Australian Government
Comcare

INSPECTOR REPORT

Work Health and Safety Act 2011 (Cth) (WHS Act)

[redacted]

Inspector's activity/objective	I commenced an intervention to conduct a compliance inspection.
If 'other' is selected or there is more than one activity/objective:	

Relevant date	18-Feb-2014	**Reference no.**	EVE00224256-0001
Entry time		**Departure time**	

SUMMARY OF COMMITMENTS/OUTCOMES

Over the days of 16, 17 and 18 February 2014 there were a number of violent protests involving transferees at the Manus Island Offshore Processing Centre (MIOPC). As a result of these protests there were many injuries sustained mostly by transferees, some very serious. An Iranian transferee, Mr Reza Barati, suffered a head injury so severe that he died during the early hours of 18 February.

The Department of Immigration and Border Protection (DIBP) notified Comcare of the incident on 18 February, and an inspection was commenced.

Inspector Jason Briggs undertook a compliance inspection but no powers were exercised during the course of the inspection.

Outcome

After a thorough review of available evidence Inspector Briggs did not identify any breaches of the *Workplace Relations Act 2011* (the WHS Act) by DIBP. On the evidence reviewed it appears DIBP provided a safe workplace as far as reasonably practicable. It is apparent that the injuries and death that occurred were the direct result of criminal actions, not as a result of inadequate WHS practices, processes or systems.

Recommendations have been made further in this report.

ACTUAL SITE ADDRESS OF ATTENDANCE OR WORKPLACE(S) INVOLVED IN INTERVENTION ACTIVITY

Name	Manus Island Offshore Processing Centre				
Address	Manus Island, Papua New Guinea				
		State		**Postcode**	

LEGAL NAME AND ADDRESS OF THE PERSON CONDUCTING BUSINESS OR UNDERTAKING (PCBU)

Name	Department of Immigration and Border Protection	**ABN**	33380054835
Address	PO Box 25, Belconnen ACT 2617		

THIS REPORT ADDRESSED TO

Name	Rita Haddad	**Role**	A/Director, Health and Safety		
Address	PO Box 25				
Belconnen		**State**	ACT	**Postcode**	2617

CORPORATE OR NATIONAL CONTACT

Name	Rita Haddad	**Title**	A/Director, Health and Safety
Phone	02 6225 6337	**Email**	[redacted]

WORKPLACE CONTACT

Name	N/A	**Title**	
Phone		**Email**	

HEALTH AND SAFETY REPRESENTATIVE DETAILS

Name	N/A	**Workgroup**	
Email		**Phone**	

OTHER PERSONS SPOKEN WITH IN RELATION TO THE ACTIVITY

Name	N/A	**Position/role**	

SUMMARY OF INSPECTOR'S ACTIONS AND OBSERVATIONS (Including any powers exercised, recommendations or directions made and compliance/s observed)

Inspector Actions

In response to DIBP's notification of the death of Mr Barati a compliance inspection was undertaken by Inspector Briggs. Early in the inspection DIBP indicated that they would cooperate with Comcare's request for information without the need for coercive notices. Prior to requesting information Inspector Briggs reviewed information obtained by Inspector Greg Zadro during his visit to MIOPC in December 2013.

The first request for information was made to Ms Rita Haddad by email on 28 February. On 18 March DIBP responded to the request providing some of the requested material. The remaining material from the initial request was provided on 7 April. On 15 April DIBP Assistant Secretary Nick Evans provided information to Neil Quarmby, General Manager Comcare regarding some general questions on offshore processing facilities.

After reviewing the material provided on 7 April, a further request for information was emailed to Ms Haddad on 16 April. The request was complied with on 13 May.

A comprehensive review was undertaken of all the material provided by DIBP, along with the report of Mr Robert Cornall AO and the "Nauru Review 2013" by Mr Keith Hamburger AM.

Observations

1. DIBP's position is that the WHS Act applies in full in the context of MIOPC and that MIOPC satisfies the definition of "workplace" for the purposes of the WHS Act.
2. The contract for services between DIBP and G4S contained numerous clauses relating to safety, emergency and contingency plans and systems. The evidence supports the existence and implementation of these plans.
3. No DIBP workers were injured during the protests, most likely due to effective implementation of the Emergency Management Plan.
4. There was a large percentage of Papua New Guinea (PNG) workers engaged in MIOPC. This was a requirement of the contract for services.
5. DIBP appeared to have done what is reasonably practicable to provide a safe workplace at MIOPC. DIBP exhibited no control over the events that transpired between 16-18 February that led to the death of Mr Barati.

Recommendations

1. Consideration is given to implementing the recommendations from the Cornall Review, particularly recommendations 5, 6, 7, 8, 9, 11, and 13 which all have a direct or indirect relationship with workplace safety.
2. The same consideration is given to adapting recommendations 1, 3, 4, 7, and 10 from the Nauru Review 2013 as they apply to MIOPC.
3. Comcare inspectors undertake a further site visit to MIOPC prior to the end of 2014.

