

Chapter 8

Conclusions and Recommendations

8.1 This inquiry has canvassed a broad range of issues relating to the operation of the Manus Island Regional Processing Centre (RPC), focusing on the events of 16 to 18 February 2014 in which at least 70 individuals were injured, many seriously, and Mr Reza Barati was killed.

8.2 As previously noted, the committee is not a judicial body, nor is it vested with the power to conduct criminal investigations, particularly in this case as the events in question occurred outside of Australia. As such, the committee has not sought to ascertain the identity of Mr Barati's killers or other specific individuals who assaulted transferees during the riots; indeed, the committee has been at pains throughout the inquiry to avoid prejudicing ongoing investigations in Papua New Guinea by naming individuals alleged to have been involved.

8.3 The committee has instead focused its attention on the broader questions arising from this incident. The most pertinent of these is how it came to be that an individual who arrived in Australia seeking its protection ultimately ended up being killed in a remote offshore detention centre, with many of his cohort suffering serious physical and psychological damage on the same night. Equally important are the questions of what has been done since the events to ensure the ongoing safety and wellbeing of those still detained on Manus Island, and how best to ensure that we do not see the likes of these events again in immigration detention facilities funded by the Australian Government.

8.4 By examining the legal and administrative arrangements undergirding the Manus Island RPC, the physical conditions and services provided at the centre, and the policy framework and processes in place for assessing detainees' asylum claims, the committee has reached some definitive conclusions regarding the causes leading to the riots that occurred in February 2014. The committee has also formed strong views in relation to the ongoing operation of the centre and changes that should be implemented to improve the treatment of asylum seekers currently subject to offshore processing in PNG.

8.5 In summary, the committee has found that the events of 16 to 18 February 2014 at the Manus Island RPC were eminently foreseeable, and may have been prevented if transferees had been given a clear pathway for the assessment of their asylum claims. Many of the problems at the centre had their origins in the events of July to October 2013, when the centre was transformed from a mixed facility into a single adult males facility and experienced a massive influx of new transferees, reaching more than double the initial intended capacity of the centre in the space of approximately 12 weeks. The inability of the centre's infrastructure to cope with this influx, combined with the complete absence of any clear refugee status determination and resettlement framework to deal with these asylum seekers, created an environment where unrest and transferee protests were the inevitable result.

8.6 It is clear from evidence presented to the committee that the Australian Government failed in its duty to protect asylum seekers including Mr Barati from harm.

Contributing factors leading to the violence of 16-18 February 2014

8.7 It is clear to the committee that a variety of factors gave rise to the incident from 16 to 18 February 2014. These were: the size and composition of the transferee population at the RPC; tension between asylum seekers and locals; the physical conditions and facilities at the RPC; inadequate security infrastructure at the centre; and uncertainty about refugee status determination and resettlement arrangements. All these issues have been discussed in greater detail in earlier chapters.

8.8 On the evidence before the committee, all of the factors giving rise to the incident were or should have been known to the Australian Government and contractors responsible for managing the RPC: for example, animosity towards the centre by PNG locals had its genesis as early as August 2012; the inadequacy of fencing and security lighting was identified in June 2013; and frustration amongst asylum seekers was apparent as tensions in the RPC increased from December 2013 onwards. In isolation, these factors should have alerted the government and contractors to problems requiring their expedient attention. Together, these factors were without doubt—and in the absence of remediation—going to lead to events of the serious and tragic nature seen on 16 to 18 February.

8.9 Of the factors that contributed to the events of 16 to 18 February, the committee is of the view that delay and uncertainty about refugee status determination and resettlement arrangements was the main cause which, if it had been addressed, would have been most likely to prevent the escalation of protest activity at the centre to the point where violence ensued. The committee believes that the hopelessness of the situation transferees found themselves in, with no clear path forward and no certainty for the future, was the central factor in the incident of 16 to 18 February.

8.10 These findings in relation to the contributing factors that led to the incident are largely consistent with those of the Cornall Review.¹ The committee notes, however, that the Cornall Review did not consider the difficult living conditions at the centre to be a significant factor leading to the unrest. The committee is of the view that harsh and inhumane conditions at the Manus Island RPC were a significant factor which, while not a direct cause, did increase the volatility of the centre and make protest activity more likely.

