

**Australian Lawyers Alliance**

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

PO Box 6100

Parliament House

ACT 2600

20 July 2015

Dear Committee,

**For additional consideration by the Committee**

We are writing to you as we wished to provide further information to the inquiry regarding our previous submission.

We believe that the information relates especially to terms of reference b), c) and d) of the inquiry:

- b) the performance of the Commonwealth Government in connection with the Centre, including the conduct and behaviour of the staff employed at the Centre, to the extent that the Commonwealth Government is responsible;
- c) the Commonwealth Government's duty of care obligations and responsibilities with respect to the Centre;
- d) the circumstances that precipitated the Moss Review, including allegations made regarding conditions and circumstances at the centre and the conduct and behaviour of staff employed by contracted service providers, the timing of the Commonwealth Government's knowledge of the allegations, and the appropriateness of the response of the Commonwealth Government to these allegations.

On monitoring the inquiry and submissions provided to the committee, we have noted that there have been a number of serious issues reported to the Department of Immigration and Border Protection ('DIBP') over a number of years.

We believe that there may be a number of cases in which notifiable incidents have not been reported to Comcare. This would be a breach of the *Work, Health and Safety Act 2011* (Cth),

('WHS Act') which the DIBP has acknowledged applies in offshore detention centres. We provided further detail on this issue in our primary submission.

Failure to report a notifiable incident is an offence under the WHS Act; section 38.

### **Failure to report to Comcare in November 2013**

We submit that documents provided to the Committee by Transfield<sup>1</sup> in answers to questions on notice indicate that the Department was notified in November 2013 of the incident of abuse of a child.

In the listing of the 449 incidents reported by the DIBP to Comcare in July 2013- June 2014, (which we obtained under freedom of information laws and previously provided to the Committee) the abuse of a child in November 2013 was not reported to Comcare by DIBP.

### **Further incidents**

There may be further incidents that were not reported to Comcare.

We note that the documents provided by Transfield indicated that there had been a number of assaults. While noting the broad categories utilised for reporting of child abuse, we note that these documents revealed that there were:

'67 allegations of child abuse (comprising parental violence, minor against minor violence, allegation by minor against service provider, and allegation by minor against adult asylum seeker) made up of:

- a. 52 allegations of child abuse recorded via Incident Reporting framework to 30 April 2015; and
- b. 15 allegations of child abuse recorded via Complaints Management framework from 21 February 2014 to 30 April 2015.'

The documents further make provision regarding 'exchange of sexual favours for contraband':

'5 allegations, made up of:

- a. 5 allegations recorded via Incident Reporting framework to 30 April 2015; and
- b. 0 allegations recorded via Complaints Management framework from 21 February 2014 to 30 April 2015.

Each of these allegations has been reported to the Department. Transfield Services first received a report that sexual favours were being exchanged for contraband on 22 January 2014.'

We note that in January 2014, the DIBP did not report regarding this issue to Comcare.

Regarding sexual assault/rape:



'33 Allegations, made up of:

- a. 25 allegations recorded via Incident Reporting framework to 30 April 2015; and
- b. 8 allegations recorded via Complaints Management framework from 21 February 2014 to 31 April 2015.'

None of these allegations were reported to Comcare in the period between 21 February 2014 and 30 June 2014.

### **Liability for criminal acts**

Of these incidents, the documents provided by Transfield highlight that Transfield has been unable to provide a breakdown of how many of these incidents involved expat or local staff:

Allegation	No. of incidents involving allegation against staff	No. of incidents involving allegations against an asylum seeker
Child abuse	30	37
Exchange of sexual favours for contraband	4	1
Sexual assault/rape	15	18

The number of staff involved in such allegations is significant.

In addition to the Commonwealth being potentially liable for breaches of section 38 of the WHS Act we believe that the Committee ought to examine the arrangements between the Commonwealth and Transfield as to which entity is responsible for reporting allegations of criminal wrongdoing. While there is no Commonwealth offence for failing to disclose or report a criminal offence (as is the case in New South Wales for example) there is a clear moral obligation to do so.

### **Further information relevant**

We note also that Transfield has provided a list of the total number of incidents reported between September 2012 and April 2015 to the committee.

We submit that these statistics would be of greater assistance if they were provided with dates, so they may be compared with departmental reporting to Comcare.

So too, while a number of submissions have referred to incidents, they have not necessarily recorded the date on which the incident occurred. We believe that it would be appropriate for, as far as possible, for dates to be provided by submitters, or through questions on notice, so that the committee may be able to evaluate to what extent these incidents were reported to Comcare.

We have recently sought the release of incidents reported to Comcare by DIBP in FY2014/15. On receipt, we will provide this to the Committee.

### **Important questions to ask**

However we submit that the following questions would be pertinent for the committee to seek answers of the DIBP:

1. What is the process of reporting incidents to Comcare?
2. How is it determined as to which incidents will be reported to Comcare?
3. Who maintains responsibility for reporting incidents to Comcare?
4. Why was the incident in November 2013 not reported to Comcare?
5. How many incidents of child abuse has the Department reported to Comcare?
6. If at all, how does the decision making process regarding reporting of incidents to Comcare differ in regards to decisions made about Commonwealth workplaces that are overseas, such as Nauru?

### **Duty of care training at induction**

We also note that documents provided by Transfield referred to induction training that is conducted for staff:

'The general induction program runs for 7 days and includes the following modules... human rights standards... duty of care.'

We believe that it would be appropriate for relevant documentation to such induction training be provided to the committee. This would be relevant to assess stakeholders' understanding of their duty of care, and potentially, the Commonwealth's direction as to both stakeholders' and the Commonwealth's, duty of care.

### **Conclusion**

We believe that these are important issues to examine.

Yours faithfully,

Greg Phelps

National President

Australian Lawyers Alliance



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<sup>i</sup> Accessible at <http://www.aph.gov.au/DocumentStore.ashx?id=56c605b3-8d28-4737-850f-23b09dddbe90>