



## RESPONSE TO TRANSFIELD STATEMENT

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## RESPONSE TO TRANSFIELD STATEMENT

### A. BACKGROUND

#### **About No Business in Abuse (NBIA)**

NBIA is a new initiative bringing together a cross-section of Australian society including faith-based groups, unions, lawyers and human rights campaigners. NBIA seeks to end the complicity of corporate entities in human rights abuses perpetuated within Australia's immigration system.

#### **NBIA interactions with the financial sector**

Since early 2015, NBIA representatives have met with a broad cross-section of the financial sector, including banks, analysts and institutional investors, regarding corporate complicity in human rights abuses perpetuated within Australia's immigration system. Many of these entities hold securities in, or have financial or business links with, Transfield Services Limited (**Transfield**). Transfield is the lead contractor to the Australian Government for security, operational and welfare services in Regional Processing Centres (**RPCs**) on Manus Island and Nauru. NBIA's engagement program and provision of evidence regarding the existence of human rights abuses within the RPCs has been well received by the investment community. Our analysis has proven helpful to many investors, some of whom have taken strong action in response to the evidence available of Transfield's complicity in gross human rights abuses through provision of services to the RPCs.<sup>1</sup>

#### **NBIA interactions with Transfield**

To date, NBIA has had two face-to-face meetings with Transfield. The first, on 19 August 2015 was with the CEO, Graeme Hunt, and four members of the executive team (**First Meeting**). The second was on 3 September 2015 with Chris Jeffrey, Executive General Manager Strategy, Markets & Investments, and a colleague (**Second Meeting**).

#### **Transfield Statement**

On 4 September 2015, NBIA received various copies of a nine-page statement released by Transfield on that day (**Transfield Statement**). We include the Transfield Statement at **Annexure A**.

To NBIA's knowledge, the Transfield Statement has not been released publicly. It appears on neither the ASX nor the Transfield website. NBIA is aware that only some institutional investors, analysts, and banks received the Transfield Statement as evidenced by the fact that some entities provided the statement to NBIA, while other entities requested to obtain the Transfield statement directly from NBIA. NBIA has no further information regarding Transfield's distribution of this document, including whether or not it was received by all securities holders in the company (of which there are over 13,000 in number).

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<sup>1</sup> Examples of this evidence available at Part B of this response.



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The Transfield Statement makes explicit reference to NBIA and its engagement with the financial sector and states that: “much of [NBIA’s] source data regarding conditions at Manus and Nauru is based on outdated public information, and is therefore incorrect.” NBIA responds to this contention and others contained in the Transfield Statement below.

### **B. NBIA response to Transfield Statement**

NBIA has concerns regarding a number of aspects of the Transfield Statement. In summary these concerns are that Transfield’s Statement:

1. Fails to disclose the relevant and recent findings by international and domestic expert authorities of continuing human rights abuses at the Manus and Nauru RPCs;
2. Fails to disclose the recent statement of an independent body, the UNHCR, who inspected the RPCs and held in April 2015 that conditions were “largely unchanged”, and reiterated their earlier findings of human rights violations;
3. Fails to disclose the central conclusions of the multi-party majority report from the Nauru Senate Select Committee;
4. Mischaracterises the implications of the Australian Border Force Act in failing to disclose that the Act institutes criminal offences for conduct that previously would have been deemed a breach of contractual obligations; and
5. Fails to disclose that causing or contributing to human rights abuses may give rise to:
  - Individual liability for Transfield directors, officers and employees;
  - Legal, financial and reputational risks for Transfield; and
  - Contravention of the policy and practice commitments of many of Transfield’s investors, financiers and clients.

#### **1. Transfield’s Statement fails to disclose the relevant and recent findings by international and domestic expert authorities of continuing gross human rights abuses at the Manus and Nauru RPCs**

Transfield states that:

Much of [NBIA’s] source data regarding conditions at Manus and Nauru is based on outdated public information, and is therefore incorrect;  
(page 2)

International and domestic expert authorities have consistently held that gross human rights abuses occur at the Manus and Nauru RPCs, with severe mental and physical impact upon detainees, which include children. These findings stretch from the RPCs’ inception in 2012 to the Senate Select Committee report on the Nauru RPC released on 31 August 2015. Summaries of these findings are outlined at



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**Annexure B.** Authorities cited include various UN bodies including the UN High Commissioner for Human Rights, the Australian Human Rights Commission, Australian Parliamentary Committees and Government-appointed independent assessors, Amnesty International, peak Australian medical bodies, and Australian doctors who practiced at the RPCs.

The findings listed at Annexure B are publicly available. NBIA relies only upon publicly verifiable documentation in our conclusions, to ensure our statements themselves are able to be verified by others.

**2. Transfield's Statement fails to disclose the recent statement of an independent body, the UNHCR, who inspected the RPCs and found that conditions were "largely unchanged", and reiterated their earlier findings of human rights violations.**

Transfield states that:

As previously mentioned, a number of relevant independent bodies have visited the sites in the last year. Since November 2014, operations on site have been reviewed by the Commonwealth Immigration Ombudsman, the International Red Cross, the UNHCR, as well as members of the independent Joint Advisory Committee for Regional Processing Arrangements (page 2)

We have asked the NBIA to consult with the independent bodies to ensure that its report and the information that it is based on is both current and applicable to the RPCs. We do not believe that this has occurred. (page 5)

A considerable amount of progress has been made since December 2013 by the local Governments, the Commonwealth of Australia and its service providers. (page 9)

A number of key issues outlined in the NBIA source documentation have been addressed either in part or in full since their publication. (page 9)

As the excerpts outlined above illustrate, Transfield's statements give rise to an implication that the findings of the independent bodies who have (privately) visited the Manus and Nauru RPCs since public findings were last released in December 2013, would support Transfield's contention that the some or all of the gross human rights abuses previously outlined are no longer occurring.

However, in its April 2015 submission to the Senate Select Committee Inquiry, one of the independent bodies Transfield listed - the UNHCR - publicly outlined its assessment, after subsequent visits, that harsh conditions in the Nauru RPC remain "largely unchanged" from its earliest inspections. The UNHCR then went on to reiterate the continuing applicability of its 2013 findings relating to human rights abuses. Starting at paragraph 16 of its submission, the UNHCR specifically stated:



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UNHCR, in assessing the transfer arrangement in totality, observed [in its 2013 report] that it did not comply with international standards and in particular: a) constituted arbitrary detention under international law; b) despite a sound legal framework, did not provide a fair, efficient and expeditious system for assessing refugee claims; c) did not provide safe and human conditions of treatment in detention; and d) did not provide for adequate and timely solutions for refugees.

Indeed, UNHCR shared its view, **which it maintains**, that due to the significant shortcomings at the Centre, no child, whether unaccompanied/separated or accompanied, should be transferred to Nauru from Australia.

