



*Submission to the Inquiry into Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre*

November 2016

## Table of Contents

Who we are .....	2
Introduction.....	3
Australian context .....	4
Government policy .....	4
The Australian Government and private contractors: Outsourcing our obligations .....	5
Legal and moral implications.....	7
Looking ahead.....	8
Our Recommendations.....	9
References .....	10

**For further information, contact:**

Sally Parnell

Chief Operating Officer, Jesuit Social Services

## Who we are

Jesuit Social Services works to build a just society by advocating for social change and promoting the health and wellbeing of disadvantaged people, families, and communities.

Jesuit Social Services works where the need is greatest and where it has the capacity, experience and skills to make the most difference. Jesuit Social Services values all persons and seeks to engage with them in a respectful way, that acknowledges their experiences and skills and gives them the opportunity to harness their full potential.

We do this by working directly to address disadvantage and by influencing hearts and minds for social change. We strengthen and build respectful, constructive relationships for:

- **Effective services** – by partnering with people most in need and those who support them to address disadvantage
- **Education** – by providing access to life-long learning and development
- **Capacity building** – by refining and evaluating our practice and sharing and partnering for greater impact
- **Advocacy** – by building awareness of injustice and advocating for social change based on grounded experience and research
- **Leadership development** – by partnering across sectors to build expertise and commitment for justice.

Our service delivery and advocacy focuses on the following key areas:

- **Justice and crime prevention** – people involved with the justice system
- **Mental health and wellbeing** – people with multiple and complex needs and those affected by suicide, trauma and complex bereavement
- **Settlement and community building** – recently arrived immigrants and refugees and disadvantaged communities
- **Education, training and employment** – people with barriers to sustainable employment.

Our direct services and volunteer programs are located in Victoria, New South Wales and Northern Territory, and include:

- **Community and Settlement Programs:** working with newly arrived migrants across metropolitan Melbourne and in NSW, including the African and Vietnamese communities.
- **Just Leadership:** Working in partnership with community and corporate enterprises to foster leadership for a just society. This includes the African Australian Inclusion Program, a professional bridging program developed in partnership with the National Australia Bank providing paid work experience and a pathway to ongoing employment for African Australians.

Jesuit Social Services is also joint founder (with Cabrini Health) of the **Catholic Alliance for People Seeking Asylum (CAPSA)**. In 2014, the Catholic Alliance for People Seeking Asylum was formed to turn hearts and minds to compassion. We seek to achieve this by building on the groundswell of support from Australian Catholics, linking people together and creating a collective Catholic voice for change. Together, we advocate for policy changes to better uphold the dignity and rights of each person seeking asylum.

The work of CAPSA was powerfully demonstrated during National Child Protection Week 2016, where CAPSA facilitated a week of solidarity, prayer and action for people seeking asylum across Catholic schools nationally. Over 120 schools took part and added their voices to the call for our political leaders to resolve the crisis at detention centres on Nauru and Manus Island and #BringThemHere. Around 12,000 students participated nationally from every state and territory, representing a reach of over 250,000 people across the wider community.

## Introduction

Jesuit Social Services welcomes the opportunity to respond to the Senate Inquiry into *Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre.*

People who come to Australia seeking asylum are among the most vulnerable members of our community. Respect for their human dignity and health and wellbeing requires that they are properly fed, sheltered, safe, provided with appropriate educational opportunities, receive medical care and have their claims adjudicated fairly within a reasonable timeframe.

The fundamental Catholic principles of respect for human dignity and of solidarity within and between nations, that makes the flourishing of the weakest the concern of all, were embodied in the United Nations Convention on Refugees. The 1951 Convention and its 1967 Protocol Relating to the Status of Refugees are the global legal instruments explicitly covering important aspects of asylum seekers' rights and responsibilities of signatory countries during and post the refugee determination process. These instruments have helped to protect millions of people in a wide variety of situations.

