

Submission on behalf of Australian Women in Support of Women on Nauru in relation to the Senate Inquiry into the “*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.*”

We rely upon our report Protection Denied Abuse Condoned. (our Report)
<http://www.awswrn.org/blog/2016/6/6/protection-denied-abuse-condoned-women-on-nauru-at-risk>

In addition to the contents of the Report we provide these submissions to address the known risks that exist for the detainees on Nauru (and by implication Manus) based on the almost two decades of research, reports, litigation, and advocacy in relation to both the onshore detention centres in Australia and the use of off-shore detention centres when used a decade ago.

We will also submit recommendations that would reduce the known risk of harm to detainees.

The writers rely on our Report in relation to the reports of abuse and harm we have detailed therein as well as other subsequent information reporting about the impact of the detention on the health and welfare of detainees.

We submit that the concerns of the medical profession that the health and welfare of detainees continues to be at risk confirms our concerns. See
[http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)32118-3/fulltext?rss=yes](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)32118-3/fulltext?rss=yes)

We note the recent ABC 4 Corners programme which detailed some of the horrific experiences of women and young children on Nauru, including lack of access to education, fear of and actual assault and harassment, failure to investigate crimes committed on refugees, overcrowding, depression and hopelessness. See
<http://www.abc.net.au/4corners/stories/2016/10/17/4556062.htm>

We also note that the Film *Chasing Asylum* released earlier this year depicted similar concerns as our Report, noting that it contained interviews with staff and detainees whose stories were consistent with our findings. See
<http://www.chasingasylum.com.au/>

A common criticism of the Government of Australia and Nauru is that advocates such as us cannot speak of the matters we raise because our information is flawed or not backed up by experiences.

The policies of the both governments prevents accountability.

Before publishing our Report two of our members had tried to visit Nauru. Like many others who have tried the visas were not granted. See
<https://newmatilda.com/2016/06/09/nauruan-consulate-contradicts-peter-dutton-over-who-is-keeping-aussies-out-of-nauru/>

Earlier this year a delegation of Danish MPs arrived in Australia intending to visit Nauru. They, too, were refused visas. See <https://www.theguardian.com/world/2016/aug/30/danish-delegation-visit-to-nauru-australian-detention-centre-refused-visas>

Journalist visas, not granted automatically, cost \$8000. See <http://www.naurugov.nr/about-nauru/visiting-nauru/visa-requirements.aspx>

Nauru and Manus were opened as a solution to the number of boat arrivals coming to Australia in the last 16 years. Both political parties are of the view that boat arrivals should stop and that the community mandates them to do so. The only solution postulated by both parties is a cruel and crushing policy that sees people transported to poor third world countries and told that they will be detained indefinitely in conditions criticised by national and international organisations. Some of the commentary by politicians claim that the cruel policy prevents drownings – some say that it prevents those not invited to Australia from ever being permitted to stay.

We say that here are numerous reasons that are political, cultural, administrative and historic in nature that have led to the high levels of abuse, sexual assault and neglect of asylum seekers and refugees on Nauru. We say that the levels are both to be expected because of the conditions detainees are kept in and because of the experiences that the Commonwealth has in detaining similar populations within Australia both on the mainland and at its centres on Christmas Island.

The risk to detainees of abuse, self-harm and neglect was and is well known by both political parties.

For unjustifiable reasons to those interested in human rights and the welfare of those vulnerable people now on Manus and Nauru, it is difficult to comprehend why the price to pay for stopping people coming by sea to seek asylum is the cruel and neglectful treatment of those in our care and who are already found to be, or likely to be, genuine refugees.

We shall attempt to detail the most egregious reasons for the policy of off-shore processing.

