

## Chapter 10

### Pacific Solution: Negotiations and Agreements

‘We are currently exploring a number of offshore sites. An assessment team has gone to Kiribati today but will be unlikely to report in under a week given transit times. We have had some interest from Palau who have sought further information but again this will be unlikely to generate any options in the short term. Fiji also remains an option...’<sup>1</sup>

#### Introduction

10.1 When the Prime Minister announced<sup>2</sup> on 1 September 2001 that an agreement had been reached that all of the people rescued by the *MV Tampa* would be processed in third countries rather than in Australia or Australian territories, it marked a substantial shift in Australia’s arrangements for the reception of asylum seekers arriving by boat.

10.2 The issue of ‘boat people’ is one about which many Australians hold strong views. The idea that Australia may have international protection obligations to people who arrive uninvited and without authorisation is often challenging and unwelcome.<sup>3</sup> Boat arrivals are seen as ‘breaking the rules’ and ‘jumping the queue’, or as not being genuine refugees, even though the Department of Immigration and Multicultural and Indigenous Affairs’ own figures show that a significant proportion are subsequently found to be genuinely in need of protection.<sup>4</sup>

10.3 The number of people who arrive in Australia without authority is small both in international terms and compared to the number of visa overstayers.<sup>5</sup> However, various factors conspired in 2001 to fuel a fear of a greater influx. These included a recent rise in the number of unauthorised boat arrivals (from 921 in 1998/99 to 4175 in 1999/00 and 4137 in 2000/01<sup>6</sup>), reports of several thousand more asylum seekers waiting in Indonesia to make the trip and a view that Australia was being targeted by

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1 Department of Prime Minister and Cabinet, *Options for Handling Unauthorised Boat Arrivals: Christmas Island*, 7 October 2001, p.4.

2 Transcript of the Prime Minister the Hon John Howard MP Joint Press Conference with the Minister for Immigration the Hon Philip Ruddock MP, Sydney, 1 September 2001.

3 Mary Crock and Ben Saul, *Future Seekers: refugees and the law in Australia* (Sydney, Federation Press, 2002), p.10.

4 *Boat Arrival Details*, Fact Sheet No.74a, Department of Immigration and Multicultural and Indigenous Affairs, Revised 1 August 2002.

5 Mary Crock and Ben Saul, *Future Seekers: refugees and the law in Australia*, p.23.

6 *Unauthorised Arrivals by Air and Sea*, Fact Sheet No.74, Department of Immigration and Multicultural and Indigenous Affairs, Revised 22 July 2002.

organised people smugglers because our refugee determination outcomes were overly generous.<sup>7</sup>

10.4 The timing of the *Tampa* incident in the lead up to the Federal election provided an opportunity for a hardline political response which reflected popular sentiment. The terrorist attacks in the USA on 11 September further fed fears concerning unauthorised boat arrivals, many of whom were Muslims from Iraq or Afghanistan, through a loose linking of the asylum seeker issue with national security concerns.<sup>8</sup>

10.5 The *Tampa* incident was presented by the Government as a metaphor for the threat posed by unauthorised arrivals to Australia's right to control its borders.<sup>9</sup> In a move which was well received in the polls,<sup>10</sup> the government initially refused permission for the vessel to enter Australian territorial waters, and when this instruction was not complied with sent SAS troops to take control of the vessel.

10.6 On 29 August 2001 the Prime Minister told Parliament:

It remains our very strong determination not to allow this vessel or its occupants, save and excepting humanitarian circumstances clearly demonstrated, to land in Australia...<sup>11</sup>

10.7 The impasse between the Captain of the *Tampa* and the Australian Government was resolved when Australia reached an agreement with Nauru and New Zealand to take all of the people aboard the vessel for initial processing.

10.8 New Zealand indicated that those amongst the up to 150 people it had offered to accept who were assessed as being refugees would be allowed to remain in that country.<sup>12</sup>

10.9 The arrangement with Nauru was substantially different. Australia would establish and operate a processing centre on the island, and provide additional development aid to Nauru as part of the arrangement. Those assessed as refugees on Nauru would have to seek resettlement in Australia or other countries.

10.10 On 10 October 2001, the Prime Minister made a further announcement that the Government of Papua New Guinea had also agreed to establish a processing centre for unauthorised boat arrivals.<sup>13</sup>

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7 Philip Ruddock, MP, House of Representatives, *Hansard*, 20 September 2001, pp.31188

8 Scott Bennett, Gerard Newman and Andrew Kopras, *Commonwealth Election 2001*, Research Paper No.11 2001-02, Department of the Parliamentary Library, 19 March 2002, p.10.

9 John Howard, MP, House of Representatives, *Hansard*, 29 August 2001, p.30570.

10 Scott Bennett, Gerard Newman and Andrew Kopras, p.6.

11 John Howard, MP, House of Representatives, *Hansard*, 29 August 2001, p.30517.

12 Prime Minister of Australia, *MV Tampa – Unauthorised Arrivals*, Media Release, 1 September 2001.

10.11 The agreements reached between Australia and Nauru and Papua New Guinea (PNG) were the outcomes of a suite of negotiations with Pacific nations undertaken in an effort to ensure that unauthorised boat arrivals were not taken to Australia for processing. In this chapter the committee outlines the nature of those approaches and the agreements reached in relation to the so-called Pacific Solution.

## Initial Approaches

10.12 In the initial deliberations concerning options for offshore processing sites East Timor was considered as a possible trans-shipment point or temporary processing centre.<sup>14</sup> Approaches, which coincided with the election period in East Timor, were made to the UN administration and to East Timorese leaders. The East Timorese leadership was quoted expressing a willingness to assist Australia,<sup>15</sup> however there were substantial concerns over the capacity of the new nation and the UN administration was not supportive of the proposal.

10.13 By 31 August 2001, the same day as he approached President Harris of Nauru, the Minister for Foreign Affairs was acknowledging that processing in East Timor was unlikely.<sup>16</sup>

10.14 The notes of the People Smuggling Taskforce show that other offshore sites continued to be investigated during September and October, although locations have been deleted in the version provided to the Committee 'because its publication could reasonably be expected to cause damage to defence or international relations'.<sup>17</sup>

10.15 The Department of Foreign Affairs and Trade has advised the Committee that formal consultations were held with Kiribati, Fiji and Palau, and 'informal soundings' were taken of officials of the governments of Tuvalu, Tonga and France (in relation to French Polynesia).<sup>18</sup>

10.16 The Minister for Foreign Affairs made public statements in September that discussions were being held with President Tito of Kiribati about the possibility of using one of Kiribati's islands as a processing site.<sup>19</sup> In October President Tito is reported as saying:

13 Prime Minister of Australia, *Arrangement with Papua New Guinea to Process Unauthorised Arrivals*, Media Release, 10 October 2001.