Global movements of people as a result of conflict and persecution demand a global response. Solidarity between nations in responding to the needs of refugees requires of Australia and other wealthy nations' leadership, serious international negotiation, courage and a well-considered response in which the human dignity of those fleeing persecution is non-negotiable. In this context, we affirm the following principles of CAPSA:

1. Australia should continue to work within the region and international context to lead a more humane, ordered response to processing the claims of people seeking asylum.
2. All asylum seekers who make a claim on Australia must be processed with respect for their human dignity demanded by the UNHCR Convention on the Status of Refugees. Their claims for protection should be processed promptly and fairly.
3. The principles of deterrence, by which the members of one group of people who have come to Australia to seek protection are treated harshly in order to modify the behaviour of others, should form no part of Australian policy.
4. People seeking asylum should not be referred to as "illegal" or in other derogatory terms.
5. People who come to Australia to seek protection should not be transferred from Australian territory to other nations for processing or protection unless there is a firm regional agreement assuring that they will have equivalent rights and support in the countries to which they are transferred, and that they will be promptly resettled if found to be refugees.
6. Arbitrary or indefinite detention at any stage of the refugee determination process is unacceptable.
7. People who seek asylum should live in the Australian community. Respect for their humanity demands that they have the right to work, access to basic services, and to some financial support if they cannot find work. The financial burden of their support should be accepted by the Government and not be shifted to the community sector.
8. Children should not be held in detention in Australia or in offshore detention centres, but housed in the Australian community with the full range of services necessary for their welfare. Young unaccompanied children and adults, families with children and those with mental and physical health issues should also be carefully supported when living in the community.
9. In the Catholic tradition, if people are to live with dignity their family ties are essential. People should have the opportunity to be promptly reunited with separated close family members once they are found to be refugees.
10. Those who have exhausted all appeals against rejection of their claims but who cannot be returned to their countries should not be compelled by destitution to return in keeping with the principle of non-refoulement.

## Australian context

In relation to recent incidents of self-harm at the Nauru regional processing centre, Australian Prime Minister Malcolm Turnbull has asserted that the Australian Government is not responsible for the people seeking asylum held on offshore processing centres under federal immigration policy. In an interview with the ABC's *Four Corners* program, Turnbull defended his Government's human rights record in the face of two self-immolations by asserting that "those centres are managed by the respective governments, PNG and Nauru. That's a fact."<sup>1</sup>

The government has maintained that Papua New Guinea and Nauru bear the responsibility for the conditions of the centres and the welfare of their residents, however this statement contradicts the United Nations Convention relating to the Status of Refugees, and international human rights law more broadly. Seeking asylum is a human right, and the UN's Covenant on Civil and Political Rights asserts that "a State party must respect and ensure the rights laid down in the Covenant to anyone within the...effective control of that State Party, even if not situated within the territory of the State."<sup>2</sup> Therefore, Australia is not absolved of its duties to people seeking asylum once they are removed from our boundaries.

Numerous allegations of abuse, coupled with protests and frequent reports of self-harm and attempted suicide, raise the important question of who in practice is responsible for ensuring that the rights of people seeking asylum are upheld. The debate over legal jurisdiction indicates a lapse in transparency and accountability, and consequently undermines the protection of people directly affected by the experience of prolonged immigration detention.

This submission briefly describes the policy background of offshore detention, the relationship between the Australian Government and its contractors, and the government's legal and moral responsibilities to those subject to offshore processing and resettlement.

As outlined below, Jesuit Social Services recommends that offshore detention centres should be closed to ensure the safety, dignity, and legal rights of all asylum seekers. Recognising the current policy settings, and as an interim solution while offshore processing remains in place, we also make several recommendations to ensure the immediate strengthening of protection, oversight and accountability for those currently in offshore detention.

**Jesuit Social Services advocates for the humane, just and dignified treatment of people seeking asylum. We believe that offshore detention centres should be closed to ensure the safety, dignity, and legal rights of all asylum seekers.**

**Jesuit Social Services calls on the Australian Government to close down the Nauru processing operation and to bring all asylum-seekers and refugees in Nauru to Australia.**

**The Government should reinvest the approximately \$1 billion spent per annum on Nauru and Manus Island towards community settlement programs and providing essential services for asylum seekers in Australia.**

## Government policy

Three core features define the Australian government's approach to people seeking asylum who are intercepted while travelling by boat in their attempt to gain refugee status (known as Irregular Maritime Arrivals or IMAs):

- Mandatory detention
- Indefinite time frames for processing
- No possibility of resettlement in Australia.

Since 19 July 2013, all people seeking asylum attempting to reach Australia by boat have been intercepted and transferred to Regional Processing Centres (RPCs) under the Government's policy of deterrence, meaning that no one who arrives by boat is to be settled on mainland Australia. Since then, several thousand people have been sent to either Nauru or Manus Island in Papua New Guinea, and as of 31 August 2016 there were 1,233 people on Nauru and Manus Island.<sup>3</sup> This policy violates the Refugee Convention's principle of non-penalisation, as IMAs are being singled out and face limited opportunities based solely on the mode of arrival. The *Migration and Maritime Powers Legislation Amendment Act* (2014) expanded upon the *Migration Act* (1958) and codified the practice of at-sea interception.

