



AUSTRALIAN
COUNCIL
FOR
INTERNATIONAL
DEVELOPMENT



Submission to the Senate Select Committee regarding recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru

May 2015

Enquiries:

Marc Purcell, ACFID Executive Director

ACFID

The Australian Council for International Development (ACFID) unites Australia's non-government aid and international development organisations to strengthen their collective impact against poverty. Founded in 1965, ACFID currently has 133 members and 13 affiliates operating in more than 100 developing countries.

ACFID members comply with the ACFID Code of Conduct, a voluntary, self-regulatory sector code of good practice that aims to improve international development outcomes and increase stakeholder trust by enhancing the transparency and accountability of signatory organisations. ACFID has mandatory requirements in its Code regarding Child Protection.

ACOSS

The Australian Council of Social Service (ACOSS) is the peak body of the community services and welfare sector and the national voice for the needs of people affected by poverty and inequality. Its vision is for a fair, inclusive and sustainable Australia where all individuals and communities can participate in and benefit from social and economic life.

Established in 1956, ACOSS aims to reduce poverty and inequality by:

- Leading and supporting initiatives within the community services and welfare sector and acting as an independent non-party political voice; and
- Drawing on the direct experiences of people affected by poverty and inequality and the expertise of our diverse member base to develop and promote socially and economically responsible public policy and action by government, community and business.

Executive Summary

On 20 March 2015, the ***Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*** (the “Moss Review”) was released by the Department of Immigration and Border Protection (the “Department”). The Review was an independent analysis carried out by the former Integrity Commissioner and former Head of the Australian Commission for Law Enforcement Integrity, Mr Philip Moss.

The Moss Review considered allegations of instances of child abuse of detainees at the Regional Processing Centre in Nauru (the “Centre”). It found substantial evidence that sexual abuse and sexual harassment of minors has occurred in the Centre.

As set out in the Moss Review, the Centre is a Nauruan facility. However, officials of the Department have senior management and oversight roles at the Centre. The Department also contracts a numbers of service providers and their subcontractors who operate the Centre.

The Moss Review made 19 recommendations to the Department. Many of the recommendations focus on the role of the Nauruan Police Force in preventing further abuses taking place at the Centre.

KEY ISSUES

While we welcomed the Moss Review, we contend that it did not sufficiently examine the role and responsibilities of the Department in protecting the rights and wellbeing of those detained in the Centre, and whether the Department is liable for the harm suffered by the detainees. Furthermore, we submit that the recommendations of the Review do not sufficiently ensure that future abuses will not occur in the Centre.

Our view is that:

1. The Department of Immigration and Border Protection owes a non delegable duty of care to detainees in the Regional Processing Centre in Nauru. Further:
 - The Department exerts significant oversight and control over the day-to-day running and management of the Regional Processing Centre in Nauru. Moreover, the Department is responsible for the actions of its contractors and sub-contractors. Given this relationship, the Department owed a duty of care to those it detains in the Centre.
 - Furthermore, employees of the Department owed a duty of care to detainees under the provisions of the Public Service Act (1999).
2. There is clear evidence that sexual abuse and sexual harassment has occurred in the Regional Processing Centre in Nauru, and that this is an explicit breach of the Department’s duty of care.
 - We point specifically to the findings of the Moss Review that substantiate allegations of sexual abuse and harassment, particularly against minors.
3. The recommendations of the Moss Review are insufficient to prevent further harm.
 - In particular, the Review recommends greater involvement and cooperation with Nauruan authorities to prevent further abuse – while simultaneously acknowledging that Nauruan authorities have a limited capacity to investigate incidents of abuse.

In light of this, **our primary recommendation** is that the Senate Select Committee refers this matter of sexual abuse of children to the Royal Commission into Institutional Responses to Child Sexual Abuse.

The Commission can examine the actions and liabilities of the Commonwealth, so as to protect the children recently harmed, and to help prevent such harm occurring to other children detained in the future.

Introduction

ACFID and ACOSS welcome the opportunity to make this submission regarding recent allegations relating to conditions and circumstances at the Centre in Nauru (henceforth “the Centre”).¹ ACFID has mandatory requirements in its Code regarding child protection applying to all its members. Australian social service providers working with children have mandatory child protection requirements too. Please see the appendices for additional information about ACFID and ACOSS.

Our submission is limited to matters pertaining to the following sections of the Committee’s Terms of Reference:

- a. the performance of the Commonwealth Government in connection with the Centre, including the conduct and behaviour of the staff employed at the Centre, to the extent that the Commonwealth Government is responsible; and
- b. the Commonwealth Government’s duty of care obligations and responsibilities with respect to the Centre.

ACFID and ACOSS note the allegations made by former staff of Commonwealth contractors in the Centre on 17 April 2015, in regards to sexual abuse, sexual harassment of children and sexualised behaviour of children and the failure of the Commonwealth to adequately ensure the safety of the children.

On 20 March 2015, the ***Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*** (the “Moss Review”) was released by the Department of Immigration and Border Protection (the “Department”). The Review was an independent analysis carried out by the former Integrity Commissioner and former Head of the Australian Commission for Law Enforcement Integrity, Mr Philip Moss.

The Moss Review considered allegations of instances of child abuse of detainees at the Centre in Nauru. It found substantial evidence that sexual abuse and sexual harassment of minors has occurred in the Centre.

Our submission focuses on issues arising from these allegations and findings of sexual abuse and harassment of children by the Moss Review.

1. The Department of Immigration and Border Protection, and by extension the Commonwealth Government, owes a duty of care to detainees in the Regional Processing Centre in Nauru.

- **The Commonwealth Government exerts considerable control over the Regional Processing Centre and is responsible for the mistreatment of detainees**

The Centre is a Nauruan facility operated under the auspices of the Nauru Government. However, it is clear that the Department exerts substantial control and authority over the management and day-to-day operations of the Centre.

¹ We note that two sub-contractor NGOs at the Centre (one now a former contractor) are members of ACOSS and ACFID, namely the Salvation Army which is a member of both ACOSS and ACFID, and Save the Children, which is a member of ACFID.

This finding was substantiated by the Moss Review which stated that the Department has 20 identified positions in Nauru and that the 'senior Departmental position for all matters relating to the Centre is the Assistant Secretary, Nauru Operations.' The Review notes that the position involved engagement with 'the Government of Nauru and contract service providers in the day-to-day running of the Centre.'

The Moss review records that the Commonwealth's Department of Immigration and Border Protection is **effectively operating the Centre** with Transfield on a daily basis, not the Nauruan Government.

The Moss Review notes that the Nauruan management of the Centre claim that they are excluded from key meetings, and are not privy to the contract between the Commonwealth and Transfield, nor meetings arising as a consequence:

5.5 The Department provided the Review with the list of all regular meetings that occur at the Centre, including frequency and attendees. The Review notes the discrepancy between the meetings to which the Nauruan operation managers say they are invited and those to which they are said to be invited. The Review suggests that the Department clarify the situation.

5.6 The Nauruan operations managers told the Review that they do not have access to, or knowledge of, the contract provisions between the Department and its contract service providers. They expressed interest in knowing more.

It's vital to us. We want to know what's in their contract, and what's outside their contract. We want to know if they're keeping up with their side of the contract.¹⁷⁵

The findings of the Moss Review call into question the Government's assertions that the Centre in Nauru is managed by and the primary responsibility of Nauruan authorities. Rather, it is clear that the Commonwealth Government is the principle manager, operator and funder of the Centre – and is therefore responsible for the care of detainees.

- **We believe the responsibility of the Commonwealth Government of detainees in the Regional Processing Centre in Nauru is a non-delegable duty of care**

It has been established under Australian law that the Commonwealth Government owes a duty to take reasonable care of people in its custody, and that this duty is non-delegable. Furthermore, this non-delegable duty of care extends to people detained in immigration detention centres. In *S v Secretary, (2005)* the Federal Court found that the Commonwealth Government owed a non-delegable duty of care to detainees at the Baxter immigration detention facility.

We believe the Commonwealth's non-delegable duty of care extends to detainees of the Centre in Nauru. As highlighted by the Moss Review, these detainees reside in a facility that is clearly under the management of the Commonwealth Government, and as such they are in the custody of the Commonwealth Government. The Government must take reasonable care to ensure they are not harmed.

