

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

SCI 2014 06770

BETWEEN:

**MAJID KARAMI KAMASAE**

Plaintiff

and

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

**DEFENCE TO THE PLAINTIFF'S THIRD ~~SECOND~~-AMENDED STATEMENT OF CLAIM  
(filed pursuant to order made by McDonald J on 12 September 2016)**

Date of Document:	19 September 2016	Solicitor's Code:	10225910
Filed on behalf of:	The Second Defendant	DX:	163 Melbourne
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In response to the plaintiff's Third ~~Second~~-Amended Statement of Claim filed on behalf of the Plaintiff on 1 August 2016 ~~25 May 2015~~, the second defendant (**G4S**) says as follows:

**PART A – PARTIES**

1. In response to paragraph 1:
  - (a) **G4S** admits that the plaintiff is a natural person;
  - (b) **G4S** admits that the plaintiff arrived at the Manus Island Regional Processing Centre (**Manus Island**) on or about 4 September 2013; and
  - (c) **G4S** otherwise does not admit the remainder of the allegations contained in paragraph 1 thereof as it does not know whether the allegations are true or false
2. **G4S** does not plead to the facts and matters alleged in paragraph 2 thereof as it contains no allegations against it.

3. In response to paragraph 3, **G4S** says:
- (a) as to paragraph 3(a), it admits the allegations therein;
  - (b) as to paragraph 3(b), save that it:
    - (i) provided services to the first defendant (**the Commonwealth**) in respect of certain onshore immigration detention centres in Australia in the period from in or about January 2004 to 2009;
    - (ii) provided operational and maintenance support services (**the G4S Contract Services**) at Manus Island pursuant to a contract and variations thereto (as set out in paragraph 34 hereof) between itself and the **Commonwealth** entitled 'Contract in relation to the provision of services on Manus Island' dated 1 February 2013 (**the G4S Contract**) from on or about 15 October 2012 to 31 March 2014 (**the G4S Contract Period**);
- it otherwise does not admit the allegations therein;
- (c) as to paragraph 3(c), it admits the allegations therein.
4. **G4S** does not plead to paragraph 4 thereof as it contains no allegations against it.
5. In response to paragraph 5, **G4S**:
- (a) denies the allegations in paragraph 5(d) insofar as they relate to **the G4S Contract Period**; and
  - (b) otherwise does not admit the allegations in paragraphs 5.

5A Insofar as there are any allegations made against G4S in paragraph 5A, it denies those allegations.

6. **G4S** does not admit the allegations in paragraph 6.

## **PART B – MANUS ISLAND REGIONAL PROCESSING CENTRE**

7. **G4S** admits the allegations in paragraph 7.
8. **G4S** admits the allegations in paragraph 8.
9. **G4S** admits the allegations made in paragraph 9.

9A G4S does not admit the allegations in paragraphs 9A.

10. In response to paragraph 10, **G4S** says:

- (a) it admits the allegations made in paragraph 10 (a);
- (b) it does not admit the allegations in paragraph 10(b);
- (c) as to paragraph 10(c), it:
  - (i) says that in **the G4S Contract Period**, the Centre Manus Island was intended to have a secure perimeter to prevent ~~which prevented~~ unauthorised egress by Transferees ~~at the Centre~~ and to prevent ~~prevented~~ unauthorised ingress by any person; and
  - (ii) otherwise denies the allegations made therein;
- (d) that its staff employees and subcontractors patrolled the Centre during the **G4S Contract Period** but otherwise does not admit ~~it admits~~ the allegations made in paragraph 10(d); and
- (e) it admits the allegations made in paragraph 10(e).

11. **G4S** does not plead to the facts and matters alleged in paragraph 11 as that paragraph contains no allegations against it.

12. **G4S** does not plead to the facts and matters alleged in paragraph 12 as that paragraph contains no allegations against it.

13. **G4S** does not plead to the facts and matters alleged in paragraph 13 as that paragraph contains no allegations against it.

14. **G4S** does not plead to the facts and matters alleged in paragraph 14 as that paragraph contains no allegations against it.

15. **G4S** does not plead to the facts and matters alleged in paragraph 15 as that paragraph contains no allegations against it.

15A G4S does not plead to the facts and matters alleged in paragraph 15A as that paragraph contains no allegations against it.

16. **G4S** does not plead to the facts and matters alleged in paragraph 16 as that paragraph contains no allegations against it.
17. **G4S** does not plead to the facts and matters alleged in paragraph 17 as that paragraph contains no allegations against it.
18. **G4S** does not plead to the facts and matters alleged in paragraph 18 as that paragraph contains no allegations against it.
19. **G4S** does not plead to the facts and matters alleged in paragraph 19 as that paragraph contains no allegations against it.
- 19A **G4S** does not plead to the facts and matters alleged in paragraph 19A as that paragraph contains no allegations against it
20. **G4S** does not plead to the facts and matters alleged in paragraph 20 as that paragraph contains no allegations against it.
21. **G4S** does not plead to the facts and matters alleged in paragraph 21 as that paragraph contains no allegations against it.
22. **G4S** does not plead to the facts and matters alleged in paragraph 22 as that paragraph contains no allegations against it.
23. **G4S** does not plead to the facts and matters alleged in paragraph 23 as that paragraph contains no allegations against it.
- 23A **G4S** does not plead to the facts and matters alleged in paragraph 23A as that paragraph contains no allegations against it.
- 23B **G4S** does not plead to the facts and matters alleged in paragraph 23B as that paragraph contains no allegations against it.
24. **G4S** does not plead to the facts and matters alleged in paragraph 24 as that paragraph contains no allegations against it.
- 24A **G4S** does not plead to the facts and matters alleged in paragraph 24A as that paragraph contains no allegations against it.
25. G4S admits that the Transferees were not permitted to leave the Centre without the authorisation of the Operational Manager or the Australian Coordinator, but otherwise

~~does not admit the allegations in paragraph 25. **G4S** does not plead to the facts and matters alleged in paragraph 25 as that paragraph contains no allegations against it.~~

26. **G4S** does not plead to the facts and matters alleged in paragraph 26 as that paragraph contains no allegations against it.
27. **G4S** does not plead to the facts and matters alleged in paragraph 27 as that paragraph contains no allegations against it.
28. **G4S** does not plead to the facts and matters alleged in paragraph 28 as that paragraph contains no allegations against it.
29. **G4S** does not plead to the facts and matters alleged in paragraph 29 as that paragraph contains no allegations against it.

29A In response to paragraph 29A:

- (a) insofar as the allegations relate to the **G4S Contract Period GS4** save to say that the front gate of the Centre was manned by G4S staff and the front gates of the compounds were manned by G4S staff and the authorisations alleged therein were provided by the Operational Manager or the Australian Coordinator of the Centre, it otherwise admits the allegations made against it; and
- (b) insofar as the allegations relate to times outside the G4S Contract Period, it does not plead to paragraph 29A as no allegation is made against it.

29B Insofar as the allegation relates to the **G4S Contract Period**, **GS4** refers to and relies on paragraphs 25 and 29A above and otherwise denies paragraph 29B but otherwise does not plead to the paragraph as it makes no allegation against it.

29C G4S denies the allegations in paragraph 29C.

## **PART C- APPLICABLE LAW**

30. In response to paragraph 30, **G4S** says that if:

- (a) the alleged acts and omissions by it; and
- (b) the alleged effects of the alleged acts and omissions by it;

occurred, which is subject to the admissions and averments in this defence, then such matters occurred at Manus Island, PNG.

31. Save that **G4S** says that the substantive law of PNG, including the law as to assessment of damages, is the appropriate law to be applied in determining the plaintiff's claim against it, **G4S** otherwise denies the allegations in paragraph 31 thereof.

31A G4S denies the allegations in paragraph 31A.

32. In response to paragraph 32, **G4S** does not admit the allegations thereof.

#### **PART D - G4S PERIOD - CONTRACT ARRANGEMENTS**

33. In response to paragraph 33, **G4S** says that on about 15 October 2012 **G4S** commenced to provide or subcontract the provision of operational and maintenance support services to the **Commonwealth** at Manus Island pursuant to a letter of intent dated 12 October 2012 and the statement of work attached thereto (**letter of intent**). Save as aforesaid it denies the allegations contained in paragraph 33 thereof.

#### **Particulars**

The **letter of intent** dated 12 October 2012 is in writing as is the request for expression of interest and statement of work published 28 September 2012. The **letter of intent** refers to the Centre on Manus Island, ~~at which transferees would come and go unescorted and engage with local communities~~

34. In response to paragraph 34, **G4S** admits that it entered into the **G4S Contract** by which it agreed to provide or subcontract the provision of the **G4S Contract** operational and maintenance to ~~s~~Services for the **Commonwealth** in relation to transferees at Manus Island, which Contract was varied from time to time by variations that were partly in writing partly oral and partly to be inferred (the **G4S Agreements**). Further **G4S** reserves the right to refer to the full terms and effect of the **G4S Agreements** at trial. Save as aforesaid **G4S** denies the allegations contained in paragraph 34 thereof.

#### **Particulars**

Insofar as the variations to the Contract were in writing those variations are found in:

- (a) Deed of Variation was executed by **G4S** and the **Commonwealth**, which varied the Contract on 2 August 2013; and
- (b) a letter of amendment signed on 7 November ~~2013~~ 2014;

a copy of which documents will be discovered by **G4S**.

Insofar as the variations to the Contract were oral they were such variations being recorded in various emails, which emails will be discovered by **G4S**.

Insofar as the variations to the Contract are to be inferred, such variations were needed to give commercial efficacy to the dealings as between **G4S** and the **Commonwealth**.

35. In response to paragraph 35, **G4S** says that prior to 1 February 2013 G4S had been providing services in good faith under the terms of the **letter of intent** and that from 1 February 2013 there were terms of the G4S Contract that, or to the effect that:

- (a) G4S would provide, or ~~subcontract~~ ~~arrange for~~ the provision of, the **G4S Contract sServices**, being those services identified in Schedule 1 of the Contract (~~the Contract Services~~) to the **G4S Agreements (Sch 1)** for the Department at Manus Island (the **Centre Site**)
- (b) the **G4S Contract Services** were to be provided in accordance with **Schedule 1** as from the date the Transferees first arrived at the **Centre Site**;

and **G4S** otherwise denies the allegations in paragraph 35 hereof.

36. In response to paragraph 36, **G4S** says:

- (a) that the only services it was obliged to provide at the **Centre** were those it agreed to provide for the **Commonwealth** under the terms of the **G4S Agreements**; that the services provided by it at the Site during the claim period were provided pursuant to the G4S Agreements
- (b) insofar as they had not been subcontracted, the **G4S Contract Services** were provided by it at the **Centre** during the **G4S Contract Period** pursuant to the **G4S Agreements**; that with the approval of the **Commonwealth** and pursuant to the **G4S Agreements** it entered into a contract with Eurest (PNG) Catering and Services Limited (**Eurest**) for the provision of services by **Eurest** (the

~~**Eurest Services**) including services relating to the purchase, storage, preparation, provision and disposal of food and water at **the Site** which constituted part of the **Contract Services** (the **Eurest Contract**)~~

- (c) from about 15 October 2012 and for the balance of the **G4S Contract Period**, with the approval of the **Commonwealth** and pursuant to the **G4S Agreements**, it subcontracted the provision of the **G4S Contract Services** (the **Catering and Facilities Maintenance and Management Services Subcontract**) constituted by those services required by Part 3 and Part 6 of **Sch 1 (Catering and Facilities Maintenance and Management Services Contract Services)** to an independent contractor, Eurest (PNG) Catering and Services Limited (**Eurest**); pursuant to the ~~**Eurest Contract**, **Eurest**~~, subject to the matters set out in (d) hereof, provided all services in relating to the purchase, storage, preparation, provision and disposal of food and water at **the Site**;
- (d) during the period referred to in subparagraph (c) above **G4S**: save as provided for in this sub-paragraph **G4S** did not engage in the purchase storage preparation, provision and disposal of food and water at the **Site**, **G4S's** role in relation to food and water was limited to one of procurement in that **G4S**
- (i) received ~~requests~~ orders from **Eurest** for procurement of goods and material in respect of **Eurest's** provision the of the **Catering and Facilities Maintenance and Management Services Contract Services** required by **Eurest**; **Services**
  - (ii) merely sent those ~~orders~~ requests to the **Commonwealth** to be approved;
  - (iii) received such approvals from the **Commonwealth**;
  - (iv) procured the approved goods on behalf of **Eurest** forwarded such approvals from the **Commonwealth** to **Eurest**;
  - (v) issued ~~received~~ invoices to the **Commonwealth** for the procurement of the approved goods from **Eurest** for the purchase of goods and material relating to the provision of the **Eurest Services**;
  - (vi) received invoices from **Eurest** for the provision of the **Catering and Facilities Maintenance and Management Services Contract Services** and forwarded such invoices to the **Commonwealth**;



- (vii) received payment from the **Commonwealth** on such invoices;
  - (viii) merely passed on the payments to **Eurest**;
- (e) from about October 2012 and for the balance of **G4S Contract Period**, with the approval of the **Commonwealth** and pursuant to the **G4S Agreements**, it subcontracted the provision of the **G4S Contract Services (the Cleaning Subcontract Contract)** constituted by those required by “Part 9- Cleaning services” of **Sch 1 (Cleaning Contract Services)** to an independent contractor, **Spic N Span Pty Ltd (Spic N Span)**; that **G4S** did not engage in the provision of maintenance services at the **Site** but, pursuant to the **Eurest Contract, Eurest FM** (trading as **Delta FM**) contracted with **G4S** to be the entity responsible for, and would carry out, maintenance services at the **Site**;
- (i) ~~**Eurest FM** had a maintenance team operating at the Centre who were responsible for carrying out ongoing preventative maintenance and were also in attendance as and when required to fulfil more immediate maintenance requirements at the Centre;~~
  - (ii) ~~key stakeholders (**G4S, the Commonwealth, the Salvation Army**) would submit a maintenance request form to **Eurest FM** for maintenance services required in their respective areas; and~~
  - (iii) ~~**Eurest FM** was responsible for assessing and prioritising maintenance requests and performing the maintenance services required.~~
- (f) during the period referred to in subparagraph (e) above **G4S**:
- (i) received invoices from **Spic N Span** for the provision of the **Cleaning Contract Services** that had been approved by the **Commonwealth** and forwarded such invoices to the **Commonwealth**;
  - (ii) received payment from the **Commonwealth** on such invoices;
  - (iii) merely passed on the payments to **Spic N Span**.

that **G4S** did not engage in the cleaning of the **Site** but, pursuant to the **G4S Agreements** entered into a contract with **Spic N Span Pty Ltd (Spic N Span)** for the provision of services by **Spic N Span (Spic N Span Services)** relating to

cleaning at ~~the Site~~ which constituted part of the ~~Contract Services (the Spic N Span Contract)~~.

- (g) the Transferee Welfare Support Service Provider was not G4S but was The Salvation Army, who was the lead service provider at the Centre and who provided the Services set out in schedule 1 (Transferee Welfare Support Services) of its contract with the Commonwealth (Welfare Support Services Contract) since in or about August 2012, which services included:
- (i) the placement, location of and the provision of shelter and accommodation to Transferees;
  - (ii) the development and management of programs and activities for Transferees, including activities that enhance the ongoing emotional and mental health of Transferees;
  - (iii) the development, implementation of and management of a complaints handling process for Transferees; and
  - (iv) the provision of amenities to Transferees;
  - (v) in conjunction with the Health Service Provider, the facilitation of a health assessment for each Transferee upon their arrival at the Centre.
- (h) the Health Service Provider was not G4S but was International Health and Medical Services (IHMS), who provided the "Health Services" as defined in its contract with the Commonwealth (Transferee Health Services) since in or about August 2012;
- (i) the design and construction of Centre's infrastructure, including its buildings, facilities and fencing, was not provided by G4S but was provided by the Commonwealth (Infrastructure Services);
  - (j) otherwise denies paragraph 36.

#### Particulars

~~The Eurorest Contract and the Spic N Span Contract will be discovered by the G4S.~~

37. In response to paragraph 37, G4S:

- (a) denies that there were any terms of the Contract or **G4S Agreements** that contemplated the provision of services to a group of people referred to as '*detainees*',
  - (b) refers to and relies upon the terms of the Contract or **G4S Agreements**; and
  - (c) otherwise denies the allegations made therein.
38. In response to paragraph 38 **G4S**:
- (a) denies that there were terms of Schedule 1 to the Contract that contemplated the provision of services to a person, or group of people, referred to as '*detainee*' or '*detainees*',
  - (b) refers to and relies upon Schedule 1 to the **G4S** Contract; and
  - (c) otherwise denies the allegations made therein.
39. In response to paragraph 39 **G4S**:
- (a) refers to and relies upon the **G4S Agreements**; ~~and~~  
(a1) refers to and repeats paragraph 36 above; and
  - (b) otherwise denies the allegations made therein.
40. In response to paragraph 40 **G4S**:
- (a) refers to and relies upon the **G4S Agreements**; ~~and~~  
(a1) refers to and repeats paragraph 36 above; and
  - (b) otherwise denies the allegations made therein
41. As to paragraph 41, **G4S** says:
- (a) denies the allegations in paragraph 41(a);
  - (b) denies the allegations in paragraph 41(b);
  - (c) it does not admit the allegations in paragraph 41(c)
  - (d) save that **G4S** and **G4S PNG** established training programs for use by Loda Securities PNG Ltd (**Loda**) to train Manus Province residents recruited to work

as security personnel at the **Centre Site** and assisted in the conduct of the training programs by Loda, it does not admit the allegations in paragraph 41(d); and

- (e) save that **G4S** says that it proposed Loda to the Commonwealth to be an approved local subcontractor for the purpose of providing trained security personnel to work at the **Centre Site** under the supervision of **G4S**, it otherwise does not admit the allegations in paragraph 41(e).