In addition, the fast-track design of the government's refugee determination framework for this particular group isolates asylum seekers from their procedural rights under the Refugee Convention and obscures their presence and voice from the Australian government and wider community. Lengthy waits with little information is the norm at the RPCs, with the average length of stay in immigration detention facilities 454 days.<sup>4</sup>

By placing people seeking asylum outside of Australia's territorial jurisdiction, the government has neglected its humanitarian obligations under international and domestic law. This has allowed the government to deny control over the conditions and treatment of people who would otherwise undoubtedly be considered under their care. It is especially pertinent to note that the vast majority of IMAs are found to be legitimate refugees under the requirements of the UN Refugee Convention.<sup>5</sup> According to the DIBP's Annual Asylum Trends publication 2012-13, 95% of Irregular Maritime Arrivals between 2008 and 2013 were found to be genuine refugees.

Further obscuring the reality of the offshore detention program since it resumed in 2012, has been an effective media blackout at Nauru and Manus Island. Both the Department of Immigration and Border Protection (DIBP) and the Nauruan governments have denied entry to journalists and human rights organisations attempting to assess the treatment of people seeking asylum at these facilities. Recently, the Nauruan President justified the censure as an effort to prevent "activist-journalists" who seek to "to incite violence, hatred and tension within our country."<sup>6</sup> By fostering an environment of secrecy around its offshore detention regime in order to avoid criticism, the government has exposed people seeking asylum to further trauma and unnecessary risks. Subsequently, there is a growing demand for increased transparency and accountability from the Australian and international community.

**Strengthen oversight and accountability – if the policy of offshore detention is to continue, an independent third-party reviewer or Ombudsman should be established to regularly review conditions, and access by journalists and organisations must be allowed.**

## **The Australian Government and private contractors: Outsourcing our obligations**

Compounding the opaque nature of offshore detention is the use of private firms for the purpose of directly managing operations at the centres. By contracting corporations rather than administering the refugee determination procedure themselves, the Australian Government has distanced itself from the consequences of a policy which undermines the human rights of those with whom it comes into contact. This has been the case under successive federal governments.

Since the implementation of the policy, the government has contracted several companies to take on operational and maintenance services at the centres. This includes global security firm G4S, construction company Transfield (now Broadspectrum), and Wilson Security and Serco, which runs the Christmas Island and onshore centres.<sup>7</sup> The Salvation Army and Save the Children have also delivered welfare services, and the International Health and Medical Services have been brought in to manage healthcare. The competing objectives of security versus welfare for such a vulnerable population is a critical tension, which has become starker due to the welfare portfolio coming under Broadspectrum's operational umbrella.

The Broadspectrum (formerly Transfield) contract delineates the construction giant's role as providing garrison (e.g. security personnel and structural fortification) and welfare services at both centres. This cost an estimated \$1.5 billion between 2012 and 2015.<sup>8</sup> Prior to the Transfield takeover, G4S was frequently criticised for their handling of the Manus Island camp, particularly following the death of 23 year old Iranian asylum seeker Reza Barati at the hands of two men when Papua New Guinean locals and police entered the complex in February 2014.<sup>9</sup> In the wake of this event, Transfield has failed to establish a credible human rights record, with a 2015 Senate Inquiry finding that the company has faced dozens of allegations (including 30 reports of child abuse).<sup>10</sup>

Amnesty International's 2013 report about the conditions on Manus Island found that five overarching rights are being violated in the form of refoulement, arbitrary detention, discrimination, lack of legal protection and cruel, inhuman and degrading treatment.<sup>11</sup> The detainment of children in the RPCs is particularly concerning. "The Forgotten Children" report by the Australian Human Rights Commission in 2014 found that "prolonged, mandatory detention of asylum seeker children causes them significant mental and physical illness and developmental delays."<sup>12</sup> The report recommended that all children be released into community detention, but as of August 2016, there are still 49 children detained at RPCs.<sup>13</sup> The power of the "Let them Stay" campaign – which challenged the government's attempt to send 267 asylum seekers back to Manus Island and Nauru (including 37 children) – illustrates the growing momentum against offshore detention, especially for mothers and children.<sup>14</sup>

Due to pressure from human rights organisations and other Australian and international civil society organisations, a number of corporations have indicated they will not re-tender for contracts to provide garrison and welfare services at the Nauru or Manus Island RPC. This includes lead company Broadspectrum, now owned by Ferrovial, which announced it would cease operation of the facilities in February 2017. The DIBP has unilaterally extended Ferrovial's contract until October 2017. Wilson Security likewise has announced it will not re-tender to run the centres' security services, with its contract tied to Broadspectrum's, thus ending in October 2017. The Federal government may face an increasingly difficult task of finding companies willing to manage these dangerous and internationally condemned centres.

