

# Additional comments by the Australian Greens

## Introduction

1.1 The establishment of the Select Committee on Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru was, in part, a reaction to the findings of the Moss Review, including that:

- asylum seekers had concerns about their personal safety and privacy;
- it was possible that sexual favours were bartered for access to marijuana and access to amenities;
- there was likely to be under-reporting of sexual abuse by asylum seekers; and
- there was no substantiating evidence to support allegations of misconduct by Save the Children Australia (STC) employees.<sup>1</sup>

1.2 When first asked about the findings of the Moss Review, the Prime Minister the Hon Tony Abbott MP responded by saying on 20 March 2015 'occasionally, I daresay, things happen.'<sup>2</sup>

1.3 This committee was also established because the Moss Review raised more questions than it answered, including:

- (a) why are assaults going under-reported in Nauru? How many assaults and abuses have not been reported?
- (b) if incidents are not being reported because of concerns about the impact this may have on the processing of asylum claims, or due to a belief that nothing would be done about complaints, as suggested by Mr Moss, what is the cause of these fears and what can be done to redress this?
- (c) what has the Nauruan Police Force done with the numerous cases that have been referred to them?
- (d) are the Nauruan government and the Nauruan police force capable of upholding the basic human rights of asylum seekers and refugees in their care in the face of a deteriorating rule of law situation in Nauru?
- (e) why are Wilson Security staff carrying out investigations into misconduct that were in many cases alleged to have been perpetrated by Wilson Security staff?
- (f) if there was no evidence to substantiate any wrongdoing by the ten STC employees who were summarily dismissed and deported from Nauru, why was this action taken?

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1 Mr Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, 6 February 2015.

2 Interview with Ben Fordham, 2GB Radio, 20 March 2015.

- (g) if these dismissals were directed by the department with the Minister's foreknowledge, why was Philip Moss commissioned by the department to investigate this matter?

1.4 Further, the Moss Review did not adequately address the breakdown of the rule of law in Nauru. This included the lack of independence of the police force, as outlined in chapter 2 of the majority report, which has continued to deteriorate during the course of the committee's inquiry. In fact, many of the Moss Review recommendations assumed that the Nauruan Police Force (NPF) is capable of functioning as an independent and professionally competent law enforcement body. This committee process has shown that this is not the case.

1.5 Dozens of recommendations further to those set out in the Moss Review in relation to the above and other matters have been made to this committee by numerous submitters.

1.6 Prior to the Moss Review, the *Forgotten Children* report by the Australian Human Rights Commission (AHRC) raised concerns over children being held in detention, finding that:

Children on Nauru are suffering from extreme levels of physical, emotional, psychological and developmental distress. The Commission is concerned that detention on Nauru is mandatory for children and that there is no time limit on how long they will be detained.<sup>3</sup>

1.7 The AHRC concluded their findings regarding detention on Nauru by putting the Australian Government 'on notice':

Given the well documented evidence regarding the negative impacts of lengthy detention on Nauru, the Australian Government can be considered to be on notice as to the risk of serious harm to the children and families that are detained there.<sup>4</sup>

1.8 Successive reports, including the *Forgotten Children* report and the Moss Review, and the substantial evidence published by this committee, have brought into focus the conditions in the Regional Processing Centre (RPC) on Nauru.

1.9 The committee has received a large body of evidence from asylum seekers currently or formerly detained on Nauru, former staff members of contracted service providers, legal and human rights bodies and advocacy groups. This evidence has relayed disturbing allegations of sexual and physical abuse of women and children, assault, sexual harassment, neglect and very low standards of living.

1.10 While the committee endeavoured to publish as much material as it could, a large amount of evidence was received in confidence owing to its sensitive or

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3 Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014*, p 195.

4 Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014*, p 187.

identifying nature. This evidence has been used to inform views on the main issues raised in connection with the RPC on Nauru. The sheer volume of this evidence demonstrates the systemic problems with the operation and management of the RPC, with information provided alleging assault, corruption, ineptitude and mismanagement of contracts.

1.11 The Australian Greens agree with the majority report of the committee that conditions must be improved, accountability strengthened and transparency be made a focus of the ongoing operation and management of the RPC. However, the Australian Greens believe that no amount of oversight or funding can overcome the fundamental damage done to vulnerable people that occurs through mandatory and indefinite detention. The Australian Greens further believe that this damage is exacerbated in the particularly harsh, abusive and lawless environment of Nauru. Ultimately, the Nauru RPC must be shut down.

### **Circumstances precipitating Moss Review**

1.12 One of the terms of reference of this Committee was as follows:

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;

1.13 The Moss Review was commissioned on 3 October 2014. As noted in the majority report, the Moss Review was commissioned with the dual purpose of investigating claims of sexual and other physical assault of asylum seekers in Nauru and the conduct and behaviour of staff members employed by contracted service providers. The Moss Review made it clear that the contracted service providers in question were the ten STC staff stood down and deported from Nauru, at the department's direction, without notice and without the opportunity to respond to any allegations of wrongdoing, on 2 October 2014.

1.14 Prior to this on 26 September 2014, Senator Hanson-Young wrote to the former Minister for Immigration, the Hon Scott Morrison MP, raising claims that asylum seekers were being sexually exploited by guards in exchange for access to showers, cigarettes and marijuana. Subsequently Senator Hanson-Young raised further claims of mistreatment of asylum seekers in Nauru with the Minister. No response was received from the Minister to these letters.

1.15 Shortly after these claims were raised with the Minister, the Australian media also published these claims. These claims had already been reported to case managers by asylum seekers in Nauru and ought to have been known by the Minister and the department through the RPC complaints and reporting processes. The department confirmed to this committee that it did in fact have this knowledge prior to the commission of the Moss Review. Or, perhaps more importantly, prior to these matters being raised in the Australian media, as early as November 2013.

1.16 On 3 October 2014, *The Daily Telegraph* published an article carrying the headline *Truth overboard: Claims of asylum seeker abuse on Nauru were 'fabricated'*. This article stated that:

An intelligence report provided to the federal government has revealed that staff from the Save The Children organisation based at Nauru had also been involved in “encouraging and coaching” self-harm to “achieve evacuations to Australia”.

1.17 On the same day this article was published, Mr Morrison announced the commission of the Moss Review, saying:

If people want to be political activists, that's their choice, but they don't get to do it on the taxpayer's dollar and working in a sensitive place like Nauru ... The public don't want to be played for mugs.

They are employed to do a job, not to be political activists. Making false claims, and worse allegedly coaching self-harm and using children in protests is unacceptable, whatever their political views or agendas.

1.18 The department gave evidence to this committee that:

- (a) it was provided with an intelligence report regarding possible misconduct by STC staff by Wilson Security on 30 September 2014; and
- (b) Minister Morrison met with the department on 2 October 2014 to discuss their mutual concerns over the actions of STC.

1.19 On the same day as this meeting, the department ordered STC to remove ten staff.

1.20 The 30 September 2014 intelligence report relied on by the department to order the removal of the ten staff was tabled by Senator Hanson-Young in the Senate on 5 March 2015. The intelligence report simply contains a series of vague allegations without any actual evidence of inappropriate action by any STC staff member in the centre.

1.21 The above facts and timeline leaves one with the strong impression that:

- (a) the former Minister commissioned the Moss Review in October 2014, despite first being made aware of claims of child sexual abuse in November 2013, in response to negative press coverage on the conditions for asylum seekers in Nauru;
- (b) the order to remove staff without any evidence of wrongdoing, without putting any allegations of wrongdoing to the staff and without investigating these allegations was an attempt to counter this negative press. They did this by putting these allegations of wrongdoing on an equal footing with the more serious and credible allegations of harm to asylum seekers, with the intention to cast doubt on the harm experienced by asylum seekers and to distract from these allegations of harm; and

- (c) either the former Minister or the department leaked the Wilson intelligence report to *The Daily Telegraph* as part of the government's strategy to counter this negative press.

1.22 This committee provided Minister Dutton and the department with the opportunity to disabuse the public of these conclusions if they are wrong. This opportunity was not taken up. Senator Hanson-Young asked several specific questions regarding why the intelligence report was prepared, who requested it to be prepared, how the decision to remove the STC staff was reached and how the report ended up on the front page of *The Daily Telegraph*. None of these questions were answered directly.

1.23 For example, the following question on notice was put to the department:

Asked: Please provide a timeline of events and actions and all high level documents regarding the ...deportation from Nauru of all SCA staff for alleged misconduct. The timeline requested should include who made recommendations and when, who made decisions and, who was consulted in making decisions, what directions were given, by whom and when, and when SCA staff were informed of decisions.

1.24 The answer the committee received was as follows:

Answer: Any deportation notices are matters for the Government of Nauru.

1.25 At the committee's public hearing on 19 May 2015, representatives from Wilson were asked on a number of occasions who requested the intelligence report and why. Wilson provided a number of written answers to these questions on notice which skirted around these questions, and ultimately failed to answer them directly.

1.26 The committee heard evidence from Ms Natasha Blucher, one of the ten STC staff ordered to be removed from Nauru by the department. Her evidence was that a spate of self-harm incidents, mass suicide pacts and protests by the asylum seekers was a direct result of a video message delivered to them in Nauru from Minister Morrison in September 2014.<sup>5</sup>

1.27 The Australian Greens support a hard line being taken against illegal people smuggling activities. However, too often this government has blurred this line in both its rhetoric and actions to vilify vulnerable and desperate asylum seekers, as well as people smugglers. This misdirected vilification is not only unfair and misleading, it is also counter-productive. This was clearly demonstrated in the reaction to Mr Morrison's harshly-worded video message, a message which came as a shock to many on Nauru. Putting aside the Australian Greens' opposition to the policy being announced in this message, had the messaging itself been softened, taking into account the sensitivities, vulnerabilities and desperation of the audience it was being delivered to, the unrest that followed may have been avoided.

1.28 The Australian Greens consider that greater and more open communication with asylum seekers regarding the status of their claims process and their rights

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5 *Committee Hansard*, 20 July 2015, p 59.

generally, as described in recommendations 2 and 4 of the majority report, would go some way to redressing these issues.

1.29 Ms Blucher also gave evidence to the committee on how STC staff dealt with the unrest caused by Minister Morrison's message and her shock at the allegation that she was acting inappropriately in doing so:

Ms Blucher: We were desperately trying to talk people out of harming themselves and out of these suicide plans.

Senator Hanson-Young: That is very different to what the intelligence report suggests.

Ms Blucher: That is correct.

Senator Hanson-Young: That report was obviously leaked to The Daily Telegraph and suggested that in fact you were coaching self-harm.

Ms Blucher: At that time I was distraught at the allegation, because you can imagine that I and my colleagues were terrified and we were desperately attempting to convince people not to harm themselves. I attempted to convince seven men who had stitched their lips to unstitch their lips and write a letter to the Refugee Council in lieu of that and had explained to them that stitching their lips was not in their interest, that the department would not listen to them if they did that and that there were more appropriate ways to do that. I was signing incident reports desperately supporting caseworkers to try to give them strategies to talk their clients down from self-harm or from suicidal ideation, and I was going to bed at night terrified that I would wake up in the morning and find that more clients had harmed themselves. And then to be told that I was accused of having tried to facilitate that was beyond comprehension.<sup>6</sup>

1.30 Understandably, the department's decision to summarily stand down ten staff, and the emotional, reputational and financial consequences of this decision, have had a profound effect on these staff. As a result of the department's order, STC terminated the employment of these ten staff on 9 January 2015.

