

# Chapter 5

## Committee views and recommendations

5.1 This committee was established in the wake of the *Forgotten Children* report and the Moss Review, reflecting the belief of the Senate that the evidence uncovered in those reports was important but not complete, and that the situation at the Regional Processing Centre (RPC) in Nauru, as well as the implementation of the findings and recommendations of the Moss Review, required further scrutiny.

5.2 The inquiry conducted by this committee has vindicated that assessment. Despite its short timeframe, the committee has been inundated with evidence from a range of stakeholders in the RPC, including contractors and their current and former staff, and asylum seekers themselves. This evidence has served to corroborate the findings of the Moss Review, but has also gone beyond it, to raise a range of issues of concern in relation to the conditions and circumstances prevailing at the RPC, and the adequacy of efforts by the Australian Government to fulfil its responsibilities to the people detained there.

5.3 The committee has, wherever possible, published the submissions and evidence given to it, to enable further scrutiny by relevant authorities and transparency to the public. However, the committee has found it necessary to accept a certain amount of the evidence received on a confidential basis, mostly in order to protect the privacy of individuals. That information has informed, but is not directly reflected in, this report.

5.4 Throughout this inquiry the committee has also been conscious of the convention that parliamentary committees generally refrain from inquiring into matters which may prejudice ongoing law enforcement investigations or legal actions. The committee sought briefing from relevant authorities in determining its boundaries in that regard. At the same time, given the lack of transparency around events and circumstances at the RPC, and a lack of confidence expressed by many in the functioning of official systems to bring to light and resolve issues related to the RPC, the committee has given appropriate weight to the strong public interest in the disclosure of these matters in conducting its inquiry.

5.5 The volume, complexity and sensitivity of the evidence gathered during this inquiry is so great that the committee has been unable, within the time and resources at its disposal, to forensically examine all the specific claims and allegations made. Moreover, a Senate committee is not a law enforcement or judicial body, and it is not within the realm of this committee to verify or to resolve individual cases. Rather, the inquiry and this report have focused on the key systemic issues arising from the evidence, and the changes which this committee considers must be made by the Commonwealth government and its relevant agencies in relation to conditions and circumstances at the RPC.

5.6 Some of those who engaged with the inquiry expressed the strong view that offshore processing of asylum seekers in its entirety, or the operation of the RPC in Nauru in particular, was inherently condemnable, and that the committee should

recommend that the RPC be closed. Examination of the merits of the broader policy of offshore processing was not part of the terms of reference of this committee, and as such, the committee has formulated its findings and recommendations on the assumption of the continued existence of the RPC.

5.7 The committee is nevertheless of the overall view that the present conditions and circumstances at the Regional Processing Centre on Nauru are not adequate, appropriate or safe for the asylum seekers detained there. The committee believes that the Commonwealth must accept ultimate responsibility for conditions at the Centre, commit to a clear plan for its future as part of genuine regional arrangements for dealing with irregular migration, and make tangible improvements to living conditions. The committee believes there is a need for the government, in its oversight of the RPC, to adjust the relative prioritisation between enforcing a security environment and providing a decent quality of life for asylum seekers, and take measures to create a significantly better environment for these persons. The committee further regards increased transparency and accountability in relation to the RPC, including independent oversight of the conduct of service providers and staff, to be essential.

5.8 The committee emphasises that the very serious allegations of misconduct and abuse that were cited in the Moss Review, and those that have emerged during this inquiry, must be credibly and transparently investigated and dealt with by competent authorities, ensuring full respect for human rights and natural justice. The Government of Australia cannot and must not seek to abdicate that responsibility to another nation, nor to contracted entities.

5.9 The committee is deeply concerned that without this inquiry, the allegations heard and evidence received would not have been uncovered. There appears to be no other pathway for those affected by what they have seen and experienced in the Regional Processing Centre on Nauru to disclose allegations of mistreatment, abuse or to make complaints. The department has been unaware of serious acts of misconduct by staff of contractors, as those contractors have not adequately fulfilled their reporting obligations. The committee believes that no guarantee can be given by the department that any aspect of the RPC is run well, and that no guarantee of transparency and accountability can be given until significant changes are made and accountability systems are put in place.

5.10 Australia created the Regional Processing Centre in Nauru. It is Australia's responsibility and in its present form, it is insupportable. This committee is strongly of the view that Australia must take a number of actions to improve significantly the conditions and circumstances at the RPC. The committee's specific recommendations in this regard are set out below.

