

## **Dissenting Report from Government Senators**

1.1 This inquiry has been a politically-motivated public-relations stunt on the part of the Labor Party and the Greens Political Party designed to tarnish the success of the Coalition's strong border protection policies by inference and hearsay. Government Senators condemn Opposition Senators for failing to support policies which have saved lives, secured the border and restored integrity to the immigration system. Their reckless actions also put into jeopardy Australia's strong relationships with Papua New Guinea and Nauru.

1.2 The committee's majority report (the report), by the Chair's own admission, relies heavily on evidence from previous inquiries—evidence that is in many cases no longer current, no longer relevant, or has since been disproven or otherwise clarified.

1.3 The report is highly speculative and relies consistently on anecdotal evidence, second- and third-hand reports, and on unsupported allegations that are presented as fact. The report also paraphrases evidence rather than providing direct quotes and uses this technique to introduce highly emotive and pejorative language that does not reflect the true state of affairs.

1.4 The report references media stories as 'evidence' and 'reports' of alleged incidents at the RPCs. Government Senators would suggest that the Australian people deserve a higher standard of veracity from Parliamentary inquiries. If stories from a media outlet are the basis of fact for the report, then this inquiry should have been abandoned completely and permanently following the dissolution of the 44th parliament.

1.5 One of the report's key themes relates to the financial impacts of operating RPCs, and claims that the Coalition Government has failed to properly manage or report on the costs of managing Illegal Maritime Arrivals (IMAs). Government Senators are astonished by the hypocrisy of these claims. Last September's ANAO Report into Regional Processing Centres exposed the dysfunctional establishment of the Regional Processing Centres under Labor. The chaos the Labor Party and Greens Political Party unleashed on our borders placed the Department of Immigration and Border Protection (the department) under immense pressure, resulting in significant process failures in that period.

1.6 The Coalition Government is committed to maintaining Australia's border security and managing hard-working Australian's tax revenue in a responsible and effective manner. It was the Labor-Greens Rudd-Gillard-Rudd Government that opened the Regional Processing Centres on Manus Island and Nauru. It was the Labor-Greens Rudd-Gillard-Rudd Government that perpetuated the people-smuggling trade and allowed a flood of illegal arrivals to enter Australia. And it was the Labor-Greens Rudd-Gillard-Rudd Government that wasted billions of dollars on a failed and broken system. In 2013 the Coalition Government committed itself to the task of repairing this broken system and has largely succeeded at the task.

1.7 Labor and the Greens completely lost control of Australia's borders, and every Australian continues to bear the burden of their disastrous legacy. Border

agencies were restricted by budget cuts, and control of our borders was handed over to people smugglers. The integrity of our migration programme was destroyed by 50,000 illegal arrivals on more than 800 successful people smuggling ventures. Under Labor and the Greens' failed border protection policies, over 8000 children were put into detention. This included almost 2000 children at the one time. Tragically, there were at least 1200 deaths at sea due to the Labor-Greens Rudd-Gillard-Rudd Government's arrogance and complacency.

1.8 The Coalition has been diligently working to clean up this mess through Operation Sovereign Borders. The Government will not waver in its commitment to keep Australia's borders secure. Regional processing is a key component of the Government's border protection framework which has stopped the boats and therefore the deaths at sea. The Government is operating the largest and most capable maritime surveillance and response fleet Australia has ever deployed. Any people smuggling boats that attempt to reach Australia are intercepted and turned back.

1.9 Under the Coalition Government there has not been a successful boat arrival in over 980 days which has put an end to the tragic deaths of asylum seekers at sea. Having stopped the boats, the Government had set about its next task: to empty and close detention centres. The Coalition Government removed *all* children from detention and closed 17 detention centres, contributing \$3 billion to Budget savings.

1.10 Having now disrupted the criminal people smuggling syndicates and removed the children from detention, the Coalition Government is acting decisively to resolve Labor's offshore legacy: the illegal maritime arrivals in regional processing centres on Manus Island and Nauru.

