

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

SCI 2014 06770

BETWEEN:

MAJID KARAMI KAMASAE

Plaintiff

and

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

Defendants

THIRD SECOND AMENDED STATEMENT OF CLAIM TO THIRD PARTY NOTICE

(Filed pursuant to the order of the Honourable Justice McDonald

made on 5 April 2017 ~~12 September 2016~~)

Date of document: 21 September 2016 1 May 2017

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The second defendant adopts the definitions contained in the fourth third second amended statement of claim dated 7 April 2017 ~~1 August 2016~~ ~~25 May 2015~~ (~~TASOC~~) and the second defendant's defence dated 19 September 2016 ~~7 August 2015~~, unless otherwise indicated.

Claim against International Health and Medical Services Pty Ltd

1. By the ~~TASOC~~ fourth amended statement of claim the plaintiff claims on his own behalf and on behalf of all persons who are Group Members (as that term is defined in paragraph 5 thereof) damages, interest and costs against, *inter alia*, the second defendant (G4S).

~~1A~~ ~~International Health and Medical Services Pty Ltd (IHMS) is and was at all material times:~~

~~(a) a duly incorporated corporation;~~

~~(b) capable of being sued; and~~

- (e) ~~carried on the business of, inter alia, providing to the Commonwealth services for the provision of health care and treatment at immigration detention facilities.~~

1B—~~The plaintiff alleges that G4S breached its duty of care in the provision by it of services to the plaintiff and the Group Members which were not in accordance with Australian Precautions (as that term is defined in paragraph 52 of the TASOC SASOC), including the provision of medical and healthcare services (the plaintiffs' allegations).~~

1C—~~The plaintiff alleges that as a result of the alleged breach of duty by G4S, he and the Group Members suffered loss and damage, which allegation is denied by G4S.~~

2.—~~Throughout the G4S period, IHMS:~~

~~(a) provided medical and health care services (the IHMS medical services) for persons (the Transferees) resident at and directed to reside at the Centre (the IHMS Contract); and~~

~~(b) had practical control over the provision of medical treatment and health care for Transferees at the Centre.~~

3.—~~On or about 29 January 2013, IHMS and the Commonwealth entered into a contract which regulated and stipulated the services, responsibilities and duties of IHMS in the delivery by it of the IHMS medical services (the IHMS Contract).~~

Particulars

~~The IHMS Contract was in writing and dated in or about 29 January 2013, and was preceded by and substantially in accordance with an agreement entitled, "Heads of Agreement relating to the provision of health services on Nauru and Manus Island" dated 14 September 2012.~~

4.—~~There were terms of the IHMS Contract to the effect that:~~

~~(a) IHMS would provide the medical and health care services provided in the statement of work incorporated in the agreement (clause 5);~~

~~(b) IHMS must ensure that Transferees had access to, and were able to obtain, health care on the terms, at the locations and times described in the IHMS Agreement and must structure and tailor its access and service delivery~~

~~arrangements to reflect the characteristics and requirements of Manus Island and the Transferee population group (schedule 1, clause 16);~~

~~(c) IHMS must ensure that the quality and standard of health care provided to Transferees during their time at the Centre is sufficient to maintain optimal health for Transferees while at the Centre and is the best available in the circumstances and broadly comparable with health services available within the Australian community (schedule 1, clause 17);~~

~~(d) IHMS must ensure that health care provided to Transferees:~~

~~(i) is provided with a cultural appreciation and understanding of the issues and concerns which may impact on the health of Transferees;~~

~~(ii) is provided without any form of discrimination and with respect for individual patient rights; and~~

~~(iii) is based on the best available evidence and prioritised according to clinical need (schedule 1, clause 17);~~

~~(e) IHMS must ensure that Transferees have direct and continuous access to health practitioner services for the duration of their time at the Centre (schedule 1, clause 17);~~

~~(f) IHMS must ensure that a Transferee has a consultation with a health care practitioner within seventy two hours of a request for a medical consultation (schedule 1, clause 17);~~

~~(g) IHMS must develop and implement policies and procedures that allow Transferees to make requests in relation to their health care and for the management of such requests (schedule 1, clause 9);~~

~~(h) IHMS must ensure that Transferees are able to access and receive the following services onsite at the Centre:~~

~~(i) registered nurse clinics;~~

~~(ii) nurse immunisation and vaccination services;~~

~~(iii) health promotion services;~~

~~(iv) radiography trained nursing services;~~

~~(v) GP clinics;~~

~~(vi) preventative health services;~~

~~(vii) emergency observation and treatment of critically ill Transferees;~~

~~(viii) minor surgical procedures;~~

~~(ix) mental health clinics comprising—~~

~~(A) counselling;~~

~~(B) clinical psychology;~~

~~(C) mental health nursing; and~~

~~(D) psychiatry;~~

~~(x) an after hours emergency response service through the provision of appropriately trained paramedics;~~

