

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION
MAJOR TORTS LIST

S CI 2014 06770

BETWEEN:

MAJID KAMARI KAMASAE

Plaintiff

and

THE COMMONWEALTH OF AUSTRALIA and others
(in accordance with the schedule attached)

Defendants

and between:

TRANSFIELD SERVICES (AUSTRALIA) PTY LTD (ABN 11 093 114 553)

Plaintiff by Counter-Claim

and

COMMONWEALTH OF AUSTRALIA and others
(in accordance with the schedule attached)

Defendants by Counter-Claim

SECOND AMENDED DEFENCE AND COUNTERCLAIM
(filed pursuant to orders made by McDonald J on ~~12 September 2016~~ 17 March 2017)

Date of document: 31 March 2017 ~~24 September 2016~~

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To the Plaintiff's Third Amended Statement of Claim -the Third Defendant (**Transfield Services**)
says –

Part A - Parties

1. To paragraph 1 –

- (a) it admits the allegations in sub-paragraph (a);
- (b) it does not admit the allegations in sub-paragraph (b);

- (c) it does not admit the allegations in sub-paragraph (c);
- (d) it does not admit the allegations in sub-paragraph (d);
- (e) it admits that the plaintiff was transferred by the Commonwealth to the Independent State of Papua New Guinea (**PNG**) on or about 4 September 2013, and otherwise denies the allegations in sub-paragraph (e);
- (f) it does not admit the allegations in sub-paragraph (f);
- (g) it admits the allegations in sub-paragraph (g);
- (h) it admits the allegations in sub-paragraph (h).

2. It admits the allegations in paragraph 2.

3. It does not plead to paragraph 3, in which no allegations are made against it.

4. To paragraph 4 –

- (a) it admits the allegations in sub-paragraph (a);
- (b) it admits that it carried on business, relevantly, providing welfare, garrison and accommodation services to the Commonwealth in respect of sites located in regional processing countries designated by the Commonwealth;
- (c) it denies that it provided services to the Commonwealth at immigration detention facilities;
- (d) otherwise, it does not admit the allegations therein.

5. It does not admit the allegations in paragraph 5, insofar as those allegations are made against it.

5A. It does not admit the allegations in paragraph 5A, insofar as those allegations are made against it.

6. It does not admit the allegations in paragraph 6, insofar as those allegations are made against it.

Part B – Manus Island Regional Processing Centre

7. It admits the allegations in paragraph 7.

8. To paragraph 8 –

- (a) it admits the allegations in sub-paragraphs (a), (b) and (d);

- (b) it does not admit the allegations in sub-paragraph (c).

9. As to paragraph 9 –

- (a) it admits the allegations in sub-paragraphs (a) and (b);
- (b) it does not admit the allegations in sub-paragraph (c).

9A. It admits the allegations in paragraph 9A.

10. To paragraph 10 –

- (a) it admits the allegations in sub-paragraph (a);
- (b) it admits the allegations in sub-paragraph (b);
- (c) to sub-paragraph (c) –
 - (i) it admits that the Centre has or is intended to have a secure perimeter;
 - (ii) it says that egress from the Centre by persons who were required to reside there pursuant to the directions to reside made by PNG as alleged at paragraphs 23B, 24, 24A, 25 and 29, and ingress into the centre by other persons, was permitted and controlled by PNG, acting through the Centre Administrator, in accordance with the 2012 and 2013 MOU's and the 2012 and 2014 Administrative Arrangements (as alleged or admitted at paragraphs 13, 14(g), 15A, 16, 18, 22, 26 27 and 29 below);
 - (iii) it admits that pursuant to the Transfield Contract it was contracted to provided services to the Commonwealth which relevantly included ensuring that the security of the perimeter was maintained at all times in accordance with departmental policies and procedures as notified from time to time by the Commonwealth (Transfield Contract, 4.18), which services it subcontracted to Wilson, as alleged in paragraph 132 below;
 - (iv) it says that the provision of security services pursuant to the Transfield Contract took place in circumstances where the persons who were required to reside at the Centre were already the subject of restrictions on their liberty by reason of decisions made by officials of the government of PNG (being the directions to reside made by PNG as alleged at paragraphs 23B, 24, 24A, 25 and 29 below, and decisions made from time to time by the Administrator as alleged in paragraph 18);
 - (v) otherwise, it does not admit the allegations therein;

- (d) to sub-paragraph (d) – insofar as the allegations concern Transfield Services -
 - (i) it says that access to and egress from the Centre and between compounds within the Centre was determined and facilitated in accordance with the 2012 MOU and 2012 Administrative Arrangements and the 2013 MOU and 2014 Administrative Arrangements (as alleged and admitted herein);
 - (ii) it admits that Wilson, pursuant to the Wilson Subcontract (described at paragraph 132 below), maintained a physical presence at access points to the Centre and at access points to compounds within the Centre;
 - (iii) it otherwise does not admit the allegations therein.
- 11. It admits the allegations in paragraph 11.
- 12. To paragraph 12 –
 - (a) it refers to and relies upon the Convention for its full terms and effect;
 - (b) it denies that the Convention imposes obligations on the Commonwealth with respect to refugees who are within the territory of PNG;
 - (c) it says further that the Convention does not give rise to private rights enforceable under the domestic law of Australia or PNG;
 - (d) it otherwise denies the allegations therein.
- 13. It admits the allegations in paragraph 13.
- 14. To paragraph 14 –
 - (a) it refers to and relies upon the 2012 MOU for its full terms and effect;
 - (b) it says that clause 6 of the 2012 MOU provided that the Government of PNG will conduct all activities in respect of the MOU in accordance with its constitution and all relevant domestic laws;
 - (c) it says further that clause 21 of the 2012 MOU provided that the Government of PNG and the Government of Australia would establish a joint committee with responsibility for the oversight of practical arrangements required to implement the MOU including issues relating to the duration of stay of persons transferred to PNG under the MOU (**Transferees**), which committee would meet no less than once monthly and would co-chaired by mutually agreed representatives of the

Australian High Commission Port Moresby and the PNG Immigration and Citizenship Service (**PNG ICSA**);

- (d) it otherwise admits the allegations therein.
- 15. It admits the allegations in paragraph 15.
- 15A. It does not admit the allegations in paragraph 15A.
- 16. It admits the allegations in paragraph 16 and says that it will rely at trial on the 2012 Administrative Arrangements and the 2014 Administrative Arrangements for their full terms and effect.
- 17. To paragraph 17 -
 - (a) it does not admit the allegations in sub-paragraph (a) and says that clause 3.1 of the 2012 Administrative Arrangements and clause 5.1.1 of the 2014 Administrative Arrangements provided that the Centre will be established by Australia and managed by the Administrator supported by contracted service providers and that management of the contracts will be the responsibility of the government of Australia;
 - (b) it admits the allegations in sub-paragraphs (b), (c) and (d);
 - (c) it says that the term alleged at sub-paragraph (e) appeared at clause 5.1.7 of the 2012 Administrative Arrangements (and not at clause 5.1.17) but otherwise admits sub-paragraph (e);
 - (d) it says that the term alleged at sub-paragraph (f) appeared at clause 5.1.8 of the 2014 Administrative Arrangements (and not at clause 5.1.18) but otherwise admits sub-paragraph (f);
 - (e) it relies upon the 2012 Administrative Arrangements and the 2014 Administrative Arrangements for their full terms and effect.
- 18. To paragraph 18 -
 - (a) it admits the allegations in sub-paragraphs (a), (b) and (c);
 - (b) it says that the term alleged at sub-paragraph (d) appeared at clause 3.19 of the 2012 Administrative Arrangements (and not at clause 3.18) but otherwise admits sub-paragraph (d);

- (c) it says that the 2012 Administrative Arrangements provided (at page 2) that the Operational Manager was a PNG ICSA manager delegated by the Administrator to control the Centre under section 15D of the *Migration Act 1978* of PNG (***PNG Migration Act***);
 - (d) it relies upon the 2012 Administrative Arrangements and the 2014 Administrative Arrangements for their full terms and effect.
- 19. It admits the allegations in paragraph 19, and it refers to and relies upon the 2012 Administrative Arrangements for their full terms and effect.
- 19A. It admits the allegations in paragraph 19A.
- 20. It admits the allegations in paragraph 20.
- 21. It admits the allegations in paragraph 21, and it refers to and relies upon the 2012 Administrative Arrangements and the 2014 Administrative Arrangements for their full terms and effect.
- 22. As to paragraph 22 -
 - (a) it admits the allegations therein;
 - (b) it refers to and relies upon the 2012 Administrative Arrangements and the 2014 Administrative Arrangements for their full terms and effect;
 - (c) it says further that there were further terms of the 2012 Administrative Arrangements as follows:
 - (i) the Government of Australia will request clearance from the Government of PNG for the proposed transfer of nominated Transferees; the Government of PNG will provide clearance of the transfer to the Government of Australia and both governments will facilitate the transfer of Transferees as soon as is practicable (clauses 2.6-2.12);
 - (ii) on arrival Transferees will disembark the aircraft or vessel in which they arrived and will be received by PNG officials (customs, quarantine, immigration) and security personnel from the Centre. Centre staff will be present to facilitate hand-over, supported by those who accompanied the Transferees. Transferees will be encouraged to disembark from the aircraft or vessel voluntarily and if any Transferee does not disembark voluntarily, the Transferee will be escorted by PNG officials to complete

disembarkation. In such situations, lawful use of force may be employed as is necessary and reasonable (clause 2.13);

- (iii) PNG officials will conduct relevant immigration, customs and quarantine clearance processes under PNG law. Transferees will be escorted to transport by PNG officials if appropriate under PNG law and taken to the Centre – accompanied by Centre staff and Centre security personnel (clauses 2.16 and 2.1);
- (iv) the PNG Minister for Foreign Affairs and Immigration (the **PNG Minister**) may declare the Centre to be a Relocation Centre pursuant to s.15B of the *PNG Migration Act* (clause 1.2);
- (v) the Centre and Centre staff are in the jurisdiction of PNG and will be subject to the laws of PNG (clause 1.1);
- (vi) the PNG Minister will direct Transferees to reside in the Centre in accordance with s.15C(1) of the *PNG Migration Act* (clause 1.3);
- (vii) the PNG Minister will, under s.20 of the *PNG Migration Act*, exempt Transferees from section 3 (prohibition of entry without entry permit) and section 7 (unlawful presence in country), of that Act (clause 1.4);
- (viii) the government of PNG will allow the Transferees to remain at the Centre while their claims to international protection are being assessed and, if they are determined to be in need of international protection, while they are waiting for the provision of a durable solution (clause 3.3);
- (ix) the government of PNG will move Transferees assessed not to be in need of international protection and having exhausted all avenues of review, to a transit facility in Port Moresby pending return to their country of origin or to a third country to which they have a right of entry and stay (clause 3.4);
- (x) the Centre will be established by Australia and managed by the Administrator, supported by contracted service providers. Management of the contracts will be the responsibility of the government of Australia. Service providers will ensure access to health, education, counselling, interpreters and other relevant services, noting that the Government of Australia will provide facilities for these services (clauses 3.1 and 3.2);

- (xi) the Administrator will be consulted prior to the awarding of contracts to service providers, which consultation will include consideration of local companies in Manus Province that may be able to contract or sub-contract to provide services to the Centre, and the appointment of contractors will include criteria for use of local sub-contractors and employers (clause 3.2).
- (d) it says further that there were further terms of the 2014 Administrative Arrangements as follows –
- (i) persons to be transferred to PNG are those persons who have travelled irregularly by sea to Australia or have been intercepted by Australian authorities or rescued in the course of trying to reach Australia by irregular means, and are authorised by Australian law to be transferred to PNG (cl 4.1);
 - (ii) the Government of Australia will request clearance from the Government of PNG for the proposed transfers (cl 4.2.8);
 - (iii) the PNG Minister may declare a place to be a Relocation Centre pursuant to s.15B of the *PNG Migration Act* (clause 2.2);
 - (iv) Transferees residing at the Centre and Centre Staff will be subject to the laws of PNG (cl 2.1);
 - (v) the PNG Minister for Foreign Affairs and Immigration will direct a Transferee to reside in a Centre in accordance with Section 15C(1) of the *PNG Migration Act* (cl 2.3);
 - (vi) the PNG Minister will, under s.20 of the *PNG Migration Act*, exempt a Transferee from section 3 (prohibition of entry without entry permit) and section 7 (unlawful presence in country), of that Act (cl 2.4);
 - (vii) on arrival Transferees will disembark the aircraft or vessel in which they arrived and will be received by PNG officials (customs, quarantine, immigration) and Centre security. Centre staff will be present to facilitate hand-over. Transferees will be encouraged to disembark from the aircraft or vessel voluntarily and if any Transferee does not voluntarily disembark, the Transferee will be escorted by PNG officials to complete disembarkation. In such situations, lawful use of force may be employed as is necessary and reasonable (cl 4.4.1);

- (viii) PNG officials will conduct relevant immigration, customs and quarantine clearance processes under PNG law. Transferees will be escorted to transport by PNG officials if appropriate under PNG law and taken to the Centre – accompanied by Centre staff and Centre security personnel (ccl 4.4.4 and 4.4.6);
- (ix) the Centre will be managed by an Administrator (an officer appointed under Section 15D of the *PNG Migration Act* to manage and control the Centre), supported by contracted Service Providers. Management of relevant contracts will be the responsibility of the Government of Australia. Service providers will ensure a Transferee has access to health (including mental health), education, interpreters and other relevant services. The Government of Australia will enable the provision of these services (cl 5.1.1 and 5.1.2);
- (x) the Administrator will delegate the day to day management of the Centre to an Operational Manager (a PNG Officer) (cl 5.3.2);
- (xi) the Government of Australia will appoint a Programme Co-ordinator, who will be responsible, in close liaison with the Operational Manager, for managing all Australian Officers and services contracts in relation to the Centre (cl 5.3.3);
- (xii) the Government of PNG will allow a Transferee to remain at the Centre while their claim to international protection is being assessed (cl 5.2.1);
- (xiii) the Government of PNG will accommodate a Transferee found not to be in need of international protection and who has exhausted all avenues for review, in a transit detention facility pending return to their country of origin or to a third country in respect to which they have a right to enter and reside (cl 5.2.3);
- (xiv) the Administrator may approve a Transferee, who has skills useful to the local community, to leave a Centre to undertake volunteering activities during the day (cl 5.4.4);
- (xv) a Service Provider will be appointed to provide adequate security to ensure the safety of those residing in the Centre and the safety of the Centre (cl 5.4.6);

(xvi) refugee determination will be made by PNG under PNG law (cl 6.1).