#### ***Provision of information to the inquiry***

5.11 The committee wishes to record its concern that in the conduct of the inquiry it was not afforded full and transparent access to the information it requested from key stakeholders in relation to the management of the RPC. The committee remains of the view that the government in particular has sought to avoid the full accountability to which the Senate is entitled.

5.12 The committee wrote to Secretary of the Department of Immigration and Border Protection on 10 July 2015 to register its concern about the department's answers to a number of questions on notice asked by the committee. In some cases, the department declined to provide substantive responses on the grounds that the matters involved 'government deliberations' or 'advice to government', without fulfilling the requirement of Senate orders that it specify the harm to the public interest that would be caused by disclosure of the information to the committee. In other cases, the department sought to avoid substantive responses by reference to matters as being the responsibility of the Government of Nauru, or subject to consultation with the Government of Nauru, although it seemed clear that the department should have had access to information that could have been provided to the committee.

5.13 While the department did provide additional information to assist the committee in response to the committee's letter of 10 July 2015, the committee wishes to emphasise the importance of departments meeting their accountability obligations to the Senate and its committees, including the requirement for officials to provide full and accurate information to the parliament about the factual and technical background to policies and their administration.

5.14 Wilson Security gave information to the committee regarding the existence of footage of the riot of 19 July 2013 which, after questioning from the committee, was shown to be untrue. However, in the month between the giving of the evidence and the correction of the record, Wilson Security did not attempt to provide the committee with accurate information. This issue is further discussed below, but demonstrates the difficulty experienced by the committee in inquiring into allegations of abuse.

### **Responsibilities of the Commonwealth**

5.15 The committee accepts the evidence from a range of legal and human rights experts that Australia holds obligations under international and domestic law, as well as responsibilities under the MOU with Nauru, in relation to asylum seekers at the RPC.

5.16 The committee agrees that the level of control exercised by the Government of Australia over the RPC supports a strong argument that the primary obligation rests with Australia under international law for protecting the human rights of the asylum seekers, and for compliance with the Refugees Convention. At a minimum, the committee is convinced that Australia holds joint obligations with the Government of Nauru in that regard.

5.17 The committee endorses the recommendation made by the Senate Legal and Constitutional Affairs References Committee in 2014 about the comparable situation at the Manus Island RPC, that the Australian Government should 'acknowledge its responsibility to respect, protect and fulfil the human rights of individuals detained' at the RPC in Nauru.<sup>1</sup>

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1 Senate Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*, December 2014, p. 151.

5.18 The committee also notes the evidence received about Australia's responsibilities to persons in immigration detention under domestic legislation and common law, and the real possibility of future litigation in Australian courts in relation to duty of care and workplace health and safety, should care not be taken to ensure that suitable conditions are maintained for both contracted staff and asylum seekers at the RPC.

5.19 In the committee's view, the Government of Australia's purported reliance on the sovereignty and legal system of Nauru in the face of allegations of human rights abuses and serious crimes at the RPC is a cynical and unjustifiable attempt to avoid accountability for a situation created by this country.

5.20 The committee's view in this regard is strengthened by the evidence received about the significant challenges, both logistical and political, under which the law enforcement and justice systems of the Republic of Nauru are currently operating. Given the small size and limited capacity of institutions in Nauru, the present serious concerns about the state of the rule of law there, and the absence of a comprehensive legal and policy framework for child protection, the committee is of the view that Australia must assume greater responsibility for ensuring that the rights of asylum seekers at the RPC are protected and enforced to the standards required by Australian and international law.

5.21 The committee recognises that under the terms of the arrangements in place, certain matters are necessarily within the jurisdiction of the Government of Nauru and its relevant authorities. That is, nonetheless, the very reason why an MOU and a set of consultation measures are in place. Australia needs to use these mechanisms to engage in robust dialogue, as necessary, with the Government of Nauru toward greater adherence to the rule of law. Australia also needs to take responsibility for ensuring provision of the support and assistance necessary for Nauru's law and justice sector to meet the standards of Australian and international law to which the asylum seekers that Australia has placed in Nauru are legitimately entitled.

### **Recommendation 1**

**5.22 The committee recommends that, consistent with the terms of the Memorandum of Understanding and related arrangements between the governments of Australia and Nauru, Australia ensure that support and assistance is provided to Nauru's police, judicial, prosecutorial and other law and justice entities to the extent necessary to ensure that Nauru's justice system meets the standards of accountability and probity required by Australian and international law.**

5.23 The 2012 expert report that recommended the reopening of the detention facility on Nauru proposed it as a short-term measure, pending further development of an integrated regional framework for processing asylum claims. Almost three years on, the government has failed to make meaningful progress on a genuine regional framework, and the RPC in Nauru and its inhabitants have been left in limbo: in a facility without permanent infrastructure, enduring long and uncertain processing times, and absent any clarity about the future of the RPC or their own fate.

