Australian Human Rights Commission

Joint Select Committee on Australia's Immigration Detention Network

Australian Human Rights Commission response to questions on notice

24 October 2011

Australian Human Rights Commission
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At the public hearing of the Joint Select Committee on Australia's Immigration Detention Network in Sydney on 5 October 2011, two questions on notice were put to the Australian Human Rights Commission by Committee members. The Commission's responses are set out below.

Question 1: Provide a copy of the Commission's submission to the Independent Review of the Intelligence Community.

The Commission made a submission to the Independent Review of the Intelligence Community in April 2011. A copy of the submission is attached and is also available at http://humanrights.gov.au/legal/submissions/2011/20110431_intelligence.html.

The submission outlined the Commission's key concerns relating to the conduct, transparency and reviewability of Australian Security Intelligence Organisation security assessments for people seeking asylum in Australia, particularly those in immigration detention facilities.

A brief summary of those concerns is included in the Commission's submission to the Joint Select Committee on Australia's Immigration Detention Network (see section 5).

Since making those submissions, the Commission has addressed these concerns in its report, *Immigration detention at Curtin: Observations from visit to Curtin Immigration Detention Centre and key concerns across the detention network* (see sections 5.1 and 7). That report has been provided to the Joint Select Committee and is also available at http://humanrights.gov.au/human_rights/immigration/idc2011_curtin.html.

Question 2: When did the Commission raise with the government the need to use the Residence Determination power under the Migration Act in order to remove children and other vulnerable people from 'alternative places of detention' and place them in community detention? Provide copies of reports and correspondence with the government.

The Commission has continually advocated with successive Australian Governments that children and other vulnerable individuals should not be subjected to mandatory, prolonged and indefinite detention in immigration detention facilities.

In particular, the Commission has long advocated for changes to Australia's system of mandatory immigration detention of children. In 2004 the Commission released *A last resort?,* the report of the National Inquiry into Children in Immigration Detention. The Inquiry report is available at http://humanrights.gov.au/human_rights/children_detention_report/index.html.

The Inquiry's major findings in relation to children who arrived in Australia without a visa between 1999 and 2002 included that:

- Australia's immigration detention laws create a detention system that is fundamentally inconsistent with the *Convention on the Rights of the Child.*[1]
- Children in immigration detention for long periods of time are at high risk of serious mental harm. The Commonwealth's failure to implement the repeated

> recommendations by mental health professionals that certain children be removed from the detention environment with their parents amounted to cruel, inhumane and degrading treatment of those children.

Among other things, the Inquiry recommended that children in immigration detention centres and residential housing projects be released with their parents as soon as possible, and no later than four weeks after the tabling of the Inquiry report. That could be achieved within the existing legislative framework through transfer into the community (home-based detention); the exercise of Ministerial discretion to grant humanitarian visas; or the grant of bridging visas.

In 2005, the year after the release of the Inquiry report, the Commission welcomed the amendment of the *Migration Act 1958* (Cth) to create the Residence Determination power.[2] Under that power the Minister for Immigration can issue a Residence Determination permitting a person in immigration detention to live at a specified residence in the community, in what is known as 'community detention'.

Since that time, the Commission has made numerous recommendations to successive Australian Governments relating to the need to ensure that children and other vulnerable individuals are not subjected to mandatory, prolonged and indefinite detention in immigration detention facilities, and that full use is made of community-based alternatives including community detention and bridging visas.

Relevant recommendations have been made in a range of submissions and reports, including the following:

- *2006 Summary of Observations following the Inspection of Mainland Immigration Detention Facilities* (released in January 2007). The report is available at http://humanrights.gov.au/human_rights/immigration/inspection_of_mainland_idf.html. In particular, see recommendations 2, 10 and 11.
- *2007 Summary of Observations following the Inspection of Mainland Immigration Detention Facilities* (released in January 2008). The report is available at http://humanrights.gov.au/human_rights/immigration/idc2007.html. In particular, see recommendations 2, 5 and 8.
- *2008 Immigration detention report: Summary of observations following visits to Australia's immigration detention facilities* (released in January 2009). The report is available at http://humanrights.gov.au/human_rights/immigration/idc2008.html. In particular, see sections 10.3, 12.3 and 14.
- *2009 Immigration detention and offshore processing on Christmas Island* (released in October 2009). The report is available at http://humanrights.gov.au/human_rights/immigration/idc2009_xmas_island.html. In particular, see recommendations 8 and 9.
- *2010 Immigration detention on Christmas Island* (released in October 2010). The report has been provided to the Joint Select Committee and is also available at

http://humanrights.gov.au/human_rights/immigration/idc2010_christmas_island.html. In particular, see recommendations 5, 6 and 19.