UNHCR has conducted subsequent visits to the Centre and **although there have been some improvements, the harsh conditions, lack of privacy for individuals, uncertainty regarding durable solutions remain largely unchanged.**<sup>2</sup> (emphasis added)

NBIA has not pressed any of the independent bodies Transfield has listed for access to their private reports regarding the Manus and Nauru RPCs for two reasons. Firstly, we do not believe it likely or appropriate that we would be granted access to this currently confidential information, and secondly NBIA relies only upon publicly verifiable documentation in our conclusions, to ensure our statements themselves are able to be verified by others. In our interactions with these bodies however, it has been emphasised to us that the mere fact of a visit by an agency such as the International Red Cross – which monitors, on a confidential basis, some of the world's harshest and most inadequate places of detention – should not be construed as any approval by that agency or others of the conditions of detention.<sup>3</sup>

### 3. Transfield's Statement fails to disclose the central conclusions of the multi-party majority report from the Nauru Senate Select Committee

The Transfield Statement asks:

"What is your reaction to the Nauru Senate Select Committee Report?" (page 1)

The Transfield Statement asks the reader to rely upon the "Dissenting Report by Government Senators," as follows:

We also note the conclusions and recommendations of the recent Senate Select Committee review relating to the Nauru RPC, and refer our shareholders and any other interested parties to the Dissenting Report by Government Senators located at pages 137-146 of the report, with relevant extracts set out at **Annexure 1** to this document. (page 1)

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<sup>2</sup> UNHCR, "Submission 19 - Submission by the Office of the United Nations High Commissioner for Refugees to the Senate Select Committee on the Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru," April 27, 2015, para. 16.

<sup>3</sup> See <https://www.icrc.org/en/what-we-do/visiting-detainees> for further details



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However, the Transfield Statement fails to outline the specific findings in relation to Transfield's services at the Nauru RPC. The following excerpts from the full Senate report highlight the deep and extensive concerns held by the multi-party majority of Senators on the committee:

- [5.7] The committee is nevertheless of the overall view that **the present conditions and circumstances at the Regional Processing Centre on Nauru are not adequate, appropriate or safe for the asylum seekers detained there.**
- [2.137] While the committee notes the department's evidence in relation to this matter, it is difficult to entirely reconcile this evidence with the public statements of the Prime Minister and the Minister for Immigration and Border Protection on 5 June 2015. It is also of serious concern to the committee that Commonwealth funded contractors did not view it as their primary obligation to support transparency and openness in relation to the visit of an Australian Senator to the Nauru RPC and instead viewed her presence as a potential security threat to be managed. The committee considers that this incident is **a striking example of gaps in the discipline and professionalism of contractor staff and their management, indicative of a culture of secrecy, and demonstrates inadequate Commonwealth oversight** of the relevant contractors.
- [5.9] The committee is deeply concerned that without this inquiry, the allegations heard and evidence received would not have been uncovered. There appears to be no other pathway for those affected by what they have seen and experienced in the Regional Processing Centre on Nauru to disclose allegations of mistreatment, abuse or to make complaints. **The department has been unaware of serious acts of misconduct by staff of contractors, as those contractors have not adequately fulfilled their reporting obligations.** The committee believes that **no guarantee can be given by the department that any aspect of the RPC is run well, and that no guarantee of transparency and accountability can be given until significant changes are made and accountability systems are put in place.**
- [5.28] The high volume of evidence received in relation to the behaviour of staff engaged at the RPC indicated to the committee that there was **cause for ongoing concern about the performance and accountability of Commonwealth contracted service providers.** While the contractors themselves and the department sought to reassure the committee that the recruitment, training and management of contractors was of an acceptable standard, the **weight of evidence submitted to this inquiry strongly suggested that there were significant problems.**
- [5.71] Based on the evidence received by this inquiry, **the committee has reached the conclusion that the RPC in Nauru is not a safe environment for asylum seekers.** This assessment is particularly acute in relation to women, children and other vulnerable persons.
- [5.73] The committee accepts the evidence provided by legal experts that the continued transfer of children to Nauru, and detention of them in the RPC, is likely to **breach Australia's obligations** under the Convention on the Rights of the Child.
- [5.75] The committee concludes that the **RPC Nauru is neither a safe nor an appropriate environment for children and that they should no longer be held there.** (emphasis added)



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### **4. Transfield's statement mischaracterises the implications of the Australian Border Force Act in failing to disclose that the Act institutes criminal offences for conduct that previously would have been deemed a breach of contractual obligations**

In relation to the Australian Border Force Act (2015), Transfield's Statement strongly asserts that:

"It is factually incorrect to assert that the new legislation in any way prevents service providers (including medical practitioners) from reporting any suspected wrongdoings. The pre-existing channels remain in place and are effective. Claims to the contrary by news outlets, social media, NGOs and some politicians are baseless." (page 2)

The Australian Border Force Act (2015) (**The Act**) makes it a criminal offence, punishable by two years imprisonment, for anyone who does work (directly or indirectly) for the Department of Immigration and Border Protection to disclose any information obtained by them while doing that work.<sup>4</sup> The Act does not specify any exemptions in relation to the mandatory reporting of physical or mental harm, child abuse or any other such purpose in the public interest. It is clear that its provisions apply to Transfield and any other parties providing services to the Manus and Nauru RPCs. Up until the institution of The Act on 1 July 2015, the same disclosures may have amounted to a breach of an individual's contractual obligations with an employer, but were not classified as a criminal offence.

The peak bodies of Australia's medical profession have legitimately pointed out that the threat of prosecution for a criminal offence, with the potential for a term of imprisonment, is a significant preventative factor for medical professionals who are bound by the ethical standards of their profession to disclose information regarding mental and physical harm. Relevant comments include:<sup>5</sup>

Royal Australian College of Physicians President, Professor Nick Talley, who said the law "attempts to tie our hands to prevent us from fulfilling our duty for a vulnerable group of children and adults with complex health care needs".

AMA President Professor Brian Owler, who told ABC's *Lateline* program that the laws were designed "to intimidate people against speaking out. There is no reason why doctors, nurses, and other health care workers should be stopped from speaking up about concerns that they have for the care of their patients, whether they're detainees or anyone else in our society."

In accordance with these comments, and contrary to Transfield's assertions, it is reasonable to assert that the institution of a criminal offence for disclosure of information is likely to prevent service providers (including medical professionals) from disclosing information regarding wrongdoing. The criminal law is designed to

<sup>4</sup> (Cth), *Australian Border Force Act 2015, Act No. 40 of 2015*, 2015, pt. 6.