5.24 The committee considers that the government should intensify its efforts to achieve a genuine regional framework for irregular migration and processing of asylum seekers, within which the future of the RPC, in line with regional and international norms, can be properly considered.

5.25 Meanwhile, the committee notes that the steps for a refugee status determination are unknown, and is concerned at the very long duration of the average stay in the RPC. The uncertainty of asylum seekers enduring an average processing time of 402 days and a vacuum of information about their status and future is not acceptable. The committee is of the view that there should be a greater focus on transparency and communication of the steps involved in processing claims, and an explanation given to asylum seekers as to why the process is so lengthy. Australia should ensure that the necessary support is provided to the Government of Nauru to ensure fair and comprehensive refugee status determination processes to be undertaken within accountable, publicised timeframes.

## **Recommendation 2**

**5.26 The committee recommends that the Government of Australia, in consultation with the Government of Nauru, agree on and publicly commit to a model timeframe for refugee status determinations, and that Australia provide the Government of Nauru with the support necessary to achieve faster and more predictable processing of claims.**

**5.27 The committee further recommends that asylum seekers be informed about the steps being taken to process their claims, be regularly updated on the progress of the claim, and that an explanation be provided to asylum seekers when model timeframes are not met.**

## **Management of contractors and staff**

5.28 The high volume of evidence received in relation to the behaviour of staff engaged at the RPC indicated to the committee that there was cause for ongoing concern about the performance and accountability of Commonwealth contracted service providers. While the contractors themselves and the department sought to reassure the committee that the recruitment, training and management of contractors was of an acceptable standard, the weight of evidence submitted to this inquiry strongly suggested that there were significant problems.

5.29 Despite the likelihood of significant under-reporting of incidents and concerns, which was remarked upon in the Moss Review and endorsed by witnesses before this committee, the internal complaints mechanism managed by Transfield Services recorded 725 complaints about service provider staff over a 14-month period to April 2015.<sup>2</sup> The incidents and complaints recorded by Transfield since 2012 included some 45 allegations of child abuse and sexual assault.<sup>3</sup> The committee is

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2 Transfield Services, answer to question on notice of 20 May 2015 (received 16 June 2015).

3 Transfield Services, answer to question on notice from the committee's public hearing on 19 May 2015 (received 16 June 2015).

very deeply concerned about a situation in which this level of reported misconduct can occur and, at least until brought to light by the Moss Review, apparently be accepted.

5.30 The committee considers that a system in which contractors are essentially left to manage and report on complaints against their staff is inadequate. The committee recognises that the department receives reporting and is responsible for general oversight of its contractors, but given the pervasive culture of secrecy which cloaks most of the department's activities in relation to the Nauru RPC, the committee believes that a far greater level of scrutiny, transparency and accountability is required.

5.31 The absence of a Wilson Security IT server system for six months in 2013-14 was extremely concerning to the committee, as was the acknowledgement by Wilson Security that document storage during that time relied on 'people saving things to their actual desktop computers'.<sup>4</sup> Wilson Security acknowledged that a document from this period of time and which related to a staff member who allegedly instigated unauthorised surveillance of a member of the committee has not been able to be located by Wilson Security. This data loss appears to be indicative of larger problems around recordkeeping and accountability. The committee believes that such a lengthy period of disruption to the IT infrastructure is inadequate and that the duration of the disruption was unacceptably long, with minimal assurance that other documents have not been lost.

5.32 The evidence provided by Wilson Security representatives regarding the recording of footage of the riot of 19 July 2013 was shown to be incorrect. Wilson Security representatives initially denied the existence of footage and told the committee that body-worn cameras were not in use during that time.<sup>5</sup> Footage which contradicted that statement was, however, provided to the media and reported during the ABC's 7.30 program on 13 August 2015. At the committee's public hearing on 20 August 2015, after the release of the footage, Mr John Rogers, Executive General Manager, Wilson Security, acknowledged that his earlier evidence was incorrect. The committee is concerned that this error was not brought to the committee's attention earlier and was revealed only during questioning. The committee was also concerned that a representative present at the hearing who knew that the cameras were used during that time said he had not heard the evidence being given. The footage appeared to show security personnel planning to use unreasonable force against asylum seekers, and those visible in the footage used derogatory language to refer to asylum seekers. The footage revealed a workplace culture which is inconsistent with Wilson Security's role to provide safety and security to asylum seekers within the facility.