- *2010 Immigration detention in Darwin* (released in December 2010). The report has been provided to the Joint Select Committee and is also available at http://humanrights.gov.au/human_rights/immigration/idc2010_darwin.html. In particular, see sections 7 and 8 and recommendation 4.
- *2011 Immigration detention at Leonora* (released in February 2011). The report has been provided to the Joint Select Committee and is also available at http://humanrights.gov.au/human_rights/immigration/idc2011_leonora.html. In particular, see sections 7 and 8 and recommendation 4.
- *2011 Immigration detention at Villawood* (released in May 2011). The report has been provided to the Joint Select Committee and is also available at http://humanrights.gov.au/human_rights/immigration/idc2011_villawood.html. In particular, see recommendations 3 and 12.
- *Submission to the Joint Select Committee on Australia's Immigration Detention Network* (August 2011). In particular, see recommendations 17, 25, 30 and 31.
- *2011 Immigration detention at Curtin* (released in September 2011). The report has been provided to the Joint Select Committee and is also available at http://humanrights.gov.au/human_rights/immigration/idc2011_curtin.html. In particular, see recommendations 4 and 19.

In addition to raising these matters in public reports and submissions, the Commission has raised them directly with successive Ministers for Immigration. In particular, Commission President and Human Rights Commissioner, Catherine Branson QC raised these matters in a letter to Senator the Hon. Chris Evans, Minister for Immigration and Citizenship on 30 April 2010 and in letters to the Hon. Chris Bowen MP, Minister for Immigration and Citizenship on 23 September 2010 and 4 April 2011. Copies of those letters are attached.

The Commission has welcomed the expanded use of community detention for families and unaccompanied minors since late 2010. Under this expansion, between October 2010 and August 2011, 1690 people were moved out of detention facilities and into community detention – 882 adults, 527 accompanied children and 281 unaccompanied minors.[3] This is a significant positive development.

The Commission has urged the Australian Government to expand this program further.[4] If a person cannot be granted a bridging visa and must be held in immigration detention, the Minister for Immigration and Citizenship and the Department of Immigration and Citizenship should make the greatest possible use of community detention as an alternative to holding people in immigration detention facilities. This should apply to all people in immigration detention, particularly those who meet the priority criteria under the Residence Determination Guidelines. Among others, this includes children and their accompanying family members, people who may have experienced torture or trauma and people with significant physical or mental health concerns.[5]

[1] *Convention on the Rights of the Child* (1989). At http://www2.ohchr.org/english/law/crc.htm (viewed 17 October 2011).
[2] *Migration Act 1958* (Cth), s 197AB.
[3] These figures cover the period between 18 October 2010 and 31 August 2011. Figures provided to the Commission by the Department of Immigration and Citizenship.
[4] See, for example Australian Human Rights Commission, *2011 Immigration detention at Curtin* (2011), sections 8.2 and 12, recommendation 4. At http://humanrights.gov.au/human_rights/immigration/idc2011_curtin.html (viewed 17 October 2011).
[5] Minister for Immigration and Citizenship, *Minister's Residence Determination Power Under s. 197AB and S.197AD of the Migration Act 1958: Guidelines* (2009), para 4.1.4.

Australian Human Rights Commission

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President
The Hon Catherine Branson QC

23 September 2010

The Hon Chris Bowen MP
Minister for Immigration and Citizenship
Parliament House
CANBERRA ACT 2600

Dear Minister

As you are aware, the Australian Human Rights Commission recently visited the immigration detention facilities on Christmas Island and in Darwin.

As I indicated in my letter dated 22 September 2010, we expect to publish a report on the Christmas Island visit in late October and a report on the Darwin visit in mid-November. Before these reports are published, we will provide DIAC with an opportunity to prepare a response. We will also provide the reports to your office.

I am writing to raise concerns about two pressing issues which were of particular concern during our recent detention visits: the significant delays in the conduct of security clearances for asylum seekers in immigration detention; and the under-utilisation of the Community Detention system.

Security clearances

During visits to detention facilities both on Christmas Island and in Darwin, the Commission had significant concerns about the length of time people are being held in immigration detention. In many cases, this appeared to be related to delays in the conduct of their security clearances.

Delay with a security clearance resulting in the prolonged detention of any person is of significant concern, but it is of particular concern in the case of people in respect of whom Australia has been assessed as owing protection obligations.

On Christmas Island and in Darwin, the Commission met with people in immigration detention who were aware that they had been assessed through the non-statutory Refugee Status Assessment process to be refugees in respect of whom Australia owed protection, yet who remained in immigration detention waiting for their security clearances to be finalised.

Most of these people expressed significant frustration and distress at their situation. Some of them appeared to the Commission to have significant vulnerabilities – for example, some had experienced significant trauma, some were single mothers with several children, and others had significant health concerns. I am concerned that the prolonged detention of such people will have a deleterious impact on their mental health. As you would be aware,

the impact of prolonged detention on the mental health of asylum seekers is well documented.

I understand that the Australian Security and Intelligence Organisation (ASIO) is responsible for providing security clearances. I also understand that this agency is facing a considerable workload given the increase in the number of people seeking asylum in Australia. I encourage the Australian Government to ensure that adequate resources are provided to ASIO to enable the agency to undertake this work in a timely manner.

I am not aware of precisely what is required to allow ASIO to issue a security clearance. However, I would be concerned if the Australian Government requires ASIO to provide a full security clearance for each individual in immigration detention prior to their release from detention and the grant of a protection visa. Such a requirement would inevitably mean that there will continue to be high numbers of people detained for prolonged periods while they await security clearances. In particular, significant delays would ensue if it is difficult for ASIO to obtain information about a particular individual.

If the Government has imposed the above requirement, I urge it to consider whether there might be alternatives to requiring a full individual security clearance before an individual will be released from immigration detention and granted a protection visa.

I understand that in some countries, asylum seekers are permitted to reside in the community while their refugee claims are assessed, without a prerequisite of full security clearances conducted by national security agencies.

Alternatively, there may be useful international examples where qualified security clearances are used. For example, in the United States of America in cases where a preliminary determination has been made to grant asylum but security clearance results have not been received, a 'recommended approval' decision may be made. A recommended approval allows asylum seekers and their family to apply for permission to work in the United States. Once the results of the required security checks are received and the asylum seeker is cleared, the recommended approval will be changed to a grant of asylum. If the results of the security checks adversely affect eligibility for asylum, the request for asylum may be denied or the case may be referred to an immigration judge.

My final concern is that there is a lack of transparency around the conduct of security clearances. I am concerned that asylum seekers appear to be provided with very little information about the process and the likely timeframe, and are not provided with regular updates about progress with their security clearance. Furthermore, a person who receives an adverse security assessment is not provided with the reasons for this decision and the decision is not independently reviewable. If it is regarded as incompatible with the security of Australia for a person who receives an adverse security assessment to be provided with the reasons for the decision, I urge the Government nonetheless to consider creating some form of independent audit mechanism in respect of adverse security assessments. I will raise these concerns with the Attorney-General and the Director General of ASIO. However, I raise them with you due to the potentially serious consequences for an asylum seeker if an error is made during their security clearance process.

Community Detention

A related concern is the under-utilisation of the Community Detention system. We will address this issue in our forthcoming report on Christmas Island.

The Commission's preference would be for asylum seekers to be issued with bridging visas to reside in the community while their asylum claims are processed. However, in

cases where that is not possible and it is necessary to hold an asylum seeker in immigration detention, the Commission views Community Detention as the most appropriate form of detention.

The Commission welcomed the introduction of the Minister's Residence Determination powers in 2005. The creation of the Community Detention system was a significant development which aimed to ensure that people, particularly vulnerable groups, would not be held in immigration detention facilities for prolonged periods.

As you would be aware, under the Residence Determination Guidelines, priority for Community Detention is to be given to children and accompanying family members; persons who may have experienced torture or trauma; persons with significant physical or mental health problems; cases which will take a considerable period to substantively resolve; and other cases with unique or exceptional characteristics. These priority groups are to be assessed and referred to the Minister as soon as practicable. In particular, all minors are to be identified for a Residence Determination as soon as they are detained.

The Commission has serious concerns that these Guidelines are not being implemented. As indicated in my letter dated 22 September 2010, during recent detention visits the Commission has met with many vulnerable people who should be prioritised for Community Detention, but who have remained in detention facilities for lengthy periods.

DIAC has informed the Commission that one of the reasons for the current under-utilisation of the Community Detention system is that most irregular maritime arrivals in immigration detention facilities have not yet received security clearances.

However, I note that legally, a person in Community Detention remains in immigration detention; and a completed security clearance is not a prerequisite for placement in Community Detention under the Residence Determination Guidelines. The Community Detention system allows for the imposition of a range of conditions which can be used to mitigate risks that might be posed by a particular individual. This is specifically acknowledged in the Residence Determination Guidelines.

I encourage you to take steps to ensure the full implementation of the Residence Determination Guidelines. In particular, I urge you to take steps to enable families with children, unaccompanied minors and other vulnerable individuals to be placed in Community Detention as a matter of priority.

I look forward to discussing these issues in further detail when we meet.

Yours sincerely

Catherine Branson
President

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Australian Human Rights Commission
everyone, everywhere, everyday

President
The Hon Catherine Branson QC

30 April 2010

Senator Chris Evans
Minister for Immigration and Citizenship
Parliament House
Canberra ACT 2600

Dear Minister

Suspension of processing of claims by asylum seekers from Sri Lanka and Afghanistan

I am writing to express my concern about the decision announced by the Australian Government on 9 April 2010 to suspend the processing of refugee claims by asylum seekers from Sri Lanka and Afghanistan.

As you know, the Commission has previously welcomed positive reforms introduced by this government which have made Australia's immigration detention system a fairer and more humane one. In particular, the Commission has expressed support for the government's 'New Directions in Detention' policy and for most of the key immigration values expressed in that policy.[1]

I recognise that the recent arrival of asylum seekers by boat presents challenges for the Australian Government. However, the combination of the suspension of processing, the mandatory detention of asylum seekers without judicial oversight, and the decision to detain asylum seekers affected by the suspension in remote locations is of significant concern on both humanitarian and human rights grounds.

In summary, my major concerns are that:

- mandatory detention of asylum seekers may amount to arbitrary detention, in breach of Australia's obligations under the *International Covenant on Civil and Political Rights* (ICCPR)
- mandatory detention of children is inconsistent with Australia's obligations under the *Convention on the Rights of the Child* (CRC) to only detain children as a measure of last resort
- detention of asylum seekers in remote locations such as Christmas Island and Curtin limits their access to appropriate services and support networks, and limits the accessibility and transparency of their detention arrangements

[1] The Commission has welcomed the statement of values 3 to 7, and expressed the need for those values to be translated into policy, practice and legislative change as soon as possible.

- prolonged and indefinite detention of asylum seekers may have significant impacts on their mental health, particularly in the case of unaccompanied minors, families with children, and survivors of torture and trauma.

In light of these concerns, I urge the Australian Government to move promptly to lift the suspension of processing. If the government decides against doing so, I urge it to minimise the uncertainty faced by those affected by the suspension by providing a commitment to resume processing at the end of the current three and six month suspension periods.

Arbitrary detention

I am concerned that the suspension of processing will subject asylum seekers to prolonged and indefinite periods in immigration detention. This could lead to arbitrary detention, in breach of Australia's obligations under article 9 of the ICCPR.

Under international law, detention will be arbitrary because of elements of injustice, inappropriateness, unreasonableness or indeterminacy or if it is 'not necessary in all the circumstances of the case' or not a proportionate means of achieving a legitimate aim.[2]

Immigration detention for the purposes of essential health, security and identity checks *may* be justified under international law. However, the Commission is concerned that the current policy of mandatory detention of unauthorised boat arrivals may amount to arbitrary detention because of the failure to provide an individual assessment mechanism to determine whether detention is necessary to achieve those purposes.

Furthermore, even if the initial detention is not arbitrary, a subsequent period of detention may become arbitrary, for example, because of the length of the detention or because the detention ceases to be a proportionate response.[3]

The Commission is concerned that the mandatory detention of asylum seekers subject to the suspension, for an indefinite period of time, and in the absence of individual assessment or access to judicial review may amount to arbitrary detention in breach of Australia's international human rights obligations.

You will be aware that on a number of occasions, the United Nations Human Rights Committee has found Australia to be in breach of its obligations under article 9 of the ICCPR as a result of the arbitrary detention of people under Australia's mandatory immigration detention system.[4] Further, the Australian Human Rights Commission has

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[2] United Nations Human Rights Committee, *A v Australia,* Communication No. 560/1993, UN Doc CCPR/C/59/D/560/1993, 30 April 1997, para 9.2.

[3] See United Nations Human Rights Committee, *Van Alphen v The Netherlands,* Communication No. 305/1988, UN Doc CCPR/C/39/D/305/1988, 15 August 1990, paras 5.6-5.8; United Nations Human Rights Committee, *Spakmo v Norway*, Communication No. 631/1995, UN Doc CCPR/C/67/D/631/1995, 11 November 1999, para 6.3; United Nations Human Rights Committee, *A v Australia,* Communication No.560/1993, UN Doc CCPR/C/59/D/560/1993, 30 April 1997, para 9.4; United Nations Human Rights Committee, *Concluding Observations of the Human Rights Committee: Switzerland*, UN Doc CCPR/C/79/Add.70, 8 November 1996, para 15.

[4] See, for example United Nations Human Rights Committee, *A v Australia,* Communication No.560/1993, UN Doc CCPR/C/59/D/560/1993, 30 April 1997; United Nations Human Rights Committee, *C v Australia,*

found the Commonwealth to be in breach of its obligations under article 9(1) in seven reports to Parliament stemming from complaints lodged by individuals in immigration detention.

The suspension of processing and the mandatory detention of asylum seekers for the duration of the suspension could expose the Australian Government to further complaints of arbitrary detention in breach of the ICCPR.

I therefore urge the Australian Government to move promptly to lift the suspension of processing. In the meantime, I encourage you to implement the Australian Government's New Directions policy, under which the presumption should be that asylum seekers who have had their health, identity and security checks completed will be allowed to reside in the community while their immigration status is resolved.

I note that, according to information provided by DIAC, Sri Lankan and Afghani asylum seekers who arrive on the mainland will not be taken into immigration detention, but will remain on their existing visas or be granted bridging visas to reside in the community while they wait for their applications to be assessed. I draw to your attention that differential treatment of asylum seekers based on their irregular arrival at an excised offshore place could be inconsistent with the Refugee Convention.[5]

Children should only be detained as a measure of last resort

I am also concerned that the mandatory detention of children affected by the suspension is inconsistent with Australia's obligations under the CRC. The CRC requires that:

- the best interests of the child are a primary consideration in all actions affecting children
- children are only detained as a measure of last resort and for the shortest appropriate period of time
- if a child is detained, they are treated in a manner which takes into account the needs of persons of their age.[6]

These obligations require consideration of any less restrictive alternatives that may be available to an individual child in deciding whether a child is detained, and if so, for how long.

Detention of children should only occur in exceptional cases. If, after considering the

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Communication No. 900/1999, UN Doc CCPR/C/76/D/900/1999, 28 October 2002; United Nations Human Rights Committee, *Baban et al v Australia,* Communication No. 1014/2001, UN Doc CCPR/C/78/D/1014/2001, 6 August 2003; United Nations Human Rights Committee, *D&E v Australia,* UN Doc CCPR/C/87/D/1050/2002, 11 July 2006; United Nations Human Rights Committee, *Danyal Shafiq v Australia*, UN Doc CCPR/C/88/D/1324/2004, 13 November 2006; United Nations Human Rights Committee, *Shams et al v Australia,* UN Doc CCPR/C/90/D/1255, 11 September 2007.

[5] Article 31(1) of the Refugee Convention prohibits state parties from penalising asylum seekers on account of their unlawful entry where they are coming directly from a territory where their life or freedom was threatened. Australia's differential treatment of asylum seekers based on their place and method of arrival arguably breaches this obligation.

[6] *Convention on the Rights of the Child* (1989), arts 3(1), 37(b), 37(c).

available alternatives, detention is considered to be appropriate in the specific circumstances, then it should be as short as possible. It should also be in the least restrictive environment appropriate to the child's age and other circumstances.

As you are aware, the Commission has previously expressed the view that Christmas Island is not an appropriate place in which to hold people in immigration detention – in particular, unaccompanied minors and families with children. I have significant concerns about the detention of unaccompanied minors and families with children in the 'Construction Camp' immigration detention facility on Christmas Island. In the Commission's view, the Construction Camp is not an appropriate environment for children.

I therefore welcome efforts made by the Australian Government to move small groups of unaccompanied minors and families with children from Christmas Island to the mainland. I urge you to consider extending these efforts to *all* unaccompanied minors and families with children who arrive on Christmas Island seeking asylum.

In doing so, I encourage you to consider any less restrictive alternatives to detaining these groups in closed detention facilities on the mainland. In particular, this should include the grant of bridging visas. This would be in line with the Australian Government's New Directions policy, under which the presumption should be that asylum seekers who have had their health, identity and security checks completed will be allowed to reside in the community while their immigration status is resolved. Where such checks have not been completed, we urge that they be given a high priority.

If it is not possible to grant bridging visas, I encourage you to issue Residence Determinations to allow these asylum seekers to reside in community detention. The Commission supported the introduction of the Residence Determination system in 2005, as it provides a readily available alternative to holding people in closed immigration detention facilities – in particular vulnerable groups such as families and unaccompanied minors.

Detention in remote locations

As noted, the Commission is of the view that Christmas Island is not an appropriate place in which to hold people in immigration detention. Following our last visit, we expressed the view that the remoteness and small size of the island limits detainees' access to appropriate services; the location makes it less visible and transparent to the Australian public; and the limited facilities and infrastructure make it a difficult place in which to ensure implementation of some key aspects of the Australian Government's New Directions policy. The Commission has also become increasingly concerned about reported overcrowding in the detention facilities on the island.

