

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE

No: SCI 2014 06770

COMMON LAW DIVISION

IN THE MATTER OF:

MAJID KARAMI KAMASAE

Plaintiff

and

COMMONWEALTH OF AUSTRALIA

First Defendant

and

G4S AUSTRALIA PTY LTD
ABN 64 100 104 658

Second Defendant

and

TRANSFIELD SERVICES PTY LTD
ABN 69 000 484 417

Third Defendant

DEFENCE TO ~~SECOND~~ THIRD AMENDED STATEMENT OF CLAIM

Date of Document: 19 September 2016

Filed on behalf of: First Defendant

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In response to the ~~Second~~ Third Amended Statement of Claim filed on behalf of the Plaintiff on ~~25 May 2015~~ 1 August 2016,¹ the First Defendant says as follows:

PART A – PARTIES

1. In response to paragraph [1], the First Defendant:

- (a) as to paragraph [1(a)], admits the Plaintiff is a natural person, and otherwise does not admit the allegations therein

¹ All paragraph references in this defence are references to the ~~Second~~ Third Amended Statement of Claim, unless otherwise indicated.

- (b) as to paragraph [1(b)], does not admit the allegations made therein
- (c) as to paragraph [1(c)]:
 - (i) says that the Plaintiff entered Australia on 19 August 2013 as an unauthorised maritime arrival
 - (ii) otherwise does not admit the allegations made therein
- (d) as to paragraph [1(d)], says that:
 - (i) the Plaintiff became an '*unlawful non-citizen*', as that term is defined in s 14 of the *Migration Act 1958* (Cth) (**the Migration Act**), at the time he entered Australia's migration zone
 - (ii) the Plaintiff was an '*unauthorised maritime arrival*', as that term is defined in s 5AA of the Migration Act, at the time he entered Australia
 - (iii) on 19 August 2013, at Darwin, the Plaintiff was taken into '*immigration detention*', as that term is defined in s 5(1) of the Migration Act, by officers of the First Defendant pursuant to s 189(1) of the Migration Act
 - (iv) section 189(1) of the Migration Act required that the Plaintiff be detained by officers of the First Defendant upon his entry into Australia
 - (v) otherwise does not admit the allegations made therein
- (e) as to paragraph [1(e)], denies the allegations made therein, and says further that:
 - (i) on or about 4 September 2013, the Plaintiff was taken to the Independent State of Papua New Guinea (**PNG**) by the First Defendant
 - (ii) the taking of the Plaintiff to PNG was required by or under Australian law

PARTICULARS

On 10 September 2012, the then Minister for Immigration and Citizenship, the Honourable Chris Bowen MP, designated the Republic of Nauru as a '*regional processing country*' under s 198AB(1) of the Migration Act.

On 9 October 2012, the Minister for Immigration and Citizenship, the Honourable Chris Bowen MP, designated PNG as a ‘*regional processing country*’ under s 198AB(1) of the Migration Act.

On 29 July 2013, the then Minister for Immigration, Multicultural Affairs and Citizenship, the Honourable Tony Burke MP, made a direction under s 198AD(5) of the Migration Act (**the s 198AD(5) Direction**).

Section 198AD of the Migration Act required that the Plaintiff, as an ‘*unauthorised maritime arrival*’ held in ‘*immigration detention*’, be taken to a ‘*regional processing country*’. The s 198AD(5) Direction stipulated that the ‘*regional processing country*’ to which the Plaintiff was required to be taken was PNG.

At the time the Plaintiff was taken to PNG, s 198AD of the Migration Act required that any ‘*unauthorised maritime arrival*’ detained under s 189 of the Migration Act be taken to a ‘*regional processing country*’ as soon as reasonably practicable, subject to exceptions that did not apply in respect of the Plaintiff (persons taken to PNG pursuant to the duty in s 198AD of the Migration Act are referred to in this Defence as ‘**transferees**’).²

- (iii) when the Plaintiff was taken to PNG as required by s 198AD of the Migration Act, he ceased to be held in ‘*immigration detention*’, as that term is defined in s 5(1) of the Migration Act
- (iv) the location in PNG to which the Plaintiff would be taken, pursuant to s 198AD of the Migration Act, was determined by the operation of PNG law

PARTICULARS

On 2 September 2012, pursuant to s 15C of the *Migration Act 1978* (PNG) (the **PNG Migration Act**), the PNG Minister for Foreign Affairs and

² The periods of time defined as the ‘Negligence Claim Period’ and ‘False Imprisonment Claim Period’, at paragraphs [5] and [5A] respectively of the ~~Second~~ Third Amended Statement of Claim filed on behalf of the Plaintiff on ~~25 May 2015~~ 1 August 2016, both commenced on 21 November 2012. At that time, the taking obligation in s 198AD of the Migration Act arose in respect of an ‘*offshore entry person*’ detained under s 189 of the Act, as that term was defined in s 5 of the Act at that time. On 1 June 2013, several amendments to the Act came into effect which, *inter alia*, repealed the definition of ‘*offshore entry person*’ in s 5 of the Act, and replaced it with the definition ‘*unauthorised maritime arrival*’. Other provisions of the Act, including s 198AD, were amended accordingly.

Immigration (the **PNG Minister**) directed a class of persons, including the Plaintiff, to temporarily reside at, relevantly, the Manus Regional Processing Centre (**Manus RPC**), for the purposes of the determination of their refugee status under international law (the **First 15C Direction**).

On 27 November 2012, the PNG Minister revoked the First 15C Direction and, pursuant to s 15C of the PNG Migration Act, directed a class of persons including the Plaintiff to temporarily reside at, relevantly, the Manus RPC for the purposes of the determination of their refugee status (the **Second 15C Direction**).

On 14 August 2013, the PNG Minister revoked the Second 15C Direction and, pursuant to s 15C of the PNG Migration Act, directed a class of persons including the Plaintiff to temporarily reside at, relevantly, the Manus RPC, until such time their refugee status is determined under PNG law (the **Third 15C Direction**).

- (v) within PNG, the Plaintiff was taken to the Manus RPC, which is located on the Lombrum Naval Base, Los Negros Island, Manus Province, PNG
 - (vi) on 18 July 2014 the Plaintiff was brought to Australia for the temporary purpose of receiving medical treatment
 - (f) as to paragraph [1(f)], does not admit the allegations made therein
 - (g) as to paragraph [1(g)], refers to and repeats the matters pleaded in paragraph [1(e)(vi)] of this defence, and otherwise does not admit the allegations made therein
 - (h) as to paragraph [1(h)], admits the allegations made therein.
2. The First Defendant admits paragraph [2].
 3. In response to paragraph [3], the First Defendant:

- (a) denies that the Second Defendant provided services to the First Defendant for the management of and maintenance of security at immigration detention facilities in Australia at any time during the claim periods³
 - (b) denies that any persons detained pursuant to the Migration Act were detained by or on behalf of the First Defendant at any facility outside Australia
 - (c) otherwise does not plead to paragraph [3] as it makes no allegation against it.
4. In response to paragraph [4], the First Defendant:
- (a) denies that the Third Defendant provided services to the First Defendant at immigration detention facilities
 - (b) otherwise does not plead to paragraph [4] as it makes no allegation against it.
5. In response to paragraph [5], the First Defendant:
- (a) as to paragraph [5(a)], refers to and repeats the matters pleaded in paragraphs [1(d)(iii)] and [(1)(d)(iv)] of this defence
 - (b) as to paragraph [5(b)], refers to and repeats the matters pleaded in paragraphs [1(e)(i)], [1(e)(ii)] and [1(e)(iii)] of this defence, and otherwise denies the allegations made therein
 - (c) as to paragraph [5(c)], refers to and repeats the matters pleaded in paragraph [1(e)(iv)] of this defence, and otherwise denies the allegations made therein
 - (d) as to paragraph [5(d)], denies the allegations made therein.
- 5A. In response to paragraph [5A], the First Defendant:
- (a) denies that any persons were confined at the Manus RPC by or on behalf of it during the False Imprisonment Claim Period
 - (b) says that any period during which transferees were not permitted to leave the Manus RPC without authorisation from the Administrator of the Manus RPC ended on 27 April 2016
 - (c) otherwise does not plead to paragraph [5A] as it makes no allegation against it.

