

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

SCI 2014 06770

BETWEEN

MAJID KARAMI KAMASAE

Plaintiff

– and –

THE COMMONWEALTH OF AUSTRALIA and others
(in accordance with the Schedule to the Writ)

Defendants

FOURTH ~~THIRD~~ AMENDED STATEMENT OF CLAIM

**Filed pursuant to paragraph 4 of the Orders of
the Honourable Justice McDonald dated 6 April 2017**

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PART A – PARTIES

1. The Plaintiff:

- (a) is a natural person, born on 31 December 1981 in Tehran, Iran;
- (b) suffered serious burns to his face, neck and hands at around age 15 in Iran, which caused ongoing pain and sensitivity of his skin, and which had required over 30 surgical procedures to treat or manage;

Particulars

The Plaintiff was burned in a heater fire in his family home.

- (c) entered Australia as an unauthorised maritime arrival on or about 14 August 2013; (d) on entering Australia was immediately taken into custody by the Commonwealth and relocated to Darwin on or about 19 August 2013;

Particulars

- 1. The Plaintiff departed Indonesia by boat in early August 2013.
- 2. On or about 14 August 2013 the Plaintiff's boat was intercepted by an Australian Naval vessel and the Plaintiff was taken into the Commonwealth's custody.
- 3. After staying for approximately 48 hours on this vessel, the Plaintiff was transferred at sea to another Australian naval vessel, which travelled towards Darwin shortly thereafter.
- 4. On or about 19 August 2013, the second Australian naval vessel arrived in Darwin and transferred the Plaintiff to the custody of staff from the Department of Immigration and Border Protection (the **Department**).

- (e) was transferred to Manus Island by the Commonwealth on or about 4 September 2013, and was detained there for approximately 11 months;
- (f) experienced severe pain and irritation to his skin, as well as other physical and psychological injuries, during his time on Manus Island;
- (g) remained on Manus Island until approximately July 2014, when he was transferred to Melbourne for medical treatment;
- (h) as at the date of commencement of this proceeding is held in immigration detention in Melbourne in the State of Victoria pursuant to the *Migration Act 1958* (Cth) (the **Migration Act**).

2. The first defendant (the **Commonwealth**) is:

- (a) the Crown in right of the Commonwealth of Australia; and
- (b) capable of being sued pursuant to Part IX of the *Judiciary Act 1903* (Cth) (the **Judiciary Act**).

3. The second defendant (**G4S**) at all material times:
 - (a) was and is a body corporate capable of being sued;
 - (b) carried on a business of, *inter alia*, providing to the Commonwealth services for the management of and maintenance of security at:
 - (i) detention centres in Australia, within the meaning of the *Migration Act 1958 (Cth)*; and
 - (ii) facilities outside Australia to which persons detained by or on behalf of the Commonwealth pursuant to the *Migration Act* were transferred and detained;
 (severally **detention facilities**); and
 - (c) was and is a body corporate related to G4S Secure Solutions (PNG) Ltd (**G4S- PNG**), being a corporation registered in Papua New Guinea (**PNG**).

4. The third defendant (**Transfield**) at all material times:
 - (a) was and is a body corporate capable of being sued;
 - (b) carried on a business of, *inter alia*, providing to the Commonwealth services for the management of and maintenance of security at immigration detention facilities.

Negligence group members and false imprisonment group members

5. The Plaintiff brings this proceeding on his own behalf and on behalf of all persons who at any time during the period 21 November 2012 until 19 December 2014 (the **Negligence Claim Period**):
 - (a) were detained by or on behalf of the Commonwealth pursuant to the *Migration Act*; and
 - (b) as detainees, were taken by officers of, or on behalf of, the Commonwealth from Australia to PNG; and
 - (c) were detained at the detention facility known to the parties as the “Manus Island Regional Processing Centre” (the **Centre**) on Los Negros Island in Manus Island Province in PNG; and
 - (d) suffered personal injury (including but not limited to psychological or psychiatric injury) as a result of the conduct of the Commonwealth, G4S and/or Transfield, described in this Statement of Claim;
 (together and severally **Negligence Group Members**).

- 5A. The Plaintiff also brings this proceeding on his own behalf and on behalf of all persons who at any time during the period 21 November 2012 until 12 May 2016 (the **False Imprisonment Claim Period**) were confined at the Centre by or on behalf of:

- (a) the Commonwealth;
 - (b) Transfield; and/or
 - (c) G4S
- (together and severally **False Imprisonment Group Members**).

6. As at the date of this pleading there are, as against each of the defendants, more than seven Negligence Group Members and False Imprisonment Group Members who make the claims set out in this Statement of Claim.

PART B – MANUS ISLAND REGIONAL PROCESSING CENTRE

Location and climate

7. The Centre is located at the Lombrum Naval Base on Los Negros Island in the Manus Island Province of PNG.
8. Manus Island Province:
- (a) is located in the northeast of PNG;
 - (b) includes the Admiralty Islands, the largest of which is Manus Island;
 - (c) at all material times had:
 - (i) a total provincial population of approximately sixty thousand (60,000) people; and
 - (ii) a total population on Manus Island of approximately fifty thousand (50,000) people;
 - (d) has as its provincial capital the town of Lorengau, on Manus Island.

Particulars

- 1. Maps of the northeast region of PNG including Manus Island and Los Negros Island are reproduced as Annexure A to this Statement of Claim.
 - 2. The province population information is set out in the National Statistical Office of Papua New Guinea: Census 2011 Final Figures Brochure.
 - 3. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
9. Los Negros Island:
- (a) is the third largest of the Admiralty Islands;
 - (b) is connected to Manus Island by a bridge;
 - (c) has a weather climate which features:

- (i) average daytime maximum temperatures of between 30 and 40 degrees Celsius throughout the year;
- (ii) very high levels of humidity throughout the year; and
- (iii) very frequent torrential rain throughout the year.

Particulars

1. The weather climate is described in:
 - (a) a document published by the Department of Immigration and Border Protection titled "*Manus Island: A Living and Working Guide*", and
 - (b) a report titled "*This is Breaking People*" authored by Amnesty International, dated December 2013 (**Amnesty International, December 2013**), at page 40.
2. Copies of the documents referred to herein may be inspected by appointment at the Melbourne office of the solicitors for the Plaintiff.

9A. At all material times, homosexuality was illegal in PNG.

10. The Centre:

- (a) is located on the coast of Los Negros Island (which, in accordance with the customary usage of the defendants will hereafter, unless otherwise stipulated, be referred to as a part or adjunct of Manus Island and the two land-masses referred to compendiously as **Manus Island**);
- (b) is bounded by the coast on one side and high fences on all landward boundaries;
- (c) at all material times, had perimeter fencing for the purpose of:
 - (i) preventing unauthorised egress by persons taken to the Centre pursuant to the Memoranda of Understanding referred to at paragraphs 13 and 26 below (**Detainees**); and
 - (ii) preventing unauthorised ingress by persons who are not Detainees.
- (d) was at all material times patrolled or guarded by security personnel engaged by:
 - (i) the Commonwealth; or,
 - (ii) G4S; or
 - (iii) Transfield; or
 - (iv) subcontractors of G4S or Transfield;
- (e) comprises, *inter alia*, accommodation facilities for Detainees being:
 - (i) in October 2012 – refurbished buildings and canvas tents;

Particulars

The accommodation facilities as at October 2012 are

described in the “*Statement about arrangements that are in place, or to be put in place, in the Independent State of Papua New Guinea for the treatment of persons taken to Papua New Guinea*” appended to the 2012 MOU referred to at paragraph 13 below.

- (ii) from about November 2012 – refurbished buildings plus prefabricated dormitory accommodation progressively replacing canvas tents.

Particulars

An aerial photograph and schematic map of the Centre are reproduced as Annexure B to this Statement of Claim.

Obligations under the United Nations *Convention Relating to the Status of Refugees*

11. At all material times, the Commonwealth has been a signatory and contracting state to the United Nations *Convention Relating to the Status of Refugees* (the **Convention**).

12. The Convention describes a number of particular obligations of contracting states towards refugees, including:
 - (a) the provision of free access to the courts of law on the territory of the contracting state (article 16);
 - (b) the provision of treatment in relation to housing that is as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances (article 21);
 - (c) the provision of treatment in relation to public relief and assistance that is the same as is accorded to the contracting state’s nationals (article 23);
 - (d) not imposing penalties on refugees, who enter or are present in the contracting state’s territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence (article 31);
 - (e) not expelling a refugee lawfully in the contracting state’s territory other than on grounds of national security or public order, and without any such expulsion occurring in pursuance of a decision reached in accordance with due process of law (article 32);
 - (f) not expelling or returning a refugee in any manner to the frontiers of territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion (article 33),
(collectively, the **Convention Obligations**).

Regulatory arrangements – 2012

2012 MOU

13. On or about 8 September 2012 the Commonwealth and PNG entered a memorandum of understanding titled “*Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the Transfer and Assessment of Persons in Papua New Guinea and Related Issues*” (the **2012 MOU**).

Particulars

The 2012 MOU is in writing, signed by the Minister for Foreign Affairs and Immigration for the Government of PNG, and the Minister for Trade and Competitiveness for the Government of Australia. A copy of the 2012 MOU may be inspected by appointment at the Melbourne office of the solicitors for the Plaintiff.

14. There were terms of the 2012 MOU that, or to the effect that, *inter alia*:
- (a) it recorded a common understanding regarding a transfer arrangement, whereby the Commonwealth could transfer persons under the 2012 MOU (**Transferees**) to PNG, for processing by PNG or the Commonwealth of any asylum claims the Transferees might raise: 2012 MOU p.2;
 - (b) the Commonwealth and PNG are both state parties to the Convention (2012 MOU p.1) and that all activities undertaken in relation to the 2012 MOU would be conducted in accordance with international law and the international obligations of the respective party (2012 MOU cl.4);
 - (c) the Commonwealth was to bear all costs incurred under the 2012 MOU: cl.7;
 - (d) the Transferees would be persons who:
 - (i) had travelled irregularly by sea to Australia; or
 - (ii) had been intercepted at sea by Australian authorities in the course of trying to reach Australia by irregular means; and
 - (iii) were required by Australian law to be transferred to PNG: cl.11;
 - (e) the Commonwealth may transfer and PNG would accept Transferees under the 2012 MOU: cl.9;
 - (f) administrative measures giving effect to the 2012 MOU would be settled between PNG and the Commonwealth: cl.10;
 - (g) PNG would host an “Assessment Centre”, being a relocation centre to be established in PNG pursuant to the 2012 MOU and declared under s.15B of the *Migration Act 1978* (PNG) (**PNG Migration Act**), in Manus Province or elsewhere in PNG for the purposes of the 2012 MOU: cl.12;
 - (h) PNG and the Commonwealth would ensure that Transferees would be

treated with dignity and respect and that relevant human rights standards were met: cl.15; and

- (i) PNG would make an assessment, or permit an assessment to be made, of whether or not a person transferred is covered by the definition of refugee in Article 1A of the Convention: cl.18(b).

- 15. On or about 9 October 2012 the Minister for Immigration and Citizenship for the Commonwealth (**Commonwealth Minister**) designated PNG to be a regional processing country for the purposes of the *Migration Act*. (**the Designation**)

Particulars

The designation was effected by legislative instrument IMMI12/115 "*Instrument of Designation of the Independent state of Papua New Guinea as a Regional Proceeding Country under subsection 198AB(1) of the Migration Act 1958*". A copy of the said instrument may be inspected by appointment at the Melbourne office of the solicitors for the Plaintiff.

- 15A. A Department of Immigration and Citizenship Submission dated 9 October 2012 which set out the basis for recommending the Commonwealth Minister sign the Designation stated that the Government of PNG had "*indicated that Transferees will not be able to leave the proposed regional processing centre at will*".

Particulars

Department of Immigration and Citizenship Submission
signed by the Commonwealth Minister dated 9 October 2012
A.100.3728.0011

Administrative Arrangements

- 16. On or about 30 April 2013 and 17 July 2014, the Commonwealth and PNG entered into administrative arrangements for or in connection with the Centre (the **Administrative Arrangements**).

Particulars

The Administrative Arrangements are contained in:

- (i) a document titled "*Administrative Arrangements for the Temporary Regional Processing Centre, Supporting the Memorandum of Understanding between the Government of the Independent State of Papua New Guinea (PNG) and the Government of Australia, relating to the transfer and assessment of persons in Papua New Guinea, and Related Matters*" (**2012 Administrative Arrangements**), signed on behalf of the Government of PNG on 23 April 2013 and the Government of Australia on 30 April 2013; and

- (ii) A document titled Administrative Arrangements for regional processing and settlement in Papua New Guinea (**2014 Administrative Arrangements**).

A copy of the 2012 Administrative Arrangements may be inspected by appointment at the Melbourne office of the solicitors for the Plaintiff.

17. There were terms of the Administrative Arrangements, including that:
- (a) the Commonwealth was to establish the Centre and would transport Detainees to PNG to be detained at the Centre (cl.3.1 of the 2012 Administrative Arrangements and cl 5.1.1 of the 2014 Administrative Arrangements);
 - (b) the Commonwealth would have responsibility for the management of the contracted service providers (**CSPs**) engaged to provide services at the Centre (cl.3.1 of the 2012 Administrative Arrangements and cl 5.1.1 of the 2014 Administrative Arrangements);
 - (c) the Commonwealth was to provide facilities for health, education, counselling, interpreters and other relevant services (cl.3.2 of the 2012 Administrative Arrangements and cl 5.1.2 of the 2014 Administrative Arrangements);
 - (d) the Commonwealth was to establish a funding mechanism to meet all operating costs for any Papua New Guinean officials involved with the establishment and operation of the Centre (cl.3.15; of the 2012 Administrative Arrangements) and the Commonwealth would bear all agreed costs incurred under and incidental to the MOU including any reasonable costs associated with legal claims arising from activities under the MOU (cl. 1 of the 2014 Administrative Arrangements);
 - (e) in exceptional circumstances, PNG could request the immediate removal of a Detainee from PNG and PNG and the Commonwealth are to use its best endeavours to remove them to Australia within 48 hours; (cl. 3.6 of the 2012 Administrative Arrangements and cl. 5.1.17 of the 2014 Administrative Arrangements); and
 - (f) in exceptional circumstances, should a Detainee need to be returned to Australia, the Commonwealth and PNG are to facilitate arrangements for their temporary return to Australia (cl.3.7 of the 2012 Administrative Arrangements and cl. 5.1.18 of the 2014 Administrative Arrangements).
18. There were further terms of the Administrative Arrangements, including that:
- (a) the Centre was to be managed by an "Administrator" (the **Administrator**) (cl.3.1 of the 2012 Administrative Arrangements and cl. 5.1.1 of the 2014 Administrative Arrangements);
 - (b) the Administrator was to be a person appointed to manage and control the centre under section 15D of the PNG Migration Act and supported by CSPs (cl.3.8 of the 2012 Administrative Arrangements and cl. 5.3.1 of the 2014 Administrative Arrangements); and

- (c) the Administrator was to delegate the day to day management and control of the centre to an **Operational Manager** (cl.3.9 of the 2012 Administrative Arrangements and cl. 5.3.2 of the 2014 Administrative Arrangements), who was to be a PNG Immigration and Citizenship Services Authority (**ICSA**) Manager (Definitions, p.2 of the 2012 Administrative Arrangements and p.3 of the 2014 Administrative Arrangements); and
 - d) the Administrator could approve Detainees who were in the process of having their claims to protection assessed or who had been determined to be a refugee and who had skills that may be useful to the local community to leave the Centre during the day (cl.3.18 of the 2012 Administrative Arrangements and cl. 5.4.2 of the 2014 Administrative Arrangements).
19. There were further terms of the 2012 Administrative Arrangements that:
- (a) the Commonwealth was to appoint an Australian official as a Coordinator (the **Australian Coordinator**) (cl.3.10);
 - (b) the Australian Coordinator was to work with the Operational Manager to assist in the management and control of the centre (cl.3.10);
 - (c) the Australian Coordinator was to be responsible for managing all Australian officials and service providers, including ensuring that all CSPs delivered services to the standards outlined in their contracts (cl.3.11); and
 - (d) the Australian Coordinator was, with assistance from CSPs, to monitor the welfare, conduct and security of the detainees and provide regular reports on those matters to the Operational Manager (cl.3.13).
- 19A. There were further terms of the 2014 Administrative Arrangements that:
- (a) the Commonwealth was to appoint an officer as a Programme Coordinator (the **Programme Coordinator**) (cl.5.3.3);
 - (b) the Programme Coordinator was to be responsible for managing all Australian officers and service contracts in relation to the Centre in close liaison with the Operational Manager and to ensure that all CSPs delivered services to the standards outlined in their contracts (cl.5.3.3); and
 - (c) the Programme Coordinator was to assist the Operational Manager to monitor the welfare, conduct and security of the detainees (cl.5.3.5).
20. At all material times, the Australian Coordinator and the Programme Coordinator has been
- (a) an officer of the Department; and, in the premises

- (b) an officer of the Commonwealth.

Particulars

The plaintiff relies on the "Definitions" section of the 2012 Administrative Arrangements.

21. There were further terms of the Administrative Arrangements that a CSP was to be appointed to provide adequate security to:
 - (a) ensure the safety of the Detainees; and
 - (b) ensure the safety of the Centre (cl.3.21 of the 2012 Administrative Arrangements and cl. 5.4.6 of the 2014 Administrative Arrangements).

22. There were further terms of the Administrative Arrangements, including that:
 - (a) Detainees were not to be permitted to leave the Centre until they were health and security cleared (cl.3.17 of the 2012 Administrative Arrangements and cl 5.4.1 of the 2014 Administrative Arrangements);
 - (b) Detainees who were in the process of having their protection claims assessed were to be permitted to move in and outside the Centre during the day, subject to appropriate security arrangements in place, for escorted activities including sporting events, shopping, cultural activities and any other activities approved by the Administrator (cl.3.18 of the 2012 Administrative Arrangements and cl 5.4.2 of the 2014 Administrative Arrangements); and
 - (c) if a Detainee was found not to be a refugee, the Detainee was not to be permitted to leave the Centre without appropriate security arrangements in place (cl.3.20) of the 2012 Administrative Arrangements and cl 5.4.5 of the 2014 Administrative Arrangements); and
 - (d) where a Centre is located on a PNG Defence base, any unescorted movement outside the Centre, but within the base perimeter, was subject to prior written approval of the base commander (cl 5.4.3 of the 2014 Administrative Arrangements).

23. There were further terms of the Administrative Arrangements including those that provided for the establishment of an administrative framework for the management of the Centre, including:
 - (a) the creation of an Interim Joint Advisory Committee (the **JAC**), to be co-chaired by representatives of the Department and PNG, for the purpose, amongst others, of overseeing the practical management of services (including security and other relevant services);
 - (b) the provision of secretariat support for the JAC by the Department;

- (c) the creation of a Joint Working Party to be co-chaired by the Department and the Operational Manager, for the purpose, amongst others, of overseeing the practical management of services.

23A. On 19 July 2013, the Commonwealth and PNG signed a Regional Resettlement Agreement pursuant to which persons transferred to PNG found to be refugees would be resettled in PNG.

23B. On 5 September 2012, PNG issued a statutory instrument titled "Exemption" and "Direction to Reside in Relocation Centre under the *Migration Act 1978* (PNG)" pursuant to which persons transferred to PNG under the 2012 MOU were exempted from the requirement to obtain an entry permit under sections 3 and 7 of the *Migration Act 1978* (PNG) but were directed to reside at the Centre for the purposes of determination of their refugee status.

Particulars

PNG National Gazette No G334 dated 2 September 2012 at p.1.

24. On 28 November 2012, PNG revoked the notice of exemption dated 2 September 2012 and issued a statutory instrument titled "Exemption" and "Direction to Reside in Relocation Centre under the *Migration Act 1978* (PNG)" pursuant to which persons transferred to PNG under the 2012 MOU were exempted from the requirement to obtain an entry permit under sections 3 and 7 of the *Migration Act 1978* (PNG) but were directed to reside at the Centre for the purposes of determination of their refugee status.

Particulars

Statutory instrument number 375/2012 published in PNG National Gazette No G463 dated 28 November 2012 at page 1.

24A. On 14 August 2013, PNG issued a statutory instrument titled "Exemption" and "Direction to Reside in Relocation Centre under the *Migration Act 1978* (PNG)" pursuant to which persons transferred to PNG under the Regional Resettlement Arrangements were exempted from the requirement to obtain an entry permit under sections 3 and 7 of the *Migration Act 1978* (PNG) but were directed to reside at the Centre for the purposes of determination of their refugee status.

25. It was a necessary effect of the directions (**Residence Directions**) set out in paragraphs 23B to 24A and of paragraph 22(d) that Detainees were not permitted to leave the Centre without authorisation.

Regulatory arrangements – August 2013

2013 MOU

26. On or about 6 August 2013 the Commonwealth and PNG entered into a memorandum of understanding titled “*Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to, and assessment and settlement in, Papua New Guinea of certain persons, and related issues*” (the **2013 MOU**).

Particulars

The 2013 MOU is in writing, constituted by a document signed by the Australian High Commissioner on behalf of the Commonwealth and Rimbink Pato, Minister for Foreign Affairs and Immigration for the Government of PNG and dated 6 August 2013.

A copy of the 2013 MOU may be inspected at the Melbourne office of the solicitors for the Plaintiff.

27. There were terms of the 2013 MOU that, or to the effect that, inter alia:
- (a) it recorded a common understanding of the parties to it regarding a transfer, assessment and settlement arrangement, whereby Australia could transfer persons under the 2013 MOU (**Transferees**) to PNG for processing of any asylum claims those persons may wish to raise and PNG would settle such of those persons as it determined were refugees: Preamble, page 2;
 - (b) the Commonwealth would bear all costs incurred under the 2013 MOU: cl.7;
 - (c) the Commonwealth may transfer persons from Australia and PNG would accept such Transferees under the 2013 MOU: cl.8;
 - (d) PNG would host a Processing Centre or Processing Centres, being a relocation centre or centres established in PNG and declared under section 15B of the Migration Act 1978 (PNG) (Interpretation) in Manus Province and may host other Processing Centres in PNG for the purposes of the 2013 MOU: cl.11; and
 - (e) PNG may also host persons transferred by the Commonwealth in other arrangements, such as community-based arrangements: cl.12.

Commonwealth control of Centre

28. By reason of the matters set out in paragraphs 13 to 27 inclusive above, at all material times from about 10 October 2012 each of:
- (a) the construction and maintenance of the premises comprising the Centre;
 - (b) the placement, care, and management of persons detained at the Centre;
and
 - (c) any restriction on movement of persons detained at the Centre
- was:
- (i) funded or mainly funded by the Commonwealth;
 - (ii) implemented by Commonwealth officers, or subject to the direction or approval of Commonwealth officers;
 - (iii) from 10 October 2012 – pursuant to the 2012 MOU;
 - (iv) from about 30 April 2012 – subject to the 2012 MOU and the Administrative Arrangements; and
 - (v) from about 6 August 2013 – subject to the 2013 MOU and the Administrative Arrangements.

Particulars

As to paragraph 28(b) above, the 'placement' of persons detained at the Centre means the allocation of such persons to one of the internal compounds at the Centre and the accompanying direction to that person that they are to reside in that compound.

29. In the premises set out in the preceding paragraph, at all material times from 10 October 2012 the Commonwealth had control or substantial control over the management of and operations at the Centre.

Closed Detention

- 29A. From at least 21 November 2012 to at least 12 May 2016:
- (a) the Centre was surrounded by a perimeter fence with gates;
 - (b) the perimeter fence gates were locked and/or manned by guards;
 - (c) each compound within the Centre was surrounded by a fence with gates; (d) the compound fence gates were locked and/or manned by guards;
 - (e) detainees were not permitted to move between compounds without authorisation; and
 - (f) detainees were not permitted to leave the Centre other than for limited excursions or transfers which were subject to authorisation, supervision and

escort.

29B. From at least 21 November 2012 to at least 12 May 2016 Detainees were not permitted to leave the Centre of their own free will.

29C. In the premises, at all material times from at least 21 November 2012 to at least 12 May 2016, the Centre was operated as a closed place of detention.

PART C – APPLICABLE LAW

30. Each of:

- (a) the acts and omissions alleged against the defendants below (other than the making of the G4S Contract and the Transfield Contract); and
 - (b) the immediate and substantive effects of the said acts and omissions upon the Claimants;
- occurred at Manus Island.

31. In the premises set out in the preceding paragraph, the claims of the Claimants are to be determined in accordance with the substantive law of PNG.

31A. Further to paragraph 31, under PNG law, damages for inconvenience and distress are available to the Claimants for:

- (a) negligence; and/or
- (b) false imprisonment.

32. The substantive law of negligence in PNG does not fix or impose:

- (a) any threshold level of impairment as a precondition to the accrual or exercise of the rights of action alleged in this Statement of Claim; or
- (b) any requirements for notice before action, or other procedures to be completed, prior to the accrual or exercise of the rights of action alleged in this Statement of Claim.

PART D – G4S PERIOD – CONTRACT ARRANGEMENTS

G4S contract

33. On or about 10 October 2012, G4S commenced to provide certain management and security services to the Commonwealth at the Centre as a

CSP, in accordance with a letter of intent agreed between G4S and the Commonwealth.

Particulars

So far as the Plaintiff can say prior to discovery, the letter of intent was in writing dated 12 October 2012 and signed by an officer of the Department.

Further particulars will be provided following discovery.

34. By an agreement dated 1 February 2013, the Commonwealth (represented by the Department) and G4S agreed upon terms for the provision of management and security services by G4S to the Commonwealth at the Centre (the **G4S Contract**).

Particulars

The G4S Contract is in writing, constituted by a document titled "*Contract in Relation to the Provision of Services on Manus Island (PNG)*", signed by Kenneth Douglas, First Assistant Secretary Detention Infrastructure and Service Division on behalf of the Commonwealth and Darren Boyd, Managing Director G4S Australia Pty Ltd on behalf of G4S.

A copy of the G4S Contract may be inspected by appointment at the Melbourne office of the solicitors for the Plaintiff.

35. There were terms of the G4S Contract that or to the effect that
- (a) G4S would provide to the Department at the Centre the "Services" described in Schedule 1 to the G4S Contract (**Services**); and
 - (b) the Services were to be provided in accordance with Schedule 1 "as from the date that Transferees first arrived [sic] at the [Centre]": cl.2.4.3.
36. In the premises set out in the preceding paragraph, from the time G4S commenced to provide management and security services at the Centre the said services were to be provided in accordance with the G4S Contract.
37. There were further terms of the G4S Contract that or to the effect that:
- (a) its primary objectives were to:
 - (i) provide open, accountable and transparent Services to Detainees;
 - (ii) provide Detainees with a standard and range of operational and maintenance services that were the best available in the circumstances, and utilising facilities and personnel on Manus Island and that as far as possible, but recognising any unavoidable limitations deriving from the circumstances of Manus Island, were

broadly comparable with services available within the Australian community; and

(iii) provide the Services (as defined in Schedule 1 to the Contract):
cl.2.1.1;

- (b) G4S agreed to:
 - (i) provide the Services; and
 - (ii) adopt relevant best practices: cl.3.1.3;
- (c) G4S must ensure compliance by all its personnel with all applicable Commonwealth policies as notified to it from time to time: cl.3.3.1(b);
- (d) the Department would appoint *inter alia* a Contract Administrator: cl.4.2.1;
- (e) G4S agreed to comply with directions of the Contract Administrator that were consistent with the G4S Contract: cl.4.3.1;
- (f) G4S must ensure that all officers, employees, agents or professional advisors (**G4S personnel**) were appropriately skilled, trained and qualified to provide the Services: cl.5.4.2(e);
- (g) G4S would be liable to the Department for the acts, omissions, defaults and neglect of any subcontractor of G4S or any representative of a subcontractor of G4S engaged in the performance of Services as fully as if they were the acts, omissions, defaults or neglect of G4S: cl.6.4.3;
- (h) in addition to any right to terminate at law, the Department may by written notice and in its absolute discretion terminate the Contract upon notice or reduce the scope of the Services: cl.15.11.1; and
- (i) the Schedules to the G4S Contract form part of the Contract: cl.1.1.2(i).

38. Further, there were terms of Schedule 1 to the G4S Contract that or to the effect that:

- (a) G4S would ensure that G4S personnel levels at the Centre were adequate to deliver the Services: item 1.2.1;
- (b) all service delivery decisions taken by G4S would take account of the individual needs of Detainees and would aim to improve health and wellbeing outcomes for each Detainee: item 2.1.2;
- (c) G4S would provide a range of Services to promote the wellbeing of Detainees and create an environment that supports security and safety at the Centre: item 2.1.3;
- (d) G4S must take reasonable steps to ensure that it and all the G4S personnel and subcontractors treat Detainees with dignity and respect: item 2.1.4;
- (e) G4S would in cooperation with other CSPs:
 - (i) promote and maintain an environment conducive to the health and welfare of Detainees where the needs of Detainees are identified and responded to openly and with integrity: item 6.1.1(a);

- (ii) establish processes to prevent Detainees being subjected to illegal and antisocial behaviour: item 6.1.1(b);
- (f) G4S must:
 - (i) ensure that any Detainee who requests, or appears to be in need of medical attention, is referred to the Health Service Provider (as defined) for appropriate medical attention: item 6.6.1;
 - (ii) where it appears that a Detainee requires emergency medical attention, seek emergency medical attention for him or her immediately, including arranging for transport of the Detainee to the Department's nominated medical facility at the Department's cost: item 6.6.2;
- (g) G4S must develop and implement:
 - (i) a system of Detainee behavioural management strategies that aim to defuse tensions and conflicts before they escalate or become serious or violent: item 6.9.1;
 - (ii) processes for managing instances where Detainees are engaged in behaviour that is illegal or antisocial: item 6.10.1;
- (h) G4S must maintain and operate the Centre as a safe and secure environment for people to live and work in: item 12.1.1;
- (i) G4S must deliver structured security services at the Centre to achieve a safe and secure environment for Detainees and all other people at the site, ensuring that each individual's human rights, dignity and wellbeing is preserved: item 14.1.1, 14.1.2;
- (iA) G4S must take reasonable steps to ensure that Detainees behave at all times in accordance with relevant provisions of the visa granted to them by the government of Papua New Guinea: item 14.2.1;
- (j) G4S must:
 - (i) provide trained G4S personnel to *inter alia* respond effectively to unforeseen incidents while treating Detainees with dignity and respect: item 14.4.1;
 - (ii) in developing and updating its security risk assessment for the Centre, take account of:
 - (A) the number and risk profile of Detainees at the Centre; and
 - (B) the overall security situation: item 14.7.2;
 - (iii) ensure that daily rosters of G4S personnel for the Centre provide a reasonable number of G4S personnel with the skills, experience and fitness required to manage the security environment in a manner that addresses identified risks in the security risk assessment: item 14.8.1;
 - (iv) communicate site safety and security requirements to all people at the Centre: item 14.9.1;

- (v) facilitate controlled and efficient access to the Centre: item 15.1.1;
 - (vi) develop and implement systems to manage access to controlled areas within the Centre: item 15.3.1;
 - (vii) maintain operations logs to record *inter alia* a comprehensive and accurate account of all Centre operations: item 15.4.1
 - (viA) verify that all Detainees are present and safe in the Centre at least twice a day: item 15.7.1;
 - (viii) ensure that the security of the perimeter of the Centre is maintained at all times in accordance with Department policies and procedures as notified from time to time by the Department: item 15.10.1;
 - (ix) develop and implement a contingency plan in accordance with item 1.4.1 of Schedule 1: item 15.11.1;
- (k) G4S must ensure Detainees are provided with access to food and beverages that:
- (i) are sufficient in quantity, offer variety, are nutritious, culturally appropriate, and dietary specific: item 16.1.1;
 - (ii) exceed by at least 10% at lunch times and 10% at dinner times the recommended quantities identified in the Dietary Guidelines for Australian Adults published by the National Health and Medical Research Council: item 16.2; and
- (l) G4S must ensure compliance with all applicable Australian and PNG health and food safety regulations: items 16.1.1, 16.6.1, 16.7.1.

G4S subcontractors

39. Further to the two preceding paragraphs, there were terms of the G4S Contract that or to the effect that:
- (a) the parties to the G4S Contract intended that G4S would engage as subcontractors some “local” entities, meaning persons resident in or businesses based in the Manus Province;

Particulars

“Local” is defined in Item 1.2.3, Schedule 1 to the G4S Contract.

- (b) the parties recognised that it may not be possible for local entities to meet all of the requirements placed on G4S by the terms of the G4S Contract; and
- (c) the terms on which local entities would be engaged would be agreed between the parties: cl.6.7.

