

# **Dissenting report from Government Members of the Committee**

## **Introduction**

1.1 Government Senators note that the majority of problems identified by witnesses regarding Manus Island had their origin in the way the Manus Island Regional Processing Centre (MIRPC) was re-opened by the Rudd Labor government in the lead up to the 2013 federal election. The announcement by then Prime Minister Rudd regarding the re-opening of the facility was an attempt to fix a political problem caused by years of Labor government neglect, and by the porous state of Australia's northern borders at that time. The decision to re-open the facility was taken without sufficient planning, training, facilities upgrades or consideration of the challenges of administration and operation of the centre.

1.2 Government Senators are concerned by the nature and tone of elements of Chapter 8 of the committee report which appear to ignore the provenance of the problems that have occurred at the MIRPC, and overlook the significant works already completed to address these problems. The report is clearly an attempt by the Labor Party, and their parliamentary allies the Greens Political Party, to re-write history.

1.3 In particular the government members of the committee seek to clarify the actual position regarding the welfare and human rights of transferees, and to provide accurate information regarding logistic, infrastructure and service-delivery upgrades.

## **Background**

1.4 The timelines and historical data presented in the committee report in Chapters 1-7 are not disputed and form a basically accurate record.

1.5 The government members note that the Commonwealth of Australia is now unambiguously committed to ensuring the safety and well-being of all persons at the MIRPC and at every other transfer and processing centre operated by or with the support of the Commonwealth of Australia.

1.6 This commitment to the safety of foreign nationals who are seeking asylum in Australia is evidenced by the Coalition government's commitment to stopping the boats, thus putting an end to the deaths at sea that had resulted from attempted illegal maritime entry to Australia.

1.7 Government Senators acknowledge that the MIRPC has faced a range of logistic and operational challenges. In the Departmental Opening Statement to the inquiry's 11 July, 2014 public hearing, Deputy Secretary Mr Mark Cormack remarked:

Many elements, such a negotiations with service providers, consultations with other agencies and governments, legislative considerations, timeframes and availability of resources, come into play. On Manus this process is further exacerbated by the logistical challenge of rapidly deploying and accommodating large numbers of people – both staff and transferees – and freight in short time frames, together with the need to work closely alongside and within another country's legislative, administrative and social frameworks.

In Manus, of course, there were more complex factors at work, with the OPC being located both in the province of Manus and also within an operational Papua New Guinea Defence Force base.<sup>1</sup>

Mr Cormack further remarked:

The build-up of transferee numbers in the middle of last year was sudden. In seven weeks, from 19 July 2013 to the election on 7 September 2013, the centre's population grew from 130 to 723 – an increase of almost 600 per cent.<sup>2</sup>

1.8 It is noted that the government and the department have, since September 2013, largely overcome the bulk of these challenges.

1.9 According to the evidence before the committee many of these challenges resulted from the insufficient care and attention given by the former government to the decision to open the facility.

1.10 The government members note that the decision-making processes of the previous government in relation to the MIRPC facility were conducted to expedite a solution to a political problem, rather than with the health and safety of asylum-seekers and transferees in mind.

1.11 Government members further note that since September 2013 the Australian government has demonstrated its commitment to ensuring that the facilities at the MIRPC are of a standard that would satisfy the expectations of the Australian people. This standard is in sharp contrast to that inherited from the previous government and includes the significant regulatory, logistic, infrastructure and service-related enhancements that have been applied by the Coalition government since September 2013.

1.12 Evidence presented to the committee detailed that a number of investigations have been conducted into the events that occurred on Manus Island from 16 to 18 February 2014.

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1 Mr Mark Cormack, Deputy Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 19.

2 *Committee Hansard*, 11 July 2014, p. 19.

1.13 Government members understand that the agencies that have conducted, and are conducting, these investigations are in a good position to effectively investigate and draw conclusions regarding conditions and events at the MIRPC. By contrast, a committee of the Australian Senate is limited by distance (physical and temporal) and by the completeness or otherwise of the evidence before it.