DOCUMENTS OR THINGS THE INSPECTOR RECEIVED OR REVIEWED

Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to, and assessment and settlement in, Papua New Guinea of certain persons, and related issues

Contract for the provision of services between the Department of Immigration and Citizenship (now the Department of Immigration and Border Protection) and G4S Australia Pty Ltd

Numerous email responses from DIBP (received 18/3/14, 7/4/14 & 13/5/14) to questions asked by Inspector Briggs

Correspondence from DIBP Assistant Secretary Nick Evans dated 11 April 2014 (received 15 April)

Documents prepared by G4S including:

- Emergency Management Plan
- Contingency Plan
- Safety and Security Management Plan
- Security Awareness training
- Emergency Orders Incident Response training
- Emergency Awareness training (*Bibby Progress)*
- Operational Order for the Training Evacuation of MIRPC
- Operational Briefs (1 to 3) – Introduction to Evacuation
- Training Evacuation Debriefs dated 7th and 27th December 2013
- Work Health and Safety Plan
- Initial training course session plan and assessment
- Defensive options practical assessment
- Session plan and handout for staff induction
- Learning and Development Management Plan

G4S debrief document

SitReps from 16 - 19 February 2014

15 x G4S Incident Reports

Report of the review by Mr Robert Cornall AO

"Nauru Review 2013" by Mr Keith Hamburger

DOCUMENTS OR THINGS THE INSPECTOR PROVIDED

N/A

NOTICES ISSUED

Type of notice(s) issued	None
If 'other' is selected or more than one type of notice is issued:	

Summary of notice(s) content

N/A

STATUS OF ANY EXISTING NOTICES MONITORED DURING THIS ACTIVITY

N/A

OTHER ACTION/S TAKEN

N/A

INSPECTOR'S DETAILS (appointed under s156 of the WHS Act)

Name	Jason Briggs	**Title**	Assistant Director
Office	Brisbane	**Region**	Queensland
Group	Regulatory Operations Group	**Phone**	[redacted]
Email	[redacted]		
Signature	[redacted]	**Date**	26 June 2014

OTHERS ATTENDING/ASSISTING

Name	N/A	**Role**	

METHOD OF SERVICE FOR THIS REPORT

Emailed to:	Rita Haddad	**Role**	A/Director, Health and Safety
Email	[redacted]	**Phone**	[redacted]

COPY OF REPORT PROVIDED TO

Name	Nick Evans	**Role**	Other (please specify below) Assistant Secretary DIBP

NEED HELP?

If you do not understand the information provided in this report or the information provided by an inspector during a site visit, or you are uncertain how to address the actions required of you, please discuss your concerns with the inspector/investigator who attended your workplace.

The inspector that attended your workplace should also be contacted should you wish to view photographs, documents or other evidence taken during the visit.

REVIEW OF CERTAIN INSPECTOR DECISIONS

Comcare will seek to resolve your concerns in a staged process.

Decision Maker Review
If you disagree with a regulatory decision made by an Inspector as part of this activity, you may request a review of the decision. Comcare requests you firstly consult with the Inspector to discuss and resolve the issue at the operational level. If you are not satisfied with the reviewed decision you may subsequently request a further review with their Manager.

Independent Review
If you believe your concerns were not addressed through the Decision Maker Review process, then you or any concerned party, may put a complaint in writing (via email) to **complaints@comcare.gov.au**. This is a formal independent process. Comcare conducts two types of Independent Reviews:

- **Professional Standards Enquiry** is conducted for complaints regarding non-statutory regulatory decisions, actions and findings against Comcare's service charter, policy commitments, procedures and professional standards.
- **Internal Review** is conducted where an eligible party makes a complaint related to specific statutory provisions of the WHS Act. If you want to apply for statutory review of a decision made by an Inspector during this activity, you must do so with Comcare within 14 days of the date the decision came to your notice or—in the case of an improvement notice—the lesser of 14 days or the period specified in the notice for compliance (or such longer period as the regulator allows). Comcare must conduct the internal review within 14 days (unless further information is required). If Comcare does not notify you of the internal review decision within the required time, Comcare is taken to have made a decision to affirm the reviewable decision. Not all decisions can be internally reviewed and in order to seek internal review of a decision you must be an eligible person. If you are not satisfied with an internal review decision you can apply for an external review to Fair Work Australia. For further information about Statutory Reviews and to download the application form, go to our website at: **www.comcare.gov.au/WHS/guidance_and_resources/guidance**.

PRIVACY STATEMENT

Your privacy is important to us. We will only collect, use or disclose your personal information in accordance with the *Privacy Act 1988*. If Comcare does not collect personal information from you for the purposes of its legislated functions or related functions, we may not be able to respond appropriately.