The events of 16 to 18 February 2014

8.11 Through the course of its inquiry, the committee heard some harrowing and traumatic accounts of the violent events that unfolded at the Manus Island RPC over two nights in February of this year. Witnesses to the events have described in graphic detail the violence perpetrated against asylum seekers. In particular, evidence of

1 See: Mr Robert Cornall AO, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*, 23 May 2014, pp 81-82.

non-protesting individuals who were hiding in their rooms being dragged out and beaten has been especially disturbing to the committee.²

8.12 The committee expresses its appreciation to those submitters and witnesses who gave evidence in relation to such trying events. It is regrettable that the committee was unable to hear first-hand testimony from asylum seekers detained at the centre, however the committee hopes that this report will help shed light on the crimes perpetrated against them and ensure that their experience is not repeated.

Actions of service provider staff during the incident

8.13 It is clear that during the violent unrest at the Manus Island RPC from 16 to 18 February 2014, many service provider staff showed great courage and commitment in performing their duties under exceptionally difficult circumstances. On the night of 17 February G4S security staff, led predominately by Australian personnel and including many PNG national staff, were responsible for safely containing much of the protest activity that occurred in the initial stages of the evening, escorting non-participants to safety and preventing the various protesting groups within the centre from coalescing for as long as possible. As the riots grew uncontrollable and PNG police and locals entered the centre, these staff continued to defend transferees at great risk to their own safety, and were responsible for retrieving injured transferees from the fray. The committee agrees with G4S's assessment that without the courageous actions of these individuals, the outcome of these events would have been far worse.

8.14 The committee also commends the actions of other service provider staff who assisted in the treatment of injured asylum seekers at the makeshift triage site at the Bibby accommodation barge on the night of 17 February.

8.15 The committee did hear extremely troubling evidence, however, in relation to the actions of some service provider staff during these events. It is undeniable that a significant number of local service provider staff, as well as a small minority of expat staff, were involved in the violence against transferees. During the disturbance on 16 February, PNG national G4S staff, along with other local residents, used excessive force to bring transferees who had egressed from Oscar compound back into the centre, and then continued to assault transferees inside the centre. On the night of 17 February, G4S reported that some of its local security staff involved in the IRT broke ranks and entered the affray. Many other witness accounts provided to the committee alleged that service provider staff were responsible for some of the injuries incurred by asylum seekers, including allegations that service provider staff were among Mr Barati's attackers.

8.16 The committee notes that, during the protests, some transferees engaged in chanting offensive and racist comments at PNG nationals outside the centre, who likewise were engaged in similar behaviour towards transferees. It is clear that the hostility between PNG locals and transferees contributed to the severity of the

2 Humanitarian Research Partners, *Submission 26*, p. 6; Mr Andrew Wilkie MP, *Submission 4*, p. 14; Asylum Seeker Resource Centre, *Submission 23*, pp 4 and 9.

violence that occurred, and encouraged the involvement of local residents and service provider staff who subsequently engaged in criminal actions against transferees.

Actions of PNG police mobile squad

8.17 As noted in chapter 5, the majority of the violence that took place on the night of 17 February occurred when members of the PNG police mobile squad forcefully entered the centre, accompanied by some local service provider staff and Manus Island residents, and put down the protests with extreme and excessive force. Evidence to the committee indicates that the mobile squad did not simply fire warning shots into the air, but rather fired dangerously into the centre, possibly directly at transferees.³

8.18 The committee is satisfied with G4S's evidence that it did not request the mobile squad to enter the centre in order to quell the disturbance. Despite this, the committee considers that the involvement of the mobile squad was inevitable, due to the inability of G4S security staff to control the centre as the riots progressed. Both G4S and the Department of Immigration and Border Protection (department) were well aware that the mobile squad would intervene in circumstances where G4S was unable to maintain control of the centre, and G4S's Emergency Management Plan for the centre notes that in dealing with a major disturbance in the compound, the police mobile squad 'will deploy if illegal activity or risk to life is occurring as part of the disturbance'.⁴ As noted in chapter 6, G4S and the department knew that such a deployment would result in violence and possibly the death of protesters.

