru and related issues, the security, good order and management of the Centre, including the care and welfare of persons residing in the Centre, are the responsibility of the Government of Nauru.*

5.50 As with other aspects of the operation and management of the Centre, the intelligence capability would benefit from a more joined-up approach. The Review considers that the effective engagement of the Nauruan Police Force is lacking in the current intelligence arrangements in the Centre.

5.51 The Review considers that, as the Centre continues to evolve, the lack of Nauruan Police Force input will become increasingly significant. The Wilson's Security intelligence unit explained it to the Review in the following terms:

*...we've got to remember we are contracted to the Government. Intelligence should be a State function... we're collecting information. We do analysis based on information...we do information reports from the ground, we do information-- open source information ... For example, if during the course of our information collection...drugs are identified with an individual, we no longer chase or we don't chase an intelligence function for a network to try and coerce or get anything out of it. We hand it to [Wilson Security] Investigations...we'll collect information in support of investigations, which is then handed to the police force to go and do prosecution and whatever they need to do...So that all comes back to my thought process on the information rather than intelligence ...<sup>190</sup>*

5.52 In 2012, the Nauruan Police Force formed a small intelligence unit led by an inspector. According to the AFP submission to the Review, Wilson Security set up an intelligence unit without input from the Nauruan Police Force's Intelligence Unit or the AFP, with the primary aim of the meeting the internal needs in terms of the safety and security of the Centre.

5.53 The Review notes that the circumstances of the Centre are changing. First, the number of refugee settlers in Nauru is increasing as transferees are granted refugee status. Secondly, as the then Minister announced on 6 November 2014, the Centre will transition to an open centre model in early 2015.<sup>191</sup>

5.54 With these changes, effective cooperation between the Nauruan Police Force and the Wilson Security intelligence unit will be needed. In this context, consideration needs to be given to intelligence collection and analysis not only within, but also beyond, the Centre. This role is properly one for the Nauruan Police Force intelligence unit, together with Wilson Security intelligence unit support. For this reason, the present level of cooperation needs to be developed. Liaison visits between the two units would be a good starting point.

5.55 The Review notes that the principal means of facilitating a joined-up approach has been through the joint intelligence group that commenced in mid-2014. The joint intelligence

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<sup>191</sup> MR3015 - 6.11.2014 - S Morrison - MIBP - Getting on with the job on off-shore processing and resettlement

group includes the heads of all the contract service providers.

- 5.56 The AFP told the Review that at times joint intelligence group meetings have not been held as regularly as might have been expected and that the AFP senior adviser is trying to address this situation from the Nauruan Police Force perspective<sup>192</sup>.

**RECOMMENDATION 15:** The Department ensure that there is a more joined-up approach between the Wilson Security intelligence unit and the Nauruan Police Force.

- 5.57 *The Nauru Police Force Community Liaison Officers Program (Program) provides an opportunity for greater intelligence sharing. The Program aims to “engage with the broader Nauruan community in a range of initiatives to ensure a safe and secure community”. The Program recognises that crime prevention and community safety are best achieved when all sections of the community take responsibility.*

- 5.58 The objectives of the Program are:
- increasing community awareness of crime risk and prevention strategies;
  - encouraging community involvement in local community safety;
  - identifying real and potential community safety problems;
  - co-ordinating multi-faceted crime prevention efforts;
  - utilising the Nauruan Police Force to assist in early intervention, particularly programs for children;
  - assisting in ensuring safe transition of asylum seekers to the status of refugees in the Nauruan community.<sup>193</sup>

- 5.59 The Review considers that the Program would have benefits for transferees, not only in supporting intelligence to identify and prevent risks to personal safety in the Centre, but also in building stronger connections between the transferees and the Nauruan Police Force and the Nauruan community more broadly.

- 5.60 The Program is currently based on the division of Nauru into 16 districts, with representatives from each district. The Review suggests that consideration be given to making the Centre a separate district and to providing representation for the transferees in the Program.

**RECOMMENDATION 16:** The Department work with the Nauruan Government to extend the Nauruan Police Force Community Liaison Officers Program to the Centre.

<sup>192</sup> S3034 - Response to 5 January 2015 consultation - AFP, at p.2

<sup>193</sup> *Nauru Police Force Community Liaison Officers Program*, Memorandum to Hon. David Adeang MP from

Cory Caleb, Director of Police, 26 June 2014

### Treatment of local staff and shaping of perceptions of Nauru

- 5.61 The Review notes that attention needs to be paid to: the way in which local Nauruan staff are regarded and treated; more structured education programs and positive messaging about Nauruan society; and improved training and supervision of local Nauruan staff members employed by contract service providers.
- 5.62 The perception exists that some contract service provider staff members do not treat Nauruan employees with respect or show courteous regard for the Republic of Nauru. It is said that the transferees are observing and taking note.
- 5.63 Accordingly, the induction programs for all non-Nauruan contract service provider staff members about Nauruan culture and Nauruan society should be provided. Such programs should be delivered by Nauruans. Secretary Aingimea commented on the issue of cultural awareness: *"They do some, but I think the induction really doesn't touch on-- the issue of being culturally aware."*<sup>194</sup> It is suggested that the induction program be reviewed and consolidated through regular training, perhaps every six months.
- 5.64 Additionally, the Review suggests that advice be given to all Departmental officers and contract service provider staff members working at the Centre about the way in which they relate to the local staff and the messaging that they provide to transferees about Nauru. The Department should take the lead in assisting contract service providers to ensure that their staff members provide appropriate messaging to transferees about Nauru.
- 5.65 Assisted by the Department and contract service providers, Nauruan authorities should continue to explore opportunities to introduce transferees to Nauruan culture with the view to equip them for life in Nauru. Finding ways for Nauruans to interact with transferees would assist in creating positive attitudes towards the recent arrivals. The Review acknowledges the steps which have already been taken.
- 5.66 The need for increased engagement with the local communities hosting regional processing centres has been highlighted in a number of reviews undertaken both in relation to Nauru and Manus. In his review into the events that occurred at the Manus Regional Processing Centre in February 2014, Mr Cornall recommended:

*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.*<sup>195</sup>

- 5.67 KPMG made a similar recommendation in their August 2014 review of both the Nauru and Manus Centres:

*Continue efforts to strengthen communication between transferees and the local*

<sup>194</sup> T294 - 16.11.2014 - Interview - L Aingimea and G Leung, at p.15

<sup>195</sup> OR2958 - 23.5.2014 - Cornall Report 2 - Manus RPC events 16-18 Feb 2014, Recommendation 10 at p.14



*community through a broader communications strategy.*<sup>196</sup>

- 5.68 The Department accepted both of these recommendations.
- 5.69 The Department must ensure that the staff members it deploys at all levels in Nauru understand their role in helping to shape the positive perceptions of Nauruan staff members and Nauru more generally.

**RECOMMENDATION 17:** The Department and contract service providers review and enhance existing efforts to ensure that Nauruan staff members are treated with respect and that there is courteous regard shown for the Republic of Nauru. This requirement could be enhanced through:

- a. the induction programs for all non-Nauruan contract service provider staff members about Nauruan culture and Nauruan society be delivered by Nauruans;
- b. establishment of a framework to deliver positive messaging about Nauru;
- c. the Department taking the lead with its contract service providers to assist Nauruan authorities to continue to find ways to introduce transferees and Nauruans to each other's cultures and traditions.

### **Building the capacity of the Nauruan workforce**

- 5.70 Building the capability of the contract service providers' Nauruan workforce would assist in the operation and management of the Centre.
- 5.71 One of the Nauruan operations managers told the Review that *"we've been pushing, at both RPCs 2 and 3, for the security expats to be paired off with local security, but this isn't happening. We want our local staff to gain as much skills and knowledge from the expats, because they are better qualified. Plus just using the English language would help them to develop their English skills. We've been pushing this but it's still not happening in both centres."*<sup>197</sup> The Review supports this suggestion yet acknowledges that it may not be possible to match expatriate and Nauruan staff members in every workplace location.
- 5.72 The Review discussed the issue of building greater capability amongst local Nauruan staff members with both contract service providers and Nauruan officials. There is agreement, in principle, that strengthening the capability of local Nauruan staff is important. Transfield Services noted:

*I think the strategic long term has to be more than Nauruan employment, has to be more training and that's again part of the challenge for a contractor. We had, I think it was a 12 month contract, and it was another 12 to 18 contract, but we're making commitments to training now, to train more people, to get more Nauruans employed. There's clearly a challenge around the capability of the workforce and the capacity. Capability is not quite the right word, capacity in the workforce. Work is so short in Nauru so there's not a huge work ethic, so taking that on the journey I think*

<sup>196</sup> OR2960 - 29.8.2014 - KPMG Report 2 - Manus and Nauru OPC Risk analysis continuation work, Recommendation 4.1 at p.9

*is inherent upon us, if we can, to continue to appoint more senior Nauruans into our organisation structure.*<sup>198</sup>

- 5.73 The Review is aware that steps have been taken in this direction and encourages them to continue.

**RECOMMENDATION 18:** The Department work with Nauruan authorities and contract service providers to develop new strategies and training programs to build the capacity of the contract service providers' Nauruan workforces.

#### **The protocol to manage protest and other activity at the Centre**

- 5.74 One of the issues the Review has been asked to consider under the Terms of Reference is the ability of service providers to appropriately and professionally manage protest and other activity within the Centre. This topic could be treated in a broad fashion as it goes to the overall operation and management of the Centre. The Review notes the comprehensive reviews which have been conducted, including those by Mr Cornall, Mr Keith Hamburger and Dr Allan Hawke and Ms Helen Williams. This Review does not intend to restate the conclusions and recommendations of those reviews.
- 5.75 The Review notes the AFP's submission which suggests that a protocol be established between the Nauruan Police Force, the Nauruan Department of Justice and Border Control and Transfield Services and Wilson Security. The purpose of the proposed protocol is to provide an operations interaction in response to incidents at the Centre. The AFP notes that, having regard to Recommendation 12 of this report (a stronger relationship between Transfield Services, Wilson Security and the Nauruan Police Force), the implementation of the draft protocol would not only enhance the current arrangements for managing critical events, but also provide more clarity and direction in the day-to-day roles and responsibilities of all stakeholders. The Review supports the AFP's suggestion. [REDACTED]
- 5.76 Transfield Services advised the Review that *"...to the extent appropriate we [Transfield Services/Wilson Security] have incorporated all relevant aspects of any AFP input into the hand over protocol".*<sup>199</sup> Noting this response, the Review recommends that the Department, together with Nauruan authorities, consider the existing emergency management plans to satisfy themselves that the relevant aspects of the AFP protocol have been adopted.

<sup>199</sup> E3030 - 4 2 2015 – Email from [REDACTED] (Transfield) to DIBP - Handover protocol and MOU

**RECOMMENDATION 19:** The Department consider the draft protocol suggested by the AFP for protest and incident management to assess whether it adds value to existing emergency management plans.

Philip Moss

6 February 2015

Number of Illegal Maritime arrivals who arrived in Australia by month (1 January 2009–31 March 2014)

Arrivals by month by Port Arrival Date					
		SIEVS	IMAs	Crew	Total
2007	December	1	4	0	4
	TOTAL	1	4	0	4
2008	January	0	0	0	0
	February	0	0	0	0
	March	0	0	0	0
	April	0	0	0	0
	May	0	0	0	0
	June	0	0	0	0
	July	0	0	0	0
	August	0	0	0	0
	September	0	0	0	0
	October	2	26	5	31
	November	2	22	2	24
	December	3	113	11	124
	TOTAL	7	161	18	179
2009	January	1	17	3	20
	February	0	0	0	0
	March	1	52	2	54
	April	5	221	7	228
	May	5	210	13	223
	June	4	319	10	329
	July	1	72	0	72
	August	1	77	0	77
	September	8	471	19	490
	October	10	384	22	406
	November	12	407	30	437
	December	7	327	20	347
	TOTAL	55	2,557	126	2,683
2010	January	13	455	35	490
	February	8	492	23	515
	March	15	659	37	696
	April	14	650	43	693
	May	16	754	39	793
	June	12	567	32	599
	July	9	509	25	534
	August	9	307	20	327
	September	5	335	13	348
	October	15	747	39	786
	November	10	537	16	553
	December	12	588	35	623
	TOTAL	138	6,600	357	6,957
2011	January	3	223	9	232

Number of Illegal Maritime arrivals who arrived in Australia by month (1 January 2009–31 March 2014)

	February	3	149	8	157
	March	7	419	15	434
	April	6	318	11	329
	May	6	333	9	342
	June	4	235	10	245
	July	4	228	11	239
	August	5	335	12	347
	September	4	319	10	329
	October	5	259	12	271
	November	10	734	27	761
	December	13	1,070	37	1,107
	<b>TOTAL</b>	<b>70</b>	<b>4,622</b>	<b>171</b>	<b>4,793</b>
<b>2012</b>	January	5	301	9	310
	February	9	849	23	872
	March	3	110	5	115
	April	11	837	27	864
	May	16	1,286	30	1,316
	June	24	1,642	37	1,679
	July	31	1,756	41	1,797
	August	37	2,078	39	2,117
	September	31	2,062	34	2,096
	October	47	2,452	44	2,496
	November	44	2,663	57	2,720
	December	18	1,017	39	1,056
	<b>TOTAL</b>	<b>276</b>	<b>17,053</b>	<b>385</b>	<b>17,438</b>
<b>2013</b>	January	11	541	25	566
	February	17	973	34	1,007
	March	35	2,320	86	2,406
	April	47	3,329	86	3,415
	May	47	3,252	103	3,355
	June	40	2,750	79	2,829
	July	48	4,230	108	4,338
	August	25	1,585	65	1,650
	September	15	829	32	861
	October	5	339	7	346
	November	5	208	14	222
	December	7	355	14	369
	<b>TOTAL</b>	<b>302</b>	<b>20,711</b>	<b>653</b>	<b>21,364</b>
<b>2014</b>	January	0	3	0	3
	February	0	1	0	1
	March	0	0	0	0
	April	0	0	0	0
	May	0	0	0	0
	June	0	0	0	0

Number of Illegal Maritime arrivals who arrived in Australia by month (1 January 2009–31 March 2014)

	<b>July</b>	<b>1</b>	<b>157</b>	<b>0</b>	<b>157</b>
	<b>August</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>September</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>3</b>
	<b>October</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>November</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>December</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>4</b>
	<b>TOTAL</b>	<b>1</b>	<b>168</b>	<b>0</b>	<b>168</b>
<b>2015</b>	<b>January</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>February</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>March</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>TOTAL</b>	<b>850</b>	<b>51,876</b>	<b>1,710</b>	<b>53,586</b>

\*2013 figures includes 1 IMA who arrived by cruise ship

\*\*2014 figures include 2 IMAs who arrived by cruise ship

\* Excludes 5 confirmed deceased aboard SIEV 36 which arrived April 2009 and 12 confirmed deceased aboard SIEV 69 which arrived November 2009.

\* Excludes 50 confirmed deceased aboard SIEV 221 which arrived December 2010.

\* Excludes 17 confirmed deceased aboard AMSA 2012-4106 which arrived June 2012, 1 confirmed deceased aboard AMSA 2012-4259 which arrived June 2012 and 1 confirmed deceased aboard SIEV 535 which arrived November 2012.

\* Excludes 2 confirmed deceased aboard SIEV 624 which arrived March 2013, 1 confirmed deceased aboard SIEV 749 which arrived June 2013, 1 confirmed deceased aboard SIEV 784 which arrived July 2013 and 4 confirmed deceased aboard SIEV 794 which arrived July 2013.



Australian Government

# REPORT OF THE EXPERT PANEL ON ASYLUM SEEKERS

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AUGUST 2012

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# THE REPORT

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## FOREWORD

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This Report has been compiled over a six week period. In this time we have consulted widely on asylum issues with political leaders, other members of the Parliament, agencies and departments of government, non-government organisations (NGOs), academics and other experts as well as those in the wider community. We have also held discussions with representatives of some refugee communities in Australia and refugees who travelled to Australia more recently through irregular means. Our consultations have been conducted in many meetings and through the more than 550 written submissions that we have received.

In all these processes, we have encountered a broad cross section of views on asylum issues and on the direction that Australian policymaking should take. Those views are deeply held and have been strongly argued.

We have applied an overriding priority to addressing the complex and difficult task we have been given. That priority has been to consult in good faith, to base our deliberations on the merits of different points of view, and to propose a way forward that meets the tests of reasonableness, fairness and humanitarian need. In proposing a way forward, our guiding light has been to find practical ways in which to advance the Australian national interest in achieving progress towards the goal of more effective regional cooperation on asylum issues.

There are no quick or simple solutions to the policy dilemmas and the humanitarian challenges that asylum seeking create. In addressing these dilemmas and meeting those challenges, we believe that Australian policy can, and should, be hard headed but not hard hearted; that practicality and fairness should take precedence over theory and inertia; and that the perfect should not be allowed to become the enemy of the good.

We believe that the current impasse on Australian policymaking in relation to asylum issues is not a viable option for the future. The prospect of further losses of life at sea is one that demands urgent and decisive action on the part of the Australian Parliament.

We believe that no single focus can provide an effective basis for policymaking. This is true whether the focus is on better protections for asylum seekers or on disincentives to discourage them from taking dangerous maritime voyages.

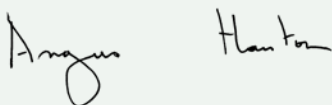
The loss of life on dangerous maritime voyages in search of Australia's protection has been increasing. The number of irregular maritime arrivals (IMAs) who have arrived in Australia in the first seven months of 2012 (7,120) has exceeded the number who arrived in total in 2011 (4,733) and 2010 (6,850). The likelihood that more people will lose their lives is high and unacceptable. These realities have changed the circumstances that Australia now faces. They are why new, comprehensive and integrated strategies for responding are needed. Those strategies need to shift the balance of Australian policies and regional arrangements to give greater hope and confidence to asylum seekers that regional arrangements will work more effectively, and to discourage more actively the use of irregular maritime voyages.

In this context, the Panel believes that to do nothing when there is the ability to do more is unacceptable. Rather than denying asylum seekers the 'right' to take terrible risks, there is a responsibility to create opportunities that would enable their claims to be processed more fairly and effectively in ways that make those risks unnecessary.

We believe that the only viable way forward is one that shifts the balance of risk and incentive in favour of regular migration pathways and established international protections and against high-risk maritime migration.

The recommendations we propose in this Report are aimed at better achieving these purposes. They entail changes in Australian policies and more active support for an enhanced regional cooperation framework on asylum issues. They recommend an increase in Australia's Humanitarian Program to assist in making regular migration pathways work better. They also recommend disincentives to irregular maritime voyages to Australia by establishing a clear 'no advantage' principle whereby asylum seekers gain no benefit by choosing not to seek protection through established mechanisms. These recommendations put a fundamental emphasis on fairness and reasonableness. They constitute an integrated set of proposals. The incentives and disincentives we recommend complement each other. In our view, they need to be pursued in that comprehensive and integrated context as the most effective way of discouraging asylum seekers from risking their lives on dangerous maritime voyages to Australia.

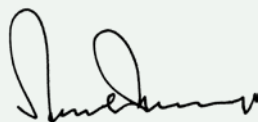
We have appreciated this opportunity to make the contribution embodied in this Report. We thank all those who have contributed to the process, and those who have helped and supported us in a highly professional way, particularly the officers from departments and agencies who have worked as members of our Taskforce. This Report, however, is our responsibility alone and reflects our personal views on the priorities we believe are appropriate. We present this Report in good faith and in the hope that it contributes in a positive way to a productive outcome.



**Air Chief Marshal Angus Houston AC, AFC (Ret'd)**



**Paris Aristotle AM**



**Professor Michael L'Estrange AO**

## TERMS OF REFERENCE

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The Panel will provide advice and recommendations to the Government on policy options available, and in its considered opinion, the efficacy of such options, to prevent asylum seekers risking their lives on dangerous boat journeys to Australia. As part of its review, the panel will take into account, and provide policy advice on:

- how best to prevent asylum seekers risking their lives by travelling to Australia by boat;
- source, transit and destination country aspects of irregular migration;
- relevant international obligations;
- the development of an inter-related set of proposals in support of asylum seeker issues, given Australia's right to maintain its borders;
- short, medium and long term approaches to assist in the development of an effective and sustainable approach to asylum seekers;
- the legislative requirements for implementation; and
- the order of magnitude of costs of such policy options.

The Panel will consult government and NGOs and individuals. It will have access to the information it requires to support its deliberations and finalise its advice.

The Panel will consult with the Multi-Party Reference Group to understand and take into account the views of the Parliament.

The Panel will provide advice to the Prime Minister and Minister for Immigration and Citizenship prior to the start of the next sitting period in August 2012. The Panel's advice will be released publicly.



## OVERVIEW: THE APPROACH UNDERPINNING THIS REPORT

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- i. The international community faces diverse, difficult and complex challenges in relation to the irregular movement of people across borders. In the context of those challenges, Australia is confronting a particular set of policy circumstances that are the product of realities internationally, in our region and on our borders. There are growing numbers of people seeking protection in Australia through dangerous and irregular maritime voyages. In the period ahead, the number of people seeking protection internationally, including in Asia, is likely to increase – and perhaps very significantly. A consensus in the Australian Parliament on how to best respond to this current and prospective situation, regionally and globally, is proving elusive. Furthermore, while a regional cooperation framework to address the range of these challenges in the Asia Pacific region is both necessary and desirable, its practical development is still at an early stage.
- ii. These realities and pressures engage Australia's national interests across a broad spectrum. They engage a fundamental sovereign interest in, and responsibility for, the integrity of Australia's borders. They engage issues relevant to the broad support in the Australian community for our Migration Program – a support which has always underpinned the Program in the past and which is fundamental to its future. They engage a focus on an international environment in which irregular migration and asylum seeking are facilitated by accessible travel, networked people smuggling operations and agents of collusion in many countries. The realities we face also engage Australia's capacity for responding to consequent humanitarian needs, both in their own right and in the context of international humanitarian obligations which Australia has upheld over many decades. In addition, the current situation engages our national capacities in terms of building regional and broader international support for effective protection arrangements over the short and longer term.
- iii. These complex and diverse challenges for Australian policymaking frame the central issue in the Panel's Terms of Reference: to assess 'the policy options available... to prevent asylum seekers risking their lives on dangerous boat voyages to Australia'. This issue demands a strategic and comprehensive response. Such a response needs to be hard headed but not hard hearted. It needs to be driven by a clear-eyed practicality, and by a sense of humanity as well as fairness. It needs to advance Australia's sovereign interests but also to recognise the limitations of Australia's capacities when acting alone on these issues. A strategic and comprehensive response needs to reflect circumstances as they currently exist and are likely to develop rather than what they have been in the past. It needs to take account of the balance of risk, incentive and despair that drives many people to do business with people smugglers. Above all, such a response should not allow the perfect to become the enemy of the good.
- iv. Australian policy settings do influence the flows of irregular migration to Australia. Those settings need to address the factors 'pushing' as well as 'pulling' the trend toward greater numbers of dangerous irregular maritime ventures to Australia. Australian policy settings, however, cannot resolve current challenges in isolation from the regional and international realities to which they relate. A focused and

sustained response to the asylum seeker issue also needs to encompass more effective Australian strategies in the main source countries for irregular migration flows into South-East Asia and Australia; it needs to facilitate a more practical framework of shared management and responsibility involving Australia and countries in our region; and it needs to actively promote a more productive engagement by the wider international community in addressing the global phenomenon of forced displacement and irregular people movement.

- v. The single most important priority in preventing people from risking their lives on dangerous maritime voyages is to recalibrate Australian policy settings to achieve an outcome that asylum seekers will not be advantaged if they pay people smugglers to attempt dangerous irregular entry into Australia instead of pursuing regular migration pathways and international protection arrangements as close as possible to their country of origin. That is why a regional cooperation framework on protection and asylum issues, reflecting a comprehensive regional approach, is so fundamentally important and such a central focus of this Report.
- vi. A comprehensive regional framework to address asylum seeker issues, encompassing joint approaches and common standards on protections, processing and durable outcomes is an objective to which regional governments are committed. It is also a goal towards which progress will be incremental.
- vii. Some of the building blocks on which a regional cooperation framework can be established are able to be implemented immediately; others will take time and extensive negotiations.
- viii. Australia needs to be an active participant as these processes develop and gather momentum. In the intervening period, Australian policy in its own right needs to pursue a dual approach. It needs to promote incentives to encourage greater use of regular migration pathways and international protection arrangements; and it also needs to implement more effective disincentives to irregular and dangerous maritime voyages to Australia for the purposes of seeking asylum.
- ix. Australia's priorities – in our own national policies and in our engagement within our region and beyond – need to be focused on shifting the current balance of risk and incentive that makes dangerous irregular migration a preferable option for too many people.
- x. At the present time, there are risks and incentives in decisions to take dangerous irregular maritime voyages to Australia – risks in the physical dangers and personal dislocation, but incentives in terms of the prospects if Australian territory is reached and protection secured. The current balance of those risks and incentives still tempts too many asylum seekers to put their lives into the hands of people smugglers.
- xi. By contrast, the use of regular migration pathways and established international protection arrangements have their own risks and incentives – the risk of indefinite delay with inadequate protections and without any durable outcome, set against the incentive of possible resettlement and a new life. The balance of those risks and incentives is too often insufficient to convince asylum seekers that regular pathways are more productive than irregular ones.
- xii. The shift in the balance of risk and incentive that is necessary requires a set of circuit breakers in Australian policymaking which need to operate in a phased and coordinated way at two levels.

- xiii. At one level, there is a need for new measures to expand regular humanitarian pathways and make the international protection arrangements more effective. Such measures need to build confidence and hope in established processes through genuine incentives for asylum seekers in the region to participate in needs-based, well-managed, regionally coordinated, safe, orderly and timely processing that delivers durable outcomes.
- xiv. Such measures to sustain a more practical, better managed and more coordinated regional framework of cooperation, to address asylum seeking, and to counter people smuggling operations should identify and pursue common interests and shared objectives among regional countries. From Australia's perspective, these measures need to include high-level and broad-ranging bilateral cooperation with Indonesia and Malaysia in particular, and with other regional countries as well. They also need to include shifts in Australian policy settings which encompass significantly expanding and refocusing Australia's Humanitarian Program, enhancing relevant capacity building in South-East Asia as well as in source countries of asylum seeker flows, and addressing the backlog in family reunion under the Special Humanitarian Program (SHP) which risks becoming a significant factor motivating those who choose irregular migration by boat to Australia. Australia also needs to be proactive in encouraging greater responsiveness among resettlement countries in terms of increasing the resettlement places available for those in the region needing protection.
- xv. There also needs to be policy circuit breakers operating at a second level. This is required because incentives to utilise existing migration pathways and established international protection arrangements, operating in national or regional contexts or both, will be necessary but they will not be sufficient in their own right as an effective strategy to counter irregular migration flows. Circuit breakers are needed to reduce the attractiveness of Australia as a destination point for irregular migration. They are needed to reinforce a basic principle of fairness – that those who continue to choose irregular maritime voyages to Australia to claim asylum should not be advantaged for doing so over those who pursue regular mechanisms.
- xvi. Incentives to use regular migration and protection pathways need to be complemented by policy measures that send a coherent and unambiguously clear message that disincentives to irregular maritime migration to Australia will be immediate and real. Over time, a genuinely regional framework will reduce the lure of irregular maritime migration options through a common approach to the processing of claims and provision of outcomes based on need. Until such a regional framework is established in a practical way, and within a framework of appropriate safeguards, the active discouragement of irregular maritime migration to Australia needs to include the prospect of processing options outside Australia for the determination of protection claims of those who arrive by irregular means.
- xvii. To support such processing within the development of a comprehensive regional cooperation framework, the Panel believes that the Australian Parliament should agree, as a matter of urgency, to legislation that would allow for the processing of irregular maritime arrivals in locations outside Australia. That legislation should also reserve to the Parliament the provision to allow or disallow the legislative instrument that would authorise particular arrangements in specific locations outside Australia.
- xviii. In that context, Australia should move immediately to establish facilities in Nauru and Papua New Guinea (PNG) for the processing of protection claims by IMAs to Australia.

- xix. In addition to the facilities in Nauru and PNG, Australia should also immediately pursue amendments to the Arrangement it negotiated with Malaysia in 2011. In particular, those amendments should strengthen the protections provided under the Arrangement which are relevant to the transfer of a number of IMAs to Malaysia.
- xx. Other measures to discourage dangerous and irregular maritime voyages to Australia should include changes to family reunion arrangements as they relate to IMAs in Australia, a more effective focus on the return of failed asylum seekers to their home country and more sustained strategies for the disruption of people smuggling operations both in Australia and abroad. A thorough review of the efficacy of Australian processes for determining refugee status would also be timely.
- xxi. The Panel is of the strong view that there are a range of conditions that need to be fulfilled for the safe and lawful turnback of boats carrying asylum seekers. The Panel does not believe those conditions currently exist, although they could at some stage in the future, in particular if appropriate regional and bilateral arrangements are in place.
- xxii. In this policy agenda designed to shift the balance of risk and incentive in favour of regular migration and against irregular options, the engagement of governments and civil society – in Australia, in our region and internationally – will become even more important. This engagement needs to embrace more comprehensive and cooperative arrangements in relation to policy development processes and the implementation of policy decisions. In addition to effective disincentives to irregular boat voyages, there needs to be greater hope and confidence that applying through the regular processes of international protection, including in source and transit countries, can work better and more quickly.
- xxiii. The costs of the recommendations made in this Report are set out in Attachment 11. These costs need to be offset against savings that the Panel believes will be made from expenditures currently incurred as a result of managing the flow of unauthorised arrivals in Australia. The forward estimates presented in the 2012-13 Budget estimate such expenditure incurred by the Department of Immigration and Citizenship (DIAC) alone over the period 2011-12 to 2015-16 inclusive to be at around \$5 billion assuming that arrivals remain at around the level of 450 per month from 1 July 2012. With the levels of irregular arrivals averaging over 1,300 per month since April 2012, the Panel notes that if this rate of increase were to be sustained the costs of dealing with these IMAs would likely be a significantly larger amount than the costs of the recommendations in this report.
- xxiv. In the Panel's view, the recommendations in this Report will promote greater efficacy, fairness and good management in Australian policymaking on protection and asylum issues. Our recommendations will include new costs; but they will also, in our view, result in significant savings in expenditures currently being incurred.
- xxv. The need for circuit breakers, and effective follow through, in Australian and regional policymaking on the asylum seeker issue is an urgent one. Too many lives have already been lost. Too many others are in danger of being lost. Clear and sustained policymaking, in Australia and at a regional level, are required to change the balance of risk and opportunity. Such an outcome will advance Australian national interests on this issue. It will strengthen effective regional and international cooperation. It will more effectively address humanitarian needs and it will also save lives. These are the objectives to which the recommendations in this Report are directed.

# SUMMARY OF RECOMMENDATIONS

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## Principles

### *Recommendation 1*

The Panel recommends that the following **principles** should shape Australian policymaking on asylum seeker issues (paragraphs 2.6-2.22):

- The implementation of a strategic, comprehensive and integrated approach that establishes short, medium and long-term priorities for managing asylum and mixed migration flows across the region.
- The provision of incentives for asylum seekers to seek protection through a managed regional system.
- The facilitation of a regional cooperation and protection framework that is consistent in the processing of asylum claims, the provision of assistance while those claims are being assessed and the achievement of durable outcomes.
- The application of a 'no advantage' principle to ensure that no benefit is gained through circumventing regular migration arrangements.
- Promotion of a credible, fair and managed Australian Humanitarian Program.
- Adherence by Australia to its international obligations.

## Australia's Humanitarian Program

### *Recommendation 2*

The Panel recommends that **Australia's Humanitarian Program** be increased and refocused:

- The Humanitarian Program be immediately increased to 20,000 places per annum (paragraphs 3.3-3.8).
- Of the 20,000 places recommended for the Humanitarian Program, a minimum of 12,000 places should be allocated for the refugee component which would double the current allocation (paragraphs 3.3-3.8).
- Subject to prevailing economic circumstances, the impact of the Program increase (recommended above) and progress in achieving more effective regional cooperation arrangements, consideration be given to increasing the number of places in the Humanitarian Program to around 27,000 within five years (paragraphs 3.3-3.8).
- The Humanitarian Program be more focused on asylum seeker flows moving from source countries into South-East Asia (paragraphs 3.3-3.9).

## Regional engagement

### *Recommendation 3*

The Panel recommends that in support of the further development of a regional cooperation framework on protection and asylum systems, the Australian Government expand its relevant **capacity-building initiatives** in the region and significantly increase the allocation of resources for this purpose (paragraphs 3.26-3.28).

### *Recommendation 4*

The Panel recommends that **bilateral cooperation on asylum seeker issues with Indonesia** be advanced as a matter of urgency, particularly in relation to:

- The allocation of an increased number of Humanitarian Program resettlement places for Indonesia (paragraphs 3.20-3.22).
- Enhanced cooperation on joint surveillance and response patrols, law enforcement and search and rescue coordination (paragraphs 3.20-3.22).
- Changes to Australian law in relation to Indonesian minors and others crewing unlawful boat voyages from Indonesia to Australia (paragraphs 3.20-3.22).

### *Recommendation 5*

The Panel recommends that Australia continue to **develop its vitally important cooperation with Malaysia on asylum issues**, including the management of a substantial number of refugees to be taken annually from Malaysia (paragraphs 3.23-3.24).

### *Recommendation 6*

The Panel recommends a **more effective whole-of-government strategy be developed for engaging with source countries** for asylum seekers to Australia, with a focus on a significant increase in resettlement places provided by Australia to the Middle East and Asia regions (paragraphs 3.29-3.33).

## Regional processing

### *Recommendation 7*

The Panel recommends that **legislation to support the transfer of people to regional processing arrangements be introduced into the Australian Parliament as a matter of urgency** (paragraphs 3.54 and 3.57). This legislation should require that any future designation of a country as an appropriate place for processing be achieved through **a further legislative instrument that would provide the opportunity for the Australian Parliament to allow or disallow the instrument** (paragraph 3.43).

### *Recommendation 8*

The Panel recommends that a **capacity be established in Nauru** as soon as practical to process the claims of IMAs transferred from Australia in ways consistent with Australian and Nauruan responsibilities under international law (paragraphs 3.44-3.55).

### *Recommendation 9*

The Panel recommends that a **capacity be established in PNG** as soon as possible to process the claims of IMAs transferred from Australia in ways consistent with the responsibilities of Australia and PNG under international law (paragraphs 3.56-3.57).

### *Recommendation 10*

**The Panel recommends that the 2011 Arrangement between the Government of Australia and the Government of Malaysia on Transfer and Resettlement (Malaysia Agreement) be built on further, rather than being discarded or neglected**, and that this be achieved through high-level bilateral engagement focused on strengthening safeguards and accountability as a positive basis for the Australian Parliament's reconsideration of new legislation that would be necessary (paragraphs 3.58-3.70).

## Family reunion

### *Recommendation 11*

The Panel recommends that the current backlog in the SHP be addressed as a means of **reducing the demand for family reunion through irregular and dangerous maritime voyages to Australia**, and that this be achieved through removing family reunion concessions for proposers who arrive through irregular maritime voyages – with these proposers to instead seek reunion through the family stream of the Migration Program (paragraphs 3.13-3.18).

### *Recommendation 12*

The Panel recommends that in the **future those who arrive in Australia through irregular maritime means should not be eligible to sponsor family** under the SHP but should seek to do so within the family stream of the Migration Program (paragraph 3.71).

## Other recommendations

### *Recommendation 13*

The Panel recommends that Australia promote **more actively coordinated strategies among traditional and emerging resettlement countries** to create more opportunities for resettlement as a part of new regional cooperation arrangements (paragraphs 3.35-3.37).

### *Recommendation 14*

The Panel recommends that the **Migration Act 1958 be amended** so that arrival anywhere on Australia by irregular maritime means will not provide individuals with a different lawful status than those who arrive in an excised offshore place (paragraphs 3.72-3.73).

### *Recommendation 15*

The Panel recommends that a **thorough review of refugee status determination** (RSD) would be timely and useful (paragraphs 3.74-3.76).

### *Recommendation 16*

The Panel recommends that a more effective whole-of-government strategy be developed to negotiate better outcomes on **removals and returns** on failed asylum seekers (paragraphs 3.81-3.83).

### *Recommendation 17*

The Panel recommends that **disruption strategies** be continued as part of any comprehensive approach to the challenges posed by people smuggling and that relevant Australian agencies be resourced with appropriate funding on a continuing basis for this purpose (paragraphs 3.84-3.86).

### *Recommendation 18*

The Panel recommends that **law enforcement** agencies in Australia continue their activities in countering involvement of Australian residents who are engaged in funding or facilitating people smuggling operations (paragraph 3.87).

### *Recommendation 19*

The Panel notes that **the conditions necessary for effective, lawful and safe turnback of irregular vessels carrying asylum seekers to Australia** are not currently met, but that this situation could change in the future, in particular if appropriate regional and bilateral arrangements are in place (paragraphs 3.77-3.80).



### *Recommendation 20*

The Panel recommends that Australia continue to work with regional countries in a focused way to develop joint operational guidelines for managing **Search and Rescue (SAR)** activities in the region and to address the need for any further regional and national codification of arrangements across SAR jurisdictions (paragraphs 3.88-3.90).

### *Recommendation 21*

The Panel recommends that, in the context of a review of the efficacy of the recommendations put forward in this Report, **the linkage between the onshore and offshore components of the Humanitarian Program be reviewed within two years.**

### *Recommendation 22*

The Panel recommends that the incompleteness of the current evidence base on asylum issues be addressed through a **well-managed and adequately funded research program engaging government and non-government expertise** (paragraphs 3.38-3.40).

## CHAPTER 1: ASYLUM SEEKING: THE CHALLENGES AUSTRALIA FACES IN CONTEXT

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- 1.1 The scale and complexity of international migration has increased in recent decades. Its driving forces are varied and include a range of political, economic, social and humanitarian considerations. The expansion of international migration is a product of regular national programs, international arrangements and various forms of irregular mechanisms.
- 1.2 Underlying the phenomenon of irregular migration to Australia is the appalling reality of the loss of many lives at sea. From late 2001 to June 2012 there have been 964 asylum seekers and crew lost at sea from known incidents concerning boats carrying asylum seekers to Australia.<sup>1</sup> Of these, 604 people have lost their lives since October 2009. All survivors have been deeply traumatised, some in an enduring way. Many have also suffered long term physical injuries. (Attachment 2).
- 1.3 In meeting the Panel's main Term of Reference to – 'provide advice and recommendations to the Government on policy options available, and in its considered opinion, the efficacy of such options, to prevent asylum seekers risking their lives on dangerous boat journeys to Australia' – this Report proposes a way forward with a view to developing a comprehensive package of policy options that will address the challenges that Australia faces over the short, medium and longer term.
- 1.4 These challenges include:
- effectively safeguarding the integrity of Australia's borders;
  - ensuring consistency between Australian policymaking and requirements and obligations under domestic and international law;<sup>2</sup>
  - maintaining longstanding Australian community support for the Migration and Humanitarian Programs;
  - strengthening the foundations of a needs-based refugee and humanitarian program;
  - continuing Australia's highly successful resettlement program;
  - promoting and facilitating more effective and better coordinated regional cooperation arrangements that will improve the availability of protection for asylum seekers while their claims are being processed and deliver durable outcomes, including;
    - improved access to timely and fair processing of asylum seekers' claims for refugee status;

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1 Australian Customs and Border Protection Service and DIAC. See also Table 7 at Attachment 2,

2 See Attachment 3, 'Australia's International Legal Obligations with Respect to Refugees and Asylum Seekers'.

- safety and support while claims are being determined and subsequently, including guarantees against *refoulement* and arbitrary detention, access to education, employment and health care; and
  - expanded opportunities for durable outcomes, namely voluntary repatriation when safe to do so, local integration or resettlement;
  - ensuring that those who choose irregular and dangerous maritime voyages to Australia in order to seek asylum are not advantaged over those who seek asylum through regular migration pathways and established international arrangements;
  - implementing more productive whole-of-government strategies in relation to the return of those who are found not to require protection;
  - pursuing appropriate strategies at national and regional levels to combat people smuggling and address the appalling loss of life among people making irregular voyages to Australia;
  - recognising, and anticipating, the evolution of people smuggling operations which are adaptive, entrepreneurial, networked and ruthless in exploiting market niches and policy gaps;
  - developing greater cooperation between government, NGOs and civil society in meeting these challenges and implementing responses to them;
  - engaging more intensively with refugee community groups in Australia which have particular connections with source countries and effective lines of communication with potential irregular asylum seekers; and
  - continuing to uphold Australia's obligations under the *International Convention for the Safety of Life at Sea* (SOLAS Convention), the *International Convention on Maritime Search and Rescue* (SAR Convention) and the *United Nations Convention on the Law of the Sea* (UNCLOS).
- 1.5 The Panel has aimed to address its Terms of Reference in the context of these challenges for Australian policymaking and with a view to strengthening Australia's capacity to meet each of them successfully.

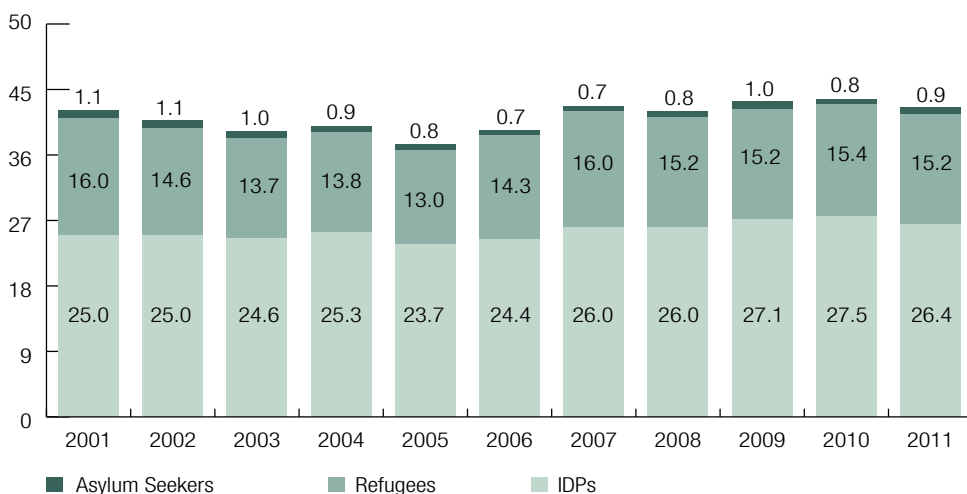
## Global realities

- 1.6 The Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that there are 42.5 million forcibly displaced persons worldwide.<sup>3</sup> They include refugees, asylum seekers and internally displaced persons (IDPs). While the total number and the proportions of each category have varied slightly, the figure has largely remained constant over the past decade.

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3 'A Year of Crises: UNHCR Global Trends 2011', *UNHCR*, viewed 26 July 2012, <http://www.unhcr.org/4fd6f87f9.html>.

