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To the Senate Legal and Constitutional Affairs Committee

Inquiry into the Conditions and Treatment of Asylum Seekers and Refugees at the Regional Processing Centres in the Republic of Nauru and Papua New Guinea

Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. It is concerned with the protection and promotion of civil liberties throughout Australia. As such, Liberty is actively involved in the development and revision of Australia's laws and systems of government. Further information on our activities may be found at www.libertyvictoria.org.au.

Liberty Victoria welcomes the opportunity to provide this additional submission to the Senate Legal and Constitutional Affairs Committee (**this inquiry**). Liberty Victoria has previously made a submission to the Legal and Constitutional Affairs Committee Inquiry into the Conditions and Treatment of Asylum Seekers and Refugees at the Regional Processing Centres in the Republic of Nauru and Papua New Guinea (**former Inquiry**). This submission updates the Committee on Liberty Victoria's position regarding the healthcare provided to asylum seekers in Regional Processing Centres (**RPCs**).

At the time of this inquiry a number of preventable deaths have occurred at RPC's at Nauru and Manus Island, as well as countless other claims made by asylum seekers for injuries sustained whilst being detained there.

Concerns regarding the provision of medical care have been known and documented for years. On 4 February 2013, the United Nations High Commissioner for Refugees (UNHCR) published a detailed report concluding that, as a whole, *"the facilities on Manus Island lack some of the basic conditions and standards required. In particular, the closed detention setting and the lack of freedom of movement, along with the absence of an appropriate legal framework and capacitated system to assess refugee claims, are particularly concerning."*¹

¹ UNHCR Mission to Manus Island, Papua New Guinea, 15-17 January 2013, accessed at: http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&ved=0ahUKEwitmeekzpXQAhVGHZQKHbxdBIsQFgg2MAU&url=http%3A%2F%2Funhcr.org.au%2Fwpcontent%2Fuploads%2F2015%2F05%2F15Jan2013_ManusMission.pdf&usq=AFQjCNEBmmv1yL6djlIIMeBtEcthrN-I9Sg&sig2=qTXww-sdcjMK4QmEB8GQJg

This damning conclusion was quoted in the Papua New Guinea's Supreme Court decision in April 2016, which concluded that Australia's detention of asylum seekers at Manus Island was illegal.²

Over several years Liberty Victoria has consistently raised concerns about the need for transparency and the well-being of asylum seekers detained at RPCs. It has also focused much of its work addressing the lack of accountability with regards to care provided to asylum seekers detained at RPCs.³

As highlighted in the 2013 UNHCR Report into Manus Island, there is an alarming lack of information regarding the reported poor provision of health-care at RPCs. This concern was echoed in a report by Young Liberty for Law Reform, 'Operation Sovereign Borders'⁴, which highlighted systemic issues stemming from a lack of accountability and a regime of secrecy surrounding the RPC's. In particular, it was noted that the clamp down on medical professionals, with the threat of hefty penalties if they chose to speak about what they saw, had a direct impact on the risk to the health and safety of those in RPCs.

The statements which are publicly available from medical professionals employed at RPCs are most concerning. A recent open letter⁵ written by Julian Burnside QC, and published in the Huffington Post in April 2016, quoted verbatim a statement provided by a medical doctor formerly employed at the Manus Island RPC.

On the whole, the conditions of detention at the Manus Island OPC are extremely poor. When I first arrived at the Manus Island OPC I was considerably distressed at what I saw, and I recall thinking that this must be similar to a concentration camp.

The detainees at the Manus Island OPC are detained behind razor wire fences, in conditions below the standard of Australian maximum-security prison.

My professional opinion is that the minimum medical requirements of the detained population were not being met. I have no reason to believe that the conditions of detention have improved since I ceased employment at the Manus Island OPC.

The conditions of detention at the Manus Island OPC appeared to be calculated to break the spirit of those detained in the Manus Island OPC. On a number of occasions the extreme conditions of detention resulted in detainees abandoning their claims for asylum and returning to their country of origin.

At the Manus Island OPC, bathroom facilities are rarely cleaned. There was a lot of mould, poor ventilation, and the structural integrity of the facilities is concerning.

Formal requests for medical attention are available to the detainees. The forms are only available in English. Many of the detainees do not have a workable understanding of English and the guards will not provide assistance.