~~except when those services may be delivered offsite with the Commonwealth's approval or agreement that the service will be physically located at a different facility (for example, dental or radiology services), or where IHMS reasonably satisfies the Commonwealth that the patient could not have been safely and effectively treated at a facility on site (schedule 1, clauses 17 and 24);~~

~~(i) IHMS must ensure that:~~

~~(i) the staffing levels specified in the IHMS Agreement are maintained;~~

~~(ii) onsite health clinics will be delivered during the twelvehour clinic opening times;~~

~~(iii) Transferees must be able to access services from the registered nurse clinic at the Centre within seventy*two hours of making a request for a consultation at the onsite health clinic and must implement and maintain a system for collecting requests for consultations from Transferees and must collect requests daily (schedule 1, clause 24);~~

- ~~(j) IHMS must ensure that each Transferee has an up-to-date individual health care record which includes an accurate and complete summary of the Transferee's clinical history, describes all stages of assessment and the findings and conclusions at each stage and all recommended follow up actions (schedule 1, clause 19);~~
- ~~(k) IHMS must ensure that on arrival at the Centre, Transferees are provided with clear and accurate information about health care and health care access arrangements (schedule 1, clause 19);~~
- ~~(l) IHMS must ensure that if a Transferee presents, or is identified with, a health condition or problem, that he or she is provided with a clinically appropriate health care response in the accordance with the IHMS Agreement, which response may take the form of further assessment, treatment, monitoring or case management by a multi*disciplinary team of health care providers (schedule 1, clause 21);~~
- ~~(m) IHMS must ensure that the mental health needs of Transferees are adequately and appropriately identified, monitored and treated at all times during their time at the Centre, including by the conduct of periodic and indicated mental health screening, assessment and treatment services in accordance with the policies and procedures specified by the Agreement (schedule 1, clause 22);~~
- ~~(n) if any Transferee is identified as at risk of, or as having, a mental health concern, IHMS must ensure that he or she is provided with a targeted mental health management plan, drawing on the expertise of a multidisciplinary team of specialist mental health care providers which may, as appropriate, comprise mental health care nurses, psychologists, senior counsellors, GP's and psychiatrists (schedule 1, clause 22);~~
- ~~(o) each mental health clinic must be managed by a mental health team leader and be staffed by a mental health team comprising specified mental health professionals, and the mental health clinic must provide:

 - ~~(i) co-ordination, management and review of the mental health case load by the mental health team leader;~~~~

- ~~(ii) developing and delivering mental health awareness and education programs;~~
- ~~(iii) attendance by mental health team leader at appropriate meetings;~~
- ~~(iv) provision of advice by the mental health team leader to the Department on placement and behavioural management issues for Transferees;~~
- ~~(v) general counselling services in the form of confidential face to face individual and group counselling sessions for Transferees;~~
- ~~(vi) psychological services in the form of clinical assessment, treatment, management and referral to other clinically appropriate health care providers;~~
- ~~(vii) specialist psychiatric services;~~
- ~~(viii) behavioural management advice services including providing advice, education and support to other service providers and the Department on behavioural management issues, attendances and participation at appropriate workshops, committees and meetings (schedule 1, clause 24);~~
- ~~(p) IHMS must ensure the provision of dental services to Transferees as specified in the Agreement, subject to the availability of appropriate clinical infrastructure (schedule 1, clause 24);~~
- ~~(q) For dental, pathology, optometry, radiography, clinical psychological and psychiatric services IHMS must ensure that Transferees can access those services from the onsite health clinic only via referral from a GP or nurse, as agreed with the Department (schedule 1, clause 24);~~
- ~~(r) IHMS must establish and maintain a network comprising health care professionals that is appropriate and sufficient to deliver health services to Transferees in accordance with the IHMS Agreement, including a sufficient number of appropriately qualified and experienced nurses (including mental health nurses), general practitioners, psychologists, psychiatrists and other medical specialists, pharmacists, dentists, optometrists, paramedics, pathologists and other appropriate allied health professionals, and must~~

~~ensure that all providers are given access to appropriate support and training (schedule 1, clause 5).~~

5. ~~Throughout the G4S Period IHMS:~~

~~(a) was obliged pursuant to the IHMS Contract to provide the IHMS medical services pursuant to the IHMS Contract; and~~

~~(b) was the sole provider of medical and health care services for Transferees at the Centre.~~

6. ~~In the premises, at all material times during the G4S Period, IHMS:~~

~~(a) owed to Transferees at the Centre a duty to take reasonable care to avoid foreseeable harm to the Transferees (the IHMS duty of care);~~

~~(b) knew or ought to have reasonably known that the Transferees at the Centre had, or could have had, the characteristics set out in paragraph 55(b)(i) to (vii) of the Second Amended Statement of Claim (the Transferee Characteristics); and~~

~~(c) was required under the IHMS duty of care to ensure that Transferees were provided with medical care and health services that were reasonably adapted to prevent avoidable deterioration of the physical or mental health of the Transferees.~~

Particulars

~~IHMS knew or ought to have known the said matters by reason of its experience in providing like services prior to the G4S Period at places such as the Nauru Regional Processing Centre and on Christmas Island.~~

7. ~~Throughout the G4S Period, Transferees (including the plaintiff) who were members of the G4S Subgroup (Group Members):~~

~~(a) resided at the Centre;~~

~~(b) were required by the Commonwealth or under PNG law to reside at the Centre while their claims for international protection were determined by the Government of PNG;~~

~~(c) were, by reason of the matters alleged at paragraphs 3, 4, 5 and 6 above, persons in respect of whom IHMS had agreed with the Commonwealth to provide, and did provide, medical and health care services;~~

~~(d) had no means of obtaining medical or health care services other than those provided by IHMS, or provided off site after referral by IHMS subject to all necessary approvals by the Commonwealth and/or representatives of the Government of PNG.~~

~~8. In breach of the IHMS duty of care, throughout the G4S Period,~~

~~(a) IHMS had no or no adequate systems to ensure that:~~

~~A (i) medical aids (such as corrective lenses, hearing aids, prostheses and medications) (**Medical Aids** ~~medical aids~~) possessed by Transferees on arrival in Australia or at Manus Island were in a timely way, after being checked, either approved and returned to the Transferee or appropriately replaced in a timely way, to prevent harm, pain or injury being caused to Transferees as a result of prolonged deprivation of the Medical Aids ~~medical aids~~;~~

~~B (ii) Transferees had access to medical treatment and healthcare:~~

~~I. that recognised that Transferees, being:~~

~~1 likely to have the Transferees Characteristics (as defined in the TASOC SASOC under the term Detainee Characteristics); and~~

~~2 detained in the difficult environmental and physical conditions present at the Centre and on Manus Island including those set out in paragraphs 7 to 10 of the TASOC,~~

~~were a high risk cohort for physical and psychiatric or psychological conditions requiring medical treatment and health care;~~

~~II. that was timely, in accordance with Australian Precautions;~~

~~III. that was delivered in facilities compliant with Australian Precautions;~~

~~IV. — that had expertise in the physical, psychiatric or psychological condition(s) requiring treatment, in accordance with Australian Precautions;~~

~~V. — that utilised modern equipment, treatments, procedures and medications, in accordance with Australian Precautions; and~~

~~VI. — that was private and maintained patient privacy, in accordance with Australian Precautions; and~~

~~VII. — adequate medical and other logs or records were maintained to document *inter alia* a comprehensive and accurate account of all medical and health-related issues arising within the Centre.~~

~~C (iii) cases of mental illness, harm or distress amongst Transferees at the Centre were identified, assessed and treated adequately and in a timely way;~~

~~D (iv) adequate medical and other logs or records were maintained to document *inter alia* a comprehensive and accurate account of all medical and health-related issues arising within the Centre;~~

~~E (v) condoms were freely available to Transferees at the Centre in circumstances where:~~

~~1. a number of Transferees had sexually transmitted diseases;~~

~~2. the local population on Manus Island was known to have sexually transmitted diseases;~~

~~3. male to male sex was occurring among some of the Transferees; and~~

~~4. sexual assaults occurred at the Centre.~~

~~F (vi) vaccines and medications were stored and refrigerated to ensure their efficacy; and~~

~~G (vii) medical supplies were ordered and obtained in a quantity and timeliness adequate to meet the needs of the Transferees~~

~~(b) — By reason of the omissions referred to in the preceding sub-paragraph:~~

~~(i) — Transferees, on arrival in Australia or at Lorengau Port, routinely:~~

~~A. — had Medical Aids medical aids confiscated temporarily or permanently; and~~

~~B. — by reason of the lack of any or any adequate system to ensure replacement of such medical aids experienced long and distressing delays before the Medical Aids medical aids were returned or replaced;~~

Particulars

~~1. — The Plaintiff's longstanding burn injuries had regularly required the use of several medical skin creams to apply to the burns and surgical scarring on his face, neck and hands, prior to arriving at the Centre. The cream he required most often was called 'Rejuderm'. Upon his detention by the Commonwealth and prior to his arrival at the Centre, his skin creams were confiscated.~~

~~2. — No adequate alternative creams were made available to the Plaintiff while at the Centre, during which time he had little or no means for relief from his skin irritation available to him.~~

~~3. — The hot and humid conditions at the Centre caused serious itching, pain and irritation to the Plaintiff's skin, and caused growths to develop on his face, which he was unable to satisfactorily treat.~~

~~4. — IHMS staff repeatedly advised the Plaintiff that the local climate and weather conditions were damaging to his skin, and at times advised him to apply sunscreen, Vaseline or a non-medical 'Nivea' skin cream instead and wait for 1-2 months to see if they had any effect. These measures were ineffective.~~

~~5. — Doctors also advised the Plaintiff to avoid exposing the skin~~

~~on his face to prolonged direct sunlight.~~

~~6. Particulars relating to the individual group members will be provided following the trial of common questions or otherwise as the Court may direct.~~

~~(ii) (c) the only medical facilities which Transferees were authorised to access:~~