40. There were further terms of Schedule 1 to the G4S Contract that or to the effect that:
- (a) G4S was required to engage with the local community to employ local personnel or subcontract local businesses that met the requirements of Schedule: Item 1.2.2, Schedule 1;
 - (b) by 31 December 2012 G4S was to achieve, where possible:
 - (i) 50% local engagement of security staff;
 - (ii) 75% local engagement of cleaning staff; and
 - (iii) 75% local engagement of gardening staff;
 using subcontracting arrangements with local business: Item 1.2.2, Schedule 1.
41. From a date known to G4S but not presently known to the plaintiff, G4S:
- (a) caused or assisted, alternatively caused G4S-PNG to cause or assist, the incorporation of Loda Securities PNG Ltd, being a corporation registered in PNG (**Loda**);
 - (b) caused or assisted, alternatively caused G4S-PNG to cause or assist, Loda to establish a business of providing security services in Manus Province;
 - (c) caused or assisted, alternatively caused G4S-PNG to cause or assist, Loda to recruit Manus Province residents to work as security personnel at the Centre (**Loda Guards**);
 - (d) caused or assisted, alternatively caused G4S-PNG to cause or assist, Loda to develop and implement training programs to Loda Guards; and
 - (e) proposed Loda to the Commonwealth as an approved local subcontractor of G4S, alternatively G4S-PNG, for the purposes of providing security services under the supervision of G4S at the Centre.

Particulars

In or about early 2013:

1. G4S reviewed the existing security firms on Manus Island to assess whether or not they had the capacity to provide security personnel at the Centre.
2. G4S, through G4S-PNG, assisted Loda officers to establish and to conduct a recruitment process to hire employees, including by giving advice about the selection process for those employees.
3. G4S, through G4S-PNG, assisted with the training of local Manus Island residents who were then employed through Loda.
4. In or around December 2012, G4S notified the Department of its intention to engage Loda for the purpose of complying with clause 6.7 of the Contract.

5. A letter of intent (A.100.3051.3410) was sent from G4S to Loda on 13 April 2013 which provided that Loda would assist in provision of manned security guarding services at the Centre. Terms of the letter of intent included that:
 - a. Loda Guards would remain at all times employees of Loda: cl 2(a);
 - b. Loda Guards would be suitably qualified and have been vetted and approved before they commence work at the Centre: cl 2(b);
 - c. Loda Guards would undertake and successfully complete all training that is required of them for providing security services at the Centre: cl 2(c);
 - d. Loda would act in accordance with all reasonable directions given by the Company and in a manner which complies with G4S operating processes and procedures for delivery of security services at the Centre: cl 2(d);
 - e. Loda would act with due care and skill, in a professional, efficient and safe manner and to the same industry standards and expectations that apply to security staff who are employed directly by the G4S: cl 2(e);
 - f. Loda Guards would wear the G4S uniform at all times whilst on duty: cl 2(f);
 - g. Loda would act at all times in accordance with all applicable Laws and in accordance with G4S's reasonable directions: cl2(g);
 - h. Loda would immediately remove any Loda Guards from the Centre if requested to do so by G4S if G4S considered that those employees have been incompetent, negligent, violent, aggressive or have demonstrated otherwise inappropriate behaviour: cl 2(i);
 - i. The agreement could be terminated on provision of 30 days' written notice to Loda.

42. G4S undertook the actions, or caused the actions of G4S-PNG, alleged in the preceding paragraph for the purpose of, *inter alia*, giving effect to clause 6.7 of the G4S Contract.

43. On or about 17 December 2012:
 - (a) the Commonwealth approved Loda as a local subcontractor; and
 - (b) Loda commenced to provide Loda Guards to G4S, alternatively G4S-PNG,

to perform security services at the Centre under the direction of G4S.

44. Further, on or about 16 April 2013:
- (a) G4S caused G4S-PNG to enter into a letter of intent with Loda (**Loda LOI**);
 - (b) there were terms of the Loda LOI that or to the effect that:
 - (i) Loda would provide to G4S-PNG agreed numbers of personnel to provide manned security guarding services at the Centre;
 - (ii) Loda would ensure that the Loda Guards:
 - (A) were suitably qualified and experienced, and had been approved by G4S-PNG prior to commencing work at the Centre;
 - (B) undertook and successfully completed all training required of them for providing security services at the Centre;
 - (C) acted in accordance with all reasonable directions given to them by G4S-PNG;
 - (D) acted with due care and skill, in a professional, efficient and safe manner and to the same industry standards and expectations that apply to security staff who are employed directly by G4S; and
 - (E) wore G4S uniforms.

Particulars

The terms are in writing in the Loda LOI, a copy of which can be inspected by prior appointment at the Melbourne offices of the solicitors for the plaintiff.

45. In the premises set out in paragraphs 3(c) and 39 to 44 inclusive, at all material times during the G4S Period:
- (a) G4S by itself or by G4S-PNG had a power of control over the conduct of Loda Guards at the Centre, and in particular the conduct of Loda Guards in respect of Detainees; and
 - (b) the Commonwealth had a power of control over the provision of Services by G4S pursuant to the G4S Contract, including a power to direct G4S to give directions to G4S-PNG and Loda.

PART E – G4S PERIOD – DUTIES AND STANDARD OF CARE

Detention Duty of Care

46. In the premises set out in paragraphs 13 to 45 inclusive above, at all material times from about 10 October 2012 the Commonwealth:

- (a) was purportedly authorised by PNG under:
 - (i) the 2012 MOU until up to and including 6 August 2013; and thereafter
 - (ii) the 2013 MOU;
 to direct or influence the conduct of operations at the Centre;
- (b) for purposes including a purpose of giving effect to the said authorisation from PNG, from about 10 October 2012 up to and including 23 March 2014 (**G4S Period**) engaged G4S to provide to the Commonwealth management and security services at the Centre, being the “Services” as defined in the G4S Contract;
- (c) authorised G4S to provide the said Services by agents or subcontractors of G4S, including G4S-PNG and Loda;
- (d) by the authority referred to in (c), authorised and empowered G4S, G4S-PNG and Loda to, *inter alia*:
 - (i) exercise powers of custodianship and detention in respect of Detainees; and thereby
 - (ii) affect the legal relations between Detainees and the Commonwealth;
- (e) had power under the G4S Contract to direct G4S, its agents and contractors as to the manner in which G4S, its agents and contractors provided the Services; and
- (f) in fact exercised its power to direct G4S, its agents and contractors as to the manner in which those persons provided the Services by, *inter alia*, notifying G4S of procedures, policies and guidelines to be applied by G4S at the Centre.

Particulars

The Commonwealth provided a number of finalised policies, procedures and guidelines to G4S in June 2013. Prior to June 2013, policies and procedures may or may not have been in writing and may or may not have been finalised.

47. In the premises set out in the preceding paragraph, at all material times during the G4S Period, G4S, its agents and contractors, in providing the Services at the Centre in respect of Detainees, did so as agent for the Commonwealth.
48. Further to the two preceding paragraphs, by reason of paragraphs 48A to 48F below, at all material times during the G4S Period the Commonwealth, by itself and, except in relation to paragraph 48(c)(iii) below, by its agent G4S, had asserted practical control over:
- (a) the premises comprising the Centre;
 - (b) the placement and locations of Detainees within the Centre; and

- (c) the provision of:
 - (i) food and water;
 - (ii) shelter and accommodation;
 - (iii) medical treatment and health care; and
 - (iv) physical security
 to Detainees at the Centre.; and
- (d) any restrictions on movement of Detainees at the Centre; and
- (e) access to medical treatment and health care.

[Particulars to paragraph 48 have been deleted and re-pleaded in substance in paragraph 49A to 49F]

As to the Commonwealth:

48A. As to paragraphs 48(a) and (d), the asserted practical control included:

- (a) financial control over the monies allocated to the construction, maintenance and upkeep of the premises., including fences;
- (b) the engagement, through G4S, of security services officers to perform work at the Centre;
- (c) the physical control, including as effected by its agent G4S and the G4S Personnel:
 - (i) over access to the Centre by persons other than Detainees, including persons employed to work at the Centre and external visitors; and
 - (ii) the physical control of egress from the Centre and from compounds within the Centre, by all persons, including Detainees;
- (d) granting permission for excursions and transfers to areas outside the Centre.
- (e) the physical control of movement by Detainees from one part of the Centre to another part of the Centre, including between compounds and as between the compounds and the medical facility;

48B. As to paragraph 48(b), the practical control included:

- (a) physical control, including as effected by its agent G4S and the G4S Personnel:
 - (i) over the integrity of internal fencing between compounds at the Centre; and
 - (ii) over the movement of Detainees from one compound to another

compound and to other parts of the Centre, including fencing intended to keep Detainees within their allocated compound;

48C. As to the provision of the matters in paragraph 48(c), the practical control included:

- (a) control over the funding available for and expended on each item;
- (b) as to food and water, the selection and provision of the types and amounts of food, and amounts of water, to be made available to Detainees, including determining the manner in which it was to be made available and the times and places at which it was to be made available;
- (c) determining and directing the nature, type and number of structures constructed at the Centre, the amenities to be provided at each structure and the maintenance and upkeep of each structure;
- (d) determining and directing the nature and type of medical treatment and health care made available to Detainees, including the type of services offered, the number of healthcare practitioners available to provide the services and the resources allocated to those practitioner to provide the services;
- (e) determining when and how Detainees were able to access medical treatment and health care, including by the making of appointments and allocation of priority to requests for medical appointments made by Detainees.
- (f) determining and directing the number, type, composition of and resources allocated to security services personnel employed to work at the Centre, including by exercising financial and administrative control over changes in staffing levels;
- (g) as to physical security, determining and directing the physical and administrative operations at the Centre, including as to the matters particularised at paragraph 48A.

As to G4S:

48D. As to paragraph 48(a) and (d), the practical control included:

- (a) guarding access points to the Centre and permitting or physically preventing entry to the Centre;
- (b) patrolling perimeter fences and guarding access points to restrict

egress from the Centre;

- (c) escorting Detainees from one part of the Centre to another part of the Centre, including between compounds and as between the compounds and the medical facility;
- (d) exercising financial control over the actual application of monies allocated to the construction, maintenance and upkeep of the structures at the premises.;
- (e) granting permissions for excursions by Detainees to areas outside the Centre,.

48E. As to the paragraph 48(b), the practical control included:

- (a) determining or directing which compound each Detainee would reside in while at the Centre;
- (b) erecting, maintaining and patrolling internal fencing between compounds at the Centre;
escorting Detainees from one compound to another compound and to other parts of the Centre, including preventing Detainees from moving outside their allocated compound unescorted or unauthorised;

48F. Further as to the provision of the matters in paragraph 48(c), the practical control, included:

- (a) determining or directing the manner in which Detainees accessed ~~these services, food and water, shelter and accommodation and physical security~~ including as to where the services were located, how they were delivered and at what times;
- (b) determining or directing what and how much food and what water was to be made available to Detainees, the manner in which it was to be made available and that times and places at which it was to be made available;
- (c) determining the nature, type and number of structures constructed at the Centre, the amenities to be provided at each structure and the maintenance and upkeep of each structure;
- ~~(d) —determining when and how Detainees were able to access medical treatment and health care, including by the making of appointments and, allocation of priority to requests for medical appointments made by Detainees and provision of information about medical appointment times.~~
- (e) as to physical security, determining and directing the physical and administrative operations at the Centre, including as to the matters pleaded at paragraphs 45 and 48A above.

48G. As to the paragraph 48(e), practical control included facilitating Detainee access to

medical care by notifying Detainees of medical appointments; referring Detainees to IHMS for medical care; receiving Detainee requests for medical attention; and escorting Detainees to IHMS appointments.

49. In the premises set out in paragraphs 46 to 48F above, at all material times during the G4S Period each of the Commonwealth and G4S owed to Detainees at the Centre, including the Claimants, a duty to take reasonable care to avoid foreseeable harm to the Detainees (**Detention Duty of Care**).
50. Further, by reason of the matters set out in paragraphs 13 to 48F inclusive above, the Detention Duty of Care was and is, so far as it was and is owed by the Commonwealth, a non-delegable duty of care.

Particulars

The Commonwealth Duty was non-delegable:

1. by operation of sections 5(1), 13, 14, 189, 173 and 198AD of the *Migration Act* and the facts, matters and circumstances pleaded in paragraphs 13 to 48G inclusive above.; and/or
2. by reason of the inherent danger in sending persons with the Detainee Characteristics to closed detention on Manus Island in the circumstances.

Standard of care

Commonwealth

51. At all material times during the G4S Period the Commonwealth, in doing the acts or making the omissions pleaded in this Statement of Claim:
- (a) exercised powers that:
 - (i) were the executive powers of the Commonwealth of Australia;
 - (ii) were powers in the nature of custodianship or detention of persons;
 - (iii) were powers in the nature of custodianship or detention of persons not arising from the convictions of any of the said persons for an offence;
 - (iv) in the premises in each of (i) to (iii) – were powers that were available only to the Commonwealth as the Commonwealth of Australia;

Particulars

As to paragraph 51(a) the executive powers of the Commonwealth are those vested by s 61 of the *Constitution of Australia Act 1901*.

- (b) by its officers, servants and agents, had or had access to specialised knowledge about:
 - (i) the risks of harm to persons held in:

- (A) detention; further or alternatively
 - (B) immigration detention;
- being the risks set out in paragraphs 55 to 71 below;
- (ii) precautions that in fact were likely materially to reduce the risks of harm to persons held in:
 - (A) detention; further or alternatively
 - (B) immigration detention;
 being precautions that had developed as good practice in Australia;
 - (c) had access to better financial, material and human resources for implementing precautions referred to in (b) than any other person exercising a function at or in respect of the Centre;
 - (d) was doing the acts and making the omissions at or in respect of Manus Island because the Commonwealth had chosen to cause the Claimants to be transported to and detained at Manus Island, instead of an immigration detention facility in Australia.

52. In the premises set out in the preceding paragraph, at all material times during the G4S Period the Detention Duty of Care required the Commonwealth to exercise at the Centre the standard of care required of the Commonwealth in respect of persons held in immigration detention in Australia (**Australian Precautions**).

G4S

53. Further and in the alternative to the two preceding paragraphs, at all material times during the G4S Period, G4S, in doing the acts or making the omissions pleaded in this Statement of Claim:
- (a) exercised powers that:
 - (i) were purportedly conferred or purportedly authorised by the Commonwealth of Australia;
 - (ii) were powers in the nature of custodianship or detention of persons;
 - (iii) were powers in the nature of custodianship or detention of persons not arising from the convictions of any of the said persons for an offence;
 - (iv) in the premises in each of (i) to (iii) – were powers that were available only to the Commonwealth as the Commonwealth of Australia or persons acting under lawful authority of the Commonwealth;
 - (b) by its officers, servants and agents, had or had access to specialised knowledge about:
 - (i) the risks of harm to persons held in:
 - (A) detention; further or alternatively

- (B) immigration detention;
being the risks set out in paragraphs 55 to 71 below;
 - (ii) precautions that in fact were likely materially to reduce the risks of harm to persons held in:
 - (A) detention; further or alternatively
 - (B) immigration detention;
being precautions that had developed as good practice in Australia;
 - (c) had access to better financial, material and human resources for implementing precautions referred to in (b) than any person exercising a function at or in respect of the Centre, other than the Commonwealth.;
 - (d) was acting pursuant to contractual requirements that the services it provided were the best available in the circumstances and broadly comparable with the services available within the Australian community.
54. In the premises set out in the preceding paragraph, at all material times during the G4S Period the Detention Duty of Care required G4S to exercise, at the Centre, the Australian Precautions.

Foreseeable significant harms

Risks – internal detention conditions

55. At all material times from not later than 10 October 2012:
- (a) the Commonwealth; and
 - (b) G4S;
- and each of them knew or ought reasonably to have known that Detainees at the Centre:
- (i) had or were likely to have travelled from war zones or other places affected by conflict, violence, discrimination and poverty;
 - (ii) were claiming or were likely to be claiming asylum (**asylum claims**) under the Convention;
 - (iii) were likely to have complex asylum claims requiring a high level of expertise from the persons or agencies conducting the refugee status determinations (**RSDs**) required by the Convention;
 - (iv) had or were likely to have suffered violence, including torture and sexual violence, and trauma;
 - (v) had or were likely to have travelled to Australia in circumstances of physical deprivation, danger and fear;
 - (vi) had or were likely to have arrived in Australia with physical and psychological health conditions requiring medical treatment and other health services; and

- (vii) had or were likely to have diverse religious and cultural beliefs, practices and customs
- (viii) may be persons who engage in male to male sex. (the **Detainee Characteristics**).

Particulars

1. The Commonwealth knew or ought to have known the said matters by reason of:
 - a. the operation, in the period 1970 through to the present of the *Migration Act* in relation to persons arriving in Australia and making application, or seeking to make application, for asylum;
 - b. its operation of the Nauru Regional Processing Centre;
 - c. its operation of nine immigration detention facilities on the Australian mainland, the earliest having opened in 1966 and the latest in 2012;
 - d. the state of medical, psychiatric and psychological science by October 2012;
 - e. advice received by or available to it from expert sources such as its own advisory groups/boards, including the Detention Health Advisory Group (later the Immigration Health Advisory Group), IHMS, and independent medical and mental health experts; and
 - f. the information obtained in relation to each Detainee from the rapid transit assessment conducted in relation to each Detainee while that Detainee was in detention in Australia prior to being taken to the Centre.

2. G4S knew or ought to have known the said matters by reason of:
 - a. its experience since not later than about 2005 in providing security and management services at immigration detention facilities;
 - b. the circumstances set out in '1d' to '1f' of these particulars.

3. As to paragraph 55(vi) the physical and psychological health issues included:
 - a. exhaustion and dehydration;
 - b. bruises, cuts, strains, scrapes and other minor physical injuries;
 - c. diet and nutrition issues, including vitamin deficiencies.
 - d. trauma;
 - e. depression, stress and anxiety;
 - f. psychiatric illness;
 - g. infectious and vaccine-preventable diseases;

- h. chronic diseases, including HIV, hepatitis B and tuberculosis, diabetes, heart disease, arthritis, osteoporosis and cancer;
- i. poor oral health;
- j. vision and hearing difficulties; and
- k. sexual and reproductive health problems, including problems arising from inadequate past care for pregnancies, inadequate care for extant pregnancies and inadequate past care for sexual assault.

56. Further, at all material times throughout the G4S Period:

- (a) the Commonwealth; and
- (b) except in relation to the matter in sub-paragraph (iii) below, G4S;

and each of them knew or ought reasonably to have known that a failure to take reasonable steps to ensure that persons who had or were likely to have some or all of the Detainee Characteristics were provided with:

- (i) food and water of a standard, quantity and accessibility in accordance with Australian Precautions;
- (ii) shelter and accommodation that was, according to Australian Precautions, reasonably adapted to prevent distressing physical discomfort in the tropical conditions of Manus Island;
- (iii) medical care and health services that were, according to Australian Precautions, reasonably adapted to prevent avoidable deterioration of physical or mental health;
- (iiiA) reasonable access to and escort to IHMS upon request for medical attention or services; and referrals to IHMS when a Detainee requested, or appeared to be in need of, medical attention;
- (iv) access to basic supplies, amenities and recreational facilities according to Australian Precautions;
- (v) reasonable protection, according to Australian Precautions, from:
 - (A) physical violence or intimidation, discrimination, ostracisation, bullying or other anti-social behaviours from other Detainees or from other persons lawfully attending the Centre; or
 - (B) exposure to violent or other behaviours as described in sub-paragraph A above between other persons;

would or may cause harm, in the nature of physical ill-health and/or mental harm (**Detention Harm**), to Detainees.

Particulars

The plaintiff refers to and repeats the particulars set out under the preceding paragraph.

57. Further, at all material times throughout the G4S

Period:

- (a) the Commonwealth; and
- (b) G4S;

and each of them knew or ought reasonably to have known that:

- (i) the probability of harm to Detainees if reasonable care were not taken as described in the preceding paragraph was not far-fetched or fanciful;
- (ii) the nature of the harm, where it eventuated, was likely to be in the nature of serious physical harm, further or alternatively serious mental harm; and
- (iii) the likelihood of the harm, or the seriousness where it eventuated, was likely to be materially reduced if the precautions referred to in paragraph 56 (i) to (iv) were taken.

Particulars

The plaintiff refers to and repeats the particulars set out under the preceding paragraph.

Risks – prolonged detention

58. At all material times throughout the G4S

Period:

- (a) there was no clearly-specified:
 - (i) Australian domestic legal or regulatory framework; or
 - (ii) PNG domestic legal or regulatory framework;
 for undertaking RSDs within the meaning of the Convention at, or in respect of Detainees at, the Centre;
- (b) there were no or no clearly-specified procedures for the conduct of a RSD process at the Centre;
- (c) few or no persons had been employed to undertake RSDs at the Centre;
- (d) no, or no adequate, RSD process had commenced in relation to any Detainees at the Centre;
- (e) no RSD decisions had been made in relation to Detainees at the Centre; and
- (f) Detainees were provided with no or no adequate information, in writing or otherwise, about:
 - (i) the RSD process;
 - (ii) the consequences of receiving a positive or negative RSD;
 - (iii) the likely timeframes associated with the RSD process; or

- (iv) the procedure for, or progress or status of, their asylum claims.

Particulars

1. As at January 2013:
 - (a) there were no experienced officials in the PNG Government who were able to undertake RSDs at the Centre: Report of the United Nations High Commissioner for Refugees (**UNHCR**) into its Monitoring Visit to Manus Island, Papua New Guinea, dated 15-17 January 2013 (**UNHCR, January 2013**), p10.
 - (b) RSD processes at the Centre had not commenced and relevant processes were still being developed by Australian and PNG officials: UNHCR January 2013, p8.
 - (c) Detainees were given limited and uncertain information as to how and when RSDs on Manus would commence: UNHCR January 2013, p8.
2. By October 2013:
 - (a) procedural guidelines for the RSD process to be undertaken at the Centre had not been finalised: Report of the UNHCR into its Monitoring Visit to Manus Island, Papua New Guinea, dated 23-25 October 2013 (**UNHCR, October 2013**), pp 8-10.
 - (b) the PNG Government had employed five RSD officers to conduct RSDs at the centre, all of whom had no prior RSD experience. These officers were mentored by one experienced RSD officer employed by the Department: UNHCR October 2013, p 8.
 - (c) of the 1,063 Detainees at the Centre, 160 had been able to lodge applications for asylum, and 55 had completed RSD interviews: UNHCR October 2013, p 8.
 - (d) further RSD interviews had been suspended and no RSD decisions based on completed interviews had been handed down to Detainees: UNHCR October 2013, p 10.
 - (e) fact sheets containing guidance for Detainees as to RSD processes were planned but still not yet been finalised, and some Detainees had been advised by staff working at the Centre that they were likely to remain detained there for two to five years: UNHCR October 2013, p 10; report of the UNHCR into its Monitoring Visit to Manus Island, Papua New Guinea, dated 11-13 June 2013 (**UNHCR, June 2013**), p 8.
3. Copies of the UNHCR reports referred to in these particulars are available for inspection at the Melbourne offices of the solicitors for the Plaintiff.
4. As to paragraph 58(b), a clearly specified procedure would have included, as a minimum:
 - (a) a clear statement of the legal framework within

- which a claim of asylum would be assessed;
 - (b) the possible outcomes from a RSD;
 - (c) what would likely happen to the Detainee in the event of a positive assessment, and what would likely happen in the event of a negative assessment;
 - (d) a clear statement of the timeframe for the conduct of the RSD;
 - (e) a clear statement of the resources available to assist Detainees with their asylum claims, including legal assistance;
 - (f) a clear statement of the Detainees' appeal rights, the process for an appeal and the likely timeframes for the conduct of such an appeal;
 - (g) what, if any, rights the Detainee had to access the legal system;
 - (h) a clear statement of what would happen to a Detainee who exhausted all avenues of appeal.
5. As to paragraph 58(d) adequate information about the RSD process would have included, as a minimum, written information translated into appropriate languages setting out each of the matters described in particular 4 above.

59. In the premises set out in the preceding paragraph, throughout the G4S Period the Commonwealth and G4S knew or ought reasonably to have known that:
- (a) establishing an RSD process at the Centre was likely to take many weeks or months;
 - (b) undertaking the RSD process for the entire population of Detainees being held at the Centre was likely to take many months;
 - (c) it was likely that Detainees would remain detained at the Centre for an undetermined but very long time;
 - (d) Detainees were or were likely to be aware that it was likely that they would be required to remain detained at the Centre for an undetermined but very long time; and
 - (e) Detainees were or were likely to be aware that it was likely that they would be required to remain detained at the Centre for a very long time.
60. Further, in the premises set out in paragraphs 55 and 56, at all material times:
- (a) the Commonwealth; and
 - (b) G4S;
- and each of them knew or ought reasonably to have known that the probability of Detention Harm eventuating was significantly increased by the matters set out in paragraph 58.

Risks – delayed remediation work

61. Further, at all material times:

- (a) Manus Province was likely to have little if any locally-available construction equipment for the construction, improvement or repair of buildings, fences and physical structures at the Centre;
- (b) Manus Province was likely to have little if any locally-available expertise in the construction, improvement or repair of buildings, fences and physical structures like the structures comprising the Centre;
- (c) Manus Province was likely to have long delays in accessing equipment, materials, engineering skills and labour suitable for use in the construction, improvement or repair of buildings, fences and physical structures at the Centre;
- (d) the undertaking of construction works at the Centre required:
 - (i) surveys to detect unexploded military ordnance and removal of unexploded ordnance;
 - (ii) geotechnical surveys;
 - (iii) site surveys; and
 - (iv) remedial earthworks and drainage.

Particulars

1. The land on which the Centre is located, and the surrounding area, was the site of bombings by Allied Forces in 1944 and, later, of a large United States naval base. The area continues to have unexploded ordnance from World War II. Surveys to identify such ordnance are required before construction works can commence.
 2. Construction work in PNG often requires sophisticated drainage and soil consolidation technologies because of the thin soil layer and high rainfall: Asian Development Bank Development Effectiveness Brief titled "PNG: Building Solid Physical and Social Infrastructure", dated September 2010 (**Asian Development Bank Brief**). Construction work at the Centre required sophisticated drainage and soil remediation.
- (e) Manus Province was likely to have few if any local businesses with experience in recruiting, training and deploying security personnel trained to the level of competence required in immigration detention facilities operated in accordance with Australian Precautions; and
 - (f) Manus Province was likely to have few if any local workers trained to provide detention security services to the level of competence required in immigration detention facilities operated in accordance with Australian Precautions.

Particulars

1. PNG is a third-world nation in which 37.5% of its population live below the national poverty line. As at 2007, the adult literacy rate was 57.8%. As at 2009, 85% of the population led subsistence lives based on a barter economy and 1 in 10 people had access to electricity: Asian Development Bank, Brief.
 2. In 2000, PNG's waged job employment rate was 10.4% and its labour participation rate was 67.5%. Its subsistence employment rate was 67.4%: PNG National Statistical Office, Labour Force Statistics, accessed 12 February 2015. Approximately 40% of the PNG population are poor and/or face hardship: 2013 Pacific Regional MDG Tracking Report, Department of Foreign Affairs, PNG Country Brief (**DFAT PNG Country Brief**).
 3. PNG is the largest recipient of Asian Development Bank assistance in the Pacific, with a total of \$1,272 million in approved loans and Asian Development Fund grants of \$15 million by the end of 2009: Asian Development Bank.
 4. Manus Island is located in the far north of PNG and is accessible only by light aeroplane or sea transfer. The majority of the roads on Manus Island are unsealed and the roads that are sealed roads are in poor condition from heavy rainfall, subsidence and a lack of infrastructure.
 5. Manus Island had little modern equipment for undertaking construction work and no local suppliers of construction materials, including fencing and building materials. Construction work often required sophisticated drainage and soil consolidation technologies because of the thin soil later and high rainfall: Asian Development Bank Brief.
62. By reason of, *inter alia*, the matters set out in the preceding paragraph, at all material times from not later than October 2012 there were likely to be:
- (a) long delays in completing building, construction and improvement works at the Centre; and
 - (b) long delays in upgrading the staff complement at the Centre, to train existing staff or obtain new staff with the level of competence in detention security services required to comply with Australian Precautions.
63. Further, at all material times from not later than October 2012 each of:
- (a) the Commonwealth; and
 - (b) G4S;
- knew or ought reasonably to have known the matters set out in the two preceding paragraphs.

Particulars

The Commonwealth and G4S knew or ought to have known of those matters by reason of the matters set out in the particulars to paragraph 61, which were notorious and recorded in DFAT and other publications, including:

- (a) the Asian Development Bank Brief;
- (b) the PNG – Australia Transport Sector Support Program, Annual Transport Sector Performance Report for the years 2009, 2010, 2011 and 2012; and
- (c) the PNG – Australia Transport Sector Support Program Annual Plans for each of the years 2009, 2010, 2011, 2012 and 2013; and
- (d) the DFAT PNG Country Brief;
- (e) the PNG-Australia Partnership for Development.

64. In the premises set out in paragraphs 57, 60 and 63, throughout the G4S Period each of:

- (a) the Commonwealth; and
- (b) G4S;

knew or ought reasonably to have known that:

- (i) if accommodation or healthcare facilities at the Centre were or became inadequate to prevent physical or psychological harm to Detainees then there was a material risk that the harm would become materially worse before upgraded facilities were able to be installed;
- (ii) if local workers were engaged to provide security services at the Centre, there were likely to be delays of months before the workers were sufficiently trained and experienced to provide detention security services to the level of competence required in immigration detention facilities operated in accordance with Australian Precautions;
- (iii) if the internal or external security situation at the Centre was or became restive, volatile or violent there were likely to be long delays (compared to immigration detention facilities in Australia) before upgrades of facilities or reinforcements of appropriately-qualified security staff could be completed in order to restore a safe security environment;
- (iv) in the premises set out in (i) to (iii) above, if Detainees were transferred to the Centre before the accommodation and healthcare facilities and the security services at the Centre were established in accordance with Australian Precautions, there were risks of Detention Harm to Detainees.

Risks – internal security – dependence on PNG Mobile Squad

65. Further, at all material times in the G4S Period:

- (a) the Commonwealth; and
- (b) G4S;

and each of them knew or ought reasonably to have known that the PNG Mobile Police Squad (the **Mobile Squad**):

- (i) was the only resource available in Manus Province to provide assistance to G4S personnel in the event of unrest at the Centre;
- (ii) was poorly trained;
- (iii) did not have conventional riot force capability;
- (iv) was not equipped with batons or shields and had not been trained in the use of batons or shields for a long period of time;
- (v) had limited capacity for local training in the use of non-lethal force;
- (vi) had a force escalation procedure that rapidly escalated to the use of lethal force in a manner inconsistent with Australian Precautions for force escalation;
- (vii) in the event of force escalation was equipped with gas grenades, shotguns, and small arms including assault rifles and live ammunition;
- (viii) if deployed at the Centre, could not be relied upon to act with the level of discipline, skill and competence that would be required in immigration detention facilities in Australia; and
- (ix) could be deployed inside the Centre to respond to internal unrest or disturbances only with permission from the Provincial Chief Commander (**PCC**).

Particulars

G4S wrote to the Commonwealth setting out its concerns in relation to the Mobile Squad on a number of occasions, including:

1. an operational meeting on 25 February 2013 (G4S.004.005.2697);
2. a Facility Level Board meeting on 27 February 2013 (G4S.004.012.7557);
3. an Offshore Joint Service Provider meeting on 8 March 2013 (G4S.005.002.0414);
4. a letter to the Assistant Secretary of the Department on 9 May 2013 (A.100.2002.0127);
5. a letter to the Assistant Secretary of the Department on 15 June 2013 (A.100.3003.5373);
6. an Offshore Joint Service Provider meeting on 16 July 2013 (A.100.3010.0229);
7. a briefing note to the Secretary of the Department on 4 February 2014 (A.100.3003.5313); and
8. an email to the Department on 10 February 2014 (G4S.004.005.5197).

Duty of care – content (internal conditions)

66. In the premises set out in paragraphs 46 to 50 and 55 to 65 inclusive, at all material times throughout the G4S Period the Commonwealth was required by the Detention Duty of Care to:

(a) take reasonable care by its officers, servants and agents; further or alternatively

(b) ensure that reasonable care was taken by G4S;

to ensure that Detainees were provided with:

- (i) food and water of a standard, quantity and accessibility in accordance with Australian Precautions;
- (ii) shelter and accommodation that was, according to Australian Precautions, reasonably adapted to prevent distressing physical discomfort in the tropical conditions of Manus Island;
- (iii) medical care and health services that were, according to Australian Precautions, reasonably adapted to prevent avoidable deterioration of physical or mental health;
- (iv) access to Personal Supplies, amenities, recreational facilities and opportunities in accordance with Australian Precautions;
- (v) reasonable protection, according to Australian Precautions, from:
 - (A) physical violence or intimidation, discrimination, ostracisation, bullying or other anti-social behaviours from other Detainees or from other persons lawfully attending the Centre; or
 - (B) exposure to violent or other behaviours as described in sub-paragraph (A) above between other persons.