²SCA no.84/2013 [68-[69].

³See 'Statement on Report of Expert Panel on Asylum Seekers and Government Response', 13 August 2012 (<https://libertyvictoria.org.au/node/408>); 'Serious concerns about the PNG solution', 24 July 2013 (<https://libertyvictoria.org.au/node/520>); 'Time to end the cruelty at Manus Island', 18 February 2014 (<https://libertyvictoria.org.au/node/405>). The Secrecy surrounding Australia's Border Security has gone too Far (<http://www.smh.com.au/comment/what-we-dont-know-is-hurting-us-20160728-gganu.html>) Human Rights Group backs Doctor's on Whistle Blowing' 27 July 2016 (<https://libertyvictoria.org.au/content/human-rights-group-backs-doctors-whistleblowing>); Detention Staff Say Careers and Lives Damaged by Speaking Out (<https://www.theguardian.com/australia-news/2016/apr/27/detention-centre-staff-say-careers-and-lives-were-damaged-by-speaking-out>); Open Letter Calling for End to Offshore Immigration Detention (<https://libertyvictoria.org.au/content/open-letter-calling-end-offshore-immigration-detention>) In addition, Liberty Victoria was a signatory to the 24 April 2015 Joint Statement with the Refugee Council calling for a Moratorium on offshore transfers (<http://www.refugeecouncil.org.au/media/refugee-council-calls-for-immediate-moratorium-of-offshore-transfers/>) (<https://libertyvictoria.org.au/node/520>);

⁴'Operation Secret Borders', a Report by Young Liberty for Law Reform (YLLR): <https://libertyvictoria.org.au/content/yllr-report-operation-secret-borders>

⁵<http://www.huffingtonpost.com.au/julian-burnside/he-only-thing-illegal-about-asylum-seekers-is-the-way-austral/>

The medical request forms are collected in a box throughout the week, and then on the weekend the box (together with its contents) is disposed of in a waste bin without having been reviewed. I witnessed this on a number of occasions, and understood it to be common practice.

I often expressed my concern about the lack of medical treatment provided to the detainees. Never were my concerns addressed.

We attach the Operation Sovereign Borders Report for the Committee's reference. The report details the accounts of 'whistleblowers' who courageously provided valuable insight into the RPC's operations, as well as a detailed account of the legal barriers they faced under the *Border Force Act* (Cth).

Regrettably, this is not the first Inquiry that has examined the provision and adequacy of medical care at RPCs. The Final Report produced following the 2015 Inquiry into the Regional Processing Centre of Nauru (**the Moss Report**)⁶ noted:

- it had received '*evidence which indicated where medical care is required, it is often slow to be provided, and could involve asylum seekers queuing for long periods*'; and
- that the mental health of asylum seekers was specifically linked to the '*effect of difficult living conditions, poor resourcing, uncertainty about their future, and a lack of personal safety and security*'; and
- that evidence in relation to serious medical issues such as immunization, screening, and general medical services had been accepted by the committee only '*on a confidential basis*'.⁷

Liberty Victoria's April 2016 submission to the former inquiry lamented that the Moss Report had been, at that stage, 8 months without any recommendations being implemented, including recommendations regarding the safety of asylum seekers, responding to abuse, access to medical care and provision of services. It has now been close to 15 months that have elapsed since the Moss Report was handed down.

Despite the lack of transparency and independent evaluation of the RPC's permitted by the Australian government, the evidence summarized above clearly indicates that medical care provided to asylum seekers is troubling and RPC's are managed with a poor level of medical oversight, services and delivery which have, on many accounts, resulted in serious injuries and deaths.

In addition, Liberty Victoria notes there are currently several proceedings on foot, both in Australia and internationally, which would be relevant to the committee's inquiry. The forthcoming High Court challenge to the Nauruan constitutional validity of detention in Nauru (*DWN042 v Republic of Nauru*) makes timing of this inquiry all the more important.

The terms of reference for this inquiry are important, but swift government action is now required in order to prevent further harm from occurring at Australian controlled RPCs.

Should you wish to discuss any aspect of this submission further please contact Gillian Garner through the Liberty Victoria office on 9670 6422 or info@libertyvictoria.org.au. This is a public submission and is not confidential.

Yours sincerely



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President
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⁶http://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report

⁷ Chapter 3, p 82-84