

**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 attached Schedule)

Defendants

WRIT



Date of document: 19 December 2014
Filed on behalf of: The Plaintiff
Prepared by: Slater and Gordon Limited
Address: 485 La Trobe Street
Melbourne VIC 3000

Lawyer Code: 339
DX: 229
Tel: (03) 9602 6866
Email: andrew.baker@slatergordon.com.au

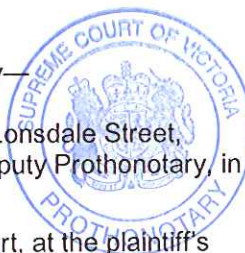
TO THE DEFENDANTS

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearances stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.



IF YOU FAIL to file an appearance within the proper time, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

THE PROPER TIME TO FILE AN APPEARANCE is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in New Zealand or in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in any other place, within 42 days after service.

FILED this 19th day of December 2014



The Plaintiff's claim is attached.

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

SCI 2014

BETWEEN

MAJID KARAMI KAMASAE

Plaintiff

– and –

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

Defendants

STATEMENT OF CLAIM

Date of document:	19 December 2014	
Filed on behalf of:	The Plaintiff	
Prepared by:	Slater and Gordon Lawyers 485 La Trobe Street MELBOURNE VIC 3000	Lawyer code: 339 DX: 229 Tel: (03) 9602 6888 Ref: M342568

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 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.
- (c) arrived in Australia as an unauthorised maritime arrival on or about 19 August 2013 and was immediately taken into custody by the Commonwealth in Darwin.
- (d) was transferred to Manus Island by the Commonwealth by late August 2013, and was detained there for approximately 11 months.
- (e) experienced severe pain and irritation to his skin, as well as other physical and psychological injuries, during his time on Manus Island.

(f) remained until approximately July 2014, when he was transferred to Melbourne for medical treatment.

(g) Is, as at the date of commencement, held in immigration detention in Melbourne, Australia 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**).

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.

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 **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 Papua New Guinea (**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 **Group Members**).

6. As at the date of this pleading there are, as against each of the defendants, more than seven 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 people (60,000); and
 - (ii) a total population on Manus Island of approximately fifty thousand people (50,000);
 - (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;
 - (iii) very frequent torrential rain throughout the year; and
 - (iv) no dry season.

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.

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) has or is intended to have a secure perimeter, being a perimeter:
 - (i) preventing unauthorised egress by persons taken to the Centre pursuant to the Memoranda of Understanding referred to at paragraphs 11 and 19 below (**Detainees**); and
 - (ii) preventing unauthorised ingress by persons who are not Detainees;
 and patrolled or guarded by security personnel engaged by the Commonwealth or, from time to time, G4S or Transfield;
- (d) 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 11 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.

Regulatory arrangements – 2012 MOU

- 11. 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.

12. 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 was to bear all costs incurred under the 2012 MOU: cl.7;
 - (c) 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;
 - (d) the Commonwealth may transfer and PNG would accept Transferees under the 2012: cl.9;
 - (e) administrative measures giving effect to the MOU will be settled between PNG and the Commonwealth: cl.10;
 - (f) 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;
 - (g) 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

- (h) 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 United Nations *Convention Relating to the Status of Refugees* (**Convention**): cl.18(b).
13. On or about 9 October 2012 the Minister for Immigration and Citizenship for the Commonwealth designated PNG to be a regional processing country for the purposes of the *Migration Act*.

Particulars

The designation was effected by legislative instrument IMMI12/115 "*Instrument of Designation of the Independent state of Papua New Guinea as a Regional Processing 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.

Administrative Arrangements

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

Particulars

The Administrative Arrangements 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; p17.

So far as the Plaintiff is able to say prior to discovery, the Administrative Arrangements were in writing and were signed on behalf of the Government of PNG on 23 April 2013 and the Government of Australia on 30 April 2013.

Further particulars will be provided following discovery.

15. There were terms of the Administrative Arrangements, or terms to the effect, that:
- (a) the Centre was to be managed by an "Administrator" (the **Administrator**);
 - (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 contracted service providers (**CSPs**);

- (c) the Administrator was to delegate the day to day management and control of the centre to an Operational Manager;
- (d) the Commonwealth was to appoint an Australian official as a Coordinator (the **Australian Coordinator**);
- (e) the Australian Coordinator was to work with the Operational Manager to assist in the management and control of the centre; and
- (f) 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.

Particulars

1. Select provisions of the Administrative Arrangements are extracted 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; pp 17-18.
 2. As at February 2014, the Administrator was PNG's Chief Migration Officer, Mataio Rabura, the Operational Manager was Jeffrey Kiangali; and the Australian Coordinator was Anthony Kneipp, an officer of the Department.
 3. Full particulars will be provided following discovery.
 4. A copy of the report referred to in these particulars is available for inspection at the Melbourne offices of the solicitors for the Plaintiff.
16. By reason of the terms of the 2012 MOU and the Administrative Arrangements, the Commonwealth had control or substantial control over the management of and operations at the Centre
17. On 27 November 2012, PNG issued a statutory instrument titled "Direction to Reside in Relocation Centre under the Migration Act 1978 (PNG)" pursuant to which persons transferred to PNG under the 2012 MOU and the Administrative Arrangements were directed to reside at the Centre (the **Residence Direction**).

Particulars

The statutory instrument bore number 375/2012 and was published in Papua New Guinea National Gazette No G463, 28 November 2012 at page 1.

18. In the premises in paragraphs 15 to 17 inclusive above, the Commonwealth:

- (a) had practical control over the operations of the Centre; and
- (b) operated the Centre as a closed place of detention.

2013 Regulatory arrangements

2013 MOU

19. 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.

20. 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 will 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.

PART C – G4S PERIOD – DUTY OF CARE

G4S contract

- 21. 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.

- 22. 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.

- 23. 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**);
 - (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.
- 24. 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.

25. 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).

26. 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: cl.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: cl.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: cl.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: cl.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: cl.6.1.1(a);
 - (ii) establish processes to prevent Detainees being subjected to illegal and antisocial behaviour: cl.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: cl.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: cl.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: cl.6.9.1;
 - (ii) processes for managing instances where Detainees are engaged in behaviour that is illegal or antisocial: cl.6.10.1;

- (h) G4S must maintain and operate the Centre as a safe and secure environment for people to live and work in: cl.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: cl.14.1.1, 14.1.2;
- (j) G4S must:
 - (i) provide trained G4S personnel to *inter alia* respond effectively to unforeseen incidents while treating Detainees with dignity and respect: cl.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: cl.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: cl.14.8.1;
 - (iv) communicate site safety and security requirements to all people at the Centre: cl.14.9.1;
 - (v) facilitate controlled and efficient access to the Centre: cl.15.1.1;
 - (vi) develop and implement systems to manage access to controlled areas within the Centre: cl.15.3.1;
 - (vii) maintain operations logs to record *inter alia* a comprehensive and accurate account of all Centre operations: cl.15.4.1;
 - (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: cl.15.10.1;
 - (ix) develop and implement a contingency plan in accordance with cl.1.4.1 of Schedule 1: cl.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: cl.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: cl.16.2; and
- (l) G4S must ensure compliance with all applicable Australian and PNG health and food safety regulations: cl.16.1.1, 16.6.1, 16.7.1.