8.19 In the committee's view, the mere fact that G4S or the department did not specifically advocate for a handover of the centre to police or invite them in during the height of the protests does not absolve these parties of responsibility for the violence that occurred. It is a failing of both G4S and the department that the centre was not sufficiently resourced, in terms of both staffing and security infrastructure, to contain protest activity at the centre and prevent a situation occurring where the police mobile squad would intervene.

Failure of the department to resolve issues relating to the mobile squad

8.20 The department claimed that it had raised concerns about the police mobile squad with the relevant PNG authorities 'on multiple occasions as appropriate', and that in some instances, 'positive changes were realised through ongoing stakeholder engagement on these matters'.⁵ Given the outcomes of the intervention of the mobile squad on the night of 17 February, it is not clear what these 'positive changes' prior to

3 See chapter 5, paragraphs 5.47-5.48.

4 G4S, 'Manus Island OPC Emergency Management Plan', p. 32, *Additional Information provided by Comcare – documents relating to management of the Manus Island RPC* (received 10 July 2014), [p. 56].

5 Department of Immigration and Border Protection, *Answers to questions taken on notice at a public hearing on 10 June 2014* (received 9 July 2014), [p. 11] (See paragraph 7.21 of this report).

the events could have been. The department clearly failed to adequately respond to the strong concerns raised by G4S in relation to this issue.

8.21 The committee notes further that the Australian Government provides direct funding to the PNG police for the purpose of policing the Manus Island RPC. The committee considers that this means Australia was effectively financing the PNG police mobile squad deployed at the centre, both prior to and during the events in which its members assaulted transferees and enabled other locals and service provider staff to enter the centre and do likewise.

8.22 The committee notes the Cornall Review's recommendation that Transfield Services (and its security services subcontractor, Wilson Security), the RPNGC provincial police and the mobile squad clearly establish and understand their respective roles and responsibilities in regard to the maintenance of law and order within the Manus RPC. The committee agrees that this matter requires the urgent and ongoing attention of the Australian Government and Transfield to ensure that the events of 17 February 2014 are not repeated.

Responses to the incidents by Australian and PNG authorities

8.23 The inquiry heard a significant amount of evidence in relation to the response of relevant bodies to the incidents, including the PNG authorities, service providers engaged at the centre, and Australian authorities including the department and the minister.

Criminal investigations in PNG relating to the incident

8.24 The committee notes that criminal investigations in PNG have progressed to the point that two individuals have been charged with murder in relation to the death of Mr Barati. It is a matter of considerable concern, however, that it took six months from the events in question for these charges to be laid, and that there are three more suspects whom PNG authorities are still looking for in relation to the incident, including two expatriates. There have also been no arrests or charges laid in relation to the other criminal assaults perpetrated against asylum seekers between 16 and 18 February 2014, and the committee has received no evidence that suggests any arrests will be forthcoming.

8.25 The committee considers that the Australian Government should continue assisting the PNG authorities in furthering these investigations, to ensure that the perpetrators of attacks on asylum seekers at the Manus Island RPC are brought to justice.

Recommendation 1

8.26 The committee recommends that the Australian Government ensure an adequate and effective investigation into the criminal assaults perpetrated against individuals detained at the Manus Island Regional Processing Centre during the events of 16 to 18 February 2014, including by assisting the Papua New Guinea authorities in any ongoing investigations and facilitating the taking of witness testimony from individuals present at the incident who are now in Australian territory.

Conduct of the minister and the department after the events

8.27 As noted in chapter 6, the public statements of the Minister for Immigration and Border Protection in the immediate aftermath of the disturbances at the Manus centre contained untrue assertions, some of which were corrected four days later in a press statement released late on a Saturday evening.⁶

8.28 From the information provided to the inquiry, the committee considers that it is reasonable to assume that the Minister was relying on factually incorrect written reports from departmental staff on Manus Island when he asserted on 18 February 2014 that the incident on 17 February 2014 involved transferees breaching external perimeter fences, and that PNG police did not enter the centre and their activities related only to dealing with transferees who breached the external perimeter.

