



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

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Introduction

ChilOut – *Children Out of Detention* – has been advocating for the implementation of laws and policies that disallow the mandatory and indefinite detention of children since 2001. ChilOut welcomes the opportunity to make a submission to the Inquiry of the Senate Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru (“the Inquiry”). We believe that the allegations that are the subject of the Inquiry are extremely concerning and are indicative of a failure by the Australian Government to safeguard the health and wellbeing of children detained in the Regional Processing Centre on Nauru (“the Nauru RPC” or “the Centre”).

As of 31 March 2015 there were 103 children held at the Nauru RPC.¹ Investigations conducted to date by organisations including ChilOut, the Australian Human Rights Commission, the UNHCR, Philip Moss, and civil society organisations demonstrate that:

- The allegations that are the subject of the Inquiry are credible and warrant thorough investigation and prosecution where appropriate;
- The ongoing detention of asylum seeker children in Nauru constitutes a breach by the Australian Government of its international human rights obligations, in particular those prescribed in the Convention on the Rights of the Child;
- It is inappropriate to allow children to remain in the Nauru RPC;
- Unaccompanied children, particularly those relocated to the community, face unacceptable threats of physical and emotional harm; and
- No further asylum seeker children should be sent to offshore immigration detention facilities.

ChilOut urges the Inquiry to support the immediate relocation of all children and their families held in the Nauru RPC to the Australian community.

Summary of evidence relating to welfare of children in the Nauru RPC

The transfer of asylum seekers to the Nauru RPC commenced on 13 September

¹ Department of Immigration and Border Protection, “Immigration Detention and Community Statistics Summary”, 31 March 2015, <https://www.immi.gov.au/About/Documents/detention/immigration-detention-statistics-mar2015.pdf>.

2012.² Since that time, the reports produced from a number of investigations and site visits lead to the same conclusion: children should not be held in offshore immigration detention facilities and in particular, the Nauru RPC is a completely inappropriate place for children.

It is worthwhile revisiting the key reports here, as they support the allegations of conditions and circumstances that precipitated the Moss Review.

On 7 to 9 October 2013, the UNHCR undertook a monitoring visit to the Centre and produced a report of its visit (“the UNHCR Report”).³ The findings in the UNHCR Report included:

- The conditions at the Nauru RPC raised serious issues about compatibility with international human rights standards, to which Australia is a signatory;
- Detainees lived in very cramped and hot conditions with no privacy;
- There was a prevalence of family break-ups as a result of recriminations in relation to finding themselves in Nauru rather than Australia;
- The Centre had insufficient water and insufficient access to telephones and internet; and
- The UNHCR was deeply concerned by the transfer of children to a closed detention facility with no time limit for when freedom of movement may be achieved.⁴

The UNHCR Report concluded that it is inappropriate to send asylum seeker children offshore into immigration detention and that doing so may be in breach of the Convention on the Rights of the Child.⁵

Four months later, on 16-19 February 2014, five independent clinical experts forming the Physical and Mental Health Subcommittee of the Joint Advisory Committee for Nauru Regional Processing Arrangements conducted a site visit to the Centre and prepared a report to the Australian and Nauruan Governments outlining its finding and recommendations (“the Physical and Mental Health Subcommittee Report”). *The Guardian* published the Physical and Mental Health Subcommittee

² Moss Review [2.2].

³ UNHCR, “UNHCR monitoring visit to the Republic of Nauru 7 to 9 October 2013”, 26 November 2013, accessed 23 April 2015, <http://unhcr.org.au/unhcr/images/2013-11-26%20Report%20of%20UNHCR%20Visit%20to%20Nauru%20of%207-9%20October%202013.pdf>.

⁴ UNHCR, “UNHCR monitoring visit to the Republic of Nauru 7 to 9 October 2013”, 26 November 2013, accessed 23 April 2015, <http://unhcr.org.au/unhcr/images/2013-11-26%20Report%20of%20UNHCR%20Visit%20to%20Nauru%20of%207-9%20October%202013.pdf>.