<sup>5</sup> "World Medical Leaders Join Condemnation of Detention Centre Gag Laws," *Australian Medical Association*, accessed September 15, 2015, <https://ama.com.au/ausmed/world-medical-leaders-join-condemnation-detention-centre-gag-laws>.



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operate as a disincentive in regards to actions deemed to be offences. It is hardly “baseless” to view it as such.

In regards to the existing channels for reporting wrongdoing, Transfield disclosed to the Nauru Senate Select Inquiry that between the period of September 2012 to 31 April 2015, that its Whistleblower Integrity Hotline had not been accessed by a single person engaged on Nauru.<sup>6</sup> During that same period the Australian Human Rights Commission and the Nauru Senate Select Committee received evidence from numerous former staff, including medical professionals, at the Nauru RPC of wrongdoing and abuse. Medical staff, teachers and social workers who had worked at the Nauru RPC also signed and released an open letter which stated that “all service providers were informed, in writing, of several of the assaults detailed in the Moss Review in addition to many other assaults not mentioned in the Report,” went on to outline the subsequent failure (for over 17 months) in addressing these assaults, and called for the immediate transfer of all asylum seekers in the Nauru RPC to Australia for their own protection.<sup>7</sup>

In light of the above disclosures, it is reasonable to assert that existing channels, such as the Whistleblower Hotline appear to be ineffective for the reporting of wrongdoings, and substantial numbers of staff working at the Nauru RPC have opted to disclose allegations to the public sphere after prior attempts at internal resolution within the RPCs. Any such disclosure now carries the risk of criminal conviction and imprisonment under The Act.

**5. Transfield’s Statement characterising its obligations to respect human rights as purely voluntary and without basis in law fails to disclose that causing or contributing to human rights abuses may give rise to:**

- **Individual liability for Transfield directors, officers and employees;**
- **Legal, financial and reputational risks for Transfield; and**
- **Contravention of the policy and practice commitments of many of Transfield’s investors, financiers and clients.**

Transfield makes the following assertions in regards to its obligations to respect human rights:

[International human rights instruments] do not create legal obligations on private citizens or corporations. (page 3)

There are no international human rights instruments that bind Australian companies. (page 3)

Significantly, none of these voluntary guidelines or principles create new legal obligations, even where corporations and individuals elect to comply with them. For example, the United

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<sup>6</sup> Transfield Services, “Questions Taken on Notice by Transfield Services: Select Committee on the Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru,” June 16, 2015, 1.

<sup>7</sup> Dr Michael Gordon, FRANZCP et al, “An Open Letter to the Australian People,” April 7, 2015, <http://www.abc.net.au/news/2015-04-07/nauru-letter-of-concern-demands-royal-commission/6374680#letter>.



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Nations Guiding Principles on Business and Human Rights (the “**Guiding Principles**”) are intended to promote respect for human of rights. The principles themselves, however,

expressly state that “*nothing in these Guiding Principles should be read as creating new international law obligations*”. (page 3)

The UN Guiding Principles on Business and Human Rights provide apt instruction on this point when they outline that:

(Principle 23) In all contexts, business enterprises should...[t]reat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

Business enterprises should treat this risk as a legal compliance issue, given the expanding web of potential corporate legal liability arising from extraterritorial civil claims, and from the incorporation of the provisions of the Rome Statute of the International Criminal Court in jurisdictions that provide for corporate criminal responsibility. In addition, corporate directors, officers and employees may be subject to individual liability for acts that amount to gross human rights abuses.<sup>8</sup>

In its discussion with the investment community, and Transfield, NBIA has outlined the above instructions of the UN Guiding Principles and openly relayed that NBIA is seeking legal advice regarding the individual liability of Transfield’s directors and officers for acts that amount to gross human rights abuses. In addition to the substantial questions regarding individual liability, Transfield is presently party to litigation in both the Supreme Court of Victoria and the High Court of Australia regarding its operations on Nauru and Manus Island. Both these actions include allegations of harm/injury sustained by detainees, as a result of events which are also deemed to be human rights abuses. Clearly the exposure to legal risk is not directly related to the question of whether particular human rights instruments bind individual companies, but whether causing or contributing to human rights abuses can result in a range of different domestic and international compliance issues.

Transfield has already seen the financial implications of association with human rights abuses first-hand, as \$28 million in Transfield shares have been divested by institutional investors.<sup>9</sup> Many of Australia’s institutional investors, and financiers have made strong commitments to respect human rights, as stand-alone commitments, and through adherence to initiatives such as the UN Principles of Responsible Investment and the UN Global Compact. Transfield’s client base includes public institutions like hospitals, schools, universities and councils as well as major listed companies within the mining industry. Many of these clients have made commitments regarding ethical conduct and human rights, and have in place strong policies regarding issues such as child abuse.

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<sup>8</sup> United Nations, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” 2011, 25–26, [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>9</sup> HESTA, “HESTA’s Divestment from Transfield Services Pty Ltd (Media Statement),” August 18, 2015, <http://www.hesta.com.au/media/docs/Media-statement-HESTAs-divestment-from-Transfield-Services-Pty-Ltd-bd0a266a-d14a-4f6c-9a30-3df643fc5a13-0.pdf>; “Why Act? Because It’s the Right Thing to Do,” *Financial Review*, accessed August 25, 2015, <http://www.afr.com/news/ngs-super-dumps-transfield-services-on-moral-grounds-20150825-gj72tm>.



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In our view, any complicity by Transfield in gross human rights abuses including child abuse would reasonably be likely to impair relations with investors, financiers and current and future clients, and therefore pose significant financial risks to the company.

Transfield's view of the risk profile of any contravention of human rights is made apparent when it states:

While OECD guidelines allow for complaints to be made to the Australian government, in the **unlikely event the Australian government recognised a complaint about the Company**, it has no power to enforce any finding; (page 4) and

The RPCs are not places of "detention" as the asylum seekers are not prisoners or detainees. (page 4)

It appears to NBIA that Transfield is relying upon two clear assumptions, firstly that the current political paradigm will provide it some form of protection in relation to the risk of complicity in gross human rights abuses. As illustrated by the example of the newly appointed Australian Prime Minister Malcolm Turnbull, politics is an unsteady shield, and companies with a view to anything past the next election should be wary of reliance upon the continuing approval of an Australian Government to provide protection against the significant risks posed by corporate complicity in gross human rights abuses.

Secondly Transfield seems to be operating under the assumption that contesting the overwhelming consensus of international and domestic expert opinion in relation to basic issues such as whether the RPCs are places of "detention" is an approach likely to address the serious concerns of its stakeholders. The RPCs are facilities surrounded by fences, where asylum seekers not permitted to leave without official authorisation. The conversations NBIA has had across the investment community indicate Transfield's stakeholders have significant concerns in regards to the weight of the evidence pointing to gross human rights abuses occurring at the RPCs. Such concerns are unlikely to be swayed by an approach of contesting clearly observable facts in the face of an overwhelming consensus by independent experts.