Detention Duty of Care

27. In the premises set out in paragraphs 11 to 26 inclusive above, at all material times from about 10 October 2012 the Commonwealth:
- (a) was 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) had power under the G4S Contract to direct G4S as to the manner in which G4S provided the Services; and
 - (d) in fact exercised its power to direct G4S as to the manner in which G4S provided the Services by, *inter alia*, notifying G4S of procedures, policies and guidelines to be applied by G4S at the Centre.

28. In the premises set out in the preceding paragraph, at all material times during the G4S Period:
- (a) the Commonwealth had and exercised substantial powers of control over the operations of the Centre, in respect of Detainees; and
 - (b) G4S in providing the Services at the Centre did so as agent for the Commonwealth, in respect of Detainees.
29. Further to the two preceding paragraphs, at all material times during the G4S Period the Commonwealth, by itself and by its agent G4S, had 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) physical security; and
 - (iv) medical treatment and health care
 to Detainees at the Centre.

Particulars

The practical control arose from the facts, matters and circumstances pleaded in paragraphs 11 to 26 inclusive above.

30. In the premises set out in the three preceding paragraphs, 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**).
31. Further, by reason of the matters set out in paragraphs 11 to 26 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 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 11 to 26 inclusive above.

Foreseeable, significant harms – internal detention conditions

32. 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 seeking or were likely to be seeking 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 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

(the **Detainee Characteristics**).

Particulars

1. The Commonwealth's knowledge is to be inferred from:

- 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 opening in 1966 and the latest in 2012; and
 - d. 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. So far as the Plaintiff is able to say prior to discovery, G4S's knowledge is to be implied from, *inter alia*, the information provided to G4S by the Commonwealth in relation to each Detainee prior to that Detainee's transfer from Australia to the Centre.

33. 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 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 reasonable standard, quantity and accessibility, according to the reasonable expectations of the Australian community for persons detained by government authorities (**Australian standards**);
- (ii) shelter and accommodation that was, by Australian standards, reasonably adapted to prevent distressing physical discomfort in the tropical conditions of Manus Island;
- (iii) medical care and health services that were, by Australian standards, reasonably adapted to prevent avoidable deterioration of physical or mental health;
- (iv) reasonable protection, by Australian standards, 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 harm, in the nature of physical ill-health and mental harm, to Detainees.

34. 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 41 (i) to (iv) were taken.

Particulars

1. The Commonwealth's knowledge is to be inferred from
 - 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 opening in 1966 and the latest in 2012; and
 - d. Advice received by or available to it from expert sources such as its own advisory groups/boards, including the Detention Health Advisory Group, IHMS, and independent medical and mental health experts.
2. So far as the Plaintiff is able to say prior to discovery, G4S's knowledge is to be implied from, *inter alia*, the information provided to G4S by the Commonwealth in relation to each Detainee prior to that Detainee's transfer from Australia to the Centre.

35. 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 refugee status determinations (**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 or no persons had been employed to undertake RSDs at the Centre;
- (d) no RSD process had commenced in relation to, at various times, all or nearly all 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:
 - (i) about the RSD process;
 - (ii) about the consequences of receiving a positive or negative RSD;
 - (iii) about the likely timeframes associated with the RSD process; or
 - (iv) about the procedure for, or progress or status of, their asylum claims.

Particulars

1. At all relevant times, there was no clear legislative or regulatory guidance or framework to establish RSD procedures consistent with the Convention or to govern decisions concerning detention. The Plaintiff refers to the 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**) p9, and the report of the UNHCR into its Monitoring Visit to Manus Island, Papua New Guinea, dated 23-25 October 2013 (**UNHCR, October 2013**) pp 8-9.
2. By October 2013, procedural guidelines for the RSD process to be undertaken at the Centre had not been finalised: UNHCR October 2013, pp 8-10.

3. As at January 2013, RSD processes at the Centre had not commenced and relevant processes were still being developed by Australian and PNG officials: UNHCR January 2013, p8.
 4. As at January 2013, there were no experienced officials in the PNG Government who were able to undertake RSDs at the Centre: UNHCR January 2013, p10.
 5. By October 2013, 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.
 6. By October 2013, 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.
 7. By October 2013, 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.
 8. As at January 2013, Detainees were given limited and uncertain information as to how and when RSDs on Manus would commence: UNHCR January 2013, p8.
 9. By October 2013, planned fact sheets containing guidance for Detainees as to RSD processes had 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.
 10. Copies of the UNHCR reports referred to in these particulars are available for inspection at the Melbourne offices of the solicitors for the Plaintiff.
36. 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) remedying the deficiencies identified in paragraphs 35 (a) to (f) above would be highly likely to take a considerable amount of time;
 - (b) undertaking the RSD process for the entire population of Detainees being held at the Centre would be highly likely to take a considerable amount of time;

- (c) it was highly likely that Detainees would remain detained at the Centre for an undetermined but very long time; and
- (d) many Detainees were aware that it was highly likely that they would be required to remain detained at the Centre for an undetermined time; and
- (e) many Detainees were aware that it was highly likely that they would be required to remain detained at the Centre for a very long time.

37. Further, in the premises set out in paragraphs 33 and 34, 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 such harm to Detainees eventuating was significantly increased by the matters set out in paragraph 35.

38. In the premises set out in paragraphs 32 to 33, alternatively 32 to 36 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 standards;
- (ii) shelter and accommodation that was, by Australian standards, reasonably adapted to prevent distressing physical discomfort in the tropical conditions of Manus Island;
- (iii) medical care and health services that were, by Australian standards, reasonably adapted to prevent avoidable deterioration of physical or mental health;
- (iv) reasonable protection, by Australian standards, 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.