1.11 A dividend of the Coalition Government's strong control over Australia's borders has been the additional intake of 12,000 refugees from conflicts in Syria and Iraq.

1.12 Australia will continue to be a leader in the permanent resettlement of refugees. The Government has committed to increasing the number of places under the Humanitarian Programme to 16,250 in 2017-18 and then 18,750 places in 2018-19.

1.13 Responsibility for the operation of Regional Processing Centres (RPCs) in Nauru and Papua New Guinea (PNG) lies with the respective Governments of those sovereign nations. The department continues to support those Governments by funding the RPCs, and providing capacity-building support to local services. Coalition Senators commend these efforts.

1.14 Coalition Senators welcome the refugee resettlement arrangement with the United States of America.

### **The Committee Majority's Recommendations**

1.15 **Recommendation 1** of the report recommends that recommends that the department, as a matter of urgency, commission an external review of its medical transfer procedures in offshore processing centres. Government Senators do not agree with this recommendation.

1.16 A robust process is in place for the timely medical transfer of transferees and refugees requiring medical treatment that is not available in Nauru or Manus. As the department noted in its submission to the inquiry:

Transferees and refugees requiring medical treatment not available in Nauru or Manus may be transferred to another location to receive treatment. Medical transfers to Port Moresby from both Nauru and Manus are undertaken on medical advice from IHMS. The Department makes logistical travel arrangements for all medical transfer cases. Emergency evacuations are undertaken by air ambulance as a priority, whereas commercial or charter aircraft are used to transfer more routine, non-urgent cases.<sup>1</sup>

1.17 The department's response to QON RPC002 outlines the process for transfer to Australia:

1. For those patients where transfer to Australia is recommended, the health care provider, International Health and Medical Services (IHMS) will generate a Request for Medical Movement (RMM) form which states the reason for transfer and a recommended timeframe which can range from immediate or within 24 hours for an emergency to a few months for an elective matter.
2. The Departmental clinical review checks to see that advice is supported by appropriate specialist opinion, and that the necessary services are not presently available offshore or the capability to provide the service cannot be commissioned.
3. The decision to permit a person to travel to Australia as a transitory person, under the *Migration Act 1958*, is made by the Assistant Commissioner, Detention, Compliance and Removals, based on the clinical IHMS advice and Chief Medical Officer review.<sup>2</sup>

1.18 The department provided evidence that it considers a range of complex factors when an asylum seeker is recommended for specialist care that is not available on Manus or Nauru. This includes the availability of treatment options in third countries and the capacity of service providers to deploy enhanced capability to Manus and/or Nauru to provide clinical assessment and treatment in-country.<sup>3</sup>

1.19 The department gave further evidence to the Committee at the 15 March hearing that urgent transfers are undertaken when medically necessary:

CHAIR: But, if it is very urgent, you might need something quicker than 24 hours, surely? If it is urgent, it is like calling an ambulance; it needs to be immediate.

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1 Department of Immigration and Border Protection (DIBP), *Submission 23*, p. 52.

2 DIBP, response to question on notice, 11 November 2016 (received 28 November 2016).

3 DIBP, response to question on notice, 11 November 2016 (received 25 November 2016).

Mr Woodford-Smith: Yes, and we will absolutely work in whatever that time frame is. So, if IHMS says, 'This person is absolutely critical and will die without intervention,' then we will make sure that the appropriate intervention—if it is a condition or an issue that cannot be dealt with on island, then we will make sure that we are getting an immediate response to that particular incident. That is without a doubt.<sup>4</sup>

1.20 **Recommendation 2** of the report recommends that the Australian Government undertake to seek advice in relation to whether improvements are required to the medical treatment options available to asylum seekers and refugees in the Republic of Nauru and Papua New Guinea, particularly mental health services. Government Senators disagree with this recommendation and are of the view the provision of health services to IMAs currently in the Republic of Nauru and Papua New Guinea is conducted to a high standard.