Comcare is the Commonwealth agency authorised by the *Work, Health and Safety Act 2011* (WHS Act) to collect personal information relevant to the exercise of functions and powers under the WHS Act, *Work Health and Safety Regulations 2011* and other legislation, and the administration and evaluation of Comcare's WHS programs. Any personal information collected in these forms will be used for those purposes.

In exercising those functions, we may disclose personal information, subject to confidentiality of information provisions under the WHS Act, to the following bodies and agencies, including but not limited to:

- Comcare's legal advisers
- the Safety, Rehabilitation and Compensation Commission
- contractors and agents
- a court or tribunal
- state or territory work health and safety regulatory agencies
- enforcement agencies (including police investigating or conducting an interview in connection with the application)
- state and territory Coroners
- commonwealth, state or territory industry regulators
- any other person where there is an obligation under law to do so

We want to ensure personal information collected, used, stored or disclosed is accurate, up-to-date and complete. Comcare's Privacy Policy contains information on how you can request access to personal information held about you and how to seek correction of that information.

You may make a complaint to us if you consider that Comcare has interfered with your privacy or otherwise breached its obligations under the *Privacy Act 1988*. Our Privacy Policy contains more information about how to make a complaint and how we will respond.

Comcare is not likely to disclose personal information to a person who is not in Australia or an external Territory, unless the information relates to an incident, investigation, injury or illness sustained while overseas, or treatment provided by an overseas practitioner. If disclosure of personal information is made to an overseas recipient, Comcare will comply with obligations regarding disclosure to overseas entities (Australian Privacy Principle 8).

For further information about our information handling practices, for a copy of our Privacy Policy, to request an amendment of your personal information or to make a privacy complaint, please refer to **www.comcare.gov.au/privacy**, contact us on 1300 366 979 or email **privacy@comcare.gov.au**.

FURTHER INFORMATION

Comcare has a range of publications and fact sheets to help explain your responsibilities and provide guidance to make your workplace safer. To access these, visit our website at www.comcare.gov.au. To get further advice, assistance and information, call **1300 366 979** or email **ohs.help@comcare.gov.au**.

DISCLAIMER

This report contains information based on the recent visit to your workplace and is given to assist you to take any steps in regard to your obligations under the WHS Act. To ensure you comply with your legal obligations you must refer to the WHS Act and associated Regulations. A link to these documents is provided on our website at **www.comcare.gov.au**.

While every step will be taken in providing advice to you, Comcare will not be liable for any errors or omissions or for any loss or damage suffered by you or any person which arises from your reliance on this advice or for any breach by you of your obligations under the WHS Act. The fact that an inspector has inspected a particular workplace is not a representation by Comcare that the particular workplace is in any way approved or free of hazards.

Australian Government
Comcare

PUTTING YOU FIRST

28 February 2014

Nick Evans
Assistant Secretary
Work Environment Branch
Department of Immigration and Border Protection
Email: [redacted]

Dear Nick,

As discussed yesterday, I am writing in response to the recent incident at the regional processing centre (RPC), Manus Island on 18 February 2014; notified to us by the Department of Immigration and Border Protection (DIBP) on the morning of 18 February 2014.

Comcare commenced a compliance inspection in response to this notification and preliminary enquiries have been undertaken with DIBP staff. The objective and focus of this inspection is to determine sufficient facts to enable Comcare to assist DIBP enhance safety outcomes for its RPC workplaces wherever reasonable and practicable. We are seeking to engage and exchange relevant information in the spirit of cooperation without the use of statutory powers.

Information needed by Comcare to assess any jurisdictional issues includes a regular update on the progress of investigation(s) about the Manus Island RPC incident. We understand there are police investigations underway and a major enquiry by DIBP. It would be valuable for Comcare to be provided weekly progress updates for all investigations where DIBP are capable of doing so. We understand there may be limitations to this and are comfortable in receiving this information in a form that suits DIBP or even under s155 of the WHS Act if you feel this is a necessary protection.

DIBP has previously advised Comcare on the legal nuances of the shift from detainee to transferee and we are comfortable that contractual arrangements and emergency arrangements put in place to date appear to cover off on WHS obligations. However, given the nature of the incident it is timely for DIBP to review and confirm their position on WHS matters. Could you please advise:

1. The outcomes of any incident investigation or review conducted in relation to WHS processes/policies.
2. DIBP's legal view of the status of transferees at the RPC especially insofar as who holds a duty of care for them and specifically what is their relationship with DIBP in relation to the *Work Health and Safety Act 2011*? What parts of the RPC constitute a federal workplace? Do transferees retain any s29 obligations?