**Figure 1:** Global forced displacement: 2001-2011 (millions)



Source: *UNHCR Global Trends 2011*

- 1.7 Many of the world's refugees are in protracted situations and for longer periods than in the past. Developing countries such as Pakistan, Iran and Kenya host four-fifths of the world's refugees,<sup>4</sup> reflecting the fact that around 80 per cent of persons who leave their country of origin to seek protection remain in an adjacent country that provides first asylum.<sup>5</sup> In 2011 Pakistan was host to 1.7 million registered and around 1 million unregistered refugees. The Islamic Republic of Iran hosts almost 900,000 registered refugees.<sup>6</sup> These realities seriously overstretch local resources and infrastructure in these countries and many others, and contribute to onward movements.
- 1.8 Such pressures are intensifying in critical parts of the Middle East, South Asia and elsewhere and are likely to intensify further in the period ahead as governance and security arrangements in source countries for asylum-seeker flows, and in countries of first asylum, deteriorate.
- 1.9 According to UNHCR, in 2009 almost half of the world's refugees lived in cities and towns compared to around one-third who lived in camps.<sup>7</sup> Urban refugees face a range of legal, financial, cultural and linguistic barriers in their efforts to establish sustainable livelihoods. They may have freedoms and opportunities to integrate locally into the society but they also face a range of protection risks, including the threat of arrest and detention, *refoulement*, harassment, exploitation and discrimination. Urbanisation can

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> '2012 UNHCR Country Operations Profile – Islamic Republic of Iran', *UNHCR*, 2012, viewed 26 June 2012, <http://www.unhcr.org/pages/49e486f96.html>.

<sup>7</sup> 'Urban Refugees: Trying to get by in the city', *UNHCR*, viewed 26 July 2012 <http://www.unhcr.org/refworld/docid/4ab8e7f72.html>.

also make it more difficult for UNHCR to identify populations in need and to provide essential services, especially to the most vulnerable.

- 1.10 The large number of refugees and asylum seekers in protracted unsafe situations around the world, both in camps and urban locations, create the conditions in which people smuggling can flourish.

## The regional dimension in the Asia Pacific

- 1.11 For a variety of reasons, the number of irregular migrants is significantly understated in statistical analysis.<sup>8</sup> It is estimated that 30-40 per cent of all migration flows in Asia take place through irregular channels, much of it intra-regional.<sup>9</sup>
- 1.12 The Asia Pacific region currently has more than 3.6 million refugees which is around 24 per cent of the total world refugee population.<sup>10</sup> Furthermore, there are few signatories to the *1951 Convention on the Status of Refugees* and its *1967 Protocol* (the Refugees Convention) in the Asia Pacific region. In those states which are parties to the Refugees Convention, asylum systems are often undeveloped. The level of accession in the region to other human rights conventions is also variable. UNHCR assumes primary responsibility for processing asylum seekers in the region in the absence of appropriate national systems. The challenges it faces in doing so are compounded by a lack of resources, security considerations and the parameters in which UNHCR can operate in some countries.
- 1.13 Refugee determination in the Asia Pacific is complicated by mixed migration flows. There are differences between forced displacement and irregular labour migration to (and within) the region, although these issues can overlap in individual protection claims. Increasingly, the two intersect to create mixed migration flows: economic migrants, refugees and asylum seekers often travel in the same direction, using the same routes and modes of transport and facing the same risks *en route*.<sup>11</sup>

## Australia's circumstances

- 1.14 The number of IMAs who have arrived in Australia in the first seven months of 2012 (7,120) has exceeded the number who arrived in total in 2011 (4,733) and 2010 (6,850). The number of IMAs in July 2012 (1,798) constitutes the largest ever monthly number and was the 'largest ever' number for the third month in a row. Passenger numbers per boat arrival have also been increasing.

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8 Irregular Migration, Migrant Smuggling, and Human Rights: Towards Coherence, *International Council on Human Rights Policy*, 2010, viewed 26 July 2012, [http://www.ichrp.org/files/reports/56/122\\_report\\_en.pdf](http://www.ichrp.org/files/reports/56/122_report_en.pdf).

9 'Country Operations Fact Sheets February 2012', *UNHCR Bureau for Asia and Pacific*, viewed 3 August 2012, <http://www.unhcr.org/pages/4a02d8ec6.html>. See also 'Contextualising Irregular Migration', *International Organization for Migration (IOM) Metropolis 2011*, viewed 1 August 2012, [http://www.metropolis2011.org/workshops/WS313/Metropolis\\_CAgghazarm\\_Irregular Migration.ppt](http://www.metropolis2011.org/workshops/WS313/Metropolis_CAgghazarm_Irregular Migration.ppt).

10 'A Year of Crises: UNHCR Global Trends 2011', *UNHCR*.

11 'Challenges of Irregular Migration: Addressing Mixed Migration Flows', *IOM Council Papers*, MC/INF/294, 2008.

**Table 1:** IMAs to Australia (by calendar year)

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012 (Up to 31/7/12)	Total
Arrivals	200	3,721	2,938	5,526	2	53	15	7	61	110	179	2,850	6,850	4,733	7,120	34,635
Vessels	17	86	51	42	2	1	1	2	6	4	7	60	134	69	102	584
	Country of origin															
Afghanistan	22	1,082	1,050	2,601	0	0	0	0	3	0	118	1,409	2,945	1,596	2,556	13,382
Iraq	4	1,672	1,014	2,216	0	0	0	0	0	0	20	187	603	313	262	6,291
Iran	0	71	483	308	0	0	0	0	0	0	4	97	1,208	1,595	854	4,620
Sri Lanka	7	32	30	221	0	0	0	0	0	83	16	724	537	210	1,443	3,303
Stateless*	0	9	128	46	1	0	0	0	1	0	3	173	947	359	537	2,204
Other	167	855	233	134	1	53	15	7	57	27	18	260	610	660	1,468	4,565

Source: DIAC.

\* Includes Rohingya, Palestinians and Farsi Kurds.

- 1.15 Onshore asylum figures are made up of both air and maritime arrivals. From 1 July 1998 to 27 July 2012 there were 79,498 applications for a Protection visa by persons who arrived in Australia by air and subsequently applied for a Protection visa.<sup>12</sup> This compares with some 33,412 boat arrivals over the same period, most of whom applied for protection.<sup>13</sup>
- 1.16 Australia received 2.5 per cent of global asylum claims in 2011, including both maritime and air arrivals.<sup>14</sup>
- 1.17 The largest number of nationalities arriving by boat to Australia in 2011-2012 were, respectively, Afghans, Iranians and Sri Lankans with these three cohorts representing 75 per cent of the total arrivals.<sup>15</sup> During the last peak in irregular boat arrivals in the years from 1999-2001, Afghans and Iraqis represented the largest cohorts.<sup>16</sup>
- 1.18 Australia assesses the claims of those who enter Australian territory seeking protection under the Refugees Convention and other relevant human rights conventions that contain *non-refoulement* (non-return) obligations and provides protection to those who need it.
- 1.19 Australia also implements its commitment to refugee protection more broadly through its longstanding Humanitarian Program that resettles refugees and persons of humanitarian concern from overseas. The Humanitarian Program which comprises both an onshore and offshore component currently stands at 13,750 places. Since 1996 it has been the policy of successive governments to link the onshore and offshore components of the Program. The basis for that approach is that it provides a limit on the overall number of visa grants, which meets budgetary requirements and allows proper planning for the provision of settlement services. For each Protection visa granted to an asylum seeker onshore, the offshore SHP component of the Program is reduced by one place.
- 1.20 For the first time in its 35 years of operation,<sup>17</sup> the 2011-12 Humanitarian Program has resulted in more onshore Protection visa grants than the total number of visas granted offshore to refugees and SHP applicants. The increase in onshore grants and consequent reduction in SHP grants (only 714 in the 2011-12 program year) is creating increasing pressures, with over 20,000 SHP applications outstanding and more than 16,000 of these being for immediate family members.<sup>18</sup> The vast majority of the applications for immediate family members have been proposed by former IMAs now living in Australia. (Attachment 4).

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12 See Attachment 5, Table 9, 'IMAs and air arrivals in Australia'.

13 Ibid.

14 'Fewer Asylum Claims in Australia', *UNHCR*, 18 October 2011, viewed 26 July 2012, [http://unhcr.org.au/unhcr/index.php?option=com\\_content&view=article&id=227:fewer-asylum-claims-in-australia&catid=35:news-a-media&Itemid=63](http://unhcr.org.au/unhcr/index.php?option=com_content&view=article&id=227:fewer-asylum-claims-in-australia&catid=35:news-a-media&Itemid=63).

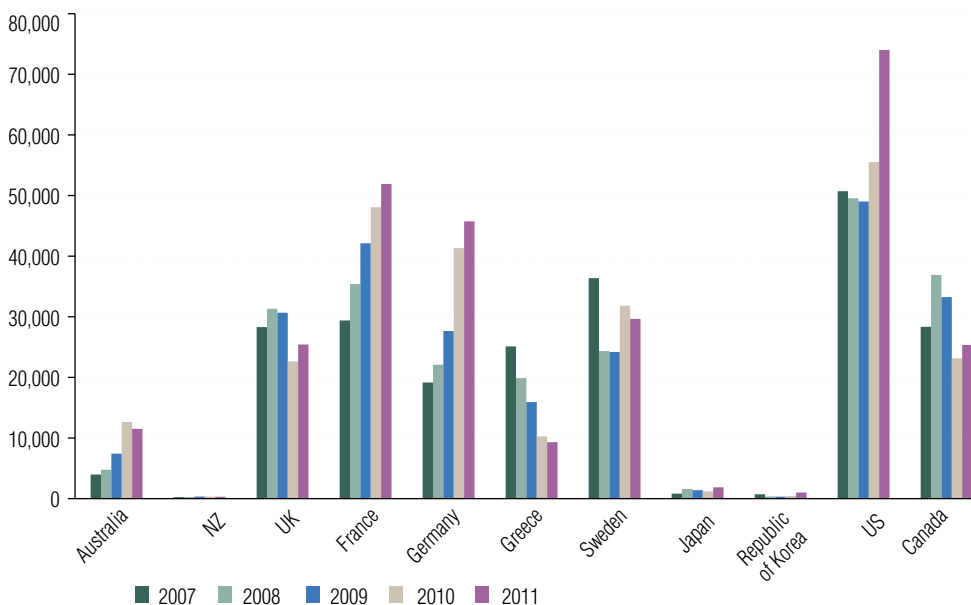
15 See Attachment 5, Table 9, 'IMAs and air arrivals in Australia'.

16 Ibid.

17 Note that Australia has resettled refugees since 1947. The current formal Humanitarian Program was established in 1977.

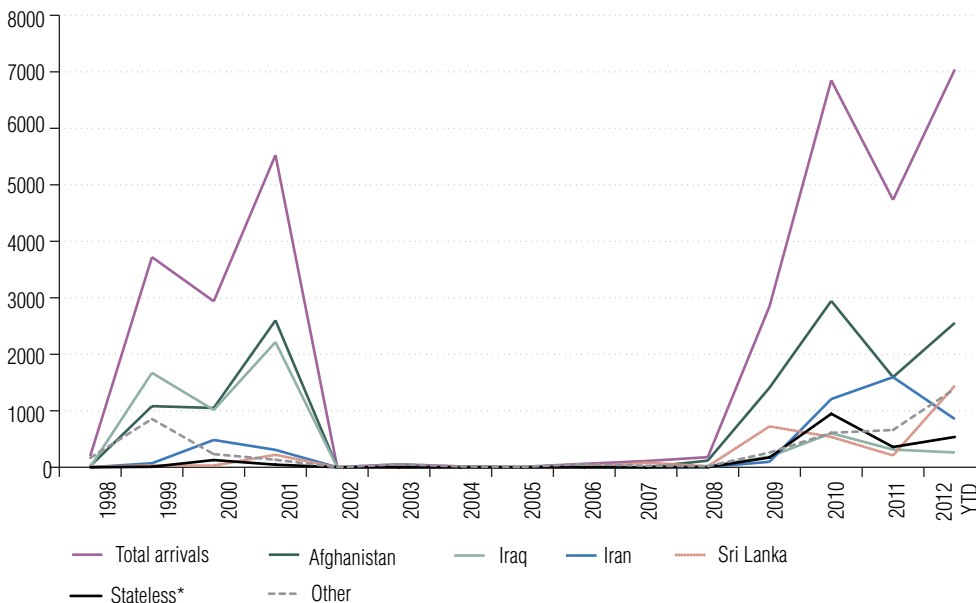
18 DIAC, received 6 August 2012.

**Figure 2:** Asylum Applications in Selected Industrialised Countries by Calendar Year



Source: UNHCR, 'Asylum Levels and Trends in Industrialized Countries', 2011.

**Figure 3:** Key IMA caseloads in Australia



Source: DIAC, received 6 August 2012.



**Table 2:** Visa grants by Humanitarian Program component 1996–97 to 2011–12  
(as at 6 July 2012)

Program Year	Refugee grants	SHP grants	SAC <sup>20</sup> grants	Sub-total offshore grants	Offshore (per cent)	Sub-total onshore grants	Onshore (per cent)	Total grants
<b>1996–97</b>	3,334	2,470	3,848	9,652	81.10	2,250	18.90	<b>11,902</b>
<b>1997–98</b>	4,010	4,636	1,821	10,467	86.80	1,588	13.20	<b>12,055</b>
<b>1998–99</b>	3,988	4,348	1,190	9,526	83.90	1,830	16.10	<b>11,356</b>
<b>1999–00</b>	3,802	3,051	649	7,502	75.30	2,458	24.70	<b>9,960</b>
<b>2000–01</b>	3,997	3,116	879	7,992	58.20	5,741	41.80	<b>13,733</b>
<b>2001–02</b>	4,105	4,197	40	8,342	67.70	3,974	32.30	<b>12,316</b>
<b>2002–03</b>	3,996	7,212	0	11,208	92.50	911	7.50	<b>12,119</b>
<b>2003–04</b>	3,851	8,912	0	12,763	93.80	840	6.20	<b>13,603</b>
<b>2004–05</b>	5,289	6,684	0	11,973	92.20	1,015	7.80	<b>12,988</b>
<b>2005–06</b>	5,699	6,739	0	12,438	89.90	1,398	10.10	<b>13,836</b>
<b>2006–07</b>	5,924	5,157	0	11,081	85.90	1,821	14.10	<b>12,902</b>
<b>2007–08</b>	5,951	4,721	0	10,672	83.20	2,153	16.80	<b>12,825</b>
<b>2008–09</b>	6,446	4,471	0	10,917	81.40	2,497	18.60	<b>13,414</b>
<b>2009–10</b>	5,988	3,234	0	9,222	67.00	4,534	33.00	<b>13,756</b>
<b>2010–11</b>	5,998	2,973	0	8,971	65.00	4,828	35.00	<b>13,799</b>
<b>2011–12</b>	6,004	714	0	6,718	48.80	7,041 <sup>1</sup>	51.20	<b>13,759</b>

Source: DIAC, received 6 July 2012. Note: Data prior to 2001–02 is based on historical information. Data from 2001–02 onwards is fully revised and may vary from previously published figures.

## ‘Push’ and ‘pull’ factors

- 1.21 Decisions about migration are complex. Individual migrants are usually influenced by a range of ‘push’ and ‘pull’ factors when choosing pathways and destinations for migration. Some may be more immediate and more significant than others. Some relate to fear of persecution, others to economic circumstances and the search for a better life. For many Afghans leaving Afghanistan, for example, insecurity or persecution are key push factors that drive migration into neighbouring Iran or Pakistan. Having escaped immediate security threats, however, decisions about onward migration will likely take into account a broader range of factors. Individuals weigh their risks and prospects differently, but at the secondary movement stage it is more likely that migrants will consider pull factors such as stability, existing diasporas, employment or education prospects, the availability of an established refugee determination system and perceived livelihood opportunities. (Attachment 1).

<sup>19</sup> The SAC was a Special Assistance Category that was discontinued for new applications in 2000–01.

- 1.22 Those who choose to move through irregular pathways may be further influenced in their choice of destination by people smugglers, relative costs and their own assessment of whether they will be able to remain in a country permanently. Members of refugee communities indicated to the Panel that perceptions about the likelihood of successfully securing asylum in a particular country – whether this is justified in reality or otherwise – are often part of these calculations.
- 1.23 People who risk their lives on dangerous boat voyages to Australia to claim protection have usually factored in some assessment of this risk, although they may not be fully aware of how great it is until they have boarded a vessel. Many will also weigh this risk against the threat of return, the financial investment, the emotional commitment already invested and the likely outcome.
- 1.24 Currently, close to 90 per cent of all IMAs coming to Australia are successful in being granted a protection visa at either the primary or review stage. For certain cohorts the success rate has exceeded 95 per cent for particular reporting periods (see Table 3 below). Some of those with a negative outcome may receive approval following successful judicial review or be granted permanent status through the Minister personally intervening.<sup>20</sup> At the present time, and following the High Court's decision in November 2010<sup>21</sup>, the majority of failed asylum seekers in Australia are seeking judicial review.

**Table 3:** Finally determined rates for key IMA caseloads in Australia (per cent)<sup>22</sup>

	2010-11	2011-12
<b>Afghanistan</b>	94	96
<b>Sri Lanka</b>	90	87
<b>Stateless</b>	95	90
<b>Iraq</b>	92	86
<b>Iran</b>	95	88
<b>Avg. for all nationalities</b>	<b>88</b>	<b>88</b>

Source: DIAC, received 6 August 2012.

- 1.25 While those approval rates are high, they are broadly consistent with UNHCR refugee status decision approval rates for similar caseloads in Malaysia and Indonesia.

<sup>20</sup> The Minister for Immigration and Citizenship has several personal powers that allow him to intervene in certain circumstances.

<sup>21</sup> *M61/2010E v Commonwealth of Australia & Ors* and *M69 of 2010 v Commonwealth of Australia & Ors* [2010] HCA 41.

<sup>22</sup> The finally determined rate for IMAs is a measure of the Protection visas granted to IMAs as a proportion of all decisions made on refugee status in a specified period by a departmental delegate or following merits review.

**Table 4:** UNHCR Refugee Status Determination (RSD) rates for 2011 in Malaysia and Indonesia

	Malaysia		Indonesia	
	No. of decisions	RSD rate (per cent)	No. of decisions	RSD rate (per cent)
<b>Afghans</b>	8	75	1,676	97
<b>Iranians</b>	92	75	275	94
<b>Iraqis</b>	160	100	461	89
<b>Sri Lankans</b>	553	24	145	98
<b>All nationalities</b>	16,707	90	2,890	96

Source: UNHCR 2,011 *Global Trends Report*.

- 1.26 It is fundamental to a properly functioning system of international protection that those not in need of protection, after having undergone a thorough assessment, should be able to be returned to their country of origin. While voluntary removal is preferred over involuntary removal, pursuit of the latter is often necessary as an encouragement for voluntary removal. After completion of the lengthy assessment and review processes, the removal of persons not in need of Australia's protection is proving increasingly difficult. This is partly a result of statelessness, the attitude of countries of origin, lack of cooperation from the potential returnees with travel documentation, appeals to United Nations review bodies and assessments in relation to generalised violence in the country of origin and whether the person may specifically face serious harm on return. International experience suggests that Australia is not alone in having difficulty effecting removals of failed asylum seekers although others have had some success in negotiating better performance on returns using a whole-of-government approach. (Attachment 7).
- 1.27 Between October 2008 and 3 August 2012 a total of 287 IMAs (not including crew on the boats) were removed from Australia. Of these, 17 were involuntary removals (refer to Table 5 below). In addition, two persons living in the community on Bridging visas returned voluntarily.
- 1.28 Many of the regular pathways for international protection arrangements in Australia's region are failing to provide confidence and hope among claimants for protection that their cases will be processed within a reasonable time frame and that they will be provided with a durable outcome. For too many, these factors are shifting the balance of risk and incentive away from regular migration and protection pathways towards irregular migration and dangerous boat voyages.

**Table 5: Removals of IMAs from 1 July 2008 to 3 August 2012**

Citizenship	IMA Removals by Citizenship											
	2008-09		2009-10		2010-11		2011-12		2012-13			
	Involuntary	Voluntary	Involuntary	Voluntary	Involuntary	Voluntary	Involuntary	Voluntary	Involuntary	Voluntary	Involuntary	Voluntary
Afghanistan	0	0	0	1	0	5	0	2	0	3		
Iran	0	0	0	2	0	45	0	33	0	0		
Iraq	0	0	0	0	0	8	0	5	0	1		
Pakistan	0	0	0	0	0	0	1	0	0	0		
Sri Lanka*	0	11	15	59	0	0	0	2	0	0		
Indonesia	0	2	0	60	0	0	0	0	0	0		
India	0	0	0	1	0	0	0	0	0	0		
Vietnam	0	0	0	0	0	20	0	8	0	1		
United Kingdom#	0	0	0	1	0	0	1	0	0	0		
Total	0	13	15	124	0	78	2	50	0	5		
Total Onshore Removals	13		139		78		52		5			

\* Two Sri Lankans were returned involuntarily to PNG.  
# Client was a dual Afghan/UK citizen returned to the UK.  
Source: DIAC, 3 August 2012.

Nauru  
Submission 31



## CHAPTER 2: AUSTRALIAN POLICY SETTINGS: AN INTEGRATED APPROACH TOWARDS A REGIONAL COOPERATION FRAMEWORK

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- 2.1 Australia's policy settings on protection and asylum seeker issues are not determined in isolation. They need to take account of the global and regional environment to which they relate. Their implementation depends on cooperation and the extent to which our policy settings actually advance our national interests depends significantly on the quality of that cooperation. Inevitably, and increasingly, those interests are best advanced in a sustainable way through effective cooperation with, and learning from, regional and international partners who are addressing related though not identical challenges.
- 2.2 A critical focus for this Report is how Australia's sovereign responsibilities for national policymaking on protection and asylum issues intersect with the imperative of a more effective framework of cooperation in our own region and internationally.

### The relevance of Australia's national policy settings

- 2.3 In the context of IMAs coming to Australia, precise calibrations of the significance of particular Australian national policy measures are always open to debate. Assessing the specific relative weight of particular 'push' and 'pull' factors in influencing the flow of those seeking asylum in Australia on boat voyages, either now or in Australia's recent past, is more a matter of judgement than science.
- 2.4 Nonetheless, some conclusions of a broad kind can be made about the flow of asylum seekers by boat to Australia over the past decade. For example, 'push' factors in the period immediately after 2001, and later in the period after 2007, certainly had an impact on the flow of asylum seekers to Australia by boat. But changes in Australia's policy settings during those periods also certainly had an impact on the particular flow of asylum seekers by boat to Australia. (Attachment 1).
- 2.5 The absence of precision in relation to the relative importance of 'push' and 'pull' factors does not invalidate the broad conclusion that those Australian national policy settings can enhance, or diminish, the attractiveness of Australia in the context of people smuggling operations. Those policy settings can directly influence irregular maritime migration flows to Australia, even if the precise impact of the cost effectiveness and the international consequences of particular measures remain a matter of ongoing debate and subjective judgement.

## The imperative of a regional cooperation plan on protection and asylum

- 2.6 National policy settings alone cannot resolve the challenges that currently confront Australian policymaking, and the Australian community generally, in relation to asylum seekers using dangerous irregular maritime means to claim protection. Such settings certainly cannot achieve that goal in a sustainable way over time without being coordinated with regional and source countries in a more orderly, structured and effective way.
- 2.7 In that context, the Regional Cooperation Framework (RCF) agreed at the *Fourth Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime* (the Bali Process), held in March 2011, provides a very productive way forward. The core principles underpinning the RCF and the guidance provided for practical arrangements developed under it are noted in Attachment 6.
- 2.8 A more comprehensive and sustainable regional framework for improving protection and asylum systems is a key prerequisite for creating safer alternatives to people smuggling. This will require a significant expansion of registration, processing, delivery of durable outcomes for refugees and the return of failed asylum seekers. Enhanced regional cooperation to combat people smuggling groups will also be necessary.
- 2.9 Australia has a potentially significant role to play in helping to resource this regional capacity building. Such resourcing should be incremental and developed in close consultation with regional governments. Particular areas of focus should include:
- consolidation of the RCF agreed during the Bali Process;
  - engagement and close coordination among governments, NGOs and civil society groups on capacity-building priorities;
  - increased funding for UNHCR in relation to specific programs and outcomes to improve the management and processing of asylum seekers across the wider region, including the Middle East;
  - specific interaction and coordination with the Regional Support Office (RSO) recently established in Bangkok by the Bali Process to strengthen the RCF across all functional areas;
  - enhanced capture and sharing of biometrics data to strengthen the integrity of the regional asylum system through the monitoring of asylum-seeker flows, support for the management of specific cases and assistance in the return of unsuccessful applicants;
  - increased support for capacity-building and service-delivery programs among NGOs and civil society groups to enhance assistance for those seeking protection under regional processes;
  - strengthened channels of accurate communications about the dangers of boat voyages and the safer alternatives available through regular processes;
  - upgraded support for the development, where appropriate, of local integration programs in cooperation with governments, UNHCR, the International Organization for Migration (IOM) and civil society groups; and
  - more effective mechanisms of regional cooperation on voluntary and involuntary returns.

- 2.10 Effective oversight and monitoring are critical elements of any regional approach in relation to protections, assessment, transfer, service delivery and durable outcomes. They will need to be developed as an important part of the RCF under the Bali Process and Australia will need to be actively involved in that process.
- 2.11 To strengthen oversight and monitoring arrangements, this Report proposes a number of particular measures (paragraphs 3.43-3.70) in relation to the recommendations made concerning facilities in Nauru, PNG and hopefully in time Malaysia.
- 2.12 The Panel believes it would be appropriate to bring a representative of each of these oversight and monitoring teams together at regular intervals to coordinate a shared approach on issues such as:
- consistency of operations with Australia's international obligations;
  - the welfare of particular groups including unaccompanied minors (UAMs) and survivors of torture and trauma; and
  - the ongoing development of regional systems in relation to protections and processing.
- 2.13 In the circumstances Australia now faces, what is needed is a dual and integrated response. At one level, some revision of Australian policy settings is needed and this is set out in more detail in Chapter Three. At another level, Australia needs to engage in, and help facilitate, the development of practical strategies with regional states on protections, registration, processing of asylum claims and provision of durable outcomes. Those strategies can be pursued bilaterally in the first instance, and developed over time into more regionally integrated arrangements with wider and deeper international linkages beyond the region. Proposals in relation to this evolution over time are also set out later in this Report.
- 2.14 The importance of developing greater regional cooperation on protection and asylum seeking enjoys broad in-principle support across the Asia Pacific region, as reflected by the broad participation in the Bali Process which includes significant Asian countries and small Pacific island nations.<sup>23</sup> Going beyond principle, however, to addressing how greater regional cooperation would work in practice, in the immediate and longer term, is less travelled territory but critically important.
- 2.15 If a more structured, orderly and genuinely linked-up framework of regional cooperation on protection and asylum seeking issues is to be actively pursued as an objective of Australian policy, certain realities need to be acknowledged.

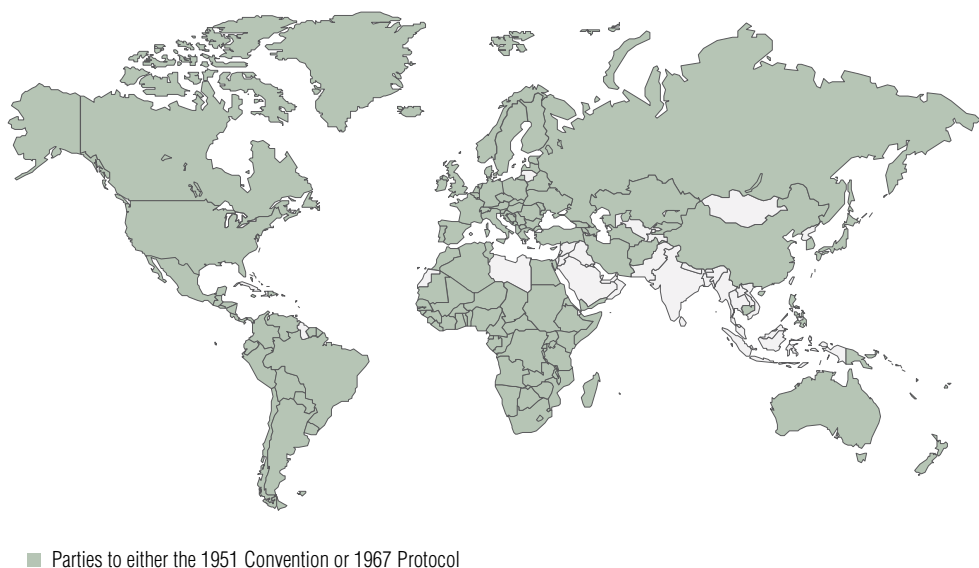
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23 The membership of the Bali Process is Afghanistan, Australia, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, DPR Korea, Fiji, France (New Caledonia), Hong Kong Special Administrative Region (SAR), India, Indonesia, Iran, Iraq, Japan, Jordan, Kiribati, Lao PDR, Macau SAR, Malaysia, Maldives, Mongolia, Myanmar, Nauru, Nepal, New Zealand, Pakistan, Palau, PNG, Philippines, Republic of Korea, Samoa, Singapore, Solomon Islands, Sri Lanka, Syria, Thailand, Timor-Leste, Tonga, Turkey, United States of America, Vanuatu, Viet Nam, IOM, and UNHCR. Other participating countries: Austria, Belgium, Canada, Denmark, European Commission, Finland, Germany, Italy, The Netherlands, Norway, Romania, Russian Federation, South Africa, Spain, Sweden, Switzerland, United Kingdom, United Arab Emirates. Other participating agencies: ADB, APC, ICMPD, ICRC, IFRC, IGC, ILO, Interpol, UNDP, UNODC, World Bank.



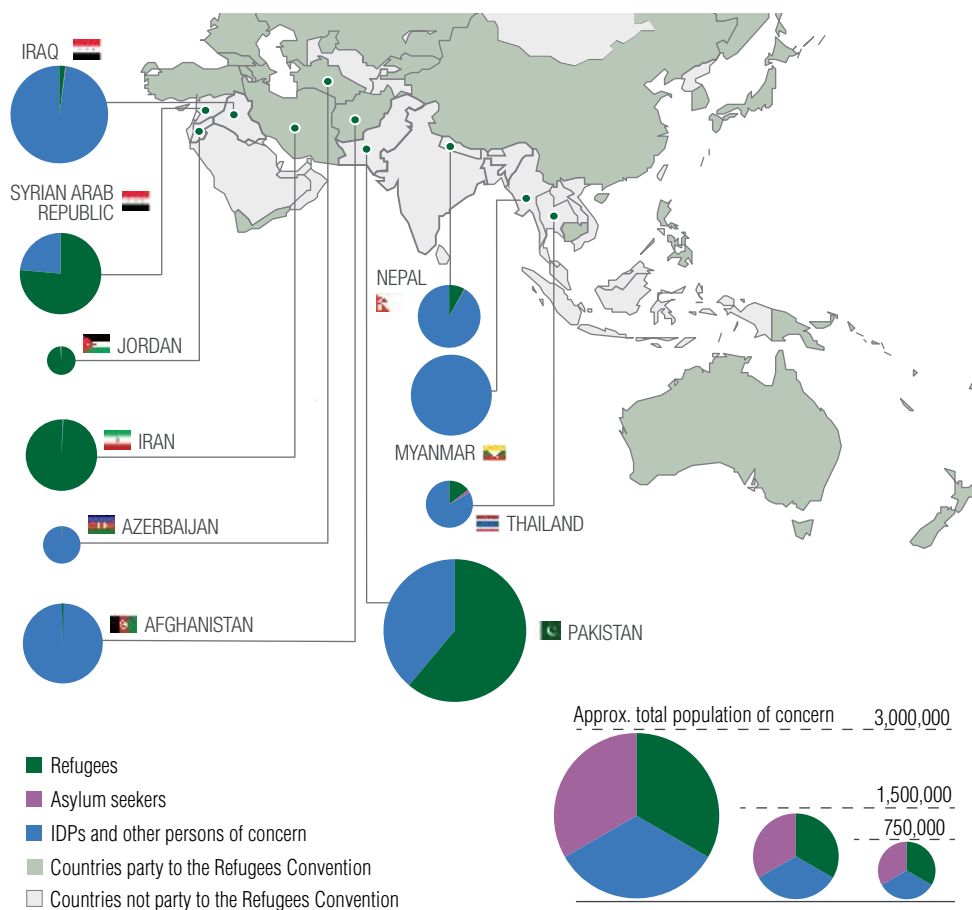
- 2.16 First, it is impractical for Australia to encourage and support such a regional cooperation framework on asylum and protection issues without an Australian national approach to such issues that enjoys broad-based support and the prospect of sustainability over time.
- 2.17 Second, an enhanced framework of regional cooperation on protection and asylum issues will not be effective if it is confined only to those countries which have signed the the Refugees Convention and its *1967 Protocol* or both. The fact is that the countries in our region with most refugees and asylum seekers within their borders, or which are transit routes for them, are not parties to the Refugees Convention or its Protocol (see Figure 4 below). The challenge of regional cooperation is to find effective mechanisms for responding to the realities of asylum flows in ways that include appropriate safeguards and practical processes that work fairly for those seeking protection.

**Figure 4:** Parties to the Refugees Convention



2.18 Third, a more comprehensive and practical regional cooperation framework needs to be built on common purposes among regional countries that may partly relate to protection and asylum issues in their own right, and partly to broader bilateral and regional concerns to which those issues are connected. Common purposes in this context can be bilateral, later developing into regional linkages, or they can be regional in scope from the outset.

**Figure 5:** Parties to the Refugees Convention in Australia's region (including populations of concern to UNHCR)<sup>24</sup>



2.19 Fourth, a regional cooperation framework on protection and asylum issues will be most effective if it engages genuine interaction in policy development and implementation among governments, international organisations (particularly UNHCR and IOM), NGOs and civil society groups.

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- 2.20 Fifth, such enhanced regional cooperation includes short-term goals and longer-term aspirations. Both are directed in an overall sense to strengthening common standards and procedures to address irregular people movement, and in particular to ensure appropriate protections and standards of treatment, provide for credible and consistent RSD, and arrange durable outcomes for refugees and return for those who can go back to their country of origin.
- 2.21 And sixth, a strengthened regional approach will not be effective, or its benefits will be reduced, if those who choose to seek asylum through irregular means gain advantage from doing so over those who claim asylum through established mechanisms.
- 2.22 These fundamental realities, and the urgent need to build on the progress made to date in the Bali Process, underpin proposals for an enhanced regional cooperation framework on protection and asylum seeking in this Report.

## CHAPTER 3: AN AUSTRALIAN POLICY AGENDA

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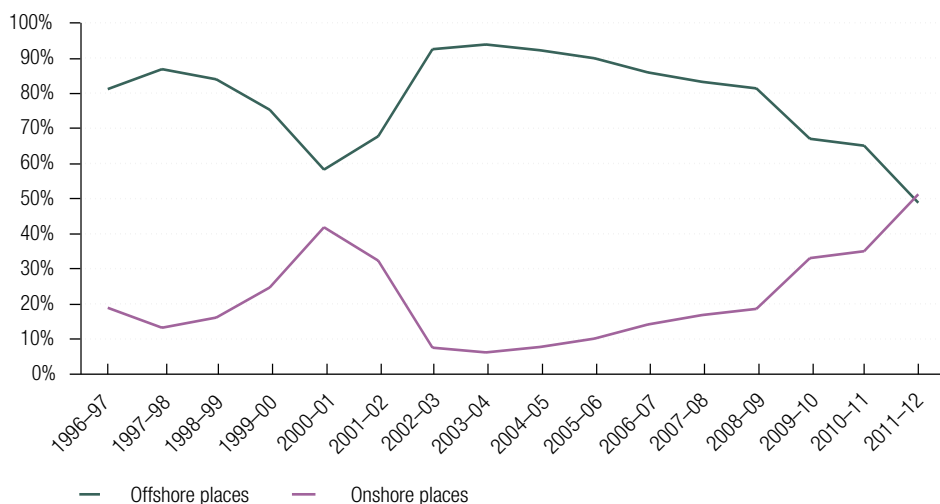
- 3.1 The dual approach which the Panel advocates is based on adjustments to Australia's national policy settings and enhanced regional cooperation arrangements. It is an approach that needs to be pursued in an integrated way. The common and principal focus of activity at both levels must be to shift the balance of risk, predictability and incentive in favour of the use of regular pathways of international protection and migration, and against the need to resort to irregular and dangerous boat voyages to Australia for those purposes.
- 3.2 This recalibration of Australian policy settings within a more integrated regional framework needs to be implemented in a way that is clear, sustainable over time, phased and contingent on developments. This approach demands two key priorities – one focused on incentives to use regular processes and pathways, and the other directed to disincentives to use irregular and dangerous maritime options. The Panel considers that a more strategic approach to managing the flow of asylum seekers in the region and the creation of a pathway to sustainable, regular and reliable processes towards migration alternatives need to be complemented by strengthening measures focused on discouraging irregular travel to Australia's borders.

## Part A: Proposed changes to Australian policy settings to encourage use of regular pathways for international protection and established migration programs

### Enhancing and refocusing Australia's Humanitarian Program

- 3.3 The Humanitarian Program is a significant contribution to meeting Australia's international obligations by offering protection to asylum seekers who are found to be refugees under the Refugees Convention. By offering a world-class resettlement scheme to refugees from overseas, Australia goes beyond those obligations outlined in the Convention.
- 3.4 Australia started taking refugees from Europe in the period immediately after the Second World War. In subsequent decades when a more formalised Humanitarian Program was established it continued to focus on resettlement from offshore. Currently, this focus has been distorted because of the high numbers of onshore arrivals claiming asylum. As noted above (paragraph 1.20), in Australia's 2011-12 Humanitarian Program the number of people granted a Protection visa in Australia was, for the first time, higher than the number of people resettled in Australia from overseas.

Figure 6: Australia's Humanitarian Program



Source: DIAC, received 6 July 2012.

- 3.5 At the same time pressures are increasing on countries hosting refugee and asylum seeker populations for long periods of time. While the resettlement base of countries expanded to 26 in 2011, the number of resettlement places offered has largely been constant at around 80,000 places over a number of years. Currently, at best, only one in 10 persons in need of resettlement will be provided with that outcome annually.<sup>25</sup>

<sup>25</sup> Ibid.

- 3.6 As already noted there is also a large backlog of applications in the SHP component of the Humanitarian Program, which will not be cleared for many years.
- 3.7 In the Panel's view, Australia needs a substantially increased and more regionally focused Humanitarian Program while still maintaining capacity to respond to other regions of concern to Australia and UNHCR such as Africa. Such an initiative would serve Australian national interests as well as our international engagement. It would enhance the scope of our cooperation with regional partners. It would give greater hope and confidence to asylum seekers in the region that regular migration pathways and international protection arrangements provide a practical, realistic and better alternative to dangerous boat voyages to Australia. It would enable Australia to assist in meeting growing humanitarian needs in our region in a fair and timely way. It would support Australian strategies to encourage other international resettlement countries to assist in more expansive ways. A substantially increased and more regionally focused Humanitarian Program would also contribute importantly to the strengthening of regional cooperation on asylum issues.
- 3.8 The Panel considers that the Humanitarian Program should be immediately increased from its current level of 13,750 places to 20,000 places. At least 12,000 places should be for the refugee component which would double the current allocation for refugees within the Humanitarian Program. If the new policy directions recommended in this Report are effective in reducing the number of IMAs, the Humanitarian Program should be progressively further increased to 27,000 places within five years. Consideration of such an increase would need to take account of Australia's prevailing economic circumstances, the impact of the earlier Program increase and progress in achieving more effective regional cooperation arrangements.
- 3.9 The increased resettlement program should maintain the current allocation targeting need (as identified by UNHCR) for resettlement places from the Africa region, with additional places from the Middle East and Asia regions. While providing a program of up to 3,800 resettlement places from regional countries in South-East Asia, there should also be a deliberate strategy to target the majority of additional places as close to countries of origin as possible. This would involve a significant increase in places for the Middle East region. Some places should also be made available for other caseloads such as Sri Lankans, Iranians and Iraqis. Any increase in places under the Humanitarian Program should also be complemented by the normal provision for Australia's world-class settlement services.
- 3.10 The Panel notes that there will be costs associated with increasing the number of places in the Humanitarian Program (Attachment 11). However, as part of a comprehensive package, these costs should be seen in the context of likely operational and capital cost increases if the current number of asylum arrivals continue or increase further and, in particular, the costs of onshore detention in remote areas and asylum processing expenses. The recommendations in this Report are designed to reduce IMAs as well as the costs associated with their processing and protection.

- 3.11 An enhanced Humanitarian Program should utilise new opportunities for private and community sponsorship on which the Minister for Immigration and Citizenship has recently sought public submissions.<sup>26</sup> The Canadian Government has operated a Private Sponsorship of Refugees (PSR) Program since 1978, with more than 200,000 people migrating to Canada under the Program. The Canadian Government has set an admissions target of around 5,500 people under the PSR Program in 2012. This equates to more than 40 per cent of Canada's total 2012 refugee resettlement quota of 13,000.
- 3.12 Private and community sponsorship within Australia's Humanitarian Program could provide some important opportunities to assist with its expansion in a productive, cost-effective and community-based way. It is important that the private and community sponsorship arrangements be responsibly utilised to their full potential. The Panel expects that it may be possible to develop a sponsorship model that reduces the costs of a place under the Humanitarian Program by up to one-third and considers that any savings achieved through such an initiative should be used to offset other costs under the expanded program.

### *Family reunion arrangements*

- 3.13 As already noted, there is a large backlog of applications in the SHP component of the Humanitarian Program which will not be cleared for many years under existing arrangements. In 2011-12, the SHP provided for only 714 family reunion<sup>27</sup> places to accommodate the more than 20,000 applications for such places. The provision for SHP places in 2012-13 is likely to be significantly less than this figure. With long delays in family reunion that could exceed twenty years, the Panel considers that this backlog increases the incentive for irregular movement of family members. It is also creating considerable distress amongst refugee communities in Australia who were resettled through the offshore component of the Humanitarian Program, but who as a consequence of the SHP backlog no longer have practical prospects of family reunion.
- 3.14 The backlog cannot be addressed through a single initiative or in a single year. Furthermore, eliminating the existing backlog of applications will not provide an enduring resolution of this situation as there will be a continuing flow of SHP applicants into the future.
- 3.15 The Panel notes the current policy concession that presumes that immediate family applicants meet the 'compelling reasons' criteria for resettlement under the SHP. The Panel believes that this concession should be removed for applicants currently in the backlog whose proposers have arrived in Australia through irregular maritime voyages unless the proposer was under the age of 18 at the time the SHP application was lodged. Applicants who are now likely to be unsuccessful under the SHP can seek family

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26 'Australia's Humanitarian Program: Proposed Pilot of a Private/Community Refugee Sponsorship Program', *DIAC*, viewed 2 August 2012, <http://www.immi.gov.au/about/contracts-tenders-submissions/humanitarian-program.htm>.

27 'Delivering on our Humanitarian Commitment', *Minister for Immigration and Citizenship*, 19 July 2012, viewed 3 August 2012, <http://www.minister.immi.gov.au/media/cb/2012/cb188299.htm>.

reunion under the existing provisions of the family stream within the overall Migration Program (see paragraph 3.18 on additional places for the family stream of the Migration Program). Current policy settings should continue for applicants in the backlog who have sponsors who arrived in Australia through regular migration pathways.

- 3.16 The Panel also recommends that the ability of any future IMA to propose family members through the SHP should be removed. IMAs seeking to bring family to Australia will need to seek to do so under the existing family stream of the Migration Program. This change would be consistent with creating a fair regional processing arrangement in which advantage is not obtained through participation in irregular migration. It also creates an additional incentive for potential IMAs to seek protection earlier and closer to their country of origin under the enhanced regional arrangements.
- 3.17 This policy change will not just amount to shifting the SHP backlog into another category (the family stream of the Migration Program). There are additional costs in the stream such as the visa application charge which will need to be met by the sponsor in Australia. The Panel recommends that possibilities for private sponsorship arrangements for humanitarian visa holders seeking to sponsor through the family stream should also be explored.
- 3.18 In recognition that these changes will place pressure on the family stream, the Panel recommends that 4,000 additional places be provided to that stream per annum. These should be specifically allocated to humanitarian visa holders. This will minimise any impact on non-humanitarian visa holder sponsors in the family stream. Provision of an additional 4,000 places per annum would need to be reviewed in the light of expected decreases in the number of IMAs when the measures recommended in this Report are implemented. Details of the proposed new arrangements are at Attachment 9.