39. Further, in the premises set out in paragraphs 32 to 33, alternatively 32 to 36 inclusive, at all material times from not later than 10 October 2012, G4S was required by the Detention Duty of Care to take reasonable care to ensure that Detainees were provided with:

- (a) food and water of a standard, quantity and accessibility in accordance with Australian standards;
- (b) shelter and accommodation that was, by Australian standards, reasonably adapted to prevent distressing physical discomfort in the tropical conditions of Manus Island;
- (c) medical care and health services that were, by Australian standards, reasonably adapted to prevent avoidable deterioration of physical or mental health; and
- (d) reasonable protection, by Australian standards, from:
 - (i) physical violence or intimidation, discrimination, ostracisation, bullying or other anti-social behaviours from other Detainees or from other persons lawfully attending the Centre; or
 - (ii) exposure to violent or other behaviours as described in sub-paragraph i above between other persons.

Foreseeable, significant harms – external security

40. 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. As to paragraphs 45 (i) – (ix), the Plaintiff refers to the:
 - a. 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;
 - 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. report titled 'Human Development Report 2013' published by the United National Development Programme in 2013;
 - d. 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;
 - e. report titled 'Papua New Guinea – District and Provincial Profiles' published by The National Research Institute in March 2010;
 - f. article titled 'Prevalence of and factors associated with non-partner rape perpetration: findings from the UN Multi-country Crosssectional 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;

- g. document titled 'Manus Island: A Living and Working Guide' published by the Department.
- 2. As to paragraph 45 (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 45 (ix), so far as the Plaintiff is able to say prior to discovery, 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. Certain of these intelligence reports are detailed and/or extracted in:
 - a. 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; and
 - b. a report of the Australian Senate Legal and Constitutional Affairs References Committee into the "Incident at the Manus Island Detention Centre from 16 February to 18 February 2014".

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.

41. 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

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

- 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 intelligence 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 had (i) attempted to gain access to the Centre, (ii) had threatened to harm Detainees, (iii) had occupied the road leading to the Centre while lightly 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.

42. 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.

43. In the premises set out in paragraphs 45 to 47 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 D – G4S PERIOD – NEGLIGENCE

G4S Subgroup detained at Centre

44. On various dates before or during the G4S Period the plaintiff and some of the Group Members (together and severally the **G4S Subgroup**):

- (a) arrived in 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 arrived in Australia on or about 19 August 2013 and was immediately taken into custody by the Commonwealth in Darwin. By late August 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.

45. On various dates on or after 21 November 2012 during the G4S Period the Commonwealth, pursuant to the 2012 MOU, the 2013 MOU and the 2012 Administrative Arrangements, caused each of the G4S Subgroup 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 detention at the Centre (**Manus Detention**).

Particulars

The Plaintiff refers to and repeats the particulars to paragraph 44 above.

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

46. In the premises set out in paragraphs 44 to 45 inclusive, at all times whilst in Manus Detention:
- (a) each of the G4S Subgroup was a Detainee as defined herein; and
 - (b) the Manus Detention of each of the G4S Subgroup Claimants was detention:
 - (i) by the Commonwealth; further or alternatively
 - (ii) by G4S as agent for the Commonwealth.
47. 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.

Breach of duty – food and water

48. 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 standards;
- (ii) the delays experienced by Detainees before being able to access potable water were not unreasonable, according to Australian standards;
- (iii) Detainees had reasonable and safe access to edible fruit and sugar, commensurate with Australian standards;
- (iv) the food made available for consumption by Detainees was stored, prepared, handled and served in accordance with Australian standards.

49. By reason of the omissions described in the preceding paragraphs, 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 standards;
- (b) Detainees routinely endured long delays before obtaining potable water;
- (c) Detainees were not permitted to access fruit or sugar; and
- (d) Detainees were not infrequently provided food contaminated by worms, maggots, flies or other insects.

Particulars

As to the allegations in paragraphs 54 (a) and (b):

1. The Plaintiff experienced regular shortages and insufficient supplies of water throughout the Centre.
2. 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. During these periods there would be no running water available at the Centre.
3. The Plaintiff experienced intermittent cut-offs of the Centre's electricity supply, which would occur up to 1-2 times per day, often for 1-2 hours at a time. Whenever this occurred, the Centre's running water supply would also become unavailable or unreliable.
4. 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.
5. The World Health Organisation Domestic Water Quantity, Service, Level and Health Report (2003) recommended a minimum adult water intake in tropical conditions of 4.5 litres per day.
6. Doctors employed by IHMS (as defined in paragraph 56(c)(ii) below) had advised Detainees to drink at least 5 litres of water per day: Amnesty International, December 2013, p42.
7. 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: Report of the Australian Legal and Constitutional Affairs References Committee into the Incident at the Manus Island Detention Centre from 16 February to 18 February 2014, dated 11 December 2014 (**Senate Committee report**), 3.18 (p43).
8. Detainees in Oscar Compound had, as at December 2013, access to less than 500 millilitres per day of potable water each, available in bottled form.
9. 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.

10. The Plaintiff regularly received food of very poor quality at the Centre.

As to the allegations in paragraphs 54 (c) and (d):

11. 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: Senate Committee report, 3.20-21 (p 43).
12. 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.
13. 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.
14. 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.
15. 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.

A copy of the Senate Committee report referred to in these particulars is available for inspection at the Melbourne offices of the solicitors for the Plaintiff.

50. 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 standards.

51. 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.

Shelter and accommodation

52. 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 standards;
- (ii) was ventilated in accordance with Australian standards;
- (iii) had beds and bedding and bathroom facilities in accordance with Australian standards;
- (iv) offered personal space and privacy in accordance with Australian standards;
- (v) offered bathing and hygiene facilities in accordance with Australian standards; and
- (vi) facilitated or permitted healthful physical exercise, in accordance with Australian standards.

53. 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;

- (v) had no beds other than foldable camp beds;
- (vi) had shared or communal bathroom facilities; and
- (vii) offered no means for personal privacy.

Particulars

As to the Plaintiff:

1. Mr Kamasae 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, conditions in the Centre were harsh and the hot and humid weather made the accommodation very uncomfortable for Detainees: UNHCR, January 2013, p 14.
7. As at January 2013, 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.
8. As at June 2013, many of the tents occupied by Detainees were in a poor state and required repair: UNHCR, June 2013, pp 4, p 10-11.

9. As at June 2013, most sleeping quarters for Detainees lacked any privacy, and Detainees were prevented from erecting any ad-hoc privacy screens or barriers: Senate Committee report, 3.11 (p 41).
10. 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: Senate Committee report, 3.13 (p 41).
11. As at October 2013, there were no facilities at the mess hall for Detainees to wash their hands before or after meals: Senate Committee report, 3.16 (p 42).
12. 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.
13. As at November 2013, 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.
14. As at November 2013, 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.
15. As at November 2013, 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.
16. As at November 2013, 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 structures very hot throughout the day. The compound had some air conditioning installed: Amnesty International, December 2013, p 38-40.
17. As at November 2013, Foxtrot compound contained 'P Dorm', which housed up to 112 Detainees in a 40 metre long bunker, with a low corrugated-iron roof. Claimants are allocated a single bunk bed placed not more than 20 centimetres from the next bed. P Dorm has 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 Claimants: Amnesty International, December 2013, p39-40, p 95.