~~A. were the facilities known to the parties as the **Medical Centre**;~~

~~B. were located outside the Centre's main compound;~~

~~C. could not be accessed by Transferees directly or without accompaniment by G4S personnel;~~

~~D. were housed in subdivided shipping containers;~~

~~E. had, or in some instances had, dirt floors;~~

~~F. were equipped with plastic chairs and foldable camp-style tables;~~

~~G. for non-emergency services, operated only five days per week, and between 08:00 and 18:00 hours;~~

~~H. were the only authorised first-line source of medical treatment and health care for up to 1,350 1,200 Transferees; and~~

~~I. were, up to November 2013, staffed by not more than seven permanent employees fluctuating numbers of rotating health workers, being:~~

~~1. two doctors;~~

~~2. two psychologists;~~

~~3. one counselor counsellors; and~~

~~4. two support staff;~~

~~J. had, from at least February 2014, a fluctuating number of rotating mental health team of not more than eleven people, workers, being:~~

~~1. six mental health nurses;~~

~~2. one or no psychiatrists;~~

~~3. one psychologists; and~~

~~4. three counsellors;~~

~~K. regularly received more than one hundred approximately 50 to 100 applications for medical appointments per day;~~

Particulars

~~1. The Medical Centre and its staff and facilities are described in UNHCR January 2013 pp 18-19; UNHCR June 2013 at p 15, Amnesty International December 2013 at p 53, Amnesty International May 2014 at pp 7 and 53.~~

~~2. As at June 2013, the Medical Centre received approximately 110 requests for medical appointments from Transferees per day, which could lead to long delays in providing medical appointments.~~

~~3. As at March 2014, a new area adjacent to the Oscar compound had been established for psychiatric patients, comprising small rooms each containing one mattress on the floor, surrounded by a corrugated iron wall, and supervised by a security officer: Amnesty International, May 2014, p 7.~~

~~(iii) (d) following a Transferee's arrival at Manus Island:~~

~~A. there was no timely or adequate assessment of the physical or mental healthcare requirements of the Transferee, conducted by a healthcare professional and applying criteria in accordance with Australian Precautions;~~

~~B. periodic reviews of the physical and mental health of Transferees, and in particular reviews investigating any~~

~~emergence or aggravation of psychological conditions, were insufficiently regular or specialised to comply with Australian Precautions;~~

Particulars

~~As at October 2013, arriving Transferees were not commonly subject to 'initial transferee interviews.~~

~~(iv) (e) Transferees seeking medical treatment or health care:~~

~~A. were not permitted to obtain any medications, including medications that would be non-prescription or "over the counter" medications in Australia (such as Panadol or paracetamol), save as provided by the Medical Centre;~~

~~B. were not permitted direct contact with the Medical Centre;~~

~~C. were required to make written application to G4S for an appointment at the Medical Centre;~~

~~D. routinely waited up to three days or more for a medical appointment, regardless of the nature of the condition for which treatment was sought.~~

Particulars

~~1. As at January 2013, the turnaround time for Transferees who requested a medical appointment to see a medical practitioner was up to 72 hours: UNHCR, January 2013, p 19.~~

~~2. As at June 2013:~~

~~(a) it was common for Transferees to be required to make multiple medical requests for medical assistance for the same problem or issue before they would be provided an appointment to see a member of the medical staff;~~

~~(b) it was not uncommon for Transferees to have to wait up to three days to receive basic painkillers such as Panadol~~

~~3. As to paragraph 90(d)(ii) of the TASOC, Transferees were not permitted to attend at the Medical Centre or to speak with employees of the Medical Centre without a prior appointment. Transferees were not permitted to make such an appointment at the Medical Centre or by speaking with Medical Centre employees. Rather, Transferees were required to make written application to G4S for an appointment at the Medical Centre.~~

~~As to the Plaintiff:~~

~~4. The Plaintiff made regular requests for assistance from IHMS, often one or two requests per day, for assistance to:~~

~~(a) relieve his skin condition; and~~

~~(b) be permitted to see a psychologist.~~

~~5. The Plaintiff was never provided with an appointment to speak with a psychologist at the Centre, however he was occasionally given an appointment to speak to a counsellor or mental health worker employed by STTARS (the Survivors of Torture and Trauma Assistance and Rehabilitation Service).~~

~~6. The Plaintiff made regular requests for medical assistance to treat his worsening skin, but was often only advised by IHMS staff to apply sunscreen or a non-medical 'Nivea' skin cream, and wait 1-2 months to determine if this was effective. These measures did not assist in treating the Plaintiff's skin condition. On one occasion the Plaintiff saw a doctor at the Medical Centre who stated that he had experience in the treatment of burns; this doctor provided the Plaintiff with a supply of~~

~~Vaseline to apply to his skin. This too proved ineffective.~~

~~7. The Plaintiff made regular requests to be given back his confiscated skin creams, or to be provided with a new supply of those creams, but these requests were never actioned.~~