### *Specific initiatives with key regional countries*

- 3.19 Encouraging the use of regular pathways for protection and resettlement over dangerous and irregular ones necessitates enhanced and sustained engagement with key regional countries. This needs to be pursued in a variety of ways but with special focus on the Bali Process, and in particular on consolidating the 2011 RCF. Bilateral cooperation with Bali Process partners also needs to be a central focus for Australian policymaking. As major transit countries, and in Malaysia's case, as a major host country, both Malaysia and Indonesia are key bilateral partners with Australia. This bilateral dimension of a more productive and coordinated regional framework needs to be pursued actively and sustained over time at the highest levels of Australian leadership and diplomacy. (Attachment 6).

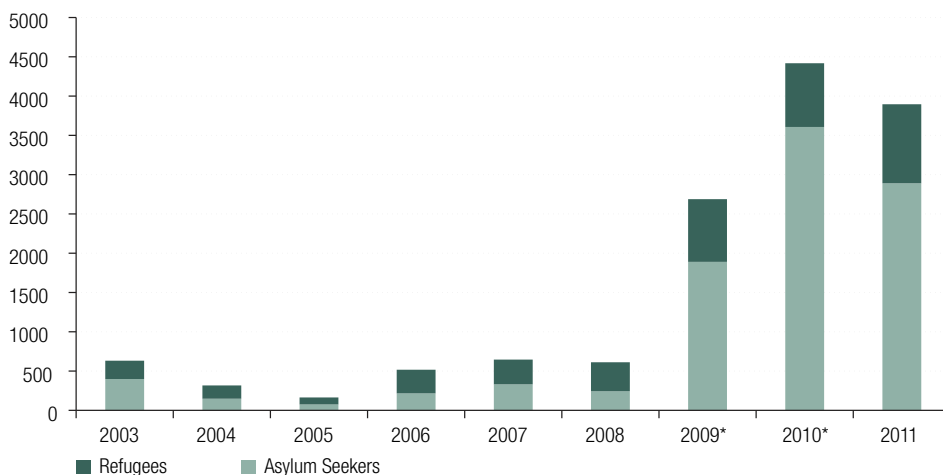
### **Indonesia**

- 3.20 Indonesia is a key strategic partner for Australia across a wide range of shared interests. Vital and expanding areas of bilateral cooperation have been established over the past decade in trade and investment, in security and defence matters, in economic development, in disaster relief, in counter-terrorism activities and in many other areas. Significantly, Indonesia and Australia work together cooperatively as Co-Chairs of the Bali Process.



3.21 The *2010 Australia-Indonesia Implementation Framework for Cooperation on People Smuggling and Trafficking in Persons* now provides a useful focal point for pursuing a broader partnership on issues relating to people trafficking, protection claims, people smuggling and asylum seekers in ways that address the particular interests of both countries. But a more intensive and dynamic approach is needed in current circumstances.

**Figure 7:** Total number of asylum seekers and refugees registered with UNHCR in Indonesia since 2003<sup>28</sup>



\* The rise in 2009 and 2010 reflects a significant increase in claims from people from Afghanistan

3.22 In the Panel's view, the following areas of bilateral cooperation with Indonesia should be pursued as a matter of priority:

- In the context of the proposed increase in Australia's Humanitarian Program (paragraphs 3.3-3.12), particular arrangements for a substantial increase in additional places from Indonesia will be negotiated in consultation with the Indonesian Government and UNHCR. The scope of further increases in such resettlement places from Indonesia should be determined annually in consultation with the Indonesian Government.
- More extensive maritime cooperation between Australia and Indonesia should be developed across a range of activities, including cooperative patrols and joint surveillance patrols, collaborative search and rescue operations, information exchanges and exercises.
- The close bilateral cooperation on law enforcement and intelligence exchanges in relation to people smuggling activities should be further consolidated, broadened and resourced along lines similar to the other bilateral programs currently underway.

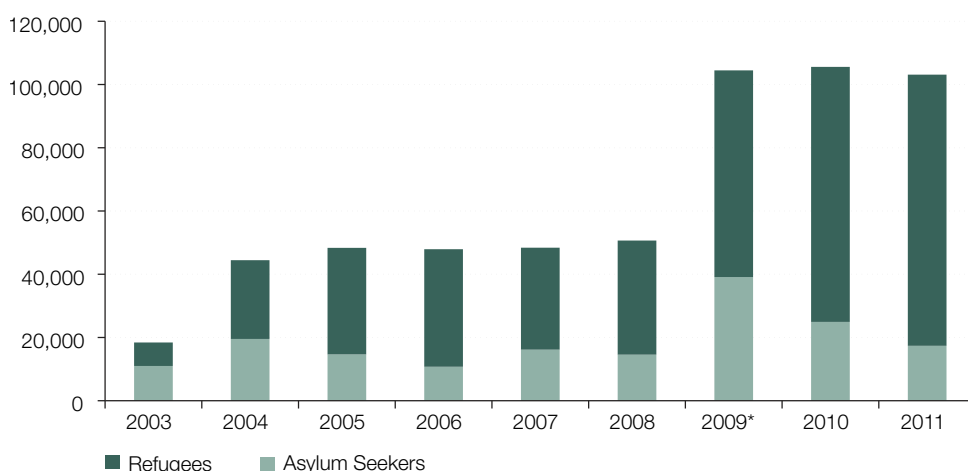
28 'Refugee and Asylum Populations in Indonesia', *UNHCR Statistical Online Population Database*, viewed on 31 July 2012, <http://www.unhcr.org/pages/4a013eb06.html>.

- Changes to Australian law in relation to Indonesian minors and others crewing unlawful boat voyages from Indonesia to Australia should be pursued with options including crew members being dealt with in Australian courts with their sentences to be served in Indonesia, discretion being restored to Australian courts in relation to sentencing, or returning those crews to the jurisdiction of Indonesia.
- A practical agenda of initiatives should be developed between Australia and Indonesia to be pursued under the auspices of the RCF established under the Bali Process and in liaison with the newly established RSO.
- The capacity for assisting Indonesia with the impact of people trafficking across its borders should also be actively pursued.
- Ways in which the Association of Southeast Asian Nations (ASEAN) could enhance such a regional framework on asylum issues should be explored with Indonesia.

## Malaysia

3.23 Malaysia is another key regional country in relation to protection claims, people smuggling and asylum seekers. In 2011 it hosted a refugee and asylum-seeker population of over 100,000 including 85,700 refugees and 17,300 asylum seekers in addition to a very large number of irregular migrants who are attracted to work opportunities in Malaysia. Strong and expanding cooperation between Australia and Malaysia on such issues advances shared interests in both countries, and can provide another important building block in terms of a deeper and broader framework of regional cooperation.

**Figure 8:** Total number of asylum seekers and refugees registered with UNHCR in Malaysia since 2003<sup>29</sup>



\* The rise in 2009 reflects a sharp increase in claims from people from Myanmar.

29 'Refugee and Asylum Populations in Malaysia', *UNHCR*.

- 3.24 In July 2011, the Australian Government announced it had entered into an agreement with Malaysia on a new arrangement to help address people smuggling and irregular migration in the Asia Pacific region (the Malaysia Arrangement). Following a decision by the High Court of Australia in August 2011<sup>30</sup> and a subsequent impasse in the Australian Parliament on amendments to the *Migration Act 1958* relating to the Malaysia Arrangement, the Arrangement has only been partially implemented, with Australia meeting its commitment to increase resettlement from Malaysia. In the context of the proposed increase in resettlement places under the Humanitarian Program (paragraphs 3.3-3.12), the Panel considers that resettlement should be actively managed to ensure a substantial number of refugees are taken from Malaysia each year.
- 3.25 Issues in relation to the future of the Malaysia Arrangement are addressed later in the Report (paragraphs 3.58-3.70).

### *Expansion of capacity-building measures to facilitate safe and sustainable alternatives to irregular migration*

- 3.26 A capacity-building agenda to underpin the practical development of regional registration, processing and resettlement arrangements for those seeking protection needs to be implemented in a phased and incremental way. It would require significant and sustained resourcing. It would entail detailed negotiations with UNHCR and regional governments on a range of in-principle and implementation issues. And it would potentially involve the need for legislative changes in some partner countries. There are, however, some other aspects of this agenda that could be implemented immediately or over the short term. As a whole, the agenda would enhance protections, encourage the use of established regular protection and migration processes, broaden local engagement in those processes and diversify effective sources of accurate information to those contemplating dangerous boat voyages.
- 3.27 Enhanced regional capacity building to address refugee and asylum-seeker flows will require new forms of cooperation among regional countries. Australia's role in this context would be critical in terms of enabling and facilitating bilateral and regional outcomes. In 2011-12, DIAC was allocated approximately \$70 million from the Australian aid program for international engagement and capacity-building activities related to people smuggling and border control. Those activities included support for regional cooperation and capacity building in regional and source countries (\$47 million); management and care of irregular immigrants in Indonesia (\$10 million); initiatives in relation to displaced persons in source and transit countries, and sustainable returns (\$7 million); and returns and reintegration assistance packages (\$7 million).
- 3.28 In the context of accelerating the development of a regional cooperation framework, we believe that Australia needs to diversify its capacity-building initiatives and significantly increase its allocation of resources. The Panel recommends the current level of expenditure should be doubled and focused on programs in support of building the regional framework for improved protections, registration, processing, integration, resettlement, returns and other priorities. This funding increase should come from Australia's aid program and be jointly managed by DIAC and the Australian Agency for International Development (AusAID).

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30 *Plaintiff M70/2011 v MIAC; Plaintiff M106/2011 v MIAC* [2011] HCA 32.

### *New strategies in source countries*

- 3.29 Addressing the root causes of displacement in countries of origin for refugees and building more effective protections in neighbouring countries of first asylum is a critical, ongoing and long-term challenge for the international community.
- 3.30 The overwhelming majority of refugees and asylum seekers do not move beyond countries adjacent to their own. Those asylum seekers and refugees who do move more widely are frequently motivated by low levels of security and opportunity in the neighbouring countries. Those contemplating irregular routes and the use of people smugglers need to know the dangers involved and the alternatives to them. The best opportunity to influence the decision making of those asylum seekers is as close to their home countries as possible. Once they have made a significant financial investment and emotional commitment in pursuing an irregular migration path to Australia, it becomes very difficult to counteract their goal of completing their journey by whatever means.
- 3.31 This Report has proposed a significant enhancement to Australia's Humanitarian Program (paragraphs 3.3 to 3.12). A significant number of these increased resettlement places would be allocated to countries of first asylum that are sources of asylum seeker flows to Australia.
- 3.32 It is vital that the international community focus productively on how it can maximise the protections that are available and how they can be expanded in countries of first asylum and secondary movement. This requires the creation of improved 'protection space' – a safe and stable environment until a durable outcome can be delivered, including:
- promotion of an effective international aid effort in support of displaced populations that is strategic and sustained;
  - provision of greater access (usually under the auspices of UNHCR) to orderly pathways for asylum through consistent RSD and provision of durable outcomes close to the source country;
  - provision of increased resettlement opportunities focused on the highest priority groups;
  - cooperation on the return of failed asylum seekers who do not need international protection; and
  - disruption of people smugglers through effective law enforcement and intelligence cooperation.
- 3.33 As a major refugee resettlement country, Australia's national and regional interests are served by a proactive approach on these strategies in source countries. This approach should be coordinated with the initiatives outlined in paragraph 3.28 above.

### *Better coordination of the Humanitarian Program with other elements of Australia's Migration Program*

- 3.34 There is scope for more effective integration of the Humanitarian Program within the broader Australian Migration Program. Some applicants for protection may have skills and qualifications that make them eligible for entry to Australia through channels other than the Humanitarian Program. This could enable others without those skills and qualifications, but with a recognised need for protection, to access one of the available places in the Humanitarian Program. The Panel recognises, however, that the numbers of potential irregular migrants able to satisfy the criteria for a skilled migration visa is likely to be small.

### *Active engagement with resettlement countries*

- 3.35 Greater cooperation through a regional framework should be supported not only through enhanced resettlement by Australia but on the part of other resettlement countries as well.
- 3.36 The scale of current and prospective asylum-seeker flows from the Middle East, South Asia and elsewhere is a large and growing problem. Appropriate national policy settings and a more effective regional cooperation framework are necessary, but not sufficient, responses. They need to be complemented by more active and better coordinated strategies among traditional resettlement countries – particularly those in Europe, the United States, Canada and New Zealand – as well as emerging resettlement countries to create more opportunities for resettlement from the region.
- 3.37 This is a complex challenge and responses will need to be sustained over time. But it is one on which Australia can, and should, take a lead.

### *Establishing an evidence base for future policy development*

- 3.38 The Panel notes that the evidence on the drivers and impacts of forced migration is incomplete, and more intuitive than factual. As a result, the policymaking process is forced to rely on partial and largely qualitative information, rather than a solid base of measurement and analysis. Addressing this gap in evidence and knowledge is a priority.
- 3.39 A well-managed and appropriately funded research program should support the development of sustainable, evidence-based policy approaches aimed at meeting Australia's obligations to manage its borders and provide protection to refugees. It is envisaged that, among other things, the program would focus on the drivers and determinants of irregular migration, including why people decide to leave their home countries, how they travel between source, transit and destination countries, and the irregular and regular migration pathways used by asylum seekers.
- 3.40 The Panel recommends that at least \$3 million each year (to be reviewed after two years) of new policy funding should be allocated to establish a significant, ongoing research program that will develop a more robust evidence base on irregular migration and asylum. The program should be developed in partnership with academic and other expertise in the field. It should be managed by a board comprised of academics with expertise in migration matters, NGOs and senior government officials.

## Part B: Measures to discourage the use of irregular maritime travel to Australia

- 3.41 A range of disincentives is set out in this Report to actively discourage irregular and dangerous maritime voyages to Australia for the purposes of claiming protection or seeking asylum. The purpose of these disincentives, which are consistent with Australia's international obligations, is not to 'punish' those in search of such protection or asylum. It is to ensure that IMAs to Australia do not gain advantage over others who also claim protection and seek asylum but who do so through enhanced regional and international arrangements and through regular Australian migration pathways.
- 3.42 One of the goals of enhanced regional cooperation on asylum seeking is that, over time, those choosing to claim protection by travelling to Australia on irregular maritime voyages should have their claims processed through regionally integrated arrangements. Those arrangements would entail protections, decision making, review processes and durable outcomes in close consultation with UNHCR. Where resettlement is the appropriate durable outcome for an individual, it would be provided on a prioritised basis across the region. These are practical objectives to which a regional cooperation framework should be directed, and which Australia and other regional countries should pursue as a matter of urgency.
- 3.43 To support such processing within the development of a comprehensive regional cooperation framework, the Panel believes that the Australian Parliament should agree, as a matter of urgency, to legislation that would allow for the processing of irregular maritime arrivals in locations outside Australia. That legislation should also reserve to the Parliament the provision to allow or disallow the legislative instrument that would authorise particular arrangements in specific locations outside Australia.

### *Processing of protection claims of IMAs in Nauru*

- 3.44 While some key aspects of a more integrated regional framework on asylum seeking can occur relatively quickly, others will take time to be established. In the intervening period, Australia's current circumstances call for more immediate measures. In this context and in coordination with the Nauruan Government, appropriate facilities and services should be established in Nauru as soon as practical for the processing of claims made by IMAs to Australia and for their living arrangements while they await a durable outcome.
- 3.45 The Panel's view is that, in the short term, the establishment of processing facilities in Nauru as soon as practical is a necessary circuit breaker to the current surge in irregular migration to Australia. It is also an important measure to diminish the prospect of further loss of life at sea. Over time, further development of such facilities in Nauru would need to take account of the ongoing flow of IMAs to Australia and progress towards the goal of an integrated regional framework for the processing of asylum claims.

- 3.46 Asylum seekers who have their claims processed in Nauru would be provided with protection and welfare arrangements consistent with Australian and Nauruan responsibilities under international law, including the Refugees Convention. Those protections and welfare arrangements would include:
- treatment consistent with human rights standards (including no arbitrary detention);
  - appropriate accommodation;
  - appropriate physical and mental health services;
  - access to educational and vocational training programs;
  - application assistance during the preparation of asylum claims;
  - an appeal mechanism against negative decisions on asylum applications that would enable merits review by more senior officials and NGO representatives with specific expertise;
  - monitoring of care and protection arrangements by a representative group drawn from government and civil society in Australia and Nauru; and
  - providing case management assistance to individual applicants being processed in Nauru.
- 3.47 Those IMAs transferred to Nauru may choose to return voluntarily to their home country. In such circumstances, this voluntary return could be facilitated through appropriate arrangements including Australian assistance with reintegration.
- 3.48 There should be provision for IMAs in Nauru who are determined to have special needs, or to be highly vulnerable, or who need to be moved for other particular reasons, to be transferred to Australia. The Panel recommends that such IMAs come to Australia on a temporary visa. Their conditions and entitlements during this period in Australia would be similar to those that apply to persons currently being processed on a bridging visa. Such arrangements would continue to apply for the period until their application for protection has been fully processed in Nauru and a durable outcome provided.
- 3.49 Other IMAs not in need of moving to Australia would remain in Nauru until their refugee status is determined and resettlement options are finalised.
- 3.50 Irrespective of whether IMAs stay in Nauru for the period of their status determination or are moved to Australia, the same principle would apply to all. Their position in relation to refugee status and resettlement would not be advantaged over what it would have been had they availed themselves of assessment by UNHCR within the regional processing arrangement.
- 3.51 Decisions in relation to how IMAs in Nauru would be processed would be determined by Australian officials in accordance with international obligations and in the context of prevailing circumstances.
- 3.52 The involvement of UNHCR and IOM with registrations, processing and resettlement and/or returns in Nauru and other regional processing centres would be highly desirable and should be actively pursued as a matter of urgency. NGOs and civil society groups should also be productively engaged in specific aspects of welfare and service delivery.

- 3.53 For those asylum seekers in Nauru who are found to be refugees, resettlement options should be explored with UNHCR and other resettlement countries. If such refugees require resettlement in Australia, this would be provided at a time comparable to what would have been made available had their claims been assessed through regional processing arrangements.
- 3.54 In the context of recent High Court decisions, the Panel considers that any future arrangements for processing of protection claims in Nauru as part of a regional cooperation framework should be implemented with new legislative authority from the Australian Parliament (Attachment 10).
- 3.55 Consistent with the objectives outlined above, the Panel recommends that as a matter of urgency the Australian Government commence negotiations with the Nauruan Government to identify a suitable location for the establishment of a facility of sufficient capacity to host IMAs to Australia for the short term.

### *A processing facility in PNG*

- 3.56 In the Panel's view, in addition to Nauru, similar arrangements also need to be put in place elsewhere in the region to address the rising number of IMAs to Australia. The PNG Government has facilitated such arrangements in the past and entered into a Memorandum of Understanding (MOU) with Australia on 19 August 2011 for the processing of asylum claims of IMAs at an assessment centre on Manus Island. It would be a matter of negotiation with PNG whether Manus Island remains its preferred location for such a facility or whether other options would be relevant.
- 3.57 If a processing centre for asylum claims were to be re-established in PNG, similar arrangements to those proposed in this Report in relation to Nauru (paragraphs 3.43 to 3.55) would need to be negotiated with the PNG Government. Furthermore, relevant new legislative authority would need to be passed by the Australian Parliament.

### *Next Steps on the Malaysia Arrangement*

- 3.58 On 25 July 2011 the Australian Prime Minister and the Minister for Immigration and Citizenship announced the Malaysia Arrangement had been signed by Australia and Malaysia. Under the Arrangement, Malaysia agreed to accept 800 'transferees' (people who have travelled irregularly by sea to Australia or who had been intercepted at sea by Australian authorities while trying to reach Australia by irregular means) and Australia agreed to resettle 4,000 refugees currently residing in Malaysia over a four year period at a rate of approximately 1,000 per year. The Arrangement also set out a number of commitments by the Governments of Australia and Malaysia in relation to protection, welfare and processing arrangements for transferees. (Attachment 8).



3.59 Protections in the Arrangement and its Operational Guidelines include:

- pre-screening assessments in accordance with international standards prior to transfer to Malaysia;
- registration by UNHCR of transferees seeking asylum;
- appropriate consideration of transferees' claims for asylum by UNHCR;
- lawful residence for transferees in Malaysia during consideration of their asylum claims;
- guidance to law enforcement agencies and other relevant authorities in Malaysia in relation to the protections afforded to transferees under the Arrangement;
- *non-refoulement* of transferees during processing and for those found to be in need of protection;
- provision of appropriate health, counselling and psychological services to transferees;
- provision of self-reliance opportunities (including employment) to transferees;
- provision of educational opportunities to transferees of school age;
- support for vulnerable transferees from UNHCR and IOM; and
- establishment of a Joint Committee and an Advisory Committee to oversee the Arrangement, both on a day-to-day basis and at a strategic level.

3.60 As a result of decisions in the High Court of Australia and an impasse in the Australian Parliament over subsequent legislation, only one part of the Malaysia Arrangement has been implemented, namely the resettlement of refugees from Malaysia to Australia as agreed. One key provision not implemented to date is the movement of the 800 transferees from Australian authorities to Malaysia.

3.61 There are concerns among a wide range of groups and individuals in Australia in relation to the protections and human rights implications of the Malaysia Arrangement. Many of those concerns have been conveyed directly to this Panel through meetings and written submissions. There are concerns that relate to the non-legally binding nature of the Arrangement, the scope of oversight and monitoring mechanisms, the adequacy of pre-transfer assessments, channels for appeal and access to independent legal advice, practical options for resettlement as well as issues of compliance with international law obligations and human rights standards (particularly in relation to *non-refoulement*, conditions in Malaysia, standards of treatment and UAMs).

3.62 The Australian Government has emphasised its clear view that the Malaysia Arrangement provides an effective disincentive to irregular maritime ventures, that it is consistent with Australia's obligations under the Refugees Convention and other human rights conventions, that the Malaysian Government is committed to implementing the Arrangement, and that UNHCR and IOM involvement in the development of the Arrangement has been critical.

- 3.63 In the Panel's view, the Malaysia Arrangement is an important initiative in bilateral cooperation between Australia and Malaysia on an issue of great significance for both countries and for the broader region. It also is a potential building block for a stronger framework of regional cooperation on protection and asylum claims. The Panel believes, however, that the operational aspects underpinning the current provisions in the Arrangement need to be specified in greater detail as part of a broader revision to enhance the protections for transferees that it aims to provide.
- 3.64 The adequacy of protections for asylum seekers set out in the Arrangement, and measures of accountability for their implementation, should be strengthened to meet a range of concerns. There should also be a commitment to working towards developing these protections further. Provisions for UAMs and for other highly vulnerable asylum seekers need to be more explicitly detailed and agreed with Malaysia. Furthermore, in relation to pre-transfer risk assessment, further specific details and safeguards will also need to be provided. Where appropriate, these provisions should be strengthened and delivered in association with relevant NGOs.
- 3.65 As part of ongoing discussions between both the Australian and Malaysian Governments to facilitate a positive outcome, an MOU, or comparable instrument, should be actively pursued. Such an approach could further enhance mutual accountability in the context of the Arrangement. A written agreement between Malaysia and UNHCR on implementation of the Arrangement should also be pursued as another important dimension of accountability.
- 3.66 The Panel recommends that a more effective monitoring mechanism be negotiated with Malaysia in relation to the protections under the Arrangement. That mechanism should involve senior officials and eminent persons from civil society in Australia and Malaysia. A monitoring mechanism of this kind could encompass in its remit the development of guidelines for the support of vulnerable transferees to Malaysia, including UAMs, and reporting on the adequacy of protections in practice through regular updates on the welfare of individuals transferred. This mechanism should be linked to the broader regional arrangements for monitoring and oversight.
- 3.67 It will also be important to ensure that UNHCR is properly resourced to deliver services, both to transferees and to the broader asylum seeker population in Malaysia, through enhancement of its capacity to provide core protection services, assistance to highly vulnerable individuals and support to local communities.
- 3.68 Initiatives along the lines of the Malaysia Arrangement are relevant to, and important in, a future framework of enhanced regional cooperation on asylum issues. This is a reality because so few countries in Australia's region are parties to the Refugees Convention and because alternative bilateral and regional forms of cooperation need to be developed in ways that provide appropriate safeguards and effective accountability.

- 3.69 In the Panel's view, the Malaysia Arrangement needs to be strengthened and revised in these ways as a matter of urgency and at the highest level of government. This is particularly the case in terms of the confidence it provides that its protections will be respected and implemented in practice, and that the human rights of transferees will be upheld. It is also important because it is the Panel's view that, with appropriate amendments for these purposes, the Arrangement would be able to play a vital and necessary role in supplementing the processing facilities in Nauru and PNG that are recommended elsewhere in this report.
- 3.70 What has been negotiated with Malaysia needs to be built on further, not discarded or neglected. In that context, innovative thinking and open mindedness on all sides will be important. The Arrangement constitutes potentially too important an initiative in bilateral and regional terms not be taken to the necessary next stage of development. It is the Panel's hope that this next stage can be achieved as soon as possible to provide a positive basis for the Australian Parliament's reconsideration of this issue.

### *Family reunion changes for IMAs*

- 3.71 As discussed above (paragraphs 3.13 to 3.18), the Panel has recommended changes to the operation of the SHP in terms of who may act as a proposer for a relative overseas seeking to be reunited with family in Australia. Those changes will mean that people who in future come to Australia as IMAs and who do not seek to have their claims assessed through enhanced regional arrangements will not be able to propose their family under the SHP at any time. Any family reunion would need to occur through the family migration stream of the Migration Program. The Panel believes this change will create an additional incentive for potential IMAs to seek protection as close to their home countries as possible rather than making the dangerous journey to Australia. (Attachment 9)

### *Reducing risk of longer maritime voyages to Australia*

- 3.72 The Panel considers that all possible measures should be implemented to avoid creating an incentive for IMAs taking even greater risks with their lives by seeking to reach the Australian mainland. As a complement to facilities in Nauru and PNG, the Panel recommends the Government bring forward legislative amendments to the *Migration Act 1958* so that arrival on the Australian mainland by irregular maritime means does not provide individuals with a different lawful status than those who enter at an excised offshore place, such as Christmas Island (Attachment 10).
- 3.73 Such an amendment will be important to ensure that introduction of processing outside Australia does not encourage asylum seekers to avoid these arrangements by attempting to enter at the Australian mainland. Such attempts would increase the existing dangers inherent in irregular maritime travel. Legislative change would ensure that all IMAs will be able to be processed outside Australia, regardless of where they first enter the country.

### *Review of the efficacy of Australia's processes for determining refugee status*

- 3.74 As noted previously in the Report (paragraph 1.24), final rates of approval of refugee status for IMAs to Australia are high. These are broadly consistent with UNHCR approval rates for similar caseloads. However, there have been substantial fluctuations in approval rates across caseloads at different times. There are also a significant number of negative decisions at primary assessment which are overturned on review.
- 3.75 In the Panel's view, a thorough review of Australian processes for RSD, including complementary protection, would be timely and useful. Over recent years, comparable countries such as the United Kingdom and Canada have undertaken significant reform of their migration legislation and processes for the determination of refugee status, including appeal rights. It would be relevant to assess whether there are aspects of such reforms that would be relevant in Australia's circumstances.
- 3.76 Such a review should include within its scope:
- identity issues and the use of biometrics;
  - the consequences of a refusal by applicants to cooperate in confirming their identity;
  - a more expeditious assessment process to finalise RSDs;
  - the quality of application advice;
  - the primary decision and review processes;
  - improved capacity to use intelligence material in RSDs;
  - the consistency and quality of country information available to primary decision makers and at review; and
  - the need for greater codification in domestic legislation of the RSD assessment and the tests and standards applied, consistent with Australia's Refugees Convention obligations.

### *Turnbacks*

- 3.77 Turning back irregular maritime vessels carrying asylum seekers to Australia can be operationally achieved and can constitute an effective disincentive to such ventures, but only in circumstances where a range of operational, safety of life, diplomatic and legal conditions are met:
- The State to which the vessel is to be returned would need to consent to such a return.<sup>31</sup>
  - Turning around a vessel outside Australia's territorial sea or contiguous zone (that is, in international waters) or 'steaming' a vessel intercepted and turned around in Australia's territorial sea or contiguous zone back through international waters could only be done under international law with the approval of the State in which the vessel is registered (the 'flag State').

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31 This may be provided through acquiescence.

- A decision to turn around a vessel would need to be made in accordance with Australian domestic law and international law, including *non-refoulement* obligations, and consider any legal responsibility Australia or operational personnel would have for the consequences to the individuals on board any vessel that was to be turned around.
- Turning around a vessel would need to be conducted consistently with Australia's obligations under the SOLAS Convention, particularly in relation to those on board the vessel, mindful also of the safety of those Australian officials or Australian Defence Force (ADF) personnel involved in any such operation.

- 3.78 Circumstances have changed since the limited number of turnbacks of irregular vessels carrying asylum seekers in Australia over a decade ago. The legal context has changed. The attitudes of many regional governments have evolved, raising the potential cost in terms of bilateral cooperation generally and coordination on people smuggling activities in particular. Furthermore, the pre-emptive tactics of people smugglers have adapted. Irregular vessels carrying asylum seekers can often be quickly disabled or rendered unsafe to foil any attempted turnbacks and to create a safety of life at sea situation. In addition, the potential dangers for asylum seekers and Australian personnel in effecting turnbacks have not diminished. (Attachment 8).
- 3.79 In implementing a turnback policy, an Australian Government would need to be mindful of the significant operational implications for the ADF. In particular, there must be a complete understanding that the Commanding Officer is best placed to assess the situation to determine if a turnback is feasible, safe and lawful. Furthermore, any implementation of the turnback policy would need to take careful account of the availability of major fleet units that would be suitable to conduct and sustain such operations.
- 3.80 In the Panel's view, the conditions noted above and required for effective, lawful and safe turnbacks of irregular vessels headed for Australia with asylum seekers on board are not currently met in regard to turnbacks to Indonesia. That situation may change in the future, in particular if appropriate regional and bilateral arrangements are in place. It would only do so if the conditions outlined above (paragraph 3.77) are fully met and, in particular, if there are changes in the understandings that exist with regional states and if there is clarification of what constitutes safe and lawful conduct by Australian personnel.

## *Removals and Returns*

- 3.81 Between October 2008 and 3 August 2012 a total of 287 IMAs (not including crew on the boats) were removed from Australia. Only 17 of these were involuntary removals. In addition, two persons living in the community on Bridging visas returned voluntarily from the community. While voluntary removal is preferred over involuntary removal, the latter is often necessary as an encouragement for voluntary removal with reintegration packages that are commonly offered.

- 3.82 It is fundamental to a properly functioning system of international protection that those determined not to be in need of protection, after having undergone a thorough assessment, should be able to be returned to their country of origin. Australia has return arrangements in a place with a number of countries of origin. However, some countries of origin have indicated they will not accept involuntary and undocumented returns. International experience suggests that Australia is not alone in having difficulty effecting removals, and that a whole-of-government approach is needed to negotiate better performance on removals.
- 3.83 Such an approach could include taking a more holistic view of Australia's relationship with countries that refuse to readmit their nationals. It could also include securing return arrangements that provide incentives for countries to cooperate and assist with involuntary removals as well as disincentives for non-compliance. The capacity to undertake involuntary removals will encourage the voluntary return of others. A Joint Working Strategy between DIAC and Department of Foreign Affairs and Trade (DFAT) should be developed to identify means of increasing the scope for bilateral cooperation with countries that do not currently accept the involuntary return of their nationals. (Attachment 7).

### *Disruptions*

- 3.84 Australia has worked successfully with local law enforcement agencies in various countries to disrupt the activities of people smuggling syndicates and specific ventures. That cooperative work has helped to moderate the inflow of irregular asylum seekers from source countries to Australia (Attachment 6).
- 3.85 Funding for the capabilities that support this disruption effort has been provided to Australian agencies for country-specific activities for limited periods. This has hindered the ability of agencies to operate comprehensively across all relevant countries involved, and to respond quickly and flexibly. It has also complicated the challenge for agencies in maintaining their capabilities and local relationships in the region that are critically important to effective disruption.
- 3.86 Disruption efforts are, and should continue to be, part of any comprehensive approach to address the challenges posed by people smuggling. Their impact is impossible to quantify with precision but they complement other strategies in a useful way. Accordingly, the relevant agencies should be resourced with sufficient funding to cover their important activities on a continuing basis.

### *Law enforcement in Australia*

- 3.87 Law enforcement agencies in Australia should continue their activities in countering any involvement of Australian residents who are engaged in funding and facilitating people smuggling.

### *Search and Rescue (SAR)*

- 3.88 The need for cooperation extends across the boundaries of Australia's SAR region to neighbouring countries, notably with Indonesia, PNG and the Solomon Islands.
- 3.89 Australia takes its SAR obligations under international and domestic law very seriously. In practice, Australia meets its responsibilities by implementing internationally agreed protocols and obligations consistent with the relevant Conventions and International Aviation and Maritime SAR Manual. This Manual provides guidelines for the implementation of the necessary infrastructure, planning and operational procedures at the domestic level and for coordination and liaison with neighbouring countries.
- 3.90 Coordination with neighbouring countries will be an ongoing challenge for Australian SAR authorities and it will be necessary to continue to invest in initiatives with those countries to ensure that the capacity and frameworks exist for effective liaison and cooperation. It will also be important to continue working with neighbouring countries to identify lessons learned from recent experience and to develop joint operational guidelines for managing SAR activity within the region, particularly close to boundaries of SAR responsibilities. This initiative should also identify the need for any further regional and national codification of arrangements across SAR jurisdictions.

# ATTACHMENTS

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Nauru  
Submission 31



## ATTACHMENT 1: THE GLOBAL AND REGIONAL CONTEXT

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Migration is a global phenomenon and an enduring aspect of the human experience. Human mobility is at unprecedented levels, reflecting increasing global pressures for forced migration, as well as social and economic aspirations. The scale and complexity of international migration has increased in recent decades, accelerated by growing demographic disparities and enabled by better access to global information flows, communications and transport networks. This upwards trend in mobility is likely to continue – the estimated 214 million international migrants in the world represent only a fraction of the 700 million people who would prefer to live elsewhere permanently if they could (according to a recent two-year Gallup survey).<sup>32</sup>

An estimated 10-15 per cent of these international migrants are in an irregular situation.<sup>33</sup> People smuggling and other forms of irregular movement, such as human trafficking, have emerged to exploit the large gap that exists between the number of people wanting to migrate – because they are fleeing persecution, or for social or economic benefit – and the relatively few places made available through formal migration channels.

Ongoing global economic disparities – and individuals' growing awareness of their comparative economic circumstances – sustain strong demand for international migration, including irregular migration. High rates of unemployment, combined with higher wages offered abroad, are strong incentives for an individual to seek employment outside their own country, as is the opportunity to send remittances back to family at home. The possibility of such remittances is also a strong disincentive for some source countries to prevent large-scale irregular emigration: global remittances back to the developing world reached \$372 billion in 2011.<sup>34</sup> But migration is not only an economic activity. It is also a response to conflict, persecution, lack of political or social freedoms, and the loss of livelihood.

### Migration drivers

Migration drivers – both regular and irregular – can be broadly broken into 'push factors' in countries of origin or of first asylum, and 'pull factors' in destination countries. One factor may predominate – the need for physical safety, for example – but for most would-be migrants, decisions about where, and even when, to move are based on a combination of these factors (whether real or perceived).

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32 '700 million world wide desire to migrate permanently', *Gallup Poll and Potential Net Migration Index 2009*, 2009, viewed 27 July 2012, <http://www.gallup.com/poll/124028/700-million-worldwide-desire-migrate-permanently.aspx>.

33 'IOM World Migration Report 2010', *International Organization for Migration (IOM)*, 2010, viewed 30 July 2012, [http://publications.iom.int/bookstore/free/WMR\\_2010\\_ENGLISH.pdf](http://publications.iom.int/bookstore/free/WMR_2010_ENGLISH.pdf).

34 'Remittance Flows in 2011', *World Bank Migration and Development Brief*, viewed 27 July 2012, <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/MigrationandDevelopmentBrief18.pdf>.

Push factors that drive individuals out of countries of origin are usually associated with instability or violence (either generalised or specifically targeting an individual), lack of opportunity or disaster. While those forced to leave in such circumstances may have little choice about their initial destination, push and pull factors can contribute to onward movement from countries of first asylum (CFAs) or transit countries, creating new (and mixed) migration flows.<sup>35</sup> Pull factors are significantly more varied, and their relative attraction depends on individual circumstances and perceptions. But broadly, stability, empowerment, economic prospects, education and existing diasporas (which contribute to chain migration) attract people to developed countries.<sup>36</sup> How potential irregular migrants choose between destinations is less clear, but may further depend on cost comparisons, as well as their perceptions of prospects of being able to remain permanently and the opportunities and support available in each.

Onward migrants usually take a range of factors into account.<sup>37</sup> For those would-be migrants who choose to move beyond CFAs, and have the chance to choose their destination, the policy settings of different states may factor in that choice. For those intending to claim asylum, this may include an understanding, however basic, of how likely different countries are to accept them. Factors that inform would-be migrants' decision making can include:<sup>38</sup>

- the presence of relatives in the country (and possibly the ability to sponsor reunion for other family members);
- comparative livelihood and economic opportunities;
- cost of travel; and
- difficulty of travel, including documentation and physical access, as well as enforcement practices in source, transit and destination countries.

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35 Many refugees find out about potential destination countries in the West once in third countries. See 'Global Migration Perspectives no. 34: Why asylum seekers seek refuge in particular destination countries: an exploration of key determinants', *Global Commission on International Migration*, 2005, pp23-24 and p32, viewed 1 August 2012, [http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy\\_and\\_research/gcim/gmp/gmp34.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/gmp/gmp34.pdf).

36 F Duvell, 'Research Report: Irregular Immigration, Economics and Politics', *CESifo DICE Report 3/2011*, 2011, viewed 2 August 2011, [http://www.compas.ox.ac.uk/fileadmin/files/People/staff\\_publications/Duvell/1210202.pdf](http://www.compas.ox.ac.uk/fileadmin/files/People/staff_publications/Duvell/1210202.pdf). See also 'Push and pull factors of international migration: a comparative report', *European Commission*, 2000, viewed 2 August 2012, <http://www.nidi.knaw.nl/Content/NIDI/output/2000/eurostat-2000-theme1-pushpull.pdf>.

37 'Drivers of Migration', *Migrating Out of Poverty: UK Department for International Development Working Paper 1*, 2012, viewed 2 August 2012, [http://www.dfid.gov.uk/r4d/PDF/Outputs/MigratingOutOfPov/WP1\\_Drivers\\_of\\_Migration.pdf](http://www.dfid.gov.uk/r4d/PDF/Outputs/MigratingOutOfPov/WP1_Drivers_of_Migration.pdf).

38 'Why asylum seekers seek refuge in particular destination countries: an exploration of key determinants', *Global Migration Perspectives no. 34*, Global Commission on International Migration, May 2005, pp2-3 and pp23-32, viewed 1 August 2012, [http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy\\_and\\_research/gcim/gmp/gmp34.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/gmp/gmp34.pdf). See also F Barthel and E Neumayer, 'Spatial Dependence in Asylum Migration', *London School of Economics*, 2012, viewed 2 August, <http://ssrn.com/abstract=2062832> or <http://dx.doi.org/10.2139/ssrn.2062832>.

For asylum seekers, there may be further consideration of the likelihood of permanent residency or protection in a destination country, and potentially, access to services such as healthcare, education, housing, welfare and employment.

## The global situation

Today there are around 15.2 million refugees (people outside their country of origin found to be in need of international protection under the terms of the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol* (Refugees Convention)) and nearly 900,000 asylum seekers (those seeking international protection who may not necessarily be found to be a refugee).<sup>39</sup> Of these, around 80 per cent are unable to travel beyond an adjacent country that provides initial asylum, which puts much of the refugee and asylum-seeker burden on the developing world.<sup>40</sup>

- On average, Afghans represent one of every four refugees in the world, with 95 per cent of them located in Pakistan and Iran.
- Pakistan hosts the largest number of refugees worldwide (around 1.7 million, with another million unregistered), followed by the Islamic Republic of Iran (around 900,000).<sup>41</sup>
- Of the estimated 1.6 million Iraqi asylum seekers in the world, the majority reside in neighbouring countries (around 1 million in Syria, 500,000 in Jordan, 50,000 in Iran and 30,000 in Lebanon).<sup>42</sup>
- South Africa and Kenya each host refugee numbers in the hundreds of thousands. The city of Dadaab in north-eastern Kenya hosts the largest refugee complex in the world, housing more than 559,000 registered refugees and several thousand more asylum seekers who are unregistered.<sup>43</sup>

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39 'Year of Crises: UNHCR Global Trends 2011', *UNHCR*, 2011, viewed 27 July 2012, <http://www.unhcr.org/4fd6f87f9.html>.

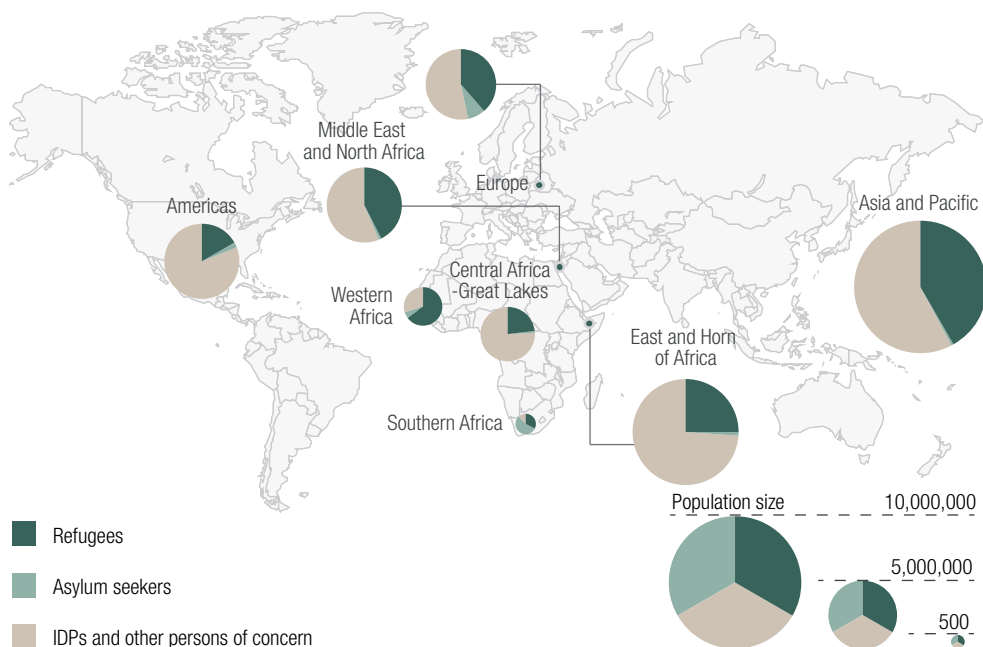
40 Ibid.

41 '2012 UNHCR Country Operations Profile – Islamic Republic of Iran', *UNHCR*, 2012, viewed 26 June 2012, <http://www.unhcr.org/pages/49e486f96.html> and '2010 UNHCR Country Operations Profile – Pakistan', *UNHCR*, 2012, viewed 26 June 2012, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e487016&submit=GO>.

42 'Protracted Refugee Situations – Iraqis', *University of Oxford Refugee Studies Centre*, February 2012, viewed 26 June 2012, <http://www.prsproject.org/case-studies/contemporary/iraqis/>.