1.31 The staff were given no notice of the decision, but were intercepted on their way to work and removed from Nauru on the same day, without the opportunity to properly hand over their clients' cases to remaining colleagues, in an extremely sensitive environment. As Ms Blucher stated in evidence:

One of the most upsetting things—one of them—was not being able to work with our clients anymore. We were all working very hard to the best of our ability to protect our clients, to advocate for our clients and to provide the best service that we could to them.<sup>7</sup>

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6 Ms Natasha Blucher, *Committee Hansard*, 20 July 2015, p 59.

7 Ms Natasha Blucher, *Committee Hansard*, 20 July 2015, p 61.

1.32 The staff may have believed their ordeal was coming to an end when the Moss Review found no evidence to substantiate the allegations against them and recommended the department review its decision to remove them and the government announced it would accept all recommendations of the review. However, the department's ineptitude and callousness towards them has continued since this time.

1.33 The Moss Review recommendation for a department review stated:

The review would include providing:

- a. Save the Children with the information the Department relied on;
- b. The opportunity for Save the Children to address the allegations concerning its staff members.<sup>8</sup>

1.34 Ms Blucher provided evidence to the committee that neither of the above two aspects of the Moss Review recommendation were followed by the department, despite her lawyers making numerous requests of the department for this information and opportunity.

1.35 Further, despite the Moss Review recommendations being accepted by the government on 20 March 2015, as at the time of writing this report in late August 2015 the review of the removal of staff from Nauru has still not been released. This is obviously distressing for the staff, as Ms Blucher stated:

It is now over 10 months since my colleagues and I were removed from Nauru and still no allegations have been put to us so as to give us the opportunity to respond to the insinuation and inference of wrongdoing. As a result, our reputation has been smeared and the Department has allowed this to continue for over 10 months without redress.<sup>9</sup>

1.36 The department appointed former Registrar of the High Court, Christopher Doogan, to conduct the review of the department's decision. Mr Doogan has informed Ms Blucher's lawyers that he would not be making any adverse findings against the ten STC staff. At the public hearing on 20 July 2015, Secretary Pezullo informed the committee that Mr Doogan's report had been provided to him and would be released by the department in due course.

## **Recommendation 1**

**1.37 The department release Mr Doogan's report immediately.**

**1.38 If no adverse findings are made in Mr Doogan's report against the ten Save the Children staff who are the subject of the review, the department and Minister Morrison issue an apology to the staff and the Commonwealth offer compensation to the staff for the financial, reputational and psychological damage caused to them by the removal decision and the associated allegations in the Minister Morrison's public statements on the matter.**

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8 Mr Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, 6 February 2015, Recommendation 9.

9 Ms Natasha Blucher, Supplementary to Submission 83, p. 4.

## Children

1.39 Submitters put to the committee that there is no existing child protection framework in operation on Nauru. For example, Mr Paul Ronalds, Chief Executive Officer of STC, told the committee that:

...there are laws on Nauru that go to issues of assault and sexual assault. What I am advising is that there is no child protection framework, as we would understand it in Australia, which is much broader and goes beyond that.<sup>10</sup>

1.40 Ms Kirsty Diallo, a former STC employee, told the committee:

There is no child protection legislation that would protect children from harm. There are no specialist police that could investigate allegations of child sexual abuse that would occur in Australian detention centres.<sup>11</sup>

1.41 The committee heard that there was a disparity in engagement procedures followed between expatriate and locally engaged staff who work with children. For example, working with children checks cannot be conducted for locally engaged Nauruan staff. Mr Brett McDonald, Security Contract Manager at Wilson Security, advised:

There is not a currently a jurisdiction in Nauru to conduct working-with-children checks. What we do in substitute of that is we have some specific behavioural questions, we have a specific statutory declaration that employees sign during the recruitment process and we also have a code of conduct that we go through. We also undertake a local police check in Nauru.<sup>12</sup>

1.42 STC submitted that prolonged detention in the RPC has had a negative impact on the mental and physical health of children:

Save the Children has observed and is concerned by developmental regression and mental ill-health amongst children, as well as instances of family violence and the effects of family breakdown and separation from family members and close relatives. These observations together with the documented incidents, very clearly and comprehensively demonstrate how prolonged immigration detention threatens the physical, mental and emotional wellbeing of asylum seekers, particularly children.<sup>13</sup>

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10 Mr Paul Ronalds, Chief Executive Officer, Save the Children Australia, *Committee Hansard*, 19 May 2015, p. 44.

11 Ms Kirsty Diallo, *Committee Hansard*, 9 June 2015, p. 29.

12 Mr Brett McDonald, Security Contract Manager, Wilson Security, *Committee Hansard*, 19 May 2015, p. 21.

13 Save the Children Australia, *Submission 30*, p. 15.



1.43 Ms Samantha Betts, a former STC worker, told the committee that she observed 'distress markers' in children, during her period as a recreation officer in the RPC:

These markers included predominately unpredictable behaviour, outbursts and emotional collapse, disturbing depictions in artworks relating to their trauma, rapid and very extreme mood swings. They included children becoming mute and refusing to talk, being clingy and wanting to stay close to us Save the Children workers. They also included significant changes in friendship groups and relationships, very short attention spans and regression in children up to the age of 13, with behaviours such as thumb sucking, sleepwalking and bedwetting.<sup>14</sup>

*Best interests of the child*

1.44 According to the Convention on the Rights of the Child (CRC), Australia has an obligation to consider the best interests of the child. The CRC sets out that:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.<sup>15</sup>

1.45 ChilOut argued that detention can never be in the best interests of the child:

The ongoing detention of children in the Nauru RPC where serious and credible allegations of sexual and other physical abuse arise cannot be in the best interests of the child.<sup>16</sup>

1.46 Similarly, the Andrew & Renata Kaldor Centre for International Refugee Law (Kaldor Centre) submitted that:

...the current process of transferring children to Nauru appears to breach Australia's human rights obligations with respect to those children, including the obligation to make the best interests of the child a primary consideration in any decision affecting them; to refrain from detaining children except as a measure of last resort; and to make adequate provision for the protection of children.<sup>17</sup>

1.47 The Kaldor Centre wrote that while the concept of the best interests of the child can be 'flexible and dynamic', there were guidelines for how the assessment might be undertaken and:

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14 Ms Samantha Betts, *Committee Hansard*, 20 July 2015, p. 54.

15 *Convention on the rights of the child*, Article 3.

16 ChilOut, *Submission 13*, p. 7.

17 Andrew & Renata Kaldor Centre for International Refugee Law, *Submission 60*, p. 2.

...neither international law nor Australian law prescribes what is in the best interests of a particular child in a given situation. However, they do provide guidance on how the best interests of a child should be assessed.<sup>18</sup>

1.48 They further set out the function of a 'best interests assessment', which should occur according to the following criteria:

- the best interests assessment should be performed on a case-by-case basis; and
- the decision maker must identify the best interests of the child, and consider any flow-on consequences.<sup>19</sup>

1.49 The AHRC found that although the department's best interests assessment explicitly acknowledges the obligation, the assessment was not undertaken on a case-by-case basis:

...the Department's Best Interest Assessment appears to be irrelevant in the decision to transfer a child to Nauru. This is because the Australian Government has made a blanket decision that, in every case, the best interests of the child are outweighed by other primary considerations...<sup>20</sup>

1.50 The department's *Best Interests Assessment for transferring minors to an RPC (forming part of the Pre-Transfer Assessment)* sets out:

...the Australian Government's view is that in making the transfer decision, the best interests of such children are outweighed by other primary considerations, including the need to preserve the integrity of Australia's migration system and the need to discourage children taking, or being taken on, dangerous illegal boat journeys to Australia.

Accordingly, while this assessment considers a range of factors to ensure that care, services and support arrangements are available to meet the needs of the individual child, it does not consider whether the best interests of the child would be served by the individual child being transferred to an RPC.<sup>21</sup>

1.51 Further to this acknowledgement by the department that the best interests of the child is outweighed by other 'primary considerations', a submission from Ms Viktoria Vibhakar (former Child Protection Worker with STC) argued that there were gaps in the ability for STC to also provide welfare services which were in the best interests of the child:

Although [STC] was contracted by the Commonwealth to provide child protection services to children on Nauru, they were not given authority by

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18 Andrew & Renata Kaldor Centre for International Refugee Law, *Submission 60*, p. 7.

19 Andrew & Renata Kaldor Centre for International Refugee Law, *Submission 60*, pp 7-9.

20 Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014*, p 192.

21 Department of Immigration and Border Protection, *Best Interests Assessment for transferring minors to an RPC (forming part of the Pre-Transfer Assessment)*, February 2014, p. 1.

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DIBP to remove children from harm, to prevent additional incidents of harm, or to act to protect the best interests of children.<sup>22</sup>

1.52 STC outlined their response framework to children who experience family violence, which confirms Ms Vibhakar's submission on this point:

[STC] does not have legal authority to remove a child from the care of parents or guardians on Nauru, and employs a collaborative and multi-stakeholder approach, to the extent possible, when supporting children and families who are at risk of family violence. This includes involving the Nauru Police Force where appropriate, as was the case with this particular family.<sup>23</sup>

1.53 Ms Vibhakar told the committee that, in her view, government policy, rather than the best interests of the child, was the primary consideration of departmental staff:

The Department of Immigration and Border Protection employees that I interface with and that were on Nauru made it clear that their primary responsibility was to ensure that the government policy was implemented. What that meant was that, even though on numerous occasions they were always aware of assaults that had occurred to children, the children remained in situations of ongoing harm.<sup>24</sup>

#### *Legal guardianship*

1.54 The department advised that the Nauruan Minister for Justice and Border Control is the legal guardian of unaccompanied minors in the RPC on Nauru:

Under the Asylum Seekers (Regional Processing Centre) Act 2012 (Nr), the Minister for Justice and Border Control is the legal guardian of every unaccompanied minor who arrives in Nauru. The Minister has delegated most of his powers and functions as guardian to Connect.<sup>25</sup>

1.55 The Royal Australasian College of Physicians' statement on the health of people seeking asylum argues that there is a potential conflict of interest in the appointment of the Minister for Immigration as the legal guardian of unaccompanied minors in the RPC:

A key issue impacting on the wellbeing of unaccompanied minors seeking asylum is the automatic appointment of the Minister of Immigration as their legal guardian. In this capacity, the Minister is responsible for protecting the child and their best interests, however the Minister is also responsible for placing children in immigration detention. The RACP considers that immigration detention is not in the best interests of any child, and echoes

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22 Ms Viktoria Vibhakar, *Submission 63*, p. 10.

23 Save the Children Australia, response to *Submission 63*, p. 5.

24 Ms Viktoria Vibhakar, *Committee Hansard*, 9 June 2015, p. 30.

25 Department of Immigration and Border Protection, *Submission 31*, p. 56.

concerns that there is a potential conflict between these dual responsibilities.<sup>26</sup>

### *Lack of parental agency*

1.56 The committee heard evidence of the impact the detention environment has on the family unit and relationships. This environment changes the interaction between parent and child, of provider and dependent, to the entire family unit being dependent on an external entity. The inability of parents to have direct influence over the care of their child places the parent in a state of stress, with no opportunity for them to change this. Being a parent on Nauru means not being able to parent at all.