42. In response to paragraph 42, **G4S** says that:

- (a) it undertook the steps set out in paragraph 41 above for the purpose of satisfying its obligations to the Commonwealth under clause 6.7 of the **G4S Agreements Contract**; and
- (b) otherwise denies the allegations in paragraph 42 thereof.

43. **G4S** admits the allegations in paragraph 43.

44. In response to paragraph 44, **G4S** says that:

- (a) on or about 16 April 2013, G4S PNG entered into a letter of intent with Loda (**the Loda contract**) to the effect that Loda would provide agreed numbers of trained personnel (**Loda trained personnel**) to assist in the provision of manned security guarding services at the **Centre Site** and that Loda must ensure that the **Loda trained personnel** security personnel;
  - (i) remained at all times employees of Loda;
  - (ii) would be suitably qualified and experienced and vetted and approved by **G4S** before they commenced working at the **Centre Site**;
  - (iii) undertook and successfully completed all training required of them for providing security services at the **Centre Site**;
  - (iv) act in accordance with all reasonable directions given by **G4S PNG** and in a manner which complies with **G4S** operating processes and procedures for delivery of security services at the **Centre Site**;

- (v) act with due care and skill in a professional, efficient and safe manner and to the same industry standards and expectations who are employed directly by **G4S**;
  - (vi) wear **G4S** uniforms; and
  - (vii) act at all times in accordance with all applicable Laws; and
- (b) it otherwise denies the allegations made in paragraph 44.

### Particulars

The terms of the Loda contract are in writing in the Loda Letter of Intent.

45. In response to paragraph 45, **G4S** says that:
- (a) it supervised the **Loda trained personnel** ~~Loda Guards~~ in respect of their conduct at the **Centre Site**;
  - (b) pursuant to the Loda contract, whilst the **Loda trained personnel** ~~Loda Guards~~ remained employees of Loda, they were required to act in accordance with all reasonable directions given by **G4S**; and
  - (c) it otherwise does not admit the allegations in paragraph 45.

### PART E - G4S PERIOD - DUTIES AND STANDARDS OF CARE

#### Detention duty of care

46. ~~In response to paragraph 46, **G4S** says: does not plead to the facts and matters alleged in paragraph 46 as that paragraph contains no allegations against it~~
- (a) the Commonwealth was authorised by reason of the matters set out in therein to direct or influence the conduct of the operation of the Centre;
  - (b) save that **G4S** was engaged to provide or subcontract the provision of the the **G4S Contract Services** under the **G4S Agreements** to the **Commonwealth** it does not admit the allegations in paragraph 46(b);
  - (c) it admits the allegations in paragraph 46(c);

- (d) save that the **Commonwealth** authorised and empowered **G4S** to exercise powers to retain transferees within the Centre except if they were authorised to leave the Centre, it denies the allegations in paragraph 46(d);
  - (e) it admits the allegations in paragraph 46(e); and
  - (f) it admits the allegations in paragraph 46(f).
47. ~~**G4S** does not admit~~ the allegations contained in paragraph 47 and but says that at all times it acted in accordance with its requirements under the **G4S Agreements**.
48. In response to paragraph 48, **G4S**:
- (a) denies that there were any terms of the Contract or **G4S Agreements** that contemplated the provision of services to a group of people referred to as 'detainees',
  - (b) says that insofar as the allegations of control, including in respect of movement, are in respect of the provision of:
    - (i) **Catering and Maintenance and Management Services Contract Services**, that control was by the **Commonwealth** and **Eurest**;
    - (ii) **Cleaning Contract Services**, that control was by the **Commonwealth** and **Spic N Span**;
    - (iii) **Transferee Welfare Support Services**, that control was by the **Commonwealth** and the Salvation Army;
    - (iv) **Transferee Health Services**, that control was by the **Commonwealth** and **IHMS**;
    - (v) **Infrastructure Services**, that control was by the **Commonwealth**;

refers to and relies upon the terms of the ~~Contract or **G4S Agreements**~~ insofar as they required ~~**G4S**~~ to perform, either itself or through sub-contractors, those tasks set out in paragraph 48(c)
  - (c) as to paragraph 48(d) admits that the **Commonwealth** asserted practical control on movement of Transferees at the Centre;

~~says at all material times the placement and location of Transferees, as referred to in paragraph 48(b), within the **Site** was at the discretion of The Salvation Army~~

- (d) and otherwise denies the allegations made therein. ~~says that:~~
- (i) ~~at all material times by reason of the **Eurest Contract** and with the approval of **the Commonwealth**, the provision of food and water to the Transferees was undertaken by **Eurest**;~~
  - (ii) ~~in or about August 2012 the **Commonwealth** engaged International Health and Medical Services (**IHMS**) to provide healthcare services to Transferees at the **Site**;~~
  - (iii) ~~As part of the **G4S Services** under the **G4S Agreements**, **G4S** facilitated and assisted **IHMS** in the delivery by that service provider of its services but did not provide healthcare services to Transferees at the **Site**; and~~
- ~~(e) Otherwise denies the allegation made therein~~

48A In response to paragraph 48A, **G4S**:

- (a) refers to and relies upon the **G4S Agreements**;
- (b) refers to and repeats its pleading in paragraph 48; and
- (c) otherwise does not admit the allegations made therein.

48B In response to paragraph 48B, **G4S**:

- (a) refers to and relies upon the **G4S Agreements**;
- (b) refers to and repeats its pleading in paragraph 48; and
- (c) otherwise does not admit the allegations made therein.

48C In response to paragraph 48C, **G4S**:

- (a) refers to and relies upon the **G4S Agreements**;
- (b) refers to and repeats its pleading in paragraph 48; and
- (c) otherwise does not admit the allegations made therein.

48D In response to paragraph 48D, **G4S**:

- (a) refers to and repeats its pleading in paragraph 48; and
- (b) denies the allegation that it has practical control over the matters set out therein.

48E In response to paragraph 48E, **G4S**:

- (a) refers to and repeats its pleadings in paragraphs 48 and 48D; and
- (b) otherwise denies the allegations set out therein.

48F In response to paragraph 48F, **G4S**:

- (a) refers to and repeats its pleading in paragraph 48; and
- (b) denies the allegation that it has practical control over the matters set out therein.

49. Save that **G4S** admits that in providing the G4S Contract Services for the **Commonwealth** it owed a common law duty to take reasonable care not to cause direct and reasonably foreseeable physical injury to the **Transferees**, it otherwise denies it owed the duty alleged in paragraph 49 and says that any duty it owed to the **Transferees** was limited in its scope by reason of:

- (a) the terms of the **G4S Agreements**;
- (b) the directions given to it by the **Commonwealth**;
- (c) the personnel it was required to employ under the terms of the **G4S Agreements**;
- (d) the facilities provided to it by the **Commonwealth**;
- (e) the equipment provided to it by the **Commonwealth**;
- (f) the restrictions applicable to it by reason of the law of PNG and in particular:
  - (i) the absence of any lawful authority to search transferees and entrants to the **Centre**;



- (ii) the absence of any lawful authority to compel transferees and entrants to comply with its directions; and
- (iii) the absence of any lawful authority of its employees and agents to use force other than by way of self-defence.

Save that ~~G4S~~ admits that it owed a common law duty to take reasonable care not to cause directly or indirectly reasonably foreseeable injury to the plaintiff, it otherwise denies it owed the duty alleged in paragraph 49 and says that any duty it owed to plaintiff was limited in its scope by reason of:

- (g) ~~the terms of the **G4S Agreements**;~~
- (h) ~~the directions given to it by the **Commonwealth**;~~
- (i) ~~the personnel it was required to employ under the terms of the **G4S Agreements**;~~
- (j) ~~the facilities provided to it by the **Commonwealth**;~~
- (k) ~~the equipment provided to it by the **Commonwealth**;~~
- (l) ~~the restrictions applicable to it by reason of the law of PNG and in particular:~~
  - (i) ~~the absence of any lawful authority to search transferees and entrants to the Site;~~
  - (ii) ~~the absence of any lawful authority to compel transferees and entrants to comply with its directions; and~~
  - (iii) ~~the absence of any lawful authority of its employees and agents to use force other than by way of self-defence.~~

50. **G4S** does not plead to the facts and matters alleged in paragraph 50 thereof as it contains no allegations against it.