1.14 Government Senators note that investigations by the Royal Papua New Guinea Constabulary are ongoing and should be allowed to come to completion before any definitive conclusions are drawn.

1.15 Government Senators also caution that the committee's process of inquiry and report, which may include engagement with Australian media outlets, has the potential to prejudice ongoing investigations if not conducted with sensitivity and maturity.

1.16 It is further noted that on 21 February 2014 the Minister for Immigration and Border Protection the Hon Scott Morrison MP announced an independent review into events at the MIRPC by Mr Robert Cornall AO which was undertaken with the cooperation of the government of Papua New Guinea.

1.17 The Cornall Report, which has been made available to transferees and has been published on the Department's website, made thirteen recommendations all of which have been accepted by the government and the Department of Immigration and Border Protection. Two of these recommendations have been completed and the remaining eleven are well progressed. The recommendations of the Cornall report can be found at Annexure A of this dissenting report.

1.18 Following the Cornall Review there have been significant additional enhancements to the infrastructure, services and operations at the centre. The Department continues to work closely with the government of Papua New Guinea to implement the remaining recommendations.

## **Operation of the MIRPC**

### **Employment and Training Standards**

1.19 Government Senators note the concerns raised regarding the existing qualifications held by staff at the MIRPC, and regarding the additional training provided to these staff.

1.20 Creating employment opportunities for the local population at the MIRPC was a core benefit in the operation of the centre.<sup>3</sup> Sourcing a proportion of MIRPC employees from the local Manus Island population did, however, present challenges in establishing and maintaining baseline capabilities.<sup>4</sup>

1.21 Government members of the committee are satisfied that, in addition to the core training that service provider staff receive as part of the discharge of their normal duties, under their contracts with the department service providers are also required to

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3 *Committee Hansard*, 10 June 2014, p. 2.

4 Mr Darren Boyd, G4S, *Committee Hansard*, 10 June 2014, p. 50.

ensure that their staff undertake and adhere to a minimum set of training standards. This includes providing training to employees prior to commencing work at an Offshore Processing Centre.

1.22 The training that is provided includes training on human rights, cultural awareness, mental health awareness, abuse and trauma awareness, interacting and engaging with transferees and professional behaviour. In providing services across Offshore Processing Centres, service provider staff must behave in such a way that is consistent with the Offshore Processing Centre code of conduct, and other contractual guidelines and requirements, including that all transferees should be treated fairly and reasonably, ensuring the inherent dignity of the human person.

1.23 The Department of Immigration and Border Protection also provides its service providers with information to include in their training programmes regarding duty-of-care, international treaties and international obligations.

### **Access and Transparency**

1.24 Government members note the difficulties that have been encountered by individuals and organisations attempting to visit and/or inspect the MIRPC.

1.25 Government Senators note that the granting or otherwise of permission to enter the facility – or indeed the country – remains solely within the ambit of the government of Papua New Guinea. The government members of the committee acknowledge that the decisions of the relevant authority are not always aligned with the preferences of those individuals and organisations seeking access to the MIRPC.

1.26 It is noted that:

- The UNHCR visited the MIRPC in January 2013;
- The UNHCR conducted a Monitoring Visit 11-13 June, 2013;
- The UNHCR conducted a Monitoring Visit 23-25 October, 2013;
- Amnesty International visited the MIRPC from 11-16 November 2013; and
- Amnesty International visited the MIRPC in March 2014 along with Justice David Canning, the Human Rights Law Centre, and Australian journalists.

1.27 It is also noted that Comcare conducted site inspections in 2013 and compliance investigations in 2014.

### **Refugee Status Determinations**

1.28 Government members of the committee acknowledge the findings of the Cornall Review to the effect that uncertainty regarding the Refugee Status Determination process was a significant contributing factor to transferee frustration.

