

Question on notice arising from the 23 September 2011 hearing of the Inquiry into Australia's agreement with Malaysia in relation to asylum seekers

Question 001 – Senator Trish Crossin

In evidence given to the Senate Legal and Constitutional Committee, the Ombudsman acknowledged communicating with Senator Sarah Hanson-Young and other Senators and Members on matters relating to asylum seekers in particular.

Could the Ombudsman's office please provide to the committee copies of any communications on issues relating to asylum seekers or any matters that were the subject of Senate Estimates or parliamentary inquiries, between the Ombudsman's office and any Senators or Members of the House of Representatives (including their offices), specifically:

- (1) Emails;
- (2) Written correspondence;
- (3) File notes relating to any verbal communications; and
- (4) Any other form of communication.

In providing this information, the committee recognises, that if any of this communication relates to individual clients (e.g. persons in immigration detention) then that information which identifies the person should of course be redacted.

Response from the Office of the Commonwealth Ombudsman

In relation to Question 001 asked by Senator Trish Crossin, the Office of the Commonwealth Ombudsman sought clarification from the Committee Secretariat regarding its scope.

In accordance with the Secretariat's advice, this response:

- covers the period 1 September 2010 onwards
- relates to communications regarding asylum seekers between the Office of the Commonwealth Ombudsman and Senators or Members of the House of Representatives (including their offices).

A search by the Office of the Commonwealth Ombudsman has identified the following documents:

Ref.	Date	Time	From	To	Subject	Attachment/s
1	2 Feb. 2011	5:16 pm	• (Commonwealth Ombudsman)	• (Minister Bowen's office) • (Minister Bowen's office) •	Ombudsman meeting	N/A

Ref.	Date	Time	From	To	Subject	Attachment/s
				(Commonwealth Ombudsman)		
2	4 Feb. 2011	12:07 pm	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> (Minister Bowen's office) (Commonwealth Ombudsman) 	Ombudsman meeting	N/A
3	4 Feb. 2011	12:32 pm	<ul style="list-style-type: none"> (Minister Bowen's office) 	<ul style="list-style-type: none"> (Commonwealth Ombudsman) (Commonwealth Ombudsman) (Minister Bowen's office) 	Ombudsman's meeting	N/A
4	4 March 2011	11:53 am	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> (Minister Bowen's office) (Minister Bowen's office) 	Commonwealth Ombudsman welcomes Minister Chris Bowen's announcement as an opportunity for improved immigration detention outcomes for children and families	<ul style="list-style-type: none"> Media release – Improved immigration detention outcomes for children and families
5	17 March 2011	4:19 pm	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> (Minister Gray's office) (Commonwealth Ombudsman) 	Media Release	<ul style="list-style-type: none"> Commonwealth Ombudsman media release – No weapons evident
6	17 March 2011	4:22 pm	<ul style="list-style-type: none"> (Minister Bowen's office) 	<ul style="list-style-type: none"> (Commonwealth Ombudsman) (Commonwealth Ombudsman) 	Media Release	N/A

Ref.	Date	Time	From	To	Subject	Attachment/s
7	13 May 2011	12:40 pm	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> senator.hanson-young@aph.gov.au () 	C'wealth Ombudsman – request for meeting re immigration detention issues	N/A
8	16 May 2011	12:41 pm	<ul style="list-style-type: none"> (Senator Hanson-Young's office) 	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	C'wealth Ombudsman – confirming meeting re immigration detention issues	N/A
9	23 May 2011	11:40 am	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> (Senator Hanson-Young's office) 	C'wealth Ombudsman mtg – follow up info	<ul style="list-style-type: none"> Follow-up material for Sen Hanson-Young – May 2011
10	23 May 2011	12:13 pm	<ul style="list-style-type: none"> (Senator Hanson-Young's office) 	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	C'wealth Ombudsman mtg – follow up info	N/A
11	27 May 2011	12:32 pm	<ul style="list-style-type: none"> (Senator Hanson-Young's office) 	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	C'wealth Ombudsman mtg – follow up info	N/A
12	27 May 2011	2:46 pm	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> (Minister Bowen's office) 	Ombudsman response to Greens statement on funding	<ul style="list-style-type: none"> Final MR – Budget Estimates – May 2011
13	27 May 2011	2:51 pm	<ul style="list-style-type: none"> (Minister Bowen's office) 	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	Ombudsman response to Greens statement on funding	N/A
14	27 May 2011	2:59 pm	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> (Senator Hanson-Young's office) 	Ombudsman response to Greens statement on funding	<ul style="list-style-type: none"> Final MR – Budget Estimates – May 2011
15	27 May 2011	3:02 pm	<ul style="list-style-type: none"> (Senator Hanson-Young's office) 	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	Ombudsman response to Greens statement on funding	N/A
16	20 July 2011	6:21 pm	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> Chris Bowen (Minister for Immigration) (Minister Bowen's office) 	Ombudsman investigation – suicide & self-harm in immigration detention facilities	<ul style="list-style-type: none"> C'wealth Omb letter to Immigration Minister – suicide and self-harm investigation – 20 July 2011

Ref.	Date	Time	From	To	Subject	Attachment/s
17	20 July 2011	6:26 pm	<ul style="list-style-type: none"> (Minister Bowen's office) 	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	Ombudsman investigation – suicide & self-harm in immigration detention facilities	N/A
18	28 July 2011	10:08 am	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> (Minister for Immigration) (Minister Bowen's office) 	Ombudsman media – suicide & self-harm in immigration detention	<ul style="list-style-type: none"> Final MR – suicide self-harm investigation – July 2011 Final Ombudsman oped for 29 July 2011
19	28 July 2011	2:52 pm	<ul style="list-style-type: none"> (Minister Bowen's office) 	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	AAP: Inquiry into asylum seeker mental health	N/A
20	28 July 2011	2:56 pm	<ul style="list-style-type: none"> (Minister Bowen's office) 	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	AAP: Inquiry into asylum seeker mental health	N/A
21	28 July 2011	8:39 pm	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> (Minister Bowen's office) 	Ombudsman editorial – immigration detention values	<ul style="list-style-type: none"> Situation Report 18 July 2008
22	29 July 2011	12:09 pm	<ul style="list-style-type: none"> (Minister Bowen's office) 	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	Ombudsman editorial – immigration detention values	N/A
23	29 July 2011	8:38 pm	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> (Minister Bowen's office) 	Ombudsman editorial – immigration detention values	N/A
24	14 Sept. 2011	7:00 pm	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> (Minister Bowen's office) 	Submission to Joint Select Committee	<ul style="list-style-type: none"> Commonwealth and Immigration Ombudsman – Submission to the Joint Select Committee on Australia's Immigration Detention Network – September 2011
25	15 Sept. 2011	1:04 pm	<ul style="list-style-type: none"> (Minister Bowen's office) 	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	Submission to Joint Select Committee	N/A

Ref.	Date	Time	From	To	Subject	Attachment/s
				Ombudsman)		
26	15 Sept. 2011	1:09 pm	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> (Minister Bowen's office) 	Submission to Joint Select Committee	N/A
27	21 Sept. 2011	8:17 pm	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> Allan Asher (Commonwealth Ombudsman) (Commonwealth Ombudsman) (Commonwealth Ombudsman) 	Malaysian solution	N/A
28	21 Sept. 2011	8:29 pm	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> (Minister Bowen's office) 	Ombudsman's submission	N/A
29	21 Sept. 2011	8:42 pm	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> (Minister Gray's office) 	Malaysian Solution submission	N/A
30	22 Sept. 2011	1:56 pm	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> Allan Asher (Commonwealth Ombudsman) (Commonwealth Ombudsman) (Commonwealth Ombudsman) (Commonwealth Ombudsman) 	Malaysian solution	N/A

Ref.	Date	Time	From	To	Subject	Attachment/s
31	22 Sept. 2011	4:39 pm	<ul style="list-style-type: none"> (Minister Bowen's office) 	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	Ombudsman's submission	N/A
32	22 Sept. 2011	8:48 pm	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> Chris Bowen (Minister for Immigration) (Minister Bowen's office) 	Commonwealth Ombudsman supplementary submission to the inquiry into the Malaysia arrangement	<ul style="list-style-type: none"> Commonwealth Ombudsman supplementary submission to the inquiry into the Malaysia arrangement – 22 Sept 2011
33	26 Sept. 2011	7:00 pm	<ul style="list-style-type: none"> (Commonwealth Ombudsman) 	<ul style="list-style-type: none"> (Minister Bowen's office) 	Ombudsman's submission	N/A

From:
Sent: Friday, 4 February 2011 12:32 PM
To:
Cc:
Subject: Re: Ombudsman meeting [SEC=UNCLASSIFIED]
Attachments: pic25449.jpg

3

Hi

I'm afraid I am having increasingly grave concerns about the internal communications within the Ombudsman's office. As discussed with any request for a meeting with the Minister need to be discussed with the Minister's diary secretary. I note he has already emailed her. I understand that she is like to be in touch imminently with the Minister's response.

Please direct any further requests about this meeting to whom I have CCed into this email for ease of reference.

Acting Chief of Staff
The Hon Chris Bowen MP
Minister for Immigration and Citizenship

04/02/2011 12:07
PM

>

Subject
FW: Ombudsman meeting
[SEC=UNCLASSIFIED]
Protective Mark

2

Hi

Just following up on your email below to

Acting Deputy Ombudsman.

I await your response regarding this appointment.

Thanks

Kind regards

Executive Assistant to the
Commonwealth Ombudsman

GPO Box 442
CANBERRA ACT 2601
www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration

(Embedded image moved to file: pic25449.jpg)COMMcol_small_238x70

From:
Sent: Wednesday, 2 February 2011 5:16 PM
To:
Cc:
Subject: Ombudsman meeting [SEC=UNCLASSIFIED]

Dear

As discussed on the phone, the Ombudsman would like the opportunity to meet with the Minister to discuss the role of the office in the Immigration area, some of the issues we have identified in the report to be released tomorrow and broader observations.

It would be appreciated if this could be arranged. The Ombudsman's EA, _____ can be contacted for possible times and venue.

Also as discussed should you and other advisers wish to be briefed on our role and observations please let me know and we can arrange a time to meet.

I also followed up the timing of release of embargoed copy of the report to the media and can advise that media did not receive a copy until about 20 minutes after I had sent your office and DIAC a copy. So the media did not receive a copy before as suggest. Hope this clarifies the situation.

Regards

Acting Deputy Ombudsman
COMMONWEALTH OMBUDSMAN

website www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

COMMONWEALTH OMBUDSMAN - IMPORTANT CONFIDENTIALITY NOTICE This e-mail message or an attachment to it is confidential, and it is intended to be accessed only by the person or entity to which it is addressed.

No use, copying or disclosure (including by further transmission) of this message, an attachment or the content of either is permitted and any use, copying or disclosure may be subject to legal sanctions. This message may contain information which is:

- * about an identifiable individual;
- * subject to client legal privilege or other privilege; or
- * subject to a statutory or other requirement of confidentiality.

If you have received this message in error, please call 1300 362 072 to inform the sender so that future errors can be avoided.