Unfortunately, the DIBP and the Australian Government continue to condone the arbitrary and indefinite detention of hundreds of asylum seekers who are within their legal rights to apply for protection, even as claims of endemic mistreatment and abuse continue to grow.

## Legal and moral implications

The Coalition Government's policy of "Stop the Boats" and commitment to offshore processing has been the focus of a series of High Court challenges. Until recently, however, the decisions have almost exclusively been in favour of the Commonwealth. Yet the judgement made in a case brought to the Court in February 2016 clearly states that the government is an active participant in the detainment of people seeking asylum, even if not exercising physical control over them.<sup>15</sup> This judgement contradicts statements by the DIBP, contending that "the government of Nauru is specifically responsible for security and good order and the care and welfare of persons residing in the centre" and that for Australia to claim more than a supportive role would be encroaching on Nauru's sovereignty.<sup>16</sup>

Contesting this view are international law experts, refugee advocates, and human rights organisations who say that the physical location of asylum seekers is irrelevant. Australia maintains 'effective control' over this group of persons through funding, engaging contractors and directly transporting them to the centres. As such, Australia is responsible for guaranteeing their protection and rights, and is liable when this is found not to be the case. The UN High Commissioner for Refugees has criticised the government's attempt to waive its obligations, similarly implying that Australia retains its legal mandate even when processing is taking place outside of the country's borders.<sup>17</sup> According to legal experts, the Department is likewise bound under domestic law to provide a non-delegable duty of care to people seeking asylum as per the Constitution and several articles of immigration legislation, including the Memorandums of Understanding that established the regional arrangements. Workplace health and safety law is also believed to extend to the Australian-sponsored RPCs, meaning Manus Island and Nauru should be subject to the appropriate oversight and regulation regarding workplace conditions.<sup>18</sup>

The implications of a system characterised by unclear lines of authority and intentional secrecy extend from the legal to the moral realm when accusations of mistreatment, abuse, and unliveable conditions for those in Australia's care continue to grow. Several reports have shed light on the troubling experiences of detainees and employees of service providers at the detention facilities, defined by a 'culture of fear,' according to a former Save the Children Australia employee.<sup>19</sup>

The in-depth investigation undertaken by the Moss Review substantiated many allegations and determined that the Nauruan police force and judicial systems are incapable of responding to incidents and upholding the rule of law.<sup>20</sup> Although technically within Australia's territory, there have also been persistent complaints from detainees at the Christmas Island facility relating to living conditions and long-ignored grievances, which precipitated riots in late 2015.<sup>21</sup>

A damning Senate Inquiry of the Nauru centre exposed Transfield and subcontractor Wilson Security on numerous counts of improper and abusive treatment of asylum seekers by RPC staff. Former employees of the companies described systematic covering up of incidents, destruction of evidence and blatant lack of discipline for staff known to be involved in misconduct (including verbal and physical harassment).<sup>22</sup> The efficacy of the complaint system has also been criticised, with some service providers claiming that detainees did not trust the internally managed system and were fearful of retribution, resulting in underreporting.<sup>23</sup>

Despite this, between February 2014 and April 2015, 725 written complaints (approximately 11 per week and 51 per month) were received by Transfield in relation to staff at Nauru, although it is unclear whether any complaints have resulted in the termination of staff.<sup>24</sup> The International Health and Medical Services (IHMS), brought in to manage healthcare, were recently embroiled in a scandal relating to failures to



meet medical benchmarks and falsifying data.<sup>25</sup> The Journal of Medical Ethics published a scathing assessment of Australia's asylum process, especially where it concerns health professionals and accountability. The lack of transparency has been codified with the *Border Force Act (2015)* making it illegal for doctors and other consultants ("entrusted persons") working at the centres to speak publicly about what they witness, including human rights abuses and mistreatment that could even amount to torture, risking a two-year jail term if they do.<sup>26</sup>

On 30 September 2016 the DIBP Secretary signed an amendment to this Act to exempt health professionals from the gag order. This comes after a High Court challenge of the *Border Force Act* by Doctors for Refugees to maintain their professional standard of disclosure.<sup>27</sup> While this is a welcome adjustment, other professionals working in onshore and offshore immigration detention – including teachers, lawyers, security staff and social workers – have not been exempted and still face a jail term of up to two years for unauthorised disclosure<sup>28</sup>.