### **C. Next Steps**

NBIA's position to Transfield, and the investment community is clear. That is:

- Transfield and its subcontractors have an overarching responsibility to respect human rights in their business activities, as clearly outlined by the United Nations Guiding Principles on Business and Human Rights. This



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responsibility exists despite any domestic legality, and regardless of the involvement of national governments in human rights abuses;

- The weight of international and domestic evidence points to gross human rights abuses occurring at the Manus and Nauru RPCs;
- Transfield and its subcontractors, through provision of a range of services in the RPCs, are complicit in these gross human rights abuses;
- Should Transfield sign a new contract to institute services under the current system at the RPCs from 31 October 2015, it would be choosing to knowingly engage in and profit from causing or contributing to gross human rights abuses.

In our discussions with the investment community and Transfield, NBIA has provided an outline of a 'Human Rights Floor'. The Human Rights Floor is a set of fundamental human rights obligations most at risk in the context of Australia's immigration practice. NBIA's position is that, without explicit guarantees that the immigration system and services of private contractors are compliant with the Human Rights Floor, there is no legitimate business for corporate entities in servicing Australia's immigration system. The Human Rights Floor is set out at **Annexure C**.

As foreshadowed with both Transfield and the investment community, NBIA intends to release a major report further detailing Transfield's complicity in human rights abuses within the RPCs in the next few weeks, and begin engagement with the public on this issue.

## Transfield Services' commitment to human rights and response to recent media and other commentary

Human rights are fundamental rights, freedoms and standards of treatment to which all people are entitled. Transfield Services recognises that where possible and within their spheres of influence, companies should strive to protect human rights arising from the conduct of business activities. Transfield Services is committed to respecting human rights in its operations and uses the International Human Rights Standards<sup>1</sup> as a framework to guide its activities, while respecting the responsibility of government to ensure the protection of human rights.

### 1. The Senate Select Committee, Other Reports & Legislative Impacts

#### ***What is your reaction to the Nauru Senate Select Committee Report?***

As has been the case with previous reports that were prepared by both independent and political bodies, Transfield Services will closely review the Senate Select Committee Report and work with the Federal Government and the DIPC on any accepted findings where they relate to our company and areas of contracted responsibility. Transfield Services remains committed to continuous improvement and is always open to ways in which we can adjust our systems and processes at the Regional Processing Centres (**RPCs**) to better support the care and well-being of transferees.

We also note the conclusions and recommendations of the recent Senate Select Committee review relating to the Nauru RPC, and refer our shareholders and any other interested parties to the Dissenting Report by Government Senators located at pages 137-146 of the report, with relevant extracts set out at **Annexure 1** to this document.

As announced to the Australian Securities Exchange on 31 August 2015, the Department of Immigration & Border Protection (**DIBP**) has selected Transfield Services as the preferred tenderer to provide Welfare & Garrison Support Services at the RPCs in both the Nauru and Manus Provinces. The revised contract is expected to be for a five year term and on an expanded scope, which is yet to be finalised.

Importantly, a number of relevant independent bodies with a proven track record in this area have visited the sites in the last year. Since November 2014, operations on site have been reviewed by the Commonwealth Immigration Ombudsman, the International Red Cross, the UNHCR, as well as members of the independent Joint Advisory Committee for Regional Processing Arrangements.

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<sup>1</sup> As defined in its Human Rights Statement available on the corporate website.

***How did Management and the Board get comfortable with renewing the contract against the background of the new Border Force legislation now in place?***

The Federal Government and Opposition both supported the Australian Border Force Act, which is effective from July 1 2015. There will be no material changes to our operations. Contractually, Transfield Services employees are already bound to keep operational information confidential. Under the Border Force Act ("the Act"), Transfield Services is now classified as an "entrusted person" in receipt of information about the operation of the facilities in Manus and Nauru. This means that we are not free to publicly disclose information unless permitted and / or required by either the Act or compelled by another law.

Despite the introduction of the Act, we believe that our business operations will continue with very little change, if any. Indeed in most of our contracts, Transfield Services has confidentiality obligations to its clients. Our processes and systems of internal control ensure that any incident can either be raised through designated internal management channels or through an independently operated whistle-blower and integrity hotline. This has been in place for some time and it is management's intention to continually promote and enforce transparency and accountability in all operation and at all levels. Transfield Services has also employed its normal risk review process in its decision to tender for the renewed contract.

It is factually incorrect to assert that the new legislation in any way prevents service providers (including medical practitioners) from reporting any suspected wrongdoings. The pre-existing channels remain in place and are effective. Claims to the contrary by news outlets, social media, NGOs and some politicians are baseless.

***What Interactions have you had with the No Business in Abuse Organisation ("NBIA")?***

Transfield Services is committed to the highest level of transparency in business. As part of this commitment, we routinely meet with investors and other stakeholders and observers of the company, including the NBIA<sup>2</sup>.

Where possible, Transfield Services will work with any stakeholder that is concerned with the welfare and interests of asylum seekers. We are also deeply committed to the goal of continuously improving the quality and effectiveness of the services that we provide. However, to be actionable by Transfield Services, any suggestions need to be capable of execution within the confines of existing government policy and the scope of our contract.

Transfield Services seeks to implement the principles contained in its Human Rights Statement at a practical level in the delivery of the services. There have been many instances of the Company and the DIBP taking action at an operational level to enhance the welfare of asylum seekers. We will continue to adopt this approach going forward.

NBIA appear to be considering the interests of asylum seekers through their advocacy for a human rights floor. We strongly disagree, however, with the NBIA's view on Transfield Services' potential legal exposure relating to Human Rights (refer Section 2 below). We do not believe the stance taken by the NBIA is capable of being executed in practice, nor is it necessarily an approach that would enhance the welfare of those seeking asylum in Australia either now or into the future.

The Company has advised the NBIA that:

- much of their source data regarding conditions at Manus and Nauru is based on outdated public information, and is therefore incorrect; and

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<sup>2</sup> NBIA is a new NGO that has recently approached Transfield Services and some of its major shareholders. It is backed by a number of other NGOs and also has a member of the Maurice Blackburn legal firm on its Board.

- as previously mentioned, a number of relevant independent bodies have visited the sites in the last year. Since November 2014, operations on site have been reviewed by the Commonwealth Immigration Ombudsman, the International Red Cross, the UNHCR, as well as members of the independent Joint Advisory Committee for Regional Processing Arrangements.

We have asked the NBIA to consult with the independent bodies to ensure that its report and the information that it is based on is both current and applicable to the RPCs. We do not believe that this has occurred. More detail regarding our review of the NBIA's source data is contained in **Annexure 2**.