⁵ UNHCR Report at p19.

Report on 30 May 2014.⁶ The key findings of that report were:

- There was a significant and ongoing risk of child abuse including physical and sexual abuse;
- Staff had inadequate experience in child protection. There was also no child protection framework in place;
- Health care services were inadequate and there were general public health concerns arising from living conditions in the Centre;
- The conditions in the Centre were not conducive to a quality education and asylum seeker students received fewer hours than in the Nauruan or Australian education systems;
- There were inadequate play facilities and inadequate recreation facilities for children; and
- Children were exposed to the mental health issues of others around them.⁷

Fundamentally, the Physical and Mental Health Subcommittee Report stated, “*The RPC is not a suitable environment for children*”.⁸

In May 2014, ChilOut made a submission to the Australian Human Rights Commission Inquiry into Children in Immigration Detention.⁹ That submission made the following comments in respect of children in detention at the Nauru RPC:

- There were inadequate play areas at the Centre. There was no grass for children to play on, only rocks and coral ground;
- There was no designated area for a classroom. Space in the Centre was shared amongst all age groups and including adults therefore learning could not take place separately from other activities;
- Basic educational items such as pencils, notebooks, pencil cases, school bags, water bottles and hats were not provided to children as part of funded services and Save the Children relied on donated goods;
- The hot, humid and crowded tent environment was a health hazard to children, in particular infants;
- Inadequate maternal and neo-natal health facilities on the island placed pregnant women and their babies at an unnecessary level of fatal risk; and

⁶ *The Guardian*, “Nauru family health risks – the report in full”, 30 May 2014, accessed 23 April 2015, <http://www.theguardian.com/world/interactive/2014/may/29/nauru-family-health-risks-report-in-full>.

⁷ The Physical and Mental Health Subcommittee Report at pp 29-35.

⁸ The Physical and Mental Health Subcommittee Report at p 35.

⁹ ChilOut, “Submission to the Australian Human Rights Commission Inquiry into Children in Immigration Detention”, May 2014, accessed 23 April 2015, <https://d3n8a8pro7vhmx.cloudfront.net/chilout/pages/25/attachments/original/1416283555/1.pdf?1416283555>.

- There were inadequate and limited forms of communication for detainees to maintain contact with family overseas.¹⁰

In November 2014 the Australian Human Rights Commission released the report of its inquiry into children in detention, “The Forgotten Children: National Inquiry into Children in Immigration Detention” (“the Forgotten Children Report”).¹¹ While the mandate of the AHRC Inquiry did not extend to the facilities on Nauru, and the investigating team was barred from entering the RPC itself, the Commission heard detailed evidence from experts and staff, as well as testimony from children and parents who had been detained on Nauru. The final report outlined in great detail findings that were consistent with those summarized above from the UNHCR, Physical and Mental Health Subcommittee and ChilOut.

Faced with such findings it is unsurprising, yet deeply concerning, that the Forgotten Children Report concluded, “*Children on Nauru are suffering from extreme levels of physical, emotional, psychological and developmental distress.*”¹²

On 3 October 2014, the then Minister for Immigration and Border Protection, Mr. Scott Morrison MP, announced a review into allegations regarding conditions and circumstances in the Nauru RPC, including allegations of sexual assault, sexual exploitation, harassment and other physical abuse. The resulting review and report by Philip Moss published on 6 February 2015 (“the Moss Review”) considered that there were credible allegations of indecent assault, sexual harassment, physical assault, sexual exploitation and allegations of rape that should be investigated and overall issues involving the privacy and personal safety of detainees.¹³ Troublingly, the Moss Review found that there were credible allegations of such conduct by contract service providers involving children asylum seekers.