43 '2012 UNHCR Country Operations Profile – Kenya', *UNHCR*, 2012, viewed 2 August 2012, <http://www.unhcr.org/pages/49e483a16.html>.

**Figure 9.** Populations of Concern to UNHCR (January 2011)



Source: *UNHCR Global Trends 2011*

Developing countries that host refugee populations from neighbouring states (CFAs) are often least-equipped to deal with such an influx. Most receive limited international support for the kind of capacity building that might stabilise refugee and asylum seeker populations and promote temporary protection or integration – by enabling provision of employment opportunities, education and so on – in a way that reduces the imperative for onward migration.<sup>44</sup>

More of the world's refugees are in protracted exile than ever before, and for longer periods.<sup>45</sup> Many CFAs have hosted large refugee populations for years. For countries such as Pakistan, Iran and Kenya, long-term refugee populations place additional demands on already overstretched resources and infrastructure and can contribute to 'host fatigue';<sup>46</sup> particularly when the chances of large-scale repatriation or international assistance towards resettlement appear slim. The Office of the United Nations High Commissioner for Refugees (UNHCR)

44 'Protracted refugee situations: the search for practical solutions', *UNHCR*, 2010, viewed 2 August 2012, <http://www.unhcr.org/4444afcb0.pdf>.

45 'Protracted Refugee Situations', *Refugee Studies Centre*, University of Oxford, 2011, viewed 2 August 2012, <http://www.prsproject.org/protracted-refugee-situations/>.

46 'Afghan Solutions Strategy', *UNHCR*, viewed 22 July 2012, <http://www.unhcr.org/pages/4f9016576.html>. See also 'No Turning Back: A review of UNHCR's Response to the Protracted Refugee Situation in East Sudan', *UNHCR*, 2012, viewed 2 August 2012, <http://www.humansecuritygateway.com/showRecord.php?RecordId=36388>.

estimates that some 7 million people are in protracted refugee situations,<sup>47</sup> characterised by large numbers of refugees who have moved beyond the initial emergency phase but cannot attain a durable outcome in the foreseeable future (UNHCR identifies a major protracted refugee situation as one in which more than 25,000 refugees have been in exile for more than five years). The average timeframe for these situations is now around 20 years, up from an average of nine years in the early 1990s.<sup>48</sup>

Global refugee numbers have remained relatively steady despite different crises and conflicts in the past decade. In the same timeframe, the number of internally displaced persons (IDPs) worldwide has consistently exceeded refugee and asylum seeker numbers; in 2011 an estimated 26.4 million people were considered internally displaced<sup>49</sup> (Figure 10). Unlike refugees, IDPs have not crossed an international border to seek protection, even though they may be displaced for similar reasons as refugees. IDPs also legally remain under the protection of their own government, even though that government may be the cause of their flight.

**Figure 10.** Global Forced Displacement 2001 - 2011



Source: UNHCR Global Trends 2011

47 'A Year of Crises: UNHCR Global Trends 2011', UNHCR

48 'Protracted Refugee Situations', *Refugee Studies Centre*, University of Oxford.

49 'A Year of Crises: UNHCR Global Trends 2011', UNHCR

## Refugee protection

The international system of refugee protection is a combination of elements, among them:

- preventative measures such as development assistance, helping with conflict resolution, peace keeping and rebuilding infrastructure;
- temporary protection in a country of first asylum until a durable outcome can be found; and
- durable outcomes promoted by UNHCR. UNHCR's primary purpose is to safeguard the rights and well being of refugees, but its ultimate goal is to help find durable outcomes that will allow refugees to rebuild their lives in dignity and peace.

UNHCR promotes three durable solutions:<sup>50</sup> voluntary repatriation (return), local integration and resettlement in a third country. UNHCR prefers refugees to be able to repatriate to their home country on a voluntary basis. Most refugees want to return to their homes when it is safe to do so, and this is the most desirable outcome for the individual, their society and the international community.

While difficult, repatriation is particularly important because UNHCR's two other durable outcomes are less likely to be implemented on a large-scale: comparatively small numbers of the world's displaced people are locally integrated or achieve permanent resettlement in third countries via accepted asylum processes. Support for reconstruction, reintegration and reconciliation helps ensure the success of repatriation as a durable solution.

Local integration in a CFA is an alternative in cases where voluntary repatriation is not possible. CFAs are usually in the same region as the refugee's home country, and cultural ties can make the integration process easier, while increasing the likelihood that refugees will remain in the country of asylum permanently.<sup>51</sup> But CFAs struggle to offer the long-term protection that helps refugees stabilise their situation in a new country, which reflects both a lack of hosting capacity and a reluctance to continue to shoulder the burden without greater assistance from the West.

Resettlement in a third country is used to provide protection to refugees whose life, liberty, safety, health or fundamental human rights are at risk in their country of asylum. UNHCR usually promotes resettlement only when refugees are unable to return to their home country, or when local integration may not be viable; or if it is part of a responsibility sharing arrangement. UNHCR undertakes Refugee Status Determination (RSD), referring eligible individuals to resettlement countries for consideration for refugee status.

Australia is one of a small number of countries that operates a formal and well-established resettlement program. The top three resettlement countries of 2011 were the US (51,500), Canada (12,900) and Australia (9,200).<sup>52</sup> A number of countries – particularly European

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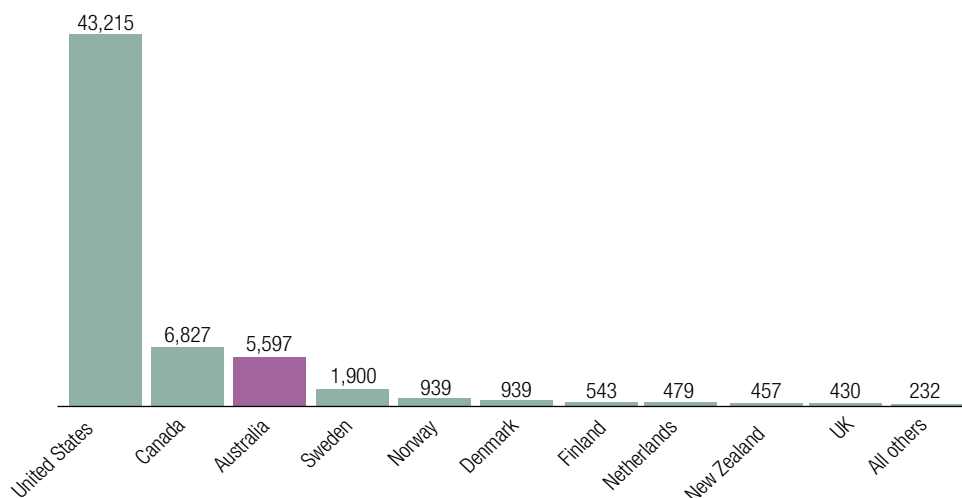
50 'The Ultimate Goal', *UNHCR*, viewed 2 August 2012, <http://www.unhcr.org/pages/49c3646cf8.html>.

51 'Local Integration, the Forgotten Solution', *Migration Policy Institute*, 2003, viewed 28 July 2012, <http://www.migrationinformation.org/feature/display.cfm?ID=166>.

52 'Resettlement in a third country: a new beginning', *UNHCR*, viewed 2 August 2012, <http://www.unhcr.org/pages/4a16b1676.html>

countries – receive large numbers of asylum seekers and focus on assisting those who arrive at their border, rather than providing places through offshore resettlement programs.

**Figure 11.** Refugees resettled through UNHCR 2011 – by countries of resettlement



Source: UNHCR (Note: Some countries such as the US, Canada and Australia also admit refugees under family reunion and other migration programs).

The Australian resettlement program is a partnership between government and NGOs. The current annual intake in the Humanitarian program is 13,750 places, which includes an onshore protection/asylum component for people who arrive in Australia and are found to be refugees, and an offshore resettlement component, which accepts people from overseas who are referred by UNHCR as being in greatest need of humanitarian assistance.

Resettlement efforts are important, but they will not solve protracted refugee situations. There is a significant global gap between the number of people who need resettlement and the number of places available: less than one per cent of the world's refugees were resettled in 2011.<sup>53</sup> Of the more than 800,000 refugees considered by UNHCR to need resettlement, an estimated 80,000 of them will be given a place.<sup>54</sup>

53 'Resettlement in a third country: a new beginning', *UNHCR*.

54 'UN refugee chief says protracted major conflicts creating new 'global refugee' populations', *UNHCR*, 4 October 2010, viewed 27 July 2012, <http://www.unhcr.se/en/print/what-we-do/environment/artikel/f12b507a44e22095b283a215f14ce645/excom-un-refugee-chief-says-protrac.html>. See also 'UN and partners to discuss ways to enhance resettlement for over 800,000 refugees', *UN News Centre*, 6 July 2012, viewed 1 August 2012, <http://www.un.org/apps/news/story.asp?NewsID=42408&Cr=refugee&Cr1>.



## The regional situation

The Asia Pacific region has experienced high levels of migration, particularly intra-regional migration, since the 1980s. Rapid economic growth in some countries – particularly Malaysia, Singapore and Thailand – has led to a surge in labour migration from near neighbours including Myanmar, Cambodia, Indonesia, and the Philippines.<sup>55</sup> Pronounced regional income disparities are an ongoing incentive for the ‘poor and low skilled’ to migrate. Migration from outside the region, particularly from South Asia and the Middle East – including from Afghanistan, Pakistan, Sri Lanka, Iraq and Iran – is also common. Reasons for travel vary but are usually based on a desire for work, protection, onward travel or some combination of the three. Indonesia and Malaysia, in particular, have seen a steady increase in irregular arrivals in recent years.

Extensive land and sea borders, and governments’ limited capacity to adequately monitor them, mean that an estimated 30 to 40 per cent of all migration within the region is undocumented.<sup>56</sup> In some cases, this is because the regional mechanisms for regular migration are insufficient to address the labour shortages of expanding economies. Malaysia and Thailand, as the primary destinations in the region, host approximately three million undocumented migrants between them. Thailand alone hosts an estimated two million migrant workers, many without legal status or Thai documentation.<sup>57</sup> Thailand is also a major country of asylum for ethnic minorities from Myanmar, with groups of new arrivals ranging in numbers from a few hundred to several thousand entering the country on a temporary basis, due to tensions in the border area.<sup>58</sup>

Existing irregular migration paths into, and within, the region can facilitate secondary or onward migration to destination countries such as Canada and Australia. But many irregular migrants to the region prefer to remain, having reached a country that offers them relative security and some opportunity for livelihood. Malaysia is a good example: its Rohingya refugee population has achieved a level of *de facto* integration that means few seek

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55 ‘Situation report on international migration in East and South-East Asia’, Regional thematic working group on international migration including trafficking, *IOM*, 2008, viewed 2 August 2012 [http://www.iom.int/jahia/webdav/shared/shared/mainsite/published\\_docs/brochures\\_and\\_info\\_sheets/iom\\_situation\\_report.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/brochures_and_info_sheets/iom_situation_report.pdf). See also G Hugo, ‘Migration in the Asia Pacific’, *Global Commission on International Migration*, 2005, viewed 1 August 2012, [http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy\\_and\\_research/gcim/rs/RS2.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/rs/RS2.pdf). See also ‘Trends & issues in Crime and Criminal Justice No. 401: Migration and people trafficking in Southeast Asia’, *Australian Institute of Criminology*, 2010, viewed 2 August 2012, [http://www.aic.gov.au/publications/current\\_per\\_cent20series/tandi/401-420/tandi401.aspx](http://www.aic.gov.au/publications/current_per_cent20series/tandi/401-420/tandi401.aspx). See also S Castles and M Miller, ‘Migration in the Asia Pacific Region’, *Migration Policy Institute*, 2009, viewed 30 July 2012, <http://www.migrationinformation.org/feature/display.cfm?ID=733>.

56 G Hugo, ‘Migration in the Asia Pacific’, *Global Commission on International Migration*.

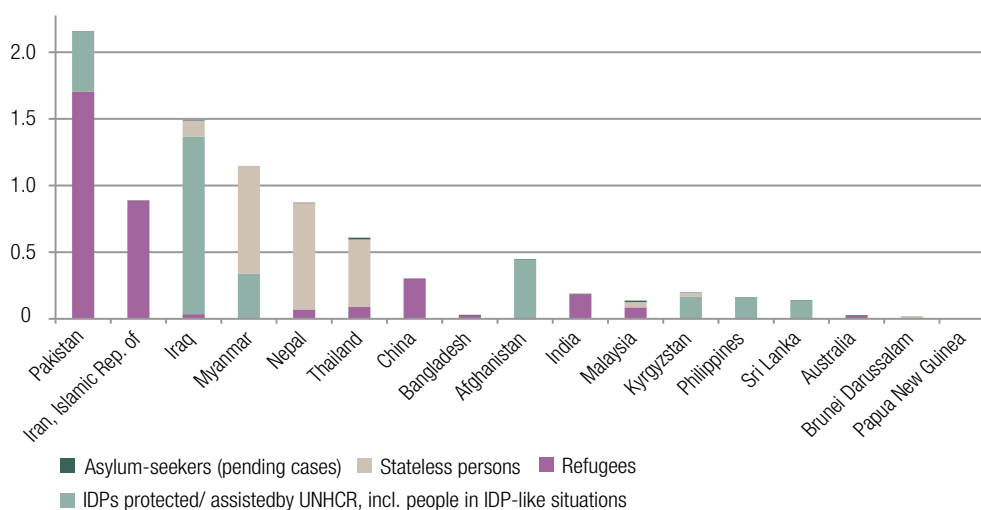
57 Ibid.

58 Ibid.

onward migration.<sup>59</sup> It is also the case that many Irregular Maritime Arrivals (IMAs) to Australia use regular migration paths in the initial stages of their journey; for example, using visa free or visa on arrival arrangements in countries in the South-East Asian region to enter and transit, before joining irregular maritime ventures to Australia.

The Asia Pacific region hosts around 24 per cent of the global refugee population, with more than 3.6 million refugees and people in refugee-like situations in the Asia Pacific today (Figure 12).<sup>60</sup>

**Figure 12.** Asia Pacific Region 2011: Key host countries of persons of concern to UNHCR



Source: *UNHCR Global Trends 2011 and UNHCR Bureau for Asia and the Pacific Country Operations Fact Sheets February 2012.*

Despite the relatively few countries party to the Refugees Convention in the region, a long-standing humanitarian tradition of hosting refugees in the region provides them with some support (although it does not guarantee international standards of protection).<sup>61</sup> Besides Australia, regional signatories to both the Refugees Convention include<sup>62</sup> Afghanistan, Cambodia, China, Fiji, Iran, Japan, Kazakhstan, Kyrgyzstan, Nauru, New Zealand, Papua New Guinea (PNG) (with numerous reservations), the Philippines, Samoa, Solomon Islands, Tajikistan, Timor-Leste, Turkmenistan and Tuvalu. Of these, some have a national asylum system in place to identify asylum seekers and refugees and provide them with legal

59 S Cheung, 'Migration Control and the Solutions Impasse in South and Southeast Asia: Implications from the Rohingya Experience', *Journal of Refugee Studies* Vol. 25 (1), 2012, pp50-70. See also 'Palestinians pick Malaysia to look for refuge', *New Straits Times*, 28 July 2012, viewed 4 August 2012, <http://www.nst.com.my/latest/palestinians-pick-malaysia-to-look-for-refuge-1.114261.8>.

60 'Country Operations Fact Sheets February 2012', *UNHCR Bureau for Asia and the Pacific*, viewed 3 August 2012, <http://www.unhcr.org/pages/4a02d8ec6.html>.

61 G Hugo, 'Migration in the Asia Pacific', *Global Commission on International Migration*.

62 'Country Operations Fact Sheets February 2012', *UNHCR Bureau for Asia and the Pacific*.

protection, although most of these are limited in scope and not fully functional. Only the Philippines has acceded to the *1954 Convention relating to the Status of Stateless Persons* and no country in the region has yet acceded to the *1961 Convention on the Reduction of Statelessness*. In the rest of the region, UNHCR takes responsibility for identifying and assisting people in need of international protection, as well as providing RSD assistance to countries such as Cambodia and PNG.

Refugee determination in the Asia Pacific is complicated by mixed migration flows. There is a clear difference between forced displacement and irregular labour migration to (and within) the region. But increasingly, the two intersect to create mixed migration flows: economic migrants, refugees and asylum seekers often travel in the same direction, using the same routes and modes of transport and facing the same risks *en route*.<sup>63</sup> Migrants and refugees alike hire smugglers and are exploited by traffickers. People also move for a combination of reasons; individuals who leave their countries of origin for protection reasons may take social and economic factors into account when choosing destinations, such as seeking to join extended family or community networks elsewhere.

For many, the ability to claim asylum, and the quality of that asylum, at their final destination is an important factor. It is common for smugglers to make use of the Refugees Convention when moving irregular migrants and asylum seekers to favourable destinations, relying on destination countries' reluctance to risk returning a person to circumstances in which they face the risk of serious harm.

## The Australian context

The Australian experience of irregular migration has been quite different from that of Europe or North America. Unlike other destination countries, the majority of IMAs to Australia come from just a handful of source countries: Afghanistan, Pakistan, Iran, Sri Lanka and Iraq (or are stateless). Australia's exceptional ability to control its borders means that the only way a migrant who has arrived in Australia without documentation can remain is to claim asylum.

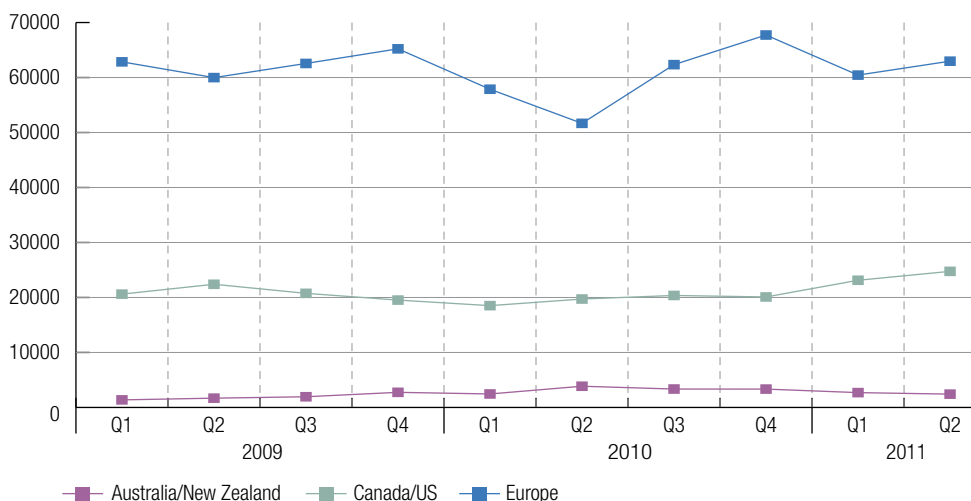
In the global context, Australia remains a minor destination country for irregular migrants and asylum seekers (Figure 13). It received 2.5 per cent of global asylum claims in 2011 (including air and maritime arrivals).<sup>64</sup> For the comparatively few labour migrants and asylum seekers who move beyond the developing world, western Europe, North America, and even parts of eastern Europe and the Middle East, are attractive destinations closer to home.

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63 'Challenges of Irregular Migration: addressing mixed migration flows', *IOM Council Papers*, MC/INF/294, 2008 and 'Irregular Migration and Mixed Migration Flows: IOM's approach', *IOM* MC/INF/297, 2009.

64 'Fewer asylum claims in Australia', *UNHCR*.

**Figure 13.** Quarterly number of asylum claims submitted in selected regions 2009-2011



Source: UNHCR: *Asylum Levels and Trends in Industrialised Countries (to first half of 2011)*.

But Australia is not immune to global pressures that contribute to irregular migration and asylum seeker flows. Historically, the number of air arrivals seeking and obtaining protection in Australia has exceeded the number of IMA asylum seekers. Since late 2008, over 18,000 IMAs have arrived in Australia; the only comparable time for this number and tempo of boat arrivals was more than a decade ago, when 12,176 people arrived on 180 vessels in 1999 – 2001 (Table 6).

This accelerated pace of boat arrivals has changed the composition of Australia's onshore protection caseloads and put significant pressure on the asylum system. Growing numbers of would-be asylum seekers joining irregular maritime ventures to Australia have also led to loss of life at sea: since 2000, an estimated 946 people have died (or been presumed deceased) while attempting to reach Australia by boat, 604 of them since October 2009.<sup>65</sup>

<sup>65</sup> See Table 7 in Attachment 2, 'Number of Deaths and Missing Persons at Sea from October 2001 to June 2012', *Australian Customs and Border Protection Service (ACBPS)*, 2012.

**Table 6.** IMAs in Australia (boat arrivals)

	98-99	99-00	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13 (to 31/7/12)	TOTAL
Total vessels	42	75	54	17	1	2	0	6	3	3	23	117	89	111	32	575
Total people	919	4,175	4,137	3,049	1	68	0	57	96	25	980	5,315	4,700	8,092	1,798	33,412
Afghanistan	92	1,270	2,250	1,121	0	0	0	3	0	0	574	2,990	1,309	3,384	367	13,360
Iraq	120	2,253	1,012	1,521	0	0	0	0	0	0	67	374	471	402	71	6,291
Iran	0	230	517	115	0	0	0	0	0	0	20	358	1,643	1,425	312	4,620
Sri Lanka	21	32	59	178	0	0	0	0	83	0	291	770	242	1,356	712	3,744
Stateless*	0	19	132	32	1	0	0	1	0	0	18	578	724	660	205	2,370
Other	686	371	167	82	0	68	0	53	13	25	10	245	311	865	131	3,027

Source: Department of Immigration and Citizenship (DIAC).

\* Includes Rohingya, Palestinians and Farsi Kurds.

## ATTACHMENT 2: PEOPLE SMUGGLING AND AUSTRALIA

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It is difficult to provide a comprehensive global picture of people smuggling. By its nature, people smuggling is a criminal activity that is not always visible or quantifiable. Worldwide, certain irregular migration patterns, routes and trends are well understood, but there are also regions and countries in which this kind of information is not collected, or not analysed.

The precise number of people who travel irregularly is unknown, although it is estimated that of the 214 million international migrants worldwide, 10-15 per cent (up to 32 million people) are in an irregular situation.<sup>66</sup> Of these irregular migrants, it is increasingly assumed that – partly in response to tightening border controls and immigration policies – the majority pay for the services of people smugglers at some point in their journey.<sup>67</sup> Many of the people using the services of a people smuggler are asylum seekers as well as being irregular migrants.

### People smuggling defined

Article 3 of the *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime* (Migrant Smuggling Protocol) supplementing the *United Nations Convention Against Transnational Organised Crime* states that three conditions must be met in order to constitute ‘migrant smuggling and related conduct’.<sup>68</sup> To be considered a people smuggler, an individual must procure the illegal entry or residence of a person into a country (of which that person is not a national or a permanent resident) for financial or material gain.

Article 6 of the same Protocol criminalises such activity, as well as requiring states to criminalise producing, obtaining or possessing fraudulent travel documents for the purpose of enabling people smuggling.<sup>69</sup> Iraq, Sri Lanka, Thailand and Indonesia are among the parties to the Convention and the Migrant Smuggling Protocol affected by irregular migration flows to Australia.

Migrant smuggling is distinct from human trafficking, although these distinctions are not always clear and the two activities can occasionally overlap: as when irregular migrants who

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66 ‘World Migration Report 2010’, *IOM*, 2010, viewed 1 August 2012, [http://www.iom.int/jahia/webdav/shared/shared/mainsite/published\\_docs/wmr-2010/4-Irregular-Migration.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/wmr-2010/4-Irregular-Migration.pdf).

67 ‘The Smuggling of Migrants by Sea’, *United Nations Office on Drugs and Crime (UNODC)* Issue Paper, p19, viewed 27 July 2012, [http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue\\_Paper\\_-\\_Smuggling\\_of\\_Migrants\\_by\\_Sea.pdf](http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue_Paper_-_Smuggling_of_Migrants_by_Sea.pdf). See also ‘Defending Refugees’ Access to Protection in Europe’, *European Council on Refugees and Exiles*, 2007, viewed 27 July 2012, <http://www.unhcr.org.refworld/docid/4766464e2.html>.

68 ‘Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime’, *General Assembly Resolution 55/25 of 15 November 2000*, viewed 26 July 2012, [http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_smug\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_smug_eng.pdf).

69 ‘Migrant Smuggling: Frequently Asked Questions’, *UNODC*, viewed 3 August 2012, <http://www.unodc.org/unodc/en/human-trafficking/faqs-migrant-smuggling.html>.

have agreed to be smuggled are later deceived or coerced into an exploitative situation. In general terms, migrant smuggling is characterised by consent and a lack of exploitation. Smuggled migrants consent to be smuggled, even if the circumstances of their journey are appalling or dangerous. Their journey ends when they have arrived at their intended international destination, and they usually provide payment of some kind in exchange for being smuggled. By contrast, trafficking involves the ongoing exploitation of a victim without their consent, and profits are usually derived from the process of exploitation rather than from the act of facilitating irregular migration.

Australian domestic legislation reflects the definition of people smuggling contained within the Migrant Smuggling Protocol. But section 236B of the *Migration Act 1958*, added in 2010,<sup>70</sup> also provides for the application of mandatory minimum penalties<sup>71</sup> for certain aggravated people smuggling offences:

- People smuggling involving exploitation, or danger of death or serious harm.
- People smuggling at least five non-citizens who have no lawful right to come to Australia.
- Presenting, making, delivering or transferring forged documents or false and misleading information in connection with the entry to Australia of non-citizens (at least five people).

Mandatory minimum penalties for any of the above are at least five years (eight years if a conviction for a repeat offence) with non-parole periods of at least three years.

## Smugglers

For organisers and facilitators, people smuggling is a 'low risk, high profit' business, with estimated annual profits between USD 3 and USD 10 billion.<sup>72</sup> Only a limited number of governments have specific policies and legislation in place to address people smuggling, and prosecutions can be difficult: securing smuggled migrants as witnesses is an ongoing problem, as is a lack of capacity to investigate and prosecute in some countries. It is also the case that in certain countries, people smuggling carries no criminal stigma but is simply viewed as 'normal business'; irregular migration is facilitated by businesses that also conduct legitimate activities, such as travel agencies or transport companies.<sup>73</sup>

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70 Added by the *Anti-People Smuggling and Other Measures Act 2010*, available at ComLaw, viewed 2 August 2012, <http://www.comlaw.gov.au/Details/C2010A00050>. Further information on the Act is available at 'Departmental Information', DIAC, viewed 2 August 2012, <http://www.immi.gov.au/legislation/amendments/2010/100701/lc01072010-01.htm>.

71 Mandatory minimum sentences were introduced in 2001, as part of the *Border Protection (Validation and Enforcement) Act 2001*, viewed 2 August 2012, [http://www.comlaw.gov.au/Details/C2004C01199/Html/Text#\\_Toc1241066794258](http://www.comlaw.gov.au/Details/C2004C01199/Html/Text#_Toc1241066794258).

72 'The International Organization for Migration and People Smuggling', *IOM*, 2011, viewed 23 July 2012, <http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/ibm/10-IOM-IBM-FACT-SHEET-People-smuggling.pdf>.

73 'Smuggling of Migrants: A Global Review and Annotated Bibliography of Recent Publications', *United Nations Office on Drugs and Crime (UNODC)*, 2011, viewed 1 August 2012, [http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Smuggling\\_of\\_Migrants\\_A\\_Global\\_Review.pdf](http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Smuggling_of_Migrants_A_Global_Review.pdf).

Inevitably, such a profitable and low-risk enterprise draws in a range of people smugglers, from local opportunists to more organised criminal networks, and reflects a variety of people smuggling services and methods. The methods by which people are smuggled depend on the organisers and the region but can also be affected by the preferences and resources of the migrant paying for the service.<sup>74</sup> The relative economic status of irregular migrants is not an indication of their protection needs, although it can make a difference to their means of travel. Those irregular migrants with better financial capacity to access particular smuggling services may utilise less dangerous routes for most, if not the entirety, of their journey.

Moving an individual across national borders illegally requires planning. The amount of planning required increases as irregular migration routes become more complicated, possibly moving through a number of transit points and countries to reach an end destination.<sup>75</sup> Smuggling services offered to migrants can range from simple one-off services to more comprehensive packages that cover air and/or land legs of the journey as well as falsified or fraudulent documents to enable entry into the country of destination.

Similarly, the sophistication of people smugglers varies from loose amateur groups specialising in facilitating particular routes, through to transnational and/or organised crime groups that may also be involved in other criminal activities that may or may not be related.

A number of people smugglers may be involved in smuggling one individual. Although the smugglers may only be loosely connected, each will fulfil specific requirements in the smuggling chain. Organisers or coordinators oversee the process, utilising contacts to arrange essential personnel, routes, modes of transportation, accommodation, falsified or fraudulent documents and (often) access to corrupt officials. These individuals might be considered people smuggling 'kingpins', overseeing and planning significant people smuggling activity and making the largest proportion of the profits. Further down the chain, intermediaries or brokers are usually located at key hubs in common migration routes. Often of the same ethno-linguistic background as the migrants they recruit, they may work for more than one organiser.<sup>76</sup> Others in a network may procure vessels or provide accommodation, or act as financial guarantors (holding payment until journeys have been successful). An even broader network of individuals, less well paid and less well informed, will provide transport, act as guides, police spotters, boat crew and so on.<sup>77</sup> For those irregular migrants en route to Australia from Indonesia, boat crew – usually young males recruited out of fishing villages – are the last and lowest link in the chain.

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74 'The Smuggling of Migrants by Sea', *UNODC*.

75 R Tailby, 'Trends and Issues in Crime and Criminal Justice no. 208: Organised Crime and People Smuggling/Trafficking to Australia', *Australian Institute of Criminology*, 2001, viewed 29 July 2011, <http://www.aic.gov.au/documents/7/F/E/ per cent7B7FE1BB81-D038-4C1E-A34D-8453FAAC6D2F per cent7Dt208.pdf>.

76 'The Smuggling of Migrants by Sea', *UNODC*.

77 'Smuggling of Migrants: A Global Review and Annotated Bibliography of Recent Publications', *UNODC*.



## Maritime people smuggling

Around the world, migrant smuggling by sea accounts for significantly less smuggling than air or land routes.<sup>78</sup> Smuggling by sea is often just one stage of a larger journey that involves land and air movements as well. But smuggling by sea is disproportionately important to particular groups of migrants as the best, or possibly only, form of available transport for a particular leg of their journey – those crossing the Gulf of Aden from Africa to Yemen, for example, or IMAs to Australia.

Migrant smuggling by sea is also the most dangerous type of smuggling for the migrants concerned, with more deaths occurring at sea than through irregular land or air travel.<sup>79</sup> The dangers of irregular maritime travel to Australia are apparent (Table 7), while similar loss of life has occurred in the Mediterranean and other established irregular maritime routes.

Maritime smuggling has different characteristics worldwide, but research has shown that it is more often carried out by criminal groups or individuals operating on loose transactional or contractual arrangements, than by strict hierarchical organisations.<sup>80</sup> Such a model gives people smugglers the flexibility to swiftly adapt to changing circumstances and to evade law enforcement authorities. Methodology also varies, although two broad approaches can be seen. At the point of arrival, smugglers aim either to reach their destination undetected by authorities – as with Cuban and Haitian vessels attempting to reach the US – or set out to be detected and intercepted or rescued by authorities within the territorial waters of the destination country.<sup>81</sup> This last approach is the most common for irregular maritime ventures to Australia.

Maritime people smuggling within and through the South-East Asian region is relatively common, whether moving would-be illegal workers (such as boats carrying Rohingya passengers hoping to work (illegally) in Thailand or Malaysia) or asylum seekers. Within South-East Asia, Australia is a key destination for asylum seekers, although the region also serves as a hub for other nationalities intending to claim asylum elsewhere. In recent years, Indonesia and the Gulf of Thailand have been staging or loading areas for irregular Tamil migrants on the way to Canada; a group of 76 on the *MV Ocean Lady* in October 2009 and a further 492 passengers on the *MV Sun Sea* in August 2010.<sup>82</sup> Other individuals in the region have attempted to reach New Zealand via maritime ventures<sup>83</sup>.

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78 'The Smuggling of Migrants by Sea', *UNODC*.

79 Ibid.

80 A Schloenhardt, 'Research and Public Policy Series No. 44: Organised Crime and Migrant Smuggling Australia and the Asia Pacific', *Australian Institute of Criminology*, 2002, p26, viewed 22 July 2012, [http://www.aic.gov.au/documents/9/7/E/per\\_cent7B97EFC2BE-3D43-4E9B-B9D0-4AC71800B398\\_per\\_cent7Drpp44.pdf](http://www.aic.gov.au/documents/9/7/E/per_cent7B97EFC2BE-3D43-4E9B-B9D0-4AC71800B398_per_cent7Drpp44.pdf).

81 'The Smuggling of Migrants by Sea', *UNODC*.

82 'Investigation of migrant ship sharply criticized by Crown prosecutors', *The National*, 10 May 2011, viewed 31 July 2012, <http://news.nationalpost.com/2011/05/10/investigation-of-tamil-migrant-ship-sharply-criticized-by-prosecutors/>. 'Toronto Man arrested in MV Sun Sea human smuggling case: RCMP', *The National*, 6 June 2012, viewed 31 July 2012, <http://news.nationalpost.com/2012/06/06/toronto-man-arrested-in-mv-sun-sea-human-smuggling-case-rcmp/>.

83 'Chinese boatpeople weigh up NZ journey', *Sydney Morning Herald*, 11 April 2012, viewed 31 July 2012, <http://www.smh.com.au/opinion/political-news/chinese-boatpeople-weigh-up-nz-journey-20120410-1wn1p.html>.

## Australian context

The two possible means of entry to Australia are by air or sea. Organised facilitation of irregular entry occurs via both routes. However, arrival by air, while possible, is more difficult: some form of fraudulent documentation, access to corrupt officials en route, or both, is usually necessary.<sup>84</sup> It is more common for air arrivals to exploit the visitor visa system, individually or in groups. Boat ventures better suit those without access to air travel. But those who decide to join irregular maritime ventures to Australia take significant risks; since 2001, 964 passengers have died (or gone missing, presumed dead) on irregular maritime ventures.

**Table 7.** Number of Deaths and Missing Persons at Sea from October 2001 to June 2012

Date	Boat name	Estimated deaths/missing persons	Incident Details
19-10-01	SIEV X	352*	Foundered vessel off Indonesia, 352 missing presumed drowned
8-11-01	SIEV 10	2	Foundered vessel , 2 confirmed deceased
15-04-09	SIEV 36	5	Explosion on boat near Ashmore Reef, 5 deceased, multiple casualties
10-09	Unknown	103**	Alleged missing vessel, all passengers missing presumed drowned
1-11-09	SIEV 69	12	Foundered vessel, 12 confirmed deceased
9-05-10	SIEV 143	5*	5 passengers missing presumed drowned after abandoning vessel north of Cocos Islands
11-10	Unknown	97**	Alleged missing vessel, all passengers missing presumed drowned
15-12-10	SIEV 221	50*	Foundered Vessel off Christmas Island, 30 deceased, up to 20 missing presumed drowned
1-11-11	N/A	30*	Foundered vessel off coast of southern Java, Indonesia, 8 confirmed deceased, 22 unaccounted for presumed drowned
17-12-11	N/A	201*	Foundered vessel off the coast of central Java, Indonesia, 103 confirmed deceased, 98 missing presumed drowned, 49 rescued
1-02-12	N/A	11	Foundered vessel off Johor, Malaysia, 11 confirmed deceased
21-06-12	N/A	92*	Foundered vessel north east of Christmas Island, 17 confirmed deceased, up to 75 unaccounted for presumed drowned, 110 rescued
27-06-12	N/A	4*	Foundered vessel north of Christmas Island, 1 confirmed deceased, 1-3 unaccounted for (the range is due to some passengers claiming they saw two crew members 'get away' when the boat started taking on water, that is, two of the unaccounted for may not have perished), 130 rescued.
<b>Total</b>		<b>964***</b>	

\* Total denotes estimated number of persons unaccounted for.

\*\* Estimates are derived from publicly available information and are generally believed to account for all those persons unaccounted for on the alleged missing vessels of October 2009 and November 2010.

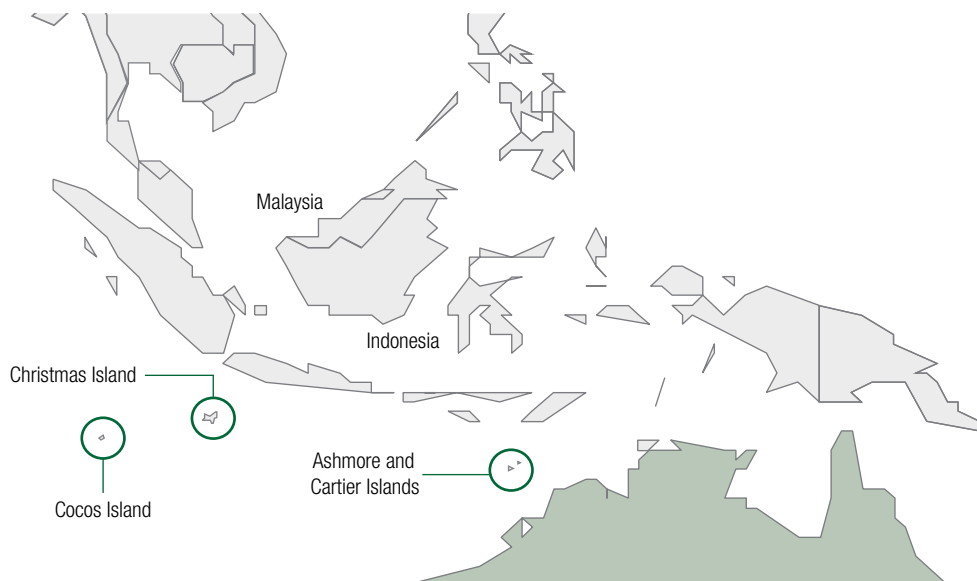
\*\*\* Total inclusive of estimates for October 2009 and November 2010 alleged missing vessels.

Source: ACBPS and DIAC.

84 'The Smuggling of Migrants by Sea', UNODC.

Since the beginning of 2012, a number of boats carrying Sri Lankan asylum seekers have arrived at the Cocos (Keeling) Islands en route to Australia. But unless earlier intercepted by Australian maritime authorities, the vast majority of irregular maritime ventures to Australia continue to arrive off Australia's northern coastline, at either Ashmore or Christmas Island.

**Figure 14.** Christmas, Cocos and Ashmore and Cartier Islands



*Source: Taskforce supporting the Expert Panel on Asylum Seekers*

With the exception of some boats carrying Burmese or Rohingya asylum seekers, it is rare that IMAs to Australia are nationals of countries in the South-East Asian region. Boat arrivals are dominated by a few key nationality groups, primarily Afghan Hazaras, Iranian, Iraqi and Sri Lankan nationals. The high number of particular nationalities migrating to Australia by boat demonstrates the sophistication and ability of people smugglers in source, transit and sometimes in destination countries to move large numbers of people through the region, with all of the contacts and planning that entails.

Aside from the Sri Lankan ventures, nearly all current IMAs depart from Indonesia (some ventures departed from Malaysia before 2010). Almost always, these boat ventures represent the final leg of an irregular migrant's longer journey from the Middle East or South Asia. For some IMAs, the network that they use for one leg may not be the same as for others; it is increasingly common for smugglers to specialise in particular routes. In South-East Asia, this may mean that an IMA pays for a smuggling package overland or by air to Indonesia, but will then need to broker a separate deal for the final boat leg to Australia. For many Iranian IMAs, who are able to utilise Indonesia's visa free and visa-on-arrival arrangements, the final boat leg is the only point at which they engage a smuggler's services. Other key nationalities joining boat ventures to Australia – Afghans, Iraqis, and to a lesser extent, Sri Lankans or Pakistanis – may need to travel through a series of transit countries to do so, sometimes before even reaching South-East Asia.

### *An international response*

People smuggling is a global and a regional problem. To facilitate and profit from irregular migration, networks need to transcend international borders, undermining state sovereignty and security in addition to risking the safety of irregular migrants. A successful response to people smuggling requires strengthening international cooperation – between source, transit and destination countries – to remove ‘areas of impunity’ for smugglers along smuggling routes<sup>85</sup> and to promote practical measures for cooperation such as:

- effective information and intelligence sharing;
- law enforcement and immigration cooperation;
- increasing public awareness to discourage people smuggling and warn those who may be susceptible; and
- addressing the root causes of irregular migration.

Australia is an active participant in regional (and global) mechanisms that facilitate cooperation on combating people smuggling, such as the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime*.

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85 ‘The Smuggling of Migrants by Sea’, *UNODC*.



## ATTACHMENT 3: AUSTRALIA'S INTERNATIONAL LAW OBLIGATIONS WITH RESPECT TO REFUGEES AND ASYLUM SEEKERS

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### Introduction

There are four areas of international law that are likely to be of most relevance to Australia's policies with respect to asylum seekers:

- the Refugees Convention;
- international human rights law;
- the law of the sea; and
- principles of state responsibility.

The applicable international law will depend on the details of a specific policy and the implementation of that policy.

As a general statement, legislation alone is unlikely to be able to guarantee compliance with Australia's international law obligations. Compliance depends on what Australia does by way of legislation, administration and practice.

### Refugees Convention

The Refugees Convention defines the word 'refugee' and provides that Contracting States need to accord to refugees certain standards of treatment. Australia is a party to the Refugees Convention.

#### *Who is a refugee?*

Article 1A(2) defines a refugee as any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion:

- is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country; or
- who, not having a nationality and being outside the country of his/her former habitual residence is unable or, owing to such fear, is unwilling to return to it.

Article 1C relates to the cessation of refugee status. It sets out the circumstances in which the Refugees Convention will cease to apply to refugees. For example, the Refugees Convention will cease to apply to a refugee who can no longer continue to refuse to avail himself/herself of the protection of his or her country of nationality because the circumstances in connection with which he/she has been recognised as a refugee have ceased to exist.

Under the Convention, certain persons can be excluded from refugee status such as where there are serious reasons for considering that the person has committed a war crime or crime against humanity) (Article 1F). Other persons, although determined to be a refugee, may still be able to be returned to their country of origin. For example, where they represent a danger to the security of the country or have committed a particularly serious crime.

### *Where does the Refugees Convention apply?*

There are a range of views within the international law community on this issue.

The position of successive Australian Governments has been that the Refugees Convention only applies to persons within Australia's territorial boundaries (that is, landward of the outer limits of the territorial sea).

### *Non-refoulement*

Under Article 33(1) of the Refugees Convention, a Contracting State has an obligation to not expel/return (that is, *refoule*), either directly or indirectly, a refugee to a place where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion.

*Non-refoulement* obligations apply to the transfer of a refugee to a third country, regardless of whether or not that third country is a Contracting State to the Refugees Convention.

A Contracting State must examine whether its *non-refoulement* obligations would prevent the transfer of a refugee to a country which is not the refugee's country of origin.

- A Contracting State cannot transfer a refugee to a third country if the refugee has a well-founded fear of persecution in that third country, or if there is a risk that the third country will return the refugee to another country (for example the country of origin) where the refugee has a well-founded fear of persecution.
- These obligations also apply to the return of a refugee to a transit country, where the refugee may have been for a temporary period of time.

As making a determination about a person as a refugee is only declaratory of their existing refugee status, these obligations in effect apply to asylum seekers who have yet to be assessed. That is, they are asylum seekers who may actually be refugees.

### *Penalties*

Depending on the circumstances, transit through third countries may still constitute coming directly from a territory where a refugee's life or freedom was threatened.