³ The 'claim period', as used throughout this document, encompasses both the 'Negligence Claim Period' and the 'False Imprisonment Claim Period' as defined in paragraphs [5] and [5A] of the Third Amended Statement of Claim filed on 1 August 2016.

6. The First Defendant does not admit the allegations made in paragraph [6].

PART B – MANUS REGIONAL PROCESSING CENTRE

7. In response to paragraph [7], the First Defendant refers to and repeats the matters pleaded in paragraphs [1(e)(iv)] and [1(e)(v)] of this defence.

8. The First Defendant admits paragraph [8].

9. In response to paragraph [9], the First Defendant:

- (a) as to paragraph [9(a)], admits the allegations made therein
- (b) as to paragraph [9(b)], admits the allegations made therein
- (c) as to paragraph [9(c)], does not admit the allegations made therein.

9A. The First Defendant admits paragraph [9A].

10. In response to paragraph [10], the First Defendant:

- (a) as to paragraph [10(a)], refers to and repeats the matters pleaded in paragraphs [1(e)(iv)] and [1(e)(v)] of this defence, and otherwise denies the allegations made therein
- (b) as to paragraph [10(b)]:
 - (i) says that the Manus RPC was, at all times during the claim periods, surrounded by fences on all sides
 - (ii) says that the characteristics of those fences varied from time to time over the claim periods
 - (iii) otherwise does not admit the allegations made therein.
- (c) as to paragraph [10(c)]:
 - (i) admits that at all material times the Manus RPC had perimeter fencing
~~admits that the Centre is intended to have a secure perimeter, being a perimeter that:~~
 - ~~I. prevents unauthorised egress by persons directed to reside at the Manus RPC pursuant to the s 15C Direction~~
 - ~~II. prevents unauthorised ingress by any persons~~

(ii) admits that throughout the claim period, the security personnel contracted to provide security services at the Manus RPC were contracted by the First Defendant or, from time to time, the Second or Third Defendants

(iii) says further that any restraints on the liberty of the Plaintiff, or any other transferee, at the Manus RPC, were imposed as a necessary effect of PNG law, including the s 15C Direction

(iv) otherwise denies the allegations made therein.

(d) as to paragraph [10(d)]:

(i) admits that throughout the claim periods, the security personnel contracted to provide security services at the Manus RPC were contracted by the First Defendant or, from time to time, the Second or Third Defendants

(ii) says further that any restraints on the liberty of the Plaintiff, or any other transferee, at the Manus RPC, were imposed as a necessary effect of PNG law, including the s 15C Direction

(iii) otherwise denies the allegations made therein.

(e) as to paragraph [10(e)] [10(d)]:

(i) admits that the Manus RPC comprises, inter alia, accommodation facilities being in October 2012 refurbished buildings and canvas tents, and from about November 2012 refurbished buildings plus prefabricated dormitory accommodation progressively replacing canvas tents

(ii) otherwise denies the allegations made therein.

11. In response to paragraph [11], the First Defendant says that the *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) (the **Convention**), was ratified by it on 22 January 1954 and entered into force in Australia on 22 April 1954.

12. In response to paragraph [12], the First Defendant:

(a) as to paragraph [12(a)], admits that article 16 of the Convention includes a statement that a refugee shall have free access to the courts of law on the territory of all contracting states

- (b) as to paragraph [12(b)], admits that article 21 of the Convention includes a statement that contracting states, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances
 - (c) as to paragraph [12(c)], admits that article 23 of the Convention includes a statement that contracting states shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals
 - (d) as to paragraph [12(d)], admits that article 31(1) of the Convention includes a statement that contracting states shall not impose penalties, on account of their illegal entry or presence, on refugees who enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence
 - (e) as to paragraph [12(e)], admits that article 32 of the Convention includes a statement that contracting states shall not expel a refugee lawfully in their territory save on ground of national security or public order and that the expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law
 - (f) as to paragraph [12(f)], admits that article 33(1) of the Convention includes a statement that no contracting state shall expel or return a refugee in any manner to the frontiers of territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion
 - (g) otherwise does not admit the allegations made in paragraph [12]
 - (h) further and alternatively, neither the Convention itself, nor the First Defendant's ratification of the Convention, nor any of the First Defendant's conduct in respect of the Convention, gives rise to a private right on behalf of the Plaintiff.
13. The First Defendant admits paragraph [13].
14. In response to paragraph [14], the First Defendant:

- (a) denies that the 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 of Persons in Papua New Guinea, and Related Issues (the **2012 MoU**) contemplated that the First Defendant would or might process any asylum claims raised by transferees

PARTICULARS

Clause 18(b) of the 2012 MoU.

- (b) says further that the First Defendant neither ever intended to, nor ever did in fact, process any asylum claims of persons transferred to PNG under s 198AD of the Act
- (c) otherwise refers to and relies upon the terms of the 2012 MoU.

15. The First Defendant admits paragraph [15].

15A. In response to paragraph [15A], the First Defendant:

- (a) says that paragraph 31 of the submission dated 9 October 2012 stated:

“You should note that the Government of PNG has indicated that Transferees will not be able to leave the proposed regional processing centre at will. Transferees will not be permitted to leave the processing centre until security and health assessments have been completed, and they are assessed as not presenting a risk to public health and are security cleared. Thereafter, transferees in the process of having their claims to protection assessed, or who have been determined to be a refugee, will be permitted to leave the Centre with an escort for approved activities. The Government of PNG has indicated that Transferees with appropriate skills may be invited to utilise those skills to the benefit of the local community. Details regarding this proposal are still to be worked through.”

- (b) otherwise admits the allegations made therein.

16. The First Defendant admits paragraph [16], and says further that the administrative arrangements entered into by the First Defendant and PNG (**the 2013 Administrative Arrangements**) were superseded by further administrative arrangements entered into

by the First Defendant and PNG on 17 July 2014 (**the 2014 Administrative Arrangements**).

17. In response to paragraph [17], the First Defendant refers to and relies upon the terms of the 2013 Administrative Arrangements and the 2014 Administrative Arrangements, and otherwise denies the allegations made therein.
18. In response to paragraph [18], the First Defendant refers to and relies upon the terms of the 2013 Administrative Arrangements and the 2014 Administrative Arrangements, and otherwise does not admit the allegations made therein.
19. In response to paragraph [19], the First Defendant refers to and relies upon the terms of the 2013 Administrative Arrangements, and otherwise does not admit the allegations made therein.
- 19A. In response to paragraph [19A], the First Defendant refers to and relies upon the terms of the 2014 Administrative Arrangements, and otherwise does not admit the allegations made therein.
20. The First Defendant admits paragraph 20.
21. In response to paragraph [21], the First Defendant refers to and relies upon the terms of the 2013 Administrative Arrangements and the 2014 Administrative Arrangements, and otherwise does not admit the allegations made therein.
22. In response to paragraph [22], the First Defendant refers to and relies upon the terms of the 2013 Administrative Arrangements and the 2014 Administrative Arrangements, and otherwise does not admit the allegations made therein.
23. In response to paragraph [23], the First Defendant refers to and relies upon the terms of the 2013 Administrative Arrangements and the 2014 Administrative Arrangements, and otherwise does not admit the allegations made therein.
- 23A. In response to paragraph [23A], the First Defendant:
 - (a) admits that on 19 July 2013 the First Defendant and PNG signed a Regional Resettlement arrangement
 - (b) refers to and relies upon the terms of the Regional Resettlement Arrangement
 - (c) otherwise denies the allegations made therein.

