

# Chapter 1

## Introduction and background

### Referral of the Inquiry

1.1 On 26 March 2015, the Senate resolved to establish the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, to inquire into and report by 15 June 2015 on the responsibilities of the Commonwealth Government in connection with the management and operation of the Regional Processing Centre in Nauru.<sup>1</sup> On 12 June the committee tabled an interim report,<sup>2</sup> and on 15 June the Senate extended the reporting date for the inquiry to 31 July 2015.<sup>3</sup> On 31 July 2015, the committee reported that due to unforeseen circumstances it was unable to complete its work and would seek to be re-established on the next sitting day. The committee was re-established on 10 August 2015, with the same terms of reference, with a reporting date of 31 August 2015.

1.2 The committee's terms of reference required it to report on:

...the responsibilities of the Commonwealth Government in connection with the management and operation of the Regional Processing Centre in Nauru (the Centre), with particular reference to:

- a. how the Commonwealth Government is fulfilling its obligations under the Memorandum of Understanding between The Republic of Nauru and the Commonwealth of Australia relating to the transfer to and assessment of persons in Nauru, cost and related issues;
- b. the performance of the Commonwealth Government in connection with the Centre, including the conduct and behaviour of the staff employed at the Centre, to the extent that the Commonwealth Government is responsible;
- c. the Commonwealth Government's duty of care obligations and responsibilities with respect to the Centre;
- d. the circumstances that precipitated the Moss Review, including allegations made regarding conditions and circumstances at the centre and the conduct and behaviour of staff employed by contracted service providers, the timing of the Commonwealth Government's knowledge of the allegations, and the appropriateness of the response of the Commonwealth Government to these allegations;
- e. factors relating to the timing of the release of the Moss Review;

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1 *Journals of the Senate* No. 90, 26 March 2015, pp 2466–2467.

2 *Journals of the Senate* No. 95, 15 June 2015, p. 2630.

3 *Journals of the Senate* No. 95, 15 June 2015, p. 2644.

f. the response of the Commonwealth Government to the recommendations of the Moss Review, including timelines for implementation; and

g. any related matters.

### **Conduct of the inquiry**

1.3 In accordance with usual process, the inquiry was advertised on the website of the Australian Parliament, and the committee also wrote to relevant persons and organisations inviting submissions to the inquiry by 27 April 2015. A number of submissions were received and considered by the committee after the closing date for submissions.

1.4 The committee received 101 submissions to the inquiry, including a number of confidential submissions. The list of submissions received is at Appendix 1. The committee also received a large volume of correspondence, much of which was accepted on a confidential basis.

1.5 The committee held public hearings in Canberra on 19 May, 9 June, 20 July and 20 August 2015. The witnesses who appeared at the public hearings are listed at Appendix 2, and additional information received by the committee during and following the hearings is at Appendix 3.

1.6 The committee thanks all those who made submissions, gave evidence at its hearings, and otherwise assisted the inquiry. The committee recognises that for many submitters, particularly asylum seekers, staff and former staff and others directly involved with circumstances and events at the Nauru processing centre, it was difficult and for some, distressing, to provide evidence to the committee. The committee has benefited from their willingness to assist in its inquiry and expresses its gratitude to them.

### **Interim report**

1.7 In its interim report, tabled on 12 June 2015, the committee noted the substantial volume of sensitive information received to that date, and that the committee required additional time to consider the evidence and prepare its final report.<sup>4</sup>

1.8 The committee made one initial recommendation, in relation to ensuring that Commonwealth expenditure on public works in the Republic of Nauru is appropriately considered by the Joint Standing Committee on Public Works in accordance with the *Public Works Committee Act 1969*.<sup>5</sup> This issue is further discussed in Chapter 2, under 'Costs and prioritisation of resources'.

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4 Select Committee on Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, *Interim report*, 12 June 2015, p. 1.