We also believe that the NBIA's desire to lobby our investor base with the aim of achieving closure of the RPCs via withdrawal of services is neither practical nor in the interest of the welfare of asylum seekers. Transfield Services does, however, remain open to continuing a dialogue with the NBIA and will consider any suggestions for improvement that are practical and capable of execution in order to enhance service delivery at the RPCs.

## 2. Legal Considerations & Transfield Services' Approach

### ***What legal obligations does Transfield Services have when it comes to human rights?***

As a nation, Australia has signed various international human rights instruments. These include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

International instruments ratified by Australia create an extensive range of obligations on the Australian Government. However, unless those instruments are enacted into Commonwealth, State or Territory legislation, they do not create legal obligations on private citizens or corporations.

### ***Does that mean there are no international human rights instruments that bind Australian companies?***

Correct. International human rights instruments are not designed to create legal obligations on Australian companies. Australian law binds Australian companies. Where operating internationally, the law of the host country prevails, with Australian law also often imposing obligations on Australian corporates and citizens.

A number of voluntary human rights principles and guidelines for businesses have been published by the United Nations and other international organisations. These documents set out human rights principles and guidelines that companies and private people can voluntarily commit to and comply with.

Significantly, none of these voluntary guidelines or principles create new legal obligations, even where corporations and individuals elect to comply with them. For example, the United Nations Guiding Principles on Business and Human Rights (the "**Guiding Principles**") are intended to promote respect for human rights. The principles themselves, however, expressly state that "*nothing in these Guiding Principles should be read as creating new international law obligations*".

Transfield Services is aware that assertions have been made that the company and its directors and officers could be sued in connection with breaches of 'human rights' and other 'international laws'. There is no legitimate basis for these assertions. While OECD guidelines allow for complaints to be made to the Australian government, in the unlikely event the Australian government recognised a complaint about the Company, it has no power to enforce any finding.

***In what ways does Transfield Services respect and uphold human rights in its business activities?***

Our business operates pursuant to a strong Code of Business Conduct (the "Code"). The Code includes a Conduct Principle which specifically relates to human rights. While our internal control framework and the Code in our view always recognised the importance of human rights, in June 2015, the Board of Transfield Services approved the adoption of both a **Human Rights Statement** and a standalone Conduct Principle, namely "**Upholding Human Rights in Our Business**". The Conduct Principle was added to the Code, which can be found on the Company's website. An overview of the Code and supporting policies is also contained in the 30 July 2015 ASX Announcement and accompanying presentation on Sustainability. The Sustainability presentation contains an overview of our Environmental, Social & Governance profile and includes examples of the work that we do to invest in the local communities in which we operate.

Our concern for Human Rights is embedded within the following key areas of the Transfield Services business:

- **Health and safety:** We have comprehensive health and safety policies, procedures and practices to help us protect the health, safety and well-being of all persons involved in and impacted by our business.
- **Workplace culture:** We are committed to encouraging a workplace culture that respects human rights. We actively encourage employees to raise concerns by providing a safe environment in which to do so, including via an independently operated whistle-blower hotline. In particular, we are deeply committed to diversity, inclusion and indigenous reconciliation.
- **Environment:** We seek to engage in sustainable business practices with minimal impact on the environment and surrounding communities.
- **Procurement and supply agreements:** Our procurement strategy requires us to select suppliers who have a similar approach to human rights.
- **Subcontractors:** We regularly engage and monitor our subcontractors so that we can identify potential human rights risks and, to the extent practicable, take actions to prevent or mitigate those risks.
- **Local communities:** We demonstrate respect for human rights through our community engagement programs.

***How does Transfield Services respect and uphold human rights in the RPCs?***

In addition to the commitments described above, we have taken steps to demonstrate our respect for human rights at the RPCs at Nauru and Manus Province, Papua New Guinea.

The RPCs are not places of "detention", as the asylum seekers are not prisoners or detainees. Transfield Services takes a "welfare-led approach" to providing services at the RPCs. This means that all aspects of our service delivery is underpinned by welfare service principles. The care and wellbeing of asylum seekers is paramount in all of our processes, decisions and actions. Our staff work collaboratively with all other service providers at the RPCs, including Save the Children, International Health & Medical Services and the International Organisation for Migration, to provide services in a way that enhances their overall physical and mental wellbeing.

Some of the ways in which we aim to achieve this goal include:

- providing case management services, programs and activities for asylum seekers;

- engaging with industry experts to assist in formulating comprehensive training programs for case managers, which cover topics including cultural awareness, trauma and mental health;
- incorporating asylum seeker feedback into the design and delivery of programs and activities and encouraging asylum seeker led activities;
- implementing new educational curricula and vocationally relevant programs;
- taking care to recruit and screen staff appropriately, and supporting them through ongoing training and carefully designed policies and procedures;
- robust codes of conduct and other policies and procedures that clearly communicate to staff the Company's expectations of them in their interactions with asylum seekers and high expectations of staff and contractors to ensure the highest priority on the care and wellbeing of asylum seekers at the RPCs;
- rigorous disciplinary and investigation procedures that demonstrate that we take all reports of inappropriate conduct by staff and other asylum seekers seriously;
- an effective complaints and requests system that is available to all asylum seekers and staff and ensures that each complaint is actioned within 24 hours;
- careful oversight of subcontractors' operations;
- as part of our efforts to continually improve our services, we work with independent third parties who review our operations. Since November 2014, operations on site have been reviewed by the Commonwealth Immigration Ombudsman, the International Red Cross, the UNHCR and the members of the independent Joint Advisory Committee for Regional Processing Arrangements.
- working with stakeholders including the Australian, Nauruan and PNG governments, as well as other service providers to develop and implement processes and procedures to prevent and deal with illegal or anti-social behaviour; and
- working with these stakeholders and the regional police forces to report, investigate and resolve incidents and allegations of misconduct.

### 3 Reputational Considerations

#### ***We have read about serious incidents in the media. Why have these occurred?***

Transfield Services emphasises that investigations show no evidence to support the majority of these allegations.

We thoroughly investigate any reports of misconduct by staff, and have taken immediate action where there has been any substance to a complaint made. Actions include referrals to external law enforcement agencies if appropriate. Our staff on Manus and Nauru and the team that appeared before the Senate Select Committee have demonstrated the highest integrity in very challenging circumstances. Our job is to look after asylum seekers on Manus and Nauru, and we will continue to do this to the best of our ability.