1.29 Government members note that responsibility for administration of the Refugee Status Determination process was vested in the relevant Papua New Guinean authority.

1.30 The Regional Resettlement Arrangement entered into between the Papua New Guinean government and the Rudd Labor government in July 2013 provided the

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framework for cooperation between the two nations for processing illegal maritime arrivals. These measures included:

...any unauthorized [sic] maritime arrival entering Australian waters will be liable for transfer to Papua New Guinea (in the first instance, Manus Island) for processing and resettlement in Papua New Guinea and in any other participating regional, including Pacific Island, states.<sup>5</sup>

1.31 The Regional Resettlement Arrangement further provided:

Transferees would be accommodated in regional processing centres. Papua New Guinea will undertake refugee status determination. The regional processing centre will be managed and administered by Papua New Guinea under Papua New Guinean law, with support from Australia.

What is unique about this Arrangement is that persons found to be refugees will be resettled in Papua New Guinea and any other participating regional, including Pacific Island, state. Persons found not to be refugees may be held in detention or returned to their home country or a country where they have right of residence.<sup>6</sup>

1.32 The government of Papua New Guinea retains responsibility for the Refugee Status Determination process, however government Senators note that the process is complex and the implementation of robust procedures has taken some time.

1.33 Government Senators also note that the changes to the population at the MIRPC – from a mix of men, women and children to an entirely single adult male population – was the result of a decision taken by the then Minister for Immigration the Hon Tony Burke MP.

### **Health and Safety at MIRPC**

1.34 Government members of the committee note that concerns have been raised regarding the provision of healthcare services at the MIRPC. In December 2013 a Comcare inspector characterised the provision of such services as 'under strain'.<sup>7</sup>

1.35 In answer to written question on notice, the department provided information that health services at MIRPC have been evolving since the commencement of Offshore Processing Centres. This evolution includes:

- implementation of a programme of visiting specialists;
- establishment of telemedicine capabilities;

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5 Government of Papua New Guinea and the Government of Australia, *Regional Resettlement Arrangement between Australia and Papua New Guinea* (Regional Resettlement Arrangement), 19 July 2013, available at: <http://www.dfat.gov.au/geo/png/regional-resettlement-arrangement-20130719.pdf> (accessed 8 August 2014).

6 Regional Resettlement Arrangement, 19 July 2013.

7 Department of Immigration and Border Protection, *Answers to questions on notice* (received 7 November 2014), p. 4.

- installation of additional refrigerated containers for storage of medical supplies and pharmaceuticals; and
- adjustment of staffing levels appropriately to meet the requirements of the population of the OPC.<sup>8</sup>

1.36 Government Senators acknowledge that the MIRPC healthcare provider – International Health and Medical Services (IHMS) – characterised the facilities at the MIRPC as able to handle the emergency and non-emergency presentation caseload to an effective degree:

The ability of IHMS staff to manage a critical injury was commensurate with our scope as a primary care and basic pre-hospital emergency care facility. There would indeed have been limited capacity for higher level ICU type or inpatient management, which has always required off-island movement. Initial stabilisation and medevac [sic] was however adequate as was the ability to manage critical injury in an initial emergency medicine context.<sup>9</sup>

1.37 Mental health care and support is also delivered through IHMS.

1.38 As at 21 November 2014, there were 16 mental health clinicians at the MIRPC. This included 13 IHMS staff (Mental Health Team Leaders, Mental Health Nurses, Psychologists and Counsellors), two subcontracted torture and trauma counsellors and one visiting psychiatrist.

1.39 In keeping with the Australian government's commitment to ensuring the well-being of immigration transferees, the services provided to transferees by IHMS are broadly comparable with those delivered to the Australian community. A telemedicine capacity has also been established at the MIRPC and regular consultations with psychiatrists and other specialists are occurring.