In fact, the Commonwealth Government has itself conceded that it owes a duty of care to those detained in immigration processing centres. In establishing a new Child Protection

Panel, the Department acknowledges that it has a responsibility 'to ensure reasonable care is taken for the safety and welfare of people in immigration detention and in Regional Processing Centres in particular to prevent and respond to abuse, neglect or exploitation being suffered by a child.'²

The fact that the duty of care owed to detainees is non-delegable is crucial, as it means the Government remains responsible for harm that occurs to those in its custody, even if it has delegated responsibility for the care of those people to a third party. Under Australian law, this means the Commonwealth Government is liable for the negligence of its servants and independent contractors in preventing harm from occurring to detainees.³

Therefore, we believe the obligations placed on Transfield remain the responsibility of the Commonwealth, and the Department – notwithstanding the fact that the Department has contracted Transfield to operate the Centre on Nauru (and Manus Island in Papua New Guinea) on its behalf.

2. There is clear evidence that sexual abuse and sexual harassment has occurred in the Regional Processing Centre in Nauru, and this is an explicit breach of the Department's duty of care.

We draw attention to the following findings regarding sexual abuse of children in the Moss Review:

- Sexual assaults on minors have been found to occur (3.98 & 3.99)
- Further allegations of assault of minors have been made (3.101, 3.102, 3.103 & 3.106)
- Sexual harassment of minors has been found to occur (3.107) and further allegations of sexual harassment have been uncovered (3.108-3.110)
- Sexualised behaviour of children is occurring (3.113 and 3.114)

[See Appendix 1 for relevant parts of the Moss Review]

There is no question that the children subjected to sexual abuse and harassment in the Centre have suffered serious harm. The Department, and Departmental staff, were in charge of the daily operations of the Centre and had a duty of care to protect detainees from harm. The failure to do so amounts to a breach of the Department's duty of care.

² See Department of Immigration and Border Protection website: <http://www.immi.gov.au/about/dept-info/panel.htm>

³ [Greg Barns](http://www.abc.net.au/news/2015-04-09/barns-nauru-open-letter-could-send-legal-shockwaves/6379838), Nauru open letter could send legal shockwaves, Posted 9 Apr 2015
<http://www.abc.net.au/news/2015-04-09/barns-nauru-open-letter-could-send-legal-shockwaves/6379838>

- **Departmental officials breached the duty to report suspected cases of child abuse**

Under Section 13 of the *Public Service Act* (1999), which describes the Australian Public Service Code of Conduct, an APS employee, when acting in the course of APS employment, “... must comply with all applicable Australian laws. For this purpose Australian law means:

- a) any ACT (including this Act) or any instrument made under an Act; or
- b) Any law of a State or Territory, including any instrument made under such a law.”

Furthermore, the provisions of the Public Service Code of Conduct make it clear that public servants must adhere to Australian law, and fulfil obligations as a public servant, even when working in other jurisdictions. This was confirmed by recent comments by the Public Service Commissioner.⁴

Australian law states that “...where a person owes a child a duty of care, failure by that person to report a suspicion of abuse may produce liability in negligence for subsequent further injury suffered by the child. This liability will accrue whether or not a legislative reporting duty exists.”⁵

Further, in all Australian jurisdictions, “...the reporting duty applies to cases of suspected past abuse and of suspected abuse that is currently occurring.”⁶

As officers of the Commonwealth, staff and officials from the Department had a duty of care to detainees in the Centre.

ACFID and ACOSS emphasise the following statement regarding the right of children to be safe and protected by adults, from the Victorian Government’s Report of the Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations:

*Children have a right to be safe from criminal abuse in organisations. Parents, caregivers and the community trust organisations to protect children while in their care. Children are vulnerable and dependent on adults and organisations have a responsibility to ensure their safety.*⁷

The Moss Review was commissioned by the Commonwealth to examine the Commonwealth’s contractors on the Nauruan Centre only. It did not examine the actions of Commonwealth employees at the centre.