We acknowledge, however, that the environment at the RPCs can be complex and challenging. In a small number of instances members of staff (or sub-contracted staff) have acted in a manner that is inconsistent with our expectations. As such, the company took firm and decisive action to eliminate risk and demonstrate that misconduct will not be tolerated. It is stressed, however, that no Transfield Services employee has been charged with an offence relating to an asylum seeker. Transfield Services has also supported a number of independent reviews and government inquiries and audits into these matters, and is committed to continuing to support Government approved inquiries. We welcome all recommendations which are aimed at improving conditions at the RPCs and do all we can to promote and respect the human rights of these vulnerable people.

We are proud of the demanding and important work that our staff perform at the RPCs and we are committed to the contributing to the local communities in which we operate. Furthermore, should our contract with the DIBP be renewed, we would look to ensure that where possible:

- the level of transparency within the contract is enhanced;
- we take a more active role in ensuring that accurate information is available to ensure that any public discussions on the matter is appropriately informed; and
- we continue to engage with key stakeholders to ensure that the welfare of the people within the RPC's continues to be the key focus for all parties.

The Company continues to work closely with the DIBP to enhance the welfare of asylum seekers through an ongoing review of the operating protocols at both RPCs.

***How does the Board and Management reconcile managing corporate reputational risk within your governance framework?***

The risk to the Company's reputation is always considered by Senior Management (through the Gate Review process) and the Board prior to entry into any major new contract, service area or geography.

The Company conducted a full risk review prior to entering into the contract with the Australian Border Force and has always acted professionally and appropriately in performing its services. This risk review process helps Transfield Services determine whether it can adequately deliver the services contemplated by a proposed contract and understand whether the anticipated returns are commensurate with the risk profile. Senior Management and the Board also receive regular reports on the operation of this contract, supplemented by direct observation through site visits.

The reputational risk arising from criticism due to allegations of misconduct, poor performance, or other incidents is a real and appropriate consideration. In the Company's view, however, this is the case for all areas where we provide services and there is a direct or indirect interface with the public. Against this background, Senior Management and the Board have made a concerted effort to ensure that the investment community is kept abreast of our performance on the DIBP contract and that accurate information in relation to operations at the RPCs is provided.

***How do you feel about how you are being portrayed in the press?***

Naturally, Senior Management, the Board of Directors and the all shareholders would be concerned with the way the company is being portrayed in the media. There are a variety of instances where factually incorrect, baseless allegations have been published. Some have been subsequently amended on the public record, with the company also issuing ASX and media statements to correct some of these misstatements and inaccuracies. We will consider what additional steps need to be taken to protect the company's reputation.

The company believes that it is making a genuine difference to the welfare of asylum seekers in the RPCs. As a company we also have a long and proud history of positive community engagement through investment in local employment and training, procurement of goods and services and the delivery of infrastructure into the communities in which we operate.

In Manus Island and Nauru the company stands by its record of:

- Developing local capability, employment and training;
- Helping deliver improved infrastructure;
- Direct involvement in Malaria eradication programs; and
- Community integration – we are particularly pleased to have been able to offer employment to a number of asylum seekers once their status was determined.

The company sees the Department of Immigration and Border Protection, the Australian taxpayers, the host communities of Nauru and Manus Island and the asylum seekers as key stakeholders. Our commitment is to all of these groups.

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## **ANNEXURE 1: EXTRACTS FROM DISSENTING REPORT BY COALITION SENATORS**

*"The Government Senators require to place the context and conduct of the Committee on the record.*

*It is their view the process and principles of due process and procedural fairness have not been adhered to as a result of the majority members of the Committee being willing to accept untested and unsubstantiated submissions as fact. Large and complex submissions were received by the Committee late in the process preventing any proper testing as to veracity of the allegations therein contained. Indeed on one occasion when such a submission was tested it became very clear that many of allegations made were completely lacking in credibility."*

Further:

*"All members ... appreciate the seriousness of the allegations put to the Committee; however it is important to note that the veracity of many of the allegations made was not able to be tested. In fact, a number of witnesses and submitters had spent very little time actually on Nauru and therefore were only able to provide limited anecdotal evidence. Some provided no time line of their visit at all, and others did not provide first-hand evidence, instead relying on unsubstantiated hearsay."*

## ANNEXURE 2: REVIEW OF NBIA SOURCE DATA

We understand that NBIA has utilised a number of publicly available documents in making their assessments of RPC operations. These documents include published reports based on visits by third parties to the RPC, the most recent of which was conducted in 2013.

A considerable amount of progress has been made since December 2013<sup>3</sup> by the local Governments, the Commonwealth of Australia and its service providers. In December 2013 when these site visits took place and the corresponding reports were published, Transfield Services was not providing any services on Manus Island. In addition, we were not providing Welfare Services to asylum seekers in Nauru. At the time our sole scope of services was Garrison Support at Nauru.

While there are no public reports that have been published since the Company commenced providing Welfare and Garrison Services in Nauru and Manus Island, we believe that our welfare led solution, operational discipline and commitment to continuous improvement have made significant positive impacts at the RPCs. The Company proactively collaborates with visiting third parties to develop solutions to any issues raised. This has included the UNHCR, the Commonwealth Immigration Ombudsman and the International Red Cross.

A number of key issues outlined in the NBIA source documentation have been addressed either in part or in full since their publication including:

- the implementation and clear communication of local legislative frameworks in both jurisdictions, including the clarification and regulation of the use of force, as well as the refugee status determination processes;
- strengthened operational frameworks and service provider contract performance governance;
- development and implementation of open centre arrangements in Nauru;
- relocation of accommodation of all unaccompanied minors (both asylum seeker and refugee) into the Nauruan community;
- regular visits by the Commonwealth Immigration Ombudsman supplemented by routine UNHCR and International Red Cross inspections;
- significant investment in purpose built refugee accommodation and site upgrades;
- continued optimisation of accommodation, including decommissioning of the P-Block on Manus Island; and
- most importantly, the commencement of refugee status determinations in both locations.