23. To paragraph 23 –

- (a) it does not admit the allegations in paragraph 23, and it refers to and relies upon the 2012 Administrative Arrangements and the 2014 Administrative Arrangements for their full terms and effect;
- (b) it says further that the 2012 and 2014 Administrative Arrangements also provided that the Interim Joint Advisory Committee (subsequently referred to in the 2014 Administrative Arrangements as the Joint Committee for asylum seeker management under the Regional Resettlement Arrangement in PNG) was to oversee the implementation and operation of the Centre, including relevantly the welfare of Transferees, process outcomes including refugee status determinations, the voluntary and involuntary return of Transferees, infrastructure developments, maintenance and Centre management.

23A. It admits the allegations in paragraph 23A.

23B. It admits the allegations in paragraph 23B.

24. To paragraph 24 -

- (a) it says that on 2 September 2012 the PNG Minister –
 - (i) pursuant to s.15B of the *PNG Migration Act*, declared the Asylum Seeker Assessment Centre located at the PNG Naval base in Lombrum, Manus Province (the **Centre**) to be a relocation centre for the temporary residence of asylum seekers pending the determination of their refugee status under international law;
 - (ii) pursuant to s.15D of the *PNG Migration Act* appointed the PNG Chief Migration Officer as the Administrator of the Relocation Centre;
 - (iii) pursuant to s.20 of the *PNG Migration Act* exempted Transferees who travel to PNG under the terms of the 2012 MOU, from the requirements imposed by s.3 of that Act that no person other than a citizen of PNG shall enter PNG unless he holds an entry permit, and by s.7 of that Act that the presence of a person, other than a citizen, in PNG is unlawful if he does not hold an entry permit;

- (iv) pursuant to s.15C of the *PNG Migration Act* directed all persons seeking international refugee protection and who are permitted to enter and reside in PNG under the terms of the 2012 MOU, to temporarily reside at the Relocation Centre, for the purposes of the determination of their refugee status;
- (b) it says that on 27 November 2012 the PNG Minister –
 - (i) revoked –
 - (A) the declaration alleged in sub-paragraph 24(a)(i);
 - (B) the exemption alleged in paragraph 24(a)(iii);
 - (C) the direction alleged in paragraph 24(a)(iv);
 - (ii) pursuant to s.15B of the *PNG Migration Act*, declared the Relocation Centre to be a relocation centre for the temporary residence of asylum seekers pending the determination of their refugee status claims;
 - (iii) pursuant to s.20 of the *PNG Migration Act* exempted Transferees who travel to PNG under the terms of the 2012 MOU, from the requirements imposed by s.3 of that Act that no person other than a citizen of PNG shall enter PNG unless he holds an entry permit, and by s.7 of that Act that the presence of a person, other than a citizen, in PNG is unlawful if he does not hold an entry permit;
 - (iv) pursuant to s.15C of the *PNG Migration Act* directed all persons seeking international refugee protection and who are permitted to enter and reside in PNG under the terms of the 2012 MOU, to temporarily reside at the Relocation Centre, for the purposes of the determination of their refugee status;
- (c) otherwise, it admits the allegations therein.

24A. To paragraph 24A -

- (a) it admits the allegations therein;
- (b) it says further that, on the same day, the PNG Minister -
 - (i) pursuant to s.15B of the *PNG Migration Act*, declared several sites, including the Centre, to be a relocation centre for the temporary residence of asylum seekers pending the determination of their refugee status claims;

- (ii) pursuant to s.15D of the *PNG Migration Act* appointed the PNG Chief Migration Officer as the Administrator of the Centre;
 - (c) pursuant to s.15C of the *PNG Migration Act* directed all persons seeking international refugee protection and who are permitted to enter and reside in PNG under the terms of the 2013 MOU, to temporarily reside at the Centre, for the purposes of the determination of their refugee status.
- 25. It admits the allegations in paragraph 25 in respect of all material times prior to late April 2016 (or, in the case of Transferees who had received negative refugee determinations, 5 May 2016).
- 26. To paragraph 26 -
 - (a) it admits the allegations therein;
 - (b) it says further that the 2013 MOU provided that –
 - (i) the Government of PNG will conduct all activities in respect of the MOU in accordance with its Constitution (clause 5);
 - (ii) the Administrator of the Centre will be consulted prior to awarding a contract for service provision at the Centre and service provider contracts will maximise the use of PNG contractors, sub-contractors and employees (clause 5.1.5).
- 27. It admits the allegations in paragraph 27, and refers to and relies upon the 2013 MOU for its full terms and effect.

Commonwealth control of centre

- 28. To paragraph 28 –
 - (a) it admits that the capital costs and recurrent operational costs of the Centre were funded or mainly funded by the Commonwealth, pursuant to the 2012 MOU and 2012 Administrative Arrangements and, subsequently, the 2013 MOU and 2014 Administrative Arrangements;
 - (b) it admits that the placement, care and management of Transferees directed by PNG to reside at the Centre was funded by the Commonwealth pursuant to the 2012

MOU and 2012 Administrative Arrangements and, subsequently, the 2013 MOU and 2014 Administrative Arrangements;

- (c) it says that any restrictions on the movement of Transferees at the Centre were:
 - (i) determined pursuant to the 2012 MOU and the 2012 Administrative Arrangements and, subsequently, the 2013 MOU and the 2014 Administrative Arrangements (as alleged or admitted herein);
 - (ii) caused or substantially caused by decisions of the PNG Minister as alleged or admitted in paragraphs 23B, 24 and 24A above;
- (d) it otherwise does not admit the allegations therein.

29. To paragraph 29 –

- (a) it does not admit the allegations therein;
- (b) it says further that PNG is a sovereign State that has control over matters within its territory to the exclusion of any other State;
- (c) it says that at all relevant times-
 - (i) PNG had agreed to accept Transferees from Australia in accordance with the 2012 MOU and the 2013 MOU;
 - (ii) Transferees were taken to PNG by the Commonwealth pursuant to the duty imposed by s 198AD of the *Migration Act 1958* (Cth);
 - (iii) Transferees were permitted to enter and remain in PNG by reason of the exemptions granted to them by the PNG Minister under s 20 of the *PNG Migration Act*;
 - (iv) the PNG Minister had declared the Centre to be a relocation centre pursuant to s 15B of the *PNG Migration Act*;
 - (v) the PNG Minister had directed, pursuant to s 15C of the *PNG Migration Act*, that Transferees reside at the Centre while their claims for international protection were determined by the Government of PNG, under PNG law, as alleged in paragraphs 23B, 24, 24A and 25 above;
 - (vi) the Royal Papua New Guinea Constabulary was responsible for the enforcement of the laws of PNG in Manus Province, including at the

Centre, and including by enforcing any directions under s 15C(1) of the *PNG Migration Act*;

- (vii) for the duration of the claim period, a special unit of the Royal Papua New Guinea Constabulary (the **Mobile Squad**) was stationed in the vicinity of the Centre. The commanding officer of the Mobile Squad reported directly to his commanding officer in Port Moresby;
 - (viii) the PNG Chief Migration Officer had management and control of the Centre, having been appointed as the Administrator of the Centre by the PNG Minister acting pursuant to s.15D of the *PNG Migration Act*;
 - (ix) as contemplated by the 2012 and 2014 Administrative Arrangements, the PNG Chief Migration Officer delegated the day to day management of the Centre to the Operational Manager, who was an officer of the PNG Immigration and Citizenship Service;
 - (x) while they were and are residing at the Centre, restrictions on Transferees' movement in and out of the Centre were subject to the approval of the Operational Manager, in accordance with the 2012 and 2014 Administrative Arrangements;
 - (xi) management and control of the Centre was overseen by a Joint Committee and Joint Working Group comprised of representatives of the PNG Minister and the Commonwealth;
 - (xii) a Programme Co-ordinator appointed by the Commonwealth was responsible for managing contracted service providers at and in relation to the Centre, in close liaison with the Operational Manager;
 - (xiii) as a service provider, Transfield Services was required to comply with the directions of the Contract Administrator appointed by the Commonwealth pursuant to the Transfield Contract (provided only that those directions were consistent with the contract) (Transfield Contract, clause 4.3.1);
- (d) it says further that, by reason of the matters alleged in paragraphs (c) above, insofar as Transferees were –
- (i) required to reside at the Centre;
 - (ii) restricted from leaving the Centre;

(iii) detained;

they were so required, restricted and/or detained by the Government of PNG, or alternatively by the Commonwealth, and not by Transfield Services.

29A. To paragraph 29A, it does not plead in respect of the period prior to 24 March 2014 and, in respect of the period from 24 March 2014 to 12 May 2016 -

- (a) it admits the allegations in sub-paragraph (a);
- (b) to sub-paragraph (b)-
 - (i) it admits that the perimeter fence gates were locked save for the pedestrian access gate which is the main access gate to the Centre and which was not locked;
 - (ii) it says that in and after about late April 2016 (or, in the case of Transferees who had received negative refugee determinations, 5 May 2016), perimeter fence gates were opened whenever Transferees requested;
 - (iii) it admits that employees or contractors of Wilson maintained a physical presence at perimeter fence gates;
- (c) it admits the allegations in sub-paragraph (c);
- (d) to sub-paragraph (d) –
 - (i) it says that the compound fence gates were ordinarily unlocked;
 - (ii) it admits that employees or contractors of Wilson maintained a physical presence at compound fence gates;
 - (iii) it otherwise does not admit the allegations therein;
- (e) to sub-paragraph (e) –
 - (i) it admits the allegations therein;
 - (ii) it says that the Department and PNG ICSA determined the conditions on which intra-compound visits would be permitted, which conditions applied to all visits, and that those conditions were applied by Wilson and/or Transfield Services on a visit by visit basis;
- (ii) to sub-paragraph (f) –
 - (i) it admits that Transferees required permission to leave the Centre;

- (ii) it says that approval for excursions and transfers out of the Centre was required to be given by both the Department and PNG ICSA;
 - (iii) it says that scheduled excursions were pre-approved by the Department and PNG ICSA;
 - (f) it says further that any restrictions on the ability of Transferees to leave the Centre or move within it as admitted herein were determined in accordance with the 2012 MOU and 2012 Administrative Arrangements, and subsequently the 2013 MOU and 2014 Administrative Arrangements;
 - (g) it refers to and repeats the matters alleged at paragraphs 10 and 29.
- 29B. To paragraph 29B –
- (a) it does not plead in respect of the period prior to 24 March 2014;
 - (b) it admits the allegations in respect of the period from 24 March 2014 to in or about late April 2016;
 - (c) it says that in and after about late April 2016 all Transferees were permitted to leave the Centre of their own free will;
 - (d) it refers to and repeats the matters alleged at paragraphs 10 and 29.
- 29C. To paragraph 29C –
- (a) it refers to and repeats the matters alleged at paragraphs 29, 29A, 29B, 185A and 185O; and
 - (b) otherwise, it does not admit the allegations therein.

Part C – Applicable law

30. As to paragraph 30:
- (a) it admits the allegations so far as they relate to acts and omissions alleged to have occurred during the Transfield Period;
 - (b) otherwise, it does not admit the allegations therein.
31. Insofar as they concern Transfield Services, it admits the allegations in paragraph 31.
- 31A. It does not admit the allegations in paragraph 31A.
32. To paragraph 32 -
- (a) it does not admit the allegations therein;

- (b) it says that, under the substantive law in PNG:
- (i) contractual obligations can inform the standard of care that is owed in negligence (including, but not limited to, by reason of s 53(2) of the *Wrongs (Miscellaneous Provisions) Act 1975* (PNG) (**PNG Wrongs Act**));
 - (ii) the content of any duty of care under PNG law, including with respect to the living conditions of Transferees, would be determined in part by the conditions under which locals live within PNG;
 - (iii) a tortfeasor may recover contribution from any other tortfeasor, whether as a joint tortfeasor or otherwise (by reason of s 37 of the *PNG Wrongs Act*);
 - (iv) the amount of contribution recoverable from a tortfeasor or third party is such as is found by the Court to be just and equitable having regard to the extent of his or her responsibility for the damage (by reason of s.37(2) of the *PNG Wrongs Act*);
 - (v) if more than one action is brought in respect of the same damage against tortfeasors liable in respect of that damage, the sums recoverable under the judgments given in the actions shall not in the aggregate exceed the amount of damages awarded by the first judgment given (by reason of s.37(2) of the *PNG Wrongs Act*).

