

## SCHEDULE

### LIMITATIONS OF PAST AND EXISTING INVESTIGATIONS INTO THE REGIONAL PROCESSING CENTRE ON NAURU

The Commission is the only body in Australia with the jurisdiction, power, expertise, independence and authority to sufficiently and appropriately inquire into the Commonwealth and its Australian contractors' responsibility for, and response to, allegations of child abuse at the Nauru Regional Processing Centre.

This Schedule outlines the key limitations of following past and ongoing investigations into related matters:

- Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru (***Moss Review***);
- Senate Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru (***Senate Committee***);
- Child Protection Panel established by the Department of Immigration and Border Protection (***Child Protection Panel***); and
- Human Rights Commission report on children in immigration detention (***Human Rights Commission report.***)

#### 1. The Moss Review

In 2014, the Commonwealth Government commissioned the Moss Review. The Moss Review was conducted by former integrity commissioner Philip Moss and focused on investigating:

- claims of sexual and other physical assault of transferees; and
- the conduct and behaviour of staff members employed by contract service providers.

The purpose of the Moss Review was to:

...provide a complete and accurate account of the circumstances, to determine the substance (if any) of the allegations and to provide recommendations to relevant authorities to strengthen arrangements at the Regional Processing Centre in Nauru.

The Moss Review largely focused on claims made by adult detainees in the centre. In relation to minors, the final report states:

...there were both reported and unreported allegations of sexual and other physical assault. When the Review obtained information that would assist relevant authorities to investigate these allegations, it was provided to the Department.

The Moss Review found substantial evidence that the sexual abuse and harassment of minors had occurred within the Centre, and that the Nauruan authorities were not fulfilling their responsibilities to

protect children and investigate criminal allegations. However, the Moss Review did not adequately deal with the matters that the Commission has been directed to inquire into. Specifically:

- While the Commission is specifically directed to inquire into matters concerning children, the Moss Review was not. It only inquired into issues involving minors in the broader context of abuse at the Centre;
- Whereas the Commission is directed to inquire into institutional and governmental responses to child sex abuse, the Moss Review was only focused on the conduct and responses of the Nauruan authorities and contractors;
- Unlike the Commission, the Moss Review was not directed to consider best practice for Australian institutions and the Commonwealth and only made recommendations to improve the Nauruan and contractor frameworks for child protection; and
- The Moss Review lacked the powers of a Royal Commission.

## **2. The Senate Committee**

On 26 March 2015, the Senate resolved to establish a committee to inquire into and report on the responsibilities of the Commonwealth Government in connection with the management and operation of the Centre.

The Senate Committee was tasked with inquiring into:

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

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

The Senate Committee released an interim report on 12 June 2015, which contained one interim recommendation related to Commonwealth expenditure on public works on Nauru. The final report is due by 31 July 2015.

- While the terms of the Senate Committee inquiry have some overlap with the terms of the Commission, it has the following key limitations relative to the Commission: Senate inquiries and government responses to them can often be politicised. For instance, in response to the announcement of this Senate Committee inquiry, Immigration Minister Peter Dutton issued a media release titled 'Labor Greens: One Sided Inquiry', describing the Senate inquiry as a 'Labor-Greens witchhunt' in which Labor and Greens inquiry members 'were intent on railing against regional processing'.<sup>1</sup> The Minister said the Senate inquiry is a 'stunt that should be seen for what it is – nothing more than a waste of time and taxpayers' money';
- The Senate Committee is not expressly concerned with the sexual abuse of children nor is it required to make best practice recommendations - its Terms of Reference are focused on past conduct;
- The Senate Committee lacks the powers of the Commission;
- The Senate Committee members lack the highly specialised expertise of Commissioners and Commission staff.

The fact the Senate Committee has limited ability to properly investigate the Commonwealth's response to the alleged child abuse in the Nauru centre is further evidenced by the fact that one of the Committee members, Senator Hanson-Young, has expressly called for the Commission to inquire into allegations of child sex abuse at the Centre.