- 23B. In response to paragraph [23B], the First Defendant admits the allegations made therein and says further that the purpose of the direction is particularised in paragraph [1(e)(iv)] of this defence and in the direction itself.
24. In response to paragraph [24], the First Defendant admits the allegations made therein and says further that the purpose of the direction is particularised in paragraph [1(e)(iv)] of this defence and in the direction itself.
- (a) ~~refers to and repeats the matters pleaded in paragraph [1(e)(iv)] of this defence~~
- (b) ~~otherwise denies the matters set out therein.~~
- 24A. In response to paragraph [24A], the First Defendant admits the allegations made therein and says further that the purpose of the direction is particularised in paragraph [1(e)(iv)] of this defence and in the direction itself.
- ~~25. The First Defendant does not admit the allegations made in paragraph [25].~~ In response to paragraph [25], the First Defendant admits that the transferees residing at the Manus RPC were not permitted to leave without authorisation, but denies that this was a necessary effect of the Residence Directions.
26. The First Defendant admits paragraph [26].
27. In response to paragraph [27], the First Defendant:
- (a) says that cl 6 of the 2013 MoU provides that the Government of Australia will bear all costs incurred under the 2013 MoU
- (b) refers to and relies upon the terms of the 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**)
- (c) otherwise does not admit the allegations made therein.
28. In response to paragraph [28], the First Defendant:
- (a) as to paragraph [28(a)]:
- (i) admits that it funded the capital costs and recurrent operational costs of the Manus RPC pursuant to agreements between the First Defendant and PNG

that were in place from time to time during the claim periods, and assisted and provided support to PNG in the operation of the Manus RPC

- (ii) otherwise denies the allegations made therein
- (b) as to paragraph [28(b)]:
 - (i) admits that it funded the capital costs and recurrent operational costs of the Manus RPC pursuant to agreements between the First Defendant and PNG that were in place from time to time during the claim periods, and assisted and provided support to PNG in the operation of the Manus RPC
 - (ii) otherwise denies the allegations made therein-
- (c) as to paragraph [28(c)], denies the allegations made therein.

29. In response to paragraph [29], the First Defendant denies the allegations made therein, and says further that:

- (a) for the duration of the claim periods, the Manus RPC was declared a ‘*relocation centre*’ by the PNG Minister pursuant to s 15B of the PNG Migration Act

PARTICULARS

On 2 September 2012, the PNG Minister declared the Manus RPC to be a ‘*relocation centre*’ for the temporary residence of asylum seekers pending the determination of their refugee status under international law.

On 27 November 2012, the PNG Minister declared the Manus RPC to be a ‘*relocation centre*’ for the temporary residence of asylum seekers pending the determination of their refugee status.

On 14 August 2013, the PNG Minister declared the Manus RPC to be a ‘*relocation centre*’ for the temporary residence of asylum seekers pending the determination of their refugee status under PNG law, pursuant to s 15B of the PNG Migration Act.

- (b) for the duration of the claim periods, the Manus RPC was under the control and management of the ‘*officer*’, for the purposes of the PNG Migration Act, appointed as the Administrator of the Manus RPC by the PNG Minister pursuant to s 15D of the PNG Migration Act (the **Administrator**)

PARTICULARS

On 2 September 2012, the PNG Minister appointed Mataio Rabura, the Chief Migration Officer, as the Administrator of the Manus RPC, pursuant to s 15D of the PNG Migration Act.

On 14 August 2013, the PNG Minister appointed Mataio Rabura, the Chief Migration Officer, as the Administrator of the Manus RPC, pursuant to s 15D of the PNG Migration Act.

- (c) for the duration of the claim periods, the day to day management and control of the Manus RPC was delegated, by the Administrator, to an Operational Manager who was an officer of the PNG Immigration and Citizenship Service Authority **(PNG ICSA)**.

PARTICULARS

Clause 3.9 of the 2013 Administrative Arrangements.

Clause 5.3.2 of the 2014 Administrative Arrangements.

- (d) for the duration of the claim periods, the Royal Papua New Guinea Constabulary was responsible for the enforcement of the laws of PNG in Manus Province, including at and within the Manus RPC
- (e) for the duration of the claim periods, a special unit of the Royal Papua New Guinea Constabulary (the **Mobile Squad**) was stationed in the vicinity of the Manus RPC. The commanding officer of the Mobile Squad reported directly to his commanding officer in Port Moresby
- (f) the assistance that it provided PNG in relation to the operation of the Manus RPC, as described herein, arose by virtue of government-to-government communications and agreements and did not impinge upon PNG sovereignty, nor control of the Manus RPC by PNG.

29A. In response to paragraph [29A], the First Defendant:

- (a) as to paragraphs [29A(a)] to [29A(e)], admits the allegations made therein, save that the relevant period ended on 27 April 2016

- (b) as to paragraph [29A(f)], refers to and repeats the matters pleaded in paragraph [29B] of this defence.

29B. In response to paragraph [29B], the First Defendant:

- (a) admits that the transferees residing at the Manus RPC were not permitted to leave without authorisation until 27 April 2016
- (b) says that such authorisation was to be provided by the Administrator of the Manus RPC, as appointed by the PNG Minister pursuant to s 15D of the PNG Migration Act
- (c) otherwise denies the allegations made therein.

29C. In response to paragraph [29C], the First Defendant:

- (a) refers to and repeats the matters pleaded in paragraph [29B] of this defence
- (b) otherwise denies the allegations made therein.

PART C – APPLICABLE LAW

30. In response to paragraph [30], the First Defendant:

- (a) says that if:
- (i) the alleged acts and omissions against the Defendants
- (ii) the alleged immediate and substantive effects of the said acts and omissions on the Plaintiff

occurred, which is subject to the admissions and averments in this defence, then they would have occurred in PNG

- (b) otherwise does not admit the allegations contained therein.

31. In response to paragraph [31], the First Defendant says that the substantive elements of the claims of the Plaintiff, and of the persons on whose behalf he brings those claims, should be determined in accordance with the law of PNG.

31A. The First Defendant does not plead to paragraph [31A] as it makes no allegation of fact against it.

32. The First Defendant does not plead to paragraph [32] as it makes no allegation of fact against it. ~~The First Defendant does not admit the allegations made in paragraph [32].~~

PART D – G4S PERIOD – CONTRACT ARRANGEMENTS

33. In response to paragraph [33], the First Defendant:
- (a) admits that by letter of intent dated 12 October 2012, the First Defendant invited the Second Defendant to provide garrison support services at the Manus RPC
 - (b) admits that on or about 12 October 2012, the Second Defendant commenced provision of those services
 - (c) otherwise denies the allegations made therein.
34. In response to paragraph [34], the First Defendant admits that on 1 February 2013, it entered into a contract with G4S in respect of the provision of operational and maintenance services at the Manus RPC (the **G4S Contract**), and otherwise denies the allegations made therein.
35. In response to paragraph [35], the First Defendant:
- (a) refers to and relies upon the G4S Contract
 - (b) otherwise denies the allegations made therein.
36. In response to paragraph [36], the First Defendant says that any services provided by G4S at the Manus RPC during the claim periods were provided pursuant to:
- (a) the letter of intent referred to at paragraph [33(a)] above, from the period 12 October 2012 to 31 January 2013
 - (b) the G4S Contract, from 1 February 2013
 - (c) a deed of variation executed on 2 August 2013
 - (d) a letter of amendment signed on 7 November 2014
- collectively, the **G4S Agreements**.
37. In response to paragraph [37], the First Defendant:
- (a) denies that there were any terms of the G4S Agreements that contemplated the provision of services to a group of people referred to as ‘*detainees*’
 - (b) refers to and relies upon the G4S Agreements