The first and most potent factor is political. Both the Coalition and Labor operate a policy of mandatory detention in offshore centres that is now globally infamous for abuse, as a form of deterrence. Both major parties argue Nauru and Manus detention centres are vital in order to make Australia look as unwelcoming as possible and avoid “pull factors.” As Minister Peter Dutton said recently in The Australian newspaper: *Australia was in discussions with a number of third countries about taking the refugees currently held on Manus and Nauru, but had to provide an arrangement that would not constitute a “pull factor” for people smugglers.*

Again as former Coalition Minister, Amanda Vanstone, opined on Q&A recently, “Take the sugar off the table if you don’t want ants.” Presumably, Australia is the sugar and the refugees, ants. See

<http://thenewdaily.com.au/news/national/2016/09/26/amanda-vanstone-ganda-refugees>

Further, while human rights groups, including some members of the major parties, were keen to stop people drowning at sea on the journey to Australia, they could hide behind this deterrent policy to say that deaths were being prevented. The 2010 drowning of over 50 people off the coast of Christmas Island from a boat with mainly Iranian families, including many children, enabled there to be some common ground between those not wanting to punish asylum seekers in cruel conditions and those who did not care. All could say they wanted to stop the boats.

A policy of deterring people from getting on a boat in the first place was developed. By definition to be a deterrent the policy had to be hard. Any end result for the asylum seeker that resulted in sanctuary in an attractive third country would never operate as a deterrent. Any detention in proper conditions with appropriate medical, educational, recreational and work opportunities would also not be a deterrent. And when you consider the environments that people were escaping – war – terrorism – the Taliban – those conditions had to be particularly cruel to stop someone trying to reach Australia.

Nauru and Manus Island were chosen as sites for Australia's detention centres because they presented no such "pull factors" and because their Governments were willing to conspire in the cruel practice. Damage to detainees was an inevitable consequence of such a policy – so much was known by the time those centres were reopened. It was as if the detainees sent to Manus and Nauru had to be martyrs for the political cause of preventing boats at any cost.

The Commonwealth have received fifteen years of reports from its service providers into the numerous incidents of self-harm and suicides within its detention centres caused by, or contributed to by, the conditions the detainees were kept in. All service providers have been, and continue to be required to report to the Commonwealth about detainees at risk of suicide and self-harm and about the reported incidents of same. There are hundreds of such reports held by the Commonwealth. Some detainees have died at their own hands and not only are reports obtained by the Commonwealth but the Commonwealth, for onshore deaths, participates in the inquests.

We detail here a brief summary of some of the starker reports and findings which were known before Manus and Nauru were reopened in 2012 or became known during this present use of those centres.

We note that many reports on the toxicity of the detention centres go back as far as 1998.

We note that about 90% of persons who come by boat and were processed before this current policy were found to be genuine refugees. We have no reason to doubt that the percentages on Nauru and Manus are likely to be the same. As to be a refugee there has to be a well-founded fear of persecution in the home country many will arrive with vulnerable psychological or psychiatric states. For the definition of

Australia's protection obligations see *The Migration Act 1958* section 36
http://www.austlii.edu.au/au/legis/cth/consol_act/ma1958118/s36.html

We also know that in the journey to Australia via Malaysia and Indonesia those arriving by boat cross dangerous waters in poor vessels to get to Ashmore Reef or Christmas Island. Many drown. Those who survive are often traumatized by the experience.

We know it is likely that the boat arrival should receive an initial assessment and might be very vulnerable to poor conditions. We know many already suffer from a PTSD.

In March 2002 Professor McGorry, who went on to become Australian of the year, published in the *Australian Family Physician* Vol 21, no 3 an article, "Asylum seeking and Mandatory Detention." Professor McGorry said that, "*Those who have suffered the most severe persecution are perversely the most at risk (of developing mental illness) in detention in Australia. This is not really surprising because these people are the most desperate to leave...*".

The Commonwealth has known of the failures within its detention environments to diagnose and treat mental health problems caused by immigration detention conditions through litigation taken against it such as that of Shayan Bedraie whose family sued it a decade ago and where the Commonwealth paid out compensation, the case of Cornelia Rau who also sued the Commonwealth and who reached a settlement not just for false imprisonment but for the failure to diagnose and treat her mental illness, and the cases of P, S and M who sued the Commonwealth in the Federal Court in 2004 for the failure to provide any or adequate mental health services. There have been many more since.

The Commonwealth is aware that it has had dozens of other claims by detainees and former detainees harmed by its negligence in detaining them in immigration detention centres which conditions are mirrored by or worse than those in Manus and Nauru. Many millions have been paid for not only persons falsely imprisoned, as was Rau, but by others who were lawfully detained under the *Migration Act* but who were harmed by the negligence of the Commonwealth in their detention. There are still dozens of historical cases involving negligence claims for former men, women and children from detention centres permanently harmed by the negligence of the Commonwealth listed in Courts in Victoria, NSW, ACT, and SA.