Nonetheless, the widespread and damaging reports of mismanagement did not deter the Australian Government from announcing Transfield as the "preferred bidder" for a renewed five-year contract for both centres in late 2015.<sup>29</sup> There is a problematic disconnect between the government that has contracted private corporations to manage the RPCs in accordance with domestic law and international obligations, and the poor track record of Transfield and others. Yet "The Australian Government's long-standing view is that Australia's human rights obligations are essentially territorial...[and it maintains the] Government's position that Australia does not exercise the degree of control necessary in regional processing countries to enliven Australia's international obligations."<sup>30</sup> Serious concerns regarding the health, safety and rights of people seeking asylum brought to light by several investigations illustrate that the current system is not functioning in the capacity for which it is established.

The system of offshore detention is a highly vulnerable one, based on precarious legal grounds and enforced through a strict veil of secrecy on operational matters by the DIBP. The ruling by the PNG Supreme Court in May 2016 that the Manus Island RPC was unconstitutional under PNG law, as it contravened the country's own Charter of Rights, is evidence of this. This court case – along with the increasingly disturbing reports coming from Manus Island and Nauru of self-harm, sexual assault and abuse – has ignited a campaign by Australian and international civil society organisations to close the RPCs and "Bring Them Here". The Guardian Australia revealed in August 2016 a cache of over 2,000 leaked documents detailing some horrific instances of abuse and sexual assault.<sup>31</sup> Similarly, recent reports by Amnesty International<sup>32</sup> and Four Corners<sup>33</sup> have once again reiterated the horrific conditions on Nauru and Manus Island, especially for children.

**An efficient and independent complaints system must be arranged to allow detained asylum seekers (and staff) to lodge complaints without fear of retribution, and the appropriate follow-up investigation to take place.**

## Looking ahead

Following the PNG Supreme Court ruling that the Manus Island centre is illegal and unconstitutional under the country's obligations to asylum seekers, PNG's Prime Minister Peter O'Neill subsequently declared the closure of Manus Island. What this case confirmed is that the governments of Australia and PNG are jointly responsible for the RPC at both the policy level and in terms of practical management of the centre.<sup>34</sup> This effectively negates both the DIBP and the Prime Minister's claims that the government has delegated their responsibility to the PNG and Nauruan Governments.

Although there remains some uncertainty around the fate of the men on Manus Island, Australian Immigration Minister Peter Dutton has reaffirmed that they will not be resettled in Australia<sup>35</sup>, with the Federal Government most recently announcing legislation to ban refugees and asylum seekers on Manus Island and Nauru from ever coming to Australia<sup>36</sup> (i.e. blocking them from obtaining any visa, including tourist and business visas).

The future of the Nauru centre is in jeopardy due to a recent sale of Broadspectrum (previously Transfield) – the preferred bidder for a renewed contract at both RPCs – to Spanish company Ferrovial. As highlighted earlier, Ferrovial has expressed their intention to discontinue the provision of security and welfare services at the RPCs given the controversial history of Broadspectrum’s operations, although it would be giving up a majority of their new acquisition’s revenue in doing so.<sup>37</sup>

This follows a damaging divestment campaign by major shareholders of Broadspectrum in reaction to mounting cases of human rights violations against the company. Pressure is mounting for Ferrovial to quickly make an exit, as international law experts suggest that the company’s employees could be liable for crimes against humanity, and its investors complicit in “gross human rights violations.”<sup>38</sup> It is currently uncertain whether the government will grant the contract to another firm. Regardless of who operates the centre, it is paramount that both Australia and Nauru work to implement reforms including staff vetting and training, reporting requirements and greater transparency of operations to ensure that the human rights and physical and mental wellbeing of people seeking asylum are prioritised over short-term political imperatives.

The Australian public is reacting to the distressing consequences of such a harsh and illegal approach to asylum seekers. Recent polls indicate that a majority of Australians now oppose the ban on resettling refugees in Australia<sup>39</sup> and support asylum seeker immigration<sup>40</sup>, demonstrating the growing disconnect between the current policy platform and the public interest, as well as international standards of human rights and humane treatment. From a legal, moral, and political standpoint, the Australian government must take responsibility for the 1,200 asylum seekers under its care.