67. Further, in the premises set out in paragraphs 46 to 50 and 55 to 65 inclusive, at all material times from not later than 10 October 2012, G4S was required by the Detention Duty of Care to:

(a) take reasonable care by its officers, servants and agents; further or alternatively

(b) ensure that reasonable care was taken by its agents and contractors including G4S-PNG and Loda;

to ensure that Detainees were provided with:

- (i) food and water of a standard, quantity and accessibility in accordance with Australian Precautions;
- (ii) shelter and accommodation that was, according to Australian Precautions, reasonably adapted to prevent distressing physical discomfort in the tropical conditions of Manus Island;
- (iii) reasonable access to and escort to IHMS upon request for medical

- attention or services; and referrals to IHMS when a Detainee requested, or appeared to be in need of, medical attention;
- ~~(iii) medical care and health services that were, according to Australian Precautions, reasonably adapted to prevent avoidable deterioration of physical or mental health; and~~
- (iv) access to Personal Supplies, amenities and recreational facilities and opportunities in accordance with Australian Precautions; and
- (v) reasonable protection, according to Australian Precautions, from:
- (A) physical violence or intimidation, discrimination, ostracisation, bullying or other anti-social behaviours from other Detainees or from other persons lawfully attending the Centre; or
- (B) exposure to violent or other behaviours as described in subparagraph (A) above between other persons.

Duty of care – external security

68. Further, at all material times in the G4S Period:

- (a) the Commonwealth; and
- (b) G4S;

and each of them knew or ought reasonably to have known that the population of Manus Island (**local population**):

- (i) averaged very low levels of per capita income;
- (ii) featured very high levels of unemployment;
- (iii) featured very low levels of education;
- (iv) suffered high levels of official corruption;
- (v) featured high levels of internal community tensions;
- (vi) featured high levels of inter-tribal, inter-community and other violence, including in particular high rates of violence against women and girls;
- (vii) featured high levels of chronic use of betel nut, alcohol and other behaviour-altering drugs or chemicals;
- (viii) scored very poor health metrics, measured according to World Health Organisation (**WHO**) standards; and
- (ix) from late 2012 or early 2013, was dangerously hostile toward the Centre, staff associated with the Centre and Detainees (the **Local Population Characteristics**).

Particulars

1. The said matters were notorious and documented in authoritative materials available to the Commonwealth and G4S, including:

- a. report titled 'Papua New Guinea – District and Provincial Profiles' published by The National Research Institute in March 2010;
 - b. report titled 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment – Addendum – Mission to Papua New Guinea' published by the United Nations General Assembly, Human Rights Council, on 7 February 2011;
 - c. article titled 'Prevalence of and factors associated with non-partner rape perpetration: findings from the UN Multi-country Cross-sectional Study on Men and Violence in Asia and the Pacific' by Rachel Jewkes, Emma Fulu, Tim Roselli, Claudia Garcia-Moreno, on behalf of the UN Multi-country Cross-sectional Study on Men and Violence research team, published in The Lancet on 10 September 2012;
 - d. report titled 'Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo – Addendum – Mission to Papua New Guinea', published by the United Nations General Assembly, Human Rights Council, on 18 March 2013;
 - e. report titled 'Human Development Report 2013' published by the United National Development Programme in 2013;
 - f. report titled 'Papua New Guinea 2012 Human Rights Report' published by the Department of State of the United States of America on 19 April 2013;
 - g. document titled 'Manus Island: A Living and Working Guide' published by the Department.
2. As to paragraph 68 (viii), the PNG health metrics are described in the '*Global Health Observatory Data Repository*' maintained by the World Health Organisation, as it relates to PNG.
 3. As to paragraph 68 (ix), the dangerously hostile situation at the Centre was regularly and accurately reported by G4S personnel by way of intelligence reports compiled by G4S and provided to Commonwealth personnel at the Centre and in Australia A report to the Secretary, Department of Immigration and Border Protection, titled '*Review into the events of 16-18 February 2014 at the Manus Island Regional Processing Centre*' authored by Robert Cornall AO and dated 23 May 2014 (**Cornall Report**) refers to a number of intelligence reports; and
 4. Further as to paragraph 68 (ix), in November 2012 members of the local population blockaded the airport and the road leading to the RPC to protest about a lack of consultation about the reopening of the Centre.

Copies of the documents and sources referred to in paragraphs 1, 2 and 3 of these particulars may be inspected by appointment at the Melbourne office of the solicitors for the Plaintiff.

69. Further to the matters set out in the preceding paragraph, at all material times from late 2012 or early 2013:

- (a) the Commonwealth; and
- (b) G4S;

and each of them knew or ought reasonably to have known that a failure to take reasonable care to protect Detainees from attack by the local population would or may result in:

- (i) assaults by the local population upon Detainees;
- (ii) physical injury and mental harm to Detainees who were assaulted; and
- (iii) mental harm to Detainees who witnessed assaults or were terrorised by a reasonable fear of assaults.

Particulars

- a. The dangerously hostile situation at the Centre was regularly and accurately reported in late 2013 and early 2014 by G4S personnel by way of reports compiled by G4S and provided to Commonwealth personnel at the Centre and in Australia;
- b. In January and February 2014, G4S personnel had reported that the local population (i) had attempted to gain access to the Centre, (ii) had threatened to harm Detainees, (iii) had occupied the road leading to the Centre while armed and threatening to harm Detainees, and (iv) had assaulted Detainees;
- c. The reports referred to in paragraph 1(b) above were provided to the Commonwealth in January and February 2014;
- d. G4S personnel at the Centre had recorded approaches by Detainees reporting a fear of being harmed by the local population in late 2013 and early 2014.

70. Further, at all material times in the G4S Period:

- (a) the Commonwealth; and
- (b) G4S;

and each of them knew or ought reasonably to have known that:

- (i) the probability of harm to Detainees if reasonable care were not taken as described in the preceding paragraph was not far-fetched or fanciful; and
- (ii) the nature of the harm, where it eventuated, was likely to be in the nature of:
 - (A) death, serious physical injury or serious mental harm to any Detainees who were assaulted;
 - (B) nervous shock or other mental harm to Detainees who

- witnessed assaults; and
- (C) mental harm in the nature of serious anxiety, depression and despair among Detainees experiencing a reasonable fear of assaults;
- (iii) the likelihood of the harm, or the seriousness of harm where it eventuated, was likely to be materially reduced if reasonable care were taken to protect Detainees from attacks by the local population.
71. In the premises set out in paragraphs 68 to 70 inclusive, at all material times from not later than 10 October 2012:
- (a) the Commonwealth was required by the Detention Duty of Care to:
- (i) take reasonable care by its officers, servants and agents; further or alternatively
- (ii) ensure that reasonable care was taken by G4S; and
- (b) G4S was required by the Detention Duty of Care to take reasonable care; to protect Detainees from attack by the local population.

PART F – G4S PERIOD – NEGLIGENCE

G4S Subgroup detained at Centre

72. On various dates before or during the G4S Period the plaintiff and some of the Negligence Group Members (together and severally the **G4S Subgroup**):
- (a) entered Australia without a valid visa within the meaning of the *Migration Act*; (b) became, upon arrival:
- (i) unlawful non-citizens; and
- (ii) unauthorised maritime arrivals;
- within the meaning of the *Migration Act*; and
- (c) were taken into custody by officers of the Commonwealth, pursuant to section 189 of the *Migration Act*.

Particulars

1. The Plaintiff entered Australia on or about 14 August 2013 and was immediately taken into custody by the Commonwealth. By about 4 September 2013, he was transferred to Manus Island.
2. The Plaintiff was detained on Manus Island until approximately July 2014, when he was transferred to Melbourne for medical treatment.
3. Particulars of individual group members will be provided following the trial of common questions or otherwise as the Court may direct.

73. On various dates on or after 21 November 2012 during the G4S Period the Commonwealth, Minister and the Commonwealth, purportedly pursuant to the 2012 MOU, the 2013 MOU the Administrative Arrangements, caused each of the G4S Subgroup Claimants to be:
- (a) taken from Australia to Lorengau Port on Manus Island;
 - (b) received at Lorengau Port by:
 - (i) customs, quarantine and immigration officials from the PNG Department of Immigration; and
 - (ii) security personnel from the Centre, being either:
 - (A) officers of the Commonwealth; or
 - (B) G4S personnel, titled "Security Service Officers" (**SSOs**); (together and severally, **Centre Security**);
 - (c) escorted to the Centre by Centre Security; and
 - (d) thereafter held in closed detention at the Centre (**Manus Detention**) and guarded by G4S personnel (including SSOs), G4S-PNG personnel and Loda guards (together and severally, **Security Staff**).

Particulars

The Plaintiff refers to and repeats the particulars to paragraph 72 above.

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

74. In the premises set out in paragraphs 29A to 29C, 72 to 73 inclusive, at all times whilst in Manus Detention:
- (a) each of the G4S Subgroup Claimants was a Detainee as defined herein; and
 - (b) the Manus Detention of each of the G4S Subgroup Claimants was closed detention:
 - (i) by the Commonwealth; further or alternatively
 - (ii) by G4S as agent for the Commonwealth.
75. Further in the premises, at all times while each G4S Subgroup Claimant was in Manus Detention each of:
- (a) the Commonwealth; and
 - (b) G4S;
- owed to the Claimant, as a Detainee, the Detention Duty of Care.

July 2013 – escalation of risks

76. On and from 19 July 2013:
- (a) the Commonwealth Minister announced that family groups would no longer be detained at, or transferred to, the Centre;
 - (b) all family groups held at the Centre were transferred to immigration detention facilities outside of PNG; and thereafter
 - (c) the Centre accommodated only single adult males.
77. In the period 19 July 2013 to 16 February 2014 the Commonwealth rapidly increased the number of Detainees at the Centre.

Particulars

The number of single adult male Detainees detained at the Centre was approximately:

- (A) 130 as at 19 July 2013;
- (B) 723 as at 7 September 2013; and
- (C) 1338 as at 16 February 2014.

78. At all material times throughout the G4S Period from not later than 19 July 2013, each of:
- (a) the Commonwealth; and
 - (b) G4S;
- knew or ought reasonably to have known that the Centre was:
- (i) not appropriately adapted to house only single adult male Detainees; and
 - (ii) not adequately staffed or resourced to absorb the increased numbers of single adult male Detainees arriving from 19 July 2013.

Particulars

Prior to July 2013 the Centre was intended to house both families and single adult men and the Centre was intended to be a temporary centre.

79. In the premises set out in the three preceding paragraphs, at all material times each of:
- (a) the Commonwealth; and
 - (b) G4S;
- knew or ought reasonably to have known that the risks of the harms to Detainees described in paragraph 55 to 71 above were significantly increased by the conversion of the Centre to a large population of single adult males.

Particulars

1. In June 2013, as a result of the change in population composition at the Centre, G4S prepared and delivered

to the Commonwealth a risk assessment that concluded that the change in composition significantly increased the risks of violence or unrest at the Centre and recommended improved security infrastructure, specifically 'fit for purpose' fencing, and stated that that the lack of that fencing was a high security risk.

2. From at least 30 January 2014:
 - i. intelligence reports indicated that there was an increasing threat of violent action by Detainees.
 - ii. G4S knew that it had insufficient security officers to respond to any violent action that might occur.

Breach – food and water

80. Throughout the G4S Period:

- (a) the Commonwealth; and
- (b) G4S;

and each of them had no or no adequate systems to ensure that:

- (i) the daily volume of potable water available to individual Detainees was sufficient, according to Australian Precautions;
- (ii) the delays experienced by Detainees before being able to access potable water were not unreasonable, according to Australian Precautions;
- (iii) Detainees had reasonable and safe access to edible fruit and sugar, commensurate with Australian Precautions;
- (iv) the food made available for consumption by Detainees was stored, prepared, handled and served in accordance with Australian Precautions.
- (v) the food made available for consumption by Detainees was stored and prepared using procedures which could be relied on by Detainees to reassure themselves that the food was safe, hygienic and compliant with cultural or religious requirements.
- (vi) Detainees did not have to queue for food for long periods, including in circumstances where they queued in rain or sun without shelter.

81. By reason of the omissions described in the preceding paragraph, throughout the G4S Period:

- (a) the daily volume of potable water provided to individual Claimants was, routinely, materially less than the requirements of:
 - (i) WHO, in respect of persons living in tropical conditions; and
 - (ii) Australian Precautions;

Particulars

1. The World Health Organisation Domestic Water Quantity, Service, Level and Health Report (2003) recommended a minimum adult water intake for males performing manual labour in tropical conditions of 4.5 litres per day.
 2. Doctors employed by IHMS (as defined in paragraph 88(b)(ii) below) had advised Detainees to drink at least 5 litres of water per day: Amnesty International, December 2013, p42.
 3. As at June 2013 there was limited running water available at the Centre, which was available or operating inconsistently. At this time, the amount of bottled water available per detainee was inadequate to the conditions, and would generally be exposed to the local tropical heat prior to consumption.
 4. Detainees in Oscar Compound had, as at December 2013, access to less than 500 millilitres per day of potable water each, in bottled form.
 5. Aside from 2-3 occasions where interruptions were announced to Detainees in advance, the duration of any power outages or interruptions to the Centre's water supply would never be known to Detainees in advance or able to be reliably predicted, and the resulting uncertainty added to the stresses experienced by the Plaintiff and Detainees.
- (b) from time to time, Detainees-endured long delays before obtaining potable water;
- (c) the potable water available to Detainees was often warm from prolonged exposure to the sun;
- (cc) from around 2013, Detainees in a number of compounds were not given bottled water, instead they had to carry cups of water from a number of water coolers;

Particulars

1. Detainees in Oscar Compound relied on security personnel to ensure that bottles of water were replaced as they were used, causing frequent long delays before water was available: Amnesty International, December 2013, p41.
2. As to the allegation in paragraph 81(c) bottled water was left on pallets in the sun, causing it to become very hot.
3. The Plaintiff experienced regular shortages and insufficient supplies of water throughout his detention at the Centre.
4. The Plaintiff experienced frequent periodic cut-offs to the Centre's water supply, which would often last for up to 1-2 days at a time and which increased in frequency over the course of his detention at the Centre. During these periods there would be no running water available at the Centre.
5. In around December 2013, water bottles ceased to be

provided in the Oscar compound and instead water was provided by way of 'water jerries' and cups (G4S.004.004.4047).

- (d) Detainees had limited access fruit or sugar; and
- (e) Detainees were at times provided with food contaminated by worms, maggots, flies other insects, human hair, teeth or sweat; and

Particulars

1. As at June 2013, food provided at the Centre was regularly contaminated and was considered to regularly be the cause of food poisoning and diarrhoea amongst Detainees and staff.
2. As at November 2013, Detainees were required to queue for long periods of time, often hours, to receive meals each day: Amnesty International, December 2013, p 6.
3. Up to at least December 2013 flies and worms were reported to have been regularly found in the food provided to Detainees: Amnesty International, December 2013, p 43.
4. Fruit and sugar were removed from the foods available to Detainees because of concerns that Detainees would convert them into alcohol: Amnesty International, December 2013, p 43.
5. As at March 2014, basic hygiene standards in kitchens at the Centre, such as wearing gloves, were not consistently applied: Amnesty International, May 2014, pp 6-8.

The Plaintiff:

6. regularly received food of very poor quality at the Centre, which was regularly contaminated with small insects, stones and/or other particulate matter.
7. frequently observed rats and other rodents running over and moving amongst cooking equipment and eating utensils in the Centre kitchens, and was required to eat food that had been prepared with such equipment and utensils.
8. Other than on the limited occasions when the Centre was being inspected or visited by external parties, had very limited access to fruit at any time and limited access to vegetables during meals. He was provided with access to fruit on average once per fortnight, and during almost all meals there was a very limited selection of vegetables provided. The vegetables served at the Centre were frequently unwashed (or poorly washed) and so would be contaminated with small stones or dirt, and were difficult to eat.
9. The Plaintiff and Detainees were aware that the local staff who were preparing meals at the Centre were hostile towards Detainees, and were consequently

fearful of the safety and quality of food that was provided.

- (f) Food provided to Detainees was at times past its use-by date.
- (g) Food provided to Detainees was at times prepared unsafely and in unhygienic conditions; and
- (h) Food provided to detainees was at times of poor quality.

82. In the premises set out in the two preceding paragraphs:

- (a) the Commonwealth:
 - (i) failed, by its agent G4S, to take reasonable care; alternatively
 - (ii) failed to ensure that reasonable care was taken by G4S; and
 - (b) G4S failed to take reasonable care;
- to ensure that Detainees were provided with food and water of a standard, quantity and accessibility in accordance with Australian Precautions.

83. By reason of the matters set out in the preceding paragraph:

- (a) the Commonwealth; and
 - (b) G4S;
- and each of them breached the Detention Duty of Care.

Breach – shelter and accommodation

84. Throughout the G4S

Period:

- (a) the Commonwealth; and
- (b) G4S;

and each of them had no or no adequate systems to ensure that the accommodation provided to Detainees:

- (i) provided shelter from rain, wind, heat and insects in accordance with Australian Precautions;
- (ii) was ventilated in accordance with Australian Precautions;
- (iii) had beds, bedding and bathroom facilities in accordance with Australian Precautions;
- (iv) offered personal space and privacy in accordance with Australian Precautions;
- (v) offered bathing and hygiene facilities in accordance with Australian Precautions; and
- (vi) facilitated or permitted healthful physical exercise, in accordance with Australian Precautions.; and

- (vii) enabled vulnerable Detainees and Detainees with behavioural management issues to be accommodated appropriately and safely.

85. By reason of the omissions set out in the preceding paragraph, throughout the G4S Period:

- (a) Detainees were accommodated in refurbished or part-refurbished buildings, or canvas tents, that:
 - (i) leaked rain;
 - (ii) left occupants exposed to wind, heat and insects;
 - (iii) were poorly ventilated, causing distressingly hot and stuffy inside conditions;
 - (iv) in some buildings and most tents – had dirt floors;
[deleted]
 - (v) had shared or communal bathroom facilities;
 - (vi) offered no means for personal privacy;
 - (vii) were dirty;
 - (viii) were crowded;
 - (ix) were constructed of inappropriate materials and design for the tropical conditions of Manus Island;
 - (x) were inappropriately cooled or not cooled at all; and
 - (xi) were affected by pungent odours of garbage, sewerage, body odour and medical waste.

Particulars

As to the Plaintiff:

1. the Plaintiff was accommodated in a room in a refurbished building that was exceedingly stuffy, hot and humid throughout the day. The room contained a small fan, which could create a small breeze, however it would not work during the intermittent periods when the electricity supply to the centre was not functioning.
2. on humid days, the Plaintiff found that the combination of heat and humidity meant that activating the fan in his room made his environment less bearable than if it was not operating.
3. in the presence of the heat and other environmental conditions present at the Centre, the conditions of the Plaintiff's accommodation at the Centre caused increased pain, itching and irritation to the Plaintiff's skin condition.
4. on occasion the Plaintiff would associate closely with patients suffering from gastroenteritis or diarrhoea so that he would be accommodated in the medical isolation

facility with them, as this area was better ventilated and was slightly cooler than the other areas of the Centre accessible to him. Doing so meant that he would only have access to bread and water to eat and drink, and that he ran a high risk of becoming more unwell, which occurred approximately 5-6 times.

As to the Plaintiff and the Claimants:

5. The G4S Subgroup Claimants were accommodated in several discrete compounds, including Delta, Foxtrot, Mike, and Oscar compounds.
6. As at January 2013:
 - (a) conditions in the Centre were harsh and the hot and humid weather made the accommodation very uncomfortable for Detainees: UNHCR, January 2013, p 14.
 - (b) some areas of the Centre were extremely muddy, with large amounts of standing water in some locations due to recent heavy rain: UNHCR, January 2013, p 14.
7. As at June 2013:
 - (a) many of the tents occupied by Detainees were in a poor state and required repair: UNHCR, June 2013, pp 4, p 10-11.
 - (b) most sleeping quarters for Detainees lacked any privacy, and Detainees were prevented from erecting any ad-hoc privacy screens or barriers.
 - (c) there was very little shade or protection from the elements available in areas where Detainees would need to queue to receive food, medications or medical treatment. Detainees were not provided with hats and had limited access to sunscreen.
8. As at October 2013, there were no facilities at the mess hall for Detainees to wash their hands before or after meals.
9. Between July 2013 and November 2013, the population of the Centre increased from around 200 to around 1,100 Detainees, with no increase in the size of the Centre itself: Amnesty International, December 2013, p 38.
10. As at November 2013:
 - (a) accommodation facilities for Detainees provided almost no fresh air, natural light or personal space. Buildings and structures were erected very close together providing limited recreation areas, and there was very little shade or shelter from the sun available to Detainees, particularly in Oscar compound: Amnesty International, December 2013, pp 6, 40.
 - (b) there were too few showers and toilets available at the Centre to accommodate the number of Detainees being held there. In Oscar compound, there were 16 toilets for approximately 500 Detainees, and in Delta compound, there were

around 5-10 toilets and showers for approximately 200 Detainees: Amnesty International, December 2013, pp 6, 38, 42.

- (c) Oscar compound contained an accommodation block divided into 10 rooms housing approximately 50 Detainees in each. It had two toilet blocks containing a total of 16 toilets and two shower blocks containing a total of 12 showers. The compound had some air conditioning facilities installed: Amnesty International, December 2013, p 38-40.
 - (d) Delta compound was comprised of converted shipping containers/demountables with corridors between them covered by a metal roof. The metal structures made the interior of the compound very hot throughout the day. The compound had some air conditioning installed: Amnesty International, December 2013, p 38-40.
 - (e) Foxtrot compound contained 'P Dorm', which housed up to 112 Detainees in a 40 metre long bunker, with a low corrugated-iron roof. Detainees were allocated a single bunk bed placed not more than 20 centimetres from the next bed. P Dorm had no windows, no air conditioning, and no form of ventilation. There was no airflow to the rear of the building, and P Dorm regularly had a strong and unpleasant odour. There were two large fans installed at the front of the room, and there was otherwise one fan available between four Detainees: Amnesty International, December 2013, p39-40, p 95.
11. In December 2013, Amnesty International reported that there was insufficient personal space and privacy available to Detainees, and that this circumstance may exacerbate symptoms of anxiety and post-traumatic stress disorder: Amnesty International, December 2013, p 38.
12. As at March 2014, further shaded areas in Oscar compound had not been provided, and the shade available in the compound had been reduced in size compared to November 2013: report titled "*This is Still Breaking People*" authored by Amnesty International and dated May 2014 (**Amnesty International, May 2014**), pp 5-8.

Copies of the documents referred to above are available for inspection at the Melbourne office of the solicitors for the Plaintiff.

- (b) Detainees were frequently unable to access basic clothing and personal hygiene products (**Personal Supplies**) including:
 - (i) shoes;
 - (ii) soap;
 - (iii) shampoo;
 - (iv) toilet paper; and

- (v) safety or other appropriate shaving razors; and
- (vi) nail clippers, or

(bb) Detainees:

- (i) were required to request Personal Supplies in a manner that was degrading and humiliating, such as sharing nail clippers or requesting soap or toilet paper on an as-needed basis; or
- (ii) made requests for Personal Supplies that were from time to time:
 - (A) unanswered,
 - (B) repeatedly unanswered,
 - (C) met with delay; or
 - (D) never met.

Particulars

As to the Plaintiff and the Claimants:

1. On arrival at the Centre, Detainees were issued with one set of clothing comprising one or two t-shirts, one or two pairs of shorts, two pairs of underwear and a pair of thongs. Shoes were not standard issue. Shoes were a special request item: Amnesty International, December 2013, p44-45.
2. G4S ordered personal hygiene items from Australian suppliers. There were frequently long delays in new supplies arriving. There were no local suppliers to meet demand while supplies were being sourced from Australia. While new supplies were being sourced from Australia, there was no means for Detainees to source these items.
3. As at June 2013, very limited amounts of soap, shampoo and toilet paper were distributed to Detainees on an as- needed basis.
4. Supplies of soap ran out many times.
5. The clothing and personal hygiene items available to Detainees are described in UNHCR January 2013, UNHCR June 2013, and UNHCR October 2013.
6. Detainees were not permitted to have direct access to a reasonable supply of toilet paper and were required to ask G4S personnel for an allocation of toilet paper each time they required it.

As to the Plaintiff:

7. The Plaintiff received minimal supplies of toiletries and clothing at the Centre, and experienced difficulty in obtaining new or additional supplies of such goods.

- (c) Detainees were forced to use bathing and hygiene facilities that were:
 - (i) makeshift;
 - (ii) unreliable in operation;

- (iii) unclean;
- (iv) mouldy;
- (v) inadequate to service the numbers of users;
- (vi) exposed and insufficiently private; and
- (vii) in the premises in (i) to (vi) inclusive above, not in accordance with Australian Precautions;

Particulars

1. On the occasions when running water ceased at the Centre, there would be a severe disruption to bathing and hygiene facilities. The Plaintiff and other Detainees were unable to take showers or wash their hands; toilets would not operate; and Detainees were not provided with toilet paper; and there was insufficient water for washing machines.
 2. A running hose or pipe was available at toilets for hygiene purposes in place of toilet paper. However this would not operate when the water supply was not available.
 3. The toilet facilities in the Centre were essentially open to the environment, which caused them to have a very strong and unpleasant odour. There would be a strong smell of urine in the vicinity of toilet facilities, often lasting for days.
 4. As at October 2013:
 - (a) the toilet blocks at the Centre were not regularly or adequately cleaned and maintained, were frequently dirty, foul-smelling, blocked, badly lit and insufficiently ventilated: UNHCR, October 2013, pp 18-20.
 - (b) the toilets and shower facilities frequently had water pooled on the floors and often had damaged doors, limiting the amount of privacy available to the Plaintiff and other Detainees: UNHCR, October 2013, pp 18-20.
 5. As at November 2013:
 - (a) most of the toilet facilities at the Centre did not have hand soap available to be used: Amnesty International, December 2013, p 6.
 - (b) many toilets and showers in Oscar compound were damaged and did not have hand soap available to use: Amnesty International, December 2013, p 42.
- (d) the Centre offered insufficient open space or other facilities for Detainees to obtain physical exercise;

Particulars

1. As at June 2013, a playing field in Oscar compound containing a small soccer pitch and volleyball net was able to be used for a couple of hours each afternoon: UNHCR, June 2013, p 11.
2. As at November 2013:

- (a) the Plaintiff and other Detainees had minimal physical activities available to them. There were small gym facilities containing some weights available in the Foxtrot (housing around 110 Detainees) and Oscar (housing around 500 Detainees) compounds for two hours, twice per day: Amnesty International, December 2013, pp 45-46.
 - (b) G4S required that Detainees wear shoes when engaging in walking trips, and Detainees often found that they required shoes in order to be able to engage in any sporting or physical activity, however most detainees were not provided with shoes: Amnesty International, December 2013, pp 45-46.
3. The Department of Immigration and Border Protection's Standards for Design and Fitout of Immigration Detention Facilities stipulated 50m² of recreation space per person.
- (e) the physical recreation activities available to Detainees were, or were normally, limited to walking or running around the Centre grounds at appointed times and under supervision from G4S personnel.

Particulars

As at October 2013, Detainees were only provided with limited and tightly controlled opportunities to walk or run around the Centre, accompanied by two G4S staff and a G4S vehicle: UNHCR, October 2013, p16.

- (f) the Centre offered insufficient shaded outdoor space, and no or no adequate access to sun protection products such as hats and sunscreen, thereby exposing Detainees to the sun and other elements.

Particulars

1. Detainees were not issued with hats;
2. Detainees were provided with limited supplies of sunscreen;
3. As at June 2013, there was very little shade or protection from the elements available in areas where Detainees would need to queue to receive food, medications or medical treatment.
4. As at November 2013, there was very little shade or shelter from the sun, heat or rain available to Detainees, particularly in Oscar compound: Amnesty International, December 2013, pp 6, 40.

- (g) vulnerable Detainees and Detainees with behavioural management issues were accommodated in separate compounds in which the conditions and treatment were harsh and punitive.

Particulars

1. As at around April 2013, there was no dedicated area for accommodation of vulnerable detainees, In around April 2013, a Detainee who was alleged to have suffered from sexual assault in the main compounds was required to be held in the medical centre for around 20 nights.
2. Detainees with perceived or actual behavioural management issues were placed in an area known as Delta 9. There were no doors on the rooms in Delta 9 and Detainees were watched by security guards at all times. Detainees at Delta 9 who wished to use the toilet were escorted to a toilet and the door would remain open while they were using the toilet.

86. In the premises set out in the two preceding paragraphs:

- (a) the Commonwealth:
 - (i) failed, by its agent G4S, to take reasonable care; alternatively
 - (ii) failed to ensure that reasonable care was taken by G4S; and
- (b) G4S failed to take reasonable care;

to ensure that Detainees were provided with shelter and accommodation that was, according to Australian Precautions, reasonably adapted to prevent distressing physical discomfort in the tropical conditions of Manus Island.

87. By reason of the matters set out in the preceding paragraph:

- (a) the Commonwealth; and
- (b) G4S;

and each of them breached the Detention Duty of Care.

Breach – medical treatment and healthcare

88. Throughout the G4S Period:

- (a) Detainees at the Centre were not authorised to obtain medical treatment or health care save as provided at the Centre;
 - (b) the medical care and health services provided at the Centre were:
 - (i) wholly funded, including as to facilities, equipment, medical supplies and staff, by the Commonwealth;
 - (ii) provided by a contract service provider engaged by the Commonwealth, known to the parties as IHMS (**IHMS**);
 - (iii) provided by IHMS as the “Health Service Provider” defined in the G4S Contract;
- and

- (c) G4S had the obligations imposed by the G4S Contract to ~~ensure that Detainees had access to appropriate and timely medical treatment:~~
- (i) under clause 6.6.1 of Schedule 1 to the G4S Contract, ensure that any Detainee who requested, or appeared to be in need of, medication attention, was referred to IHMS for appropriate medical attention; and
 - (ii) under clause 6.6.2 of Schedule 1 to the G4S Contract where it appeared that a detainee required emergency medical attention:
 - A. provide first aid;
 - B. seek emergency medical attention for the Detainee immediately, including arranging for transport of the Detainee to the nominated medical facility at the Department's cost;
 - C. inform the Health Services Provider of the Detainee's condition as soon as the initial response is complete; and
 - D. inform the Department of the Detainee's condition as soon as the initial response is complete.

Particulars

The IHMS Contract comprises a document headed "Regional Processing Countries Health Services Contract", signed by the Commonwealth and IHMS and dated 29 January 2013.

- (d) Detainees' access to medical care required facilitation by G4S, in that G4S notified Detainees of medical appointments, referred Detainees to IHMS for medical care, received Detainee requests for medical attention and escorted Detainees to IHMS appointments.

88A. During the G4S Period:

- (a) G4S did not have a system to ensure that all Detainees who requested, or appeared to be in need of, medication attention, were referred to IHMS for appropriate medical attention;
- (b) G4S did not have a system to ensure that where it appeared that Detainees required emergency medical attention, G4S would:
 - i. seek emergency medical attention for the Detainee immediately, including arranging for transport of the Transferee to the nominated medical facility at the Department's cost;
 - ii. inform IHMS of the Detainee's condition as soon as the initial response was complete; and
 - iii. inform the Department of the Detainee's condition as soon as the initial response was complete.

89. Throughout the G4S

Period: ~~(a)~~ the

Commonwealth; ~~and (b)~~

~~G4S;~~

~~and each of them~~ had no or no adequate systems to ensure that:

- (i) medical aids (such as corrective lenses, hearing aids, prostheses and medications) (**Medical Aids**) possessed by Detainees on arrival in Australia or at Manus Island were in a timely way, after being checked, either approved and returned to the Detainee or appropriately replaced to prevent harm, pain or, injury being caused to Detainees as a result of prolonged deprivation of the Medical Aids;
- (ii) Detainees had access to medical treatment and healthcare:
 - (A) that recognised that Detainees, being:
 - (1) likely to have the 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, were a high-risk cohort for physical and psychiatric or psychological conditions requiring medical treatment and health care;
 - (B) that was timely, in accordance with Australian Precautions;
 - (C) that was delivered in facilities compliant with Australian Precautions;
 - (D) that had expertise in the physical, psychiatric or psychological condition(s) requiring treatment, in accordance with Australian Precautions;
 - (E) that utilised modern equipment, treatments, procedures and medications, in accordance with Australian Precautions; and
 - (F) that was private and maintained patient privacy, in accordance with Australian Precautions.
- (iii) G4S and Commonwealth personnel at the Centre were adequately trained to recognise or identify, and intervene by seeking or arranging medical assessment or treatment, cases of mental illness, harm or distress amongst Detainees; and
- (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.;

- (v) condoms were freely available to Detainees at the Centre in circumstances where;
 - (A) a number of Detainees 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 Detainees; and
 - (D) sexual assaults occurred at the Centre.
- (vi) vaccines and medications were stored and refrigerated to ensure their efficacy; and
- (vii) medical supplies were ordered and obtained in a quantity and timeliness adequate to meet the needs of the Detainees.