Many more have already been settled as stated but the settlements are done with confidential deeds preventing the claimant or his or her lawyer from discussing the litigation. Most in Australia are unaware of these payouts.

The Commonwealth is aware from the current litigation it is involved in for the class actions against it for the centres it operates on Manus and on Christmas Island that there are claims in those cases that the conditions are toxic and harmful, that the level of health care is criticized by experts, its own staff and by the reports of the plaintiffs and they are causing permanent mental harm therein.

All these pleadings inform the Commonwealth of the harm its detention centre is causing and the likely risk of harm to detainees.

The Commonwealth has had to appear and answer allegations about the failures to provide adequate health services at its detention centres at inquests into the deaths of detainees. The Commonwealth knows that coroners have made countless criticisms of the conditions in detention, the inadequacy of the training of mental health staff to meet the complex needs of the detainee population and the employing of guards who have little or no skills to care for a vulnerable population. See for example <http://www.austlii.edu.au/au/journals/BaJINTLawSoc/2012/80.pdf>

The Commonwealth has had to provide submissions to, and provide material about, complaints by detainees and former detainees to the Commonwealth Ombudsman, to the Human Rights and Equal Opportunity Commission (HREOC) and to the Human Rights Commission (HRC) where criticisms were made over the failure to diagnose and treat serious mental health conditions, to house detainees in cramped and punitive conditions, to have lack of access to adequate or any facilities for recreation and sport and to provide little or no access to adequate education and welfare facilities for children. On many occasions the Ombudsman, HREOC and HRC have recommended that the Commonwealth pay compensation to detainees for their failures.

Many peer reviewed publications, documentaries and research has informed the Commonwealth of the impact of operating a detention centre like Nauru without adequate facilities.

In May 2002, the Professional Alliance for the Health of Asylum Seekers and their Children made a submission to HREOC for its 2004 Report *A Last Resort; National Inquiry into Children in Detention*¹ that every detention centre operated by the Commonwealth should have

1. at least one medical practitioner on call and available 24 hours a day to attend to detainees
2. detainees who could not obtain adequate treatment within detention should be transferred to appropriate facilities
3. that detainees should have ready access to psychiatric services within detention centres
4. suitably qualified staff including psychiatric staff should be involved in providing policy information to the Commonwealth about the services within the detention centres
5. detainees with psychiatric illnesses should be removed to treatment facilities and not kept within the detention centre
6. detainees self-harming or threatening to should not be put into isolation
7. the medical and detention staff should stop referring to self-harm and suicide ideation and attempts as attempts at manipulation of the system but should treat such as indicative of mental illness

¹ https://www.humanrights.gov.au/sites/default/files/document/publication/alr_complete.pdf

8. detention centres should not be in isolated and remote places and should be adjacent to appropriate services and enable detainees to see families and friends as well as lawyers, medical practitioners and others with a legitimate interest in their welfare.

Such recommendations were ignored by the Commonwealth when housing the detainees on Nauru and where, ten years earlier, the Commonwealth was told that not implementing these recommendations would likely lead to harm to the health of the detainees.

In June 2002, the Family and Youth Services acting manager at Port Augusta, South Australia, wrote to the Commonwealth complaining that children housed in Woomera were not getting adequate mental health care and that there were children with mental illnesses noting in particular the large numbers of detainees presenting with mental illnesses after being in detention for in excess of 12 months².

In the same year, the Commonwealth had been told by a psychologist that the likely breakdown of the mental wellness of a detainee was a pattern whereby it was observed that, *"We actually started time-lining the breakdown of individuals. We classified the first three months as being a state of euphoria, hope, dreams. The next three months they are going through all their interviews and there is anxiety starting to building up. After six months, we see deterioration in the emotional and psychological wellbeing of individuals, a significant start in the increase of self-harm. Be it hunger strikes, emotional anxiety, psychological disturbances developing, increased request for assistance with state, which is an indication of depression, medication for depression, more active involvement in disturbances and in self-harm. So yes, I have seen people age on a daily basis. I have seen middle aged men become old men in months"*³