### **Human Rights at Offshore Processing Centres**

1.40 Government Senators acknowledge that the Australian government continues to work effectively with the Papua New Guinean government towards the operative and humane implementation of offshore processing. Both governments are clear in their commitment to ensuring appropriate arrangements and supports are in place to meet transferees' needs.

1.41 Government members of the committee reject the suggestion that transferees are not treated respectfully and humanely by the Papua New Guinean government, by the Department of Immigration and Border Protection, and by service provider staff.

1.42 It is noted that Papua New Guinea is a party to the Refugee Convention and that the Regional Resettlement Arrangement (RRA), signed by both the Papua New Guinean government and the Australian government, reaffirms Papua New Guinea's commitment to the Refugee Convention.

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8 Department of Immigration and Border Protection, *Answers to questions on notice* (received 7 November 2014), p. 5.

9 IHMS, *Answers to questions on notice* (received 12 November 2014), p. 1.

1.43 It is also noted that the Department of Immigration and Border Protection has contracted service providers with the expertise to deliver a range of services to transferees, including health, catering and cleaning services, programmes and activities, and education to ensure the well-being of transferees.

## **Infrastructure**

1.44 Government Senators note that the Coalition government has, since September 2013, made substantial investments in infrastructure at the MIRPC and more widely on Manus Island. These upgrades to facilities at the MIRPC and to surrounding supportive infrastructure acknowledge the sub-standard conditions that were inherited from the previous government.

1.45 Government members also note that Australia is providing additional aid to Manus Province valued at \$37 million. This is \$11 million more than originally committed. Additionally, under the terms of the Joint Understanding, Australia has committed \$420 million over four years in additional aid to Papua New Guinea for:

- the redevelopment of the Lae ANGAU Hospital;
- the deployment of Australian Federal Police;
- the rehabilitation of infrastructure at the University of Papua New Guinea;
- scoping and design work for the Lower Courts complex in Port Moresby; and
- upgrades to the Madang – Ramu highway.<sup>10</sup>

1.46 The Department of Immigration and Border Protection is spending an estimated \$513 million to upgrade infrastructure in Papua New Guinea which includes expanded office accommodation for Papua New Guinea's Immigration and Citizenship Services Authority in Port Moresby and new facilities at Lombrum and East Lorengau in Manus Province. Construction works at Lorengau are complete.<sup>11</sup>

1.47 As at 31 October 2014 there were 314 persons working on the Lombrum project. Of these, 141 employees are from Manus. There are an additional 84 Papua New Guinean citizens employed on the project. There have been 52 subcontract packages awarded on the Lombrum project. Of these 23 have been awarded to Papua New Guinean companies.<sup>12</sup>

1.48 The Australian Government is funding upgrades to the Lombrum Naval Base that include the repair and grading of roads, repairs to the water supply, repair and upgrade of power and sewerage systems, new warehousing, and the erection of fencing. The renovation of existing buildings at the Lombrum Naval Base and the building of new structures in support of the Regional Processing Centre will provide

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10 Economic and Development Benefits to PNG of the Regional Resettlement Arrangement, 7 November 2014, p. 1.

11 Economic and Development Benefits to PNG of the Regional Resettlement Arrangement, 7 November 2014, p. 1.

12 Economic and Development Benefits to PNG of the Regional Resettlement Arrangement, 7 November 2014, p. 3.

the Papua New Guinean Defence Force with infrastructure that will benefit the base and the Defence Force over the long-term.

1.49 Construction is expected to be completed in December 2014 on the upgrade and refurbishment of the Lorengau Market.

1.50 The Australian Government is also providing assistance in the form of substantial refurbishments and upgrades to the Lorengau Hospital and the Lorengau Police Station. Both facilities represent key capabilities that assist the daily functioning of the MIRPC.

