

Chapter 3

Factors contributing to allegations of abuse, self-harm and neglect

3.1 This chapter deals with evidence received by this committee in relation to the factors which have contributed (and continue to contribute) to the allegations of abuse, neglect and self-harm among refugees and asylum seekers in the Nauru and Manus Island Regional Process Centres (RPCs).

3.2 The committee heard that a range of factors that contribute to the existence and persistence of the many allegations of abuse and self-harm among refugees and asylum seekers in Nauru and Papua New Guinea (PNG). Much of this evidence reflects evidence presented to the previous inquiries into matters associated with RPCs. The committee has observed that this seems to indicate that the quality of life and safety of asylum seekers and refugees in Nauru and PNG has not improved despite the passing of time, and a number of inquiries into these matters.

3.3 In this inquiry, the committee heard evidence of a number of factors which have contributed to the allegations of abuse, self-harm and neglect, including:

- a damaging living environment characterised by ongoing detention-like conditions, inadequate health services, and cultural and social barriers;
- a lack of oversight and appropriate regulation, including a developing child protection framework in Nauru, and a lack of faith in the authorities to investigate allegations of abuse and harm where required; and
- the significant average length of time spent at the RPCs, and the impact of long term family separation and uncertainty about the future.

3.4 The committee also heard compelling evidence as to the lack of transparency, accountability and scrutiny among all matters associated with the RPCs, and the relationship between this lack of accountability and transparency and the perpetuation of the allegations of abuse, self-harm and neglect over a number of years.

A damaging living environment

Detention-like conditions

3.5 A number of submitters and witnesses argued that detention (or effective detention) is the root cause behind widespread poor mental health and self-harm among refugees and asylum seekers, as well as the many allegations of abuse and neglect.

3.6 As set out in Chapter 2, both the Nauru and Manus RPCs are now described as being 'open centres'. From February to October 2015, asylum seekers and refugees

at the Nauru RPC could leave at a designated exit point during agreed hours.¹ Since October 2015, the centre has been designated as being open 'all the time'.² On 27 April 2016 PNG introduced open centre arrangements for asylum seekers and refugees in the Manus RPC.³ This came one day after the decision of the Supreme Court of PNG, finding the detention of asylum seekers and refugees at the RPC to be unconstitutional.⁴

3.7 However, many submitters argued that the move to 'open centres' has largely been in name only. The Office of the United Nations High Commissioner for Refugees (UNHCR) stated that conditions are indistinguishable from those of the detention centre, noting in particular the number of guards, the configuration of perimeter fences, the sub-compounds and overcrowding of accommodation, and the use of communal tents for extended periods.⁵ It described the levels of security at the Manus RPC as 'excessive' and argued that this created 'an institutionalised and punitive environment, wholly inappropriate for asylum seekers and refugees'.⁶

3.8 Amnesty International agreed, arguing that Nauru is effectively an 'open air prison' which people can move about, but cannot leave.⁷ The Royal Australian and New Zealand College of Psychiatrists (RANZCP) likewise highlighted intrusive surveillance and oppressive levels of security, arguing that these contribute to a lack of privacy, and undermine the capacity of refugees and asylum seekers to parent and maintain a family life.⁸

3.9 A number of incident reports from the Nauru RPC indicate that during 2015, when 'open centre' measures were being progressively introduced, there were still many restrictions associated with leaving and re-entering the RPC. Examples of incident reports relating to the restrictions of open centres include: a worker noting that an asylum seeker could not participate in the open centre arrangements because they had refused to attend the family RSD appointment;⁹ a woman not permitted to

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- 1 Minister for Immigration and Border Protection, the Hon Peter Dutton MP, Media Release, *Australia welcomes Nauru open centre*, 5 October 2015, www.minister.border.gov.au/peterdutton/2015/Pages/australia-welcomes-nauru-open-centre.aspx (accessed 9 January 2017).
 - 2 Minister for Immigration and Border Protection, the Hon Peter Dutton MP, Media Release, *Australia welcomes Nauru open centre*, 5 October 2015.
 - 3 Department of Immigration and Border Protection (DIBP), *Submission 23*, p. 68.
 - 4 *Belden Norman Namah MP v Hon Rimbink Pato, National Executive Council and the Independent State of Papua New Guinea*, SCA No. 84 of 2013, Supreme Court of Justice (Papua New Guinea), 26 April 2016.
 - 5 United Nations High Commissioner for Refugees (UNHCR), *Submission 43*, p. 8.
 - 6 UNHCR, *Submission 43*, p. 7.
 - 7 Amnesty International, *Submission 6*, Attachment 1, *Island of Despair: Australia's 'Processing' of Refugees on Nauru*, 2016, p. 5.
 - 8 Royal Australian and New Zealand College of Psychiatrists (RANZCP), *Submission 8*, p. 4.
 - 9 The Guardian Australia, *the Nauru files*, major incident 'threatened self-harm', 1 August 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150503.pdf> (accessed 4 April 2017).

leave the centre because she had not attended the 'open centre briefings', and was warned that 'absconding' was against the RPC rules;¹⁰ an individual was warned that if they arrived back to the RPC 'late', their open centre privileges could be suspended;¹¹ a child who had forged an open centre consent form was reported as having absconded from the RPC;¹² and asylum seekers reportedly being screened upon their return to camp and prohibited items such as Panadol being confiscated.¹³

3.10 A number of incident reports from the Nauru RPC also indicate that there are a number of restrictions on movement within the RPC itself. These reports suggest that individuals cannot relocate to different tents without approval,¹⁴ and asylum seekers may be found to be in breach of RPC rules if they enter certain areas of the camp after 'curfew'.¹⁵ In one of these incidents a woman allegedly described feeling humiliated when she was told that she could not move to another tent, despite there being space for her to do so.¹⁶ Another incident report described a woman who became so distressed at having a particular man housed in the Restricted Area accommodation with her that she barricaded herself in a tea room and drank insect repellent.¹⁷ Other incident reports detail instances of asylum seekers and refugees becoming angry and distressed at being told they were going to be moved to a different area of the RPC,¹⁸ with some threatening suicide.¹⁹

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- 10 The Guardian Australia, *the Nauru files*, minor incident 'threat self-harm', 5 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150378.pdf> (accessed 4 April 2017).
- 11 The Guardian Australia, *the Nauru files*, minor incident 'threatened self-harm', 23 April 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150300.pdf> (accessed 4 April 2017).
- 12 The Guardian Australia, *the Nauru files*, critical incident 'abscond', 18 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150481.pdf> (accessed 4 April 2017).
- 13 The Guardian Australia, *the Nauru files*, information, 23 September 2015 (no link to the incident report is provided where none is available).
- 14 The Guardian Australia, *the Nauru files*, minor incident 'self-harm threat', 11 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150335.pdf> (accessed 4 April 2017).
- 15 The Guardian Australia, *the Nauru files*, information, 13 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150399.pdf> (accessed 4 April 2017).
- 16 The Guardian Australia, *the Nauru files*, minor incident 'self-harm threat', 11 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150335.pdf> (accessed 4 April 2017).
- 17 The Guardian Australia, *the Nauru files*, critical incident 'actual self-harm', 27 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150496.pdf> (accessed 4 April 2017).
- 18 The Guardian Australia, *the Nauru files*, minor incident 'threat of self-harm', 1 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150366.pdf> (accessed 4 April 2017); minor incident 'aggressive behaviour', 9 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150389.pdf> (accessed 4 April 2017); minor incident 'assault', 16 April 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150280.pdf> (accessed 4 April 2017).
- 19 The Guardian Australia, *the Nauru files*, minor incident 'threatened self-harm', 20 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150407.pdf> (accessed 4 April 2017).

3.11 Several incident reports indicate that a lack of privacy and control is a source of concern for asylum seekers.²⁰ The committee noted evidence of certain items being prohibited within the Nauru RPC, or within particular areas of the RPC. Incident reports indicate that the consumption of alcohol is prohibited,²¹ as is the possession of knives.²² One incident report explained that as part of the Nauru School integration project students were given a pencil case, which included a pencil sharpener, however the razor element of the sharpener was contraband.²³ Several incident reports indicate that the consumption of meals outside the mess is restricted. One report alleged that when a woman had attempted to take food from the mess it was confiscated.²⁴ In another, an asylum seeker alleged that, while she was using crutches, she had placed her food in a plastic bag so she could carry it back to her room, but it was confiscated from her.²⁵ In a further example, two parents alleged that they were prevented from taking six bananas from the mess for their children to snack on, because this did not fit the definition of 'snacks between meals'.²⁶

3.12 A number of incident reports allege that RPC staff exercise a significant degree of control over the relationships between parents and their children in Nauru. While some reports merely record the behaviour of children, such as a child throwing a tantrum,²⁷ others describe RPC staff becoming involved in what would typically be regarded as areas of normal parental responsibility. These include security guards intervening when adults were having a verbal altercation about their children,²⁸ a staff member disciplining a child who had been accused of not sharing a ball and stating that this kind of behaviour would not be tolerated,²⁹ staff members approaching

20 The Guardian Australia, *the Nauru files*, minor incident 'abusive/aggressive behaviour', 29 June 2015; minor incident 'non-compliance', 8 August 2015; minor incident 'non-compliance', 10 August 2015 <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150517.pdf> (accessed 4 April 2017).

21 The Guardian Australia, *the Nauru files*, major incident 'assault', 9 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150330.pdf> (accessed 5 April 2017).

22 The Guardian Australia, *the Nauru files*, minor incident 'contraband', 4 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150433.pdf> (accessed 5 April 2017).

23 The Guardian Australia, *the Nauru files*, unclassified incident, 15 November 2013.

24 The Guardian Australia, *the Nauru files*, major incident 'assault on a minor (downgraded to information)', 3 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150317.pdf> (accessed 5 April 2017).

25 The Guardian Australia, *the Nauru files*, major incident 'bullying and harassment/ medical incident', 16 April 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150278.pdf> (accessed 5 April 2017).

26 The Guardian Australia, *the Nauru files*, information, 28 September 2015.

27 The Guardian Australia, *the Nauru files*, incident 'concern for minor', 31 August 2013.

28 The Guardian Australia, *the Nauru files*, unclassified incident 'abusive or aggressive behaviour', 30 August 2013.

29 The Guardian Australia, *the Nauru files*, incident 'accident or injury', 8 September 2013.

parents about their eating patterns,³⁰ and reprimanding parents who had not accompanied their children to breakfast.³¹ Further incident reports include staff members approaching parents who were perceived to not be intervening when their child was misbehaving,³² and a case worker speaking with a parent about how to discipline his children.³³

3.13 Several submitters raised concerns about the effect of ongoing detention or detention-like conditions on the capacity of parents to care for their children. The UNHCR submitted that such conditions have a significant impact on parents and children:

The impact of impaired parenting due to parental despair and mental illness, the absence of family or community support and the challenging physical environment place young children (zero to five years) at significant risk of compromised development from emotional, cognitive and physical perspectives. In this context, the intolerable situation for asylum-seekers and refugees, as well as the breakdown of normal family structures and intra-familial relationships may place women and children at heightened risk. Living in these conditions, as well as a physically hostile environment in poorly ventilated tents, is especially traumatizing to children, in the context of mandatory and open-ended detention that will exacerbate or precipitate mental and physical illness into the future for them.³⁴

3.14 Doctors for Refugees (DFR) agreed, stating that in detention, 'the disintegration of parents' authority and declining parental mental health profoundly undermine the parental role, leaving children with little protection or comfort'.³⁵ The UNHCR also argued that the retention of this detention-like environment had a detrimental impact on the mental health of individuals, as well as increasing the risk of abuse and self-harm.³⁶ Human Rights Watch (HRW) agreed, citing a comment made by a refugee who had experienced long periods of detention:

You become domesticated, like an animal inside a cage. You think they are fine. They look normal, they seem healthy but they could not survive in

30 The Guardian Australia, *the Nauru files*, unclassified incident 'abusive or aggressive behaviour', 31 August 2013; incident 'concern for minor', 1 September 2013.

31 The Guardian Australia, *the Nauru files*, unclassified incident 'concern for minor', 16 January 2014, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca140020.pdf> (accessed 5 April 2017).

32 The Guardian Australia, *the Nauru files*, major incident 'assault on a minor', 16 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150344.pdf> (accessed 5 April 2017).

33 The Guardian Australia, *the Nauru files*, information 'threatened self-harm', 13 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150440.pdf> (accessed 5 April 2017).

34 UNHCR, *Submission 43*, p. 23.

35 Doctors for Refugees (DFR), *Submission 56*, p. 9.

36 UNHCR, *Submission 43*, p. 8.

nature, and that is like us now. We become like that. Mentally, we are not fine.³⁷

3.15 The committee noted evidence of restrictions to internet and computer facilities. In 2014 it was reported that following an incident on Nauru in July of that year, the internet had been cut off for three months.³⁸ The same report alleged that asylum seekers on Manus Island had likewise been denied access to the internet and telephone. Several incident reports from Nauru reflect these concerns, including being denied access to computers³⁹ and refused access to the computer room because of a lack of identification.⁴⁰ The department has also advised that mobile phones with the capacity to record video are also prohibited.⁴¹

3.16 The committee also heard that access to Facebook in Nauru is heavily restricted. On 5 May 2015 it was reported that all Facebook users in Nauru had been denied access to the website.⁴² A public Facebook page called 'Refugees on Nauru', which states that it was administered by a refugee in Nauru, appears to have ceased posting to Facebook on 1 May 2015.⁴³ Ms Pamela Curr of the Asylum Seeker Resource Centre (ASRC) was reported to have stated that her contacts in Nauru told her this ban was put in place at the request of the Australian Government.⁴⁴ However, the department was reported to have stated that any internet restrictions were 'a matter for the government of Nauru'.⁴⁵ On 8 July 2016, a Nauruan public official who was interviewed acknowledged that the Facebook restrictions were still in place, but allegedly stated that they could be bypassed.⁴⁶

Health care service delivery

3.17 The committee considered evidence of concerns about the suitability and adequacy of health care services available on Nauru and Manus Island.

3.18 The committee received evidence from the department and health care service contractor IHMS explaining the type of health services which are provided to refugees

37 Human Rights Watch (HRW), *Submission 22*, p. 9.

38 Sydney Morning Herald, *We need to see Manus Island*, 24 February 2014.

39 The Guardian Australia, *the Nauru files*, minor incident 'information', 3 April 2014.

40 The Guardian Australia, *the Nauru files*, incident 'unclassified', 12 November 2013.

41 DIBP, *Latest Nauru claims false*, media release, 25 February 2016, <http://newsroom.border.gov.au/releases/latest-nauru-claims-false> (accessed 16 January 2017).

42 ABC News, *Nauru Facebook ban came 'at request of Australian Government', refugee advocates say*, 5 May 2015.

43 Facebook, *Refugees on Nauru*, <https://www.facebook.com/Refugees-on-Nauru-1018704628155583/> (accessed 2 March 2017).

44 ABC News, *Nauru Facebook ban came 'at request of Australian Government', refugee advocates say*, 5 May 2015.

45 ABC News, *Nauru Facebook ban came 'at request of Australian Government', refugee advocates say*, 5 May 2015.

46 Radio NZ, *Nauru candidate uses banned Facebook to campaign*, 8 July 2016.

and asylum seekers in Nauru and PNG. This evidence, which will be discussed in detail below, indicated that the applicable health service will depend on whether the individual is a recognised refugee or an asylum seeker, any medical recommendation in relation to the person's treatment, and the availability of required medical services in a range of potential treatment locations.

3.19 This evidence indicates that the health care service delivery scheme for refugees and asylum seekers is extremely complicated. The service delivery and duty of care in relation to patients appears to involve three different governments, hospitals in three countries, private contractors, both regular and ad hoc specialist medical services, and ultimately the department itself.