5.33 The giving of false or misleading evidence is a potential contempt of the Senate, and the committee was extremely concerned to learn that no attempt was made to advise them of the incorrect evidence in the month after it was given. The serious

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4 Mr Brett McDonald, Security Contracts Manager, Wilson Security, *Committee Hansard*, 20 August 2015, p. 29.

5 Mr John Rogers, Executive General Manager, Southern Pacific, Wilson Security, *Committee Hansard*, 20 July 2015, p. 42.

nature of the allegations against Wilson Security personnel and the significant investment of Australian taxpayers' funds require the highest level of accountability. There appears to be a lack of transparency to the Australian Parliament and the community. The performance of the Department of Immigration and Border Protection has been called into question by their lack of knowledge of serious incidents such as the existence of footage of the riot in which security staff discuss asylum seekers in a disturbing manner, and the existence of an audio file allegedly recording a security staff member confessing to the fabrication of an allegation of assault against an asylum seeker. The department's ignorance of such events demonstrates the limits of Commonwealth control or oversight of the RPC on Nauru. The department acknowledged that they had only been made aware of the existence of the audio file on 20 August 2015, even though the audio file had been created by Wilson Security in January 2015.

5.34 Evidence revealed to the committee during its inquiry was put to the Department of Immigration and Border Protection for investigation and comment. Although numerous allegations were made against staff of Wilson Security and the head contract holder Transfield Services, responsibility ultimately rests with the department. The committee believes that there must be a direct relationship between the department and the security service provider in order to facilitate stronger accountability and transparency, where at present the department can only deal directly with Transfield Services. The department has effectively outsourced its accountability to Transfield Services and through them, to Wilson Security, with no penalty for non-compliance.

5.35 It appears to the committee that the Regional Processing Centre on Nauru is not run well, nor are Wilson Security and Transfield Services properly accountable to the Commonwealth despite the significant investment in their services. The committee has found that the Department of Immigration and Border Protection does not have full knowledge of incidents occurring on Nauru, owing to their inability to scrutinise their contracted service providers. A representative of the department acknowledged that 'the current contract does not provide as strong an abatement regime as the proposed contract',<sup>6</sup> and told the committee that no financial abatements or penalties have been triggered under the current Performance Management Framework.<sup>7</sup> The committee believes that the shortcomings of the current framework offer no reassurance that the department is fully aware of events on Nauru.

5.36 The committee notes that the Commonwealth Ombudsman holds powers, constituted as the Immigration Ombudsman, to scrutinise matters related to immigration detention and processing, including offshore, and has visited the Nauru RPC in that capacity. The Ombudsman is also able to scrutinise Commonwealth-contracted service providers. The committee believes that using the Ombudsman to

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6 Mr Neil Skill, First Assistant Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 20 August 2015, p. 39.

7 Department of Immigration and Border Protection, answer to question on notice, 20 August 2015 (received 21 August 2015).

provide direct oversight and scrutiny of complaints about the conduct of Commonwealth-contracted staff at the RPC would provide a greater level of transparency and integrity in the handling of complaints and allegations, and would help increase the confidence of asylum seekers in the accountability of contractors which is presently lacking.

### **Recommendation 3**

**5.37 The committee recommends that the Immigration Ombudsman undertake independent external review of all complaints involving the conduct of Australian-funded staff or contractors at the Regional Processing Centre, and that the government ensure that the office of the Ombudsman is adequately resourced to do so.**

**5.38 The committee further recommends that the Ombudsman report to parliament on an annual basis on the number and nature of the complaints received and the outcomes of the Ombudsman's assessment of them.**

### **Recommendation 4**

**5.39 The committee recommends that briefing be required to be provided to all asylum seekers on their rights to lodge complaints with independent bodies such as the Immigration Ombudsman, the Australian Human Rights Commission and the International Committee of the Red Cross, both generally and in specific response to any complaints made.**

#### *Surveillance of a member of the committee*

5.40 The committee draws attention to the particular incidence of the allegedly unauthorised surveillance of a member of the committee by contractor staff while in Nauru. The committee finds the government's and the department's responses to this incident to have been contradictory and inadequate.

5.41 The committee regards this incident as providing an example of the shortcomings in the professionalism of service provider staff on Nauru, but also, importantly, in the effectiveness of Commonwealth oversight of the performance of those providers. The fact that the incident was not reported to the department, and that when it came to light the department accepted at face value the contractors' advice that it had been dealt with and did not conduct any further investigation or action, is of grave concern to the committee.

5.42 The committee observes 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. The committee strongly believes that greater transparency is an important prerequisite to improving accountability of all involved for the welfare and safety of persons at the RPC.