1.57 One submission alleged that some parents had relinquished care of their children while they received treatment for mental health issues:

It has now occurred on a number of occasions that parents have relinquished care of their children, with the system unprepared for this, children are left to be cared for by Save the Children case managers and recreation staff in facilities for asylum seekers who are having extended medical treatment or being medically observed, including asylum seekers who have attempted suicide.<sup>27</sup>

1.58 Children whose parents are not able to care for them within the RPC are especially vulnerable, and require a greater level of protection and a guarantee that they will be safe while in the RPC.

### *Children exposed to extreme violence*

1.59 Submitters, including former employees of STC submitted that children in the RPC are routinely exposed to acts of extreme violence such as suicide attempts and physical assault.<sup>28</sup>

1.60 Darwin Asylum Seeker Support and Advocacy Network (DASSAN) submitted that asylum seekers had reported to them the challenging conditions parents face in the RPC:

Parents talked with despair about the conditions they were trying to care for their children in, with nowhere to play, constant exposure to violence and anger, no privacy, and inadequate health care.<sup>29</sup>

1.61 Mr Tobias Gunn, a former STC employee, submitted that he had witnessed a suicide attempt by a 15 year old boy who had threatened to jump from the roof of a toilet facility. Mr Gunn submitted that minors were witnesses to the incident, as:

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26 Royal Australasian College of Physicians, *Statement on the health of people seeking asylum*, August 2013, p. 4.

27 *Submission 84*, p. 4.

28 RAC-Q, *Submission 73*, p. 7.

29 DASSAN, *Submission 61*, p. 7.

...security had not closed off the area and children were walking past, some sitting down to watch. I had a young girl under ten come up to me and ask if this boy 'would be coming to recreation tomorrow? Or do you think he will jump?'<sup>30</sup>

*Example of inadequate Commonwealth response to assault of a child*

1.62 The alleged sexual assault of a minor was put to the committee by Ms Diallo.<sup>31</sup> She submitted that:

On 16 November 2013 a child was sexually assaulted by a government contractor. That information was investigated by Wilson Security and an incident report was completed. That was forwarded onto the department of immigration and in December 2013 I asked the Save the Children director if that incident report had been forwarded on to the Minister for Immigration and Border Protection. I was advised that the minister had seen that incident report.<sup>32</sup>

1.63 Ms Diallo was the Child Protection and Support Worker for the alleged victim. As a result of a lack of available private facilities, she was required to speak with the minor in an open part of the RPC.<sup>33</sup> Ms Diallo stated that she had 'offered the family counselling with the specialist torture and trauma services (STTARS), as there was no sexual assault counselling available on Nauru'<sup>34</sup>:

The family expressed fear of attending this service as they had concerns about potential repercussions from local security staff that were present at the STTARS office. Both the boy and his Mother, also expressed fear of pursuing the matter with the local Police, and stated that they were scared the local Nauruan staff in the RPC would blame them and subsequently they would experience further threats and abuse.<sup>35</sup>

1.64 Ms Diallo submitted that she 'would never advise a family to pursue criminal charges if they remained in an environment where they could still be subject to further abuse'.<sup>36</sup>

1.65 The inability for alleged victims of assault and abuse to be removed from their surroundings or from the alleged perpetrators was discussed in the committee's report, and so will not be discussed further in these additional comments.

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30 Mr Tobias Gunn, *Submission 68*, p. 7.

31 The committee understands that this is the same incident referred to in the Moss Review. Mr Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, 6 February 2015, p. 37.

32 Ms Kirsty Diallo, *Committee Hansard*, 9 June 2015, p. 29.

33 Ms Kirsty Diallo, *Submission 64*, p. 2.

34 Ms Kirsty Diallo, *Submission 64*, p. 2.

35 Ms Kirsty Diallo, *Submission 64*, p. 2.

36 Ms Kirsty Diallo, *Submission 64*, p. 2.

1.66 Ms Cindy Briscoe, from the department, advised that the 'incident was reported at the time, through the appropriate system, to the department. An investigation was conducted by the [Nauru Police Force (NPF)] and it was left in the hands of the NPF'.<sup>37</sup> Further, she notes:

My understanding is that the mother decided not to progress that complaint any further and the treatment that was provided was according to their wishes.<sup>38</sup>

1.67 However, the committee received evidence on a confidential basis that alleged further incidents of assault and harassment against the family of the alleged victim occurred and that these were seen as retribution against the family for speaking out about the assault. It would seem more likely that these further assaults, rather than satisfaction at the way their complaints were handled, were behind the family deciding not to progress the complaint any further.

### **Recommendation 2**

**1.68 The Australian Greens recommend that as a matter of priority, children and their families be released from the Nauru Regional Processing Centre and be transferred into the community in Australia.**

### **Recommendation 3**

**1.69 The Australian Greens recommend that a royal commission be established to investigate the detention of children, and the impact of detention on their mental and physical health, as previously recommended by AHRC in their *Forgotten Children* report.**

1.70 This is not the first time that a royal commission into abuse in Australian-controlled immigration detention facilities has been called for.

1.71 Recommendation 15 of the AHRC's *Forgotten Children* recommended that a royal commission be established to examine, among other matters, the long term impacts of detention on the physical and mental health of children in immigration detention.

1.72 In an open letter dated 7 April 2015, a group of 24 current and former employees from the Nauru detention centre who have first-hand knowledge of the conditions in which children and adults are detained requested the Australian people to support a Royal Commission into abuse allegations in the Nauru detention centre and the government's response to those allegations.

1.73 One of the signatories to that letter was Dr Peter Young, the International Health and Medical Services (IHMS) medical director for mental health from 2011 to 2014.

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37 Ms Cindy Briscoe, Deputy Commissioner, Australian Border Force Support, Department of Immigration and Border Protection, *Committee Hansard*, 20 July 2015, p. 77.

38 Ms Cindy Briscoe, Deputy Commissioner, Australian Border Force Support, Department of Immigration and Border Protection, *Committee Hansard*, 20 July 2015, p. 78.

1.74 In his evidence to this committee at the public hearing on 9 June 2015, Dr Young highlighted the “specific similarities of this institutional environment in immigration detention to other institutional environments in which abuses have occurred and which have been shown to cause abuse and abusive practices.”<sup>39</sup>

1.75 Dr Young elaborated on these similarities:

Wherever there is a situation in an institution where there is a vulnerable group that is under supervision, and where there is a power differential between those who are being supervised and those who are supervising them, you create the conditions in which abuses tend to occur. The other factor that adds to that, in this situation particularly, is when there is non-transparency and when there is a lack of capacity for independent oversight. The final thing that really has a very powerful effect—and we have seen this in other institutions where abuse has occurred very regularly—is when there is this overriding concern that the interests of the institution, the preservation of the institutional interests, override everything else. We have seen this in the current royal commission that is occurring in relation to the reputation and the wealth of organisations overriding the concerns of duties of care, and we see it in this example where the policy position of stopping the boats and maintaining the offshore processing facility and its reputation is the overriding concern.<sup>40</sup>

1.76 Dr Young has identified, in his evidence before this committee and elsewhere, numerous factors that make immigration detention, particularly in Nauru, prone to abuse on the same scale as the institutional abuses being investigated by the Royal Commission. Among these factors are:

- (a) Physical isolation of detention centres;
- (b) Lack of transparency;
- (c) Lack of independent oversight;
- (d) Power imbalance;
- (e) Pre-existing vulnerabilities by virtue of being asylum seekers;
- (f) Linguistic and cultural barriers;
- (g) Indefinite nature of the detention;
- (h) The nature of detention itself;
- (i) The institutional policy and reputational interests conflict with the interests of the welfare of individuals in their care.

1.77 While the institution of immigration detention makes child abuse prone to occur in Nauru, this committee has heard many incidents of child abuse that have actually occurred and are continuing to occur.

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<sup>39</sup> Dr Peter Young, *Committee Hansard*, 9 June 2015, p. 2.

<sup>40</sup> Dr Peter Young, *Committee Hansard*, 9 June 2015, p. 2.

1.78 Transfield Services gave evidence that there had been 67 allegations of child abuse in Nauru.<sup>41</sup> 12 of these were referred to the NPF, but the police had not charged anyone in relation to any of these alleged incidents as at 20 July 2015.<sup>42</sup>

1.79 In only the last reporting period (February to May 2015) there have been two incidents of child sexual assault and 11 incidents of other assaults against children in immigration detention centres in Australia.

1.80 In the six months to May 2015, there were 48 incidents of self-harm by children in immigration detention centres in Australia and 26 incidents of self-harm by children in the Nauru RPC.

1.81 The *Forgotten Children* report found that there were 33 incidents of reported sexual assault (the majority involving children) and 233 total assaults involving children from January 2013 to March 2014.

1.82 Of course, the figures for Nauru do not take account of the under-reporting that the Moss Review found prevalent in Nauru.

1.83 These figures are also limited to the instances of sexual assault and violence occurring to children themselves and do not take account of the number of sexual assaults the children are witness to in Nauru. For example, Transfield Services gave evidence that there had been 33 allegations of sexual assault and 5 allegations of the exchange of sexual favours for contraband among adults in Nauru.<sup>43</sup>

1.84 Further, the figures do not take into account the generalised sexualisation of children in Nauru, which is the inevitable result of the living conditions and number of sexual assaults occurring in Nauru. For example, Ms Vibhakar gave evidence in relation to a four year old girl named “Tiana” who had been sexually assaulted:

...there were ongoing concerns related to inadequate supervision of Tiana. Furthermore, concerns regarding the inappropriate boundaries observed in relation to touch/physical affection that she was receiving from Commonwealth contracted staff was noted in a multi-Commonwealth contractor meeting as early as January 2014. The DIBP detention centre manager was present at this meeting. Tiana also exhibited progressively alarming sexualised behaviours that were consistent with indicators of sexual abuse which included:

- Sexualised play with dolls
- Sexualised dancing inappropriate for her developmental level
- Often found wandering outside her tent with only her underwear

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41 Transfield Services, answer to question on notice, 19 May 2015 (received on 16 June 2015).

42 Ms Erin O’Sullivan, Commercial and Strategy Manager, Transfield Services, *Committee Hansard*, 20 July 2015, p. 6.

43 Transfield Services, answer to question on notice, 19 May 2015 (received on 16 June 2015).



- An incident report was filed alleging that she entered the tent of another asylum seeker, pulled down her underwear and tried to get adults to insert their finger into her anus.<sup>44</sup>

1.85 The figures for Nauru are also limited to incidents within the RPC. They do not take account of the spate of sexual assaults and rapes that have taken place in recent times outside of the RPC. This particular issue will be discussed further.

1.86 The department has stated that it has taken a number of steps to improve the situation for children in Nauru, beginning with the child safeguarding protocol it says was introduced in November 2013. But numerous cases of child abuse have occurred since this time and ongoing cases of child abuse continue to be reported to the committee. While the steps taken by the department may be well-intentioned, they are token measures that miss the point of the institutional nature of the problem; the conditions in Nauru make systematic child abuse an endemic problem and if removal of children who are at risk of abuse or already have been abused is not an option, other child protection strategies are meaningless.