Health care service delivery scheme

3.20 The department advised that all RPC residents receive 'clinically-indicated health care, broadly consistent with Australian public health standards'.⁴⁷ RPC health clinics, which are operated by IHMS are open seven days per week, and afterhours medical staff are available for emergencies. These services are supplemented by visiting practitioners, tele-health services, and medical transfers. The department explained that where a health service cannot be provided on Nauru, asylum seekers and refugees may be temporarily transferred to Port Moresby, as recommended by IHMS. Where the individual is a recognised refugee this process will take place in consultation with the Republic of Nauru Hospital, with approval from the Government of Nauru.⁴⁸

3.21 The department advised that mental health care is provided by a number of medical professionals, and mental health screening is provided by RPC mental health clinicians.⁴⁹ It explained that a mental health treatment framework in Nauru is being developed, stating:

The Department is working with IHMS to enhance the provisions of mental health services to transferees and refugees in Nauru, including transition into settlement, and accessing local community health services...The Department is also working with the Government of Nauru to establish a systematic approach to develop and deliver mental health services for transferees and refugees in Nauru...In May 2016, the Government of Nauru passed an amendment to the Nauru *Mentally-disordered Person Act 1963* to enable compulsory treatment. The Government of Nauru is developing Mental Health Regulations and an Implementation Strategy that will support the amendments to the Act.⁵⁰

3.22 The department explained that refugees living in the Nauru community access health care services at the Settlement Health Clinic (situated in the Republic of Nauru

47 DIBP, *Submission 23*, p. 44.

48 DIBP, *Submission 23*, p. 44.

49 DIBP, *Submission 23*, p. 48.

50 DIBP, *Submission 23*, p. 49.

Hospital) six days a week, or at the hospital itself.⁵¹ The department submitted that the standard of health care provided here is 'in line with Nauruan community standards'.

3.23 The department advised that asylum seekers and refugees living in the Manus RPC or East Lorengau Refugee Transit Centre may be transferred to Port Moresby for treatment if this is required.⁵² It explained that health care services in PNG may be accessed in a range of ways:

IHMS provides a weekly medical clinic to refugees living at the East Lorengau Refugee Transit Centre. Settled refugees may access the Lorengau Hospital in Manus for care outside of the weekly clinic. The clinic is staffed by an IHMS registered nurse and general practitioner. Torture and trauma counselling is also provided as required. Refugees have been briefed about how to access emergency care via the Lorengau Hospital. Health care through the Papua New Guinea health care system is provided free of charge to refugees.

Refugees permanently settling outside of Manus Province have access to health insurance and may access health services at public hospitals in their settlement location. On leaving the RPC, IHMS provides refugees with a 28-day supply of all clinically-indicated medication and advises refugees on how to obtain their own medications from local pharmacies. Refugees receive a weekly subsistence allowance to purchase such items. Where a refugee has a chronic illness they can register at the Lorengau Lifestyle Clinic and receive free treatment and medication.⁵³

3.24 IHMS advised the committee that the provision of specialist services to refugees do not fall within its control.⁵⁴

3.25 The department claims that the only connection it has to the provision of health services in the Manus RPC is via the contractual relationship it has with IHMS. On 8 February 2017 the department submitted to the committee that it does not run the medical facility at Manus Island, which is 'provided to the Papua New Guinea government'.⁵⁵

3.26 The department explained the process by which a medical transfer of a refugee or asylum seeker to another location for treatment, may take place. It explained that medical transfers require the involvement of a number of parties:

51 DIBP, *Submission 23*, p. 51.

52 DIBP, *Submission 23*, p. 44.

53 DIBP, *Submission 23*, p. 51.

54 Australian Medical Association (AMA), *Submission 1*, International Health and Medical Services (IHMS) response, p. 3.

55 Ms Cheryl-anne Moy, Acting Deputy Commissioner Support, DIBP, *Committee Hansard*, Wednesday 8 February 2017, p. 2.

- medical transfers to Port Moresby from either Nauru or Manus are undertaken on medical advice from IHMS. The department will make the logistical travel arrangements for all medical transfer cases;⁵⁶
- for refugees in Nauru, the transfer process to PNG or another location is undertaken 'in consultation with the Republic of Nauru Hospital with approval from the Government of Nauru'.⁵⁷ The Government of Nauru 'is responsible for the health care of refugees residing in Nauru' and 'The Department **does not** receive recommended clinical timeframes for treatment for refugees from the Government of Nauru', although the Government of Nauru does advise the Department of 'urgent cases' and the department will action them accordingly;⁵⁸
- 'Transfers to Australia can only occur for compelling medical reasons including situations involving the risk of life-long injury or disability.' Transfers to Australia are 'supported by clinical advice', which is provided by a Commonwealth Medical Officer or the Department's Chief Medical Officer;⁵⁹ and
- the Government of Nauru and the Republic of Nauru Hospital manage and oversee the 'Overseas Medical Referral' processes for refugees. Where requested, the department and IHMS will assist these two parties to 'facilitate the medical transfer of refugees to Port Moresby'.⁶⁰

3.27 On 8 February 2017, DIBP Assistant Commissioner, Detention, Compliance and Removals Division Mr Kingsley Woodford-Smith explained that a request for medical movement will come to the department and be considered in a 'committee style format', and that committee will put a recommendation to him as to whether the request should be approved.⁶¹ He stated that he would make the decision as to whether the person comes to Australia. He also explained that the use of an air ambulance would also require funding approval.

3.28 IHMS stated that the 'transfer policy' does not fall within its control.⁶²

3.29 The department advised that between 1 July 2015 and 30 September 2016, a total of 171 medical transfers from Nauru and Manus to Port Moresby had taken

56 DIBP, *Submission 23*, p. 52.

57 DIBP, *Submission 23*, p. 52.

58 DIBP, response to question on notice, 20 March 2017 (received 4 April 2017).

59 DIBP, *Submission 23*, p. 52.

60 DIBP, *Submission 23*, p. 53.

61 Mr Kingsley Woodford-Smith, Assistant Commissioner, Detention, Compliance and Removals Division, DIBP, *Committee Hansard*, Wednesday 8 February 2017, p. 11.

62 AMA, *Submission 1*, IHMS response, p. 3.

place.⁶³ It explained that 'some' refugees have been transferred to Australia for medical care, but did not provide a figure.⁶⁴

3.30 The department explained that if RPC staff members require medical treatment they would be treated at the local IHMS clinic and receive the same standard of care at that clinic as would refugees and asylum seekers attending the clinic.⁶⁵ It also advised that where a staff member were to require urgent medical treatment they would 'normally be lifted to Australia under [departmental] insurance arrangements for staff', and if it was an emergency they may be treated at the Pacific International Hospital in Port Moresby.⁶⁶ When asked why these arrangements differed from those arrangements for the medical evacuation of refugees and asylum seekers, the department explained that:

It is because asylum seekers are managed by and under the care of other governments. The government of Nauru and the government of Papua New Guinea manage asylum seekers, refugees and regional processing. They ask us for support, and we provide support to them as they request. When it is a staff member, that person is under the care of the department, and the department takes responsibility for moving them if there is an injury or illness that they need to be moved for.⁶⁷

Concerns regarding health care services

3.31 The committee heard a substantial body of evidence from primary and secondary sources, including medical organisations, arguing that the standard of health care provided at the Nauru and Manus RPCs is inadequate, and highlighting a lack of trust in the services being provided. Many of the concerns raised by submitters to this inquiry, notably medical organisations, derived from examination of medical records which had been obtained with the consent of the patient, and discussed the difficulties which organisations faced in gaining timely access to those records.

3.32 The Australasian College of Emergency Medicine (ACEM), the peak organisation for emergency medicine in Australasia, explained that asylum seekers and refugees have complex health care needs, which can arise due to the means by which they arrived at an RPC, and as a result of the conditions once they are housed in the RPC.⁶⁸ They may be vulnerable to infectious diseases, poor nutritional health, and developmental risks associated with poor mental health in the case of children.⁶⁹

63 DIBP, *Submission 23*, p. 53.

64 DIBP, *Submission 23*, p. 53.

65 Ms Cheryl-Anne Moy, Acting Deputy Commissioner, Support, DIBP, *Committee Hansard*, Wednesday 8 February 2017, pp. 17-18.

66 Ms Cheryl-Anne Moy, Acting Deputy Commissioner, Support, DIBP, *Committee Hansard*, Wednesday 8 February 2017, pp. 17-18.

67 Ms Cheryl-Anne Moy, Acting Deputy Commissioner, Support, DIBP, *Committee Hansard*, Wednesday 8 February 2017, pp. 17-18.

68 Australasian College of Emergency Medicine (ACEM), *Submission 13*, p. 2.

69 ACEM, *Submission 13*, p. 2.

Dr Paddy McLisky of DFR explained that, based on the medical records which it had reviewed, it was evident that refugees and asylum seekers on Nauru exhibit a range of health concerns, with kidney stones being a common complaint, diagnoses of locally-contracted infections including schistosomiasis, and medical trends emerging from a diet lacking in fresh produce, as well as a trend of severe depression and anxiety.⁷⁰

3.33 The Royal Australian College of General Practitioners (RACGP) raised concerns about the lack of public health care data for refugee and asylum seeker patients. It argued that current publicly available datasets do not provide enough information to determine whether health services being provided are adequate, or to assess 'the true prevalence of conditions such as mental health diagnoses'.⁷¹ It argued that in a high risk environment like an RPC, 'this is completely inadequate'.⁷²

3.34 IHMS provided a response to the submission made by the RACGP.⁷³ This response did not directly address the RACGP's criticism about a lack of *publicly available* data, but explained that the manner in which IHMS provides the department with health data, the limitations on the health care data to which IHMS may have access, and outlined the health care services which it provides. IHMS explained that it provides the department with health data summaries four times per year, which include an analysis of 'general health trends and indicators' among the RPC population.⁷⁴

3.35 A number of submitters argued that the capacity of health care professionals to provide adequate health care in RPCs, is impeded. Dr Paddy McLisky of DFR submitted that by situating the RPCs on remote island in 'unsafe conditions' and 'far from necessary infrastructure' both 'radically impedes' the capacity of health care processing to provide adequate care, and denies refugees and asylum seekers the right to 'gain access to what we as Australians would see as a necessary level of health care'.⁷⁵ He explained that DFR's examination of medical records obtained with the consent of patients in Nauru and PNG, indicate that there may be delays in approving particular treatment options for patients.⁷⁶ He submitted that such delays are a 'predictable outcome of putting people on remote islands' considering the transport and visas which would be required.⁷⁷

3.36 The Australian Association of Social Workers (AAWS) likewise argued that the policy of offshore processing interferes with the ability of social workers to 'offer

70 Dr Paddy McLisky, Secretary, DFR, *Committee Hansard*, Tuesday 14 November 2017, p. 9.

71 Royal Australian College of General Practitioners (RACGP), *Submission 17*, p. 3.

72 RACGP, *Submission 17*, p. 3.

73 RACGP, *Submission 17*, IHMS response.

74 RACGP, *Submission 17*, IHMS response, p. 2.

75 Dr Paddy McLisky, Secretary, DFR, *Committee Hansard*, Tuesday 14 November 2017, p. 2.

76 Dr Paddy McLisky, Secretary, DFR, *Committee Hansard*, Tuesday 14 November 2017, p. 3.

77 Dr Paddy McLisky, Secretary, DFR, *Committee Hansard*, Tuesday 14 November 2017, p. 3.

appropriate professional assistance'.⁷⁸ The Australian Psychological Society (APS) also raised the capacity of workers to provide ethical services, arguing that detention in a remote and high security facility 'compromises the ethical and effective delivery of psychological and other support services'.⁷⁹

3.37 Submitters also argued that the standard of health care being provided to asylum seekers and refugees in Nauru and PNG is, in fact, inadequate. The AMA explained that it did not believe that people detained on Manus or Nauru, or living in the community, could access a standard of care which a person in Australia would receive.⁸⁰ Amnesty International likewise submitted that the health care available on Nauru is inadequate, citing delays of months to see visiting medical specialists and undergo necessary tests.⁸¹ It cited the example of a man who had suffered a heart attack and was sent to Australia for four months. Amnesty International alleged that upon his return to Nauru, a doctor examined his file and stated that he should not have been sent back because the doctor could not be responsible for him. Amnesty International submitted that the man had a further heart attack on Nauru, and that doctors have advised that the man requires specialist treatment which is not available on the island.⁸² It also highlighted the case of an asylum seeker on Manus Island who alleged that his diabetes was inappropriately managed, leading him to faint a number of times and experiencing persistently high blood sugar levels.⁸³ Ms Pamela Curr of Australian Women in Support of Women on Nauru (AWSWN) argued that the numbers of patients who have been transferred to Australia to access services indicates that the services being provided in Manus and Nauru are not adequate.⁸⁴ The UNHCR also submitted that asylum seekers and refugees cannot access appropriate mental health services in PNG.⁸⁵

3.38 The RANZCP expressed concern about the provision of training to RPC medical staff.⁸⁶ It noted a case reported by the media, which stated that on 29 January 2015 an asylum seeker had repeatedly told their case manager that they wanted to die. The case manager reportedly told the woman to 'think of something positive that she enjoyed prior to detention and to do this every day to improve her well-being'. The RANZCP noted that the same report stated that the incident report had been downgraded in classification from a 'minor incident' to 'information'. It argued that the clinic response to this patient's medical needs was poor:

78 Australian Association of Social Workers (AASW), *Submission 46*, p. 1.

79 Australian Psychological Society (APS), *Submission 49*, p. 4.

80 AMA, *Submission 1*, p. 7.

81 Amnesty International, *Submission 6*, Attachment 1, p. 5.

82 Amnesty International, *Submission 6*, Attachment 1, p. 6.

83 Amnesty International, *Submission 6*, Attachment 3, p. 52.

84 Ms Pamela Curr, Australian Women in Support of Women on Nauru (AWSWN), *Committee Hansard*, Tuesday 15 November 2016, p. 20.

85 UNHCR, *Submission 43*, p. 18.

86 RANZCP, *Submission 8*, p. 5.

Reminding an individual of 'positive' things in their past is not an appropriate way of managing someone's current risk of suicide. Furthermore, downgrading of an incident of suicidal ideation to 'information' only raises some questions about the capacity for regional processing centres to appropriately recognise and respond to mental health issues. The RANZCP finds unacceptable the apparent neglect of serious mental health incidents and the absence of an appropriate mechanism to ensure these kinds of incidents are immediately referred to an appropriately resourced staff of trained and qualified health professionals.⁸⁷

3.39 DFR explained that it was aware of claims of sexual assault and abuse against children, which had been disclosed to health care workers, where there was no evidence that the worker had escalated the claim.⁸⁸

3.40 The RANZCP highlighted that initial health assessments conducted within 48 hours of a boat arriving do not include a mental health or developmental status assessment, and noted that there is currently no 'routine mental health or developmental screening of children detained for prolonged periods of time'.⁸⁹

3.41 ACMHN likewise noted its concern that incomplete or inappropriate medical responses to such mental health concerns could be reported as being 'appropriate' responses, thereby skewing the data relating to health care treatment.⁹⁰ It stated that:

A person seeking asylum who has been provided with medication (e.g. sedative or antidepressant etc) for acute mental illness, but who is unable to access counselling services they need should not be reported as having received 'appropriate treatment'...

Identifying that a form of clinical treatment has been provided in response to psychological distress and trauma does not automatically indicate that the treatment was clinically appropriate, or proportionate to the psychological distress that an individual presented with. Nor does it indicate whether a treatment was clinically effective in resulting in a reduction in symptoms.⁹¹

3.42 IHMS rejected claims made by Amnesty International about the conduct of medical staff members.⁹² It expressed its concern about claims by Amnesty International that staff had failed to abide by professional medical ethics, calling such claims 'offensive to IHMS clinicians who are highly committed to providing high

87 RANZCP, *Submission 8*, p. 5.

88 DFR, *Submission 56*, p. 19.

89 RANZCP, *Submission 8*, p. 3.

90 ACMHN, *Submission 41*, p. 9.

91 ACMHN, *Submission 41*, p. 9.

92 Amnesty International, *Submission 6*, IHMS response.

quality health care services'.⁹³ It also stated that it believes all refugees and asylum seekers '...have the right to high quality health care'.⁹⁴

3.43 The RACGP questioned the methods by which health care services in Nauru and PNG are being 'enhanced', arguing that the current approach of adding infrastructure may not be appropriate.⁹⁵ It submitted that the capacity of a health system may not necessarily be enhanced in the long term by adding extra infrastructure because the addition of highly technical equipment imposes an ongoing obligation to maintain that equipment. It also noted that any plans to enhance Nauru's health care capacity must recognise that the health care needs of Nauruans and asylum seekers are extremely different. It emphasised that, while Nauruans face an epidemic of chronic diseases like diabetes, kidney disease and cardiovascular disease, asylum seekers face an epidemic of mental illness.⁹⁶

3.44 A number of submitters questioned the level of departmental involvement in medical decision making. As stated above, requests for medical movement outside Australia will ultimately come to the department, which considers the request in a 'committee style format', and makes a recommendation to senior staff for approval for travel.⁹⁷

3.45 This departmental involvement in medical decisions is currently the subject of scrutiny by the Queensland Coroners Court, in the inquest into the death of Mr Hamid Khazaei in 2014. To date, it has been reported that the following evidence has been presented to the Coroner in relation to the events leading up to Mr Khazaei's death:

- the initial email request for transfer was sent at 1.15pm. This email requested an 'urgent medical transfer' citing 'risk of...life-threatening widespread systemic infection'.⁹⁸ The department's director of detention health services did not reply until 6.01pm, at which time she asked whether the patient could be treated on the island. The director argued that the email outlining the medical transfer request did not 'paint a picture of urgency'.⁹⁹ Then-Chief

93 Amnesty International, *Submission 6*, IHMS response, pp. 2-3.

94 Amnesty International, *Submission 6*, IHMS response, p. 3.

95 RACGP, *Submission 17*, p. 5.

96 RACGP, *Submission 17*, p. 5.

97 Mr Kingsley Woodford-Smith, Assistant Commissioner, Detention, Compliance and Removals Division, DIBP, *Committee Hansard*, Wednesday 8 February 2017, p. 11.