GPO BOX 9905
CANBERRA ACT 2601
P 1300 366 979
COMCARE.GOV.AU

3. What is the status of transferees with regard to visas once they arrive at the OPC? That is, are processes in train by PNG authorities for the purposes of assessing their prospects of settlement in PNG? Or are they considered as being in an assessment process undertaken by DIBP? If so, who is DIBP undertaking the processing activity on behalf of?
4. What are the WHS elements in contract arrangements in place with such service providers as G4S, Transfield and The Salvation Army insofar as duties of care for transferees are concerned, and what does DIBP consider to be the status of these contractors in relation to who they are contracted to, providing services for and who has control and to what extent over their work activities?
5. At what point is (including for the purposes of these events 'was') control of the transferees at the RPC ever handed over to local authorities? For example during any day-to-day routine events or during emergencies such as the reported riot?

Comcare is aware that it may take some time to review existing positions on these questions, however, we think it best to establish a weekly dialogue. If you have another preferred point of contact please advise accordingly. Jason Briggs and Paul Orwin (both from my Queensland office) are the points of contact at this end.

Thank you for your assistance in this matter.

Yours sincerely

[redacted]

Neil Quarmby
General Manager
Regulatory Operations Group

FYI

Kiera Monaghan

Executive Assistant to Neil Quarmby

General Manager

Regulatory Operations Group

and Christina Bolger

Director Scheme Design

[redacted]

Email: HYPERLINK
[redacted]

From: Nick EVANS [redacted]
Sent: Thursday, 27 March 2014 4:34 PM
To: Neil Quarmby
Cc: Katrina Ashcroft; Lizzy GREEN
Subject: GM letter to DIBP [DLM=For-Official-Use-Only]
Importance: High

For-Official-Use-Only

Neil,

I refer to your letter of 28 February 2014, and our correspondence earlier this week. Please find attached a status update in relation to the matters you raised in your letter. As you will note below, we are finalising some of the information required to fully respond to your request - I intend to have this information ready in the next few weeks, and to formally respond to your letter by mid-April. Should there be a delay with this process I will let you know.

Status update as follows:

Q1. The outcomes of any incident investigation or review conducted in relation to WHS processes/policies.

There are several departmental, independent, and PNG police investigations underway enquiry into the Manus incident that will assess the WHS processes that were in place at the time of the incident.

The service provider, KPMG has recently undertaken an independent WHS risk assessment on Manus and Nauru as recommended in the recent Hamburger report, "Nauru Review 2013".

The department provided Comcare a number of responses on 18/03/14 to the Comcare Compliance Investigation sent on 28/02/14. This remains incomplete as some of the information has not been made available by the business due to the ongoing investigations.

The department has recently reviewed some of its WHS processes/policies and has introduced enhanced support services to staff being deployed to Manus and Nauru under the Professional Support Framework. This includes:

- DIBP staff and TIS interpreters will have access to on-site counselling through an EAP provider by 31/03/14. The delivery details are still being finalised. Access to EAP phone counselling continues to be offered to all staff.

- All DIBP staff being deployed to OPCs are undergoing resilience and medical assessments and appropriate vaccinations no matter the length of deployment. Each staff member will be provided a self-care plan and ongoing EAP support as required whilst on-site.

- All staff returning from deployment are provided with a post-deployment debrief from the EAP provider and the staff member's home manager. A WHS de-brief is also provided by the IMA Health and Safety team.

2. DIBP's legal view of the status of transferees at the RPC especially insofar as who holds a duty of care for them and specifically what is their relationship with DIBP in relation to the Work Health and Safety Act 2011? What parts of the RPC constitute a federal workplace? Do transferees retain any s29 obligations?

Awaiting an updated response from the department's legal area. This will be part of our formal response.

3. What is the status of transferees with regard to visas once they arrive at the OPC? That is, are processes in train by PNG authorities for the purposes of assessing their prospects of settlement in PNG? Or are they considered as being in an assessment process undertaken by DIBP? If so, who is DIBP undertaking the processing activity on behalf of?

Persons transferred to PNG under the current MOU with Australia for the purposes of assessment and settlement are issued a section 20 (of the Migration Act 1978) exemption to hold an entry permit, which is issued by the Minister for Foreign Affairs and Immigration. The issue of the entry permit effects their lawful entry and stay in PNG. The Minister has also issued a direction under section 15C of the Migration Act 1978 that transferees must reside in a relocation centre (i.e. Regional Processing Centre).

The PNG Government, through the Immigration and Citizenship Service Authority (ICSA), conducts refugee status determination assessments on all asylum claims

lodged by persons transferred under the MOU. The Minister for Foreign Affairs and Immigration is the decision maker on all applications. DIBP staff are currently assisting ICSA to undertake assessments and are providing ICSA with training and mentoring to develop their assessment capacity. The process, however, is owned and managed by PNG and assessments and determinations are made under PNG law.

4. What are the WHS elements in contract arrangements in place with such service providers as G4S, Transfield and The Salvation Army insofar as duties of care for transferees are concerned, and what does DIBP consider to be the status of these contractors in relation to who they are contracted to, providing services for and who has control and to what extent over their work activities?

Awaiting an updated response from a department business area. This will be part of our formal response.