Parts D to H – G4S Period

33. It does not plead to paragraphs 33 to 124 in which no allegations are made against it.

[There are no paragraphs 34 to 124]

Part I – Transfield Period – Contract Arrangements

125. To paragraph 125 –

- (a) it admits the allegations therein;
- (b) it refers to and relies upon the Transfield Contract for its full terms and effect;
- (c) it says further that the Transfield Contract was varied –
 - (i) by Deed of Variation No.1 effective in or about 21 April 2015;
 - (ii) by a Deed of Variation No. 2 effective in or about 28 October 2015;
 - (iii) by a Deed of Variation No. 3 effective in or about 1 March 2016;

and relies on the Deeds of Variation for their full terms and effect.

126. It admits the allegations in paragraph 126, refers to and relies upon the Transfield Contract for its full terms and effect, and says further that there were terms of the Transfield Contract that or to the effect that –:

- (a) the Department has a requirement for the provision of welfare and garrison services at offshore processing countries and has a key role in developing and implementing an appropriate and sustainable offshore processing model which will support government policy that all people arriving in Australia by boat will be transferred to an offshore processing country and which will include the provision of appropriate accommodation and services (schedule 1 part 1, clause 1.1.1);
- (b) Transfield Services must perform the services under the Transfield Contract in a manner that is adaptable to and readily accommodates changes in Commonwealth policy during the term of the Transfield Contract to ensure that the services are delivered in accordance with Commonwealth policy (clause 1.1.11);
- (c) the Department will appoint a Contract Administrator, with whose directions Transfield Services must comply, provided that such directions are consistent with the Transfield Contract (clause 4.3.1);

- (d) the Department will provide security infrastructure at the Centre, which infrastructure may include perimeter fencing, lighting towers and an entry gate (schedule 1, part 3, clause 4.1.3);
- (e) Transfield Services must –
 - (i) deliver structured security services at the Centre (schedule 1, part 3, clause 4.1.2);
 - (ii) take reasonable steps to ensure that Transferees and personnel behave at all times in accordance with relevant provisions of the visa granted to them by PNG (schedule 1, part 3, clause 4.2.1);
 - (iii) provide trained personnel to deliver security services 24 hours a day and 7 days a week at the Centre (schedule 1, part 3, clause 4.4.1), which services were specified in schedule 1 part 3, clause 4 of the Transfield Contract);
- (f) the parameters within which offshore processing will operate include Australian and host country legislation, ministerial directions, joint agency task force arrangements, regional re-settlement arrangement Memoranda of Understanding and regional re-settlement Administrative Arrangements (schedule 1 part 1, clause 1.1.5);
- (g) Transfield Services must not permit any act or omission that causes or may cause the Commonwealth to be in breach of its Memorandum of Understanding with PNG or related Administrative Arrangements (clause 2.3.1);
- (h) the requirements that Transfield Services perform the services specified by the Transfield Contract were expressly subject to the requirement that Transfield Services must comply with all applicable laws, which laws included the Constitution of PNG (clauses 3.1.2, 3.3.1; clause 1.1.1);
- (i) the parties will agree, develop and implement a performance management framework specifying key deliverables and performance measures, on which Transfield Services must periodically report to the Department and by reference to which the Department would assess the performance by Transfield Services of the Transfield Contract (clause 4.4; schedule 6);
- (j) Transfield Services must notify the Department from time to time of key personnel that have been retained in relation to the performance and management of Transfield Services' obligations under the Transfield Contract and must ensure that

each of the key personnel occupy the positions and provide the services advised to the Department, and the Department may in its absolute discretion, give notice requiring Transfield Services to remove any key personnel from work in respect of the services (clauses 5.1-5.3);

- (k) Transfield Services must not enter into a subcontract without the prior written approval of the Department (clause 6.1);
 - (l) Transfield Services is required to identify and provide training opportunities for local PNG people and businesses, must engage with the local community to employ local personnel or sub-contract local businesses who meet the requirements of the statement of works specified in the Transfield Contract, should engage a minimum percentage of local personnel in specified services lines (namely 45% local personnel in security, 75% in cleaning, 75% in gardening and 50% in catering) and, where local capacity exists, must utilise that capacity as far as possible (schedule 1 part 1, clauses 1.4.2 and 1.4.3);
 - (m) Transfield Services must, in collaboration with other service providers, develop offshore processing centre guidelines (OPC Guidelines) for review and approval by the Department and those Guidelines must not be implemented until the Department provides written approval for their implementation (schedule 1, part 1, clauses 1.5.1-1.5.4).
127. It admits the allegations in paragraph 127, and it refers to and relies upon the Transfield Contract for its full terms and effect.
128. To paragraph 128 -
- (a) it admits the allegations in sub-paragraphs (a), (b), (c) and (f);
 - (b) to sub-paragraph (d) –
 - (i) it admits the allegations in sub-paragraph (d)(i);
 - (ii) it says at that clause 2.1.1(b) provided that it was to establish processes to prevent Transferees being subject to illegal and anti-social behaviour and, where such behaviour becomes apparent, to deal with the issues co-operatively with local authorities, the Department and other service providers;
 - (c) to sub-paragraph (e) –

- (i) it admits the allegations therein;
- (ii) it says that it was also required, where it appears that a Transferee requires emergency medical attention, to inform the service provider responsible for health services (that is, International Health and Medical Services Pty Ltd (IHMS)) and the Department, of the Transferee's condition as soon as the initial response was complete (clause 2.9.2(c),(d));
- (iii) it refers to and repeats the matters alleged at paragraph 170; and
- (d) it refers to and relies upon the Transfield Contract for its full terms and effect.

129. To paragraph 129 –

- (a) it admits that clause 4.1.1 of part 3 of schedule 1 provided as alleged at sub-paragraph (a) until it was varied, by Deed of Variation No.2 (Attachment A clause (e)), to provide that, to the extent reasonably possible having regard to the ability of refugees at the sites on Manus Island to come and go from the Site freely at any time, the sites are intended to provide a safe and secure environment for residents and personnel, ensuring that each individual's human rights, dignity and well-being are preserved;
- (b) it admits that clause 4.2.1(a) of part 3 of schedule 1 provided as alleged at sub-paragraph (aa) until it was deleted by Deed of Variation No.2 (Attachment A clause (f));
- (c) it admits that clause 4.14.1 of part 3 of schedule 1 provided, as alleged at sub-paragraph (b)(vii), that Transfield Services was required, in conjunction with other service providers, to verify that all Transferees were present and safe at the Centre at least twice each day, at times which take account of any curfew arrangements, until it was deleted by Deed of Variation No.2 (Attachment A clause (i));
- (d) it admits that clause 4.18.1 of part 3 of schedule 1 provided as alleged at sub-paragraph (b)(ix) until it was amended by Deed of Variation No.2 (Attachment A clause (j)) to provide that, having regard to the ability of refugees at the sites on Manus Island to come and go from any site freely at any time, the service provider must use reasonable endeavours to ensure that the security of the perimeter of the site is maintained at all times in accordance with departmental policies and procedures as notified from time to time by the Department;
- (e) it admits the allegations in sub-paragraph (b)(i),(ii),(iii), (iv), (v), (vi), (viii) and (x);

- (f) it admits the allegations in sub-paragraphs (c) and (d);
 - (g) it refers to and relies upon the Transfield Contract for its full terms and effect.
130. To paragraph 130 –
- (a) it admits that at all material times since on or about 24 March 2014 it has provided the services specified in Schedule 1 to the Transfield Contract, as varied from time to time, as alleged herein;
 - (b) otherwise, it does not admit the allegations therein.
131. It admits the allegations in paragraph 131, and it refers to and relies upon the Transfield Contract for its full terms and effect.
132. To paragraph 132 –
- (a) it denies the allegations therein;
 - (b) it says that, on or about 28 March 2014, it entered into a contract entitled “Subcontract agreement in relation to the provision of services on Manus Island (Papua New Guinea)” with Wilson Protective Services PNG Ltd (**Wilson**), being a company incorporated under PNG law (**the Wilson Subcontract**);
 - (c) it says that the Wilson Subcontract provided that or to the effect that -
 - (i) the Department has a requirement for the provision of welfare and garrison services at offshore processing countries and has a key role in developing and implementing an appropriate and sustainable offshore processing model which will support government policy that all people arriving in Australia by boat will be transferred to an offshore processing country and which will include the provision of appropriate accommodation and services (annexure 8, part 1, clause 1.1.1);
 - (ii) the parameters within which offshore processing will operate include Australian and host country legislation, ministerial directions, joint agency task force arrangements, regional re-settlement arrangement Memoranda of Understanding and regional re-settlement Administrative Arrangements (annexure 8, part 1, clause 1.1.5);
 - (iii) Wilson must not permit any act or omission that causes or may cause the Commonwealth to be in breach of its Memorandum of Understanding with PNG or related Administrative Arrangements (annexure 7, clause 1.3.1);

- (iv) Wilson must comply with the law in performing its obligations under the sub-contract, which law included those applicable in PNG (clause 3.2(d); annexure 1);
 - (d) it relies on the Wilson Subcontract for its full terms and effect;
 - (e) it says that the Wilson Subcontract was varied by a deed of variation effective from 1 April 2016 which gave effect to a number of previous variations, on which deed and agreements it relies for their full terms and effect.
133. To paragraph 133 –
- (a) it says that Wilson commenced providing services under the Wilson Subcontract after 28 March 2014;
 - (b) it denies that Transfield Personnel provided security services at the Centre;
 - (c) it otherwise does not admit the allegations therein.
134. To paragraph 134 –
- (a) to sub-paragraph (a):
 - (i) it does not admit that it had the power to approve or not approve the training given to security staff, including training given by Wilson to the Wilson Personnel in relation to the work to be performed at the Centre;
 - (ii) if it had the power referred to in subparagraph (i), it denies that that power was exercised;
 - (b) it does not admit the allegations in sub-paragraphs (b) and (c).
135. To paragraph 135 –
- (a) to sub-paragraph (a) –
 - (i) it denies that it authorised or empowered Wilson to “effect legal relations” between Transfield Services and transferees;
 - (ii) it denies that it exercised any custodial or detention powers or that it authorised Wilson to do so;
 - (b) it denies the allegations in sub-paragraph (b).
136. It denies the allegations in paragraph 136.
137. To paragraph 137 –

- (a) it denies the allegations in sub-paragraph (a);
- (b) it refers to cl.17.7 of the Transfield Contract;
- (c) it does not plead to sub-paragraph (b), which makes no allegation against it.

Part J – Transfield Period – Duties and Standard of Care

Detention duty of care

138. To paragraph 138 –

- (a) to sub-paragraph (a) –
 - (i) it refers to and repeats the allegations at paragraph 29 above;
 - (ii) otherwise, it does not admit the allegations;
- (b) to sub-paragraph (b) –
 - (i) it admits that on or about 24 March 2014 it was engaged by the Commonwealth to provide the services specified in Schedule 1 to the Transfield Contract;
 - (ii) otherwise, it denies the allegations;
- (c) to sub-paragraph (c) –
 - (i) it denies that it “affected the Commonwealth’s legal relations with detainees”;
 - (ii) it denies that it exercised “custodial or detention powers”;
 - (iii) it says that by the Transfield Contract it was required to provide the services specified in the Transfield Contract, being services with respect to Transferees who were already subject to restrictions arising by reason of decisions made by officials of the government of PNG under PNG law as alleged in paragraph 29 above and paragraph 185O below;
 - (iv) otherwise, it denies the allegations;
- (d) to sub-paragraph (d) –
 - (i) it admits that in providing services in accordance with the Transfield Contract, at all relevant times –

- (A) it was required to comply with the directions of the Contract Administrator appointed by the Commonwealth, provided that those directions were consistent with the contract (Transfield Contract, 4.3);
- (B) it was managed by a Program Co-Ordinator appointed by the Commonwealth to be responsible for managing services contracts in relation to the Centre, in close liaison with the Operational Manager (as alleged in paragraphs 27(c)(vi));
- (ii) otherwise, it does not admit the allegations therein;
- (e) to sub-paragraph (e) –
 - (i) it repeats the matters alleged under sub-paragraph (d) hereof;
 - (ii) otherwise, and in the absence of particulars concerning the alleged exercises of power by the Commonwealth to direct Transfield Services as to the manner in which it provided services under the Contract, it does not admit the allegations therein.

139. To paragraph 139 –

- (a) to sub-paragraph (a) –
 - (i) it refers to and repeats the allegations at paragraph 29 above;
 - (ii) otherwise, it denies the allegations therein;
- (b) it refers to cl 17.7 of the Transfield Contract, and denies the allegations in sub-paragraph (b).