~~8. The Plaintiff was told by IHMS staff that as his skin condition was not life threatening it would not be a priority when IHMS triaged the medical requests that had been made.~~

~~Particulars relating to individual group members will be provided following the trial of common questions or otherwise as the Court may direct.~~

~~(v) (f) the Medical Centre:~~

~~A. 1. routinely lacked adequate supplies of common medications;~~

~~B. 2. did not provide specialist medical services, such as:~~

~~1. a. during the G4S period to 19 July 2013, obstetric and gynecological staff;~~

~~2. b. specialist, ancillary and acute care, such as dental, optical or radiological services;~~

~~C. 3. did not have a permanent or full time psychiatrist;~~

~~D. 4. did not have a specialist facility for treating Transferees with acute mental health conditions; and~~

~~E. 5. had insufficient numbers of qualified trauma and torture counsellors to adequately service the number of Transferees Detainees requiring assistance;~~

Particulars

~~As to the Plaintiff:~~

~~1. The Plaintiff never received any specialist or~~

~~ongoing mental health assessment, care or treatment while detained at the Centre.~~

~~As to the Plaintiff and the Claimants:~~

~~2. The Medical Centre frequently ran out of supplies of Panadol and other painkilling medication.~~

~~3. As at June 2013, Transferees with serious mental health conditions were held in the 'Delta 9' compound, which contained small, cramped rooms with no windows or natural lighting and no recreational facilities, and were supervised by Security Staff.~~

~~4. As at October/November 2013, a team from Survivors STTARS had commenced providing some counselling services at the Centre for Transferees with a torture and trauma background. STTARS had a three person team at the Centre, with two counsellors working each day, usually seeing four Transferees per day. As at November 2013, the STTARS team had a full caseload and had 16 additional Transferees on a waiting list: Amnesty International, December 2013, pp 56-67; UNHCR, October 2013, p 22.~~

~~5. As at November 2013, IHMS mental health team leader Gareth Lee stated that IHMS was receiving eight to twelve new requests for mental health-related appointments per day, and that 30 per cent of the Transferee population had presented with some form of mental health issue. Mr Lee stated that IHMS required additional staff to address increasing demand for mental health assistance, and that there was at the time no psychiatrist permanently based at the Centre, despite the requirements of the Department: Amnesty~~

~~International, December 2013, pp 57.~~

~~6. In the six months prior to February 2014, there were five visiting psychiatrist attendances at the Centre.~~

~~7. In the six month period from February 2014 to July 2014 there were nine visiting psychiatrist visits to the Centre.~~

~~As to paragraph 90(e)(v) of the TASOC, the number of Transferees requiring assistance will be provided after discovery.~~

~~(vi) (g) the dental services available to Transferees were provided via referrals to the local Manus Island dentist, who:~~

~~A. at times did not have access to a functional dental drill, or other equipment in accordance with Australian Precautions;~~

~~B. was unable to treat tooth conditions other than by inserting fillings or performing extractions;~~

~~C. had limited capacity to treat Transferees from the Centre because of the need to treat members of the local population; and~~

~~D. undertook more invasive treatments than were consistent with Australian Precautions; and~~

~~E. provided services in an unhygienic setting.~~

Particulars

~~1. As at November 2013, dental facilities on Manus Island outside the Centre consisted of a clinic that could perform fillings and extractions but could not perform other procedures, including making and inserting false teeth. The clinic could see four Transferee patients per day, on two days per week; on other days, the clinic would only service members of the local community: Amnesty International, December 2013, pp 58.~~

~~2. The dentist had only recently acquired a drill as of October 2013, and prior to this was unable to perform fillings and could only perform extractions: UNHCR, October 2013, p22.~~

~~(vii) IHMS:~~

~~A. did not have any or any adequate written or unwritten procedure for the escalation of medical treatment for Detainees when appropriate care could not be provided by the Medical Centre;~~

~~B. in practice could only refer a Detainee for treatment at an alternative location:~~

~~1. upon application to an officer of the Commonwealth;~~

~~2. upon approval of the application, by the Commonwealth officer;~~

Particulars

~~1. Clinicians recommending a Transferee for a transfer away from Manus for medical purposes would notify the IHMS Medical Director of the Medical Director Mental Health, and would thereafter complete and submit a 'recommendation for transfer' form concerning that Transferee.~~

~~2. Upon receipt of a 'recommendation for transfer' form, the IHMS Medical Director or the Medical Director Mental Health may submit the form to the DIBP Health Section for approval.~~

~~3. At times the Commonwealth responded to IHMS recommendations that Transferees should be removed from the Centre to treat mental health conditions, by instructing that the Transferee should be treated at the Centre or otherwise elsewhere within PNG.~~

~~4. On occasion, the Commonwealth obtained the second opinions from external Australian doctors on IHMS's recommendations for transfers, which created further delays in decision-making.~~

~~(viii) (h) In a number of cases, Transferees who required escalation of medical treatment endured:~~

~~A. lengthy delays; and~~

~~B. inadequate interim care pending presentation to the alternative medical treatment providers; and~~

~~C. refusal to escalate care by means of transferring the person of Manus Island to Port Moresby and/or to Australia.~~

~~(ix) (i) Transferees exhibiting symptoms or signs of physical or mental harm or other poor health:~~

~~A. were not identified by Centre personnel, and recommended or referred for medical assessment and/or treatment, in a timely manner;~~

~~B. were not provided with any information or advice sufficient to enable them or other Transferees to identify when medical intervention or assistance may be required for such symptoms;~~

~~C. as a result of the matters described in subparagraphs (b) (e) (ii) (v) and (h) (vii) above, were in practice discouraged from actively seeking early intervention or assistance with medical concerns, and~~

~~D. consequently experienced protracted delays in receiving medical care and lengthy periods of suffering from their untreated symptoms.~~

Particulars

~~1. The Plaintiff was not provided with additional medical care or support despite his worsening presentation over time.~~

~~2. Full particulars in relation to the Plaintiff will be provided prior to trial.~~

~~3. Particulars of individual Group Members will be provided following the trial of common questions or otherwise as the Court may direct.~~

~~4. Particulars of the untreated symptoms will be provided after~~

discovery.

(x) — Transferees had limited access to condoms, in circumstances where:

A. a number of the Transferees had sexually transmitted diseases;

B. the local population on Manus Island was known to have sexually transmitted diseases;

C. male to male sex was occurring among some of the Transferees; and

D. sexual assaults occurred at the Centre.

Particulars

1. Prior to around December 2013, condoms were not made available to Transferees at the Centre (G4S.004.010.7894) and were considered contraband (A.100.2020.0423)

2. From around December 2013, condoms were only accessible upon request from the medical clinic (P.500.9007.0003.1236)

3. The condoms were available at the Centre as at 7 January 2014 were considered to be compromised due to exposure to heat (BNL.013.007.2045)

4. From around early 2014, one IHMS counsellor, John Zammit, distributed condoms and lubricant to Transferees in the compounds at his discretion, but otherwise condoms were only available at the IHMS clinic.

(xi) — Transferees had a fear of seeking advice, assistance and/or sexual health issues.

8A. — In the premises of the matters set out in the preceding paragraph, IHMS, throughout the G4S period, failed to take reasonable care to ensure that Transferees were provided with medical care and health services that: breached its duty of care owed to the Transferees.

- ~~(a) — recognised that Transferees were likely to have the Transferee Characteristics, were a high-risk cohort for physical and psychiatric or psychological conditions requiring medical treatment and health care;~~
- ~~(b) — were, according to Australian Precautions, reasonably adapted to prevent avoidable deterioration of their physical and mental health of Transferees;~~
- ~~(c) — recognised the level of medical care and health services needed to reflect the limited medical services and facilities available on Manus Island and PNG;~~
- ~~(d) — recognised the level of mental health services needed to reflect the lack of any or any adequate mental health services and facilities available on Manus Island and PNG; and~~
- ~~(e) — prevented or ameliorated paid to Transferees.~~

~~8B — In the premises of the matters set out in the preceding two paragraphs, IHMS, throughout the G4S period, breached the IHMS Duty of Care owed to Group Members.~~

Causation

~~8C — Throughout the G4S Period, the matters of fact alleged at paragraph 8 were notorious among existing Transferees and new Transferees as the latter arrived at the Centre.~~

~~8D — By reason of:~~

- ~~(a) — the Group Members' direct personal experiences of matters alleged at paragraph 8; and~~
- ~~(b) — the Group Members' knowledge or belief from other Transferees of those circumstances, as alleged at paragraph 8C;~~

~~the Group Members have suffered and continue to suffer mental harm and/or physical injury and/or distress and inconvenience (**G4S Subgroup Harm**)~~

~~8E — By reason of the matters alleged at paragraphs 8C and 8D, the G4S Subgroup Harm was a result of the breaches of the IHMS Duty of Care as alleged at paragraph 8B.~~

~~8F—By reason of the matters alleged at paragraph 8, failures by IHMS to provide medical care and health services that were, according to Australian Precautions, reasonably adapted to prevent and ameliorate pain, physical injury or mental illness, the Plaintiff and some of the Group Members suffered:~~

~~(a)—deterioration in or aggravation of pre-existing physical, psychological or psychiatric condition;~~

~~(b)—new physical injuries or mental harm caused by:~~

~~(i)—unreasonable lack of access to medical treatment compliant with Australian Precautions;~~

~~(ii)—unreasonable delays before delivery of medical treatment compliant with Australian Precautions;~~

~~(iii)—medical treatment not compliant with Australian Precautions; and/or~~

~~(iv)—panicked, coerced or necessary recourse to illegal, unauthorized and unqualified medical procedures; and~~

~~(c)—pain, distress and inconvenience.~~

~~9.—If, which is denied, G4S is liable in respect of the plaintiff's allegation for any loss or damage suffered by the plaintiff and/or the Group Members, then G4S says:~~