98 The Guardian Australia, *Immigration department and health provider blame each other over Manus death*, 16 February 2017.

99 SBS News, *Inquest resumes into Manus asylum seeker Hamid Khazaei's death*, 13 February 2017.

Medical Officer of the department Dr Paul Douglas also argued that IHMS had failed to make the department aware of the urgency;¹⁰⁰

- the request from IHMS for Mr Khazaei's medical transfer was delayed because approvals had to be sought from up to five levels of bureaucrats who did not have medical qualifications;¹⁰¹
- then-Regional Director of IHMS, Dr Mark Parrish, stated that 'the continuing questioning of medical judgment [was] part of the reason for this gentleman's death'. He stated that IHMS was not asking for a clinical discussion of the patient, and were asking to move him.¹⁰² He stated that the department would regularly overrule recommendations by doctors to transfer sick patients;
- Dr Parrish stated that 'In an ideal world, we would have moved everybody to Australia for care that was greater than that which could be provided at Manus Island';¹⁰³ and
- Mr Khazaei was allegedly left lying in the sun on a stretcher at the Manus airstrip while awaiting the air ambulance.¹⁰⁴

3.46 It has also been reported that the Coroner has also heard evidence as to the sub-standard health care which was provided to Mr Khazaei when he was initially transferred to Port Moresby for treatment, including:

- local staff were not expecting Mr Khazaei's arrival;¹⁰⁵
- when the alarms on both Mr Khazaei's heart monitor and vital sign monitor were both signalling, a former nurse and team leader contracted to provide medical services to the Australian Federal Police in PNG observed 'a nurse stood on the other side of the bed, not attending to the patient';¹⁰⁶ and
- a nurse working for IHMS in a patient liaison administrative role intervened when local hospital staff failed to attend to the patient, having waited for an hour to intubate his trachea for ventilation after he was admitted, and then taking almost one hour to do this.¹⁰⁷ The nurse was reported to have agreed

100 The Guardian Australia, *Immigration department and health provider blame each other over Manus death*, 16 February 2017.

101 SBS News, *Khazaei inquest: Hamid's death linked to 'deficient' emergency evacuation policy*, 15 February 2017.

102 The Guardian Australia, *Immigration department and health provider blame each other over Manus death*, 16 February 2017.

103 The Guardian Australia, *Immigration department and health provider blame each other over Manus death*, 16 February 2017.

104 SBS News, *Khazaei inquest: Hamid's death linked to 'deficient' emergency evacuation policy*, 15 February 2017.

105 SBS News, *Khazaei inquest: Hamid's death linked to 'deficient' emergency evacuation policy*, 15 February 2017.

106 SBS News, *'Turning blue': Khazaei inquest hears of failing at PNG hospital*, 13 February 2017.

107 SBS News, *'Turning blue': Khazaei inquest hears of failing at PNG hospital*, 13 February 2017.

that the care Mr Khazaei received from hospital staff was 'woefully inadequate' and 'endangered his life'.

3.47 Dr McLisky of DFR raised concerns about refugees and asylum seekers who had been transferred to Australia for medical treatment being discharged from hospital too early. He submitted that there had been cases where the department had taken a person from hospital back to an onshore immigration detention centre, earlier than the doctors had recommended.¹⁰⁸ He explained that DFR regarded departmental involvement in medical decision-making as a 'dangerous practice':

[IHMS health professionals] are working in a system in which there are numerous impediments to their work, including the approval of specialist reviews, medical transfers, getting hold of medications which may not be available on the island. Anything that they cannot do that they need to appears to require approval by DIBP...[T]he officers approving this are often not medically trained so you are taking a clinical decision and putting it into the hands of a non-clinician.¹⁰⁹

3.48 Many of the medical organisations which provided submissions argued that detention (or detention-like conditions) means that health care outcomes will be poor, because detainees are being continually re-traumatised by their ongoing detention. The Royal Australasian College of Physicians (RACP) stated that detention has severe adverse health impacts on detainees.¹¹⁰ It argued that:

It is imperative to acknowledge that the mental health issues caused by or exacerbated by detention and by the offshore processing experience, cannot be addressed while people remain in detention and/or living in uncertainty, regardless of the extent or quality of services available.¹¹¹

3.49 The ACEM agreed, arguing that there is clear evidence to indicate that mandatory and indefinite detention places additional stress on mental and physical health.¹¹² The Australian Association of Social Workers (AASW) likewise submitted that 'any period of detention is potentially harmful'.¹¹³ The RANZCP likewise submitted that prolonged and indefinite detention 'violates basic human rights and contributes adversely' to the mental health of asylum seekers and refugees,¹¹⁴ arguing that:

Mental health conditions are unlikely to respond to treatment until key stressors are removed from the patient's life. There is clear evidence that harms to well-being accumulate during detention and that the longer a

108 Dr Paddy McLisky, Secretary, DFR, *Committee Hansard*, Tuesday 14 November 2017, p. 6.

109 Dr Paddy McLisky, Secretary, DFR, *Committee Hansard*, Tuesday 14 November 2017, p. 8.

110 Royal Australasian College of Physicians (RACP), *Submissions 5*, p. 1.

111 RACGP, *Submission 17*, p. 1 (emphasis in original).

112 ACEM, *Submission 13*, p. 1.

113 AASW, *Submission 46*, p. 2.

114 RANZCP, *Submission 8*, p. 1.

person is held in detention, the higher their risk of developing or worsening mental ill health...Prolonged immigration detention has been shown to worsen mental illness in those already suffering when detained and to result in the development of completely new conditions in those without mental illness on arrival....While people continue to be held in difficult, often (re-)traumatising conditions and with an uncertain future, mental disorders are likely to persist or worsen—and where they don't exist, they may be created.¹¹⁵

3.50 Dr Kym Jenkins, RANZCP President-elect, explained that trying to treat mental illness while somebody is in this situation, 'is like trying to fill the bath with the plug out'.¹¹⁶ She argued that it is not possible to provide effective mental health care in a setting where people are continuously being re-traumatised and exposed to things which have poor mental health outcomes.¹¹⁷

3.51 DFR explained that 'deprivation, despair and loss of hope' are recurring themes in the requests DFR receives from asylum seekers and refugees held in detention. It asserted that 'individuals categorically have not received adequate health care in offshore detention and continue to receive substandard care', arguing that the 'wall of secrecy and obstruction from IHMS and DIBP represents obscene negligence and a wilful denial of humane, economic and practical alternatives'.¹¹⁸

Detention as deterrence

3.52 Several submitters argued that RPC conditions must be harsh in order to achieve the aim of deterring any further asylum seekers from seeking asylum from Australia. The RANZCP argued that this extends to the provision of health care services:

One tension in allowing proper access to support services, including health and education, is that the stated purpose of detention include the notion of deterrence and coercion. Detention is designed to be aversive so that it is an effective deterrent to others who might arrive by boat, and to coerce compliance with repatriation. This lead to a tension between any positive experience or service provisions and the stated purpose of detention.¹¹⁹

3.53 The Refugee Council of Australia (RCA) agreed that the policy of offshore processing is the root cause of the abuse and self-harm, because it is a policy designed to deter vulnerable people from claiming asylum, and coerce them into repatriating.¹²⁰ Ms Claire O'Connor SC, of AWSWN, submitted that the Australian Government

115 RANZCP, *Submission 8*, p. 5.

116 Dr Kym Jenkins, President-elect, RANZCP, *Committee Hansard*, Tuesday 15 November 2016, p. 23.

117 Dr Kym Jenkins, President-elect, RANZCP, *Committee Hansard*, Tuesday 15 November 2016, p. 23; RANZCP, *Submission 8*, p. 10.

118 DFR, *Submission 56*, p. 23.

119 RANZCP, *Submission 8*, p. 11.

120 Refugee Council of Australia (RCA), *Submission 19*, 3.

would be aware that the RPC environment is one of punishment, given the research which has been conducted in relation to detention centres at Woomera, Baxter, Port Hedland, Curtin and Christmas Island, and due to the findings of related inquiries, including the 2005 Palmer Inquiry.¹²¹ DFR echoed these concerns, arguing that Australia's current immigration policy denies the right to seek asylum and enjoy liberty, safety and respect, and thereby denies fundamental human rights.¹²²

3.54 The UNHCR highlighted the causal nexus between ongoing detention (or detention-like conditions), alarmingly widespread poor mental health, and the inability of health services, even effective ones, to effectively address those worsening mental health concerns. It explained that when UNHCR medical experts visited the RPCs in April 2016, the evidence indicated that although most asylum seekers and refugees had been exposed to trauma prior to their detention at an RPC, the majority did not have a pre-existing psychiatric condition.¹²³ It argued that:

The prolonged, arbitrary and indefinite nature of immigration detention in conjunction with a profound hopelessness in the context of no durable settlement options has corroded these individual's resilience and rendered them vulnerable to alarming levels of mental illness.

In both locations, the medical experts noted that specific individual medical interventions are relatively ineffective due to the nature of the complex interplay of psychiatric and psychosocial factors, and poor adherence to standard treatment strategies.

Further, the medical experts found that there are inadequate services in place in both Nauru and Papua New Guinea to address the present health concerns of refugees, and that it will not be possible to establish appropriate systems in a reasonable timeframe.¹²⁴

Cultural and social barriers

3.55 The committee noted evidence of the cultural differences between refugees, asylum seekers, and their host nations; as well as evidence that the tensions between these groups are connected with some of the allegations of abuse and neglect.

Nauru

3.56 There are significant cultural differences between local Nauruans and the refugees and asylum seekers living in their community. The majority of asylum seekers and refugees are Iranian, Sri Lankan, or stateless. A smaller number come

121 Ms Claire O'Connor SC, AWSWN, *Committee Hansard*, Tuesday 15 November 2016, pp. 11-12.

122 DFR, *Submission 56*, p. 23.

123 UNHCR, *Submission 43*, p. 9.

124 UNHCR, *Submission 43*, p. 10.

from Bangladesh, Afghanistan, Iraq, Burma, India, Nepal, and Somalia.¹²⁵ The small Nauruan population, by contrast, is largely monocultural, and prior to the opening of the Nauru RPC the non-Nauruan population were primarily from Kiribati, Tuvalu, and the People's Republic of China.¹²⁶ Cultural differences have evidently presented a significant challenge to positive relationships between locals and asylum seekers and refugees. This is no doubt compounded by the fact that the asylum seekers and refugees did not choose to live in Nauru, and many have expressed their strong desire to leave. It is also apparent that some locals are unhappy with either the establishment of the RPC in their country, or with the opening up of the centre, allowing former detainees to mix with the local community. As set out in Chapter 2, there are many allegations of abuse from locals directed to asylum seekers and refugees, as well as hostility towards asylum seeker and refugee children attending local schools, and individuals starting businesses and living in the community. Additionally, the lack of clarity about if and when refugees will be resettled in a third country, and whether the jobs and income derived from the RPC will cease, contributes to this hostility.

3.57 The UNHCR submitted that settlement on Nauru is not an option, even temporarily.¹²⁷ It argued that the health, educational, child welfare and protection, social and vocational needs of refugees on Nauru 'grossly exceed the capacity of Nauruan services'. It also submitted that attempts to settle refugees in Nauru for more than a short time carries the risk of harm in the form of unmet health, educational and other needs.

3.58 The committee also regards that the relationship between Nauruans, refugees and asylum seekers, and the potential success of any long term resettlement options in Nauru, must take into account of Nauru's historical relationship with Australia—the country responsible for the establishment of the RPCs, and the consequent influx of refugees and asylum seekers into the community.

3.59 Nauru is a small nation of approximately 10,000 residents, most of whom are native to the country. As set out in a previous report relating to these matters, Nauru experienced an economic boom as a result of phosphate mining on the atoll, however the benefits were short lived. Between 1962 and 1963 the Australian government appointed a Director of Nauruan Resettlement to consider whether the Nauruan population could be moved to Australian territory, but this did not eventuate, with Nauru citing concerns about the loss of its culture in the context of the White Australia policy.¹²⁸ Nauru initiated a claim against Australia in the International Court

125 Parliamentary Library, *Australia's offshore processing of asylum seekers in Nauru and PNG: a quick guide to statistics and resources*, www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/Offshore (accessed 12 January 2017).

126 Secretariat of the Pacific Community and Nauru Bureau of Statistics, *Demographic Profile of the Republic of Nauru 1992-2002*, p. 54.

127 UNHCR, *Submission 43*, p. 19.

128 Professor Jane McAdam, *How the entire nation of Nauru almost moved to Queensland*, <http://theconversation.com/how-the-entire-nation-of-nauru-almost-moved-to-queensland-63833> (accessed 12 January 2017).

of Justice (ICJ) for phosphate lands mined prior to 1 July 1967 and Australia, which had purchased a significant amount of the mined phosphate, agreed to an out of court settlement totalling \$107 million, including an up front payment of \$57 million, with the remainder paid in instalments over twenty years.¹²⁹ In 2003 then-Foreign Minister the Hon Mr Alexander Downer again suggested that the Nauruan population be relocated due to the country's bankruptcy.¹³⁰ Nauru's then-President Mr Rene Harris dismissed the suggestion citing concerns about the move undermining the country's identity and culture.¹³¹

3.60 Today, Nauru is heavily reliant on revenue from Australia. Between 2014 and 2015 Australia's aid contribution to Nauru made up 15 per cent of the nation's domestic revenue.¹³² The Department of Foreign Affairs and Trade (DFAT) estimates that from 2016 to 2017 Australia will provide Nauru with \$25.5 million in aid.¹³³ The presence and operation of the RPCs and the associated services is currently Nauru's most significant revenue stream.¹³⁴

Papua New Guinea

3.61 Cultural and social barriers are also evident in PNG, and have been linked with some of the allegations of abuse and neglect among refugees and asylum seekers there. The vast majority of the all-male asylum seeker population in PNG are Iranian. Asylum seekers also come from Sri Lanka, Pakistan, Bangladesh, Afghanistan, Iraq, Burma, India, Nepal, Somalia, and Lebanon. There are also a number of individuals who are stateless.¹³⁵ The PNG population of approximately 7.2 million people,¹³⁶ by contrast, is characterised by diverse local groups speaking over 800 languages.¹³⁷ In 2015 the International Labour Organization (ILO) advised that PNG had a crude net migration rate of zero, although many individuals travel to PNG for short term visits

129 Department of Foreign Affairs and Trade (DFAT), *Aid performance report 2012-13 Nauru*, p. 4.

130 The Independent UK, *Australia moots radical future for bankrupt Nauru*, 20 December 2003.

131 The Independent UK, *Australia moots radical future for bankrupt Nauru*, 20 December 2003.

132 DFAT, *Overview of Australia's aid program to Nauru*, <http://dfat.gov.au/geo/nauru/development-assistance/Pages/development-assistance-in-nauru.aspx> (accessed 12 January 2017).

133 DFAT, *Overview of Australia's aid program to Nauru*.

134 DFAT, *Overview of Australia's aid program to Nauru*.

135 Parliamentary Library, *Australia's offshore processing of asylum seekers in Nauru and PNG: a quick guide to statistics and resources*, www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/Offshore (accessed 12 January 2017).