18. 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.
19. 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, including:
 - (i) shoes;
 - (ii) soap;
 - (iii) shampoo; and
 - (iv) safety or other appropriate shaving razors.

Particulars

1. The Plaintiff received minimal supplies of toiletries and clothing at the Centre, and experienced difficulty in obtaining new or additional supplies of such goods.
2. 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.
3. 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.

4. As at June 2013, very limited amounts of soap, shampoo and toilet paper were distributed to Detainees on an as-needed basis: Senate Committee report, 3.17 (p 42).
5. The clothing and personal hygiene items available to Detainees are described in UNHCR January 2013, UNHCR June 2013, UNHCR October 2013, and the Senate Committee report.

- (c) Detainees were forced to use bathing and hygiene facilities that were not in accordance with Australian standards;

Particulars

1. On the occasions when running water would cease 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.
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 for days on end.
4. As at October 2013, 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.
5. 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.
6. As at November 2013, most of the toilet facilities at the Centre did not have hand soap available to be used: Amnesty International, December 2013, p 6.
7. As at November 2013, 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, 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.
3. As at November 2013, 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.

- (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.

54. 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, by Australian standards, reasonably adapted to prevent distressing physical discomfort in the tropical conditions of Manus Island.

55. 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.

Medical treatment and healthcare

56. Throughout the G4S Period:

- (a) 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 confiscated by the Commonwealth or G4S personnel;
- (b) Detainees at the Centre were not authorised to obtain medical treatment or health care save as provided at the Centre;
- (c) 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;
- (d) G4S had the obligations imposed by the G4S Contract to ensure that Detainees had access to appropriate and timely medical treatment.

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.

57. 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 possessed by Detainees on arrival in Australia or at Manus Island were checked, and 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 likely to have the Detainee Characteristics, were a high-risk cohort for physical and psychiatric or psychological conditions requiring medical treatment and health care;
 - (B) that was timely, within Australian standards;
 - (C) that was delivered in facilities compliant with Australian standards;
 - (D) that had expertise in the physical, psychiatric or psychological condition(s) requiring treatment, in accordance with Australian standards;
 - (E) that utilised modern equipment, treatments, procedures and medications, in accordance with Australian standards; and
 - (F) that was private and maintained patient privacy, in accordance with Australian standards.
- (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) 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.

58. By reason of the omissions referred to in the preceding paragraph:

- (a) Detainees, on arrival 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

1. At age 15 in Iran, the Plaintiff suffered serious burns to his face, neck and hands.
2. The Plaintiff had regularly required the use of several medical skin creams to apply to the burns on his face, neck and hands, prior to arriving at the Centre. The cream he required most often was called 'Regiderm'. Prior to his arrival at the Centre, his skin creams were confiscated and were not made available to him 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 advised the Plaintiff that the local climate and weather conditions were damaging to his skin, and at times advised him to apply sunscreen 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. Particulars of 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) were located outside the Centre's main compound;
- (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;

- (vii) for non-emergency services, operated only five days per week, and between 08:00 and 18:00 hours;
- (viii) were staffed by not more than seven permanent employees, being:
 - (A) two doctors;
 - (B) two psychologists;
 - (C) one counselor; and
 - (D) two support staff;
- (ix) were the only authorised first-line source of medical treatment and health care for up to 1,200 Detainees; and
- (x) regularly received over one hundred applications for medical appointments per day;

Particulars

1. 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: Senate Committee report, 3.24 (p 44).
2. 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.
3. 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, and the Senate Committee report at p 54.

(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 standards;
- (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 and specialised to comply with Australian standards;

Particulars

As at October 2013, arriving Detainees were not commonly subject to 'initial transferee interviews': Senate Committee report, 4.33 (p 63).

- (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 up to three days for a medical appointment, regardless of the nature of the condition for which treatment was sought;

Particulars

As to the Plaintiff:

1. The Plaintiff made regular requests for assistance from IHMS, often one or two requests per day, for assistance to relieve his skin condition and to be permitted to see a psychologist.
2. 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.
3. 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.

4. The Plaintiff made regular requests to be given back his confiscated skin creams, or to be provided with a new supply of those creams, however these requests were never actioned.
5. 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 of individual group members will be provided following the trial of common questions or otherwise as the Court may direct.

As to the Claimants:

6. As at January 2013, the turnaround time for detainees for asylum seekers who requested a medical appointment to see a medical practitioner could be up to 72 hours: UNHCR, January 2013, p 19.
7. As at June 2013, 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: Senate Committee report, 3.26 (p 45).
8. As at June 2013, it was not uncommon for Detainees to have to wait up to three days to receive painkillers such as Panadol: Senate Committee report, 3.25 (p 45).

(e) the Medical Centre:

- (i) routinely lacked adequate supplies of common medications;
- (ii) did not provide specialist medical services, such as:
 - (A) obstetric and gynaecological staff;
 - (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;
- (v) had insufficient numbers of qualified trauma and torture counsellors to adequately service the number of Detainees requiring assistance;

Particulars

1. The Plaintiff never received any specialist mental health assessment, care or treatment while detained at the Centre.
 2. 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 was supervised by security staff: Senate Committee report, 3.29 (p 46).
 3. As at October/November 2013, a team from Survivors of Torture and Trauma Rehabilitation and Assistance Service ('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.
 4. 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.
- (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 dental drill or other equipment in accordance with Australian standards;
 - (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; and
 - (iv) undertook more invasive treatments than were consistent with Australian standards;

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) 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

Full particulars will be provided following discovery.

(h) Detainees who required escalation of medical treatment endured:

- (i) lengthy delays; and
 - (ii) inadequate interim care pending presentation to the alternative medical treatment providers.
- (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. Particulars of individual Group Members will be provided following the trial of common questions or otherwise as the Court may direct.

59. 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 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, by Australian standards, reasonably adapted to prevent avoidable deterioration of the physical or mental health of Detainees.

60. 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.

Internal security

61. 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 standards;
- (ii) Centre personnel were adequately trained to manage, in accordance with Australian standards, violent or antisocial behaviour between Detainees;
- (iii) Detainees were not subjected to violent or anti-social behaviour from other Detainees or Centre personnel; and
- (iv) Detainees were not exposed to a well-founded fear of violent or anti-social behaviour from other Detainees or Centre personnel.