The Moss Review recommended various improvements in order to better identify, report, respond to, mitigate and prevent incidents of sexual and other physical assaults at the Nauru RPC.¹⁴ The findings and recommendations of the Moss Review

¹⁰ ChilOut, “Submission to the Australian Human Rights Commission Inquiry into Children in Immigration Detention”, May 2014, accessed 23 April 2015, <https://d3n8a8pro7vhm.cloudfront.net/chilout/pages/25/attachments/original/1416283555/1.pdf?1416283555>.

¹¹ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Detention* (2014), accessed 23 April 2015, https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf, pp 59 and 63.

¹² Forgotten Children Report, p195.

¹³ Philip Moss, “Final Report of the Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru”, 6 February 2015, accessed 22 April 2015, https://www.immi.gov.au/about/dept-info/_files/review-conditions-circumstances-nauru.pdf, pp43-44.

¹⁴ Moss Review [19].

demonstrate that significant work is required by the Australian and Nauruan Governments in order to improve the safety and security of asylum seekers, in particular children.

That the Moss Review was compelled to recommend steps such as providing training to contract service providers to ensure they understand what is appropriate behaviour around children and that a robust child protection framework be deployed¹⁵ indicates that the Australian Government has failed from the outset in acting in the best interests of children, as it is required to do under international human rights law and under the Council of Australian Government's National Framework for Protecting Australia's Children. These obligations are considered further below.

Additional concerns held by ChilOut

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

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

Currently, the legal guardianship of the UACs on Nauru remains unclear. The boys, who have endured severe disruption to their education and who currently report near-constant threats of intimidation and violence, have largely been overlooked by the official inquiries that have been held to date.

ChilOut remain deeply concerned for the safety, health and welfare of this most vulnerable cohort, and encourage the Committee to consider their plight in their findings and recommendations.

Fulfillment of obligations under the Memorandum of Understanding

ChilOut notes that 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 ratified on 3 August 2013 ("the MOU") requires:

¹⁵ Moss Review, pp 9-11.

- The Australian Government to treat detainees with dignity and respect and in accordance with human rights standards (clause 17); and
- Special arrangements to be made for vulnerable cases, including unaccompanied minors (clause 18).

The human rights standards to which Australia is required to comply with include the Convention on the Rights of the Child (“the Convention”).

Article 3 of the Convention requires that in all actions concerning children, the best interests of the child shall be a primary consideration. The ongoing detention of children in the Nauru RPC where serious and credible allegations of sexual and other physical abuse arise cannot be in the best interests of the child. In addition, the Australian Human Rights Commission has stated that the mandatory detention of children offshore, which bypasses any assessment of the best interests of the child, constitutes a breach of this fundamental provision.¹⁶ ChilOut agrees with the Commission’s conclusion and urges the Inquiry to keep Article 3 of the Convention at the forefront of its assessment of the Australian Government’s conduct and performance in respect of the Nauru RPC.

Article 16 of the Convention requires that no child be subjected to arbitrary interference with his or her privacy, home or correspondence. The Forgotten Children Report outlines reports of children feeling uncomfortable due to the lack of privacy as a result of sharing tents with their families that are inadequately secured or insulated from sound.¹⁷ Similar concerns are noted in the UNHCR Report summarised above.

Article 19 of the Convention requires states to implement appropriate measures to protect children from all forms of physical or mental violence, injury and abuse whilst in the care of a person. The findings of the Moss Review throw this obligation into sharp focus. The failure of the Australian Nauruan Governments to develop and implement a child protection framework specific to the Nauru RPC, to require mandatory child protection checks of all staff (this responsibility was assumed by Save the Children instead) and to provide adequate child protection training to all Nauruan staff is likely to have contributed to creating an environment in which sexual and other physical abuse could occur.

Article 28(1) requires member states to expressly recognize the rights of children to education. Save the Children, which is contracted by the Australian Government to provide education services to children at the Centre, have stated that resources are

¹⁶ Forgotten Children Report, pp 192-193.

¹⁷ Forgotten Children Report, p181.

inadequate to provide an environment that is conducive to learning.¹⁸ The reports summarised above consistently report on the inadequate educational facilities for children at the Centre.