14 *The Prime Minister is happy about the deal with Nauru and New Zealand to take the people from the 'Tampa'*, Transcript, The Insiders, ABC, 2 September 2001.

15 Mark Dodd, 'We'll Take Them, East Timor Says', *The Age*, 1 September 2001.

16 Minister for Foreign Affairs, Doorstop Interview, Adelaide, 31 August 2001.

17 Correspondence to the Committee from Mr Jeff Whalan, Department of Prime Minister and Cabinet, 6 June 2002.

18 Answers to Questions on Notice, Department of Foreign Affairs and Trade, 2 August 2002, Q1.

19 *Minister discusses terrorism; and the asylum seekers on the 'Manoora'*, Transcript, Sunday program, Channel 9, 23 September 2001.

When Australia was already asking Kiribati whether there was a possibility of our helping, it naturally occurred to me that if Nauru was in a position to provide some help to Australia with only one island, I thought Kiribati logically should be in a better position to provide some help. It was in response to what we considered to be a need, a genuine need of a good friend of Kiribati reaching out to a good friend in the Pacific.<sup>20</sup>

10.17 On 7 October an inspection team of Australian officials departed for Kiribati.<sup>21</sup> Kanton Island, in the Phoenix group of islands, was under consideration as a potential location but presented considerable logistical difficulties.<sup>22</sup> Kanton is very isolated and without regular shipping or air services and no arrangement with Kiribati was proceeded with. By this time the community of Kiribati was also expressing some concern at being involved with people from Afghanistan.<sup>23</sup>

10.18 Australia also approached the small island states of Palau and Tuvalu. Initial discussions were held with Palau in October, and it was visited in late November or early December by an Australian delegation looking at possible processing centre sites.<sup>24</sup>

10.19 In their evidence to the inquiry, Oxfam Community Aid abroad indicated that the Secretary to the Government of Tuvalu, Mr Panapa Nelson, had stated that his country received a verbal request from Canberra to process asylum seekers, but no official approach followed.<sup>25</sup>

10.20 An approach by Australia to Fiji in October was the subject of considerable discussion, much of it critical, within Fiji itself. Strong opposition came from many quarters including the Great Council of Chiefs and the Fiji Muslim League.<sup>26</sup>

10.21 Fiji's Labor Party leader, Mr Mahendra Chaudry, has been quoted as describing the offer of money to the country in return for hosting a detention centre as 'a shameful display of cheque book diplomacy' and as 'tantamount to offering a

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20 Submission 17, *Adrift in the Pacific; the implications of Australia's Pacific refugee solution*, Oxfam Community Aid Abroad (February 2002) p20.

21 *Options for Handling Unauthorised Boat Arrivals: Christmas Island*, p.4.

22 Answers to Questions on Notice, Department of Foreign Affairs and Trade, 2 August 2002, Q1.

23 Submission 17, *Adrift in the Pacific*, p.20.

24 *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade, 6 June 2002 p.398.

25 Submission 17, *Adrift in the Pacific*, p.21.

26 Derek Ingram, 'Commonwealth Update', *The Round Table* 364 (2002), p.150.

bribe'.<sup>27</sup> Mr Downer noted the widespread debate that the approach had created, and withdrew the request in December.<sup>28</sup>

10.22 The opposition within Fiji was characteristic of concerns expressed by others within the region that Australia was using its economic power to further its domestic policy agenda by exporting its problems to its poorer neighbours.<sup>29</sup> Mr Noel Levi, Secretary General of the Pacific Islands Forum Secretariat, expressed serious reservations over the impact of the Australian government's refugee policy. In October 2001 he said:

The emerging refugees market in the region where Forum Island Countries lease out their territories for quarantine and processing services carries unknown risks. Yet it is evolving rapidly without the necessary legal and policy framework to ensure its proper and equitable regulation. Such a substantial population influx places extreme pressure on our already very limited resources, exposing our small and vulnerable economies to further social and economic problems which we can ill afford.<sup>30</sup>

10.23 This sentiment was reiterated in a Joint Statement by the Pacific Council of Churches and a number of Pacific non-government organisations, on 26 October 2001:

We also appeal to Pacific Island Governments to carefully consider the long-term impact and consequences of accepting Australian aid deals in connection to the refugees. To welcome and accommodate Australian refugees for the sake of money will add more problems and will have adverse impacts on our communal life as Pacific communities, as well as our sovereignty.<sup>31</sup>

## The Agreement with Nauru

10.24 On 31 August, the Minister for Foreign Affairs, the Hon Alexander Downer MP, approached President Rene Harris of Nauru to consider the possibility of hosting a facility on Nauru for processing asylum seekers. On 1 September 2001 President Harris announced that Nauru was interested in Australia's proposal.<sup>32</sup>

10.25 On 2 September, an Australian delegation including representatives from the Department of Foreign Affairs and Trade, Department of Defence, Department of

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27 Greg Fry, 'The "Pacific Solution"', *Refugees and the Myth of a Borderless World*, (Australian National University, 2002) p.26.

28 Minister for Foreign Affairs, *Fiji Visit*, Media Release, 12 December 2001.

29 Submission 18.

30 Quoted in *Adrift in the Pacific*, p.22.

31 *Refugees in the Pacific*, Joint Statement by the Pacific Council of Churches, Pacific Desk of the World Council of Churches, Pacific Association of Non-Government Organisations and others, 26 October 2001.

32 Answers to Questions on Notice, Department of Foreign Affairs and Trade, 19 June 2002.

Immigration and Multicultural and Indigenous Affairs, and the Australian Federal Police arrived in Nauru. The Australian officials conducted a number of meetings with Nauruan government members and senior officials between 2 and 7 September to negotiate issues concerning the establishment and operation of the processing centres, and Nauru's economic and development assistance priorities.<sup>33</sup>

10.26 The then Minister for Defence, Mr Reith, arrived in Nauru on 9 September to conclude negotiations and a 13 point Statement of Principles and First Administrative Arrangement (FAA) was signed by President Harris and Mr Reith on 10 September 2001.