8.29 Information provided to the committee also shows that the department in Canberra had been provided with a copy of G4S's Emergency Control Organisation occurrence log of the incident early on the afternoon of 18 February.⁷ As such, it is still unclear to the committee why it was a further three and a half days until the Minister corrected the record by acknowledging that the riotous behaviour and subsequent actions to restore order at the centre took place within the perimeter of the centre.

8.30 Further, G4S stated that it verbally informed the department as early as 10.30 am on 18 February that PNG police had, in fact, entered the centre during the night of 17 February 2014.⁸ The chronology of events provided by G4S to the department on 18 February also included this information, which was reiterated to departmental staff in writing by G4S on 19 February. Despite this, the Minister did not take the opportunity to correct his initial statement that 'PNG police did not enter the centre', either on 22 February or at any subsequent time up until the release of the Cornall Review over three months later.⁹

8.31 It is the committee's view that, by giving the impression that events primarily occurred outside the centre, and that PNG police were not involved in the violence that occurred in the centre, the Minister sought to unfairly apportion blame to the asylum seekers themselves for the violence that was done to them on the night of 17 February 2014. The Minister was clearly selective in the facts he chose to use in his initial statements on the incident, and should have more quickly acknowledged

6 See chapter 6, paragraphs 6.19-6.27.

7 Department of Immigration and Border Protection, *Answers to written questions on notice* (received 25 November 2014), pp 1-2.

8 G4S, *Answers to written questions on notice* (received 28 November 2014), pp 1 and 2.

9 Note, for example, that in an interview on 24 February 2014, it was put to the Minister that it appeared that PNG police had entered the compound, however the Minister did not confirm or deny this. See: The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Manus Island incident', *Interview with Chris Uhlmann, ABC AM Program*, 24 February 2014, at: <http://www.minister.immi.gov.au/media/sm/2014/sm212067.htm> (accessed 30 October 2014).

that the violence occurred inside the centre. The Minister also failed to correct his initial statements with regards to the involvement of PNG police, despite clear evidence from quite soon after the events that they had entered the centre and been involved in the violence that occurred. At the very least, the Minister should have exercised greater care while events were still unclear before apportioning blame.

Responsibility of the Australian Government in relation to the centre

8.32 A significant question raised during the inquiry was whether Australia exercises 'effective control' over the Manus Island RPC, and consequently has obligations under international human rights law to respect, protect and fulfil the human rights of individuals detained at the centre.

8.33 The evidence provided to the committee by experts in international human rights law in relation to this issue was unequivocal in stating that Australia was, at the time of the disturbances in February 2014, and still is, exercising effective control with respect to the Manus Island RPC and the individuals held there. The committee considers that the degree of involvement by the Australian Government in the establishment, use, operation, and provision of total funding for the centre clearly satisfies the test of effective control in international law, and the government's ongoing refusal to concede this point displays a denial of Australia's international obligations.

8.34 The committee agrees with the view put to it by international human rights law experts that, even if Australia did not exercise 'effective control', Australia would still be liable for breaches of international human rights law that occur in respect of asylum seekers held at Manus Island under the doctrine of joint liability.¹⁰ The committee further considers that, questions of effective control aside, the Australian Government, as the architect of the arrangements with PNG,¹¹ has a clear and compelling moral obligation to ensure the treatment of asylum seekers held on Manus Island is in accordance with the principles and minimum standards contained in international human rights law.

Recommendation 2

8.35 The committee recommends that the Australian Government acknowledge its responsibility to respect, protect and fulfil the human rights of individuals detained at the Manus Island Regional Processing Centre.

Duty of care responsibilities under domestic law

8.36 The committee heard evidence from some submitters and witnesses that Australia also has duty of care responsibilities to the asylum seekers under domestic Australian law, and may be vicariously liable for any breaches of this duty.¹² These stakeholders argued that contractual arrangements with G4S or other service providers

10 See chapter 7, paragraphs 7.36-7.39.

11 See, Mr Mark Cormack, DIBP, *Committee Hansard*, 11 July 2014, p. 28.

12 See chapter 7, paragraphs 7.59-7.63.

would not discharge Australia from its non-delegable duty of care to asylum seekers. The committee considers that the duty of care responsibilities that the Australian Government owes under domestic Australian law are another compelling reason for Australia to take full responsibility for the treatment of asylum seekers held in the Manus Island RPC. The committee further considers that the Australian Government must act urgently to address any potential breaches of this duty of care.

Australia's human rights breaches in relation to the incident

8.37 The committee agrees with evidence presented to it that asylum seekers suffered numerous violations of their basic human rights during the violence perpetrated during the events of 16 to 18 February 2014, including the right to life (in relation to Mar Barati) and the right to security of person. The committee also received a range of evidence in relation to the specific requirements under international human rights law of the right to an effective remedy as it applies to the incident at Manus Island.

8.38 The committee considers that making reparations to individuals whose rights have been violated in the incident at the Manus Island RPC, and preventing recurrences of human rights violations, is essential from the perspective of Australia's international obligations. In the context of the physical and psychological injuries suffered by asylum seekers during the incidents from 16 to 18 February 2014, the committee is of the view that an effective remedy should include appropriate reparations for wrongs committed, as well as adequate medical treatment including mental health services. The committee is extremely concerned at evidence suggesting that medical treatment for those who were injured has been unsatisfactory in the months subsequent, and considers that this must be rectified as a matter of urgency.

Recommendation 3

8.39 The committee recommends that, in accordance with the right to an effective remedy and right to health in international human rights law, the Australian Government:

- **acknowledge and take responsibility for violations of human rights in relation to the incident at the Manus Island Regional Processing Centre from 16 to 18 February 2014; and**
- **provide compensation to those who have suffered human rights violations, including to Mr Reza Barati's family and to asylum seekers who were injured during the incident.**

Recommendation 4

8.40 The committee recommends that the Australian Government ensure that all asylum seekers injured in the violence at the Manus Island Regional Processing Centre from 16 to 18 February 2014 receive adequate professional assistance, including medical treatment, full rehabilitation and mental health services, as well as independent legal advice.

Ongoing issues in relation to the Manus Island RPC

8.41 Several other issues were raised during the inquiry in relation to the operation of the Manus Island RPC that the committee wishes to comment on, in particular: ongoing RSD processes for transferees; transparency at the centre, including access for relevant organisations and individuals; and the level of training provided to service provider staff.

Refugee status determination and resettlement processes

8.42 The committee has already noted that a lack of progress on transferees' refugee status determination processing was a critical causal factor leading to the events of 16 to 18 February 2014. The committee finds it alarming that these issues are still not well advanced months after these events occurred. As at November 2014, only ten asylum seekers out of a population of over 1,000 have received a final refugee status determination decision, and it is apparent that there is still a significant proportion of transferees who have not had their formal assessment process commenced at all. Based on comments from the PNG Immigration Minister about the timeframe for handing down the outstanding determinations,¹³ it is apparent to the committee that some asylum seekers could still be living in the Manus RPC for another 18 months to two years before their claims are finalised.

8.43 The committee notes that even the small number of asylum seekers whose claims have been finalised and who have been found to be refugees have not been granted permanent resettlement in PNG or elsewhere. Announcements by the PNG Government in November 2014 that a proposed resettlement policy has been scrapped and will be redeveloped after extensive consultations show that the prospect of any refugees being permanently resettled in Papua New Guinea in the foreseeable future is limited.

8.44 It is also a matter of significant concern to the committee that the current RSD process in place for transferees at the Manus RPC vests final decision making power in relation to granting a refugee visa in the PNG Immigration Minister, with no avenue for judicial review. Without independent judicial review of these ministerial determinations being available, the committee believes that there is still a high risk of genuine refugees being returned to harm as a result of incorrect decisions.