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## **Recommendation 5**

**5.43** The committee recommends that Australia increase the transparency of conditions and operations at the Regional Processing Centre, including by ensuring the provision of reasonable access, in negotiation with the Government of Nauru as necessary, by the Australian Human Rights Commission and by the media.

### *Alcohol and drug testing*

5.44 The committee is concerned that, despite the serious allegations made to this committee and elsewhere about substance abuse and related misconduct by employees at the RPC, drug testing is still not being conducted at the centre. The committee acknowledges the advice from contractors that implementing on-site random drug testing presents logistical challenges. However, such difficulties can not justify compromising the safety of asylum seekers and others in the RPC. Moreover, the challenges are essentially the same as those faced by contractors on mining and construction work sites in remote parts of Australia, and the committee contends that solutions can and must be found. This matter can not be consigned to the 'too-hard basket': the department and its contractors must take the necessary measures to ensure that asylum seekers are not under the control of drunk or drug-affected staff at the RPC.

## **Recommendation 6**

**5.45** The committee recommends that the Department of Immigration and Border Protection require, in its contracts with service providers, that comprehensive drug and alcohol testing be conducted on staff employed at the Regional Processing Centre on Nauru, including daily random tests for both alcohol and drugs.

### **Costs and prioritisation of resources**

5.46 The committee was struck by the difficulty it encountered in obtaining access to straightforward information about the costs Australian taxpayers are incurring to maintain the RPC on Nauru. While this information was eventually provided by the department, the committee considers there to be a lack of transparency and accountability surrounding the funding of the RPC and related expenditure in Nauru. For example, the department's annual Portfolio Budget Statement (PBS) conflates spending on regional processing, providing no means to distinguish between funds spent on Manus Island and Nauru. The committee also found it very difficult to assess the full range of spending taking place in relation to asylum seeker processing in Nauru between direct RPC and settlement costs, related assistance and support to the Government of Nauru, and other Australian whole-of-government spending including development assistance.

5.47 The committee notes that the costs it was able to obtain from the department in relation to the processing of asylum seekers on Nauru are extraordinary. As noted in chapter 1, the Australian taxpayer spent \$415.6 million in the first ten months of the

2014-15 financial year in capital and operating costs<sup>8</sup> for a facility that housed 677 asylum seekers as at 30 April 2015.<sup>9</sup> That is more than \$1.3 million per day. That is \$613,900 per asylum seeker in a ten month period, or over \$2,000 per asylum seeker per day. That amount does not include costs relating to the settlement of refugees in Nauru, or any related support to the Government of Nauru.

5.48 Given the significant investment of Australian taxpayers' money in the management and operation of the RPC, the committee considers that a much higher level of transparency should exist as a means of ensuring that taxpayers' money is being spent responsibly and in the best interest of Australia.

### **Recommendation 7**

**5.49 The committee recommends that the Department of Immigration and Border Protection provide full and disaggregated accounts in its Portfolio Budget Statements, annual reports and other relevant reports to Parliament and to the Australian public, of the expenditure associated with the Regional Processing Centre on Nauru. This accounting should include detailing costs specific to the Nauru RPC, as well as related support and assistance provided by the Australian Government to the Republic of Nauru.**

#### *Public works and aid to Nauru*

5.50 The committee is concerned that there is minimal oversight of expenditure on Nauru, whether it is a public work or assistance to a foreign government. As foreshadowed in its interim report, the committee believes that the department should undertake an audit on all expenditure for the RPC on Nauru and associated projects and provide an explanation as to why an exemption from oversight by the Public Works Committee applies.

5.51 The committee is of the view that clarification is required as to what expenditure associated with the RPC is classed as aid, given that there appears to have been a significant investment of Australian taxpayers' money in the RPC with no parliamentary oversight, including in the Estimates process.

### **Recommendation 8**

**5.52 The committee recommends that a full and disaggregated account of all works conducted in association with the Regional Processing Centre to date be reported by the Department of Immigration and Border Protection to the Senate.**

**5.53 The committee recommends that a clarification be provided to the Senate by the Department of Immigration and Border Protection as to why exemptions**

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

9 Department of Immigration and Border Protection, *Immigration Detention and Community Statistics Summary*, 30 April 2015, at: <http://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-apr2015.pdf>, p. 3.

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on the grounds of assistance to foreign governments apply to expenditure associated with the Regional Processing Centre on Nauru.

**5.54** The committee further recommends that all expenditure associated with the Regional Processing Centre on Nauru, including expenditure considered to be assistance to a foreign government, should be specifically reported to the Senate Legal and Constitutional Affairs Legislation Committee before each estimates round.