140. To paragraph 140 – insofar as the allegations concern Transfield Services –

- (a) it denies the allegations in sub-paragraph (a), and repeats the allegations in paragraph 29;
- (b) it denies the allegations in sub-paragraph (b);
- (c) to sub-paragraph (c) –
 - (i) it admits that it had practical control over the provision of food and water to Transferees at the Centre subject to the circumstances of the Centre as provided by clause 2.1 of the Transfield Contract;

- (ii) it denies the allegations in sub-paragraph (ii) and refers to and repeats the matters alleged at paragraph 166;
- (d) to sub-paragraph (d) –
 - (i) it admits that it had control, through Wilson, over physical security at the Centre to the extent alleged in paragraph 176 below, such control being limited by and subject to the following conditions and circumstances -
 - (A) pursuant to the Transfield Contract it was contracted to provide services to the Commonwealth which relevantly included ensuring that the security of the perimeter was maintained at all times in accordance with departmental policies and procedures as notified from time to time by the Commonwealth (Transfield Contract, 4.18), which services it sub-contracted to Wilson, as alleged in paragraph 132 above;
 - (B) the provision of security services pursuant to the Transfield Contract took place in circumstances where the persons who were required to reside at the Centre were already the subject of restrictions on their liberty by reason of decisions made by officials of the government of PNG under PNG law, or alternatively by the Commonwealth, as alleged in paragraph 29 above and paragraph 185O below;
 - (C) egress from the Centre by persons who were required to reside there pursuant to the directions to reside made by PNG as alleged at paragraph 29(c)(v) above, was permitted and controlled by PNG, acting through the Centre Administrator, in accordance with the 2012 and 2013 MOU's and the 2012 Administrative Arrangements and 2014 Administrative Arrangements;
 - (D) the Centre was managed and controlled by the PNG Chief Migration Officers who was the Centre Administrator, and by the Operational Manager, who was an officer of the PNG Immigration and Citizenship Service (as alleged at paragraph 29(c)(viii) above);
 - (E) as a service provider, Transfield Services was required to comply with the directions of the Contract Administrator appointed by the

Commonwealth, provided only that those directions were consistent with the Transfield Contract (as alleged at paragraph 29(c)(xiii) above);

(ii) it otherwise denies the allegations in subparagraph (d);

(e) it denies the allegations at sub-paragraph (e).

[140A-C] It does not plead to paragraphs 140A-C in which no allegations are made against it.

[140D] To paragraph 140D -

- (a) it refers and repeats the matters alleged at paragraph 140(d);
- (b) to sub-paragraphs (a) and (b)–
 - (i) it admits that Wilson, pursuant to the Wilson Subcontract, maintained a physical presence at access points to the Centre;
 - (ii) it says that access to and egress from the Centre was determined in accordance with the 2012 MOU and 2012 Administrative Arrangements, and subsequently the 2013 MOU and 2014 Administrative Arrangements;
 - (iii) it otherwise denies the allegations therein;
- (c) to sub-paragraph (c) –
 - (i) it admits that Wilson, pursuant to the Wilson Subcontract, escorted Transferees to and from compounds within the Centre;
 - (ii) it otherwise denies the allegations therein;
- (d) it denies sub-paragraph (d) and refers to and repeats the matters alleged at paragraph 166 below;
- (e) to sub-paragraph (e) -
 - (i) it says that approval for excursions and transfers out of the Centre was required to be given by both the Department and PNG ICSA;
 - (ii) it says that scheduled excursions were pre-approved by the Department and PNG ICSA and that the role of Transfield Services and Wilson, in consultation with other stakeholders, was limited to determining which Transferees could attend which excursions, and managing the logistical arrangements for excursions;

- (iii) it otherwise denies the allegations therein.

[140E] To paragraph 140E -

- (a) to sub-paragraph (a) –
 - (i) it denies the allegations therein;
 - (ii) it says further that when it commenced providing services pursuant to the Transfield Contract, Transferees resident at the Centre had already been allocated accommodation in one or other compound within the Centre and that from time to time the allocation of accommodation to particular Transferees was reviewed, in which case Transfield Services (usually, via Wilson) consulted with the Department, IHMS and PNG ICSA and following such consultation made recommendations to the Department with respect to the allocation of accommodation, which recommendations could be accepted or rejected by the Department;
- (b) to sub-paragraph (b) –
 - (i) it denies that it erected internal compound fencing;
 - (ii) it admits that it repaired and maintained internal compound fencing;
 - (iii) it otherwise does not admit the allegations therein;
- (c) to sub-paragraph (c) –
 - (i) it repeats the matters alleged and admitted at sub-paragraph 140D(c) above;
 - (ii) it otherwise denies the allegations therein.

[140F] To paragraph 140F -

- (a) it does not admit the allegations in sub-paragraph (a);
- (b) to sub-paragraph (b) –
 - (i) it admits that it determined the availability of food and water to Transferees, subject to the circumstances of the Centre as provided by clause 2.1 of the Transfield Contract;
 - (ii) it refers to and repeats the matters alleged at paragraph 140(d)(i)(D) and (E) above;
 - (iii) it otherwise does not admit the allegations;

- (c) it denies the allegations in sub-paragraph (c) and refers to and repeats the allegations in paragraph 166 below;
- (d) it denies the allegations in sub-paragraph (d) and refers to and repeats the allegations at paragraphs 170 and 172 below;
- (e) to sub-paragraph (e) –
 - (i) it denies the allegations therein;
 - (ii) it says further that pursuant to the 2012 MOU and 2012 Administrative Arrangements and the 2013 MOU and 2014 Administrative Arrangements (as alleged or admitted herein) –
 - (A) the Centre was managed and controlled by the Administrator who was appointed under s.15D of the *PNG Migration Act* (as alleged at paragraph 29(c)(viii) above);
 - (B) the day to day management and control of the Centre was delegated by the Administrator to the Operational Manager who was a PNG Immigration and Citizenship Authority Manager (as alleged at paragraph 29(c)(ix) above);
 - (C) an Australian Co-ordinator who was an officer of the Commonwealth was appointed by the Commonwealth to work with the Operational Manager to assist in the management and control of the Centre and was responsible for managing all Australian officials and service providers;
 - (D) as a service provider, Transfield Services was required to comply with the directions of the Contract Administrator appointed by the Commonwealth, provided only that those directions were consistent with the Transfield Contract (as alleged at paragraph 29(c)(xiii) above).

141. To paragraph 141 –

- (a) it does not plead to sub-paragraph (a) in which no allegation is made against it;
- (b) to sub-paragraph (b) –

- (i) it admits that it owed a duty to take reasonable care that the performance of its obligations under the Transfield Contract did not cause reasonably foreseeable injury to the plaintiff and/or group members;
- (ii) otherwise, it denies the allegations therein.

142. It does not plead to paragraph 142 in which no allegation is made against it.

Standard of care

143. It does not plead to paragraph 143 in which no allegation is made against it.

144. To paragraph 144 –

- (a) to sub-paragraph (a) -
 - (i) it denies that the Transfield Contract conferred powers upon it;
 - (ii) it denies that, in performing its obligations under the Transfield Contract, it exercised powers of any kind other than those available to any natural person;
 - (iii) alternatively, it denies that it exercised powers:
 - (A) in the nature of custodianship or detention powers; or
 - (B) that were conferred or authorised by the Commonwealth;
 - (iv) alternatively, if it did exercise powers conferred or authorised by the Commonwealth, it says that that was supported by s 198AHA(2) of the *Migration Act 1958* (Cth);
 - (v) it otherwise denies the allegations therein;
 - (vi) it refers to and repeats the allegations at paragraph 29;
- (b) it does not admit the allegations in sub-paragraph (b);
- (c) it does not admit the allegations in sub-paragraph (c);
- (d) to sub-paragraph (d) -
 - (i) it denies the allegations therein;
 - (ii) says that clause 2.1.1 of the Transfield Contract provided that the primary objectives of the contract were to (a) provide open, accountable and transparent services (identified in the statement of works to the contract) to Transferees and personnel; and (b) to provide services that are the best

available in the circumstances and utilising facilities and personnel at the sites, that as far as possible (but recognising any unavoidable limitations deriving from the circumstances of the sites) is broadly comparable with the services available in the Australian community;

- (iii) it relies on the Transfield Contract for its full terms and effect.

145. To paragraph 145 –

- (a) it says that that it was required to do no more than to exercise reasonable care in the provision of services under the Transfield Contract to avoid reasonably foreseeable injury to the plaintiff and/or group members;
- (b) it says that reasonable care is to be assessed by reference to the standards that would apply in the provision of equivalent services in PNG;
- (c) it denies that it was required to exercise the Australian Precautions.

Foreseeable, significant harms

146. To paragraph 146 – insofar as the allegations concern Transfield Services -

- (a) it admits that it knew or ought reasonably to have known that Transferees at the Centre had or were claiming or were likely to be claiming asylum;
- (b) it admits that it knew or ought reasonably to have known that Transferees at the Centre had or were likely to have had diverse religious and cultural beliefs, practices and customs;
- (c) it admits that it knew or ought reasonably to have been aware that some Transferees at the Centre may have suffered violence, trauma and torture;
- (d) it admits that it knew or ought reasonably to have been aware that some Transferees at the Centre may have travelled to Australia in circumstances of physical deprivation, danger or fear;
- (e) it admits that it knew or ought reasonably to have been aware that some Transferees at the Centre may have arrived in Australia with physical or psychological health conditions requiring medical treatment;
- (f) otherwise, it does not admit the allegations therein.

147. To paragraph 147 – insofar as the allegations concern Transfield Services –
- (a) it does not admit the allegations therein;
 - (b) it says that unless and until the Plaintiff defines the content of “Australian Precautions” it cannot plead further.
148. To paragraph 148 – insofar as the allegations concern Transfield Services –
- (a) it does not admit the allegations therein;
 - (b) it says that unless and until the Plaintiff defines the content of “Australian Precautions” it cannot plead further.
149. To paragraph 149 –
- (a) it admits that for the duration of the Transfield Period there was no Australian domestic legal or regulatory framework for undertaking a refugee status determination (**RSD**), within the meaning of the Convention or otherwise, at or in respect of any person at the Centre;
 - (b) it says further that the consideration by the PNG Minister, pursuant to s.15A of the *PNG Migration Act*, of whether to determine that a particular transferee is a refugee for the purposes of the *PNG Migration Act* and any legal or regulatory framework directed at such consideration, was at all relevant times within the control of the sovereign state of PNG;
 - (c) otherwise, it does not admit the allegations therein.
150. To paragraph 150 – insofar as the allegations concern Transfield Services -
- (a) it admits that throughout the Transfield Period it was aware of the length of time that each transferee had remained at the Centre;
 - (b) it otherwise does not admit the allegations therein.
151. To paragraph 151 – insofar as the allegations concern Transfield Services -
- (a) it admits that it knew that for some Transferees uncertainty concerning their futures may cause stress and anxiety;
 - (b) otherwise, it does not admit the allegations therein.

152. To paragraph 152 –

- (a) it admits the allegations at sub-paragraph (a);
- (b) it admits the allegations at sub-paragraph (b);
- (c) to sub-paragraph (c) –
 - (i) it admits the allegations therein;
 - (ii) it says that given those facts, Transfield Services used airfreight wherever possible to transport to Manus Island, materials and equipment required for construction and maintenance works and labour sourced from outside of PNG where necessary;
- (d) to sub-paragraph (d) –
 - (i) it says that the detection and removal of unexploded military ordnance, geotechnical surveys and remedial earthworks were not required in respect of parts of the Centre on which construction projects were proposed or undertaken by Transfield Services;
 - (ii) otherwise, it admits the allegations therein;
- (e) it admits the allegations at sub-paragraph (e);
- (f) it admits the allegations at sub-paragraph (f).

153. To paragraph 153 –

- (a) to sub-paragraph (a) –
 - (i) during the Transfield Period any delays in construction works for which Transfield Services was responsible were substantially attributable to the time taken to receive the approvals required for it to undertake those works (in accordance with the facilities maintenance program (FMP) described at paragraph 166(a)(iv) below);
 - (ii) otherwise it does not admit the allegations therein;
- (b) to sub-paragraph (b) –
 - (i) it admits that the recruitment process for some specialist personnel such as those involved in the delivery of cultural, religious and recreational programs, was lengthy;

- (ii) it admits that it took some months to achieve full staffing levels at the Centre;
 - (iii) otherwise, it does not admit the allegations therein.
- 154. To paragraph 154 – insofar as the allegations concern Transfield Services -
 - (a) it admits that it knew of the matters alleged in paragraphs 152 and 153(b) above;
 - (b) otherwise, it does not admit the allegations therein.
- 155. It does not admit the allegations at paragraph 155.
- 156. To paragraph 156 – insofar as the allegations concern Transfield Services -
 - (a) it repeats the matters alleged at paragraph 145 above;
 - (b) otherwise, it denies the allegations.
- 157. To paragraph 157 –
 - (a) it repeats the matters alleged at paragraph 145 above;
 - (b) otherwise, it denies the allegations.

Part K – Transfield period - Negligence

- 158. To paragraph 158 –
 - (a) it denies the allegations at sub-paragraph (a);
 - (b) as to sub-paragraph (b):
 - (i) it refers to and repeats paragraph 29;
 - (ii) it otherwise does not admit the allegations therein.
- 159. To paragraph 159 –
 - (a) it admits that the residence direction alleged at sub-paragraph 24(a)(iv) herein remained in force at all times on and after 24 March 2014;
 - (b) it does not admit the allegations in sub-paragraph (b).
- 160. To paragraph 160 – insofar as the allegations concern Transfield Services -
 - (a) to sub-paragraph (a) –
 - (i) it does not admit the allegations therein;
 - (ii) it refers to and repeat the allegations at sub-paragraph 10(c);

- (b) to sub-paragraph (b), in respect of the Transfield Sub-group Claimants (**Claimants**) –
 - (i) it denies the allegations therein; and
 - (ii) it refers to and repeats paragraphs 10(c), 29 and 185O;
- (c) it otherwise does not admit the allegations.

161. To paragraph 161 –

- (a) it does not plead to sub-paragraph (a) in which no allegation is made against it;
- (b) to sub-paragraph (b) –
 - (i) it admits that it owed a duty to take reasonable care that the performance of its obligations under the Transfield Contract did not cause reasonably foreseeable injury to the plaintiff and/or group members;
 - (ii) otherwise, it denies the allegations therein.

Food and water

162. To paragraph 162, insofar as the allegations concern Transfield Services -

- (a) it denies that it failed to exercise reasonable care in respect of the provision, preparation and storage of food and water for consumption by transferees;
- (b) it says that unless and until the plaintiff defines the content of “Australian Precautions” it cannot plead further concerning the “Australian Precautions” and repeats sub-paragraph (a);
- (c) it says that it had in place at all relevant times systems and processes as follows –
 - (i) in respect of food quality, portions, handling and preparation –
 - (A) food was handled, prepared and stored in accordance with a documented quality management system reflecting hazard analysis and critical control point (HACCP) principles and practices which included procedures for –
 - (1) the provision of meals accommodating special medical needs and other dietary requirements;
 - (2) food receipt, inspection and storage;
 - (3) quality checks for fresh and dry foods;

- (4) food preparation and cooking;
 - (5) food safety analysis;
 - (6) kitchen maintenance and cleaning;
 - (7) foreign material in foods;
 - (8) pest control and prevention;
 - (9) personal hygiene for all catering personnel;
 - (10) preventative measure for avoiding food poisoning;
 - (11) complaints procedures;
- (B) it provided a 6 week cyclical menu which included both lean and spicy food;
 - (C) meal portions were at least 10% more than those specified by Australian dietary guidelines published by the National Health & Medical Research Council;
 - (D) all meat products were sourced from Australia and were Halal certified and pork was kept and served separately from other meat products;
 - (E) any foods considered to be high-risk were shipped from Australia in accordance with HACCP standards;
 - (F)
 - (G) a significant number of kitchen staff were employed including a head chef, chef, senior chef de partie, sous chef, kitchen hand, mess supervisor, servery team leader, servery staff, catering administrator, catering driver, catering stores team leader, catering stores person and catering trainer;
 - (H) all personnel responsible for managing catering held at least a Certificate III in Hospitality (Kitchen Operations) or equivalent and had acquired at least 3 years' experience in managing commercial kitchens and all other personnel engaged in the preparation of food or beverages held at least a Certificate II in Hospitality (Kitchen

Operations) or practical training in skills equivalent to those taught in a Certificate II;

- (I) all local catering staff were provided with practical training (as alleged at sub-paragraph (H) above) and were supervised by either an appropriately qualified Australian staff member who held at least a Certificate II qualification, or a PNG National with equivalent local qualifications;

(ii) in respect of drinking water –

- (A) water was delivered daily to each compound, food service areas and drinking points around accommodation areas in both 19L bottles and 600ml bottles;
- (B) some Transferees developed a practice of individually taking a large number of 600ml water bottles (some taking more than 20 bottles each at a time), which meant that the number of bottles available to other Transferees was reduced. In order to overcome that problem Transfield Services assigned catering or security staff to monitor water access points to ensure that access to bottled water was equitable;
- (C) security staff were require to monitor water access points so that supplies were replenished when needed;

(d) otherwise, it does not admit the allegations therein.

163. To paragraph 163 –

- (a) it denies the allegations in sub-paragraph (a);
- (b) to sub-paragraph (b) –
 - (i) it denies the allegations in sub-paragraph (b);
 - (ii) it says that occasionally it was not possible for forklifts delivering 19L bottles of water to access the Centre, with the result that on occasion water was available only in 600ml bottles;
 - (iii) it says that any delays in the provision of water to Transferees were occasional only and of very limited duration ;
- (c) to sub-paragraph (c) –

- (i) it denies the allegations;
 - (ii) it says that at meal times 2 pieces of fruit were available to each transferee and at other times fruit and sugar were available to Transferees on request;
 - (iii) it otherwise repeats the matters alleged at paragraph 162(c).
- (d) to sub-paragraph (d) –
- (i) it does not admit that some compounds were not given bottled water;
 - (ii) it says that if, which is not admitted, some Transferees sometimes did not receive bottled water but instead had to use cups to carry water from water coolers, that such occurrences were not attributable to any failure by it to exercise reasonable care, in that it had and implemented reasonable systems to provide drinking water to Transferees;
- (e) to sub-paragraph (e) –
- (i) it does not admit that it served contaminated food to Transferees;
 - (ii) it says that if, which is not admitted, there were any occasions on which food served to Transferees contained contaminants, the presence of contaminants was not attributable to any failure by it to exercise reasonable care, in that it had and implemented reasonable systems to prevent contamination namely –
 - (A) storage and inspection of goods to prevent or minimise and detect infestation of pests and vermin;
 - (B) sifting of flour before use in cooking;
 - (C) training and supervising staff in food handling practices to avoid contamination;
 - (D) catering managers and head chefs regularly spot checking kitchens for compliance;
 - (E) covering of pots and other storage vessels while food was being prepared;
 - (F) inspection of food during the process of portioning meals into hot-boxes;
 - (G) discarding left over food at the end of every meal service;

- (H) regular pest and vermin treatment of facilities;
- (f) to sub-paragraph (f) –
 - (i) it does not admit that it provided food that was past its use-by date;
 - (ii) it says that any instance of the provision of goods bearing an expired use by date (which is not admitted) was not attributable to any failure by it to exercise reasonable care, in that it had and implemented a reasonable system for inspecting provisions on arrival and during storage which required it to observe the use by date on packaged produce and to rotate supplies for use accordingly.
- (g) it denies the allegations in sub-paragraph (g);
- (h) it denies the allegations in sub-paragraph (h).
- 164. It denies the allegations in paragraph 164 insofar as they concern it and does not plead to the allegations concerning the Commonwealth.
- 165. It denies the allegations in paragraph 165 insofar as they concern it and does not plead to the allegations concerning the Commonwealth.

Shelter and accommodation

- 166. To paragraph 166 – insofar as the allegations concern Transfield Services –
 - (a) it says that pursuant to the Transfield Contract –
 - (i) the Commonwealth, and not Transfield Services, was responsible for accepting and commissioning all infrastructure at and comprising the Centre (schedule 1, clause 2.4);
 - (ii) Transfield Services was responsible for the maintenance and management of assets and infrastructure (schedule 1, clause 2.4) but that within the meaning of the Transfield Contract (and subject to the matters alleged in sub-paragraphs (iii) to (viii) below) such maintenance and management did not include the provision, construction, replacement or refurbishment of infrastructure, specifically accommodation, ventilation, bathing and hygiene facilities, provision for personal space and privacy, shade or areas available for exercise;

- (iii) when directed by the Commonwealth, Transfield Services was required to develop a maintenance management plan for the Centre for approval by the Commonwealth (schedule 1, clause 2.4.5);
 - (iv) Transfield Services was required to provide to the Commonwealth a draft facilities maintenance program (the **FMP**) which relevantly itemised and costed, recommended maintenance and upgrades to the infrastructure at the Centre, and was permitted to submit updated FMP's to the Commonwealth during the term of the Contract (schedule 1, clause 12.1);
 - (v) Transfield Services was not permitted to implement the FMP or any part of it unless and until it received prior written approval from the Commonwealth (schedule 1, clause 12.1);
 - (vi) the Commonwealth would pay Transfield Services a facilities management cost to facilitate the execution of approved FMP items (schedule 1, clause 12.1);
 - (vii) Transfield Services was required to consult with the Commonwealth so as to agree a reasonable timetable for the commencement of any approved FMP items (schedule 1, clause 12.1);
 - (viii) the Commonwealth may, during the term of the Contract, submit a brief to Transfield Services requesting it to undertake "minor capital works" and Transfield Services may undertake such works subject to agreement with the Commonwealth including as to the terms on which such works would be undertaken (schedule 1, clause 12.2);
- (b) it says that, consistent with the Transfield Contract as alleged in the preceding paragraph, apart from the provision of routine maintenance and repairs, the Commonwealth, and not Transfield Services, was responsible for providing and determining –
- (i) the quality of accommodation facilities;
 - (ii) the extent and nature of ventilation of accommodation facilities;
 - (iii) the quality of bathing and hygiene facilities;
 - (iv) provision for personal space and privacy for transferees;

- (v) provision of shaded areas and areas within which Transferees could engage in exercise;
- (c) it says that, other than by proposing projects for the improvement of the facilities and infrastructure at the Centre pursuant to the FMP, it had no power to effect the provision, construction or improvement of infrastructure including accommodation, ventilation, bathing and hygiene facilities, personal space and structures permitting privacy for transferees, shaded areas or areas within which Transferees could engage in exercise;
- (d) it denies that it owed any duty to Transferees to provide or implement systems for the provision, construction or improvement of accommodation, ventilation, bathing and hygiene facilities, personal space and structures permitting privacy for transferees, shaded areas or areas within which Transferees could engage in exercise;
- (e) it says further that:
 - (i) Transfield Services did prepare and submit to the Commonwealth proposals for maintenance and improvement of the facilities and infrastructure at the Centre;

Particulars

Between about March 2014 and September 2014 Transfield Services prepared and submitted to the Commonwealth for approval, proposals in respect of approximately 120 FMP items, including for the improvement of bathroom facilities, replacement of roofs on accommodation blocks, installation and improvement of ventilation and air-conditioning, provision of shaded areas for relaxation and additional recreation spaces and the supply of reticulated drinking water. The proposals were in writing, copies of which are in the possession of Transfield Services' solicitors and may be inspected on reasonable notice.

- (ii) on or about 25 September 2014 the Commonwealth approved 21 FMP items;

Particulars

A list of the projects approved by the Commonwealth is in the possession of Transfield Services' solicitors and may be inspected on reasonable notice.

- (iii) During the Transfield Period, Transfield Services commenced a number of projects, including: major improvements to the ablution facilities in Foxtrot Compounds (in which existing ablutions facilities were demolished and replaced with modular buildings) were carried out during the period 28 November 2014 to 12 January 2015; construction of a kitchen scullery during the period 8 November 2014 to 1 December 2014; refurbishment of the kitchen facilities in November/December 2014; installation of a mess in Delta in or about November 2014; provision of additional laundry facilities for transferees in Foxtrot and Oscar compounds (by the demolition of existing facilities and construction of a ventilated containerised facility, this work being carried out during the period December 2014 to January 2015); the removal of unused playground equipment to create additional space for transferees; moving the temporary dining marquee in Delta compound to a permanent location; installing modular containerised canteen kiosk in Delta compound; riot repair works to Mike and Oscar compounds in December 2014; installation of a temporary scullery; installation of a temporary grease trap.
- (f) it says that unless and until the plaintiff defines the content of “Australian Precautions” it cannot plead further concerning the “Australian Precautions”;
- (g) it admits that, pursuant to the Transfield Contract, Transfield Services was required to ensure that each transferee was, during their reception process, provided (relevantly) with bedding that was clean and fit for purpose, where required new clothing and footwear suited to the local climate and transferee’s cultural needs and a starter pack of toiletries, and that otherwise those items were to be replenished as required or purchased or collected by Transferees trading Individual Allowance Points at a shop at the Centre to be provisioned and managed by Transfield Services (schedule 1, clauses 4.5 and 3.7);
- (h) it says that it had and implemented a reasonable system which enabled Transferees needing respite or observation, or who had behavioural management issues, to be accommodated appropriately and safely, and refers to and repeats the matters alleged at sub-paragraph 167(g);
- (i) otherwise, it denies the allegations therein.

167. To paragraph 167 –

- (a) As to sub-paragraph (a):
 - (i) it refers to and repeats sub-paragraphs 166(a) to (d);
 - (ii) it admits that bathroom facilities were shared or communal;
 - (iii) it says that no accommodation rooms had dirt floors;
 - (iv) it otherwise denies the allegations therein;
- (b) to sub-paragraph (b) –
 - (i) it says that prior to December 2014, it provided to each transferee at the start of each month a hygiene pack containing soap, shampoo, conditioner, toothbrush, toothpaste, deodorant, skin lotion, baby powder, shaving cream, sunscreen, washing powder and insect repellent;
 - (ii) prior to December 2014, Transferees were able to purchase (using a points system) the full range of items mentioned in sub-paragraph (i), from the on-site canteen;
 - (iii) from December 2014 onwards, Transferees were able to collect (without points charged) the full range of items mentioned in sub-paragraph (i) from the on-site canteen;
 - (iv) supplies of razors were available to Transferees at security huts at the Centre at all times, and Transferees were required to exchange their used razors for new ones;
 - (v) it says that, on the arrival of a Transferee at the Centre during the Transfield Period, it provided a clothing issue comprising two t-shirts, a long sleeve shirt, track-pants, two shorts, six pairs of underwear, two pairs of socks, one pair of shoes, one pair of thongs, pyjamas, a raincoat, a hat, a pair of sunglasses and a laundry bag;
 - (vi) all Transferees were issued with shoes and clothing in April and May 2014;
 - (vii) Transferees could submit requests for clothing, exchange worn or damaged clothing and request replacement clothing if their clothes were lost or stolen;

Particulars

Notwithstanding that he was already resident at the Centre when the Transfield Period began, on or around 5 May 2014 the plaintiff

received a clothing pack containing the items listed above. The plaintiff requested additional clothes and shoes on 8 and 11 May 2014 respectively. These were provided to him on 16 May 2014.