⁴ Submission by the Public Service Commissioner to the Inquiry into the Integrity of overseas law enforcement operations, Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity

⁵ Mandatory reporting laws’ Ben Mathews and Kerryann Walsh, in *Families, policy and the law: Selected essays on contemporary issues for Australia*, Edited by Alan Hayes and Daryl Higgins, Australian Institute of Family Studies. <http://www.aifs.gov.au/institute/pubs/fpl/fpl14.html> [accessed 010515]

⁶ Ibid. In *AB v Victoria* (unreported, Supreme Court of Victoria, Gillard J, 15 June 2000), a former student successfully sued the State of Victoria in negligence for the failure by a government school principal and deputy principal to report what should have amounted to a reasonable suspicion that the child was being sexually abused. The child had demonstrated clear signs of being sexually abused. After the point at which the court found the school personnel should have developed and reported what amounted to a reasonable suspicion of the child’s sexual abuse, the child suffered further abuse

⁷ Report in Parliament for the Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations, Wednesday 13 November 2013, p.217.

3. The recommendations of the Moss Review are insufficient to prevent further sexual abuse from occurring and does not remedy the explicit breach of the Government's non-delegable duty of care

The Moss review confirmed that Nauruan law is inadequate to protect children:

- 3.185 Despite the protocols already in place at the Centre, the Review notes the absence of a specific child protection framework or mandatory reporting requirement of all abuse allegations involving minors under Nauruan law. As such, the Review notes that, once the avenues in the Centre have been exhausted, issues involving child protection may not be escalated or actioned appropriately or in a timely manner and that there is limited expertise to conduct investigations into child protection issues. The Review also notes that the absence of relevant protections under Nauruan law is not a criticism of Save the Children. Save the Children provides support to all stakeholders including the Nauruan government in relation to child protection matters.

Key recommendations from the Moss Review centre on increased oversight and involvement by Nauruan authorities. For example, Recommendation 12 suggests that the Nauruan Police Force been given 'greater visibility of the Centre based on community policing' while recommendation 15 suggests a more 'joined up approach' with the Nauruan Police Force.

However, the Review notes that during the period where the sexual assaults of children occurred, the local police were ill equipped to deal with such matters:

- 3.162 The Review is aware that the Nauruan authorities have a limited capacity to investigate, record and prosecute incidents of sexual and other physical assault in the Centre and in Nauru.

This was corroborated by the Australian Federal Police at 5.31:

The AFP's ██████████ commented that "[the Nauruan Police Force] is dealing with things [it] never had to deal with before."¹⁸⁷ The AFP has two officers from its International Deployment Group attached to the Nauruan Police Force. The AFP officers do not exercise executive authority in Nauru and are not directly involved in Nauruan police investigations. Accordingly, although AFP officers in Nauru are broadly aware of any allegations of sexual and other physical assault in the Centre that have been referred to the Nauruan Police Force. The AFP members know the details of specific allegations only to the extent that they advise on investigative procedures and practices.

The Moss Review, observing this absence of local police capacity in relation to being able to deal with sex abuse cases, also noted that child protection provisions would need to be incorporated into local law at 3.182:

the Department liaise with the Government of Nauru to ensure that child protection issues are reflected in the work being done on the Nauruan criminal code.

Nauruan law is considered inadequate to deal with sexual offenses in general. As legal academic Christine Forster observes of Pacific Island Countries (PICs) including Nauru:

“Nauru, Tuvalu, Tonga, the Solomon Islands, Tokelau, Niue, Fiji, Kiribati and the Cook Islands do not include any contextual or aggravating factors in their sexual offences provisions. ...

All 11 PICs therefore fall well short of international good practice standards”⁸

The Review notes one example where the local police appear to have removed a perpetrator of sex abuse from the centre back into the Nauruan community, where the Review also found that the police are unable to deal adequately with such matters.

Given the lack of relevant Nauruan child protection legislation and local policing capacity to adequately investigate and prosecute cases of child sexual abuse during the period concerned – we submit that the recommendations do not adequately protect children detained in the Centre.

Moreover, the Review’s recommendations do not place sufficient responsibility on the Commonwealth of Australia and its contractors to fulfil its duty of care to those in the Centre.