In the same year, a doctor employed by the Commonwealth at its detention centre in Woomera told the Commonwealth that, *'I saw when they came in with a reputation of Australia having such a good human rights track record that they were quite sure that they will be processed quickly, that their application visa will be settled within six to 12 months at the most. When after three months I could see, the depression setting and after 12 months I can see the severe depression, anxiety, self-harm, and even some detainees having psychotic episode and in lay terms going mad'*⁴, (Dr. Bernice Pfitzner)

Also in 2002 a report from the SA Department of Human Services – in relation to the detention centre at Woomera - told the Commonwealth that the *"provision of psychological and psychiatric services to children and adolescents is grossly inadequate for their short and long term needs... the provision of medical services does not have sufficient scope to provide for the acute and long term psychological and psychiatric needs of the detainees. This particularly applies to the needs of the children and adolescents. Behaviours of self-harm are minimised: depression in young children is rarely recognised. The local town doctor provides the primary*

² https://www.humanrights.gov.au/sites/default/files/document/publication/alr_complete.pdf

³ Ibid

⁴ Ibid

*medical service and this is an incredible drain on one person... the lack of immediate access to direct psychiatric diagnosis and care is considered to be a major gap in the centre's health service. Similarly, the lack of a child psychiatrist is a primary concern given the number of depressed and self-harming children present in the centre*⁵.

The same Department wrote to the Commonwealth and informed it in relation to recommendations for treatment and for children in Woomera that, *"the overarching issue raised by these cases and reports are: increasing clinical concern that their recommendations are not being implemented by DIMIA, the ineffectiveness of community based treatment delivered at Woomera, no effective treatment programs can be put around people while they are in such a noxious environment"*

Again, in 2002 the United Nations reported that the long-term detention of refugees and asylum seekers was having a negative impact on the mental health of detainees. The report writer, Justice Bhagwati, was dismissed by the Commonwealth has having prepared a fundamentally flawed report.

The Lancet published an article by Loff, Creati, Snell and Mohan which said that the conditions in Woomera were grim and punitive noting that children did not have enough space to play or crawl, the climate was too extreme with cooling often breaking down, and that the lack of adequate running water and toilet facilities was noted. See "Inside Woomera's Detention Centre "Lancet 2002:359 (9307):683

In 2003 an article written by a former health staff worker at Woomera (Glenda Koutrolis in the Australian and NZ journal of Public Health), criticized the Commonwealth for providing inadequate staffing for the large numbers of ill persons in detention at Woomera. She had been employed as a psychiatric nurse at the Centre⁶.

In July 2003, the ABC showed a documentary, *"About Woomera"* which featured numerous reports of and examples of detainees in severe mental distress, self-harming and on hunger strike. The programme detailed the failure to provide adequate treatment and the high number of very unwell detainees within the population⁷.

The Commonwealth knew that by 2003 Dr. Jureidini and Dr. Mares reported that, *"In children under five years old (in Woomera) 50% presented with symptoms including delays in language and social development and emotional dysregulation, 30% showed marked disturbances of distortion or attachment relationships, and, over time, a further three children in the age group was diagnosed with severe parent-child relationship problems...."* (In the children 6 – 17 years of age) *...All fulfil criteria for post-traumatic stress disorders. All were troubled by experiences since detention.... All reported trouble sleeping, poor concentration, little motivation for reading or study, a sense of utility and hopelessness and overwhelming boredom, all fulfil criteria for major depression with suicidal ideation, 30% reported frequent enuresis since being in the detention centre. All reported recurrent thoughts of self-*

⁵ Ibid

⁶ *Detained Asylum Seekers: Health Care and Questions of Human(e)ness*: Australian and NZ Journal of Public health (2003) Vol 23 p 381

⁷ http://www.abc.net.au/4corners/content/2003/20030519_woomera/

harm. 80% had acted on these impulses including three pre-adolescent children, 70% had symptoms of anxiety...50% reported persistent severe somatic symptoms particularly headaches and abdominal pain...all children had at least one parent with a major psychiatric illness leaving children alone in the camp....⁸

In 2003 the director of the South Australian Women's and Children's hospital wrote to the Commonwealth that the Board of Directors was deeply concerned that a number of detainee adolescents were, "manifesting major depression, suicidal and self-destructive behaviour as a direct result of the environment in which there (were) living."