~~(a)—by reason of the matters alleged at paragraphs 5 to 8F above, particularly the IHMS breach of duty of care, IHMS is liable to the plaintiff and the Group Members in respect of the same damage;~~

~~(b)—any losses, damages, expenses and costs incurred by G4S and arising from the plaintiff's allegations were occasioned by acts or omissions of IHMS which caused or contributed to such expenses, losses, damages and costs claimed by the plaintiff and/or Group Members;~~

~~(c)—accordingly, G4S is entitled, pursuant to:~~

~~(i)—section 37 of the *Wrongs (Miscellaneous Provisions) Act 1975* (PNG);~~

~~(ii) — alternatively, section 23B of the *Wrongs Act 1958* (VIC);~~

~~(iii) — alternatively, section 21 of the *Civil Law (Wrongs) Act 2002* (ACT),~~

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

Claim against the Commonwealth of Australia

~~40.2.~~ If, which is denied, G4S 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~~ Fourth ~~Second~~ Amended Statement of Claim concerning the Commonwealth, the Commonwealth is liable to the plaintiff and group members in respect of the same damage;

(b) accordingly, G4S is entitled, pursuant to:

(i) section 37 of the *Wrongs (Miscellaneous Provisions) Act 1975* (PNG);

(ii) alternatively, section 23B of the *Wrongs Act 1958* (VIC);

(iii) 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.

~~40.2A.~~ G4S entered into an agreement (**the G4S Contract**) with the Commonwealth by which it agreed to provide operational support services, including garrison support services (**Garrison Services**), in relation to transferees at the Manus Island Regional Processing Centre (**MIRPC**) in Papua New Guinea (**PNG**) between 15 October 2012 and 23 March 2014.

Particulars

The G4S Contract is partly in writing, partly oral and partly to be implied.

Insofar as the G4S Contract is in writing, it is constituted by:

- (i) a document entitled 'Contract in relation to the provision of services on Manus Island' dated 1 February 2013 executed by G4S and on behalf of the Commonwealth and which incorporated by reference a Memorandum of Understanding entered into between the Commonwealth and Government of PNG dated 8 September 2012 and the Administrative Arrangements made pursuant thereto (cl.2.2.3);
- (ii) Deed of Variation executed by G4S and on behalf of the Commonwealth, which varied the Contract on 2 August 2013;
- (iii) a letter of amendment signed on 7 November 2014;
- (iv) the MIRPC Plan Procedures issued by the Commonwealth to G4S.
- (v) directions given by Commonwealth to G4S at daily operational and weekly service providers meetings at the MIRPC as to the services to be performed by G4S that are recorded in writings.

Insofar as it was oral, it was constituted by oral directions given by Commonwealth to G4S at daily operational and weekly service providers meetings at the MIRPC as to the services to be performed by G4S.

Insofar as it is to be implied, it is to be implied so as to give business efficacy or as an incident of the relationship.

19 2B The relationship between the Commonwealth and G4S created by the G4S Contract and/or in fact in the provision of the services provided by G4S in relation to transferees at the MIRPC was one of principal and agent (**Agency Relationship**).

Particulars

The Agency Relationship arises because at all relevant times, the Commonwealth asserted control and direction over the provision of the services provided by G4S in relation to transferees at the MIRPC.

G4S refer to and relies on the following terms of the G4S Contract:

- (a) G4S must comply with the directions of the Contract Administrator (to be appointed by the Department of the Commonwealth) (CI 4.3.1);

- (b) G4S must comply with the plans, procedures and guidelines issued to it or imposed upon it by the Commonwealth (Cl.3.13(b));
- (c) the Commonwealth may approve or request changes to the plans required to be submitted by G4S in accordance with the G4S Contract as to the performance by it of its obligations under the G4S Contract (Cl 7.2.1 & 7.2.2 G4S Contract);
- (d) G4S was required to seek the Commonwealth's approval before engaging any subcontractor, and the Commonwealth had the power to control the employment by G4S of subcontractors (clause 6.4.3(b));
- (e) the Commonwealth had an absolute discretion to remove personnel and sub-contractors employed by G4S from the Centre (clauses 5.2.1 and 5.3.1);
- (f) the Commonwealth had an absolute discretion to contact G4S's subcontractors directly to obtain information regarding the Services provided by that subcontractor (clause 6.6.2).

G4S refers to and relies on the fact that:

- (a) directions were given by the Commonwealth to G4S at daily operational and weekly service providers meetings at the MIRPC as to as to the manner the services by G4S were to be provided;
- (b) the Commonwealth imposed on G4S its procedures, policies and guidelines to be applied at the Centre in respect of the services provided by G4S.

For the purposes of this Third Party Notice only, G4S refers to and repeats paragraphs 46 and 47 of the [TASOGfourth amended statement of claim](#).

G4S refers to and relies on the fact that services provided by G4S including the Garrison Services were for and on behalf of the Commonwealth and for the benefit of the Commonwealth as it allowed the Commonwealth to implement its No Advantage Policy and Operation Sovereign Borders Policy.