51. **G4S** does not plead to the facts and matters alleged in paragraph 51 thereof as it contains no allegations against it.

52. **G4S** does not plead to the facts and matters alleged in paragraph 52 thereof as it contains no allegations against it.

#### **G4S – Standard of Care**

53. As to paragraph 53, **G4S**:

- (a) save to admit that the **G4S Contract Services** provided by it were authorised by the **Commonwealth**, it otherwise denies the allegations in paragraph 53(a);

- (b) does not admit the allegations contained in paragraph 53(b); ~~and~~
  - (c) denies the allegations in paragraph 53(c) ~~and further says that the allegations are embarrassing and should be struck out; and~~
  - (d) denies the allegations in paragraph 53(d).
54. As to paragraph 54, **G4S** denies the allegations in paragraph 54 and says that the standard of care owed by **G4S** to transferees was defined by the matters set out in paragraphs 36, 48 and 49 which it refers to and here repeats (collectively the **G4S Standard of Care**).
55. In response to paragraph 55, **G4S** says:
- (a) **G4S** does not plead to paragraph 55(a) as it makes no allegation against it;
  - (b) as to paragraph 55(b), **G4S** says:
    - (i) as to paragraph 55(b)(i), it admits that it knew that Transferees may have travelled from war zones or other places affected by conflict, violence, discrimination and poverty;
    - (ii) as to paragraph 55(b)(ii), it admits that it knew that Transferees were likely to claim to be refugees pursuant to the Convention;
    - (iii) as to paragraph 55(b)(iii), it denies the allegations made therein;
    - (iv) as to paragraph 55(b)(iv), it admits that it knew that Transferees may claim to have suffered violence and trauma and otherwise denies the allegations contained therein;
    - (v) as to paragraph 55(b)(v), it admits that it knew that Transferees may have travelled to Australia in circumstances of physical deprivation, danger or fear;
    - (vi) as to paragraph 55(b)(vi), it denies the allegations made therein; ~~and~~
    - (vii) as to paragraph 55(b)(vii), it admits that it knew that Transferees may have diverse religious and cultural beliefs, practice and customs;
    - (viii) as to paragraph 55(b)(viii), it denies the allegations made therein; and

(ix) otherwise denies the allegations in that paragraph.

56. **G4S** denies the allegations made against it in paragraph 56.
57. **G4S** denies the allegations made against it in paragraph 57.
58. **G4S** does not plead to the facts and matters alleged in paragraph 58 thereof as it contains no allegations against it.
59. **G4S** denies the allegations made against it in paragraph 59.
60. **G4S** denies the allegations made against it in paragraph 60.
61. **G4S** does not plead to the facts and matters alleged in paragraph 61 thereof as it contains no allegations against it.
62. **G4S** does not plead to the facts and matters alleged in paragraph 62 as it contains no allegations against it.
63. **G4S** denies the allegations made against it in paragraph 63.
64. **G4S** denies the allegations made against it in paragraph 64.
65. **G4S** admits that it provided information to the Commonwealth of concerns held by it in relation to the PNG Mobile Police Squad and otherwise denies the allegations made against it in paragraph 65.

### Particulars

The information provided by G4S to the Commonwealth is contained in communications including those dated 15 June 2013, 4 February 2014 and 10 February 2014.

66. Insofar as paragraph 66 contains allegations against **G4S**, it denies those allegations, and, save for the matters set out in paragraph 67A hereof, otherwise does not plead to the facts and matters alleged in paragraph 66 and says further that the duty alleged is not of a duty known to the law of negligence.
67. In response to paragraph 67, **G4S** says:  
  
(aa) refers to and repeats paragraphs 36, 48, 49 and 54 above;

- (a) that subject to the matters in paragraphs 67(a) and 67A below, it admits it owed Transferees a duty when to providing the **G4S Contract Services** actually provided by **G4S** to the **Commonwealth** in accordance with the **G4S Standard of Care**;
- (b) otherwise it denies the allegations made in paragraph 67; and
- (c) further that the breach alleged is not of a duty known to the law of negligence.
- 67A. In further response to paragraphs 66 and 67, **G4S** says insofar as the duty alleged by paragraph 66 is in respect of conduct (including by omission) constituted by the provision of:
- (a) **Catering and Facility Maintenance and Management Services Contract Services**, that conduct, including the preparation of systems and procedures for the provision of those services, was by the **Commonwealth** and **Eurest** systems and procedures were established by **G4S** and the **Commonwealth** for the delivery by **G4S** of the **G4S Services**;
- (b) **Cleaning Contract Services**, that conduct, including the preparation of systems and procedures for the provision of those services, was by the **Commonwealth** and **Spic N Span**; with the approval of the **Commonwealth** it entered into the **Eurest Contract**;
- (c) **Transferee Welfare Support Services**, that conduct, including the preparation of systems and procedures for the provision of for those services, was by the **Commonwealth** and the **Salvation Army**; by reason of the **Eurest Contract**, and with the approval of the **Commonwealth**, the provision of food and water to the Transferees and maintenance at the **Site** was undertaken by **Eurest**;
- (d) **Transferee Health Services**, that conduct, including the preparation of systems and procedures for the provision of those services, was by the **Commonwealth** and **IHMS**; systems and procedures were established by **Eurest** for the provision by **Eurest** of the **Eurest Services**;
- (e) **Infrastructure Services**, that conduct, including the preparation of systems and procedures for the provision of those services, was by the **Commonwealth**; with the approval of the **Commonwealth** **G4S** entered into the **Spic N Span Contract**;

- (f) **G4S Contract Services** not subcontracted by **G4S** that conduct, including the preparation of systems and procedures for the provision of those services, was by the **Commonwealth** and **G4S**, those systems and procedures generally being imposed on **G4S** by the **Commonwealth** by reason of the **Spic N Span Contract** and with the approval of the **Commonwealth**, the provision of cleaning at **the Site** was undertaken by **Spic N Span**;
- (h) ~~systems and procedures were established by **Spic N Span** for the provision by **Spic N Span** of the **Spic N Span Services**;~~
- (i) ~~in or about August 2012 the **Commonwealth** engaged the **Salvation Army** to provide welfare services to Transferees at **the Site**;~~
- (j) ~~in or about August 2012 the **Commonwealth** engaged International Health and Medical Services (**IHMS**) to provide healthcare services to Transferees at the Site; and~~
- (k) ~~as part of the **G4S Services** under the **G4S Agreements**, **G4S** facilitated and assisted the **Salvation Army** and **IHMS** in the delivery by those service providers of their services but did not provide welfare services or healthcare services to Transferees at **the Site**.~~

### Particulars

**G4S** refers to and repeats paragraph 36 and the particulars subjoined thereto. The systems and procedures are in writing and are contained in plans, guidelines and protocols identified and listed in Schedule A hereto. Copies of all documents set out in Schedule A will be discovered by **G4S**.

68. In response to paragraph 68, **G4S** says:
- (a) it does not plead to the allegations in paragraph 68(a) as there are no allegations made against it;
- (b) save that it knew that a small part of the local population (as that term is defined therein) were, from early 2013 hostile to Transferees at the **Centre Site**, it otherwise denies the allegations contained in paragraph 68(b)(i) to (ix) inclusive.
69. In response to paragraph 69, **G4S** says:

- (a) it does not plead to the allegations in paragraph 69(a) as there are no allegations made against it; and
  - (b) it denies the allegations in paragraph 69(b).
70. In response to paragraph 70, **G4S** says:
- (a) it does not plead to the allegations in paragraph 70(a) as there are no allegations made against it; and
  - (b) it denies the allegations in paragraph 70(b).
71. In response to paragraph 71, **G4S** says:
- (a) It does not plead to the allegations in paragraph 71(a) as there are no allegations made against it;
  - (b) It denies the allegations in paragraph 71(b);
  - (c) refers to and repeats paragraphs 36, 48, 49, 54 and 67A above; and
  - (d) subject to the matters in paragraphs 71(c), it admits that it owed the **G4S Standard of Care** to the Transferees when providing the **G4S Contract Services** actually provided by **G4S** for the **Commonwealth** to take reasonable care to avoid foreseeable physical harm to Transferee.

In response to paragraph 71, **G4S** says:

- ~~(a) It does not plead to the allegations in paragraph 71(a) as there are no allegations made against it;~~
- ~~(b) It denies the allegations in paragraph 71(b); and~~
- ~~(c) Says that it owed the **G4S Standard of Care** to the Transferees to take reasonable care to avoid foreseeable harm to Transferees by ensuring that the security of the perimeter of the Site was maintained insofar as it was practicable to do so.~~

## **PART F – G4S PERIOD - NEGLIGENCE**

72. **G4S** does not plead to the facts and matters alleged in paragraph 72 as that paragraph contains no allegations against it.

73. **G4S** does not plead to the facts and matters alleged in paragraph 73 thereof as it contains no allegations against it.
74. As to paragraph 74, insofar as an allegations are made against it in paragraph 74 (b)(i), **G4S** denies those allegations the allegations in ~~paragraph 74 (b)(ii)~~ and otherwise does not plead to the facts and matters alleged in paragraph 74 as it contains no allegations against it.
75. **G4S** denies the allegations in paragraph 75 and refers to and repeats the matters set out in paragraph 49 hereof.
76. **G4S** admits the allegations in paragraphs 76(a) and 76(c) and does not admit paragraph 76(b).
77. **G4S** admits the allegations in paragraphs 77 save to say that the occupants were referred to as Transferees and not Detainees.
78. As to paragraph 78, **G4S**:
- (a) does not plead to the allegations in paragraph 78(a) as there are no allegations made against it; and
  - (b) denies the allegations in paragraph 78(b) thereof.
79. As to paragraph 79, **G4S**:
- (a) does not plead to the allegations in paragraph 79(a) as there are no allegations made against it;
  - (b) denies the allegations in paragraph 79(b) thereof and says;
    - (i) that ~~on~~ in or about ~~23 June~~ May 2013, it conducted a risk assessment addressing the possible effect of changing the nature of the **Centre Site** to being one that would only accommodate Single Adult Males including whether:
      - 1. the change in the composition of the Transferees at the **Centre Site** increased the risk of unrest and violence between Transferees within the **Centre Site**; and

2. the state of the perimeter fencing at the **Centre Site** posed a security risk; and
- (ii) from in or about June 2013 on a regular basis until the end of the **G4S Agreements** advised the **Commonwealth** of its views as to the potential risk of unrest and violence by and between Transferees and by and between Transferees and other persons on Manus Island.

### **Particulars**

A Security Risk Assessment dated 23 ~~June~~ May 2013, which was delivered to the **Commonwealth** on or about 23 June 2013.

Key stakeholders (the **Department**, **G4S**, the **Salvation Army**, **IHMS**) held daily operations meeting to discuss operations, incidents and other relevant matters.

Regular oral communications between **G4S** personnel present at the **Centre Site** with the Coordinator, an employee and a representative of the **Commonwealth**, present at the **Centre Site**. There were 3 to 4 representatives of the **Commonwealth** present at the **Centre Site** during the term of the **G4S Contract**.

Monthly security assessments and in particular that of 10 January 2014.

Emails from **G4S** to the **Commonwealth**, including emails of 30 January 2014, 1 February 2014 and 2 February 2014.

Briefing notes of 4 February 2014.

Formal proposals dated 10 February 2014 and 11 February 2014 from **G4S** to the **Commonwealth**.

80. **G4S** denies the allegations made against it in paragraph 80 therein and otherwise refers to the matters set out in paragraph, 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto.
81. **G4S** denies the allegations made against it in paragraph 81 therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto.



82. **G4S** denies the allegations made against it in paragraph 82 therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto.
83. **G4S** denies the allegations made against it in paragraph 83 therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto and says further that the breach alleged is not of a duty known to the law of negligence.
84. **G4S** denies the allegations made against it in paragraph 84 therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto.
85. **G4S** denies the allegations made against it in paragraph 85 therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto.
86. **G4S** denies the allegations made against it in paragraph 86 therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto.
87. **G4S** denies the allegations made against it in paragraph 87 therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto and says further that the breach alleged is not of a duty known to the law of negligence.
88. **G4S** denies the allegations made against it in paragraph 88 therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto.
89. **G4S** denies the allegations made against it in paragraph 89 therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto.
90. **G4S** denies the allegations made against it in paragraph 90 therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto.

91. **G4S** denies the allegations made against it in paragraph 91 therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto.
92. **G4S** denies the allegations made against it in paragraph 92 therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto and says further that the breach alleged is not of a duty known to the law of negligence.
93. **G4S** denies the allegations made against it in paragraph 93 therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto.
94. **G4S** denies the allegations made against it in paragraph 94 therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto.
95. **G4S** denies the allegations made against it in paragraph 95 therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto.
96. **G4S** denies the allegations made against it in paragraph 96 therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto and says further that the breach alleged is not of a duty known to the law of negligence.
97. **G4S** denies the allegations made against it in paragraph 97 therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto.
98. **G4S** denies the allegations made against it in paragraph 98 therein and otherwise refers to the matters set out in paragraph 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto.
99. In relation to paragraph 99 **G4S**:
- (a) denies the allegations contained therein and otherwise refers to the matters set out in paragraphs 36(b), 48, 49, 54, 67, and 67A and 79 and the particulars subjoined thereto;

- (b) says further in relation to paragraph 99(b)(ii)-(v) specifically that, prior to the riots which occurred on 17 February 2014 **G4S**:
- (i) advised Transferees, including the plaintiff, of its view that there was a potential risk of further unrest and violence occurring at the Centre;
  - (ii) invited Transferees, including the plaintiff to re-locate within the **Centre Site** to Charlie and Bravo Compounds where **G4S** would be better able to protect those who wanted no involvement with such potential further unrest or violence;
  - (iii) relocated numerous Transferees from Oscar Compound to Charlie and Bravo Compounds during the course of 17 February 2014 so that they would not be affected by any potential further unrest or violence;
  - (iv) during the course of the unrest which occurred on the night of 17 February 2014, while under attack from Transferees using rocks, makeshift weapons and other objects being used as projectiles and weapons, offered to all Transferees, including the plaintiff, the opportunity to escape the area of unrest with the aid of **G4S** staff;
  - (v) established a protective cordon which allowed **G4S** staff to successfully evacuate 306 Transferees from the area of unrest to the dining room of the Mike Compound where those evacuated were removed from the area of unrest and violence that was occurring on the night of 17 February 2014.

99A. In the premises of the matters pleaded in 99(b) above, **G4S** says that the plaintiff and claimant offered the opportunity to be relocated to Charlie and Bravo compounds and or to the dining room of the Mike Compound and who chose to remain in Mike and Foxtrot Compounds:

- (a) knew and appreciated the nature and extent of the risk of injury involved in remaining in an area where obvious unrest and violence was about to occur, further or alternatively, occurring; and
- (b) voluntarily assumed the risk of injury by remaining in that area.
- (c) further or alternatively, might have participated in such unrest and violence; and

- (d) further or alternatively, there was contributory negligence on the part of those who remained in that area, or participated in such violence as to any injury suffered by any of them on the night of 17 February 2014 and any sequelae related thereto.
100. **G4S** denies the allegations made against it in paragraph 100 therein and otherwise refers to the matters set out in paragraphs 36, 48, 49, 54, 67~~and~~, 67A and 79, and the particulars subjoined thereto, 99 and 99A.
101. **G4S** denies the allegations made against it in paragraph 101 therein and otherwise refers to the matters set out in paragraphs 36, 48, 49, 54, 67~~and~~, 67A and 79, and the particulars subjoined thereto, 99 and 99A and says further that the breach alleged is not of a duty known to the law of negligence.
102. **G4S** does not plead to the facts and matters alleged in paragraph 102 thereof as it contains no allegations against it.
103. **G4S** does not plead to the facts and matters alleged in paragraph 103 thereof as it contains no allegations against it.
104. **G4S** does not plead to the facts and matters alleged in paragraph 104 thereof as it contains no allegations against it.
105. **G4S** does not plead to the facts and matters alleged in paragraph 105 thereof as it contains no allegations against it.
106. **G4S** does not plead to the facts and matters alleged in paragraph 106 thereof as it contains no allegations against it.
107. **G4S** does not plead to the facts and matters alleged in paragraph 107 thereof as it contains no allegations against it.
108. **G4S** denies each and every allegation made against it in paragraph 108 therein.
109. **G4S** denies the allegations made against it in paragraph 109 therein.
110. **G4S** denies the allegations made against it in paragraph 110 therein
111. **G4S** denies each and every allegation made against it in paragraph 111 therein
112. **G4S** denies each and every allegation made against it in paragraph 112 therein

113. **G4S** denies each and every allegation made against it in paragraph 113 therein.

114. **G4S** denies each and every allegation made against it in paragraph 114 therein.

115. **G4S** denies each and every allegation made against it in paragraph 115 therein.