Important Notice: If you have received this email by mistake, please advise the sender and delete the message and attachments immediately. This email, including attachments, may contain confidential, sensitive, legally privileged and/or copyright information. Any review, retransmission, dissemination or other use of this information by persons or entities other than the intended recipient is prohibited. DIAC respects your privacy and has obligations under the Privacy Act 1988. The official departmental privacy policy can be viewed on the department's website at www.immi.gov.au. See:

<http://www.immi.gov.au/functional/privacy.htm>

From:
Sent: Friday, 4 March 2011 11:53 AM
To:
Subject: FW: Commonwealth Ombudsman welcomes Minister Chris Bowen's announcement as an opportunity for improved immigration detention outcomes for children and families [SEC=UNCLASSIFIED]
Attachments: Media release - Improved immigration detention outcomes for children and families.pdf
Importance: High
Security Classification: UNCLASSIFIED

4

Please find attached Ombudsman's press release re the Minister's announcement regarding improved detention arrangements.

Regards

Acting Deputy Ombudsman
COMMONWEALTH OMBUDSMAN

website www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

From:
Sent: Friday, 4 March 2011 11:48 AM
To:
Subject: Commonwealth Ombudsman welcomes Minister Chris Bowen's announcement as an opportunity for improved immigration detention outcomes for children and families [SEC=UNCLASSIFIED]
Importance: High

Hi

Please forward to the Minister's office. Copy being sent now to
DIAC.

National Communications Manager

Cheers,

Director | Public Affairs
COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

4 March 2011

Improved immigration detention outcomes for children and families

The Commonwealth Ombudsman, Allan Asher today, welcomed Immigration Minister Chris Bowen's announcement of a new mainland immigration detention centre at Wickham Point—Darwin and other expanded facilities and support services, as an opportunity for improved immigration detention outcomes, especially for children and families.

Mr Asher extended this acknowledgment of the announcement as a positive step towards a fuller implementation of the Government's *Immigration Detention Values* announced on 29 July 2008.

"Today's announcement provides the opportunity to continue progress towards more fully implementing the government's *Immigration Detention Values*—particularly capacity for achieving quicker transfers of children and families to more appropriate mainland community detention facilities," Mr Asher said.

At the time of release of Ombudsman's February report* concerning the Christmas Island detention facilities, Mr Asher said "there is little doubt that resources have been sorely stretched as the facilities have sought to accommodate a continued increase in numbers of people seeking refuge in Australia" and that "the current scale of the operation on Christmas Island is not sustainable".

Mr Asher said he "remained concerned about timeliness in processing refugee applications, delays in security agency clearances and various health issues—particularly those related to mental health".

Other recommendations highlighted the lack of appropriate accommodation, education and recreation activities, and the need to provide more and correct interpreters on Christmas Island. Mr Asher was particularly concerned about overcrowding and the need to provide community detention on mainland Australia—especially for unaccompanied minors, families with children and people who have received positive refugee assessments but who are awaiting security clearances.

Mr Asher welcomed the Minister's positive response to his report and the Ombudsman's role in providing ongoing independent oversight. He also acknowledged DIAC's responsiveness to his periodic public reports and ongoing private briefings, willingness to accept advice, and learn from mistakes and make improvements.

** Christmas Island detention centre facilities: Report on the Commonwealth and Immigration Ombudsman's oversight of immigration processes on Christmas Island October 2008–September 2010, 02/2011, February 2011*

Media contact: Shaun Rohrlach, Director of Public Affairs 0408 861 803 or 02 6276 3710

Follow the Ombudsman on twitter – <http://twitter.com/CwealthOmb>

From:
Sent: Thursday, 17 March 2011 4:19 PM
To:
Cc:
Subject: Media Release [SEC=UNCLASSIFIED]
Attachments: Commonwealth Ombudsman media release - No weapons evident.pdf

5

Security Classification:
UNCLASSIFIED

- please find attached media release the Ombudsman is about to issue in relation to the recent allegations made by asylum seekers regarding use of weapons.
Regards

Senior Assistant Ombudsman
COMMONWEALTH OMBUDSMAN

website www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

Thursday 17 March 2011

No weapons evident

Last week, the Commonwealth Ombudsman received enquiries and noted weekend media reports of allegations by four asylum seekers, that Serco staff used 'baton-style or cattle-prod' like weapons against them during their transfer back to Christmas Island following attendance at funerals for their relatives who died in last year's shipwreck on 15 December 2010.

It was further suggested that video footage taken by the Department of Immigration and Citizenship (DIAC) could include evidence in support of these claims.

The Office of the Ombudsman requested and was provided copies of the video footage by DIAC for the purpose of independent inspection. This has now occurred.

As result of this inspection, the Ombudsman advises that he is unable to find evidence of the use of any type of weapon on the video footage, as was alleged to have occurred.

The Ombudsman reaffirms the Office's understanding of the following:

- batons or maglite type torches or other implements that may be confused with 'cattle-prod' like weapons are not part of the standard kit of resources used by Serco staff, either in detention centres or during escort activities
- Serco staff are authorised to use restraints only as a 'last resort' and these are limited to handcuffs/flexicuffs, restraint belts and ankle manacles
- use of any other restraint must be approved by the Secretary of DIAC
- to date no complaints have been received regarding the use of force related to this incident.

The Ombudsman's enquiries are ongoing.

Media contact: Shaun Rohrlach, Director of Public Affairs 0408 861 803 or 02 6276 3710

Follow the Ombudsman on twitter – <http://twitter.com/CwealthOmb>

From:
Sent: Thursday, 17 March 2011 4:22 PM
To:
Cc:
Subject: Re: Media Release [SEC=UNCLASSIFIED]

6

Much appreciated. Thanks very much

Deputy Chief of Staff
Office of The Hon Chris Bowen MP
Minister for Immigration and Citizenship

To

17/03/2011 04:15
PM

Subject
Media Release
[SEC=UNCLASSIFIED]
Protective Mark

– please find attached media release the Ombudsman is about to issue in relation to the recent allegations made by asylum seekers regarding use of weapons.
Regards

Senior Assistant Ombudsman
COMMONWEALTH OMBUDSMAN

From: Friday, 13 May 2011 12:40 PM
Sent: senator.hanson-young@aph.gov.au
To: C'wealth Ombudsman - request for meeting re immigration detention issues
Subject: [SEC=UNCLASSIFIED]

7

Security Classification:
UNCLASSIFIED

Dear

Many thanks for your time on the phone this morning.

As discussed, Commonwealth Ombudsman Allan Asher is keen to meet with Senator Sarah Hanson-Young as soon as possible in relation to a range of immigration detention-related issues.

The Senator would be aware that last month Mr Asher announced an investigation into:

- the use of force by the Australian Federal Police and the Government's immigration detention service provider, SERCO, on Christmas Island during the week of 12 March 2011, and
- whether the Department of Immigration and Citizenship (DIAC) and SERCO demonstrated due process and considered decision-making.

In addition, Mr Asher has raised publicly his concerns about the seemingly high incidence of self-harm and the high number of apparent suicides within the immigration detention network. He is considering an investigation into the appropriateness of the physical facilities within which asylum-seekers are held and the extent to which DIAC and SERCO have developed and implemented programs to identify and manage those at risk of suicide.

For more information, the Senator may wish to refer to the Ombudsman's 14 April 2011 speech "*A fair deal for asylum-seekers?*" ([http://www.ombudsman.gov.au/docs/speeches/a fair deal for asylum seekers.pdf](http://www.ombudsman.gov.au/docs/speeches/a%20fair%20deal%20for%20asylum%20seekers.pdf)). And she may be interested also in his 12 May 2011 speech "*Integrity agencies: the fourth arm of government*" ([http://www.ombudsman.gov.au/docs/speeches/Ombudsman speech to Public Sector Leadership conf 2011.pdf](http://www.ombudsman.gov.au/docs/speeches/Ombudsman%20speech%20to%20Public%20Sector%20Leadership%20conf%202011.pdf)), in which the Ombudsman uses the asylum issue to highlight the kind of serious problems that can occur when policies are developed at one level of government and delivered by another, or outsourced.

I appreciate that the Senator is a very busy person but the issues about which the Ombudsman wishes to speak to her are of critical importance and are priorities, I believe, for them both. Accordingly, I would be grateful if you would please pursue this request with Senator Hanson-Young as a matter of urgency. Mr Asher would be happy to meet with her in Canberra or Adelaide and proposes any time on Friday, 20 May 2011 as suitable, ahead of the Budget Estimates Hearings that begin the following week.

I look forward to hearing from you.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

From: (Sen S. Hanson-Young)
Sent: Monday, 16 May 2011 12:41 PM
To:
Subject: C'wealth Ombudsman - confirming meeting re immigration detention issues
[SEC=UNCLASSIFIED]

8

Dear

I'm able to confirm that Senator Hanson-Young is able to meet with Allan Asher, Commonwealth Ombudsman, as follows:

- Tuesday 17th May at 2.30pm
- Senator Hanson-Young's suite: S1.43

Kind regards

Office Manager/Personal Assistant

Office of Senator Sarah Hanson-Young

Australian Greens Senator for South Australia

Level 13/100 King William Street, Adelaide SA 5000

E: | www.sarahinthesenate.com | www.GreensMPs.org.au

From:
Sent: Monday, 23 May 2011 11:40 AM
To:
Subject: FW: C'wealth Ombudsman mtg - follow up info [SEC=UNCLASSIFIED]
Attachments: Follow-up material for Sen Hanson-Young - May 2011.doc

9

Security Classification:
UNCLASSIFIED

Dear

You will be aware that the Commonwealth Ombudsman, Allan Asher, met with Senator Sarah Hanson-Young last week on the issues outlined below. As a result of that meeting, the Ombudsman agreed to provide some additional material to the Senator—please find it attached to this email.

In addition, Mr Asher suggested that if the Senator was interested in any of the following issues, he would be happy to respond to any queries she may have:

- Public Interest Disclosure legislation – role of the Ombudsman
- Freedom of information activity
- Overseas Students Ombudsman
- Indigenous language interpreters and government communication
- Centrelink internal reviews
- Ombudsman Scrutiny of the Australian Building and Construction Commissioner's Exercise of Examination Powers
- Extension of governance arrangements to Norfolk Island

Please don't hesitate to let me know if I can provide any further assistance.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

From:
Sent: Friday, 13 May 2011 12:40 PM
To: senator.hanson-young@aph.gov.au
Subject: C'wealth Ombudsman - request for meeting re immigration detention issues [SEC=UNCLASSIFIED]

Dear

Many thanks for your time on the phone this morning.

As discussed, Commonwealth Ombudsman Allan Asher is keen to meet with Senator Sarah Hanson-Young as soon as possible in relation to a range of immigration detention-related issues.

The Senator would be aware that last month Mr Asher announced an investigation into:

- the use of force by the Australian Federal Police and the Government's immigration detention service provider, SERCO, on Christmas Island during the week of 12 March 2011, and
- whether the Department of Immigration and Citizenship (DIAC) and SERCO demonstrated due process and considered decision-making.

In addition, Mr Asher has raised publicly his concerns about the seemingly high incidence of self-harm and the high number of apparent suicides within the immigration detention network. He is considering an investigation into the appropriateness of the physical facilities within which asylum-seekers are held and the extent to which DIAC and SERCO have developed and implemented programs to identify and manage those at risk of suicide.

For more information, the Senator may wish to refer to the Ombudsman's 14 April 2011 speech "*A fair deal for asylum-seekers?*" ([http://www.ombudsman.gov.au/docs/speeches/a fair deal for asylum seekers.pdf](http://www.ombudsman.gov.au/docs/speeches/a%20fair%20deal%20for%20asylum%20seekers.pdf)). And she may be interested also in his 12 May 2011 speech "*Integrity agencies: the fourth arm of government*" ([http://www.ombudsman.gov.au/docs/speeches/Ombudsman speech to Public Sector Leadership conf 2011.pdf](http://www.ombudsman.gov.au/docs/speeches/Ombudsman%20speech%20to%20Public%20Sector%20Leadership%20conf%202011.pdf)), in which the Ombudsman uses the asylum issue to highlight the kind of serious problems that can occur when policies are developed at one level of government and delivered by another, or outsourced.