*Reprioritising resources: the open centre model*

5.55 The committee believes that the very large amount of Australian taxpayers' money being spent on the RPC could and should be used more appropriately to ensure that asylum seekers are housed in humane conditions. In this regard, the committee observes that despite the employment of more than 800 security staff at the RPC, the department and its contractors appear to be unable to maintain a safe environment for asylum seekers.

5.56 The committee considers that the emphasis on creating and maintaining a high security environment is both unnecessary and counterproductive to the wellbeing of the people housed within it. They are not criminals, and they do not pose such a threat to the people of Nauru as to justify conditions of large scale security and confinement.

5.57 The committee noted in particular the evidence received from a range of submitters in relation to the relative advantages of an 'open centre' model over a high security one. The committee commends the Australian and Nauruan governments for their decision to move toward an open centre model, which commenced in February 2015.

5.58 The committee is of the view that an open centre model is a more humane and potentially more effective means of processing asylum seeker claims offshore; one that is likely to contribute to improving the mental health and wellbeing of the asylum seekers, and reduce tensions within the RPC. Importantly, the committee also endorses the view expressed by the Government of Nauru that open centre arrangements will help to build better relations between the asylum seeker and Nauruan communities, and serve as an important preparatory step in the ongoing resettlement of refugees in the Nauruan community.

**Recommendation 9**

**5.59** The committee recommends that the Australian Government continue to review the operation of the Regional Processing Centre with a view to expanding open centre arrangements. The committee recommends that the Regional Processing Centre on Nauru move toward becoming a more open, lower security living arrangement for all asylum seekers except where there is a compelling reason for an asylum seeker to be accommodated more securely.

5.60 The committee recommends that any savings resulting from the implementation of an open centre model be redirected toward improving the living conditions of asylum seekers in the Regional Processing Centre, with a focus on humane living arrangements, services and amenities, including improved access to communications. The committee recommends that the

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**Department of Immigration and Border Protection report publicly and to the Senate within 12 months on progress in this regard.**

**Living conditions and provision of services**

5.61 As noted in chapter 1, the 2012 Expert Panel recommended the reopening of a processing centre on Nauru as a short term measure, while progress was made toward the establishment of an integrated regional framework for the processing of asylum seekers. Almost three years on, the committee observes that the government has failed to secure agreement on a genuine regional approach, and has also failed to articulate any clear plan for the medium to long-term future of the RPC. Meanwhile the Centre continues to function with asylum seekers stuck in rudimentary, temporary living conditions.

5.62 While the committee recognises that the fire at the RPC in June 2013 resulted in the destruction of some permanent infrastructure, the committee considers that, two years on, the lack of commitment and clarity to rebuilding and improving living conditions only heightens the frustrations that contribute to continued tension and potential unrest. The committee believes that it is no longer acceptable for the RPC in Nauru to exist in a half-life between short-term stopgap and long-term home for several hundred people, including children.

5.63 The committee welcomed advice from Transfield Services that, in collaboration with the department, some steps were being taken to make improvements to accommodation facilities in response to the recommendations of the Moss Review, including installation of air conditioning or fans, added privacy screens and additional lighting.

5.64 The committee is nevertheless deeply concerned at the evidence provided which suggests that standards of living for asylum seekers in the Regional Processing Centre are unacceptably low in a range of areas, including exposure to the elements, lack of privacy, poor hygiene and insufficient access to water and sanitation.

5.65 These matters are of concern in and of themselves, but the committee is also cognisant of the connection drawn by many submitters, including health and welfare workers with direct experience of the RPC, between the very poor living conditions at the RPC and the high level of physical and mental health problems experienced by the asylum seekers resident there.

5.66 The committee was concerned to hear that measures in place around the provision of clothing were unnecessarily complex, and in particular, that Transfield Services' policy around reporting stolen clothing was punitive and harsh. The committee notes the current policy that a Wilson Security guard must search the possessions of an asylum seeker if a report is made of stolen clothing. The committee believes that such a response is unwarranted and fosters an unhealthy living environment.

**Recommendation 10**

**5.67 The committee recommends that the government commit to and publicly release a medium to long term plan for the completion of permanent infrastructure at the Regional Processing Centre on Nauru, including the**

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**construction of solid accommodation structures, and for tangible improvements to amenities for asylum seekers including lighting, water, toilets, air conditioning, cooking facilities and communications.**

**5.68 The committee is convinced that welfare services must be provided by a dedicated welfare service provider with the required experience and accreditation to undertake such work. The committee recommends that a non-government organisation be contracted directly by the Department of Immigration and Border Protection to provide welfare services to all asylum seekers within the Regional Processing Centre on Nauru.**

### *Food*

5.69 As discussed in chapter 3, given that a significant investment of Australian taxpayers' money has been made into the provision of services, the evidence that mouldy or rotten food is provided is highly concerning. The committee is concerned that instances of food poisoning and gastroenteritis could be especially harmful to pregnant women, children and the elderly in the Regional Processing Centre.