## **Our Recommendations**

It is the position of Jesuit Social Services that the Australian Government is responsible for people who travel to Australia seeking asylum, and those held at Nauru and Manus Island be transferred to the mainland and settled within the community until their refugee status is determined.<sup>41</sup> This action will not only bring Australia into compliance with its international legal obligations but uphold our national values of fairness, equality and opportunity. People seeking asylum deserve the chance to make their claim on Australian soil where protection of their civil, political and human rights can be assured.

We reiterate our core principles:

- All people seeking asylum who make a claim for refugee status must be processed with respect for their human right and dignity as demanded by the UN Convention on the Status of Refugees. Their claims for protection should be processed promptly and fairly.
- The principle of deterrence, which serves as the foundation of the offshore detention of asylum seekers arriving by boat, should form no part of Australian policy.
- People who come to Australia to seek protection should not be transferred from Australian territory to other nations for processing or protection.

- Children should not be held in detention given the proven mental and physical damage that the circumstances of detention create. Rather, they should be accommodated in the Australian community with the full ranges of services necessary for their welfare.

#### Jesuit Social Services calls on the Australian Government to enact the following reforms:

- **Close down the Nauru RPC and bring all asylum-seekers and refugees in Nauru to Australia.**
- **Reinvest the approximately \$1 billion spent per annum on Nauru and Manus Island towards community settlement programs and providing essential services for asylum seekers in Australia.**
- **If the policy of offshore detention is to continue, an independent third-party reviewer or Ombudsman should be established to regularly review conditions, and access by journalists and organisations must be allowed.**
- **An efficient and independent complaints system must be arranged to allow detained asylum seekers (and staff) to lodge complaints without fear of retribution, and that appropriate follow-up investigation takes place.**

## References

<sup>1</sup> Taylor, L. (2016, June 28). Turnbull Suggests Australia is Not Responsible for Asylum Seekers Held Offshore. *The Guardian*. Retrieved from: <https://www.theguardian.com/australia-news/2016/jun/28/turnbull-suggests-australia-is-not-responsible-for-asylum-seekers-held-offshore>.

<sup>2</sup> Article 10 of the International Covenant on Civil and Political Rights goes on to explicitly state that “the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons” who find themselves under the jurisdiction of a state, regardless of whether or not they are within or outside the state’s territory. See:

UN Human Rights Committee (HRC) (2004, May 26). *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*. CCPR/C/21/Rev.1/Add.13. Retrieved from: <http://www.refworld.org/docid/478b26ae2.html>.

<sup>3</sup> Department of Immigration and Border Protection (2016). *Immigration Detention and Community Statistics Summary, 31 August 2016*. Canberra. Retrieved from: <http://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-31-aug-2016.pdf>.

<sup>4</sup> Ibid.

<sup>5</sup> Department of Immigration and Border Protection (2013). *Asylum Trends – Australia: 2012-13 Annual Publication*. Canberra, ACT. Retrieved from: <https://www.border.gov.au/ReportsandPublications/Documents/statistics/asylum-trends-aus-2012-13.pdf>

<sup>6</sup> The Insider Blog (2016, June 22). Nauru Says It Only Lets in ‘Objective, Respectful’ Journalists Like Chris Kenny. *The New Matilda*. Retrieved from: <https://newmatilda.com/2016/06/22/nauru-says-it-only-lets-in-objective-respectful-journalists-like-chris-kenny>.

<sup>7</sup> Alexander, C. (2014, February 25). Meet the Companies that Run our Immigration Detention Camps. *Crikey*. Retrieved from: <https://www.crikey.com.au/2014/02/25/meet-the-companies-that-run-our-immigration-detention-camps/>.

<sup>8</sup> Broadspectrum [formerly Transfield Services] (2016). *Manus and Nauru fact sheet*. Retrieved from: [http://www.transfieldservices.com/sectors/social/Manus\\_and\\_Nauru\\_fact\\_sheet](http://www.transfieldservices.com/sectors/social/Manus_and_Nauru_fact_sheet).

<sup>9</sup> Cochrane, L. (2015, February 18). Manus Island asylum seekers mark one year since bashing death of Reza Barati. *ABC News*. Retrieved from: <http://www.abc.net.au/news/2015-02-17/manus-island-detainees-mark-anniversary-of-reza-barati-death/6131606>.

<sup>10</sup> Commonwealth of Australia (2015). *Taking Responsibility: Conditions and Circumstances at Australia’s Regional Processing Centre in Nauru*. Canberra, ACT. Retrieved from: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regional\\_processing\\_Nauru/Regional\\_processing\\_Nauru/Final\\_Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report).