I appreciate that the Senator is a very busy person but the issues about which the Ombudsman wishes to speak to her are of critical importance and are priorities, I believe, for them both. Accordingly, I would be grateful if you would please pursue this request with Senator Hanson-Young as a matter of urgency. Mr Asher would be happy to meet with her in Canberra or Adelaide and proposes any time on Friday, 20 May 2011 as suitable, ahead of the Budget Estimates Hearings that begin the following week.

I look forward to hearing from you.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

Recipient

Allan Asher
Allan Asher

Read

Read: 23/05/2011 1:02 PM

Possible questions

Immigration Ombudsman

1. No-one would be surprised to learn that the Immigration Ombudsman function is more time consuming and resource intensive than ever before. Yet this year's federal Budget provided no additional funding for this constantly expanding and important role.
 - Will you be able to continue your Immigration Ombudsman work at the level that is required?
 - Will this have an impact on the transparency of detention centre operations?
 - How will it affect the work you do in other areas?
2. In a formal report in February this year, you warned the Government that the situation on Christmas Island was not sustainable. You were right, as demonstrated by the March riots. Since then, you have stated that you consider the Government to be in breach of its own immigration detention values.
 - Are you satisfied that the Government is taking seriously the issues you have raised, especially given the ongoing detention on Christmas Island of families with children, unaccompanied minors and other vulnerable people?
 - Have you been informed of any measures that will be put in place to address the lack of availability of appropriate medical and mental health services on Christmas Island?
 - Has the Department of Immigration and Citizenship acted on the other recommendations in your February 2011 report?
 - What resources do you require to monitor what's happening on Christmas Island and track the progress of work being undertaken to address your recommendations to the Government? How are you funding this work?
3. Why did you choose to announce an inquiry into the March 2011 incidents on Christmas Island after the Government had already announced the Hawke-Williams inquiry?
 - Did the Government consult you about the Hawke-Williams inquiry?
 - How can you justify public expenditure on a second Christmas Island inquiry?
4. You have stated publicly that you are considering an investigation into suicide and self-harm in immigration detention facilities.
 - What is stopping you from going ahead?
 - When will you decide whether or not to conduct this investigation?

Taxation Ombudsman

1. What action is your office taking in response to allegations by high-profile Australians that the Government has treated them unfairly in relation to its Project Wickenby investigation into illegal offshore schemes?
2. In March this year, the media attributed to you criticisms of the Australian Taxation Office made in a private briefing of the Joint Parliamentary Committee of Public Accounts and Audit. It was reported that you said the ATO was plagued by 'systemic problems' and 'institutional rigidities'.
 - What did you mean?
 - What is the impact on taxpayers of these problems?
 - How many complaints does your office receive each year about taxation issues and what are the complaints about?

Defence Force Ombudsman

1. Has the level of ineptness of the Defence Forces to deal with internal complaints, as highlighted by recent events, come as a surprise to you in your role as Defence Force Ombudsman?
2. At least half-a-dozen inquiries and reviews into aspects of Defence culture have been announced during the past month or so. Are you involved in any of these investigations?

From: (Sen S. Hanson-Young)
Sent: Monday, 23 May 2011 12:13 PM
To:
Subject: RE: C'wealth Ombudsman mtg - follow up info [SEC=UNCLASSIFIED]

10

Hi

This is brilliant.

Thank you so much for this information. I was about to email you anyway!

Best wishes,

Senior Adviser
Office of Sarah Hanson-Young
Greens Senator for South Australia

This correspondence may contain information which is confidential. If you are not the intended recipient of this communication please delete and destroy all copies and notify us immediately. If you are the intended recipient you should not copy, disclose or distribute this communication without the prior authority.

From:
Sent: Monday, 23 May 2011 11:40 AM
To: (Sen S. Hanson-Young)
Subject: FW: C'wealth Ombudsman mtg - follow up info [SEC=UNCLASSIFIED]

Dear

You will be aware that the Commonwealth Ombudsman, Allan Asher, met with Senator Sarah Hanson-Young last week on the issues outlined below. As a result of that meeting, the Ombudsman agreed to provide some additional material to the Senator—please find it attached to this email.

In addition, Mr Asher suggested that if the Senator was interested in any of the following issues, he would be happy to respond to any queries she may have:

- Public Interest Disclosure legislation – role of the Ombudsman
- Freedom of information activity
- Overseas Students Ombudsman
- Indigenous language interpreters and government communication
- Centrelink internal reviews
- Ombudsman Scrutiny of the Australian Building and Construction Commissioner's Exercise of Examination Powers
- Extension of governance arrangements to Norfolk Island

Please don't hesitate to let me know if I can provide any further assistance.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

From:

Sent: Friday, 13 May 2011 12:40 PM

To: senator.hanson-young@aph.gov.au

Subject: C'wealth Ombudsman - request for meeting re immigration detention issues [SEC=UNCLASSIFIED]

Dear

Many thanks for your time on the phone this morning.

As discussed, Commonwealth Ombudsman Allan Asher is keen to meet with Senator Sarah Hanson-Young as soon as possible in relation to a range of immigration detention-related issues.

The Senator would be aware that last month Mr Asher announced an investigation into:

- the use of force by the Australian Federal Police and the Government's immigration detention service provider, SERCO, on Christmas Island during the week of 12 March 2011, and
- whether the Department of Immigration and Citizenship (DIAC) and SERCO demonstrated due process and considered decision-making.

In addition, Mr Asher has raised publicly his concerns about the seemingly high incidence of self-harm and the high number of apparent suicides within the immigration detention network. He is considering an investigation into the appropriateness of the physical facilities within which asylum-seekers are held and the extent to which DIAC and SERCO have developed and implemented programs to identify and manage those at risk of suicide.

For more information, the Senator may wish to refer to the Ombudsman's 14 April 2011 speech "*A fair deal for asylum-seekers?*" ([http://www.ombudsman.gov.au/docs/speeches/a fair deal for asylum seekers.pdf](http://www.ombudsman.gov.au/docs/speeches/a%20fair%20deal%20for%20asylum%20seekers.pdf)). And she may be interested also in his 12 May 2011 speech "*Integrity agencies: the fourth arm of government*" ([http://www.ombudsman.gov.au/docs/speeches/Ombudsman speech to Public Sector Leadership conf 2011.pdf](http://www.ombudsman.gov.au/docs/speeches/Ombudsman%20speech%20to%20Public%20Sector%20Leadership%20conf%202011.pdf)), in which the Ombudsman uses the asylum issue to highlight the kind of serious problems that can occur when policies are developed at one level of government and delivered by another, or outsourced.

I appreciate that the Senator is a very busy person but the issues about which the Ombudsman wishes to speak to her are of critical importance and are priorities, I believe, for them both. Accordingly, I would be grateful if you would please pursue this request with Senator Hanson-Young as a matter of urgency. Mr Asher would be happy to meet with her in Canberra or Adelaide and proposes any time on Friday, 20 May 2011 as suitable, ahead of the Budget Estimates Hearings that begin the following week.

I look forward to hearing from you.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

COMMONWEALTH OMBUDSMAN - IMPORTANT CONFIDENTIALITY NOTICE

This e-mail message or an attachment to it is confidential, and it is intended to be accessed only by the person or entity to which it is addressed.

No use, copying or disclosure (including by further transmission) of this message, an attachment or the content of either is permitted and any use, copying or disclosure may be subject to legal sanctions. This message may contain information which is:

- * about an identifiable individual;
- * subject to client legal privilege or other privilege; or
- * subject to a statutory or other requirement of confidentiality.

If you have received this message in error, please call 1300 362 072 to inform the sender so that future errors can be avoided.

From: (Sen S. Hanson-Young)
Sent: Friday, 27 May 2011 12:32 PM
To:
Subject: RE: C'wealth Ombudsman mtg - follow up info [SEC=UNCLASSIFIED]

Hi

Statement, as discussed -

Friday, May 27 2011
MEDIA RELEASE

Greens seek increase in Immigration Ombudsman's funding to ensure no repeat of Cornelia Rau incident

The Australian Greens have written to the Treasurer, asking he reconsider an increase in the 2011-12 funding for the Commonwealth Ombudsman office in his role as Immigration Ombudsman. The Ombudsman this week told a Senate estimates hearing while his office was now handling thousands of cases of asylum seekers who had been detained six months or longer, there has been no corresponding increase in funding.

"Allan Asher said he regards the reviews of individual cases as among the most important work his office performs," Greens' immigration spokesperson, Sen. Sarah Hanson-Young said today.
"He does not want to have to perform these on batches of people, because he doesn't want anyone to fall into limbo.

"Mr Asher warned his office feared unless there's an increase in its budget, there could be a return to the days of Cornelia Rau, who languished in detention for 10 months.

"I've written to Treasurer Swan, pointing out that the Ombudsman has also indicated the need to conduct an independent inquiry into the increase of self-harm, but that this would be difficult within the existing budget.

"This week we've already heard from the UN Human Rights High Commissioner and the Australian Human Rights Commission who have both highlighted problems within Australia's mandatory detention system, especially the mental health damage caused to fragile detainees.

"We hope the Federal government can find the money so the Ombudsman can help individuals who remain in detention centres for months and years on end, with no idea when the assessment of their claim for asylum will be completed."

Sen. Hanson-Young is also today attending a parliamentary inquiry into the Christmas Island boat tragedy and will visit the island next week.

Senior Adviser
Office of Sarah Hanson-Young
Greens Senator for South Australia

This correspondence may contain information which is confidential. If you are not the intended recipient of this communication please delete and destroy all copies and notify us immediately. If you are the intended recipient you should not copy, disclose or distribute this communication without the prior authority.

From:
Sent: Monday, 23 May 2011 11:40 AM
To: (Sen S. Hanson-Young)
Subject: FW: C'wealth Ombudsman mtg - follow up info [SEC=UNCLASSIFIED]

Dear

You will be aware that the Commonwealth Ombudsman, Allan Asher, met with Senator Sarah Hanson-Young last week on the issues outlined below. As a result of that meeting, the Ombudsman agreed to provide some additional material to the Senator—please find it attached to this email.

In addition, Mr Asher suggested that if the Senator was interested in any of the following issues, he would be happy to respond to any queries she may have:

- Public Interest Disclosure legislation – role of the Ombudsman
- Freedom of information activity
- Overseas Students Ombudsman
- Indigenous language interpreters and government communication
- Centrelink internal reviews
- Ombudsman Scrutiny of the Australian Building and Construction Commissioner's Exercise of Examination Powers
- Extension of governance arrangements to Norfolk Island

Please don't hesitate to let me know if I can provide any further assistance.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

From:
Sent: Friday, 13 May 2011 12:40 PM
To: senator.hanson-young@aph.gov.au
Subject: C'wealth Ombudsman - request for meeting re immigration detention issues [SEC=UNCLASSIFIED]

Dear

Many thanks for your time on the phone this morning.

As discussed, Commonwealth Ombudsman Allan Asher is keen to meet with Senator Sarah Hanson-Young as soon as possible in relation to a range of immigration detention-related issues.