62. 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) were not:
 - (i) in accordance with Australian security-industry standards;
 - (ii) in accordance with Australian standards;
 - (iii) submitted by G4S to the Commonwealth for approval; or
 - (iv) reviewed or approved by Commonwealth officers who were appropriately-qualified, according to Australian standards, to approve the training of personnel engaged in security functions at detention or like facilities;

Particulars

1. G4S personnel received no training from the Commonwealth.
2. So far as the Plaintiff is able to say prior to discovery, the G4S personnel selection process had no method for identifying applicants whose personal characteristics were unsuited to work on Manus Island.
3. So far as the Plaintiff is able to say prior to discovery and interrogatories, the G4S training program consisted of six days' training, including an induction to the Centre. 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.
4. The training program was frequently not carried out in full: Senate Committee report, 2.56 (pp 31-32).
5. 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: Senate Committee report, 3.7-3.8 (p 39).
6. In November 2013, Amnesty International reported that staff at the Centre remained unaware of policies and procedures concerning how to respond to allegations or reports of sexual assault: Amnesty International, December 2013, pp 49-50.

(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;

(d) G4S made no or no adequate response to:

- (i) reports of violent or anti-social behaviour by G4S personnel;
- (ii) reports of violent or anti-social behaviour by or between Detainees; or

- (iii) increasing trends in reports in sub-paragraph ii above from about early 2013;
- (e) Detainees were subjected to violent or anti-social behaviour from:
 - (i) G4S personnel; further or alternatively
 - (ii) other Detainees; and
- (f) Detainees from not later than early 2013 were exposed to a well-founded fear of violent or anti-social behaviour from:
 - (i) G4S personnel; 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.

63. 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 standards, from exposure to violent or anti-social behaviour from other Detainees or from G4S personnel.
64. 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.

External (perimeter) security

65. Further 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 standards, to prevent unauthorised incursion by, *inter alia*, members or a group of members of the local population;
- (ii) security personnel at the Centre were selected, trained, qualified and equipped in accordance with Australian standards 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 group 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 ensure that
- (iii) Detainees had reliable and effective access to sanctuary in the event of any dangerous incursion by unauthorised persons into the Centre.

66. 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;

- (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 standards, 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;
- (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 2013 until not earlier than 18 February 2013, Centre staff, and in particular G4S personnel, had not taken any or any adequate steps to respond to 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. So far as the Plaintiff is able to say prior to discovery, the protests and violence at the Centre in early 2014 was accurately predicted in intelligence reports compiled by G4S and reported to the Commonwealth.

2. Those reports noted that Detainees were unhappy with the response received to questions asked by them in relation to asylum claim processing, timeframes for their ongoing detention and Centre facilities.
3. The intelligence reports noted that Detainees were preparing makeshift weapons. G4S incident reports indicated that tensions in the Centre grew significantly in the period on and from 26 January 2014.
4. G4S intelligence reports noted further increases in tensions on and from 5 February 2014 and predicted internal protest activity would occur on 16/17/18 February 2014.
5. G4S prepared a document headed 'Contingency Plan for the Regional Processing Centre Manus Island PNG (v 1.1)'. So far as the Plaintiff is able to say prior to discovery, that plan was in writing and is in the possession of the Commonwealth and G4S, but not the Plaintiff. Further particulars will be provided after discovery.
6. So far as the Plaintiff is able to say prior to discovery and interrogatories, the Contingency Plan provided that, in emergency circumstances, control of the Centre would be handed over to the Manus Island Police. The Manus Island Police were, and are, inadequately trained for such circumstances and unable to protect claimants from injury or harm in the event of an emergency.
7. As at June 2013 a G4S assessment had identified that the external fencing at the Centre was inadequate: Senate Committee report, 3.37 (p 48).
8. By February 2014, no work had been commenced at the Centre to improve the exterior fencing: Senate Committee report, 3.38 (p 48).
9. On 18 October 2013 there was an altercation between PNG Police and PNG military personnel outside the Centre, in view of Detainees at the Foxtrot compound, in which firearms were reported to have been discharged. In the course of the incident, most staff working at the Centre were evacuated; detainees were left with one G4S staff member in the Oscar compound, four G4S staff in Oscar compound and no staff in Delta compound. Detainees expressed fear that they would be left behind alone and unprotected at the Centre, and mistakenly believed that the incident was an attack by members of the local population: Senate Committee report, 3.49 (p52); Amnesty International, December 2013, pp 48-49; UNHCR, October 2013, p 22.
10. 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: Senate Committee report, 3.49-3.50, p 52.

67. Further to the two preceding paragraphs:

- (a) on or about 17 February 2013 the Centre was attacked by a lightly-armed group from or mainly comprising the local population (**attackers**);
- (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 G4S personnel 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 G4S personnel;
 - (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) Detainees were assaulted by the attackers and by G4S personnel; and
 - (vii) 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
 - (viii) Detainees have suffered and continue to suffer 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

As to the allegations contained in paragraphs 72(b)(i), (ii), (iv) and (v):

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 2205 hours that the gates between Mike and Foxtrot had been damaged or taken down and Detainees had free and open access between the two Compounds.
6. 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.
7. At 2320 hours all remaining Centre personnel were evacuated. Control of the Centre was handed to the Manus Island Police Force 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.
8. At 2324 hours the Mobile Squad threw grenades in the Centre.

As to the allegations in paragraph 72(b)(vi):

9. 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.
10. Local PNG residents and some local G4S security personnel entered bedrooms in Mike compounds and dragged Detainees outside where they were beaten.

As to the allegations in paragraphs 72(b)(vi) and (vii):

11. 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; and
 - (k) Haematomas.
12. Eight patients were taken to Port Moresby and one to Australia for medical treatment. Some Detainees later developed post-traumatic stress disorder.
 13. 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.

The Plaintiff:

14. Was present at the Centre during the incursion in mid-February 2014.
15. Was struck in the lower back with a hard object at one point during the night, causing a bruise.
16. Was in the vicinity when Detainees were beaten by attackers in the compounds, and subsequently learned that he was in the vicinity when the Detainee who passed away that evening, Reza Berati, was killed. The Plaintiff learned that Mr Berati had died during the incident the following day. Throughout the night, the Plaintiff could hear the noises being caused by attackers beating Detainees, which was a frightening and traumatic experience.
17. Identified at one point during the night that the local PNG G4S 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. The Plaintiff saw some local G4S staff guarding or shielding locals, and making 'cut-throat' gestures towards groups of Detainees.
18. Found this incident extremely traumatic and disturbing, and worries frequently about being returned to this kind of violence at the Centre. On some days in the Centre following the incident, the Plaintiff collapsed as a consequence of his stress and panic in the heat.