5. At what point is (including for the purposes of these events 'was') control of the transferees at the RPC ever handed over to local authorities? For example during any day-to-day routine events or during emergencies such as the reported riot?

Awaiting an updated response from a department business area. This will be part of our formal response.

Please let me know if you would like to discuss further.

Regards

Nick Evans
Assistant Secretary

Work Environment Branch
Department of Immigration and Border Protection
[redacted]

For-Official-Use-Only

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Australian Government

Department of Immigration and Border Protection

11 April 2014

Neil Quarmby
General Manager
Regulatory Operations Group
Comcare
GPO Box 9905
Canberra ACT 2601

Dear Neil

Manus Island Incident 17 February 2014

Thank you for your correspondence dated 28 February 2014 regarding the recent incident on Manus Island.

As requested, the department has progressed your request for information, and has provided you with updates on 12 March, 27 March and 4 April 2014. A consolidated response is now provided in the attached documentation.

The department will continue to work closely with Comcare to ensure its processes and systems are adequate, and that our work is carried out in a safe and appropriate manner.

Yours sincerely

[redacted]

Nick Evans
Assistant Secretary
Work Environment Branch
Business Services Group

Response from Offshore Detention Operations to Comcare's letter of 28 February 2014

1. **The outcomes of any incident investigation or review conducted in relation to WHS processes/policies.**

The Secretary of the Department has initiated a review to investigate and report on the key issues surrounding the incidents and leading up to the events of 16 to 18 February at the Manus Offshore Processing Centre (OPC). Mr Cornall AO has been commissioned to undertake the review. Any issues in relation to WHS processes/policies identified during the review will be included in the report.

2. **DIBP's legal view of the status of transferees at the OPC especially insofar as who holds a duty of care for them and specifically what is their relationship with DIBP in relation to the Work Health and Safety Act 2011? What parts of the OPC constitute a federal workplace? Do transferees retain any s29 obligations?**

In relation to Question 2, the Department understands that there are two aspects to this Question: one being about the duty of care owed to transferees and the other being the application of the *Work Health and Safety Act 2011* (Cth) ("WHS Act").

With respect to the first, the issue of duty of care obligations in relation to the Manus OPC is a complex one. In so far as persons accommodated in the centre are detained, the Commonwealth is not the detaining authority, with the result that the Commonwealth does not owe the sort of duty of care that it owes under the common law to persons detained in immigration detention in Australia. It may be, however, that the Commonwealth has a duty to exercise reasonable care in its own provision of services to persons accommodated in the centre, including medical services. The precise nature and extent of any such duty has not been explored.

In terms of the application of the WHS Act, the Department's position is that it applies in full in the context of the Manus OPC. This means that transferees fall within the category of "other persons" in relation to section 19(2) of the WHS Act, and they have duties under section 29 of that Act.

Further, as you are aware, the WHS Act provides for the definition of "workplace". Therefore, the Department's position is that if a place in the Manus OPC satisfies the definition of "workplace", it is a workplace for the purposes of that Act.

3. **What is the status of transferees with regard to visas once they arrive at the OPC? That is, are processes in train by PNG authorities for the purposes of assessing their prospects of settlement in PNG? Or are they considered as being in an assessment process undertaken by DIBP? If so, who is DIBP undertaking the processing activity on behalf of?**

People transferred to Papua New Guinea (PNG) under the current MOU with Australia for refugee determination are issued a section 20 (of the Migration Act 1978) exemption to hold an entry permit, which is issued by the PNG Minister for Foreign Affairs and Immigration. The issue of the entry permit effects lawful entry and stay in PNG. The PNG Minister has also issued a direction under section 15C of the Migration Act 1978 that transferees must reside in a relocation centre (ie Regional Processing Centre).

The PNG Government, through its Immigration and Citizenship Service Authority (ICSA), conducts a Refugee Determination (RD) assessment on all protection claims lodged by people transferred under the MOU. The PNG Minister for Foreign Affairs and Immigration is the decision maker on all RD applications. DIBP staff are currently assisting PNG ICSA to conduct RD assessments for transferees on behalf of the PNG Government and providing training and mentoring to PNG ICSA RD officers to build their capacity to assess protection claims. The RD process, however, is owned and managed by PNG and RD assessments and determinations are made under PNG law.

4. **What are the WHS elements in contract arrangements in place with such service providers as G4S, Transfield and The Salvation Army insofar as duties of care for transferees are concerned, and what does DIBP consider to be the status of these contractors in relation to who they are contracted to, providing services for and who has control and to what extent over their work activities?**

The Department relies on service providers to develop the operational procedures necessary to deliver the services they are contracted for.

With respect to service providers exercising the Department's duty of care to transferees, there are requirements in the contract that service providers "...comply with, and ensure that its Personnel and subcontractors comply with WHS Law in the provision of the Services ..." To assist, the contract also requires service providers to develop and implement a WHS plan and establish a work health and safety committee to oversee compliance with WHS requirements for the site as a whole.