Dr. Dudley, in reporting in the Australasian Psychiatry Journal in 2003 noted that the Commonwealth's repeated claims detainees were not unwell when they self-harmed meant that the Commonwealth lacked a fundamental understanding of the psychological effects of detention which informed an inappropriate response to the managing of the self-harm and suicide attempts and this was likely to exacerbate the risk of suicide. M Dudley (Contradictory Australian. National Policies of Self-Harm and Suicide: The Case of Asylum Seekers in Mandatory Detention "Australasian Psychiatry Vol 11 (Suppl) 2003 S102-8. This Journal is in the Parliamentary Library.

In 2004 The Human Rights and Equal Opportunities Commission (HREOC) wrote an extensive report into children in immigration detention, "A Last Resort; National Inquiry into Children in Detention" (the HREOC Report). This informed the Commonwealth of the impact of mandatory detention on children. HREOC interviewed medical and other staff, detainees and former detainees, independent experts, the Immigration Dept. staff, the service providers, advocates and visitors and visited every centre then operating. It called for and received many submissions. It gave the draft to the Commonwealth for its response.

The HREOC Report was a damning account of the impact that immigration detention was having on children – long term or whole of life damage. It noted delays in development, failure to diagnose and treat children of both mental and physical conditions, and the exposure by young children to adults self-harming, rioting and being assaulted by guards.

The same report contained submissions from the South Australian Department of Human Services which told HREOC that *'for the children and young people in Woomera their continuous exposure to violence and self-harming behaviour is also creating an unstable and unsafe environment in which psychological symptomology such as suicidal ideation, dissociation, depression, restricted ranges.*

The Commonwealth knew that in the HREOC report the recommendation that there should be no requirement for health service providers in the detention centres to sign confidentiality clauses in their contracts as such clauses meant that staff were not able to report on toxic conditions within the centres⁹.

⁸ "Children and Families Referred from a Remote Immigration Detention Centre" presented at a summit "Forgotten Rights Responding to the Crisis of Asylum Seeker Health Care" Sydney 2003

⁹ https://www.humanrights.gov.au/sites/default/files/document/publication/alr_complete.pdf

We note that not only did the Government not implement this recommendation but, by enacting the *Australian Border Force Act 2015*, it deliberately attempted to make it even harder for the harm to children to be disclosed and acted upon. See part 6 of the Act.

The HREOC Report noted that the accommodation facilities at the centres at Woomera, Curtin and Port Headland were substandard and were causing or contributing to the mental unwellness of the detainee population, in particular children¹⁰.

We note that the conditions on Nauru were and are worse for detainees than those reported to be the cause of mental health problems a decade ago.

The HREOC report, in 2004, told the Commonwealth about the danger of keeping children in immigration detention centres like Curtin, Woomera, Villawood and Baxter. It noted that many children were undiagnosed and untreated for severe illnesses, that there were no torture and trauma counsellors available although a high percentage of the detainees came from places where they had been harmed by the governments they were fleeing, that the service providers were unskilled in identifying mental health needs, that children could not be treated appropriately in the toxic environments they were being housed in where they were exposed to self-harm and distress and lack of adequate facilities, that there was a failure to monitor the health service providers in any event, and that there was a high risk of children exiting detention with life-long psychiatric and psychological conditions as a result of the failures identified in the Report¹¹.

The Report detailed further causes of the high number of ill children in the centres and referred to using third party service providers, untrained staff, isolation of the centres, failing to audit the health and welfare of children, secrecy and inappropriate use of high risk watch programmes¹².

In 2004 Dr. Simon Lockwood, a former GP at Woomera, reported on the ABC Lateline programme that he had been told by the Commonwealth when trying to advocate for better services, that the purpose of keeping detainees in harsh conditions was so that people would want to leave¹³.

By 2005 the Commonwealth knew that the majority of the detainee population in immigration detention were displaying psychiatric symptoms and there were no resident psychiatrists in any centre and that legal teams were having to file applications in Court to get very ill detainees transferred to treatment facilities¹⁴.