136 National Statistical Office, Papua New Guinea, *National Population and Housing Census 2011*.

137 The World Bank, *Papua New Guinea Overview*, www.worldbank.org/en/country/png/overview (accessed 27 March 2017).

(including for business and employment reasons).¹³⁸ PNG has also participated in the resettlement of refugees from West Papua, with the UNHCR explaining in 2005 that PNG hosted up to 10,000 mainly West Papuan refugees, with some cases dating back to the 1960s.¹³⁹ In 2016 it was reported that PNG would resettle hundreds of West Papuan refugees.¹⁴⁰

3.62 The committee observed, in December 2014, animosity between asylum seekers and locals on Manus Island,¹⁴¹ including an incident during which locals attempted to invade the RPC armed with machetes.¹⁴² The committee also noted evidence of misinformation about both locals and asylum seekers, including stories of locals being cannibals, and the prevalence of HIV in the population.¹⁴³

3.63 The UNHCR stated that it has advised the governments of Australia and PNG that the 'integration of transferred refugees to Papua New Guinea is not possible',¹⁴⁴ highlighting that:

- for approximately 30 years (and as recently as 2013), the UNHCR has consistently referred non-Melanesian refugees who had arrived in PNG previously for resettlement in third countries due to 'severe limitations and significant challenges of finding safe and effective durable solutions in Papua New Guinea itself', and the 'formidable challenges' to achieving the integration of non-Melanesian refugees in PNG;
- the widespread deterioration in the mental health of refugees and asylum seekers who have been transferred to PNG for processing compounds the existing concerns which the UNHCR has regarding integration;
- refugees have informed the UNCHR that they cannot settle in PNG because of a 'pervasive fear for their safety'; and
- refugees who have attempted to settle in the community have been the victims of several attacks, and have not been adequately protected.

138 International Labour Organization (ILO), *Labour Migration in Papua New Guinea*, 14 April 2015, www.ilo.org/suva/areas-of-work/WCMS_407377/lang-en/index.htm (accessed 27 March 2017).

139 UNHCR, *UNHCR Country Operations Plan 2006 – Papua New Guinea*, 1 September 2005, p. 1.

140 ABC News, *Papua New Guinea resettling hundreds of West Papua asylum seekers*, 18 March 2016.

141 Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014 ('Incident at Manus')*, December 2014, p. 51.

142 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 52.

143 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014, p. 52.

144 UNHCR, *Submission 43*, p. 16.

3.64 The UNHCR submitted that the measures intended to help facilitate integration in PNG have not worked, and that PNG's Refugee Policy in particular, has caused a number of difficulties for refugees.¹⁴⁵ It highlighted that, pursuant to this policy:

- refugees must receive support which is comparable to that made available to local people (and therefore does not take into account their inherent disadvantages); and
- a refugee must first establish 'effective settlement' and financial independence before they can sponsor their family to join them, disregarding the 'established fact that the unity of the family is a key facilitator of effective settlement'.¹⁴⁶

Lack of appropriate regulation

3.65 Evidence examined by the committee indicated that concerns about a lack of appropriate regulation and oversight both within RPCs and in local communities, contributing to the many allegations of abuse, self-harm and neglect, and to their persistence over the life of the Nauru and PNG RPCs.

Concerns regarding regulation within the RPCs

3.66 As set out in Chapter 1, the Select Committee on recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru (select committee) has previously noted concerns about a lack of appropriate regulation and oversight within RPCs, including concerns about the performance and accountability of Commonwealth contracted service providers, an inappropriate complaints mechanism, and a system in which contractors were expected to 'self-manage'.¹⁴⁷

3.67 The evidence to which this committee had regard, both echo and build on these concerns, including in relation to the Manus RPC.

3.68 As will be further discussed in Chapter 5 (the management of expenses associated with RPCs), the Australian National Audit Office (ANAO) has recently completed two audit reports regarding both contract procurement and contract management at offshore processing centres.¹⁴⁸ The ANAO made a number of findings in relation to the procurement of major contracts for services at the RPCs, and the management of those contracts. In the course of these audits, the ANAO highlighted

145 UNHCR, *Submission 43*, pp. 17–18.

146 UNHCR, *Submission 43*, p. 16.

147 Select Committee on recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru ('Select Committee'), *Taking responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru ('Nauru RPC')*, August 2015, pp. 123–124.

148 Australian National Audit Office (ANAO), *Offshore Processing Centres in Nauru and Papua New Guinea: procurement of garrison support and welfare services ('Procurement of garrison support and welfare services')*, Audit Report No. 16 2016-17; ANAO, *Offshore processing centres in Nauru and Papua New Guinea – contact management of garrison support and welfare services ('Contract management')*, ANAO Report No. 32 2016–17.

the casual nexus between a lack of regulation and oversight, consequent problems in both auditing the performance of those contracts, and ongoing failures to address recommendations to improve the safety of the RPCs.

3.69 In particular, the ANAO commented on:

- shortcomings in the department's record keeping systems;¹⁴⁹
- a heavy reliance on self-assessment of contractors for the purposes of performance measurement, combined with delays in the department's review of those self-assessments;¹⁵⁰
- shortcomings in record keeping relating to incidents at RPCs, including a significant variation between the numbers of records held by the department and those held by service providers;¹⁵¹
- a failure by the department to ensure that all digital records, which were held by Wilson Security (the subcontractor of Broadspectrum) were being appropriately held,¹⁵² including an inability to provide 'any details' as to the 'extent and nature' of digital records held on its behalf;¹⁵³
- delays in the development and departmental approval of 'management plans' for contractors;¹⁵⁴
- a failure to adopt a systematic approach to monitoring goods and services being delivered to the RPCs under contracts, and a failure to conduct regular audits of the contract performance;¹⁵⁵ and
- delayed responses to periodic reviews conducted by the department's Chief Medical Officer, including observations by the CMO in January 2015 that water pooling, excessive mould, and vermin were increasing the risk of infection and disease; as well observations of overcrowding, inadequate cleaning and poor food hygiene.¹⁵⁶

3.70 The ANAO concluded that the failure by the department to appropriately monitor the performance of these contracts, and the services being provided at RPCs, reduced the department's ability to verify that key welfare services were being delivered, facilities had been maintained, and work health and safety responsibilities

149 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016-17, p. 8; ANAO, *Contract management*, ANAO Report No. 32 2016-17, p. 11.

150 ANAO, *Contract management*, ANAO Report No. 32 2016-17, pp. 8-9.

151 ANAO, *Contract management*, ANAO Report No. 32 2016-17, pp. 1-12.

152 ANAO, *Contract management*, ANAO Report No. 32 2016-17, p. 12.

153 ANAO, *Contract management*, ANAO Report No. 32 2016-17, p. 59.

154 ANAO, *Contract management*, ANAO Report No. 32 2016-17, p. 40.

155 ANAO, *Contract management*, ANAO Report No. 32 2016-17, p. 50.

156 ANAO, *Contract management*, ANAO Report No. 32 2016-17, p. 52.

were being met.¹⁵⁷ The ANAO highlighted in particular the department's failure to respond to a recommendation regarding the removal of mould from RPC accommodation in Nauru, made in February 2015. At December 2016, during the course of the ANAO's audit, the department advised that mould remediation work had been completed in just four of 13 accommodation marquees.

3.71 The department and its contractors and subcontractors responded to the findings of these audit reports. The department emphasised that the procurement of garrison and welfare services at RPCs was undertaken in a 'highly complex and rapidly evolving environment', and one which remains extremely complex.¹⁵⁸ Broadspectrum likewise argued that the ANAO had failed to address the 'complexity of operations', 'dynamic and changing conditions', and 'flexibility and responsiveness' required of the department and contractors to respond to the requirements of the Nauruan and PNG Governments, which had 'ultimate control over the legal and operating environment'.¹⁵⁹ Wilson Security acknowledged 'the challenges that exist in maintaining data integrity in these operational environments', and noted that the environmental and infrastructure conditions at the RPCs meant that all organisations struggled to maintain 'the information and communication technology access and service continuity that would be experienced in a modern, developed nation'.¹⁶⁰

Changing incident report classification levels

3.72 The committee also heard evidence of incident report classifications being downgraded in the course of being initially drafted and then passed up the chain of command. Mr Paul Stevenson, a former psychologist at both the Nauru and Manus RPC from July 2014 to July 2015, submitted that he had observed systematic downgrading of incident classification from critical to major and minor at a rate of 30 per cent.¹⁶¹ He submitted that this took place due to the inclusion of 'abatement fees' in the contract between Transfield and Wilson Security, which involved the imposition of an \$80,000 abatement per incident, for any critical incidents which were not reported to Australian office of Transfield within three hours of the incident having occurred. Mr Stevenson further explained that an incident classified as being 'major' could be reported within 24 hours of having occurred, while a 'minor' incident could be reported within three days.¹⁶²

3.73 The Guardian Australia's interactive 'Nauru files' database indicates that 128 incidents were downgraded in classification from January 2015 to

157 ANAO, *Contract management*, ANAO Report No. 32 2016–17, p. 50.

158 ANAO, *Procurement of garrison support and welfare services*, Audit Report No. 16 2016–17, p. 16.

159 ANAO, *Contract management*, ANAO Report No. 32 2016–17, p. 17

160 ANAO, *Contract management*, ANAO Report No. 32 2016–17, p. 18

161 Mr Paul Stevenson, Psychologist, Brisbane Refugee and Asylum Seeker Support Network (BRASSN), *Committee Hansard*, Tuesday 14 March 2017, pp. 11–12.

162 Mr Paul Stevenson, Psychologist, BRASSN, *Committee Hansard*, Tuesday 14 March 2017, p. 18.

September 2015. Two of the downgraded incidents in January 2015 were initially reported as 'critical', and we subsequently downgraded by being struck out in pen to read 'major'. One of these incidents reported an allegation of the sexual abuse of a child by a security officer, and includes a notation in pen: 'rating changed by Wilsons'.¹⁶³

3.74 The department advised that it had conducted a review of 1814 incidents from the Nauru RPC. It submitted that it was satisfied that 'the classification of incidents is generally appropriate', and that 'there was no indication of systemic issues such as the deliberate downgrading of severity'.¹⁶⁴ The department also submitted that:

The Garrison and Welfare Service Provider will assess the incident against the incident categories provided by the Department, in conjunction with their own standard operating procedures. It is common practice for Service Providers, in consultation with the Department and other stakeholders, to review incidents and if necessary, reclassify these incidents, as further information becomes available. This may result in a discrepancy between what the Garrison and Welfare Service Provider initially reports, compared to what the department has recorded.¹⁶⁵

Concerns regarding Nauruan and PNG regulatory schemes

3.75 The opening up of the Nauru and Manus RPCs has meant that asylum seekers and refugees can move about the local communities, in some cases being housed in the community; and may be required to utilise local services rather than RPC services.

3.76 Several submitters and witnesses expressed their concern about the suitability of the regulatory frameworks present in Nauru and PNG, particularly in relation to police and the judiciary, and the Nauruan child protection framework.

Low confidence in local authorities

3.77 The committee heard evidence about poor treatment of asylum seekers and refugees in both Nauru and PNG by local authorities, and a low level of confidence in the capacity and propensity of some of those authorities to treat asylum seekers and refugees fairly and transparently.

3.78 These claims both reflect and build on evidence presented to previous inquiries into these matters. As set out in Chapter 1, in 2014 the committee heard evidence of animosity between detainees and locals in PNG, as well as a significant degree of fear and distrust in local PNG staff members and PNG police, arising out of the riots in February 2014, and the death of Mr Reza Barati.¹⁶⁶ The 2015 select committee likewise noted the limitations on the capacity of the Nauruan Police Force

163 The Guardian Australia, *the Nauru files*, critical (downgraded to major) incident, 'sexual assault allegation', 15 January 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150051.pdf> (accessed 3 April 2017).

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

165 DIBP, response to question on notice, 15 March 2017 (received 4 April 2017).

166 Legal and Constitutional Affairs References Committee, *Incident at Manus*, December 2014.

to investigate allegations, as well as questionable willingness to do so where the complainant was a refugee or asylum seeker.¹⁶⁷

3.79 Amnesty International explained that the Nauruan justice system has experienced a number of controversies in recent years, some of which have stemmed from the exercise of government powers against the judiciary. In 2014 the Nauruan government expelled both its Magistrate and Police Commissioner, both of whom were Australian citizens.¹⁶⁸ The government also revoked the visa of the Chief Justice, the Hon Geoffrey Eames AM QC, who was consequently forced to resign from his position. Mr Eames advised the select committee that these actions constituted 'a series of flagrant breaches of the Rule of Law', and argued that they demonstrated that 'the concept of separation of powers was not well understood or accepted by some members of the government'.¹⁶⁹ Amnesty International argued that the expulsion of several individuals from Nauru, allegations of bribery, and the introduction of new legislation which criminalised statements which are 'likely to threaten public safety', raises 'questions about government corruption and authoritarianism'.¹⁷⁰ It also noted that in October 2015 the government and its public relations company published the name of a sexual assault complainant, along with a detailed description of the alleged attack.¹⁷¹

3.80 Several submitters raised particular concerns about the Nauruan Police Force. The department explained that the Nauru Police Force plays a key role in the investigation of alleged incidents involving refugees and asylum seekers. In August 2016, following the leak of the Nauru files, the department confirmed that all the alleged criminal incidents within RPCs had been referred to the Nauru Police Force for investigation, and that refugees living in the community are encouraged to report all criminal incidents to police.¹⁷² It explained that of the matters reported in the media, 14 incidents had been referred to the Nauruan police. Nine of the referred incidents had been closed due to insufficient evidence, one had closed following the withdrawal of the complaint, one investigation 'revealed no evidence committed', two investigations were ongoing, and one had resulted in a charge of assault which was before the court at the time.¹⁷³

167 Select Committee, *Nauru RPC*, August 2015.

168 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 12.

169 Select Committee, *Nauru RPC*, August 2015, the Hon Geoffrey Eames AM QC, *Submission 70*, p. 1.

170 Amnesty International, *Submission 6*, Attachment 1, p. 13.

171 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 39.

172 DIBP, media release, *The 'Nauru files'*, 10 August 2016, <http://newsroom.border.gov.au/releases/the-nauru-files> (accessed 14 February 2017).

173 Ms Justine Saunders APM, Acting Deputy Commissioner, Operations, DIBP, *Committee Hansard*, Monday 17 October 2016, p. 27.

3.81 The committee asked the department how many incidents had been deemed necessary to refer to Nauruan and PNG Police for investigation, and what the results of those referrals were. The department responded that the referral of incidents to police is the responsibility of 'host government officials'. It explained that all allegations of assault (for example) are reported to the Government of Nauru for referral to the Nauru Police Force for investigation, and that all refugees and asylum seekers are encouraged to report incidents. It stated that host governments are 'not obligated to provide the Department or Service Providers with information relating to their referrals to police or any subsequent investigation'.¹⁷⁴

3.82 Amnesty International highlighted several examples of alleged inappropriate conduct on the part of Nauruan Police, including allegations that police officers had posted derogatory comments about refugees on social media.¹⁷⁵ It submitted that in October 2015 the Nauru Police Force allegedly allowed a convicted paedophile to serve as a police reserve officer.¹⁷⁶ It also noted three instances where a child was allegedly interrogated by police without a child protection specialist present,¹⁷⁷ and claims that three refugee children were stripped naked and held overnight in a police cell in 2015.¹⁷⁸

3.83 Amnesty International argued that Nauruan Police have consistently failed to investigate alleged crimes, or hold perpetrators accountable.¹⁷⁹ It highlighted several claims made by de-identified refugees and asylum seekers who said that they had reported crimes which had not been investigated, and called police who did not attend,¹⁸⁰ and that police had forced asylum seekers to sign false pre drafted statements.¹⁸¹ Ms Laura Sawtell, a Save the Children employee at the Nauru RPC until November 2015, submitted that she had personally experienced several failures by the Nauru Police to respond to a report of abuse against a child, which she had witnessed:

I recall a rare time when the Nauruan police force did attempt to investigate an allegation of abuse of a child that I had witnessed. I arranged on three

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

175 Amnesty International, *Submission 6*, p. 2; *Submission 6*, Attachment 1, p. 39.

176 ABC News, *Nauruan police force face fresh scrutiny after convicted rapist allowed to join police reserves*, 15 October 2015.