10.27 The First Administrative Arrangement committed Australia to:

- ensure fuel supplies for power generation on Nauru to 1 May 2002;
- organise the replacement of some generation equipment;
- meet outstanding Australian hospital accounts to approximately A\$1 million;
- double the number of educational scholarships offered by Australia;
- broaden its program of maritime surveillance to enhance coverage of Nauru's exclusive economic zone, although Defence subsequently advised that this matter could not be actioned until global commitments diminished;<sup>34</sup>
- mitigate the temporary loss of the Topside Sports Oval by the provision of alternative sporting facilities and/or equipment, the gifting of infrastructure provided at the Topside Sports Oval to Nauru as permanent improvement to the site, and the provision of sports scholarships over and above those already provided; and
- review 'options to provide advice or assistance on, but not limited to, telecommunications and aviation infrastructure, the protection of economic resources and any other matters as jointly determined through administrative arrangements'.<sup>35</sup>

10.28 Nauru undertook to accept those persons at that time on the HMAS *Manoora*, not including those to go to New Zealand. Nauru also agreed to accept additional persons from time to time as mutually determined with Australia in the period to 1 May 2002, with further Australian funding also to be determined.

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33 Answers to Questions on Notice, Department of Foreign Affairs and Trade, 19 June 2002.

34 *Summary of Progress against the First Administrative Arrangement as at 11 December 2002*, Answers to Questions on Notice, Department of Foreign Affairs and Trade, 2 August 2002.

35 *First Administrative Arrangement*, Answers to Questions on Notice, Department of Foreign Affairs and Trade, 19 June 2002.

10.29 Under the First Administrative Arrangement an additional \$16.5 million was allocated in development assistance to Nauru including power and water generation, education and health.<sup>36</sup>

10.30 AusAID estimated the breakup of aid funding under the FAA as fuel \$9.50 million, power and desalination \$4.70 million, in-Australia hospital bills \$1.06 million, aviation \$150,000, kit homes \$110,000, educational scholarships \$100,000, sporting facilities and scholarships \$60,000, telecommunications \$50,000, economic reforms \$70,000, and Departmental administrative expenses \$700,000.<sup>37</sup>

10.31 The Statement of Principles and First Administrative Arrangement was terminated by the signing on 11 December 2001 of a Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia for Cooperation in the Administration of Asylum Seekers and Related Issues (MOU).<sup>38</sup> President Harris and the Minister for Foreign Affairs, Mr Downer, signed the MOU.

10.32 The terms of the MOU were negotiated by an Australian delegation from the Departments of Foreign Affairs and Trade, AusAID and Immigration and Multicultural and Indigenous Affairs between 4 and 6 December 2001.

10.33 Under the MOU, Nauru agreed to accept 'certain persons' on behalf of Australia 'with the understanding that each individual will be processed within six months of their arrival in Nauru, or as short a time as is reasonably necessary for the implementation of this Memorandum.'<sup>39</sup>

10.34 The MOU includes the commitment that Australia will ensure that all persons will depart within this six month period, or 'as short a time as is reasonably necessary for the implementation of this Memorandum', with no person to be left behind in Nauru.

10.35 The MOU provides for a maximum of 1,200 people to be accommodated at two sites, known as Topside and Former State House. As of 12 June 2002 long-term lease arrangements for the sites had not been signed.<sup>40</sup>

10.36 Under the MOU Australia fully finances the activities in Nauru and agrees to reasonably compensate Nauru for its assistance and any losses it incurs.

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36 *Portfolio Additional Estimates Statements 2001-02*, Foreign Affairs and Trade Portfolio, p83.

37 AusAID Answers to Questions on Notice, Estimates, Senate Foreign Affairs Defence and Trade, 20 February 2002, Q5(iii).

38 *Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia for Cooperation in the Administration of Asylum Seekers and Related Issues*, Answers to Questions on Notice, Department of Foreign Affairs and Trade, 19 June 2002.

39 *Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia*.

40 Answers to Questions on Notice, Department of Immigration and Multicultural and Indigenous Affairs, 12 June 2002, Q3.

10.37 Australia also agreed to work with Nauru and multilateral partners, including the United Nations and Asian Development Bank, to develop a medium-term sustainable development strategy for Nauru, with an estimated completion date of mid-2002.<sup>41</sup> Specific priority activities in support of the strategy, above and beyond commitments in the Statement of First Principles and Administrative Arrangement, were estimated to cost A\$10 million. The A\$10 million figure comprised \$4.5 million for health services including \$1 million for outstanding Australian medical bills, \$3.45 million for education, \$1 million for waste management infrastructure, \$200,000 for water tank repairs, \$150,000 for police training, and \$700,000 for technical assistance across a range of activities,<sup>42</sup> including \$200,000 for training of media staff.<sup>43</sup>

10.38 Australia's commitment to Nauru for extra development assistance under the FAA and MOU totals \$26.5m.<sup>44</sup> \$19.5m was allocated for 2001-2002<sup>45</sup> and \$7 million in 2002-2003.<sup>46</sup>

10.39 The MOU continues until terminated by either party, with the understanding that the parties 'will attempt to mutually determine the date of termination in order to allow orderly termination of activities'.<sup>47</sup>

10.40 The approach to Nauru and subsequent agreements have not been without criticism, with a perception that Australia was taking advantage of the desperate state of the Nauruan economy, and in the process undermining its own regional aid priorities of good governance, sustainable development and poverty alleviation.

10.41 Nauru, with a surface area of 21 sq km and a population of just 12,000, has serious cash flow problems, an economy dependent on declining phosphate reserves, and a political system plagued by instability, with nine changes of government since 1996.<sup>48</sup>

10.42 Statistics on the Nauruan economy are scarce. However, according to the Asian Development Bank, the medium-term outlook for the economy is weak. Per capita income is estimated to have fallen from A\$9,000 in fiscal year 1988 to around

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41 *Schedule to the Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia for Cooperation*, Answers to Questions on Notice, Department of Foreign Affairs and Trade, 2 August 2002, p.1.

42 Minister for Foreign Affairs, Media Release, 11 December 2001.

43 *Schedule to the Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia for Cooperation*, p.3.

44 Answers to Questions on Notice, Department of Foreign Affairs and Trade, 19 June 2002.

45 *Portfolio Additional Estimates Statements 2001-02, Foreign Affairs and Trade Portfolio*, p83.

46 *Portfolio Budget Statements 2002-03, Foreign Affairs Defence and Trade Portfolio*, p130.

47 *Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia for Cooperation in the Administration of Asylum Seekers and Related Issues*, Answers to Questions on Notice, Department of Foreign Affairs and Trade, 19 June 2002. P.6.