90. ~~By reason of the omissions referred to in the preceding paragraph~~ During the G4S period:

- (a) Detainees, on arrival in Australia or at Lorengau Port, routinely:
 - (i) had Medical Aids confiscated temporarily or permanently; and
 - (ii) experienced long and distressing delays before the 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.

- (b) the only medical facilities which Detainees were authorised to access:
- (i) were the facilities known to the parties as the **Medical Centre**;
 - (ii) [deleted]
 - (iii) could not be accessed by Detainees directly or without accompaniment by G4S personnel;
 - (iv) were housed in subdivided shipping containers;
 - (v) had, or in some instances had, dirt floors;
 - (vi) were equipped with plastic chairs and foldable camp-style tables;
 - (vi) [deleted]
 - (vii) were the only authorised first-line source of medical treatment and health care for up to 1,350 Detainees; and
 - (viii) were staffed by fluctuating numbers of rotating health workers, being:
 - (A) doctors;
 - (B) psychologists;
 - (C) counsellors; and
 - (D) support staff;
 - (ix) had a fluctuating number of rotating mental health workers, being:
 - (A) mental health nurses;
 - (B) psychiatrists;
 - (C) psychologists; and
 - (D) counsellors;
 - (x) regularly received 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 Detainees 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

- (c) following a Detainee's arrival at Manus Island:
- (i) there was no timely or adequate assessment of the physical or mental healthcare requirements of the Detainee, conducted by a healthcare professional and applying criteria in accordance with Australian Precautions;
 - (ii) periodic reviews of the physical and mental health of Detainees, 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 Detainees were not commonly subject to 'initial transferee interviews'

- (d) Detainees seeking medical treatment or health care:
- (i) 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;
 - (ii) were not permitted direct contact with the Medical Centre;
 - (iii) were required to make written application to G4S for an appointment at the Medical Centre;
 - (iv) routinely waited 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 detainees 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 Detainees 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 Detainees to have to wait up to three days to receive basic painkillers such as Panadol.
3. As to paragraph 90(d)(ii), Detainees were not permitted to attend at the Medical Centre or to speak with employees of the Medical Centre without a prior appointment. Detainees were not permitted to make such an appointment at the Medical Centre or by speaking with Medical Centre employees. Rather, Detainees 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.

(e) the Medical Centre:

- (i) routinely lacked adequate supplies of common medications;
- (ii) did not provide specialist medical services, such as:
 - (A) [deleted];
 - (B) specialist, ancillary and acute care, such as dental, optical or radiological services;
- (iii) did not have a permanent or full time psychiatrist;
- (iv) did not have a specialist facility for treating Detainees with acute mental health conditions; and
- (v) had insufficient numbers of qualified trauma and torture counsellors to adequately service the number of 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, Detainees 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 STTARS had commenced providing some counselling services at the Centre for Detainees with a torture and trauma background. STTARS had a three-person team at the Centre, with two counsellors working each day, usually seeing four Detainees per day. As at November 2013, the STTARS team had a full caseload and had 16 additional Detainees 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 Detainee 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.
 8. As to paragraph 90(e)(v) the number of Detainees requiring assistance will be provided after discovery.
- (f) the dental services available to Detainees were provided via referrals to the local Manus Island dentist, who:
- (i) at times did not have access to a functional dental drill, or other equipment in accordance with Australian Precautions;
 - (ii) was unable to treat tooth conditions other than by inserting fillings or performing extractions;
 - (iii) had limited capacity to treat Detainees from the Centre because

- of the need to treat members of the local population;
- (iv) undertook more invasive treatments than were consistent with Australian Precautions; and
- (v) 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 Detainee 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.

(g) The Commonwealth G4S and the Medical Centre:

- (i) 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;
- (ii) in practice could only refer a Detainee for treatment at an alternative location:
 - (A) upon application to an officer of the Commonwealth;
 - (B) upon approval of the application, by the Commonwealth officer;

Particulars

1. Clinicians recommending a detainee for a transfer away from Manus for medical purposes would notify the IHMS Medical Director or the Medical Director Mental Health, and would thereafter complete and submit a 'recommendation for transfer' form concerning that detainee.
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 detainees should be removed from the Centre to treat mental health conditions, by instructing that the detainee should be treated at the Centre or otherwise elsewhere within PNG.
4. On occasion, the Commonwealth obtained second opinions from external Australian doctors on IHMS' recommendations for transfers, which created further delays in decision-making.

- (h) In a number of cases, Detainees who required escalation of medical treatment endured:
 - (i) lengthy delays; and
 - (ii) inadequate interim care pending presentation to the alternative medical treatment providers.; and
 - (iii) refusal to escalate care by means of transferring the person off Manus Island to Port Moresby and/or to Australia.
- (i) Detainees exhibiting symptoms or signs of physical or mental harm or other poor health:
 - (i) were not identified by Centre personnel, and recommended or referred for medical assessment and/or treatment, in a timely manner;
 - (ii) were not provided with any information or advice sufficient to enable them or other Detainees to identify when medical intervention or assistance may be required for such symptoms;
 - (iii) as a result of the matters described in sub-paragraphs (b)-(e) and (h) above, were in practice discouraged from actively seeking early intervention or assistance with medical concerns, and
 - (iv) 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. As to paragraph 90(i)(iv), particulars of the untreated symptoms will be provided after discovery.
- (j) Detainees had limited access to condoms, in circumstances where:
 - (i) a number of Detainees had sexually transmitted diseases;
 - (ii) the local population on Manus Island was known to have sexually transmitted diseases;
 - (iii) male to male sex was occurring among some of the Detainees; and
 - (iv) sexual assaults occurred at the Centre.

Particulars

1. Prior to around December 2013, condoms were not made available to Detainees 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 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 early 2014, one IHMS counsellor, John Zammit, distributed condoms and lubricant to Detainees in the compounds at his discretion, but otherwise condoms were only available at the IHMS clinic.

- (k) Detainees had a fear of seeking advice, assistance and/or treatment for sexual health issues.

91. In the premises set out in the three preceding paragraphs:

(a) the Commonwealth:

- (i) failed, ~~by its agent G4S,~~ to take reasonable care; alternatively
- (ii) failed to ensure that reasonable care was taken by G4S; ~~and~~

~~(b) — G4S failed to take reasonable care;~~

to ensure that Detainees were provided with medical care and health services that:

- (i) recognised that Detainees, being likely to have the Detainee Characteristics, were a high-risk cohort for physical and psychiatric or psychological conditions requiring medical treatment and health care; and
- (ii) were, according to Australian Precautions, reasonably adapted to prevent avoidable deterioration of the physical or mental health of Detainees.; and
- (iii) recognised the level of medical care and health services needed to reflect the limited medical services and facilities available on Manus Island and PNG; and
- (iv) 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
- (v) prevented or ameliorated pain to Detainees.

92. By reason of the matters set out in the preceding paragraph:

(a) the Commonwealth; ~~and~~

~~(b) G4S;~~

~~and each of them~~ breached the Detention Duty of Care.

92A. By reason of the matters in paragraph 88A, G4S breached the Detention Duty of Care.

Breach – internal security

93. Throughout the G4S Period:

- (a) the Commonwealth; and
- (b) G4S;

and each of them had no or no adequate systems to ensure that:

- (i) the Detainee population was monitored for violent, intimidatory, discriminatory, ostracising, bullying or other anti-social behaviour between Detainees, in accordance with Australian Precautions;
- (ii) Centre personnel were adequately trained to manage, in accordance with Australian Precautions, violent or antisocial behaviour between Detainees;
- (iii) Detainees were not subjected to violent or anti-social behaviour from other Detainees or Centre personnel;
- (iv) Detainees were not exposed to a well-founded fear of violent or anti-social behaviour from other Detainees or Centre personnel;
- (v) internal compound fencing was adequate, according to Australian Precautions, to prevent:
 - (A) unauthorised incursion by Detainees or other persons from one compound into other compounds;
 - (B) unauthorised incursion by persons inside the Centre, whether lawfully or otherwise, into the compounds; and
- (vi) the compound fencing was adequate, according to Australian Precautions, to prevent unauthorised egress by Detainees from the Centre.;
- (vii) Detainee allegations of sexual assault or sexual harassment by other Detainees or Centre staff were handled appropriately and not ignored;
- (viii) staff did not place Detainees in solitary confinement or in isolated and restrictive non-therapeutic environments; and
- (ix) staff did not assault Detainees.

94. By reason of the omissions referred to in the preceding paragraph, during the G4S Period:

- (a) the selection, training and qualifications of G4S personnel involved in security functions at the Centre (in particular, but without limitation, locally-engaged G4S personnel:

- (i) were not in accordance with Australian security-industry standards;
- (ii) were not in accordance with Australian Precautions;
- (iii) were not reviewed or approved by Commonwealth officers who were appropriately qualified, according to Australian Precautions, to approve the training of personnel engaged in security functions at detention or like facilities.
- (iv) did not encompass adequate training regarding mental health issues;
- (v) involved training being delivered in English to local staff who spoke Pidgin;
- (vi) involved training being delivered by staff who themselves had only received two to four weeks work experience;
- (vii) did not cover mental health awareness training at all or adequately;
- (viii) did not cover issues of sexual harassment and sexual assault at all or adequately.

Particulars

- (a) the G4S personnel selection process had no method for identifying applicants whose personal characteristics were unsuited to work on Manus Island;
 - (b) the training program was intended to cover topics including risk and hazard identification, dynamic and situational security awareness, emergency and incident response, defensive tactics and cultural awareness. It consisted of less than 16 hours actual training time and was conducted in groups of between five and twenty people at a time;
 - (c) G4S did not have, or have access to, dedicated training facilities. Groups undertaking training were moved from room to room;
 - (d) in some cases training courses were ceased prior to the completion of the six days training and employees allocated to active duties because of staff shortages;
 - (e) the training program did not adequately train personnel in how to manage tensions between Detainees and between Detainees and local PNG residents, including in the course of violent disturbances;
 - (f) G4S personnel typically received no training from the Commonwealth.
 - (g) the training program was frequently not carried out in full; and
 - (h) some G4S personnel were left unsupervised on shift before the completion of the six-day training period.
2. As at June 2013, training practices had not been altered or updated to reflect the change in the nature of the Centre to one solely housing single adult males;

4. There was no clear or well-understood policy concerning how to respond to allegations or reports of sexual assault (A.100.3013.8474).
- (b) G4S had inadequate systems for identifying Detainees who were:
- (i) exhibiting violent or anti-social behaviour; or
 - (ii) at risk of violent or anti-social behaviour from other Detainees;
- (c) G4S had inadequate systems for managing Detainees who were:
- (i) exhibiting violent or anti-social behaviour; or
 - (ii) at risk of violent or anti-social behaviour from other Detainees;

Particulars

1. G4S had no or no adequate formal system for observing or monitoring Detainee behaviour.
 2. G4S had no or no adequate formal system for receiving, investigating or assessing complaints about Detainee behaviour. Detainees had no independent, private, process for making a complaint about the conduct of other Detainees.
 3. G4S had no or no adequate formal system for the allocation, or reallocation, of Detainees to particular compounds, including for Detainees who had displayed violent or aggressive tendencies to other Detainees and for Detainees who were the subject of threats of violence or anti-social behaviour from other Detainees.
 4. Employees of the Salvation Army were responsible for allocating Detainees to rooms and compounds. There was no policy or procedure that set out how Detainees were to be allocated to rooms or compounds.
- (d) G4S made no or no adequate response to:
- (i) reports of violent or anti-social behaviour by Security Staff;
 - (ii) reports that the training provided to the Loda Guards was inadequate and that the Loda Guards were insufficiently trained to appropriately respond to serious disorder or unrest within the Centre;

Particulars

So far as the plaintiff is able to say prior to discovery:

1. From at least late 2013, G4S received reports from employees and from Detainees that some Security Staff:
 - a. spoke to Detainees aggressively;
 - b. conducted loud and intimidating briefings in front of Detainees;
 - c. taught Detainees local greetings that were, in fact, swear words; and
 - d. told Detainees that the local population were cannibals and were hostile to the Detainees.
2. From at least November 2013, G4S was in possession of detailed written complaints from at least two G4S

employees that stated that the Loda Guards were inadequately trained and unable to adequately respond in the event of a disturbance at the Centre.

3. Detainees were assaulted by G4S staff on a number of occasions.
- (iii) reports of violent or anti-social behaviour by or between Detainees; or
- (iv) increasing trends in reports in sub-paragraph (iii) above from about early 2013;

Particulars

1. From at least January 2014, G4S was in possession of intelligence reports that identified that Detainees were conducting peaceful, *ad hoc* protests at the Centre. These protests were initially confined to Oscar compound. From 26 January 2014 the protests occurred daily, became more organised and involved more compounds.
2. From at least 30 January 2014:
 - i. intelligence reports indicated that there was an increasing threat of violent action by Detainees.
 - ii. G4S knew that it had insufficient Security Staff to respond to any violent action that might occur.
3. In early 2014, G4S requested that the Department approve the employment and deployment of an additional 30 SSOs to the Centre and then an additional 100 SSOs.
4. Save as set out in particular 3 above, G4S took no or no adequate steps to respond to the reports referred to in the particulars in particulars 1 and 2 above.

- (e) Detainees were subjected to violent or anti-social behaviour from:
- (i) Security Staff; further or alternatively
 - (ii) other Detainees; and

Particulars

The plaintiff repeats and relies on the matters set out in the particulars under subparagraph (d)(ii) above. The plaintiff relies on the particulars under paragraph 92 below.

- (f) Detainees from not later than early 2013 were exposed to a well-founded fear of violent or anti-social behaviour from:
- (i) Security Staff; further or alternatively
 - (ii) other Detainees.

Particulars

As at June 2013, the UNHCR described the Centre as “a volatile environment in which otherwise minor disagreements or misunderstandings had the potential to spark significant tensions or self-harm as pressure, uncertainty and feelings of vulnerability increased among the asylum-seekers.”: UNHCR, June 2013, pp 11, 16.

- (g) G4S made no or no adequate response to:
- (i) reports that the internal compound fencing was inadequate to prevent Detainees in one compound breaching the internal fencing and gaining unauthorised access to other compounds within the Centre;
 - (ii) reports the perimeter fence on the seaward side of the Centre was inadequate to prevent Detainees:
 - (A) leaving the Centre without permission by climbing the perimeter fence; and
 - (B) attempting suicide by drowning in the open sea; and
 - (iii) the risk that the internal fencing was inadequate to prevent persons gaining unauthorised access to the Centre and compounds and causing harm to Detainees.

Particulars

1. By not later than early 2013, G4S was aware that Detainees had attempted to breach the seaside perimeter fence and drown themselves in the open sea.
 2. From at least 23 June 2013, the Commonwealth was in possession of a written security evaluation conducted by G4S which identified that the external and internal fencing was inadequate for a detention facility housing only single adult males and recommending the construction of "anti-climb" fencing.
 3. In the period June 2013 to February 2014, the Commonwealth received monthly security risk assessments prepared by G4S in which, *inter alia*, G4S identified inadequate internal and external fencing, the rapid increase in Detainee numbers and the conversion to a single adult male only facility as serious security risks.
 4. From at least 15 December 2013, the Commonwealth was in possession of a report prepared by G4S which stated that the internal and perimeter fencing at the Centre was inadequate and needed to be replaced;
 5. From at least 2 January 2014, the Commonwealth was in possession of a security risk assessment prepared by G4S that, *inter alia*, advocated the erection of more robust fencing, installation of closed circuit television and improved security lighting;
 6. In each of October 2013, December 2013 and January 2014, G4S made a request to the Department for improvements to Security Infrastructure. As at January 2014, no security infrastructure upgrades had been completed.
 7. By February 2014, no work had been commenced at the Centre to improve the internal or exterior fencing.
- (iv) Detainee allegations of sexual assault or sexual harassment by other

Detainees or Centre staff.

- (h) Detainees were afraid of reporting sexual assault or sexual harassment.
- (i) Detainees with behavioural management issues were placed in solitary confinement or in isolated and restrictive non-therapeutic environments.

95. In the premises set out in the two preceding paragraphs:

- (a) the Commonwealth:
 - (i) failed, by its agent G4S, to take reasonable care; alternatively
 - (ii) failed to ensure that reasonable care was taken by G4S; and
- (b) G4S failed to take reasonable care;

to ensure that Detainees were provided with reasonable protection, in accordance with Australian Precautions, from exposure to violent or anti-social behaviour from other Detainees or from G4S personnel.

96. By reason of the matters set out in the preceding paragraph:

- (a) the Commonwealth; and
- (b) G4S;

and each of them breached the Detention Duty of Care.

Breach – external (perimeter) security

97. Further and in the alternative to the preceding subheading, in and from October 2012 until not earlier than late February 2013:

- (a) the Commonwealth; and
- (b) G4S;

and each of them had no or no adequate systems to ensure that:

- (i) perimeter fencing protecting the Centre was adequate, according to Australian Precautions, to prevent unauthorised incursion by, *inter alia*, members or groups of members of the local population;
- (ii) security personnel at the Centre were selected, trained, qualified and equipped in accordance with Australian Precautions to:
 - (A) defend Detainees, while authorised to be outside the Centre, from assaults by members of the local population who were or were likely to be:
 - (1) affected by betel nut, alcohol or other drugs; and
 - (2) very violent; and
 - (B) defend Detainees within the Centre from assaults by any

persons, in the event of any incursion into the Centre by members or groups of members of the local population who were or were likely to be:

- (1) affected by betel nut, alcohol or other drugs; and
 - (2) very violent; and
- (iii) Detainees had reliable and effective access to sanctuary in the event of any dangerous incursion by unauthorised persons into the Centre.

98. By reason of the omissions referred to in the preceding paragraph, from October 2012 until not earlier than late February 2013:

- (a) the perimeter fencing around the Centre was inadequate to prevent unauthorised incursions by lightly-armed groups of members of the local population;

Particulars

1. As at June 2013, a G4S assessment had identified that security infrastructure, including the internal and the external fencing at the Centre was inadequate.
 2. In each of October 2013, December 2013 and January 2014, G4S made a request to the Department for improvements to Security Infrastructure. As at January 2014, no security infrastructure upgrades had been completed.
 3. From at least 6 October 2013, the Commonwealth was in possession of a document prepared by G4S identifying inadequacies in the perimeter fencing and requesting that new fencing be erected, lighting be installed and that a logistics hub be created.
 4. From at least 13 October 2013, the Commonwealth was in possession of a further document prepared by G4S identifying inadequacies in the perimeter fencing and requesting that new fencing be erected and lighting be installed.
 5. By February 2014, no work had been commenced at the Centre to improve the internal or exterior fencing.
 6. As to paragraph 98(a) the light arms included machetes and other knives, batons (including makeshift batons), sharp weapons fashioned from natural materials including tree branches, and rocks and stones.
- (b) there were no internal compounds, buildings or areas (**sanctuaries**) within the Centre to which Detainees could retreat in the event of a dangerous incursion by unauthorised persons into the Centre;
 - (c) Centre staff, and in particular G4S personnel, were not selected, trained, qualified or equipped, in accordance with Australian Precautions, to:
 - (i) defend the Centre perimeter in the event of a determined attack by lightly-armed groups from the local population;

- (ii) create or defend a sanctuary within the Centre, in the event of an unauthorised incursion into the Centre by lightly-armed groups from the local population;
- (iii) defend Detainees in the event of an unauthorised incursion into the Centre by lightly-armed groups from the local population;
- (iv) evacuate Detainees from the Centre in time to prevent assaults upon them following an unauthorised incursion into the Centre by lightly-armed groups from the local population;
- (v) prevent attacks upon Detainees, or protect Detainees from harm in the event of attacks, by lightly-armed members of the local population at times when Detainees were on authorised excursions from the Centre;

Particulars

On 18 October 2013, to the knowledge of the Commonwealth and G4S, there had been an altercation between PNG Police and PNG military personnel outside the Centre, in view of Detainees at the Foxtrot compound. During the altercation:

- a. firearms were drawn and reported to have been discharged;
 - b. most staff working at the Centre gathered at a safe area and prepared to evacuate;
 - c. expatriate staff commenced evacuating from the Centre;
 - d. the decision to evacuate was not authorised through the normal chain of command;
 - e. there were significant communication difficulties due to radios failing;
 - f. the relevant Emergency Plan was not followed;
 - g. Detainees were left in the accommodation compounds;
 - h. Detainees reported to Centre management that they had believed the incident was an attack by members of the local population;
 - i. Detainees reported fears that they would be left behind alone and unprotected at the Centre in the event of any attack by members of the local population.
- (d) Detainees were not briefed, advised or trained on the actions that they should take (including where and how to seek shelter) in the event of a dangerous incursion by unauthorised persons into the Centre; and
 - (e) during the period from about 7 February 2014 until not earlier than 18 February 2014, Centre staff, and in particular G4S personnel, had not taken any or any adequate steps to respond to recent warnings of a likely attack on the Centre from members of the local population who might be or were likely to be:
 - (i) affected by betel nut, alcohol or other drugs; and
 - (ii) very violent.

Particulars

1. The warnings were recorded by G4S in intelligence reports prepared by or for it in about late January or early February 2014, and provided by it to the Commonwealth.
2. the reports noted that Detainees were unhappy with the response received to questions asked by them in relation to RSD processing, timeframes for their ongoing detention, and Centre facilities;
3. the intelligence reports noted that Detainees were preparing makeshift weapons;
4. tensions in the Centre were growing significantly in the period on and from 26 January 2014;
5. tensions increased further on and from 5 February 2014;
6. by early or mid February 2014 the reports predicted internal protest activity would occur on 16-18 February 2014.

Further, in the period prior to February 2014 there had been incidents of PNG locals gathering at or near the Centre's perimeter fence, occasionally attempting to enter or interfere with the Centre.

99. Further to the two preceding paragraphs:
- (a) on or about 17 February 2014 the Centre was attacked by a lightly-armed group from or mainly comprising the local population (**attackers**);
 - (aa) a number of Centre Staff enabled gates to allow attackers to enter the Centre;
 - (b) by reason of the matters set out in the two preceding paragraphs:
 - (i) the perimeter fence failed to prevent incursion by the attackers into the Centre;
 - (ii) the Centre staff and in particular Security Staff were not willing or not able:
 - (A) to prevent incursion by the attackers into the Centre;
 - (B) to create or defend a sanctuary for Detainees within the Centre; or
 - (C) to defend Detainees from assault by the attackers or by other Security Staff;
 - (iii) Detainees had not been briefed, advised or trained on how to respond to the incursion;
 - (iv) Detainees had no sanctuary to which they could safely retreat;
 - (v) Detainees were not evacuated from the areas where perimeter security had been breached;
 - (vi) the PNG Mobile Squad entered compounds and discharged live ammunition without authorisation from G4S, the Centre Administrator,

local PNG Police or otherwise;

- (vii) Detainees were assaulted by:
 - (A) the local attackers;
 - (B) Security Staff and other workers at the Centre; and
 - (C) members of the PNG Mobile Squad;
- (viii) the said assaults resulted in:
 - (A) death or serious physical injury and mental harm to Detainees who were assaulted; and
 - (B) nervous shock or other mental harm to Detainees who witnessed the assaults; and
- (ix) Detainees have suffered and continue to suffer distress and inconvenience, mental harm in the nature of serious anxiety, depression and despair, based upon a reasonable fear of future assaults by the local population or by G4S personnel.

Particulars

1. On Monday 17 February 2014 some Detainees in Mike, Oscar and Foxtrot Compounds engaged in protests.
2. At 1712 hours non-essential Centre personnel were evacuated from the Centre.
3. At 1938 hours a decision was made to remove all local personnel from the Centre, including local security personnel.
4. At 2114 hours the generators in Mike Compound failed. from that time there were no internal or external lights in Mike Compound.
5. At 2145 hours the Mobile Squad With a dog team was deployed in the Green Zone (the area between Mike and Foxtrot compounds).
6. At approximately 2145 hours the G4S IRT was deployed to assist G4S employees in the Green Zone. The IRT withdrew from the Green Zone at 2200.
7. At 2205 hours the fence and gates between Mike and Foxtrot had been damaged or taken down and Detainees had free and open access between the two Compounds.
8. At 2259 hours IHMS withdrew from the Centre and established a field medical facility at the Bibby (the accommodation vessel) with a mass casualty triage facility on the wharf alongside the Bibby.
9. At 2320 hours all remaining Centre personnel were evacuated. Control of the Centre was handed to the Mobile Squad. At 2322 hours the Mobile Squad fired guns in the vicinity of Mike Compound, including at chest height into the administration centre and into the residential areas.
10. At 2324 hours the Mobile Squad threw grenades in the Centre.

11. At approximately 2324 hours, local PNG residents entered the compound and began assaulting Detainees. At this time, local members of G4S dispersed into the Compounds and ceased to be under the control of G4S.
12. Local PNG residents and some Security Staff entered bedrooms in Mike compounds and dragged Detainees outside where they were beaten.
13. As a consequence of the incident, one Detainee died and 69 Detainees received medical treatment for injuries. The injuries sustained included:
 - (a) Lacerations and abrasions;
 - (b) Fractures;
 - (c) Soft tissue injuries;
 - (d) Contusions;
 - (e) Sprains;
 - (f) Dental trauma;
 - (g) Ligament injuries;
 - (h) Gunshot wounds;
 - (i) Head injuries;
 - (j) An eye enucleation (loss of an eye); and
 - (k) Haematomas.
14. Eight patients were taken to Port Moresby and one to Australia for medical treatment. Some Detainees later developed post-traumatic stress disorder.
15. The events are detailed in a report to the Secretary, Department of Immigration and Border Protection, titled 'Review into the events of 16-18 February 2014 at the Manus Island Regional Processing Centre' authored by Robert Cornall AO and dated 23 May 2014.
16. As to paragraph 99(a) the light arms included machetes and other knives, batons (including makeshift batons), sharp weapons fashioned from natural materials including tree branches, and rocks and stones.

The Plaintiff:

17. was present at the Centre during the incursion in mid-February 2014.
18. was struck in the lower back and hip with a hard object at one point during the night, causing a bruise.
19. was in the vicinity when Detainees were beaten by attackers in the compounds;
20. could hear the noises being caused by attackers beating Detainees, which was a frightening and traumatic experience;
21. observed during the night that Security Staff present at the Centre were not defending Detainees, but were instead protecting or assisting the local PNG residents who had broken into the Centre;

22. saw some Security Staff guarding or shielding locals, and making 'cut-throat' gestures towards groups of Detainees;
 23. learned the following day that one of the Detainees, Mr Reza Berati, had been killed during the incident;
 24. suffered and continues to suffer mental trauma, and worries frequently about being returned to this kind of violence at the Centre. On several occasions in the Centre following the incident, the Plaintiff collapsed as a consequence of his stress and panic in the heat.
100. In the premises set out in the three preceding paragraphs:
- (a) the Commonwealth:
 - (i) failed, by its agent G4S, to take reasonable care; alternatively
 - (ii) failed to ensure that reasonable care was taken by G4S; and
 - (b) G4S failed to take reasonable care;
- to ensure that Claimants, being Detainees, were provided with reasonable protection, in accordance with Australian Precautions, from attack by the local population including Loda Guards and members of the Mobile Squad.
101. By reason of the matters set out in the preceding paragraph:
- (a) the Commonwealth; and
 - (b) G4S;
- and each of them breached the Detention Duty of Care.

Contumelious disregard of Claimants' rights

Exemplary damages – Commonwealth

102. In August 2012 the Commonwealth adopted a policy known as the 'no advantage' policy, under which asylum seekers who arrived in Australia by boat without a valid visa in effect would be held in immigration detention for an unspecified period of time for the purported reason of ensuring that they did not gain any advantage over asylum seekers resettled under the United Nations refugee processing system (the **No Advantage Policy**).

The No Advantage Policy:

- i. is described in the *Report of the Expert Panel on Asylum Seekers* of August 2012 authored by Air Chief Marshal Angus Houston, Paris Aristotle and Professor Michael L'Estrange at pages 8 and 14, 41, 47, 48, 141, and
- ii. was adopted by the Australian Government as described in the transcript of press conference published by the Department of Prime Minister and Cabinet from 13 August 2012 in Canberra by the

Commonwealth Minister;

- iii. was further described in the press conference transcript of the (then) Commonwealth Minister, Chris Bowen on 14 September 2012;
- iv. was further described in the transcript of a press conference given by the Prime Minister of Australia on 9 May 2013 in which, among other things, the Prime Minister said “The no- advantage principle that arises from the Houston Review is about saying that people shouldn't get an advantage because they travelled to Australia by boat that the waiting time that they get for a resettlement opportunity is the same amount of waiting time they would have had if they had not got on that boat. The no-advantage principle is about sending a clear message that if you get on a boat, all you do is risk your life and pay a people smuggler; you don't get an advantage from doing it”.

Copies of these documents are available for inspection at the Melbourne offices of the solicitors for the Plaintiff.

103. Further, on 18 September 2013 the Commonwealth adopted a policy or procedure:

- (a) known as “*Operation Sovereign Borders*”;
- (b) under which, among other things, all asylum seekers who arrived in Australia by boat without a valid visa in effect:
 - (i) would be transferred to an offshore regional processing centre, including the Centre, within 48 hours of arriving in Australia and
 - (ii) would not be eligible for resettlement in Australia;

for the stated purpose of deterring other asylum seekers from attempting to reach Australia by boat.

Particulars

In September 2013 the Commonwealth Minister's title was changed to Minister for Immigration and Border Protection.

The Operation Sovereign Borders Policy is described in a document headed ‘The Opposition's Sovereign Borders Policy’ and dated July 2013.

The adoption by the Commonwealth of the Operation Sovereign Borders Policy is described in the transcript of the Commonwealth Minister's ‘Operation Sovereign Borders Joint Agency Taskforce’ address, dated 23 September 2013.

Copies of these documents are available for inspection at the Melbourne offices of the solicitors for the Plaintiff.

The Commonwealth “taskgroup” established for the purpose of giving effect to the policy was the “Offshore Detention and Returns Taskgroup”.

104. Neither:

- (a) the No Advantage Policy; nor
 - (b) the Operation Sovereign Borders policy or procedure:
- was expressed as altering, or in law altered or derogated from, the Commonwealth's Detention Duty of Care.

105. The Commonwealth:

- (a) transferred the Detainees to the Centre knowing, or in circumstances where it ought reasonably to have known, of the matters pleaded in paragraphs 7 to 10, 46 to 50, 55 to 65 and 68 to 101 inclusive above;

Particulars

1. The first transfers to the Centre pursuant to the No Advantage Policy were announced in a media release from the Commonwealth Minister dated 21 November 2012 in which, among other things, the Minister stated that 'There is no visa on arrival, there will be no special treatment, no speedy outcome and certainly no advantage given to those who come by boat'.
2. On 1 August 2013 the Commonwealth Minister announced the first transfer to the Centre under the regional settlement arrangement and the planned expansion of the Centre at a press conference in the course of which, among other things, the Commonwealth Minister said of the first transferees "As of now, there are the first 40 people in Papua New Guinea who are realising that people smugglers no longer have a product to sell".

- (b) detained the Detainees at the Centre knowing of the matters set out in paragraphs 68 to 101 inclusive above;
- (c) has repeatedly made public statements, including by way of videos published on the Internet, to the effect that the processing of Detainees' asylum claim and the resettlement of Detainees found to be refugees would be subject to the No Advantage Policy and that Detainees would be held at the Centre for long periods of time;

Particulars

So far as the plaintiff is able to say prior to discovery, the No Advantage Policy was communicated to Detainees, or persons likely to be in contact with Detainees, by means of:

- i. social media, including Facebook and Twitter; and
- ii. a video recorded in September 2014 by the then Commonwealth Minister and thereafter was shown to all new arrivals at the Centre.

- (d) failed over a prolonged period of time to take any, or any adequate, steps to improve conditions at the Centre, including by failing to convert the Centre into an open facility until at least 12 May 2016;
- (dd) did not have any adequate system for responding to Detainees' complaints at the Centre to enable such complaints to be responded to;
- (e) did not respond to Detainees' complaints about the conditions at the Centre in a timely, efficient and responsive way;
- (f) responded to Detainees' complaints about the Centre by assuming that such complaints were not genuine and that Detainees making such complaints were not genuine in making them;
- (g) failed over a prolonged period of time to develop and/or implement a reasonable procedure, according to Australian Precautions, for the timely, efficient, transparent and expert processing of asylum claims.; and
- (h) kept the Detainees detained in the Centre unlawfully, as pleaded in paragraphs 185A to 185Y herein.