5.70 The committee considers that instances of food poisoning should be reported to the provider of that service and that Transfield Services should compile and monitor statistics concerning this. The committee believes that Transfield Services should have been more forthcoming in its answers to questions concerning instances of food poisoning and needs to be more transparent about that issue. More broadly, the committee considers that there should be greater integration of reporting and monitoring of health and illness that directly relates to the provision of a service.

### **Protecting the safety of asylum seekers and responding to abuse**

5.71 Based on the evidence received by this inquiry, the committee has reached the conclusion that the RPC in Nauru is not a safe environment for asylum seekers. This assessment is particularly acute in relation to women, children and other vulnerable persons.

### *Children*

5.72 The committee is particularly disturbed by the evidence it has received about abuse of children, traumatisation and mental illness among children, and the impact of the persistent, indefinite detention of children in the poor conditions which prevail at the RPC. These children are not only denied a reasonable approximation of childhood in the RPC, but often do not feel safe, and in fact often are not safe. Their extreme vulnerability is further exacerbated by their location in a country which lacks an adequate legal or policy framework for their protection.

5.73 The committee accepts the evidence provided by legal experts that the continued transfer of children to Nauru, and detention of them in the RPC, is likely to breach Australia's obligations under the Convention on the Rights of the Child.

5.74 The committee commends the government on the commitment it made in 2014 to remove children from immigration detention within Australia to the maximum extent possible. That said, given the evidence put before this committee, the committee fails to understand how, if immigration detention facilities in Australia are

regarded as inappropriate locations for children, the government could possibly regard as acceptable their continued detention in the far worse conditions of the Nauru RPC.

5.75 The committee concludes that the RPC Nauru is neither a safe nor an appropriate environment for children and that they should no longer be held there.

### **Recommendation 11**

**5.76 The committee recommends that the government extend its current policy commitment to remove children from immigration detention to the maximum extent possible, to include the removal of children from the Regional Processing Centre in Nauru. The government should develop a plan for the removal of children from the Nauru RPC as soon as possible, with their families where they have them, to appropriate arrangements in the community.**

#### *Education*

5.77 The committee considers provision of a sound education to be an absolute priority for expenditure and management in relation to both asylum seeker children in the RPC and refugee children settled in Nauru. Plans for the education of asylum seeker and refugee children should be finalised and made public as soon as possible by the Department of Immigration and Border Protection and Save the Children Australia.

5.78 The committee further urges that teachers in Nauruan schools be provided with specialist training in order to enable them to teach asylum seeker and refugee students who have experienced trauma and may have special requirements.

### **Recommendation 12**

**5.79 The committee recommends that the Australian Government commit to and publicly state a specific plan for addressing the educational needs of asylum seeker and refugee children in Nauru.**

5.80 The committee also notes its concern about evidence it received indicating that there is no clear instruction relating to the filing of incident reports for incidents involving asylum seekers that occur outside of the RPC, including in schools. These guidelines should be clarified with all contracted service providers to ensure that the safety of all asylum seekers, including children, is protected and all incidents are appropriately reported whether or not they occur within the physical boundaries of the RPC.

#### *Responding to allegations of abuse*

5.81 The Moss Review began a process of shedding light on serious allegations of abuse and impropriety taking place at the RPC. The material received by this committee has corroborated and added to that evidence, and has also provided further indication that Mr Moss' suspicion of significant underreporting was well placed. The committee is burdened by the weight of reporting received by it as to possible cases of abuse, many of which it has not been able to make public.

5.82 The committee welcomes advice provided by the department that it is working to reconcile the allegations of which it is aware, including confidential

allegations, to ensure that all cases are appropriately referred for action. The committee acknowledges the secretary's observation that this is not an easy task.

5.83 The committee regards it as imperative, however challenging, that every effort be made to trace and follow up all serious allegations which have emerged in the various inquiries in relation to the RPC. It will be difficult and it will require a commitment of bureaucratic time and resources, but it is not optional.