48 *Republic of Nauru Country Brief*, Department of Foreign Affairs and Trade.



A\$4,600 in fiscal year 1998. The provision of basic public services is regularly disrupted and is at serious risk over the medium term.<sup>49</sup> The country is also one of 15 jurisdictions named in June 2000 by the Financial Action Task Force on Money Laundering as having serious systematic problems in regard to money laundering,<sup>50</sup> and continues to have problems in this regard.<sup>51</sup>

10.43 Nauruan Member of Parliament, Mr Anthony Audoa, expressed his concern about the Australian offer:

I don't know what is behind the mentality of the Australian leaders but I don't think it is right. A country that is desperate with its economy, and you try to dangle a carrot in front of them, of course, just like a prostitute...if you dangle money in front of her, you think she will not accept it. Of course she will, because she's desperate.<sup>52</sup>

10.44 There have been also been concerns expressed in Nauru over the impact of the establishment of the detention facility in terms of the provision of basic services for the Nauruan community, particularly potable water which is a scarce commodity.<sup>53</sup> The Presidential Counsel and the Senior Medical Officer in Nauru reportedly received letters of suspension without pay from their positions as public servants after they expressed such concerns.<sup>54</sup>

## **The Agreement with Papua New Guinea**

10.45 The Secretary of the Department of the Prime Minister and Cabinet, Mr Max Moore-Wilton, raised the possibility of Papua New Guinea hosting an offshore asylum claims processing facility in a meeting with PNG's Chief Secretary, Mr Robert Igara, in Sydney on the morning of 8 October 2001. Present at the meeting were Mr Michael Potts, First Assistant Secretary, Department of the Prime Minister and Cabinet, Mr Nicholas Warner, Australian High Commissioner to Papua New Guinea, Dr Allan Hawke, Secretary of the Department of Defence, and Mr Ken Baxter, Treasury Adviser to the Papua New Guinea government.<sup>55</sup>

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49 Asian Development Bank, *Asian Development Outlook 2002* (Oxford University Press, 2002).

50 Dr George Gilligan, 'International Trends in the Regulation of the Financial Services Sector', *Australian Journal of Corporate Law* 14 (2002), p.66.

51 *Transcript*, Joint Standing Committee on Foreign Affairs, Defence and Trade, 21 May 2002, p.82.

52 Quoted in *Adrift in the Pacific*, p.23.

53 Submission23, p.5.

54 *Transcript of Evidence*, CMI 1399.

55 Answers to Questions on Notice, Department of Foreign Affairs and Trade, 19 June 2002.

10.46 The 8 October meeting also addressed the first tranche of Australian assistance for the reform of the Papua New Guinea Defence Force, totalling \$20 million.<sup>56</sup>

10.47 The timing of the meeting is significant in that the 'caretaker conventions' relating to the forthcoming election came into effect at midday 8 October. Mr Potts<sup>57</sup> and Dr Hawke<sup>58</sup> have indicated that the meeting concluded at approximately 11.30am, just short of the caretaker convention period during which it would have been necessary to consult the Opposition concerning such a substantial new policy initiative.

10.48 The Committee concedes the strict legitimacy of the decision in terms of its occurring prior to the 12 noon deadline. The perception, however, that it was contrived so as to avoid the inconvenience of consultation is not easily set aside.

10.49 The terms of a Memorandum of Understanding between Australia and Papua New Guinea establishing an asylum seeker processing centre in PNG were negotiated in meetings between PNG and Australian officials in Port Moresby on 9 and 10 October.<sup>59</sup>

10.50 The MOU was signed by Australia's High Commissioner to Papua New Guinea, Mr Nicholas Warner, and Papua New Guinea's Secretary of the Department of Foreign Affairs, Mr Evoa Lalatute, on 11 October.

10.51 The objective of the MOU is stated as:

The parties agree that combating people smuggling and illegal migration in the Asia-Pacific region is a shared objective. The establishment of an immigration processing centre as a visible deterrent to people smugglers will enable joint co-operation, including the development of enhanced capacity in Papua New Guinea, to address these issues.<sup>60</sup>

10.52 Australia bears all costs of establishing and operating the immigration processing centre. A trust fund of A\$1 million for the purpose is jointly administered, and replenished by Australia as required. The trust fund is funded by the Department of Immigration and Multicultural and Indigenous Affairs and funds are released on the

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56 *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade, 3 June 2002 pp.20.

57 *Transcript of Evidence*, Estimates, Senate Finance and Public Administration, 28 May 2002, p.140.

58 *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade, 3 June 2002 pp25.

59 Answers to Questions on Notice, Department of Foreign Affairs and Trade, 19 June 2002.

60 *Memorandum of Understanding between the Government of Australia and the Government of the Independent State of Papua New Guinea, Relating to the Processing of Certain Persons, and Related Issues*, Answers to Questions on Notice, Department of Foreign Affairs and Trade, 19 June 2002.

joint authority of the Papua New Guinea Secretary of Foreign Affairs, the PNG Secretary of Finance, and the Australian High Commissioner.<sup>61</sup>

10.53 The offshore processing centre was established on 21 October 2001 and is located in the Lombrum Naval Patrol Boat Base on Los Negros Island, Manus Province.<sup>62</sup> The facility is commonly referred to as the Manus Island centre.

10.54 There is no additional development aid provided to PNG under the MOU, and in this respect it differs from the arrangement reached with Nauru. However the PNG Minister for Foreign Affairs, Hon Professor John Waiko, noted in February 2002 that the establishment of the facility had 'resulted in the fast tracking of important AusAid projects for Manus, such as the Papitalia High School, Police Housing and upgrading of the Momote airport.'<sup>63</sup>

10.55 The establishment of the centre has also required the upgrading of infrastructure on the island, including electricity, sewerage and water systems, and improvements have been made to the base hospital and PNG Defence Force Buildings. The camp has also become a major source of local employment.<sup>64</sup>

10.56 The MOU also committed Australia to support PNG, through advice and technical and financial assistance, in its management of nationals from third countries who are illegally entering the country. The Manus centre will be returned to the PNG government in a condition that would enable a similar use in future if required.

10.57 Under the MOU, the Government of Papua New Guinea permitted entry to the 223 persons taken on board HMAS *Adelaide* on 8 October 2001, and two persons taken on board HMAS *Bendigo* on 10 October 2001, to enable processing in accordance with the arrangement. Extension of the agreement to additional persons was possible by joint agreement.