177 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 30.

178 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 39.

179 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 5.

180 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 37.

181 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 40.

occasions an allocated time and place to meet the Nauruan police force member and provide a statement. On all three occasions the police force member did not present to the meeting and following this I did not hear from them again.¹⁸²

3.84 A former teacher at the Nauru RPC echoed this allegation, highlighting the case of an assault of a group of unaccompanied minors who had been housed in the Nauruan community in October 2014.¹⁸³ The worker stated that despite the incident having been reported to local police, to date the investigation had not been finalised.¹⁸⁴ The worker also stated that in some instances, the victims' statements had been lost.

3.85 Amnesty International also noted a number of confidential claims that police would arrest refugees and asylum seekers arbitrarily as a means of harassing and intimidating them, including arbitrarily arresting a person for self-harming:¹⁸⁵

In late May 2016, Nauru decriminalized suicide, as well as homosexuality. However, since that time, Amnesty International has received credible reports that people are still being jailed for threatening to or actually harming themselves, but on the basis of other provisions in the *Nauru Crimes Act*. Service-providers have also told Amnesty International that in May 2016, their managers instructed them to report self-harm incidents to the Nauru Police Force. This has resulted in some service-providers being forced to testify against their own clients in court. As a result, there has been a drop in reported self-harming, as several service-providers said they felt it was their ethical duty to not take action that would result in criminalizing behaviour requiring mental healthcare - not law enforcement. But even if suicide and attempted suicide are no longer criminal offences, Nauruan law still permits refugees to be prosecuted for actions that took place before May 2016.¹⁸⁶

3.86 HRW raised similar concerns in relation to the capability and propensity of Nauruan police to investigate crimes perpetrated against refugees and asylum seekers. Australia Director Ms Elaine Pearson told the committee that:

The people that we interviewed on Nauru described various cases of having rocks thrown at their head - in one case a Somali women witnessed her husband being beaten and hit on the head with a machete by local Nauruans. Despite efforts to get the police to investigate these cases, often the police would simply shrug their shoulders and refuse to file the complaints. In one case, as an example, where the refugee had diligently

182 Ms Laura Sawtell, *Submission 52*, p. 7.

183 *Submission 53*, p. 2.

184 *Submission 53*, p. 2.

185 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 39.

186 Amnesty International, *Submission 6*, p. 2; Amnesty International, *Submission 6*, Attachment 1, p. 39.

written down the licence plate of the car after he was held up at knifepoint, he was told that that car belonged to a government official and was asked if he was therefore implying that the government official had committed the abuse against him. He said: 'That's not what I'm implying at all. It was a young man driving the car; I'm not saying that it was a government official.' It is this kind of pressure on the refugees that makes them give up and not want to report the cases to the authorities anymore. We found in a lot of these incidences that they have lost all faith in the police.¹⁸⁷

3.87 In February 2016 the Nauruan Police Force stated that it was 'sick of the lies told about them and the fabricated allegations of refugees—encouraged by Australian advocates and lawyers'.¹⁸⁸ Nauru Police Commissioner Mr Corey Caleb argued that refugees would regularly fabricate allegations of assault and sexual assault, stating:

They tell us they have been assaulted but their stories seldom add up; there is usually no physical evidence or witnesses or even any details...Not only do police have nothing to investigate except an allegation with no information but even if we had a suspect, no prosecutor can build a case when the only piece of so-called evidence is an unsubstantiated allegation...Even in Australia, these allegations would be dismissed and those making them would be charged with making a false complaint.¹⁸⁹

3.88 The department, in response to the submission by Amnesty International, asserted that the Nauruan Police Force 'does investigate alleged crimes', but that investigations can be difficult where asylum seekers or refugees 'fail to cooperate' or where there is insufficient evidence.¹⁹⁰

3.89 The committee noted evidence of concerns about a lack of fair treatment towards refugees and asylum seekers by PNG authorities, including local police. The department explained that the Royal Papua New Guinea Constabulary (RPNGC) may investigate matters involving refugees living in PNG, and noted that the RPNGC maintains a permanent presence at the RPC itself.¹⁹¹

3.90 A recent incident during which two refugees were arrested by local police raised a number of concerns about the conduct of local police. These included the arrest of two refugees in the community, reportedly for drunk and disorderly conduct,¹⁹² who alleged that they had been beaten by PNG police. The case of Mr Loghman Sawari, as set out in Chapter 2, also highlighted concerns about inappropriate conduct on the part of PNG immigration authorities and local police. On

187 Ms Elaine Pearson, Australia Director, Human Rights Watch (HRW), *Committee Hansard*, Tuesday 15 November 2016, pp. 3–4.

188 The Government of the Republic of Nauru, media release, *We won't cop it anymore – Nauru police*, 3 February 2016.

189 The Government of the Republic of Nauru, media release, *We won't cop it anymore – Nauru police*, 3 February 2016.

190 Amnesty International, *Submission 6*, Attachment 1, DIBP response, p. 4.

191 DIBP, *Submission 23*, pp. 29–30.

192 Radio NZ, *Manus Refugees self-harm and hunger strike in protest*, 17 January 2017.

28 January 2017 it was reported that Mr Sawari had boarded a plane using a false name and travelled to Fiji,¹⁹³ where he sought to claim asylum. On 3 February 2017 it was reported that Mr Sawari had been arrested by Fijian police,¹⁹⁴ and handed over to immigration authorities.¹⁹⁵ On his return to PNG, Mr Sawari was charged with giving false information in a passport application, arrested, and released on bail.¹⁹⁶ On 5 April 2017 it was reported that Mr Sawari had been re-arrested on similar charges.¹⁹⁷

The Nauruan child protection scheme

3.91 A number of submitters raised concerns about the capacity of Nauru's developing child protection framework to sufficiently meet the needs of refugee and asylum seeker children.

3.92 In 2016, the United Nations International Children's Emergency Fund (UNICEF) Pacific and the Nauru Ministry of Home Affairs conducted a joint review of Nauru's child protection system.¹⁹⁸ The review noted that the prevailing attitude towards and handling of allegations of child abuse and neglect in the Nauruan community differ significantly from that in Australia. Some forms of maltreatment against children (including neglect, corporal punishment, emotional abuse, and witnessing violence in the home) are not necessarily viewed as unacceptable or reportable in Nauru.¹⁹⁹ There appears to be reluctance on the part of local police to investigate allegations of child abuse, and prevailing Nauruan cultural norms against interference in family matters.²⁰⁰

3.93 The review stated that significant data reporting gaps and a lack of training also made an assessment of child maltreatment difficult. UNICEF stated that Nauruan police advised that they did not keep data on reported cases of child abuse in a readily accessible form.²⁰¹ Police also advised that they had little training in dealing with

193 Sydney Morning Herald, *Escape from Manus Island: Iranian refugee seeks asylum in Fiji*, 28 January 2017.

194 ABC News, *Iranian asylum seeker who fled Manus Island detained in Fiji, deported to PNG*, 3 February 2017.

195 ABC News, *Iranian asylum seeker who fled Manus Island detained in Fiji, deported to PNG*, 3 February 2017.

196 ABC News, *Iranian refugee Loghman Sawari moved from Port Moresby to Bomana prison ahead of bail application*, 10 February 2017.

197 The Guardian Australia, *Amnesty calls for release of refugee Loghman Sawari in Papua New Guinea*, 5 April 2017.

198 Ministry of Home Affairs and UNICEF Pacific, *Review of the Child Protection System in Nauru*, 2016.

199 Ministry of Home Affairs and UNICEF Pacific, *Review of the Child Protection System in Nauru*, 2016, p. 17.

200 Ministry of Home Affairs and UNICEF Pacific, *Review of the Child Protection System in Nauru*, 2016, p. 17.

201 Ministry of Home Affairs and UNICEF Pacific, *Review of the Child Protection System in Nauru*, 2016, p. 18.

child protection issues, and because there were limited legal options for responding.²⁰² UNICEF also found that medical staff have little training in identifying cases of child abuse, and so may treat injuries but offer no other support or follow up.²⁰³ The review also found that investigations may also be hampered by the lack of trained specialists and facilities to gather and analyse forensic evidence.²⁰⁴ The report recommended that the reporting of suspected cases of child abuse be mandatory for professionals working in the health, education, justice and social welfare sectors.²⁰⁵

3.94 The Nauruan Government adopted the *Child Protection and Welfare Act* in 2016.²⁰⁶ UNICEF Australia commended the introduction of this legislation, stating that it better aligns Nauru with international human rights standards.²⁰⁷ However, it argued that further systems development, capacity building and human and financial resourcing was required to ensure it can be implemented.²⁰⁸

3.95 In May 2016 the department's Child Protection Panel completed its report into the wellbeing and protection of children in detention and RPCs.²⁰⁹ The Panel found that responses to incidents of child abuse at the Nauru RPC were 'adequate or better' in only 30.5 per cent of cases reviewed, and noted that more than 20 per cent of all incidents could not be reviewed due to a lack of data available to the Panel.²¹⁰ The Panel also noted that the professional conduct of subcontractor staff was of concern.²¹¹

3.96 On 30 September 2016, the United Nations Committee on the Rights of the Child (CRC) stated that it had found 'persistent discrimination against asylum seeking children and refugee children in all areas', and highlighted the limited capacity of Nauruan Police to investigate allegations, lack of a 'child sensitive approach, inhumane and degrading treatment against children living in the RPC, and abuse and

202 Ministry of Home Affairs and UNICEF Pacific, *Review of the Child Protection System in Nauru*, 2016, p. 34.

203 Ministry of Home Affairs and UNICEF Pacific, *Review of the Child Protection System in Nauru*, 2016, p. 37.

204 Ministry of Home Affairs and UNICEF Pacific, *Review of the Child Protection System in Nauru*, 2016, p. 37.

205 Ministry of Home Affairs and UNICEF Pacific, *Review of the Child Protection System in Nauru*, 2016, p. 48.

206 *Child Protection and Welfare Act 2016* (Nauru), ronlaw.gov.nr/nauru_lpms/index.php/act/view/1186 (accessed 20 December 2016).

207 UNICEF Australia, *Submission 55*, p. 3.

208 UNICEF Australia, *Submission 55*, p. 3.

209 Child Protection Panel (CPP), *Making Children Safer*, May 2016, www.border.gov.au/ReportsandPublications/Documents/cpp-report-making-children-safer.pdf

210 CPP, *Making Children Safer*, May 2016, p. 23.

211 CPP, *Making Children Safer*, May 2016, p. 23.

threats against families living outside the RPC.²¹² The CRC also highlighted the failure of Australia's Memorandum of Understanding (MOU) with Nauru to take into account the best interests of the child.²¹³ The UNHCR, in its submission to this inquiry, likewise questioned the limited forensic capacity of the Nauru Police Force to investigate allegations of sexual-based violence against women and children, despite capacity building efforts by the AFP.²¹⁴

3.97 UNICEF Australia submitted that despite the steps taken to develop a formal child protection system in Nauru, there are still serious gaps.²¹⁵ It argued that:

The child protection in Nauru, at this stage, is developing and is currently not well positioned to respond adequately to the complex needs of refugee children and their families. Further efforts and investment is required to strengthen the basic building blocks of the child protection system, train skilled staff, improve the referral and case management systems and address incidents of gender-based violence and to support children with disabilities.²¹⁶

3.98 It concluded that, in light of this, offshore processing arrangements cannot reasonably be considered to be in the best interests of refugee children.²¹⁷

Uncertainty about the future

3.99 The committee received evidence indicating that the length of time being spent at the RPCs, and the family separation that can accompany this, is one of the causal factors in the prevalence of poor mental health among asylum seekers and refugees.

3.100 In July 2013, then Prime Minister Mr Kevin Rudd announced that asylum seekers who came to Australia by boat would be sent to PNG for assessment, and would never be settled in Australia.²¹⁸ In October 2016 Prime Minister Mr Malcolm Turnbull announced that refugees and asylum seekers on Manus and Nauru would be banned from ever coming to Australia, even on a tourist or business

212 UN Committee on the Rights of the Child (CRC), *Concluding Observations on the Initial Report of Nauru (Advance Unedited Edition)*, 30 September 2016, UN Doc. CRC/C/NRU/CO/1, para. 30.

213 CRC, *Concluding Observations on the Initial Report of Nauru (Advance Unedited Edition)*, 30 September 2016, UN Doc. CRC/C/NRU/CO/1, para. 52.

214 UNHCR, *Submission 43*, p. 24.

215 Ms Amy Lamoin, Head of Policy and Advocacy, UNICEF Australia, *Committee Hansard*, Tuesday 15 November 2016, p. 27.

216 UNICEF Australia, *Submission 55*, p. 6.

217 UNICEF Australia, *Submission 55*, p. 6.

218 Prime Minister, Attorney General, and Minister for Immigration Joint Press Release, *Australia and Papua New Guinea Resettlement Arrangement*, 19 July 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22media%2Fpressrel%2F2611771%22> (accessed 28 March 2017).

visa.²¹⁹ The legislation by which the government sought to enact this change, the *Migration Legislation Amendment (Regional Processing Cohort) Bill 2016*, is yet to pass through the Senate.²²⁰ It has also been the subject of inquiry by this committee.²²¹

3.101 The Government has sought to secure resettlement options for the refugees on Nauru and Manus. This will be discussed in more detail in Chapter 4. By way of summary, six refugees from Nauru accepted an offer to resettle in Cambodia, however by November 2016 four of those had elected to return to their country of origin.²²² In February 2016, it was reported that two refugees from Nauru had been resettled in Canada under a family reunification visa.²²³

3.102 On 13 November 2016, the Government announced that refugees located on Manus Island and Nauru would be offered resettlement in the United States under a 'one off' arrangement.²²⁴ This will be discussed in further detail in Chapter 4. However, at the date of this report few further details have been released and no refugees have been resettled in the US pursuant to the arrangement.

3.103 Several submitters argued that refugees and asylum seekers continue to experience uncertainty about their futures, and that this has contributed to widespread poor mental health and self-harm.²²⁵ The UNHCR submitted that, based on its interviews with asylum seekers and refugees in April 2016, it was clear that 'family separation resulted in a marked deterioration in mental health', and stated that 'it is critical for the mental health of refugees that separated families be reunited'.²²⁶

3.104 A number of incident reports from the Nauru RPC reflect this concern about uncertainty. Incident reports, particularly through the year 2015, indicate numerous instances where refugees and asylum seekers disclosed concern at having been detained on the island for years, their attempts to force authorities to progress their

219 ABC News, *Manus Island, Nauru refugees to be banned from entering Australia, Malcolm Turnbull says*, 30 October 2016.

220 See, www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5754 (accessed 28 March 2017).

221 Legal and Constitutional Affairs Legislation Committee, *Migration Legislation Amendment (Regional Processing Cohort) Bill 2016 [Provisions]*, 22 November 2016.

222 Mr David Nockels, Acting Deputy Commissioner, Support Group, DIBP, *Committee Hansard*, Friday 11 November 2016, p. 28.

223 ABC News, *Asylum seeker pair leave Nauru 'black hole' to be reunited with family in Canada*, 21 February 2016.

224 See, www.minister.border.gov.au/peterdutton/Pages/Refugee-resettlement-from-Regional-Process-Centres.aspx.

225 University of Newcastle Legal Centre (UNLC), *Submission 12*, p. 2; Dr Kym Jenkins, President-elect, RANZCP, *Committee Hansard*, Tuesday 15 November 2016, p. 21; Mr Daniel Webb, Director of Advocacy (DA), HRLC, *Committee Hansard*, Tuesday 15 November 2016, p. 2; RANZCP, *Submission 8*, p. 4; UNHCR, *Submission 43*, p. 5; Australasian College of Emergency Medicine (ACEM), *Submission 13*, p. 1.