Particulars

So far as the Plaintiff is able to say prior to discovery:

- (a) throughout the G4S Period the Commonwealth received reports from IHMS titled "Offshore Processing Centres Quarterly Health Trend Report" identifying ongoing systemic issues in the health and medical services available to Detainees.
- (b) throughout the G4S Period the Commonwealth attended and participated in operations meetings conducted at the Centre in the course of which services providers at the Centre identified deficiencies in health services, food and water provisions and internal and external security.
- (c) from at least 23 June 2013 the Commonwealth was in possession of a written security evaluation conducted by G4S which identified that the external and internal fencing was inadequate for a detention facility housing only single adult males and recommending the construction of anti-climb fencing.
- (d) in the period June 2013 to February 2014 the Commonwealth received monthly security risk assessments prepared by G4S in which, *inter alia*, G4S identified inadequate internal and external fencing, the rapid increase in Detainee numbers and the conversion to a single adult male only facility as serious security risks.
- (e) in September 2013 the Commonwealth directed Lieutenant General Angus Campbell, DSC, AM to conduct an "Operation Sovereign Borders - Force Protection Review" of the Centre. The Review identified nine issues requiring attention including:
 - (f) the need for service provider personal safety training;
 - (g) inadequate service provider staffing depth, requiring

- changes to ensure sufficient staff levels at all times;
- (h) inadequate physical security fencing and lighting; and
 - (i) personnel security and access procedures
 - (j) as at 16 February 2014 not more than one of the nine issues had been addressed. As at June 2014 not more than four of the nine issues had been addressed:.
 - (k) from at least 6 October 2013 the Commonwealth was in possession of a document prepared by G4S identifying inadequacies in the perimeter fencing and requesting that new fencing be erected, lighting be installed and that a logistics hub be created.
 - (l) from at least 13 October 2013 the Commonwealth was in possession of a further document prepared by G4S identifying inadequacies in the perimeter fencing and requesting that new fencing be erected and lighting be installed.
 - (m) from at least 15 December 2013 the Commonwealth was in possession of a report prepared by G4S which stated that the internal and perimeter fencing at the Centre was inadequate and needed to be replaced.
 - (n) from at least 2 January 2014, the Commonwealth was in possession of a security risk assessment prepared by G4S that, inter alia, advocated the erection of more robust fencing, installation of closed circuit television and improved security lighting.
 - (o) from at least 30 January 2014 the Commonwealth was in possession of a written request from G4S for the deployment of an additional 130 security officers at the Centre because of concerns of G4S that the Centre had inadequate numbers of personnel to appropriately respond to serious incidents.
 - (p) from at least 2 February 2014 the Commonwealth had in its possession an email communication from officers of G4S to the effect that G4S held serious concerns about the likelihood of unrest at the Centre as a consequence of the cessation of RSD processing.
 - (q) on each of 6 and 7 February 2014 the Commonwealth received written communication from G4S about the volatile situation that had arisen at the Centre.
 - (r) from at least 10 February 2014 the Commonwealth was in possession of an email communication from officers of G4S to the effect that G4S held serious concerns about the capacity of the Mobile Squad to respond to unrest at the Centre and the likelihood that use of the Mobile Squad to respond to unrest at the Centre would result in very serious injury or death.
 - (s) as at 24 March 2014, a survey of the fence line had been completed. No other works had been undertaken to erect the new fences.
 - (t) as to paragraphs 105(e) and (f) the complaints were made orally to G4S Personnel, to other personnel employed to work at the Centre including medical staff and/or were made or recorded in writing.

106. In the premises, the Commonwealth's conduct comprising each of its breaches of the Detention Duty of Care was:
- (aa) intentional;
 - (a) punitive;
 - (b) cruel;
 - (c) highhanded;
 - (d) in contumelious disregard of Australia's Convention Obligations;
 - (e) in contumelious disregard of the rights of the Detainees to be treated with humanity and respect for their inherent dignity, as is required by the Convention Obligations.
 - (f) in contumelious disregard of the Commonwealth's Detention Duty of Care.
107. By reason of the matters in paragraphs 102 to 106 inclusive, the Plaintiff on his own behalf and on behalf of the Negligence Group Members seeks exemplary damages.

Exemplary damages – G4S

108. G4S:
- (a) failed over a prolonged period of time to take any, or any adequate, steps to improve conditions at the Centre;

Particulars

The plaintiff repeats and relies on the particulars under paragraph 105 (g) above.

- (aa) did not have any adequate system for responding to Detainees' complaints at the Centre to enable such complaints to be responded to;
- (b) did not respond to Detainees' complaints about the conditions at the Centre in a timely, efficient and responsive way;
- (c) responded to Detainees' complaints about the Centre by assuming that such complaints were not genuine; and
- (d) by its servants or agents:
 - (i) spoke to Detainees in loud, aggressive voices;
 - (ii) engaged in acts of physical violence towards Detainees;
 - (iii) taught Detainees what were said to be local greetings but were in fact obscene insults;
 - (iv) engaged in aggressive behaviour, including by gathering in groups and shouting;

- (v) dismissed or disregarded requests or complaints from Detainees concerning health/medical, accommodation, and food/water issues in a derogatory, offensive or racially discriminatory manner;
- (vi) disseminated misinformation about PNG locals to Detainees designed to threaten, intimidate or frighten them;
- (vii) made verbal threats to harm or kill Detainees during the February 2014 incursion into the Centre;
- (viii) made jokes to Detainees and Centre staff to the effect that Detainees would be harmed or shot in the event of a riot or disturbance;
- (ix) turned away or otherwise created significant delays for Detainees seeking passage to the Medical Centre for medical appointments;
- (x) failed to respond to or protect affected Detainees from credible reports of sexual assaults at the Centre;
- (xi) capriciously disregarded, ignored or denied requests from Detainees for medical assistance from IHMS, despite not having any specific medical expertise or experience with which to assess those requests;
- (xii) made jokes or other references in front of Detainees to suggest that the food and water provided at the Centre was unsafe to eat or was contaminated; and
- (xiii) participated in groups of PNG locals jeering at or insulting Detainees from outside the Centre when off duty.

Particulars

1. Security Staff often raised their voices, yelled at and spoke aggressively to Detainees.
2. Security Staff physically assaulted Detainees.
3. Security Staff insulted the religious and cultural beliefs of Detainees.
4. Security Staff told Detainees that cannibalism was rampant among the local population and that there were high levels of criminal activity towards foreigners.
5. Security Staff told Detainees about allegedly high levels of HIV among the local population.
6. Security Staff told Detainees that the local population were murderous.

109. In the premises, the conduct of G4S was:

- (a) cruel;
- (b) highhanded;
- (c) in contumelious disregard of the rights of the Detainees to be treated in accordance with the requirements of Schedule 1 to the G4S Contract,

including the requirement to ensure that each Detainees' individual human rights, dignity and wellbeing is preserved; and/or

(d) in contumelious disregard of the G4S Duty of Care.

110. By reason of the matters in paragraphs 108 to 109 inclusive the Plaintiff and the G4S Subgroup claimants seek exemplary damages.

Aggravated damages

111. Further, each of the breaches of the Detention Duty of Care by the Commonwealth, further or alternatively G4S, occurred in respect of persons who:

- (a) had or were likely to have the Detainee Characteristics;
- (b) were in the care and protection of the Commonwealth and G4S; and
- (c) were highly vulnerable to conduct by the Commonwealth, further or alternatively G4S.

112. Each of the breaches of duty by the Commonwealth, further or alternatively G4S, in the circumstances described in the preceding paragraph was likely to cause the Detainees:

- (a) fear;
- (b) indignity; further or alternatively
- (c) humiliation.

113. At all material times each of:

- (a) the Commonwealth; and
- (b) G4S;

knew or ought reasonably to have known the matters set out in the preceding paragraph.

114. By reason of the said breaches by the Commonwealth, further or alternatively G4S, the plaintiff and other detainees in fact suffered:

- (a) fear;
- (b) indignity; further or alternatively
- (c) humiliation.

115. By reason of the matters set out in the four preceding paragraphs the Plaintiff on his own behalf and on behalf of the G4S Subgroup claimants seeks aggravated damages.

PART G – G4S PERIOD – CAUSATION

116. Each of the matters of fact alleged in:

- (a) paragraphs 55 to 71, concerning the likelihood of prolonged detention and delayed, if any, improvements in physical facilities and security arrangements at the Centre;
- (b) paragraphs 80 to 83 inclusive, regarding the failure to provide food and water of a reasonable standard, quantity and accessibility;
- (c) paragraphs 84 to 85(a) and 85(d) to 87 inclusive, regarding the failure to provide reasonable shelter and accommodation;
- (d) paragraphs 88 to 92 inclusive, regarding the failure to provide reasonable medical care and health services;
- (e) paragraphs 93 to 96 inclusive, regarding the failure to provide Detainees with reasonable protection, according to Australian Precautions, from:
 - (i) physical violence or intimidation, discrimination, ostracisation, bullying or other anti-social behaviour from other Detainees or from other persons lawfully attending the Centre; or
 - (ii) exposure to violent or other behaviour as described in “i” between other persons;
- (f) paragraphs 97 to 101 inclusive, regarding the failure to take reasonable steps, according to Australian Precautions, to protect Detainees from attack by members of the local population including locally-engaged G4S personnel;
- (g) paragraph 85(b), (bb), (d) and (e) inclusive, regarding the Detainees’ lack of Personal Supplies and the Centre’s lack of amenity, recreational facilities and recreational opportunities.

(being the matters giving rise to the breaches of the Detention Duty of Care as alleged) was notorious among existing Detainees, and new Detainees as the latter arrived at the Centre, from about the time each of the said matters arose as pleaded above.

117. By reason of:

- (a) the G4S Subgroup Claimants’ direct personal experiences of matters referred to in the preceding paragraph; and
- (b) the G4S Subgroup Claimants’ knowledge, or belief based upon information from other Detainees, of all of the matters referred to in the preceding paragraph;

the G4S Subgroup Claimants and each of them have suffered and continue to suffer mental harm; and/or, physical injury; and/or, distress and inconvenience (**G4S Subgroup mental and physical harm**).

Particulars of loss and damage

1. The Plaintiff resided at the Centre for approximately 11 months.
2. During this time, the Plaintiff frequently received inadequate, insufficient and/or irregular food and water.
3. The Plaintiff lived in exceedingly hot and humid conditions, in accommodations that were insufficient or inadequate for the climate and conditions; were insufficiently ventilated; had insufficient or inadequate beds, bedding and bathroom facilities; and had very limited personal space and privacy.
4. The Plaintiff had inadequate or insufficient supplies available of basic personal care items such as soap, shampoo, toilet paper.
5. As a consequence of the above, the Plaintiff has suffered physical and psychological injuries, and/or has had physical and psychological conditions exacerbated.
6. Full particulars as to the Plaintiff will be provided prior to trial.
7. Particulars of individual group members will be provided following the trial of common questions or otherwise as the Court may direct.

118. In the premises set out in the preceding two paragraphs, the G4S Subgroup mental harm was a result of the breaches of the Detention Duty of Care by:
- (a) the Commonwealth; further or alternatively
 - (b) G4S;
- alleged in paragraphs 80 to 101 inclusive above.

G4S Healthcare Subgroup

~~119. By reason of paragraphs 88 to 92 failures by G4S 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 G4S Subgroup claimants (being together and severally the **G4S Healthcare Subgroup**) suffered:~~

119. By reason of the matters in paragraphs 88 to 92, the Commonwealth failed 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, and the Plaintiff and some of the G4S Subgroup claimants (being together and severally the **G4S Healthcare Subgroup**) suffered:

- (a) deterioration in or aggravation of pre-existing physical, psychological or psychiatric conditions;
- (b) new physical injury 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, unauthorised and unqualified medical procedures.; and
- (c) pain, distress and inconvenience.

Particulars of loss and damage

As to the Plaintiff:

1. The Plaintiff's pre-existing injuries ("**Injuries**") were extensive burns and consequential scarring, including to his face, ears, both hands and both thighs, the treatment of which had required more than 30 surgical operations, including extensive skin grafts.
2. His last operation occurred around two weeks before he left his home country.
3. At the time the Plaintiff arrived at the Centre his scars included red and thick scars which were around two months old.
4. The Plaintiff's skin cream – Rejuderm – was confiscated prior to his arrival at the Centre and was not returned to him.
5. The Injuries deteriorated in the heat and humidity of the Centre in that the Plaintiff's scars became irritable, itchy and painful.
6. The application of non-medical and medical substances did not alleviate the irritation, itchiness or pain.
7. The Plaintiff made regular, repeated requests for medical and mental health assistance or intervention. The Plaintiff's requests were unmet or were met after various delays.
8. The Plaintiff asked for a hat for sun protection but did not receive one until around several months after his request.
9. The Plaintiff did not receive sunscreen until around December 2013.
10. To avoid sun exposure and/or to hide his appearance:
 - (a) on a number of occasions, the Plaintiff attempted to cover or covered his skin with his T-shirt and/or T-shirt material; and
 - (b) he mainly stayed indoors during the day.
11. As a consequence of the above matters, the Plaintiff has suffered physical and psychological injuries, and/or has had physical and psychological conditions exacerbated. and/or has suffered pain, distress and inconvenience.
12. Full particulars as to the Plaintiff will be provided prior to trial.

As to the Claimants:

13. In the period up to mid-August 2013 medical staff at the Lorengau Hospital had diagnosed 40 cases of malaria. In August 2013 IHMS confirmed that a substantial majority of those cases were misdiagnosed. The wrongly diagnosed Detainees were treated with anti-malarial medication that would not have been prescribed had their conditions not been misdiagnosed.
14. In the period October – December 2013:
 - (a) fungal infections and bacterial skin infections were common among Detainees;
 - (b) Detainees suffered from insect bites, cuts, scratches and abrasions that quickly became infected;
 - (c) Detainees with asthma had difficulty getting appropriate treatment due to climate and exposure to dust;
 - (d) mild dehydration was common;
 - (e) Detainees experienced headaches, fatigue and sleep disturbances;
 - (f) there was limited access to local dental services with high numbers of Detainees experiencing dental pain requiring the provision of pain medication;
 - (g) Detainees with diabetes had difficulty controlling their sugar levels due to a lack of proper exercise facilities and a largely starch-based diet with limited options for diabetics;
 - (h) there were a high number of injuries acquired due to the uneven and rocky ground;
 - (i) Detainees suffered damp feet and associated skin complaints caused by uncovered walkways, frequent rainfall and unstable muddy wet ground; and
 - (j) a significant number of Detainees suffered upper and lower respiratory tract infections caused by living in close proximity to other Detainees:

(Offshore Processing Centres Quarterly Health Trend Report October – December 2013)

Further particulars relating to other G4S Healthcare Subgroup members will be provided following the trial of common questions or otherwise as the Court may direct.

119A. By reason of the matters in paragraph 88A, G4S caused the Plaintiff and the G4S Healthcare Subgroup to suffer:

(a) deterioration in or aggravation of pre-existing physical, psychological or psychiatric conditions; and/or

(b) new physical injury or mental harm caused by:

(i) unreasonable lack of access to medical treatment compliant with Australian Precautions; and/or

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

(c) pain, distress and inconvenience.

120. In the premises set out in ~~the preceding~~ paragraphs 119 and 119A, the personal injuries suffered by the G4S Healthcare Subgroup were a result of the breaches of the Detention Duty of Care by:
- (a) the Commonwealth as set out in paragraphs 88 to 92; further or alternatively
 - (b) G4S, as set out in paragraph 88A, ~~alleged in paragraphs 88 to 92 inclusive above.~~

Assault-trauma Subgroup

121. Further to paragraphs 97 to 101 inclusive above, by reason of the failures to take reasonable steps, in accordance with Australian Precautions, to protect Detainees from assault at times including during the attack on the Centre on 17 February 2014, the Plaintiff and some of the G4S Subgroup Claimants (being together and severally the **Assault-trauma Subgroup**) suffered:
- (a) physical injury, mental harm, distress and inconvenience among G4S Subgroup Claimants who were assaulted; (including sexually assaulted);
 - (b) mental harm, distress and inconvenience among G4S Subgroup Claimants who witnessed the assaults; and
 - (c) mental harm, distress and inconvenience among G4S Subgroup Claimants who suffered and continued to suffer a reasonable fear of future assaults by persons gaining unauthorised access to the Centre, or G4S personnel or other Centre staff.

Particulars of loss and damage

1. The Plaintiff repeats and relies on particulars 13 to 24 inclusive under paragraph 99 above.
2. As a consequence of the above, the Plaintiff has suffered physical and psychological injuries, and/or has had physical and psychological conditions exacerbated and/or has suffered distress and inconvenience.
3. Full particulars as to the Plaintiff will be provided prior to trial.
4. Particulars of individual group members will be provided following the trial of common questions or otherwise as the Court may direct.

122. In the premises set out in the preceding paragraph, the personal injuries suffered by the Assault-trauma Subgroup were a result of the breaches of the Detention Duty of Care by:
- (a) the Commonwealth; further or alternatively
 - (b) G4S;
- alleged in paragraphs 97 to 101 inclusive above.

PART H – TERMINATION OF G4S CONTRACT

123. In or around March 2014 the G4S Contract was terminated.
124. On or about 23 March 2014 G4S ceased providing the Services or any services to the Commonwealth at the Centre.

PART I – TRANSFIELD PERIOD – CONTRACT ARRANGEMENTS

Transfield Contract

125. By an agreement dated 24 March 2014, the Commonwealth (represented by the Department) and Transfield Services (Australia) Pty Ltd (**Transfield**) agreed upon terms for the provision of welfare services, garrison services and garrison and accommodation services at Regional Processing Centres, including at the Centre (the **Transfield Contract**).

Particulars

The Transfield Contract is in writing, constituted by a document titled "*Contract in relation to the provision of garrison and welfare services at regional processing countries*" (TRA.319.001.3938, TRA.319.001.3900, TRA.319.001.3858).

126. There were terms of the Transfield Contract, as relevant to Manus Island, including that or to the effect that:
- (a) the primary objectives of the Contract were to:
 - (i) provide open, accountable and transparent Services (as defined in Schedule 1 [Statement of Work] to the Contract) to Detainees and Personnel: cl 2.1.1;
 - (ii) provide services that were the best available in the circumstances, and utilising facilities and personnel on Manus Island and that as far as possible, but recognising any unavoidable limitations deriving from the circumstances of Manus Island, were broadly comparable with services available within the Australian community: cl 2.1.2;
 - (b) Transfield agreed to:
 - (i) provide the Services and to meet the requirements described in

Schedule 1 [Statement of Work], and

- (ii) adopt relevant best practice, including any applicable Department, Commonwealth or industry standards and guidelines: cl 3.1.3;
 - (c) the Department would appoint *inter alia* a Contract Administrator: cl 4.2.1;
 - (d) Transfield would agree to comply with the directions of the Contract Administrator that were consistent with the Transfield Contract: cl 4.3.1;
 - (e) Transfield must ensure that all officers, employees, agents or professional advisors (**Transfield Personnel**) were appropriately skilled, trained and qualified to provide the Services: cl 5.4.2(e);
 - (f) Transfield would be liable to the Department for the acts, omissions, defaults and neglect of any subcontractor of Transfield or any representative of a subcontractor of Transfield engaged in the performance of Services as fully as if they were the acts, omissions, defaults or neglect of Transfield: cl 6.4.2;
 - (g) in addition to any right to terminate at law, the Department may by written notice and in its absolute discretion terminate the Contract upon notice or reduce the scope of the Services: cl 15.1.1;
 - (h) the Schedules to the Transfield Contract form part of the Contract: cl 1.1.2(j);
and
 - (i) the Commonwealth could exercise step-in rights under the Contract : cl 17.13.
127. Further, there were terms of Part 1 of Schedule 1 to the Transfield Contract that or to the effect that:
- (a) Transfield was expected to put in place policies and procedures to support security enhancements and to minimise tensions at offshore processing countries: cl 1.1.4;
 - (b) Transfield must perform the Services in a manner that is:
 - (i) adaptable to and readily accommodated changes in Commonwealth policy during the term of the Contract to ensure that the Services are delivered in accordance with Commonwealth policy: cl 1.1.11(a);
 - (ii) appropriate to the individual needs of each Detainee: cl 1.1.11(b); and
 - (iii) adaptable to and readily accommodated changes in Detainee numbers: cl 1.1.11(c);
 - (c) Transfield would ensure that Transfield personnel levels at the Centre were adequate to deliver the Services: cl 1.4.1.
128. Further, there were terms of Part 2 of Schedule 1 to the Transfield Contract that or to the effect that:
- (a) all Service delivery decisions taken by Transfield would take account of the individual needs of Detainees, and would aim to improve health, welfare and

well-being outcomes for each Detainee: cl 1.1.2;

- (b) Transfield would provide a range of Services to promote the welfare and wellbeing of Detainees and create an environment that supports security and safety at the Centre: cl 1.1.3;
- (c) Transfield must take reasonable steps to ensure that it and all the Transfield Personnel treat Detainees with dignity and respect: cl 1.1.4;
- (d) Transfield would in cooperation with other CSPs:
 - (i) promote and maintain an environment conducive to the health and welfare of Detainees where the needs of Detainees are identified and responded to openly and with integrity: cl 2.1.1(a);
 - (ii) establish processes to prevent Detainees being subjected to illegal and antisocial behaviour: cl 2.1.1(b);
- (e) Transfield must:
 - (i) ensure that any Detainee who requests, or appears to be in need of medical attention is referred for appropriate medical attention: cl 2.9.1;
 - (ii) where it appears that a Detainee requires emergency medical attention, seek emergency medical attention for the Detainee immediately, including arranging for transport of the Detainee to the Department-nominated medical facility at the Department's cost: cl 2.9.2;
- (f) Transfield must develop and implement a behavioural management strategy that includes strategies for an incident or unforeseen event requiring immediate intervention and strategies that aim to defuse tensions and conflict before they escalate or become serious or violent, or to manage behaviour following an incident or unforeseen event: cl 2.12.1.

129. Further, there were terms of Part 3 of Schedule 1 to the Transfield Contract that or to the effect that:

- (a) the Centre must provide a safe and secure environment for Detainees and personnel at the Centre, ensuring that each individual's human rights, dignity and wellbeing are preserved: cl 4.1.1;
- (aa) Transfield must take reasonable steps to ensure that Detainees behave at all times in accordance with relevant provisions of the visa granted to them by Papua New Guinea: cl 4.2.1(a);
- (b) Transfield must:
 - (i) provide trained Transfield Personnel to, *inter alia*, respond effectively to unforeseen incidents while treating Detainees with dignity and respect: cl 4.4.1;
 - (ii) ensure that daily rosters of Transfield Personnel for the Centre provide

a reasonable number of Transfield Personnel with the skills, experience and fitness required to manage the security environment in a manner that addresses identified risks in the security risk assessment: cl 4.5.5;

- (iii) develop a security risk assessment for the Centre that takes into account, *inter alia*, the overall number and risk profile of the Transferees at the Centre: cl 4.6.2;
 - (iv) facilitate controlled and efficient access to the Centre: cl 4.8.1;
 - (v) develop and implement systems to manage access to controlled areas within the Centre: cl 4.10.1;
 - (vi) maintain operations logs to record, *inter alia*, a comprehensive and accurate account of all Centre operations: cl 4.11.1;
 - (vii) verify that all Detainees are present and safe in the Centre at least twice a day: cl 4.14.1
 - (viii) implement processes and procedures for random identification checks and movement restrictions to be able to better account for Detainees: cl 4.14.2;
 - (ix) ensure that the security of the perimeter of the Centre is maintained at all times in accordance with Department policies and procedures as notified from time to time by the Department: cl 4.18;
 - (x) develop and implement a contingency plan in accordance with cl 1.2.1 of Schedule 1: cl 4.19.1;
- (c) Transfield must ensure Detainees are provided with access to food and beverages that are:
- (i) sufficient in quantity, offer variety, are nutritious, culturally appropriate and dietary specific: cl 5.1.1;
 - (ii) at least 10% more at lunch times and 10% more at dinner times than the quantities identified in the Dietary Guidelines for Australian Adults published by the National Health and Medical Research Council: cl 5.2.1; and
- (d) Transfield must ensure compliance with all applicable Australian and PNG health and food safety regulations: cl 5.5, cl 5.6.

130. At all material times since on or about 24 March 2014 (the **Transfield Period**) Transfield has provided the Transfield Services at the Centre pursuant to the Transfield Contract.

Transfield security contractor – Wilson

131. In addition to the terms of the Transfield Contract set out in paragraphs 126 to 129 inclusive above, there were additional terms of the said Contract that or to the

effect that:

- (a) the parties to the Transfield Contract intended that Transfield would seek to maximise local involvement in the delivery of Services including engaging local entities as subcontractors;
- (b) the parties recognised that it may not be possible for local entities or local personnel to meet all of the requirements of the Transfield Contract;
- (c) Transfield was to use its best endeavours to ensure that local Personnel meet the requirements of the Transfield Contract as much as possible; and
- (d) on the terms on which local entities would be engaged would be agreed between the parties: clause 6.7; and
- (e) forty-five per centum (45%) of security personnel engaged at the Centre were to be local personnel.

132. In or around February 2014 Transfield:

- (a) entered into a contract with Wilson Parking Pty Ltd trading as Wilson Security (**Wilson**); and
 - (b) by the said contract, engaged Wilson to provide appropriate trained, qualified and experienced security personnel to undertake the duties of security services officers at the Centre;
- (the **Wilson Contract**).

Particulars

1. The Wilson Contract is in writing, comprised of a subcontract agreement between Transfield and Wilson Protective Services PNG Ltd (a subsidiary of Wilson Parking Australia 1992 Pty Ltd) titled '*Subcontract Agreement General Terms and Conditions in Relation to the Provision of Services on Manus Island (Papua New Guinea)*' (TRA.388.067.7844) and a deed between Transfield and Wilson Parking Australia 1992 Pty Ltd titled '*Parent Company Guarantee*' (TRA.388.067.9473).
2. The duties of security services officers included:
 - a. patrolling the internal and external fences;
 - b. taking custody of Detainees on their arrival at Lorengau;
 - c. escorting Detainees from Lorengau to the Centre;
 - d. escorting Detainees to their allocated compound after arrival at the Centre;
 - e. patrolling the compounds;
 - f. escorting Detainees between compounds;
 - g. escorting Detainees to medical appointments at the Centre;
 - h. escorting Detainees leaving the Centre for recreation or other purposes;
 - i. controlling access to the Centre;

- j. controlling egress from the Centre;
- k. responding to incidents of conflict between Detainees;
- l. responding to incidents of conflict between Detainees and persons outside of the Centre;
- m. keeping the Centre and each compound free from materials that might be used in the event of conflict;
- n. lodging and filing required reports;
- o. supervising the provision of meals to Detainees;
- p. supervising access by Detainees to water;
- q. receiving requests for medical appointments from Detainees; and
- r. receiving complaints from Detainees.
- s. conducting hazard checks and identifying suitable control measures;
- t. providing a security risk assessment for each detainee within 24 hours of arrival and updating security assessments subsequently;
- u. responding to emergencies; and
- v. other services as directed by Transfield under the Wilson Contract.

133. From in or around March 2014:

- (a) Wilson commenced providing Transfield with personnel under the Wilson Contract (the **Wilson Personnel**);
- (b) the Wilson Personnel commenced performing the duties of SSOs at the Centre; and
- (c) the Security Staff consisted of Transfield Personnel, Wilson Personnel or other persons engaged or subcontracted by Transfield or Wilson to provide security services at the Centre

134. At all material times during the Transfield Period Transfield:

- (a) had, and exercised, power to approve or not to 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;

Particulars

Transfield had a contractual right under the Wilson Contract to approve the training provided by Wilson to the Wilson Personnel prior to those personnel being provided by Wilson to Transfield under the Transfield Contract. Transfield exercised that contractual right by:

- (a) requiring Wilson to submit to Transfield details of the training provided by Wilson to the personnel and approving the content of that training;

- (b) requiring Wilson to provide to Transfield details of the training undertaken and qualifications obtained, by the Wilson Personnel prior to the Wilson Personnel commencing to perform work at the Centre;
 - (c) requiring Wilson to ensure that the personnel levels at the Centre are adequate to deliver the Services under the Wilson Contract and that all personnel are considered suitable by Transfield; are appropriately skilled, trained and qualified; are authorised, registered or licensed in accordance with any applicable regulatory requirements and possess all relevant memberships in accordance with the Wilson Contract; and
 - (d) requiring Wilson to allow Transfield to inspect and monitor the performance of services and requiring Wilson to rectify, replace or rework any part of the Services not in accordance with the Wilson Contract.
- (b) had, and exercised, power to approve or not approve the Security Staff, including Wilson Personnel, who were to be engaged at the Centre, including in relation to their management or control of Detainees; and

Particulars

Transfield had a contractual right to approve or not approve each person nominated by Wilson to be provided to Transfield under the terms of the Wilson Contract, including a contractual right to remove any employee or agent of Wilson.. Transfield exercised that contractual right by:

- a. requiring Wilson to nominate to Transfield the individuals it proposed to provide to Transfield as security services officers under the Wilson Contract; and
 - b. either approving or not approving each individual so nominated before Wilson commenced to provide that person's services to Transfield;. and
 - c. requiring Wilson to ensure that the personnel levels at the Centre are adequate to deliver the Services under the Wilson Contract and that all personnel are considered suitable by Transfield; are appropriately skilled, trained and qualified; are authorised, registered or licensed in accordance with any applicable regulatory requirements and possess all relevant memberships in accordance with the Wilson Contract.
- (c) in fact directed and controlled the performance of work by the Security Staff at the Centre.

Particulars

Transfield:

- (a) specified the content of training to be delivered to the Wilson Personnel;
- (b) supervised and delivered training to the Wilson Personnel, including by way of site inductions;
- (c) stipulated the number of Wilson Personnel that Wilson was to provide at the Centre on each shift;
- (d) approved each individual person nominated by Wilson to be provided to Transfield under the Wilson Contract;
- (e) set, approved and altered the rostering of the Wilson Personnel;
- (f) set, approved and altered the daily work tasks of the Wilson Personnel;
- (g) directed the Wilson Personnel as to the manner in which their duties were to be performed, including through the promulgation of policies and procedures that detailed the work tasks to be performed and the manner which they were to be performed, and required Wilson to comply with Transfield's policies;
- (h) supervised the Wilson Personnel in the performance of their duties, including by issuing instructions and directions to the Wilson Personnel;
- (i) preventing Wilson Personnel from performing duties at the Centre including in the event of poor performance or inappropriate conduct;
- (j) required Wilson to attend local management meetings, action agreed items resulting from all meetings, consultative committees and forums at the request of Transfield, and provide updates, reports and briefings for meetings, consultative committees and forums at the request of Transfield; and
- (k) required Wilson to ensure that the personnel levels at the Centre are adequate to deliver the Services under the Wilson Contract and that all personnel are considered suitable by Transfield; are appropriately skilled, trained and qualified; are authorised, registered or licensed in accordance with any applicable regulatory requirements and possess all relevant memberships in accordance with the Wilson Contract.

135. In the premises set out in the preceding paragraph, at all material times during the Transfield Period:

- (a) Transfield purportedly authorised and empowered Wilson Personnel to affect Transfield's legal relations with Detainees, including by exercising custodial or detention powers; and

Particulars

1. Transfield engaged Wilson to:

- (a) escort Detainees from Lorengau to the Centre and to their allocated compound on arrival at the Centre;
 - (b) control Detainees' physical movements, including by way of escort between compounds or from the Detainee's allocated compound to other facilities at the Centre, such as the Medical Centre;
 - (c) control Detainees' egress from the Centre; and
 - (d) patrol and guard access points at the Centre.
2. In addition to purportedly conferring custodial or detention powers, Transfield authorised the Wilson Personnel to do each of the things enumerated in the particulars under paragraph 132(b) above.
 3. By engaging Wilson to discharge on behalf of Transfield the functions in respect of Detainees which Transfield had (by the Transfield Contract) undertaken to the Commonwealth to discharge, Transfield placed Wilson in a position of exercising practical, physical control over the persons and wellbeing of Detainees, and Wilson's exercise of that control created rights of action (as alleged herein) in the Detainees against Transfield as the person contractually empowered to direct (and therefore responsible for) the conduct of Wilson.

- (b) Transfield had and exercised practical control over the Wilson Personnel in the performance of their duties at the Centre.

Particulars

1. Transfield had the contractual power and practical commercial ability to:
 - a. specify, supervise and deliver training to the Wilson Personnel;
 - b. stipulate the number of Wilson Personnel at the Centre on each shift;
 - c. set, approve and alter the rostering of the Wilson Personnel;
 - d. set, approve and alter the daily work tasks of the Wilson Personnel;
 - e. direct the Wilson Personnel as to the manner in which their duties were to be performed;
 - f. supervise the Wilson Personnel in the performance of their duties;
 - g. prevent Wilson Personnel from performing duties at the Centre, including in the event of poor performance or inappropriate conduct.
 2. Transfield's exercise of practical control over the Wilson Personnel was constituted by the matters set out in the particulars under paragraphs 134(c) above.
136. In the premises set out in the preceding paragraph:
- (a) the Wilson Personnel performed work at the Centre as agents of Transfield;

and

- (b) Transfield was and is liable for the conduct of the Wilson Personnel at the Centre.
137. Further, by reason of the matters set out in the preceding paragraph and paragraph 131 above:
- (a) Transfield in holding and exercising powers of control over the conduct of Wilson at the Centre did so as agent for the Commonwealth; and
 - (b) the Commonwealth is liable as principal for the conduct of Transfield as its agent.