- (viii) otherwise, it denies the allegations therein;
- (bb) it does not admit the allegations in sub-paragraph (bb);
- (c) to sub-paragraph (c) –
 - (i) it refers to and repeats sub-paragraphs 166(a) to (d);
 - (ii) it admits that Transferees were accommodated in re-furnished or part-refurnished buildings;
 - (iii) it says that it implemented a reasonable system for cleaning bathrooms and hygiene facilities, namely cleaning by professional cleaners, including four daily cleans in Delta, Foxtrot and Oscar compounds and three daily cleans in Mike compound;
 - (iv) otherwise, it does not admit the allegations therein;
 - (v) it says that unless and until the plaintiff defines the content of “Australian Precautions” it cannot plead further concerning the “Australian Precautions”;
- (d) it does not admit the allegations in sub-paragraph (d), and it refers to and repeats sub-paragraphs 166(a) to (d);
- (e) it does not admit the allegations in sub-paragraph (e), and it refers to and repeats sub-paragraphs 166(a) to (d);
- (f) to sub-paragraph (f) –
 - (i) it denies that Transferees had no or no adequate access to sun protection products and says that Transferees were provided with hats in their clothing issue and that sunscreen was available at the canteen at all times and was included in the hygiene packs provided to Transferees;
 - (ii) otherwise, does not admit the allegations therein, and it refers to and repeats sub-paragraphs 166(a) to (d);
- (g) to sub-paragraph (g) –
 - (i) it denies that Transferees with behavioural management issues were treated inappropriately;

- (ii) it says that Transferees who required respite from communal living could move for short periods of time, on request, to a supported accommodation area where they continued to have access to welfare services;
- (iii) it says that Transferees who engaged in violent or anti-social behaviour which put at risk the safety of others –
 - (A) were managed in accordance with the behavioural management framework described at paragraph 176(c);
 - (B) could be accommodated for short periods of time (usually for periods of 24-48 hours) in a managed accommodation area (**MAA**), which provided a low-stimulus environment where they could be monitored, including to protect against the risk of self-harm;
 - (C) would be accommodated in the MAA only if that was approved by the Department, reviewed every 24 hours and notified to IHMS;
- (iv) as to accommodation in the MAA –
 - (A) while in the MAA, Transferees received visits from caseworkers;
 - (B) while in the MAA, Transferees received the same sized food serving as was otherwise available to Transferees;
 - (C) while in the MAA, Transferees were observed by staff in accordance with the assessed risk to their own safety, which in some cases meant that they were placed on “arms-length” watch;
 - (D) the use of the MAA was governed by and in accordance with policies approved by the Department.

168. It denies the allegations in paragraph 168 insofar as they concern it and does not plead to the allegations concerning the Commonwealth.
169. It denies the allegations in paragraph 169 insofar as they concern it and does not plead to the allegations concerning the Commonwealth.

Medical treatment and healthcare

170. To paragraph 170 –

- (a) it does not admit the allegations in sub-paragraph (a);
- (b) it does not admit the allegations in sub-paragraph (b);

(c) to sub-paragraph (c) –

- (i) it denies that it was obliged to ensure that Transferees had access to appropriate and timely medical treatment, the provision of medical services at the Centre being the subject of a contract, to which Transfield Services was not a party, between the Commonwealth and IHMS ;
- (ii) it admits that it was obliged by clause 2.9 of the Transfield Contract to ensure that any transferee who requests, or appears to be in need of medical attention, is referred for appropriate medical attention;
- (iii) it says that, other than in emergencies, under the Transfield Contract its obligation to refer Transferees for medical attention was limited to referring Transferees to IHMS, and that it was not required to assess whether or not Transferees were in need of medical treatment;
- (iv) it admits that it was obliged by clause 2.9 of the Transfield Contract, where it appeared to it that a transferee required emergency medical attention, to provide first aid by suitably qualified personnel, to seek emergency attention for the transferee immediately and to inform IHMS and the Commonwealth of the transferee's condition as soon as the initial response was complete;
- (v) otherwise, it denies the allegations therein.

171. To paragraph 171 – insofar as the allegations concern Transfield Services –

(a) to sub-paragraph (b)(i) –

- (i) it says that it had no role in relation to the retention or removal of medical aids possessed by Transferees on arrival in Australia or on Manus Island and no policy or practice of retaining, confiscating or removing medical aids possessed by Transferees on arrival at the Centre;
- (ii) it denies that it was obliged, pursuant to the Transfield Contract or otherwise, to have in place systems capable of preventing harm being caused to Transferees as a result of prolonged deprivation of medical aids;
- (iii) it says that it had and implemented a process for screening and recording all transferee property brought into the Centre at the time of reception, which process occurred within sight of the relevant transferee;

- (iv) otherwise, it denies the allegations therein;
- (b) to sub-paragraphs (b)(ii), (iii), (iv), (v), (vi), (vii) and (viii):
 - (i) it refers to and repeats the allegations in paragraph 170(c);
 - (ii) denies that it was obliged, under the Transfield Contract or otherwise –
 - (A) to provide or have in place systems to ensure the provision of medical treatment and health care for Transferees;
 - (B) to recognise or identify, and to intervene by seeking or arranging medical assessment or treatment, cases of mental illness or injury among Transferees;
 - (C) to maintain medical and other logs or records documenting medical and health related issues arising within the Centre;
 - (D) to ensure or have in place systems capable of ensuring that the medical care provided to Transferees was provided by appropriately trained and qualified individuals;
 - (E) to provide Transferees with condoms, which was the sole responsibility of IHMS;
 - (F) to store or to provide for the storage or refrigeration of vaccines and medications, which was the sole responsibility of IHMS;
 - (G) to order or obtain medical supplies which was the sole responsibility of IHMS;
- (c) further in respect of mental illness or injury it says that –
 - (i) at the Centre it did not engage personnel who were trained or qualified to diagnose or treat mental illness or injury and nor was it obliged to do so pursuant to the Transfield Contract or otherwise;
 - (ii) it provided welfare support for Transferees who had or potentially had mental health issues by implementing procedures that reflected a multi-agency collaborative approach, specifically –
 - (A) its procedure for mental health referrals stipulated, relevantly, that Transfield Services case managers (whose function was to provide welfare and not medical services) may assist Transferees who have

mental health concerns but who may be reluctant or unwilling to themselves make requests to IHMS for treatment or consultations for their mental health, by making a referral to the IHMS mental health team by making an incident report;

(B) it implemented a behaviour management strategy pursuant to which -

(1) Complex Behaviour Management meetings at which behavioural management issues affecting particular Transferees were discussed, were held regularly. Those meetings were chaired by Wilson and attended by Transfield Services, IHMS, the Commonwealth and the Papua New Guinea Immigration and Citizenship Service Authority,

(2) IHMS determined whether any of the identified behaviours raised mental health issues;

(C) Transfield Services' Welfare team implemented processes intended to mitigate the risk of suicide and self-harm by Transferees and to provide additional support during situations of particular vulnerability and stress, including –

(1) communicating with and supporting Transferees who missed 3 consecutive meals over any 24 hour period, who had received recent refugee status determination notifications, who had identified mental health concerns or had no or low participation in programs and activities;

(2) daily welfare checks including referrals to IHMS mental health service;

(3) observation by specialist security teams in cases where a transferee was identified as being potentially at risk of self-harm;

(d) otherwise, it does not admit the allegations.

172. To paragraph 172 -

- (a) to sub-paragraph (a) –
 - (i) it says that it had no role in relation to the retention or removal of medical aids possessed by Transferees on arrival in Australia or Lorengau Port, or the eventual return of any such medical aids;
 - (ii) in so far as they relate to Transfield Services, it denies the allegations therein;
- (b) to sub-paragraph (b) –
 - (i) it does not admit the allegations in sub-paragraph (i) ;
 - (ii) it admits the allegations in sub-paragraph (ii), save that it says Transferees could also be accompanied by Wilson personnel;
 - (iii) otherwise, it does not admit the allegations therein;
 - (iv) it repeats the matters alleged at sub-paragraphs 170(c) and 171(b) and (c);
- (c) it does not admit the allegations in sub-paragraph (c), and it repeats the matters alleged at sub-paragraphs 170(c) and 171(b) and (c);
- (d) to sub-paragraph (d) –
 - (i) it denies that Transferees were not permitted to obtain any medications save as provided by the Medical Centre, and says that Transferees were permitted to access paracetamol by requesting it from Wilson personnel, who were authorised to provide this by IHMS in accordance with an approved procedure;
 - (ii) it admits that in order to obtain appointments with the medical centre –
 - (A) except in urgent cases Transferees were required to submit a request for medical treatment either by:
 - (1) submitting a request to Transfield Services through Transfield Services' complaints and feedback system, which Transfield Services would refer to IHMS within 24 hours of receipt; or
 - (2) submitting a request directly to IHMS;
 - (B) in urgent cases Transferees could request medical attention by asking Wilson personnel, who would contact IHMS by radio and

request guidance or escort the transferee to the IHMS medical facility;

- (iii) says that it had no role in assessing requests for medical appointments or scheduling appointments;
 - (iv) otherwise, it does not admit the allegations therein;
 - (e) it does not admit the allegations in sub-paragraph (e) and repeats the matters alleged at sub-paragraphs 170(c) and 171(b) and (c);
 - (f) it does not admit the allegations in sub-paragraph (f) and repeats the matters alleged at sub-paragraphs 170(c) and 171(b) and (c);
 - (g) it does not admit the allegations in sub-paragraph (g) and repeats the matters alleged at sub-paragraphs 170(c) and 171(b) and (c);
 - (h) it does not admit the allegations in sub-paragraph (h) and repeats the matters alleged at sub-paragraphs 170(c) and 171(b) and (c);
 - (i) it does not admit the allegations in sub-paragraph (i) and repeats the matters alleged at sub-paragraphs 170(c) and 171(b) and (c);
 - (j) it does not admit the allegations in sub-paragraph (j) and repeats the matters alleged at sub-paragraphs 170(c) and 171(b) and (c).
173. It denies the allegations in paragraph 173 insofar as they concern it and does not plead to the allegations concerning the Commonwealth.
174. It denies the allegations in paragraph 174.
175. It denies the allegations in paragraph 175 insofar as they concern it and does not plead to the allegations concerning the Commonwealth.

Internal security

176. To paragraph 176 – insofar as the allegations concern Transfield Services -
- (a) it denies the allegations therein;
 - (b) it says that it was not responsible, under the Transfield Contract or otherwise, for the provision of either internal or external compound fencing;
 - (c) it says further that it had and implemented systems that were appropriate and adequate in respect of –

- (i) the monitoring of the transferee population for violent, intimidatory, discriminatory, ostracising, bullying or other anti-social behaviour between Transferees;
- (ii) the training of personnel to manage behaviour of the kind mentioned in sub-paragraph (i);
- (iii) the risk of violent or anti-social behaviour towards Transferees by other Transferees or Centre personnel;
- (iv) the security of the compounds within the Centre;
- (v) responding to reported incidents or complaints;
- (vi) the use of managed accommodation.