- (c) otherwise denies the allegations made therein.
38. In response to paragraph [38], the First Defendant:
- (a) denies that there were any terms of Schedule 1 to the G4S Contract that contemplated the provision of services to a person, or group of people, referred to as a '*detainee*' or '*detainees*'
 - (b) refers to and relies upon Schedule 1 to the G4S Contract
 - (c) otherwise denies the allegations made therein.
39. In response to paragraph [39], the First Defendant:
- (a) refers to and relies upon the G4S Agreements
 - (b) otherwise denies the allegations made therein.
40. In response to paragraph [40], the First Defendant:
- (a) refers to and relies upon the G4S Agreements
 - (b) otherwise denies the allegations made therein.
41. In response to paragraph [41], the First Defendant:
- (a) admits that on 7 December 2012, the Second Defendant proposed to the First Defendant that Loda Securities PNG Ltd (**Loda**) be approved as a local subcontractor of G4S
 - (b) otherwise does not know and cannot admit the allegations made therein.
42. The First Defendant does not plead to paragraph [42] as it makes no allegation against it.
43. The First Defendant does not admit paragraph [43].
44. The First Defendant does not plead to paragraph [44] as it makes no allegation against it.
45. In response to paragraph [45], the First Defendant:
- (a) does not plead to paragraph [45(a)], as it makes no allegation against it
 - (b) as to paragraph [45(b)]:
 - (i) refers to and relies upon the G4S Agreements

- (ii) refers to and repeats the matters set out in response to paragraph [29]
- (iii) otherwise denies the allegations made therein.

PART E – G4S PERIOD – DUTIES AND STANDARD OF CARE

46. In response to paragraph [46], the First Defendant:

- (a) as to paragraph [46(a)]:
 - (i) refers to and repeats the matters set out in response to paragraph [29]
 - (ii) says further that the 2012 MoU, the 2013 MoU, the 2013 Administrative Arrangements, and the 2014 Administrative Arrangements, did not give rise to any enforceable right, or binding obligation, in respect of either the First Defendant or PNG, or at all
 - (iii) otherwise denies the allegations made therein
- (b) as to paragraph [46(b)]:
 - (i) refers to and repeats the matters set out in response to paragraphs [33], [34] and [36]
 - (ii) admits that the services provided by the Second Defendant at the Manus RPC from 1 February 2013 were the services set out in the G4S Contract
 - (iii) otherwise denies the allegations made therein
- (c) as to paragraph [46(c)]:
 - (i) admits that the G4S Agreements contemplated that G4S may perform some of its obligations under the G4S Agreements with the assistance of subcontractors
 - (ii) otherwise denies the allegations made therein
- (d) as to paragraph [46(d)], denies the allegations made therein
- (e) as to paragraph [46(e)]:
 - (i) says that the Second Defendant's obligations and the First Defendant's rights under the G4S Contract were as set out in the G4S contract, as modified by the G4S Agreements
 - (ii) refers to and repeats the matters set out in response to paragraph [29]

- (iii) otherwise denies the allegations made therein
 - (f) as to paragraph [46(f)]:
 - (i) says that it monitored and managed the performance by G4S of G4S' obligations under the G4S Agreements
 - (ii) otherwise denies the allegations made therein.
47. In response to paragraph [47], the First Defendant:
- (a) denies that any services provided at the Manus RPC by G4S, its agents, or its contractors, pursuant to the G4S Agreements or otherwise, were provided by G4S, its agents, or its contractors, as an agent or agents of the First Defendant
 - (b) refers to and repeats the matters set out in response to paragraph [36]
 - (c) otherwise denies the allegations made against it therein.

PARTICULARS

Clause 17.7 of the G4S Contract.

48. In response to paragraph [48], the First Defendant:
- (a) refers to and repeats the matters set out in response to paragraph [29], [36] and [47]
 - (b) otherwise denies the allegations made therein.
- 48A. In response to paragraph [48A], the First Defendant:
- (a) refers to and repeats the matters set out in response to paragraphs [28], [29], [36] and [47]
 - (b) as to paragraph [48A(d)] also refers to and repeats the matters pleaded in paragraphs [1(e)(iv)] and [29B] of this defence
 - (c) otherwise denies the allegations made therein.
- 48B. In response to paragraph [48B], the First Defendant:
- (a) refers to and repeats the matters set out in response to paragraphs [29], [36] and [47]
 - (b) otherwise denies the allegations made therein.

48C. In response to paragraph [48C], the First Defendant:

- (a) refers to and repeats the matters set out in response to paragraphs [29], [36] and [47]
- (b) otherwise denies the allegations made therein.

48D. The First Defendant does not plead to paragraph [48D] as it makes no allegation against it.

48E. The First Defendant does not plead to paragraph [48E] as it makes no allegation against it.

48F. The First Defendant does not plead to paragraph [48F] as it makes no allegation against it.

49. In response to paragraph [49], the First Defendant denies the allegations made against it therein, and says further:

- (a) that the imposition of a duty of care on the First Defendant in respect of persons lawfully transferred to PNG pursuant to s 198AD of the Migration Act would be incompatible with
 - (i) the statutory duty contained in s 198AD(2) of the Migration Act
 - (ii) the purpose of Subdivision B of Division 8 of Part 2 of the Migration Act
- (b) says that the allegations made therein impermissibly invite the Court to apply the standard of negligence to decisions of high level government policy, which involve or are dictated by economic, social and political factors, including in relation to the First Defendant's relationships with foreign governments, and in respect of which the Court should not impose a duty of care.

50. The First Defendant denies the allegations made in paragraph [50].

51. In response to paragraph [51], the First Defendant:

- (a) ~~denies the allegations made therein~~
- (b) refers to and repeats the matters pleaded in paragraphs [1(e)], [29] and [49(b)] of this defence

- (c) says further that all of the acts done, or omissions made, by the First Defendant in respect of the matters alleged against it in the Second Amended Statement of Claim were actions either:
- (i) required to be taken by the operation of the Migration Act; or
 - (ii) taken in relation to an arrangement with PNG in relation to its regional processing function, pursuant to s 198AHA of the Migration Act

PARTICULARS

The arrangement between the First Defendant and PNG, evidenced by *inter alia* the 2012 MoU and the 2013 MoU, is an ‘arrangement’ of the kind mentioned in s 198AHA(1) of the Migration Act.

alternatively:

- (d) refers to and repeats the matters pleaded in paragraphs [1(e)], [29] and [49(b)] of this defence
 - (e) says further that all of the acts done, or omissions made, by the First Defendant in respect of the matters alleged against it in the ~~Second~~ Third Amended Statement of Claim were actions either:
 - (i) required to be taken by the operation of the Migration Act; or
 - (ii) taken pursuant to the exercise of the executive powers of the First Defendant vested by s 61 of the Constitution
 - (f) otherwise denies the allegations made against it in paragraph [51].
52. The First Defendant denies the allegations made in paragraph [52].
53. In response to paragraph [53], the First Defendant:
- (a) as to paragraph [53(a)], denies the allegations made therein
 - (b) does not plead to paragraphs [53(b)] and [53(c)], as they make no allegation against it.
 - (c) refers to and relies upon the G4S Contract but does not otherwise plead to paragraph [53(d)] as it makes no allegation against it.