226 UNHCR, *Submission 43*, p. 10.

claims and their resettlement, and their concerns about the RSD process.²²⁷ In May 2015, a worker reported that a man had expressed concern about whether he would be reunited with his wife and daughter, who had been medically transferred out of Nauru. He stated that he was experiencing suicidal thoughts and would stop taking the medication which he is required to take in order to stay alive.²²⁸ In June 2015 a child, who advised a Save the Children worker of an intention to kill themselves by jumping from a roof, explained that her extended family had recently been returned to Nauru after having been in Darwin for medical treatment for over a year.²²⁹ In July 2015, a case worker recorded meeting with a woman on Nauru who told her:

[T]hat she did not want to 'live in this situation anymore, two years in this life, I can't stand it, I want to die...I want to be with my fiancé in Australia, please I can't live like this...please help me, kill me, I can't live anymore'...[Reacted] stated that she did not want to pray or speak with her mother, reporting 'I don't want to do anything, I want to die here, let me die'.²³⁰

3.105 In a further incident in July, a man became distressed when he found out that his wife, who was located in the Melbourne Immigration Transit Centre, was unwell and being transferred to hospital. The Save the Children worker recorded:

[Redacted] began to get teary and began breathing very heavily. [Redacted] then stated that he is 'not going to take his medication and not going to eat anymore'. CM stated that she understands the news of his wife must be very hard for and also the stress of the prolonged separation of 9 months from his wife and daughter but ensured that he needs to look after himself as well as son [redacted] (who also resides in RPC3). [Redacted] sat quietly and sobbed. [Redacted] nodded and apologised to CM for getting upset and shook her hand and departed.²³¹

227 The Guardian Australia, *the Nauru files*, major incident 'food and fluid refusal' (downgraded to minor), 25 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150466.pdf> (accessed 5 April 2017); minor incident 'demonstration', 26 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150490.pdf> (accessed 5 April 2017); minor incident 'threatened self-harm', 28 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150492.pdf> (accessed 5 April 2017); major incident 'self-harm', 5 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150454.pdf> (accessed 5 April 2017); minor incident 'threat to self-harm', 7 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150384.pdf> (accessed 5 April 2017); minor incident 'threat to self-harm', 7 June 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150385.pdf> (accessed 5 April 2017).

228 The Guardian Australia, *the Nauru files*, minor incident, 'threat of self-harm', 2 May 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150315.pdf> (accessed 5 April 2017).

229 The Guardian Australia, *the Nauru files*, 29 June 2015, major incident 'threat of self-harm', <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150424.pdf> (accessed 4 April 2017).

230 The Guardian Australia, *the Nauru files*, minor incident 'threat of self-harm', 24 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150487.pdf> (accessed 5 April 2017).

231 The Guardian Australia, *the Nauru files*, major incident 'food and fluid refusal', 17 July 2015, <https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150476.pdf> (accessed 3 April 2017).

3.106 In September 2015 a worker reported that a father had sought assistance for his son who had stopped eating, lost weight, and was isolating himself from his friends.²³² His father told the worker that his son had been separated from his mother for 11 months. When the worker spoke with the son, he said that he did not want to leave his room because 'it made him angry when he went to the mess and saw families eating together'.

A lack of transparency, accountability and scrutiny

3.107 The committee heard evidence indicating that a lack of accountability and transparency about RPC operations has contributed to the existence of the allegations of abuse, self-harm and neglect, and to their persistence over the life of the offshore processing centres.

3.108 The committee heard that this lack of accountability and transparency derives from:

- a legislative framework preventing disclosure without fear of prosecution;
- a pervasive culture of secrecy and mistrust around the RPCs; and
- structural barriers which prevent accountability.

3.109 The committee observed that these difficulties are compounded by a persistent unwillingness on the part of the department to speak openly about matters associated with the RPCs, including to this committee in the course of this inquiry.

The legislative framework

3.110 The committee heard that, in addition to restrictions contained within contracts of employment, codes of conduct, and any relevant professional standards,²³³ RPC employees are restricted in their capacity to speak about RPC operations because of the Australian Statutory framework. This framework includes:

- *Public Interest Disclosure Act 2013* (PID Act);
- *Crimes Act 1914* (Crimes Act);
- *Public Service Act 1999* (Public Service Act); and
- *Australian Border Force Act 2015* (Border Force Act).

The PID, Crimes and Public Service Acts

3.111 Workers who are covered by the Public Service Act are required to comply with the Australian Public Service (APS) Code of Conduct (the Code).²³⁴ The Code requires that, among other things, APS employees must comply with all applicable Australian laws.²³⁵ Breach of the Code may result in a number of sanctions, including

232 The Guardian Australia, *the Nauru files*, information, 15 September 2015.

233 Liberty Victoria, *Submission 26*, Attachment 1, pp. 30–32.

234 *Australian Public Service Act 1999*, s. 13.

235 *Australian Public Service Act 1999*, s. 13(4).

employment termination, reducing in classification, re-assignment of duty, salary reduction, a fine, or a reprimand.²³⁶

3.112 Section 70 of the Crimes Act states that it is an offence for a 'Commonwealth officer' to disclose any information which comes into their knowledge or possession by virtue of their being a Commonwealth officer where they have a duty not to disclose that information.²³⁷ This also applies to individuals who are no longer employed as a Commonwealth officer at the time of the disclosure. This offence is punishable by imprisonment for two years. The Crimes Act does not describe the types of information which will be prohibited from disclosure.²³⁸ In 2014, it was reported that then Minister for Immigration and Border Protection the Hon Scott Morrison MP had referred several Save the Children employees to the Australian Federal Police for allegedly breaching section 70 by misusing privileged information.²³⁹

3.113 The department explained that there have been eight matters involving a potential breach of section 70 of the Crimes Act relating to RPC operations.²⁴⁰

3.114 The PID Act provides a mechanism for current and former public officials, including contractors and subcontractors, to report suspected wrong doing and receive protections from reprisal action and immunity from criminal, civil and administrative liability for reporting the wrong doing. While the PID Act promotes the disclosure of possible wrong doing, a key element is that the disclosure is made to the agency in which the wrong doing relates. Additionally, the disclosure can only be made to certain people within the agency:

- the head of the agency;
- 'authorised officers' who have been formally appointed under the PID Act; or
- the public official's supervisor who is then required to pass the information onto an authorised officer to assess.

3.115 The PID Act requires that agencies ensure that its authorised officers are accessible,²⁴¹ and that public officials who belong to the agency are aware of the identity of each authorised officer.²⁴² While the PID Act is silent on the number of authorised officers that must be appointed to satisfy this accessibility requirement, the Commonwealth Ombudsman has provided guidance in this area. The Ombudsman

236 *Australian Public Service Act 1999*, s. 15(1).

237 *Crimes Act 1914*, s. 70.

238 Liberty Victoria, *Submission 26*, Attachment 1, p. 23.

239 Sydney Morning Herald, *Legal experts criticise Scott Morrison's use of 'draconian' law*, 9 October 2014, www.smh.com.au/federal-politics/political-news/legal-experts-criticise-scott-morrisons-use-of-draconian-law-20141008-10rwn3.html (accessed 3 February 2017).

240 DIBP, responses to questions on notice, 31 March 2017 (received 13 April 2017).

241 *Public Interest Disclosure Act 2013*, s. 59(3)(b).

242 *Public Interest Disclosure Act 2013*, s. 59(3)(c).

notes that some factors that agencies should consider when appointing authorised officers includes the size of the agency, the nature of the work performed by the agency, areas with higher risk and opportunity for disclosable conduct, and the geographical location of staff.²⁴³ The department advised the committee that it currently has four such authorised officers, three of whom are located in the Australian Capital Territory, and one of whom is located in Victoria.²⁴⁴ It stated that a fifth authorised officer will soon be located in New South Wales.

3.116 Additionally, while supervisors must provide information they reasonably believe meets the definition of a public interest disclosure to an authorised officer, the Commonwealth Ombudsman has reported that there has been significant under reporting by supervisors across agencies subject to the PID Act.²⁴⁵

3.117 Australian Lawyers for Human Rights (ALHR) explained that for a public official to disclose the matter externally, to those outside of the agency, a number of additional hurdles must be overcome, including:

- the public official must have reported their concerns internally;
- the matter must have been assessed by an authorised officer to be a public interest disclosure and investigated;
- the public official has reasonable grounds for believing that the investigation conducted by the agency was inadequate;
- the disclosure of information cannot be contrary to the public interest
- no more information is disclosed than is reasonably necessary to identify the disclosable conduct; and
- the information does not consist of intelligence information or relates to the conduct of an intelligence agency.²⁴⁶

3.118 In limited circumstances disclosures can be made outside of this process, for example, in emergency situations where the public official believes on reasonable grounds that the information concerns a substantial and imminent danger to the health and safety of one or more persons or to the environment.²⁴⁷ Again, further requirements must be satisfied for a public official to make an emergency disclosure and receive the protections of the PID Act.

3.119 ALHR pointed out that in addition to these requirements, the PID Act contains exemptions so that a person cannot disclose information that relates to

243 Commonwealth Ombudsman, *Agency Guide to the Public Interest Disclosure Act 2013*, April 2016, p. 17.

244 DIBP, responses to questions on notice, 31 March 2017 (received 13 April 2017).

245 Commonwealth Ombudsman, *Annual Report 2014–15*, October 2015, p. 79.

246 Australian Lawyers for Human Rights (ALHR), *Submission 25*, p. 11; *Public Interest Disclosure Act 2013*, s 26, item 2.

247 *Public Interest Disclosure Act 2013*, s 26, item 3.

Government policy or proposed policy, or the actions or proposed actions of a Minister.²⁴⁸

3.120 Mr Julian Burnside, AO QC, of Liberty Australia, explained that whistleblower protections under the PID Act are only available once an individual has been prosecuted.²⁴⁹ He argued that the effect of this is that 'you have to go to lawyers and you live day to day wondering whether you will be convicted or not' He described this as 'the chilling effect, I think, that the government has worked on'.

3.121 ALHR argued that the limited protections under the PID Act, combined with the secrecy provisions in the Border Force Act, 'leave whistle blowers vulnerable to prosecution'.²⁵⁰ It argued that 'It is imperative for the rule of law that government actions—and those of its contractors—can be subject to public scrutiny'.

3.122 The department explained that since the Border Force Act was implemented in July 2015 there have been seven investigations into alleged potential unauthorised disclosures under the Act, and no prosecutions.²⁵¹ The department stated that it could not advise how many inquiries its authorised officers had received about contemplated public interest disclosures relating to RPC operation, because it does not record the relevant statistics.²⁵²

The Border Force Act

3.123 In addition to the above legislation, individuals who fall within the remit of the Border Force Act will *also* be limited by the secrecy and disclosure provisions contained in Part 6. Part 6 requires that:

An entrusted person must not make a record of or disclose protected information unless the making of the record or disclosure is authorised by a provision of this Part, is in the course of the person's employment or service as an entrusted person or is required or authorised by law or by an order or direction of a court or tribunal.²⁵³

3.124 Where an entrusted person does make such a disclosure, they commit an offence punishable by imprisonment for two years.²⁵⁴ Section 14.2 of the *Criminal Code* applies to an offence under section 41(1), meaning that an individual can be located outside Australian territory and still be prosecuted for an offence under the Act.²⁵⁵ If a person is prosecuted for an offence under section 42(1) of the Act, they bear the evidentiary burden of proving that one or more of the exceptions to this

248 ALHR, *Submission 25*, p. 11; *Public Interest Disclosure Act 2013*, s 31.

249 Mr Julian Burnside, AO QC, Liberty Australia, *Committee Hansard*, 15 November 2016, p. 33.

250 ALHR, *Submission 25*, p. 11.

251 DIBP, responses to questions on notice, 31 March 2017 (received 13 April 2017).

252 DIBP, responses to questions on notice, 31 March 2017 (received 13 April 2017).

253 *Australian Border Force Act 2015* ('*Border Force Act*'), s. 41.

254 *Border Force Act*, s. 42(1).

255 *Border Force Act*, s. 43.

offence apply in their case.²⁵⁶ Part 6 sets out a range of circumstances in which a disclosure may be permissible.²⁵⁷ These include where protected information is being disclosed by a person who 'reasonably believes that the disclosure is necessary to prevent or lessen a serious threat to the life or health of an individual' and the disclosure is to help prevent or lessen that threat.²⁵⁸

3.125 An entrusted person means the Secretary, Australian Border Force Commissioner, or 'an Immigration and Border Protection worker'.²⁵⁹ 'Immigration and Border Protection worker' is defined to include departmental employees, and people who have been engaged to provide services to the department (including as a contractor, consultant, or subcontractor).²⁶⁰

3.126 At the date of this report no prosecutions had been brought under Part 6 of the Act. As such, there is no judicial guidance as to the interpretation of these provisions.

3.127 When the Act was introduced in July 2015, a significant number of staff (including doctors, teachers, and youth workers) who had been employed at the RPCs expressed their strong opposition to Part 6 of the Act in an open letter.²⁶¹

3.128 In September 2015, the United Nations Special Rapporteur on the human rights of migrants, Mr Francois Crepeau, announced that he would postpone his official visit to Australia due to 'a lack of full cooperation from the Government regarding protection concerns and access to detention centres'.²⁶² Mr Crepeau stated that he had sought a written guarantee from the Government that no person who met with him during his visit would not be at risk of intimidation or sanction pursuant to the Act. This written assurance was not provided. Mr Crepeau also noted that since March 2015, he had repeatedly asked the Government to facilitate access to its offshore processing centres, but the necessary cooperation was not provided.

3.129 On 27 July 2016 Doctors for Refugees stated that it would be filing a constitutional challenge to the Act in the High Court of Australia, arguing that the secrecy provisions imposed an impermissible burden on the implied freedom of political communication.²⁶³ On 30 September 2016, the department's Secretary,

256 *Border Force Act*, s. 42(2).

257 *Border Force Act*, ss. 43-51.

258 *Border Force Act*, s. 48.

259 *Border Force Act*, s. 4.

260 *Border Force Act*, s. 4.

261 The Guardian Australia, *Open letter on the Border Force Act: 'We challenge the department to prosecute'*, 1 July 2015.

262 United Nations Special Rapporteur on the human rights of migrants, Mr Francois Crepeau, *Official visit to Australia postponed due to protection concerns*, 25 September 2015, <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16503&LangID=E> (accessed 3 February 2017).

263 Fitzroy Legal Service Inc, www.fitzroy-legal.org.au/doctors_for_refugees (accessed 1 February 2017).

Mr Michael Pezzullo signed an amendment to the Determination of Immigration and Border Protection Workers, which had originally been made on 29 June 2015.²⁶⁴ The Determination, in full, now indicates that people performing services for the department as a 'health practitioner' are exempt from the determination of 'immigration and border protection workers' for the purposes of defining an 'entrusted person' under the Act.²⁶⁵

3.130 Both the RANZCP and RACGP welcomed the amendment to Part 6 which excludes health practitioners from its operation,²⁶⁶ with the RACGP recommending that the exclusion of health care workers be extended to include other professionals such as teachers, social workers, and security staff.²⁶⁷ The RACP also raised concern about medical personnel not having been either consulted or notified about the amendments to Part 6.²⁶⁸ It called on the government to clarify the effect of the amendment, and to communicate this widely with the medical profession to ensure that professionals could be assured that they would not be risking a prison sentence for speaking about immigration detention conditions. ALHR expressed support for the exemption of health practitioners, but remained concerned that 'entrusted persons' were not exempt.²⁶⁹

3.131 A number of submitters to this inquiry indicated that, despite this amendment, they were still opposed to the operation of Part 6.²⁷⁰ The Edmund Rice Centre (ERC) argued that it had made it dangerous for workers to report about conditions there and 'garner action for the trauma experienced by transferees'.²⁷¹ The University of Newcastle Legal Centre (UNLC) argued that, as currently drafted, Part 6 puts a number of professionals at risk of prosecution, including teachers, lawyers, journalists and non-government organisation (NGO) representatives.²⁷² It also highlighted that while the provisions of Part 6 are retained, they criminalise behaviour 'that would

264 *Determination of Immigration and Border Protection Workers – Amendment No. 1*, 30 September 2016, www.border.gov.au/AccessandAccountability/Documents/determination-workers-c.pdf#search=determination (accessed 1 February 2017).

265 *Determination of Immigration and Border Protection Workers*, 29 June 2015, www.border.gov.au/AccessandAccountability/Documents/determination-workers.pdf (accessed 1 February 2017).