68. 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 Claimants, being Detainees, were provided with reasonable protection, in accordance with Australian standards, from attack by the local population including locally-engaged G4S personnel.

69. 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

70. In August 2012 the Commonwealth adopted a policy known as 'no advantage', 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**).

Particulars

The No Advantage Policy 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 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 Minister for Immigration and Citizenship.

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

71. The No Advantage Policy did not alter or derogate from the Commonwealth's common law duty of care, as described above.
72. The Commonwealth:
- (a) transferred the Detainees to the Centre knowing of the matters pleaded in paragraphs 48 to 69 inclusive above;
 - (b) detained, and, in furtherance of the No Advantage Policy continues to detain, the Detainees at the Centre knowing of the matters set out in paragraphs 48-69 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;
 - (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;
 - (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 those 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, by Australian standards, for the timely, efficient, transparent and expert processing of asylum claims; and
 - (h) failed to take any, or any adequate, steps to address the matters set out in UNHCR January 2013, UNHCR June 2013, and UNHCR October 2013.
73. In the premises, the Commonwealth's conduct was:
- (a) punitive;
 - (b) cruel;
 - (c) highhanded;
 - (d) in contumelious disregard of Australia's obligations under the Convention;

- (e) in contumelious disregard of the rights of the Detainees;
- (f) in contumelious disregard of the Commonwealth's Detention Duty of Care.

74. By reason of the matters in paragraphs 75-79, the Plaintiff and the group members seek exemplary damages.

G4S

75. G4S:

- (a) failed over a prolonged period of time to take any, or any adequate, steps to improve conditions at the Centre;
- (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;
- (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;
- (xiii) participated in groups of PNG locals jeering at or insulting Detainees from outside the Centre when off duty.

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

- (a) cruel;
- (b) highhanded;
- (c) in contumelious disregard of the rights of the Detainees;
- (d) in contumelious disregard of the G4S Duty of Care.

77. By reason of the matters in paragraphs 81 and 82 the Plaintiff and the group members seek exemplary damages.

PART F – G4S PERIOD – CAUSATION

78. Each of the matters of fact alleged in:

- (a) paragraphs 35 and 36, concerning the likely duration of Detainees' detention at the Centre;
- (b) paragraphs 48 to 51 inclusive, regarding the failure to provide food and water of a reasonable standard, quantity and accessibility;

- (c) paragraphs 52 to 55 inclusive, regarding the failure to provide shelter and accommodation that was, by Australian standards, reasonably adapted to prevent distressing physical discomfort in the tropical conditions of Manus Island;
- (d) paragraphs 56 to 60 inclusive, regarding the failure to provide medical care and health services that were, by Australian standards, reasonably adapted to prevent avoidable deterioration of physical or mental health;
- (e) paragraphs 61 to 64 inclusive, regarding the failure to provide Detainees with reasonable protection, to Australian standards, 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 65 to 69 inclusive, regarding the failure to take reasonable steps, to Australian standards, to protect Detainees from attack by member of the local population including locally-engaged G4S personnel;

(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.

79. By reason of:

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

the Claimants and each of them have suffered and continue to suffer mental harm (**G4S Subgroup mental 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.
80. 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 48 to 69 inclusive above.

Medical care subgroup

81. Further to paragraphs 56 to 60 inclusive, by reason of the failures to provide medical care and health services that were, by Australian standards, reasonably adapted to prevent avoidable deterioration of physical or mental health the Plaintiff and some of the Group Members (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 standards;
 - (ii) unreasonable delays before delivery of medical treatment compliant with Australian standards;

- (iii) medical treatment not compliant with Australian standards; or
- (iv) panicked, coerced or necessary recourse to illegal, unauthorised and unqualified medical procedures including (in the case of female Detainees) illegal abortions executed illicitly by PNG nationals.

Particulars of loss and damage

1. The Plaintiff's skin cream was confiscated prior to his arrival at the Centre and was not returned to him. Attempts to manage the Plaintiff's skin irritation using basic, non-medical substances, were ineffective. As a result, the Plaintiff suffered from severe and painful skin irritation in the conditions present at the Centre.
2. The Plaintiff made regular, repeated requests for medical and mental health assistance or intervention. However, these requests were frequently not acted upon.
3. As a consequence of the above matters, the Plaintiff has suffered physical and psychological injuries, and/or has had physical and psychological conditions exacerbated.
4. Full particulars as to the Plaintiff will be provided prior to trial.
5. Particulars of other G4S Healthcare Subgroup members will be provided following the trial of common questions or otherwise as the Court may direct.

82. In the premises set out in the preceding paragraph, 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; further or alternatively
- (b) G4S;

alleged in paragraphs 56 to 60 inclusive above.

Assault-trauma Subgroup

83. Further to paragraphs 65 to 69 inclusive above, by reason of the failures to take reasonable steps, to Australian standards, to protect Detainees from assault during the local population's attack on the Centre on 17 February 2014, the Plaintiff and some of

the Group Members (being together and severally the **Assault-trauma Subgroup**) suffered:

- (a) physical injury and mental harm among Claimants who were assaulted;
- (b) mental harm among Claimants who witnessed the assaults; and
- (c) mental harm among 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 was present during the incursion by armed locals into the Centre on 17 February 2014.
2. The Plaintiff was struck in his lower back with a hard object and experienced panic, fear and confusion throughout the incident.
3. The Plaintiff saw local PNG G4S staff act in a threatening manner towards himself and other Detainees.
4. The Plaintiff was in the vicinity when Detainees were beaten by attackers in the compounds of the Centres, and subsequently learned that he had been in the vicinity of a Detainee who was beaten that evening and passed away shortly afterwards.
5. The Plaintiff could hear the sounds of Detainees being beaten and otherwise expressing their panic and terror, throughout the night.
6. The Plaintiff realised during the night that local G4S staff were protecting or assisting local PNG residents who had broken into the Centre, rather than defending the Detainees. He witnessed some local G4S staff shielding or protecting locals and making threatening gestures towards Detainees.
7. The Plaintiff found the incident extremely traumatic, and continues to experience fear and uncertainty when thinking about the events of 17 February 2014.
8. On some occasions since, when recalling the events of 17 February 2014 the Plaintiff has experienced significant distress and panic. In combination with the heat and other environmental conditions present at the Centre, this has caused the Plaintiff to collapse or pass out.
9. As a consequence of the above, the Plaintiff has suffered physical and psychological injuries, and/or has had physical and psychological conditions exacerbated.
10. Full particulars as to the Plaintiff will be provided prior to trial.