PART J – TRANSFIELD PERIOD – DUTIES AND STANDARD OF CARE

Detention Duty of Care

138. In the premises set out in paragraph 125 to 137 inclusive above, at all material times during the Transfield Period the Commonwealth:
- (a) purportedly continued to be authorised by PNG under the 2013 MOU to direct or influence the conduct of operations at the Centre;

Particulars

The Plaintiff refers to and repeats the particulars under paragraph 16 above, and in particular cls 3.1, 3.2, 3.10, 3.11, 3.21, 7.1, of the Administrative Arrangements.

- (b) for purposes including a purpose of giving effect to the said authorisation from PNG, engaged Transfield to provide to the Commonwealth management and security services at the Centre, being the “Services” as defined in the Transfield Contract;
- (c) purportedly authorised and empowered Transfield to affect the Commonwealth’s legal relations with Detainees, including by exercising custodial or detention powers;

Particulars

The Plaintiff refers to and repeats the particulars to paragraphs 135(a) and 135(b) above.

- (d) had power under the Transfield Contract to direct Transfield as to the manner in which Transfield provided the Services; and
- (e) in fact exercised its power to direct Transfield as to the manner in which Transfield provided the Services by, *inter alia*, notifying Transfield of procedures, policies and guidelines to be applied by Transfield at the Centre.

139. In the premises set out in the preceding paragraph, at all material times from about 24 March 2014:

- (a) the Commonwealth continued to purport to have and to exercise substantial powers of control over the operations of the Centre, in respect of Detainees; and
- (b) Transfield in providing the Services at the Centre did so as agent for the Commonwealth, in respect of Detainees.

140. Further to the two preceding paragraphs, at all material times from 24 March 2014 the Commonwealth, by itself and except in relation to sub-paragraph (e) below, by its agent Transfield, asserted practical control over:

- (a) the premises comprising the Centre;
- (b) the placement and locations of Detainees within the Centre; and
- (c) the provision of:
 - (i) food and water;
 - (ii) shelter and accommodation;
- (d) physical security; ~~and/or~~
- (e) medical treatment and health care; ~~and/or~~
- (f) access to medical treatment and health care.

to Detainees at the Centre.

[particulars have been deleted and re-pleaded below]

As to the Commonwealth:

140A. As to the paragraphs 140(a) and (d), the practical control included:

- (a) financial control over the monies allocated to the construction, maintenance and upkeep of the premises, including fences;
- (b) the engagement, through Transfield, of security services officers to perform work at the Centre;
- (c) the physical control, including as effected by its agent G4S-Transfield and the G4S-Transfield Personnel
 - (i) over access to the Centre by persons other than Detainees, including persons employed to work at the Centre and external visitors; and
 - (ii) over egress from the Centre and from compounds within the Centre, by all persons, including Detainees;
- (d) granting permissions for excursions and transfers to areas outside the Centre; and

- (e) the physical control of movement by Detainees from one part of the Centre to another part of the Centre, including between compounds and as between the compounds and the medical facility;

140B. As to paragraph 140(b), the practical control included:

- (a) physical control, including as effected by its agent Transfield and the Transfield Personnel:
 - (i) over the integrity of internal fencing between compounds at the Centre; and
 - (ii) over the movement of Detainees from one compound to another compound and to other parts of the Centre, including fencing intended to keep Detainees within their allocated compound;

140C. As to the provision of the matters in paragraph 140(c) (e) and (f), the practical control

included:

- (a) control over the funding available for and expended on each item;
- (b) as to food and water, the selection and provision of the types and amounts of food, and amounts of water, to be made available to Detainees, including determining the manner in which it was to be made available and the times and places at which it was to be made available;
- (c) determining and directing that the nature, type and number of structures constructed at the Centre, the amenities to be provided at each structure and the maintenance and upkeep of each structure;
- (d) determining and directing the nature and type of medical treatment and health care made available to Detainees, including the type of services offered, the number of healthcare practitioners available to provide the services and the resources allocated to those practitioner to provide the services;
- (e) determining when and how Detainees were able to access medical treatment and health care, including by the making of appointments and allocation of priority to requests for medical appointments made by Detainees.
- (f) determining and directing the number, type, composition of and resources allocated to security services personnel employed to

work at the Centre, including by exercising financial and administrative control over changes in staffing levels; and

- (g) as to physical security, determining and directing the physical, administrative operations at the Centre, including as to the matters referred to at paragraphs 140A(a)-(c).

As to Transfield:

140D. As to the paragraph 140(a) and (d), the practical control included:

- (a) guarding access points to the Centre and permitting or physically preventing entry to the Centre;
- (b) patrolling perimeter fences and guarding access points to restrict egress from the Centre;
- (c) escorting Detainees from one part of the Centre to another part of the Centre, including between compounds and as between the compounds and the medical facility;
- (d) exercising financial control over the actual application of monies allocated to the construction, maintenance and upkeep of the structures at the premises;
- (e) granting permissions for excursions by Detainees to areas outside the Centre.

140E. As to the paragraph 140(b), the practical control included:

- (a) determining or directing which compound each Detainee would reside in while at the Centre;
- (b) erecting, maintaining and patrolling internal fencing between compounds at the Centre;
- (c) escorting Detainees from one compound to another compound and to other parts of the Centre, including preventing Detainees from moving outside their allocated compound unescorted or unauthorised;

140F. Further, as to the provision of the matters in paragraph 140(c), the practical control, included:

- (a) determining or directing the manner in which Detainees accessed ~~these services~~ food and water, shelter and accommodation, including as to where the services were located, how they were

- delivered and at what times;
- (b) determining or directing what and how much food and what water was to be made available to Detainees, the manner in which it was to be made available and that times and places at which it was to be made available;
- (c) determining the nature, type and number of structures constructed at the Centre, the amenities to be provided at each structure and the maintenance and upkeep of each structure;
- ~~(d) determining when and how Detainees were able to access medical treatment and health care, including by the making of appointments, allocation of priority to requests for medical appointments made by Detainees and provision of information about medical appointment times.~~
- (e) as to physical security, determining and directing the physical and administrative operations at the Centre, including as to the matters pleaded at 135(a) to (b) above.

140G. As to the paragraph 140(f), practical control included facilitating Detainee access to medical care by notifying Detainees of medical appointments; referring Detainees to IHMS for medical care; receiving Detainee requests for medical attention; and escorting Detainees to IHMS appointments.

141. In the premises set out in paragraphs 140 to 140F, at all material times from 24 March 2014:
- (a) the Commonwealth continued to owe Detainees at the Centre the Detention Duty of Care; and
- (b) Transfield owed to Detainees at the Centre the Detention Duty of Care.
142. Further, by reason of the matters set out in paragraphs 13 to 29C and 138 to 141 inclusive above, the Detention Duty of Care owed by the Commonwealth continued to be a non- delegable duty of care.

Particulars

The Commonwealth Duty was non-delegable:

1. by operation of sections 5(1), 13, 14, 189, 173 and 198AD of the *Migration Act* and the facts, matters and circumstances pleaded in paragraphs 13 to 29C and 138 to 141 inclusive above.; and/or
2. by reason of the inherent danger in sending persons with the Detainee Characteristics to closed detention on Manus Island in the circumstances.

Standard of care

Commonwealth

143. At all material times during the Transfield Period:

- (a) the matters set out in paragraph 51 continued in respect of the Commonwealth; and
- (b) in the premises, the Detention Duty of Care continued to require that the Commonwealth exercise the standard of care in accordance with Australian Precautions.

Transfield

144. Further and in the alternative, at all material times during the Transfield Period, Transfield, in doing the acts or making the omissions pleaded in this Statement of Claim:

- (a) exercised powers that:
 - (i) were purportedly conferred or purportedly authorised by the Commonwealth of Australia;
 - (ii) were powers in the nature of custodianship or detention of persons;
 - (iii) were powers in the nature of custodianship or detention of persons not arising from the convictions of any of the said persons for an offence;
 - (iv) in the premises in each of (i) to (iii) – were powers that were available only to the Commonwealth as the Commonwealth of Australia or persons acting under lawful authority of the Commonwealth;

Particulars

1. As to paragraph 144(a)(i) the powers authorised or conferred on Transfield by the Commonwealth were the powers conferred by the Transfield Contract including the specific powers pleaded in paragraphs 126-129 above.
2. As to paragraph 144(a)(ii) the plaintiff repeats and relies on the particulars under paragraph 135(a).
3. Further particulars will be provided after discovery.
4. As to paragraph 144 (a)(iv) the powers that were only available to the Commonwealth of Australia or persons acting under lawful authority of the Commonwealth were the powers made available by the Administrative Arrangements, including the terms pleaded in paragraphs 17-23 above

- (b) by its officers, servants and agents, had or had access to specialised knowledge about:

- (i) the risks of harm to persons held in:
 - (A) detention; further or alternatively
 - (B) immigration detention;
 being the risks set out in paragraphs 146 to 154 below;

Particulars

1. Transfield had, or had access to specialised knowledge about the risks of harm by reason of:
 - a. its knowledge of the prior experiences of the Commonwealth and Transfield in managing the Centre during the Transfield Period;
 - b. its experience since not later than about 2013 in providing security and management services at the Nauru Regional Processing Centre; and
 - c. the circumstances set out in '1d' to '1f' of the particulars to paragraph 55 above.
- (ii) the precautions that in fact were likely materially to reduce the risks of harm to persons held in:
 - (A) detention; further or alternatively
 - (B) immigration detention;
 being the precautions that had developed as good practice in Australia;
 - (c) had access to better financial, material and human resources for implementing precautions referred to in (b) than any person exercising a function at or in respect of the Centre, other than the Commonwealth.
 - (d) was acting pursuant to contractual requirements to provide services that were the best available in the circumstances and were broadly comparable with services available within the Australian community.

145. In the premises set out in the preceding paragraph, at all material times during the Transfield Period the Detention Duty of Care required Transfield to exercise, at the Centre, the Australian Precautions.

Foreseeable, significant harms

Risks – internal detention conditions

146. At all material times during the Transfield Period:
- (a) the Commonwealth; and
 - (b) Transfield;
- and each of them knew or ought reasonably to have known that Detainees at the Centre had or were likely to have the Detainee Characteristics.

Particulars

1. In respect of the Commonwealth's knowledge, the Plaintiff refers to and repeats paragraph 1 of the particulars to paragraph 55 above.
2. Further, the Commonwealth knew or ought to have known the said matters by reason of its involvement in the operation of the Centre during the G4S Period.
3. Transfield knew or ought to have known the said matters by reason of:
 - a. its knowledge of the prior experiences of the Commonwealth in managing the Centre since October 2012;
 - b. its prior experiences in managing the Centre during the Transfield Period;
 - c. its experience since not later than about 2013 in providing security and management services at the Nauru Regional Processing Centre ('Nauru'); and
 - d. the circumstances set out in '1d' to '1f' of the particulars to paragraph 55 above.

147. Further, at all material times throughout the Transfield Period:

- (a) the Commonwealth; and
- (b) except in relation to sub-paragraph (iii) below, Transfield;

and each of them knew or ought reasonably to have known that a failure to take reasonable steps to ensure that persons who had or were likely to have some or all of the Detainee Characteristics were provided with:

- (i) food and water of a standard, quantity and accessibility in accordance with Australian Precautions;
- (ii) shelter and accommodation that was, according to Australian Precautions, reasonably adapted to prevent distressing physical discomfort in the tropical conditions of Manus Island;
- (iii) medical care and health services that were, according to Australian Precautions, reasonably adapted to prevent avoidable deterioration of physical or mental health;
- (iiiA) reasonable access to and escort to IHMS upon request for medical attention or services; and referrals to IHMS when a Detainee requested, or appeared to be in need of, medical attention;
- (iv) access to Personal Supplies, amenities, recreational facilities and opportunities, according to Australian Precautions;
- (v) reasonable protection, according to Australian Precautions, from:

- (A) physical violence or intimidation, discrimination, ostracisation, bullying or other anti-social behaviours from other Detainees or from other persons lawfully attending the Centre; or
- (B) exposure to violent or other behaviours as described in subparagraph A above between other persons;

would or may cause Detention Harm to Detainees.

Particulars

The plaintiff refers to and repeats the particulars set out under the preceding paragraph.

148. Further, at all material times throughout the Transfield Period:

- (a) the Commonwealth; and
- (b) Transfield;

and each of them knew or ought reasonably to have known that:

- (i) the probability of Detention Harm to Detainees if reasonable care were not taken as described in the preceding paragraph was not far-fetched or fanciful;
- (ii) the nature of Detention Harm, where it eventuated, was likely to be in the nature of serious physical harm, further or alternatively serious mental harm; and
- (iii) the likelihood of Detention Harm, or the seriousness where it eventuated, was likely to be materially reduced if the precautions referred to in paragraph 147(i) to (iv) were taken.

Particulars

The plaintiff refers to and repeats the particulars set out under the preceding paragraph.

Risks – prolonged detention

149. At all material times throughout the Transfield Period:

- (a) there was no clearly-specified:
 - (i) Australian domestic legal or regulatory framework; or
 - (ii) PNG domestic legal or regulatory framework;
 for undertaking RSDs within the meaning of the Convention at, or in respect of Detainees at, the Centre;
- (b) there were no clearly-specified procedures for the conduct of a RSD process at the Centre;
- (c) few RSD decisions has been made in relation to Detainees at the Centre;
- (d) no adequate RSD process had commenced in relation to, at various times, any Detainees at the Centre;

- (e) Detainees were provided with no adequate information, in writing or otherwise, about:
- (i) the RSD process;
 - (ii) the consequences of receiving a positive or negative RSD;
 - (iii) the likely timeframes associated with the RSD process; or
 - (iv) the procedure for, or progress or status of, their asylum claims.

Particulars

Neither the *Migration Act 1980* of PNG, nor the *Migration Regulation 1979* set out any comprehensive RSD procedures that would apply to all asylum seekers.

Prior to around 30 April 2014, no Detainees had been provided with any interim RSD determinations.

As at 30 September 2014, of the 1,060 Detainees at the Centre, 86 had been provided with interim RSD determinations.

Prior to November 2014, none of the interim RSD determinations made in respect of Detainees at the Centre had led to final RSDs.

In November 2014, the PNG Minister for Foreign Affairs and Immigration announced that RSDs had been made in respect of ten of the Detainees at the Centre.

150. In the premises set out in the preceding paragraph, throughout the Transfield Period the Commonwealth and Transfield knew or ought reasonably to have known that:
- (a) undertaking the RSD process for the entire population of Detainees being held at the Centre was likely to take many months;
 - (b) it was likely that Detainees would remain detained at the Centre for an undetermined but very long time;
 - (c) Detainees were or were likely to be aware that it was likely that they would be required to remain detained at the Centre for an undetermined but very long time; and
 - (d) Detainees were or were likely to be aware that it was likely that they would be required to remain detained at the Centre for a very long time.
151. Further, in the premises set out in paragraphs 146 and 148, at all material times:
- (a) the Commonwealth; and
 - (b) Transfield;
- and each of them knew or ought reasonably to have known that the probability of the Detention Harm eventuating was significantly increased by the matters set out

in paragraph 150.

Risks – delayed remediation work

152. Further, at all material times during the Transfield Period it remained the case that:
- (a) Manus Province was likely to have little if any locally-available construction equipment for the construction, improvement or repair of buildings, fences and physical structures at the Centre;
 - (b) Manus Province was likely to have little if any locally-available expertise in the construction, improvement or repair of buildings, fences and physical structures like the structures comprising the Centre;
 - (c) Manus Province was likely to have long delays in accessing equipment, materials, engineering skills and labour suitable for use in the construction, improvement or repair of buildings, fences and physical structures at the Centre;
 - (d) the undertaking of construction works at the Centre required:
 - (i) surveys to detect unexploded military ordnance and removal of unexploded ordnance;
 - (ii) geotechnical surveys; and
 - (iii) site surveys; and
 - (iv) remedial earthworks and drainage.

Particulars

The plaintiff repeats and relies on the particulars under paragraph 61(d) above.

- (e) Manus Province was likely to have few if any local businesses with experience in recruiting, training and deploying security personnel trained to the level of competence required in immigration detention facilities operated in accordance with Australian Precautions; and
- (f) Manus Province was likely to have few if any local workers trained to provide detention security services to the level of competence required in immigration detention facilities operated in accordance with Australian Precautions.

Particulars

The plaintiff repeats and relies on the particulars under paragraph 61(f) above.

153. By reason of, *inter alia*, the matters set out in the preceding paragraph, at all material times during the Transfield Period there were likely to be:
- (a) long delays in completing building, construction and improvement works at the Centre; and

Particulars

The long delays were delays of many months between the identification of the need for building, construction and improvement works and the commencement and completion of those works, including:

- (i) The need for an upgrade to the perimeter security fencing at the Centre was identified before the Transfield period, and Transfield was made aware of this by at least 1 March 2014. The construction of the perimeter fencing began on or around 30 May 2014. The construction of perimeter security fencing was completed on or around 18 August 2014;
- (ii) The need for an upgrade to internal security fencing at the Centre was identified before the Transfield period, and Transfield was made aware of this by at least 1 March 2014. The construction of internal fencing began on or around 21 August 2014. The internal security fencing was completed on or around 17 December 2014;
- (iii) The need for installation of CCTV facilities at the Centre was identified before the Transfield period, and Transfield was made aware of this as early as 1 March 2014. CCTV began to be installed on or around 23 December 2014. The installation of CCTV facilities was not completed until around 20 March 2015.

- (b) long delays in upgrading the staff complement at the Centre, to train existing staff or obtain new staff with the level of competence in detention security services required to comply with Australian Precautions.

Particulars

1. The long delays were delays of many weeks between the identification of a shortage or deficiency in the staffing complement at the Centre and the provision and supply of the necessary personnel to resolve the personnel shortage.
2. As at 21 February 2014 the number of expatriate staff was 340. A request was made by Wilson to increase the number of expatriate staff by another 72 on 27 February 2014. As at 31 March the number of expatriate staff was at 368. As at 3 April 2014, the number of expatriate staff was 380. As at 10 April 2014 the number of expatriate staffing levels was 419.

154. Further, at all material times during the Transfield Period each of:

- (a) the Commonwealth; and
- (b) Transfield;

knew or ought reasonably to have known the matters set out in the two preceding paragraphs.

Particulars

The plaintiff repeats and relies on the particulars under paragraph 63 above.

155. In the premises set out in paragraphs 148, 151 and 152, throughout the Transfield Period each of:

- (a) the Commonwealth; and
- (b) Transfield;

knew or ought reasonably to have known that:

- (i) if accommodation or healthcare facilities at the Centre were or became inadequate to prevent Detention Harm to Detainees, then there was a material risk that Detention Harm would become materially worse before upgraded facilities were able to be installed;
- (ii) if local workers were engaged to provide security services at the Centre, there were likely to be delays of weeks or months before the workers were sufficiently trained and experienced to provide detention security services to the level of competence required in immigration detention facilities operated in accordance with Australian Precautions;
- (iii) if the internal or external security situation at the Centre was or became restive, volatile or violent there were likely to be long delays (compared to immigration detention facilities in Australia) before upgrades of facilities or reinforcements of appropriately-qualified security staff could be completed in order to restore a safe security environment;
- (iv) in the premises set out in (i) to (iii) above, the risk of Detention Harm was materially increased.

Duty of care – content (internal conditions)

156. In the premises set out in paragraphs 146 to 155 inclusive, at all material times during the Transfield Period the Detention Duty of Care continued to require the Commonwealth to:

- (a) take reasonable care by its officers, servants and agents, now including Transfield; further or alternatively
- (b) ensure that reasonable care was taken by Transfield;

to ensure that Detainees were provided with:

- (i) food and water of a standard, quantity and accessibility in accordance with Australian Precautions;
- (ii) shelter and accommodation that was, according to Australian Precautions, reasonably adapted to prevent distressing physical discomfort in the tropical conditions of Manus Island;

- (iii) medical care and health services that were, according to Australian Precautions, reasonably adapted to prevent avoidable deterioration of physical or mental health;
- (iv) access to Personal Supplies, amenity and recreational facilities and opportunities according to Australian Precautions;
- (v) reasonable protection, according to Australian Precautions, from:
 - (A) physical violence or intimidation, discrimination, ostracisation, bullying or other anti-social behaviours from other Detainees or from other persons lawfully attending the Centre; or
 - (B) exposure to violent or other behaviours as described in subparagraph (A) above between other persons.

157. Further, in the premises set out in paragraphs 146 to 155 inclusive, at all material times during the Transfield Period, Transfield was required by the Detention Duty of Care to:

- (a) take reasonable care by its officers, servants and agents; further or alternatively
- (b) ensure that reasonable care was taken by its agents and contractors, including the Wilson Personnel;

to ensure that Detainees were provided with:

- (i) food and water of a standard, quantity and accessibility in accordance with Australian Precautions;
- (ii) shelter and accommodation that was, according to Australian Precautions, reasonably adapted to prevent distressing physical discomfort in the tropical conditions of Manus Island;
- ~~(iii) reasonable access to and escort to IHMS upon request for medical attention or services; and referrals to IHMS when a Detainee requested, or appeared to be in need of, medical attention;~~
- ~~(iii) medical care and health services that were, according to Australian Precautions, reasonably adapted to prevent avoidable deterioration of physical or mental health;~~
- (iv) access to Personal Supplies, amenity, recreational facilities and opportunities in accordance with Australian Precautions; and
- (v) reasonable protection, according to Australian Precautions, from:
 - (A) physical violence or intimidation, discrimination, ostracisation, bullying or other anti-social behaviours from other Detainees or from other persons lawfully attending the Centre; or
 - (B) exposure to violent or other behaviours as described in subparagraph (A) above between other persons.

PART K – TRANSFIELD PERIOD – NEGLIGENCE**Claimants remained or arrived at Centre**

158. After 24 March 2014:

- (a) most of the G4S Subgroup remained at the Centre; and
- (b) new Detainees were:
 - (i) taken by or on behalf of the Commonwealth to the Centre; and thereafter
 - (ii) were held in Manus Detention.

159. On and from 24 March 2014 the:

- (a) Residence Directions remained in force; and
- (b) the Centre continued to be a closed place of detention.

160. In the premises set out in paragraphs 13 to 23 inclusive, 125 to 137 inclusive, and the preceding two paragraphs, during the Transfield Period:

- (a) each of the Claimants referred to in paragraph 158 above (the **Transfield Subgroup**) was a Detainee as defined herein; and
- (b) the Manus Detention of each Transfield Subgroup Claimant was detention:
 - (i) by the Commonwealth; further or alternatively
 - (ii) by Transfield as agent for the Commonwealth.

Particulars

As to paragraph 160 (b)(ii) the plaintiff repeats and relies on the particulars under paragraphs 138, to 140 and 144 above.

161. Further in the premises, at all times while each Transfield Subgroup Claimant was in Manus Detention each of:

- (a) the Commonwealth; and
- (b) Transfield;

owed to the Claimant, as a Detainee, the Detention Duty of Care.

Particulars

The Plaintiff remained detained at the Centre during the Transfield Period until approximately June 2014.

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

Breach – food and water

162. Throughout the Transfield Period:

- (a) the Commonwealth; and
- (b) Transfield;

and each of them had no or no adequate systems to ensure that:

- (i) the daily volume of potable water available to individual Detainees was sufficient, according to Australian Precautions;
- (ii) the delays experienced by Detainees before being able to access potable water were not unreasonable, according to Australian Precautions;
- (iii) Detainees had reasonable and safe access to edible fruit and sugar, commensurate with Australian Precautions;
- (iv) the food made available for consumption by Detainees was stored, prepared, handled and served in accordance with Australian Precautions;
- (v) the food made available for consumption by Detainees was stored and prepared using procedures which could be relied on by Detainees to reassure themselves that the food was safe, hygienic, and compliant with cultural or religious requirements; and
- (vi) Detainees did not have to queue for food for long periods, including in circumstances where they queued in rain or sun without shelter.

163. By reason of the omissions described in the preceding paragraph, throughout the Transfield Period:

- (a) the daily volume of potable water provided to individual Claimants was, routinely, materially less than the requirements of:
 - (i) WHO, in respect of persons living in tropical conditions; and
 - (ii) Australian Precautions;

Particulars

1. The plaintiff repeats and relies on the particulars under paragraph 81(a) above.
2. Water was made available to detainees by the provision of pallets or other bulk containers of individual plastic bottles of water, which were left in outdoor areas for Detainees to access.
3. At certain times the pallets or containers of water bottles would be placed or moved by Transfield or Wilson staff behind the fences of some compounds, such that Detainees could only access water bottles with the consent and cooperation of staff.

4. When access to pallets or containers of water bottles was not restricted, the pallets or containers would often be depleted by some Detainees taking multiple bottles for themselves in an attempt to ensure they would have a sufficient supply of water, having experienced periods when there was insufficient water supply within the Centre. When this occurred, Detainees who attempted to obtain water bottles subsequently would often miss out on receiving water.
5. Whenever water supplies would be cut off in bathrooms and toilets at the Centre, Detainees would regularly use supplies of bottled water to wash or shower, which further reduced the availability of drinking water at the Centre.

- (b) Detainees from time to time endured long delays before obtaining potable water;

Particulars

1. Detainees often waited for hours for potable water to be delivered to their compounds.
2. During the Plaintiff's time at the Centre during the Transfield Period, approximately once or twice per month there would be a delay of approximately one day before supplies of water would be made available at the Centre.
4. In Oscar compound, detainees were provided water in small cups. This was provided from a 15 to 20 litre water tank for the whole compound to use. The tank needed replaced sometimes up to 12 times a day. At times when the tank ran out, the bottles were not immediately replaced.
5. Bottled water was provided in Foxtrot, Delta and Mike compounds.
6. Due to the regular shortage of water in Foxtrot during the Transfield period, detainees would stockpile water bottles in their own rooms.
7. On occasion in Mike compound, the detainees were told the water supply had not been received and they would have to wait for a few hours

- (c) Detainees had limited access fruit or sugar.

Particulars

1. Fruit and sugar had been removed from the foods available to Detainees during the G4S Period because of concerns that Detainees would convert them into alcohol: Amnesty International, December 2013, p 43.
2. For most of the Transfield period, fruit and sugar continued to be unavailable to Detainees in most compounds at the Centre, but was made available to some detainees in some compounds such as Delta irregularly.

3. Although the supplies of food and water available to the Plaintiff during the Transfield Period had improved from those available during the G4S Period, the Plaintiff continued to receive insufficient or inadequate access to food and water during this period.
 4. Milk and other packaged food items provided to detainees were often provided past relevant expiry or 'use by' dates, or had obviously expired or spoiled.
 5. Meals and other produce provided to detainees in means often looked or smelled as though it had expired.
 6. The Plaintiff continued to observe small stones and insects contaminating meals provided to him at the Centre throughout the Transfield Period.
 7. From early in the Transfield Period, following the attacks on the Centre's population in February 2014, meals for detainees at the Centre were prepared off-site and transported into the Centre's compounds each day. The Plaintiff and detainees were aware that the local staff who were preparing and delivering the meals to the Centre were present during the February 2014 incident and were either involved in or supportive of the attacks on detainees, and were consequently fearful of the safety and quality of the food that was delivered.
 8. The Plaintiff continued to observe rats and other rodents running around kitchens and storage areas at the Centre, including running over and through utensils, cutlery and other food service items.
 9. Particulars of individual group members will be provided following the trial of common questions or otherwise as the Court may direct.
- (d) from around 2014, Detainees in some compounds were not given bottled water, instead they had to carry cups of water from a number of water coolers;

Particulars

1. From around December 2013, water bottles ceased to be provided in the Oscar compound and instead water was provided by way of 'water jerries' and cups.
2. The water in the Oscar compound was provided in small cups from a 15 to 20 litre water tank for the whole compound to use. The tank needed to be replaced sometimes up to 12 times a day. At times when the tank ran out, the bottles were not immediately replaced.

- (e) Detainees were served contaminated food on a number of occasions;

Particulars

Detainees have reported observing hair, fingernail clippings, dirt, stones, worms, maggots and other insects in their food

during the Transfield Period.

- (f) food provided to Detainees was at times past its use by date;

Particulars

Detainees have reported receiving, during the Transfield Period, food that was expired according to the labels on that food, including milk, juice and corn flakes.

- (g) food provided to Detainees was at times prepared unsafely and in unhygienic conditions; and
 (h) food provided to Detainees was at times of poor quality.

Particulars

The plaintiff repeats paragraphs 163(e) to (g) and the particulars under paragraph 163(c) above.

164. In the premises set out in the preceding paragraph during the Transfield Period:

- (a) the Commonwealth:
 (i) failed, by its agent Transfield, to take reasonable care; alternatively
 (ii) failed to ensure that reasonable care was taken by Transfield; and
 (b) Transfield failed to take reasonable care;
 to ensure that Detainees were provided with food and water of a standard, quantity and accessibility in accordance with Australian Precautions.

165. By reason of the matters set out in the preceding paragraph:

- (a) the Commonwealth; and
 (b) Transfield;
 and each of them breached the Detention Duty of Care.

Breach – shelter and accommodation

166. Throughout the Transfield Period:

- (a) the Commonwealth; and
 (b) Transfield;
 and each of them had no or no adequate systems to ensure that the accommodation provided to Detainees:
 (i) provided shelter from rain, wind, heat and insects in accordance with Australian Precautions;
 (ii) was ventilated in accordance with Australian Precautions;
 (iii) had beds and bedding and bathroom facilities in accordance with Australian Precautions;
 (iv) offered personal space and privacy in accordance with Australian

Precautions;

- (v) offered bathing and hygiene facilities in accordance with Australian Precautions;
- (vi) facilitated or permitted healthful physical exercise, in accordance with Australian Precautions.; and
- (vii) enabled vulnerable Detainees and Detainees with behavioural management issues to be accommodated appropriately and safely.

167. By reason of the omissions set out in the preceding paragraph, throughout the Transfield Period:

- (a) Detainees were accommodated in refurbished or part-refurbished buildings, that:
 - (i) leaked rain;
 - (ii) left occupants exposed to wind, heat and insects;
 - (iii) were poorly ventilated, causing distressingly hot and stuffy inside conditions;
 - (iv) in some buildings, had dirt floors;
 - (iii) [deleted]
 - (v) had shared or communal bathroom facilities;
 - and
 - (vi) offered no means for personal privacy.;
 - (vii) were dirty;
 - (viii) were crowded;
 - (ix) were constructed of inappropriate materials and design for the tropical conditions of Manus Island;
 - (x) were inappropriately cooled or not cooled at all; and
 - (xi) were affected by pungent and bad smells such as smells of garbage, sewerage, body odour and medical waste.

Particulars

As to the Plaintiff, the Plaintiff repeats and relies on the particulars under paragraph 85(a) above.

As to the Plaintiff and the Claimants, the plaintiff repeats and relies on the particulars under paragraph 85(a) above.

Further, during the Transfield period

1. There were more than 1,000 Detainees held at the Centre, being significantly more than the initial intended capacity of the Centre;
2. Shared sleeping quarters were extremely crowded, with large numbers of Detainees required to sleep in bunk

beds in a confined space;

3. Sleeping quarters lacked appropriate personal space and privacy, and Detainees were prevented from erecting any ad-hoc privacy screens or barriers;
4. Accommodation facilities did not provide sufficient fresh air, ventilation or natural light;
5. There were too few showers, toilets or hygiene facilities available at the Centre to accommodate the number of Detainees being held there.
6. The refurbished buildings or containers provided as accommodation at the Centre were frequently rusted or otherwise damaged, so as not to provide adequate shelter from the elements;
7. The metal structures within the Centre would become very hot during the daytime; and
8. There was inadequate shade or protection from the elements available in the compounds, including in areas where Detainees were required to queue outdoors for long periods to receive food, medications or medical treatment;

(b) Detainees were frequently unable to access basic clothing and personal hygiene products (**Personal Supplies**); or

(bb) Detainees:

- (i) were required to request Personal Supplies in a manner that was degrading and humiliating, such as sharing nail clippers or requesting soap or toilet paper on an as-needed basis; or
- (ii) made requests for Personal Supplies that were from time to time:
 - (A) unanswered,
 - (B) repeatedly unanswered,
 - (C) met with delay; or
 - (D) never met.

Particulars

As to the Plaintiff and the Claimants, the plaintiff repeats and relies on the particulars under paragraph 85(b) above.

Further, during the Transfield Period:

1. The Plaintiff had very few clothes available to him, and had no choice but to wear the same clothes constantly, which meant that over time they became very worn and damaged.
2. The Plaintiff made repeated requests to Transfield staff for a replacement set of clothes, but each time he was told that requests had been made and that supplies were on their way to the Centre. The Plaintiff did not receive replacement clothes for several months after his first requests.
3. The Plaintiff was provided with a new set of clothes on

one occasion during the Transfield period, soon before he was taken to Australia.