The Senator would be aware that last month Mr Asher announced an investigation into:

- the use of force by the Australian Federal Police and the Government's immigration detention service provider, SERCO, on Christmas Island during the week of 12 March 2011, and
- whether the Department of Immigration and Citizenship (DIAC) and SERCO demonstrated due process and considered decision-making.

In addition, Mr Asher has raised publicly his concerns about the seemingly high incidence of self-harm and the high number of apparent suicides within the immigration detention network. He is considering an investigation into the appropriateness of the physical facilities within which asylum-seekers are held and the extent to which DIAC and SERCO have developed and implemented programs to identify and manage those at risk of suicide.

For more information, the Senator may wish to refer to the Ombudsman's 14 April 2011 speech "*A fair deal for asylum-seekers?*" ([http://www.ombudsman.gov.au/docs/speeches/a fair deal for asylum seekers.pdf](http://www.ombudsman.gov.au/docs/speeches/a%20fair%20deal%20for%20asylum%20seekers.pdf)). And she may be interested also in his 12 May 2011 speech "*Integrity agencies: the fourth arm of government*" ([http://www.ombudsman.gov.au/docs/speeches/Ombudsman speech to Public Sector Leadership conf 2011.pdf](http://www.ombudsman.gov.au/docs/speeches/Ombudsman%20speech%20to%20Public%20Sector%20Leadership%20conf%202011.pdf)), in which the Ombudsman uses the asylum issue to highlight the kind of serious problems that can occur when policies are developed at one level of government and delivered by another, or outsourced.

I appreciate that the Senator is a very busy person but the issues about which the Ombudsman wishes to speak to her are of critical importance and are priorities, I believe, for them both. Accordingly, I would be grateful if you would please pursue this request with Senator Hanson-Young as a matter of urgency. Mr Asher would be happy to meet with her in Canberra or Adelaide and proposes any time on Friday, 20 May 2011 as suitable, ahead of the Budget Estimates Hearings that begin the following week.

I look forward to hearing from you.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

COMMONWEALTH OMBUDSMAN - IMPORTANT CONFIDENTIALITY NOTICE

This e-mail message or an attachment to it is confidential, and it is intended to be accessed only by the person or entity to which it is addressed.

No use, copying or disclosure (including by further transmission) of this message, an attachment or the

content of either is permitted and any use, copying or disclosure may be subject to legal sanctions. This message may contain information which is:

- * about an identifiable individual;
- * subject to client legal privilege or other privilege; or
- * subject to a statutory or other requirement of confidentiality.

If you have received this message in error, please call 1300 362 072 to inform the sender so that future errors can be avoided.

From:
Sent: Friday, 27 May 2011 2:46 PM
To:
Subject: FW: Ombudsman response to Greens statement on funding [SEC=UNCLASSIFIED]
Attachments: Final MR - Budget Estimates - May 2011.doc

Security Classification:
UNCLASSIFIED

From:
Sent: Friday, 27 May 2011 2:43 PM
To:
Subject: Ombudsman response to Greens statement on funding [SEC=UNCLASSIFIED]

Dear

As discussed, please find attached the Ombudsman's statement in response to Senator Sarah Hanson-Young's press conference today.

The Ombudsman will be issuing the release at 3:30 pm.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

Friday, 27 May 2011

More money needed for immigration detention oversight

Commonwealth Ombudsman Allan Asher today confirmed his evidence at a Budget Estimates hearing this week that he must redirect resources from other work to be able to perform the important and expanding role associated with the rising number of asylum seekers held in immigration detention.

Mr Asher was responding to a statement made today by the Australian Greens' Senator Sarah Hanson-Young about the adequacy of Ombudsman funding for immigration detention work.

This month the Government announced an additional \$400,000 for both 2010-11 and 2011-12 for the Ombudsman to do this work, but the funding must be found internally and from existing resources.

'Growing numbers of people in immigration detention mean a greater case review workload for my office and a need to conduct substantial and comprehensive enquiries into the consequences of incidents such as the March riots on Christmas Island,' Mr Asher said.

To demonstrate the increased resource demands, the Ombudsman explained that in 2008, when his office took on oversight of the Refugee Status Assessment process, it was anticipated that there would only be about 100 Irregular Maritime Arrivals each year. There are now more than 6,000 people in immigration detention.

'Our inspections of immigration detention facilities, especially on Christmas Island, have highlighted other areas requiring further investigation and oversight by my office, such as the seemingly high incidence of self-harm and apparent suicides.

'These are matters of critical importance and must be a priority for my office, which means setting aside other work and making tough decisions about what my office can realistically do within existing funding.'

Mr Asher noted that while it was pleasing many detainees had recently been moved off Christmas Island, this was creating other challenges for his office because several detention facilities are located in remote areas on the Australian mainland.

'In some cases, I expect that we will start to see the kinds of problems that made the situation unsustainable on Christmas Island occurring elsewhere.

'It is vital, therefore, that my office is able to continue to provide an appropriate and adequate level of oversight.

'We must put our resources into mitigating the risk of further incidents like those that occurred recently on Christmas Island and at Villawood. We must not return to the bad old days when Cornelia Rau and Vivian Alvarez were treated so appallingly,' he said.

Media contact: Fiona Skivington 0423 845 160

Follow the Ombudsman on twitter – <http://twitter.com/CwealthOmb>

From:
Sent: Friday, 27 May 2011 2:51 PM
To:
Subject: Re: FW: Ombudsman response to Greens statement on funding
[SEC=UNCLASSIFIED]
Attachments: pic27758.gif

Thanks

27/05/2011 02:46 PM

cc

Subject FW: Ombudsman response to Greens statement on funding
[SEC=UNCLASSIFIED]

Protective Mark

From:
Sent: Friday, 27 May 2011 2:43 PM
To:
Subject: Ombudsman response to Greens statement on funding [SEC=UNCLASSIFIED]

Dear

As discussed, please find attached the Ombudsman's statement in response to Senator Sarah Hanson-Young's press conference today.

The Ombudsman will be issuing the release at 3:30 pm.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

COMMONWEALTH OMBUDSMAN - IMPORTANT CONFIDENTIALITY NOTICE

This e-mail message or an attachment to it is confidential, and it is intended to be accessed only by the person or entity to which it is addressed.

No use, copying or disclosure (including by further transmission) of this message, an attachment or the content of either is permitted and any use, copying or disclosure may be subject to legal sanctions. This message may contain information which is:

- * about an identifiable individual;
- * subject to client legal privilege or other privilege; or
- * subject to a statutory or other requirement of confidentiality.

If you have received this message in error, please call 1300 362 072 to inform the sender so that future errors can be avoided.

----- [attachment "Final MR - Budget Estimates - May 2011.doc" deleted by

Important Notice: If you have received this email by mistake, please advise the sender and delete the message and attachments immediately. This email, including attachments, may contain confidential, sensitive, legally privileged and/or copyright information. Any review, retransmission, dissemination or other use of this information by persons or entities other than the intended recipient is prohibited. DIAC respects your privacy and has obligations under the Privacy Act 1988. The official departmental privacy policy can be viewed on the department's website at www.immi.gov.au. See: <http://www.immi.gov.au/functional/privacy.htm>

From:
Sent: Friday, 27 May 2011 2:59 PM
To: (Sen S. Hanson-Young)
Subject: Ombudsman response to Greens statement on funding [SEC=UNCLASSIFIED]
Attachments: Final MR - Budget Estimates - May 2011.pdf

Security Classification: UNCLASSIFIED

Hi

As promised, please find attached the Ombudsman's statement in response to Senator Sarah Hanson-Young's press conference today.

The Ombudsman will be issuing the release at 3:30 pm.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

Friday, 27 May 2011

More money needed for immigration detention oversight

Commonwealth Ombudsman Allan Asher today confirmed his evidence at a Budget Estimates hearing this week that he must redirect resources from other work to be able to perform the important and expanding role associated with the rising number of asylum seekers held in immigration detention.

Mr Asher was responding to a statement made today by the Australian Greens' Senator Sarah Hanson-Young about the adequacy of Ombudsman funding for immigration detention work.

This month the Government announced an additional \$400,000 for both 2010-11 and 2011-12 for the Ombudsman to do this work, but the funding must be found internally and from existing resources.

'Growing numbers of people in immigration detention mean a greater case review workload for my office and a need to conduct substantial and comprehensive enquiries into the consequences of incidents such as the March riots on Christmas Island,' Mr Asher said.

To demonstrate the increased resource demands, the Ombudsman explained that in 2008, when his office took on oversight of the Refugee Status Assessment process, it was anticipated that there would only be about 100 Irregular Maritime Arrivals each year. There are now more than 6,000 people in immigration detention.

'Our inspections of immigration detention facilities, especially on Christmas Island, have highlighted other areas requiring further investigation and oversight by my office, such as the seemingly high incidence of self-harm and apparent suicides.

'These are matters of critical importance and must be a priority for my office, which means setting aside other work and making tough decisions about what my office can realistically do within existing funding.'

Mr Asher noted that while it was pleasing many detainees had recently been moved off Christmas Island, this was creating other challenges for his office because several detention facilities are located in remote areas on the Australian mainland.

'In some cases, I expect that we will start to see the kinds of problems that made the situation unsustainable on Christmas Island occurring elsewhere.

'It is vital, therefore, that my office is able to continue to provide an appropriate and adequate level of oversight.

'We must put our resources into mitigating the risk of further incidents like those that occurred recently on Christmas Island and at Villawood. We must not return to the bad old days when Cornelia Rau and Vivian Alvarez were treated so appallingly,' he said.

Media contact: Fiona Skivington 0423 845 160

Follow the Ombudsman on twitter – <http://twitter.com/CwealthOmb>

From: (Sen S. Hanson-Young)
Sent: Friday, 27 May 2011 3:02 PM
To:
Subject: RE: Ombudsman response to Greens statement on funding [SEC=UNCLASSIFIED]

Thanks greatly appreciated.

Senior Adviser
Office of Sarah Hanson-Young
Greens Senator for South Australia

This correspondence may contain information which is confidential. If you are not the intended recipient of this communication please delete and destroy all copies and notify us immediately. If you are the intended recipient you should not copy, disclose or distribute this communication without the prior authority.

From:
Sent: Friday, 27 May 2011 2:59 PM
To: (Sen S. Hanson-Young)
Subject: Ombudsman response to Greens statement on funding [SEC=UNCLASSIFIED]

Hi

As promised, please find attached the Ombudsman's statement in response to Senator Sarah Hanson-Young's press conference today.

The Ombudsman will be issuing the release at 3:30 pm.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

COMMONWEALTH OMBUDSMAN - IMPORTANT CONFIDENTIALITY NOTICE

This e-mail message or an attachment to it is confidential, and it is intended to be accessed only by the person or entity to which it is addressed.

No use, copying or disclosure (including by further transmission) of this message, an attachment or the content of either is permitted and any use, copying or disclosure may be subject to legal sanctions. This message may contain information which is:

- * about an identifiable individual;
- * subject to client legal privilege or other privilege; or
- * subject to a statutory or other requirement of confidentiality.

If you have received this message in error, please call 1300 362 072 to inform the sender so that future errors can be avoided.

From:
Sent: Wednesday, 20 July 2011 6:21 PM
To: 'Chris.Bowen.MP@aph.gov.au'
Cc:
Subject: Ombudsman investigation - suicide & self-harm in immigration detention facilities
[SEC=UNCLASSIFIED]
Attachments: C'wealth Omb letter to Immigration Minister - suicide and self-harm investigation - 20 July 2011.pdf

Security Classification: UNCLASSIFIED

Dear Minister

Please find attached a letter from Commonwealth Ombudsman Allan Asher to you regarding his decision to conduct an own motion investigation into suicide and self-harm in immigration detention facilities. The hard copy will be put in the mail tomorrow.

Mr Asher will publicly announce the investigation in about a week's time.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

20 July 2011

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

Dear Minister

My office is conducting an own motion investigation into suicide and self-harm in Australian immigration detention facilities.

My investigation will include an examination of:

- how the Department of Immigration and Citizenship (DIAC) and service providers SERCO and International Health and Medical Services (IHMS) have sought to ensure that the physical facilities within which asylum-seekers and other detainees are held are designed to prevent suicide and self-harm, and
- the extent to which appropriate programs to identify and manage those at risk of suicide and self-harm have been developed and implemented.

In order to advance the investigation, my office will need to obtain relevant documents and information, and may need to interview DIAC, SERCO and IHMS staff.

Section 9 of the *Ombudsman Act 1976* (the Act) provides that, where I believe someone has information relevant to an investigation, I may issue a notice compelling the recipient to attend and answer questions or to provide information or documents.

Section 9 also provides people served with a notice with protection against proceedings for disclosing information to my officers; section 37 provides a certain level of protection against any civil action.

The Act requires that, before I issue a notice or provide an opportunity to make submissions in relation to possible criticism, I must have informed the responsible Minister about the investigation. This ensures that you are aware of my investigation, in part so that you can decide whether to seek a briefing from the agency. Please accept this letter as my notification that I am investigating this matter.

Should you or your staff wish to discuss this further, please do not hesitate to contact me on

Yours sincerely

Allan Asher
Commonwealth Ombudsman

From:
Sent: Wednesday, 20 July 2011 6:26 PM
To:
Subject: Re: Ombudsman investigation - suicide & self-harm in immigration detention facilities
[SEC=UNCLASSIFIED]
Attachments: pic15556.gif

Thanks

20/07/2011 06:20 PM

To "Chris.Bowen.MP@aph.gov.au"
<Chris.Bowen.MP@aph.gov.au>

cc

Subject Ombudsman investigation - suicide & self-harm in immigration
detention facilities [SEC=UNCLASSIFIED]

Protective Mark

Dear Minister

Please find attached a letter from Commonwealth Ombudsman Allan Asher to you regarding his decision to conduct an own motion investigation into suicide and self-harm in immigration detention facilities. The hard copy will be put in the mail tomorrow.

Mr Asher will publicly announce the investigation in about a week's time.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

COMMONWEALTH OMBUDSMAN - IMPORTANT CONFIDENTIALITY NOTICE

This e-mail message or an attachment to it is confidential, and it is intended to be accessed only by the person or entity to which it is addressed.

No use, copying or disclosure (including by further transmission) of this message, an attachment or the content of either is permitted and any use, copying or disclosure may be subject to legal sanctions. This message may contain information which is:

- * about an identifiable individual;
- * subject to client legal privilege or other privilege; or

* subject to a statutory or other requirement of confidentiality.

If you have received this message in error, please call 1300 362 072 to inform the sender so that future errors can be avoided.

----- [attachment "C'wealth Omb letter to Immigration
Minister - suicide and self-harm investigation - 20 July 2011.pdf" deleted by

Important Notice: If you have received this email by mistake, please advise the sender and delete the message and attachments immediately. This email, including attachments, may contain confidential, sensitive, legally privileged and/or copyright information. Any review, retransmission, dissemination or other use of this information by persons or entities other than the intended recipient is prohibited. DIAC respects your privacy and has obligations under the Privacy Act 1988. The official departmental privacy policy can be viewed on the department's website at www.immi.gov.au. See: <http://www.immi.gov.au/functional/privacy.htm>

From:
Sent: Thursday, 28 July 2011 10:08 AM
To: Chris.Bowen.MP@aph.gov.au
Cc:
Subject: Ombudsman media - suicide & self-harm in immigration detention [SEC=UNCLASSIFIED]
Attachments: Final MR - suicide self-harm investigation - July 2011.pdf; Final Ombudsman oped for 29 July 2011.pdf

Security Classification:
UNCLASSIFIED

Dear Minister

For information, please find attached the following Commonwealth Ombudsman documents:

- media release to be issued today, embargoed until tomorrow, announcing the Ombudsman's investigation into suicide and self-harm in immigration detention facilities
- an editorial we anticipate will be published in Fairfax media tomorrow.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

EMBARGOED TIL 12:01 AM

Friday, 29 July 2011

Inquiry to examine suicide & self-harm in immigration detention

Commonwealth Ombudsman Allan Asher today confirmed his office would undertake an investigation into suicide and self-harm in Australian immigration detention facilities.

Earlier in the year, Mr Asher publicly raised concerns about the impact of long-term detention on the ongoing mental health of detainees, while more recently he witnessed the deteriorating psychological health of detainees on Christmas Island.

'I was alarmed that in the week of June that I visited Christmas Island more than 30 incidents of self-harm by detainees held there were reported to the contracted health services provider, International Health and Medical Services (IHMS),' Mr Asher said.

'This reflects an upsurge in the number of incidents of self-harm and attempted suicide reported to IHMS across all immigration detention facilities.'

Since March 2011, Ombudsman staff have inspected the immigration detention facilities at Curtin, Leonora and Christmas Island. A significant issue of concern arising from each of these visits has related to the mental health and wellbeing of detainees.

More than 1,100 incidents of threatened or actual self-harm across all places of detention were reported in 2010-11, according to the latest information provided by the Department of Immigration and Citizenship to the Ombudsman's office. Fifty-four incidents of self-harm were reported during the first week of July this year alone.

'My investigation will assess the extent of this tragic problem, examine the root causes, and consider practical steps that the Department and its service providers SERCO and IHMS should take to identify and manage those at risk of suicide and self-harm.'

'The aim will be to produce evidence-based, expert-endorsed advice on guidelines and protocols for reducing and/or preventing the number of incidents that occur in detainee communities.'

The investigation will consider:

- the extent of the problem, including relative to the incidence of suicide and self-harm in the broader Australian community
- demographic information, including gender, age, country of origin, urban/rural background, language, and length of time in detention of people who participate in suicidal or self-harming behaviours
- potential determinants of this behaviour, including pre-existence of mental illnesses
- catalysts for suicidal ideation and self-harming behaviours, for example denial of visa applications, detention overcrowding, uncertainty about the future
- contagion issues and the impact of attempted or completed suicides and incidents of self-harm on the broader detention community
- prevention (such as screening for warning signs specific to populations, putting in place appropriate safety measures), intervention and postvention initiatives, including access to counselling and other health services
- detention facility guidelines and protocols
- the availability of appropriately qualified and professionally trained staff
- the nature and different types of detention facilities, access to means to self-harm or suicide, physical environments, risk assessments and mitigation strategies/measures.

The Ombudsman hopes to be able to release the investigation findings by the end of 2011.

Media contact: Fiona Skivington 0423 845 160

Follow the Ombudsman on twitter – <http://twitter.com/CwealthOmb>

Friday, 29 July 2011

Australia's immigration detention values: Milestones or motherhood statements?

by Allan Asher, Commonwealth and Immigration Ombudsman

Three years ago today, the Australian Government announced major reforms heralding a new fair go for asylum-seekers and other immigration detainees. Australia's detention policies henceforth would be driven by seven key values reflecting the compassion and tolerance of our community.

In the wake of years of political and public controversy over border control policies, and public inquiries into the scandalous cases of Cornelia Rau and Vivian Alvarez that revealed bureaucratic ineptitude and administrative apathy, the values signalled a paradigm shift to fairer and more transparent processes.

And they were backed by publicly funded systems for processing claims, independent review of decisions, and external scrutiny by the Immigration Ombudsman.

Where, then, have these compassionate, risk-based new policies delivered us?

From an onlooker's perspective, it might seem, to a landscape of fear and mutual distrust.

Who will ever forget the images of detainees rioting and buildings burning? Who could fail to be disquieted by rooftop protests, families and children in detention, hunger strikes, and angry activists? New dramas unfold weekly on our television screens followed by stage-managed debates about what they mean, but solutions seemingly elude us.

The realities behind this public angst are complex. In 2008, relatively few asylum-seekers arrived by boat and none were held in detention on Christmas Island. By the end of 2010, more than 2,500 people were detained on the Island and close to 7,000 nationally.

Inevitably, events overtook processes and tensions ran high. Reports of rising frustrations and detainee protests became a fact of daily life. And now, sadly, increasing numbers of detainees are attempting to suicide or harm themselves.

Why is it proving so difficult to achieve the ideals described by the Government's immigration detention values?

The answer is practical and political. Detention facilities and logistic and administrative arrangements have been overwhelmed by an unpredictable increase in the volume of asylum-seekers arriving by boat. Too many detainees are waiting too long for bureaucrats to process and review their paperwork. And changing policy or direction on any border control issue is fraught with political risk.

Administrative challenges do not, however, justify elasticity in interpreting or applying the detention values to which the Government has committed. It is my responsibility to speak up if that happens.

More than 4,000 people are currently held in Australian immigration detention facilities. Common challenges include delays in finalising protection visas, assessments and decisions; a lack of detailed plans for managing rejected asylum-seekers who can't be returned to their countries of origin; remoteness of accommodation; poor levels of decision making – evidenced by a high rate of decisions overturned upon review; and physical and mental health problems.

Tensions generated by these issues are exacerbated by uncertainties about Third Party Transfer policies, with events on Christmas Island during the past week or so showing that it remains a tinderbox.

I witnessed the deteriorating psychological health of detainees during a visit to Christmas Island in a week in June 2011 when more than 30 incidents of self-harm by people held there were reported. More than 1,100 incidents of threatened or actual self-harm across all

places of detention were reported in 2010-11. Fifty-four were reported during the first week of July this year.

There is clearly something fundamentally wrong. We urgently need an evidence-based assessment of the extent and causes of these tragedies in detention facilities relative to the general population, and guidelines and protocols for preventing and managing them.

Today I have announced that my office will investigate fully the circumstances contributing to these behaviours and seek appropriate strategies for turning the situation around.

In the interim, it is incumbent on the Immigration department to ensure that detainees are offered appropriately structured communal activities to give them a reason to get up in the morning, reduce their sense of isolation and maintain contact with reality.

It is my job as Ombudsman to oversight and guide good administrative policy, not to make it. In that context I suggest the time is right for the Government and the agencies managing its detention programs to re-focus on administering humane and risk-based detention practices, never losing sight of their duty of care to detainees, in which the paramount consideration is every detainee's health and wellbeing.

What do the Government's seven key immigration detention values really mean today? Are they milestones to a fairer society, or 'motherhood' statements overtaken by reality? The challenges associated with immigration detention are unlikely to diminish, so perhaps the time has come to review, clarify and produce new operational guidelines designed to ensure the values can be fully implemented.

I am concerned principally with good public administration.

Our national values and potential for compassion are for the community to decide.

Ends.

Possible breakout box

The Australian Government's seven key immigration detention values are:

1. Mandatory detention as an essential component of strong border control.
2. To support the integrity of Australia's immigration program three groups will be subject to mandatory detention:
 - a. all unauthorised arrivals, for management of health, identity and security risks to the community;
 - b. unlawful non-citizens who present unacceptable risks to the community; and
 - c. unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre.
4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, will be subject to regular review.
5. Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.
6. People in detention will be treated fairly and reasonably within the law.
7. Conditions of detention will ensure the inherent dignity of the human person.