1.21 The Australian Government, through the department, has provided over \$1 billion dollars for infrastructure projects on Manus and Nauru, including hospital facilities in Nauru, the Nauru Primary School, a Community Resource Centre on Nauru and the East Lorengau Refugee Transit Centre on Manus. This includes almost \$500 million on Manus and more than \$550 million on Nauru.

1.22 The department gave evidence that, in 2014, a new multipurpose primary and mental healthcare facility that provides 18 separate consultation rooms was constructed at RPC1 in Nauru.<sup>5</sup>

1.23 The department gave further evidence that, in June 2015, a new medical centre was commissioned and handed over for use as part of the Manus RPC2 enhancement works. The medical centre provides a dental unit, x-ray facility, pharmacy, six-person in-patient facility, and mental health and general practitioner consultation rooms.<sup>6</sup>

1.24 Health care is provided to all transferees at the RPC's, consistent with Australian public health standards, with transferee health services provided in modern clinics at the RPCs, staffed by general practitioners, registered nurses, psychologists and counsellors. Healthcare clinics are open at the RPCs seven days per week, and after-hours medical staff are able to respond to any after-hours medical emergencies.

1.25 Mental health care, including torture and trauma counselling services, is provided by the department's Health Services Provider through general practitioners, mental health nurses, psychologists, counsellors and psychiatrists. Mental health screening is routinely provided by mental health clinicians at the RPCs, in line with the screening policies in operation in Australia

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4 Mr Kingsley Woodford-Smith, Assistant Commissioner, Detention, Compliance and Removals Division, DIBP, *Committee Hansard*, Wednesday 15 March 2017, p. 58.

5 DIBP, *Submission 23*, p. 46.

6 DIBP, *Submission 23*, p. 50.

1.26 **Recommendation 3** of the report recommends that the Australian Government recognise the impacts of long-term immigration detention, including by commissioning an independent assessment of its impacts on physical and mental health. Government Senators disagree with this recommendation.

1.27 Incidences of physical or mental health impacts during immigration detention are actioned on a case-by-case basis. Expending taxpayers' resources on broad-based study will not, in the view of Government Senators, add value. For such a study to yield useful data it would need to be conducted over a prohibitively wide-ranging sample of detainees, detention sites, climates, and geographical conditions. The effectiveness of the Coalition Government's border-protection scheme means that a wide-ranging sample of this kind is simply no longer in existence to be studied.

1.28 The physical and mental health care services that are provided to immigration detainees reflect the extensive nature of the Department's engagement in this area. Conducting additional expensive and lengthy studies will not add value to service-delivery.

1.29 The Government has secured several pathways for refugees to resettle in third countries, including in the United States. This is the best possible outcome for refugees on Manus and Nauru.

1.30 **Recommendation 4** of the report recommends that an external audit and investigation be conducted into all incident reports over the life of the Transfield Pty Ltd and Broadspectrum Australia Pty Ltd contracts at the Manus Island and Nauru Regional Processing Centres, including an analysis of:

- incidences which were downgraded in severity;
- any inconsistencies in relation to incidents being downgraded in severity; and
- evidence of follow-up activities in relation to reported incidents.

1.31 Government Senators do not agree with this recommendation and do not believe that further investigation is necessary.

1.32 The department gave evidence that it does not allow offences to go unreported. Within the Regional Processing Centre (RPC), where the alleged victim consents or where mandatory reporting applies, all allegations of assault are reported to the Government of Nauru for referral to the Nauru Police Force (NPF) for investigation. All residents, refugees and asylum seekers involved in incidents are encouraged and supported to report incidents to the appropriate agency.<sup>7</sup>

1.33 The department continues to assist and support service providers, the Government of Nauru, and local Nauruan authorities to support continuous improvement to incident response and reporting practices, including referrals for additional services or to the Nauru Police Force in cases of possible criminal wrongdoing. These continuous improvement processes have seen a significant

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7 DIBP, response to questions on notice, 31 March 2017 (received 14 April 2017).

strengthening of incident response and management capabilities, including how the department tracks incidents reported to it and appropriate response actions.<sup>8</sup>

1.34 Current service providers are contractually required to report and record all reportable incidents to the department that occur in RPCs. The department maintains a record of all reported alleged incidents. Robust reporting protocols govern the reporting of all incidents.<sup>9</sup>

1.35 **Recommendation 5** of the report recommends that that the Australian Government undertake to work with the Government of the Republic of Nauru to establish an independent children's advocate who would have both the jurisdiction and authority to advocate for the rights of children being held in the Republic of Nauru. Government Senators do not agree with this recommendation.