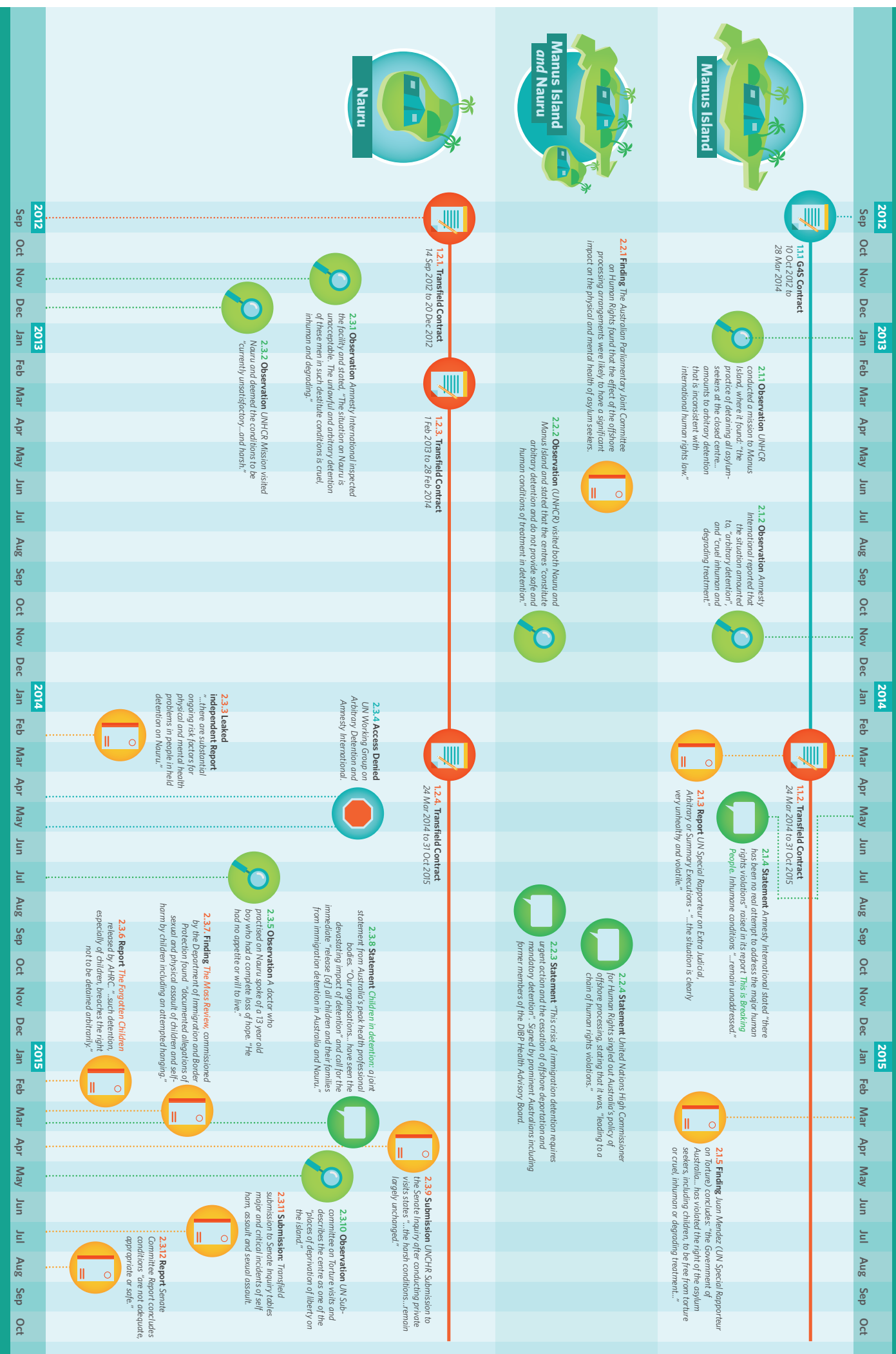
As outlined above we collaborate with third parties in relation to the provision of services on both islands. The Company will also work with these bodies should they wish to update their published reports.

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<sup>3</sup> Date of the last published report made in relation to a RPC visit by either the UNHCR or Amnesty International.

# FINDINGS OF ABUSES IN OFFSHORE DETENTION CENTRES

## NO BUSINESS IN ABUSE





## ANNEXURE B

- 2.1.1. United Nations High Commissioner for Refugees. "UNHCR Report on Manus Island (Feb 13)." UNHCR, April 2, 2013. <http://unhcr.org.au/unhcr/images/2013-02-04%20Manus%20Island%20Report%20Final.pdf>.
- 2.1.2. Amnesty International. "This Is Breaking People: Human Rights Violations at Australia's Asylum Seeker Processing Centre on Manus Island, Papua New Guinea." Sydney: Amnesty International, 2013. [http://www.amnesty.org.au/images/uploads/about/Amnesty\\_International\\_Manus\\_Island\\_report.pdf](http://www.amnesty.org.au/images/uploads/about/Amnesty_International_Manus_Island_report.pdf).
- 2.1.3. Christof Heyns, UN Special Rapporteur on Extra Judicial, Arbitrary or Summary Executions. "Preliminary Observations on the Official Visit to Papua New Guinea - Press Statement," March 14, 2014. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14373&LangID=E#sthash.EVRx7UM7.dpuf>.
- 2.1.4. Amnesty International. "This Is Still Breaking People." Amnesty International, 2014. <https://www.amnesty.org/en/documents/asa12/002/2014/en/>.
- 2.1.5. Juan E. Mendez. "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," March 6, 2015.
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- 2.2.2. United Nations High Commissioner for Refugees. "UNHCR Monitoring Visit to Manus Island, Papua New Guinea 23 to 25 October 2013," 2013. <http://unhcr.org.au/unhcr/images/2013-11-26%20Report%20of%20UNHCR%20Visit%20to%20Manus%20Island%20PNG%2023-25%20October%202013.pdf>. And United Nations High Commissioner for Refugees. "UNHCR Monitoring Visit to the Republic of Nauru 7 to 9 October 2013." Canberra: UNHCR, 2013. <http://unhcr.org.au/unhcr/images/2013-11-26%20Report%20of%20UNHCR%20Visit%20to%20Nauru%20of%207-9%20October%202013.pdf>. And United Nations High Commissioner for Refugees. "Media Release - 'Men, Women and Children Suffering from Harsh Physical Conditions and Legal Shortcomings at Pacific Island Asylum Centres: UNHCR Reports,'" November 26, 2013. [http://unhcr.org.au/unhcr/index.php?option=com\\_content&view=article&id=351:men-women-and-children-suffering-from-harsh-physical-conditions-and-legal-shortcomings-at-pacific-island-asylum-centres-unhcr-reports&catid=35:news-a-media&Itemid=63](http://unhcr.org.au/unhcr/index.php?option=com_content&view=article&id=351:men-women-and-children-suffering-from-harsh-physical-conditions-and-legal-shortcomings-at-pacific-island-asylum-centres-unhcr-reports&catid=35:news-a-media&Itemid=63).
- 2.2.3. "J'Accuse: Group Condemns Government over 'Wilful' Racism and Neglect of Asylum Seekers." *The Sydney Morning Herald*. Accessed September 15, 2015. <http://www.smh.com.au/federal-politics/political-news/jaccuse-group-condemns-government-over-wilful-racism-and-neglect-of-asylum-seekers-20140809-3dez.html>.
- 2.2.4. United Nations High Commissioner for Human Rights. "Opening Statement by Zeid Ra'ad Al Hussein United Nations High Commissioner for Human Rights at the Human Rights Council 27th Session." presented at the Human Rights Council 27th Session, Geneva, September 8, 2014. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14998&LangID=E#sthash.m3pC8MGY.dpuf>.
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- 2.3.9. UNHCR. "Submission 19 - Submission by the Office of the United Nations High Commissioner for Refugees to the Senate Select Committee on the Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru," April 27, 2015.
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- 2.3.11. Transfield Services. "Questions Taken on Notice by Transfield Services (Australia) Pty Ltd at the Senate Select Committee Hearing on Conditions and Circumstances at Nauru Held on 20 July 2015," July 27, 2015.
- 2.3.12. The Senate, Parliament of Australia. "Select Committee on the Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru: Taking Responsibility: Conditions and Circumstances at Australia's Regional Processing Centre in Nauru." Commonwealth of Australia, August 2015.