5 Select Committee on Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, *Interim report*, 12 June 2015, p. 2.

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## Structure of this report

1.9 The report is structured as follows:

- the remainder of this chapter provides background on the Republic of Nauru, the establishment and operation of the immigration detention centre on Nauru, jurisdiction over the centre, and allegations of sexual and other misconduct;
- chapter 2 examines evidence received by the committee in relation to the obligations and performance of the Commonwealth government in relation to the Nauru Regional Processing Centre, including questions of legal jurisdiction and Australia's role, the management and conduct of staff, systems of transfer and processing of asylum seekers and costs;
- chapter 3 sets out concerns raised over living conditions, and includes information on the provision of services and facilities;
- chapter 4 discusses issues relating to the protection of asylum seekers, including matters arising from the *Forgotten Children* and Moss Review reports, the evidence received by this committee in relation to sexual abuse, fear and safety, and particular concerns regarding the protection of asylum seeker children; and
- chapter 5 summarises the committee's conclusions and recommendations on the issues explored during the inquiry.

### A note on terminology

1.10 The Australian Government refers to the immigration detention facility in Nauru as the Nauru Regional Processing Centre. Within the facility, the separate sites are referred to as Regional Processing Centre One (RPC 1), Two (RPC 2) and Three (RPC 3). Some submitters and witnesses have used other terminology for the centre and the sites such as OPC (offshore processing centre) or Nauru detention centre. Except where directly quoting others, this report generally uses the term Nauru Regional Processing Centre or RPC, and the site identifiers RPC 1, RPC 2 and RPC 3.

1.11 Individuals detained at the RPC are referred to by the Australian Government as 'transferees'. Other stakeholders variously use other terms, notably 'detainees' and 'asylum seekers'. Except where directly quoting others, this report generally refers to persons detained at the RPC as asylum seekers. Those persons who have been determined to have refugee status and resettled in the Nauruan community are referred to as refugees.

## Background

### *Nauru*

1.12 The Republic of Nauru is a small island state situated north east of Australia in the central Pacific Ocean, 42 kilometres south of the equator. Nauru consists of a

single coral atoll 21 square kilometres in size, and surrounding waters. The population is approximately 10,000 including a non-Nauruan population of 1,000.<sup>6</sup>

1.13 Nauru's executive government is comprised of its President and Cabinet, who are drawn from and collectively responsible to an elected parliament of 19 members. Nauru's judiciary consists of a Supreme Court, subordinate District Court, and Family Court. The High Court of Australia has jurisdiction to hear appeals from civil and criminal judgements of the Supreme Court, with certain exceptions.<sup>7</sup>

1.14 Under the control of various colonial and occupying powers from the late nineteenth century, Nauru was a United Nations trust territory under Australian administration at the time of its independence in 1968. At that time Nauru derived significant revenue from phosphate mining, and for a period after independence, Nauruans enjoyed enormous wealth. By the end of the twentieth century, however, declining phosphate royalties and financial mismanagement had virtually bankrupted the nation.<sup>8</sup>

1.15 Secondary phosphate mining commenced in 2005, and Nauru currently derives some revenue from licensing commercial fishing in its waters, but its economy remains limited and fragile. While reliable economic statistics are difficult to obtain, it is evident that the government of the Republic of Nauru has limited sources of internal revenue, very little local commercial activity and extremely high unemployment, with the public sector dominating employment on the island.<sup>9</sup>

1.16 The gross domestic product (GDP) of Nauru as at 2012 was estimated at \$121 million USD, a significantly higher figure than the estimate for 2010 which was \$62 million USD.<sup>10</sup> The Asian Development Bank (ADB) reported that GDP grew by 10 per cent in 2014, with expected growth of eight per cent in 2015. According to the ADB this growth was largely attributable to externally funded infrastructure projects, particularly construction work following the recommencement of operations at the Regional Processing Centre.<sup>11</sup>

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

7 *Nauru Courts System Information*, <http://www.paclii.org/nr/courts.html> (accessed 27 May 2015).

8 ABC Radio National, 'How Nauru threw it all away', 11 March 2014, <http://www.abc.net.au/radionational/programs/rearvision/how-nauru-threw-it-all-away/5312714> (accessed 19 May 2015).

9 See, for example, CIA World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/nr.html> (accessed 19 May 2015); Asian Development Bank, <http://www.adb.org/countries/nauru/main> (accessed 19 May 2015).

10 *UN Data*, <http://data.un.org/CountryProfile.aspx?crName=Nauru> (accessed 19 May 2015).