### *What is the process for deciding a person is a refugee?*

The Refugees Convention does not indicate what procedures are to be adopted for the determination of refugee status. It is left to each Contracting State to establish the procedure for refugee status assessments that it considers most appropriate. However, UNHCR has provided guidance on this matter.

### *What does the Refugees Convention require?*

Contracting States must apply the provisions of the Refugees Convention to refugees without discrimination as to race, religion or country of origin (Article 3).

What standard of treatment a Contracting State is required to accord to refugees depends on the level of 'connection' that the refugee has with the State. The levels of 'connection' can generally be broken into the following categories:

- All refugees 'lawfully in' (that is, lawfully present in) a country.
- Refugees 'lawfully staying' (that is, ongoing presence, residence) in a country.
- Refugees 'habitually resident in a country' (for example artistic rights and industrial property rights) (Article 14).

There is no rule under international law that an asylum seeker must seek protection in the first State in which effective protection might be available. However, a refugee does not have an entitlement, under international law, to have his or her status determined in a particular place.

## International human rights law

### *Non-refoulement*

Australia has obligations under the *International Covenant on Civil and Political Rights* (ICCPR) and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* not to return a person to a country where he/she would be at a real risk of irreparable harm by way of arbitrary deprivation of life or application of the death penalty, torture, or cruel, inhuman or degrading treatment or punishment.

Where *non-refoulement* concerns arise, an assessment of the real risk of harm must take into account all the circumstances of the particular case. These could include: the personal risk faced by the claimant; the human rights record of the relevant country; and, if relevant, the content and credibility of any agreements or assurances as to treatment.

Australia's *non-refoulement* obligations under international human rights law exist regardless of whether a person is entitled to *non-refoulement* protection under the Refugees Convention.



## *Non-discrimination*

Australia has obligations under a number of treaties, including the ICCPR (Articles 2, 3 and 26), *International Covenant on Economic, Social and Cultural Rights* (Articles 2 and 3) and the *Convention on the Rights of the Child* (CRC) (Article 2), not to discriminate on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

However, not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the relevant treaty. The requirement of reasonableness includes a consideration of proportionality to the aim to be achieved.

## *Rights of the child*

Article 3 of the CRC requires Australia to ensure that the best interests of the child are a primary consideration in any actions involving a child.

In addition, Article 24(1) of the ICCPR requires Australia to take such measures of protection as are required by a child's status as a minor. Article 24(1) does not, however, define which protective measures are required by a child's status as a minor.

## *Family rights*

There is no right to 'family reunion' under international human rights law.

Article 10(1) of the CRC requires States Parties to deal with applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification in a positive, humane and expeditious manner.

Articles 17(1) and 23(1) of the ICCPR require States Parties to ensure that there is no *arbitrary* interference with the family and to protect the family.

## *Extraterritorial application of international human rights law*

There are a range of views within the international law community on this issue.

The Australian Government has acknowledged, at least in relation to the ICCPR, that 'there may be exceptional circumstances in which the rights and freedoms set out under the Covenant may be relevant beyond the territory of a State party'. The Government has accepted that Australia's human rights obligations may apply extraterritorially where it is exercising 'effective control' over territory abroad (this includes exercising the power to proscribe and enforce laws).

International bodies, including the UN Human Rights Committee and the European Court of Human Rights, have held that, in certain circumstances, a person will be subject to a State's jurisdiction where the State exercises 'effective control' over a person extraterritorially – in which case, relevant human rights obligations will apply.

## Law of the sea

Australia's obligations that relate to the interdiction of a suspected irregular entry vessel (SIEV), the rescue of persons at sea and safety of life at sea (in addition to any obligations under international human rights law and the Refugees Convention) arise from:

- the *United Nations Convention on the Law of the Sea* (UNCLOS);
- the *International Convention on Maritime Search and Rescue* (SAR Convention); and
- the *International Convention for the Safety of Life at Sea* (SOLAS Convention).

### UNCLOS

UNCLOS sets out the jurisdictional status of waters and also provides for a duty to render assistance.

#### Jurisdictional status of waters

UNCLOS identifies five maritime zones which may be relevant to interdiction, including:

- internal waters (Articles 2, 8);
- territorial sea (Articles 2, 3, 4, 17);
- contiguous zone: (Article 33);
- exclusive economic zone: (Articles 55, 56, 57); and
- high seas: (Article 86).

A coastal State has a right of 'hot pursuit' which can be exercised when it has good reason to believe that a foreign-flagged vessel has violated its laws and regulations.

A State can interdict a foreign-flagged vessel in the high seas with the flag State's consent. The powers that may be exercised on board the vessel are those which have been agreed with the flag State.

#### Duty to render assistance

Every State must require the master of a vessel flying its flag, in so far as he or she can do so without serious danger to the vessel, crew or passengers, to:

- render assistance to any person found at sea in danger of being lost; and
- in so far as such action may be reasonably expected of the master, proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance (Article 98(1)(a), (b)).

### *SAR Convention*

A Party has an obligation to use search and rescue units, and other available facilities, to provide assistance to persons in distress at sea in its search and rescue region (SRR).

Parties shall ensure that assistance is provided to any person in distress at sea, regardless of the nationality or status of a person or the circumstances in which the person is found.

### *SOLAS Convention*

On receiving information that persons are in distress at sea, the master of a ship, which is in a position to provide assistance, must proceed with all speed to their assistance.

- This obligation applies regardless of the nationality or status of such persons or the circumstances in which they are found.

Where assistance has been provided to persons in distress in a State's SRR, that State has primary responsibility to ensure that coordination and cooperation occurs between Governments, so that survivors are disembarked from the assisting ship and delivered to a place of safety.

As a matter of practice 'a place of safety' could be the nearest convenient port. This will not necessarily be a port in the territory of the State in whose SRR an incident occurs, nor in the territory of the State of the vessel rendering assistance.

## State responsibility

If a breach of an international obligation (such as a human rights obligation) occurs, international law prescribes rules which determine when a particular State is responsible for that breach. Key principles of state responsibility include:

- A State is responsible for conduct that may be attributed to it. The basic principle is that a State will be responsible for any actions of its officials to the extent that they are acting in a government capacity.
- The conduct of bodies which are not, or persons who are not, State organs may also be attributed to a State if, for example, the State instructs or directs or controls that conduct.
- In addition, a State may be responsible for wrongful conduct committed by another State, where the first State knowingly aids or assists in that conduct.

## ATTACHMENT 4: AUSTRALIA'S CONTRIBUTION TO INTERNATIONAL PROTECTION

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### Introduction

As a member of the international community, Australia shares responsibility for protecting refugees and resolving refugee situations. Australia is an active contributor to the system of international refugee protection, working with UNHCR and the international community to contribute towards comprehensive, integrated responses to refugee situations.

#### *Influencing international policy and action on refugee situations*

Australia engages in a number of international fora with intergovernmental organisations and non government partners to address international protection issues. This includes active participation in UNHCR's governance and policy discussions, resettlement meetings and informal consultations on emerging issues. For example, as a member of UNHCR's Executive Committee, Australia meets with other members every year to review and approve the agency's programs and budget and to discuss a wide range of international protection and other issues.

Australia is also an active participant at the Annual Tripartite Consultations on Resettlement (ATCR), which brings together UNHCR, resettlement states and non-government organisations (NGOs). It provides the opportunity to address a range of policy and procedural matters, including: advocacy, capacity building and operational support. Australia was the chair of ATCR in 2011-12 with the Refugee Council of Australia as the partner NGO.

In addition to participating in broader international fora, Australia is a leader in refugee policy and action within our own region. See Attachment 6 for further detail on Australia's regional involvement on refugee and asylum seeker issues.

#### *International development assistance and capacity building*

Australia helps to ease the plight of refugees and displaced persons through targeted development assistance provided by Australian Government agencies. See Attachment 6 and [www.auseid.gov.au](http://www.auseid.gov.au) for further detail on Australia's international development assistance relating to refugee situations.

## Humanitarian Program and how Australia implements its international protection obligations

The Humanitarian Program has two important functions:

- A. It enables Australia to fulfil its international obligations under the Refugees Convention and other relevant human rights conventions containing *non-refoulement* (non-return) obligations by offering protection to people already in Australia. Successful applicants are granted a permanent Protection visa.
- B. It expresses Australia's commitment to refugee protection by going beyond these obligations and offering resettlement to people overseas for whom this is the most appropriate option.

The offshore resettlement component comprises two categories of permanent visas:

- A. A refugee category for people who are subject to persecution in their home country, who are typically outside their home country, and are in need of resettlement. The majority of applicants who are considered under this category are identified and referred by UNHCR to Australia for resettlement. The Refugee category includes the Refugee, In-country Special Humanitarian, Emergency Rescue and Woman at Risk visa subclasses.
- B. A Special Humanitarian Program (SHP) category for people who:
  - B.1 are outside their home country, subject to substantial discrimination in their home country and proposed by a person or an organisation in Australia; or
  - B.2 have a proposer in Australia who is an immediate family member.

In the case of persons in category B.1 above, proposers must be Australian citizens, permanent residents or eligible New Zealand citizens or organisations operating in Australia. For category B.2 proposers must hold or have held a specified humanitarian visa. For both categories, applicants must meet 'compelling reasons' for grant criteria.

## Visa options

### *Permanent humanitarian visas (offshore application)*

Within the offshore component of the Humanitarian Program there are five visa subclasses. Four subclasses fall within the Refugee category and one within the SHP.

The Refugee category assists people who are subject to persecution in their home country and have a strong need for resettlement. In selecting people under this category Australia works closely with UNHCR – which refers most applicants that are resettled in Australia. The visa subclasses within the Refugee category are:

- Refugee – for applicants who have fled persecution in their home country and are living outside their home country.

- In-country Special Humanitarian – for applicants living in their home country who are subject to persecution.
- Emergency Rescue – for applicants who are living in or outside their home country and who are in urgent need of protection because there is an immediate threat to their life and security.
- Woman at Risk – for female applicants and their dependants who are subject to persecution or are people of concern to UNHCR, are living outside their home country without the protection of a male relative and are in danger of victimisation, harassment or serious abuse because of their gender. This subclass recognises the priority given by UNHCR to the protection of refugee women who are in particularly vulnerable situations.

People granted a permanent humanitarian visa have the same access to government support services as other permanent residents in Australia. In recognition of the challenges in adjusting to a new life in another country, the government also provides a range of services to support refugee and humanitarian entrants once they arrive. This assistance, provided within their first five years of settlement, is designed and administered through specialised settlement programs and services which:

- provide settlement information and orientation;
- address English language learning, translating and interpreting needs;
- provide support to the community development of new cultural groups; and
- address specialist needs, such as torture and trauma counselling.

Refugee and humanitarian entrants may also be eligible for assistance under the Humanitarian Settlement Services (HSS) scheme, which provides a coordinated case management approach tailored to the individual's needs.

### *Permanent protection visa (onshore application)*

As part of Australia's RSD procedures, a person who arrives and seeks Australia's protection has their claims assessed on an individual basis against the Refugees Convention, with reference to up-to-date information on conditions in the applicant's home country. The assessment also takes into account Australia's international obligations under other relevant human rights treaties to which Australia is a party, namely the ICCPR and CAT.

The ICCPR and CAT provide that Australia must not forcibly return a person to a country where there are substantial grounds for believing that there is a real risk they would be subjected to significant harm as a necessary and foreseeable consequence of their return. A person will suffer significant harm if they will be subjected to the death penalty, be arbitrarily deprived of their life, or be subjected to torture or cruel, inhuman or degrading treatment or punishment.

People who are found to be owed protection are eligible for the grant of a Protection visa, providing they also satisfy health, character and security requirements. People who are found not to be owed Australia's protection, and have no lawful basis to remain in Australia, are expected to return to their country of origin or former habitual residence.

People granted a permanent Protection visa have the same access to government support services as other permanent residents in Australia and may be eligible for assistance under the HSS.

### *Temporary humanitarian visas*

#### Subclass 449 Humanitarian Stay (Temporary) visa

The subclass 449 visa (also known as a 'safe haven' visa) is intended to allow for entry and temporary stay in Australia in humanitarian crisis situations. Individuals must be in grave fear for their personal safety because of circumstances that led to their displacement from their place of residence. Subclass 449 visas are granted on the understanding that the visa holder will return to their home country when it is considered safe to do so.

A person cannot apply for a subclass 449 visa in the usual way – that is, they cannot initiate an application themselves. Application is only by acceptance of an offer made by the Minister for Immigration, who determines the length of stay. Applicants must meet relevant security, character and health requirements, although the health requirement may be completed onshore, if necessary.

Subclass 449 visa holders do not have access to mainstream Commonwealth health care or income support. Holders cannot sponsor or propose relatives to Australia, nor may they re-enter the country if they leave. Subclass 449 visa holders are prevented from applying for any visa (apart from another subclass 449 visa) by section 91K of the *Migration Act 1958*, unless the Minister for Immigration (the Minister) agrees to lift the application bar. Subclass 449 visas are not counted under the Humanitarian Program (or the Migration Program).

#### Subclass 786 Temporary (Humanitarian Concern) visa

Created in July 2000, the subclass 786 visa has mainly been granted to members of former 'safe haven' visa caseloads, some of whom were unable to return home because they required ongoing medical treatment and/or torture and trauma counselling.

Subclass 786 visas are typically granted to persons who hold a subclass 449 visa in Australia and if the Minister for Immigration considers there are humanitarian reasons for allowing the person further stay.

Subclass 786 visa holders are eligible to apply for Medicare and Centrelink benefits, access public education for children, English as a second language training and have full work rights. Holders cannot sponsor or propose any relatives to Australia nor does this visa have any travel rights. The Minister determines the length of stay, up to a maximum of three years. Subclass 786 visa grants are counted against the Humanitarian Program.

## Humanitarian Program outcomes

**Table 8:** Grants by Program component 1996–97 to 2011–12

Program Year	Refugee grants	SHP grants	SAC grants	Sub-total offshore grants	Sub-total onshore grants	Offshore (per cent)	Onshore (per cent)	Total grants
1996–97	3,334	2,470	3,848	9,652	2,250	81.1	18.9	<b>11,902</b>
1997–98	4,010	4,636	1,821	10,467	1,588	86.8	13.2	<b>12,055</b>
1998–99	3,988	4,348	1,190	9,526	1,830	83.9	16.1	<b>11,356</b>
1999–00	3,802	3,051	649	7,502	2,458	75.3	24.7	<b>9,960</b>
2000–01	3,997	3,116	879	7,992	5,741	58.2	41.8	<b>13,733</b>
2001–02	4,105	4,197	40	8,342	3,974	67.7	32.3	<b>12,316</b>
2002–03	3,996	7,212	0	11,208	911	92.5	7.5	<b>12,119</b>
2003–04	3,851	8,912	0	12,763	840	93.8	6.2	<b>13,603</b>
2004–05	5,289	6,684	0	11,973	1,015	92.2	7.8	<b>12,988</b>
2005–06	5,699	6,739	0	12,438	1,398	89.9	10.1	<b>13,836</b>
2006–07	5,924	5,157	0	11,081	1,821	85.9	14.1	<b>12,902</b>
2007–08	5,951	4,721	0	10,672	2,153	83.2	16.8	<b>12,825</b>
2008–09	6,446	4,471	0	10,917	2,497	81.4	18.6	<b>13,414</b>
2009–10	5,988	3,234	0	9,222	4,534	67.0	33.0	<b>13,756</b>
2010–11	5,998	2,973	0	8,971	4,828	65.0	35.0	<b>13,799</b>
2011–12	6,004	714	0	6,718	7,041	48.8	51.2	<b>13,759</b>

Source: DIAC received on 7 July 2012. Data prior to 2001–02 is based on published historical information. Data from 2001–02 onwards was provided on 30 June 2011 and may vary from previously published figures.

### 2011-12 Program outcomes

Australia's Humanitarian Program of 13,750 places was fully delivered in 2011-12. Included in the 13,759 visas granted in 2011-12 were 6,004 offshore refugee visas, following referral by UNHCR. The remaining 7,755 places went to onshore arrivals – by air and boat – and to the 714 SHP visas.

Under the offshore program, Australia resettled people from Myanmar, Iraq, Afghanistan, Bhutan and Ethiopia, along with other countries in the Middle East, Asia and Africa regions.

Of the offshore refugee component, 13.7 per cent were visas granted under the 'woman at risk' program, exceeding the target of 12 per cent. The program is for women and their dependents subject to persecution and who are particularly vulnerable.



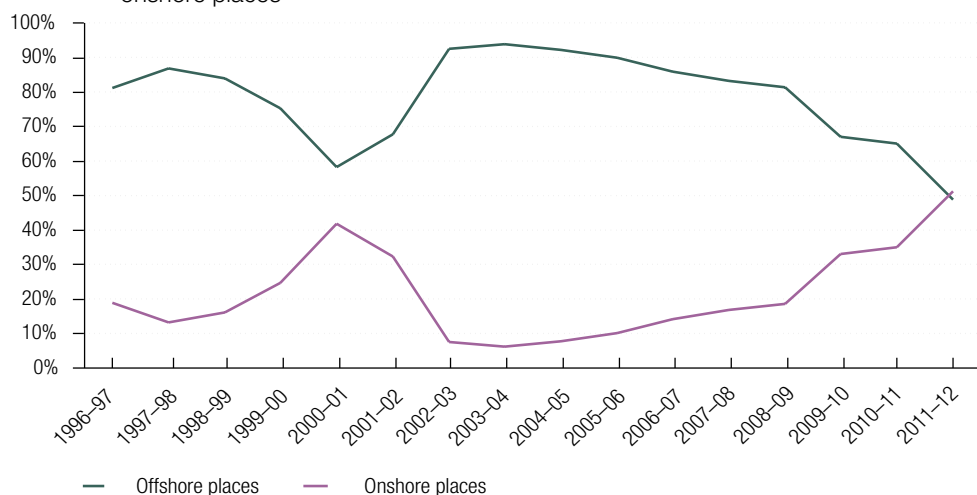
There is pressure on Australia's Humanitarian Program on two fronts:

- A. Reduced places for the SHP due to increased onshore Protection visa grants, particularly for people who arrived as IMAs.
- B. Within the SHP, demand by Protection visa holders who arrived as IMAs to reunite with their immediate ('split') family.

As noted, there were only 714 SHP visas granted in the 2011-12 Program, which was the smallest SHP intake since its inception in the early 1980s. There is currently a backlog of 20,000 undecided applications of which the majority are immediate or 'split' family members of Protection visa holders. There are very few places now available for other (not immediate) family members, particularly from non-IMA communities in Australia. All SHP applicants face a wait of many years.

As at 1 August 2012, there were 13,509 onshore applicants and IMAs awaiting a Protection visa outcome. Based on current finally determined grant rates (Attachment 5, Table 15), it is estimated around 12,000 applicants will be granted a Protection visa in the 2012-2013 program year.

**Figure 15:** Australia's Humanitarian Program – percentage of offshore and onshore places



Source: DIAC, Data received on 7 July 2012.

## Historical approaches

### *Safe Haven visas*

In 1999, subclass 448 (Kosovar Safe Haven) visas were granted to almost 4000 displaced Kosovars who were in desperate need of assistance because of conflict in their home region. Safe Haven centres were established at military barracks throughout Australia. At these centres a range of services were provided including medical and dental treatment, educational and recreational activities, language services and specialised torture and trauma counselling.

Also in 1999, the Humanitarian Stay (Temporary) subclass 449 visa was initially introduced in response to the humanitarian crisis in East Timor. Almost 2,000 visas were granted to East Timorese who were identified as needing Australia's assistance. More recently, this visa has been used to provide temporary stay to 54 East Timorese in May 2006.

### *Temporary Protection visas (TPVs)*

TPVs were introduced by the Howard Government in October 1999 in response to a surge in individuals using people smugglers to travel to Australia without authorisation. TPV arrangements were intended to reduce incentives for people to bypass or abandon effective protection in other countries.

Under the arrangements, unauthorised arrivals who were found to be refugees had access to a three-year visa only, after which their need for protection was reassessed. TPV holders had access to medical and welfare services, but had reduced access to settlement services, no access to family reunion and no travel rights. If a person who held a TPV left Australia their visa ceased and they had no right of return.

In 2001, legislative changes were introduced to provide that a TPV holder would be ineligible for a permanent Protection visa if, en route to Australia, they resided in a country for seven or more days where they could have sought and obtained effective protection.

The rule proved difficult to interpret and apply because of questions about what 'resided' meant and also as to what was meant by 'could have sought and obtained effective protection'.

TPV grants from inception to abolition (1999-2007) was 11,206.<sup>86</sup> Of the 11,206 people granted a TPV, 9,043 were irregular maritime arrivals.<sup>87</sup> Of this number 8,600 (95 per cent) were eventually granted a permanent visa in Australia.<sup>88</sup> The Rudd Government abolished TPV arrangements in 2008, including repealing relevant regulations.

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86 'IMAs – An Historical Study: 1990 to 30 June 2008', DIAC.

87 Ibid

88 Ibid

### *Special Assistance Category (SAC) visas*

In the 1990s, there was ongoing community support for aiding other ethnic groups with close links to Australia whose lives were severely affected by conflicts in their countries, but who did not meet the traditional humanitarian resettlement criteria. The Government's response was the introduction of the SAC in April 1991. Overall, ten SACs were introduced. These included the following groups:

- Soviet minorities
- East Timorese living in Portugal, Mozambique or Macau
- citizens of the former Yugoslavia
- Burmese
- Vietnamese
- Cambodians
- Sri Lankans
- Sudanese

The major growth in the SAC program occurred after the SAC for citizens of the former Yugoslavia was introduced. In 1995-96, SACs provided visas to 6,910 people and more than half of the Humanitarian Program comprised either SAC or onshore protection grants. A review of the SAC program in 1996 determined that all the categories would be gradually brought to a close by the end of 2001.

## **ATTACHMENT 5: ASYLUM CASELOADS AND RSD RATES IN AUSTRALIA AND GLOBALLY**

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## 1. Australian context

Table 9: IMAs and air arrivals<sup>89</sup> in Australia

	98-99	99-00	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	TOTAL
Total vessels	42	75	54	17	1	2	0	6	3	3	23	117	89	111	32*	575
Total people, including:	919	4,175	4,137	3,049	1	68	0	57	96	25	980	5,315	4,700	8,092	1,798	33,412
Afghanistan	92	1,270	2,250	1,121	0	0	0	3	0	0	574	2,990	1,309	3,384	367	13,360
Iraq	120	2,253	1,012	1,521	0	0	0	0	0	0	67	374	471	402	71	6,291
Iran	0	230	517	115	0	0	0	0	0	0	20	358	1,643	1,425	312	4,620
Sri Lanka	21	32	59	178	0	0	0	0	83	0	291	770	242	1,356	712	3,744
Stateless**	0	19	132	32	1	0	0	1	0	0	18	578	724	660	205	2,370
Other	686	371	167	82	0	68	0	53	13	25	10	245	311	865	131	3,027
Total people, including:	8,077	8,141	8,861	7,026	4,960	3,485	3,062	3,191	3,723	3,987	5,072	5,986	6,337	7,036	554***	79,498
China (PRC)	1,003	1,040	1,212	1,232	1,011	753	918	964	1,040	1,252	1,188	1,293	1,124	1,216	107	15,353
India	373	699	652	647	609	404	167	302	378	194	353	301	556	906	87	6,628
Indonesia	1,850	679	953	840	359	191	137	208	182	219	211	178	196	133	5	6,341
Sri Lanka	424	430	408	303	150	122	289	209	460	397	478	328	160	137	9	4,304
Fiji	127	395	927	479	242	131	62	34	78	44	116	564	331	271	14	3,815
Other	4,300	4,898	4,709	3,525	2,589	1,884	1,489	1,474	1,585	1,881	2,726	3,322	3,970	4,373	332	43,057

Source: DIAC, consolidated on 6 August 2012.

\* All IMA statistics for 2012-13 refer to the period up to 31 July 2012.

\*\* Includes Rohingya, Palestinians and Faili Kurds.

\*\*\* All air arrivals statistics for 2012-13 refer to the period up to 27 July 2012.

<sup>89</sup> Data on air arrivals is not confined to those persons who sought protection immediately upon arrival at an Australian airport but includes all persons who arrived in Australia lawfully on a visa (e.g. tourists, students and other temporary entrants) and applied for a Protection visa at a later date.

**Table 10:** IMAs by age

	2008-09		2009-10		2010-11		2011-12	
	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent
0-17 years	78	8	740	13	1,082	22	1,603	19
18+ years	955	92	4,875	87	3,828	78	6,716	81
Total	1,033	100	5,615	100	4,910	100	8,319	100

Source: DIAC, received on 26 July 2012. Data includes crew and is based on vessel interception date not arrival date.

**Table 11:** IMAs by sex

	2008-09		2009-10		2010-11		2011-12	
	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent
Female	47	5	402	7	866	18	837	10
Male	986	95	5,213	93	4,044	82	7,482	90
Total	1,033	100	5,615	100	4,910	100	8,319	100

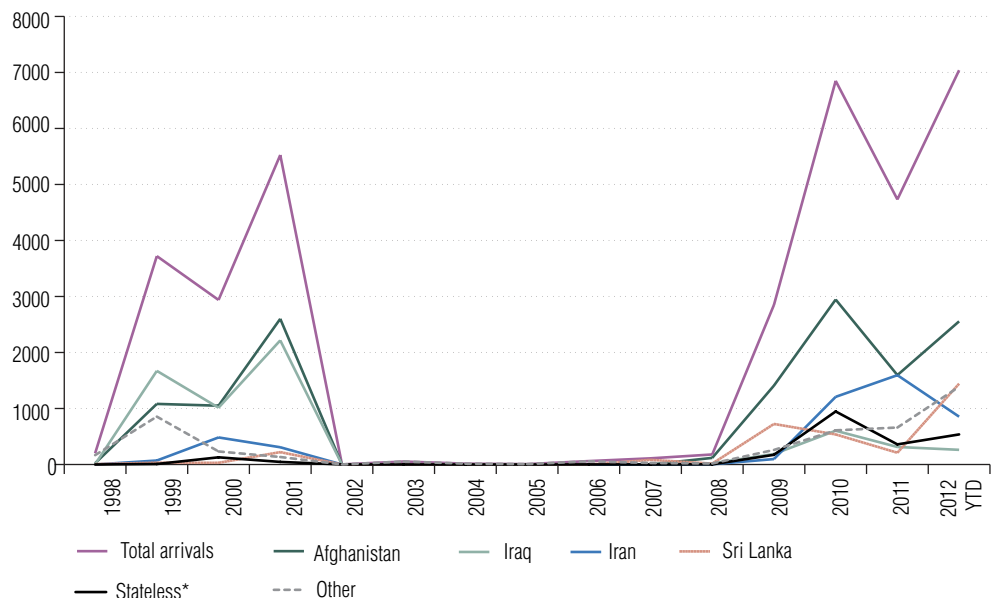
Source: DIAC, received on 26 July 2012. Data includes crew and is based on vessel interception date not arrival date.

**Table 12:** IMAs by familial status

	2008-09		2009-10		2010-11		2011-12	
	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent
Individuals who arrived as part of a family group	129	12	962	17	1,880	38	1,708	21
Single adult males	860	83	4,196	75	2,535	52	5,659	68
Single adult females	3	0	25	0	25	1	74	1
Unaccompanied minors	41	4	432	8	470	10	889	11
Total	1,033	100	5,615	100	4,910	100	8,319	100

Source: DIAC, received on 26 July 2012. Data includes crew and is based on vessel interception date not arrival date. Figures rounded to nearest per cent.

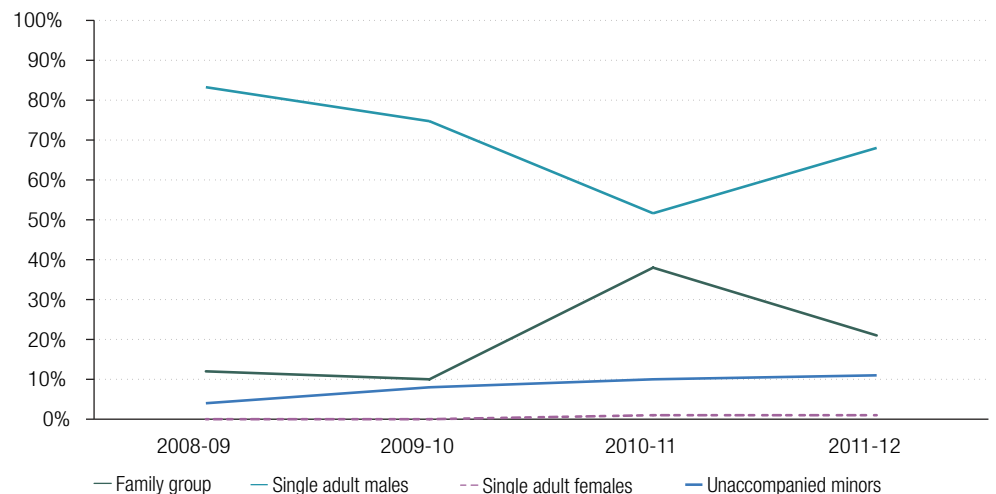
**Figure 16:** Key IMA caseloads in Australia



Source: DIAC.

\* Includes Rohingyas, Palestinians and Faili Kurds.

**Figure 17:** IMAs by familial status



Source: DIAC.

## Refugee Status Determination (RSD) rates for IMAs

Australian RSD rates set out in this attachment are visa grant rates rather than recognition rates, because recorded dates in systems for visa grants are more reliable than recorded dates for recognition that a person is in need of protection. A difference between the two rates can arise if the flow of positive RSD decisions and grants is uneven. The actual determination that a person is a refugee or is owed protection may occur in a different period to visa grant. The effect of this is strongest for the IMA caseload which has a more uneven profile (in terms of the flow of decisions and health, security or character checks) compared with the non-IMA caseload. In general, the effect disappears if rates are calculated for periods of six months or greater.

Variance in primary grant rates over time may reflect:

- changes to the composition of the asylum caseload;
- the changing nature of claims put forward by asylum seekers;
- changes in information on country conditions; and
- provision of country specific guidance notes to assist decision makers to make better informed decisions.

The overturn of negative primary decisions at the review stage may be explained by a range of factors, including:

- more detailed information on protection claims or new claims submitted at review;
- changing circumstances in countries of origin in the time between a primary decision and review assessment;
- different assessments by reviewers on:
  - the credibility of a person's claims;
  - whether internal relocation in the applicant's home country is practical and reasonable; and
  - country information.

In the following tables:

\* indicates that less than 50 cases decided for this cohort in the given period.

All data provided by DIAC unless otherwise stated.



## RSD rates for IMAs

**Table 13:** Primary Protection visa grant rates for key IMA caseloads by nationality<sup>90</sup> (per cent)

	1999-00	2000-01	2001-02	2002-03	2008-09	2009-10	2010-11	2011-12
<b>All</b>	<b>78</b>	<b>78</b>	<b>80</b>	<b>13</b>	<b>100</b>	<b>74</b>	<b>38</b>	<b>71</b>
Afghanistan	96	84	80	0*	100	78	38	84
Sri Lanka	77*	42*	67*	0*	100*	77	47	70
Stateless	50*	22	68*	0*	100*	67	43	72
Iraq	77	92	90	47*	100*	60	41	76
Iran	12*	25	43	0*	100*	52	28	61

**Table 14:** Review overturn rates for key IMA caseloads by nationality<sup>91</sup> (per cent)

	1999-00	2000-01	2001-02	2002-03	2008-09	2009-10	2010-11	2011-12
<b>All</b>	<b>46</b>	<b>51</b>	<b>58</b>	<b>40</b>	#	<b>66</b>	<b>83</b>	<b>82</b>
Afghanistan	70*	77	73	43*	#	#	87	90
Sri Lanka	100*	56*	46*	12*	#	#	70	82
Stateless	100*	25	18*	71*	#	#	84	82
Iraq	57	81	94	100*	#	#	75	75
Iran	11*	29	21	52*	#	#	79	79

# There were no review outcomes in 2008-09, and only 83 review outcomes in 2009-10.

**Table 15:** Finally determined rates for key IMA caseloads in Australia<sup>92</sup> (per cent)

	1999-00	2000-01	2001-02	2002-03	2008-09	2009-10	2010-11	2011-12
<b>All</b>	<b>90</b>	<b>91</b>	<b>89</b>	<b>50</b>	<b>100</b>	<b>98</b>	<b>88</b>	<b>88</b>
Afghanistan	99	98	94	50	100	100	94	96
Sri Lanka	100*	82*	76	12*	100*	90	90	87
Stateless	100*	45	51	75*	100*	100	95	90
Iraq	98	98	91	89*	100*	94	92	86
Iran	27*	48	51	58*	100*	97	95	88

90 A primary Protection visa grant is defined as a Protection visa granted to an irregular maritime arrival following a positive RSD made by a DIAC delegate.

91 The overturn rate for IMAs is a percentage of positive review recommendations on IMA refugee status as a proportion of the total number of review recommendations during the period.

92 The finally determined rate for IMAs is a measure of the Protection visas granted to IMAs as a proportion of all decisions made on refugee status in a specified period by a departmental delegate or following merits review.

## RSD rates – non-IMAs

**Table 16A:** Primary Protection visa grant rates for non-IMAs by top 5 countries of citizenship<sup>93</sup> (per cent)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
<b>All</b>	<b>25</b>	<b>35</b>	<b>35</b>	<b>36</b>	<b>25</b>	<b>25</b>
Iran	56	76	80	88	78	70
Pakistan	45	64	66	72	54	40
China (PRC)	12	17	15	20	11	10
Zimbabwe	45	52	76	74	50	36
Egypt	38	58	42	46	29	23

**Table 16B:** Primary Protection visa grant rates for non-IMAs by selected nationalities (per cent)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
<b>All</b>	<b>25</b>	<b>35</b>	<b>35</b>	<b>36</b>	<b>25</b>	<b>25</b>
Afghanistan	100*	90*	92*	86	68	72
Sri Lanka	74	88	80	68	46	52
Stateless	50*	50*	67*	74*	44*	71*
Iraq	93	97	88	91	67	78
Iran	56	76	80	88	78	70

<sup>93</sup> Primary Protection visa grant rates are an expression of visa grants at the initial processing stage as a percentage of all primary decisions (grants and refusals) made in a given period. Top five countries are based on 2010-11 program year primary grants.

**Table 17A:** Refugee Review Tribunal set aside rates by top 5 countries of citizenship<sup>94</sup>  
(per cent)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
China (PRC)	22	22	21	27	22	17
India	6	5	4	6	7	6
Egypt	N/A <sup>#</sup>	24	31	52	36	61
Pakistan	20	24	17	42	36	50
Nepal	16	N/A <sup>#</sup>	27	33	16	9
<b>Avg. for all nationalities</b>	<b>22</b>	<b>18</b>	<b>19</b>	<b>24</b>	<b>24</b>	<b>27</b>

Source: Migration Review Tribunal / Refugee Review Tribunal website: <http://www.mrt-rrt.gov.au/>

<sup>#</sup> Information not available as nationals from this country were not in the top ten lodgements for the given year.

**Table 17B:** Refugee Review Tribunal set aside rates by selected nationalities (per cent)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Afghanistan	69*	50*	No cases	50*	73*	75*
Sri Lanka	49	31	38	32	59	28
Stateless	0*	0*	33*	No cases	33*	90*
Iraq	100*	60*	63*	55*	93*	82*
Iran	63*	53*	38*	80*	76	80
<b>Avg. for all nationalities</b>	<b>22</b>	<b>18</b>	<b>19</b>	<b>24</b>	<b>24</b>	<b>27</b>

Source: Refugee Review Tribunal.

94 The Refugee Review Tribunal sets aside a decision when it substitutes a new decision in place of the primary (negative) decision. Top five caseloads are based on 2011-12 lodgements.

**Table 18A:** Final Protection visa grant rates for non-IMAs by top 5 countries of citizenship<sup>95</sup>  
(per cent)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Iran	81	92	89	98	96	94
China (PRC)	31	38	32	42	30	27
Pakistan	50	73	77	85	80	74
Zimbabwe	100	80	90	86	77	66
Egypt	71	63	56	72	67	66
<b>Avg. for all nationalities</b>	<b>39</b>	<b>47</b>	<b>42</b>	<b>51</b>	<b>43</b>	<b>44</b>

**Table 18B:** Final Protection visa grant rates for non-IMAs by selected nationalities (per cent)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Afghanistan	100*	100*	100*	100	79	92
Sri Lanka	82	91	90	76	78	64
Stateless	100*	100*	100*	100*	76*	91*
Iraq	100	97	96	96	95	96
Iran	81	92	89	98	96	94
<b>Avg. for all nationalities</b>	<b>39</b>	<b>47</b>	<b>42</b>	<b>51</b>	<b>43</b>	<b>44</b>

<sup>95</sup> Final Protection visa grant rates are an expression of visa grants at the final processing stage as a percentage of all decisions (grants and refusals) made in a given period. Top five countries are based on 2010-11 program year final grants.

## 2. Persons of concern in the Middle East and South-East Asia regions

**Table 19:** Total Persons of Concern to UNHCR in selected territory/country of asylum by calendar year <sup>96</sup>

	2006	2007	2008	2009	2010	2011
Iran	969,492	964,743	981,911	1,072,346	1,075,163	886,914
Pakistan	1,047,141	2,038,154	1,939,700	4,744,098	4,041,642	2,781,067
Thailand	151,829	139,127	3,625,510	3,615,552	649,430	608,807
Malaysia	107,670	140,824	147,312	177,734	212,856	217,618
Indonesia	566	526	726	2,878	2,882	4,239

Source: *UNHCR Statistical Yearbooks 2006 to 2010; UNHCR Global Trends Report 2011.*

The composition of the asylum caseloads in these countries is:<sup>97</sup>

- Iran – Afghan (96 per cent) and Iraq (4 per cent)
- Pakistan – Afghan (99.9 per cent)
- Thailand – Stateless/Myanmar (99 per cent)
- Malaysia – Stateless/Myanmar (92 per cent), Sri Lanka (5 per cent)
- Indonesia – Afghan (67 per cent), Iranian (10 per cent), Somali (7 per cent)

**Table 20:** UNHCR RSD rates for 2011 in Malaysia and Indonesia

	Malaysia		Indonesia	
	No. of decisions	RSD rate (per cent)	No. of decisions	RSD rate (per cent)
Afghans	8	75	1,676	97
Iranians	92	75	275	94
Iraqis	160	100	461	89
Sri Lankans	553	24	145	98
<b>All nationalities</b>	<b>16,707</b>	<b>90</b>	<b>2,890</b>	<b>96</b>

Source: *UNHCR 2011 Global Trends Report.*

<sup>96</sup> UNHCR identifies seven population categories, collectively referred to as 'persons of concern': (1) refugees; (2) asylum-seekers; (3) internally displaced persons; (4) refugees who have returned home (returnees); (5) IDPs who have returned home; (6) stateless persons; and (7) other people who do not fall under any of the above categories but to whom the Office extends protection. In 2007, two sub-categories were introduced: (a) people in refugee-like situations (included under refugees); and (b) people in IDP-like situations (included under IDPs).

<sup>97</sup> 'Country Operations Fact Sheets', *UNHCR Bureau for Asia and the Pacific*, February 2012; and *UNHCR Global Appeal 2012-13*.

### 3. Global situation

According to UNHCR, an estimated 441,300 asylum applications were registered in 2011 in the 44 industrialised countries including Australia.<sup>98</sup> The 2011 level is a 20 per cent increase on 2010 figures (368,000) and the highest number of asylum applications since 2003, when 505,000 were lodged in the industrialised countries.

Australia received 11,510 asylum applications in 2011, which was a 9 per cent decrease on 2010 (12,640 applications). By comparison, the US (with 74,020 applications in 2011) had an increase of 25 per cent on 2010 (55,530 applications) and the EU (with 277,400 applications in 2011) had an increase of 15 per cent on 2010 (240,400 applications).

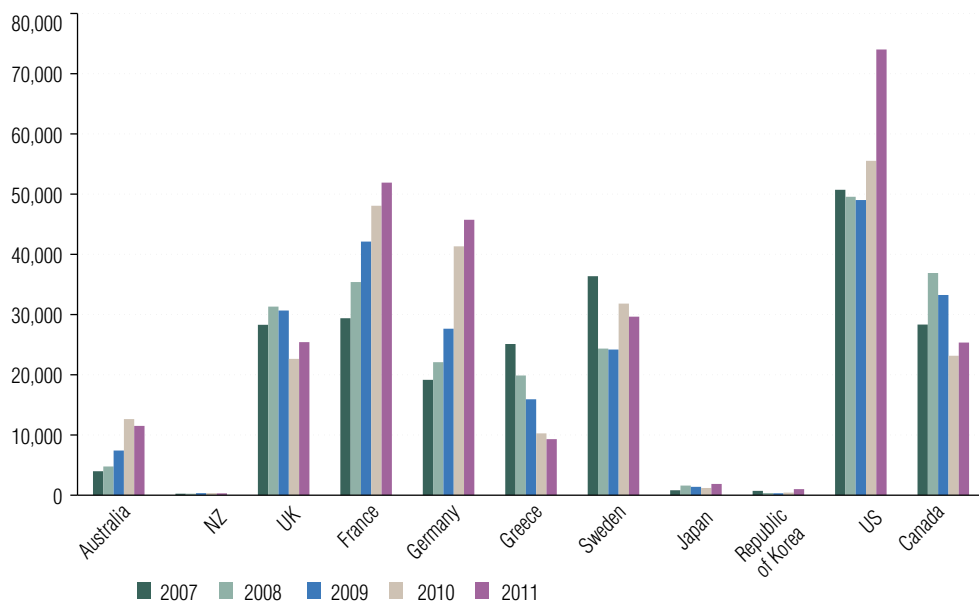
**Table 21:** Asylum applications in selected industrialised countries by calendar year

	2007	2008	2009	2010	2011
Australia	3,980	4,770	7,420	12,640	11,510
Canada	28,340	36,900	33,250	23,160	25,350
France	29,390	35,400	42,120	48,070	51,910
Germany	19,160	22,090	27,650	41,330	45,740
Greece	25,110	19,880	15,930	10,270	9,310
Japan	820	1,600	1,390	1,200	1,870
NZ	250	250	340	340	310
South Korea	720	360	320	430	1,010
Sweden	36,370	24,350	24,190	31,820	29,650
UK	28,300	31,320	30,670	22,640	25,420
US	50,720	49,560	49,020	55,530	74,020
<b>Total for all 44 industrialised countries</b>	<b>334,480</b>	<b>377,130</b>	<b>379,570</b>	<b>368,010</b>	<b>441,260</b>

Source: UNHCR, 'Asylum Levels and Trends in Industrialized Countries', 2011.

98 UNHCR Asylum Levels and Trends in Industrialized Countries, 2011.

**Figure 18:** Asylum applications in selected industrialised countries by calendar year



Source: UNHCR, 'Asylum Levels and Trends in Industrialized Countries', 2011.

**Figure 19:** Asylum applications in industrialised countries, 2011



## Nature of caseloads and RSD rates in other countries

**Table 22:** Comparison of composition of top three asylum caseloads in Canada, UK, USA and Australia

	Canada	UK	USA	Australia (IMA/non-IMA)	Australia (IMA only)
2011	Hungary	Pakistan	China	Iran	Afghanistan
	China	Iran	Mexico	Afghanistan	Iran
	Colombia	Sri Lanka	Guatemala	China	Sri Lanka
2010	Hungary	Iran	China	Afghanistan	Iran
	China	Pakistan	Mexico	Iran	Afghanistan
	Colombia	Zimbabwe	Guatemala	China	Stateless
2009	Mexico	Zimbabwe	China	Afghanistan	Afghanistan
	Hungary	Afghanistan	Mexico	China	Sri Lanka
	China	Iran	El Salvador	Sri Lanka	Stateless
2008	Mexico	Zimbabwe	China	China	Afghanistan
	Haiti	Afghanistan	Mexico	Sri Lanka	Sri Lanka
	Colombia	Iran	El Salvador	India	Iraq

Source: *Intergovernmental Consultations on Asylum, Migration and Refugees (IGC)*. Caseloads are in descending order.