We note again that notwithstanding Mr Moss’s recommendation to refer a number of cases of abuse to the Nauruan police, and the Government’s subsequent appointment of a Child Protection Panel to referral material to ‘relevant authorities’, that this is an inadequate response to protect children. The ‘relevant authorities’, as asserted by the Commonwealth, is the Nauruan police which Mr Moss has found to be inadequate to the task of handling such investigations and Nauru has inadequate criminal code to deal with such matters.

Recommendations

We note the findings of the report of the 2004 Australian Human Rights and Equal Opportunity Commission in regards to detention of children⁹:

The evidence before the Inquiry demonstrates that the Commonwealth failed to take all appropriate measures to protect the safety of children in immigration detention over the period of the Inquiry and therefore breached the CRC.

Between 1999 and 2002, Woomera, Port Hedland and Curtin detention centres were the site of multiple demonstrations, riots, hunger strikes and violent acts of self-harm. The longer children were held in such an environment the more likely they were to be exposed to risks of harm.

When children are detained in a closed environment, the options available to shelter them from such events are limited. Thus the detention of children in immigration detention centres simultaneously increases the risk of harm and limits the options

⁸ SEXUAL OFFENCES LAW REFORM IN PACIFIC ISLAND COUNTRIES: REPLACING COLONIAL NORMS WITH INTERNATIONAL GOOD PRACTICE STANDARDS CHRISTINE FORSTER* Melbourne University Law Review [Vol 33] 2009; pp.847

⁹ Australian Human Rights and Equal Opportunity Commission, ‘A last resort? National Inquiry into Children in Immigration Detention’, Executive Summary, 2004.

available to address that harm. The Department failed to take the appropriate steps to minimise the impact of violence on children within that context. The security standards, policies and procedures in detention centres did not make the protection of children a priority.

We believe given this finding regarding harm to children in on-shore detention centres in 2004, the Commonwealth could have reasonably foreseen that by placing children into detention in the Centre at Nauru harm would occur to the children. The act of detaining children in the Centre by the Commonwealth was a contributor to the harm caused to the children and the Commonwealth's response has compounded that harm.

ACFID and ACOSS believe that the best way to assess the extent to which the Department has fulfilled its duty of care of children held in the Centre, and to ensure that effective steps are taken to ensure the ongoing safety of children in the face of sex abuse and harassment; is to refer the matters above to the current Royal Commission into Institutional Responses to Child Sexual Abuse.

The Royal Commission is best placed to independently examine how Commonwealth employees, in Nauru and in Canberra, managing daily operations with contractors and the Nauruan Government, deal with the facts and allegations of child abuse and harassment as they came to hand, and examine the adequacy of the Department's action to ensure the safety of children.¹⁰

The Royal Commission can request testimony from Departmental officials, contractors, and - importantly - the affected children and their carers now residing in Nauru as refugees.

ACFID and ACOSS's recommendation to the Senate Select Committee Inquiry is that it:

Refers all allegations, evidence and others material pertaining to the Commonwealth's handling of allegations of sexual abuse, sexual harassment and sexualized behaviour of children detained in Nauru and their duty of care, to the current Royal Commission into Institutional Responses to Child Sexual Abuse.

¹⁰ The Royal Commission's Terms of Reference specify:

government means the Government of the Commonwealth or of a State or Territory, and includes any non-government institution that undertakes, or has undertaken, activities on behalf of a government.

Institutional context: child sexual abuse happens in an **institutional context** if, for example:

- iii. it happens on premises of an institution, where activities of an institution take place, or in connection with the activities of an institution; or
- iv. it is engaged in by an official of an institution in circumstances (including circumstances involving settings not directly controlled by the institution) where you consider that the institution has, or its activities have, created, facilitated, increased, or in any way contributed to, (whether by act or omission) the risk of child sexual abuse or the circumstances or conditions giving rise to that risk; or
- v. it happens in any other circumstances where you consider that an institution is, or should be treated as being, responsible for adults having contact with children.

law means a law of the Commonwealth or of a State or Territory.