1.87 An example of an ongoing case of child abuse reported to the committee is contained in the submission of Ms Katherine Cole, a former primary school teacher employed by STC who submitted that she had a seven year old female student named 'Charlie' who was sexually assaulted in early 2015. No details of this were given to Ms Cole, despite requests. The child remains in Nauru and according to Ms Cole her condition is deteriorating because she is not receiving the care she needs and cannot possibly recover while remaining in detention in Nauru.

1.88 As Ms Cole wrote in her submission:

As Charlie's classroom teacher I was spending up to six hours with her a day, five days a week. I was never told any solid information about Charlie's assault; where it took place, who was involved, any possible triggers that could occur or any other details that could have assisted me in the after care and prevention of further distress for this child.

The RPC1 school is located under 100 meters away from the R.A.A, where the alleged perpetrator to Charlie's assault was and still is being held. As none of the teaching staff were told any details of the assault in the weeks and months thereafter, we were unaware that every time Charlie was outside the classroom, there was every possibility that she would see the perpetrator, as he could often be seen sitting outside, next to the fence facing the school.

I believe that being in an environment where Charlie knew there was a possibility that he could see her, would have been a terrifying daily ordeal. The potential for this lurking presence to retraumatise Charlie on a daily basis for months after the alleged assault, I believe has caused significant re-traumatisation.

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44 Ms Viktoria Vibhakar, *Submission 63*, pp 12-13.

Charlie's emotional, social, intellectual, and physical state have all severely deteriorated since the alleged assault.

Charlie's overall resilience has dropped significantly since the alleged assault.

Academically Charlie is falling well below the outcomes of her peers.

Nothing seems to be able to remain a special or safe object to Charlie.

To the best of my knowledge most if not all scientific and physical evidence for the case would have been lost several months ago, so now the main sources for the case will be anecdotal evidence from three children under the age of ten, with English as a second language, numerous months after the alleged incident occurred.<sup>45</sup>

1.89 Ms Cole's evidence was put to Transfield Services on 20 July 2015. They were asked if anything was done to make sure that the alleged perpetrator could not continue watching the child while she was in a learning environment.

1.90 Transfield Services responded that the alleged perpetrator's bail conditions prevented him from being within a certain distance of the child, but could provide no further details of the case and agreed to take further questions on notice.<sup>46</sup> Answers to these questions were due on 24 July 2015. As at the time of writing this report, that answer has still not been received.

1.91 On the basis of the evidence before the committee at this time, therefore, it seems there is a seven year old girl who was sexually assaulted in the Nauru RPC in early 2015 and who remains locked up in that facility, while her alleged perpetrator has been able to breach his bail conditions by watching her through a fence since this time. The impact of this on the seven year old girl cannot be overstated.

1.92 Several of the witnesses to the committee gave evidence that despite raising specific allegations through official channels, the situation had not improved over a long period of time. The below exchange at the public hearing of 9 June 2015 is representative of this evidence:

Senator KIM CARR: Have you raised your concerns with departmental officials?

Dr Young: The concerns that I had in my role over the time I was there were raised multiple times with departmental officials. Departmental officials were obviously aware of them from the publicly-available information that came through those other organisations also.

Senator KIM CARR: And were you satisfied with the response that you received?

Dr Young: No.

Senator KIM CARR: Why is that?

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45 Ms Katherine Cole, *Submission 92*, pp 4-5

46 *Committee Hansard*, 20 July 2015, pp 44-45.

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Dr Young: The conditions persist, and people continue to be harmed.<sup>47</sup>

1.93 Not only do the harmful conditions persist in Nauru, there is evidence to suggest that the conditions are further deteriorating. The committee understands that six incidents were reported to the Moss Review that fell within the terms of reference of that inquiry, but that in the short period since this time, they have received reports of a further six incidents.

1.94 Further, during the 2014 calendar year, 223 Transfield workers in Manus Island and Nauru were dismissed. Eighteen of these were for misconduct towards transferees. But in the 2015 calendar year to May 2015, 179 Transfield workers in Manus Island and Nauru had already been dismissed, 13 for misconduct towards transferees.<sup>48</sup> The rate of dismissals and misconduct towards transferees is therefore increasing.

1.95 The Australian Greens support a Royal Commission into all abuse allegations in the Nauru detention centre, as called for in the open letter from the current and former employees of the Nauru RPC. The reason the Australian Greens have nonetheless limited their recommendation above to children is twofold:

(a) Children have a special status in society.

They are particularly vulnerable and innocent and all civilised societies accept that they are responsible to ensure their protection and provide for their development, education, health and well-being. Australians would overwhelmingly consider these principles to be self-evident and Australia has accepted as much in ratifying the *Convention on the Rights of the Child*.

Yet when it comes to asylum seeker children, Australians appear to be in a state of prolonged torpor. There are no circumstances that could possibly justify the indefinite detention of newborn babies, toddlers, infants and children of all ages. Even when a minor is charged, tried and convicted of a crime in Australia, that child is rarely given a custodial sentence. A custodial sentence is viewed as a last resort, and the conditions while serving that sentence ensure the continued development of that child, free from harm. Asylum seeker children have committed no crime and their detention is indefinite, lasting on average 402 days. The harsh physical and mental conditions they face in Nauru, including the high risk of sexual abuse and the ongoing trauma of the indefinite nature of their detention is inflicting long-term damage to their development. They are not safe and every additional day they spend there will make it that much more difficult to repair this damage.

A Royal Commission may go some way to addressing this state of torpor and motivate more Australians to put pressure on their representatives to remove these children from this dangerous situation, redress past wrongs and ensure that this never happens again in their name.

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47 *Committee Hansard*, 9 June 2015, p. 3.

48 Budget Estimates 2015, Answers to questions on notice.

- (b) Focussing on child sexual abuse would allow the royal commission to build on the work of both the *Forgotten Children* report and this committee.

1.96 When asked about specific allegations, including in relation to child abuse, the committee received four common responses from the department and the service providers engaged in the RPC, as follows:

- (a) the matter has been referred to the Nauruan police force for investigation;
- (b) they have checked their records and could find nothing to support the allegation;
- (c) the matter was investigated and there was insufficient evidence to take further action; and
- (d) the family has withdrawn the complaint or expressed satisfaction at the outcome and requested that no further action be taken.

1.97 In relation to the first common response, simply referring matters to the NPF is patently inadequate to ensure justice is served or for the department and the service providers to fulfil their duty of care obligations to people in their care. These referrals are occurring in circumstances where the rule of law is currently absent in Nauru and the weight of evidence to this committee has shown that the NPF is generally incapable or unwilling to act on these referrals.

1.98 The response that the department or the service providers had checked their records and could find nothing to support the allegation is also unsatisfactory. It has been known at least since the Moss Review that assaults are going under-reported. Evidence provided to this committee suggests that the reasons for this under-reporting include that:

- (a) assaults are an everyday occurrence and when they have been previously reported, nothing has been done about them. As one submitter noted, these incidents are referred to as ‘paperwork’.<sup>49</sup>
- (b) Wilson Security destroys evidence:
  - (i) Two submissions provided to the Committee raise the destruction of documents.<sup>50</sup> One submission details the existence of a code, “file 13”, an order to shred incident reports at the direction of Wilson supervisors.<sup>51</sup> Wilson Security responded that it is unaware of this practice.<sup>52</sup>

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49 Ms Samantha Betts, *Submission 85*, p. 2.

50 Name Withheld, *Submission 62*, p 2; Name Withheld, *Submission 95*, p 9.

51 Name Withheld, *Submission 95*, p 9.

52 Wilson Security, *Response to Submission 62*, p 5; Wilson Security, *Response to Submission 95*, p 5.

- (ii) Wilson Security's own evidence provided to the Committee that it deletes video footage.<sup>53</sup>
- (c) the fear of retribution prevents victims from lodging a report. As noted in the submission of Ms Vibhakar, there was a reluctance to report wrongdoing for fear it would negatively impact upon asylum claims.<sup>54</sup> In one particular case, a child, the victim of sexual assault, and his family were fearful of retaliation for reporting an assault.<sup>55</sup>

1.99 The third common response (that there has been insufficient evidence to progress the investigation), does not take into account:

- (a) the inability of the Nauruan Police Force to conduct forensic investigations;
- (b) the inability of the Nauruan Police Force to appropriately interview alleged victims of child abuse or sexual assault;
- (c) the extent to which the culture of fear, secrecy, apathy and retribution prevents witnesses coming forward; and
- (d) the possibility that Wilson Security investigators have a conflict of interest in investigating their colleagues or that their techniques for collecting evidence are otherwise inadequate.

1.100 In relation to incidents in which the victim or the victim's family has withdrawn the complaint or expressed satisfaction at the outcome of an investigation, no mention was made by the department or the other organisations charged with the care of these children that the family's decision may have been influenced by a fear of retribution.

1.101 The serious allegations of child abuse presented to this committee, many of which cannot be published due to confidentiality, were put forward by dozens of professional doctors, nurses, teachers, social workers and security guards, with first-hand experience of the day to day conditions on the ground in Nauru. This is in stark contrast of the experiences of the senior executives from the department and service providers, only one of whom had spent any significant amount of time in Nauru.

1.102 The Australian Greens doubt that these individuals who have worked on the ground in Nauru would risk their professional reputations, invest time and energy in preparing evidence and risk retribution from their employers or non-renewal of their contracts by fabricating allegations, many of which are very specific and detailed. The Australian Greens consider it more likely that over-reliance on what is officially reported has led these senior executives to overlook the reality of what actually takes place on the ground in Nauru.

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53 *Committee Hansard*, 19 May 2015, p. 36.

54 Ms Viktoria Vibhakar, *Submission 63*, p. 28.

55 Ms Viktoria Vibhakar, *Submission 63*, p. 10.

1.103 An instructive exchange on the different perspectives on this issue was held by the Australian Greens and the representatives of these organisations took place at the public hearing on 20 July 2015 between Senator Hanson-Young and John Rogers, Executive General Manager, Southern Pacific, Wilson Security:

Senator HANSON-YOUNG: Mr Rogers, obviously this allegation of the solicitation of sex and the filming of that is pretty serious. I hear from you that you have got nothing on your files that indicates this is correct. I put to you a new allegation in relation to footage of staff having sex with each other that has allegedly been circulated. You are saying you have got no file notes or incident reports in relation to this. Are you concerned that these kinds of rumours are coming out of the facility? And these are from staff. These are staff members who are coming forward to this committee. What interest do these people have in making this up?

Mr Rogers: I am sure people are acting from the best of intentions. I am sure they are making their own judgements on the information that they have had presented to them. I cannot really speak, apart from that, as to the motivation to make any of these allegations.<sup>56</sup>

1.104 The Australian people and, more importantly, the children whom Australia has placed in the care of these organisations, deserve a better response to the numerous, grave allegations of child abuse that have been put to this committee. The appropriate forum for this response to be provided, through the thorough investigation of these allegations by experts in the field, with the resources and power to conduct these investigations, is a royal commission.

### **Surveillance of a member of the Australian Senate**

1.105 During the course of the inquiry, evidence was received by the committee to the effect that a member of the Australian Senate had been monitored while visiting the Regional Processing Centre on Nauru in December 2013.