4. The Plaintiff only ever received one pair of shoes to wear while at the Centre, which became damaged and worn over time.
5. The Plaintiff and Detainees experienced delays of up to several weeks at times in accessing razors or other materials to permit them to shave. When new supplies of razors became available, there were long lines of Detainees to collect them.
6. Approximately every three weeks during the Transfield Period, small packs of toiletries would be made available to the Plaintiff and Detainees, which typically contained a toothbrush, a small container of toothpaste, a bar of soap and a small container of shampoo. The Plaintiff and Detainees repeatedly found that supplies of these items and packs would run out entirely, meaning they would need to either borrow supplies from other Detainees or go without
7. Detainees made requests for toiletries including soap, shampoo, tooth brushes and toothpaste which were met with delay.
8. Community leaders repeatedly raised requests related to personal supplies with Centre management.
9. As at around August 2014, the canteen at the Centre had no supply of soap (TRA.374.002.4466).

(c) Detainees were forced to use bathing and hygiene facilities that were:

- (i) makeshift;
- (ii) unreliable in operation;
- (iii) unclean;
- (iv) mouldy;
- (v) inadequate to service the numbers of users;
- (vi) exposed and insufficiently private; and
- (vii) in the premises in (i) to (vi) above, not in accordance with Australian Precautions;

Particulars

The plaintiff repeats and relies on the particulars under paragraph 785(c) above, and says further that during the period:

1. There were too few showers, toilets or hygiene facilities available at the Centre to accommodate the number of Detainees;
2. The toilets and showers were frequently unclean, unhygienic, damaged and/or inoperable;
3. There was often no, or no adequate, water supply to the toilets and showers. At times when there was no water supply to toilets and showers, Detainees would be required to use supplies of bottled drinking water for

these purposes instead.

4. Detainees were required to wait in long queues in order to access showers, toilets or related hygiene facilities.
5. At times when running water ceased at the Centre there was insufficient water for washing machines.

- (d) the Centre offered insufficient open space or other facilities for Detainees to obtain physical exercise;

Particulars

The plaintiff repeats and relies on the particulars under paragraph 85(d) above, and says further that during the Transfield Period:

1. There were inadequate recreational facilities available to provide for the detained population which was, at all times during the Transfield Period, greater than 1,000 single adult males.
2. Areas of the Centre that formerly had been designated as recreation spaces had been used to construct additional accommodation in 2013, and no substitute recreation spaces were created;
3. Buildings and structures had been erected very close together, providing limited recreation areas;
4. Transfield required that Detainees wear shoes when engaging in walking trips, and Detainees required shoes to be able to engage in any sporting or physical activity, but most Detainees were not provided with shoes.
5. The Department of Immigration and Border Protection's Standards for Design and Fitout of Immigration Detention Facilities stipulated 50m² of recreation space per person.

- (e) the physical recreation activities available to Detainees were, or were normally, limited to walking or running around the Centre grounds at appointed times and under supervision from Transfield personnel, but at times Detainees were prevented from going for walks at all.

Particulars

Detainees were only provided with limited and tightly controlled opportunities to walk or run around the Centre, accompanied by Transfield, Wilson or IHMS personnel.

Opportunities to play sport such as soccer were tightly controlled and limited.

As at around November 2014, there were insufficient security resources available to continue to provide walking groups (A.100.3670.4202).

- (f) the Centre offered insufficient shaded outdoor space, and no or no adequate

access to sun protection products such as hats and sunscreen, thereby exposing Detainees to the sun and other elements.

Particulars

The plaintiff repeats and relies on the particulars under paragraph 85(f) above.

Detainees were regularly required to queue outdoors for long periods to receive food, medications or medical treatment.

- (g) vulnerable Detainees and Detainees with behavioural management issues were accommodated in separate compounds in which the conditions and treatment were harsh and punitive.

Particulars

1. From about May 2014, Detainees with perceived or actual behavioural management issues were relocated to an area known as Managed Accommodation Area (MAA) and also known as Chauka which consisted of a number of non-air-conditioned, shipping containers.
2. The servings of food in Chauka were smaller than in the main accommodation compounds.
3. Detainees at Chauka would be observed by guards at all times and if they wished to use the toilet they would be escorted there by security staff.
4. The windows in the Chauka accommodation units had been boarded up and there was no natural light.

168. In the premises set out in the preceding paragraph:

- (a) the Commonwealth:
- (i) failed, by its agent Transfield, to take reasonable care; alternatively
 - (ii) failed to ensure that reasonable care was taken by Transfield; and
- (b) Transfield failed to take reasonable care;
- to ensure that Detainees were provided with shelter and accommodation that was, according to Australian Precautions, reasonably adapted to prevent distressing physical discomfort in the tropical conditions of Manus Island.

Particulars

The Plaintiff refers to and repeats the particulars to paragraph 85 above.

The hot and humid conditions, and hot, stuffy and poorly-ventilated accommodations, continued to caused significant itching, pain and irritation to the Plaintiff's skin condition.

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

169. By reason of the matters set out in the preceding paragraph:

- (a) the Commonwealth; and
- (b) Transfield;

and each of them breached the Detention Duty of Care.

Breach – medical treatment and healthcare

170. Throughout the Transfield Period:

- (a) Detainees at the Centre were not authorised to obtain medical treatment or health care save as provided at the Centre;
- (b) the medical care and health services provided at the Centre were:
 - (i) wholly funded, including as to facilities, equipment, medical supplies and staff, by the Commonwealth; and
 - (ii) provided by IHMS;

(c) Transfield had the obligations imposed by the Transfield Contract as follows:

- (i) To ensure that any Detainee who requested or appeared to be in need of medical attention, was referred for appropriate medical attention.
- (ii) Where it appeared that a Detainee required emergency medical attention, to:
 - (A) provide first aid by suitably qualified Personnel;
 - (B) seek emergency medical attention for the Detainee immediately, including arranging for transport of the Detainee to the nominated medical facility at the Department's cost;
 - (C) inform IHMS of the Detainee's condition as soon as the initial response is complete; and
 - (D) inform the Department of the Detainee's condition as soon as the initial response is complete

~~(c) Transfield had the obligations imposed by the Transfield Contract to ensure that~~

~~Detainees had access to appropriate and timely medical treatment.~~

Particulars

The obligations are contained under clause 2.9 of the Transfield Contract.

(d) Detainees' access to medical care required facilitation by Transfield in that Transfield notified Detainees of medical appointments, referred Detainees to IHMS for medical care, received Detainee requests for medical attention and escorted Detainees to IHMS appointments.

170A. During the Transfield Period:

- (a) Transfield did not have an adequate system to ensure that Detainees who requested, or appeared to be in need of, medical attention, were referred to IHMS for appropriate medical attention; and
- (b) Transfield did not have an adequate system to ensure that where it appeared that Detainees required emergency medical attention, Transfield would:
 - i. seek emergency medical attention for the Detainee immediately, including arranging for transport of the Detainee to the nominated medical facility at the Department's cost;
 - ii. inform IHMS of the Detainee's condition as soon as the initial response was complete; and
 - iii. inform the Department of the Detainee's condition as soon as the initial response was complete.

171. Throughout the Transfield Period:

(a) the Commonwealth; ~~and~~~~(b) Transfield;~~~~and each of them~~ had no or no adequate systems to ensure that:

- (i) Medical Aids possessed by Detainees on arrival in Australia or at Manus Island were, after being checked, either approved or appropriately replaced in a timely way, to prevent harm being caused to Detainees as a result of prolonged deprivation of the medical aids;
- (ii) Detainees had access to medical treatment and healthcare:
 - (A) that recognised that Detainees, being:
 - (1) likely to have the 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, were a high-risk cohort for physical and psychiatric or psychological conditions requiring medical treatment and health care;
 - (B) that was timely, in accordance with Australian Precautions;
 - (C) that was delivered in facilities compliant with Australian Precautions;
 - (D) that had expertise in the physical, psychiatric or psychological condition(s) requiring treatment, in accordance with Australian Precautions;
 - (E) that utilised modern equipment, treatments, procedures

- and medications, in accordance with Australian Precautions; and
- (F) that was private and maintained patient privacy, in accordance with Australian Precautions.
- (iii) Transfield and Commonwealth personnel at the Centre were adequately trained to recognise or identify, and intervene by seeking or arranging medical assessment or treatment, cases of mental illness, harm or distress amongst Detainees; and
- (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; and
- (v) medical care provided to Detainees was provided by appropriately trained, qualified and independent individuals, in accordance with Australian Precautions; and
- (vi) Detainees had access to condoms, in circumstances where:
- (A) a number of Detainees 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 Detainees; and
- (D) sexual assaults occurred at the Centre;
- (vii) vaccines and medications were stored and refrigerated to ensure their efficacy; and
- (viii) medical supplies were ordered and obtained in a quantity and timeliness adequate to meet the needs of the Detainees.

172. ~~By reason of the omissions referred to in the preceding paragraph~~ During the Transfield Period:

- (a) Detainees, on arrival in Australia or at Lorengau Port, routinely:
- (i) had Medical Aids confiscated; and
- (ii) experienced long and distressing delays before the Medical Aids were returned or replaced;

Particulars

The Plaintiff repeats and relies on the particulars under paragraph 880 above.

- (b) the only medical facilities which Detainees were authorised to access:
- (i) were the Medical Centre;
- (ii) could not be accessed by Detainees directly or without accompaniment by Transfield personnel;

- (iii) were housed in subdivided shipping containers and hard-walled dongas;
- (iv) were equipped with plastic chairs and foldable camp-style tables;
- (v) were the only authorised first-line source of medical treatment and health care for up to approximately 1,322 Detainees; and
- (vi) had, throughout the Transfield Period, a mental health team of fluctuating numbers of people, being:
 - (A) mental health nurses;
 - (B) psychiatrists;
 - (C) psychologists;
 - (D) counsellors;
- (vii) regularly received 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. The Medical Centre regularly received over 100 requests for medical appointments from Detainees 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 services officer.
4. The Medical Centre was regularly reported throughout 2014 to have inadequate space for consultation areas and inadequate inpatient capacity/space (A.100.3066.1286; A.100.3004.6346; and A.100.3066.1519).
5. The Medical Centre was equipped with equipment or machinery that was often damaged or poorly functioning, for example:
 - (i) The medical waste incinerator was inoperable for approximately three months in 2014 beginning in July 2014, and thereafter continued to operate poorly or not at all;
 - (ii) From at least March 2014, the ambulance vehicle used by the Medical Centre had ongoing electrical and mechanical problems and would variously not start, require detainees to push the vehicle to assist it to commence moving, or the rear doors would not open. This situation continued until August 2014, when a new vehicle

was obtained for use as the ambulance.

- (c) following a Detainee's arrival at Manus Island:
- (i) there was no timely or adequate assessment of the physical or mental healthcare requirements of the Detainee, conducted by a healthcare professional and applying criteria in accordance with Australian Precautions;

Particulars

Arriving Detainees were not commonly subject to 'initial transferee interviews'.

Initial interviews and assessments often occurred after lengthy delays, and at times did not involve questions about or assessments of detainees' mental health.

Some screening tools used in the assessment process were difficult or unsuitable for use with detainees who did not speak English.

- (ii) periodic reviews of the physical and mental health of Detainees, and in particular reviews investigating any emergence or aggravation of psychological conditions, were insufficiently regular or specialised to comply with Australian Precautions;
- (d) Detainees seeking medical treatment or health care:
- (i) 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;
- (ii) were not permitted direct contact with the Medical Centre;
- (iii) were required to make written application to Transfield for an appointment at the Medical Centre;
- (iv) routinely waited up to three or more days for a medical appointment, regardless of the nature of the condition for which treatment was sought;
- (v) received care that was affected or altered by interference, criticism and commentary by the Department in relation to medical and therapeutic decisions.

Particulars

The plaintiff repeats and relies on the particulars under paragraph 90(d) above.

Detainees wishing to access the Medical Centre were required to submit a written request either to Wilson staff or in a mailbox adjacent to some compounds. Detainees understood that such requests were reviewed by Wilson or IHMS staff at first instance, and that such requests were inconsistently responded to.

When a request resulted in an appointment being made at the

Medical Centre, the appointment time and date would be written on a card and provided to the Detainee by Wilson staff. On the day of the appointment, the Detainee would be required to provide the card to a Wilson staff member at the appointment time, and would then usually be escorted to the Medical Centre.

Detainees regularly experienced delays of up to three or four days between requesting a medical appointment and receiving an appointment with medical staff at the Medical Centre.

Staff at the Centre were not permitted to fill in request forms for detainees, which made the appointment process difficult for detainees from non-English-speaking backgrounds, or for detainees who have no written language.

Detainees regularly experienced that scheduled medical appointments would be cancelled with no or little notice due to staffing or scheduling difficulties.

In or around July 2014, officers of the Department raised concerns with IHMS regarding its performance of its duties under the IHMS Contract, including that:

- (a) IHMS was seen to be overly conservative and risk averse;
- (b) IHMS was seen to be advocating for Detainees and recommending medical procedures that were outside the IHMS Contract's requirements; and
- (c) IHMS staff were regularly recommending transferring Detainees to Australia for medical purposes or deeming that Detainees were not fit to be returned to offshore processing centres.

Officers of the Department advised IHMS that the IHMS Contract may be at risk if its various complaints were not addressed.

- (e) the Medical Centre:
 - (i) routinely lacked adequate supplies of common medications;
 - (ii) did not provide specialist medical services, such as specialist, ancillary and acute care, including dental, optical or radiological services;
 - (iii) continued not to have a permanent or full time psychiatrist;
 - (iv) continued not to have a specialist facility for treating Detainees with acute mental health conditions; and
 - (v) continued to have insufficient numbers of qualified trauma and torture counsellors to adequately service the number of Detainees requiring assistance;

Particulars

As to the plaintiff, the Plaintiff repeats and relies on the particulars under paragraph 90(e) above.

As to the plaintiff and the claimants:

1. In the six-month period from February 2014 to July 2014 there were only nine visiting psychiatrist visits to the

Centre.

2. The medical clinic at the Centre was not stocked with medicines, including antibiotics that were appropriate and necessary for the population of Detainees and the conditions at the Centre.
 3. Detainees frequently experienced long delays while waiting for specialist medical treatment, either in PNG or Australia.
- (f) the dental services available to Detainees were provided via referrals to the local Manus Island dentist, who:
- (i) continued, at times, not to have access to a functional dental drill or other equipment in accordance with Australian Precautions;
 - (ii) was regularly unable to treat tooth conditions other than by inserting fillings or performing extractions;
 - (iii) had limited capacity to treat Detainees from the Centre because of the need to treat members of the local population; and
 - (iv) undertook more invasive treatments than were consistent with Australian Precautions; and
 - (v) provided services in an unhygienic setting;

Particulars

As at March 2014, dental services were provided by way of referrals to Lorengau Hospital, which had the capacity to insert fillings and perform extractions.

A dental clinic at the Centre commenced in around mid-November 2014, with an initial capacity of treating approximately 12 patients per day.

By 6 April 2014 there were 237 detainees requiring dental work at the Centre.

By 30 April 2014, there were 355 detainees requiring dental work at the Centre.

Detainees at times complained about having dental issues left untreated for many months at a time.

A number of detainees ceased eating solid food for periods of time due to dental pain they were experiencing, which was not treated.

On occasion, detainees resorted to forcefully extracting their own teeth rather than waiting for dental treatment

Dental services were provided to detainees at Lorengau Hospital up until around 15 November 2014.

As at around 31 July 2014, IHMS staff reported that the Lorengau Hospital Dental facilities did not meet the required health and hygiene standards (BNL.018.002.7229).

Dental services were provided to detainees from a dental clinic at the Centre from around 15 November 2014 onwards.

- (g) The Commonwealth Transfield and the Medical Centre:
- (i) 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;
 - (ii) in practice could only refer a Detainee for treatment at an alternative location:
 - (A) upon application to an officer of the Commonwealth;
 - (B) upon approval of the application, by the Commonwealth officer;

Particulars

The plaintiff refers to and repeats the particulars to paragraph 90(g) above.

- (h) In a number of cases, Detainees who required escalation of medical treatment endured:
- (i) lengthy delays;
 - (ii) inadequate interim care pending presentation to the alternative medical treatment providers.; and
 - (iii) refusal to escalate care by means of transferring the person off Manus Island to Port Moresby and/or to Australia.
- (i) Detainees exhibiting symptoms or signs of physical or mental harm or other poor health:
- (i) were not identified by Centre personnel and recommended or referred for medical assessment and/or treatment in a timely manner; and
 - (ii) were not provided with any information or advice sufficient to enable them or other Detainees to identify when medical intervention or assistance may be required for such symptoms; and
 - (iii) were, as a result of the matters described in sub-paragraphs (b)-(e) and (h) above, in practice discouraged from actively seeking early intervention or assistance with medical concerns, and
 - (iv) 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. Detainees frequently experienced long delays while waiting for specialist medical treatment, either in PNG or Australia.
 4. Particulars of individual Group Members will be provided following the trial of common questions or otherwise as the Court may direct.
- (j) Detainees had limited access to condoms in circumstances where:
- (i) a number of Detainees had sexually transmitted diseases;
 - (ii) the local population on Manus Island was known to have sexually transmitted diseases;
 - (iii) male to male sex was occurring among some of the Detainees; and
 - (iv) sexual assaults occurred at the Centre.

Particulars

1. Condoms were only available upon request from the medical centre.
 2. From early 2014, one IHMS counsellor, John Zammit, distributed condoms and lubricant to Detainees in the compounds at his discretion, but otherwise condoms were only available at the IHMS clinic.
 3. Induction materials for the Centre stated that there are many sexually transmitted diseases on the island, including HIV / AIDS, Syphilis, Gonorrhoea and Hepatitis (P.500.9000.0004.3874).
 4. A number of the Detainees at the Centre had sexually transmitted diseases, including Chlamydia, Gonorrhoea, Hepatitis B and Syphilis (A.100.3009.7466).
 5. There were numerous reported incidents of alleged sexual assault at the Centre during the Transfield Period (A.100.3016.3494).
- (k) Detainees had a fear of seeking advice, assistance and/or treatment for sexual health issues

173. In the premises set out in the preceding paragraph, the Commonwealth

- (a) failed, ~~by its agent Transfield,~~ to take reasonable care; alternatively
 - (b) failed to ensure that reasonable care was taken by Transfield,
- to ensure that Detainees were provided with medical care and health services that:
- (i) recognised the likelihood that Claimants, being likely to have the Detainee Characteristics, would be in a high-risk cohort for physical and psychiatric or psychological conditions requiring medical treatment and health care; and

- (ii) were, according to Australian Precautions, reasonably adapted to prevent avoidable deterioration of the physical or mental health of Claimants.
- (iii) recognised the level of medical care and health services needed to reflect the limited medical services and facilities available on Manus Island and PNG; and
- (iv) 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
- (v) prevented or ameliorated pain to Detainees.

Particulars

The Plaintiff refers to and repeats the particulars to paragraph 90 above.

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

~~174. Further and in the alternative to the preceding paragraph, Transfield pursuant to the Transfield Contract had practical control over:~~

- ~~(a) — inadequate training of Transfield personnel as described in paragraphs 171 and 172 above;~~
- ~~(b) — delays in replacing or returning to Detainees the medical aids confiscated as described in paragraph 171(a)(i) above;~~
- ~~(c) — delays in processing Detainees' requests for medical appointments as described in paragraphs 172(d)(iii) and (iv) above; and~~
- ~~(d) — delays in medical transfers of Detainees from the Centre to other places (including Australia) for specialist treatment.~~

175. By reason of the matters set out in:

- (a) paragraph 173, the Commonwealth; ~~and~~
 - ~~(b) — paragraph s 173 and 174, the Commonwealth and Transfield;~~
- ~~and each of them~~ breached the Detention Duty of Care.

175A. By reason of the matters in paragraph 170A, Transfield breached the Detention Duty of Care.

Breach – internal security

176. Throughout the Transfield Period:

- (a) the Commonwealth; and
- (b) Transfield;

and each of them had no or no adequate systems to ensure that:

- (i) the Detainee population was monitored for violent, intimidatory, discriminatory, ostracising, bullying or other anti-social behaviour between Detainees, in accordance with Australian Precautions;
- (ii) Centre personnel were adequately trained to manage, in accordance with Australian Precautions, violent or antisocial behaviour between Detainees;
- (iii) Detainees were not subjected to violent or anti-social behaviour from other Detainees or Centre personnel;
- (iv) Detainees were not exposed to a well-founded fear of violent or anti-social behaviour from other Detainees or Centre personnel;
- (v) internal compound fencing was adequate, according to Australian Precautions, to prevent:
 - (A) unauthorised incursion by Detainees or other persons from one compound into other compounds;
 - (B) unauthorised incursion by persons inside the Centre, whether lawfully or otherwise, into the compounds;
- (vi) the compound fencing was adequate, according to Australian Precautions, to prevent unauthorised egress by Detainees from the Centre.; and
- (vii) Detainee allegations of sexual assault or sexual harassment by other Detainees or Centre staff were handled appropriately and not ignored;
- (viii) staff did not place Detainees in solitary confinement; or in isolated and restrictive non-therapeutic environments; and
- (ix) staff did not assault Detainees.

177. By reason of the omissions referred to in the preceding paragraph, during the Transfield Period:

- (a) the selection, training and qualifications of Security Staff were not:
 - (i) in accordance with Australian security-industry standards;
 - (ii) in accordance with Australian Precautions;
 - (iii) reviewed or approved by Commonwealth officers who were appropriately-qualified, according to Australian Precautions, to approve the training of personnel engaged in security functions at detention or like facilities.

Particulars

So far as the Plaintiff is able to say prior to discovery:

- (a) the Transfield personnel selection process had no or no adequate method for identifying applicants whose personal characteristics were unsuited to work as Security Staff at the Centre;
- (b) Transfield personnel received no training from the Commonwealth.

Full particulars will be provided following discovery.

- (b) there was no adequate system for identifying Detainees who were:
 - (i) exhibiting violent or anti-social behaviour; or
 - (ii) at risk of violent or anti-social behaviour from other Detainees;
- (c) there was no adequate system for managing Detainees who were:
 - (i) exhibiting violent or anti-social behaviour; or
 - (ii) at risk of violent or anti-social behaviour from other Detainees;

Particulars

1. Transfield had no or no adequate formal system for observing or monitoring Detainee behaviour.
2. Transfield had no or no adequate formal system for receiving, investigating or assessing complaints about Detainee behaviour.
3. Detainees had no or no adequate independent, private, process for making a complaint about the conduct of other Detainees.
4. Transfield had no or no adequate formal system for the allocation, or reallocation, of Detainees to particular compounds, whether for Detainees who had displayed violent or aggressive tendencies to other Detainees or for Detainees who were the subject of threats of violence or anti-social behaviour from other Detainees.
5. There was no or no adequate policy or procedure that set out how Detainees were to be allocated to rooms or compounds.

- (d) there was no adequate response by Transfield or the Commonwealth to:
 - (i) reports of violent or anti-social behaviour by Security Staff;
 - (ii) reports that the training provided to the Security Staff was inadequate and that they were insufficiently trained to appropriately respond to serious disorder or unrest within the Centre;

Particulars

1. Transfield received reports from its employees and from Detainees that some Security Staff:
 - a. spoke to Detainees aggressively;
 - b. spoke to or about Detainees in their presence in a manner that was insulting, intimidatory or offensive;
 - c. acted in an unnecessarily aggressive or harsh manner when physically interacting with Detainees in the course of peaceful protest activity;
 - d. restrained or physically interacted with Detainees in specialist compounds such as Delta 9 in a way that was unnecessarily aggressive or harsh;

2. Between 1 June 2014 and 23 November 2014, there were 197 complaints made against service provider staff. Of this number, 188 complaints were against Transfield staff, 8 were against IHMS staff and 1 was against DIBP staff (TRA.354.002.3496).
- (iii) reports of violent or anti-social behaviour by or between Detainees.
- (e) Detainees were subjected to violent or anti-social behaviour from:
- (i) Security Staff; further or alternatively
 - (ii) other Detainees; and

Particulars

The plaintiff repeats and relies on the matters set out in the particulars under subparagraph (d)(ii) above.

During periods of heightened tensions within the Centre, Security Staff engaged in excessive and heavy-handed displays of force, including entering compounds dressed in personal protective equipment and bearing riot shields and/or batons, ignoring and not interacting with Detainees, and marching in line towards Detainees while chanting with each step.

During peaceful protest activity by Detainees at the Centre in early 2015, Security Staff entered areas where protests were occurring and employed excessive and unjustified force, including the use of batons and shields, to disperse crowds that had gathered and to apprehend Detainees that the staff considered to be the leaders of the protests.

Detainees regularly experienced Security Staff issuing threats and insults directed at them in response to comments, complaints or questions they made.

Security Staff regularly engaged in heavy-handed and unnecessarily aggressive and forceful searches of rooms and Detainees.

Between 1 July 2014 and 24 September 2014, there were 394 incidents reported at the Centre. The largest portion of incidents related to aggressive behaviour (29.03%), followed by self-harm (12.62%) and assaults (10.78%) (TRA.306.002.1557).

There were frequent incidents in which Detainees at the Centre were exposed to violent or anti-social behaviour, including on:

- a. 05 April 2014 – (TRA.707.001.0618)
- b. 14 April 2014 – (TRA.707.001.1100)
- c. 14 April 2014 – (TRA.707.001.1144)
- d. 28 April 2014 – (TRA.707.001.0166)
- e. 17 May 2014 – (TRA.707.001.0301)
- f. 09 June 2014 – (TRA.707.001.1525)
- g. 13 June 2014 – (TRA.707.001.0136)
- h. 15 June 2014 – (TRA.707.001.0292)

- i. 16 June 2014 – (TRA.707.001.0384)
 - j. 19 June 2014 – (TRA.707.001.0626)
 - k. 20 June 2014 – (TRA.707.001.0691)
 - l. 27 June 2014 – (TRA.707.001.0994)
 - m. 04 July 2014 – (TRA.707.001.1308)
 - n. 07 July 2014 – (TRA.707.001.1371)
 - o. 17 July 2014 – (TRA.707.001.0201)
 - p. 19 July 2014 – (TRA.707.001.0261)
 - q. 13 August 2014 – (TRA.707.001.1460)
 - r. 20 August 2014 – (TRA.707.001.0159)
 - s. 03 September 2014 – (TRA.707.001.0668)
 - t. 03 September 2014 – (TRA.707.001.0677)
 - u. 06 October 2014 – (TRA.707.001.0366)
 - v. 15 October 2014 – (TRA.707.001.0587)
 - w. 16 October 2014 – (TRA.707.001.0676)
 - x. 27 October 2014 – (TRA.707.001.0906)
 - y. 22 November 2014 – (TRA.707.001.0125)
 - z. 01 December 2014 – (TRA.707.001.0471)
- (f) Detainees were exposed to a well-founded fear of violent or anti-social behaviour from:
- (i) Security Staff; further or alternatively
 - (ii) other Detainees.
- (g) Transfield and the Commonwealth made no or no adequate response to:
- (i) reports that the internal compound fencing was inadequate to prevent Detainees in one compound breaching the internal fencing and gaining unauthorised access to other compounds within the Centre;
 - (ii) the risk that the internal fencing was inadequate to prevent persons gaining unauthorised access to compounds and causing harm to Detainees.

Particulars

Transfield and the Commonwealth knew or ought reasonably to have known of the matters under paragraph 94(g).

At the commencement of the Transfield Period, no work had been commenced at the Centre to improve the internal or exterior fencing.

- (h) Transfield made no or no adequate response to detainee allegations of sexual assault and sexual harassment by other Detainees or Centre Staff.

Particulars

1. In a report dated September 2013 and titled 'Review into allegations of serious sexual and other assaults at Manus Regional Processing Centre' (A.100.2008.5451), Mr Robert Cornall AO recommended that:
 - a. a clear and well understood policy be established for dealing with any future allegations of sexual assault at the Manus RPC, which takes account of the best interests of the victim and Papua and New Guinea criminal law; and
 - b. appropriate operational procedures be established to implement that policy, including preventative strategies and staff training.
 2. As at around October 2014, no formal policy had been developed for managing allegations of sexual assault at the Centre (A.100.3003.1335).
 3. As at around December 2014, Transfield's Incident Response Plan was in draft and the procedures for managing incidents of sexual assault did not take into account the interests of the victim or Papua and New Guinea criminal law (TRA.306.002.5620).
- (i) Detainees were afraid of reporting sexual harassment or sexual assault.
- (j) Detainees with behavioural management issues were placed in solitary confinement or in isolated and restrictive non-therapeutic environments.
178. In the premises set out in the preceding paragraph:
- (a) the Commonwealth:
 - (i) failed, by its agent Transfield, to take reasonable care; alternatively
 - (ii) failed to ensure that reasonable care was taken by Transfield; and
 - (b) Transfield failed to take reasonable care;

to ensure that Transfield Subgroup Claimants were provided with reasonable protection, in accordance with Australian Precautions, from exposure to violent or anti-social behaviour from other Detainees or from Transfield or Wilson Personnel.
179. By reason of the matters set out in the preceding paragraph:
- (a) the Commonwealth; and
 - (b) Transfield;
- and each of them breached the Detention Duty of Care.

PART L – TRANSFIELD PERIOD – CAUSATION

180. Each of the matters of fact alleged in:

- (a) paragraphs 162 to 165 inclusive regarding the failure to provide reasonable food and water;
- (b) paragraphs 166 to 167(a), 167(c) and 167(f) to 169 inclusive regarding the failure to provide reasonable shelter and accommodation;
- (c) paragraphs 170 to 174 inclusive regarding the failure to provide reasonable medical care and health services;
- (d) paragraphs 175 to 178 inclusive regarding the failure to provide Detainees with reasonable security protection
- (e) paragraph 167(b), (bb), (d) and (e) inclusive regarding the Detainees' lack of Personal Supplies and the Centre's lack of amenity, recreational facilities and recreational opportunities.

(being the matters giving rise to the breaches of the Detention Duty of Care as alleged) was notorious among existing Detainees, and new Detainees as the latter arrived at the Centre, throughout the Period.

181. By reason of:

- (a) the Transfield Sub-group Claimants' direct personal experiences of matters referred to in the preceding paragraph; and
- (b) the Transfield Sub-group Claimants' knowledge, or belief based upon information from other Detainees, of all of the matters referred to in the preceding paragraph;

A number of the Claimants have suffered and continue to suffer mental harm; and/or, physical harm, and/or distress and inconvenience (**Transfield Subgroup mental and physical harm**).

Particulars of loss and damage

The Plaintiff refers to and repeats the particulars to paragraph 117 above.

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

182. In the premises set out in the previous two paragraphs, the Transfield Subgroup mental harm was a result of the breaches of the Detention Duty of Care by:

- (a) the Commonwealth; further or alternatively
- (b) Transfield;

alleged in paragraphs 162 to 178 inclusive above.

Transfield Healthcare Subgroup

183. ~~By reason of 170 to 174, failures by Transfield~~ By reason of the matters in paragraphs 170 to 174, the Commonwealth failed 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, and the Plaintiff and some of the Transfield Subgroup claimants (**Transfield Healthcare Subgroup**) suffered:
- (a) deterioration in or aggravation of pre-existing physical, psychological or psychiatric conditions;
 - (b) new physical injury 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; or
 - (c) pain, distress and inconvenience.

Particulars of loss and damage

As to the Plaintiff:

1. The Plaintiff's Injuries had deteriorated during the G4S Period and had become irritated, itchy and painful.
2. Throughout the Transfield Period, the Injuries continued to be irritated, itchy and painful.
3. The Plaintiff had unsightly keloid scars and tightening of scarred skin on his lower face and neck which developed, continued and/or worsened throughout the Transfield period.
4. The application of non-medical and medical substances did not alleviate the irritation, itchiness or pain.
5. The Plaintiff made regular, repeated requests for medical and mental health assistance or intervention. The plaintiff's requests were unmet or were met after various delays.
6. To avoid sun exposure and/or to hide his appearance:
 - a. on a number of occasions, the Plaintiff attempted to cover or covered his skin with his T-shirt and/or T-shirt material; and
 - b. he mainly stayed indoors during the day.
7. As a consequence of the above matters, the Plaintiff has suffered physical and psychological injuries, and/or has had physical and psychological conditions exacerbated, and/or has suffered pain, distress and inconvenience.

Particulars relating to the personal injuries suffered by other Transfield Healthcare Subgroup members will be provided following the trial of common questions or otherwise as the Court may direct.

183A. By reason of the matters set out in paragraph 170A, Transfield caused the Plaintiff and the Transfield Healthcare Subgroup to suffer:

- (a) deterioration in or aggravation of pre-existing physical, psychological or psychiatric conditions;
- (b) new physical injury or mental harm caused by:
 - (i) unreasonable lack of access to medical treatment compliant with Australian Precautions; and/or
 - (ii) unreasonable delays before delivery of medical treatment compliant with Australian Precautions; and
- (c) pain, distress and inconvenience.