### **3. The Child Protection Panel**

In May 2015, partly in response to the Moss Review, the Commonwealth government established the Child Protection Panel to provide independent advice on child protection in immigration detention and regional processing centres. The panel consists of three independent individuals from the fields of law enforcement, child protection and public sector accountability.

The terms of reference for the Child Protection Panel state that:

In relation to incidents of abuse, neglect or exploitation involving children the Panel will:

- i. critically review responses by the Department and its service providers in onshore detention environments, including community held detention, and at regional processing centres, to reported incidents which occurred since 1 January 2008;

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<sup>1</sup> 'Labour - Greens: One Side Inquiry' Media Release, Peter Dutton Minister for Immigration and Border Protection, May 19 2015: <http://www.minister.border.gov.au/peterdutton/2015/Pages/labor-greens-one-sided-inquiry.aspx>

- ii. provide independent advice to the Secretary in relation to the effectiveness and correctness of Departmental and service provider policy and procedure around the management, response, and reporting of incidents involving children; and
- iii. make recommendations to strengthen arrangements around the management, response, and reporting of incidents involving children.

According to the Child Protection Panel's website:

The purpose of this Panel is to ensure that a comprehensive and contemporary framework for the Department relating to the protection of children is in place. This will be done by assessing the adequacy of Departmental and service provider policy and practice around the management of incidents of abuse, neglect or exploitation involving children. Based on this assessment, the Panel will provide recommendations for ongoing improvement.

The panel is yet to report publicly any findings and its final report is due around mid-2016.

While there is some overlap between the terms of the Commission and the Child Protection Panel, the Panel faces the following key limitations relative to the Commission:

- The Panel reports directly to the Secretary of the Department. It is comprised of members appointed by the Department. It is unclear whether details of the Panel's investigation and findings will be made public. Even if the Panel's final report is publicly released, it is likely to be released by the Minister. The Panel thus lacks both the actual and perceived independence of the Commission and its investigative processes and findings cannot generate the same level of public accountability around institutional responses to child abuse;
- The Panel has no legislative authority and could be dispensed with on the whim of the government of the day. Indeed, in the politicised context of immigration detention other such advisory bodies have been abruptly disbanded<sup>2</sup>;
- The terms of the Panel are narrower in scope than the Commission's terms. In particular, unlike the Commission, the Panel can only make recommendations in relation to processes of 'management, response, and reporting of incidents involving children' but not the primary causes of abuse in relation to the institutional arrangements that might have produced an environment in which the abuse of children was more likely to occur;
- The Panel lacks the powers of the Commission; and
- While each of the three Panel members are of high standing and possess significant qualifications and expertise, the Panel does not possess the highly specialised expertise of the Commission.

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<sup>2</sup> AMA media release 16 May 2015, AMA shocked by disbanding of Immigration Health Advisory Group (IHAG)

<https://ama.com.au/media/ama-shocked-disbanding-immigration-health-advisory-group-ihag>

#### **4. The Human Rights Commission's 'Forgotten Children' Report**

In November 2014 the Australian Human Rights Commission produced its report, *The Forgotten Children: National Inquiry into Children in Immigration Detention (2014)*.

The Commission's Terms of Reference indicated that it would inquire into the impact of immigration detention on the health, wellbeing and development of children – it was not specifically focused on child sexual abuse and the Commonwealth response to it. The Commission sought the following information from the Commonwealth in relation to children in detention on Nauru:

- the transfer of children to Nauru;
- the arrangements between Australia and Nauru and between Australia and its contracted service providers in relation to the detention of children at the Regional Processing Centre on Nauru; and
- the impact of detention at the Regional Processing Centre on Nauru on the health, wellbeing and development of the children detained there.

However, the Commonwealth refused to provide the information requested, saying it considered the information 'not relevant to the Inquiry, as it does not relate to the immigration detention of children in Australia and is, therefore, outside the scope of the Terms of Reference'.<sup>3</sup>

The Human Rights Commission was thus unable to properly and thoroughly investigate the issue of alleged child sexual abuse in immigration detention on Nauru and the Commonwealth's responsibility for, and response to, those allegations.

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<sup>3</sup> See the Commission's report at page 194, available at:  
[https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten\\_children\\_2014.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf).