“Criminality with Impunity”
How Australia’s Immigration 'Detention Centres' are operated

An address by Max Costello LLM - former WorkSafe Victoria prosecuting solicitor and former lecturer in Employment Law at RMIT University, now retired - at 7:00 pm on Tuesday 14 August 2018 at the Ballarat Trades and Labour hall, Camp Street, Ballarat. The event was sponsored by a group: ‘Grandmothers Against Detention of Refugee Children Ballarat’.

Thanks to the Ballarat Trades and Labour Council for letting us use this venue; thank you all for coming tonight; and thanks to the ‘Grandmothers-Against-Detention-of-Refugee-Children-Ballarat’ for sponsoring this event.

My subject is this: “Criminality with Impunity” - How Australia’s Immigration 'detention centres' are operated.

I’m calling all Immigration facilities in which people are being held “detention centres”, because it’s a convenient term, even though several such centres – the Melbourne Immigration Transit Accommodation facility (MITA), and the Nauru regional processing centre (RPC), for example – are not, strictly speaking, detention centres.

What is my address tonight going to cover? Basically, it will allege, and prove, two things, then raise one question. The allegations are NOT ABOUT breaches of international human rights (you've probably heard them all before) and NOT JUST about OFFSHORE 'detention centres' (RPCs).

The allegations are:

(1) That the Australian government is implementing its asylum seeker/refugee policy by apparently criminal means, namely, by its 'detention centre'-related and apparently systemic breaches of a workplace law, the *Work Health and Safety Act 2011* (Cth) (the WHS Act) – which applies to all Commonwealth government workplaces, including therefore 'detention centres'.

(2) That this apparent criminal offending occurs with impunity, because from 2013 onwards, the Act's "regulator", Comcare, has hardly ever detected a WHS Act breach at a detention centre, much less taken substantial compliance or enforcement action.

In short, Australia's government has been apparently breaking one of its own laws; and the 'cop on the beat', Comcare, has been letting them get away with it.

There's another reason I'm not talking about breaches of the Refugees Convention, the UN Convention on the Rights of the Child, and so on – all of which Australia has signed, ratified, and should obey. The reason? They're not enforceable – in the sense that no-one gets charged or convicted or fined or jailed for breaching them.

Why not? Because breaching a clause in a human rights convention is not a criminal offence per se. But breaches of the WHS Act *are* criminal offences, with hefty penalties.

The Act's most serious offence carries maximum fines of $3 million for government departments, and $600,000 and/or 5 years' imprisonment for senior officers, such as the Commissioner of Australian Border Force (ABF).

Just imagine if, back in, say, 2016:

- Comcare charged the Department of Immigration and Border Protection (DIBP) and its secretary;
- the jury had found them both guilty; and
- DIBP copped a $2m fine; the secretary 3 years' jail.

If that had happened, the policy of deterrence by cruelty – having been proved beyond reasonable doubt to be deterrence by *criminality* – would have been entirely discredited. That would surely have prompted major changes in asylum seeker/refugee policy and practice. So, what I'm saying is new – and potentially very important. After proving the apparent "criminality with impunity", I'll be posing the question, "What is to be done?" In other words, as concerned citizens or residents, what can we do to end this state of apparent criminality with impunity'?

I'll make a few suggestions, but during the Q&A, you'll have your chance to make suggestions or ask questions.

Before I start proving anything, let me assure you that I'm not a lone wolf. Both the Australian Lawyers Alliance (ALA) and Julian Burnside QC agree with my legal analysis.

(By the way, the department's abbreviated name, DIBP, is too hard to say: I'll just be saying "Immigration".)

Here are just the opening few paragraphs from a *Crikey* article written by the ALA's spokesperson, barrister Greg Barns. He wrote it when the Manus Island RPC was being dismantled while the men held there were still living in it.

CRIKEY

The govt agency that could stop what is happening on Manus, yet chooses not to

Comcare is a workplace regulator with serious teeth. So why is it not doing more to stop what is happening on Manus Island?

Greg Barns

8 August 2017

Imagine if somewhere in Australia the wreckers moved in to demolish a building, turned off the power and water and removed the furniture while people were still living there. Rightly, there would be calls for the government to stop this inhumanity. There would be calls for an investigation and prosecution of those responsible for the demolition by the workplace regulator.

This is exactly what is happening on Manus Island, where the dismantling and demolition of the Australian and Papua New Guinea government-run immigration detention centre is taking place, following the PNG government's May announcement that the centre would be closed by October this year. Detainees are without water, power, bedding or, importantly, any form of protection from harm by members of the local community. Yet the Commonwealth government workplace regulator, Comcare, is nowhere to be seen or heard.

Comcare has a responsibility under the 2011 *Work Health and Safety Act* to ensure that Commonwealth government workplaces, and this includes offshore sites such as Manus Island and Nauru, comply with a duty to ensure that anyone who is in the workplace is safe.

On 15 June 2018 I e-mailed an opinion piece to *The Age* and c-c'd it to Julian Burnside. You've all got a copy. It said: - the WHS Act applies to all detention centres; it has apparently been broken often; but no-one is being prosecuted; and all that equals 'criminality with impunity'. Julian e-mailed back the same day: here's what he wrote.

Julian Burnside burnside@vicbar.com.au

Fri 15/06/2018, 2:03 PM
You; The Age Opinion Mailbox; kquinn@theage.com

Dear Max

Thanks for sending through your article.

I agree with your analysis.

Very best wishes

Julian

Julian Burnside AO, QC
Level 30, 200 Queen St Melbourne
www.julianburnside.com.au

You and I share a challenge here. On the one hand you want – and rightly so – something you can understand, uncomplicated by legal jargon. But on the other hand, I'm making extremely serious allegations, things that you'd think, "Nah, can't be true". So, I have to provide proof.

Here's the deal. I'll only quote a few very short sections of the WHS Act. If there's a longer section I must mention, I'll just summarise it in plain words. But as well, I'll show you all the key sections up on the screen.

The article I sent to *The Age* and JB is a handy summary of much of tonight's address. You've got that, *and* hard copies of the key Act sections, *and* other documents I'll refer to in order to 'prove my case'. Those documents include, for example, DIBP and Comcare Annual Reports, a Comcare CEO media release, evidence given on transcript to Senate Committees, and the report of the Queensland State Coroner into an asylum seeker death.

PART 1: THE APPARENT "CRIMINALITY"

Most criminal offending involves doing what the law says you MUST NOT do – murder, steal, defraud, and so on. But in health and safety law, the offending consists of failing to do what the law says you MUST do – which is, basically, keep the workplace, the workers, and the work, safe and free from risks to health.

So shortly, I'll be explaining which people must do what in relation to the workplace, the workers and the work – in other words, what their health and safety duties are under the Act. When we're clear about what those duties require, we'll be able to understand the 'breach of duty' offences.

But first of all, let me answer a few basic questions you might have. To whom does the Commonwealth's Work Health and Safety Act apply? To what does it apply? And where does it apply?

The Act itself answers such questions simply and clearly.

1.1 Where does the Act apply and who's covered by it?

Work Health and Safety Act 2011 [my highlighting]

4 Definitions

In this Act:

…

health means physical and psychological health.

regulator means Comcare.

8 Meaning of *workplace*

(1) A ***workplace*** is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.

(2) In this section, ***place*** includes:

(a) a vehicle, vessel, aircraft or other mobile structure; and

(b) any waters and any installation on land, on the bed of any waters or floating on any waters.

10 Act binds the Commonwealth

(1) This Act binds the Commonwealth.

(2) The Commonwealth is liable for an offence against this Act.

11 Extraterritorial application

This Act extends to every external Territory.

12F Interaction with Commonwealth criminal law

(3) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against this Act.

14 Duties not transferrable

A duty cannot be transferred to another person.

272 No contracting out

A term of any agreement or contract that purports to exclude, limit or modify the operation of this Act or any duty owed under this Act or to transfer to another person any duty owed under this Act is void.

As you see in section 4, “health” always includes psychological health.

Section 8’s definition of “workplace” is extremely far-reaching. For example, when Operation Sovereign Borders personnel are carrying out ‘on-water’ activities, they are doing so at a workplace which comes under this Act.

Section 10 makes clear that "the Commonwealth" – which means the federal government and all of its departments and agencies – is bound to comply with the Act, and can be charged with allegedly committing offences. Another section I won't take you to says that charges must be laid, not against "the Commonwealth", but against the department or agency concerned.

Section 11 makes clear that the Christmas Island facility, which is a true detention centre, comes under the Act.

Section 12F (3), via the *Criminal Code* gives the Act "extended geographical jurisdiction". If you went to the *Criminal Code*, as I have done but you don't have to, you'd find that it says this: if there's a Commonwealth workplace in a country that has no – or no equivalent – health and safety law, then this Act applies. Nauru has no health and safety law; Papua New Guinea has a very old one that's not equivalent to the modern WHS Act. Accordingly, the WHS Act applied – and still applies – at the Nauru RPC. It applied at the Manus RPC, but only while it was operating. It ceased operating on 31 October 2017.

Sections 14 and 272 go together. As we'll see very soon, "the Commonwealth" – in practical terms the relevant department, which nowadays is Home Affairs – has a "health and safety duty" (in fact several such duties) in relation to all currently operating 'detention centres', wherever located. Section 30 says that those duties are all in Part 2 of the Act.

Section 14 says, in effect, that the Commonwealth can't transfer any of those duties to another "person" – which, as a matter of law, means an individual, a company, or another government. So, the Commonwealth government, the Australian government, has been and is explicitly prohibited from transferring any health and safety duty in relation to a detention centre to the governments of PNG and Nauru.

Section 272 re-emphasises that prohibition.
It says, in brief, that any attempt by way of an agreement or contract to transfer a duty is "void" – that is, legally ineffective. In short, the Commonwealth couldn't transfer a duty to PNG or Nauru even if it tried to.

So, any claims – whether by former Immigration minister Morrison, current Home Affairs minister Dutton, the Prime Minister, or anyone else – that PNG had and Nauru has the legal responsibility for RPC health and safety – are false.

Yes, the Commonwealth made with PNG and Nauru an agreement, a Memorandum of Understanding, that lawfully (according to the High Court) transferred two *functions* under the *Migration Act 1958* (Cth), namely, the processing of applications for refugee status, and the resettlement in their country of those people found to be refugees.

But the High Court has not decided – and has not been asked to decide – that the MOU has transferred any WHS Act *duty*, in fact the High Court couldn't make such a ruling because the Act is so explicit and emphatic on this issue.

1.2 The duty of care of workplace operators ('PCBUs')

The main duty holders under the Act are the persons – usually companies, in some cases government departments, rarely individuals – that operate workplaces. Under the older style Occupational Health and Safety (OHS) legislation, they were called "employers" and staff members were called "employees". OHS legislation still exists in Western Australia and Victoria, but the world of work has changed.

Under the WHS Act we're looking at, and the nearly identical WHS Acts in the other four States and both Territories, the operator is called a "person conducting a business of undertaking" ('PCBU' for short), and the people who used to be called an "employee" are now a "worker".

Now that you know what a 'PCBU' is, let me prove that the Act applied at the Manus RPC and still applies at the Nauru RPC. On 15 March 2017 (that is, while Manus was still operating), Comcare's acting CEO, Ms Lynette MacLean, appeared before a Senate Committee. It was the Senate Legal and Constitutional Affairs Legislation References Committee, which was examining "serious allegations of abuse, self-harm and neglect of asylum seekers in regional processing centres". Ms MacLean began by making some opening remarks – that is, she volunteered them. They included the following statement (transcript, at page 9).

> Ms MacLean [opening remarks]**:**
>
> *… Comcare is the WHS regulator for the … DIBP, … within Australia and overseas. … DIBP, under section 19 of the WHS Act, is the 'person conducting a business or undertaking' for the operation of regional processing centres, RPCs, on Manus Island and Nauru.*

The term "business or undertaking" includes a for-profit 'business' and a not-for-profit 'undertaking'. Obviously, a 'detention centre' is an undertaking, not a business.

From now on, and purely for conciseness, I have inserted in any Act sections containing the term "person conducting a business of undertaking", the abbreviation "[PCBU]".

19 Primary duty of care

(1) A person conducting a business or undertaking ['PCBU'] must ensure, so far as is reasonably practicable, the health and safety of:

(a) workers engaged, or caused to be engaged by the person; and

…

(2) A [PBCU] must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

So, section 19 (1) is the PCBU's duty of care for workers, whereas 19 (2) is the duty of care for "other persons".

At all workplaces, the term "other persons" includes visitors. At most 'ordinary' workplaces – shops, offices, factories, cinemas, car yards, and so on (not 'detention centres' or any other care or custody accommodation workplace) – it also includes customer or clients.

Customers and clients are usually at those 'ordinary' workplaces for only a short time – from a few minutes to a few hours, maybe a day at the most. But the "other persons" at a 'detention centre' (and all other such facilities) are the residents or detainees: they live there.

They could be there 24/7, 52 weeks a year, for years, or, with some detention centre detainees, indefinitely – for life. So, for the PCBU, the section 19 (2) duty is almost non-stop: it's very onerous, very demanding.

Service provider contractors – International Health and Medical Services (IHMS) and (onshore) Serco – being for-profit businesses, are PCBUs with section 19 duties. But section 16 says that, in shared PCBU duty settings, the PCBU with the greatest "capacity to influence and control" is the predominant duty holder. And that's Home Affairs.

The section 19 "duty of care" provision and all other 'PCBU health and safety duty' provisions are qualified by the phrase "so far as is reasonably practicable". That phrase might look like a cop-out, but section 18 of the Act, headed "What is *reasonably practicable* in ensuring health and safety", defines it very tightly. Section 17, headed "Management of risks", explains further.

17 Management of risks

A duty imposed on a person to ensure health and safety requires the person:

(a) to eliminate risks to health and safety, so far as is reasonably practicable; and

(b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

Subdivision 2 - What is reasonably practicable

18 What is *reasonably practicable* in ensuring health and safety

In this Act, ***reasonably practicable***, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including:

(a) the likelihood of the hazard or the risk concerned occurring; and

(b) the degree of harm that might result from the hazard or the risk; and
(c) what the person concerned knows, or ought reasonably to know, about:
  (i) the hazard or the risk; and
  (ii) ways of eliminating or minimising the risk; and
(d) the availability and suitability of ways to eliminate or minimise the risk; and
(e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

Those two sections work in reverse order. Here's the short version of what they say. It's a slogan - "Hazard ID; Risk assessment; Risk elimination or control" - that's in all the health and safety manuals.

Step 1: the PCBU must make a list of all the hazards – that is, all the dangers, all the *potential* risks – to health and safety.

Step 2: the PCBU must risk-assess them, one at a time, asking (a) how likely is it to occur and, (b) if it does occur, how harmful might it be.

That teases out the significant risks. Hazards that are very unlikely (the wall in a solid brick building collapsing) or likely but fairly harmless (10% of staff catching cold during the winter months), are not significant and can be disregarded.

But if it's likely and harmful, it's a significant risk, and the PCBU must keep working through the rest of section 18 and go on to Step 3, "Risk elimination or control".

A PCBU can't eliminate a risk without understanding it, or without knowing if there are any available ways of eliminating it. Therefore, to gain such knowledge, PCBUs must consult Dr Google or, sometimes, a human expert.

Step 3: Having done so, and found ways to eliminate the risk, then, in compliance with section 17, the PCBU must implement them; or, if total elimination isn't realistically practicable, must put in place measures to at least minimise the risk, that is, control it.

Summing up, the definition of "so far as is reasonably practical" makes the duty of care a very pro-active duty. The PCBU must think imaginatively about hazards, check out how likely and/or harmful they might be, seek out prevention measures, and then implement all of them.

The aim is *prevention*: ensuring that the workplace and its activities don't put anyone's health and safety at risk. The Sex Abuse Royal Commission and a Senate Committee didn't get that. They asked Immigration if it was satisfied with *responses* to abuse and the Nauru files respectively.

Enough on “so far as is reasonably practicable”. Let’s look at an example of what can happen if a PCBU ignores the “Hazard ID; Risk assessment; and Risk elimination or control” process. Failure to do so is not an offence – but as we’re about to see, it might well result in an offence.

Our example comes from page 94 of the report of the Queensland State Coroner, who had held an inquest into the death of Manus RPC asylum seeker, Hamid Khazaei.

In August 2014, Mr Khazaei arrived brain dead at a Brisbane hospital after his medical airlift - which was urgently needed because a worsening infection was starting to enter his bloodstream - had been delayed for one day by Immigration.

At paragraph 379, the Coroner states:

> *… an antibiotic was not available at the clinic that would safely and effectively treat the range of infections commonly found in a tropical setting, including Mr Khazaei’s infection. The clinic should have been stocked with such an antibiotic.*

What that low-key wording means, I think, is this. Immigration had taken hundreds of “other persons” to a tropical location, and would keep them there for years, but had apparently not worked through – or at least not worked through thoroughly – the “Hazard ID” process.

As a result, Immigration had failed to list the common local infections that all those "other persons" – and indeed the centre's workers! – might well pick up.

Failing to identify that hazard meant not risk-assessing it to find that it – the risk of contracting a local infection – was both reasonably likely and potentially very harmful. Consequently, Immigration failed to seek out how to control that risk. That control was, as the Coroner noted, stocking a suitable antibiotic that would have saved Mr Khazaei's life. Failure to stock it put the health of workers and other persons at risk, thereby breaching section 19(1) & (2), i.e., apparently committing two criminal offences.

1.3 The health risk of cadmium on Nauru

Because the presence of cadmium, a heavy metal, in the phosphate mined near the Nauru RPC was identified in a 2012 report commissioned by Immigration – the Sinclair Knight Merz report – the health risk was known. (https://www.border.gov.au/AccessandAccountability/Documents/FOI/FA140401092.PDF)

The cadmium on Nauru is of a higher toxicity than in most comparable phosphate mines. It can be ingested through food, water and airborne particles and can result in serious

health issues including diabetes, kidney and liver damage, osteoporosis and cancer.

Cadmium is apparently widespread in the soil of Nauru, so that, as I understand the situation, most if not all of Nauru's food has to be imported.

1.4 Duty of officers – a 'due diligence' duty

Section 247 says that a Commonwealth "officer" is "a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of a business or undertaking of the Commonwealth". Accordingly, the Secretary of the mega Department of Home Affairs, Mr Michael Pezzullo, and the Commissioner of Australian Border Force (ABF), Mr Michael Outram, are officers, as are other people of lower rank involved in any major decision.

ABF, which came into being on 1 July 2015, had been Immigration and Border Protection's enforcement arm. But in December 2017, Immigration morphed into – or should I say mushroomed into – Home Affairs; so ABF retains the enforcement role, but within Home Affairs.

27 Duty of officers

(1) If a [PCBU] has a duty or obligation under this Act, an officer of the [PCBU] must exercise due diligence to ensure that the [PCBU] complies with that duty or obligation.

…

(5) In this section, ***due diligence*** includes taking reasonable steps:

(a) to acquire and keep up-to-date knowledge of work health and safety matters; and

(b) to gain an understanding of the nature of the operations of the business or undertaking of the [PCBU] and generally of the hazards and risks associated with those operations; and

(c) to ensure that the [PCBU] has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and

(d) to ensure that the [PCBU] has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information; and

(e) to ensure that the [PCBU] has, and implements, processes for complying with any duty or obligation of the [PCBU] under this Act; and

(f) to verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

"Due diligence" is already an exacting requirement in the law generally, but subsection (5)'s six paragraphs make it even stricter, with paragraph (d), for example, requiring officers to ensure that their organisation has a system of timely responses to health and safety risks.

So, let's check, in the Khazaei case, how timely the PCBU's response system was, and what role officers had.

The process started when a doctor working for International Health and Medical Services (IHMS) at the Manus RPC put in a request 'up the line', marked "urgent". He sought approval from Immigration in Canberra. There was a commercial flight to Port Moresby later that same day, where a hospital could provide medical treatment not available at the Manus clinic.

The Coroner's Report says at page 99, paragraph 409:

> … the process put in place by the DIBP to approve medical transfers was overly bureaucratic … It was only when an air ambulance was requested that the process was expedited. Where the request was for a commercial flight, as in this case, the approval had to negotiate at least four departmental employees before it was approved.

The approval wasn't granted until during the following day, so the commercial flight was missed. Meanwhile, Mr Khazaei's condition had rapidly worsened.

What had been a non-healing infected cut had become blood poisoning – sepsis – because the infection from the cut had entered his bloodstream.

It is reasonable to assume therefore, that one or more senior Immigration officers had failed to ensure that the department had "appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information".

In other words, it appears that the officer/s had failed to comply with their section 27 due diligence duty – and thereby committed a criminal offence.

Speaking of non-timely responses to RPC requests for medical airlifts, there has recently been a pattern of not just delays but outright refusals of airlifts by ABF, with Minister Dutton – if those refusals are challenged in court – instructing his lawyers to fight against any 'fly them here' court order.

On 26 April 2018, Ben Doherty of *Guardian Australia* reported that former ABF Commissioner Roman Quaedvlieg had acknowledged this pattern of refusals.

In response to a tweet from former Nauru RPC medico Dr Nick Martin on 14 April 2018, claiming that ABF had "thwarted and obstructed" his airlift requests "every time", Quaedvlieg promptly tweeted back, "Understood & I accept without equivocation".

Earlier this year, ABF prevented very psychologically ill children from being flown here from Nauru – where no specialist treatment was available – until Federal Court judges ordered them to do so.

According to *Guardian Australia* (21/3/18 and 3/7/18), Justice Perram on 6 March 2018 and Justice Murphy on 26 June 2018 found that Australia has a (common law) duty of care, then made 'fly them here' orders in relation to a pre-teen girl and a boy aged 10, both suffering extreme psychological distress to the point of attempting suicide.

In another case, as Anthony Colangelo reported (*The Age*, 14/4/18), no order had been needed on Saturday 13 April 2018 because, at the last minute, Mr Dutton's lawyers had agreed to put the suicidal girl on the next flight.

On 3 August 2018, Melissa Davey of *Guardian Australia*, in "Critically ill refugee baby and parents to be flown from Nauru to Sydney for care" (yet another case), quoted the Maurice Blackburn lawyer involved, Jennifer Kanis.

Ms Kanis said, "more than a dozen other cases involving sick children on Nauru had been brought to the court in 2018". (In every case, the children were flown to Australia for treatment.) Ms Kanis added: "The outrage in this case, the question that has to be asked, is why the government fights these cases every time".

What I wonder is whether Mr Dutton – who, quite properly, says Australia's residents, citizens and would-be citizens 'must all comply with the rule of law' – has been, in effect, instructing his own department to break the law.

1.5 Duty of workers – and a dubious 'duty exemption'

28 Duties of workers

While at work, a worker must:

(a) take reasonable care for his or her own health and safety; and

(b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and

(c) comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the [PCBU] to allow the person to comply with this Act; and

(d) co-operate with any reasonable policy or procedure of the [PCBU] relating to health or safety at the workplace that has been notified to workers.

Section 8's "workplace" definition is so far-reaching that even Operation Sovereign Borders workers, during on-water activity, are at a workplace. So, OSB workers must take reasonable care that their boat interception and turnback acts or omissions don't adversely affect the health and safety of the "other persons" on the boats.

However, they seem to have been exempted by a Declaration issued under section 12D (2) of the Act by the Chief of the Defence Force on 19 December 2013.

It declares “that specified provisions of this Act do not apply” to Defence and other OSB personnel during on-water “activity” (such as boat turnbacks). It exempts such workers from their section 28(b) duty to “take reasonable care that [their] acts or omissions do not adversely affect the health and safety of other persons”.

12D Act not to prejudice Australia’s defence

(1) Nothing in this Act requires or permits a person to take any action, or to refrain from taking any action, that would be, or could reasonably be expected to be, prejudicial to Australia’s defence.

(2) Without limiting the generality of subsection (1), the Chief of the Defence Force may, by instrument in writing, declare that specified provisions of this Act do not apply, or apply subject to such modifications as are set out in the declaration, in relation to:

(a) a specified activity; or

(b) a specified member of the Defence Force; or

(c) members of the Defence Force included in a specified class of such members.

(3) A declaration under subsection (2) may only be made with the approval of the Minister and, if made with that approval, has effect according to its terms.

If there were no declaration, OSB personnel whose acts or omissions put the health and safety of “other persons” at risk would be breaching their section 28(b) health and safety duty - that is, committing a criminal offence.

The Declaration reads as follows.

Work Health and Safety (Operation Sovereign Borders) Declaration 2013

I, General David Hurley AC DSC, Chief of the Defence Force, make the following declaration under the *Work Health and Safety Act 2011*.

Dated: 19 December 2013

Registered: 20 December 2013

1 Name of declaration

This declaration is the *Work Health and Safety (Operation Sovereign Borders) Declaration 2013*.

2 Commencement

This declaration commences on the day after it is registered.

3 Authority

This declaration is made under the *Work Health and Safety Act 2011*.

4 Definitions

In this declaration:

Act means the *Work Health and Safety Act 2011*.

illegal maritime arrival means:

(a) an unauthorised maritime arrival; or

(b) a person who would be an unauthorised maritime arrival if the person enters Australia.

5 Provisions of Act declared not to apply to specified activity

(1) For subsection 12D(2) of the Act, the following provisions of the Act do not apply in relation to an activity mentioned in subsection (2) or (3):

(a) paragraphs 28(a) and (b);

(b) paragraphs 29(a) and (b);

(c) section 39.

(2) An activity is the interception, boarding, control or movement, under Operation Sovereign Borders, of a vessel suspected of carrying an illegal maritime arrival:

(a) as part of considering whether to move the vessel to a place outside Australia; or

(b) as part of moving the vessel to a place outside Australia.

(3) An activity is the control or movement at sea, under Operation Sovereign Borders, of a person suspected of being an illegal maritime arrival:

(a) while considering whether to move the person to a place outside Australia; or

(b) while moving the person to a place outside Australia; or

(c) while moving the person to or from a vessel in the course of paragraph (a) or (b).

(4) However, the transfer or movement of a person suspected of being an illegal maritime arrival to an offshore regional processing centre is not part of an activity described in subsection (2) or (3).

But there's a problem with this exemption, this Declaration, because the authorising provision, section 12D, only covers acts or omissions that, as explained in 12D (1), "would be, or could reasonably be expected to be, prejudicial to Australia's defence". In short, if there's no risk of prejudice to defence, there's no basis for a declaration.

How could any OSB workers' act or omission during on-water activity, involving unarmed people on unarmed boats, ever be prejudicial to Australia's defence?

Accompanying the Declaration is an Explanatory Statement. It makes no mention of any possible prejudice to Australia's defence. That silence is *such* a give-away.

I do not criticise the then Chief of the Defence Force, but the Declaration appears to me to be clearly "ultra vires" (beyond power). If so, the Declaration is ripe for challenge.

1.6 Onshore cruelty – the hidden psychological abuse

Until a recent Federal Court ruling overturned the policy, Immigration had prohibited asylum seekers in many 'detention centres' from having a mobile phone to contact family overseas. What ABF still does is ensure that residents are routinely taken to and from medical or dental appointments in handcuffs.

The psychological health risks of the former phone ban and ongoing handcuffing are so obvious and severe that Home Affairs (which includes ABF) has been – or so it seems – intent on damaging, not ensuring, psychological health.

Those two instances are symptomatic of - and the tip of the iceberg of - a style of operation, introduced and overseen by Border Force. It is a modus operandi that is both relatively recent - only a few years old - and appears almost designed to put the psychological health of detainees and residents at risk. In other words, it's doing the opposite of what the section 19 (2) duty requires.

There's a Tamil family I know of - a husband, wife and two small girls, aged one and three - who have been brought to Victoria from Biloela.

Biloela is a little country town in Queensland where they had been living for several years: the husband works at the local abattoir. They've been held in the Melbourne Immigration Accommodation facility (MITA) since March this year, waiting for an appeal - effectively an appeal against deportation - to be heard in the Federal Court.

How were they moved? They were woken up at home at 5 am by, I think, about 10 men in Border Force or Serco uniforms, given 10 minutes to pack, then put into cars, taken to an airport and flown to Melbourne. A neighbour heard screams. Who orders this 'blitzkrieg' way of moving non-criminals, including very young children, from A to B?

As to their future, if the mother and older girl succeed, they might stay, but the father and the one-year-old will be deported to Sri Lanka – unless Minister Dutton, who has the power to allow them all to stay, intervenes.

There's a huge campaign to raise money for legal costs and publicity.

In recent times, in the mainstream media and on social media, there's been nasty talk about people from other countries supposedly "not integrating". Well, this family is welcomed by their community. Biloela says let them stay.

There is increasing anecdotal evidence suggesting that such abrupt removal methods are widespread across the 'detention centre' network. Residents and detainees can be woken, usually at around 4 am, having been given no prior warning, and taken, sometimes in their night attire but always handcuffed, to a centre in another State, or the one on Christmas Island. They're not told why they're being moved or where they're going. Such transfers - blatant breaches of the section 19 (2) duty of care - seem to be a sort of 'management tool' apparently approved by ABF.

Finally, in this first part about “Criminality”, but also very importantly - because I know some of you are visitors to MITA and perhaps other centres - I must mention the psychological harm that is resulting from the increasingly ‘hostile to visitors’ regime that ABF has brought into effect over the last few years.

So unpleasant, complicated, time-wasting and inefficient is this restrictive set of rules that the number of visitors is down to about 20% of the number three years ago.

A particularly annoying and unnecessary part of the regime is the requirement to complete the same online form, providing the same details, for each and every visit.

The over-all result is fewer visits. Residents/detainees appear to feel increasingly isolated and depressed.

The Refugee Council of Australia’s August 2017 report, *UNWELCOME VISITORS: Challenges faced by people visiting immigration detention*, details this hostile regime.
http://www.refugeecouncil.org.au/wp-content/uploads/2017/08/Detention_visitors_FINAL.pdf

The fact that Part 7, “Making visitors unwelcome”, runs for 9 pages (13–21) is indicative. Concerns include:

- constantly changing and inconsistently applied procedural rules, with not all procedures being publicly available;

- widespread, repeated incompetence/inefficiency, e.g., booking details being lost or residents not being told that their visitor had arrived, with visitors thus being sent away;
- only completely cooked, sealed and pre-packaged food may now be brought in (no fresh fruit or vegetables), preventing residents from enjoying sharing (as they used to do) home-prepared food from their own culture;
- tighter restrictions on the number of residents [visitable] per visit (now 1 only at the Perth and Maribyrnong IDCs);
- Kafkaesque rules – examples follow:
  - at the Brisbane ITA, if visitors arrive in a pair (as married couples do), the two visitors must sit separately and must not talk to each other or to a resident other than the one being visited, … ;
  - Serco [security] staff often stand around in the visiting area, preventing people from having … private conversations: at Villawood they wear cameras, recording images and voices;

An independent inquiry, with the power to compel evidence, might make ABF restore some commonsense.

PART 2: THE APPARENT "IMPUNITY"

Comcare's functions are set out in section 152. The two functions of relevance in this context are 152 (b) and (h).

152 Functions of regulator

The regulator has the following functions:

(a) to advise and make recommendations to the Minister and report on the operation and effectiveness of this Act;

(b) to monitor and enforce compliance with this Act;

(c) to provide advice and information on work health and safety to duty holders under this Act and to the community;

(d) to collect, analyse and publish statistics relating to work health and safety;

(e) to foster a co-operative, consultative relationship between duty holders and the persons to whom they owe duties and their representatives in relation to work health and safety matters;
(f) to promote and support education and training on matters relating to work health and safety;
(g) to engage in, promote and co-ordinate the sharing of information to achieve the object of this Act, including the sharing of information with a corresponding regulator;
(h) to conduct and defend proceedings under this Act before a court or tribunal;
(i) any other function conferred on the regulator by this Act.

2.1 Does Comcare effectively "monitor compliance"?

Example #1

According to Comcare's Inspector Report EVE00229456-0001 into the Khazaei saga, the airlift delay was "not necessarily a contributing factor to the final outcome" and "… there were no apparent breaches of the legislation".

Example #2

Similarly, after an "investigation" into the February 2014 Manus riot during which 69 people (mainly asylum seekers) were injured and Reza Barati was murdered, the Inspector Report EVE00224256-0001 "did not identify any breaches of … (the WHS Act) by DIBP" and concluded that "… DIBP provided a safe workplace as far as reasonably practicable".

By contrast, another regulator, WorkSafe Victoria, which also investigated a custodial facility (remand centre) riot, laid charges, as WorkSafe News reported at the time. The riot lasted 15 hours and dozens of people were injured.

Max Costello 0425 701 690 maxcostello@hotmail.com

Thursday 22 December 2016

Department charged over Ravenhall riot

…, WorkSafe has charged the Department of Justice and Regulation with four breaches of the *Occupational Health and Safety Act 2004.*

Charges:

- One charge contrary to section 21(1) and (2)(a) in that it failed to provide and maintain safe systems of work.
- One charge contrary to section 21(1) and (2)(e) in that it failed to ensure the workplace was safe and without risks to health.
- Two charges contrary to section 23(1) in that it failed to ensure persons other than employees were not exposed to risks to health and safety.

Significantly, those last two charges alleged a failure to ensure the health and safety of "other persons" – the remandees. Section 23(1) of Victoria's OHS Act is almost identical to section 19(2) of the Commonwealth's WHS Act. WorkSafe Victoria put Comcare to shame. (Result: guilty plea to one 'representative' charge; $300,000 fine.)

Example #3 – part one

At page 208, the 2013–14 *Annual Report* of the Department of Immigration and Border Protection stated:

> Between 1 July 2013 and 30 June 2014 the department notified Comcare of 449 incidents. Table 70 summarises all incidents notified by the department ...
>
> …
>
> It should be noted that 83 per cent (374 out of 449) of incidents the department notified to Comcare in 2013–14, including deaths, involved detainees and transferees in IDFs [IDCs] and OPCs [RPCs], and did not directly involve workers.

Table 70: Incidents notified to Comcare under sections 35–37 of the Work Health and Safety Act 2011

Notifiable incident classification	Number of incidents notified 2011–2012	Number of incidents notified 2012–2013	Number of incidents notified 2013–2014
Death	4	3	8
Serious injury/illness (SII)	377	188	338
Dangerous incident (DI)	1,140	107	103
Total	1,521	298	449

So, 374 asylum seeker-related reports – just over 1 per day.

Example #3 – part two

Comcare's CEO, in her 1 July 2015 media release "Australian Lawyers Alliance claims disappointing", wrote:

> Comcare assessed all of the 449 incidents DIBP referred in 2013-14, finding 98 were notifiable under the WHS Act. More than 20 per cent of these notifications warranted on-site inspections.
>
> Comcare inspectors also visited regional processing centres on Manus, Nauru and Christmas Islands on multiple occasions in 2014 and will conduct further inspections later this year.
>
> Inspections of DIBP workplaces have not found any breaches of the WHS Act.

Example #3 – part three

The following Q & A exchange occurred during the 15 March 2017 Senate Committee hearing. Mr Napier was the General Manager, Regulatory Operations Group.

> **CHAIR:** [Comcare has] done a number of investigations in overseas RPCs. Can you outline the findings … ?
>
> Mr Napier : ... Comcare inspectors visited both Manus and Nauru in 2014 and 2015. … Those visits did not focus on duties to detainees.

Detainees cop 83% of harm: Comcare looks the other way.

Example #4

On 21 March 2017, Comcare provided a written answer (below) to a Senate Committee Question on Notice from Senator Watt about DIBP not observing its duty of care.

> Of the Inspections conducted and closed at Manus and Nauru to date, Comcare has not observed any breach of the … Act by DIBP.

Example #5 – part one

During the 15 March 2017 Senate Committee hearing, Comcare's acting CEO revealed that, according to legal advice from the Australian Government Solicitor, Comcare inspectors can't exercise their powers at offshore centres.

Example #5 – part two

Senator Watt asked whether the Minister had been told of that and advised that an Act amendment was needed to rectify that situation. Comcare's 31 March 2017 reply was:

> Comcare has not provided advice to the current Minister or her predecessors regarding the need to amend the legislative powers of Comcare.

2.2 Does Comcare effectively "enforce compliance"?

Comcare inspectors mainly enforce compliance by issuing a section 191 "improvement notice" – which names the provision the inspector believes is being contravened, then sets a reasonable date by which the PCBU must achieve compliance. That's what Greg Barns in his *Crikey* piece went on to suggest Comcare should do, because notices can stop can law-breaking fairly quickly.

Immigration Annual Reports show that, since 2012–13, Comcare has issued the department only 5 improvement notices (2 in 2015–16, 3 in 2016 –17).

In my view, improvement notices – unless successfully challenged – could well have stopped the use of boat numbers instead of names, stopped the ongoing use of mouldy marquees on Nauru, and stopped Border Force from preventing urgently needed medical airlifts.

As well as requiring Immigration/Home Affairs to comply with its section 19(2) duty in all those instances, and thereby preventing a series of risks to psychological and/or physical health, one of the notices – the one about medical airlifts – would have saved both sides the time and cost of 13 or more unnecessary court cases.

2.2.1 The 15 child sexual assault reports Comcare didn't ask for

Exactly three years ago, on 14 August 2015, I e-mailed two 'please prosecute' letters to the CEO of Comcare. Section 231 enables "a person" who's concerned that, if Comcare hasn't prosecuted in relation to an apparently serious WHS Act offence within 6–12 months, to write such a letter.

One of the offences I alleged was Immigration's failure to ensure, at the Nauru RPC, that girls and women were not exposed to the risk of sexual abuse. The deemed date on which that offending first came to the notice of Comcare (a date that Comcare hasn't disputed) was 1 October 2014.

My letter included a quote from page 80 of the Hansard transcript of a Senate Committee hearing on 20 July 2015, during which the department's First Assistant Secretary, Children, Community and Settlement Services Division, Ms Cheryl-anne Moy, was asked about child sexual abuse. She refers to Transfield: it was the company providing 'garrison' services – that is, day-to-day management, catering, etc.

> **Ms Moy:** Okay. We are looking at from 14 September 2012 to 30 June 2015. I think you will find that the numbers that Transfield provided included all types of assaults against children … [As to the number] of sexual assault against minors, it was 15.

Senator HANSON-YOUNG: So you believe that all the incidents that Transfield have in their reports to us have all been reported to the department?
Ms Moy: Through the normal incident reporting—
Senator HANSON-YOUNG: You would be aware of all of them?
Ms Moy: Yes.
Senator HANSON-YOUNG: In effectively real-time; the moment that they are reported?
Ms Moy: Not necessarily the moment they are reported, but they are reported with regularity through to the department.

Section 232(1) of the WHS Act allows Comcare 2 years, from the date that "the offence first comes to the notice of the regulator", to lay charges.

That 'first notice' date being 1 October 2014, the 2-year deadline elapsed on 1 October 2016.

232 Limitation period for prosecutions

(1) Proceedings for an offence against this Act may be brought within the latest of the following periods to occur:

(a) within 2 years after the offence first comes to the notice of the regulator;

(b) within 1 year after a coronial report was made or a coronial inquiry or inquest ended, or an official inquiry ended if it appeared from the report or the proceedings at the inquiry or inquest that an offence had been committed against this Act;

On 15 March 2017, five and a half months after that deadline had expired, at yet another Senate Committee hearing, Senator McKim reminded Comcare's people of the 2-year time limit, and then asked Comcare's acting CEO, Ms Lynette McLean, if Comcare had asked Immigration to hand over the 15 reports. (Note: Ms Moy said the reports went to Immigration "through the normal incident reporting".)

> **Senator McKIM:** Thank you. The issue here is that there is a two-year statutory time frame for bringing prosecutions in section 232 of the act. That is correct, isn't it?
>
> Mr Napier: That is correct.
>
> …
>
> **Senator McKIM:** But you have not yet asked for a copy of all incident reports, have you?
>
> Ms MacLean: No, but we will.

I think Comcare's failure to even *plan* to ask for those 15 reports until nearly 6 months after the deadline is reprehensible beyond belief. It is hard to imagine a more shameful and despicable dereliction of regulatory duty.

Maybe not all 15 reports would have warranted – or led to enough admissible evidence being obtained – to enable a prosecution. But as for those that could have resulted in charges being laid – against Immigration for failing to prevent the risk of sexual assault, and against one or more officers for not exercising due diligence to ensure that Immigration complied with its section 19(2) duty – those children and their families have been cruelly and permanently deprived of access to such justice.

2.3 How Immigration gained immunity by hiding guilt

On 30 September 2014, Senator Sarah Hanson-Young shocked the nation with evidence she claimed to have of, inter alia, child sexual abuse at the Nauru RPC. In response, the then Immigration minister Scott Morrison announced what he called an independent review.

The *legal* situation presumably included likely serious WHS Act breaches – by Immigration and some senior officers – against sections 19(2) and 27 respectively. So, in any *genuine* investigation looking beyond mere individual perpetrators, the department and its officers would be the prime suspects.

But the *realpolitik* situation was that the prime suspects and the government wanted that reality to be kept secret.

Ditto in relation to the February 2014 Manus riot.

So, who, then, commissioned the review into the Nauru sex abuse issue and the Manus riot? Who wrote the terms of reference? To whom was the report to be provided? Answer: the prime suspects. Look at this front cover:

REPORT TO THE SECRETARY

DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION

REVIEW INTO THE EVENTS OF 16 – 18 FEBRUARY 2014

AT THE MANUS REGIONAL PROCESSING CENTRE

ROBERT CORNALL AO

23 MAY 2014

Here's Scott Morrison's 3 October 2014 media release announcing the Moss Review, with key text highlighted.

Independent inquiry into 'Nauru Allegations'

Minister for Immigration and Border Protection, the Hon Scott Morrison today announced an independent review into allegations of inappropriate conduct by contracted service providers at the Nauru Offshore Processing Centre (OPC) ….

'The government takes allegations of misconduct by employees of contracted service providers at the Nauru OPC very seriously, particularly allegations of abuse or sexual misconduct. ….

'When allegations of serious misconduct involving sexual abuse were raised with me, I referred them to my Department for assessment and advice. …

'Allegations of sexual abuse and misconduct are serious and need to be addressed and action taken wherever necessary.

'Today I announce that the Acting Secretary of the Department of Immigration and Border Protection has commissioned Mr Phillip Moss to conduct an independent investigation into all of these matters.'