From:
Sent: Thursday, 28 July 2011 2:52 PM
To:
Subject: Fw: AAP: Inquiry into asylum seeker mental health [SEC=UNCLASSIFIED]

Classification: UNCLASSIFIED

Hi , not sure about that embargo going to tomorrow.

----- Original Message -----

From:
Sent: 28/07/2011 02:44 PM ZE10
To:

Cc: MinMedia; ParSecMedia; Media Section
Subject: AAP: Inquiry into asylum seeker mental health [SEC=UNCLASSIFIED]
Publisher: AAP Newswire

Publication: AAP Australian General News, Circulation: Not Available (Thu 28 Jul 2011 2:07 PM)

Keywords: detention centres (1), asylum seekers (1), Christmas Island (1), detention centre (1), detention (1), Serco (1)

Edition: Both Cycles

FED:Inquiry into asylum seeker mental health

CANBERRA, July 28 AAP - The commonwealth ombudsman has launched an inquiry into suicide and self-harm in Australia's immigration detention centres.

Allan Asher witnessed the deteriorating mental health of asylum seekers when he visited Christmas Island in June.

In the week the ombudsman visited the detention centre there were more than 30 incidents of self-harm by detainees there.

"This reflects an upsurge in the number of incidents of self-harm and attempted suicide reported to IHMS [International Health and Medical Services] across all immigration detention facilities," Mr Asher said on Thursday.

"My investigation will assess the extent of this tragic problem."

It would examine the root causes, and consider practical steps that the department and its service providers Serco and IHMS should take to identify and manage those at risk of suicide and self-harm.

Mr Asher wants the investigation to give evidence-based, expert-endorsed advice on guidelines and protocols for reducing the number of suicide and self-harm incidents.

The ombudsman hopes to release the results of his inquiry by the end of 2011.

AAP klc/rl/mm

Copyright AAP Newscentre

Kind Regards

Media Team
National Communications Branch
Department of Immigration and Citizenship, Canberra

DIAC Newsroom: www.newsroom.immi.gov.au
DIAC Facebook: www.facebook.com/DepartmentofImmigrationandCitizenship
DIAC YouTube: www.youtube.com/user/ImmiTV
DIAC Twitter: @SandiHLogan
DIAC Flickr: www.flickr.com/photos/diacimages/

Important Notice: If you have received this email by mistake, please advise the sender and delete the message and attachments immediately. This email, including attachments, may contain confidential, sensitive, legally privileged and/or copyright information. Any review, retransmission, dissemination or other use of this information by persons or entities other than the intended recipient is prohibited. DIAC respects your privacy and has obligations under the Privacy Act 1988. The official departmental privacy policy can be viewed on the department's website at www.immi.gov.au. See: <http://www.immi.gov.au/functional/privacy.htm>

From:
Sent: Thursday, 28 July 2011 2:56 PM
To:
Subject: Fw: AAP: Inquiry into asylum seeker mental health [SEC=UNCLASSIFIED]

Classification: UNCLASSIFIED

sorry, I missed the embargo label...

----- Original Message -----

From:
Sent: 28/07/2011 02:51 PM ZE10
To:
Subject: Fw: AAP: Inquiry into asylum seeker mental health [SEC=UNCLASSIFIED]
 Classification: UNCLASSIFIED

Hi not sure about that embargo going to tomorrow.

----- Original Message -----

From:
Sent: 28/07/2011 02:44 PM ZE10
To:

Cc: MinMedia; ParSecMedia; Media Section
Subject: AAP: Inquiry into asylum seeker mental health [SEC=UNCLASSIFIED]
Publisher: AAP Newswire

Publication: AAP Australian General News, Circulation: Not Available (Thu 28 Jul 2011 2:07 PM)

Keywords: detention centres (1), asylum seekers (1), Christmas Island (1), detention centre (1), detention (1), Serco (1)

Edition: Both Cycles

FED:Inquiry into asylum seeker mental health

CANBERRA, July 28 AAP - The commonwealth ombudsman has launched an inquiry into suicide and self-harm in Australia's immigration detention centres.

Allan Asher witnessed the deteriorating mental health of asylum seekers when he visited Christmas Island in June.

In the week the ombudsman visited the detention centre there were more than 30 incidents of self-harm by detainees there.

"This reflects an upsurge in the number of incidents of self-harm and attempted suicide reported to IHMS [International Health and Medical Services] across all immigration detention facilities," Mr Asher said on Thursday.

"My investigation will assess the extent of this tragic problem."

It would examine the root causes, and consider practical steps that the department and its service providers Serco and IHMS should take to identify and manage those at risk of suicide and self-harm.

Mr Asher wants the investigation to give evidence-based, expert-endorsed advice on guidelines and protocols for reducing the number of suicide and self-harm incidents.

The ombudsman hopes to release the results of his inquiry by the end of 2011.

AAP klc/rl/mm

Copyright AAP Newscentre

Kind Regards

Media Team
National Communications Branch
Department of Immigration and Citizenship, Canberra

DIAC Newsroom: www.newsroom.immi.gov.au
DIAC Facebook: www.facebook.com/DepartmentofImmigrationandCitizenship
DIAC YouTube: www.youtube.com/user/ImmiTV
DIAC Twitter: @SandiHLogan
DIAC Flickr: www.flickr.com/photos/diacimages/

Important Notice: If you have received this email by mistake, please advise the sender and delete the message and attachments immediately. This email, including attachments, may contain confidential, sensitive, legally privileged and/or copyright information. Any review, retransmission, dissemination or other use of this information by persons or entities other than the intended recipient is prohibited. DIAC respects your privacy and has obligations under the Privacy Act 1988. The official departmental privacy policy can be viewed on the department's website at www.immi.gov.au. See: <http://www.immi.gov.au/functional/privacy.htm>

From:
Sent: Thursday, 28 July 2011 8:39 PM
To:
Subject: Ombudsman editorial - immigration detention values [SEC=UNCLASSIFIED]
Attachments: Situation Report 18 July 2008.pdf

Security Classification:
UNCLASSIFIED

Dear

I refer to a telephone conversation today during which you asked me to correct information included in Commonwealth Ombudsman Allan Asher's editorial about the Australian Government's seven key immigration detention values. In particular, this email is provided in response to your request that the Ombudsman correct the statement that in 2008 there were no asylum-seekers held in immigration detention on Christmas Island because, you said, there were 170 detainees on Christmas Island at the time.

I provided your 'correction' to the relevant area of this office for verification and am now able to advise that the Ombudsman stands by the original statement. There may well have been 170 detainees held on Christmas Island by the end of 2008, but it is clear from the information provided to this office in July 2008, when the immigration detention values were announced, that there were no detainees in the Christmas Island detention facility at the time. Further, only four detainees were in community detention on Christmas Island in July 2008.

For more information, please refer to the attached Immigration Department Situation Report for 18 July 2008.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

REPORT ON NUMBER OF PEOPLE IN IMMIGRATION DETENTION AS AT 18 July 2008

SUMMARY OF TOTAL NUMBER OF PEOPLE IN IMMIGRATION DETENTION

	Capacity	No. of People on Previous Report	No. of People as at Midnight Census
Immigration Detention Centres (excluding IFF)			
Immigration Detention Centres (excluding Christmas Island)	1464	297	299
Christmas Island Immigration Detention Centre	208	0	0
Total in Immigration Detention Centres (excluding IFF)	1672	297	299
Alternative Detention (excluding IFF)			
Immigration Residential Housing (excluding Christmas Island)	68	18	18
Immigration Residential Housing Christmas Island	N/A	0	0
Immigration Transit Accommodation	59	2	1
Alternative Temporary Detention in the Community	N/A	7	4
Total in Alternative Temporary Detention Arrangements	98	27	23
Community Detention			
Community Detention (excluding Christmas Island)	N/A	42	43
Community Detention, Christmas Island	N/A	4	4
Total in Community Detention Arrangements		46	47
Illegal Foreign Fishers (IFF)			
Immigration Detention Centres	N/A	21	14
Alternative Temporary Detention in the Community	N/A	5	2
Total IFF		26	16
TOTAL IN IMMIGRATION DETENTION		396	385

PEOPLE IN IMMIGRATION DETENTION CENTRES

General Detention Population (excluding IFF) Location	Adult		Total
	Male	Female	
Villawood Immigration Detention Centre	187	23	210
Manbyrong Immigration Detention Centre	55	17	72
Northern Immigration Detention Centre			0
Perth Immigration Detention Centre	17		17
Christmas Island Immigration Detention Centre			0
Sub-Total	259	40	299
Illegal Foreign Fishers Location	Adult		Total
	Male	Female	
Northern Immigration Detention Centre	14		14
Villawood Immigration Detention Centre			0
Sub-Total	14		14
TOTAL in Immigration Detention Centres	273	40	313

PEOPLE IN ALTERNATIVE DETENTION

General Detention Population (excluding illegal foreign fishers) Location	Adult		Child (<18 years)		Total
	Male	Female	Male	Female	
Sydney Immigration Residential Housing	9	3		2	14
Perth Immigration Residential Housing	4				4
Melbourne Immigration Transit Accommodation	1				1
Brisbane Immigration Transit Accommodation					0
Adelaide Immigration Transit Accommodation (opening 2008/09)					0
Alternative Temporary Detention in the Community	2	1		1	4
Sub-Total	16	4	0	3	23
Illegal Foreign Fishers Location	Adult		Fisher Minors		Total
	Male	Female	Male	Female	
Perth Immigration Residential Housing					0
Alternative Temporary Detention in the Community	2				2
Sub-Total	2	0	0	0	2
TOTAL in Alternative Detention Arrangements	18	4	0	3	25

PEOPLE IN COMMUNITY DETENTION

Community Detention Location	Adult		Child (<18 years)		Total
	Male	Female	Male	Female	
Community Detention (excluding Christmas Island)	26	7	3	7	43
Community Detention, Christmas Island	1	1	2		4
Total in Community Detention	27	8	5	7	47

PEOPLE BY ARRIVAL TYPE

Arrival Type	Total
Unauthorised Boat Arrivals	6
Unauthorised Air Arrivals	39
Visa Overlayers	226
Visa Cancellations	83
Illegal Foreign Fishers	16
Restricted on Board	
Others - including Stowaways and Deserters	15
Total	385

PEOPLE PURSUING PROTECTION VISAS

Pursuing Protection Visas	Total
Primary Protection Visa Application on Hand	21
Seeking a Merits or Judicial Review of a Decision to their Protection Visa Application	43
Total	64

PEOPLE IN IMMIGRATION DETENTION BY NATIONALITY

Nationalities	Adult		Child (<18 years)		Total
	Male	Female	Male	Female	
China, People's Republic of	108	25	1	4	138
Indonesia	25	2	2	2	31
Vietnam	23	1			24
Malaysia	12	10			22
New Zealand	16	2			18
India	13	1			14
Bangladesh	10				10
Korea, Peoples Republic of (Sth)	7	1			8
Nigeria	8				8
Pakistan	8				8
Other	88	10	2	4	104
Total	318	52	5	10	385

CHILDREN

Type	Total
Immigration Residential Housing	2
Immigration Transit Accommodation	
Alternative Temporary Detention in the Community	1
Community Detention	12
Total	15

LENGTH OF TIME IN DETENTION

Period Detained	Total
7 days or less	35
1 week - 1 month	44
1 month - 3 months	53
3 months - 6 months	56
6 Months - 12 months	66
12 months - 18 months	50
18 months - 2 years	30
Greater than 2 years	51
Total	385

From:
Sent: Friday, 29 July 2011 12:09 PM
To:
Subject: Re: Ombudsman editorial - immigration detention values [SEC=UNCLASSIFIED]
Attachments: pic24609.gif

Thanks for that response

I acknowledge that there were some changes made following our conversation yesterday, around the total IMAs in detention figure and with respect to recent events on CI.