Article 37(b) requires that no child be deprived of his or her liberty unlawfully or arbitrarily and that the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be a measure of last resort and for the shortest appropriate period of time. Given the Australian Government's policy of mandatory detention of maritime arrivals, it is difficult to see how the Government can assert compliance with this obligation.

Article 37(c) requires that children be treated with humanity and respect for the inherent dignity of the human person. It is alarming to read in the Moss Review allegations of exploitation concerning a female detainee who requested an extended shower from 2 minutes to 4 minutes. The Forgotten Children Report notes that showers can be limited to as little as 30 seconds due to water shortages on Nauru.¹⁹ These incidents are consistent with the UNHCR Report summarized above that there was inadequate water and facilities at the Centre. If the Australian Government cannot guarantee a reasonable level of hygiene, cleanliness and comfort for children in the Nauru RPC that upholds a standard of humanity and respect for their inherent dignity, then no asylum seekers should be detained there at all.

Article 39 requires that children who have experienced torture, abuse or armed conflicts should recover in an environment that fosters the health, dignity and self-respect of the child. ChilOut has previously heard from children in detention who have stated they do not feel safe inside detention. They are constantly wary of staff, concerned about how they act around other asylum seekers, surrounded by self-harm and depression and above all uncertain as to whether they could be sent home or to offshore detention at any moment.²⁰ These comments are consistent with the Moss Review's findings that there were credible allegations of sexual and other physical abuse and are deeply concerning to ChilOut.

Aside from Australia's international human rights law obligations, the Council of Australian Governments has also developed a National Framework for Protecting Australia's Children. The Framework provides for, amongst other things, the coordination of mandatory working with children checks and the development of child protection policies. It is disappointing that the Australian Government did not

¹⁸ Forgotten Children Report, p184.

¹⁹ Forgotten Children Report, p183.

²⁰ ChilOut, "Submission to the Australian Human Rights Commission Inquiry into Children in Immigration Detention", May 2014, accessed 23 April 2015, <https://d3n8a8pro7vhmx.cloudfront.net/chilout/pages/25/attachments/original/1416283555/1.pdf?1416283555>, at 10.

consider it necessary to develop and implement a child protection framework for the Nauru RPC, despite being a party to the National Framework for Protecting Australia's Children. The Government's attitude demonstrates that child safety at the Nauru RPC has not always been a priority of the Government.²¹

ChilOut notes that the Government has subsequently announced they have taken steps to address child protection issues including the formation of a Child Protection Section within the Department. ChilOut strongly supports the Moss Review's recommendation that the Australian Government continue to work with the Government of Nauru to develop a robust child protection framework, and not simply react with ad hoc responses to child protection issues as they arise.

Australian Government's Duty of Care

As outlined above, several investigations and reports have been published since the opening of the Nauru RPC that are critical of the facility. The Moss Review has only provided further detail of the allegations. Apart from specific investigation into the alleged conduct of Save the Children staff trying to undermine the Government's mandatory detention policy, the Moss Review did not uncover any information about the Nauru RPC that the Australian Government did not already know.

It is a failure on the part of the Government to have allowed the mandatory detention of children to continue whilst being aware of the issues raised in the reports. Equally, it is a failure on the part of the Government to have allowed the unsatisfactory conditions to persist, such that the same issues continue to be identified in reports that are being provided over two years after the opening of the Nauru RPC.

The issues noted in the reports summarized above demonstrate a failure by the Australian Government in its duty of care to provide for the health, safety, wellbeing and educational needs of children in the Nauru RPC. Asylum seekers should not be subjected to substandard living standards as a result of a harsh, arbitrary policy.

Performance of the Australian Government in relation to the conduct and behaviour of staff

The Australian Government has contracted various service providers to provide services at the Nauru RPC, including Transfield Services, Wilson Security, Save the

²¹ The Moss Review reported the lack of a child protection framework in respect of the Nauru RPC, to which the Government responded that it was reliant on Save the Children to manage child protection (see Moss Review [3.177-3.178]).