184. In the premises set out in ~~the preceding~~ paragraphs 183 and 183A, the personal injuries suffered by the Transfield Healthcare Subgroup were a result of the breaches of the Detention Duty of Care by:

- (a) the Commonwealth as set out in paragraphs 170 to 174; further or alternatively
- (b) Transfield as set out in paragraph 170A;
~~alleged in paragraphs 170 to 174 inclusive above.~~

Injuries are continuing

185. The injuries suffered by the Plaintiff and the Negligence Group Members are continuing.

PART LL – FALSE IMPRISONMENT

185A. By reason of the matters pleaded at paragraphs 29A to 29C, the Detainees' freedom of bodily movement was restrained during the False Imprisonment Claim Period (**the Confinement**).

Particulars

1. The plaintiff arrived at the Centre on 4 September 2013.
2. The plaintiff's Confinement continued until approximately July 2014, when he was transferred to Melbourne for medical treatment.
3. Particulars of the period of Confinement of individual group members will be provided following the trial of common questions or otherwise as the Court may direct.

185B. The Commonwealth was or ought to have been aware at the time the Detainees were transferred to the Centre that the Detainees would be subject to the Confinement at the Centre.

Particulars

A perimeter fence was in existence prior to Detainees being transferred to the Centre and a perimeter fence surrounded the Centre at all times during the False Imprisonment Claim Period.

The Commonwealth's knowledge can be inferred from the Submission pleaded in paragraph 15A and the Commonwealth's ongoing involvement in the management and operation of the Centre pleaded in paragraphs 13 to 29.

- 185C. The Commonwealth was responsible for providing and/or ensuring that there was a perimeter fence at the Centre.

Particulars

G4S Contract, Statement of Work item 14.1.3 and Transfield Contract, Part 3, Garrison Services cl 4.1.3.

- 185D. The Commonwealth approved and funded construction of and upgrades to:
- (a) the perimeter fence; and
 - (b) internal compound fences.
- 185E. The Commonwealth had practical control over the operations of the Centre including restrictions on movement of Detainees.

Particulars

The Plaintiff refers to paragraphs 13 to 29, 48 and 140.

- 185F. From 21 November 2012 to 23 March 2014, the Security Staff that locked the gates to the perimeter fence and/or internal compound fences and/or manned the gates were employees and/or subcontractors of G4S.
- 185G. From 24 March 2014 to at least 12 May 2016, the Security Staff that locked the gates to the perimeter fence and/or internal compound fences and/or manned the gates were employees and/or subcontractors of Transfield.
- 185H. From 21 November 2012 to 23 March 2014, Detainees could only move between compounds with the authorisation of G4S, its employees or agents.
- 185I. From 24 March 2014 to at least 12 May 2016, Detainees could only move between compounds with the authorisation of Transfield, its employees or agents.
- 186J. From 21 November 2012 to 23 March 2014, Detainees could only leave the Centre on

excursions or transfers with the authorisation of the Commonwealth and/or G4S, its employees or agents and while being supervised and escorted by the Commonwealth and/or G4S, its employees or agents.

185K. From 24 March 2014 to at least 12 May 2016, Detainees could only leave the Centre on excursions or transfers with the authorisation of the Commonwealth and/or Transfield, its employees or agents and while being supervised and escorted by the Commonwealth and/or Transfield, its employees or agents.

185L. The actions of:

- (a) the Security Staff identified in paragraphs 185F and 185G; (b) G4S identified in paragraph 185F, 185H and 185J; and
- (c) Transfield identified in paragraph 185G, 185I and 185K, were as agents of the Commonwealth.

Particulars

The Plaintiff repeats and refers to paragraphs 45 to 48 and 136 and 139.

185M. By reason of the matters pleaded at paragraphs 13-29, 46-49D, 51, 73, 138-140F, 158-160 and 185B to 185L, above, the Confinement of the Detainees was:

- (a) by the Commonwealth; and/or
- (b) caused or directed by the Commonwealth.

185N. Further, from 21 November 2012 to 23 March 2014, by reason of the matters pleaded at paragraphs 33-45, 48, 49E-49G and 53, 73, 185F, 185H and 185J the Confinement was:.

- (a) by G4S; and/or
- (b) caused or directed by G4S.

185O. Further, from on or about 24 March 2014 to at least 12 May 2016, by reason of the matters pleaded at paragraphs 125 to 136, 140, 144 and 158-160, 185G, 185I and 185K the Confinement was:.

- (a) by Transfield; and/or
- (b) caused or directed by Transfield.

185P. [deleted].

185Q. [deleted].

- 185R. By reason of paragraphs 185A and 185M, the Commonwealth has falsely imprisoned the False Imprisonment Group Members.
- 185S. By reason of paragraphs 185A and 185N, G4S has falsely imprisoned the False Imprisonment Group Members.
- 185T. By reason of paragraphs 185A and 185O, Transfield has falsely imprisoned the False Imprisonment Group Members.
- 185U. The false imprisonment was in poor conditions (“**Poor Conditions**”) including:
- (a) during the G4S period, the accommodation was inadequate in the ways pleaded at paragraphs 85 (a), (c), (d), (f) and (g) above;
 - (b) during the Transfield period, the accommodation was inadequate in the ways pleaded at paragraphs 167(a), (c), (d), (f) and (g) above;
 - (c) during the G4S period, food and water at the Centre was inadequate in the ways pleaded at paragraphs 81 above;
 - (d) during the Transfield period, food and water at the Centre was inadequate in the ways pleaded at paragraphs 163 above;
 - (e) during the G4S period, there was a lack of recreational facilities and activities at the Centre in the ways pleaded at paragraphs 85(d) and (e) above;
 - (f) during the Transfield period, there was a lack of recreational facilities and activities at the Centre in the ways pleaded at paragraphs 167 (d) and (e) above;
 - (g) during the G4S period, health and mental health services, facilities and supplies in PNG and at the Centre were inadequate to meet the needs of the Detainee population at the Centre, in the ways pleaded at paragraphs 85(g) and 90 above;
 - (h) during the Transfield period, health and mental health services, facilities and supplies in PNG and at the Centre were inadequate to meet the needs of the Detainee population at the Centre, in the ways pleaded at paragraphs 167(g) and 172 above;
 - (i) during the G4S period, Detainees at the Centre lacked Personal Supplies, in the ways pleaded at paragraphs 85(b) and (bb) above;
 - (j) during the Transfield period, Detainees at the Centre lacked Personal Supplies, in the ways pleaded at paragraphs 167(b) and (bb) above;
 - (k) during the G4S period, the Centre lacked internal and external security, in the ways pleaded at paragraphs 94, 98 and 99 above; and
 - (l) during the Transfield period, the Centre lacked internal security, in the ways pleaded at paragraph 177 above; and
 - (m) during the G4S period and the Transfield period, the complaints systems at the Centre

was ineffective in that:

- (i) Detainees had no or no adequate independent, private process for making a complaint about the conduct of other Detainees;
- (ii) a number of Detainees witnessed Security Staff issuing threats and insults directed at themselves or other Detainees in response to comments, complaints or questions they made;
- (iii) there was no or no adequate formal system for receiving, investigating or assessing complaints;
- (iv) the plaintiff refers to the matters pleaded above in 94(c), 105(dd)-(f), 108(aa) to (d), 177(c) and (e).

185V. The Poor Conditions in the Transfield Period were present at times in the False Imprisonment Period.

Particulars

1. The matters alleged at paragraphs 167(a), (c), (d), (f) and (g) above in relation to accommodation continued from 19 December 2014 throughout the False Imprisonment Period.
2. The matters alleged at paragraphs 163 above in relation to food and water continued from 19 December 2014 throughout the False Imprisonment Period.
3. The matters alleged at paragraphs 167(d) and (e) above in relation to recreation facilities and activities continued from 19 December 2014 throughout the False Imprisonment Period.
4. The matters alleged at paragraphs 167(g) and 172(a), (b)(ii) and (v)-(vii), (c), (d), (g), (h), (i), (j) and (k) above in relation to health and mental health services, facilities and supplies continued from 19 December 2014 throughout the False Imprisonment Period.
5. The matters alleged at paragraphs 172(b)(i), (iii) and (iv) and 172(e) in relation to the Medical Centre continued from 19 December 2014 until around mid-2015 when IHMS moved its operations to a new clinic south of Route Pugwash.
6. The matters alleged at paragraphs 167(b) and (bb) above in relation to personal supplies continued from 19 December 2014 throughout the False Imprisonment Period.
7. The matters alleged at paragraph 177 above in relation to internal security continued from 19 December 2014 throughout the False Imprisonment Period.

8. The matters alleged at 185U(m)(i) to (iv) above in relation to complaints systems continued from 19 December 2014 throughout the False Imprisonment Period.

185W. By reason of the false imprisonment alleged in paragraphs 185P, 185R, 185S, 185T and 185U the plaintiff and the Detainees have suffered loss and damage.

Particulars

The plaintiff and False Imprisonment Group Members suffered a loss of liberty for the period of their Confinement.

The plaintiff and False Imprisonment Group Members suffered distress, discomfort, inconvenience, injury to dignity, physical injury and/or mental injury during the period of their Confinement.

The plaintiff has suffered physical or psychological injuries, and/or has had those conditions exacerbated.

Particulars relating to the loss and damage suffered by other False Imprisonment Group Members will be provided following the trial of common questions or otherwise as the Court may direct.

185X. The plaintiff on his own behalf and on behalf of the False Imprisonment Group Members seeks aggravated damages from the Commonwealth by reason of:

- (a) the matters set out in paragraphs 102 to 103 and 105;
- (b) the fact that the people who were falsely imprisoned:
 - (i) had or were likely to have the Detainee Characteristics;
 - (ii) were in the care and protection of the Commonwealth and G4S; and
 - (iii) were highly vulnerable to conduct by the Commonwealth, further or alternatively G4S; and
- (c) the fact the Commonwealth falsely imprisoned the Detainees in the Poor Conditions; and
- (d) by reason of the matters in (a) to (b), Detainees experienced:
 - (i) fear;
 - (ii) indignity; further or alternatively
 - (iii) humiliation.
- (e) the knowledge of the Commonwealth that the Confinement was unlawful or that there was a risk that it was unlawful.

185Y. The plaintiff on his own behalf and on behalf of the False Imprisonment Group Members seeks exemplary damages by reason of the matters pleaded in 185X and the Commonwealth's conduct in confining the Detainees on Manus Island and not removing them from the Centre or improving the Poor Conditions.

PART M – COMMON QUESTIONS OF LAW OR FACT

186. The questions of law or fact common to the claims of the Plaintiff and each of the Group Members or subgroup members are:
- (a) whether the Manus Detention of the Claimants was detention by or on behalf of the Commonwealth;
 - (b) whether the Manus Detention of the G4S Subgroup was detention by G4S as agent for the Commonwealth;
 - (c) whether the Commonwealth, further or alternatively G4S, owed to the G4S Subgroup the Detention Duty of Care;
 - (d) if the Commonwealth owed the G4S Subgroup the Detention Duty of Care, whether the duty was non-delegable;
 - (e) if the Commonwealth or G4S owed to the G4S Subgroup the Detention Duty of Care:
 - (i) whether the acts and omissions alleged in the Statement of Claim occurred;
 - (ii) whether the acts or omissions constituted breaches of the Detention Duty of Care by the Commonwealth and G4S or either of them, as alleged;
 - (f) whether the Manus Detention of the Transfield Subgroup was detention by Transfield as agent for the Commonwealth;
 - (g) whether the Commonwealth, further or alternatively Transfield, owed to the Transfield Subgroup the Detention Duty of Care;
 - (h) if the Commonwealth owed the Transfield Subgroup the Detention Duty of Care, whether the duty was non-delegable;
 - (i) if the Commonwealth or Transfield owed to the Transfield Subgroup the Detention Duty of Care:
 - (i) whether the acts and omissions alleged in the Statement of Claim occurred;
 - (ii) whether the acts and omissions constituted breaches of the Detention Duty of Care by the Commonwealth or Transfield or either of them, as alleged;
 - (j) whether the Commonwealth, G4S and/or Transfield falsely imprisoned the Detainees; and
 - (k) what are the principles for identifying and measuring compensable injuries or losses suffered by Claimants as a result of breaches of the Detention Duty of Care and for false imprisonment.

AND THE PLAINTIFF CLAIMS on his own behalf and on behalf of the Negligence Group Members:*Against the Commonwealth:*

- A. Declarations that the Commonwealth by conduct alleged in the Statement of Claim has breached and is continuing to breach the Detention Duty of Care owed to Claimants in Manus Detention;
- B. Damages, including aggravated, exemplary, distress and inconvenience damages;
- C. Interest pursuant to statute;
- D. Costs.

Against G4S (on behalf of the Plaintiff and the G4S Subgroup):

- E. Declarations that G4S by conduct alleged in the Statement of Claim has breached the Detention Duty of Care owed to Claimants in Manus Detention during the G4S Period;
- F. Damages, including aggravated, exemplary, distress and inconvenience damages;
- G. Interest pursuant to statute;
- H. Costs.

Against Transfield (on behalf of the Plaintiff and the Transfield Subgroup):

- I. Declarations that Transfield by conduct alleged in the Statement of Claim has breached and is continuing to breach the Detention Duty of Care owed to Claimants in Manus Detention during the Transfield Period;
- J. Damages including distress and inconvenience damages;
- K. Interest pursuant to statute;
- L. Costs.

AND THE PLAINTIFF CLAIMS on his own behalf and on behalf of the False Imprisonment Group Members:*Against the Commonwealth:*

- M. Declarations that the Commonwealth by conduct alleged in the Statement of Claim has falsely imprisoned the Plaintiff and the False Imprisonment Group Members;
- N. Damages, including aggravated, exemplary, distress and inconvenience damages;
- O. Interest pursuant to statute;
- P. Costs.

Against G4S (on behalf of the Plaintiff and the G4S Subgroup):

- Q. Declarations that G4S by conduct alleged in the Statement of Claim has falsely imprisoned the Plaintiff and the False Imprisonment Group Members during the G4S Period;

- R. Damages, including distress and inconvenience damages;
- S. Interest pursuant to statute;
- T. Costs.

Against Transfield (on behalf of the Plaintiff and the Transfield Subgroup):

- U. Declarations that Transfield by conduct alleged in the Statement of Claim has falsely imprisoned the Plaintiff and the False Imprisonment Group Members during the Transfield Period;
- V. Damages, including distress and inconvenience damages;
- W. Interest pursuant to statute;
- X. Costs.

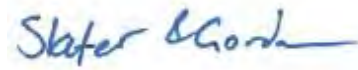
D CURTAIN

G COSTELLO

F FORSYTH

M SZYDZIK

Dated the ~~1st day of August 2016~~ 7th day of April 2017

A handwritten signature in blue ink that reads "Slater & Gordon". The signature is written in a cursive style with a long horizontal flourish at the end.

.....
Slater and Gordon Lawyers
Lawyers for the Plaintiff

1. Place of trial — Melbourne
2. Mode of trial — Judge and jury
3. This writ was filed by — Slater and Gordon Lawyers
on behalf of the Plaintiff
4. The address of the plaintiff is — Melbourne Immigration Transit
Accommodation, Camp Road,
Broadmeadows, Victoria.
5. The address for service of the plaintiff is — C/- Slater and Gordon Lawyers
485 La Trobe Street
MELBOURNE VIC 3000
6. The addresses of the defendants are — First Defendant (Commonwealth)
Attorney General's Department
Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600

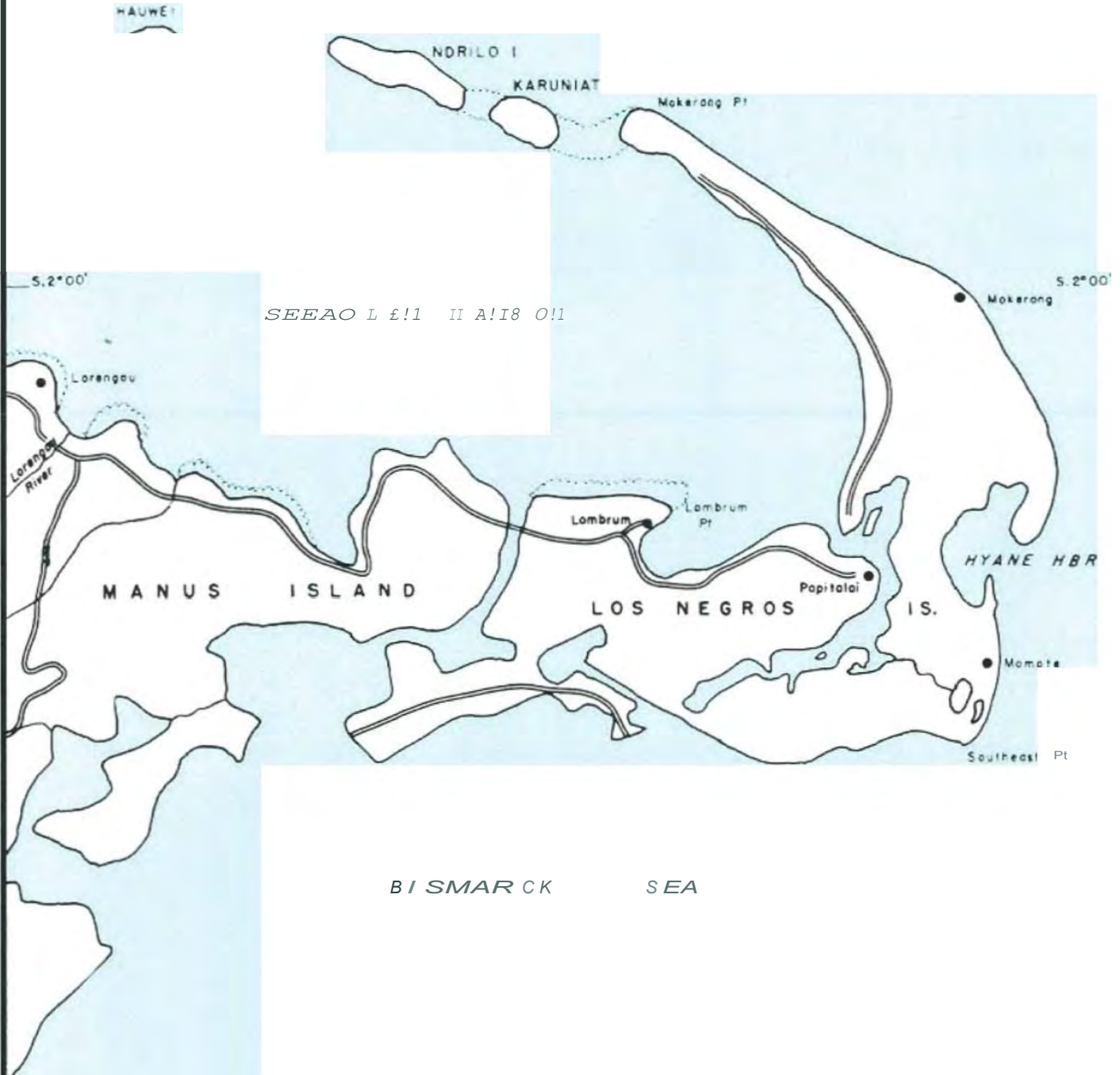
Second Defendant (G4S)
Level 4, 441 St Kilda Road
MELBOURNE VIC 3004

Third Defendant (Transfield)
Level 10, 111 Pacific Highway
NORTH SYDNEY NSW 2060

Annexure A

Map of North-West Papua New Guinea and Manus Island





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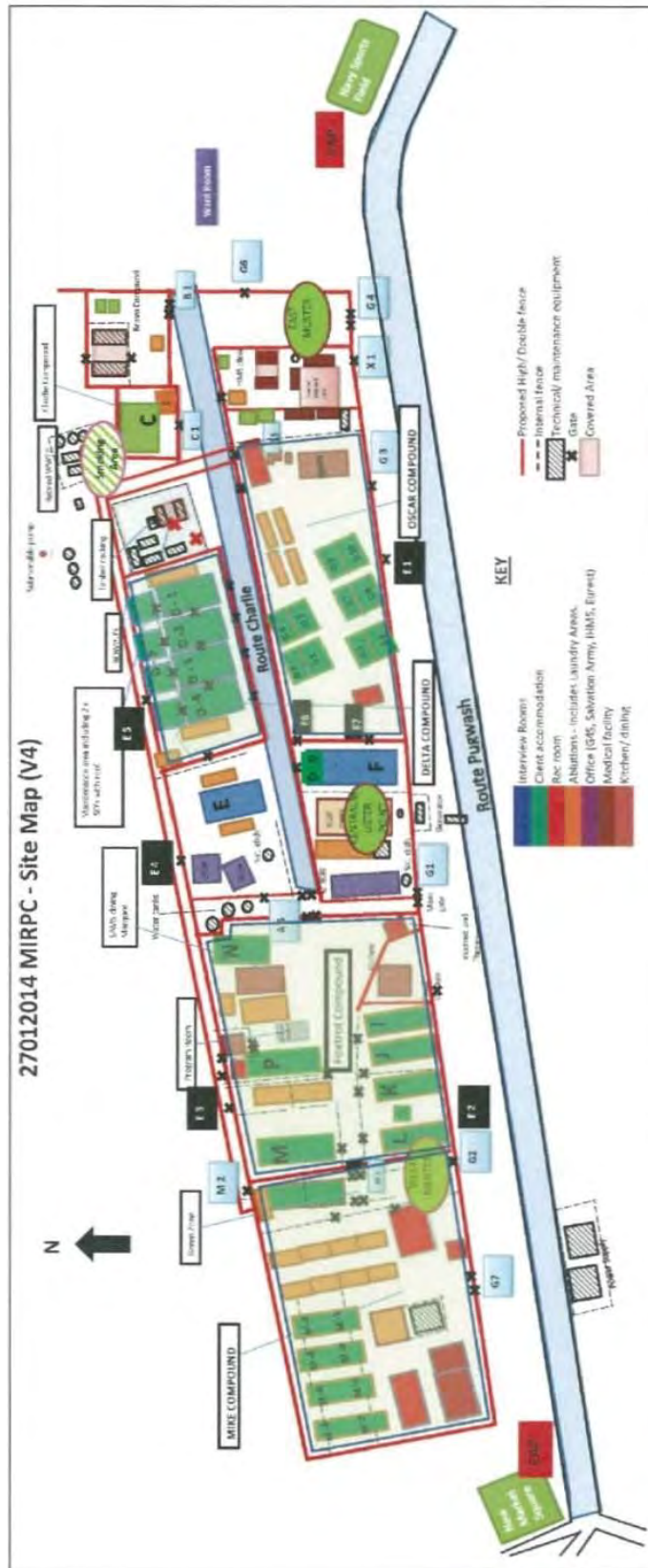
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Annexure B

Aerial Photograph and Schematic Map of Manus Island Regional Processing Centre



Figure 1.1: Manus Island Regional Processing Centre site map



Annexure C

Glossary of Defined Terms

Term	Definition	Paragraph
2012 MOU	<i>“Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer and assessment of persons in Papua New Guinea and related issues”</i> dated about 8 September 2012.	13
2013 MOU	<i>“Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to, and assessment and settlement in, Papua New Guinea of certain persons, and related issues”</i> dated about 6 August 2013.	26
Administrative Arrangements	Administrative arrangements entered into for or in connection with the Centre by the Commonwealth and PNG, on or about 2012 and 2014.	16
Administrator	The person appointed to manage and control the Centre under section 15D of the PNG Migration Act.	18
Amnesty International, December 2013	Report titled <i>“This is Breaking People”</i> authored by Amnesty International, dated December 2013.	9(c)(iii) Particular 1(b)
Amnesty International, May 2014	Report titled, <i>“This is Still Breaking People”</i> authored by Amnesty International and dated May 2014.	85(a)(vii) Particular 12
Asian Development Bank Brief	Brief titled <i>“PNG: Building Solid Physical and Social Infrastructure”</i> , dated September 2010.	61(d)(iv) Particular 2
Assault Trauma Subgroup	The Plaintiff and some of the Group Members who suffered the injuries set out in paragraph 121(a)-(c).	121
Asylum claims	Claims for asylum made under the Convention	55(b)(ii)
Attackers	The lightly-armed group from or mainly comprising of the local population that attacked the Centre on or about 17 February 2014.	99(a)

Australian Coordinator	The Australian official appointed by the Commonwealth to work with the Operational Manager to assist in the management and control of the centre.	19(a)-(b)
Australian Precautions	The standard of care required of the Commonwealth in respect of persons held in immigration detention in Australia.	52
Centre	The detention facility known as the “Manus Island Regional Processing Centre” on Los Negros Island in Manus Island Province in PNG.	5(c)
Centre Security	Security officers from the Centre, being either officers of the Commonwealth, or G4S personnel titled “Security Service Officers”.	73 (b)(ii)
Commonwealth	The first defendant.	2
Commonwealth Minister	The Minister for Immigration and Citizenship (and subsequent titles) for the Commonwealth.	15
Confinement	Restrictions on bodily movements of detainees at the Centre and within the compounds.	185A
Convention	<i>United Nations Convention Relating to the Status of Refugees.</i>	11
Convention Obligations	The obligations described within the Convention of contracting states towards refugees.	12(a)-(f)
Cornall Report	Report to the Secretary, Department of Immigration and Border Protection, titled ‘ <i>Review into the events of 16-18 February 2014 at the Manus Island Regional Processing Centre</i> ’ authored by Robert Cornall AO and dated 23 May 2014	68(ix) Particular 3
CSPs	Contracted service providers.	17(b)
Department	Department of Immigration and Border Protection.	1(d) Particular 4
Designation	Commonwealth Minister’s designation of PNG to be a regional processing country for the purposes of the <i>Migration Act</i> .	15
Detainee Characteristics	The characteristics set out in 55(i) – (vii).	55(b)(vii)

Detainees	Persons taken to the Centre pursuant to the Memoranda of Understanding referred to at paragraphs 13 and 26.	10(c)(i)
Detention Duty of Care	The duty to take reasonable care to avoid foreseeable harm, distress and inconvenience to the Detainees.	49
Detention Facilities	Detention centres in Australia, within the meaning of the <i>Migration Act</i> 1958 (Cth); and facilities outside Australia to which persons detained by or on behalf of the Commonwealth pursuant to the Migration Act were transferred and detained.	3(b)
Detention Harm	Harm, in the nature of physical ill-health and/or mental harm and/or distress and inconvenience.	56
DFAT PNG Country Brief	The 2013 Pacific Regional MDG Tracking Report, Department of Foreign Affairs, PNG Country Brief.	61(f) Particular 2
False Imprisonment Claim Period	21 November 2012 to at least 12 May 2016	5A
False Imprisonment Group Members	Persons confined in the Centre.	5A
G4S	The second defendant.	3
G4S Contract	The agreement dated 1 February 2013 between the Commonwealth (represented by the Department) and G4S.	34
G4S Healthcare Subgroup	The Plaintiff and some of the Group Members who suffered a deterioration in or aggravation of pre-existing physical, psychological or psychiatric conditions, new physical injury or mental harm that was caused by the circumstances outlined in paragraph 119(b)(i)-(iv) during the G4S period.	119
G4S Period	The period from about 10 October 2012 up to and including 23 March 2014	46(b)
G4S Personnel	Officers, employees, agents or professional advisors of G4S.	37(f)
G4S - PNG	G4S Secure Solutions (PNG) Ltd.	3(c)
G4S Subgroup	The plaintiff and Group Members who, on various dates before or during the G4S Period, entered Australia without a valid visa within the meaning of the <i>Migration Act</i> , became	72

upon arrival unlawful non-citizens and unauthorised maritime arrivals within the meaning of the *Migration Act*, and were taken into custody by officers of the Commonwealth pursuant to section 189 of the *Migration Act*.

G4S Subgroup Mental and Physical Harm	Mental harm suffered by Claimants (in relation to the G4S period).	117
ICSA	Immigration and Citizenship Services Authority.	18(c)
IHMS	The contract service provider engaged by the Commonwealth to provide medical treatment and healthcare at the Centre.	88(b)(ii)
JAC	Interim Joint Advisory Committee.	23(a)
Judiciary Act	<i>Judiciary Act 1903</i> (Cth).	2(b)
Local Population	Population of Manus Island.	68(b)
Local Population Characteristics	The characteristics set out in paragraph 68(i)-(ix).	68
Loda	Loda Securities PNG Ltd.	41(a)
Loda Guards	The Manus Province residents recruited by Loda to work as security personnel at the Centre.	41(c)
Loda LOI	Letter of Intent entered into by G4S-PNG with Loda on or about 16 April 2013.	44(a)
Manus Detention	Detention at the Centre.	73(d)
Manus Island	The land-masses of Los Negros Island and Manus Island, in the Manus Island Province of PNG.	10(a)
Medical Aids	Medical aids such as corrective lenses, hearing aids, prostheses, catheters, dentures and medications.	89(b)(i)
Medical Centre	The medical facilities located at the Centre.	90(b)(i)
Migration Act	<i>Migration Act 1958</i> (Cth).	1(h)
Mobile Squad	PNG Mobile Police Squad.	65(b)
Nauru	Nauru Regional Processing Centre.	146

Negligence Claim Period	21 November 2012 to 19 December 2014.	5
Negligence Group Members	All persons who at any time during the Claim period, satisfied the criteria in paragraphs 5(a) to (d) inclusive.	5(a)-(d)
No Advantage Policy	The policy adopted by the Commonwealth in August 2012 known as the 'no advantage' policy.	102
Operation Manager	The PNG Immigration and Citizenship Services Authority (ICSA) Manager to whom the day to day management and control of the Centre was to be delegated by the Administrator.	18(c)
PCC	Provincial Chief Commander.	65(ix)
Personal Supplies	Basic clothing and personal hygiene products.	85(b)
PNG	Papua New Guinea.	3(c)
PNG Migration Act	<i>Migration Act 1978</i> (PNG).	14(g)
Poor Conditions	The conditions of the false imprisonment, including those stated at paragraph 185U	185U
Program Coordinator	Officer appointed by the Commonwealth responsible for managing all Australian officers and service contracts in relation to the Centre	19A
Residence Directions	The direction to persons transferred to PNG under the 2012 MOU and the Administrative Arrangements to reside at the Centre, pursuant to the PNG statutory instrument, "Direction to Reside in Relocation Centre under the <i>Migration Act 1978</i> (PNG)"	25
RSDs	Refugee status determinations.	55(b)(iii)
Sanctuaries	Internal compounds, buildings or areas within the Centre to which Detainees could retreat in the event of a dangerous incursion by unauthorised persons into the Centre.	98(b)
Security Staff	During the G4S Period: G4S personnel (including SSOs), G4S-PNG personnel and Loda guards. During the Transfield Period: Transfield Personnel, Wilson Personnel or other persons engaged or subcontracted by Transfield or Wilson to provide security services at the Centre.	73(d); 133(c)

Services	The services that G4S would provide to the Department at the Centre, as described in Schedule 1 to the G4S Contract	35(a)
SSOs	Security Service Officers.	73(b)(ii)(B)
The Centre	The Manus Island Regional Processing Centre.	5(c)
Transferees	The persons whom the Commonwealth could transfer to PNG for asylum claim processing, as per the terms of the 2012 MOU and 2013 MOU.	14(a); 27(a)
Transfield	The third defendant.	4
Transfield Contract	The agreement dated 24 March 2014 between the Commonwealth and Transfield.	125
Transfield Healthcare Subgroup	The Plaintiff and some of the Group Members who suffered a deterioration in or aggravation of pre-existing physical, psychological or psychiatric conditions, new physical injury or mental harm that was caused by the circumstances outlined in paragraph 183(b)(i)-(iii) during the Transfield period.	183
Transfield Period	All material times since on or about 24 March 2014	130
Transfield Personnel	The officers, employees, agents and professional advisors of Transfield.	126(e)
Transfield Subgroup	The population of Detainees who were in Manus Detention at the Centre during the Transfield Period.	160
Transfield Subgroup Mental and Physical Harm	Mental harm suffered by Claimants (in relation to the Transfield period).	181
UNHCR	United Nations High Commissioner for Refugees.	58(f)(iv) Particular 1(a)
UNHCR, January 2013	The report written by the UNHCR regarding its Monitoring Visit to Manus Island, PNG, dated 15-17 January 2013	58(f)(iv) Particular 1(a)
UNHCR, June 2013	The report written by the UNHCR regarding its Monitoring Visit to Manus Island, PNG, dated 11-13 June 2013	58(f)(iv) Particular 2(e)
UNHCR, October 2013	The UNHCR report into its Monitoring Visit to Manus Island, PNG, dated 23-25 October 2013	58(f)(iv) Particular 2(a)
WHO	World Health Organisation.	68(viii)
Wilson	Wilson Parking Pty Ltd trading as Wilson Security.	132(a)

Wilson Contract	The contract entered into between Transfield and Wilson in or around February 2014.	132(b)
Wilson Personnel	The personnel provided to Transfield by Wilson under the Wilson Contract.	133(a)