With respect to 2008, the statement in the ABC Drum op ed is fairly categoric - 'In 2008, relatively few asylum seekers arrived by boat and none were held in detention on Christmas Island' - it does not refer to a particular point in time, it simply refers to the year. However, it was probably the least important of the three comments I made.

With respect to the inquiry, we did appreciate the email (and hard copy) last week outlining the coming announcement.

I don't expect a response to this, but we did note that we were told clearly yesterday that the media release announcing the new inquiry would be embargoed until today, but AAP reported the story yesterday afternoon without an embargo and Mr Asher appeared on Lateline. We were asked for comments yesterday afternoon.

Can I ask though, from a protocol perspective, is it commonplace for non-government stakeholders to be notified of an announcement before the Ombudsman's media statement is circulated more generally? I say this in the context of Dr Louise Newman making media comment on this announcement early yesterday afternoon.

Thanks again.

28/07/2011 08:38 PM

cc

Subject

Ombudsman editorial - immigration detention values
[SEC=UNCLASSIFIED]

Protective Mark

Dear

I refer to a telephone conversation today during which you asked me to correct information included in Commonwealth Ombudsman Allan Asher's editorial about the Australian Government's seven key immigration detention values. In particular, this email is provided in response to your request that the Ombudsman correct the statement that in 2008 there were no asylum-seekers held in immigration detention on Christmas Island because, you said, there were 170 detainees on Christmas Island at the time.

I provided your 'correction' to the relevant area of this office for verification and am now able to advise that the Ombudsman stands by the original statement. There may well have been 170 detainees held on Christmas Island by the end of 2008, but it is clear from the information provided to this office in July 2008, when the immigration detention values were announced, that there were no detainees in the Christmas Island detention facility at the time. Further, only four detainees were in community detention on Christmas Island in July 2008.

For more information, please refer to the attached Immigration Department Situation Report for 18 July 2008.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

COMMONWEALTH OMBUDSMAN - IMPORTANT CONFIDENTIALITY NOTICE

This e-mail message or an attachment to it is confidential, and it is intended to be accessed only by the person or entity to which it is addressed.

No use, copying or disclosure (including by further transmission) of this message, an attachment or the content of either is permitted and any use, copying or disclosure may be subject to legal sanctions. This message may contain information which is:

- * about an identifiable individual;
- * subject to client legal privilege or other privilege; or
- * subject to a statutory or other requirement of confidentiality.

If you have received this message in error, please call 1300 362 072 to inform the sender so that future errors can be avoided.

----- [attachment "Situation Report 18 July 2008.pdf"]

Important Notice: If you have received this email by mistake, please advise the sender and delete the message and attachments immediately. This email, including attachments, may contain confidential, sensitive, legally privileged and/or copyright information. Any review, retransmission, dissemination or other use of this information by persons or entities other than the intended recipient is prohibited. DIAC respects your privacy and has obligations under the Privacy Act 1988. The official departmental privacy policy can be viewed on the department's website at www.immi.gov.au. See: <http://www.immi.gov.au/functional/privacy.htm>

From:
Sent: Friday, 29 July 2011 8:38 PM
To:
Subject: RE: Ombudsman editorial - immigration detention values [SEC=UNCLASSIFIED]
Security Classification: UNCLASSIFIED

Dear

In answer to your questions:

- the first par of the editorial made it clear that the Ombudsman, upon the 3rd anniversary of the Government's July 2008 announcement of the immigration detention values, was reflecting on the state of affairs then and comparing them to the situation now – I reiterate, therefore, that the Ombudsman stands by his editorial
- the media release was issued under embargo
- this office did not inform Dr Louise Newman or any other non-government stakeholder about the Ombudsman's inquiry prior to his media release announcement.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
 GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.

From:
Sent: Friday, 29 July 2011 12:09 PM
To:
Subject: Re: Ombudsman editorial - immigration detention values [SEC=UNCLASSIFIED]

Thanks for that response

I acknowledge that there were some changes made following our conversation yesterday, around the total IMAs in detention figure and with respect to recent events on CI.

With respect to 2008, the statement in the ABC Drum op ed is fairly categoric - 'In 2008, relatively few asylum seekers arrived by boat and none were held in detention on Christmas Island' - it does not refer to a particular point in time, it simply refers to the year. However, it was probably the least important of the three comments I made.

With respect to the inquiry, we did appreciate the email (and hard copy) last week outlining the

coming announcement.

I don't expect a response to this, but we did note that we were told clearly yesterday that the media release announcing the new inquiry would be embargoed until today, but AAP reported the story yesterday afternoon without an embargo and Mr Asher appeared on Lateline. We were asked for comments yesterday afternoon.

Can I ask though, from a protocol perspective, is it commonplace for non-government stakeholders to be notified of an announcement before the Ombudsman's media statement is circulated more generally? I say this in the context of Dr Louise Newman making media comment on this announcement early yesterday afternoon.

Thanks again.

28/07/2011 08:38 PM

cc

Subject

Ombudsman editorial - immigration detention values
[SEC=UNCLASSIFIED]

Protective Mark

Dear

I refer to a telephone conversation today during which you asked me to correct information included in Commonwealth Ombudsman Allan Asher's editorial about the Australian Government's seven key immigration detention values. In particular, this email is provided in response to your request that the Ombudsman correct the statement that in 2008 there were no asylum-seekers held in immigration detention on Christmas Island because, you said, there were 170 detainees on Christmas Island at the time.

I provided your 'correction' to the relevant area of this office for verification and am now able to advise that the Ombudsman stands by the original statement. There may well have been 170 detainees held on Christmas Island by the end of 2008, but it is clear from the information provided to this office in July 2008, when the immigration detention values were announced, that there were no detainees in the Christmas Island detention facility at the time. Further, only four detainees were in community detention on Christmas Island in July 2008.

For more information, please refer to the attached Immigration Department Situation Report for 18 July 2008.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

COMMONWEALTH OMBUDSMAN - IMPORTANT CONFIDENTIALITY NOTICE

This e-mail message or an attachment to it is confidential, and it is intended to be accessed only by the person or entity to which it is addressed.

No use, copying or disclosure (including by further transmission) of this message, an attachment or the content of either is permitted and any use, copying or disclosure may be subject to legal sanctions. This message may contain information which is:

- * about an identifiable individual;
- * subject to client legal privilege or other privilege; or
- * subject to a statutory or other requirement of confidentiality.

If you have received this message in error, please call 1300 362 072 to inform the sender so that future errors can be avoided.

----- [attachment "Situation Report 18 July 2008.pdf"]

Important Notice: If you have received this email by mistake, please advise the sender and delete the message and attachments immediately. This email, including attachments, may contain confidential, sensitive, legally privileged and/or copyright information. Any review, retransmission, dissemination or other use of this information by persons or entities other than the intended recipient is prohibited. DIAC respects your privacy and has obligations under the Privacy Act 1988. The official departmental privacy policy can be viewed on the department's website at www.immi.gov.au. See: <http://www.immi.gov.au/functional/privacy.htm>

From:
Sent: Thursday, 15 September 2011 1:04 PM
To:
Subject: Fw: Submission to Joint Select Committee [SEC=UNCLASSIFIED]
Attachments: pic06617.gif; Commonwealth and Immigration Ombudsman - Submission to the Joint Select Committee on Australia's Immigration Detention Network - September 2011.pdf

Hi

Thank you for providing a copy of the Ombudsman's submission to the JSC. forwarded me your email as I look after detention-related matters for the Minister.

I would be happy to meet to discuss with you any particular issues from the submission (or any other issues) -- but perhaps best to wait until a non-sitting week when it is a little less hectic!

Cheers,

| Adviser
Office of Chris Bowen MP
Minister for Immigration and Citizenship

14/09/2011 07:00 PM

cc

Subject Submission to Joint Select Committee
[SEC=UNCLASSIFIED]

Protective Mark

24

Dear

Attached is a copy of our submission to the Parliamentary inquiry into Immigration Detention which was made public today.

As previously discussed I would be pleased to meet with you and others from your office to discuss any issues in this submission and more broadly regarding our role and matters we are identifying. I understand things must be very busy at the moment so no urgency about meeting ...maybe when things slow down a little.

Regards

Senior Assistant Ombudsman
Immigration and Overseas Students
COMMONWEALTH OMBUDSMAN

website www.ombudsman.gov.au

**Submission by the
Commonwealth and
Immigration Ombudsman**

**JOINT SELECT COMMITTEE ON
AUSTRALIA'S IMMIGRATION
DETENTION NETWORK**

Submission by Mr Allan Asher
Commonwealth and Immigration Ombudsman
September 2011

INTRODUCTION

In July 2008, the Minister for Immigration and Citizenship delivered a speech entitled *'New directions in Detention – Restoring Integrity to Australia's Immigration System'*. In this speech, he announced major Australian Government reforms to Australia's immigration detention system. Integral to these reforms, the Minister set out the Immigration Detention Values that would underpin a more compassionate and risk based approach to detention and asylum seekers.

Since then, the Ombudsman has reviewed the circumstances of people in detention in light of these immigration detention values. The Ombudsman acknowledges that the detention network and the refugee assessment processes have been put under significant strain since that time because of the large number of irregular maritime arrivals of asylum seekers. We are however, concerned that the values are not being implemented as envisaged. The Ombudsman believes that the implementation of the detention values should be strengthened and more clearly set out in operational guidelines. Ideally, these values should be enshrined in legislation, and in the least issued as a Ministerial direction.

The detention values do not appear to be applied equitably for irregular maritime arrivals in comparison with the approach taken to unlawful non-citizens onshore. Under the values, detention was to be a last resort and for the shortest duration for completion of initial health, identity and security checks. Our observation is that this is not consistently practiced and that the timeframe has extended well beyond the period initially anticipated. In contrast to the detention values, substantial numbers of irregular maritime arrivals are subject to prolonged detention in restrictive facilities as a first resort.

It is important to clarify government policy in relation to immigration detention administration. If there has been a shift in not only the way the detention values are being implemented, especially for the irregular maritime arrivals, but also in existing government policy then this needs to be clearly articulated, not just implied. A feature of good administrative practice is to clearly set out policy intent, criteria and guidelines in a way that enables accurate, consistent and transparent delivery and review of programs.

Even though mandatory detention remains a fundamental part of Australia's detention policy, it is not necessary for detention to occur in restrictive facilities. It is also not necessary for mandatory detention to continue where processes for the assessment of asylum seeker claims have been administratively prolonged. The Ombudsman suggests that the Department of Immigration and Citizenship (DIAC – hereafter the Department) consider greater use of less restrictive options for detention. In addition, more use could be made of the Minister's discretionary power to grant a visa under s 195A of the *Migration Act 1958* and to issue removal pending bridging visas.

The Ombudsman does not consider that the management of security risks in all cases requires a security clearance by the external agency and acknowledges the introduction of the Department's security triage. The Ombudsman considers that the Department should extend its capacity for risk assessment to enable it to determine the immediate risk to the Australian community posed by those people found to be refugees but having received an adverse security check from the external agency. This group, as well as people who are not found to be refugees but for whom there are constraints on removal, currently face indefinite detention.