1.106 This evidence included submissions by two former Wilson guards that:

When Senator Sarah Hanson-Young visited Nauru, Wilson Security organised a team from ERT to spy on her while she was on Nauru. This included following her around the island while she was outside of the OPCs and setting up an observation post to watch her room at the Menen hotel. The briefing was given by ERT supervisor...in which he gave orders to spy on the senator. This briefing included her room number, vehicle registration and even using code name "Raven" over the radio to make reference to her.<sup>57</sup>

and that:

Wilson Security Management [ordered] ERT members to follow and film Senator Hanson-Young during her entire visit to Nauru. Those that filmed then gloated to other workmates how the Senator was followed and filmed,

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56 *Committee Hansard*, 20 July 2015, p. 43.

57 Name withheld, *Submission 62*, p. 1.

but she did not know, happy that she did not “twig”. The order to follow and film the Senator was given by “Ranger 1”...to the ERT who then carried out the order;

[the submitter] is aware of where the film/s of Senator Hanson-Young were once kept but does not know if they still exist – he viewed 20 to 30 seconds of film on a Wilson Security employee’s mobile phone that he believes to be the Senator at her Hotel.<sup>58</sup>

1.107 On 5 June 2015 Minister Dutton commented on allegations of Senator Hanson-Young being spied upon at media conference:

My experience of Sarah Hanson-Young is that she gets most of the facts wrong most of the time... She makes these allegations which are completely unfounded.

I don't have any evidence that she's been spied on. I have evidence that Senator Hanson-Young over-states every issue. She gets her facts wrong most of the time.<sup>59</sup>

1.108 It can be inferred from these comments that Minister Dutton did not find the allegations credible and had no intention of investigating them.

1.109 At the committee’s public hearing on 9 June 2015, Secretary of the department, Mr Michael Pezzullo, stated that his department had investigated the matter and found that one rogue Wilson employee instructed two other Wilson employees to monitor Senator Hanson-Young’s car overnight while it was parked outside her hotel and that is the extent of the spying that took place. According to the department, anything further to this that has been alleged did not happen. When the rogue employee’s manager found out what happened, he ensured that the monitoring ceased and stood down the rogue employee. The employee was suspended from his position but later re-applied for, and was granted the same position. Wilson did not report the incident externally because it was not a reportable incident. Mr Pezullo reiterated that the monitoring was for Senator Hanson-Young’s safety but did not explain why Senator Hanson-Young was not told and why the rogue employee was disciplined, if this was the case.

1.110 At the public hearing on 20 July 2015, Senator Scott Ludlam questioned the department, Wilson Security and Transfield Services in relation to these allegations. All parties denied the spying went any further than outlined by the department at the hearing on 9 June 2015. Representatives from Transfield Services and Wilson Security apologised to Senator Hanson-Young, while no apology was offered by the department.

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58 Mr Jon Rogers, *Submission 95*, p.2.

59 'Sarah Hanson-Young labels Tony Abbott 'creepy' over his response to Nauru spying allegations', *Sydney Morning Herald*, 5 June 2015, <http://www.smh.com.au/federal-politics/political-news/sarah-hansonyoung-labels-tony-abbott-creepy-over-his-response-to-nauru-spying-allegations-20150605-ghhehb.html> (accessed 5 June 2015).

1.111 On 13 August 2015 a number of former guards reported to Australian Broadcasting Corporation (ABC) that:

- (a) the surveillance of Senator Hanson-Young involved up to eight members of the Emergency Response Team;
- (b) the surveillance continued for the full three days Senator Hanson-Young was in Nauru;
- (c) guards were ordered to photograph Senator Hanson-Young and make notes about who she met with; and
- (d) one guard witnessed shredding of all documents relating to surveillance operation, including photos and notes.

1.112 The Australian Greens understand from the ABC that its reports relied on the evidence of three former Wilson guards, none of whom gave evidence to this committee.

1.113 On 19 August 2015 the Committee received another submission which appeared to be from a former Wilson guard to the effect that:

This operation involved approximately 6-8 ERT members and consisted of recording her every movement both in and out of the camps, they were also to report on whom she spoke with and if possible they were to ascertain what was said.

Staff were requested to compile reports on her movements, contact with employees or Stakeholders. These reports and video surveillance footage were to be handed to the Intelligence unit for collation and dissemination.

Wilson investigations manager...and intelligence officer...met with Sarah hanson –young with the sole purpose of extracting and recording information from her with regards to her agenda while on Nauru.

The Emergency Response Team Supervisor...who Wilson Security management said conducted unauthorised surveillance on Hanson Young appears to have been a scapegoat. Management authorised, sanctioned and fully supported surveillance on Sarah Hanson Young while she was in Nauru.

I have spoken with ERT members involved in this operation and they have stated that their primary role was to obtain information that could assist Wilson's with negating, refuting allegations made by Hanson Young with regards to the security role conducted by Wilson's at the processing centres. Their secondary role was to ensure her safety.

The Senate has been misled and misinformed by Wilson Security Executive Management that this was the action of a lone wolf operator, management were fully aware of this operation. A considerable amount of video surveillance footage was taken of Sarah Hanson Young, both inside and out of the processing centres by tasked Emergency Response Team members.



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This was then provided to the Wilson Security Intelligence unit for dissemination.<sup>60</sup>

1.114 The purpose of Senator Hanson-Young's visit to Nauru from 15 December 2013 to 18 December 2013 was to inspect conditions for asylum seekers living in the detention camps and for refugees that would later be released into the community. Interference with the senator carrying out these parliamentary responsibilities may well constitute contempt of the Senate.

1.115 Allegations of spying on a Commonwealth member of parliament made by two separate Wilson Security guards and corroborated by three more Wilson Security guards to the ABC, raise very serious questions about whether a Commonwealth crime or contempt of the Senate has been committed. The evidence given to the committee by the department, Wilson Security and Transfield Services regarding the extent of this spying is at odds with the evidence of five separate Wilson Security guards with first-hand knowledge of these events, who have each separately approached this committee or the media, suggesting these organisations have misled the senate, either wilfully or as a result of inadequate investigations conducted by them into these matters. These issues need to be resolved.

#### **Recommendation 4**

**1.116 The Australian Greens recommend the AFP conduct a full investigation into the matters surrounding the spying on Senator Hanson-Young to determine whether any Commonwealth offences have been committed and, if so, refer them to the CDPP.**

**1.117 The Australian Greens recommend these matters be referred to the Privileges Committee for investigation of a possible contempt of the senate.**

**1.118 The Australian Greens recommend an independent review be commissioned by the department to fully investigate these matters.**

#### **Offshore processing**

1.119 Submitters to the inquiry told the committee that:

- offshore processing is harmful, regardless of the environment;
- offshore processing should be abolished; and
- offshore processing is a significant investment of Australian taxpayers' money with no guarantee of value for money.

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60 Name withheld, *Submission 99*, p. 1.

### *Harmful effects of detention*

1.120 Some submitters argued that detention is harmful regardless of the environment,<sup>61</sup> with the Law Council of Australia submitting that there were 'foreseeable risks of prolonged and remote detention'.<sup>62</sup> STC submitted that:

A significant body of research has emerged over the past decade demonstrating or confirming that immigration detention causes significant psychological harm to asylum seekers, with particular impact on children.<sup>63</sup>

1.121 STC further submitted that the effects of detention could be ongoing:

Immigration detention can cause ongoing damage to children beyond the period of detention. Some experts have suggested that the negative impacts of immigration detention can be ongoing for years after their release and in some cases, risks having a lifelong impact on children. This can include educational and social difficulties, psychological trauma and a need for ongoing counselling.<sup>64</sup>

1.122 Similarly, the Royal Australasian College of Physicians' statement on the health of people seeking asylum said:

There is a large body of evidence to suggest that prolonged detention, particularly in isolated locations with poor access to health and social services combined with an uncertainty as to the outcome asylum seeker claims, has severe and detrimental effects on health outcomes. These longterm effects include damage to social and emotional functioning, especially in those who have experienced torture or trauma, and the worsening of existing mental health problems.<sup>65</sup>

1.123 Ms Charlotte Wilson, a former employee of STC, submitted that:

I firmly believe that the level of trauma that asylum seekers have been subjected to has caused profound damage to nearly every single man, woman and child who has been arbitrarily interned in Nauru.<sup>66</sup>

1.124 Another former employee of STC wrote that:

...indefinite detention of children and their families, within the NRPC context, causes unacceptable emotional, psychological and physical harm to both children and adults.<sup>67</sup>

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61 See, for example: Human Rights Law Centre and UNICEF, *Submission 58*; Law Council of Australia, *Submission 57*.

62 Law Council of Australia, *Submission 57*, p. 9.

63 Save the Children Australia, *Submission 30*, p. 12.

64 Save the Children Australia, *Submission 30*, p. 13.

65 Royal Australasian College of Physicians, *Statement on the health of people seeking asylum*, August 2013, p. 2.

66 Ms Charlotte Wilson, *Submission 79*, p. 7.

67 *Submission 81*, p. 1.

1.125 The Refugee Action Collective Queensland (RAC-Q) submitted that:

Almost without exception, the detainees who have been at Nauru display signs of anxiety, despair, sadness or loss of hope, and this is compounded by the fact that they still live in a constant state of fear of being sent back there.<sup>68</sup>

1.126 The observations and experiences of these workers within the RPC environment evidence a regime that further traumatises an already traumatised group of people.

***Calls for the abolition of offshore processing***

1.127 Submitters told the committee that using detention as a deterrent was fundamentally at odds with protecting asylum seekers and that the practice should be abolished.<sup>69</sup> For example, the Refugee Council of Australia (RCOA) argued against offshore processing:

While RCOA would certainly welcome any efforts to alleviate the suffering of the people currently subject to offshore processing in Nauru, we believe that objective of deterring asylum seekers is irreconcilable with the objective of protecting asylum seekers. As such, we see no viable way forward for offshore processing and strongly recommend that it be abolished entirely.<sup>70</sup>

1.128 A number of submitters called for the transfer of children in particular to Nauru for detention to cease.<sup>71</sup>

1.129 DASSAN submitted that if a total ban on offshore processing could not be enacted, that there should be a 'moratorium on offshore transfers, including of transitory persons' until conditions are improved.<sup>72</sup>

***Offshore processing is an expensive model***

1.130 Offshore processing is a much more expensive model than onshore or community-based processing.

1.131 The RCOA argued in favour of an alternative to offshore processing, submitting that '[c]ommunity-based support arrangements offer a humane and cost-effective alternative to offshore processing and closed immigration detention'.<sup>73</sup>

1.132 Professor David Isaacs submitted that there is a disparity between offshore and community detention costs:

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68 Refugee Action Collective Queensland, *Submission 73*, p. 9.

69 *Submission 81*, p. 16.

70 Refugee Council of Australia, *Submission 16*, p. 3.

71 ChilOut, *Submission 13*; Human Rights Law Centre and UNICEF, *Submission 58*, p. 1; Human Rights Watch, *Submission 72*;

72 DASSAN, *Submission 61*, p. 15.

73 Refugee Council of Australia, *Submission 16*, p. 4.

The human cost of our asylum seeker policy is enormous. But the economic cost is also astronomic: last year Australia spent over \$500,000 per person in detention on Nauru. In contrast, it costs only a few thousand dollars per person in community detention in Australia.<sup>74</sup>

1.133 The department advised that for the first ten months of the 2014-15 financial year, \$415.6 million was spent on capital and operating costs. There are currently 655 asylum seekers in the RPC. It is difficult to justify this amount of money to detain that number of people.