8.45 The committee considers that the current issues relating to refugee status determination and resettlement arrangements for asylum seekers held at the Manus Island RPC must be addressed as expeditiously as possible to ensure that the welfare of these individuals is upheld.

13 The Hon Rimbink Pato, LLB, OBE, MP, Papua New Guinea Minister for Foreign Affairs and Immigration, 'Refugees to start new lives in PNG', *Media Release*, 12 November 2014. See also The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'More progress on PNG resettlement arrangement as first refugee determinations handed down', *Media Release*, 12 November 2014.

Transparency surrounding operations at the centre

8.46 In examining the evidence presented to this inquiry, one consistent conclusion drawn by the committee is that there is a striking difference between the official statements and evidence provided by the department and service providers running the centre, and the first-hand testimony of individuals who have worked at and observed the centre. On issues including the provision of healthcare services to transferees, the adequacy of accommodation and facilities, and access to legal advice and other assistance for transferees, there are massive contradictions between the 'official' evidence given by the Australian Government and its contractors, and the evidence of other observers.

8.47 The committee considers that this situation is amplified by the excessively restrictive confidentiality agreements staff member must sign in order to work at the centre. Indeed, this inquiry presented the first opportunity for some of these employees to come forward and give evidence, under the protection of parliamentary privilege, without fear of being sued by their former employers for speaking out about the true nature of conditions on Manus Island.

8.48 The committee is also troubled by reports that UN observers, respected human rights organisations, Australian lawyers, the Australian Human Rights Commission and the media have all been denied access to the Manus Island RPC at various times since its reopening in 2012. Given the government's attempts to cover up or discredit evidence which exposes the true nature of conditions at the Manus Island RPC, the committee considers that it is imperative in the interests of transparency and public accountability that these groups be allowed appropriate access to the Manus Island RPC without interference.

Recommendation 5

8.49 The committee recommends that, in the interests of transparency and accountability, the governments of Australia and Papua New Guinea take measures to facilitate appropriate access to the Manus Island Regional Processing Centre, including:

- **allowing United Nations representatives full access to the centre and transferees;**
- **permitting qualified lawyers, including lawyers certified to practice in Australia, access to the centre in order to meet with transferees and provide legal assistance;**
- **allowing the Australian Human Rights Commission to regularly inspect the centre and meet with centre staff and transferees; and**
- **permitting journalists to visit the centre and speak freely with centre staff and transferees.**

Training for service provider staff at the centre

8.50 During the inquiry the committee heard concerning evidence in relation to the hiring and employment practices of the Salvation Army during its time administering welfare services at both the Nauru and Manus RPCs, with some employees recruited

on the basis of a Facebook advertisement and deployed offshore in a matter of days, without proper training or even a job interview.¹⁴ Salvation Army management defended these practices by arguing that no specific qualifications were required for staff performing general welfare roles, and that their recruitment practices improved over time. The committee considers that this amounts to seriously deficient workplace practices. In the view of the committee, it is essential that any employees being deployed to an offshore environment are given sufficient training to ensure not only that they have the qualifications necessary to perform their role, but that they are mentally prepared for working in a remote environment with vulnerable and traumatised individuals. On this count the committee considers that there have been clear failings in relation to the duty of care some service providers exercised in relation to their employees.

8.51 The committee also heard allegations that training provided by G4S for locally employed security staff, many of whom had no previous formal employment experience, was completely inadequate to equip them to deal with difficult situations like those encountered during the events of 16 to 18 February 2014. The committee considers that the fact that G4S staff broke ranks during the violence and were even involved in perpetrating assaults against asylum seekers shows that they had not been properly selected and adequately trained. Transfield and Wilson Security must ensure that it does not make the same mistakes in relation to its security staff currently employed at the centre.

Recommendation 6

8.52 The committee recommends that Transfield Services and the Australian Government ensure that service provider staff employed at the Manus Island Regional Processing Centre be provided with sufficient workplace training to perform their roles, in line with the standards applicable to employees working in detention environments in Australia, and accounting for the particular difficulties associated with working in remote conditions.

**Senator Penny Wright
Chair**

14 See chapter 2, paragraphs 2.63-2.67.