54. The First Defendant does not plead to paragraph [54] as it makes no allegation against it.
55. In response to paragraph [55], the First Defendant:⁴
- (i) As to paragraph [55(a)(i)], admits that from 10 October 2012, it knew that an '*unauthorised maritime arrival*' in Australia may have travelled from war zones or other places affected by conflict, violence, discrimination and poverty
 - (ii) As to paragraph [55(a)(ii)], admits that from 10 October 2012, it knew that an '*unauthorised maritime arrival*' in Australia was likely to claim to be a refugee pursuant to the Convention
 - (iii) As to paragraph [55(a)(iii)], denies the allegations made therein
 - (iv) As to paragraph [55(a)(iv)], admits that from 10 October 2012, it knew that an '*unauthorised maritime arrival*' in Australia may claim to have suffered violence, possibly including torture, sexual violence and trauma
 - (v) As to paragraph [55(a)(v)], admits that from 10 October 2012, it knew that an '*unauthorised maritime arrival*' in Australia may possibly have travelled to Australia in circumstances of physical deprivation, further or alternatively danger, and further or alternatively fear
 - (vi) As to paragraph [55(a)(vi)], admits that from 10 October 2012, it knew that an '*unauthorised maritime arrival*' in Australia may possibly have arrived with a pre-existing physical or psychological health condition that may require medical treatment
 - (vii) As to paragraph [55(a)(vii)], admits that from 10 October 2012, it knew that an '*unauthorised maritime arrival*' in Australia may have diverse religious and cultural beliefs, practices and customs

⁴ References in this paragraph of the defence to an '*unauthorised maritime arrival*' are intended to include an '*offshore entry person*', which was the relevant definition for the purposes of s 198AD of the Migration Act prior to 1 June 2013: see fn 2.

(viii) As to paragraph [55(a)(viii)], admits that from 10 October 2012, it knew that an 'unauthorised maritime arrival' in Australia may be a person who engaged in male to male sex

and otherwise denies the allegations made therein.

56. The First Defendant denies the allegations made against it in paragraph [56].
57. The First Defendant denies the allegations made against it in paragraph [57].
58. In response to paragraph [58], the First Defendant:
- (a) admits that, for the duration of the G4S Period, there was no Australian domestic legal or regulatory framework for undertaking a refugee status determination (RSD), within the meaning of the Convention or otherwise, at, or in respect of, any person at the Manus RPC
 - (b) says further that:
 - (i) the consideration by the PNG Minister, pursuant to s 15A of the PNG Migration Act, of whether to determine that a particular transferee is a 'refugee' for the purposes of the PNG Migration Act
 - (ii) any legal or regulatory framework directed at such consideration, including any RSD process required by the Convention

are, and were at all material times, matters entirely within the sole and exclusive control of PNG, as a sovereign state
 - (c) otherwise denies the allegations made therein.
59. The First Defendant denies the allegations made against it in paragraph [59].
60. The First Defendant denies the allegations made against it in paragraph [60].
61. The First Defendant denies the allegations made against it in paragraph [61].
62. The First Defendant denies the allegations made against it in paragraph [62].
63. The First Defendant denies the allegations made against it in paragraph [63].
64. The First Defendant denies the allegations made against it in paragraph [64].
65. The First Defendant denies the allegations made against it in paragraph [65].

66. In response to paragraph [66], the First Defendant denies the allegations made therein, and refers to and repeats the matters set out in response to paragraphs [29], [36], [49] and [50].
67. In response to paragraph [67], The the First Defendant:
- (a) refers to and repeats the matters set out in response to paragraphs [46] to [50], and [55] to [66]
 - (b) otherwise does not plead to paragraph [67] as it makes no allegation against it.
68. The First Defendant denies the allegations made against it in paragraph [68].
69. The First Defendant denies the allegations made against it in paragraph [69].
70. The First Defendant denies the allegations made against it in paragraph [70].
71. In response to paragraph [71], the First Defendant denies the allegations made therein, and refers to and repeats the matters set out in response to paragraphs [29], [36], [49] and [50].

PART F – G4S PERIOD – NEGLIGENCE

72. In response to paragraph [72], the First Defendant:
- (a) admits the allegations in respect of the Plaintiff
 - (b) refers to and repeats the matters pleaded in paragraph [1(d)] of this defence
 - (c) otherwise denies the allegations made therein.
73. In response to paragraph [73], the First Defendant:
- (a) refers to and repeats the matters pleaded in paragraph [1(e)] of this defence, in respect of the Plaintiff
 - (b) says further that none of the 2012 MoU, the 2013 MoU, the 2013 Administrative Arrangements, or the 2014 Administrative Arrangements, gave rise to any enforceable right, or binding obligation, in respect of either the First Defendant or PNG, or at all
 - (c) otherwise denies the allegations made against it therein.
74. In response to paragraph [74], the First Defendant denies the allegations therein, and further refers to and repeats the matters set out in response to paragraphs [10(c)], [29], [36] and [47].

75. In response to paragraph [75], the First Defendant denies the allegations made against it therein, and further refers to and repeats the matters set out in response to paragraphs [36], [49] and [50].
76. In response to paragraph [76], the First Defendant:
- (a) as to paragraph [76(a)], admits the allegations made therein
 - (b) as to paragraph [76(b)], says that no family groups have been accommodated at the Manus RPC since 14 July 2013
 - (c) as to paragraph [76(c)], admits the allegations made therein.
77. In response to paragraph [77], the First Defendant:
- (a) says that on 21 July 2013, the number of single adult male transferees at the Manus RPC was 130
 - (b) says that on 8 September 2013, the number of single adult male transferees at the Manus RPC was 723
 - (c) says that on 16 February 2014, the number of single adult male transferees at the Manus RPC was 1338
- and otherwise denies the allegations made therein.
78. The First Defendant denies the allegations made against it in paragraph [78].
79. The First Defendant denies the allegations made against it in paragraph [79].
80. The First Defendant denies the allegations made against it in paragraph [80].
81. The First Defendant denies the allegations made against it in paragraph [81], and otherwise does not admit the allegations made therein.
82. In response to paragraph [82], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters set out in response to paragraphs [36], [47], [49] and [50].

83. In response to paragraph [83], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters set out in response to paragraphs [36], [49] and [50].
84. The First Defendant denies the allegations made against it in paragraph [84].
85. In response to paragraph [85], the First Defendant:
- (a) denies the allegations made against it in paragraph [85]
 - (b) otherwise does not admit the allegations made therein.
86. In response to paragraph [86], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters set out in response to paragraphs [36], [49] and [50].
87. In response to paragraph [87], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters set out in response to paragraphs [36], [49] and [50].
88. In response to paragraph [88], the First Defendant:
- (a) says that medical care and health services were provided at the Manus RPC by International Health & Medical Services Pty Ltd (**IHMS**) pursuant to:
 - (i) a heads of agreement entered into between the First Defendant and IHMS on 14 September 2012
 - (ii) a contract entered into between the First Defendant and IHMS on 29 January 2013(collectively, the **IHMS Contracts**)
 - (b) says further that the obligations of G4S in respect of medical treatment were set out in the G4S Agreements
 - (c) otherwise denies the allegations made therein.
89. The First Defendant denies the allegations made against it in paragraph [89], and further refers to and repeats the matters set out in response to paragraph [88].
90. In response to paragraph [90], the First Defendant:
- (a) denies the allegations made against it therein
 - (b) further refers to and repeats the matters set out in response to paragraph [88]

- (c) otherwise does not admit the allegations made therein.
91. In response to paragraph [91], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters set out in response to paragraphs [36], [47], [49] and [50].
92. In response to paragraph [92], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters set out in response to paragraphs [36], [49] and [50].
93. The First Defendant denies the allegations made against it in paragraph [93].
94. In response to paragraph [94], the First Defendant:
- (a) denies the allegations made against it in paragraph [94]
 - (b) otherwise does not admit the allegations made therein.
95. In response to paragraph [95], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters set out in response to paragraphs [36], [47], [49] and [50].
96. In response to paragraph [96], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters set out in response to paragraphs [36], [49] and [50].
97. The First Defendant denies the allegations made against it in paragraph [97].
98. In response to paragraph [98], the First Defendant:
- (a) denies the allegations made against it in paragraph [98]
 - (b) otherwise does not admit the allegations made therein.
99. In response to paragraph [99], the First Defendant:
- (a) denies the allegations made against it in paragraph [99(b)]
 - (b) otherwise does not admit the allegations made therein.
100. In response to paragraph [100], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters set out in response to paragraphs [36], [47], [49] and [50].