Appendix 1: Relevant findings of the Moss Review on Sexual Abuse and Harassment of Minors

3.98 On [REDACTED], an alleged sexual assault of a male minor by a contract service provider staff member was reported.⁶⁰ ([REDACTED]). The victim and his family did not want to press charges because they were satisfied with the actions taken by Wilson Security and the Nauruan Police Force.⁶¹ The locally engaged staff member was dismissed. This incident was reported in *The Guardian* on Friday, 6 June 2014 with a headline, "Nauru cleaner sexually assaulted asylum seeker boy."⁶²

3.99 On [REDACTED], a Wilson Security staff member reported the alleged sexual assault of a male minor ([REDACTED]) by two male adult transferees. The staff member identified the alleged offenders ([REDACTED]). As a precaution, the alleged offenders, were relocated [REDACTED] pending further investigation.⁶³

3.100 On [REDACTED], the victim of the above alleged incident told Wilson Security, in the presence of a Save the Children staff member, that another male minor ([REDACTED]) had been allegedly sexually assaulted by a male adult transferee.⁶⁴ The victim was identified by photograph, as was the alleged perpetrator ([REDACTED]). As a precaution, the alleged offender was relocated [REDACTED].

3.101 The Review was advised that the above matters were referred to the Nauruan Police Force.

3.102 On [REDACTED], during a consultation with IHMS, a [REDACTED] minor ([REDACTED]) alleged [REDACTED] that was sexually assaulted by an older male minor.⁶⁵ Transfield Services advised the Review

that the matter had been referred to the Nauru Police Force. [REDACTED]
[REDACTED]

3.103 On [REDACTED], a female minor told the Review about the alleged rape of a female minor by a Nauruan contract service provider staff member.

One of my underage friends has been raped, not for marijuana or not in exchange for anything. She's been raped but she's not [disclosing]. She doesn't want to come and talk about it because she's so afraid that her parents will find out. Her nationality is

[REDACTED].⁶⁶

3.104 The minor indicated that she had spoken with the alleged victim of the assault.

[REDACTED]
[REDACTED]

3.105 Given the alleged victim's reported reluctance to come forward, the Review did not investigate or refer this allegation.

3.106 In a feedback form, a transferee ([REDACTED]) alleged that a Nauruan security officer had inappropriately touched his three-year-old ([REDACTED]) 9 January 2015, the Review provided this allegation to the Department with the recommendation that Transfield Services/Wilson Security assess this information and pass it to the Nauruan Police Force.⁶⁸

Sexual harassment of minors

3.107 The Review became aware of two cases of alleged sexual harassment of minors by contract service provider staff members. Both cases have been formally reported.

3.108 On 20 March 2014, a locally engaged security staff member allegedly sexually harassed a female minor ([REDACTED]).⁶⁹

3.109 On [REDACTED], two female minor transferees, ([REDACTED]) one of whom was the alleged victim of the above [REDACTED] incident, reported to a Save the Children staff member that an unknown locally engaged security staff member had sexually harassed them.⁷⁰ The two minors were not able to identify the alleged perpetrator and separately told Wilson Security that they did not wish to make a complaint. One of the alleged victims advised Wilson Security that she did not know why the Save the Children staff member had submitted the report.⁷¹

3.110 In addition, transferees told the Review of three further instances of alleged sexual harassment and assault of minors by contract service provider staff members. These allegations involved:

- a named Wilson Security staff member ([REDACTED]) who, while on duty, was under the influence of alcohol and sexually harassed a minor;
- an unnamed Wilson Security staff member who attempted to sexually assault a minor ([REDACTED]); and
- a named Wilson Security staff member ([REDACTED]) who asked a minor ([REDACTED]) for sexual favours.