10.58 It was initially agreed that all persons entering Papua New Guinea under the agreement would have left after six months of entering PNG, or as short a time as was reasonably necessary for the implementation of the MOU.<sup>65</sup>

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61 Answers to Questions on Notice, Department of Foreign Affairs and Trade, 19 June 2002.

62 Submission 44, Senate Foreign Affairs, Defence and Trade Inquiry into Australia's Relationship with Papua New Guinea and Other Pacific Island Countries, p.32.

63 *Papua New Guinea and Australian Ministers Discuss Issues Concerning Boat People*, Minister for Immigration and Multicultural and Indigenous Affairs Joint Statement with the Hon Prof John D Waiko, PNG Minister for Foreign Affairs, 3 February 2002.

64 Submission 23, p.6.

65 *Memorandum of Understanding between the Government of Australia and the Government of the Independent State of Papua New Guinea, Relating to the Processing of Certain Persons, and Related Issues*, Answers to Questions on Notice, Department of Foreign Affairs and Trade, 19 June 2002.

10.59 On 18 January 2002, Minister Downer announced that the Government of Papua New Guinea had agreed to an expansion of the asylum seeker processing facility operating at Lombrum to accommodate up to 1,000 people, and to permit persons processed in the centre to stay in Papua New Guinea for up to 12 months.<sup>66</sup>

10.60 An earlier October 2001 request to expand the capacity of the centre to 1,000, and extend the length of the agreement, had been rejected by Foreign Affairs Minister John Pundari. In their submission to the Committee, Oxfam Community Aid Abroad stated that Sir Mekere Morauta sacked Minister Pundari on 26 October for publicly leaking and rejecting Australia's request.<sup>67</sup>

10.61 The Memorandum of Understanding between Australia and Papua New Guinea concludes on 21 October 2002,<sup>68</sup> and negotiations are reportedly underway to extend the agreement.<sup>69</sup>

## Lawfulness

10.62 The Memoranda of Understanding entered into with Papua New Guinea and Nauru oblige both countries to conduct all activities under the MOU arrangements in accordance with their own constitutions and relevant laws.

10.63 In evidence to the Committee, DIMIA advised that the governments of both Nauru and Papua New Guinea have issued temporary entry permits which provide for the legal entry of the asylum seekers into those countries.

The entry permits provide certain conditions which essentially means that the person has to be available for processing during the time that they are in the countries and that means that they are to remain within the sites of the processing centres that have been established. In a legal sense, the entry permits provide for a legal status while they are in the country and ensures that they are available for processing and they remain within the address of the processing centre.<sup>70</sup>

10.64 Submissions to the inquiry have argued that the status of the asylum seekers in Nauru is in breach of Article 5 of that country's Constitution. The group Australian Lawyers for Human Rights contend that:

The asylum seekers are being detained in apparent breach of Nauru's Constitution, which provides that there shall be no detention without trial except on the basis of public health concerns, unlawful entry into Nauru and

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66 The Hon. Alexander Downer MP, Minister for Foreign Affairs, Media Release, 17 January 2002.

67 Submission 17, *Adrift in the Pacific*, p.24.

68 Answers to Questions on Notice, Department of Foreign Affairs and Trade, 19 June 2002.

69 Mark Forbes and Sophie Douez, 'New Deal for Manus', *The Age*, 3 October 2002.

70 *Transcript of Evidence*, CMI, 812.

for deportation, and allows for the right to be informed of reason for detention and of choice of a legal representative.<sup>71</sup>

10.65 Similar concerns have been expressed in regard to the lawfulness of the arrangements in PNG.<sup>72</sup> The Committee notes DIMIA's advice that the requirement that the asylum seekers remain within the processing centres is, in the context of the immigration legislation that is being applied by Nauru and Papua New Guinea, not legally defined formally as detention.<sup>73</sup> The Committee, however, is not in a position to provide an opinion on Nauruan or PNG law in this regard.

10.66 Other concerns about the lawfulness of the agreements draw on the 1951 Refugee Convention and related Executive Committee of the United Nations High Commissioner for Refugees (EXCOM) Conclusions, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>74</sup> Arguments put forward in relation to the broader mandatory detention policy are beyond the scope of this report.

10.67 The primary source of Australia's international obligations to refugees is the 1951 Convention Relating to the Status of Refugees and the subsequent 1967 Protocol. By signing and ratifying both instruments Australia has assumed certain obligations to those who come within the Convention definition of refugee.<sup>75</sup> The right to seek asylum and enjoy asylum from persecution is set out in the Universal Declaration on Human Rights, Article 14 (1).

10.68 The core obligation under the Refugee Convention is one of non-refoulement, or not returning refugees to a territory where they could face persecution, or the threat of persecution, on one of the five refugee grounds: race, religion, nationality, membership of a particular social group or political opinion. The obligation does not extend to a refugee whom there are reasonable grounds for regarding as a danger to national security, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community.<sup>76</sup>

10.69 The Executive Committee of the UNHCR has concluded that non-refoulement also includes an obligation not to reject a refugee at the frontier (EXCOM Conclusion

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71 Submission 19.

72 Submission 23.

73 *Transcript of Evidence*, CMI 812.

74 Submission 25.

75 *A Sanctuary under Review: An Examination of Australia's Refugee and Humanitarian Determination Processes*, Senate Legal and Constitutional References Committee (June 2000) p.42.

76 1951 Convention Relating to the Status of Refugees, UNHCR, Article 33(2).

22). States which are not prepared to grant asylum must adopt a course which does not amount to refoulement.<sup>77</sup>

10.70 In evidence to the Committee, Amnesty International argued that Australia's actions under the Pacific Solution breach non-rejection at the frontier, inappropriately apply the 'safe third country' doctrine, and breach Article 31 of the Convention that a state shall not impose penalties for illegal entry.<sup>78</sup>

10.71 In a submission to the Senate Legal and Constitutional Reference Committee's Inquiry into the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002, the UNHCR stated that international law does not seem to bar a country from negotiating with another country the admission of asylum seekers for asylum purposes, including but not confined to the processing of asylum requests.<sup>79</sup> However, the submission further notes that in such circumstances the right to protection from refoulement from third countries must be addressed in an admission agreement.

10.72 The UNHCR also raises issues concerning the ongoing detention of persons recognised as refugees, which is held to be a restriction of freedom of movement in breach of Article 26 of the 1951 Convention, and inconsistent with Article 31(2).<sup>80</sup>

10.73 The *Migration Legislation Amendment (Excision from the Migration Zone) (Consequential Provisions) Act 2001* establishes the basis for the Pacific Solution by inserting an amendment into the *Migration Act 1958* allowing 'offshore entry persons' to be taken to declared countries.