Children and the International Health and Medical Service.

It is not appropriate to delegate fundamental child protection obligations to the Australian contract service provider Save the Children. The Australian Government must take responsibility for child protection and ensure that a child protection framework for the Nauru RPC is developed and implemented as soon as possible.

Save the Children provided essential welfare and educational services to children at the Nauru RPC. Following allegations that ten Save the Children staff were engaged in a campaign to undermine the Government's border protection policy, the Government reacted by removing all Save the Children staff implicated in the allegations from the Nauru RPC. The Moss Review rightly criticised the Government for failing to seek details and investigate the allegations before ordering the removal of staff.²² The Government's knee-jerk response resulted in the removal of specialist care services that were essential to the wellbeing of children detainees in the Nauru RPC. This action by the Government is likely to have damaged the reputation and ability for the key service provider for children at the Centre to effectively continue its work.

The circumstances that precipitated the Moss Review and the Government's response

On 7 April 2015, current and former staff of the Nauru RPC wrote an open letter to the Australian public alleging that the Australian Government knew of the sexual and physical assault of women and children at the Centre for at least 17 months, well before the Moss Review was commissioned.²³ The most concerning allegations made by the staff include:

- The Department of Immigration and Border Protection ("the Department") was informed in writing of several assaults referred to in the Moss Review in addition to others not referred to in the report;
- The Department was provided copies of internal Save the Children meeting notes regarding particularly vulnerable women and children at the Nauru RPC;
- Despite knowledge of credible allegations of children being subjected to sexual and physical abuse, the Department refused to remove the children from the Nauru RPC, where they faced the risk of further abuse and

²² Moss Review [26-27].

²³ Letter published by Jason Om, *Lateline ABC*, "Immigration Department aware of sexual abuse allegations against children for 17 months but failed to act, say former Nauru workers", 8 April 2015, accessed 23 April 2015, <http://www.abc.net.au/news/2015-04-07/nauru-letter-of-concern-demands-royal-commission/6374680>.

- retaliation, or in some circumstances experienced further abuse;
- The Department was made aware of sexualized behaviour amongst children;
 - There was a lack of confidence amongst asylum seekers that they can report incidents of sexual and other physical abuse without facing retaliation or damaging the assessment of their asylum claims; and
 - The settlement of refugees amongst the Nauruan population places them once again in proximity with the perpetrators of sexual abuse.

The letter confirms the findings of the reports summarized above and supports the allegations that precipitated the Moss Review. The allegation that the Australian Government was aware of assault incidents at least 17 months prior to the Moss Review also appears credible and likely, given the UNHCR had publicly reported on incidents at least 12 months prior to the Moss Review.

The fact that the Department did not remove children who were victims of alleged abuse from the Nauru RPC, despite knowledge of the allegations, demonstrates a lack of due diligence and care for the health and wellbeing of children in the Centre.

ChilOut strongly supports the call made in the letter for the Australian Government to immediately transfer all asylum seekers in the Nauru RPC, in particular children and their families, to Australia. ChilOut also supports the call for a Royal Commission into the allegations of abuse and the Government's response to those allegations.

Conclusion

The Australian Government has received repeated and consistent advice and reports of inadequate and unsafe conditions in the Nauru RPC, credible allegations of sexual and other physical abuse and inappropriate conditions for children. The Moss Review brings the allegations into sharper focus and sheds light on the inappropriateness of Nauru as a facility for detaining asylum seekers and their children.

By continuing to allow children and their families to remain in the Nauru RPC despite these reports, the Australian Government remains in breach of fundamental human rights obligations.

ChilOut urges the Inquiry to support the immediate transfer of all children and their families from the Nauru RPC to Australia for processing and settlement, and the cessation of any further transfers of asylum seekers to the Nauru RPC.