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

84. 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 65 to 69 inclusive above

PART G – TRANSFIELD PERIOD – DUTIES OF CARE

85. At all material times from on or about 6 August 2013:

- (a) the 2013 MOU applied to the relations between the Commonwealth and PNG in respect of the Centre; and
- (b) the 2012 Administrative Arrangements were in force.

G4S Contract terminated

86. In or around March 2014 the G4S Contract was terminated.

87. On or about 23 March 2014 G4S ceased providing the Services or any services to the Commonwealth at the Centre.

Transfield Contract

88. 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

So far as the Plaintiff is able to say prior to discovery, 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".

89. There were further terms of the Transfield Contract that or to the effect that (and in relation to Manus Island):

- (a) its primary objectives 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; and
 - (h) the Schedules to the Transfield Contract form part of the Contract: cl 1.1.2(j).
90. 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.
91. 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 will 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.
92. 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;
 - (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) 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;
 - (viii) 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.
93. 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.

Detention Duty of Care

94. In the premises set out in paragraph 88 to 93 inclusive above, at all material times during the Transfield Period the Commonwealth:

- (a) continued to be authorised by PNG under 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, engaged Transfield to provide to the Commonwealth management and security services at the Centre, being the "Services" as defined in the Transfield Contract;
 - (c) had power under the Transfield Contract to direct Transfield as to the manner in which Transfield provided the Services; and
 - (d) in fact exercised its power to direct Transfield as to the manner in which the Transfield provided the Services by, *inter alia*, notifying Transfield of procedures, policies and guidelines to be applied by Transfield at the Centre.
95. In the premises set out in the preceding paragraph, at all material times from about 24 March 2014
- (a) the Commonwealth continued 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.
96. Further to the two preceding paragraphs, at all material times from 24 March 2014 the Commonwealth, by itself and by its agent Transfield, had 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;
 - (e) medical treatment and health care;
- to Detainees at the Centre.
97. In the premises set out in the three preceding paragraphs, 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.
98. Further, by reason of the matters set out in paragraphs 94 to 96 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 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 98-100 above.

Foreseeable, significant harms – internal detention conditions

99. At all material times during the Transfield Period:

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

knew or ought reasonably to have known the matters set out in paragraphs 32, 35 and 36 regarding the Detainee Characteristics, the risks of harm to Detainees; and precautions to reduce the risks of harm to Detainees

100. At all material times during the Transfield Period the matters set out in paragraphs 35 and 36 were ongoing.

101. Consequently, at all material times during the Transfield Period:

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

knew or ought reasonably to have known

- (i) the matters set out in paragraph 36, concerning the probable duration of Detainee's detention at the Centre, and
- (ii) that consequently, the probability of such harm to Detainees eventuating was significantly increased by those matters.

102. In the premises referred to in the preceding three paragraphs, at all material times during the Transfield Period the Detention Duty of Care:

- (a) continued to require the Commonwealth to:
 - (i) take reasonable care, by its officers, servants and agents now including Transfield; further or alternatively
 - (ii) ensure that reasonable care was taken by Transfield;
 to ensure the matters set out in paragraph 38 (i) to (iv) inclusive above; and
- (b) required Transfield to take reasonable care to ensure the matters set out in paragraph 38 (i) to (iv) inclusive above.

PART H – TRANSFIELD PERIOD – NEGLIGENCE

Claimants remained or arrived at Centre

103. During the Claim Period 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.

104. During the Claim Period on and from 24 March 2014 the:

- (a) Resident Direction remained in force; and
- (b) the Centre continued to be a closed centre.

105. In the premises set out in paragraphs 11-20 and in the preceding paragraph, whilst in Manus Detention during the Transfield Period:

- (a) each of the Claimants referred to in paragraph 103 above (the **Transfield Subgroup**) was a Detainee as defined herein; and
- (b) the Manus Detention of each Claimant was detention:
 - (i) by the Commonwealth; further or alternatively

(ii) by Transfield as agent for the Commonwealth.

106. 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 2013.

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

Food and water

107. Throughout the Transfield Period each of the matters pleaded in paragraphs 48 and 49(a), (b) and (d) was continuing.

108. 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 standards.

Particulars

The Plaintiff refers to and repeats the particulars to paragraph 49 above.

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.

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

109. 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.

Shelter and accommodation

110. Throughout the Transfield Period each of the matters pleaded in paragraphs 52 and 53 were continuing.

111. 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, by Australian standards, 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 53 above.

The Plaintiff continued to be detained in exceedingly hot and humid conditions, and continued to be accommodated in exceedingly hot, stuffy and poorly-ventilated accommodations, which caused significant itching, pain and irritation to his skin condition.

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

112. 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.

Medical treatment and healthcare

113. Throughout the Transfield Period, the matters set out in paragraph 56, 57 and 58 above were continuing.

114. 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 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, by Australian standards, reasonably adapted to prevent avoidable deterioration of the physical or mental health of Claimants.

Particulars

The Plaintiff refers to and repeats the particulars to paragraph 58 above.

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

115. 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.

Internal security

116. Throughout the Transfield Period the matters pleaded in paragraphs 61 and 62 were continuing.

117. 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 G4S; and

(b) G4S failed to take reasonable care;

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

118. 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 J – TRANSFIELD PERIOD – CAUSATION

119. Each of the matters of fact alleged in:

- (a) paragraphs 107 to 109 inclusive regarding the failure to provide food and water of a reasonable standard, quantity and accessibility;
- (b) paragraphs 110 to 112 inclusive regarding the failure to provide shelter and accommodation that was, by Australian standards, reasonably adapted to prevent distressing physical discomfort in the tropical conditions of Manus Island;

- (c) paragraphs 113 to 115 inclusive regarding the failure to provide medical care and health services that were, by Australian standards, reasonably adapted to prevent avoidable deterioration of physical or mental health;
- (d) paragraphs 116 to 118 inclusive regarding the failure to provide Detainees with reasonable protection, to Australian standards, 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;

(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.

120. By reason of:

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

the Claimants and each of them have suffered and continue to suffer mental harm (**Transfield Subgroup mental harm**).

Particulars of loss and damage

The Plaintiff refers to and repeats the particulars to paragraph 83 above.

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

121. 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 107 to 118 inclusive above.

Medical care subgroup

122. Further to paragraphs 113 to 115 inclusive, by reason of the failures to provide medical care and health services that were, by Australian standards, reasonably adapted to prevent avoidable deterioration of physical or mental health the Plaintiff and some of the Group Members (**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 standards;
 - (ii) unreasonable delays before delivery of medical treatment compliant with Australian standards;
 - (iii) medical treatment not compliant with Australian standards; or
 - (iv) panicked, coerced or necessary recourse to illegal, unauthorised and unqualified medical procedures including (in the case of some female Detainees) illegal abortions executed illicitly by PNG nationals.