1.134 Further, given this significant investment of taxpayers' money, the lack of transparency and accountability to the Australian public is concerning. Conflated figures for Nauru and Manus Island provided in the Portfolio Budget Statement, and direct and indirect costs also make the exact financial burden to the Australian taxpayer difficult to distinguish.

### **The Regional Processing Centre as a deterrent**

1.135 It was put to the committee that, owing to the low standards of living and poor management, the RPC must have been designed to act as a deterrent. For example, Ms Blucher told the committee that in her view, the RPC was purposefully operated and managed to act as a deterrent:

The reason that it seems to me to be purposeful is that I do not understand how the Australian government could pay \$1.2 billion to a large logistics company that specialises in logistics—that is, provision of services and items and materials—and then children could not be supplied with shoes that fit them, or toys—really basic needs. It does not make any sense to me. I do not understand.<sup>75</sup>

1.136 This view was echoed in other evidence provided to the committee which demonstrated the inability to deliver basic functions such as the provision of clothing, footwear and food, and clean amenities such as toilets. This is despite the significant amount of money invested in contracts with service providers.

1.137 The committee received evidence alleging that the RPC further acts as a deterrent through the dehumanising treatment of asylum seekers. Recurring themes raised in submissions concerned:

- standards of living which would not be accepted by the Australian community;
- the description of the RPC as 'prison-like'; and
- a general lack of respect shown to asylum seekers by contracted service provider staff, including the use of Boat Identification Number in place of a name.

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74 Professor David Isaacs, *Submission 11*, p. 2.

75 Ms Natasha Blucher, *Committee Hansard*, 20 July 2015, p. 64.

### *Low standards of living*

1.138 Evidence received by the committee shows that the standards of living afforded to asylum seekers within the RPC would not be accepted by the Australian community. Asylum seekers and refugees on Nauru submitted that difficult living conditions and attitude of contracted service provider staff were dehumanising. Although much of the evidence received by asylum seekers and refugees was accepted on a confidential basis, it often referred to the effects of low standards of living on mental and physical health.

1.139 For example, a letter provided to the committee by refugees on Nauru, and subsequently published, said:

We were patient when they sent us to Nauru like a criminal. We were patient when they dumped us in those tents like rubbish. We were patient when they treated us like animals. We were patient when they didn't give us water for days.<sup>76</sup>

1.140 Dr Peter Young told the committee that a lack of adequate resources has a negative impact on peoples' behaviour:

Where the conditions are difficult, where people have been living in poor conditions, where there is a lack of availability of basic needs—even things like water and sanitary items—those things create a situation where there is competition. When people have to compete for basic needs that tends to affect their behaviour in negative ways.<sup>77</sup>

1.141 Transfield Services advised that when they assumed responsibility for the provision of goods in February 2014, there were 571 outstanding requests for clothing and other material goods'.<sup>78</sup>

### *Sanitary products*

1.142 It was put to the committee that difficulty in obtaining access to sanitary products was an example of the dehumanising treatment of asylum seekers. Ms Betts told the committee that female asylum seekers had reported difficulties in obtaining access to sanitary pads because of 'security reasons':

There were several occasions where the asylum seekers, particularly the women, would come and ask me or another female worker who was in the camp at the time to go and ask the guards on their behalf because they did not feel comfortable asking a male for such items...I would have to bring the person with me so that the guard could witness me handing it over...I was informed that it was alleged that sanitary items, pads, were used to

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76 Australian Churches Refugee Taskforce, *Submission 32, Attachment 1*, p. 11.

77 Dr Peter Young, *Committee Hansard*, 9 June 2015, p. 2.

78 Transfield Services, response to *Submission 69*, p. 7.

soak gasoline from the floodlights in the riots of 2013 and that was why they were not being handed out.<sup>79</sup>

1.143 Wilson Security, however, advised the committee that sanitary pads were distributed by another service provider, saying that 'it is not a security matter'.<sup>80</sup>

### *Shoes*

1.144 Numerous submissions referred to the inadequate provision of shoes to asylum seekers, with examples given of children issued with thongs which break or wear out quickly. Submitters said that when the thongs broke, they were often fixed or held together with wire or cable ties, with one witness saying they had used a bread tie and string.<sup>81</sup> The use of these makeshift materials for repairs was the source of discomfort and pain to the wearers, according to submitters.<sup>82</sup>

1.145 Ms Wilson submitted that pairs of shoes could be shared by multiple persons:

A female asylum seeker told me that she was sharing one pair of thongs with four women, and they would take turns wearing them to go to the toilet block or English classes.<sup>83</sup>

1.146 A former STC employee gave an example of a five-year-old girl with inadequate access to clothing and footwear:

Despite regular, multiple requests for clothing and shoe exchanges, she was not provided with additional clothing, underwear or shoes. The holes in the bottom of her Crocs exposed her feet to the sharp, hot gravel that covered [RPC 3].<sup>84</sup>

### *Toys*

1.147 Submitters told the committee that toys were not available to children in the RPC, and noted the damaging effect this can have on children's development. Submitters also highlighted the risk of potential 'grooming' behaviour allegedly displayed by RPC employees who distributed toys to children.<sup>85</sup>

1.148 Professor Isaacs and Ms Alanna Maycock, former consultants for IHMS, submitted that toys were important for children's development:

There was not a single toy in the whole medical centre. This contravenes best paediatric practice...Toys are also a valuable tool used by paediatricians and child psychiatrists to observe a child's behaviour, and to

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79 Ms Samantha Betts, *Committee Hansard*, 20 July 2015, p. 58.

80 Mr John Rogers, Executive General Manager, Southern Pacific, Wilson Security, *Committee Hansard*, 19 May 2015, p. 41.

81 Ms Samantha Betts, *Committee Hansard*, 20 July 2015, pp 57-58.

82 See, for example: *Submission 82*, p. 7.

83 Ms Charlotte Wilson, *Submission 79*, p. 6.

84 *Submission 81*, pp 2-3.

85 Ms Viktoria Vibhakar, *Submission 63*, p. 19.

watch them interact and socialise. Play can be essential when assessing development. Play can also be important when trying to differentiate whether a child's withdrawal is due to trauma or autism.<sup>86</sup>

1.149 IHMS responded to the claim that there were no toys in the medical centre by noting:

Toys are readily available, however it is recognised that these are regularly stolen... IHMS also recommends that service providers are counselled on the concerns we have of local external service provider staff stealing toys within the clinic.<sup>87</sup>

### ***Description of the Regional Processing Centre as 'prison-like'***

1.150 Some submitters argued that the presence of tall fencing, regimented meal and shower times, and lack of personal agency made the RPC seem 'prison-like'.<sup>88</sup> For example, a former STC employee submitted that:

A number of Asylum Seekers commented to me that they thought they felt like they had been imprisoned in the centre after the installation of this fence. Asylum seekers noted they had committed no crime and wondered why they had been imprisoned.<sup>89</sup>

1.151 Mr Mark Isaacs, a former worker in the RPC, also argued that the RPC was like a prison:

The 'camp', as I call it, was also encircled by approximately two metre high temporary fencing. Within the RPC there were service provider offices, a staff mess hall, and a parking lot and a separately cordoned camp for the men, also enclosed by temporary fencing and the perimeter of which was patrolled by Australian Wilson Customer Service Officers (CSOs). It was clear they were not to leave these confines. And if people weren't being processed, as indeed they weren't – for months on end – then this was effectively their prison.<sup>90</sup>

1.152 Former Chief Justice the Hon Geoffrey Eames AM QC submitted that '[t]he uniforms of guards and detainees, and their body language and activity, suggested that the camp was a prison, albeit without visible weapons'.<sup>91</sup> Mr Eames elaborated on this view at a public hearing:

I know there was a big debate in Australia about whether it was right to call the detention centres a prison or not. I have seen plenty of prisons and as much as they have physical constraints they have an atmosphere about them

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86 Professor David Isaacs and Ms Alanna Maycock, *Submission 66, Attachment 1*, pp 4-5.

87 IHMS, response to *Submission 66*, p. 4.

88 See, for example: Ms Alanna Maycock, *Submission 66*, p. 2;

89 *Submission 82*, p. 6.

90 Mr Mark Isaacs, *Submission 67*, p. 1.

91 Mr Geoffrey Eames AM QC, *Submission 70*, p. 9.

of control and removal of entitlements, and certainly in my walking around the camp, seeing the demeanour and the interaction between the security guards and the people detained in the centre, it just struck me like any number of prisons I have seen.<sup>92</sup>

1.153 Ms Betts also discussed the prison analogy:

I found the points system used for the canteen strikingly similar to an incarceration, as was the physical nature of the standardised mealtimes and standardised shower times—that sort of regimented living, I guess you would call it. In terms of the similarities of the actual experience of the detainees, it was quite dissimilar. The asylum seekers have no knowledge of the length of their stay. There are so many questions, and they do not know how long they are going to be there for. They do not see any hope of what is going to happen in the future.<sup>93</sup>

***Use of Boat Identification Number in place of name***

1.154 Throughout the inquiry, former employees of contracted service providers told the committee that asylum seekers were routinely referred to by their boat Identification Numbers rather than by their names. Submitters told the committee that the routine use of boat ID as the only identifier of an asylum seeker throughout the RPC was having an effect on children and adults, with children signing drawings and self-identifying with a number rather than a name, and adults identifying themselves by number on forms.<sup>94</sup>

1.155 Ms Wilson submitted that:

Although in our office and within Save the Children we identified clients by name, the system used on Nauru by all the other service providers was to identify asylum seekers by boat ID numbers...On countless occasions I observed children walking through and calling out their ID numbers to identify themselves, which were then recorded by Wilson's security staff. When asked for their name, both children and adults will respond immediately by reciting their boat ID number instead of their names. It is also typical that children will sign their pictures or drawings with ID numbers rather than names.<sup>95</sup>

1.156 Mr Andrew Harris, a former worker in the RPC submitted that he 'was told by security staff that they are briefed to use boat IDs of asylum seekers and not names'. Mr Harris continued:

This means that the main contact asylum seekers have with staff is with people who are referring to them by a number. Asylum seekers noted this to

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92 Mr Geoffrey Eames AM QC, *Committee Hansard*, 20 July 2015, p. 70.

93 Ms Samantha Betts, *Committee Hansard*, 20 July 2015, p. 64.

94 See, for example, Darwin Asylum Seeker Support and Advocacy Network, *Submission 61, Attachment 1*, p. 3; IHMS, response to *Submission 66*, p. 3; Ms Charlotte Wilson, *Submission 79*, p. 2; *Submission 82*, pp 4-5; Ms Natasha Blucher, *Submission 83*, p. 11, p. 18;

95 Ms Charlotte Wilson, *Submission 79*, p. 2.



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me as a dehumanising experience that didn't uphold their dignity as a human being.<sup>96</sup>

1.157 One former STC employee submitted that:

Their [Wilson Security] client lists did not even have a column for the client's names. Just Boat Id and corresponding tent allocation number. This was still common practice (despite conversations confirming that they had been told it must cease) in October 2014 during my last shift on the island.<sup>97</sup>

1.158 Wilson Security advised that the department has issued guidelines against the use of boat IDs in place of names:

...there has always been a clear request or guideline by the department to ensure that we use names, and the clear reason is around the dignity and respect of the asylum seeker...that has not always been the case and there have been times when we have had to reinforce our correct procedure to people. There have been occasions when forms have been produced with just numbers on them and we have had to go about correcting those.<sup>98</sup>

1.159 Ms Blucher refuted the claim by Wilson Security that instances in which boat ID had been used were in error, and told the committee:

...for the entire period of time that I was working in the Nauru RPC, the only Wilson paperwork that I saw—in the form of internal movement sheets, which officers would tick off at the gates as asylum seekers moved through—contained only numbers, only boat identification numbers, and there were no names on those sheets.<sup>99</sup>

### **No guarantee of safety and security**

1.160 Evidence received on a confidential basis from asylum seekers and refugees on Nauru alleged a culture of fear in the RPC with no guarantee able to be given around personal safety and security.