**Table 23:** First instance asylum rate for selected industrialised countries

Receiving country	2008 (per cent)	2009 (per cent)	2010 (per cent)	2011 (per cent)
Australia*	32	39	26	41
Canada	42	42	38	38
France	16	11	11	8
Germany	35	28	16	16
Greece	Not available	0	3	2
New Zealand	36	23	22	3
Norway	11	11	18	27
Sweden	5	5	6	8
United Kingdom	21	19	17	25
United States	24	30	32	32

Source: *IGC*.

\*Australian figures reflect decisions on both IMA and non-IMA applications.



It is common for RSD rates to vary internationally with variations shifting over time and relative to the caseload cohorts. Disparities in global refugee rates reflect a variety of factors, including:

- different characteristics of asylum seeker caseloads and claims presented;
  - countries may receive asylum seekers from different ethnic groups of the same nationality who have varying claims for protection. For example Pashtun and Hazaras from Afghanistan, and Sinhalese and Tamils from Sri Lanka;
- other alternatives provided to asylum seekers including humanitarian or compassionate visas and subsidiary protection arrangements that don't appear in refugee recognition data;
- explicit policy directions in other countries on how to assess claims; and
- different characteristics of asylum caseloads based on the method of seeking asylum
  - for example, IMAs in Australia who make immediate requests for asylum generally have a higher RSD rate compared to students who arrive lawfully and later apply for a Protection visa after an extended period of time in Australia.

## United Kingdom

The caseloads in the UK and Australia, while similar in terms of nationality, vary significantly in profile. For example, the UK receives Sinhalese as well as Tamils from Sri Lanka, and Pashtun as well as Hazaras from Afghanistan and Pakistan. The UK does not receive spontaneous boat arrivals, however it does receive irregular, undocumented arrivals. The more recent UK Sri Lankan asylum caseload (2011-12) is more similar to the Australian non-IMA Peoples Republic of China cohort, as a larger proportion of recent asylum seekers lodged onshore following periods of being on a student visa.

Lower overall RSD rates for certain nationalities in the UK compared to Australia partly reflects different caseloads, however the UK's processes also have an impact. The UK adopts a targeted range of restrictions on appeals, including deadlines to appeal, some limitations on who can appeal, how many times an individual can appeal and access to free legal representation.

## USA

Lower RSD rates in the USA compared to Australia may be attributed to the large proportion of asylum seekers in the USA originating from Central and South America, which are not traditionally refugee producing regions. Around 18 per cent of all individuals granted asylum from 2002 to 2011 in the USA were Chinese nationals, the most of any nationality in the USA.<sup>99</sup> The RSD rate for Chinese applicants in the USA has ranged from 24 per cent to 30 per cent since 2007.

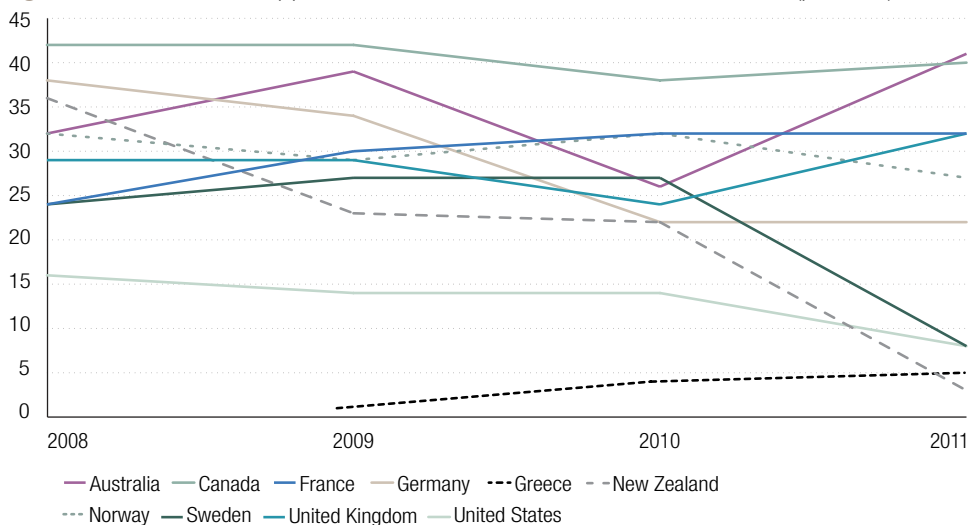
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99 'Yearbook of Immigration Statistics 2011', *US Department of Homeland Security, 2011.*

## European Union (EU)

In the EU in calendar year 2011, of the nearly 240,000 first instance decision on asylum applications, around 12 per cent were granted refugee status.<sup>100</sup> Afghans, Iraqis and Somalis were the largest groups granted protection in 2011.

**Figure 20:** First instance approval rates for selected industrialised countries (per cent)



Source: IGC.

100 'Asylum decisions in the EU27 - EU member states granted protection to 84,100 asylum seekers in 2011', *Eurostat*, 96/2012, viewed 19 June 2012, <http://epp.eurostat.ec.europa.eu>.



## ATTACHMENT 6: AUSTRALIA'S INTERNATIONAL AND REGIONAL ENGAGEMENT ON IRREGULAR MOVEMENT AND INTERNATIONAL PROTECTION

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### Overview

Australia engages closely with partner countries throughout the region on irregular movement and international protection. This engagement takes places in regional multilateral fora, such as the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, the annual ASEAN Directors-General of Immigration Departments and Heads of Consular Affairs Divisions of the Ministries of Foreign Affairs + Australia Consultation and the Pacific Immigration Directors' Conference. It also takes place directly through a series of institutionalised bilateral arrangements. Through these bilateral arrangements, Australia provides considerable technical and development assistance to boost the capacity of partner governments to respond to irregular movements, provide international protection to refugees and asylum seekers, and stabilise vulnerable populations. Australia also engages with key organisations in the region, including the UNHCR and the IOM.

### Regional multilateral fora

#### *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process)*

The Bali Process is a voluntary, non-binding forum for strengthening cooperation on people smuggling, trafficking in persons and transnational crime in the Asia Pacific region and beyond. The Bali Process aims to increase regional awareness of the consequences of people smuggling, trafficking in persons and transnational crime and improve coordination and cooperation on such issues.<sup>101</sup>

The Bali Process is co-chaired by Australia and Indonesia. There are 46 members including international organisations that participate in the forum.<sup>102</sup> There are also a number of other

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<sup>101</sup> See [www.baliprocess.net](http://www.baliprocess.net).

<sup>102</sup> Afghanistan, Australia, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, DPR Korea, Fiji, France (New Caledonia), Hong Kong SAR, India, Indonesia, Iran, Iraq, Japan, Jordan, Kiribati, Lao PDR, Macau SAR, Malaysia, Maldives, Mongolia, Myanmar, Nauru, Nepal, New Zealand, Pakistan, Palau, PNG, Philippines, Republic of Korea, Samoa, Singapore, Solomon Islands, Sri Lanka, Syria, Thailand, Timor-Leste, Tonga, Turkey, United States of America, Vanuatu, Viet Nam, IOM, and UNHCR.

countries and organisations which have observer status.<sup>103</sup> The Bali Process Steering Group comprises Australia and Indonesia as Co-Chairs, Thailand and New Zealand as coordinators and UNHCR and IOM providing expert input. It provides overall direction and coordination for the Bali Process.

## *Regional Cooperation Framework*

The fourth Bali Process Ministerial Conference in 2011 agreed to establish a Regional Cooperation Framework (RCF). The framework recognises the need for burden sharing and cooperation between source, transit and destination countries. It provides a framework for interested Bali Process members to establish practical arrangements aimed at ensuring consistent processing of asylum claims, durable solutions for refugees, the sustainable return of those found not to be owed protection and targeting people smuggling enterprises. Such arrangements can be made on a voluntary basis at a bilateral or sub-regional level.

The following core principles underpin the RCF:

- Irregular movement facilitated by people smuggling syndicates should be eliminated and States should promote and support opportunities for orderly migration.
- Where appropriate and possible, asylum seekers should have access to consistent assessment processes and arrangements, which might include a centre or centres, taking into account any existing sub-regional arrangements.
- Persons found to be refugees under those assessment processes should be provided with a durable solution, including voluntary repatriation, resettlement within and outside the region and, where appropriate, possible in-country solutions.
- Persons found not to be in need of protection should be returned, preferably on a voluntary basis, to their countries of origin, in safety and dignity. Returns should be sustainable and States should look to maximise opportunities for greater cooperation.
- People smuggling enterprises should be targeted through border security arrangements, law enforcement activities and disincentives for human trafficking and smuggling.

Practical arrangements developed under the RCF are to be guided by the following considerations:

- Arrangements should promote human life and dignity.
- Arrangements should seek to build capacity in the region to process mixed flows and where appropriate utilise available resources, such as those provided by international organisations.
- Arrangements should reflect the principles of burden sharing and collective responsibility, while respecting sovereignty and the national security of concerned States.

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103 Observer countries: Austria, Belgium, Canada, Denmark, European Commission, Finland, Germany, Italy, The Netherlands, Norway, Romania, Russian Federation, South Africa, Spain, Sweden, Switzerland, United Kingdom, United Arab Emirates. Participating agencies: ADB, APC, ICMPD, ICRC, IFRC, IGC, ILO, Interpol, UNDP, UNODC, World Bank.

- Arrangements should seek to address root causes of irregular movement and promote population stabilisation wherever possible.
- Arrangements should promote orderly, legal migration and provide appropriate opportunities for regular migration.
- Any arrangements should avoid creating pull factors to, or within, the region.
- Arrangements should seek to undermine the people smuggling model and create disincentives for irregular movement and may include, in appropriate circumstances, transfer and readmission.
- Arrangements should support and promote increased information exchange, while respecting confidentiality and upholding the privacy of affected persons.

Since the endorsement of the RCF, Bali Process members have agreed to establish the Regional Support Office (RSO) to support operationalisation of the framework. Australia and Malaysia also negotiated a Transfer and Resettlement Arrangement. This was to be augmented by a processing centre in PNG.

## *RSO*

The RSO will provide a coordination point for States to share information, build capacity, exchange best practice and pool common resources to address irregular migration in the region including issues concerning asylum seekers, refugees, human trafficking and population displacement. Australia will contribute funding and expertise for an initial four year period.

The RSO will operate in Bangkok under the oversight and direction of the Bali Process co-chairs in consultation with IOM and UNHCR. It will be staffed by officials from UNHCR, IOM and several regional States including Australia. Four foundation projects for the RSO have been endorsed:

- A regional data management initiative.
- A voluntary repatriation capacity building and support project.
- A pilot study on information exchange and data analysis on irregular migration by sea.
- Organisation of a regional roundtable on irregular movements by sea.

## *Regional Immigration Liaison Officer Network (RILON) and other Bali Process activities*

The RILON concept was established under the Bali Process as a way to facilitate information sharing on irregular movements within each source, transit and destination country. Each local RILON regularly brings together host country immigration and relevant agencies and foreign missions to share information on issues related to irregular movements of people through all borders, including travel documentation, visa issuance, and vulnerabilities at airports. So far, RILONs have been established in Bangkok, Canberra, Colombo, Kuala Lumpur and New Delhi.

One of the key ways the Bali Process delivers on its core objectives is through workshops. Bali Process workshops are usually developed at the request of the Bali Process Steering Group. Workshops provide a forum for information sharing and training. The target audience depends on the topic but is usually operational and middle management staff from appropriate agencies.

### *Association of Southeast Asian Nations (ASEAN)*

The Directors-General of Immigration Departments and Heads of Consular Affairs Divisions of the Ministries of Foreign Affairs (DGICM) is the highest forum for immigration matters within ASEAN. Following endorsement by the ASEAN Secretariat, Australia has a standing invitation to attend the DGICM through the ASEAN DGICM + Australia Consultation. Australia is the only non-ASEAN country to attend the DGICM.

The Consultation is the primary forum through which DIAC pursues its working-level border security agenda within ASEAN. In recent years, the Consultation has been used to secure management support for a wide range of practical initiatives across immigration intelligence analysis, impostor detection, investigations, training management and document examination.

### *Pacific Immigration Directors' Conference (PIDC)*

The PIDC is a forum for the heads of immigration agencies of 23 administrations in the Pacific. Australia co-funds the PIDC with New Zealand and is a permanent member of its management board. The PIDC's objective is to promote cooperation aimed at strengthening members' territorial borders and the integrity of their entry systems.

## Key partner organisations

### *UNHCR*

UNHCR is mandated to lead and coordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well being of refugees, but its ultimate goal is to help find durable outcomes that will allow refugees to rebuild their lives in dignity and peace. UNHCR is also responsible for supervising implementation of the the Refugees Convention and is a key UN agency in responding to humanitarian crises.

In **South-East Asia**, one of UNHCR's key priorities is to advocate for the rights of people of concern and for the adherence of South-East Asian States to international protection standards. UNHCR is very supportive of the RCF and has indicated a willingness to work with States to operationalise the Framework. UNHCR's focus is on the establishment of protection-sensitive responses to mixed flow situations, registration, access to asylum, RSD, and the promotion of alternative arrangements to the detention of people of concern to UNHCR.

In **Indonesia**, due to the absence of national refugee legislation and procedures, UNHCR is the primary provider of protection and assistance to refugees and asylum seekers, undertaking responsibility for registration, RSD and the search for durable outcomes. UNHCR is working to build national capacity to take on more asylum responsibilities.

In **Malaysia**, most of UNHCR's resources are dedicated to providing protection and finding outcomes for its urban refugees and asylum seekers, many of whom are Muslims from Myanmar's northern Rakhine State. UNHCR also conducts registration and RSD, monitors detention and works to secure the release of refugees.

In 2011, the **Australian** Government contributed a total of around \$52.3 million to UNHCR. Of this total funding, the DIAC provided around \$3.3 million in project funding, mostly through the Displaced Persons Program (DPP). The Australian Government through the Australian Agency for International Development (AusAID) has progressively increased its core contribution to UNHCR from \$7.4 million in 2007 to \$18 million announced in the 2011-12 budget. These increases reflect recognition of UNHCR as a key multilateral partner in Australia's humanitarian aid program and on international protection and resettlement.

## IOM

IOM is committed to the principle that humane and orderly migration benefits migrants and society. As the leading international organisation for migration, IOM acts with its partners in the international community to:

- assist in meeting the growing operational challenges of migration management;
- advance understanding of migration issues;
- encourage social and economic development through migration; and
- uphold the human dignity and well-being of migrants.

IOM provides a wide range of migration-related protection and assistance to migrants and States in order to facilitate and promote international cooperation on migration. IOM's work stretches across areas of prevention, interventions to manage caseloads, and the search for and implementation of solutions.

In coordination with UNHCR, resettlement country embassies and the Malaysian Government, IOM has facilitated the resettlement from **Malaysia** of over 20,600<sup>104</sup> refugees since 2005 to 11 countries. Departures for resettlement is projected to reach levels of 9,000 to 10,000 annually in coming years.

In **Indonesia**, IOM's activities focus on counter-trafficking, safe migration and building the capacity of Indonesia's law enforcement sector in the areas of migration and human rights. IOM works closely with the Indonesian and Australian authorities to support Indonesia's efforts to regulate the movement of irregular migrants through Indonesia. Under a Regional Cooperation Arrangement funded by Australia, IOM provides basic accommodation, medical care, an allowance for food, and counselling to irregular movers intercepted in Indonesia. IOM refers any persons seeking asylum to UNHCR.

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104 'Malaysia-Movement Assistance', *IOM Country Page – Malaysia*, viewed at 3 August 2012, <http://www.iom.int/jahia/Jahia/activities/asia-and-oceania/east-and-south-east-asia/malaysia>



Since 2007, IOM has been implementing the Reinforcing Management of Irregular Migration project. This project includes the detection and monitoring of patterns of irregular migration flows in Indonesia; raising awareness of irregular migration through information campaigns targeting both relevant government officials and local communities; and providing training to the relevant law enforcement officials at both local and provincial levels.

For the past five years, **Australia** has been one of the top ten contributors towards IOM projects. Australia contributed \$882,550 towards the administrative costs of IOM for 2012 and in 2011 Australia has provided USD 56.3 million in earmarked voluntary contributions towards domestic, regional and global projects with IOM.

Key IOM services that Australia uses include:

- facilitated travel, including travel loans, medicals, and cultural orientation, for humanitarian visa recipients;
- capacity building projects and population stabilisation operations in the Asia Pacific and Middle East;
- research and policy discussion; and
- delivery of assisted voluntary return packages.

## Australia's bilateral engagement in the region

### *Bilateral mechanisms for cooperation*

Australia has established a number of bilateral agreements and working groups on immigration and border management issues with partner countries in the region.

- The **Malaysia**-Australia Working Group on People Smuggling and Trafficking in Persons focuses on border management, legal cooperation, maritime surveillance and interdiction, law enforcement and intelligence sharing. At the Malaysia Australia Immigration Cooperation Working Group senior officers discuss initiatives to enhance immigration cooperation.
- The **Pakistan**-Australia Joint Working Group on Border Management and Transnational Crime focuses on border management, law enforcement cooperation, and legal issues, and identifies areas for technical assistance.
- The Implementation Framework for Cooperation to Combat People Smuggling and Trafficking in Persons provides Australia and **Indonesia** with additional mechanisms to aid operational-level coordination and joint strategic oversight of bilateral cooperation. The Australia-Indonesia Working Group on Immigration Cooperation is the primary forum for engagement between DIAC and Indonesian Immigration.
- The **Afghanistan**-Australia Senior Officers Meeting discusses progress and outcomes under the Memorandum of Understanding on Migration Management (MOU) and Humanitarian Cooperation.
- The **India**-Australia Joint Working Group on Visas, Passports and Consular Matters provides a forum to discuss a range of regular and irregular migration issues.

- Through the Senior Officers Exchange Program, representatives of DIAC and **China's** Ministry of Public Security engage in talks on immigration issues.
- The **Iraq**-Australia Senior Officials Talks address issues under the MOU on Security and Border Control, which covers capacity building and document examination.
- The Australia-**Cambodia** Immigration Forum builds on bilateral cooperation under the MOU concerning Mutual Cooperation in Combating Irregular Migration, People Smuggling and Trafficking.
- The Australia-**PNG** Ministerial Immigration Forum enables discussion of migration management and border security issues.

### *Supporting regional responses*

Australia provides support to countries throughout the region to strengthen their responses to irregular migration. This support ranges from technical training and operational equipment to development assistance to stabilise vulnerable populations in source and transit countries and is provided by a range of Australian Government agencies.

Australia's broad approach to national security acknowledges the contribution of our international development assistance program. The fundamental purpose of Australian aid is to help people overcome poverty. This also serves Australia's national interest by promoting stability in both Australia's region and beyond.

The majority of Australia's Overseas Development Assistance (ODA) is managed and delivered by the **AusAID**. Federal agencies other than AusAID are estimated to have delivered over 10 per cent of the aid program in 2011-12. By 2015-16 Australia's total ODA is estimated to reach \$7.7 billion.

**AFP's** budget for people smuggling for 2011-12 was \$16.9 million, which consisted of \$4.6 million for the AFP's People Smuggling Strike Team and \$12.3 million for capability and capacity building activities for law enforcement agencies in source and transit countries such as Indonesia, Malaysia, Pakistan and Sri Lanka.

The People Smuggling Strike Team supports regional operations led by local law enforcement agencies and conducts investigations in Australia and overseas in relation to people smuggling organisers, facilitators and crew.

In 2011-12, **DIAC** was allocated approximately \$70 million for international engagement and capacity building activities related to people smuggling and border control:

- \$47 million to support regional cooperation and build the capacity of source and transit countries
- \$10 million for management and care of irregular migrants in Indonesia
- \$7 million for initiatives to address the situation of displaced persons in, and promote sustainable returns to, source and transit countries
- \$7 million for returns and reintegration assistance packages.

The **Attorney-General's Department** (AGD) has a budget for strengthening regional legal frameworks to combat people smuggling and transnational organised crime of \$6.7 million over 2011-12 and 2012-13. AGD's integrated approach to building capacity with partner countries has three key pillars:

- Implementation of comprehensive anti-people smuggling laws – AGD works with partner countries to facilitate implementation of their international obligations in the People Smuggling Protocol under the UN Transnational Organised Crime Convention.
- International legal cooperation – AGD enhances countries' capacity to engage in effective international legal cooperation to ensure people smuggling prosecutions can be successfully mounted.
- Following the money – As organised crime, including people smuggling, is driven by profit, AGD's integrated approach includes helping countries 'follow the money' by strengthening anti money laundering and proceeds of crime laws.

The **ACBPS** budget for combating people smuggling for 2011-12 was over \$8.3 million. This funded information collection and intelligence analysis; overseas liaison officers; and the provision of equipment, training and development to support counter people smuggling activities and cross jurisdictional cooperation.

In 2011-12 ACBPS supported regional law enforcement agencies' capacity to combat people smuggling through the gifting of operational equipment (for example to the Sri Lanka Coast Guard) and the delivery of targeted training and development programs.

## ATTACHMENT 7: RETURNS AND REMOVALS OF PERSONS FOUND NOT TO ENGAGE AUSTRALIA'S PROTECTION OBLIGATIONS

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### Overview

The involuntary return of failed asylum seekers is an integral part of Australia's migration and border management regime. It is also fundamental to maintaining the integrity of a properly functioning international system of protection. Asylum seekers who have been found not to engage Australia's protection and have no lawful entitlement to remain in Australia are encouraged to depart voluntarily. IOM is funded to facilitate voluntary return by providing return support and reintegration assistance and counselling. Where people do not depart voluntarily and are ineligible for the grant of a Bridging visa, DIAC is required by law to detain and remove them from Australia as soon as reasonably practicable.

Once a person is considered to be available for removal, DIAC commences pre-removal planning processes (including pre-removal clearances and obtaining travel documents). Persons considered available for removal include: individuals who have completed all processes related to their protection claims including any related litigation; have requested removal; or are assessed on arrival as having no *prima facie* protection claims.

Where a person requests to be returned to their country of origin, the removal process can generally be completed within a relatively short period of time. However there are a number of complexities with effecting the involuntary return of persons who do not cooperate with their removal and have no lawful right to remain in Australia.

Involuntary removal is largely dependent on the person's and receiving country's cooperation and assistance with providing travel documents. Australia has a number of return arrangements in place to effect the voluntary and involuntary return of unlawful non-citizens. However, even with such arrangements in place, there are a number of impediments to involuntary removal which often cause delays. Throughout 2011-12, DIAC monitored, assisted or enforced the departure of 10,785 people (including on request and involuntarily). This represents a 6 per cent increase on the 10,175 departures in 2010-11.

Of the 10,785 departures<sup>105</sup> in 2011-12, a total of 50 were voluntary removals of IMAs, and two were involuntary removals of IMAs.

Since October 2008 to 3 August 2012, there have been a total of 287 removals of IMAs. Of these:

- 270 were voluntary removals; and
- 17 were involuntary removals.

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105 Departures include 'returns' from the community which are voluntary and 'removals' from detention which can be voluntary or involuntary.

## Voluntary return/removal and involuntary removal

### *Voluntary return/removal*

Given the difficulties with effecting involuntary removal, it is highly preferable that departures are voluntary wherever possible. Voluntary removal is also a safe and more dignified option. Persons in immigration detention can request their removal from Australia at any point in time. Policy measures have been put in place to encourage voluntary removal such as individual reintegration assistance (IRA) packages. The IRA package includes a cash component and in-kind assistance such as job placement support, vocational training, and small business start-up. Since the introduction of the IRA program in late 2010, a total of 122 packages have been taken up. DIAC provides funding to IOM to offer these packages.

### *Involuntary removal*

Involuntary removals are difficult to effect without the person's cooperation and without the assistance of the receiving country. Some of the key issues and impediments to effecting involuntary return include obtaining travel documents and the prolonged processes before individuals become available for removal.

### *Obtaining travel documents*

Obtaining travel documents requires establishment of the person's identity to a level sufficient to confirm nationality. The IMA caseload's lack of documentation and failure to cooperate with the removal process often means that establishing nationality and/or identity for the purpose of removal can be a complex and lengthy process. Removal is particularly difficult if countries of origin do not accept undocumented involuntary returns and do not assist with providing travel documents. To mitigate this, DIAC is actively pursuing policy measures to enable the re-documentation of IMAs and facilitate their involuntary removal. Such measures include:

- funding the identity document checking units in Afghanistan and Sri Lanka to confirm the identity of Afghan and Sri Lankan IMAs being removed;
- confirming identity through biometric data (fingerprints and facial images) checking against the databases of other countries and agencies; and
- establishing IMA status resolution identity teams to collect and test identity information to establish identity for removal purposes.

DIAC also pursues return arrangements with countries of origin to enable involuntary removal. For instance, the Australian Government signed an MOU with the Government of Afghanistan in January 2011 to facilitate the return (both voluntary and involuntary) of Afghan nationals. Involuntary removals of IMAs to countries such as Iraq and Iran have not been possible to date. DIAC has recently increased engagement with interlocutors from Iraq and Iran to progress the issue of involuntary removals.

### *Prolonged processes before becoming available for removal*

Removal is often delayed as a result of protection claim processes including merits and judicial review. For instance, clients may lodge 'out of time' judicial review applications and make repeat requests for the Minister for Immigration and Citizenship (the Minister) to intervene using his special non-compellable public interest powers. There are also mechanisms at the international level for review of decisions with requests from the relevant United Nations body to stay removal pending their consideration of the case.

One impact of the November 2010 High Court challenge (*Plaintiff M61/2010E v Commonwealth of Australia & Ors and Plaintiff M69 of 2010 v Commonwealth of Australia & Ors*) is that IMAs now have access to judicial review of their independent merits review assessment. The effect of this has been that a vast majority of IMAs now seek judicial review.

Currently, scheduled and prospective involuntary removals are impeded by an impending High Court decision raising issues of procedural fairness under the Minister's personal intervention powers.

### *Australia's current IMA removal efforts*

Between October 2008 and 3 August 2012 a total of 287 IMAs (not including crew members) were removed from Australia. Of the 287 removals over this period, 17 were involuntary removals. The remaining 270 were voluntary removals.

Of the 287 IMAs removed, 148 were persons found not to engage Australia's protection. The remainder either did not raise protection claims on arrival or whilst protection claims were pending sought voluntary removal.

As at 3 August 2012, 179 IMAs in detention or in the community on Bridging visas had no ongoing matters with DIAC or the courts. These persons are not cooperating with removal planning and DIAC is seeking travel documents or agreement of the country of return to facilitate removal. Of the 179, there were 49 Afghan; 2 Iraqi; 45 Iranian; 25 stateless; 28 Vietnamese; 18 Sri Lankan; 6 Pakistani; and 6 from other nationalities. The tables below provide IMA removal statistics (not including crew members) and non-IMA removals from 2008-2009 through to 2011-2012.

**Table 24:** Number of IMA removals from 1 July 2008 to 3 August 2012

Citizenship	IMA Removals by Citizenship							
	2008-09		2009-10		2010-11		2011-12	
	Involuntary	Voluntary	Involuntary	Voluntary	Involuntary	Voluntary	Involuntary	Voluntary
Afghanistan	0	0	0	1	0	5	0	3
Iran	0	0	0	2	0	45	0	0
Iraq	0	0	0	0	0	8	0	1
Pakistan	0	0	0	0	0	0	1	0
Sri Lanka*	0	11	15	59	0	0	0	0
Indonesia	0	2	0	60	0	0	0	0
India	0	0	0	1	0	0	0	0
Vietnam	0	0	0	0	0	20	0	1
United Kingdom#	0	0	0	1	0	0	1	0
Total	0	13	15	124	0	78	2	5
Total Onshore Removals	13		139		78		52	

\* Two Sri Lankans were returned involuntarily to PNG.

# Client was a dual Afghan/UK citizen returned to the UK

**Table 25: Number of onshore removals not including IMAs and Illegal Foreign Fishers (IFFs)**

Citizenship	Onshore Removals by Citizenship (Does not include IMAs, Illegal Foreign Fishers and other unauthorised arrivals)							
	2008-09		2009-10		2010-11		2011-12	
	Involuntary	Voluntary	Involuntary	Voluntary	Involuntary	Voluntary	Involuntary	Voluntary
Afghanistan	0	0	0	1	0	0	0	0
Iran	0	0	0	0	1	0	0	0
Iraq	0	0	0	0	0	0	0	2
Pakistan	0	7	0	6	4	11	0	13
Sri Lanka	0	8	3	4	1	5	3	11
Indonesia	1	50	1	68	2	55	2	67
India	1	30	2	43	7	86	3	155
Bangladesh	2	8	5	6	2	9	0	14
Vietnam	2	66	2	49	2	50	4	91
Asia - Other	26	621	61	603	51	711	38	1,024
Europe	6	83	12	72	8	64	10	114
Africa	1	19	7	11	7	21	7	17
Middle East - Other	1	6	5	6	0	12	1	5
The America's	4	28	2	22	5	36	2	47
Pacific Region	7	58	7	77	16	92	16	94
Not Recorded	4	71	2	0	0	12	0	35
Total	55	1,055	109	968	106	1,164	86	1,689
Total Onshore Removals	1,110		1,077		1,270		1,775	



## International experience with removals

### *United Kingdom*

Where possible, the UK returns unlawful non-citizens including failed asylum seekers to all countries. The UK uses a whole-of-government approach to negotiate better performance on returns, including through diplomatic means. The UK involuntarily returns undocumented persons to Sri Lanka and Afghanistan. Involuntary removals to Iraq are carried out on a case by case basis.<sup>106</sup> No countries have been able to effect involuntary removal to Iran of undocumented persons for some time. In 2011, the UK voluntarily and involuntarily removed a total of 1,081 Sri Lankans, 1,917 Afghans and 493 Iraqis. In the same period a total of 748 Iranians voluntarily departed the UK.<sup>107</sup> These figures include both asylum seekers and non-asylum seekers.

A direct comparison of UK and Australian statistics is complicated by the two countries' different caseloads, modalities of travel and migration processes. Taken by country of origin, the UK receives many of the same caseloads as Australia. But it often receives a different mix of ethnicities from within these countries. UK statistics also include a high number of air arrivals and irregular migrants who have arrived lawfully. Finally, the UK deals with more illegal workers than asylum seekers, most of whom retain documentation of some kind (which facilitates removal).

### *Canada*

Canada sees the return of failed asylum seekers as a key priority that helps to protect the integrity of its immigration program. It has recently undertaken broader refugee reforms including changes to its legislative and removals process (such as increased capacity and funding for removals). The average timeframe in which an asylum claim is made and all recourses are exhausted and a failed asylum seeker is removed is currently four years, although in some extreme cases this has taken up to 10 years. Between 2009 and 2010, Canada removed a total of 74 Sri Lankans, 16 Afghans, 40 Iraqis and 38 Iranians to their countries of origin (including both voluntarily and involuntarily returns). These figures include non-asylum seekers, as well as failed asylum seekers.<sup>108</sup>

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106 Iraq recently announced that it will no longer accept the involuntary return of persons from Europe (including the UK) if that person does not hold a valid Iraqi travel document. See: 'Iraqi parliament refuses to accept nationals deported from Europe', *The Guardian*, 2 July 2012, viewed 3 August 2012, <http://www.guardian.co.uk/world/2012/jul/02/iraq-parliament-deported-nationals-europe>.

107 'Removals and voluntary departures', *UK Home Office*, 24 May 2012, viewed 3 August 2012, <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-q1-2012/removals-q1-2012>.

108 *Intergovernmental Consultations on Migration, Asylum and Refugees*, 2012.

## Europe

Some European countries undertake involuntary return of failed asylum seekers from countries of origin such as Afghanistan, Pakistan, and Iraq (as well as a number of African nations). Sweden and Norway conducted involuntarily returns of Kurds and Iraqis to Iraq as late as February 2012,<sup>109</sup> while the UK conducted similar returns until 2011. However, Iraq has recently announced that it will no longer accept 'forcibly repatriated' asylum seekers from European countries, and is currently refusing to grant travel documents to Iraqis that don't want to return home.<sup>110</sup> Similar issues exist with involuntary returns to Iran from Europe.

Numerous European countries (such as the UK, France, the Netherlands, Germany, and Switzerland) also operate a Voluntary Assisted Return and Reintegration Program to encourage failed asylum seekers to return home voluntarily. Most of these programs involve some sort of reintegration package, monetary or otherwise. Switzerland, for example, has recently announced it will increase the reintegration assistance provided to 'particularly difficult cases' as a means of encouraging voluntary returns and avoiding forced returns of failed asylum seekers. In 2011, 9,641 asylum seekers were returned from Switzerland (165 of them involuntary removals through charter flights).<sup>111</sup>

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109 Sweden returned 49 Kurdish failed asylum seekers to Iraq in February 2012. A further group of 50 people were involuntarily returned to Iraq from Sweden and Norway in early 2012. See 'Kurdish asylum seekers at risk of deportation', *Rudaw*, 6 March 2012, viewed 6 August 2012, [www.rudaw.net/english/news/iraq/4499.html](http://www.rudaw.net/english/news/iraq/4499.html).

110 'Iraq refugees can't be forced home', *The Copenhagen Post*, 6 July 2012, viewed 3 August 2012, <http://www.cphpost.dk/news/national/iraq-refugees-can-per-centE2-per-cent80-per-cent99t-be-forced-home>.

111 'Paying undesirables to leave Switzerland', *Swiss Info*, 26 April 2012, viewed 3 August 2012, [http://www.swissinfo.ch/eng/swiss\\_news/Paying\\_undesirables\\_to\\_leave\\_Switzerland.html?cid=32562598](http://www.swissinfo.ch/eng/swiss_news/Paying_undesirables_to_leave_Switzerland.html?cid=32562598).

Nauru  
Submission 31



## ATTACHMENT 8: APPROACHES TO MANAGING IMAs TO AUSTRALIA

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### Introduction

Recent and historical discourse on measures to reduce the flow of IMAs to Australia has canvassed a range of options, including turning back suspected irregular entry vessels (SIEVs) from Australian waters and assessing asylum claims outside of Australia. The central policy rationale behind these approaches acknowledges that irregular dangerous boat movements should be discouraged for safety of life issues and border management reasons. However, this policy objective sits within the broader context of Australia's international obligations as a country of refuge. The difficulty in managing that balance has seen expression via a range of policy measures with varying degrees of success. The issues are complex and enduring, and will continue to be so.

### Turning back SIEVs

#### *Historical perspective*

From 1999-2001, in response to a surge in the rate of boat arrivals, in combination with other policy responses, a number of turnbacks were attempted under an Australian Defence Force (ADF) led operation. From September to December 2001, twelve asylum seeker boats (designated SIEVs) were intercepted (either inside the Australian territorial sea or contiguous zone) with attempts to enforce the turnback policy on eight occasions.

This policy, as it was implemented in 2001, typically involved Royal Australian Navy (RAN) personnel boarding a SIEV and 'steaming' it back towards Indonesian waters. These operations often involved the transfer of some or all of the asylum seekers from the SIEV onto an escorting RAN vessel while it was being 'steamed' towards Indonesian waters.<sup>112</sup>

On four occasions, asylum-seeker boats were successfully intercepted and escorted or towed back to international waters in the direction of Indonesian territorial waters. Although successful, these four operations involved the following incidents:

- on two occasions, RAN personnel undertook repairs to the boat engines; and
- on two occasions, asylum seekers jumped overboard.

Of the remaining four attempts, the boats either sank or became unseaworthy at some point during the interception or turnback operation, or non-compliant behaviour of the asylum seekers made the attempt unsustainable. In these instances, asylum seekers were transported on board RAN vessels to Christmas Island.

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112 'Testimony of Vice Admiral Griggs, Chief of Navy', Supplementary Budget Estimates Hearings 2011, *Foreign Affairs, Defence and Trade Legislation Committee*, 19 October 2011, pp. 109-112.

### *Summary of pre-conditions for implementing turnbacks*

The following principles for implementing turnbacks are based on international and domestic legal considerations, as well as diplomatic and operational considerations:

- The State to which the vessel is to be returned would need to consent to such a return.<sup>113</sup>
- Turning around a vessel outside Australia's territorial sea or contiguous zone (that is, in international waters), or 'steaming' a vessel intercepted and turned around in Australia's territorial sea or contiguous zone back through international waters could only be done under international law with the approval of the State in which the vessel is registered (the 'flag State').
- A decision to turn around a vessel would need to be made in accordance with Australian domestic law and international law, including *non-refoulement* obligations, and consider any legal responsibility Australia or operational personnel would have for the consequences to the individuals on board any vessel that was to be turned around.
- Turning around a vessel would need to be conducted consistently with Australia's obligations under the SOLAS Convention, particularly in relation to those on board the vessel, mindful also of the safety of those Australian officials or Defence Force personnel involved in any such operation.

### *Legal considerations*

Australia has a 12 nautical mile territorial sea and an adjacent 12 nautical mile contiguous zone. Under Australian and international law, Australian authorities are permitted to take action in the contiguous zone to prevent breaches of Australian migration laws that have occurred, or may occur, in our territorial seas. This includes enforcement action against a vessel suspected of smuggling people to Australia, typically designated as SIEVs.

Although people smuggling vessels are sometimes identified some distance from Australia's contiguous zone (outside 24 nautical miles), there are only limited circumstances under which Border Protection Command (BPC) is able to board these vessels outside the contiguous zone (for example, a safety of life at sea – SOLAS – incident). Therefore, most people smuggling vessels are boarded within 24 nautical miles of Ashmore Islands or Christmas Island or other Australian land mass.

Assets assigned to BPC conduct law enforcement activities on behalf of other Australian Government agencies exercising powers under the *Customs Act 1901*, *Migration Act 1958*, and *Fisheries Management Act 1991*.

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113 This may be provided through acquiescence.

### *Diplomatic considerations*

As noted, to effectively implement a turnback policy, it would be necessary to establish a bilateral agreement or understanding between Australia and the State in which the vessel is registered as well as the 'point of departure' State (which will often be the same). The most significant country in this regard is Indonesia, and such an agreement, should it be acceptable to Indonesia, would likely take some time to negotiate. Failure to obtain agreement from Indonesia (or another country of embarkation) could put significant pressure on the diplomatic relationship between Australia and Indonesia (or the relevant country), to the detriment of broader Australian interests.

Public statements by a number of senior Indonesian Government figures indicate that Indonesia's reaction to a turnback policy is likely to be negative.<sup>114</sup>

### *International obligations*

In addition to the above, Australia would be required to adhere to its obligations under international law such as relevant human rights instruments to which Australia is a party, including the Refugees Convention. For example, before turning a boat around it would be necessary to ensure that such action would not result in asylum seekers on board being *refouled* by:

- returning them directly to a country from which they are seeking protection – this is a particular issue for vessels that have travelled directly from Sri Lanka; or
- being returned to the country of embarkation if there is a likelihood that they will be forcibly removed to a third country where they face a real risk of irreparable harm.

### *Operational considerations*

Although the decision to implement a turnback policy resides with the government, at the operational level, the individual discretion to implement a SIEV turnback should reside with the Commanding Officers of the responding vessels acting in accordance with that policy. This provides appropriate flexibility for Commanding Officers to take account of their ongoing assessment of each individual situation, particularly regarding the state of the SIEV and those on board, in accordance with Australia's SOLAS obligations and mindful of the safety of all concerned. In addition, implementation of a turnback policy also needs to be mindful of the operational impacts on the ADF, particularly the availability of appropriate major fleet units.

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114 'Jakarta defiant over asylum boat towbacks', *The Australian*, 16 March 2012; 'Jakarta slams Abbott boat plan', *Sydney Morning Herald*, 24 January 2012; Australian Associated Press, 6 September 2011.

## Regional and extraterritorial processing of asylum claims

### *Summary of principles for regional and extraterritorial processing*

The following principles, which were established in March 2011 under the Bali Process RCF,<sup>115</sup> provide a basis for approaches to processing asylum claims in the region:

- Irregular movement facilitated by people smuggling syndicates should be eliminated and States should promote and support opportunities for orderly migration.
- Where appropriate and possible, asylum seekers should have access to consistent assessment processes, whether through a set of harmonised arrangements or through the possible establishment of regional assessment arrangements, which might include a centre or centres, taking into account any existing sub-regional arrangements.
- Persons found to be refugees under those assessment processes should be provided with a durable solution, including voluntary repatriation, resettlement within and outside the region and, where appropriate, possible 'in country' solutions.
- Persons found not to be in need of protection should be returned, preferably on a voluntary basis, to their countries of origin, in safety and dignity. Returns should be sustainable and States should look to maximise opportunities for greater cooperation.
- People smuggling enterprises should be targeted through border security arrangements, law enforcement activities and disincentives for human trafficking and smuggling.

In November 2010, UNHCR (a member of the Bali Process) also indicated that, while claims for international protection made by intercepted persons are in principle to be processed in procedures within the territory of the intercepting State, under certain circumstances, the processing of international protection claims outside the intercepting State could be an alternative to standard 'in-country' procedures. Notably, this could be the case when extraterritorial processing is used as part of a burden-sharing arrangement to more fairly distribute responsibilities and enhance available protection space.<sup>116</sup> In its Submission to the Panel, UNHCR have further emphasised that, in circumstances where RSD processing and the search for solutions takes place in a country other than in which an asylum seeker originally applies for asylum, it should be within the broader regional cooperation framework and:

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115 'Co-Chairs' Statement' *Fourth Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime*, 29-30 March 2011, viewed 26 July 2012, [http://www.baliprocess.net/files/110330\\_FINAL\\_Ministerial\\_Co-chairs\\_per\\_cent20statement\\_per\\_cent20BRMC\\_per\\_cent20IV.doc](http://www.baliprocess.net/files/110330_FINAL_Ministerial_Co-chairs_per_cent20statement_per_cent20BRMC_per_cent20IV.doc).

116 'Protection Policy Paper: Maritime interception operations and the processing of international protection claims: legal standards and policy considerations with respect to extraterritorial processing', *UNHCR*, November 2010, viewed 26 July 2012, <http://www.unhcr.org/refworld/docid/4cd12d3a2.html>.

- be built on the shared ownership, commitment and active engagement of participating States and aim to build/strengthen State capacity based on the principle of mutual respect for the sovereignty of participating States;
- be based on principles of burden and responsibility sharing between States that share common concerns over irregular movements, while ensuring that such actions do not shift burdens or responsibilities or undermine existing international obligations;
- be based on full respect for humanitarian and human rights principles, including those enshrined in the Refugees Convention and other international human rights instruments;
- provide for the establishment of differentiated processes and procedures for various categories of people that ensure effective and fair access to asylum for those with claims for international protection while providing efficient and timely outcomes to others, including return as appropriate;
- address disparities in the standard of treatment for asylum seekers and refugees and ensure access to conditions of safety and dignity until a decision is made on their status and, in the case of those recognised as refugees, timely access to a durable solution; and
- respond to the criminal dimensions of people smuggling and trafficking without inadvertently penalising or discriminating against the victims of criminal enterprises or compromising the protection responsibilities that are owed to persons engaged in onward maritime movements under the Refugees Convention and other international human rights instruments.<sup>117</sup>

### *Australian legislative basis*

Legislative amendments passed in 2001 to facilitate the 'Pacific Strategy' gave discretion to officers to detain people who they reasonably believed were seeking to unlawfully enter or had unlawfully entered excised offshore places, and to remove them to a declared country where their need for protection could be assessed. This allowed the asylum claims of IMAs to be assessed in Nauru and PNG's Manus Island.