10.74 A declared country is one which the Minister declares in writing:

- provides access to effective procedures for assessing the refugee status of persons;
- provides protection to these persons pending determination of their refugee status;
- provides protection to refugees pending voluntary return to their country of origin or resettlement in another country; and
- meets relevant human rights standards in providing that protection.

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77 Ernst Willheim, 'MV Tampa: the Australian response', presented at *Global Migrations/Domestic Reactions: A Comparative Constitutional Perspective*, Oxford, May 2002. p.12.

78 *Transcript of evidence*, CMI 1456.

79 *Submission No. 30*, Senate Legal and Constitutional References Committee Inquiry into the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002, p.6.

80 *Submission No. 30*, Senate Legal and Constitutional References Committee Inquiry into the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002, p.8.

It is not a requirement that the declared country be a signatory to the 1951 Refugee Convention or 1967 Protocol.<sup>81</sup>

10.75 Both Nauru and Papua New Guinea are declared countries under the Act. Nauru is not a signatory to the Refugee Convention. Papua New Guinea is a party but does not accept a number of Convention obligations in respect to paid employment, housing, public education, freedom of movement, non-discrimination against refugees who enter illegally, expulsion and naturalisation.<sup>82</sup>

10.76 Removing asylum seekers to a safe third country where refugee status processes are available is not, in the Committee's view, a formal breach of the obligations conferred by the Convention, although it is arguably contrary to its humanitarian spirit.

10.77 Article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment also contains a non-refoulement provision. As a party to the convention Australia is obligated not to return a person to a State where there are substantial grounds for believing that he or she would be in danger of being subject to torture.<sup>83</sup>

10.78 The torture convention non-refoulement obligation is not confined to persons found to be refugees. It is not clear to the Committee the extent to which processes employed by the UNHCR and Australian officials on Nauru and Manus give due weight to this obligation for persons not determined to be refugees, although evidence given by DIMIA to the Senate Inquiry into the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 indicates that the need for protection under other conventions, including the Convention against Torture, is considered in their review process.<sup>84</sup>

10.79 A further relevant convention to which Australia is a party is the Convention on the Rights of the Child. Article 22 explicitly extends to asylum seeker children the obligations under the refugee and human rights conventions, and also imposes a number of more specific obligations in respect to children. In particular, the best interests of the child must be a primary consideration, unaccompanied asylum seeker children must be afforded special protection and assurance, and no child shall be deprived of his or her liberty unlawfully or arbitrarily.

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81 Dy Spooner and Nathan Hancock, Bills Digest No. 70, Department of the Parliamentary Library, 2001.

82 Mary Crock and Ben Saul (Sydney, Federation Press, 2002), p.49.

83 Ernst Willheim, '*MV Tampa: the Australian response*', p.12.

84 *Transcript of Evidence*, Senate Legal and Constitutional References Committee Inquiry into the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002, p.11.

## Number of Asylum Seekers

10.80 As of 16 April 2001, a total of 1511<sup>85</sup> people were accommodated in the PNG and Nauru centres, down from the original total of 1515.<sup>86</sup> One thousand one hundred and fifty five people were being housed on Nauru, of whom 525 were being processed by the UNHCR. Table 10.1 provides further details. As of 1 October 2002, 1062 people remained in the offshore processing centres, comprising 960 people remaining on Nauru and 102 on Manus.<sup>87</sup>

## Operational Arrangements

10.81 The International Organisation for Migration (IOM) provides reception and processing centre services, including management of accommodation, on both Nauru and Manus under a service agreement with the Department of Immigration and Multicultural and Indigenous Affairs.<sup>88</sup> The IOM is a leading international organisation of member states which works with migrants and governments on a variety of migration issues worldwide.

10.82 The IOM provides staff to manage the facilities and sub-contracts other functions such as catering and security. Major contractors include Eurest Support Services, Chubb Security Pty Ltd in Nauru and Protect Security at Manus.<sup>89</sup> Other tasks, such as small construction work, are contracted locally.<sup>90</sup>

10.83 Australian Protective Services (APS) staff provide 'the more active security within the centres in conjunction with the respective police forces'.<sup>91</sup> For example, inside the Nauru processing centres the security is provided by Chubb, under contract to the IOM. Outside of the perimeter Nauruan constabulary and APS officers provide security at the entrance checkpoints.<sup>92</sup> Public safety and security arrangements in regard to the Nauru centre are governed by a protocol between the Nauru police force, IOM, and the APS.<sup>93</sup>

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85 Tabled by DIMIA, CMI, 16/4/02.

86 *Transcript of Evidence*, Estimates, Senate Legal and Constitutional, 30 May 2002, p546.

87 *Refugees Arrive in Australia from Manus*, Media Release DPS 77/2002, DIMIA, 1 October 2002.

88 *Transcript of Evidence*, Estimates, Senate Legal and Constitutional, 22 February 2002, p.497.

89 Answers to Questions on Notice, Department of Immigration and Multicultural and Indigenous Affairs, 12 June 2002, Q5.

90 *Transcript of Evidence*, Estimates, Senate Legal and Constitutional, 30 May 2002, p.553.

91 *Transcript of Evidence*, Estimates, Senate Legal and Constitutional, 30 May 2002, p.551.

92 *Transcript of Evidence*, Estimates, Senate Legal and Constitutional, 19 February 2002, pp.303.

93 *Public Safety and Security*, Answers to Questions on Notice, Department of Foreign Affairs and Trade, 2 August 2002.