Particulars

Transfield Services and Wilson had and implemented the following policies, systems and procedures:

1. A Behaviour Management Strategy which provided for or addressed, among other things:
 - a. behavioural support for Transferees through a welfare model which included encouraging transferees' engagement in programs and activities aimed at enhancing mental health and wellbeing;
 - b. a case management support team to provide welfare support to transferees;
 - c. the clear definition of inappropriate behaviour (which included violence, abuse, threatening behaviour, bullying or harassment);
 - d. communication to Transferees of expectations as to appropriate behaviour (refraining from anti-social or illegal behaviour) including by an induction process for Transferees on their arrival at the Centre;
 - e. guidance for Centre staff concerning the management of inappropriate behaviour;
 - f. the implementation of behaviour management plans for Transferees who demonstrate inappropriate behaviour, including anti-social or illegal behaviour, which process included the identification of behaviour including any form of violence or abuse or incitement to violence;
 - g. the ongoing review of behaviour management plans by the Complex Behaviour Management Committee on which Transfield Services was represented;

- h. regular monitoring of Transferees displaying abusive, aggressive, bullying or harassing behaviour;
 - i. the use of managed accommodation where appropriate;
 - j. procedures for reporting inappropriate behaviour;
- 2. Standard Operating Procedures and related guidelines which provided for or addressed, among other things:
 - a. a code of conduct for Centre staff which included requirements for staff relationships with Transferees and forbade bullying or harassment;
 - b. risk management;
 - c. conflict management;
 - d. intelligence management, including incident reporting, analysis of incident trends and the use of situation reports to alert stakeholders to early warning indicators of security risks;
 - e. the convening of a Joint Intelligence Group to review incidents and information gathered at the Centre to identify early warning indicators for unrest, self-harm or any other factors that may impact on the integrity of the Centre and the safety of transferees, staff or the local community;
 - f. the conduct of transferee security risk assessments and the creation and monitoring of profiles for Transferees at high risk of anti-social behaviour;
 - g. incident management for both minor and critical incidents, including the identification of threats and threat levels;
 - h. the use of force by security staff.
- 3. Guidelines for Interaction with Transferees provided for standards for and expectations of staff;
- 4. Security Standards which provided for or addressed, among other things:
 - a. monitoring of the Centre by video surveillance;
 - b. checks to account for all Transferees at least twice a day;
 - c. physical perimeter checks;
 - d. the issue of appropriate security equipment to security staff.
- 5. Perimeter security procedures.
- 6. Security staff were trained, by Wilson, including in relation to behaviour management, mental health awareness and cultural awareness, human rights standards, security procedures, safety checks, searching and screening, situational awareness, incident management, risk management, operational safety, crisis response and first aid. Training was delivered at induction and during employment. Training was delivered by experienced staff and in

externally facilitated training programs. All staff were required to complete refresher training every 12 months.

Transfield Services' policies and procedures were documented. Copies of those documents are in the possession of Transfield Services' solicitors and may be inspected on reasonable notice.

177. To paragraph 177 – insofar as the allegations concern Transfield Services -

- (a) to sub-paragraph (a) –
 - (i) it denies the allegations in sub-paragraph (i);
 - (ii) it says that unless and until the plaintiff defines the content of “Australian Precautions” it cannot plead further concerning the “Australian Precautions”;
 - (iii) it does not admit the allegations in sub-paragraph (iii);
- (b) it denies the allegations in sub-paragraph (b) and repeats the matters alleged at paragraph 176;
- (c) to sub-paragraph (c) –
 - (i) it denies the allegations therein; and
 - (ii) it repeats the matters alleged at paragraph 176.
- (d) it does not admit the allegations in sub-paragraph (d) and says that it cannot plead further in the absence of proper particulars of the plaintiff's claim;
- (e) to sub-paragraph (e) –
 - (i) it denies that security staff engaged in excessive and unjustified use of force during periods of heightened tension;
 - (ii) it denies that any incident in which any Transferee was subject to violent or anti-social behaviour was attributable to any failure by it to exercise reasonable care;
- (f) it denies the allegations in sub-paragraph (f);
- (g) to sub-paragraph (g) – insofar as the allegations concern Transfield Services -
 - (i) it denies the allegations therein;

- (ii) it says further that both internal and external fencing was significantly improved during the Transfield Period in that the Commonwealth, via a contractor, arranged for and managed the installation in or about May 2014 of new anti-climb fences both internally within and externally around the Centre;
- (iii) the Commonwealth, and not Transfield Services, was responsible for the requisitioning and installation of fencing;
- (h) to sub-paragraph (h), it denies that any reports of sexual harassment or sexual assault were not appropriately investigated and responded to;
- (i) to sub-paragraph (i) –
 - (i) to the extent that it is alleged that Transfield Services owed any duty of care to generally ensure that Transferees were unafraid to report sexual assault or harassment, says that such fear may arise from causes unconnected with anything that it did or failed to do and otherwise denies that it owed the duty alleged;
 - (ii) it denies that any reports of sexual harassment or sexual assault were not appropriately investigated and responded to;
 - (iii) it says that it cannot further plead to the allegation without adequate particulars;
- (j) to sub-paragraph (j) –
 - (i) it denies that Transferees with behavioural management issues were treated inappropriately;
 - (ii) it refers to and repeats the allegations at sub-paragraph 167(g);
 - (iii) it otherwise denies the allegations therein.
- 178. It denies the allegations in paragraph 178 insofar as they concern it and does not plead to the allegations concerning the Commonwealth.
- 179. It denies the allegations in paragraph 179 insofar as they concern it and does not plead to the allegations concerning the Commonwealth.

Part L – Transfield Period - Causation

- 180. To paragraph 180 –

- (a) it denies that as a matter of fact it failed as alleged in sub-paragraphs (a) to (e) and repeats the matters alleged in response to the allegations made in the paragraphs of the Claim incorporated at paragraph 180;
 - (b) it denies that the matters alleged were “notorious” among Transferees, either at all, or throughout the period;
 - (c) otherwise, it denies the allegations therein.
181. To paragraph 181 –
- (a) it repeats the allegations in the paragraph 180;
 - (b) it denies the allegations therein.
182. It denies the allegations in paragraph 182 insofar as they concern it and does not plead to the allegations concerning the Commonwealth.
183. It denies the allegations in paragraph 183.
184. It denies the allegations in paragraph 184 insofar as they concern it and does not plead to the allegations concerning the Commonwealth.
185. It does not admit the allegations in paragraph 185.

False Imprisonment

- 185A. To paragraph 185A –
- (a) it refers to and repeats paragraphs 29A, 29B and 29C;
 - (b) it otherwise does not admit the allegations therein;
 - (c) it says further that -
 - (i) on arrival in PNG and from time to time the Transferees were advised by ~~PNG-ICSA~~ that they could elect to return to their country of origin, be re-settled in a third country or make claims for refugee status which would be determined by PNG, and that should they elect the third option they would be required to reside at the Centre until their claims were determined;
 - (ii) the Transferees elected to make claims for refugee status which election was, as they knew, subject to the requirement that they reside at the Centre;
 - (iii) to the extent that the Transferees could have elected to return to their country of origin or go to a third country but did not do so, the Transferees

were confined in their freedom of movement by reason of their election to make claims for refugee status and reside at the Centre, and not by reason of the conduct of Transfield Services.

Particulars

Transferees were advised of the “Assisted Voluntary Returns” (AVR) services provided by the International Organization for Migration (IOM) and, in relation to return to countries in which IOM did not have a presence, the Department of Immigration and Border Protection (DIBP).

The manner of provision of the advice to Transferees included the following:

- (a) on arrival at the Centre the Transferees underwent an induction briefing during which they were told how to access information from IOM (see for example, A.100.3009.2145 and A.100.3009.2146);
- (b) on arrival at the Centre, Transferees were provided with a Transferee Induction Booklet which listed service providers at the Centre including IOM, which “provides assistance if you decide to return to your home country” (TRA.335.002.0206; see also TRA.314.002.9733 and TRA.306.002.1169);
- (c) IOM posters were displayed in compounds (see for example A.100.3056.2222);
- (d) information sessions were provided by IOM representatives from time to time (for example, in May 2013 an IOM representative gave briefings to groups of Vietnamese Transferees about the AVR assistance IOM could offer: see A.100.3613.9584 and A.100.3613.9586);
- (e) IOM representatives conducted “compound walks”, during which Transferees could seek and be provided with information about the AVR process (see for example, A.100.3613.9584 and A.100.3613.9585);
- (f) in or around April 2014 DIBP introduced the “Status Resolution Officer Programme” to assist with the establishment of a shopfront at the Centre, at which DIBP officers (known as “Status Resolution Officers”) would be available to provide AVR services to Transferees whom IOM could not assist, i.e. Transferees from Somalia and Syria (see for example, A.100.3035.8071, A.100.3531.8780 and A.100.2017.1646);
- (g) from time to time, IOM representatives held meetings with community leaders to discuss AVR services (see for example, A.100.3056.2210); and
- (h) information was provided in response to the submission by Transferees of a formal request for access to IOM (see for example, TRA.450.001.0486).

As at 3 November 2014 a total of 425 Transferees had completed the AVR process with the assistance of IOM, travelling to the following countries: Iran (322), Vietnam (15), Iraq (40), Lebanon (26), India (5), Bangladesh (4), Pakistan (3), Sri Lanka (2), Sudan (3), Egypt (2), Albania (1) and Jordan (1) (see A.100.356.2249).

The plaintiff was able to contact IOM to seek an assisted voluntary return to Iran. Article 48 of the Iranian Charter on Citizen's rights provides, by reference to Article 33 of the Constitution of Iran, that it is a right of every citizen to have freedom of movement inside the country, to enter and exit Iran, save where this right has been restricted by law. While resident at the Centre the plaintiff did not, to the knowledge of Transfield Services, participate in the Refugee Status Determination process.

- 185B. It does not plead to paragraph 185B in which no allegations are made against it.
- 185C. It does not plead to paragraph 185C in which no allegations are made against it
- 185D. It does not plead to paragraph 185D in which no allegations are made against it.
- 185E. It does not plead to paragraph 185E in which no allegations are made against it.
- 185F. It does not plead to paragraph 185F in which no allegations are made against it.
- 185G. To paragraph 185G, in respect of the period 24 March 2014 to 12 May 2016, it says that-
 - (a) any restrictions on the ability of Transferees to leave the Centre or move within it were determined in accordance with the 2012 MOU and 2012 Administrative Arrangements, and thereafter the 2013 MOU and 2014 Administrative Arrangements;
 - (b) Wilson staff or contractors maintained a physical presence at gates to the perimeter fence and internal compound fences;
 - (c) in and after about 27 April 2016 (or, in the case of Transferees who had received negative refugee determinations, 5 May 2016), perimeter fence gates were opened whenever Transferees requested.
- 185H. It does not plead to paragraph 185H in which no allegations are made against it.
- 185I. To paragraph 185I, in respect of the period 24 March 2014 to 12 May 2016 –
 - (a) it says that the Department and PNG ICSA determined the conditions on which intra-compound visits would be permitted, which conditions applied to all visits, and that those conditions were applied by Wilson and/or Transfield Services on a visit by visit basis;

(b) it says that that any restrictions on the ability of Transferees to move between compounds were determined in accordance with the 2012 MOU and 2012 Administrative Arrangements, and thereafter the 2013 MOU and 2014 Administrative Arrangements;

(c) it otherwise denies the allegations therein.

185J. It does not plead to paragraph 185J in which no allegations are made against it.

185K. To paragraph 185K, in respect of the period 24 March 2014 to 12 May 2016 -

(a) it says that approval for excursions and transfers out of the Centre was required to be given by both the Department and PNG ICSA and that requirements for supervision and escort of Transferees while outside of the Centre were determined by the Department and PNG ICSA;

(b) it says that scheduled excursions were pre-approved by the Department and PNG ICSA and that the role of Transfield Services and Wilson, in consultation with other stakeholders, was limited to determining which Transferees could attend which excursions, and managing the logistical arrangements for excursions and transfers;

(c) it otherwise denies the allegations therein.

185L. To paragraph 185L(a) and (c) -

(a) it says that the actions alleged at paragraphs 185G, 185I and 185K, to the extent those actions are proved, were taken at the request of the Commonwealth, in that they were required by the scope of works of the Transfield Contract, which scope was determined by the Commonwealth (and which was in turn reflected in the scope of works of the Wilson Subcontract);

(b) it says that it was required to comply with the directions of the Contract Administrator, subject only to those directions being consistent with the Transfield Contract;

(c) it says that it was managed by a Program Co-Ordinator appointed by the Commonwealth to be responsible for managing services contracts in relation to the Centre, in close liaison with the Operational Manager;

(d) it otherwise does not admit the allegations therein.

185M. It does not plead to paragraph 185M in which no allegations are made against it.

185N. It does not plead to paragraph 185N in which no allegations are made against it.

185O. To paragraph 185O –

- (a) it denies the allegations therein;
- (b) it says that insofar as the plaintiff and group members were confined as alleged –
 - 1) Their confinement was not by Transfield Services, or caused or directed by Transfield Services, but was caused by PNG –
 - A. acting within its own territory, in the exercise of its sovereign authority;
 - B. pursuant or purportedly pursuant to the laws of PNG, and decisions made thereunder by the PNG Minister or other officials of PNG, as alleged in paragraph 29 above;

Particulars

By reason of the matters alleged or admitted in paragraphs 12 to 27 and 29 above PNG received the plaintiff and group members into its custody, directed and required them to reside and remain at the Centre; controlled and managed the Centre; determined the conditions on which they would be permitted to leave the Centre; and enforced the conditions on which they were permitted to leave the Centre.

- 2) In the alternative to (1), their confinement was not by Transfield Services, or caused or directed by Transfield Services, but was caused and directed by the Commonwealth, either by itself or together with PNG;

Particulars

By reason of the matters alleged or admitted in paragraphs 12 to 29, 125(b),(c), (d), 138(c), (d) and 140(d), the Commonwealth, by itself or together with PNG; decided to transfer and then transferred the plaintiff and group members from Australia to PNG; delivered them into the custody of the government of PNG; agreed with the government of PNG the conditions upon which they would be required to reside and remain at the Centre; constructed (including the fences) and funded the Centre; determined the ambit of the scope of works in the Transfield Contract; and appointed a Program Co-Ordinator to work with the PNG Operations Manager in controlling and managing the Centre, including in giving directions to the service providers engaged by the Commonwealth to provide services at the Centre.

