



Foundation House

The Victorian Foundation for Survivors of Torture Inc.

Specialised services for refugees

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To: Legal and Constitutional Affairs References Committee

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Re: Submission to the *Inquiry into the incident at the Manus Island Detention Centre from 16 February to 18 February 2014*

I appreciate the invitation of the Committee to Foundation House to provide a submission to the inquiry.

The Victorian Foundation for Survivors of Torture Inc. (Foundation House) does not provide services to people at the Manus Island Detention Centre and is therefore unable to provide evidence about the specific events that are the subject of the inquiry, or more generally about the treatment of people who are detained.

With respect to the Inquiry's term of reference about the Australian Government's duty of care obligations and responsibilities (k), we note that the Manus Island Detention Centre was established in response to a recommendation of the Expert Panel on Asylum Seekers (Recommendation 9) that a processing facility be established in Papua New Guinea.¹ That recommendation explicitly provided that the treatment of people transferred to such a facility should be "in ways consistent with the responsibilities of Australia and PNG under international law." In particular, the Expert Panel stated that the arrangements consistent with those responsibilities included:

- 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;

¹ *Report of the Expert Panel on Asylum Seekers*, August 2012, Australian Government 2012.

- 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; and
- providing case management assistance to individual applicants being processed (Paragraphs 3.46 and 3.57).

The Expert Panel described Australia's international law obligations with respect to refugees and asylum seekers which clearly indicate that States may be responsible for breaches even if their officials do not directly commit the actions that are wrongful, (page 84).

The former Australian Government accepted this and all other recommendations of the Expert Panel. The current Government has not resiled from the recommendation that the treatment of people transferred to PNG should be treated in accordance with international human rights standards. The Minister for Immigration and Border Protection has indicated that ensuring the human rights of asylum seekers are fully protected in accordance with international law is "a worthy goal" and that he and his PNG counterparts are working to ensure that rights are respected.²

Reports from UNHCR and other sources indicate strong concerns that the recommendation has not been comprehensively and properly implemented. For example, UNHCR has recently reported that "the legal framework and physical conditions for the detention and treatment of asylum-seekers remain below international standards and, overall, do not provide for a safe, fair and humane standard of treatment for asylum-seekers transferred under the bilateral arrangements to the (Regional Processing Centre)."³

Yours sincerely

Paris Aristotle AM
CEO, Foundation House

² The Hon Scott Morrison MP, Minister for Immigration and Border Protection, transcript of interview with Fran Kelly, ABC National Radio Breakfast, 7 March 2014, <http://www.minister.immi.gov.au/media/sm/2014/sm212407.htm>, retrieved 8 April 2014.

³ "UNHCR monitoring visit to Manus Island, Papua New Guinea, 23 to 25 October 2013," <http://unhcr.org.au/unhcr/images/2013-11-6%20Report%20of%20UNHCR%20Visit%20to%20Manus%20Island%20PNG%2023-25%20October%202013.pdf>, retrieved 8 April 2014.