**Table 10.1<sup>94</sup>**  
**Numbers at Nauru and Manus**  
**16 April 2002**

<b>Nauru</b>			
	<i>Number</i>	<i>Gender and age</i>	<i>Claimed nationality</i>
UNHCR asylum claims process			
MV <i>Tampa</i> & SIEV 1	525	397 adult males 51 adult females 41 male minors 40 female minors	292 Afghans 203 Iraqis 25 Palestinians 1 Sri Lankan
Australian asylum claims process – Topside processing centre			
SIEV 2 & SIEV 3	271	151 adult males 51 adult females 34 male minors 35 female minors	133 Afghans 5 Iranians 131 Iraqis 1 Pakistani (claimed Afghan) 1 Palestinian
Australian asylum claims process – State House processing centre			
SIEV6, SIEV 9 & SIEV10	359	243 adult males 23 adult females 32 male minors 31 female minors 30 unaccompanied male minors	351 Afghans 8 Iranians
<b>Total Nauru</b>	<b>1155</b>		
<b>Manus</b>			
	<i>Number</i>	<i>Gender and age</i>	<i>Claimed nationality</i>
SIEV 4	216	96 adult males 46 adult females 38 minor males 36 minor females	213 Iraqis 1 Palestinian 2 Syrians
Transferred from Christmas Island 26-27 January	140	70 adult males 19 adult females 31 male minors 20 female minors	6 Bangladeshis 4 Iranians 117 Iraqis 2 Pakistanis 1 Palestinian 10 Turks
<b>Total Manus</b>	<b>356</b>		

10.84 Eighteen APS personnel<sup>95</sup> were stationed at the Nauru facility as of May 2002, increased from 9 in February 2002,<sup>96</sup> and a further 25 were on stand-by to go to the island. A smaller number of APS personnel are stationed at Manus, only one in

94 Tabled by DIMIA, CMI, 16/4/02.

95 *Transcript of Evidence*, Estimates, Senate Legal and Constitutional, 30 May 2002, p660.

96 *Transcript of Evidence*, Estimates, Senate Legal and Constitutional, 19 February 2002, p304.

February 2002. APS costs are met by the Department of Immigration and Multicultural and Indigenous Affairs.

### ***Accommodation***

10.85 Due to the short time frame for establishment of the asylum seeker processing facility on Nauru, the Australian Defence Force was deployed in the construction of the facility and provided substantial engineering and air transport assistance. An ADF team numbering 81 personnel at its peak was deployed to Nauru on 13 September 2001, and withdrew by 29 September.<sup>97</sup>

10.86 The ADF team, which included an Army engineering element from 21 Construction Squadron, RAAF personnel and construction equipment, erected a temporary processing facility including accommodation, kitchen and common areas at the Topside site. A police detention centre was also refurbished for use as a temporary segregation facility if required.

10.87 The accommodation at Nauru initially consisted of 'long, barrack style accommodation. Some private accommodation has subsequently been provided.'<sup>98</sup> In an attachment to their submission to the inquiry, Oxfam Community Aid Abroad note that 'the asylum seekers were originally to be housed in modern air-conditioned housing built for the games of the International Weightlifting Federation, but landowners refused to allow the property to be used, after requests for extra compensation were rejected.'<sup>99</sup>

10.88 Conditions at Nauru have been represented to the Committee as more difficult than either Australian detention centres, or the Manus facility. In this regard the Committee has been limited in its ability to assess conditions at both Nauru and Manus by the isolation of the centres, restrictions on access by third parties including NGOs, and a scarcity of eyewitness accounts. A number of submissions to the inquiry have mentioned restrictions on access and difficulty in obtaining visas, and lack of transparency is a commonly raised concern.<sup>100</sup>

10.89 One submission to the Committee expressed these difficulties thus:

Caritas Australia's efforts to investigate conditions in Nauru and Manus Islands has revealed a fundamental fear of independent scrutiny. There appear to be no regular independent visitors to either place. There appears to be no source of independent legal advice available to detainees. Regulations

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97 Answers to Questions on Notice, Department of Defence, W62.

98 *Transcript of Evidence*, Estimates, Senate Legal and Constitutional, 30 May 2002, p.553.

99 Submission 17, *Adrift in the Pacific*, p.9.

100 *Transcript of Evidence*, CMI 1479; Submission 19; Submission 17; Submission 18; Submission 23; Submission 24.

adopted appear to be completely ad hoc and there is no clear source of authority.<sup>101</sup>

10.90 Mr John Hodges, Chairman of the Government's Immigration Detention Advisory Group, which examines conditions at mainland immigration processing and detention centres, was one witness before the Committee who had first hand experience of both Nauru and Manus. Mr Hodges visited the Nauru facilities privately at the request of the Minister for Immigration and Multicultural and Indigenous Affairs on 25 and 26 March 2002. In evidence before the Committee he said:

...there are some deficiencies on Nauru. The department know of them. They are moving to rectify some of those deficiencies. For instance, fresh water is a problem on Nauru. Their desalination plant breaks down. Their power breaks down too frequently. They are using a mixture of brackish water and fresh water. There is a plan—I do not know whether it is to be implemented; it was going to cost a lot of money—to supplement the freshwater supply with a further desalination plant. They have installed primary treatment for sewerage at the Topside camp in Nauru. Nauru is by far the worst of the detention centres; it is hot. Both camps are built on areas that have been extensively mined, many years ago, and the facilities are just not as good as they are in Australia.<sup>102</sup>

10.91 Oxfam Community Aid Abroad also comment:

The Topside site was originally a bleak environment lacking water, sanitation or electricity. The asylum seekers are now housed in 'blocks', with a corrugated iron roof, sides of plastic sheeting and green nylon mesh. An independent visitor to the camp has noted: 'Conditions are harsh, with the heat and humidity consistently in the upper thirties and health facilities are basic.'<sup>103</sup>

10.92 In contrast to the situation on Nauru, much of the accommodation at the PNG facility located at the Lombrum Naval Patrol Boat Base was in place prior to the establishment of the processing centre.<sup>104</sup> Accommodation consists of Nissen huts, previously used by naval personnel, supplemented with converted shipping containers.<sup>105</sup> According to DIMIA, facilities include separate ablution blocks for men and women, a separate dining area and sporting and recreational facilities.<sup>106</sup>

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101 Submission 23, p.4.

102 *Transcript of Evidence*, CMI p1411.

103 Submission 17, *Adrift in the Pacific*, p.9.

104 *Transcript of Evidence*, Estimates, Senate Legal and Constitutional, 30 May 2002, p552.

105 Transcript of Joint Doorstop, Leader of the Opposition with Julia Gillard, Shadow Minister for Immigration and Population, Monash University Gippsland Campus, 5 February 2002.

106 *Offshore Processing Arrangements*, Fact Sheet No.76, Department of Immigration and Multicultural and Indigenous Affairs.

10.93 Mr John Hodges visited the Manus facility privately at the request of the Minister from 28 February to 2 March 2002. He described the accommodation as

...not as good as the accommodation that we have in Australia in the mainland detention centres, but it is adequate. They are very pleasant surroundings, because it has the water on one side and the jungle on the other. They are pleasant surroundings in that there is no barbed wire or razor wire.<sup>107</sup>

This contrasts with the comments of Caritas Australia, which also visited Manus and describe it as 'tightly secured behind barbed wire.'<sup>108</sup>

10.94 The Committee was unable to make any independent determination concerning conditions at the Manus Island facility, notwithstanding that it accommodated the passengers from SIEV 4. The Committee wrote to the SIEV 4 refugees at Manus Island, but they were unwilling to provide evidence to the Committee for fear of adversely affecting the outcome of their applications for refugee status.