266 RANZCP, *Submission 8*, pp. 14-15; RACGP, *Submission 17*, p. 6.

267 RACGP, *Submission 17*, p. 6.

268 RACP, *Submission 5*, p. 2.

269 ALHR, *Submission 25*, p. 11.

270 RACP, *Submission 5*, p. 2; Edmund Rice Centre (ERC), *Submission 7*, p. 14; RANZCP, *Submission 8*, p. 2; Ms Tracie Aylmer, *Submission 10*, p. 4; University of Newcastle Legal Centre (UNLC), *Submission 12*, p. 8; RCA, *Submission 19*, p. 5; Australian Lawyers Alliance (ALA), *Submission 24*, p. 21; Australian Lawyers for Human Rights (ALHR), *Submission 25*, p. 11; Liberty Victoria, *Submission 26*, Attachment 1, p. 9;

271 ERC, *Submission 7*, p. 14

272 UNLC, *Submission 12*, p. 8.

otherwise be required of such persons'.²⁷³ UNICEF Australia, similarly, argued that Part 6 has the capacity to undermine Nauru's developing child protection system, and submitted that an effective child protection system depends on openness and transparency.²⁷⁴

3.132 AWSWN argued that the introduction of the Act, and notably Part 6, constitutes a deliberate attempt to make it harder for harm against children to be disclosed and acted upon.²⁷⁵ It argued that Part 6 went against recommendations made by the Human Rights and Equal Opportunities Commission (HREOC) in the 2004 report *A last resort: national inquiry into children in detention*.²⁷⁶ The RCA likewise argued that the Act has reduced the capacity and willingness of people to share information, and forms part of a 'concerted effort to suppress information coming out of Nauru and Papua New Guinea'.²⁷⁷ Liberty Victoria explained that, in the view of its members, section 70 of the Crimes Act already achieves what section 42 of the Border Force Act is designed to.²⁷⁸

3.133 Medical organisations in particular, highlighted their concerns about the capacity for medical professionals to speak freely about immigration detention conditions.²⁷⁹ The RANZCP argued that open discussion and debate is critical to scientific progress, and explained that 'advocacy in the context of psychiatric practice is a non-partisan activity integral to delivering quality health care'.²⁸⁰ It highlighted the importance of this free discussion in the context of immigration detention, noting that medical practitioners employed in such centres are increasingly speaking out about the ethical dilemma of providing medical care in an environment which is itself causing harm.

3.134 The department disagreed with much of the criticism of the Act. Australian Border Force (ABF) Commissioner Mr Roman Quaedvilieg, stated that Part 6 was designed to prevent 'the leaking of classified information that can compromise operational security of our sovereignty'.²⁸¹ The department argued that the Act does not prevent workers from sharing protected information with relevant parties, where it is 'appropriate' for those workers to do so in the course of their employment, or as

273 UNLC, *Submission 12*, p. 8.

274 UNICEF Australia, *Submission 55*, p. 7.

275 AWSWN, *Submission 16*, pp. 7–8.

276 AWSWN, *Submission 16*, p. 8.

277 RCA, *Submission 19*, p. 5.

278 Mr Matthew Albert, Liberty Victoria, *Committee Hansard*, Tuesday 15 November 2016, p. 33.

279 RACP, *Submission 5*, p. 2.

280 RANZCP, *Submission 8*, pp. 14–15.

281 Mr Roman Quaedvilieg, Australian Border Force Commissioner, News Release, 1 July 2015, <http://newsroom.border.gov.au/releases/d0e3ab05-52b6-47ce-addd-762791fddbfc> (accessed 3 February 2017).

otherwise authorised by the Act.²⁸² It submitted that the Act was not designed to prevent individuals from raising their concerns about 'general conditions' in immigration centres via 'appropriate channels'. It also argued that the Act does not prevent workers from fulfilling mandatory reporting obligations, including reporting obligations relating to child abuse. It also emphasised that the Act does not apply to journalists, civil society organisations and other workers not employed by the department.²⁸³

3.135 However, the United Nations Special Rapporteur on the situation of human rights defenders, Mr Michael Forst, was critical of the overall environment in which human rights defenders operate in Australia, and the particular impact of Part 6. He concluded, in October 2016:

General observation from extensive discussions with human rights defenders across the country point to a 'chilling effect' of the combined measures including the lack of meaningful consultations on government decisions; funding cuts; general government's antipathy of advocacy; 'gagging clauses' in funding agreements; secrecy laws and the stifling Border Force Act; undermining the AHRC and vilifying human rights defenders. Many activists spoke of an atmosphere of fear, censorship and retaliation. Several defenders preferred not to meet with me because of the fear of retaliation or persecution for disclosing information.²⁸⁴

3.136 Mr Forst highlighted the department's attempts to curb information sharing, noting in particular the raid and allegations of misconduct directed towards Save the Children workers, and the corresponding 'psychological harm and sense of fear' which will follow the affected staff members as a result.²⁸⁵ He urged the government to urgently review the provisions of the Act, stating that although there had been no prosecutions to date, its existence was concerning:

During my discussions with government authorities, I was reassured that no prosecution has been executed under the Border Force Act to date. This may well be the case but the Act's existence and government actions aimed at censoring and intimidating advocates has had a chilling effect on the disclosure of information about violations in off-shore processing. And I have received evidence of significant consequences [for whistleblowers]. I met several doctors, teachers, lawyers and journalists, who either spoke out or covered conditions in offshore detention places and who have been under heavy surveillance. These concerted efforts to monitor and control any public disclosures about conditions on Nauru stand in sharp contrast to

282 DIBP, *Submission 23*, p. 18.

283 DIBP, *Submission 23*, p. 18.

284 UN Special Rapporteur on the situation of human rights defenders, Mr Michael Forst, *Visit to Australia end of mission statement*, 18 October 2016, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20689&LangID=E (accessed 2 February 2017).

285 UN Special Rapporteur on the situation of human rights defenders, Mr Michael Forst, *Visit to Australia end of mission statement*, 18 October 2016, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20689&LangID=E (accessed 2 February 2017).

weak and little-known protections provided to whistleblowers according to the Australian law.²⁸⁶

3.137 Submitters also noted the interaction between the PID Act, Crimes Act and Part 6 of the Border Force Act. ALHR argued that the Act offers limited protection to whistleblowers, and highlighted that any protection offered under the PID Act is only available once a person has overcome a number of significant hurdles.²⁸⁷ One of these hurdles is that an external public disclosure under the PID Act must not, on balance, be found to be contrary to the 'public interest', a term which is not defined in the legislation.²⁸⁸

3.138 Liberty Victoria provided the following case study to illustrate the difficult and confusing process which a potential whistleblower must navigate when contemplating making a disclosure:

A health practitioner working at a Detention Centre seeks to make a disclosure regarding the risk of children in detention developing serious mental health problems.

The person authorised to receive protected disclosures within an agency determines that the individual's disclosure is a disagreement with policy, and chooses not to allocate the disclosure for investigation on the basis that it is not a public interest disclosure.

The whistleblower considers that the agency's assessment of their disclosure is incorrect and that the agency has provided an inadequate response to the disclosure. In order to make an external disclosure, they must be confident that they have evidence capable of demonstrating:

- that they believed on reasonable grounds that the information relating to the conduct they want to disclose fits the definition of 'disclosable conduct' (for example, they will have to show that the conditions in offshore detention are unreasonably resulting in a danger to health and safety);
- their disclosure is not only a result of their disagreement with the policy of offshore detention;
- that the failure to allocate the disclosure for investigation by the agency to whom they made the internal disclosure was incorrect, and that the agency in question was required to undertake an investigation into their disclosure;

286 UN Special Rapporteur on the situation of human rights defenders, Mr Michael Forst, *Visit to Australia end of mission statement*, 18 October 2016, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20689&LangID=E (accessed 2 February 2017).

287 ALHR, *Submission 25*, p. 11.

288 *Public Interest Disclosures Act 2013*, s. 26.

- that external disclosure would be in the 'public interest'; and
- they have disclosed no more information than was reasonably necessary to identify the disclosable conduct.

The would-be whistleblower finds themselves in circumstances where they have been told by an authorised officer or principal officer who is not independent of the agency to which their disclosure relates, that their disclosure has been deemed not to constitute a protected disclosure.

They are also unsure of the degree to which any further disclosure will be protected, due to uncertainty regarding the threshold requirements for making an external disclosure.

In these circumstances, the individual would likely be strongly discouraged from making an external disclosure, even if they may have a legal basis to do so.²⁸⁹

3.139 The Ombudsman also expressed the view that the threshold requirements for making an external disclosure are complex and that public officials erroneously believe that after they have made an internal disclosure, they are free to disclose the same information elsewhere.²⁹⁰ The Ombudsman listed the six criteria that needed to be met for a public official to make an external disclosure—including that the internal disclosure must have been allocated for handling under the PID Act and the investigation was inadequate.²⁹¹ Arguably, the above case study would not meet this criterion as the internal disclosure was not allocated for investigation. The Ombudsman questioned the 'workability' of the provisions relating to making an external disclosure and noted:

There is a risk that the complexity of these very restricted circumstances in which an external disclosure may be made will result in a lack of awareness or misunderstanding. As a consequence, people may make what they think is an external disclosure in circumstances when it is not.²⁹²

3.140 Liberty Victoria argued that the scheme should be amended to address these concerns. It recommended that:

- Part 6 of the Border Force Act be repealed;
- a statutory defence to the Border Force Act, which protects public servants and contractors for loss or damage caused by their act of whistleblowing if it was done so in the public interest, be introduced;

289 Liberty Victoria, *Submission 26*, Attachment 1, p. 42.

290 Commonwealth Ombudsman, *Submission by the Commonwealth Ombudsman: Review of the Public Interest Disclosure Act 2013 (Cth)*, March 2016, pp. 15–16.

291 Commonwealth Ombudsman, *Submission by the Commonwealth Ombudsman: Review of the Public Interest Disclosure Act 2013 (Cth)*, March 2016, p. 16.

292 Commonwealth Ombudsman, *Submission by the Commonwealth Ombudsman: Review of the Public Interest Disclosure Act 2013 (Cth)*, March 2016, p. 17.

- section 70 of the Crimes Act be amended to restrict the offence to disclosure which harm, or are reasonably likely to harm, or intended to harm, an essential public interest;
- any provisions of the PID Act, which unnecessarily burden or create uncertainty for whistleblowers seeking to make an external disclosure, be repealed; and
- an independence oversight mechanism be established under the PID Act to provide advice in relation to the scope of protection available to individuals.²⁹³

3.141 It also recommended that the Government require that all detention centre or immigration policy-related employment contracts have a standard confidential clause to ensure consistency and clarity.²⁹⁴

A culture of secrecy

3.142 The committee heard evidence of a culture of secrecy around RPC operation, in addition to the secrecy provided for in legislation.

3.143 This evidence both built on and echoed evidence presented to previous committees. In 2015 the select committee commented on a pervasive culture of secrecy cloaking most of the department's activities at the Nauru RPC.²⁹⁵ At that time the committee concluded that:

...the lack of transparency regarding operations at the RPC, the effective media blackout on it, and the culture of secrecy which surrounds offshore processing, only serves to increase the risk of wrongdoing and abuse, and contribute to fear among asylum seekers that no-one will protect them, and that misconduct by staff will go unpunished.²⁹⁶

3.144 Liberty Victoria highlighted the policy of secrecy which surrounded and continues to surround Operation Sovereign Borders and 'on-water' border protection matters. It noted that in 2013 former Minister for Immigration and Border Protection the Hon Scott Morrison MP described the operation as being 'military-led', and declined to answer questions about the policy in the House of Representatives, on the basis that the information could be used by people smugglers.²⁹⁷ It also highlighted the comments of former Prime Minister the Hon Mr Tony Abbott MP, who stated in January 2014:

293 Liberty Victoria, *Submission 26*, Attachment 1, p. 9.

294 Liberty Victoria, *Submission 26*, Attachment 1, p. 9.

295 Select Committee, *Taking responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru*, August 2015, pp. 43; 124; 126; 133.

296 Select Committee, *Taking responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru*, August 2015, p. 126.

297 ABC News, *Immigration Minister Scott Morrison refuses to detail recent asylum seeker boat arrival in Question Time*, 13 November 2013, www.abc.net.au/news/2013-11-13/morrison-refuses-to-detail-asylum-seeker-boat-arrival/5089476 (accessed 7 February 2017).

If stopping the boats means being criticised because I'm not giving information that would be of use to people smugglers, so be it. If we were at war we wouldn't be giving out information that is of use to the enemy just because we might have an idle curiosity about it ourselves.²⁹⁸

3.145 Liberty Victoria argued that the effect of this rhetoric has been 'a sense that non-transparency is justified and necessary' and fosters the sense that 'speaking out is tantamount to treason'.²⁹⁹ It also highlighted the reduction in funding to the Office of the Australian Information Commissioner, arguing that the reduced capacity to review Freedom of Information (FOI) decisions made by departments provides individuals with fewer avenues for review where access to documents related to Australia's refugee and asylum seeker operations has been denied.³⁰⁰

3.146 The committee heard similar evidence about a culture of fear and suspicion among front line RPC staff. Former RPC employee Ms Jessica Bloom explained that when she was employed at the Manus RPC she was instructed to spy on her colleagues to help weed out 'negativity':

On my first day as a supervisor on Manus my manager told me that one of my tasks was to eavesdrop on staff, during private conversations and at meal times to help management stop the 'negativity'. Most of this 'negativity' was staff members processing by discussing in private the severe psychological or physical deterioration of men they worked with, or sharing accounts of some staff members who were engaging in abusive behaviours. This distancing language and toxic work environment further deepens the internal layers of secrecy on Manus, and enables further abuse. My manager was always asking me for 'positive' news to pass up to her manager.³⁰¹

3.147 The department rejected the claim that there is an excessive level of secrecy in relation to regional processing in Nauru.³⁰² It submitted that stated that the Border Force Act does not prevent individuals from speaking about 'general conditions in regional processing centres', or prevent them from fulfilling mandatory reporting obligations.

3.148 Jesuit Social Services (JSS) raised concerns about the lack of media access to RPCs, arguing that an 'effective media blackout' has been instituted in both Nauru and Manus Island.³⁰³ JSS noted a media release made by the Government of Nauru on 22 June 2016, which stated that:

298 Sydney Morning Herald, *Tony Abbott compares secrecy over asylum seekers to war time*, 10 January 2014, www.smh.com.au/federal-politics/political-news/tony-abbott-compares-secrecy-over-asylum-seekers-to-war-time-20140110-30lyt.html (accessed 7 February 2017).

299 Liberty Victoria, *Submission 26*, Attachment 1, p. 13.

300 Liberty Victoria, *Submission 26*, Attachment 1, p. 17.

301 Ms Jessica Bloom, *Submission 14*, p. 2.

302 Amnesty International, *Submission 6*, Attachment 1, DIBP response, p. 8.

303 Jesuit Social Services (JSS), *Submission 15*, p. 5.

The Government of Nauru has never enacted a media ban or blackout as has been reported by some media outlets...

It is for reasons of safety and security that we are not able to allow all media onto Nauru, and we will never allow media who we believe will intentionally incite violence and unrest to further their story.

We will, however...allow media outlets who will be respectful and objective, and who do not have a record of spreading untruths about our country...

The refugee advocates and extreme left activist-journalists will never be satisfied and spew vitriol in the direction of the journalists who have visited Nauru and report accurately, respectfully and objectively. This only proves that these people have no interest in reporting truth or respecting our country. They have their own agenda and Nauru refuses to be used by them to help them further their political campaign against the Australian Government.³⁰⁴

Structural barriers to scrutinising matters outside Australia

3.149 The location of Australia's RPCs outside Australian territory means that the capacity to scrutinise their operations in person, is severely restricted.

3.150 In order to visit Nauru or Papua New Guinea, individuals must find the funds to fly there, and obtain any required visas. Prior to January 2014, journalists who wished to travel to Nauru were required to pay \$200 for the relevant visa. In January 2014, the Nauruan Parliament voted to increase this fee to \$8000. Applicants must include a letter from their employer outlining the reason for their trip. Should the application be unsuccessful the \$8000 application fee will not be refunded.³⁰⁵ In the 18 months up to October 2015, the Nauruan Government did not approve any applications for a journalist visa.³⁰⁶ Lawyers must also apply for a Nauruan visa which includes a non-refundable application fee of \$6000.³⁰⁷

3.151 All foreign visitors to Papua New Guinea must apply for a visa.³⁰⁸ Journalists applying for a visa must provide a letter from their sponsoring organisation, obtain the approval of the International Organisation Branch of the Department of Foreign Affairs and Immigration, and pay a fee of \$435.³⁰⁹

304 Government of Nauru, *Statement from Government of Nauru*, 22 June 2016, www.nauru-news.com (accessed 17 February 2017).