## **ANNEXURE C – The Human Rights Floor**

The NBIA Human Rights Floor is expanded below. Our recommendation is that its precepts form the parameters of the contract negotiations between private contracting parties and the Australian Government, and are adopted by all private parties seeking to provide services to the Australian Government in the area of immigration services.

**A contracting party cannot provide services to the Australian Government's immigration processing system unless the system:**

### **1. Releases children and family units**

The overarching finding of the Australian Human Rights Commission Inquiry '*Forgotten Children*', was that the prolonged, mandatory detention of asylum seeker children causes them significant mental and physical illness and developmental delays, in clear violation of the *Convention on the Rights of the Child*.<sup>1</sup> On the basis of these findings, the Commission recommended that all children and their families be released from immigration detention.

In addition, children are at increased risk of physical and sexual abuse in detention. Numerous incidents of abuse of children have been outlined in the Australian Government-commissioned independent review by Phillip Moss, and submitted as evidence to the Senate Select Committee on the conditions of detention on Nauru.<sup>2</sup> The Royal Commission on Institutional Responses to Child Abuse has said that "institutions operating without accountability, or with accountability only to themselves," those "operating in physically isolated places," and having operational or funding systems beyond the range of normal scrutiny were all factors that significantly increased the risk of child abuse.<sup>3</sup> Offshore detention, in particular, fits these indicators and is not an appropriate environment for children.

A child and its family can only be released into an environment where there are appropriate, "legislative, administrative, social and educational measures to protect the child," and "the highest attainable standard of health" in accordance with the UN Convention on the Rights of the Child.

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<sup>1</sup> AHRC, "The Forgotten Children: National Inquiry into Children in Immigration Detention" (Sydney: Australian Human Rights Commission, 2014).

<sup>2</sup> The Senate, Parliament of Australia, "Select Committee on the Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru: Taking Responsibility: Conditions and Circumstances at Australia's Regional Processing Centre in Nauru" (Commonwealth of Australia, August 2015).

<sup>3</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, "Interim Report - Volume 1." (Commonwealth of Australia, n.d.), 140, [http://www.childabuseroyalcommission.gov.au/about-us/our-reports/interim-report-volume-1-final-020714\\_lr\\_web](http://www.childabuseroyalcommission.gov.au/about-us/our-reports/interim-report-volume-1-final-020714_lr_web).



## **ANNEXURE C – The Human Rights Floor**

### **2. Respects fundamental rights to freedom from arbitrary and indefinite detention**

Liberty is a fundamental human right, recognised in major human rights instruments including the International Covenant on Civil and Political Rights, Article 9 of which states “No one shall be subjected to arbitrary arrest or detention.”

The current system of detaining asylum seekers in offshore and onshore centers clearly amounts to arbitrary detention, a finding confirmed numerous times by domestic and international human rights bodies (See Annexure B). In order for the system not to constitute arbitrary detention it:

- Cannot be mandatory or automatic;
- Cannot be open-ended or indefinite;
- Must provide a robust and transparent individual assessment mechanism to determine whether the immigration detention of each person is necessary, reasonable or proportionate;
- Must provide for anyone deprived of their liberty to be able to challenge their detention in a court. To comply with Article 9(4) of the ICCPR, that court must have the power to order the person’s release if their detention is found to be arbitrary and in breach of article 9(1) of the ICCPR.

### **3. Does not treat people in a cruel, inhumane or degrading manner**

All people have a fundamental right to humane treatment in detention (Article 10, International Covenant on Civil and Political Rights) and a right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment (Article 7, International Covenant on Civil and Political Rights and Articles 1 and 16 of the UN Convention Against Torture). The current system of detention has been found to amount to a breach of the aforementioned articles.

In 2015, the UN Special Rapporteur on Torture stated that “by failing to provide adequate detention conditions; end the practice of detention of children; and put a stop to the escalating violence and tension at the Regional Processing Centre, has violated the right of the asylum seekers, including children, to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1 and 16 of the [Convention Against Torture].”<sup>4</sup>

For a system to prevent such violations, it must comply with the Australian Human Rights Commission’s, “*Human rights standards for immigration detention*,”<sup>5</sup> which sets out benchmarks for the humane treatment of people held in immigration detention. The benchmarks indicate minimum standards to ensure no person in immigration detention is exposed to violence or harassment, immediate basic health and education needs are met, including the provision of adequate food, water and

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<sup>4</sup> Juan E. Mendez, “Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” March 6, 2015.

<sup>5</sup> Australian Human Rights Commission, “Human Rights Standards for Immigration Detention” (Sydney, NSW: Australian Human Rights Commission, 2013), [https://www.humanrights.gov.au/sites/default/files/document/publication/HR\\_standards\\_immigration\\_detention%20%284%29.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/HR_standards_immigration_detention%20%284%29.pdf).



## ANNEXURE C – The Human Rights Floor

clothing, and immigration detainees are not be detained in accommodation that is prison-like. Additionally, detainees with special needs, including people with disabilities, victims of trauma and torture and the elderly must have their particular requirements met.

### **4. Allows for transparency and independent monitoring**

Independent monitoring, and the ability of detainees to make complaints to independent monitors, is essential for the prevention of torture and the protection of other human rights in detention. This is recognised in many international and regional human rights instruments and in Australian legislation. (See **Interpretive instruments:**OPCAT 4, 12, 14, 15, 19, 21; Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 'Guidelines on national preventive mechanisms', 9 December 2010; SMR 55; UNRPJDL 72-74; BOP 29; UNHCR Guidelines 10. **National law:** Ombudsman Act, s 5, 9, 14, 15; Migration Act part 8 C; Australian Human Rights Commission Act s 13.)

All immigration detention facilities should allow monitoring by independent bodies, including the Commonwealth Ombudsman, the Australian Human Rights Commission, the United Nations High Commissioner for Refugees and Australian Red Cross. The purpose of this monitoring includes ensuring that immigration detention facilities are administered in accordance with international obligations and with relevant statutory requirements. Detainees must be able to communicate freely and in full confidentiality with monitoring bodies and any other person of their choosing, including legal representatives and members of the media.