11 Asian Development Bank, <http://www.adb.org/countries/nauru/economy> (accessed 19 May 2015)

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### ***Establishment of an immigration detention facility on Nauru, 2001-2008***

1.17 In response to a rising number of asylum seekers arriving in Australia by boat in 2001, the Howard government commenced discussions with a number of Pacific nations about the potential establishment of offshore processing centres, which became known as the 'Pacific solution'. Australia signed an Administrative Agreement with Nauru on 10 September 2001 for Nauru to accommodate asylum seekers for processing. This was replaced by a Memorandum of Understanding (MOU) signed on 11 December 2001.<sup>12</sup>

1.18 Between 2001 and 2008 a total of 1,322 persons were housed at the Nauru centre. The population at the centre peaked at 1,155 asylum seekers in early 2002, and there were 82 asylum seekers remaining by the time of the centre's closure in early 2008.<sup>13</sup> The centre was managed and operated by the International Organisation for Migration.

1.19 From March 2005, the Nauru centre was maintained on an 'open centre' basis, under which residents were allowed free movement outside the centre between 8.00am and 7.00pm six days a week, subject to certain exclusions.<sup>14</sup>

1.20 Following its election in 2007, the Labor government announced that the 'Pacific solution' would cease. On 8 February 2008, the last asylum seekers were removed from Nauru, and the government announced that the Nauru centre would no longer be used.<sup>15</sup>

### ***The recommencement of offshore processing in Nauru, 2012***

1.21 In June 2012 the then government established an Expert Panel to provide it with advice and recommendations on policy options available to prevent asylum seekers risking their lives on dangerous boat journeys to Australia.<sup>16</sup> This followed high numbers of asylum seekers reaching Australia by boat in the first half of 2012.

1.22 The Expert Panel's report was released on 13 August 2012, and made 22 recommendations and four sub-recommendations. The report recommended the reintroduction of regional processing arrangements:

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- 12 Janet Phillips, 'The "Pacific Solution" revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island', Parliamentary Library, *Background Note*, 4 September 2012, pp 2-3.
  - 13 Janet Phillips, 'The "Pacific Solution" revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island', Parliamentary Library, *Background Note*, 4 September 2012, pp 12, 14.
  - 14 Janet Phillips, 'The "Pacific Solution" revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island', Parliamentary Library, *Background Notes*, 4 September 2012, pp 4-5.
  - 15 Janet Phillips and Harriet Spinks, 'Immigration Detention in Australia', Parliamentary Library, *Background Note*, 20 March 2013, p. 11.
  - 16 Australian Government, *Report of the Expert Panel on Asylum Seekers*, August 2012, terms of reference, p. 9.

Recommendation 8:

The Panel recommends that **capacity be established in Nauru** as soon as practical to process the claims of IMAs [irregular maritime arrivals] transferred from Australia in ways consistent with Australian and Nauruan responsibilities under international law.<sup>17</sup>

1.23 The Panel proposed the establishment of processing facilities in Nauru as a short-term 'circuit breaker' to the surge in irregular migration to Australia, while '[o]ver time, further development of such facilities in Nauru would need to take account of the ongoing flow of IMAs to Australia and progress towards the goal of an integrated regional framework for the processing of asylum claims'.<sup>18</sup>

1.24 The Panel identified a number of conditions upon which processing in Nauru should take place, including 'protection and welfare arrangements consistent with Australian and Nauruan responsibilities under international law, including the Refugee Convention', and that '[d]ecisions in relation to how IMAs in Nauru would be processed would be determined by Australian officials in accordance with international obligations and in the context of prevailing circumstances'. The Panel also proposed that the involvement of the United Nations High Commissioner for Refugees (UNHCR) and International Organization for Migration (IOM) in the Nauru arrangements 'would be highly desirable and should be actively pursued as a matter of urgency'.<sup>19</sup>

1.25 Upon the release of the Expert Panel's report, the government announced that it accepted all of the recommendations and that it would commence arrangements immediately to resume offshore processing in Nauru. The *Migration Legislation Amendment (Regional Processing and other measures) Act 2012* took effect on 18 August 2012, Australia and Nauru signed a Memorandum of Understanding (MOU) on 29 August, and the Nauru Regional Processing Centre (RPC) received the first group of asylum seekers on 14 September 2012.<sup>20</sup>

1.26 On 3 August 2013, a second MOU was signed between Australia and Nauru, providing for the resettlement of refugees in Nauru.<sup>21</sup>

### ***The Nauru Regional Processing Centre***

1.27 From its reopening in 2012 to June 2015, a total of 2,238 persons had been transferred to the RPC.<sup>22</sup>

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17 Australian Government, *Report of the Expert Panel on Asylum Seekers*, August 2012, terms of reference, p. 16 (original emphasis).