Mr Philip Moss is the former Integrity Commissioner and former head of the Australian Commission for Law Enforcement Integrity (ACLEI). Mr Moss has served the Australian Government's law enforcement and integrity communities with distinction since July 2007, when he was appointed the inaugural Integrity Commissioner.

Mr Moss will be asked to:

- assess the accuracy of the allegations and determine exactly what the facts are;
- ensure those facts are available to any authorities for any action that would take place as a result; and
- provide the department with recommendations to strengthen relevant arrangements relating to the provision of services at the centre, and the conduct of service providers and staff at the Offshore Processing Centre in Nauru.

'The review will look closely at the actions of all entities contracted by the Australian Government to provide services at the centre,' Minister Morrison said.

'Allegations of criminal conduct committed under Nauruan law will be referred to relevant Nauruan authorities to investigate and prosecute, as appropriate.

'Consistent with the MOU between Australia and Nauru, the security, good order and management of the centre, including the care and welfare of persons residing in the centre, remains the responsibility of the sovereign Government of Nauru. The Australian Government provides support to the Nauruan Government in this role.

'Accordingly, it is important that Mr Moss will work closely with Nauruan authorities on this review and share his findings with them,' Minister Morrison said.

The terms of reference make no mention of the WHS Act. Nor do they mention Comcare, referring only to providing facts to “any authorities”. Nonetheless, that vague term could have allowed Moss to refer facts to Comcare – but only if he chose to ‘bite the hand that was feeding him’.

As it happens, reviewer Moss did find some major un-prevented health and safety risks, as revealed by the following extracts from his February 2015 *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*).

Executive Summary

12. The perception of a lack of personal safety and privacy is heightened by high density accommodation in mostly un-air-conditioned, soft-walled marquees in a tropical climate.
14. The Review further concludes that the training and supervision of contract service provider staff members, particularly locally engaged Nauruans, need to be improved and should focus on personal safety and privacy of transferees.

[In the body of the report]

3.142.1 The following examples were provided … in relation to apprehension about personal safety and concerns about privacy and contract service provider staff members:

- *During the day, it was so hot in the tent that we were almost naked. We just had our underwear. I was lying on the bed studying some English, and there was a blue curtain that I had tucked under the fans [sic] to secure it, but after some time I noticed that someone was looking at me and watching me. I noticed that the curtain was drawn and two of the officers were looking at me and watching me.*

Recommendations

1. The Department and the Nauruan Government take into account the personal safety and privacy of transferees when making decisions about facilities and infrastructure at the Centre.

Who was responsible for the insecure marquees and the failure to train and supervise staff? Immigration. As to the latter, section 19(3)(f) imposes on Immigration (the PCBU) an explicit staff training and supervision duty:

(3) …, a [PCBU] must ensure, so far as is reasonably practicable:

(f) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking;

A WorkSafe colleague and I sent Moss a submission. In 2.5 pages we outlined the WHS regime and explained how terms of reference 'wriggle room' enabled him to include WHS Act-related findings and recommendations. Moss didn't incorporate our analysis although, having recently been the Commissioner for federal Law Enforcement Integrity, he was almost uniquely well placed to do so.

The Review paragraphs quoted in the following table's first column exemplify Mr Moss's pusillanimous approach.

The column two paragraphs suggest what an *independent* inquiry, referring to the Act and Comcare, could have said.

ACTUAL MOSS REVIEW PARAGRAPHS	POTENTIAL REVIEW PARAGRAPHS (WITH A WHS ACT PERSPECTIVE)
5.61 The Review notes that attention needs to be paid to: … improved training and super-vision of local Nauruan staff … employed by contract service providers.	5.61 The Review notes that: (a) *the Department* has apparently failed to comply with its s 19(3)(f) duty to ensure that all workers, including local Nauruans employed by contract service providers, were given the information/instruction/ *training*/*supervision* "necessary to ensure the health and safety of all persons"; and if so, (b) *Comcar*e failed "to … enforce [DIBP] compliance" as required by s 152(b).
3.316 The Review was … made aware of allegations of indecent assault, sexual harassment and physical assault occurring in the Centre. A proper response is required at all times. Allegations should be investigated by the relevant authorities. In many cases, it will be the Nauruan Police Force. As noted already, the Review has made available to the Department any material it has obtained.	3.316 The Review was … made aware of allegations of indecent assault, sexual harassment and physical assault occurring in the Centre. Had the Department complied with its s 19(2) "primary duty of care" to (in brief) ensure that the health and safety of detainees was not put at risk, and its s 20(2) duty to ensure that all risks "arising from the workplace" were prevent-ed, the Review would have received few if any allegations of those kinds. The Department's officers' apparent non-exercise of due diligence (as per s 27) to ensure those compliances is most concerning. All of the above has been referred to Comcare for compliance and enforcement action – which surely should have already occurred.

———————

I think I've said enough to prove that:

(1) some aspects of the way 'detention centres' are run have involved and continue to involve apparent, and apparently systemic – that is, *organised* – offending against the WHS Act, such that there is an ongoing situation of apparent criminality; and

(2) Comcare's non-genuine investigations and ongoing failure to pro-actively and effectively "monitor and enforce compliance with this Act" have provided, and keep providing, virtual impunity for such systemic criminality – a role that might almost be described as "running protection for organised crime".

_____

So now, "What is to be done?"
As concerned citizens or residents, what can we do to end this state of apparent 'criminality with impunity'? I'll be brief to allow for Q&A.

- Ask Comcare to issue an Improvement Notice.
- If there's a serious apparent offence that's been un-prosecuted for 6 months, ask Comcare to prosecute.
- Write a detention centre-related witness statement in support of the International Criminal Court submissions.
- Support the Biloela family.
- Given the scale of apparent criminality with impunity, a piecemeal approach is inadequate: a comprehensive exposé is required. Also, the deception and the wall of secrecy over on-water, offshore and 'onshore' matters suggest that the truth will need to be *compulsorily* exposed. I'm told you've been given a draft declaration that calls for an official inquiry, with the power to compel witnesses to not only attend hearings but also give evidence under oath or affirmation.

  Over to you for Q&A and discussion.

Max Costello 0425 701 690 maxcostello@hotmail.com