101. In response to paragraph [101], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters set out in response to paragraphs [36], [49] and [50]
102. In response to paragraph [102], the First Defendant:
- (a) admits that on 13 August 2012, it released the Report of the Expert Panel on Asylum Seekers dated August 2012 (the **Report of the Expert Panel**)
 - (b) admits that the Report of the Expert Panel recommended a range of disincentives to actively discourage irregular and dangerous maritime voyages to Australia for the purposes of bringing unauthorised maritime arrivals to Australia
 - (c) says further that key recommendations of the Report of the Expert Panel, relating to arrangements to allow for regional processing of ‘*unauthorised maritime arrivals*’ to Australia, were implemented by the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012* (Cth), including the insertion of Subdivision B of Division 8 of Part 2 of the Migration Act

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Revised Explanatory Memorandum to the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012.

- (d) otherwise denies the allegations made therein.
103. In response to paragraph [103], the First Defendant:
- (a) admits that on 18 September 2013, the First Defendant commenced to implement a ‘*Regional Deterrence Framework*’ to combat people smuggling and deter illegal maritime arrivals to Australia
 - (b) says further that, to operationalise the ‘*Regional Deterrence Framework*’, it established ‘*Operation Sovereign Borders*’
 - (c) says further that the implementation of ‘*Operation Sovereign Borders*’ included the establishment of a 48-hour target turnaround in respect of ‘*unauthorised maritime arrivals*’ required to be taken to a ‘*regional processing country*’ under s 198AD of the Migration Act, from the time of their detention under s 189 of the Migration Act, subject to operational logistics

- (d) otherwise denies the allegations made therein.
104. In response to paragraph [104], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters set out in response to paragraphs [49] and [50].
105. The First Defendant denies the allegations made against it in paragraph [105].
106. The First Defendant denies the allegations made against it in paragraph [106].
107. In response to paragraph [107], the First Defendant denies that the Plaintiff, on his own behalf or on behalf of the negligence group members, is entitled to aggravated damages.
108. The First Defendant does not plead to paragraph [108] as it makes no allegation against it.
109. The First Defendant does not plead to paragraph [109] as it makes no allegation against it.
110. The First Defendant does not plead to paragraph [110] as it makes no allegation against it.
111. In response to paragraph [111], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters pleaded in paragraphs [1(e)], [29], [49] and [50] of this defence.
112. In response to paragraph [112], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters pleaded in paragraphs [1(e)], [29], [49] and [50] of this defence.
113. In response to paragraph [113], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters pleaded in paragraphs [1(e)], [29], [49] and [50] of this defence.
114. In response to paragraph [114], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters pleaded in paragraphs [1(e)], [29], [49] and [50] of this defence.
115. In response to paragraph [115], the First Defendant denies that the Plaintiff, on his own behalf or on behalf of the G4S Subgroup claimants ~~group members~~, is entitled to aggravated damages.

PART G – G4S PERIOD – CAUSATION

116. In response to paragraph [116], the First Defendant:

- (a) denies the allegations made against it in paragraph [116]
- (b) otherwise does not admit the allegations made therein.

117. In response to paragraph [117], the First Defendant:

- (a) denies the allegations made against it in paragraph [117]
- (b) otherwise does not admit the allegations made therein.

118. The First Defendant denies the allegations made against it in paragraph [118].

119. In response to paragraph [119], the First Defendant:

- (a) denies the allegations made against it in paragraph [119]
- (b) otherwise does not admit the allegations made therein.

120. The First Defendant denies the allegations made against it in paragraph [120].

121. In response to paragraph [121], the First Defendant:

- (a) denies the allegations made against it therein
- (b) further refers to and repeats the matters set out in response to paragraphs [49] and [50]
- (c) otherwise does not admit the allegations made therein.

122. In response to paragraph [122], the First Defendant:

- (a) denies the allegations made against it therein
- (b) further, refers to and repeats the matters set out in response to paragraphs [49] and [50].

PART H – TERMINATION OF G4S CONTRACT

123. In response to paragraph [123], the First Defendant:

- (a) says that the G4S Contract was not renewed after 28 March 2014
- (b) otherwise denies the allegations made therein.

124. The First Defendant admits paragraph 124.

PART I – TRANSFIELD PERIOD – CONTRACT ARRANGEMENTS

125. In response to paragraph [125], the First Defendant admits that on 24 March 2014, it entered into a contract with the Third Defendant for the provision of garrison and welfare services in regional processing countries (the **Transfield Contract**).
126. In response to paragraph [126], the First Defendant:
- (a) denies that there were any terms of the Transfield Contract that contemplated the provision of services to a group of people referred to as ‘*detainees*’
 - (b) refers to and relies upon the Transfield Contract
 - (c) otherwise denies the allegations made therein.
127. In response to paragraph [127], the First Defendant:
- (a) denies that there were any terms of the Transfield Contract that contemplated the provision of services to a group of people referred to as ‘*detainees*’
 - (b) refers to and relies upon the Transfield Contract
 - (c) otherwise denies the allegations made therein.
128. In response to paragraph [128], the First Defendant:
- (a) denies that there were any terms of the Transfield Contract that contemplated the provision of services to a group of people referred to as ‘*detainees*’
 - (b) refers to and relies upon the Transfield Contract
 - (c) otherwise denies the allegations made therein.
129. In response to paragraph [129], the First Defendant:
- (a) denies that there were any terms of the Transfield Contract that contemplated the provision of services to a group of people referred to as ‘*detainees*’
 - (b) refers to and relies upon the Transfield Contract
 - (c) otherwise denies the allegations made therein.
130. In response to paragraph [130], the First Defendant says that any services provided by Transfield at the Manus RPC during the claim periods were provided pursuant to the Transfield Contract.
131. In response to paragraph [131], the First Defendant:

(a) refers to and relies upon the Transfield Contract

(b) otherwise denies the allegations made therein.

132. The First Defendant does not plead to paragraph [132] as it makes no allegation against it.

133. The First Defendant does not plead to paragraph [133] as it makes no allegation against it.

134. The First Defendant does not plead to paragraph [134] as it makes no allegation against it.

135. The First Defendant does not plead to paragraph [135] as it makes no allegation against it.

136. The First Defendant does not plead to paragraph [136] as it makes no allegation against it.

137. In response to paragraph [137], the First Defendant denies the allegations made against it therein, and in particular denies that any act or omission done or not done at the Manus RPC by Transfield, pursuant to the Transfield Contract or otherwise, was done or not done as an agent of the First Defendant.

PARTICULARS

Clause 17.7 of the Transfield Contract.

PART J – TRANSFIELD PERIOD – DUTIES AND STANDARD OF CARE

138. In response to paragraph [138], the First Defendant:

(a) as to paragraph [138(a)]:

(i) refers to and repeats the matters set out in response to paragraph [29]

(ii) says further that the 2012 MoU, the 2013 MoU, the 2013 Administrative Arrangements, and the 2014 Administrative Arrangements, did not give rise to any enforceable right, or binding obligation, in respect of either the First Defendant or PNG, or at all

(iii) otherwise denies the allegations made therein

- (b) as to paragraph [138(b)]:
 - (i) refers to and repeats the matters set out in response to paragraph [130]
 - (ii) otherwise denies the allegations made therein
- (c) as to paragraph [138(c)], denies the allegations made therein
- (d) as to paragraph [138(d)]:
 - (i) refers to and repeats the matters set out in response to paragraph [29]
 - (ii) refers to and relies upon the Transfield contract
 - (iii) otherwise denies the allegations made therein
- (e) as to paragraph [138(e)]:
 - (i) says that it monitored and managed the performance by Transfield of Transfield's obligations under the Transfield Contract
 - (ii) otherwise denies the allegations made therein.