In addition, I am disturbed to hear that the Curtin immigration detention centre is to be re-opened in order to detain adult male asylum seekers subject to the processing suspension. The Commission visited Curtin in 2000, 2001 and 2002 and raised some significant concerns about conditions at the centre.

Curtin is extremely remote and isolated. I fear that it will be very difficult for those detained at Curtin to get adequate access to appropriate services and support including health and mental health care; torture and trauma counselling; religious services; recreational activities including excursions outside the detention environment; and legal and migration

advice and assistance. Indeed, many of the reasons that make Christmas Island an inappropriate place in which to detain asylum seekers also apply to Curtin.

If asylum seekers subject to the suspension must be detained, I urge you to consider the possibility of transferring them to metropolitan immigration detention facilities where appropriate services can be more easily provided, and where there is greater transparency as the facilities are more accessible to oversight agencies and non-government organisations.

The impact of detention on mental health

My final concern is about the impact that prolonged and indefinite detention can have on the mental health of asylum seekers, in particular unaccompanied minors and families with children.

The Commission has documented this impact over many years, most comprehensively in *A last resort?*, the 2004 report of the National Inquiry into Children in Immigration Detention (the National Inquiry).[7]

Information provided to the National Inquiry indicated that:

> Children in immigration detention suffered from anxiety, distress, bed-wetting, suicidal ideation and self-destructive behaviour including attempted and actual self-harm. The methods used by children to self-harm included hunger strikes, attempted hanging, slashing, swallowing shampoo or detergents and lip-sewing. Some children were also diagnosed with specific psychiatric illnesses such as depression and post traumatic stress disorder.
>
> Mental health experts told the Inquiry that a variety of factors can cause mental health problems for children in detention, including pre-existing trauma, negative visa decisions and the breakdown of the family unit. These factors are either the direct result of, or exacerbated by, long-term detention in Australia's detention centres.[8]

Among the major findings of the National Inquiry was that children in immigration detention for long periods of time are at high risk of serious mental harm.[9] Since then, the Commission has publicly welcomed the Australian Government's commitment to ensure that children will not be detained in Australia's high security immigration detention centres. However, we have raised significant concerns about the ongoing practice of detaining children in other types of closed immigration detention facilities, both on the mainland and Christmas Island. I am extremely concerned that the prolonged or indefinite detention of children subject to the suspension in any closed detention facility could lead to significant impacts on their mental health.

Further, the National Inquiry found a clear link between uncertainty experienced by asylum seekers in detention, and deterioration of their mental health.[10] It is likely that the

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[7] Human Rights and Equal Opportunity Commission, *A last resort? Report of the National Inquiry into Children in Immigration Detention* (2004). At http://humanrights.gov.au/human_rights/children_detention_report/index.html.
[8] A last resort?, pp13-14.
[9] A last resort?, p 6.
[10] A last resort?, pp371-373.

uncertainty caused by the suspension of processing will exacerbate mental health issues among asylum seekers subject to immigration detention for the duration of the suspension. This is a particular concern in the case of survivors of torture and trauma.

I urge the Australian Government to minimise the uncertainty experienced by these asylum seekers by moving promptly to lift the suspension of processing. In the meantime, I encourage you to ensure that all detained asylum seekers are provided with adequate access to appropriate mental health services and torture and trauma counselling.

Concluding remarks

The Commission's past experience in this area and its National Inquiry report demonstrate the range and seriousness of human rights breaches that can occur when significant numbers of people are detained in remote immigration detention facilities for prolonged or indefinite periods of time. I urge you to make every effort to avoid such breaches.

As I indicated above, I acknowledge the challenges currently facing the Australian Government. However, I encourage you and other members of the government to seek to identify means of addressing those challenges that are both humane and consistent with Australia's international human rights obligations.

Yours sincerely

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President

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cc: The Hon Robert McClelland MP, Attorney-General
The Hon Stephen Smith MP, Minister for Foreign Affairs
The Hon Brendan O'Connor MP, Minster for Home Affairs

Australian Human Rights Commission
everyone, everywhere, everyday

President
The Hon Catherine Branson QC

4 April 2011

The Hon Chris Bowen MP
Minister for Immigration and Citizenship
Parliament House
Canberra ACT 2600

Dear Minister

Mental health of people in immigration detention

I am writing to raise serious concerns about the mental health of people in immigration detention facilities across Australia. The Commission has long held concerns about the detrimental impacts that prolonged and indefinite detention can have on the mental health of those detained. We have repeatedly raised these concerns with the Department of Immigration and Citizenship, successive Ministers for Immigration and in our public reports regarding conditions in immigration detention facilities.