The High Court of Australia considered the application of this legislation to the Malaysia Arrangement in *Plaintiff M70/2011 v MIAC*. The Court found the 2001 amendments reflected a legislative intention to give effect to Australia's obligations under the Refugees Convention, by only sending unprocessed asylum seekers to safe third countries. The effect of the decision is that the following circumstances must exist in order for the Minister for Immigration to validly declare a country under s.198A(3) of the *Migration Act 1958* (the Act) as a country to where asylum seekers may be taken for the purposes of extraterritorial processing:

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117 'UNHCR Submission to the Expert Panel on Asylum-Seekers', *UNHCR*, pp3–4 27 July 2012.



- The declared country must be legally bound, by international law or its own domestic laws, to:
  - provide access for asylum seekers to effective procedures for assessing their need for protection;
  - provide protection for asylum seekers pending determination of their refugee status; and
  - provide protection for persons given refugee status pending their voluntary return to their country of origin or their resettlement in another country.
- The country must additionally meet relevant human rights standards in providing that protection.

The 'procedures' for determining refugee status and the 'protections' referred to in s.198A(3) (a) of the Act are those provided for in the Refugees Convention (at least for those who have been assessed as refugees). The protections include, but are not limited to, *non-refoulement*, rights relating to education, the practice of religion, employment, housing, freedom of movement and free access to the courts.

### *International obligations*

In order to fulfil its obligations under the Refugees Convention and international human rights law, Australia must be satisfied, in relation to each person transferred for processing in another country, that:

- The person will have access to an effective refugee status assessment procedure.
- The person will not be *refouled* in contravention of the Refugees Convention or human rights treaties to which Australia is a party (this obligation requires an assessment of the risk both in relation to the offshore processing country and in relation to possible subsequent transfer from that country).
- The characteristics of the person will be taken into account as appropriate in deciding whether to transfer that person (for example the best interests of the child must be a primary consideration in any action concerning a child, and the Government must be satisfied that a transfer will not result in arbitrary interference with a family).

Where Australia is involved in the processing of claims outside of Australia or exercises control/authority over people whose claims are being processed outside of Australia (that is, people in another country), other obligations may become relevant.

### *Examples of models of regional and extraterritorial processing*

Various models exist for the processing of asylum claims outside Australia. These can be considered as part of a continuum, ranging from models which are wholly bilateral and in which Australia retains responsibility for assessing the claims of asylum seekers and provision of outcomes (for example, the 'Pacific Strategy'), to bilateral models (with some broader elements) which involve burden sharing of asylum caseloads of shared concern (for example, the Malaysia Arrangement), to multilateral or regional models where there is greater collective responsibility for assessments and outcomes (for example, the Comprehensive Plan of Action).

## The ‘Pacific Strategy’

In September 2001, as part of the response to the *MV Tampa* incident, the Parliament passed legislative amendments that allowed for offshore processing of unauthorised arrivals.<sup>118</sup> These amendments were part of a broader series of measures developed in 2001 and 2002, which included the use of temporary protection visas (Attachment 4) and turning back SIEVs carrying asylum seekers.

RSD for individuals seeking to enter or who had entered Australian excised offshore places was undertaken in Nauru<sup>119</sup> and PNG<sup>120</sup> under bilateral arrangements as part of the ‘Pacific Strategy’. Australia (after early initial involvement by UNHCR) undertook RSDs and bore responsibility for outcomes such as return of individuals who were not owed protection, voluntary repatriation and sourcing resettlement places for refugees.

**Table 26:** Outcomes for individuals taken to Nauru and Manus: 2001-2008

Resettled	1,153
Australia	705
New Zealand	401
Sweden	21
Canada	16
Denmark	6
Norway	4
<b>Voluntary returns</b>	<b>483</b>
<b>Deaths</b>	<b>1</b>
<b>Total</b>	<b>1,637</b>

Source: DIAC.

118 For historical context on the development of Australian policy approaches to managing irregular maritime arrivals, see ‘Submission to the Joint Select Committee on Australia’s Immigration Detention Network’, September 2011, *DIAC*, viewed 7 July 2012, [www.immi.gov.au/media/publications/pdf/2011/diac-jscaidn-submission-sept11.pdf](http://www.immi.gov.au/media/publications/pdf/2011/diac-jscaidn-submission-sept11.pdf).

119 Nauru was not a party to the Refugees Convention for the duration of the Pacific Strategy. Nauru became a party to the Convention and its 1967 Protocol on 26 September 2011 after signing the instruments of access in June 2011.

120 PNG has been a party to the Refugees Convention since 1986 with reservations affecting refugees’ rights (including areas of employment, housing, education, freedom of movement, expulsion and access to naturalisation).

## The Malaysia Arrangement

The Malaysia Arrangement is a bilateral arrangement under the Bali Process RCF, entered into between Malaysia and Australia on 25 July 2011. RSD for up to 800 individuals who had entered Australia at an excised offshore place was to be undertaken in Malaysia<sup>121</sup> by UNHCR. Australia agreed to resettle 4,000 UNHCR-mandated refugees from Malaysia over four years (1,000 each year) who could demonstrate they entered Malaysia and were registered with UNHCR prior to 25 July 2011 and had remained in Malaysia.<sup>122</sup> Malaysia committed to treat individuals transferred from Australia to Malaysia with dignity and respect and in accordance with human rights standards and to respect the principle of *non-refoulement*. Malaysia also committed to facilitate the lawful presence in Malaysia of individuals transferred.

Although not parties to the Malaysia Arrangement, UNHCR and IOM were to undertake a range of activities in association with the Arrangement. In addition to RSD for individuals transferred to Malaysia from Australia, UNHCR indicated it would assist in finding durable outcomes for people found to be owed protection. Australia was to assist Malaysia to facilitate the return from Malaysia to a country of origin (or a third country if appropriate) of individuals determined not to be in need of international protection.<sup>123</sup> IOM and UNHCR indicated they would facilitate access to services to assist vulnerable individuals. IOM and UNHCR also indicated they would assist transferees to access accommodation, health and education services as well as provide counselling to transferees on durable outcomes. IOM was to assist transferees become self-reliant.

## Multilateral arrangements – regional processing

The Comprehensive Plan of Action (CPA) was adopted at the International Conference on Indo-Chinese Refugees in June 1989<sup>124</sup> and is often cited as a model of regional processing. The conference aimed to resolve the situation of Indochinese refugees in camps in South East Asia.<sup>125</sup> The key objectives of the CPA, which ran for seven years, were to:

- reduce clandestine departures of refugees from their home country by promoting increased opportunities for legal migration under the Orderly Departure Program from source countries;
- ensure countries in South-East Asia continued to act as ‘countries of first asylum’ and grant temporary refuge to all asylum seekers as well as access by UNHCR to asylum seekers;

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121 Malaysia is not a party to the Refugees Convention.

122 *Arrangement between the Government of Australia and the Government of Malaysia on Transfer and Resettlement*, [http://www.minister.immi.gov.au/media/media-releases/\\_pdf/20110725-arrangement-malaysia-aust.pdf](http://www.minister.immi.gov.au/media/media-releases/_pdf/20110725-arrangement-malaysia-aust.pdf), viewed 26 July 2012.

123 Ibid.

124 *4th Meeting of the Executive Committee of the Standing Committee – High Commissioner’s Programme*, 19 August 1996, viewed 26 July 2012, <http://www.unhcr.org/3ae68cf94.pdf>.

125 ‘Submission to the Joint Select Committee on Australia’s Immigration Detention Network’, DIAC September 2011, p169.

- establish a consistent region-wide RSD process in accordance with internationally agreed criteria;
- resettle people found to be refugees in third countries, with a call to the international community to respond to the need for resettlement; and
- repatriate people found not to be refugees and reintegrate them in their home countries.<sup>126</sup>

Consistent with the Bali Process RCF, and to ensure long-term sustainability, future models or arrangements for regional processing could be designed around the following principles. Regional arrangements should:

- be a strategic partnership with countries that are part of asylum flows or can make a contribution to improving 'protection space' in the region;
- discourage dangerous irregular movement and provide opportunities through regular routes;
- respect international human rights obligations, especially *non-refoulement*, whether or not the countries involved are parties to the Refugees Convention or other relevant conventions;
- provide access to consistent asylum procedures, either through domestic or international arrangements;
- ensure timely long-term outcomes, either in or outside the region (but preferably as close as possible to their country of origin) for persons determined to be in need of protection;
- include the active participation or support of important partners such as UNHCR and IOM and provide opportunities for input and participation from civil society; and
- look to address the factors causing people to leave their country of origin to seek asylum.

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126 'Declaration and Comprehensive Plan of Action of the International Conference on Indo-Chinese Refugees, Report of the Secretary-General (A/44/523)', *UN Assembly 1989*, viewed 26 July 2012, <http://www.unhcr.org/refworld/topic,459d17822,459d17a82,3dda17d84,0.html>.



## ATTACHMENT 9: CHANGES TO THE HUMANITARIAN PROGRAM

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### Overview of the current SHP component of the Humanitarian Program

There are currently 20,100 applications outstanding in the SHP. Approximately 16,300 of these are applications by the immediate family members (also known as 'split family') of onshore proposers.<sup>127</sup> Over 90 per cent of those onshore proposers travelled to Australia in an irregular manner.

Under current policy settings SHP applicants who are:

- non-immediate family (approximately 3,800 applicants in the SHP backlog) must meet the 'substantial discrimination' test at the time of application and must meet the 'compelling reasons'<sup>128</sup> criterion at the time of decision; and
- immediate family are given priority in processing and only need to meet the 'compelling reasons' criteria at the time of decision. In most cases this is regarded as met on the sole basis of the applicant's close family connection to Australia. As such, immediate family applicants do not have their individual humanitarian claims (the degree of any discrimination they face in their home country) considered as part of the 'compelling reasons' assessment. These applicants would normally be granted a visa under current policy settings.

The immediate family applicants are not necessarily those most in need of a humanitarian visa, but they currently make up a large proportion of SHP grants due to the high number of onshore Protection Visa holders seeking to reunite with their family.

The reduced number of SHP places (only 714 places in the 2011-2012 program year), due to the high number of IMAs, will lead to further increases in the backlog. All applicants face the prospect of no outcome for many years. Non-immediate family applicants who are of lower processing priority are not likely to be granted a visa at all, despite some having strong humanitarian claims.

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127 Immediate family includes spouses/partners, children and parents.

128 The decision maker needs to be satisfied that there are compelling reasons to grant a permanent visa having regard to: the degree of discrimination the applicant is subject to in his/her home country; the extent of the applicant's connection with Australia; whether or not there is another suitable country available for resettlement; and the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant.

## What needs to happen

Adjustments are required to:

- address the current SHP applications backlog; and
- rebalance the Humanitarian Program to deliver places to family members offshore and on a humanitarian needs basis.

Noting the proposals to immediately increase the Humanitarian Program to 20,000 places and the family stream of the Migration Program by 4,000 places, these adjustments include:

- For the backlog: restore a greater humanitarian focus to the SHP visa and encourage those that do not have humanitarian claims to test their eligibility in the family stream of the Migration Program.
- For the ongoing SHP:
  - rebalancing the Humanitarian Program to have an offshore SHP and refugee focus rather than an onshore asylum focus; and
  - amending the SHP policy settings to provide incentives for asylum seekers to access enhanced processing arrangements in the region and not take dangerous boat journeys to Australia.

## Proposed policy changes

### *The backlog*

It is proposed the policy be changed so that immediate family SHP applicants in the backlog with proposers who were IMAs (other than proposers who are unaccompanied minors at the time of the application), be assessed against the full humanitarian criteria in the SHP subclass. This means that immediate family members with adult proposers who were IMAs would no longer be regarded as meeting the 'compelling reasons' criterion on the sole basis of being immediate family.

The current policy concession would continue to apply to applicants who are the immediate family of proposers who were not IMAs, or who were IMAs but under 18 at the time of the SHP application. For those SHP applicants who are not the immediate family of their proposer the policy settings would also remain unchanged.

This policy change means that of the 16,300 SHP immediate family applicants currently awaiting an outcome, only cases with compelling claims would be granted a visa. Those applicants who would not meet the new test (that is meet the full humanitarian criteria) would need to test their eligibility for family reunion through the family stream of the Migration Program. To avoid simply shifting the backlog to another category, it is proposed the family stream of the Migration Program be increased.

A step-by-step overview of what the proposed changes would mean for applicants in the backlog is at Figure 21.

### *SHP applications in the future*

It is proposed that the SHP visa criteria be amended such that in the future, any person who was an IMA cannot be a proposer under the SHP. Persons who were IMAs would need to seek family reunion through the family stream of the Migration Program.

This change would have a particular impact in the future on UAMs as sponsoring their parents (and siblings as secondary applicants) would not be viable due to the long waiting times in the parent category of the family stream.

For a number of years, and increasingly so in recent times, UAMs have been sent to Australia on boats to be an 'anchor' for migration for their family. Once established in Australia (but before they turn 18), they seek family reunion. In 2011-12 a total of 889 UAMs arrived in Australia as IMAs compared to 470 IMAs who were UAMs in 2010-11. The Panel is of the view that the change to eligibility to be a SHP proposer would complement other parts of the recommended package that encourage asylum seekers to access regular pathways. This is intended to reduce the number of UAMs making the dangerous voyage to Australia.

A step-by-step overview of what the proposed changes would mean for future SHP applicants is at Figure 22.

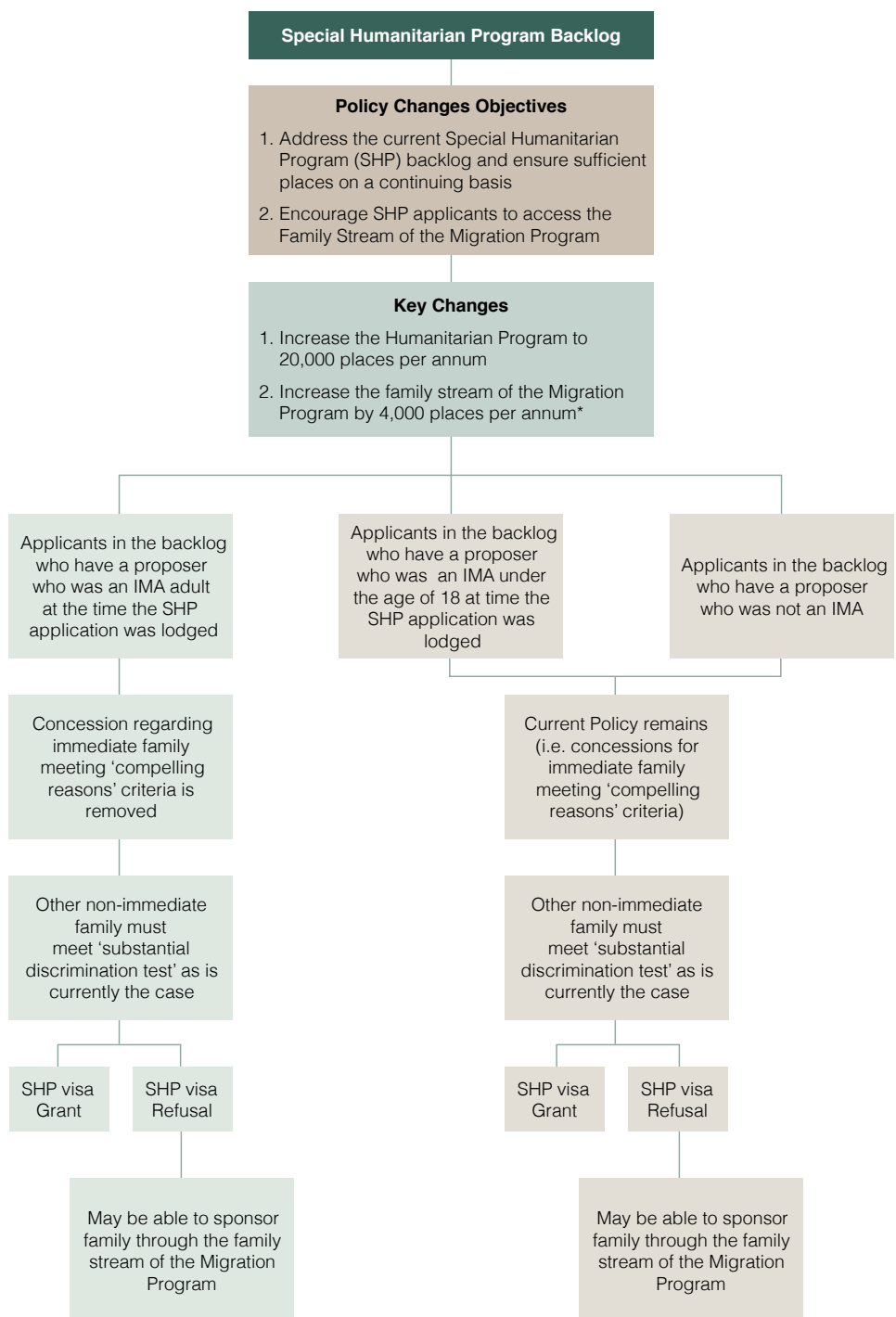
## **The family stream of the Migration Program**

Applicants who would fail to meet the new test for an SHP visa may be eligible to be granted visas under the family stream of the Migration Program. It is estimated that of those in the SHP backlog who are not likely to be eligible for an SHP visa due to the changed policy setting, around 80 per cent could become applicants for partner/spouse visas under the family stream of the Migration Program.

Holders of a Partner visa are permitted to enter and remain permanently in Australia, enrol in Australia's medical benefits expenses and hospital care scheme through Medicare and are allowed to work and study. Partner visa holders who may have otherwise entered Australia through the immediate family provisions under the SHP may also be eligible to have the two year waiting period for social security payments waived. Currently the visa application charge is \$1,995 and the processing time is 5 to 12 months.

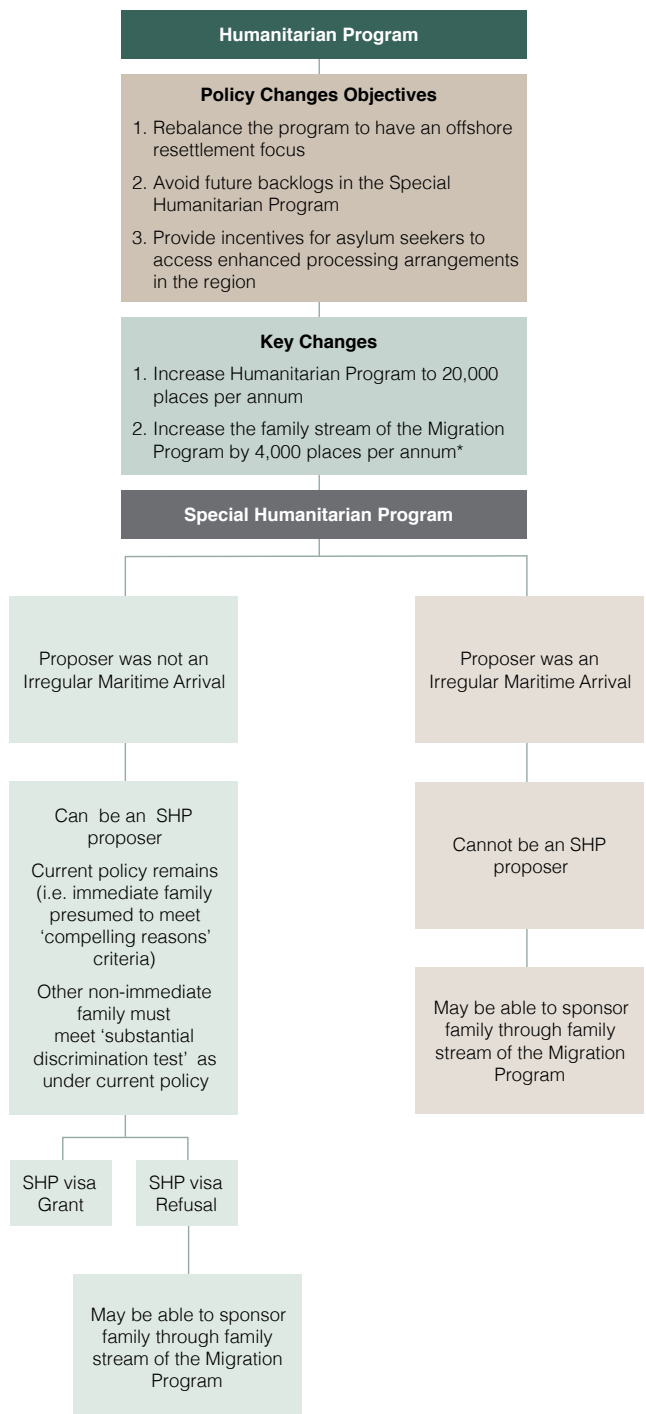


**Figure 21:** Overview of the process for clearing the SHP backlog



\* This is the same 4,000 place increase as referred to in Figure 22

**Figure 22:** Overview of SHP family reunion application process in the future



\* This is the same 4,000 place increase as referred to in Figure 21



## ATTACHMENT 10: LEGISLATION CHANGES REQUIRED TO IMPLEMENT THE PANEL'S RECOMMENDATIONS

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The Panel has made a preliminary assessment that a number of the recommendations contained in this Report may require legislative changes. Further detailed advice will be required. Potential changes required are outlined below.

### Migration Act 1958

Amendments to:

- Support regional processing by allowing for the transfer of persons from Australia to another location for the purpose of processing their asylum claims. These amendments should ensure that any designation of a location as a place where asylum seekers may be transferred is a disallowable instrument.
- Clarify that any person who enters Australia unlawfully by sea is liable to have any claims for asylum assessed in a location outside Australia. At the present time only IMAs entering Australia at an 'excised offshore place' may be taken for processing in a location outside Australia.

### Migration Regulations 1994

Amendments to:

- Prevent future IMAs from being able to be a 'proposer' for the purposes of an SHP application.
- Provide a temporary visa to asylum seekers who are having their claims processed outside Australia, to travel to and remain in Australia on a temporary basis while their claims for asylum are assessed and a suitable durable outcome is provided.
- Ensure that the principle of no advantage can be implemented in relation to IMAs being processed pursuant to regional arrangements.

### Immigration (Guardianship of Children) Act 1946

Amendments to:

- Provide that the Minister for Immigration and Citizenship's consent is not required for a non-citizen child to be taken from Australia to another location for the purpose of processing their asylum claims.
- The Parliament will have the opportunity to oversight, among other things, arrangements for minors through its capacity under the *Migration Act 1958* to disallow the instrument designating a country as a regional processing location.



## ATTACHMENT 11: LIKELY COSTS OF THE PANEL'S RECOMMENDATIONS

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As part of its deliberations, the Panel has received advice from the Department of Finance and Deregulation on the general order of magnitude of costs of the key recommendations in this Report. These costs need to be offset against savings that the Panel believes will be made from expenditures currently incurred as a result of managing the flow of unauthorised arrivals in Australia. The forward estimates presented in the 2012-13 Budget estimate such expenditure incurred by the Department of Immigration and Citizenship alone over the period 2011-12 to 2015-16 inclusive to be at around \$5 billion assuming that arrivals remain at around the level of 450 per month from 1 July 2012. With the levels of irregular arrivals averaging over 1,300 per month since April 2012, the Panel notes that if this rate of increase were to be sustained the costs of dealing with these IMAs would likely be significantly larger amount than the costs of the recommendations in this report.

In the Panel's view, the recommendations in this Report will promote greater efficacy, fairness and good management in Australian policymaking on protection and asylum issues. The recommendations will include new costs; but they will also, in the view of the Panel, result in significant savings in expenditures currently being incurred.

The Panel notes that the final cost of many of these recommendations will be influenced by decisions on particular practical costs, which are a matter for subsequent consideration by government.

The Panel has been advised that:

- an increase in the Humanitarian Program from its current level of 13,750 places per annum to 20,000 places per annum would cost in the order of \$1.4 billion over the forward estimates;
- an increase in the Family Migration stream of the Migration Program of 4,000 places per annum would cost in the order of \$0.8 billion over the forward estimates;
- the full establishment and operation of a regional processing capacity in Nauru accommodating up to 1,500 people would cost between \$1.2 billion to \$1.4 billion over the forward estimates, including capital costs in the order of \$300 million depending on policy settings for amenity and running arrangements;
- the full establishment and operation of a regional processing capacity in PNG (such as on Manus Island) accommodating up to 600 people would cost in the order of \$0.9 billion over the forward estimates, including capital costs in the order of \$230 million depending on policy settings for amenity and running arrangements;
- the implementation of the Malaysia Arrangement requires operational funding of \$80 million over the forward estimates (noting that the increase in resettlement places from Malaysia of 1,000 is already underway and will be met from the existing Humanitarian Program); and

- the establishment of a significant, ongoing research program to develop a more robust evidence base on irregular migration and asylum in partnership with academic and other expertise in the field, to strengthen both policymaking and operational management, is expected to require at least \$3 million per annum. The Panel recommends that the need for this level of funding level should be reviewed after two years.

The Panel has made a number of other recommendations that may require reprioritisation of activity within portfolios or within the Australian aid program, including:

- the development of a more extensive program of bilateral cooperation on maritime, law enforcement and intelligence cooperation with Indonesia;
- increasing the diversity and impact of Australia's capacity building initiatives to support the accelerated development of a regional cooperation framework, with the provision of up to \$70 million over the forward estimates from Australia's aid program; and
- law enforcement and disruption activity aimed at impeding the operations of people smugglers be retained as a priority for relevant Australian government agencies and resourced appropriately.

## ATTACHMENT 12: PARTIES CONSULTED

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The Panel consulted with the following third parties in preparing its report.

The Hon. Tony ABBOTT, MP	Federal Opposition Leader
Mr Iain ANDERSON	First Assistant Secretary, Attorney-General's Department
Sister Brigid ARTHUR	Brigidine Sisters
Dr Susan BANKI	University of Sydney
Mr Greg BARNES	Barrister & Director, Rights Australia
Admiral Chris BARRIE, AC (Retired)	Former Chief of the Defence Force
Mr Peter BAXTER	Director-General, Australian Agency for International Development (AusAID)
Ms Kerrin BENSON	Member of the Minister's Council on Asylum Seekers and Detention (MCASD)
Ms Gillian BIRD	Deputy Secretary, Department of Foreign Affairs and Trade
The Hon. Chris BOWEN, MP	Minister for Immigration and Citizenship
Mr Martin BOWLES, PSM	Acting Secretary, DIAC
Ms Lucy BOWRING	Regional Coordinator, International Detention Coalition
The Hon. Catherine BRANSON, QC	President, Australian Human Rights Commission and Human Rights Commissioner
Professor Rod BROADHURST	ARC Centre of Excellence in Policing and Security
Mr Julian BURNSIDE, AO QC	Barrister
Father Joe CADDY	CEO, Catholic Care
Mr Michael CARMODY, AO	Chief Executive Officer, Australian Customs and Border Protection Service
Professor Stephen CASTLES	University of Sydney
Mr Ignatius CHACKO	Tamil community
Professor Hilary CHARLESWORTH	Australian National University
Ms Megan CLEMENT	Deputy Section Editor, Politics & Society, The Conversation
Mr Guy COFFEY	Foundation House
Ms Caz COLEMAN	Member of the Minister's Council on Asylum Seekers and Detention
Mr Andrew COLVIN, APM OAM	Deputy Commissioner, Australian Federal Police
Ms Peta CREDLIN	Chief of Staff to the Federal Opposition Leader
Ms Pamela CURR	Campaign Coordinator, Asylum Seeker Resource Centre
Ms Helen DANIELS, PSM	Assistant Secretary, Attorney-General's Department
Dr Sara DAVIES	Senior Research Fellow, Centre for Governance and Public Policy
Professor Glyn DAVIS, AC	Vice-Chancellor, University of Melbourne
Mr Ian DEANE	Special Counsel to DIAC, Australian Government Solicitor



Ms Lis DE VRIES	Australian Red Cross
Professor Alan DUPONT	University of Sydney
Professor Carolyn EVANS	Dean, Melbourne Law School
Dr Nathan EVANS	Office of National Assessments
Ms Bassina FARBENBLUM	Director, Human Rights Clinic, University of NSW
Mr Bill FARMER	Former Australian Ambassador to Indonesia Former Secretary, Department of Immigration
Ms Erika FELLER	Assistant High Commissioner (Protection), United Nations High Commissioner for Refugees (UNHCR)
Mr Garry FLEMING	Acting Deputy Secretary, DIAC
Associate Professor Michele FORD	University of Sydney
Associate Professor Michelle FOSTER	Director, International Refugee Law Research Programme, Melbourne Law School
Professor James J FOX	Crawford School of Public Policy, ANU
The Hon. Malcolm FRASER, AC CH	Former Prime Minister of Australia (1975-83)
Mr Ray FUNNELL AC	Deputy Chair, MCASD
Mr Stephen GAGELER, SC	Solicitor-General
Ms Kate GAUTHIER	Migration Law Program, ANU
The Hon. Julia GILLARD, MP	Prime Minister
Vice Admiral Ray GRIGGS, AO CSC RAN	Chief of Navy
Mr Alan GYNGELL, AO	Director-General, Office of National Assessments
Senator Sarah HANSON-YOUNG	Senator for South Australia, Australian Greens
Ms Dominique HARDY	Senior Liaison Officer to DIAC, United Kingdom Border Agency
Mr Tristan HARLEY	Research Associate to Professor Pene Mathew
Professor Stuart HARRIS	Australian National University
Sir Lenox HEWITT	Former Secretary, Department of the Prime Minister and Cabinet
Dr Gerhard HOFFSTAEDTER	Lecturer, Anthropology, University of Queensland
Mr Peter HUGHES PSM	Former Deputy Secretary, DIAC Visitor, Australian National University
General David HURLEY, AC DSC	Chief of the Defence Force
Mr Krish ILLUNGKOO	Tamil community
Professor Andrew JAKUBOWICZ	University of Technology Sydney
Mr Neil JAMES	Executive Director, Australia Defence Association
Mr Sharhram JANAZ	Iranian community
Mr Stephen JONES, MP	Member for Throsby, Australian Labor Party
Dr Ida KAPLAN	Victorian Foundation for Survivors of Torture (VFST) and University of NSW
Mr Tony KEVIN	Author – ‘Reluctant Rescuers’
Ms Mitra KHAKBAZ	Iranian community
Ms Kathy KLUGMAN	First Assistant Secretary, Department of the Prime Minister and Cabinet

Mr Kruno KUKOC	First Assistant Secretary, DIAC
Mr Miles KUPA	Australian High Commissioner to Malaysia
Mr James LARSEN	Former Australian Ambassador for People Smuggling Issues
Mr Duncan LEWIS, AO DSC CSC	Secretary, Department of Defence
Professor Tim LINDSEY	University of Melbourne
Ms Libby LLOYD, AM	Member of the Council for Australian Arab Relations and Member of MCASD
Dr Maryanne LOUGHRY, RSM	Jesuit Refugee Service; Member of MCASD
Professor Andrew MacINTYRE	Australian National University
Senator John MADIGAN	Senator for Victoria, Democratic Labor Party
Mr David MANNE	Executive Director, Refugee & Immigration Legal Centre
Mr Greg MANNING	First Assistant Secretary, Office of International Law, Attorney-General's Department
Mr Peter MARES	Cities Fellow, Grattan Institute
Dr Margot McCARTHY	National Security Advisor
Mr Paul McDONALD	CEO, Anglicare Victoria
Professor Peter McDONALD, AM	Australian National University
Professor Patrick McGORRY, AO	Executive Director, Orygen Youth Health (OYH); University of Melbourne
Dr Anne McNEVIN	Royal Melbourne Institute of Technology
Dr Dave McRAE	Lowy Institute for International Policy
Mr Andrew METCALFE, AO	Secretary, DIAC
Senator Christine MILNE	Leader of the Australian Greens
Associate Professor Harry MINAS	University of Melbourne; Member of MCASD
Dr Antje MISSBACH	University of Melbourne
Dr Paul MONK	Austhink
Mr Greg MORIARTY	Australian Ambassador to Indonesia
Mr Scott MORRISON, MP	Shadow Minister for Immigration and Citizenship
Father Aloysius MOWE	Jesuit Refugee Service
Senator the Hon. Judi MOYLAN MP	Federal Member for Pearce
Mr Ali MULLAIE	Afghan community
Mr Don MURRAY	Canadian Border Services Agency
Mr Tony NEGUS, APM	Commissioner, Australian Federal Police
Professor Klaus NEUMANN	Swinburne University of Technology
Ms Arja KESKI-NUMMI, PSM	Fellow, Centre for Policy Development; Former First Assistant Secretary, DIAC
Ms Louise OLIFF	Refugee Council of Australia
Mr Robert ORR, QC PSM	Chief General Counsel, Australian Government Solicitor
Ms Alex PAGLIARO	Refugee Action Coordinator, Amnesty Australia
Mr Bill PETTITT	Principal Intelligence Advisor, DIAC

Mr Michael PEZZULLO	Chief Operating Officer, Australian Customs and Border Protection Service
Professor Sharon PICKERING	Monash University
Ms Kate POPE, PSM	First Assistant Secretary, DIAC
Professor Nicholas PROCTOR	University of South Australia; Member of MCASD
Ms Kristen PROUD	Hotham Mission Asylum Seeker Project
Mr Marc PURCELL	Executive Director, Australian Council for International Development (ACFID)
Mr Hussain RAZAIAT	Afghan community
Mr Hassan REZAAHI GHAZNAWI	Afghan community
Mr Dennis RICHARDSON, AO	Secretary, Department of Foreign Affairs and Trade
Mr Ashton ROBINSON	Assistant Secretary, Office of National Assessments
Professor Kim RUBENSTEIN	Australian National University
Professor Amin SAIKAL, AM	Australian National University
HE Admiral Thisara SAMARASINGHE	High Commissioner for Sri Lanka in Australia
Ms Jeanette SAUTNER	Counsellor, Canadian Embassy
Ms Cath SCARTH	Adult Multicultural Education Services
Dr Wendy SOUTHERN, PSM	Deputy Secretary, DIAC
The Hon. Wayne SWAN, MP	Deputy Prime Minister, Treasurer
Dr John SWEENEY	Coordinator of Research, Edmund Rice Centre
Mr William SWING	Director-General, International Organization for Migration
Mr Jo SZWARC	Victorian Foundation for Survivors of Torture
Dr Savitri TAYLOR	Latrobe University
Mr James THOMSON	Director of Policy and Advocacy, National Council of Churches-Act for Peace
Mr Richard TOWLE	Regional Representative, United Nations High Commissioner for Refugees (UNHCR)
Mr Peter VARDOS, PSM	Acting Secretary, DIAC
Dr Bala VIGNESWARAN	Tamil community
Dr Ian WATT, AO	Secretary, Department of the Prime Minister and Cabinet
Professor Michael WESLEY	University of Sydney
Dr Amanda WHITING	University of Melbourne
Dr Jessica WHYTE	University of Western Sydney
Mr Roger WILKINS, AO	Secretary, Attorney-General's Department
Mr Tony WINDSOR, MP	Member for New England
Mr Andrew WILKIE, MP	Member for Denison
Professor Glenn WITHERS, AO	Australian National University
Mr Arnold ZABLE	Vice-Chancellor's Fellow, University of Melbourne
Mr Matthew ZAGOR	Australian National University

## ATTACHMENT 13: SUBMISSIONS RECEIVED

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The following is a list of authors who provided submissions to the Panel. Copies of submissions received are available at [www.expertpanelonasylumseekers.dpmc.gov.au](http://www.expertpanelonasylumseekers.dpmc.gov.au).

In addition to the below list, the Panel also received anonymous and confidential submissions and submissions from authors who did not provide consent to the publication of their names.

### Submissions from groups and organisations

ACT Refugee Action Committee	Federation of Indo-China Ethnic Chinese Association of Australia
Amnesty International Australia	GetUp!
Anglicare Victoria	High Commission of Sri Lanka
Asylum Seeker Resource Centre	Hotham Mission Asylum Seeker Project
Australian Catholic Migrant and Refugee Office	Humanist Society of Victoria
Australian Christian Lobby	Human Protection Hub (Griffith University)
Australian Council for International Development	Human Rights Law Centre
Australian Federal Police Association	International Federation of Iranian Refugees
Australian Greens	Labor for Refugees
Australian Homestay Network	Law Council of Australia
Australian Human Rights Commission	Law Institute of Victoria
Australian Lawyers Alliance	Law Society Northern Territory
Australian Psychological Society	Liberty Victoria <i>et al.</i>
Australian Tamil Congress (QLD Chapter)	Project Safecom
Balmain for Refugees	Refugee Action Coalition
Baptcare	Refugee Action Collective (Melbourne)
Brigidine Asylum Seekers Project	Refugee Advocacy Network
Brotherhood of St Laurence	Refugee Council of Australia
Catholics in Coalition for Justice and Peace	Rural Australians for Refugees (Bendigo)
ChilOut	Rural Australians for Refugees (Castlemaine)
Coalition for Asylum Seekers, Refugees and Detainees	Rural Australians for Refugees (Queenscliff)
Darwin Asylum Seeker Support and Advocacy Network	Save the Children Australia
	Springvale Monash Legal Service
	Stable Population Party
	Tamils Against Genocide <i>et al.</i>

The Society for Peace Unity and Human  
Rights in Sri Lanka (NSW)  
UNHCR

Uniting Justice Australia  
Victoria Legal Aid

## Submissions from individuals

Malin Abeyatunge

Gemma Abraham

Joe Abrahams

Hannah Allcock

Helen M Allin

Leah Armand

Jean Hume Baker

Margaret Ruth Baker OAM

Mike Barlow

Andrew Bartlett

Chris Baulman

Peter Beahan

Jane van Beek

John V Belcher

Bronwyn Bell

Jenny Bell

Julianne Bell

Richard Bentley

John Bernacki

David L Bitel

Cory Boardman

Clare Brennan

Fr Frank Brennan SJ AO

Ray Bricknell

Mark Bruhwiler

Julian Burnside AO QC

Michelle Burrows

P.M. Button

David Bycroft

Moirá Byrne

Rev Warwick Cadenhead

Howard Cai

Thea Calzoni

Dr David Cantor

Ken Carney

Janet Castle

Michelle Cavanagh

Dusan Cech

Margeaux Chandler

Fabia Claridge

Nick Clarke

Patou Clerc

Timothy Collier

Brian Colyer

Robyn Coningham

Sophie Constance

Hellen Cooke

Tom Cooke

Melanie Coombs

Chris Coote

Lisa Craig

John Craig

Mary Crock

Fr Paul Crotty

Sr Aileen Crowe

Claudette Cusack

Alan G. Day

Margaret Desira

James Dingwall

Korey and Kelly Dowling

Helen Dunstan

Charles Ellem

Robin Errey	Matt Hilton
Helen Eyles	Jo Hind
David Feith	Paul Hite
Carol Flanagan	Benjamin Hockley
Beth Flenley	Greg Hogan
George Flowers	Chris Holley
Andrew Fodor	G E Holman
Emeritus Prof Elliott Forsyth	Toni-Lee House
Michael S Foulsham	Dorothy Howes
Ken Francis	Deanna Howland
Rt Hon Malcolm Fraser AC CH	Peter Hughes PSM
Ruth Fuller	Rev Robert Humphreys
Steve Geoghegan	Nevell Hungerford
Petro Georgiou	Amjad Hussain
Prof Geoff Gilbert	Mirza Hussain
Peter Giudes	Sabir Hussain
Zalan Glen	James Hutchinson
Guy S. Goodwin-Gill	Marg Hutton
Diane Gosden	Cheryl Iser
Natalie Gould and Mairi Petersen	Steve Isles
Chester Graham	Ian Janzow
Pat Grainger	Kate Jastram
Michael Gratton	Pamela Jess
Dennis Green	Gillian Johnson
Lindel Greggery	Les Johnson
Brigid Guinan	Warren Johnson
Geoff Hacquoil	Ellie Johnston
Jedrek Hagedorn	Rev Douglas L. Jones
Margaret Hanrahan	Melody Kemp
Graham Hardy	Belinda Kendall-White
Kate Harriden	Tony Kevin
Graeme Heine	Rae Kilkenny
Loris Hemlof	Howard King
Mark Henderson	Marilyn King
Lawry Herron	Dr Kristine Klugman OAM
Dianne Hiles AM	Prof Susan Kneebone <i>et al.</i>

Tim Kottek	John McBain
Syliva Kronberg	Todd McCarthy
Mark Lacey	Margaret McGregor OAM
Lev Lafayette	Kris McIndoe
Associate Prof Terry Laidler	Rhyll McMaster
Prof Hélène Lambert	Rod Mead
Andy Lamey	John Menadue and Arja Keski-Nummi
Colleen Lane	David Mitchell
Sandra Langtree	Martha Mollison
Greg Larkin	Russell Morison
Arthur and Rosemary Lathouris	Libby Morrison
Dymphna Laurie AM	Wayne Moynham
Trevor Lavey	William Mudford
Pat Law	Alex Mulholland
Steffi Leedham	John Murray and Maureen Partridge
Madeleine Legge	Greg and Pauline Naylor
Genevieve Lloyd	Nick Neary
Margaret Logan	Prof Klaus Neumann
Bronwyn Long	Paul Nolan
Dr Virginia Lowe	Sharon Noske
Adjunct Associate Professor David Lucas	Pauline Nunan
Tuong Quang Luu AO	Pat O'Brien
David Mac Phail	Glenn Osboldstone
Ian Macphee	Chris Ottaway
Leith Maddock	Monica O'Wheel
Edward Mahoney	Dr Sev Ozdowski OAM
Glenn Major	Hans Paas
Prof William Maley AM	Dorothy Page
Reg and Marie Maloney	Stephen Page
Michael P Mardel	Pam and Ralph
David Marler	John Parker
Alison Martin	Anne Parnis
Brett Massoud	Nick Pastalatzis
Roseanne Masters	Dr Anne Pedersen <i>et al.</i>
Margot Maule	Dr Anne Pedersen
Prof Jane McAdam <i>et al.</i>	Robert Pepper

Asoka Perera	Rosie Scott
Marlene Perkins	Mike Scrafton
Pat Perkins	Noel Semler
Robert Perrin	Andy Semple
Bill Perry	Patricia Shadforth
Hoa Pham	Anthony Sheldon
Denise Phillips	Graham Shepherd
Jan and Martyn Phillips	Marilyn Shepherd
Russell Phillips	Vianney Shiel
Ross Pickard	Colin Smith
Prof Sharon Pickering and Dr Leanne Webber	Elaine Smith
Dr Katrine Pilcher	Ranjith Soysa
Marion Pithers	Janet Spann
Bev Porter	James and Linda Sparrow
Shane Prince	Shae Spry
George H Purdy	Gerard Sta Maria
Bevil Purnell OAM	Aidan Stanger
Priya Rangan	Leonie Starnawski
Peter Ravenscroft	Don Stokes
Manita Ray	Fiona and Matthew Stokes
Audrey Raymond	Steve Stokes
AVM Richard Richardson AO AFC (Ret'd)	Des Storer and Adrienne Millbank
Max and Willis Ripper	Suzanne
Leanne Rissman	Vernon Terrill
Doreen Roache	Dilan Thampapillai
Alain Rondot	Yabbo Thompson
Maurice Rooney	Liz Thornton
Nicole Rowan	Barbara Trauer
George Rupesinghe	Alan Tulloch
Betty Russell	Dr Sanjugta Vas Dev
Peter Sainsbury	Karl J Vass
Robyn Sampson	Arthur Ventham
Anna Sande	Donna Wand <i>et al.</i>
Geoff Schleeauf	Prof Helen Ware
Wayne Scholes	Vajeera Warnakulasuriya
	Steve Warne



Sue Wasterval  
Sam Watkins  
Kathy Watson  
Sally Wearne  
Graham Wells  
Mark Whillas  
Sharon and Keith Wightley  
Lyn Wild  
Denise Williams  
Graham Williamson  
Russell Willis  
Peter Willott  
Jim Wilson  
Lawrence Wilson  
Dr Klaas Woldring  
Noel Wyndom

## ATTACHMENT 14: GLOSSARY OF COMMONLY USED ACRONYMS AND TERMS

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### Commonly used acronyms

ACBPS	Australian Customs and Border Protection Service
ADB	Asian Development Bank
ADF	Australian Defence Force
AFP	Australian Federal Police
AGD	Attorney-General's Department
AMSA	Australian Maritime Safety Authority
APC	Asia Pacific Consultations on Refugees, Displaced Persons and Migrants
ASEAN	Association of Southeast Asian Nations
ATCR	Annual Tripartite Consultations on Resettlement
AusAID	Australian Agency for International Development
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CFA	country of first asylum
CPA	Comprehensive Plan of Action
CRC	Convention on the Rights of the Child
DFAT	Department of Foreign Affairs and Trade
DGICM	ASEAN Directors-General of Immigration Departments and Heads of Consular Affairs Divisions of the Ministries of Foreign Affairs
DIAC	Department of Immigration and Citizenship
EC	the European Commission
IAMSAR	Conventions on International Aviation and Maritime SAR Manual
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICMPD	International Centre for Migration Policy Development

IDP	internally displaced person
IFRC	International Federation of Red Cross and Red Crescent Societies
IGC	Intergovernmental Consultations on Asylum, Migration and Refugees
ILO	International Labour Office
IMA	irregular maritime arrival
INTERPOL	International Criminal Police Organization
IOM	International Organization for Migration
ITP	International transfer of prisoners
JWG	Joint Working Group
MFU	Major Fleet Units
MMAF	Indonesian Ministry of Marine Affairs and Fisheries
MOU	Memorandum of Understanding
NGO	non-government organisation
OEP	offshore entry person
PIDC	Pacific Immigration Directors' Conference
PNG	Papua New Guinea
PSR	Private Sponsorship of Refugees
RAN	Royal Australian Navy
RCF	Regional Cooperation Framework
RILON	Regional Immigration Liaison Officers Network
RSD	Refugee Status Determination
RSO	Regional Support Office
SAC	Special Assistance Category visa (discontinued)
SAR	Search and Rescue
SAR Convention	International Convention on Maritime Search and Rescue
SHP	Special Humanitarian Program
SIEV	Suspected Irregular Entry Vessel
SOEP	Senior Officers Exchange Program
SOLAS	safety of life at sea
SOLAS Convention	International Convention for the Safety of Life at Sea
TPV	temporary protection visa

UAM	unaccompanied minor
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention Against Transnational Organized Crime
WB	the World Bank
WGR	Working Group on Resettlement

## Commonly used terms

Asylum seeker	An individual seeking international protection whose claim for refugee status has not yet been determined.
Bali Process	Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime.
Contiguous zone	The contiguous zone is a belt of water contiguous to the territorial sea, the outer limit of which does not exceed 24 miles from the territorial sea baseline.
Country of first asylum	A country that permits a person fleeing from persecution to enter its territory for purposes of providing asylum temporarily, pending eventual repatriation or resettlement.
Disruption	To interrupt or impede the progress and movement of people smugglers or potential irregular maritime arrivals.
Fraudulent document	Any travel or identity document that has been falsely made or altered, that has been improperly issued or obtained, or that is being used by a person other than the rightful holder.
Humanitarian Program	Australia's Humanitarian Program comprises two components: (1) The onshore protection/asylum component provides protection to people found to be refugees after arriving in Australia, in line with the Refugees Convention. (2) The offshore resettlement component offers resettlement for people overseas who are in the greatest need of humanitarian assistance. The offshore resettlement component comprises two categories of permanent visas: refugee and SHP.