## **Response to the committee's recommendations**

### **1.51 The Government members of the Committee agree with Recommendation 1 of the Committee Report.**

1.52 Evidence taken by the Committee over the course of the inquiry overwhelmingly supports the conclusion that current ongoing investigations are being conducted in the proper manner by the proper authorities: the Royal Pawa New Guinea Constabulary.

1.53 Government Senators note that Papua New Guinea is a sovereign nation responsible for law and order on Manus Island. In conducting its investigations, however, the Pawa New Guinea authorities have the ability to seek assistance both in Australia and on Manus Island as and when they consider it necessary. As and when such requests are received by the Department of Immigration and Border Protection and/or the Australian government, these requests will be treated with the greatest urgency and assessed in accordance with current government policy and legal advice.

1.54 Government Senators note that the findings of the Cornall Review have been provided to the Papua New Guinean authorities.

1.55 Government Senators also note that in the course of the investigation by the Royal Pawa New Guinea Constabulary of the events of 16 to 18 February 2014, two arrests have been made.

### **1.56 The Government members of the Committee agree with Recommendation 2 of the Committee Report.**

1.57 Both the Australian and Papua New Guinean governments are signatories to the United Nations Refugees Convention. Government Senators note that the Australian Government is committed to meeting its obligations under the Refugee Convention and all other international treaties to which it is a signatory.

1.58 Government Senators agree with the departmental evidence provided to the committee that Papua New Guinea is in effective control of the MIRPC. While Australia is in partnership with the sovereign government of Papua New Guinea, the MIRPC operates under Papua New Guinea law, and is owned and administrated by the Papua New Guinea government.



1.59 The department's evidence provided:

The department does have influence but only in a supportive sense, as stated in the regional resettlement arrangement signed by the prime ministers of PNG and Australia on 19 July 2013. The regional processing centre will be managed and administered by Papua New Guinea under Papua New Guinea law with support from Australia. In practical terms, this has meant mentoring, training and assisting PNG staff in the development and operation of the PNG RSD process, providing advice on the running of the centre and administering service delivery contracts. None of these roles, in our opinion, constitutes effective control. While the department did and continues to provide advice as in any situation, such advice is not always acted upon as other factors may be more persuasive to the relevant decision-maker. One such example goes to the matter of police services at the centre. The decision to deploy the mobile squad was and continues to be the decision of the Royal Papua New Guinea Constabulary and the PNG government. While the department and the PNG Immigration and Citizenship Advisory Authority, or ICSA, have expressed views on the various policing options available for the centre, ultimately that decision was neither Australia's nor, indeed, ICSA's to make. We also categorically refute allegations raised in previous evidence that the department did not respond to warnings regarding the safety of the miners' facility, and we would be happy to provide evidentiary information to support this.<sup>13</sup>

**1.60 Government Senators on the Committee do not agree with Recommendation 3 of the Committee Report.**

1.61 Government members suggest that the premise of Recommendation 3 is flawed in that it pre-supposes that human rights have been violated.

1.62 As already noted, the Commonwealth of Australia is unambiguously committed to ensuring the safety and well-being of all persons at the MIRPC and at every other transfer and processing centre operated by or with the support of the Commonwealth of Australia.

**1.63 Government members agree with Recommendation 4 of the Committee Report.**

1.64 Coalition Senators are pleased that the committee has expressed its support for the government's program of providing a full range of on-going support and assistance for immigration transferees.

**1.65 Government members disagree with Recommendation 5 of the Committee Report.**

1.66 Papua New Guinea is a sovereign nation and it would not be appropriate, or in keeping with the spirit of regional cooperation, for Australia to seek to dictate who can visit their territory, on what terms, and how such people should be allowed to conduct themselves once there.

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13 Mr Mark Cormack, Deputy Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 11 July 2014, p. 19.