[49 2C](#) It was an implied term of the Agency Relationship that the Commonwealth would indemnify G4S for the liabilities (including damages in tort) it incurred as a result of

the provision of services by G4S under the G4S Contract or at the direction of the Commonwealth (**Agency Indemnity**).

Particulars

The Agency Indemnity is implied as an incident of the Agency Relationship, alternatively, so as to give business efficacy to the Agency Relationship.

[40 2D](#) Further, there was an implied warranty in the G4S Contract that the provision of the Garrison Services by G4S would be lawful (**Implied Warranty**).

Particulars

The term is implied as an incident of its contract with the Crown to provide Garrison Services, alternatively, so as to give business efficacy to the G4S Contract.

[40 2E](#) In agreeing to enter into the G4S Contract and in the provision of the Garrison Services required of G4S by the terms of that contract and/or at the direction of the Commonwealth, G4S believed that the provision of those services was lawful.

[40 2F](#) By the ~~TASOC~~fourth amended statement of claim, the plaintiff claims on his own behalf and on behalf of the False Imprisonment Group Members that by reason of the provision of the alleged Garrison Services provided by G4S they were falsely imprisoned by G4S.

[40 2G](#) The plaintiff and the False Imprisonment Group Members claim damages by reason of their false imprisonment.

[40 2H](#) If, which is denied, G4S is liable for damages in respect of the plaintiff's claim and the False Imprisonment Group Members' claim for false imprisonment, then G4S says:

- (a) the Commonwealth breached the Implied Warranty;
- (b) the Garrison Services relied on by the plaintiff and the False Imprisonment Group Members were provided by G4S as agent of the Commonwealth;
- (c) G4S has suffered loss and damage as a result of the breach of the Implied Warranty and/or by reason of G4S acting as the Commonwealth's agent; and

- (d) G4S is entitled to indemnification, alternatively, damages, alternatively, contribution from the Commonwealth in respect of its loss and damage.

Particulars

G4S' losses and damages comprise:

- (i) its liability to the plaintiff and the False Imprisonment Group Members arising out of their claims for false imprisonment, including as to costs;
- (ii) the costs incurred by G4S in defending those claims.

10.2I Further, the plaintiff and the Negligence Group Members make claims against G4S for loss and damage alleged to have been caused by G4S's conduct (including by omissions) in the provision of the services the subject of the G4S Contract.

10.2J If, which is denied, G4S is liable for damages in respect of the plaintiff's claim and the Negligence Group Members' claims, then G4S says:

- (e) the conduct relied on by the plaintiff and the Negligence Group Members was provided by G4S as agent of the Commonwealth;
- (f) G4S has suffered loss and damage by reason of G4S acting as the Commonwealth's agent; and
- (g) G4S is entitled to indemnification, alternatively, damages, alternatively, contribution from the Commonwealth in respect of that loss and damage.

Particulars

G4S' losses and damages comprise:

1. its liability to the plaintiff and the Negligence Group Members, including as to costs;
2. the costs incurred by G4S in defending those claims.

Claim against Transfield Services (Australia) Pty Ltd

11.3. If, which is denied, G4S 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 ~~second~~fourth amended statement of claim concerning Transfield, Transfield is liable to the plaintiff and group members in respect of the same damage;

(b) accordingly, G4S is entitled, pursuant to:

(i) section 37 of the *Wrongs (Miscellaneous Provisions) Act 1975* (PNG);

(ii) alternatively, section 23B of the *Wrongs Act 1958* (VIC);

(iii) alternatively, section 21 of the *Civil Law (Wrongs) Act 2002* (ACT),

to recover contribution from Transfield 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 G4S CLAIMS:

~~Against IHMS~~

~~A. Contribution.~~

~~B. Costs.~~

~~C. Such further or other relief as to the Court seems appropriate.~~

Against the Commonwealth

A. Damages.

B. Indemnity.

C. Contribution.

D. Costs.

E. Such further or other relief as to the Court seems appropriate.

Against Transfield

A. Contribution.

B. Costs.

C. Such further or other relief as to the Court seems appropriate.

DATED: [1 May 2017](#)

G.P.Harris

A handwritten signature in black ink, reading "Foster Nicholson Jones", is enclosed in a rectangular box.

Foster Nicholson Jones Lawyers
Solicitors for the second defendant

SCHEDULE OF PARTIES**MAJID KARAMI KAMASAE**

Plaintiff

and

COMMONWEALTH OF AUSTRALIA

First Defendant

G4S AUSTRALIA PTY LTD (ABN 64 100 104 658)

Second Defendant

BROADSPECTRUM (AUSTRALIA) PTY LTD ABN 11 093 114 553

(previously Transfield Services (Australia) Pty Ltd)

Third Defendant

and

~~**INTERNATIONAL HEALTH AND MEDICAL SERVICES PTY LTD**~~~~**ABN 40 073 81 131**~~~~First Third Party~~**WILSON PROTECTIVE SERVICES PNG LTD****Third Party**