18 Australian Government, *Report of the Expert Panel on Asylum Seekers*, August 2012, terms of reference, p. 47.

19 Australian Government, *Report of the Expert Panel on Asylum Seekers*, August 2012, terms of reference, p. 48.

20 Elibritt Karlsen & Janet Phillips, 'Developments in Australian refugee law and policy (2012 to August 2013)', *Parliamentary Library Research Paper Series*, 25 September 2014, pp 4-5.

21 Elibritt Karlsen & Janet Phillips, 'Developments in Australian refugee law and policy (2012 to August 2013)', *Parliamentary Library Research Paper Series*, 25 September 2014, p. 7.

1.28 At 13 July 2015, there were 637 asylum seekers detained in the Nauru RPC. These comprised 551 adults and 86 children.<sup>23</sup>

1.29 This group was composed of 167 asylum seekers from Iran (140 adults and 27 children), 123 from Sri Lanka (96 adults and 27 children), 74 from Pakistan, 42 from Bangladesh, 37 from Afghanistan, 21 from Iraq, 12 from Nepal, 17 from Burma (11 adults and 6 children), 14 from India (7 adults and 7 children), 9 from Somalia, 13 from other nations and 104 stateless persons, including 15 children.<sup>24</sup>

1.30 The Department of Immigration and Border Protection (the department) advised that as at 30 April 2015, the average length of time asylum seekers spent in the RPC was 402 days.<sup>25</sup>

1.31 The total operating and capital costs of regional processing and refugee settlement in Nauru from 1 July 2012 to 30 April 2015 were provided by the department as set out below:<sup>26</sup>

<b>Costs of Regional Processing and Settlement in Nauru</b>	<b>2012/13</b> \$	<b>2013/14</b> \$	<b>2014/15</b> (to 30 April 2015) \$
RPC Operational Costs	143,196,000	387,662,000	380,419,000
DIBP Staff Costs	7,064,000	11,013,000	7,999,000
Capital	132,648,000	207,060,000	56,582,000

1.32 Of this amount, the department reported that in the 2014-15 financial year, up to 30 April 2015, \$359,013,000 of the operational cost was for the operation of the RPC, with the remainder spent on settlement.<sup>27</sup>

1.33 The RPC comprises three sites: RPC 1, RPC 2 and RPC 3. Site RPC1 consists of accommodation for staff and service providers in permanent structures, as well as some facilities used by both staff and asylum seekers. RPC 2 houses single adult male

22 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 9 June 2015, p. 43.

23 Department of Immigration and Border Protection, answer to question on notice, 10 July 2015 (received 17 July 2015).

24 Department of Immigration and Border Protection, answer to question on notice, 10 July 2015 (received 17 July 2015).

25 Department of Immigration and Border Protection, answer to question on notice, 7 May 2015 (received 13 May 2015).

26 Department of Immigration and Border Protection, answer to question on notice, 18 May 2015 (received 5 June 2015).

27 Department of Immigration and Border Protection, answer to question on notice, 9 June 2015 (received 30 June 2015).

asylum seekers in vinyl marquees with dormitory style sleeping arrangements, and various communal facilities. RPC 3 accommodates single adult female asylum seekers and families in vinyl marquees internally divided for family groups, as well as a number of communal facilities. The department has advised that the accommodation facilities are self-sufficient in water storage, power and sewerage treatment.<sup>28</sup>

1.34 The department advised the committee that it was originally planned that the RPC would operate as an 'open centre', comprising 'community living institutions' with minimal security, from which asylum seekers would come and go with relative autonomy, and engage with the local community. In ensuing consultation with the Government of Nauru, the model 'evolved' such that from its conception the centre operated as a closed facility, with movement outside the RPC only allowed on an escorted basis. On 25 February 2015, open centre arrangements were introduced at the RPC for certain cohorts of asylum seekers. The department advised that this was being 'incrementally expanded to include all eligible asylum seekers'.<sup>29</sup>

1.35 Refugee status determination of asylum seekers detained at the RPC is undertaken by the Government of Nauru. As at 30 June 2015, 506 positive refugee status determinations had been made, and 89 had been declined.<sup>30</sup> The refugees had been resettled in the Nauruan community, while those whose applications were declined were still at the RPC, while judicial and merits review processes remained in train.