- 3) Further to (1) and (2) –

- A. In engaging in the acts alleged or admitted herein, Transfield Services was providing services for and in relation to the Transferees who were already

confined by reason of the decisions of either PNG and/or the Commonwealth, and was doing so –

1. at the request of the Commonwealth;
 2. in accordance with and subject to the Transfield Contract;
- B. The 2012 MOU and the 2013 MOU provided that the Government of PNG would conduct all of its activities in relation to the MOUs in accordance with its Constitution (clauses 6 and 5 of the 2012 and 2013 MOUs respectively);
- C. Transfield Services:
1. was not required by the Transfield Contract to provide any service unless that was consistent with all applicable laws, which laws included the Constitution of PNG (clauses 3.1.2, 3.3.1; clause 1.1.1);
 2. was entitled to, and did, provide services under the Transfield Contract on the assumption the directions given to Transferees by PNG as alleged in paragraph 29 above complied with the Constitution and other laws of PNG;
- D. The Transfield Contract relevantly provided that –
1. the Department has a requirement for the provision of welfare and garrison services at offshore processing countries and has a key role in developing and implementing an appropriate and sustainable offshore processing model which will support government policy that all people arriving in Australia by boat will be transferred to an offshore processing country and which will include the provision of appropriate accommodation and services (schedule 1 part 1, clause 1.1.1);
 2. the parameters within which offshore processing will operate include Australian and host country legislation, ministerial directions, joint agency task force arrangements, regional re-settlement arrangement Memoranda of Understanding and regional re-settlement Administrative Arrangements (schedule 1 part 1, clause 1.1.5);

E. In the premises, by engaging in the acts alleged or admitted herein Transfield Services did not cause or direct the confinement of the Transferees.

[There are no paragraphs 185P or 185Q].

185R. It does not plead to paragraph 185R in which no allegations are made against it.

185S. It does not plead to paragraph 185S in which no allegations are made against it.

185T. It denies the allegations in paragraph 185T.

185U. To paragraph 185U –

(a) it does not plead to sub-paragraphs (a), (c), (e), (g), (i) or (k) in which no allegations are made against it;

(b) in respect of sub-paragraphs (b), (d), (f), (h), (j) and (l) it repeats the allegations at paragraphs 162, 163, 167, 170, 171, 172, 176 and 177;

(c) to sub-paragraph (m) –

(i) it says that it had an effective and reasonable system for receiving and responding to complaints, which system comprised –

(A) a detailed and documented incident reporting system, managed in accordance with the Department's requirements; a feedback and complaints process, approved by the Department, by which Transferees could submit complaints which were managed by a dedicated team of staff, and which required –

- (1) all complaints to be registered;
- (2) all complaints to be directed to those responsible for the relevant service, who were required to respond to the Transferee;
- (3) weekly reporting on all outstanding items;
- (4) a 10-day resolution time;
- (5) regular feedback to Transferees during the investigation of the complaint;

(B) a monthly meeting between the Transferee Consultative Committee, attended by Transferees including their nominated community leaders and all other stakeholders.

(ii) it otherwise does not admit the allegations therein.

185V. To paragraph 185V –

- (a) in respect of the period 24 March 2014 to 19 December 2014 it repeats allegations at paragraphs 162, 163, 167, 170, 171, 172, 176 and 177;
- (b) it does not admit the allegations in respect of the period 20 December 2014 to 12 May 2016.

185W. To paragraph 185W –

- (a) insofar as the allegations concern Transfield Services, it denies the allegations;
- (b) alternatively to (a) it says that if (which is denied) the plaintiff and group members are entitled to recover any damages in respect of false imprisonment, then if any party proves that, had the plaintiff and group members not been unlawfully detained at the Centre, they would have been lawfully detained at another place, then the plaintiff and group members can recover only nominal damages with respect to their loss of liberty;

Particulars

During the Transfield Period the plaintiff and group members would have been lawfully detained at Nauru Regional Processing Centre (Nauru RPC) or at a detention centre in Australia.

As to lawful detention at Nauru RPC:

- (a) The plaintiff and group members were, or would have been, at all relevant times “unlawful non-citizens” and/or “unauthorised maritime arrivals” within the meaning of the Migration Act 1958 (Cth) (Migration Act).
- (b) The plaintiff and group members would have been subject to lawful transfer to a regional processing country and any conditions of detention imposed by that country.
- (c) On 10 September 2012, the Republic of Nauru was designated as a regional processing country by the Minister under s 198AB(1) of the Migration Act.
- (d) Pursuant to Memoranda of Understanding between the Commonwealth of Australia and the Republic of Nauru dated 29 August 2012 and 3 August 2013, the Republic of Nauru agreed to accept the transfer of persons to Nauru under Australian law, and assured the Commonwealth, among other things, that it would make an assessment, or permit an assessment to be made, of whether or

not a transferee is covered by the definition of “refugee” in the Refugee Convention.

- (e) On 11 April 2014 the Commonwealth of Australia and the Republic of Nauru entered into administrative arrangements for regional processing and settlement in Nauru. The administrative arrangements provide that transferees will be accommodated at a regional processing centre established in Nauru whilst their claims to refugee status are processed.
- (f) An offshore entry person brought to Nauru pursuant to s 198D of the Migration Act is a “protected person” for the purposes of the *Asylum Seekers (Regional Processing Centre) Act 2012* (Nauru) (**RPC Act**), certified on 21 December 2012. Pursuant to s 18C(1) of the RPC Act, a protected person could not leave the Centre without the approval of an authorised officer, an operational manager of the Centre, or other authorised persons.
- (g) In Nauru transferees are granted a regional processing centre visa (**RPC visa**) by the Principal Immigration Officer of Nauru under the Immigration Regulations in force at the time.
- (h) From 10 May 2013 rr 9(6)(b) and (c) of the *Immigration Regulations 2013* (Nauru) provided that an RPC visa was subject to conditions that the holder must reside in premises specified in the visa until a health and security visa clearance certificate is granted, and that after a health and security clearance certificate is granted to the holder, the holder must remain at those premises.
- (i) Since at least 24 March 2014 Nauru RPC has had a projected maximum capacity to accommodate 3,200 residents. At no time since 24 March 2014 has the number of residents at Nauru RPC exceeded approximately 1,300 and at many points in time since that date the number of residents was significantly fewer than 1,300.

As to lawful detention at a detention centre in Australia, if there was no regional processing country, the plaintiff or any group member would have remained in immigration detention pursuant to Part 2, Division 7 of the *Migration Act* and been subject to the conditions of the place of detention. As at 30 September 2016 at least 54 Transferees were in immigration detention facilities in Australia.

Further, the plaintiff was in fact transferred to immigration detention in Australia in or about July 2014, when he was transferred to Australia for medical treatment. He is presently in immigration detention in Melbourne.

Further particulars may be provided in relation to other group members once their identities are known.

- (c) in the further alternative, if (which is denied) the plaintiff and group members are entitled to recover any damages in respect of false imprisonment, damages are to be assessed in each individual case, on the basis that:

- (i) at the commencement of the Transfield Period on 24 March 2014 Transferees, including the plaintiff, were in fact resident at the Centre;

- (ii) one further new Transferee arrived at the Centre following the commencement of the Transfield Period;
- (iii) following the decision of the Supreme Court of Papua New Guinea in *Namah v Pato*, the Centre became an open facility – that is, a facility from which resident Transferees were free to come and go – the Centre became an open facility in some respects from late April 2016 and the transition to an open facility was completed by 12 May 2016;
- (iv) despite having the ability to come and go from the Centre, the vast majority of the Transferees resident at the Centre on 12 May 2016 remained at the Centre on 28 February 2017, more than half of whom did so notwithstanding that they had successfully attained refugee status;

Particulars

As at 12 May 2016 approximately 900 Transferees were resident at the Centre.

As at 28 February 2017 approximately 800 Transferees remained at the Centre, approximately 590 of whom did so despite having received a positive refugee status determination.

Of the approximately 100 Transferees who departed the Centre between 12 May 2016 and 28 February 2017 approximately 30 left pursuant to the AVR program.

- (v) in the circumstances referred to in subparagraph (iv) above, any damages to which such individual persons may be entitled are to be assessed on the basis that had those persons not been falsely imprisoned at the Centre they would in any case have been resident at the Centre and free to come and go during the period of false imprisonment for which they make a claim against Transfield Services.

185X. It does not plead to paragraph 185X in which no allegations are made against it.

185Y. It does not plead to paragraph 185Y in which no allegations are made against it.

Common questions of law or fact

186. It does not plead to paragraph 186, in which no allegations are made concerning it.

COUNTERCLAIM

Claim against the Commonwealth

187. If, which is denied, Transfield Services is liable for any loss or damage suffered by the plaintiff and/or group members, then:

- (a) by reason of the matters alleged in the Third Amended Statement of Claim and in this Amended Defence concerning the Commonwealth, the Commonwealth is liable to the plaintiff and group members in respect of the same damage;
 - (b) accordingly, Transfield Services is entitled, pursuant to -
 - (i) section 37 of the *Wrongs (Miscellaneous Provisions) Act 1975* (PNG);
 - (ii) alternatively, section 21 of the *Civil Law (Wrongs) Act 2002* (ACT) ;

to recover contribution from the Commonwealth in the amount which the Court finds to be just and equitable having regard to the respective responsibilities of the defendants for the damage in respect of the plaintiff's and group members' claims for damages arising by reason of negligence and by reason of false imprisonment.
188. In the alternative to paragraph 187 (insofar as paragraph 187 concerns damage claimed by the plaintiff and group members by reason of false imprisonment) if, which is denied, Transfield Services is liable for any loss or damage suffered by the plaintiff and/or group members, then -
- (a) the actions of Transfield Services alleged at paragraphs 185G, 185I, 185K and 185O, to the extent that those actions are proved -
 - (i) were taken at the request of the Commonwealth, in that they were required by the scope of works of the Transfield Contract, which scope was determined by the Commonwealth;
 - (ii) in performing the Transfield Contract, including in respect of those actions, Transfield Services was required to comply with the directions of the Contract Administrator, subject only to those directions being consistent with the Transfield Contract;
 - (iii) in performing the Transfield Contract, including in respect of those actions, Transfield Services was managed by a Program Co-Ordinator appointed by the Commonwealth to be responsible for managing services contracts in relation to the Centre, in close liaison with the Operational Manager;

Particulars

Transfield Services relies on -

- (a) the Transfield Contract for its full terms and effect, including in particular the provisions alleged at paragraph 126 above;
 - (b) the matters alleged or admitted at sub-paragraphs 22(x) and 28(a) and (b);
- (b) in the premises, the actions of Transfield Services alleged at paragraphs 185G, 185I, 185K and 185O, to the extent that those actions are proved –
 - (i) were taken for and on behalf of the Commonwealth;
 - (ii) in the alternative to sub-paragraph 185L(d), were taken by Transfield Services as an agent of the Commonwealth;
- (c) by reason of the matters alleged at sub-paragraphs (a) and (b), Transfield Services is entitled to an indemnity from the Commonwealth in respect of any loss suffered by it by reason of it having taken those actions, relevantly being loss in the form of claims for damages and costs by the plaintiff and group members against it for false imprisonment.

Particulars

The indemnity is implied by law, as a legal incident of the relationship between the Commonwealth and Transfield Services.

The indemnity is not excluded by the express terms of the Transfield Contract and is implied notwithstanding that the Transfield Contract states Transfield Services is not by virtue of the Contract an agent of the Department, the relationship in fact being properly characterised as alleged in sub-paragraphs (a) and (b) above, in the circumstances relevant to the plaintiff's claims, as alleged or admitted herein.

Claim against G4S

189. Further, if, which is denied, Transfield Services is liable for any loss or damage suffered by the plaintiff and/or group members, then:
- (a) by reason of the matters alleged in the Third Amended Statement of Claim in respect of G4S, G4S is liable to the plaintiff and group members in respect of the same damage;
 - (b) accordingly, Transfield Services is entitled, pursuant to -
 - (i) section 37 of the *Wrongs (Miscellaneous Provisions) Act 1975* (PNG);
 - (ii) alternatively, pursuant to sections 23B and 24 of the *Wrongs Act 1958* (Vic);

to recover contribution from G4S in the amount which the Court finds to be just and equitable having regard to the respective responsibilities of the defendants for the damage.

AND TRANSFIELD SERVICES COUNTERCLAIMS

Against the Commonwealth

- A. Contribution.
- B. An indemnity in respect of the claims by the plaintiff and group members for damages arising by reason of their alleged false imprisonment, and in respect of the costs of, occasioned by and incidental to those claims on an indemnity basis.
- C. Costs.
- D. Such further or other relief as to the Court seems appropriate.

Against G4S

- A. Contribution
- B. Costs.
- C. Such further or other relief as to the Court seems appropriate.

STEPHEN DONAGHUE

amended JIM DELANY

LISA NICHOLS

Corrs Chambers Westgarth

Corrs Chambers Westgarth
Solicitors for the Third Defendant

DATED: ~~21 September 2016~~ 31 March 2017

SCHEDULE OF PARTIES

No. SCI 2014 4423

MAJID KARAMI KAMASAE

Plaintiff

COMMONWEALTH OF AUSTRALIA

First Defendant

G4S AUSTRALIA PTY LTD
ABN 64 100 104 658

Second Defendant

TRANSFIELD SERVICES (AUSTRALIA) PTY LTD
ABN 11 093 114 553

Third Defendant