#### **PART G – G4S PERIOD - CAUSATION**

116. Insofar as there are allegations made against it in paragraph 116, **G4S** denies those allegations.

117. Insofar as there are allegations made against it in paragraph 117, **G4S** denies those allegations.

118. **G4S** denies the allegations made against it in paragraph 118 therein.

119. Insofar as there are allegations made against it in paragraph 119, **G4S** denies those allegations.

120. **G4S** denies the allegations made against it in paragraph 120 therein.

121. **G4S** denies the allegations made against it in paragraph 121 therein

122. **G4S** denies the allegations made against it in paragraph 122 therein

#### **PART H – TERMINATION OF G4S CONTRACT**

123. **G4S** admits the allegations in paragraph 123 therein.

124. **G4S** admits the allegations in paragraph 124 therein

#### **PART I – TRANSFIELD PERIOD**

125. **G4S** does not plead to the facts and matters alleged in paragraph 125 thereof as it contains no allegations against it.

126. **G4S** does not plead to the facts and matters alleged in paragraph 126 thereof as it contains no allegations against it.

127. **G4S** does not plead to the facts and matters alleged in paragraph 127 thereof as it contains no allegations against it.

128. **G4S** does not plead to the facts and matters alleged in paragraph 128 thereof as it contains no allegations against it.
129. **G4S** does not plead to the facts and matters alleged in paragraph 129 thereof as it contains no allegations against it.
130. **G4S** does not plead to the facts and matters alleged in paragraph 130 thereof as it contains no allegations against it.
131. **G4S** does not plead to the facts and matters alleged in paragraph 131 thereof as it contains no allegations against it.
132. **G4S** does not plead to the facts and matters alleged in paragraph 132 thereof as it contains no allegations against it.
133. **G4S** does not plead to the facts and matters alleged in paragraph 133 thereof as it contains no allegations against it.
134. **G4S** does not plead to the facts and matters alleged in paragraph 134 thereof as it contains no allegations against it.
135. **G4S** does not plead to the facts and matters alleged in paragraph 135 thereof as it contains no allegations against it.
136. **G4S** does not plead to the facts and matters alleged in paragraph 136 thereof as it contains no allegations against it.
137. **G4S** does not plead to the facts and matters alleged in paragraph 137 thereof as it contains no allegations against it.

#### **PART J – TRANSFIELD PERIOD – DUTIES AND STANDARD OF CARE**

138. **G4S** does not plead to the facts and matters alleged in paragraph 138 thereof as it contains no allegations against it.
139. **G4S** does not plead to the facts and matters alleged in paragraph 139 thereof as it contains no allegations against it.
140. **G4S** does not plead to the facts and matters alleged in paragraph 140 thereof as it contains no allegations against it.

141. **G4S** does not plead to the facts and matters alleged in paragraph 141 thereof as it contains no allegations against it.
142. **G4S** does not plead to the facts and matters alleged in paragraph 142 thereof as it contains no allegations against it.
143. **G4S** does not plead to the facts and matters alleged in paragraph 143 thereof as it contains no allegations against it.
144. **G4S** does not plead to the facts and matters alleged in paragraph 144 thereof as it contains no allegations against it.
145. **G4S** does not plead to the facts and matters alleged in paragraph 145 thereof as it contains no allegations against it.
146. **G4S** does not plead to the facts and matters alleged in paragraph 146 thereof as it contains no allegations against it.
147. **G4S** does not plead to the facts and matters alleged in paragraph 147 thereof as it contains no allegations against it.
148. **G4S** does not plead to the facts and matters alleged in paragraph 148 thereof as it contains no allegations against it.
149. **G4S** does not plead to the facts and matters alleged in paragraph 149 thereof as it contains no allegations against it.
150. **G4S** does not plead to the facts and matters alleged in paragraph 150 thereof as it contains no allegations against it.
151. **G4S** does not plead to the facts and matters alleged in paragraph 151 thereof as it contains no allegations against it.
152. **G4S** does not plead to the facts and matters alleged in paragraph 152 thereof as it contains no allegations against it.
153. **G4S** does not plead to the facts and matters alleged in paragraph 153 thereof as it contains no allegations against it.
154. **G4S** does not plead to the facts and matters alleged in paragraph 154 thereof as it contains no allegations against it.

155. **G4S** does not plead to the facts and matters alleged in paragraph 155 thereof as it contains no allegations against it.
156. **G4S** does not plead to the facts and matters alleged in paragraph 156 thereof as it contains no allegations against it.
157. **G4S** does not plead to the facts and matters alleged in paragraph 157 thereof as it contains no allegations against it.

#### **PART K – TRANSFIELD PERIOD - NEGLIGENCE**

158. **G4S** does not plead to the facts and matters alleged in paragraph 158 thereof as it contains no allegations against it.
159. **G4S** does not plead to the facts and matters alleged in paragraph 159 thereof as it contains no allegations against it.
160. **G4S** does not plead to the facts and matters alleged in paragraph 160 thereof as it contains no allegations against it.
161. **G4S** does not plead to the facts and matters alleged in paragraph 161 thereof as it contains no allegations against it.
162. **G4S** does not plead to the facts and matters alleged in paragraph 162 thereof as it contains no allegations against it.
163. **G4S** does not plead to the facts and matters alleged in paragraph 163 thereof as it contains no allegations against it.
164. **G4S** does not plead to the facts and matters alleged in paragraph 164 thereof as it contains no allegations against it.
165. **G4S** does not plead to the facts and matters alleged in paragraph 165 thereof as it contains no allegations against it.
166. **G4S** does not plead to the facts and matters alleged in paragraph 166 thereof as it contains no allegations against it.
167. **G4S** does not plead to the facts and matters alleged in paragraph 167 thereof as it contains no allegations against it.



168. **G4S** does not plead to the facts and matters alleged in paragraph 168 thereof as it contains no allegations against it.
169. **G4S** does not plead to the facts and matters alleged in paragraph 169 thereof as it contains no allegations against it.
170. **G4S** does not plead to the facts and matters alleged in paragraph 170 thereof as it contains no allegations against it.
171. **G4S** does not plead to the facts and matters alleged in paragraph 171 thereof as it contains no allegations against it.
172. **G4S** does not plead to the facts and matters alleged in paragraph 172 thereof as it contains no allegations against it.
173. **G4S** does not plead to the facts and matters alleged in paragraph 173 thereof as it contains no allegations against it.
174. **G4S** does not plead to the facts and matters alleged in paragraph 174 thereof as it contains no allegations against it.
175. **G4S** does not plead to the facts and matters alleged in paragraph 175 thereof as it contains no allegations against it.
176. **G4S** does not plead to the facts and matters alleged in paragraph 176 thereof as it contains no allegations against it.
177. **G4S** does not plead to the facts and matters alleged in paragraph 177 thereof as it contains no allegations against it.
178. **G4S** does not plead to the facts and matters alleged in paragraph 178 thereof as it contains no allegations against it.
179. **G4S** does not plead to the facts and matters alleged in paragraph 179 thereof as it contains no allegations against it.

#### **PART L – TRANSFIELD PERIOD - CAUSATION**

180. **G4S** does not plead to the facts and matters alleged in paragraph 180 thereof as it contains no allegations against it.

181. **G4S** does not plead to the facts and matters alleged in paragraph 181 thereof as it contains no allegations against it.
182. **G4S** does not plead to the facts and matters alleged in paragraph 182 thereof as it contains no allegations against it.
183. **G4S** does not plead to the facts and matters alleged in paragraph 183 thereof as it contains no allegations against it.
184. **G4S** does not plead to the facts and matters alleged in paragraph 184 thereof as it contains no allegations against it.
185. **G4S** does not plead to the facts and matters alleged in paragraph 185 thereof as it contains no allegations against it.

#### **PART LL – FALSE IMPRISONMENT**

185A In response to paragraph 185A **G4S**:

- (a) refers to and repeats its pleadings in paragraphs 25 and 29A herein; and
- (b) otherwise denies the allegations therein.

185B **G4S** does not plead to the facts and matters alleged in paragraph 185B thereof as it contains no allegations against it.

185C G4S admits the allegations in paragraph 185C therein.

185D G4S admits the allegations in paragraph 185D therein.

185E G4S admits that the Commonwealth had control over the operations of the Centre subject to any control vested in or exercised by the Administrator and the Operational Manager and otherwise does not admit the allegations in paragraph 185E.

185F In response to paragraph 185F **G4S**:

- (a) refers to and repeats its pleadings in paragraphs 29A herein; and
- (b) otherwise denies the allegations therein.

185G **G4S** does not plead to the facts and matters alleged in paragraph 185G thereof as it contains no allegations against it.

185H In response to paragraph 185H **G4S**:

- (a) refers to and repeats its pleadings in paragraphs 29A, 36(i) and 48(b)(iv) herein; and
- (b) otherwise denies the allegations therein.