1.67 Access to the Offshore Processing Centres on Papua New Guinea and Nauru is a matter for the respective governments of those two countries. The government Senators on the committee note that any person – be they a journalist, lawyer or human rights observer – is able to seek consent to enter from the governments of Nauru or Papua New Guinea. The granting of permission for such a visit will rest within the discretion of the governments of Nauru and Papua New Guinea, and remain subject to the imposition of any conditions those governments may deem appropriate.

1.68 Government Senators note multiple visits to the MIRPC by the UNHCR, Amnesty International and Comcare have occurred.

**1.69 Government members agree with Recommendation 6 of the Committee Report.**

1.70 Management of, and accountability for, garrison services has been consolidated with a single service provider – Transfield - for both the Nauru and Manus Island Offshore Processing Centres. Requisite qualifications and training standards for employees are detailed in the relevant service provider contracts.

1.71 Government members welcome the support of the Committee for the government's on-going commitment to maintaining standards and developing the skill-sets of service provider staff in relation to the specific challenges associated with operations at remote Offshore Processing Centres.

**Senator the Hon Ian Macdonald**

**Deputy Chair**

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## **Annexure A to the Dissenting Report from Government Senators - Recommendations of the Cornall Report**

### **Recommendation 1**

To further and support the Royal Papua New Guinea Constabulary's investigations into the events which took place on 16 – 18 February 2014, the review recommends that the following information be provided to the RPNGC:

- The 145 transferee feedback forms containing allegations by transferees that they were the subject of a criminal offence or witnessed criminal offences taking place during the incidents under investigation
- The transcripts of interviews with transferees (redacted), and (redacted)
- The records of interview with IHMS medical staff.

### **Recommendation 2**

To assist Transfield Services management of transferees welfare and, in some cases, the physical or psychological injuries they suffered during the events of 16 – 18 February 2014, the Review recommends that the following information be provided to Transfield on the basis that it protects the transferees' privacy and maintains the confidentiality of the personal information of individual transferees:

- The Review's *Summary of all Transferee Feedback Forms*
- All of the feedback forms the Review received from transferees
- The summaries of the question and answer sessions the Review conducted with community leaders from each of the four compounds, and
- The records of interviews with IHMS medical staff.

### **Recommendation 3**

That the current measures and any further initiatives which will expedite the finalisation of PNG refugee status determinations and resettlement and removal processes be implemented as quickly as possible with appropriate assistance.

### **Recommendation 4**

That the Government of Papua New Guinea be requested to enact similar statutory powers for the garrison and security provider as presently exist in Australia.

**Recommendation 5**

That Transfield Services (and 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 Regional Processing Centre (including agreement on a process for handover and handback of an incident that is beyond the control of the garrison security provider and the levels of force not to be used).

**Recommendation 6**

That the Department review risk involved in the conduct of the Manus Regional Processing Centre and continue to strengthen its risk management procedures and the Centre's physical security infrastructure.

**Recommendation 7**

That the Department encourage and support initiatives by Transfield Services to maximise the opportunity offered by the change of service providers to restore trust and cooperation between service providers and transferees.

**Recommendation 8**

That Transfield carefully consider all the information provided to it under Recommendation 2 to ascertain if it has unwittingly engaged employees who have been identified as assaulting transferees between 16 – 18 February 2014 and, if so, deal appropriately with them (including dismissal).

**Recommendation 9**

That the Department and Transfield Services improve communication with transferees, including implementing the several proposals set out in section 11.7 of this (the Cornall) Report.

**Recommendation 10**

That the Department put in place a comprehensive and continuing community liaison program to more fully inform the local population about the Regional Processing centre and the direct benefits it brings to the Manus community.

**Recommendation 11**

That Transfield consider the recommendations made in other reports about conditions and possible improvements which can be made at the Centre and, where practical, implement those welfare improvements it considers appropriate.

**Recommendation 12**

That Transfield assist transferees to replace personal items lost or stolen during the incidents.

**Recommendation 13**

That Transfield implement a comprehensive and ongoing training program for PNG national staff to develop their professional skills and improve their future employment prospects.