¹⁰ Ibid

¹¹ Ibid in particular Chapter 9

¹² Ibid in particular recommendations

¹³ <http://www.abc.net.au/lateline/content/2004/s1229335.htm>

¹⁴ *S v Secretary, Department of Immigration and Multicultural and Indigenous Affairs* (2005) 84 ALD 257

Further in 2005 the Commonwealth commissioned a report into the unlawful detention of Cornelia Rau (the Palmer Report¹⁵) which told the Commonwealth that there were fundamental flaws in the medical services provided within detention centres and of the impact of the failure to audit the health services. The Report informed the Commonwealth of the likelihood of a detainee becoming mentally ill as a result of the conditions that existed for detainees. It made substantial recommendations for change, only a few of which have ever been implemented or, if implemented, certainly abandoned in the off-shore centres.

In 2007 Silove, Austin and Steel reported in an article in the Journal of Transcultural Psychiatry *“No Refuge from Terror; The Impact of Detention on the Mental Health of Trauma Affected Refugees Seeking Asylum in Australia”*¹⁶ wherein the authors criticize the centres being based in geographically isolated places, with conditions which look like prisons, where detainees are referred to as a number and subjected to many roll calls and searches. The article provides a history of the research on the harm caused by detention noting experts had reported detainees who *“showed marked deterioration in their psychiatric state...”* The authors criticized the Commonwealth for not allowing independent research to undertake systemic health surveys in spite of requests from, for example, the AMA. The article goes on to provide a history of the numerous inquiries, statements and findings about the high number of ill people in detention, the failures to diagnose and treat detainees and the secrecy of the Commonwealth.

In 2008 Professor Louise Newman and Zachary Steel wrote *The Child Asylum Seeker; Psychological and Developmental Impact of Immigration Detention*¹⁷ reported on the high risk that children and young people faced in immigration detention in particular stating that, *“Child asylum seekers have a range of experiences that put them at high risk of psychological distress and the development of mental disorder....Children were particularly vulnerable in the face of separation from family and caregivers and were more likely to be abused and victimized in refugee camp situations. They suffered the effect of malnutrition, disease and neglect...the experience of immigration detention....is itself a risk factor for mental disorder,”* (footnotes omitted)

The report further stated the risk factors for children being their exposure to trauma in detention, the parenting as a means of providing care is often compromised because of the impact of detention on the parents, and their history including separation from parents and family members.

In 2010 in a report by Green and Eager in the Medical Journal of Australia (MJA vol 192; p 65) they reported that, *“Those detained for greater than 24 months had particularly poor health, both mental and physical...The main health problems varied depending on the length of time in detention, but included dental, mental health, and musculoskeletal problems and lacerations...there is a clear association between time and detention and rates of mental illness.”* The writers concluded, *“Government*

¹⁵ <https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/palmer-report.pdf>

¹⁶ <http://tps.sagepub.com/content/44/3/359>

¹⁷ Child Adolesc Psychiatric Clin N Am 17 (2008) 665-683

policies.... should be informed by evidence from studies of the health of this marginalized and often traumatized group.”

In 2011 in the Australian and New Zealand Journal of Public Health Dr. Jureidini and Julian Burnside AO QC reported that there were reports from Villawood of “...*prolonged detention of young children in developmentally inappropriate circumstances and separation of families.... There are reports from Darwin of children under the age of 10 self-harming and we are beginning to see infants with severe separation anxiety, adolescents with severe depression and post-traumatic stress disorders, parents who have lost the capacity to care adequately for their children.....* The writers went on to criticize the model of contracting IHMS (who provide services on Nauru now) saying the model for doing so ‘*directly harms patients.*’ They concluded saying that, “*The present system of mandatory detention seriously harms many of the people subjected to it. The harm is predictable and foreseeable.*”¹⁸

There have been many other academic reports to medical journals both here and overseas that have informed the Commonwealth of the likelihood of the detainees held in detention centres for extended periods of time developing mental illnesses. We are happy to provide a bibliography if this Inquiry wants further information about such works.