1.161 During the course of the inquiry, the committee sought to clarify whose responsibility it is to guarantee the safety and security of asylum seekers within the RPC. It became apparent that it is the responsibility of the Government of Nauru to guarantee the safety and security of asylum seekers, as discussed below.

1.162 Moreover, the committee sought to understand why, given the employment of a significant security personnel cohort and the involvement of the department at all levels of the operation of the RPC, there were so many allegations of sexual and physical abuse.

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96 Mr Andrew Harris, *Submission 93*, p. 7.

97 *Submission 94*, p. 12.

98 Mr Brett McDonald, Security Contract Manager, Wilson Security, *Committee Hansard*, 20 July 2015, p. 36.

99 Ms Natasha Blucher, *Committee Hansard*, 20 July 2015, p. 55.

1.163 The lack of safety and security extends outside of the centre, to the entire island of Nauru. The committee heard from submitters that tension existed between Nauruan locals and refugees resettled into the community.<sup>100</sup> One submitter told the committee of multiple incidents in which refugees in the community had been targeted, and alleged that there was no protection available to them.<sup>101</sup>

1.164 ChilOut submitted that '[t]he settlement of refugees amongst the Nauruan population places them once again in proximity with the perpetrators of sexual abuse',<sup>102</sup> and told the committee that unaccompanied minors released into the community had faced risks to their safety:

...29 unaccompanied children (UACs) were released into the community on Nauru following fears for their safety while held in the family compound within the RPC.

In the following weeks, the teenage boys were subjected to a series of physical and verbal attacks by a group of locals, with several of the boys requiring hospitalisation as a result of their injuries.<sup>103</sup>

1.165 The department reported to Comcare an incident on 23 November 2014 in which two unaccompanied minors were assaulted, with the brief description: 'Assault of 2 unaccompanied refugee minors, superficial injuries'.<sup>104</sup> It was classed as a non-notifiable incident and was not investigated by Comcare. It is not known to the committee whether the incident referred to Comcare is the same incident referred to by ChilOut.

1.166 Professor Isaacs relayed an example of a female asylum seeker who disclosed an allegation of rape to him:

She told me that since the rape, one guard had offered her extra shower time in return for sexual favours (each person was restricted to two minutes a day because of water restrictions), and on another occasion a different guard offered marijuana in return for sexual favours. She wept uncontrollably for ten minutes when telling me her story...<sup>105</sup>

1.167 Ms Diallo submitted an example of the threat of sexual violence: 'One particular 13 year old girl, had received threats while in the camp to her physical safety, and there had been threats of rape made to her older sister'.<sup>106</sup>

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100 See, for example: Soroptimist International (Brisbane Club), *Submission 22*, p. 3.

101 *Submission 71*, pp 1- 2.

102 ChilOut, *Submission 13*, p. 11.

103 ChilOut, *Submission 13*, p. 6.

104 Australian Lawyers' Alliance, Supplementary to *Submission 14*, p. 39. This is incident #339.

105 Professor David Isaacs, *Submission 11*, p. 1.

106 Ms Kirsty Diallo, *Submission 64*, p. 6.

### *Sexual assault of women and children outside the RPC*

1.168 On top of the threats received while living in the RPC, it was put to the committee that asylum seekers had deep concerns about being settled in the community because of fears for their safety. One submitter stated:

It became clear early that, only very limited planning from DIBP and the Nauruan Government had gone into the 'settlement' of Asylum Seekers found to be refugees on Nauru.

Refugees were released from the OPCs with very limited information on what to expect in the Nauruan community. Some Asylum Seekers, especially the SAFs [Single Adult Females], were very scared about leaving the OPC to go into the Nauruan community, as there were many rumours on how refugees in the community would be treated particularly around being raped or being attacked by dogs.<sup>107</sup>

1.169 DASSAN submitted multiple accounts of asylum seekers who had expressed fears of being released into the Nauruan community. Examples were given of instances in which female asylum seekers had been sexually harassed by RPC staff, who intimated that the harassment would continue once the asylum seekers were released into the community.<sup>108</sup> One example in particular reveals the level of threats women receive simply undertaking day-to-day tasks while in the RPC, and what they can expect if they are resettled:

When the women went to the office/ supplies area, to obtain goods, the guards harassed them about wanting to be with them in the local community when they were released. When this was ignored by the women, the guards said that they would show them what would happen to them on the outside.<sup>109</sup>

1.170 A former Wilson Security employee submitted other examples of this harassment by Nauruan men when women are resettled in the Nauruan community:

I received a phone call from a refugee living in the community after receiving a positive RSD. She sounded deeply distressed and told me her friend had just called her saying a Nauruan is trying to break into her room. The Nauruan male was known to the female refugee in the room he was attempting to enter. Eventually the male broke the door handle and left. I saw the broken door handle the following day while walking to the Anibare boat harbor. I am aware that there are frequently drunk Nauruan males entering the refugee accommodation sites in the community calling for females to come out of their rooms.<sup>110</sup>

1.171 Ms Wilson submitted that she had witnessed a threat of rape made to female asylum seekers, saying: 'I have witnessed a Nauruan security guard telling a group of

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107 *Submission 82*, pp 7-8.

108 DASSAN, *Submission 61*, p. 8,

109 DASSAN, *Submission 61*, p. 9.

110 *Submission 62*, p. 3.

single Somali women that if they run away 'you will get raped by the local boys'.<sup>111</sup> Another submitter wrote that an incident report was filed for this allegation, but with no outcome known.<sup>112</sup>

### ***Incident of May 2015***

1.172 Submissions to the inquiry related an incident in May 2015 in which a female asylum seeker participating in the 'open centre' was found disoriented and with injuries near a road on the island, after failing to return to the centre.<sup>113</sup> The incident was also reported in the media. The submissions alleged that the asylum seeker had been sexually assaulted and beaten.

1.173 One submitter alleged that proper medical care had not been administered, and that proper police procedures were not followed.<sup>114</sup> This was echoed in other evidence to the committee where the committee was advised that the police who had responded to the incident had stopped to 'watch a fireworks display for 45 mins' with the asylum seeker in the car before interviewing her at the police station.

1.174 It was put to the committee that the department had denied a request by IHMS to transfer the asylum seeker to Australia for medical treatment. This was also reported in the media.<sup>115</sup> Subsequent media reports stated that the asylum seeker was experiencing kidney failure as a result of a hunger strike.<sup>116</sup>

1.175 The department advised on 20 August 2015 that the asylum seeker had been brought to Australia for treatment.<sup>117</sup>

1.176 Threats of sexual violence as a means of intimidation are disturbing allegations which have been made in multiple submissions to the inquiry, and only some of these examples are provided above. The allegations not only show the lack of security and safety that can be provided to asylum seekers in resettlement, they also go to evidencing the 'culture of fear' which submitters have referred to throughout the inquiry.<sup>118</sup>

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111 Ms Charlotte Wilson, *Submission 79*, p. 7.

112 *Submission 82*, p. 6.

113 *Submission 71*, p. 1.

114 *Submission 71*, p. 1.

115 Alex McDonald, 'Nauru asylum seeker rape victim refused medical treatment in Australia, family says', *ABC News*, 12 August 2015, <http://www.abc.net.au/news/2015-08-11/asylum-seeker-allegedly-raped-denied-treatment-in-australia/6689192> (accessed 13 August 2015).

116 Ben Doherty, 'Nauru guard who ordered spying on Sarah Hanson-Young to face inquiry', *The Guardian*, 19 August 2015, <http://www.theguardian.com/world/2015/aug/19/nauru-guard-who-ordered-spying-on-sarah-hanson-young-to-face-inquiry> (accessed 20 August 2015).

117 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 20 August 2015, p. 40.

118 See, for example: Josephite Justice Office, *Submission 12*, p. 4; Ms Viktoria Vibhakar, *Submission 63*, p. 35; Mr Mark Isaacs, *Submission 67*, p. 3.

1.177 The inability for vulnerable women and children to be removed from situations of family violence, assault, abuse and harassment was noted in the committee's report to be at odds with best practice and not of the standard required in Australia. The Australian Greens believe that the protection of asylum seekers, particularly children, is limited by the inability for vulnerable people to be removed from situations of harm. The resettlement of asylum seekers in Nauru further does not meet this standard.

### **No oversight or responsibility**

1.178 Throughout the inquiry, submitters and witnesses noted an apparent lack of oversight of staff employed within the RPC. Questions were raised regarding:

- responsibility for the safety of asylum seekers;
- the extent of Commonwealth oversight and accountability to the Australian public;
- oversight of decisions made by the Nauruan Government;
- the response of the department to allegations of abuse;
- Australia's human rights obligations; and
- the existence of an overly complicated management framework consisting of numerous contractors and subcontractors.

1.179 Ms Maycock submitted that:

Nauru has a dark, chilling feeling of lawlessness about it, a feeling that you can behave as inappropriately as you wish, with no respect or regard for anyone and there will be no one to answer to and no repercussions or punishment for your actions.<sup>119</sup>

### ***Responsibility for the safety of asylum seekers***

1.180 Transfield Services advised that responsibility for the security of asylum seekers resides with the Nauruan Government:

**We are not contractually obliged to guarantee the security of the asylum seekers but we work together with other stakeholders to ensure that it is a secure environment.** The centre is under the operation of the government of Nauru, so they have the overarching legal obligations that exist in that country to guarantee the safety of the citizens and the people in the centre.<sup>120</sup>

1.181 The department also advised that the ultimate responsibility for the personal safety of asylum seekers within the RPC was with the Nauruan Government.<sup>121</sup>

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119 Ms Alanna Maycock, *Submission 66*, p. 1.

120 Mrs Kate Munnings, Chief Executive Operations - Logistics, Construction & Consulting, Transfield Services, *Committee Hansard*, 20 July 2015, p. 31. Emphasis added.

121 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 20 July 2015, p. 93.

However, legal and human rights bodies submitted that Australia has a non-delegable duty of care to asylum seekers within the RPC on Nauru.<sup>122</sup>

1.182 There is no capacity for inquiry or scrutiny by the Australian Parliament of the performance of the Nauruan Government against the legal and operational obligations they are purported to hold. Therefore, there are no means for the Australian Parliament and the Australian public to know whether the safety and security of asylum seekers can be guaranteed. This is a returning concern, and once again questions the significant investment of Australian taxpayers' money into Nauru RPC.