139. In response to paragraph [139], the First Defendant:

- (a) as to paragraph [139(a)], denies the allegations made therein and refers to and repeats the matters set out in response to paragraph [29]
- (b) as to paragraph [139(b)]:
 - (i) denies that any services provided at the Manus RPC by Transfield, pursuant to the Transfield Contract or otherwise, were provided by Transfield as an agent of the First Defendant
 - (ii) refers to and repeats the matters set out in response to paragraph [130]
 - (iii) otherwise denies the allegations made against it therein.

PARTICULARS

Clause 17.7 of the Transfield Contract.

140. In response to paragraph [140], the First Defendant:

- (a) refers to and repeats the matters set out in response to paragraphs [29] and [139(b)]
- (b) otherwise denies the allegations made therein.

140A. In response to paragraph [140A], the First Defendant:

- (a) refers to and repeats the matters set out in response to paragraphs [28], [29], [36] and [47]
- (b) otherwise denies the allegations made therein.

140B. In response to paragraph [140B], the First Defendant:

- (c) refers to and repeats the matters set out in response to paragraphs [29], [36] and [47]
- (d) otherwise denies the allegations made therein.

140C. In response to paragraph [140C], the First Defendant:

- (e) refers to and repeats the matters set out in response to paragraphs [29], [36] and [47]
- (f) otherwise denies the allegations made therein.

140D. The First Defendant does not plead to paragraph [140D] as it makes no allegation against it.

140E. The First Defendant does not plead to paragraph [140E] as it makes no allegation against it.

140F. The First Defendant does not plead to paragraph [140F] as it makes no allegation against it.

141. In response to paragraph [141], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters set out in response to paragraph [49].

142. The First Defendant denies the allegations made against it in paragraph [142], and refers to and repeats that matters set out in response to paragraph [50].

143. In response to paragraph [143], the First Defendant:

- (a) refers to and repeats the matters set out in response to paragraphs [1(e)], [51] [141]
- (b) otherwise denies the allegations made therein.

144. In response to paragraph [144], the First Defendant:

- (a) as to paragraph [144(a)], denies the allegations made against it therein

- (b) does not plead to paragraphs [144(b)] and [144(c)], as they make no allegation against it-
 - (c) refers to and relies upon the Transfield Contract but does not otherwise plead to paragraph [144(d)] as it makes no allegation against it.
145. The First Defendant does not plead to the allegations in paragraph [145] as it makes no allegation against it.
146. In response to paragraph [146], the First Defendant:
- (a) refers to and repeats the matters set out in response to paragraph [55]
 - (b) otherwise denies the allegations made therein.
147. The First Defendant denies the allegations made against it in paragraph [147], and refers to and repeats the matters set out in response to paragraph [130].
148. The First Defendant denies the allegations made against it in paragraph [148], and refers to and repeats the matters set out in response to paragraph [130].
149. In response to paragraph [149], the First Defendant:
- (a) admits that, for the duration of the Transfield Period, there was no Australian domestic legal or regulatory framework for undertaking an RSD, within the meaning of the Convention or otherwise, at, or in respect of, any person at the Manus RPC
 - (b) further refers to and repeats the matters pleaded in paragraph [58(b)] of this defence
 - (c) otherwise denies the allegations made therein.
150. The First Defendant denies the allegations made against it in paragraph [150].
151. In response to paragraph [151], the First Defendant:
- (a) denies the allegations made against it in paragraph [151]
 - (b) refers to and repeats the matters set out in response to paragraph [130].
152. In response to paragraph [152], the First Defendant:
- (a) denies the allegations made against it in paragraph [152]
 - (b) otherwise does not admit the allegations made therein.

153. In response to paragraph [153], the First Defendant:
- (a) denies the allegations made against it in paragraph [153]
 - (b) otherwise does not admit the allegations made therein.
154. The First Defendant denies the allegations made against it in paragraph [154].
155. The First Defendant denies the allegations made against it in paragraph [155], and refers to and repeats the matters set out in response to paragraph [130].
156. The First Defendant denies the allegations made against it in paragraph [156], and further refers to and repeats the matters set out in response to paragraphs [29], [88], [130], [139(b)], [141] and [142].
157. The First Defendant does not plead to paragraph [157] as it makes no allegations against it.

PART K – TRANSFIELD PERIOD – NEGLIGENCE

158. In response to paragraph [158], the First Defendant:
- (a) as to paragraph [158(a)], does not admit the allegations made therein
 - (b) as to paragraph [158(b)]:
 - (i) refers to and repeats the matters pleaded in paragraphs [1(d)], [1(e)] and [10] of this defence
 - (ii) otherwise denies the allegations made therein.
159. In response to paragraph [159], the First Defendant:
- (a) as to paragraph [159(a)], refers to and repeats the matters pleaded in paragraph [1(e)(iv)] of this defence, and otherwise does not admit the allegations made therein
 - (b) does not admit paragraph [159(b)].
160. The First Defendant denies the allegations made against it in paragraph [160], and refers to and repeats the matters set out in response to paragraphs [10], [29] and [139(b)].
161. The First Defendant denies the allegations made against it in paragraph [161], and refers to and repeats the matters set out in response to paragraph [141].

162. The First Defendant denies the allegations made against it in paragraph [162], and refers to and repeats the matters set out in response to paragraphs [29] and [130].
163. In response to paragraph [163], the First Defendant:
- (a) denies the allegations made against it in paragraph [163]
 - (b) refers to and repeats the matters set out in response to paragraph [130]
 - (c) otherwise does not admit the allegations made therein.
164. The First Defendant denies the allegations made against it in paragraph [164], and further refers to and repeats the matters set out in response to paragraphs [130], [141], [142] and [139(b)].
165. The First Defendant denies the allegations made against it in paragraph [165], and further refers to and repeats the matters set out in response to paragraph [161].
166. The First Defendant denies the allegations made against it in paragraph [166], and refers to and repeats the matters set out in response to paragraphs [29] and [130].
167. In response to paragraph [167], the First Defendant:
- (a) denies the allegations made against it in paragraph [167]
 - (b) further refers to and repeats the matters set out in response to paragraphs [29] and [130]
 - (c) otherwise does not admit the allegations made therein.
168. The First Defendant denies the allegations made against it in paragraph [168], and further refers to and repeats the matters set out in response to paragraphs [139(b)], [141] and [142].
169. The First Defendant denies the allegations made against it in paragraph [169], and further refers to and repeats the matters set out in response to paragraph [161].
170. In response to paragraph [170], the First Defendant:
- (a) refers to and repeats the matters set out in response to paragraphs [29] and [88]
 - (b) says further that the obligations of Transfield in respect of medical treatment were set out in the Transfield Contract
 - (c) otherwise denies the allegations made therein.

171. The First Defendant denies the allegations made against it in paragraph [171], and further refers to and repeats the matters set out in response to paragraphs [29] and [88].
172. In response to paragraph [172], the First Defendant:
- (a) Denies the allegations made against it in paragraph [172]
 - (b) refers to and repeats the matters set out in response to paragraphs [29] and [88]
 - (c) otherwise does not admit the allegations made therein.
173. In response to paragraph [173], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters set out in response to paragraphs [88], [130], [139(b)], [141] and [142].
174. The First Defendant does not plead to paragraph [174] as it makes no allegation against it.
175. In response to paragraph [175], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters set out in response to paragraph [161].
176. The First Defendant denies the allegations made against it in paragraph [176], and further refers to and repeats the matters set out in response to paragraphs [29] and [130].
177. In response to paragraph [177], the First Defendant:
- (a) denies the allegations made against it in paragraph [177]
 - (b) further refers to and repeats the matters set out in response to paragraphs [29] and [130]
 - (c) otherwise does not admit the allegations made therein.
178. In response to paragraph [178], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters set out in response to paragraphs [130], [139(b)], [141] and [142].
179. In response to paragraph [179], the First Defendant denies the allegations made against it therein, and refers to and repeats the matters set out in response to paragraph [161].