The Commonwealth has been provided with reports from its own bodies on the conditions in the centres including;

1. The HREOC 2007 Summary of Observations Following the Inspection of Mainland Immigration Detention Facilities. This contained criticisms in particular in relation to health services, facilities for children and made a number of recommendations all directed at reducing the risk of harm.
2. The Commonwealth Ombudsman Christmas Island Immigration Detention Facilities 2010 (noting that there were a number of like reports in other years) wherein a number of recommendations were made, including for particular services for children.
3. The AHRC Immigration Detention on Christmas Island 2012 which also criticized the conditions and services for children and families
4. The AHRC Snapshot Report on Immigration Detention 2013 in particular its comments about offshore detention.
5. In 2013 the then Minister for Immigration conceded in the press that the facilities on Nauru were underfunded and underprepared following two UNHCR reports on Nauru criticising the facilities.
6. In 2013 a group of doctors employed by the Commonwealth or its service providers published a letter of concern about the serious failures within the health services on Christmas island and the rates of illness amongst the children detained therein.

¹⁸ Australian and New Zealand Journal of Public Health 2011 vol 35 no 4

7. The AHRC Commission report into Children in Detention 2014 The Forgotten Children. The writers rely on the findings and recommendations for this submission from this extensive and excellent Report.

The Commonwealth has been provided with dozens of psychiatric and psychological reports on detainees held in its detention centres for the last 15 years or so which informed the Commonwealth of the high numbers of ill people requiring treatment, the high numbers whose mental health was caused or contributed to by conditions therein and the high numbers whose mental health was compromised by its failures.

The Commonwealth has been provided with, from time to time, reports from visitors, staff and former staff members and lawyers in relation to the conditions in immigration detention. This submission does not intend to list all the reports, books, press coverage and interviews in this category of materials known to the Commonwealth unless the Inquiry makes a separate request of us to do so.

We say conditions in Nauru are markedly worse than those in Woomera, Baxter, Curtin, Villawood, Christmas Island, MITA, BITA, Inverbrackie, AITA, Maribyrnong and Port Headland. We say that all the historical information that the Commonwealth had when it reopened Nauru and Manus meant that the Commonwealth knew that it was likely that detainees kept therein would be likely to suffer mental and physical harm.

That harm became apparent amongst that detainee population very quickly.

And it was known

We rely on the findings in the aforementioned AHRC Report – *The Forgotten Children*

We rely on our Report

We rely on the work by Mark Isaacs '*The Undesirables*'¹⁹,

We rely on the work by Madeline Gleeson '*Offshore – Behind the Wire on Manus and Nauru*'²⁰,

Further we rely on the footage contained in the film by Eva Orner *Chasing Asylum* 2016 and the ABC Four Corners Programme aired October 2016, *The Forgotten Children*.

We rely on the files reported in the Guardian²¹.

¹⁹ <http://markjisaacs.com/the-undesirables/>

²⁰ <https://www.newsouthbooks.com.au/books/nauru-and-manus/>

²¹ <https://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>

We note that a report commissioned by the Guardian in 2014 found that children on Nauru were inadequately screened for disease, that there were no pediatricians in the Nauru centre and none in the hospital, there was no child protection framework in the centre which medical staff said placed children at high risk of harm, most pregnant women were suffering from depression. The report noted that in a 14 months' period 2012-2013 there were 102 cases of self-harm, including 28 attempts by hanging, and 6.3% of the asylum population were on psychotropic medication to treat mental illness. The report went on to say that living conditions were, '*Hot and humid with children having limited meaningful play. Children play with stones.*'²²

Both major parties have committed to support a refugee and asylum seeker policy that:

- commits to detaining offshore indefinitely people who arrive by boat
- refuses to process their refugee claims in Australia.
- mandates that those ultimately found to be refugees will not be permitted to settle in Australia, and,
- ensures the detainment of refugees is done in such a way that potential asylum seekers will not be attracted to Australia

The question of how a country that has previously considered itself a staunch supporter of human rights should find itself in the position of being considered an international pariah – as evidence in these reports – have baffled many mental health experts and academics as they have struggled to understand how a previously law-abiding and human rights-focused country such as Australia has found itself in breach of three key international human rights treaty obligations.

One of Australia's most senior mental health experts, Professor Michael Dudley, has recently published a paper that found: '*Public numbing and indifference toward state abuses in Nazi Germany resembles that enabling the state detention centres.*'

Professor Dudley also found Australia's public complicity in the detention regime was similar to the White Australia policy. (Established in the 1800s until dismantling began in the 1950s, this policy effectively allowed immigration only from the UK and Europe and prevented Asian immigration.)