5. At what point is (including for the purposes of these events 'was') control of the transferees at the OPC ever handed over to local authorities? For example during any day-to-day routine events or during emergencies such as the reported riot?

Unlike Australian detention facilities, Australia's presence at the Manus OPC is mainly to support our PNG counterparts and to contract manage the service providers. There are no provisions within the contract for Australia to take over management of the centre during any event, nor do service providers have legislative powers to use reasonable force in the management of the centre/transferees. The PNG authorities are the only entities who have either the overarching responsibility of the centre (PNG ICSA) or any powers of use of force (Royal PNG Constabulary (RPNGC)).

Service providers are required under their contract to engage relevant stakeholders such as PNG authorities for the management of safety and security and incidents at the centre. An example of where the service providers may recommend to PNG ICSA part or whole responsibility of the centre may be handed over to RPNGC is where incidents escalate to a point that service providers require PNG authorities to de-escalate and restore order.

With respect to the events of 16 to 18 February, DIBP would like to stress that events of those evenings are subject to the independent review by Mr Robert Cornall AO as we are not satisfied that the information that we have is entirely correct. For instance, it was reported on the night by the security service providers that the RPNGC did not enter the centre at any time, yet subsequent reports, evidence and transferee/service provider staff statements seem to indicate otherwise.

Saying that, and assuming that the reference to "local authorities" is intended to mean the RPNGC (as PNG ICSA is the managing entity), the Department is not aware when PNG ICSA may have handed control of the centre/transferees to the RPNGC – nor if it was seen by the RPNGC as a necessary step. Information provided by the security service provider, G4S, in the days following 17 February on RPNGC activity during the evening of 17 February (and again, please note that the Department cannot vouch for its veracity until Mr Cornall releases his findings) is as follows:

19:12 hours local time (20:12 hours AEDST), four Mobile Police Squad dog patrols were deployed.

23:22 hours local time (00:22 hours AEDST), the PNG Police were reported to have fired shots.

23:24 hours local time (00:24 hours AEDST), Capsicum spray gas grenades fired.

23:27 hours local time (00:27 hours AEDST), the PNG Police entered Mike compound.

00:00 hours local time (01:00 hours AEDST), remaining staff were evacuated from the centre. The PNG ICSA Assistant Centre Operations Manager and essential G4S staff remained.

01:00 hours local time (02:00 hours AEDST), the PNG Police were reported to have fired shots and use of Capsicum spray.

02:00 hours local time (03:00 hours AEDST), order was restored to the centre.

[redacted]

E-mail Message

From:	Paul Orwin [EX:/O=COMCARE AUSTRALIA/OU=COMCARE/CN=RECIPIENTS/CN=ORWIN.PAUL]
To:	Neil Quarmby [redacted] Christina Bolger [redacted]
Cc:	Kiera Monaghan [redacted] Jason Briggs [redacted]
Sent:	26/3/2014 at 8:18 AM
Received:	26/3/2014 at 8:18 AM
Subject:	RE: TRIM: For information & urgent action please: Compliance Inspection - EVE00224256-0001 [SEC=UNCLASSIFIED]

Morning Neil - we will await a response but it must be quick and not dithering and/or full of excuses which do not hold up under close examination - or what we were told previously about all the material having being collected and awaiting clearance is not accurate and that would be a serious concern in itself.

One other major concern is that he is saying that he didn't know that they hadn't supplied all documents as requested. If he is the nominated senior management contact point and was not aware of what had and hadn't been sent to us, I would say that is a serious concern for us.

Either way, they have not done themselves any favours; if someone requests an FOI then my concern it could be written up to put us (and them) in a bad light as a regulator (and them as a responsible, responsive agency) if both parties do not act quickly and decisively now.

Regards

Paul Orwin

Director Regional Operations Queensland & Inspectorate Portfolio

Regulatory Operations Group

Scheme Manager and Regulator Division

Comcare

[redacted]

From: Neil Quarmby
Sent: Wednesday, 26 March 2014 7:41 AM
To: Christina Bolger; Paul Orwin

Cc: Kiera Monaghan
Subject: RE: TRIM: For information & urgent action please: Compliance Inspection - EVE00224256-0001 [SEC=UNCLASSIFIED]

Thanks Christina

Paul - assume you will give him the chance now before 155?

If so check in with him today - if you are still concerned they will not deliver, then chat

nq

From: Christina Bolger
Sent: Tuesday, 25 March 2014 6:20 PM
To: Neil Quarmby; Paul Orwin
Cc: Kiera Monaghan
Subject: FW: TRIM: For information & urgent action please: Compliance Inspection - EVE00224256-0001 [SEC=UNCLASSIFIED]

Spoke to Nick a short time ago. He was apologetic and indicated that he was not aware that Comcare inspectors information requests had not been met in relation to the Manus Island Compliance Inspection. He committed to address this tomorrow so hopefully we will have movement. CB

From: Christina Bolger
Sent: Tuesday, 25 March 2014 6:17 PM
To: 'nick.evans[redacted]
Subject: FW: TRIM: For information & urgent action please: Compliance Inspection - EVE00224256-0001 [SEC=UNCLASSIFIED]

Nick,

As discussed this evening, there are a significant number of requests that have not yet been met by DIBP in relation to the Compliance Inspection for the Manus Incident 18th February 2014 (See the document attached).