185I **G4S** does not plead to the facts and matters alleged in paragraph 185I thereof as it contains no allegations against it.

185J In response to paragraph 185J **G4S**:

- (a) refers to and repeats its pleadings in paragraph 29A herein; and
- (b) otherwise denies the allegations therein.

185K **G4S** does not plead to the facts and matters alleged in paragraph 185K thereof as it contains no allegations against it.

185L Save that all acts of **G4S** under the **G4S Agreements** including the acts of G4S on the **Commonwealth's** instructions to give effect to the requirements set out in paragraphs 25 and 29A herein were undertaken as agent of the Commonwealth, it denies the allegations set out in paragraph 185L.

185M In response to paragraph 185M **G4S**:

- (a) refers to and repeats its pleadings in paragraphs 185E and paragraphs 29A herein; and
- (b) otherwise does not admit the allegations therein.

185N In response to paragraph 185N **G4S**:

- (a) refers to and repeats its pleadings in paragraphs 29A herein; and
- (b) otherwise denies the allegations therein.

185O **G4S** does not plead to the facts and matters alleged in paragraph 185O thereof as it contains no allegations against it.

185P (no paragraph)

185Q (no paragraph)

185R G4S does not plead to the facts and matters alleged in paragraph 185R thereof as it contains no allegations against it.

185S G4S denies paragraph 185S and G4S says:

- (a) confinement of the False Imprisonment Group Members at the Centre was knowingly consented to by them by reason of their request and the continuing maintenance of their request to be assessed as a refugee following their attempt to enter Australia illegally by boat;

Particulars

G4S refers to paragraphs 102, 103 and 105(a) and (c) and the particulars thereto of the Third Amended Statement of Claim.

- (b) further or alternatively, the constrains imposed on the False Imprisonment Group Members' movement from the Centre were not total, each being free to leave PNG to go to a place they were otherwise lawfully permitted to go;

Particulars

On their arrival, each Transferees was notified by a briefing note entitled "Answers to Transferee Questions" that:

'You are free to leave PNG and return to your home country or another country where you have a right of residence at any time. The IOM is able to assist you with this.

If you choose to remain, this will be a lengthy process. There is no definite timeframe how long you are going to be at the [Centre]. Your claims will be assessed in order of your arrival and no preference is given to anyone in this refugee claim process.

You have the freedom to leave PNG and return to your home country or another country where you have a right of long term residence at any time. The IOM is able to assist you with this.

If you choose to remain in PNG you are required under PNG law to remain at the Centre as long as it takes to process your refugee claims. This is likely to be a lengthy process.

After your 30 days quarantine period, you will be permitted to go out on escorted activities outside the Centre.'

Many Transferees elected to return to their homeland and were able to leave the Centre to enable their return.

- (c) further or alternatively, if there was relevant confinement of the False Imprisonment Group Members by G4S as alleged therein (which is denied), that confinement in the Centre was lawful, alternatively, lawful until at least 26 April 2016:

Particulars

- 1 The detention of persons under the provisions of and for the purposes of the Migration Act 1978 (PNG) (**Migration Act**) is permitted under Section 42(1)(g) of the Constitution of PNG
- 2 The False Imprisonment Group Members were, at the time they were transferred by the Australian Government to PNG, asylum seekers claiming refugee status and international refugee protection and therefore came within the terms of the provisions of Memorandum of Understanding between the Independent State of PNG and the Government of Australia dated 8 September 2012 (**Memorandum of Understanding**):
- 3 The False Imprisonment Group Members were non-citizens of PNG within the meaning of the Migration Act;
- 4 The False Imprisonment Group Members were on their arrival in PNG granted exemption by the Minister for Foreign Affairs and Immigration of PNG (**the PNG Minister**) under Section 20 of the Migration Act enabling them to enter and be present in PNG within the meaning of Sections 3 and 7 of the Migration Act for the purpose of having their refugee status and claim for international refugee protection processed;
- 5 By reason of their status as transferees under the Memorandum of Understanding, the False Imprisonment Group Members were determined by the PNG Minister to be refugees for the purposes of Section 15A of the Migration Act in accordance with Exemption and

- Directions made on 2 September 2012 or, in the alternative, were non-citizens who claimed to be refugees;
- 6 As he was empowered to do under Section 15B of the Migration Act, by a Direction made on 2 September 2012 the PNG Minister declared the Centre as a relocation centre for the accommodation of refugees and non-citizens who claimed to be refugees pending the determination of their refugee status under International law;
- 7 As he was empowered to do under Section 15C(1) of the Migration Act, by a Direction made on 2 September 2012 (the 2012 Direction) the PNG Minister declared that all persons seeking international refugee protection and who are permitted to enter and reside in PNG under the MOU, which included the False Imprisonment Group Members, to temporarily reside at the Centre for the purposes of the determination of their refugee status;
- 8 The 2012 Direction constituted authority for the PNG Government and police to keep the False Imprisonment Group Members at the Centre (Section 15C(2) of the Migration Act);
- 9 As he was empowered to do under Section 15D of the Migration Act, by a Direction made on 2 September 2012 the PNG Minister appointed an administrator to have the control and management of the Centre;
- 10 The Confinement of the False Imprisonment Group Members within the Centre by G4S or the Commonwealth was by or on behalf of the Administrator or the PNG Government or authorised by them and was lawful in accordance with the Migration Act and the law of PNG.
- (d) further or alternatively, if there was relevant confinement of the False Imprisonment Group Members by G4S as alleged therein (which is denied), that confinement in the Centre was lawful by reason that they were the subject of quarantine by the PNG Government under Section 42(1)(f) of the Constitution of PNG and section 8 of the Migration Act for all or part of the G4S Contract Period;
- (e) further or alternatively, the question of whether the False Imprisonment Group Members have a claim according to the law of Papua New Guinea

for the tort of false imprisonment committed in Papua New Guinea is not justiciable because the acts relied by the False Imprisonment Group Members:

- i. constitute acts of the Crown in the right of the Commonwealth (including by its agents) performed in the course of the Crown's relations with a foreign state, Papua New Guinea; or
- ii. bring into issue the legality or otherwise of the executive or legislative acts of a foreign state, Papua New Guinea.

185T G4S does not plead to the facts and matters alleged in paragraph 185T thereof as it contains no allegations against it.

185U In response to paragraph 185U G4S:

- (a) refers to and repeats its pleadings in paragraphs 29B, 81, 85, 94, 98, 99, 163, 167, 177 and 187 herein; and
- (b) otherwise denies the allegations therein.

185V G4S does not plead to the facts and matters alleged in paragraph 185V thereof as it contains no allegations against it.

185W In response to paragraph 185W G4S:

- (a) denies the allegations therein;
- (b) in the alternative and without admissions, says that the plaintiff and the False Imprisonment Group Members are entitled to no more than nominal damages.

#### Particulars

By reason of the matters set out in paragraphs 185S(a), 185S(b) and 185S(c) hereto and by reason of the fact that the plaintiff and the False Imprisonment Group Members entered the territorial seas of Australia to seek asylum and refugee protection in Australia, the plaintiff and the False Imprisonment Group Members would in any event have been detained in the G4S Contract period at the Centre or

such other place determined by the Commonwealth or the PNG Government.

Further, that despite the False Imprisonment Group Members being free to leave the Centre since about 26 April 2016 they have not done so.

185X G4S denies the allegations in paragraph 185X thereof as it contains no allegations against it.

185Y G4S denies the allegations in paragraph 185Y thereof as it contains no allegations against it.