1.36 A Commonwealth Child Advocate would not have jurisdiction to operate in the sovereign nations of Nauru and PNG, which operate the respective regional processing centres in Nauru and Manus Island.

1.37 There are existing entities with similar responsibilities to what a Child Advocate would presumably hope to achieve. For example, the Government of Nauru has established a dedicated Child Protection Unit with a staff of 6 people. The Child Protection Unit has the lead responsibility for the care and protection of children in Nauru and has established systems and processes to respond to cases of child abuse and neglect.

1.38 The Coalition Government has worked determinedly to introduce measures that ensure the safety of children. The Coalition:

- established the Moss Review in 2014;
- established the Child Protection Panel;
- establish a departmental taskforce in 2016 to support the Child Protection Panel;
- funded the deployment of five Australian Federal Police officers to Nauru to support, mentor and train NPF officers dealing with the investigation of child abuse and sexual assault claims reported to the NFP; and
- assisted the Government of Nauru (GoN) in establishing its dedicated Child Protection Unit.

1.39 In addition, current oversight of the RPCs is undertaken by the Commonwealth Ombudsman and the International Committee of the Red Cross. These organisations separately conduct regular inspection visits of the RPC, and the post-visit reports are actioned by the Australian Government and service providers as appropriate.

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8 DIBP, *Submission 23*, p. 31.

9 DIBP, *Submission 23*, p. 27.

1.40 **Recommendation 6** of the report recommends that the department confirm publicly that any asylum seeker or refugee who has been transferred to Australia for medical or other reasons, or who remains in Australia pursuant to domestic legal action, can apply to participate in the USA refugee resettlement arrangement, and that they will not need to return to either the Republic of Nauru or Papua New Guinea to do so. Government Senators disagree with this recommendation because it suggests that all asylum seeker cases are identical and do not need to be assessed on their individual merits.

1.41 The Coalition Government has entered into an arrangement with the United States to support the resettlement of refugees from Nauru and Papua New Guinea.

1.42 As two of the three leading countries in global humanitarian resettlement, Australia and the US have a long history of bilateral cooperation on mutual and respective humanitarian objectives.

1.43 US authorities will conduct their own assessment of refugees to determine which refugees are eligible for resettlement in the United States. Throughout the process of this Inquiry, Opposition Senators have been intent on attempting to undermine, and ultimately de-rail, this agreement. They do not care about the best interests of those on Manus and Nauru; they only care about playing politics.

1.44 This agreement is one-off and no-one who attempts to travel to Australia illegally in the future will be resettled in the US.

1.45 The orderly resettlement of UNHCR-referred refugees from regional processing countries will take time and will not be rushed. The arrangement entered into with the United States to support the resettlement of refugees from Nauru and Papua New Guinea is progressing.

1.46 As at 30 March, more than 1,500 people have registered their interest in being considered for US resettlement. US officials, including those from the Department of Homeland Security, have visited both Nauru and Manus to collect biometrics and conduct interviews. The priority remains the resettlement of the most vulnerable refugees, with an initial focus on women, children and families.

1.47 The arrangement is supported by the United Nations High Commissioner for Refugees and the Coalition Government continues to engage with UNHCR on its implementation.

1.48 **Recommendation 7** of the report recommends that the Australian Government give serious consideration to all resettlement offers it receives, including the Government of New Zealand's offer to resettle refugees from Papua New Guinea and the Republic of Nauru. Further, if particular resettlement offers are considered unsuitable, the Government should clearly outline the reasons. Government Senators do not agree with this recommendation because its premise – that the Government does not consider all resettlement offers – is mischievous and false.