The Inspectors have acted co-operatively in relation to this inspection but are close to issuing statutory notices for this information.

Thank you for your assurance that you will give this matter your attention.

Regards

Christina Bolger

Atg GM Regulatory Operations

Comcare

[redacted]

[redacted]

E-mail Message

From: Neil Quarmby [EX:/O=COMCARE AUSTRALIA/OU=COMCARE/CN=RECIPIENTS/CN=QUARMBY.NEIL]
To: Paul Orwin [redacted] Christina Bolger [redacted]
Cc: Jason Briggs [redacted]
Sent: 25/3/2014 at 12:11 PM
Received: 25/3/2014 at 12:11 PM
Subject: RE: TRIM: For information & urgent action please: Compliance Inspection - EVE00224256-0001 [SEC=UNCLASSIFIED]

Okay - Christina, can you call Nick and explain our need to escalate and start coercing.

Ta

nq

From: Paul Orwin
Sent: Tuesday, 25 March 2014 10:28 AM
To: Neil Quarmby; Christina Bolger
Cc: Jason Briggs
Subject: TRIM: For information & urgent action please: Compliance Inspection - EVE00224256-0001 [SEC=UNCLASSIFIED]

Hello Neil/Christina;

You will see from the email trail below and as you are aware, we have been trying to work with DIBP cooperatively in relation to this Compliance Inspection. We were assured that all the information requested had been collected and was going to be supplied - see below.

However you will see from the attachment, whilst some information has been provided and we will analyse it, not all the information requested has been forwarded to us with the main reason being used worded as;

'These reports have not been provided as all reports from the dates of the incident are subject to ongoing reviews.'

It is our intention to issue a s155 Notice in the near future for those documents which DIBP clearly have in their possession but not releasing to us and any others which we assess as necessary following analysis of the documents which have been supplied.

Moreover, it is our intention to move to automatic issue of s155 Notices from now on during this case unless we receive a categorical assurance from DIBP that

documents will not be withheld when requests rather than statutory requirements are made for information.

I am also on the verge of escalating the matter to a Serious Investigation should DIBP not fulfil their assurances quickly on the basis that DIBP, whether they appreciate it or not right now, seem to be deliberately withholding key information whilst in the past protesting that it was unnecessary for us to resort to using statutory notices in order to be provided with information on request.

Could I please suggest that before we consider all that further, an approach is quickly made to Nick Evans from you to express our disappointment that information requested has not been supplied despite us being assured it is held by DIBP and will be supplied, the reason such as that quoted above given for non-supply is not acceptable and the requested documentation be forwarded forthwith.

I understand there is a meeting fixed for 10 April for you with Nick but that seems too far away bearing in mind we have already agreed to one delay they asked for to provide the information requested even though they were telling us they had it all available.

Regards

Paul Orwin

Director Regional Operations Queensland & Inspectorate Portfolio

Regulatory Operations Group

Scheme Manager and Regulator Division

Comcare

[redacted]

From: Jason Briggs
Sent: Tuesday, 25 March 2014 8:39 AM
To: Paul Orwin
Subject: FW: TRIM: FW: Compliance Inspection - EVE00224256-0001 [SEC=UNCLASSIFIED]

Hi Paul

As discussed please see the response from DIBP regarding the information I requested. You will note there are a number of significant documents not provided. The information they provided, whilst helpful, is insufficient to ascertain the circumstances surrounding the event to the point of is determining whether there were any breaches of the WHS Act.

This may be something Neil can take up with his Nick Evans at DIBP rather than us resorting to the use of notices. In the meantime I will review the information provided by DIBP.

Regards

Jason

From: Rita HADDAD [redacted]
Sent: Tuesday, 18 March 2014 3:34 PM
To: Jason Briggs
Cc: Katrina Ashcroft; Frances SUMMERS; Leone FUZ; Cait VIGNON; Kate Cleary; Melissa CROWTHER; Laura COOK
Subject: TRIM: FW: Compliance Inspection - EVE00224256-0001 [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi Jason

The department's response and associated documents to Comcare's Compliance Inspection regarding the Manus Island incident on 17 February 2014 are attached for your review.

The requested reports for Comcare Items 8, 9, 10, 11, 12 and 15 are not currently available as they are still subject to the various ongoing reviews and investigations as stated in Item 1.

Also included for Item 14 is a list of Interpreters who were on Manus Island when the incident occurred.