---

<sup>11</sup> Amnesty International Australia (2013). *This is Breaking People: Human Rights Violations at Australia's Asylum Seeker Processing Centre on Manus Island, Papua New Guinea*. Broadway, NSW. Retrieved from: <http://www.amnesty.org.au/refugees/comments/33587>.

<sup>12</sup> Australian Human Rights Commission (2014). *The Forgotten Children: A National Inquiry into Children in Immigration Detention*. Sydney, NSW. Retrieved from: [https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten\\_children\\_2014.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf).

<sup>13</sup> Department of Immigration and Border Protection (2016). *Immigration Detention and Community Statistics Summary, 31 August 2016*. Canberra. Retrieved from: <http://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-31-aug-2016.pdf>.

<sup>14</sup> Webb, D. (2016, May 2). Let Them Stay Campaign a Success. *The Law Institute of Victoria*. Retrieved from: <http://www.liv.asn.au/Staying-Informed/LIJ/LIJ/May-2016/Let-Them-Stay-campaign-a-success>.

<sup>15</sup> The case, brought by a Bangladeshi woman that her detention on Nauru was illegal, was ultimately a win for the government in large part due to retroactive legislative amendments. See:

Gleeson, M. (2016, February 3). Glimmers of Hope for Detained Asylum Seekers in High Court's Nauru Decision. *The Conversation*. Retrieved from: <https://theconversation.com/glimmers-of-hope-for-detained-asylum-seekers-in-the-high-courts-nauru-decision-54036>.

For the full judgement of Plaintiff M68-2015 v Minister for Immigration and Border Protection, see:

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/2016/1.html>.

<sup>16</sup> Commonwealth of Australia (2015). *Taking Responsibility: Conditions and Circumstances at Australia's Regional Processing Centre in Nauru*. Canberra, ACT. Retrieved from: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regional\\_processing\\_Nauru/Regional\\_processing\\_Nauru/Final\\_Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report).

<sup>17</sup> Ibid.

<sup>18</sup> For a brief description of Australia's domestic and international legal obligations see Hirsch, A. (2016, March). Does What Happen Offshore, Stay Offshore?. *Asylum Insight*. Retrieved from: <http://www.asyluminsight.com/asher-hirsch/#.V3jzdouJF26>.

<sup>19</sup> Commonwealth of Australia (2015). *Taking Responsibility: Conditions and Circumstances at Australia's Regional Processing Centre in Nauru*. Canberra, ACT. Retrieved from: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regional\\_processing\\_Nauru/Regional\\_processing\\_Nauru/Final\\_Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report).

<sup>20</sup> Ibid.

<sup>21</sup> Betts, A. (2016, January 11). Christmas Island Detention Centre's Conditions Stoke Tension, Detainee Says. *ABC News*. Retrieved from: <http://www.abc.net.au/news/2016-01-11/christmas-island-detainee-claims-foul-conditions-november-riot/7080566>.

<sup>22</sup> Commonwealth of Australia (2015). *Taking Responsibility: Conditions and Circumstances at Australia's Regional Processing Centre in Nauru*. Canberra, ACT. Retrieved from: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regional\\_processing\\_Nauru/Regional\\_processing\\_Nauru/Final\\_Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report).

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> As uncovered by the Guardian, the fraudulent activity was cited as an inevitable result of the contractual requirements of the Immigration Department. See:

Farrell, P., Evershed, N. and Jabour, B. (2016, June 28). Immigration department failed to properly oversee healthcare provider, review show. *The Guardian*. Retrieved from: <https://www.theguardian.com/australia-news/2016/jun/28/asylum-seekers-reviews-find-department-failed-to-properly-oversee-healthcare-provider>.

<sup>26</sup> There were four separate submissions and an editorial in the latest issue of the Journal, from both medical professionals and ethicists who lamented the opacity of the conditions in offshore detention. See: Margo, J. (2016, June 28). Australian Doctors Warn Europe on Asylum Seekers. *The Australian Financial Review*. Retrieved from: <http://www.afr.com/news/australian-doctors-warn-europe-on-asylum-seekers-20160628-gptdrk>.

The Border Force Act (the relevant part is Part VI, sections 42-51) can be found here:

<https://www.legislation.gov.au/Details/C2016C00650>.

<sup>27</sup> Booth, A. (2016, October 20). Health workers exempt from immigration detention secrecy provisions. *SBS*. Retrieved from: <http://www.sbs.com.au/news/article/2016/10/20/government-lifts-gag-doctors-over-speaking-out-asylum-seeker-treatment>.