5.84 The committee has throughout this inquiry been conscious of the restrictions which would prevent direct use of the evidence it has received of criminal conduct in future court proceedings.<sup>10</sup> The committee therefore urges those persons who have made submissions containing allegations of criminal conduct to report them directly to the Australian Federal Police (AFP) for appropriate follow up. While investigation of alleged crimes on Nauru is the primary responsibility of the Nauru Police Force (NPF), Australian Federal Police officers have been deployed to Nauru specifically to assist the NPF with such investigations. The committee believes that this connection should be used more actively to provide the assistance and assurance of the AFP in cases where victims of crime may be reluctant to report it via contractors on Nauru or directly to the NPF. The committee acknowledges that this may require negotiation of expanded police assistance arrangements with the Government of Nauru, and investment of increased resources by the AFP but regards it as essential that this be done.

### **Recommendation 13**

**5.85 The committee recommends that the Department of Immigration and Border Protection, in consultation with the Australian Federal Police, undertake a full audit of all allegations of sexual abuse, child abuse and other criminal conduct reported to the Australian Human Rights Commission, to the Moss Review and to this inquiry, seeking the agreement of these bodies to share confidential information where necessary to conduct such an audit.**

**5.86 The committee further recommends that, taking into account the need to protect personal privacy, the minister should report to the Senate by the end of December 2015, and every six months thereafter, setting out all allegations of a criminal nature made in relation to the RPC, and the action taken by the department and other relevant authorities in response.**

#### ***Mandatory reporting***

5.87 The committee is gravely concerned that the culture of secrecy surrounding operations at the RPC, the lack of access for asylum seekers to information and support, and the lack of independent avenues of complaint and oversight, create a dangerous likelihood that the present incidence and apparent culture of abuse will continue and even intensify.

5.88 In addition to the recommendations made above relating to increased support to the law enforcement and justice sector in Nauru, and to the independent review of

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10 Subsection 16(3) of the *Parliamentary Privileges Act 1987*.

complaints by the Immigration Ombudsman, the committee believes that increased transparency of reporting of serious allegations is required.

5.89 The committee believes that the Regional Processing Centre on Nauru should be made subject to mandatory reporting requirements for serious crimes including sexual and other physical assault, and crimes against children, comparable with the requirements that apply under various legislative provisions within Australia. This can be achieved, at least in part, through Australian Commonwealth legislation with extraterritorial application.

5.90 The committee considers that such legislation should require all persons who believe on reasonable grounds that such a crime has been committed against an asylum seeker in the RPC to report it. It should ensure that the alleged offender (or employer of the offender) is not the only recipient of the report, and should include proportionate penalties for non-compliance.

#### **Recommendation 14**

**5.91 The committee recommends that legislation be passed by the Australian Parliament requiring the mandatory reporting of any reasonably suspected unlawful sexual contact, sexual harassment, unreasonable use of force or other assault perpetrated against asylum seekers at the Regional Processing Centres, under similar terms as the mandatory reporting provisions contained in existing Commonwealth, state and territory laws.**

**5.92 Such legislation should require that the reporting is made to the Department of Immigration and Border Protection and the Australian Federal Police, as well as any relevant state, territory or foreign police force and, where the matter relates to a child, child protection authorities in any relevant jurisdictions. The legislation should utilise Category C or D extraterritorial jurisdiction to apply in Nauru, and impose penalties for noncompliance comparable with those which apply in existing legislation within Australia.**

5.93 The committee reiterates its concern that without its inquiry, evidence of abuse received by the committee may not have been uncovered. Without the safety net provided by the Australian Senate, it is difficult to see how further allegations can be adequately dealt with as reliable options for reporting allegations and having them properly investigated seem to be limited at the present time.

#### **Recommendation 15**

**5.94 Given the committee's concerns about the level of accountability and transparency that currently applies to the operation of the regional processing centre in the Republic of Nauru, the committee recommends that the following matter be referred to the Legal and Constitutional Affairs References Committee for inquiry and report by 31 December 2016:**

- a) conditions and treatment of asylum seekers and refugees at the Regional Processing Centre in the Republic of Nauru;**
- b) transparency and accountability mechanisms that apply to the Regional Processing Centre in the Republic of Nauru;**



- c) implementation of recommendations of the Moss Review in relation to the regional processing centre in the Republic of Nauru;**
- d) the extent to which the Australian funded regional processing centre in the Republic of Nauru is operating in compliance with Australian and international legal obligations;**
- e) the extent to which contracts associated with the operation of offshore processing centres are:**
  - delivering value for money consistent with the definition contained in the Commonwealth procurement rules;**
  - meeting the terms of their contracts;**
  - delivering services which meet Australian standards; and**
- f) any related matter.**

**Senator Alex Gallacher**  
**Chair**