Please contact me should you require further information.

Many thanks

Rita Haddad

Assistant Director

IMA Health & Safety
Department of Immigration and Border Protection
[redacted]

[redacted]

UNCLASSIFIED

UNCLASSIFIED

From: Rita HADDAD [redacted]
Sent: Thursday, 13 March 2014 8:18 AM
To: Jason Briggs
Cc: Kate Cleary; Melissa CROWTHER; Debby VOYSEY; Katrina Ashcroft
Subject: RE: Compliance Inspection - EVE00224256-0001 [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi Jason

As per our discussion this morning, all the requested information has been compiled and is ready to be sent to Comcare. However, Mark Cormack, Deputy Secretary, is unable to review and clear the documentation by 14/03/14 as he is unavailable for the next two days.

I therefore request that the department be granted an extension to cob Wednesday 19 March 2014.

Many thanks

Rita Haddad
Assistant Director

IMA Health & Safety
Department of Immigration and Border Protection
[redacted]

[redacted]

From: Rita HADDAD [redacted]
Sent: Friday, 28 February 2014 11:58 AM
To: Jason Briggs

Cc: Katrina Ashcroft
Subject: RE: Compliance Inspection - EVE00224256-0001 [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi Jason

We will start gathering the requested information for you and have it all by 14/03/14. Should there be a potential delay in obtaining some documentation I will advise you immediately.

Many thanks

Rita Haddad
Assistant Director

IMA Health & Safety
Department of Immigration and Border Protection
[redacted]

UNCLASSIFIED

From: Jason Briggs [redacted]
Sent: Friday, 28 February 2014 12:35 PM
To: Rita HADDAD
Subject: Compliance Inspection - EVE00224256-0001 [SEC=UNCLASSIFIED]

Good morning Rita

Following on from our telephone discussion on 26 February I have compiled a list below of information I require. This information is needed as part of the compliance inspection commenced in response to the notification from the Department of Immigration and Border Protection (DIBP) on 18 February. The notification related to a riot at the Manus Island Regional Processing Centre (MIRPC) resulting in a number of injuries and a single fatality ("the incident"). The focus of this inspection is to determine sufficient facts to enable Comcare to assist DIBP enhance safety outcomes for its RPC workplaces wherever reasonable and practicable. We are seeking to engage and exchange relevant information in the spirit of cooperation without the use of statutory powers.

I would be most grateful if this information could be provided to me by Friday 14 March. If you have any difficulty in obtaining the information within that timeframe please let me know. I am more than happy to receive information that is already to hand now or as it becomes available. The preferred method of receipt of documents is electronically if possible.

As also discussed, Comcare's General Manager of Regulatory Operations, Neil Quarmby, has written to DIBP Assistant Secretary, Nick Evans, of today's date advising that Comcare has commenced enquiries and is seeking cooperation with DIBP and requesting updates on any investigations instigated by DIBP.

Information required:

1. Details of any investigation, including outcomes and/or recommendations, undertaken by DIBP or G4S into the incident as well as the events leading up to the incident

2. Copy of the most recent contract for services at MIRPC between DIBP and G4S

3. An outline of the roles of G4S, The Salvation Army (TSA) and International Health Medical Services (IHMS) at the MIRPC generally, as well as during the incident

4. Copy of the record of any debrief undertaking after the incident in accordance with the G4S Emergency Management Plan (v1.3 dated 25/11/13) ("EMP")

5. Copy of any emergency, contingency or evacuation plans for DIBP staff at MIRPC, and details on if/how they were enacted during the incident

6. Evidence of DIBP's awareness of the existence and content of G4S' EMP and Safety and Security Management Plan, both dated 25/11/13

7. Records of the weekly emergency activities as required by the EMP

8. Copy of occurrence logs relating to the incident and events leading up to the incident as required by the EMP

9. Copy of G4S officer report forms from the incident required by the EMP

10. Copy of any incident report prepared by the Operations Manager

11. Copy of any incident reports or notifications prepared by DIBP staff at MIRPC

12. Copy of the notification by G4S to DIBP

13. Copy of the Use of Force guidelines for G4S

14. Breakdown of the DIBP workers at MIRPC at the time of the incident including their roles and actions

15. Detail as to when handover of control was given to PNG authorities i.e. Police

16. Evidence, if any, that the recommendations made by Mr Keith Hamburger in the "Nauru Review 2013" were implemented (or considered) at MIRPC, particularly

recommendations 4, 7, 8 and 10 from pages 12 and 13 of the report

17. Any other information DIBP may see relevant to this inspection

Please do not hesitate to contact me if you have any queries.

I am most appreciative of your assistance in this matter.

Kind regards

Jason Briggs

Assistant Director | Regional Operations Queensland | Regulatory Operations Group

Inspector appointed under section 156 of the Work Health Safety Act 2011

[redacted]

GPO Box 1993, Canberra, ACT 2601

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