This policy involves a failure to provide appropriate medical treatment and housing and exposes those detained to violence and sexual abuse – and all of this in the name of deterring asylum seekers from coming to Australia. Both major parties support laws that gag those who report what happens on Nauru with the threat of two years' jail²³. Reports of the systemic pattern of abuse of women and children have been deflected by attacks on the credibility of victims, staff and witnesses. Successive Ministers have blamed advocates for exposing the abuse.

²² <http://www.theguardian.com/world/2014/may/30/nauru-leaked-report-exposes-desperate-state-of-health-care-in-detention-centres>

²³ Which until recently including all staff noting medical staff now exempted.

Curiously these denials have proceeded at the same time as a separate Royal Commission has exposed the cover-ups and abuse of children in Australian institutions and bipartisan political support for a campaign to end violence against women. This suggests a cognitive dissonance when it comes to the treatment of refugees and asylum seekers coming to Australia for protection.

There is documented evidence that women asylum seekers are often escaping sexual assault and entrenched and systemic gender discrimination (see p 32 of our Report). For example, in the Judgement in *S 99 v Minister for Border Protection*²⁴ Justice Bromberg recorded that the plaintiff in the case, formerly detained on Nauru, had been repeatedly beaten and sexually abused by her first husband and fled her country of origin fearing for her life. On arrival, he noted she suffered from severe health impacts of the history. He found that she was in need of specialist treatment which was not available on Nauru. She was sent to Nauru where she was raped and became pregnant.

In view of our submission it is completely unacceptable that women and children exposed to sexual abuse and assault in their history should be at risk of further trauma while in off-shore centres and in a country with high levels of domestic violence and where there are inadequate facilities and processes for the local women let alone women arriving already suffering from the impact of trauma. Further the facilities in countries presently considered as viable alternatives (Cambodia and PNG) have alarming rates of domestic violence and few resources to deal with them. Finally, encouraging women to return to places where they suffered horrific abuse is an appalling suggestion by the Australian Government.

Our recommendations to ensure that children and women are not harmed in off-shore detention

1 We are of the view that there have to be adequate guidelines for child safe policies with best practice guidelines noting the vulnerability of the detention cohort.

2 We want policies and practices developed around the stake holders – the Governments of Nauru and Australia and any contractor, to ensure standards of care are not breached and to ensure adequate auditing

3 We ask that the Australian Government ensure that any visitor to Nauru is not refused a visa unless with good cause. The practice of refusing visitors like the Danish delegation and two of the writers in the last 12 months is deplorable. Further, journalists should not have to pay \$8000 for a visa and we ask that the Commonwealth use their best efforts to enable journalists to visit Nauru and the centres.

4 That the Commonwealth reinstate the DHAG or such body to oversee the provision of health services within its centres with independent psychiatric representation on such a body.

²⁴ <http://www.austlii.edu.au/au/cases/cth/FCA/2016/483.html>

5 That if there is a children's advocate that the role includes the ability to investigate complaints and sufficient staff including staff with training on child protective servicing of clients be engaged.

6. That the Australian Government, in recognition of the duty of care owed to detainees, provide police services, (including adequate forensic services including rape kits and specially trained officers in sexual assaults), to the Government of Nauru urgently to ensure that those complaints that have been made or are made are investigated properly and in a timely fashion. The Australian Government should also commit to auditing the implementation of these steps.

7 That the Australian Government should bring any person currently held on Manus and Nauru to Australia for processing for their refugee status. Any person currently found to be a refugee should be immediately moved to Australia and permitted to live in the Australian community once health and security screening is completed. Failing this the Australian Government should use its best efforts immediately to find third countries, regardless of their risk of pull factors, for the population found to be refugees.

8 That the *Australian Border Force Act* not exclude anyone who would be a mandated reporter of harm to children from provisions in relation to disclosing reportable incidents involving detainees.

9 That the conditions in the Centres on Manus and Nauru immediately be improved to take into account recommendations made by the UNHCR, Amnesty, Save the Children and AHRC.