305 The Government of the Republic of Nauru, www.naurugov.nr/about-nauru/visiting-nauru/visa-requirements.aspx (accessed 7 February 2017).

306 The Guardian, *Chris Kenny the first foreign news reported in 18 months to be granted Nauru visa*, 20 October 2015.

307 The Guardian, *Nauru to increase visa cost for journalists from \$200 to \$8,000*, 9 January 2014.

308 High Commission of the Independent State of Papua New Guinea, www.pngcanberra.org/visas/visitor.htm (accessed 7 February 2017).

309 High Commission of the Independent State of Papua New Guinea, www.pngcanberra.org/visas/visitor.htm (accessed 7 February 2017).

3.152 The committee noted evidence that physical access to the RPCs is restricted. The department advised that, at 31 August 2016, the following independent RPC visits had taken place:³¹⁰

Nauru Visits						
Organisation	2012	2013	2014	2015	2016	Total
Commonwealth Ombudsman	-	-	1	2	1	4
International Committee of the Red Cross	1	4	4	2	2	13
United Nations High Commissioner for Refugees	1	3	1	1	1	7
Amnesty International	1	-	-	-	-	1
International Organisation of Migration	-	1	-	-	1	2
COMCARE	-	1	1	1	-	3
Australian National Audit Office	-	-	-	1	-	1
Nauru Joint Advisory Committee	-	4	4	6	6	20

Manus Visits						
Organisation	2012	2013	2014	2015	2016	Total
International Committee of the Red Cross	-	3	2	3	2	10
Commonwealth Ombudsman	-	-	1	2	1	4
United Nations High Commissioner for Refugees	-	4	1	3	1	9
Amnesty International	-	1	-	-	-	1
International Organisation of Migration	-	-	-	1	-	1

310 DIBP, *Submission 23*, p. 25.

COMCARE	-	-	2	1	-	3
Manus Joint Advisory Committee	-	-	-	2	1	3
Australian National Audit Office	-	-	-	1	-	1

3.153 The department submitted that access to the RPCs is at the 'sole discretion' of the governments of Nauru and PNG.³¹¹ The committee, however, received evidence which contradicted this. Mr Daniel Webb of the HRLC and Ms Elaine Pearson of HRW recounted their attempts to secure access to the Manus Island RPC and transit centre in June 2015. Mr Webb explained that when he tried to enter the Lorengau Transit Centre, the guard at the gate asked him whether he had 'got permission from Australian Border Force'.³¹² Ms Pearson explained that after attempting to file an application for entry to the RPC via fax, attending PNG Immigration in person, and following up with a number of phone calls to PNG Immigration, she and Mr Webb were eventually given permission to visit the transit centre, but not the RPC, and that no reason for this was provided.³¹³ Mr Webb stated that he asked PNG Immigration Officials (who were accompanied by an Australian government representative) why access had been denied. He submitted that the response was, 'Because we thought you would criticise conditions'.³¹⁴

3.154 The committee also heard evidence from Comcare, which is the regulator of the *Work Health and Safety Act 2011*. Comcare, which has visited each RPC three times, explained that it could only do this in its official capacity because it had the consent of the department.³¹⁵ The capacity of Comcare to undertake investigations at the RPCs will be discussed further in Chapter 6.

Unwillingness to speak about operations

3.155 The capacity of this, and previous committees, as well as members of the public generally, to scrutinise the operation of Australia's RPCs have been frustrated by a persistent unwillingness on the part of the department to respond to requests for information.

3.156 In 2015 the select committee commented on the lack of access to transparent information about the management of the Nauru RPC. It stated that it was not given full and transparent access to the information it had sought, and concluded that, 'The

311 DIBP, *Submission 23*, pp. 24, 26.

312 Mr Daniel Webb, DA, HRLC, *Committee Hansard*, Tuesday 15 November 2016, pp. 8–9.

313 Ms Elaine Pearson, Australia Director, HRW, *Committee Hansard*, Tuesday 15 November 2016, p. 9.

314 *Committee Hansard*, Tuesday 15 November 2016, pp. 8–9.

315 Mr Anthony Blucher, Senior Director, Regulatory Operations Group, Comcare, *Committee Hansard*, Wednesday 15 March 2017, p. 16.

committee remains of the view that the government in particular has sought to avoid the full accountability to which the Senate is entitled'.³¹⁶ It stated that the department declined to provide a number of substantive responses to questions on notice, stating that the questions related to 'government deliberations' or 'advice to government', without specifying the harm to the public interest which would have been caused by the disclosure of that information to the committee. The committee also stated that the DIBP had sought to avoid giving substantive responses to some questions by referring to matters as the responsibility of the governments of Nauru and PNG, although 'it seemed clear that the department should have had access to information that could have been provided'.³¹⁷

3.157 This committee likewise noted that responses to several questions posed by the committee were incomplete and inadequate, particularly in relation to questions about health care services. Examples of these include:

Senator Pratt: What are the lifestyle factors that contribute to poor mental health of asylum seekers?

Department: Lifestyle factors are a subset of potential aetiological factors that may lead to mental illness and will vary from person to person.

Senator Pratt: How would the health of asylum seekers improve if medical intervention was offered at the first advice?

Department: Medical services are readily accessible and available in both Nauru and Manus and interventions provided in a timely manner.

Senator Pratt: What are the most common health issues experienced by asylum seekers when they arrive at an offshore processing centre?

Department: This is a matter for the Governments of Nauru and Papua New Guinea.

Senator Pratt: Can you outline some of the common health issues of asylum seekers who have been on Manus Island and Nauru for more than two years?

Department: This is a matter for the Governments of Nauru and Papua New Guinea.

Senator Pratt: In your medical opinion, is this increase in health issues directly attributed to living conditions and the toll of indefinite detention?

Department: The Regional Processing Centre on Manus is operated by the Government of Papua New Guinea. As such, health issues of transferees are a matter for the Government of Papua New Guinea. The Regional Processing Centre in Nauru is operated by the Government of Nauru. As

316 Select Committee, *Taking responsibility conditions and circumstances at Australia's Regional Processing Centre in Nauru*, August 2015, pp. 120–121.

317 Select Committee, *Taking responsibility conditions and circumstances at Australia's Regional Processing Centre in Nauru*, August 2015, pp. 120–121.

such, health issues of transferees are a matter for the Government of Nauru.³¹⁸

3.158 Some responses by the department could be viewed as being deliberately obstructive. On 8 February 2017, the committee sought to establish what concerns the Chief Medical Officer (CMO) Dr John Brayley had communicated to the department about the medical services available at Manus Island. The department took, on notice, a question requesting that these written concerns be provided to the committee. The department then responded that this advice had taken 'a variety of forms' and was encapsulated in the principles contained in the department's 'Delivery of health care services to persons transferred to regional processing countries'.³¹⁹ The committee, having reviewed the principles contained in that document,³²⁰ considers that the department has not answered the question.

3.159 In another example, the department failed to provide the committee with vital statistical data from the RPCS:

Senator Pratt asked: On how many occasions was a staff member of a contractor or sub-contractor accused, or found to have harmed or abused an asylum seeker?

Answer: The Department's Incident Reporting Protocols do not collect data differentiating between incidents involving asylum seekers or refugees residing in the centre. In order to calculate this data, a manual review of all reported incidents since the commencement of the contracts would be required.³²¹

3.160 The question above relates to harm or abuse by staff members. The department appears to have relied upon a strict reading of the question in an attempt to avoid answering it. The department has responded by explaining how it would go about obtaining this information, rather than actually conducting that review and providing the committee with this data (or providing the data for *all* occasions on which a staff member harmed or abused an asylum seeker *or* refugee). This response by the department, particularly when viewed within the context of many of its other incomplete and inadequate responses to question, does not assist the committee to form a view about the extent of allegations. The department's multiple failures to respond to reasonable questions have stymied the work of this committee.

3.161 This unwillingness to explain key aspects of RPC operations, and the care and welfare of refugees and asylum seekers exacerbate the effects of the legislative and structural barriers, which already prevent scrutiny of RPC operations.

318 DIBP, answers to questions on notice, 11 November 2016 (received 25 November 2017).

319 DIBP, answers to questions on notice, 8 February 2017 (received 3 March 2017).

320 The principles set out in this document relate to autonomy, justice, non-maleficence, beneficence and quality domains.

321 DIBP, answers to questions on notice, 11 November 2016 (received 25 November 2017).

Investigating notifications of abuse and self-harm

3.162 The various barriers to transparency and accountability also frustrate a thorough and meaningful assessment of the investigation of notifications of abuse and self-harm.

Departmental data

3.163 The department explained that the implementation of a departmental database of RPC incidents was gradual:

Prior to August 2014, there were limited processes in place for recording and collating RPC incidents reported to the Department. While the Department holds some information from service providers, the incidents were not compiled in a structured database. The Department is scoping requirements to collate known complaints and incidents before August 2014, how to best store this material, and what interrogation is possible over the short to medium term.

In mid-2014 the Planning and Operational Management System (POMS) was introduced by the Department to record incidents occurring in the Nauru and Manus RPCs that are reported by contracted service providers, and by September of that year the system was fully operational in the offshore environment. POMS provides a single data-collection point for the Department and issues situational reports as required. The introduction of POMS has improved the transparency and consistency of reportable incidents.³²²

3.164 The department explained that POMS is not a case management system and does not track the outcome of an incident, particularly when the management of the incident is transferred to the Nauru or PNG Police.³²³

3.165 The department also explained that it does not collect data in such a way as would enable the calculation of incidents involving refugees as compared with asylum seekers, for example.³²⁴

3.166 The department explained that, in response to the leaking of the Nauru files, it undertook a review of 2,123 incidents which took place between May 2013 and March 2016 to establish that 'actions were taken in response to these reports'.³²⁵ It explained that its review demonstrated that:

- Of the 23 reports categories as 'critical', the department 'confirmed that in all cases immediate and appropriate action was taken';

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

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

324 DIBP, answers to questions on notice, 11 November 2016 (received 25 November 2017).

325 DIBP, *Submission 23*, pp. 30-31.

- Of 281 incident reports categorised as being 'major', 'immediate and appropriate' action was taken in 270 cases, and in 11 cases there was 'insufficient information to determine whether action was taken or not'; and
- Of 1,819 incidents classified as 'minor', 'information', or unclassified, 'immediate and appropriate action' was taken in 1460 cases, there was insufficient information to make such a determination in 268 cases, and in 91 cases immediate action was taken but not information to assess whether that action was appropriate or not.³²⁶

3.167 The department did not explain what 'immediate and appropriate action' means.

Role of an independent children's advocate

3.168 The committee heard limited evidence about the potential appointment of an independent children's advocate in ensuring that the rights and interests of unaccompanied minors are protected.

3.169 A number of submitters raised concerns about the Minister for Immigration and Border Protection's role as legal guardian for asylum seeker unaccompanied minors. The RANZCP argued that the fact the Minister is responsible for both implementing immigration policies and being the legal guardian for asylum seeker unaccompanied children 'represents a serious conflict of interest'.³²⁷ It submitted that:

Whilst the Minister delegates most of the daily responsibilities to a 'delegated guardian' in each facility, this DIBP employee often has another role (e.g. Manager of Detention Operations) which is likely to equally limit their capacity to advocate for, or consider the best interests of, the children nominally in their care. This presents a particular conflict of interest when children are being harmed by prolonged and unnecessary detention. Independent guardianship is an imperative.³²⁸

3.170 UNICEF Australia agreed that the combination of these two roles created a conflict of interest.³²⁹

3.171 The committee heard views as to whether an independent children's advocate would be useful, and how such an advocate could operate. Where submitters did support the proposition, they did so with a number of caveats.

3.172 The UNLC supported the appointment of an independent children's advocate, and submitted that the advocate should have the same responsibilities as the New South Wales (NSW) Advocate for Children and Young People.³³⁰ Both the AMA and

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

327 RANZCP, *Submission 8*, p. 14.

328 RANZCP, *Submission 8*, p. 14.

329 Ms Amy Lamoin, Head of Policy and Advocacy, UNICEF Australia, *Committee Hansard*, Tuesday 15 November 2016, p. 30.

330 UNLC, *Submission 12*, p. 7.

the RACP also supported the proposition, noting that it would be important for such an advocate to have jurisdictional oversight in both the Nauru community and the RPC, and that the advocate should be able to act on the advice of health staff.³³¹ The RACP also argued that children and young people should have an independent advocate present during age assessments, and that unaccompanied minors should be supported in health related decisions.³³² The ALA noted that an independent advocate would have to be able to visit places of detention, speak with children directly and privately, and be able to bring cases to court to protect and advance the interests of children.³³³

3.173 The RANZCP agreed that an independent children's advocate should be introduced,³³⁴ with the caveat that:

...the RANZCP continues to hold the view that the rights and interests of children including unaccompanied minors cannot be protected under the current system of mandatory and prolonged detention for children. Should an independent children's advocate be established, the RANZCP stresses the absolute importance of the role's independence as no children's advocate would be effective without the capacity to provide uncensored criticism to the Commonwealth and its contractors with regards to the care and treatment of detained children.³³⁵

3.174 AWSWN stated that if a children's advocate is introduced, the role should include the ability to investigate complaints, should be sufficiently staffed, and should include staff members who have been trained in child protective servicing.³³⁶ Save the Children argued that the role would have to be completely independent of both the Nauruan and Australian Governments, and suggested that an independent body such as the UNHCR or a UN rapporteur could potentially fulfil this role.³³⁷

3.175 Several submitters considered the proposition within the broader context of Nauru's developing child protection framework. The RACGP argued that given the state of the framework, there is a need for independent oversight such as an ombudsman. It suggested that the recently formed Child Protection Directorate, sitting within the Department of Home Affairs, could fulfil this role, but its 'effectiveness and independence' would need to be clarified.³³⁸ The RCA stated that 'any move that would facilitate independent scrutiny would be welcome', but argued that the establishment of an independent children's advocate would not be an adequate

331 RACP, *Submission 5*, p. 2; AMA *Submission 1*, p. 2.

332 RACP, *Submission 5*, p. 2.

333 ALA, *Submission 24*, p. 20.

334 RANZCP, *Submission 8*, p. 2.

335 RANZCP, *Submission 8*, p. 14.

336 AWSWN, *Submission 16*, p. 15.

337 Mr Mat Tinkler, Director, Policy and Public Affairs, Save the Children, *Committee Hansard*, Tuesday 15 November 2016, p. 31.

338 RACGP, *Submission 17*, p. 6.

response.³³⁹ It submitted that the government should instead extend the remit of the National Children's Commissioner to children on Nauru, and the Royal Commission on Institutional Responses to Sexual Abuse, arguing that:

These extensions would be more consistent with existing work done to protect children in Australia, and ensure better resourcing and less political interference than is likely with the role of an independent children's advocate.³⁴⁰

3.176 Some submitters, however, questioned the usefulness of appointing such an advocate. The APS argued that the detention environment is unsafe for children, and questioned what an independent advocate could actually achieve:

An independent children's advocate might be able to monitor the application of best interest of the child principles, and be more independent than the current arrangements, but it is difficult to see how children's safety and best interests could ever be guaranteed in an environment that has been linked to such detrimental health outcomes.³⁴¹

3.177 Similarly, Ms Amy Lamoin, while noting UNICEF Australia's support of an independent monitor for children on Nauru, likewise questioned the capacity to effectively advocate for children, arguing that:

...in that kind of environment, it is very difficult to see how anyone is able to make decisions genuinely based on children's best interests if children are not necessarily able to leave the island, they are not attending school and we are not able to keep them safe from day to day.³⁴²

3.178 Ms Claire O'Connor SC of AWSWN similarly submitted that:

It is all very well to have an advocate who will tell you exactly what we are telling you—that harm is occurring and is not being ameliorated. It is not an advocate you need; it is change. It is commitment to take on board what an advocate says. What is the point in having an advocate? We are all advocating. Where has that got us?³⁴³

339 RCA, *Submission 19*, p. 5.

340 RCA, *Submission 19*, p. 5.

341 APS, *Submission 49*, p. 5.

342 Ms Amy Lamoin, Head of Policy and Advocacy, UNICEF Australia, *Committee Hansard*, Tuesday 15 November 2016, p. 30.

343 Ms Claire O'Connor SC, AWSWN, *Committee Hansard*, Tuesday 15 November 2016, p. 14.