PART L – TRANSFIELD PERIOD – CAUSATION

180. In response to paragraph [180], the First Defendant:
- (a) denies the allegations made against it in paragraph [180]

- (b) otherwise does not admit the allegations made therein.
181. In response to paragraph [180], the First Defendant:
- (a) denies the allegations made against it in paragraph [181]
- (b) otherwise does not admit the allegations made therein.
182. The First Defendant denies the allegations made against it in paragraph [182], and refers to and repeats the matters set out in response to paragraph [161].
183. In response to paragraph [183], the First Defendant:
- (a) denies the allegations made against it in paragraph [183]
- (b) otherwise does not admit the allegations made therein.
184. The First Defendant denies the allegations made against it in paragraph [184], and refers to and repeats the matters set out in response to paragraph [161].
185. The First Defendant does not admit the allegations made in paragraph [185].

PART LL – FALSE IMPRISONMENT

- 185A. In response to paragraph [185A], the First Defendant:
- (a) refers to and repeats the matters set out in response to paragraphs [29A] to [29C]
- (b) denies that it restricted, or had any control over, the bodily movement of the Plaintiff or of any transferee while they were at the Manus RPC during the False Imprisonment Claim Period
- (c) refers to and repeats the matters pleaded at paragraphs [1], [3], [4] and [5] and says that the Plaintiff and other transferees were lawfully transferred to PNG pursuant to s 198AD of the Migration Act
- (d) says that once within PNG, were then subject to the law of PNG, and came to be, and remained, subject to the control of the Government of PNG (through its officials)
- (e) says that while at the Manus RPC, the Plaintiff and transferees were informed by the Government of PNG (through its officials) that they were subject to the law of PNG, and were to reside at the Manus RPC while their claims to international protection were being assessed, and if they were found to be in need of international protection, while awaiting the outcome of a durable solution

- (f) says that upon arrival at the Manus RPC, and from time to time while at the Manus RPC, all transferees were informed by the Government of PNG that arrangements could be made for their voluntary return to their country of origin or a to a third country to which a transferee had a right of entry and stay
- (g) says that the Government of PNG caused to be removed, with financial assistance from the First Defendant, transferees assessed not to be in need of international protection from PNG to another place, including a transferee's country of origin
- (h) says that the Government of PNG caused to be removed, with assistance from the First Defendant, and consistent with the obligations of the Government of PNG and the assurances under the 2013 MOU not to cause a transferee to be refouled, transferees who have undergone no assessment about need of international protection and who have made a voluntary election to return to their country of origin or to a third country to which the transferee had a right of entry and stay
- (i) says that the Manus RPC could not operate as an open centre without the express authorisation of the Government of PNG
- (j) otherwise denies the allegations made therein.

185B. In response to paragraph [185B], the First Defendant:

- (a) refers to and repeats the matters pleaded at paragraphs [13] to [19], [15A], and [185A]
- (b) otherwise denies the allegations made therein.

185C. In response to paragraph [185C], the First Defendant:

- (a) refers to and repeats the matters pleaded at paragraphs [28], [29], [47], [48A], [48B], [139], [140], [140A] and [140B]
- (b) otherwise denies the allegations made therein.

185D. In response to paragraph [185D], the First Defendant:

- (a) refers to and repeats the matters pleaded at paragraphs [28], [29], [47], [48A], [48B], [139], [140], [140A] and [140B]
- (b) otherwise denies the allegations made therein.

185E. In response to paragraph [185E], the First Defendant:

- (a) refers to and repeats the matters pleaded in response to paragraphs [13] to [29], [48], and [139] to [140] and [185A]
- (b) otherwise denies the allegations made therein.

185F. The First Defendant does not admit, or otherwise does not plead to, the allegations in paragraph [185F] as it makes no allegation against it.

185G. The First Defendant does not admit, or otherwise does not plead to, the allegations in paragraph [185G] as as it makes no allegation against it..

185H. The First Defendant does not admit, or otherwise does not plead to, the allegations in paragraph [185H] as it makes no allegation against it.

185I. The First Defendant does not admit, or otherwise does not plead to, the allegations in [185I] as it makes no allegation against it.

185J. In response to paragraph [185J], the First Defendant:

- (a) refers to and repeats the matters pleaded in paragraph [185A]
- (b) otherwise denies the allegations in so far as they pertain to the First Defendant.

185K. In response to paragraph [185K], the First Defendant refers to and repeats the matters pleaded in paragraph [185A], and otherwise denies the allegations in so far as they pertain to the First Defendant.

185L. In response to paragraph [185L], the First Defendant:

- (a) refers to and repeats the matters set out in paragraphs [45] to [48] and [136] to [139] and [185A]
- (b) otherwise denies the allegations made therein.

185M. In response to paragraph [185M], the First Defendant

- (a) refers to and repeats the matters set out in paragraphs [13] to [29], [46] to [49D], [51], [73], [138] to [140F], [158] to [160], [185A] to [185L]
- (b) otherwise denies the allegations made therein.

185N. The First Defendant does not admit, or otherwise does not plead to, the allegations in paragraph [185N] as it makes no allegation against it.

185O. The First Defendant does not admit, or otherwise does not plead to, the allegations in paragraph [185O] as it makes no allegation against it.

185P. The First Defendant does not plead to paragraph [185P] as it is deleted.

185Q. The First Defendant does not plead to paragraph [185Q] as it is deleted.

185R. In response to paragraphs [185R], the First Defendant:

- (a) refers to and repeats the matters in paragraphs [185A] and [185M]
- (b) otherwise denies the allegations made therein.

185S. The First Defendant does not admit, or otherwise does not plead to, the allegations in paragraph [185S] as it makes no allegation against it.

185T. The First Defendant does not admit, or otherwise does not plead to, the allegations in paragraph [185T] as it makes no allegation against it.

185U. In response to paragraph [185U], the First Defendant:

- (a) refers to and repeats the matters set out in response to paragraphs [81], [85], [90], [94], [98], [99], [105], [108], [163], [167], [172] and [177]
- (b) otherwise does not admit the allegations made therein.

185V. The First Defendant does not admit the allegations made in paragraph [185V].

185W. In response to paragraph [185W], the First Defendant:

- (a) refers to and repeats the matters pleaded in paragraphs [185A], [185M], [185P], [185R], [185S], [185T], [185U] and [185V]
- (b) denies that the Plaintiff or any transferee have suffered any loss or damage
- (c) says that, in the event that the Plaintiff or any transferee was falsely imprisoned by the First Defendant (as alleged, which is denied) says that the Plaintiff or any such transferee would only be entitled to nominal damages.

PARTICULARS

The Plaintiff and other transferees were, or would have been, at all relevant times ‘unlawful non-citizens’ and/or ‘unauthorised maritime arrivals’ within the meaning of the Migration Act.

The Plaintiff or any such transferee would have been subject to lawful transfer to a regional processing country (such as Nauru) and any conditions of detention imposed by that country, and, further and alternatively,

In the event that there was no regional processing country, the Plaintiff or any such transferee would have been subject to immigration detention under Part 2, Div 2 of the Migration Act.

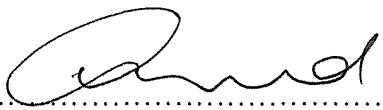
185X. The First Defendant denies that the Plaintiff or any of the False Imprisonment Group Members are entitled to aggravated damages from it.

185Y. The First Defendant denies that the Plaintiff or any of the False Imprisonment Group Members are entitled to exemplary damages from it.

PART M – COMMON QUESTIONS OF LAW OR FACT

186. The First Defendant does not plead to paragraph [186] as it makes no allegation of fact or law.

Dated: 19 September 2016



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Marianne Peterswald
A solicitor employed by
Australian Government Solicitor
Solicitor for the First Defendant