1.49 The resettlement arrangement detailed in paragraphs 3.23 to 3.30 of this Dissenting Report amply demonstrates the Coalition Government's commitment to viable resettlement options that will result in good outcomes for IMAs, and the ultimate de-commissioning of the Nauru and Manus Island RPCs.

1.50 **Recommendation 8** of the report recommends that the Australian Government give consideration to supporting refugee and asylum seeker family members to pursue options to resettle together. Government Senators do not agree with this recommendation.

1.51 The committee majority has not provided enough detail about the proposed architecture or funding of such a scheme to allow Government Senators the opportunity to make a useful assessment of its merits. Government Senators are concerned by the recommendation's use of the word '*supporting*' which could be taken to be suggesting that the Australian taxpayer should bear the cost of making satisfactory familial arrangements for persons who are not Australian citizens. Government Senators do not believe that this would be a responsible use of taxpayers' dollars and think it unlikely that the wider community would support such an idea.

1.52 **Recommendation 9** of the report recommends that the Australian Government increase Australian funding to the United Nations High Commissioner for Refugees. Government Senators do not agree with recommendation.

1.53 Government Senators would point out that this recommendation is a generalised notion about the UNHCR. Once again the committee majority have strayed from the subject matter of the Inquiry, which relates to the operation of RPCs and the experiences of the IMAs who are detained there.

1.54 The Australian government is a generous contributor to the UNHCR. In the financial year 2015-16 the Australian government contributed \$57.98 million of funding. In the 2016-17 financial year, to 31 December 2016, the Australian government has already contributed \$32.92 million.

1.55 Australia's record of support and assistance for refugees is second-to-none and Government Senators find it offensive in the extreme for the committee majority to suggest that Australia is lacking in its commitment to humanitarian aid. The Australian taxpayer already performs a disproportionate amount of the heavy-lifting when it comes to refugee intakes and resettlements. What the Australian Government – and the Australian people - will not abide, however, is lax border security, a thriving people-smuggling trade, 50,000 illegal maritime arrivals, 8000 children in detention and 1200 deaths at sea. These things are all the legacy of the Labor and Greens Rudd-Gillard-Rudd Government. It is the Coalition Government that is rectifying this mess.

1.56 **Recommendation 10** of the report recommends that the Australian Government commit to increasing Australia's annual refugee intake. Government Senators disagree with this recommendation and refer to the above statements regarding Australia's refugee intake and humanitarian commitment. Australia will continue to be a leader in the permanent resettlement of refugees.

1.57 Government senators note that the Coalition government has committed to increasing the number of places under the Humanitarian Programme to 16,250 in 2017-18 and then 18,750 places in 2018-19.

1.58 **Recommendation 11** of the report recommends that the Australian Government undertake to work with Australia's Asia-Pacific neighbours to establish a regional framework for the processing of claims for asylum. Government Senators

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disagree with this recommendation on the basis that it is their view that such cooperation already exists.

1.59 Australia is a leading state actor in the fight against people smuggling and human trafficking in the region. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime is the preeminent regional forum on people smuggling and human trafficking, and is co-chaired by Australia and Indonesia. The Australian government continues to work closely with other countries in the region to disrupt people smuggling ventures and, in the process, save lives at sea and preventing vulnerable people being exploited.

1.60 **Recommendation 12** of the report recommends that the Australian Government review the *Work Health and Safety Act 2011* to ensure that Comcare can exercise its regulatory powers in relation to Australian workplaces outside Australia's geographical jurisdiction, in a timely and straightforward manner. Government Senators do not agree with this recommendation.

1.61 Government Senators are of the view that there is no need for a review of the Commonwealth *Work Health and Safety Act 2011* as recommended by the Committee. Government Senators do not consider that any evidence provided to this inquiry indicates that Comcare is not appropriately exercising its regulatory powers in relation to Australian workplaces. Furthermore, this recommendation is beyond the scope of the inquiry.

**Senator the Hon Ian Macdonald**  
**Deputy Chair**

**Senator David Fawcett**