<sup>28</sup> Doherty, B. (2016, October 20). Doctors freed to speak about Australia's detention regime after U-turn. *The Guardian*. Retrieved from: <https://www.theguardian.com/australia-news/2016/oct/20/doctors-freed-to-speak-about-australias-detention-regime-after-u-turn>.

---

<sup>29</sup> Ben Doherty reported that as part of the contract, Transfield Services (now Broadspectrum) would also assume complete responsibility for administering welfare services, previously the task of Save the Children Australia. See: Doherty, B. (2015, August 31). Transfield named Coalition's 'preferred tenderer' for Manus and Nauru centres', *The Guardian*. Retrieved from: <https://www.theguardian.com/world/2015/aug/31/transfield-named-coalitions-preferred-tenderer-for-manus-and-nauru-centres>.

<sup>30</sup> Commonwealth of Australia (2015). *Taking Responsibility: Conditions and Circumstances at Australia's Regional Processing Centre in Nauru*. Canberra, ACT. Retrieved from: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regional\\_processing\\_Nauru/Regional\\_processing\\_Nauru/Final\\_Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report).

<sup>31</sup> The Guardian (2016, August 10). *Nauru Files*. Retrieved from: <https://www.theguardian.com/news/series/nauru-files>.

<sup>32</sup> Amnesty International (2016). *Island of Despair: Australia's "processing" of refugees on Nauru*. London, UK. Retrieved from: <https://www.amnesty.org.au/island-of-despair-nauru-refugee-report-2016/>.

<sup>33</sup> Whitmont, D. (2016, October 17). The Forgotten Children. *ABC: Four Corners*. Retrieved from: <http://www.abc.net.au/4corners/stories/2016/10/17/4556062.htm>.

<sup>34</sup> Barns, G. (2016, June 27). The Manus asylum seeker case awaits our next government. *ABC News: The Drum*. Retrieved from: <http://www.abc.net.au/news/2016-06-27/barns-manus-asylum-seeker-case-awaits-our-next-government/7546464>.

<sup>35</sup> Hasham, N. (2016, April 28). Manus Island Detention Centre to Close, PNG Prime Minister says Following Court Bombshell. *The Sydney Morning Herald*. Retrieved from: <http://www.smh.com.au/federal-politics/political-news/manus-island-detention-centre-to-close-png-prime-minister-says-following-court-bombshell-20160427-gogbyo.html>.

<sup>36</sup> Conifer, D. (2016, October 30). Manus Island, Nauru refugees to be banned from entering Australia, Malcolm Turnbull says. *ABC News*. Retrieved from: <http://www.abc.net.au/news/2016-10-30/manus-nauru-refugees-asylum-seekers-to-be-banned-turnbull-says/7978228>.

<sup>37</sup> Hewett, J. (2016, May 1). Offshore Detention Shunned by the Spanish. *The Australian Financial Review*. Retrieved from: <http://www.afr.com/opinion/columnists/offshore-detention-shunned-by-the-spanish-20160501-gojaxh>.

<sup>38</sup> These arguments are based on a report by Stanford professors from the International Human Rights and Conflict Resolution Clinic, and a report published by No Business in Abuse and the Human Rights Law Centre in July 2016 which criticises Ferrovial for ignoring its obligations under human rights law and corporate responsibility. See: Doherty, B. and Kingsley, P. (2016, July 25). Refugee camp company in Australia 'liable for crimes against humanity'. *The Guardian*. Retrieved from: <https://www.theguardian.com/australia-news/2016/jul/25/ferrovial-staff-risk-prosecution-for-managing-australian-detention-camps>.

<sup>39</sup> Williams, W. (2016, June 30). Majority of Australians Disagree with Government Policy on Refugees. *Pro Bono Australia*. Retrieved from: <http://probonoaustralia.com.au/news/2016/06/majority-australians-disagree-government-policy-refugees>.

<sup>40</sup> Roy Morgan Research (2016, October 25). *Majority of Australians support Muslim & Asylum seeker immigration; and 58% want Australia's population kept under 35 million*. Retrieved from: <http://www.roymorgan.com/findings/7017-australian-views-on-immigration-population-october-2016-201610241910>.

<sup>41</sup> Jesuit Social Services (2016, April 27). *People Seeking Asylum on Manus Island must be processed in Australia*. Retrieved from: <http://jss.org.au/people-seeking-asylum-on-manus-island-must-be-processed-in-australia/>.