#### **PART M - COMMON QUESTIONS OF LAW AND FACT**

186. In relation to the proposed Common Questions of Law and Fact as set out in paragraph 186, **G4S** says:

- (a) it accepts paragraphs 186(a), (b), (c), (d), (e)(i), (f), (g), (h), (j) and (k) (only so far as (k) deals with the plaintiff's claimed injuries or losses);
- (b) the questions of law or fact referred to in paragraph 186(e) only so far as they relate to the plaintiff's claimed injuries of losses;
- (c) there is a further question to be numbered (e)(iii) as follows:
  - (iii) whether any acts or omissions found in relation to G4S to have been in breach of any duty of care owed by it to the plaintiff or to any claimant caused harm or injury as alleged herein; and
- (d) otherwise deny that paragraph.
- ~~(a) in relation to sub-paragraph (e), insofar as it relates to G4S, that it accepts (i) and (ii) but says that there is a further question to be numbered (e)(iii) as follows:~~
  - ~~(iii) whether any acts or omissions found in relation to G4S to have been in breach of any duty of care owed by it to the plaintiff or to any claimant caused harm or injury as alleged herein;~~



~~(b) G4S does not otherwise plead to (a), (b), (c), (d), (f), (g), (h) and (i) thereof as it contains no allegations against it. G4S says that (j) is not a proper common question of law and fact.~~

DATED: 2016

G P Harris

G B Hevey

JF Doherty



**Foster Nicholson Jones Lawyers**

Solicitors for the second defendant

**SCHEDULE OF PARTIES****MAJID KARAMI KAMASAE**

Plaintiff

and

**COMMONWEALTH OF AUSTRALIA**

First Defendant

**G4S AUSTRALIA PTY LTD (ABN 64 100 104 658)**

Second Defendant

**BROADSPECTRUM (AUSTRALIA) PTY LTD (ABN 11 093 114 553)**

(previously Transfield Services (Australia) Pty Ltd)

Third Defendant

and

**INTERNATIONAL HEALTH AND MEDICAL SERVICES PTY LTD (ABN 40 073 811 131)**

Third Party

## ~~SCHEDULE A~~

### ~~PLANS, PROCEDURES AND GUIDELINES OF G4S FOR OPERATIONS AT THE REGIONAL PROCESSING CENTRE MANUS ISLAND~~

1. ~~Regional Processing Centre Guidelines: Incident Management, comprising:~~

- ~~— appendices for Business Continuity Plan,~~
- ~~— Procedure for Management of Roof Top Protest,~~
- ~~— Procedure for Management of a Serious Medical Incident,~~
- ~~— Procedure for Management of Transferee Unrest,~~
- ~~— Procedure for Management of Transferee Fighting,~~
- ~~— Procedure for Management of Flooding at the RPC,~~
- ~~— Procedure for Management of Attempted Self Harm/Self Harm,~~
- ~~— Procedure for Management of Unauthorised Egress From the RPC,~~
- ~~— Procedure for Management of Death of a Transferee,~~
- ~~— Procedure for Management of Fire,~~
- ~~— Procedure for Management of a Hostage Situation,~~
- ~~— Procedure for Management of Failure of Main Services~~

~~(9 January 2012)~~

2. ~~G4S (Updated) Safety and Security Management Plan (Manus Offshore Processing Centre) (28/11/13) comprising:~~

- ~~— Safety and Security Risk Assessment Services,~~
- ~~— Plan for Delivering Security Services 24/7,~~
- ~~— Effective Response to Unforeseen Incidents,~~
- ~~— Engagement Led Intelligence Collection,~~

- ~~-Training,~~
  - ~~-Security Risk Assessment,~~
  - ~~-Standard Risk Mitigation Control Measures,~~
  - ~~-Communication of Safety and Security Requirements,~~
  - ~~-Emergency Control Organisation.~~
- ~~3. Regional Processing Centre Guidelines DIAC: Incident Management (11 June 2013)~~
  - ~~4. Regional Processing Centre Guidelines DIAC: Incident Management – Debriefing (11 June 2013)~~
  - ~~5. Regional Processing Centre Guidelines DIAC: Post Incident Management (11 June 2013)~~
  - ~~6. Regional Processing Centre Guidelines DIAC: Incident Management – Preservation of Evidence (11 June 2013)~~
  - ~~7. Regional Processing Centre Guidelines DIAC: Incident Management – Incident Reporting (11 June 2013)~~
  - ~~8. Regional Processing Centre Guidelines DIAC: Security - Access to Control Room and Entrance Area~~
  - ~~9. Regional Processing Centre Guidelines DIAC: Security - Detection of Excluded, Controlled and Illegal Items (11 June 2013)~~
  - ~~10. Regional Processing Centre Guidelines DIAC: Security - Perimeter Security Procedures (11 June 2013)~~
  - ~~11. Regional Processing Centre Guidelines DIAC: Security – Violence Towards Staff (11 June 2013)~~
  - ~~12. Regional Processing Centre Guidelines DIAC: Service Provider – Interaction with Transferees (11 June 2013)~~
  - ~~13. Regional Processing Centre Guidelines DIAC: Partnership and Community Relations (11 June 2013)~~

14. ~~Regional Processing Centre Guidelines DIAC: Service Provider – Staff Relationships with Transferees (11 June 2013)~~
15. ~~Regional Processing Centre Guidelines DIAC: Transferee – Complaints Management (11 June 2013)~~
16. ~~Regional Processing Centre Guidelines DIAC: Transferee – Individual Behavioural Management (11 June 2013)~~
17. ~~Regional Processing Centre Guidelines DIAC: Transferee – Individual Management Plans (11 June 2013)~~
18. ~~Regional Processing Centre Guidelines DIAC: Transferee Programs and Activities Individual Allowance Program (11 June 2013)~~
19. ~~Regional Processing Centre Guidelines DIAC: Transferee – Reception and Induction, Accommodation, transfer and Discharge (11 June 2013)~~
20. ~~Regional Processing Centre Guidelines DIAC: Transferee Records Guidelines (11 June 2013)~~
21. ~~Regional Processing Centre Guidelines DIAC: Transferee – Victims of Torture (11 June 2013)~~
22. ~~G4S Security Risk Assessment for Single Adult Males (Manus Island Regional Processing Centre) (26 June 2013)~~
23. ~~G4S Security Risk Assessment Manus Island Regional Processing Centre (12/13/2012)~~  
  
~~G4S Safety and Security Management Plan (Manus Island Regional Processing Centre) (12/13/2012)~~
24. ~~The Organisation and Arrangements for Safety Management (Manus Island Regional Processing Centre)~~
25. ~~G4S Facilities Management Plan for Regional Processing Centre Manus Island (26 June 2013)~~
26. ~~G4S Pest and Vermin Control Management Plan for Regional Processing Centre Manus Island (20 May 2013)~~

- ~~27. G4S Cleaning Services Plan for Regional Processing Centre Manus Island (21 May 2013)~~
- ~~28. G4S Environmental Management Plan for Regional Processing Centre Manus Island including Water Usage Plan (Appendix 10) (21 May 2013)~~
- ~~29. G4S Contingency Plan for Regional Processing Centre Manus Island (25 June 2013)~~
- ~~30. G4S Emergency Plan for Regional Processing Centre Manus Island (1 June 2013)~~  
~~— G4S Emergency Plan Manus Island Regional Processing Centre (22/11/2013)~~
- ~~31. G4S Safety and Security Management Plan for Regional Processing Centre Manus Island (1 June 2013)~~
- ~~32. G4S Monthly Security Risk Assessment for Regional Processing Centre Manus Island (21 November 2013)~~
- ~~33. G4S Centre Security Risk Definitions~~
- ~~34. G4S Daily Transferee Welfare Check Policy (26/4/2013)~~
- ~~35. G4s Escort & Transfer Unwell Transferees Plan (26/4/2013)~~
- ~~36. G4S Transferee Brief (New Arrivals) Information Brochure~~
- ~~37. G4S Induction and Contractor WHS Procedures for Manus Island Regional Processing Centre (8 June /2013)~~
- ~~38. G4S Security Intelligence (Procedures) (4/12/2013)~~
- ~~39. G4S Perimeter Fence Security (Procedures) (4/12/2013)~~
- ~~40. G4S Post Orders — Procedures for Management of Entry and Exit to the Transferee Accommodation Area (25/05/2013)~~
- ~~41. G4S Security Awareness (Training Manual)~~
- ~~42. G4S Security Briefing for Expat Cleaners (Manual)~~
- ~~43. G4S Security Briefing for Guards~~

44. ~~G4S Personal Security Briefing~~
45. ~~G4S Security Escort Handover Checklist~~
46. ~~G4S Security Risk Management Training Presentation~~
47. ~~G4S Security Risk Manager Task List~~
48. ~~G4S Staff, Visitor, Contractor Access & Identification Policy~~
49. ~~G4S Centre Security and Intelligence Committee Terms of Reference~~
50. ~~G4S Transferee Excursion Escort Policy (2/06/2013)~~
51. ~~G4S Transferee Property Policy (26/04/2013)~~
52. ~~G4S Lesson Plan (Security Awareness)~~
53. ~~G4S Facilities Management Plan for Regional Processing Centre Manus Island —  
Eurest~~
54. ~~G4S Lesson Plan Security Officer Safety~~
55. ~~G4S Emergency Orders & Incident Response Training Material~~
56. ~~G4S Note Taking and Report Writing Training Material~~
57. ~~G4S Interpersonal Skills — Communication & Assertiveness Training Material~~
58. ~~G4S Manus Island RPC Evacuation Training Material~~
59. ~~G4S Scenarios for Training Environment Training Material.~~
60. ~~G4S Session Plan for Initial Training Course (2 December 2013)~~
61. ~~G4S Training Plan~~
62. ~~G4S Learning and Development Policy (19 November 2013)~~