The Commission's concerns have escalated over the past year as thousands of people are being detained for prolonged and indefinite periods, and there is clear evidence of the deteriorating mental health of many people in detention. As you would be aware, this includes high rates of self-harm and five suicides in immigration detention over the last six months.

In summary, my major concerns, as discussed in further detail below, relate to:

- the high number of people in immigration detention in a poor mental state
- suicides in immigration detention facilities
- high rates of self-harm in immigration detention facilities
- mental health service provision in immigration detention facilities
- the implementation of DIAC mental health policies
- the under-utilisation of Community Detention, particularly for people with mental health concerns or backgrounds of torture or trauma
- the need to reduce the length of time people spend in immigration detention facilities.

High number of people in immigration detention in a poor mental state

The Commission is becoming increasingly concerned about the high number of people in immigration detention who are in a poor mental state. This has been particularly evident during recent Commission visits to detention facilities, including a visit to Villawood Immigration Detention Centre (IDC) in February. During this visit,

many people spoke with Commission staff about their feelings of frustration and depression about being detained for a long period, and of the uncertainty and anxiety associated with being detained for an indefinite period. People spoke explicitly about the psychological impacts of their prolonged detention, including high levels of sleeplessness, feelings of hopelessness, thoughts of suicide, and feeling too depressed or distracted to take part in recreational activities.

That indefinite and prolonged detention has a detrimental impact on the mental health of people in detention has been recognised for many years. It was a key finding of the Commission's National Inquiry into Children in Immigration Detention, which found a clear link between uncertainty experienced by asylum seekers in detention, and deterioration of their mental health.

Suicides in immigration detention facilities

The Commission holds grave concerns about the risk of further suicides by people in immigration detention. I was very concerned to hear reports yesterday of a further suicide attempt at Curtin IDC on 30 March, two days after the suicide of a young Afghan man.

As mentioned, the Commission recently conducted a visit to Villawood IDC. The Commission's visiting team included Dr Suresh Sundram, a consultant psychiatrist, who assisted in our assessment of the mental health context and the provision of mental health services. Dr Sundram's view was that the conditions for suicidality in Fowler compound were very high. He noted that there appeared to be very high levels of distress, feelings of powerlessness and a pervasive sense of helplessness among individuals in that compound. Dr Sundram also assessed that within the Blaxland and Hughes compounds there were intense levels of anger and frustration and that these conditions carried an associated risk of impulsive suicides.

I urge you and your Department to consider what measures can be taken immediately to mitigate the risk of further suicides across the detention network. I urge consultation with mental health professionals, including those who are members of the Detention Health Advisory Group, as well as organisations that specialise in suicide prevention, to obtain advice about specific measures that should be taken. I understand that DeHAG has recommended to the Department that they consult immediately with Suicide Prevention Australia.

Self-harm in immigration detention facilities

The Commission has become increasingly alarmed at the levels of self-harm amongst people in immigration detention.

During our visits to detention facilities, we have heard about a range of serious self-harm incidents including hanging attempts, people slashing themselves and people ingesting chemicals. We have seen visible scars caused by self-harm. For example, during our visit to detention facilities in Darwin in September, we met a Burmese man who had recently attempted suicide, as well as several unaccompanied minors who had engaged in self-harm, for example by cutting themselves. During our visit to Villawood IDC in February, we met several individuals with visible scars from self-harming, and one individual who had recently been hospitalised following serious self-harm. We are aware of voluntary starvation having occurred at Northern IDC,

North West Point IDC, Curtin IDC and Villawood IDC in recent months. We were particularly troubled by the incidents during which a significant number of people at North-West Point IDC sewed their lips late last year.

The Commission has also been made aware of serious expressions of concern from community members about incidents of self-harm among unaccompanied minors detained at the Melbourne ITA. I have raised these concerns with the Department and to date have not received a response.

Mental health service provision in immigration detention facilities

In each detention facility visited by Commission staff over the last year, mental health staff demonstrated dedication and commitment to their work. However, the Commission holds a number of significant concerns about the adequacy of mental health service provision to people in immigration detention. These include concerns about:

- the model of clinical governance in most IHMS mental health services, where mental health nurses hold an inappropriate level of clinical risk – these services should instead be overseen by a psychiatrist
- an inadequate level of mental health staffing to adequately address the mental health needs of the high number of people in detention
- the absence of access to onsite psychiatric services at some facilities, and that there are no specialist child or adolescent mental health services
- limitations on the scope of mental health services, including that outreach services are not included within the scope of the IHMS contract in some facilities
- the fact that in some facilities (for example, the IRHs) there is no IHMS mental health presence at all.