3.111 The Review provided these three allegations to the Department with a recommendation that they be investigated.

- 3.113 The Review became aware of several cases of inappropriate sexual behaviour by minors.
- On [REDACTED], it was alleged that an older male minor ([REDACTED]) was engaged in a consensual sexual relationship with a young adult female transferee.⁷³
 - Three cases involved minors engaging in sexual acts with one another. On [REDACTED], two female transferees reported sexual acts between two unidentified male minors.⁷⁴
 - On [REDACTED], a female minor reportedly asked other minors to engage in a sexual manner.⁷⁵
 - On [REDACTED], a female transferee reported to a Save the Children staff member that minors were engaged in inappropriate sexual behaviour towards each other.⁷⁶
 - On [REDACTED], a minor ([REDACTED]) was reportedly exhibiting sexualised behaviour.⁷⁷

3.114 One of these incidents was brought to the attention of the Review. In [REDACTED] 2014, [REDACTED] female transferees ([REDACTED]) told a Transfield Services [REDACTED] [REDACTED] and a Save the Children staff member that four male minors (aged from 10 to 13 years) had engaged in sexualised behaviour [REDACTED]. The Save the Children staff member submitted a written incident report which identified the witnesses and the [REDACTED]. The Save the Children staff member subsequently told a Save the Children colleague that Wilson Security had not followed up the matter. The colleague informed the Review about the reported lack of follow-up.⁷⁸

3.115 When the Review asked about the incident, Transfield Services advised that a report had been compiled (on 3 May 2014), one of the children ([REDACTED]) had been placed on continual observation and the matter referred to Save the Children. Transfield Services advised also that *"we do not have any information to suggest that any Wilson Security officers witnessed the behaviour and allowed it to continue or were involved in the identification of the asylum seekers"*.⁷⁹

3.116 Since it is unclear what follow-up did occur, the Review recommended to the Department, in

a letter dated 10 December 2014, that Transfield Services review the investigation to ensure that all necessary action is/has been taken.

3.117 This incident was one of the cases referred to in the anonymous submission made by current and former Save the Children staff members to the AHRC Inquiry and also reported by *The Guardian* on 13 August 2014.⁸⁰

3.118 The issue of sexualised behaviour was raised several times with the Review. While not within the Terms of Reference, the Review notes the reports about the sexualised behaviour of some children in the Centre.

3.119 The Review notes that, despite the welfare and education programs designed to assist and support individuals and families, sexualised behaviours in children have reportedly occurred at the Centre. When observed, these behaviours are reported and contract service provider staff members are available to respond with professional intervention.

Appendix 2. Transfield Services receives Letter of Intent for Department of Immigration and Border Protection contract 24 February 2014

Transfield Services announced today that it has received a formal Letter of Intent from the Commonwealth of Australia for the award of a contract over a 20 month period, to provide Garrison and Welfare Services at the Australian Department of Immigration and Border Protection Offshore Processing Centres on Nauru and Manus. Based on the current occupancy of each centre, the contract is valued at \$1.22B.

Medical and counselling services will remain the responsibility of IHMS. On Manus the Company will sub-contract security services to Wilson Security, as it has on Nauru.

"We are pleased with the expanded size and scope of our relationship with the Commonwealth and believe that this is a vote of confidence in both our track record and our ability to continue to deliver," said Graeme Hunt, Transfield Services' Managing Director and Chief Executive Office.

"Transfield Services has considerable experience in this type of work, having been on Nauru since the centre there was established and before that, providing similar services at Defence facilities across New South Wales, Victoria, South Australia and Western Australia"

"We do not underestimate or take for granted the differences in circumstances in Nauru and Manus. However we know that we can bring much of that knowledge and our practical approach to Manus Island for the benefits of all stakeholders. We take this opportunity and responsibility very seriously,"

Transfield Services has already started the mobilisation and transition process, with a formal handover commencing at the beginning of March 2014.

Investor Enquiries Nick Sutherland General Manager Tax & Treasury Ph +61 2 9464 1487
Mb +61 400 471 210

Media Enquiries David Jamieson Group General Manager, Media and Comms Ph +61 2 9464 1615 Mb +61 409 563 693

Appendix 3: About ACFID & ACOSS

About ACFID

The Australian Council for International Development (ACFID) unites Australia's non-government aid and international development organisations to strengthen their collective impact against poverty. Our vision is of a world where gross inequality within societies and between nations is reversed and extreme poverty is eradicated.

ACFID's purpose is to provide leadership to the not-for-profit aid and development sector in Australia in achieving this vision and to fairly represent and promote the collective views and interests of our membership.