10.95 The provisions of parliamentary privilege do not extend beyond the boundaries of Australia's jurisdiction, but the Committee sought from DIMIA a guarantee that anything said to the Committee by the SIEV 4 asylum seekers would not be taken into consideration for the purpose of assessing their refugee status.

10.96 DIMIA declared that no such guarantee could be given because third parties might bring to DIMIA's attention matters aired by people before the Committee, and that officials determining the outcomes of applications would be obliged to take these reports into account.

10.97 DIMIA's approach was challenged at some length during the appearance of DIMIA officials before the Committee.<sup>109</sup> The Committee considers it a matter of grave regret that DIMIA insisted on its view that it could not provide the necessary guarantee, thereby impeding the effective examination of important aspects of the Senate inquiry's remit.

### ***Facilities***

10.98 The IOM provides medical treatment facilities on both islands. As of July 2002, six general practitioners, two psychiatrists, four clinical nurses, a public health coordinator and three medical interpreters staffed the Nauru facility.<sup>110</sup>

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107 *Transcript of Evidence*, CMI 1412.

108 *Submission No.23*. p4.

109 *Transcript of Evidence*, CMI 1985ff.

110 Correction to Answers to Questions on Notice, Department of Immigration and Multicultural and Indigenous Affairs, 15 July 2002.

10.99 At the Manus centre, DIMIA advised that the doctor to asylum seeker ratio was 1:85 as of 12 June 2002. At that time the medical staff comprised four international doctors (two of whom had tropical medical experience), a psychiatrist, and three medical support staff.<sup>111</sup>

10.100 There have been some reports that when the first group of asylum seekers arrived at Manus the medical facilities were run down, and anti-malarial medication was not immediately provided.<sup>112</sup> In answers to questions on notice DIMIA have advised the Committee that all asylum seekers at Manus underwent health checks on arrival and commenced anti-malarial medication.

10.101 Several people in the first group of arrivals at Manus developed malaria symptoms soon after arrival but are believed to have contracted the disease prior to reaching PNG. Two more cases, however, were diagnosed in February 2002. The risk of infection appears to be a significant ongoing concern for both asylum seekers and staff. A range of measures have been introduced to reduce this risk, including improved drug regimes, personal insect repellent, fogging of the centre and enclosed accommodation.<sup>113</sup> Malaria is not a risk on Nauru.<sup>114</sup>

10.102 The IOM has conducted a psychiatric review of mental health within the asylum seeker populations at the Manus and Nauru centres. DIMIA has advised that as a result of this assessment two minors were identified as being at risk and requiring special attention at Manus.<sup>115</sup>

10.103 At the Nauru facility, which in May 2002 accommodated 30 unaccompanied minors,<sup>116</sup> a program for the adolescent population was implemented by a psychiatrist assigned by the IOM. DIMIA does not have reports of minors identified as requiring special attention on Nauru.<sup>117</sup>

10.104 DIMIA further advised the Committee that schooling, including English language tuition, is provided on a daily basis at both locations on Nauru with Nauruan teachers conducting 'rudimentary English, math and science classes'.<sup>118</sup> At Manus, a

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111 Answers to Questions on Notice, Department of Immigration and Multicultural and Indigenous Affairs, 12 June 2002, Q16.

112 Michael Madigan, *Herald Sun*, 7 February 2002 and Greg Roberts, *The Age*, 6 February 2002.

113 Answers to Questions on Notice, Department of Immigration and Multicultural and Indigenous Affairs, 12 June 2002, Q16.

114 *Transcript of evidence*, CMI 1412.

115 Answers to Questions on Notice, Department of Immigration and Multicultural and Indigenous Affairs, 12 June 2002, Q19.

116 Answers to Questions on Notice, Department of Immigration and Multicultural and Indigenous Affairs, 12 June 2002, Q17.

117 Answers to Questions on Notice, Department of Immigration and Multicultural and Indigenous Affairs, 12 June 2002, Q19.

118 Answers to Questions on Notice, Department of Immigration and Multicultural and Indigenous Affairs, 12 June 2002, Q18.

school is established and the IOM has contracted a teacher to provide lessons in both English and Arabic. English lessons and kindergarten are also provided. Satellite television is available on both islands, and there is a range of sporting and cultural activities.

10.105 While DIMIA advised the Committee that prayer and meditation activities are available daily on Manus, Caritas Australia raised a particular concern in relation to Christian services:

There is no source of religious service available to the detainees on Manus. The local priest has been turned away twice and there is no chaplain at the Naval base. Detainees have great need of religious guidance. The number of Christians is small (estimated at 20-30) and they are unable to participate in worship. Islamic religious guidance appears to be entirely a matter for the asylum seekers' own self-organisation.<sup>119</sup>

## **Conclusions**

10.106 The development and initial implementation of the Pacific Solution policy was on the evidence undertaken in great haste and, while providing financial benefit to the islands involved, has projected a negative image of Australia in the region.

10.107 The Committee does not consider that the processing arrangements entered into are a formal breach of Australia's obligations under the 1951 Convention Relating to the Status of Refugees. However the Committee appreciates concerns raised in regard to other Conventions to which Australia is a party, including the International Convention against Torture and the Convention on the Rights of the Child, and in respect of the ongoing detention of people who have been found to be refugees.

10.108 In relation to conditions within the processing centres, the Committee accepts that early inadequacies caused by the short implementation pathway appear to have now been largely addressed, but notes the lack of independent oversight of the facilities as making a certain determination in this respect difficult. The issue of religious observance, particularly for minority religions within the centres, is one point potentially requiring attention. The ongoing risk of exposure to tropical diseases such as malaria on Manus is of continuing concern.

10.109 Common concerns raised in submissions to the inquiry have been a lack of transparency and accountability in Pacific Solution arrangements, uncertainty as to the future resettlement prospects for those determined to be refugees, and the fate of those determined not to be so.

10.110 In regard to the issue of transparency, the Committee notes that the directive to Departments by the Government that submissions not be provided to this Committee has potentially exacerbated that concern. It is hoped that the information

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119 Submission 23, p.5.

outlined in this Chapter has been of some assistance in this regard. Refugee status determination and resettlement are considered in the next chapter.