The Commission reiterates its previously made recommendation that an independent body should be charged with the function of monitoring the provision of health and mental health services in immigration detention and that adequate resources should be allocated to that body to fulfil this function. While DeHAG plays an important role, it is not sufficiently resourced to monitor health and mental health service provision on a regular and ongoing basis.

DIAC mental health policies

The Commission also holds concerns about the implementation of the three key DIAC mental health policies within detention facilities.[1]

[1] *Mental health screening for people in immigration detention*, *Psychological Support Program for the Prevention of Self-Harm in Immigration Detention* and *Identification and Support of People in Immigration Detention who are Survivors of Torture and Trauma*.

For example, the Commission is concerned that many DIAC and detention service provider staff have not received training on implementing the Psychological Support Program (PSP). It is also of concern that this policy does not apply in some detention facilities, for example the Sydney IRH. Further, the Commission is concerned that there are insufficient IHMS and Serco staff at some sites to ensure the adequate implementation of this policy.

The Commission understands that the Department intends to review the PSP policy and its implementation. We encourage the commencement of this review as soon as possible. Given the number of recent suicides within immigration detention facilities and the evidence of deteriorating mental health amongst people in detention, the Commission recommends that this review be broadened to consider all of the mental health policies and their implementation.

Under-utilisation of Community Detention

The Commission has ongoing concerns about the under-utilisation of Community Detention, particularly for people with mental health concerns or backgrounds of torture or trauma.

Under the DIAC Torture and Trauma policy, the continued detention of survivors of torture and trauma in an IDC is only to occur 'as a measure of absolute last resort where risk to the Australian community is considered unacceptable'. Under the Residence Determination Guidelines, persons who may have experienced torture or trauma and persons with mental health concerns are to be prioritised for consideration of Community Detention.

During Commission visits to Christmas Island, Darwin and Villawood, the Commission became aware of numerous cases where people met the priority criteria for consideration of Community Detention based on mental health concerns or a background of torture or trauma, yet they had not been placed in Community Detention. During its recent visit to Villawood IDC, the Commission met people who remained in detention there despite their detention review by the Commonwealth Ombudsman having noted that they met the criteria for Community Detention.

The Commission welcomes the Community Detention expansion for unaccompanied minors and vulnerable families, which commenced late last year. However, we remain seriously concerned about the under-utilisation of the Community Detention system for other groups, particularly in light of the significant numbers of people who appear to meet the priority criteria under the Residence Determination Guidelines yet remain in detention facilities.

Reducing the period of time spent in immigration detention facilities

The Commission is extremely concerned about the prolonged periods of time for which thousands of people are being held in immigration detention facilities, and the potential impacts on their mental health and wellbeing. The deteriorating mental health of people in detention and the number of recent suicides demonstrate an urgent need to reduce the length of time people spend in immigration detention facilities.

The Commission holds concerns about a range of factors that appear to be contributing to people being held in detention facilities for prolonged periods. These include: the failure to implement key aspects of the Australian Government's *New Directions in Detention*; delays with notification of refugee status assessment decisions; lengthy timeframes for completion of ASIO security assessments; the under-utilisation of Community Detention as a mechanism for removing individuals from facility-based detention; and limited use of alternatives to immigration detention.

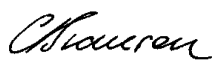
The Commission has for many years called for reforms to Australia's system of mandatory and indefinite immigration detention – both in light of the impacts it has on people's mental health, and because it leads to breaches of Australia's international human rights obligations including obligations not to subject anyone to arbitrary detention.

The Commission acknowledges that use of immigration detention may be legitimate for a strictly limited period of time. However, the need to detain should be assessed on a case-by-case basis taking into consideration individual circumstances. A person should only be held in an immigration detention facility if they are individually assessed as posing an unacceptable risk to the Australian community that cannot be met in a less restrictive way. Otherwise, they should be permitted to reside in community-based alternatives while their immigration status is resolved.

For more than ten years the Commission has raised concerns about the impacts of prolonged and indefinite detention on the mental health and wellbeing of those detained. In order to ensure that there is not further significant deterioration of the mental health of people in immigration detention, alternatives to facility-based detention – including Community Detention and existing or new visa options – should be utilised whenever possible and as promptly as possible.

Thank you for your consideration of these important issues. I look forward to hearing from you.

Yours sincerely



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