1.183 This lack of adequate Commonwealth oversight is discussed below.

### ***Insufficient Commonwealth oversight***

1.184 ChilOut submitted that they held concerns over the safety, health and wellbeing of children within the RPC:

We believe that the allegations that are the subject of the Inquiry are extremely concerning and are indicative of a failure by the Australian Government to safeguard the health and wellbeing of children detained in the Regional Processing Centre on Nauru.<sup>123</sup>

### ***No oversight of the Nauruan Government***

1.185 Mr Eames told the committee that scrutiny of the decisions or steps taken by the Nauruan Government were not easily discerned:

The Nauru government had adopted a series of steps which very much invoked secrecy and withheld open discussion about the situation in Nauru generally. The Nauru government would not allow any media attention on the opposition, for example. The media unit in Nauru was told that they could not interview and publish the views of opposition members. That had been the case for quite a while. They passed legislation, which I refer to in my submission, which seems to me is likely to have quite a chilling effect on anyone who would want to be critical of government or government policies. It was not a situation where people would be confident about coming forward...There is a general atmosphere there that you cannot have an open discussion.<sup>124</sup>

### **No capacity on Nauru**

1.186 The Republic of Nauru occupies a small area of 21 square kilometres, and has a population of around 10,000.<sup>125</sup> The Nauruan Government-issued *Nauru Bulletin* for

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122 See, for example: ACFID and ACOSS, *Submission 59*, p. 3.

123 ChilOut, *Submission 13*, p. 2.

124 Mr Geoffrey Eames AM QC, *Committee Hansard*, 20 July 2015, p. 70.

125 The Government of the Republic of Nauru, [www.naurugov.nr](http://www.naurugov.nr) (accessed 27 May 2015).

June 2015 announced that '[t]he major source of revenue for the Government now comes from the operation of the Regional Processing Centre in Nauru'.<sup>126</sup>

1.187 The *Nauru Bulletin*, issued fortnightly, refers to a number of donations by foreign governments and indicates a reliance on donated goods in order to function. For example, 40 hospital beds and 10 sets of hearing aids were donated recently to the Republic of Nauru hospital by the Republic of China (Taiwan),<sup>127</sup> and two laptop and three desktop computers were donated by Thailand for use by Nauru's Department of Foreign Affairs and Trade, who said that 'the additional equipment is a great boost for the department and will now allow all the staff members to have access to a computer'.<sup>128</sup> The reliance on donated goods belies a nation with a severe lack of capacity to host, operate and run a facility like the RPC with fluctuating numbers of asylum seekers.

1.188 Submitters raised questions about:

- the capacity of the Nauru Police Force to investigate crimes;
- no hospital facilities or ongoing staff for pregnant asylum seekers to give birth;
- no laboratory facilities for carrying out secondary drug testing of contracted staff; and
- the collapse of the rule of law.

#### ***Capacity of the Nauru Police Force to undertake investigations***

1.189 The Moss Review stated that there was a need for a more structured relationship between contracted service providers and the NPF:

At present, the relationship between Transfield Services/Wilson Security and the Nauruan Police Force relies more on individuals rather than a systematic approach.<sup>129</sup>

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126 Republic of Nauru, *Nauru Bulletin*, June 2015, [http://www.naurugov.nr/media/45875/nauru\\_20bulletin\\_20\\_07\\_25jun2015\\_20\\_28125\\_29.pdf](http://www.naurugov.nr/media/45875/nauru_20bulletin_20_07_25jun2015_20_28125_29.pdf) (accessed 9 July 2015).

127 Republic of Nauru, *Nauru Bulletin*, June 2015, [http://www.naurugov.nr/media/45875/nauru\\_20bulletin\\_20\\_07\\_25jun2015\\_20\\_28125\\_29.pdf](http://www.naurugov.nr/media/45875/nauru_20bulletin_20_07_25jun2015_20_28125_29.pdf) (accessed 9 July 2015). Other issues of the Bulletin indicated that the Republic of China (Taiwan) also donated a solar power system for the health centre, and 'will also do repairs this year to the solar street lights and this is valued at USD\$100,000'. Republic of Nauru, *Nauru Bulletin*, February 2015, [http://www.naurugov.nr/media/44546/nauru\\_20bulletin\\_20\\_02\\_17feb2015\\_20\\_28120\\_29.pdf](http://www.naurugov.nr/media/44546/nauru_20bulletin_20_02_17feb2015_20_28120_29.pdf) (accessed 9 July 2015).

128 Republic of Nauru, *Nauru Bulletin*, July 2015, [http://www.naurugov.nr/media/46005/nauru\\_20bulletin\\_20\\_09\\_20\\_20july2015\\_20\\_28127\\_29.pdf](http://www.naurugov.nr/media/46005/nauru_20bulletin_20_09_20_20july2015_20_28127_29.pdf) (accessed 29 July 2015).

129 Mr Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, 6 February 2015, p. 76.

1.190 The Moss Review also noted the potential for under-reporting of incidences of abuse:

In some cases, transferees told the Review that they had not reported particular incidents because they had lost confidence that anything would be done about their complaints.<sup>130</sup>

1.191 Serious questions were raised throughout this inquiry regarding the capacity of the NPF to adequately and appropriately investigate allegations of criminal activity, with particular attention drawn to their capacity to investigate sexual assault. One submitter alleged that, in the wake of a female asylum seeker being found naked and beaten, no forensic testing was undertaken, and no photographs were taken.<sup>131</sup>

1.192 The same submitter went on to allege numerous examples of the lack of capacity of the NPF to respond to incidents and investigate allegations of criminal activity.

1.193 Other submitters made allegations regarding the behaviour of Nauruan police officers, and alleged misconduct.<sup>132</sup>

1.194 The Castan Centre for Human Rights Law submitted:

...in theory, the Nauruan police force should have primacy in investigations of criminal matters at the centre, the [Moss] report suggests that much of the 'policing' at the centre is in fact done by Transfield Services/Wilson Security, which are contracted by the Australian government and report to the Australian government.<sup>133</sup>

1.195 The former resident magistrate on Nauru, Mr Peter Law, submitted that there was an:

...apparent failure of the NPF [Nauru Police Force] to properly investigate and charge perpetrators of incidents reported at the Processing Centre concerning allegations of physical and sexual assaults against women and children identified in the Moss Report. The issue of capability is overshadowed by motivation. The lack of action suggests the Nauruan Government is less than interested to see these incidents investigated and prosecuted because such action may reflect adversely on Nauru as a place to process and settle asylum seekers.<sup>134</sup>

1.196 Mr Law also submitted that, in his view, there had been a breakdown in the relationship between the AFP and the NPF:

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130 Mr Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, 6 February 2015, p. 46.

131 *Submission 71*, p. 1.

132 See, for example, *Submission 94*, p. 14.

133 Castan Centre for Human Rights Law, *Submission 18*, p. 4.

134 Mr Peter Law, *Submission 28*, pp 1-2.



Until July 2013 the Australian Federal Police (AFP) had performed a very important role in Nauru by providing a senior AFP officer to carry out the role of Commissioner of Police of Nauru, together with logistical and training support to police. The termination by the Nauruan Government of the appointment of Richard Britten as the Commissioner of the Nauru Police Force (NPF) on 19 July 2013, the night of the riots at the Processing Centre, has never been explained. From this time, I lost confidence in the capacity of the NPF to act independently or competently.<sup>135</sup>

1.197 Mr Lee Gordon, Head of Nauru Programs for STC, told the committee:

There are some issues in relation to the police force and its capacity to undertake investigations. It is a small police service. It does not have a lot of detailed comprehensive training around working with people with trauma or even around sexual assaults. So if we were thinking of it in terms of whether that is a competent way to deal with something then I guess there would be a question there as to whether that would be the case.<sup>136</sup>

1.198 The concerns raised by submitters and witnesses regarding the capacity of the NPF to properly undertake investigations reveal a nation that is unable to meet the standards of policing that asylum seekers need to feel protected in the Nauruan community, and a standard Australia has an obligation to ensure exists.

## Conclusion

1.199 Throughout its inquiry, the committee received substantive evidence that the conditions of living in the RPC on Nauru are of an unacceptably low standard.

1.200 Evidence put to this committee demonstrates that the conditions within the RPC on Nauru can never be guaranteed to an acceptable standard to protect the human rights of asylum seekers.

1.201 While women continue to experience sexual violence, sexual harassment and sexual exploitation and while children continue to experience abuse at the hands of family members or staff of contracted service providers, with no option to be removed from danger, the onus is on the Australian Government to intervene.

1.202 The Australian Government provides funding for all aspects of the operation and management of the RPC, manages the contracts for service providers, provides funding for Nauruan infrastructure, and selects and transfers asylum seekers to the RPC. Significant amounts of taxpayers' money is invested in the RPC, but with minimal transparency and oversight by the Commonwealth.

1.203 The Australian Government has consistently said that the operation and management of the RPC on Nauru is a matter for the Government of Nauru. The argument that total funding, management of contracts and in-depth involvement in the daily running of the RPC does not amount to control of the RPC is not a compelling one.

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135 Mr Peter Law, *Submission 28*, p. 2.

136 Mr Lee Gordon, Head of Nauru Programs, *Committee Hansard*, 19 May 2015, p. 53.

1.204 In asserting that the Nauruan Government has responsibility for the RPC, and therefore assumes the legal responsibilities regarding human rights obligations, the Australian Government is not able to assure the Australian public that their money is being spent wisely or in the best interests of Australians.

1.205 It is concerning that Australian taxpayers' money can be spent in large amounts with such limited reporting to the parliament and to the Australian public.

1.206 Throughout the inquiry, the department, along with head contracted service provider Transfield Services, have advised of the existence of high-level corporate guidelines and policies which they argue ensure an acceptable standard of living. Evidence put to the inquiry has indicated, however, that there is significant disconnect between these documents and the day-to-day running of the Regional Processing Centre. Some submitters even posited that the poor running of the RPC must be intentional, given the existence of these policies, the large amounts of money spent on contracts, and the reassurances of the department and Transfield Services.

1.207 The Republic of Nauru simply lacks the capacity to carry out the operation and management of the Regional Processing Centre in the face of a collapsing rule of law, lack of investigatory infrastructure and general inability to conduct the actual operation and management of the facility.

1.208 Nauru is not and cannot possibly fulfil its obligations under the MOU at present with the complete breakdown of rule of law in the country. The child protection framework in Nauru is inadequate and if removal from harm is not an option then meaningful child protection is impossible. The Nauruan community is just as unsafe for asylum seekers and refugees as the RPC. Removing victims of abuse from the RPC to the community in Nauru will not make them any safer.

### **Recommendation 5**

**1.209 The Australian Greens recommend the Nauru regional processing centre be closed and all refugees and asylum seekers living there be transferred to Australia.**

**1.210 If the regional processing centre is to continue to operate then, in addition to the recommendations in the main report, the Australian Greens recommend:**

- (a) that Transfield Services and Wilson Security are disqualified from holding any ongoing contract for services;**
- (b) that the ongoing management of the RPC should be undertaken by the government itself or contracted only to qualified and professional welfare and social workers from a not-for-profit organisation, especially when it comes to the management of the welfare of asylum seekers;**
- (c) video footage recorded within the RPC should not be deleted at any stage. All footage should be provided to the department, which must retain it and make it available for FOI requests;**

- (d) all allegations of misconduct by RPC staff must be investigated by an independent investigator, such as the Immigration Ombudsman; and**
- (e) clothes, shoes, hats, sunglasses, sanitary products and all other basic necessities should be provided in a timely and suitable fashion.**

**Senator Sarah Hanson-Young  
Australian Greens Immigration Spokesperson  
Senator for South Australia**