Internally displaced person	A person (or group of persons) who has been forced to flee or to leave their homes or places of habitual residence, in particular as a result of, or in order to avoid the effects of, armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.
Irregular migration	Unauthorised migration that takes place outside the norms and procedures established by States to manage the orderly flow of migrants into and out of their territories.
Malaysia Arrangement	Arrangement Between the Government of Australia and the Government of Malaysia on Transfer and Resettlement signed on 25 July 2011.
<i>Non-refoulement</i>	The obligation on States under the Refugees Convention not to expel or return a person (that is, <i>refoule</i> ), either directly or indirectly, to a place where his/ her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion. States that are party to other Conventions, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), also have obligations not to return a person to a country where he/she would be at a real risk of irreparable harm by way of arbitrary deprivation of life or application of the death penalty, torture, or cruel, inhuman or degrading treatment or punishment.
People smuggling	The United Nations Convention against Transnational Organized Crime's Protocol against the Smuggling of Migrants by Land, Sea and Air defines people smuggling as 'the procurement, in order to obtain directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident'.
Person of Concern	UNHCR identifies seven population categories, collectively referred to as persons of concern: refugees, asylum-seekers, internally displaced persons, refugees who have returned home (returnees), IDPs who have returned home, stateless persons and other people who do not fall under any of the above categories but to whom the Office extends protection. In 2007, two sub-categories were introduced: people in refugee-like situations (included under refugees); and people in IDP-like situations (included under IDPs).
Proposer	A person in Australia who supports another person's application for a visa under the SHP.

Refugee	<p>Any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion:</p> <ul style="list-style-type: none"> <li>• is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country; or</li> <li>• who, not having a nationality and being outside the country of his/her former habitual residence is unable or, owing to such fear, is unwilling to return to it.</li> </ul>
Regional Cooperation Framework	<p>A framework endorsed by the Bali Process in March 2011 which supports regional cooperation to address irregular migration flows. It is based on the concept of burden-sharing and cooperation between source, transit and destination countries and enables States in the region to improve cooperation by entering into practical bilateral or multilateral arrangements on a voluntary basis. It sets out core principles relating to the encouragement of orderly migration, consistent processing of asylum claims, durable outcomes for refugees, the sustainable return of those found not to be owed protection, and targeting of people smuggling enterprises.</p>
Source country	<p>Includes the country of origin or a Country of First Asylum for an asylum seeker or refugee (as distinct from transit countries.)</p>
Special Humanitarian Program (SHP) visa	<p>An Australian visa for people outside their home country who are subject to substantial discrimination in their home country amounting to gross violation of human rights, or for the immediate family of persons who hold or who held a refugee/humanitarian visa.</p>
Stateless person	<p>A stateless person is someone who is not considered as a national by any country. In some cases, they are not legally recognised as a citizen by any country (a situation known as <i>de jure</i> statelessness). In other cases, a person may possess a legal nationality but cannot in practice exercise their citizenship rights (known as <i>de facto</i> statelessness).</p>
Territorial sea	<p>The territorial sea is a belt of water not exceeding 12 miles in width measured from the territorial sea baseline.</p>

Trafficking in persons	The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.
Turnback	Returning a Suspected Irregular Entry Vessel to its 'point of departure' state or the state in which it is registered ('flag State'); often the same state. Turnback is distinct from 'tow back', in which a SIEV that is unable to operate under its own power is towed back to its point of departure state or flag state.
<i>1951 Convention relating to the Status of Refugees and its 1967 Protocol ('Refugees Convention')</i>	The Refugees Convention is the key legal document defining who is a refugee, their rights and the legal obligations of states. The 1967 Protocol removed geographical and temporal restrictions from the Convention. Australia is a party to both the Refugees Convention and the Protocol.
<i>1961 Convention on the Reduction of Statelessness</i>	The Convention defines classes of stateless persons; regulates their status and establishes standards of protection.
<i>1976 International Covenant on Economic, Social and Cultural Rights</i>	Part of the International Bill of Human Rights. Commits parties to work toward granting economic, social and cultural rights to individuals including labour rights, the right to education and standard living.
<i>2010 Australia-Indonesia Implementation Framework for Cooperation on People Smuggling and Trafficking in Persons</i>	A framework based on the <i>Agreement Between the Republic of Indonesia and Australia on the Framework for Security Cooperation - Lombok Treaty</i> . It underpins bilateral cooperation and focuses on pursuing broader partnerships on issues such as people trafficking, protection claims, people smuggling and asylum seekers.





# Australia and Papua New Guinea Regional Settlement Arrangement

## Prime Minister - Rudd, Kevin

Media Release - 19 July 2013

Brisbane

As of today asylum seekers who come here by boat without a visa will never be settled in Australia.

Under the new arrangement signed with Papua New Guinea today – the Regional Settlement Arrangement - unauthorised arrivals will be sent to Papua New Guinea for assessment and if found to be a refugee will be settled there.

Arriving in Australia by boat will no longer mean settlement in Australia.

Australians have had enough of seeing people drowning in the waters to our north.

Our country has had enough of people smugglers exploiting asylum seekers and seeing them drown on the high seas.

We are sick of watching our servicemen and women risking their lives in rescues in dangerous conditions on the high seas.

Regional processing arrangements in Papua New Guinea will be significantly expanded and people will be sent to Manus Island as soon as health checks are complete and appropriate accommodation is identified.

PNG officials will assess their claims on Manus Island.

Our governments will expand existing facilities on Manus Island, as well as establishing further facilities in Papua New Guinea.

There is no cap on the number of people who can be transferred to Papua New Guinea.

The Australian Government, in partnership with the PNG Government, will support settlement services for those with refugee status, as safe and appropriate accommodation and services are identified.

We are a compassionate nation and we will continue to deliver a strong humanitarian program.

If the measure announced today and the international meeting on the Convention that has been flagged lead to a significant change in the number of people arriving by boat, then the

Government stands ready to consider progressively increasing our humanitarian intake towards 27,000 as recommended by the Houston Panel.

There is nothing compassionate about criminal operations which see children and families drowning at sea.

Access to our humanitarian program must be through the international organisations which resettle people around the world, not through criminal operators who have pushed people onto unseaworthy vessels with tragic consequences.

The new arrangements will allow Australia to help more people who are genuinely in need and help prevent people smugglers from abusing our system.

The people smugglers themselves are constantly changing the way they operate and we need to be flexible enough to anticipate and match their actions to avoid the terrible consequences of this trade.

No doubt there will be some people smugglers who now encourage asylum seekers to test our resolve.

Be in no doubt. If people are paying thousands and thousands of dollars to a people smuggler they are buying a ticket to a country other than Australia.

# Transcript of Joint Press Conference - Brisbane

## Prime Minister - Rudd, Kevin

Press Conference - 19 July 2013

Prime Minister, Prime Minister of Papua New Guinea, Minister for Immigration, Attorney-General

PM RUDD: First of all, Prime Minister, thank you so much for travelling to Brisbane from Moresby. Brisbane we see as the northern capital of Australia and it's good to have you here.

To your ministerial colleagues, including of course the Foreign Minister of Papua New Guinea and the Attorney-General of Papua New Guinea, and my parliamentary and ministerial colleagues as well and I believe we have a member from West Britain, good to see you as well.

Today the Prime Minister of Papua New Guinea and I are announcing a major initiative to combat the scourge of people smuggling.

Today we're announcing a new resettlement arrangement between Australia and Papua New Guinea.

From now on, any asylum seeker who arrives in Australia by boat will have no chance of being settled in Australia as refugees.

Asylum seekers taken to Christmas Island will be sent to Manus and elsewhere in Papua New Guinea for assessment of their refugee status.

If they are found to be genuine refugees they will be resettled in Papua New Guinea, an emerging economy with a strong future; a robust democracy which is also a signatory to the United Nations Refugees Convention.

If they found not to be genuine refugees they may be repatriated to their country of origin or be sent to a safe third country other than Australia.

These arrangements are contained within the Regional Resettlement Arrangement signed by myself and the Prime Minister of Papua New Guinea just now.

Under this RRA, the arrangement between Australia and PNG will apply for the next 12 month period and be subject to annual review by the joint Australia Papua New Guinea Ministerial Forum.

Critically, this RRA does not specify an absolute limit to the number of asylum seekers who can be transferred or genuine refugees who can be resettled.

Our expectation and the expectation of our officials is as this Regional Resettlement Arrangement is implemented and the message is sent loud and clear back up the pipeline that the number of boats will decline over time as asylum seekers then make recourse to other more normal UNHCR processes to have their claims assessed.

In the period ahead our Governments intend 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.

Australia will continue its cooperative arrangements on people smuggling with the Republic of Nauru and looks forward to furthering those arrangements in the future.

I understand that this is a very hard-line decision.

I understand that different groups in Australia and around the world will see this decision in different ways.

But our responsibility as a government is to ensure that we have a robust system of border security and orderly migration on the one hand as well as fulfilling our legal and compassionate obligations under the Refugee Convention on the other.

Therefore, it's important for me to make clear to all concerned how the Government, after lengthy internal deliberation with all relevant ministers and agencies and with our PNG counterparts, have sought to get in balance right.

Number one, this decision today is part of the Government's framework for a multilayered approach to dealing with the scourge of people smuggling, and doing so within, not outside, the legal framework of the Convention.

Critically, the Convention requires us not to send genuine refugees back to the countries they have fled from, and in this arrangement we honour that undertaking.

The Convention requires us to provide proper humane treatment of people; under this arrangement we will do so.

And also under this arrangement, asylum seekers who are determined to be genuine refugees will have therefore a country of settlement, namely Papua New Guinea.

Number two, at a global level, this morning I also spoke with the United Nations Secretary-General.

I indicated that Australia will be convening an international conference of relevant transit countries and destination countries within the framework of the Refugee Convention to deliberate on how to improve current global international arrangements in two respects.

Firstly, the adequacy of processing systems and centres around the world, and as well as that, how do we best have a better arrangement for Australia, Canada, the US and other countries to deal with the resettlement burden around the world.

Number three, Australia sees this as a Regional Resettlement Arrangement between Australia and Papua New Guinea, and therefore is part of our broader approach on regional cooperative arrangements in South East Asia, and the South Pacific, on people smuggling.

In this regard, we will seek to develop further regional arrangements within this framework over time through the mechanism already agreed between Australia Indonesia for a ministerial conference of Immigration Ministers and Foreign Ministers to be held next month in Indonesia.

Number four, as also discussed in Indonesia, we will also be working with regional partners on visa arrangements for certain countries around the world that have become source countries for the outflow of irregular people movements.

In this area, I have noted reports from Jakarta today on forthcoming arrangements from the Indonesian Government on visa arrangements for Iranians.

Number five, Australia's also reviewing its own national assessment procedures for dealing with refugee determination arrangements within Australia; whether those are appropriately benchmarked with other national jurisdictions around the world, and whether these need to be changed.

Australians are people with hard heads but also with a kind and compassionate heart.

I wish to emphasise that Australia will continue to take large numbers of genuine refugees through our existing global humanitarian program.

Recently the Government increased our intake from 13,000 to 20,000 per annum.

These refugees are people who have languished in UN camps around the world for years and in some cases for more than a decade.

These refugees Australia will continue to help as part of our humanitarian responsibilities to the international community.

Should the international I referred to earlier in the week on global resettlement practices be successful, and if we also see the successful implementation of the RRA announced today, Australia stands ready to consider progressively increasing the number of places in the humanitarian program as recommended by the Houston Panel.

Many Australians will also be concerned about the proper and humane treatment of both asylum seekers and genuine refugees under the RRA.

The Government is fully mindful of its obligations under international and domestic law; this

is no trivial matter.

The Minister for Immigration will be releasing a subsequent statement on the proper treatment of asylum seekers and refugees under this arrangement, in particular the proper protection of unaccompanied minors and families with children.

The Government is fully mindful of the UNHCR report on Manus, and as I said earlier this week in Moresby, as the Manus facility is developed further over time we intend to ensure that all proper requirements are met and this will take time.

Furthermore on the question of the settlement of genuine refugees with their status having been determined in Papua New Guinea, the Australian Government, in support of the PNG Government, will provide comprehensive settlement services to ensure that these refugees can live safely and with security and in time, prosperity, within PNG.

I want to be clear with everyone both within in Australia and Papua New Guinea that Prime Minister Peter O'Neill has decided to help Australia with a problem we face, the problem of people smuggling, and Peter I thank you for that.

I thank you as a friend; I thank you as a fellow Prime Minister and as a neighbour.

I also thank the Prime Minister for having raised his willingness to do more in cooperation on people smuggling when we met in Brisbane only a couple of weeks ago, and our conversations since then have been based on that initial encounter.

I want to be equally clear with people in Australia and PNG that our Government is also helping Papua New Guinea deal with the problems that they face.

That's what friends are for and that's what friends do for each other, and we make no apology for that.

Australia has been PNG's strongest development partner for decades.

Earlier this week in Moresby I agreed with the Prime Minister that we would help PNG in a number of important areas.

The Prime Minister and I have also discussed the important work we can do in the area of health and hospitals.

We've agreed that Australia will now help with the redevelopment of the major referral hospital in Lae and its long term management needs.

We've agreed to fund 50:50 the reform of the Papua New Guinea university sector including next year by implementing the recommendations of the Australia-PNG education review.

We've also agreed to help PNG with the support they have sought in professional management teams in the health, education and law and order portfolios.

And Australia, Prime Minister, stands ready to assist PNG further with other development needs in the future.

The RRA that Papua New Guinea and Australia are announcing today represents one part of a comprehensive response to the challenge of people smuggling.

Some will say it's too hard-line; others will say it's inadequate and we should simply jettison the Refugee Convention. There will be criticism both from the left and from the right.

What the Government has sought to do is provide a robust, balanced response to a problem for all of us.

I want to be frank with everyone around the nation that the implementation of this Regional Resettlement Arrangement will not be smooth. We are bound to run into many unanticipated problems. We will tackle them one by one.

I also want to be frank with everybody by saying the implementation of this arrangement will not be inexpensive; acting on such a sustained challenge to border security does cost.

There will be those both in PNG and Australia who will seek to attack this arrangement through the courts, which is why we have been as careful as we can in constructing an arrangement which is mindful of the earlier deliberations of the courts.

And above all, I want to level with the nation by saying that the boats are not going to stop coming tomorrow, in fact it is more probable that the people smugglers will try and test our resolve for the period ahead.

It's important, however, to look how measures such as this work over the months and years ahead.

We are prepared to do more. I want to be absolutely clear with the Australian people as to why we're doing this. Finally, it's for three reasons.

The first is that our intelligence agencies indicate the numbers of people seeking to come to Australia by boat will continue to increase in the future as the people smuggling industry becomes more professional and entrenched around the world.

Other countries are finding it the same.

Second, with each vessel that comes, there is a continued risk of drownings, and we've seen too much of this already.

There is also a third reason. People smugglers try to drum up business when there is human tragedy around the world.

We know this from Afghanistan, Iraq and Iran, but the international community now faces a massive new outflow from Syria.

That is why the international community needs to deal with each of these new challenges in a sustainable fashion.

That is why we need a comprehensive network of processing centres around the world, and better and more equitable resettlement obligations around the world rather than every country simply playing pass-the parcel.

Therefore the decision announced today represents one practical step forward, among many that will need to be taken for future.

This is not a three-word slogan. This is a piece of hard public policy which we are working through cooperatively within our region and which must now be implemented.

And we must do so calmly, rationally and with resolve. Today represents one major step forward. Many other steps lie ahead, and I thank the Prime Minister for his cooperation.

PM O'NEILL: Thank you, Prime Minister Rudd. And I thank you once again for inviting myself and my colleague Ministers from Papua New Guinea to join you on this very important regional announcement.

This is a regional initiative that we think that the region continues to face as Pacific communities, like Papua New Guinea, and the other small island states continue to have challenges maintaining their borders.

And as a result of that, we continue to have illegal immigrants ourselves, into those nations and countries.

Papua New Guinea was asked, by the then government in 2006, to establish a processing centre in Manus.

In 2011 of course, the then government, the Gillard Government, asked us to reopen that facility.

We have insisted since we came into government that we wanted to establish a permanent regional processing centre.

Today's regional resettlement program is one that we believe will resolve many of those issues we have brought forward to the Australian Government.

That is why I want to thank the Prime Minister of Australia Kevin Rudd and of course the government for their initiative to try to accommodate our wishes to establish a regional processing centre and a regional resettlement scheme that has now been announced today.

Papua New Guinea as a country, it might not be widely reported, but we also have our own refugee issues. For many years, over tens of thousands of refugees in our country.

I believe that the processing centre and the resettlement arrangement, that we're now forging, will enable us to have an orderly process in those people who are seeking genuine



citizenship of other countries in the region.

And that is why we agreed to a resettlement program where we believe strongly that genuine refugees can be resettled in our country and within the region in the years to come.

I also want to say this: an annual review will take place in these arrangements.

So as Prime Minister Rudd has stated earlier, it is not going to be easy.

But of course Papua New Guinea is blessed with lots of land mass and a very small population.

There is enough assistance that we can give to the Australian Government in handling this issue of the refugees that the Australian Government is facing.

So once again, thank you very much for asking us to join you in this major announcement.

We look forward to working with the Australian government in the Australian government in the near future and making sure this resettlement program works for our community in the Pacific region.

MINISTER BURKE: Thank you, Prime Minister and Prime Minister O'Neill and Ministers.

We've had one vessel that has been intercepted, at least one immediately before this announcement.

It will be vessels from now on intercepted or on reaching Australia that will have the new rules applied to them.

To send people to Manus Island, the health checks themselves take up to two weeks.

So there will be a delay from the first boats arriving before people begin to be transferred to Manus Island.

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.

And it will be a couple of weeks because of the health checks circumstance before the first transfers take place.

AG: Thank you Prime Minister. Just to reiterate that, although the Prime Minister has already said these things, this arrangement will be in entirely in accordance with Australia's international and domestic law obligations.

Papua New Guinea is of course a signatory to the Refugees Convention and, as has been indicated by both Prime Ministers, Papua New Guinea is going to withdraw the reservations that it had to the Refugees Convention in respect of people who are to be transferred from Australia.

What that means is that all people transferred to Papua New Guinea will have the full benefit of the rights that come to them under the Refugees Convention.

Papua New Guinea will be conducting the processing and, of course, as is appropriate under the Refugees Convention, it will carry with it for all those who are assessed as being genuine refugees, the right to potentially resettlement in Papua New Guinea.

JOURNALIST: Mr Rudd, the obvious question is how much is this going to cost? And secondly, is the government confident it will withstand the obvious legal challenges that are going to come?

PM RUDD: A full statement of costs will be put forward by the Finance Minister in due course.

We've gone through that quite extensively.

Of course, some of the matters that I've referred to in terms of development cooperation would occur within the framework of the development assistance budget.

Others will, of course, need to be dealt with in a different way.

On the question of the overall impact on the budget of asylum seekers in general, at present, because the numbers are going up and up and up, this is a huge burden to budget.

What we're on about here is a new arrangement which actually will send a very clear message to people smugglers with the objective of reducing the number over time and therefore, with less call on the budget.

So for us, those budgetary arrangements are important.

On the second question you raised, I would simply refer to the statements by the Attorney and myself earlier on.

And that is, we are operating here within the legal framework of UN convention and

Australian domestic law.

We've been entirely mindful of early determinations by the Australian High Court.

JOURNALIST: Mr Rudd, you said you'll review this within twelve months, how will you measure whether it's been successful? How much of the boats need to stop or how many boats need to stop before you can decide?

PM RUDD: I think the real evaluation here lies in what the intelligence and security agencies inform us about the likely impact of these arrangements over time in bringing numbers down over time.

It would be wrong and misleading for me to even begin to suggest a number to you today. I don't intend to do that. I believe in being straight with the people of Australia.

And therefore, what we're seeking to do through these arrangements is send a clear and undiluted message to every people smuggler in the world that your business model is basically undermined.

Your business model, which says if you jump on a boat, you're going to end up in Australia, that doesn't apply any more.

We'll see how long it takes to have an effect.

But we want to be upfront about the fact that will not be overnight.

As I said, people smugglers may well seek to test the resolve early on.

It will be bumpy and rocky for a while but this is a clear change in strategic direction and dealing with the core element of the business case of people smugglers, which says that if you jump on a boat, you've got a free ticket to Australia and there to stay.

JOURNALIST: Has this been approved by Cabinet?

PM RUDD: Yes, we've had extensive discussions through full Cabinet and the National Security Committee of the Cabinet over the last several weeks.

As I said, this conversation about this arose because my good friend Peter O'Neill, when he was last in Brisbane a few weeks ago, over a bite to lunch on the verandah at Norman Park, said 'what can we do more to cooperate with people smuggling' so we've worked from there and all our agencies have been engaged since that time.

JOURNALIST: Why won't you tell us what the cost is now and how you will pay for it?

PM RUDD: Can I say we will undertake this with an absolute application to discipline, that this will be budget neutral.

That is the commitment the Australian people want me to give to them.

That's the commitment I am giving to them.

In terms of the finalisation of those arrangements which fall currently within or outside the aid budget, then we'll make a full statement in due course and the Finance Minister will do so.

JOURNALIST: One more question. In the next 12 months, how many asylum seekers is PNG willing to take?

PM O'NEILL: The details are in the agreement there. We will take as much as we can on the capacities that we have on the ground.

And as you know, we are building more capacity to take more refugees and asylum seekers.

JOURNALIST: Can you give us an indication of the number? You must have a number in your mind, surely?

PM O'NEILL: You can't just simply estimate a number.

You don't know how many people are seeking such a refugee status in the boats that arrive.

So we hope that the boat will stop and there will be nobody coming to Manus and that is the objective of these arrangements.

PM RUDD: The other point to add to what the Prime Minister has just said is that every people smuggler in the world would want us to give you a number.

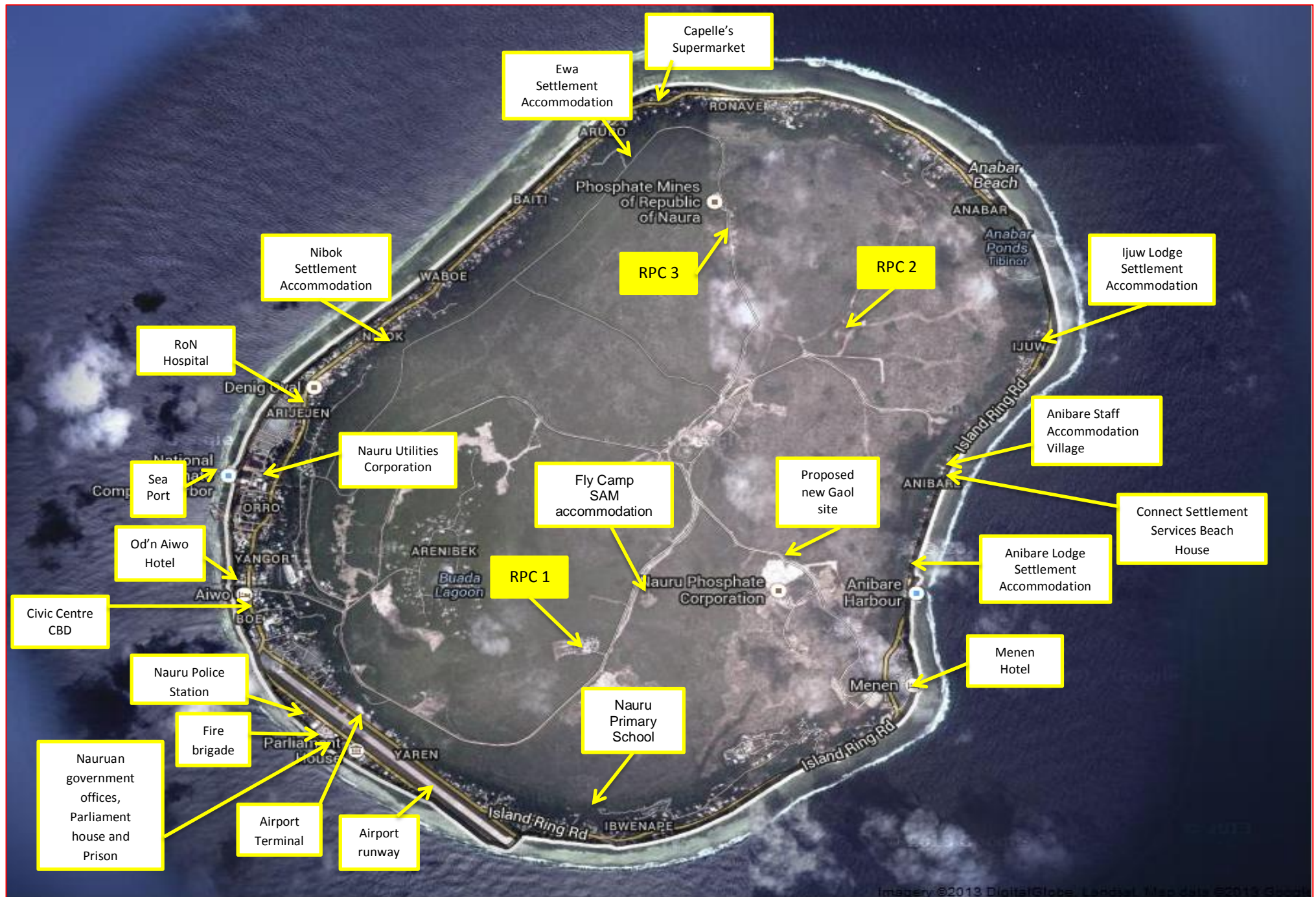
We're not for obvious national interest reasons.

That is why in agreement is framed in the way it's framing so we don't allow people smugglers to gain the system.

That's just completely wrong. I said before our international convention for visits is four.

I appreciate the lateness of the day and I'm sorry for those who have been inconvenienced by that but the PM has just arrived from PNG. Thank you for your time.

[ENDS]



## Nauru Regional Processing Centre (data as at 17/04/2015)

**Table 1: Nauru Regional Processing Centre population by cohort and month (August 2012 - March 2015)**

	Adult Male	Adult Female	Minors	Total
Aug-12	0	0	0	0
Sep-12	148	0	0	148
Oct-12	377	0	0	377
Nov-12	387	0	0	387
Dec-12	366	0	0	366
Jan-13	415	0	0	415
Feb-13	412	0	0	412
Mar-13	424	0	0	424
Apr-13	420	0	0	420
May-13	428	0	0	428
Jun-13	490	0	0	490
Jul-13	544	0	0	544
Aug-13	433	23	30	486
Sep-13	570	112	87	769
Oct-13	327	158	106	591
Nov-13	404	173	109	686
Dec-13	535	187	116	838
Jan-14	621	259	132	1012
Feb-14	630	300	177	1107
Mar-14	665	313	179	1157
Apr-14	677	310	190	1177
May-14	658	304	208	1170
Jun-14	687	289	193	1169
Jul-14	695	268	183	1146
Aug-14	748	263	222	1233
Sep-14	715	239	186	1140
Oct-14	702	226	167	1095
Nov-14	643	198	155	996
Dec-14	596	164	135	895
Jan-15	549	134	119	802
Feb-15	509	126	107	742
Mar-15	489	126	103	718

\* August 2012 to September 2013 figures according to Daily Key Statistics and are taken from reporting day closest to end of month.

\* October 2013 to March 2015 according to publically available monthly Immigration Detention and Community Statistics.

NOT FOR RELEASE

Version 1

11 June 2013

# **Regional Processing Centre Guidelines**

## **Service Provider - Code of Conduct - Employees**

### **INTRODUCTION**

Workplace culture is shaped by values, attitudes and behaviours of the people who work in it. Employers and employees have shared obligations for maintaining respectful, courteous and safe workplaces.

All employees must demonstrate the values of integrity, honesty and fairness in their decisions, actions and behaviour.

All employees need to be aware of and be sensitive to the needs of transferees. Many of our transferees have extremely complex, challenging and emotional situations. All employees must demonstrate professional behaviour when dealing with transferees. Employees should not hesitate to seek help from supervisors or security staff if a situation appears to be getting beyond their control.

This Code of Conduct applies to the Service Provider, its Personnel and any Subcontractors.

All employees should note that any breach of this Code of Conduct may result in termination of employment.

### **STANDARDS OF CONDUCT**

#### **(a) An Open and Accountable Organisation**

In carrying out their duties, employees must:

- (i) behave professionally;
- (ii) behave honestly and with integrity;
- (iii) be open and accountable for their decisions, actions and omissions;
- (iv) disclose, and take all reasonable steps to avoid any conflict of interest (real or apparent) in connection with their duties;
- (v) create and maintain open and honest communications with other service providers, with a view to delivering a truly integrated service to transferees



based on shared information, feedback and best practice;

- (vi) not make improper use of information, in order to gain, or seek to gain, a benefit or advantage for themselves, a transferee or any other person;
- (vii) not make improper use of their status, power or authority, in order to gain, or seek to gain, a benefit or advantage for themselves, a transferee or any other person;
- (viii) at all times behave in a way that maintains the values, integrity and good reputation of the Regional Processing Centre and its stakeholders;
- (ix) avoid any practice or activity which could be foreseen to bring the Regional Processing Centre or its stakeholders into disrepute; and
- (x) report any behaviour that breaches the Code of Conduct and all allegations and/or possible incidents of criminal activity, corruption, dishonesty, unlawful conduct and conflicts of interest.

**(b) Fair and Reasonable Dealings with Transferees**

In carrying out their duties, employees must:

- (i) act fairly and reasonably in all of their dealings;
- (ii) not provide false or misleading information in response to a request for information;
- (iii) respect privacy and confidentiality; and comply with obligations under any Confidentiality Deed and the Deed of Non-disclosure of Personal Information which they have signed;
- (iv) ensure transferees are not subject to discrimination on any ground, including race, colour, gender, sexual orientation, religion, political or other opinion, national social origin, status or disability; and
- (v) facilitate transferee access to internal and external complaint mechanisms, and process requests promptly and in a fair and equitable manner.

**(c) Security**

In carrying out its duties, employees must:

- (i) demonstrate awareness of sensitivity, interest in and public scrutiny of, the regional processing environment, and, with this in mind, conduct themselves in an appropriate manner at all times whether on or off duty;
- (ii) not bring weapons or dangerous goods into the centre;
- (iii) present themselves and their bags and vehicles for screening upon entering and exiting the centre;

- (iv) not bring drugs or illegal substances into the centre;
- (v) not take any photographs within the RPC within prior written approval from DIAC, this includes any part of the RPC forward the entry gate.
- (vi) ensure all visitors to the centre are signed in and screened (at the main entry gate);
- (vii) use the facilities contained in the centre, the Regional Processing Centre equipment and systems in a proper manner; and
- (viii) comply with any other conduct requirement that is prescribed by Regulations, Determinations and/or Directions.

(d) **Duty of Care and Case Management**

In carrying out their duties, employees must:

- (i) act with care and diligence;
- (ii) take actions and comply with procedures to maintain a safe working environment;
- (iii) not be under the influence of or display the after effects of drug or alcohol consumption;
- (iv) ensure the requirements for individual transferees and transferee groups are managed in accordance with specific needs for example health, age, and gender;
- (v) in respect of any children or unaccompanied minors in the centre, ensure they receive appropriate and individual care; and
- (vi) be alert for transferees who are or appear to be, traumatised and/or vulnerable to self-harm and/or to the actions of others, and to manage and report on these.

(e) **Supportive Culture**

In carrying out their duties, employees must:

- (i) support and promote a stable and harmonious environment, and seek to resolve situations and tensions peacefully;
- (ii) treat everyone with respect and courtesy, and without harassment of any kind;
- (iii) be supportive and helpful to transferees who wish to seek advice in relation to their immigration status;

- (iv) conduct all duties, particularly safety and security procedures, sensitively, enabling transferees to maintain their dignity, and with respect for their individual circumstances and backgrounds;
- (v) share information with other service providers as to the individual needs of transferees as these needs are identified;
- (vi) behave in a tolerant, respectful and culturally sensitive manner towards transferees and their visitors and avoid perceptions of discrimination and bias;
- (vii) show understanding, respect and sensitivity for religious beliefs of each transferee and their particular needs; and
- (viii) show respect for the property of transferees ensuring that it is not damaged and is treated with appropriate cultural sensitivity.

(f) **Promoting a Healthy Environment**

In carrying out their duties, employees must:

- (i) take actions and comply with procedures to maintain a healthy environment;
- (ii) behave in a manner that respects and promotes the physical and psychological well-being of transferees; and
- (iii) respect the natural environment in and surrounding the centre.

(g) **Complaints About Conduct**

- (i) The Department and the Service Provider are committed to fair, transparent and timely resolution of complaints from transferees regarding breaches of this Code of Conduct.
- (ii) Transferees must be informed of their rights and are able to comment on or complain without limitation or fear of punishment.
- (iii) All complaints to the Service Provider, its Personnel and Subcontractors, or the Department will be investigated and an initial response provided to the complainant within seven working days.
- (iv) As part of this process, all relevant information will be considered and interviews may be undertaken by the Service Provider with its Personnel or Subcontractors. All Service Provider Personnel and Subcontractors will cooperate fully with such interviews and any requests for information.
- (v) Following investigation, if necessary, the Service Provider may take corrective or disciplinary action against Service Provider Personnel or Subcontractors who have breached the Code of Conduct.

Signature:

Date:

Name:

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**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE GOVERNMENT OF AUSTRALIA  
AND  
THE GOVERNMENT OF THE KINGDOM OF CAMBODIA  
RELATING TO  
THE SETTLEMENT OF REFUGEES IN CAMBODIA**

The Government of Australia and the Government of the Kingdom of Cambodia herein after referred to as the "Participants"

wishing to build on their existing strong and cordial relations:

**Preamble**

*Noting that:*

- the Participants are States parties to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (Refugees Convention), and believe that refugee protection is enhanced through committed international cooperation;
- the Participants share a longstanding bilateral relationship of cooperation on migration and in combating transnational crime including under the *Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of Australia concerning Mutual Cooperation in Combating Irregular Migration, People Smuggling and Trafficking*, signed by the Participants on 4 March 2002 (2002 MOU); and
- the *Memorandum of Understanding between the Republic of Nauru and Commonwealth of Australia, Relating to the Transfer to and Assessment of Persons in Nauru, and Related Issues*, signed on 3 August 2013, records the understanding that Australia will assist the Republic of Nauru to settle Refugees in a third safe country;

*Recalling:*

- that at the Fourth Ministerial Conference of the Bali Process on People Smuggling, Trafficking and Related Transnational Crime (Bali Process) held in Indonesia on 29-30 March 2011, Ministers agreed to regional cooperation as an effective way for interested states to reduce irregular migration in the region, undermine the people smuggling model, and find durable solutions for Refugees, including resettlement within and outside the region;

*Recognising:*

- the Sub-Decree No. 224 of Cambodia on Procedure for Recognition as a Refugee or Providing Asylum Rights to Foreigners in the Kingdom of Cambodia dated 17 December 2009 (Sub-Decree No. 224);



- in addition to the Participants' strong bilateral cooperation on migration and transnational crime and related matters, the importance of practical international cooperation to increase protection and settlement opportunities for Refugees; and
- the Government of the Kingdom of Cambodia will provide safe and permanent settlement opportunities for Refugees from the Republic of Nauru, based on humanitarian spirit;

have come to the following common understandings:

#### Interpretation

1. In this Memorandum of Understanding (MOU) "Refugee" means a person defined as a refugee in the Refugees Convention.

#### Objectives

2. Through this MOU the Participants will:
  - a. expand protection opportunities and durable solutions for Refugees in the Asia-Pacific region;
  - b. build on the joint cooperation under the 2002 MOU, including the development of enhanced capacity in Cambodia;
  - c. demonstrate the importance of regional cooperation on Refugees' settlement in accordance with the Refugees Convention; and
  - d. further broaden cooperation under the Bali Process.

#### Operation of this MOU

3. Settlement of Refugees will be undertaken in accordance with the Kingdom of Cambodia's domestic laws.

#### *Persons to be settled in Cambodia*

4. The Kingdom of Cambodia will offer permanent settlement to persons who:
  - a. have undergone a refugee status determination process in the Republic of Nauru and have been determined to be a Refugee, and meet the entry and settlement requirements of the Kingdom of Cambodia,
  - b. have been provided with further information by Cambodian competent officials on living conditions, customs, tradition, culture and religion of the Kingdom of Cambodia; and
  - c. voluntarily accept an offer of settlement as evidenced by written consent, and who travel to the Kingdom of Cambodia voluntarily.
5. The number of Refugees settled, and the timing of their arrival into Cambodia under this MOU, will be subject to the consent of the Kingdom of Cambodia.
6. The Operational Guidelines for the Implementation of the MOU (Operational Guidelines) are attached to this MOU. The Operational Guidelines will be revised in writing by mutual consent of the Participants as necessary.



*Status of Refugees settled in Cambodia*

7. The Kingdom of Cambodia will facilitate the lawful entry of Refugees who accept an offer under clause 4 of this MOU.

8. The Kingdom of Cambodia will grant Refugees settled under this MOU permanent residence status, with all of the rights and obligations of permanent residency in accordance with Sub-Decree No. 224.

9. The Kingdom of Cambodia will treat all Refugees settled under this MOU in accordance with its obligations under the Refugees Convention.

*Settlement arrangements*

10. The Government of Australia will assist the Kingdom of Cambodia to establish appropriate arrangements and assistance for Refugees settled under this MOU, in accordance with the following principles:

- a. Refugees will be assisted to re-establish their lives so that they become self-sufficient;
- b. the level and type of support provided to each Refugee will be tailored to their needs;
- c. services and treatment will be commensurate with local community standards;
- d. the temporary accommodation of Refugees will be in Phnom Penh. The settlement services for the integration of Refugees into the Cambodian community under this MOU will be delivered at a location outside of Phnom Penh; and
- e. health insurance will be provided to Refugees as set out in the Operational Guidelines.

11. The Government of Australia will provide additional development assistance within the agreed bilateral development priorities, including to ensure benefits to local communities where Refugees are settled, as further determined by both Participants.

12. The Government of Australia will bear the direct costs of the settlement arrangements as mutually determined between the Participants in accordance with the principles in clause 10 of this MOU.

*Co-operation*

13. The Participants will work closely with the United Nations High Commissioner for Refugees (UNHCR) in line with UNHCR's supervisory responsibility under the Refugees Convention and Sub-Decree No. 224.

14. This MOU may be amended or revised in writing by mutual consent of the Participants.

15. Communications concerning the day-to-day operation of activities undertaken in accordance with this MOU will be between the Ministry of the Interior of the Kingdom of Cambodia and the Australian Department of Immigration and Border Protection, with activities to be reviewed as part of the Australia-Cambodia Immigration Forum.

16. Any dispute arising with respect to the interpretation or implementation of this MOU will be settled amicably through consultation between the Participants.

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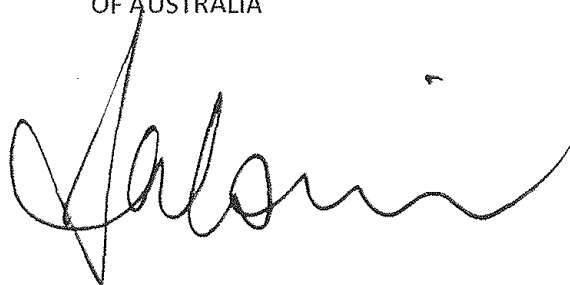
17. This MOU will come into effect on the date of signature by both Participants and will remain in effect for an initial period of four years. The MOU may be terminated by either Participant six months after written notice.

In witness whereof, the undersigned, being duly authorised, have signed this MOU.

Done at Phnom Penh, on 26 September 2014, in two originals in Khmer and English, each text being equally authentic. In case of any divergence of interpretation, the English text will prevail.

FOR THE GOVERNMENT

OF AUSTRALIA



FOR THE GOVERNMENT

OF THE KINGDOM OF CAMBODIA