Founded in 1965, ACFID currently has 133 members and 13 affiliates operating in more than 100 developing countries. The total revenue raised by ACFID's membership from all sources amounts to \$1.3 billion (2012/13), \$719 million of which is raised from over 1.9 million Australians (2012/13). 80 percent of funding is from non-government sources. ACFID's members range between large Australian multi-sectoral organisations that are linked to international federations of NGOs, to agencies with specialised thematic expertise, and smaller community based groups, with a mix of secular and faith based organisations.

ACFID members must comply with the ACFID Code of Conduct, a voluntary, self-regulatory sector code of good practice that aims to improve international development outcomes and increase stakeholder trust by enhancing the transparency and accountability of signatory organisations. Covering over 50 principles and 150 obligations, the Code sets good standards for program effectiveness, fundraising, governance and financial reporting. Compliance includes annual reporting and checks. The Code has an independent complaints handling process. Over 130 organisations belong to the ACFID Code and can be viewed at <http://www.acfid.asn.au>

ACFID has mandatory requirements in its Code regarding Child Protection. These are:

Protection of children

Signatory organisations are committed to the safety and best interests of all children accessing their services and programs or involved in campaigns, voluntary support, fundraising, work experience or employment and, in particular, to minimising the risk of abuse.

Obligation:

1. Appropriate to their circumstances and the extent of their contact with children, signatory organisations will have a documented Child Protection Policy and procedures for dealing with children which are regularly reviewed. The Policy will be based on a considered risk assessment and as appropriate to the risk, address:

- a) Development program planning and implementation;
- b) Use of images and personal information for fundraising and promotion purposes;
- c) Personnel recruitment including staff, volunteers, consultants and suppliers –
- d) in both Australia and overseas;
- e) All applicable legal obligations including mandatory police checks where
- f) available and appropriate for all personnel who have regular contact with children;
- g) Behaviour protocols or codes;

- h) Education and training of personnel and communication of the policy to all
- i) stakeholders; and
- j) Reporting procedures.

2. Signatory organisations that work with children will seek ways to incorporate the voices of children in shaping the development programs that affect them.

3. Signatory organisations that work with children will ensure that their complaints handling processes are child friendly.

About ACOSS

The Australian Council of Social Service (ACOSS) is the peak body of the community services and welfare sector and the national voice for the needs of people affected by poverty and inequality. Our vision is for a fair, inclusive and sustainable Australia where all individuals and communities can participate in and benefit from social and economic life.

Established in 1956, ACOSS aims to reduce poverty and inequality by:

- Leading and supporting initiatives within the community services and welfare sector and acting as an independent non-party political voice; and
- Drawing on the direct experiences of people affected by poverty and inequality and the expertise of our diverse member base to develop and promote socially and economically responsible public policy and action by government, community and business.

Our values

- ACOSS recognises the right of all people in Australia to opportunity, justice and equity.
- We acknowledge the importance of making a positive difference to the wellbeing of disadvantage people in Australia.
- We value national policy solutions that are economically, socially and environmentally sustainable.
- We respect the civil, social and economic contributions of all individuals and communities.
- We recognise the heritage and history of Aboriginal and Torres Strait Islander peoples, and the need for action which advances reconciliation and justice for Indigenous Australians.

The way ACOSS works

- We act ethically
- We lead and support initiatives within the community services and welfare sector
- We act as an independent public voice
- We are non-party political
- We are part of and accountable to the sector
- We are transparent and consult widely
- We draw on the wisdom and expertise of our diverse member base
- We value and draw on the direct experiences of people affected by poverty and inequality

- We rely on evidence to support our work and uphold high standards of research and analysis

Peak body for the community sector

ACOSS' member organisations are central to ACOSS' work. Our national membership network links a broad spectrum of community welfare services across Australia and is the national voice of people affected by poverty and inequality.

The ACOSS national member network is comprised of:

- Eight state and territory Councils of Social Service which represent thousands of front-line community agencies
- National peak organisations of consumers and service providers
- National religious and secular welfare agencies
- Low income consumer groups

Many state and local organisations and individuals also support ACOSS' work as Associate Members