Particulars of loss and damage

The Plaintiff refers to and repeats the particulars to paragraph 79 above.

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.

123. In the premises set out in the preceding paragraph, 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; further or alternatively
- (b) Transfield;

alleged in paragraphs 113 to 115 inclusive above.

Injuries are continuing

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

SECTION K – COMMON QUESTIONS OF LAW OR FACT

125. 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 breach of the Detention Duty of Care by the Commonwealth or Transfield or either of them, as alleged;
- (j) 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 THE PLAINTIFF CLAIMS on his own behalf and on behalf of the 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 exemplary damages;
- C. Interest pursuant to statute;
- D. Costs.

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

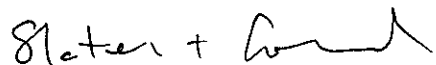
- E. Declarations that G4S by conduct alleged in the Statement of Claim has breached the Detention Duty of Care owed to Claimants in Manus Detention during the G4S Period;
- F. Damages, including exemplary damages;
- G. Interest pursuant to statute;
- H. Costs.

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;
- K. Interest pursuant to statute;
- L. Costs.

Dated the 19th day of December 2014

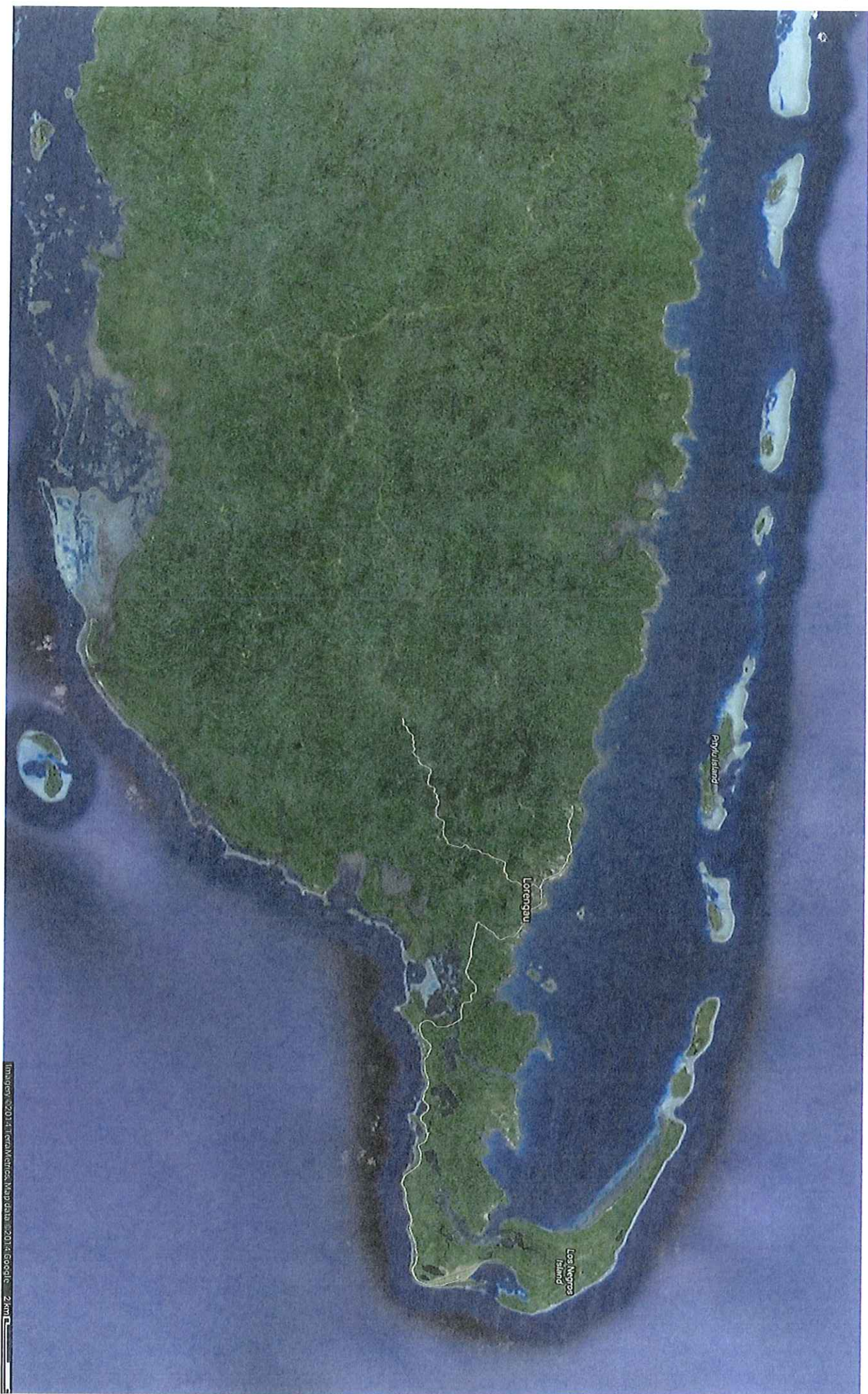

.....
Slater and Gordon Lawyers
Lawyers for the Plaintiff

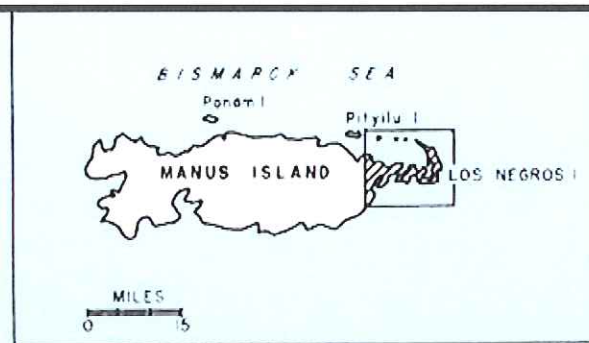
This pleading was prepared by L Armstrong SC, K Burke and S Keating of Counsel, and Andrew Baker of Slater and Gordon Lawyers.

Annexure A

Map of North-West Papua New Guinea and Manus Island







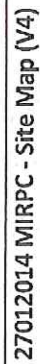
MANUS & LOS NEGROS IS.

(ADMIRALTY ISLANDS)

Annexure B

Aerial Photograph and Schematic Map of Manus Island Regional Processing Centre





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

SCHEDULE OF PARTIES

SCI 2014

MAJID KARAMI KAMASAE

Plaintiff

THE COMMONWEALTH OF AUSTRALIA

First Defendant

G4S AUSTRALIA PTY LTD
ABN 64 100 104 658

Second Defendant

TRANSFIELD SERVICES PTY LTD
ABN 69 000 484 417

Third Defendant