1.36 The 485 determined refugees from the RPC settled in the Nauruan community at 30 March 2015 comprised:

- 159 single adult males;
- 39 single adult females;
- 276 refugees in family groups;
- 11 unaccompanied refugee minors; and
- one unaccompanied minor who had yet to receive a refugee status determination.<sup>31</sup>

1.37 As at 30 June 2015, the department reported that two asylum seekers had voluntarily returned to their country of origin from the Nauru RPC, one to Iran and

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28 Department of Immigration and Border Protection, *Submission 31*, p. 33.

29 Department of Immigration and Border Protection, *Submission 31*, p. 35.

30 Department of Immigration and Border Protection, *Operation Sovereign Borders monthly update: June 2015*, 10 July 2015, at <http://newsroom.border.gov.au/releases/operation-sovereign-borders-monthly-update-june> (accessed 15 July 2015).

31 Department of Immigration and Border Protection, *Submission 31*, pp 55–56.



one to Iraq. Four refugees had been resettled from Nauru to Cambodia.<sup>32</sup> These reportedly included three single men and one woman.<sup>33</sup>

### ***Jurisdiction over and management of the Nauru RPC***

1.38 The department characterises jurisdiction over the RPC as follows:

Nauru owns and administers the Nauru Regional Processing Centre, under Nauruan law. Australia provides capacity building and funding for Government of Nauru's operation of the centre and coordinates the contract administration process.<sup>34</sup>

1.39 The department advises that under the terms of the two Memoranda of Understanding and related arrangements between the Governments of Australia and Nauru, Nauru's Secretary of Justice is responsible for the 'security, good order and management of the centre, including the care and welfare of persons residing in the centre'. The RPC is managed by three Operational Managers appointed by the Government of Nauru, assisted by Deputy Operational Managers.<sup>35</sup>

1.40 According to the department, it and its contracted service providers support Nauru's Secretary of Justice and the Operational Managers in fulfilling their roles, as agreed between the two parties. The terms of the MOU require that activities undertaken by the Australian Government comply with Australia's Constitution and laws. 'In some cases, where no relevant Nauruan standard exists, services contracts require providers to adhere to Australian standards in the delivery of services'.<sup>36</sup>

### **Previous reports**

1.41 Two reports released in the first quarter of 2015 were key precursors to the establishment of this inquiry. The Australian Human Rights Commission (AHRC) released *The Forgotten Children* report in February 2015, detailing an inquiry undertaken over ten months in 2014 into children in immigration detention, both in Australia and offshore.<sup>37</sup> The report included a chapter specifically related to children detained at the Regional Processing Centre in Nauru.

1.42 In March 2015, the *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru* (the Moss Review),

32 Department of Immigration and Border Protection, *Operation Sovereign Borders monthly update: June 2015*, 10 July 2015, <http://newsroom.border.gov.au/releases/operation-sovereign-borders-monthly-update-june> (accessed 15 July 2015).

33 'First refugees from Nauru detention centre arrive in Cambodia', *ABC Online*, 4 June 2015, <http://www.abc.net.au/news/2015-06-04/refugees-from-nauru-detention-centre-arrive-in-cambodia/6521972> (accessed 4 June 2015).

34 Department of Immigration and Border Protection, *Submission 31*, p. 4.

35 Department of Immigration and Border Protection, *Submission 31*, p. 11.

36 Department of Immigration and Border Protection, *Submission 31*, p. 12.

37 Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, 2014. Tabled in the Senate on 11 February 2015: *Journals of the Senate* No. 77, 11 February 2015, p. 2148.

commissioned by the Department of Immigration and Border Protection in October 2014 and conducted by Mr Philip Moss, was partially published.<sup>38</sup> The Moss Review was commissioned following various reports of misconduct and abuse at the RPC, including sexual abuse, received by the department and aired in the media in September 2014, as well as concerns raised about the conduct of certain service provider staff.

1.43 *The Forgotten Children* report and the Moss Review, and evidence relating to safety and abuse received by this committee, are discussed further in chapter 4.

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