The Government, the Department and its service providers owe a duty of care to people in immigration detention. The Ombudsman is concerned that detention facilities, services and administrative arrangements have not adequately kept pace with the demands of the changes and challenges presented by a rapid and significant increase in the detention population. Under such a situation there is a real risk that this duty of care will not be consistently upheld. The length of time a person remains in a state of uncertainty exacerbates the risks of mental illness and suicide and self-harm behaviours amongst asylum seekers across the detention network and in the community.

People detained in an immigration detention facility over the last 18 months are liable to have been exposed to, or involved in, an increasing number of suicide or self-harm behaviours. Detention in these circumstances is at odds with the detention value of ensuring the inherent dignity of the human person and lacks sensitivity to the traumatic circumstances in their home countries from which many people fled. In these circumstances, overcrowding and a shared sense of confusion and despair appear to be precursors to unrest and violent protest. This is the situation which the government sought to avoid when it introduced its reforms in 2008.

In order to maintain the duty of care to detainees there needs to be a different approach to the detention of irregular maritime arrivals. Within detention facilities, a pro-active approach is needed to create and maintain, to the fullest extent possible, a psychologically and socially healthy environment in which people are supported and empowered to continue to deal with difficult life problems. Some key factors follow.

- Initial detention of irregular maritime arrivals in a restrictive facility should be kept to a minimum. The Department should ensure that its contracts with service providers allow enough flexibility for service providers to respond to changes in detention population and facilities without compromising duty of care obligations.
- Less restrictive detention facilities close to mainstream community services would reduce problems created by detaining people in remote locations including less availability of qualified and experienced staff, difficulty of access by lawyers, advocates, and community support, and constraints on the delivery of mental health and medical services.
- More attention should be paid to regular, comprehensive and contextualised explanations of the processes and progress of a person's claims with empathic management of expectations, commencing at the time of a person's arrival. More general use of interpreters and translation of information about protection processes and detention operations may assist in reducing current levels of misunderstanding amongst detainees
- A substantial increase in non-crisis counselling and support including repatriation counselling may assist in resolving the issues of confusion and misinformation which circulates in the detention communities.
- A more integrated case management system is needed to provide quality control and assurance of the case management activities of the Department, the detention service provider Serco and the health service provider International Health and Medical Services.

Commonwealth and Immigration Ombudsman – Submission to the Joint Select Committee on Australia's Immigration Detention Network – September 2011

- Improvements in the regular review of detention arrangements and the way that placements are made within the network are needed to ensure that the concerns of individual detainees do not fall within case management gaps.

The Ombudsman is concerned that the number of incidents in detention centres has grown with the expansion of the restrictive detention network. The way that incidents are handled is crucial to maintaining a healthy environment and reducing unrest. The Ombudsman is also concerned about the use of force in detention centres and suggests that better monitoring and governance is required to ensure consistency, competency and integrity of the reporting of incidents as well as ongoing training to build the capacity for de-escalation of situations which lead to unrest in detention centres.

In July 2011, the Ombudsman announced an own motion investigation into suicide and self-harm in Australian immigration detention facilities. The investigation will assess the extent of this problem, examine the root causes, and consider practical steps that the Department and its service providers should consider to reduce and prevent the incidence of suicide and self-harm in immigration detention. The Ombudsman has established a steering committee to provide expert advice and guidance in this investigation.

The steering committee members are:

- Prof Diego De Leo, Director, Australian Institute for Suicide Research and Prevention
- Prof Nicholas Procter, Council for Immigration Services and Status Resolution
- Prof Louise Newman, Chair, Detention Health Advisory Group
- Dr Ida Kaplan, Foundation House
- Mr Greg Kelly, First Assistant Secretary, Detention Operations, Department of Immigration and Citizenship.

Despite the observations made by the Ombudsman's office about shortcomings in the immigration detention network, we remain impressed by the effort and goodwill demonstrated by the Department and service provider staff in carrying out their duties at detention facilities across the network. They have faced very difficult circumstances and have met challenges with an energy which deserves recognition. Our office appreciates the Department's co-operation in facilitating our visits and willingness to accept feedback and resolve problems as they arise.

The Ombudsman would be happy to appear before the Committee to give evidence and provide further suggestions for improvements in Australia's immigration detention network and to the processing of asylum claims by irregular maritime arrivals.

BACKGROUND

The Office of the Commonwealth Ombudsman is established by the Ombudsman Act 1976 and exists to safeguard the community in its dealings with Australian government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability, and
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

The Act also confers six specialist roles on the Ombudsman; the Defence Force Ombudsman, Immigration Ombudsman, Law Enforcement Ombudsman, Overseas Students Ombudsman, Postal Industry Ombudsman, and Taxation Ombudsman.

THE ROLE OF THE IMMIGRATION OMBUDSMAN

In carrying out the role of the Immigration Ombudsman we conduct a range of activities as part of our oversight and review of immigration detention. These are set out the following pages.

Reviews of the circumstances of people held in immigration detention

Amendments to the Migration Act in 2005, included a requirement for the Ombudsman to give to the Minister an assessment of the appropriateness of the arrangements of a person's detention (s 486O) when the person had been detained for a period of two years and at six monthly intervals while the person remains in detention. The Ombudsman prepares a version of the report which protects the privacy of people mentioned in the report and the Minister is required to table the de-identified report in Parliament (within 15 sitting days of receipt). The Ombudsman's review is triggered by receipt of a report from the Secretary of the Department of Immigration and Citizenship which is also prescribed under s 486N of the Migration Act.

The Ombudsman may include recommendations in reports made under s 486O. The Minister is not bound by any of the recommendations made by the Ombudsman. The Minister's response to the recommendations is also tabled in the Parliament with the Ombudsman's de-identified report.

In July 2008, as part of the Minister's introduction of new directions for immigration detention, the Ombudsman agreed to conduct six, 12 and 18 month reviews of the circumstances of immigration detainees with a focus on the implementation of the immigration detention values. These reviews are also triggered by receipt of a report from the Department. The Ombudsman does not make recommendations in the six

monthly reviews but brings to the attention of the Secretary issues of concern arising from the review.

Investigating complaints from people in detention

The Immigration Ombudsman investigates complaints made by detainees about the conditions of detention, problems arising from detention management and administrative processing of their claims. Complaints are received by email, fax, and telephone but are largely submitted through complaint clinics conducted when Ombudsman staff visit detention sites and when detainees are interviewed for the purposes of a detention review.

Inspection and monitoring of immigration detention facilities

As part of the Immigration Ombudsman role, the office conducts inspection and monitoring of immigration detention centres as well as other forms of immigration detention including residential housing centres and community detention. The purpose of this function is to monitor whether detention service standards, including access to medical and other services and activities aimed at maintaining detainees' well-being, are being met. As part of this function we provide feedback to the Department as well as to its service providers including recommendations where standards have not been met or where they need to be further developed or adjusted.

We aim to visit each centre at least twice a year while maintaining a schedule of four visits to Christmas Island. Over the last 12 months we made four visits to Christmas Island and visited the Curtin, Scherger and Darwin detention centres including the alternate places of detention in Darwin. We made five visits to Villawood and visited Perth and Maribyrnong detention centres, as well as Leonora, Inverbrackie and Adelaide Immigration Transit Accommodation.

Oversight of the non-statutory refugee status assessments for asylum seekers on Christmas Island

Since September 2008, the Ombudsman has an oversight role of the non-statutory refugee status assessment for asylum seekers on Christmas Island. This role includes monitoring of the fairness, efficiency and timeliness of the non-statutory review processes, and general oversight of the management of detainees. The Ombudsman continues to monitor the administration of the assessments with the Department's introduction of the Protection Obligations Determination and the finalisation of cases under the old Independent Merits Review process.

The office's inspection program has expanded substantially in response to the transfer of detainees from Christmas Island to detention centres that are located across the mainland including new facilities in remote locations.

Our investigation of complaints, inspections of detention facilities and review of detainees' detention circumstances enables the office to undertake an integrated approach to the review of immigration administration. The range of functions enables greater flexibility in the means by which issues are taken up by our office, including own motion investigations, informal dialogue with the Department, engagement in various department client forums, providing feedback, and sharing our views on systemic issues with the Department and its service providers.

RESPONSE TO TERMS OF REFERENCE

(A) Any reforms needed to the current Immigration Detention Network in Australia

The Ombudsman welcomed the government reform initiatives of July 2008. These reforms included the introduction of the immigration detention values. The Ombudsman considers that the values provide a sound basis for the Department to exercise its responsibilities for border control while maintaining the Government's commitment to human rights and the humane treatment of asylum seekers, whilst their claims are assessed.

The Government's immigration detention values committed the Department to the use of restrictive immigration detention as a last resort and for the shortest practicable period. While maintaining mandatory detention as an essential component of border control, the government proposed that detention would extend only for the purposes of health, identity and security checks and once the checks were successfully completed that continued detention was unwarranted. The timeframe considered reasonable for those checks was a period of 90 days.

The immigration detention values reject indefinite or otherwise arbitrary detention. Although these terms carry a substantial meaning in law, in practical terms the values sought to prevent people experiencing detention for which there was no reasonable time limit that is with the expectation that matters relating to the detention would be resolved in a reasonable period of time. The Government reversed the presumption for ongoing detention to one in which the onus would be on the Department to release a person unless it provided substantial grounds to detain or continue to detain.

The Ombudsman is concerned that these immigration detention values have not been implemented effectively. The Department's response to the influx of irregular maritime arrivals to Christmas Island has been to continue the use of restrictive detention for prolonged periods. In many ways the present circumstances are those the Government wished to avoid by introducing the reforms in 2008.

Proper application of the immigration detention values should not be inconsistent with the mandatory detention policy and legislative regime. Immigration detention, mandatory or otherwise, can be achieved by placement in the community. The Ombudsman acknowledges the Department's more recent accelerated move to transfer families and children into community detention. We are however, concerned that some have remained in detention for considerable periods and some are situated in alternative places of detention which closely resemble restrictive immigration detention centres.

The use of community detention and residential style accommodation has been mainly reserved for families and children and people with particular vulnerabilities. We believe that other groups of detainees are also vulnerable to the effects of prolonged and restrictive detention. For example, risk factors such as the development of mental illness and suicidal and self-harm behaviours apply to unaccompanied men and should be addressed.

The current problems within detention centres also impinge on the detention value that conditions of detention will ensure the inherent dignity of the human person. Many people remaining in overcrowded detention centres are exposed to violent incidents

including assaults between detainees, between officers and detainees, violent protest action, and self-inflicted violence including suicide. The higher number of detainees needing mental health and psychological support places strain on the capacity of the service providers and this inadequacy of service exacerbates the cycle of mental illness and behavioural dysfunction. Further, the effects of these conditions on people who fled violence and disruption in countries of origin and who may have been subject to torture and trauma, are not ameliorated by the provision of counselling when detention is prolonged. Detainees in these circumstances often describe a withdrawal from support systems.

The Ombudsman is now regularly reviewing cases of people arriving offshore with refugee claims, who have remained in detention for two years or more. The present processing time for a decision which goes through a review process is close to 12 months and can be more. Two groups appear to be facing indefinite detention – those who have provisionally been found to be refugees but have received an adverse security assessment and those who are not found to be refugees but are not easily returned to their home country, including those considered to be stateless.

Implementation of the immigration detention values is open to the use of a greater range of less restrictive and minimally restrictive detention arrangements. Release from detention can be achieved through greater use of visa grants including removal pending bridging visas and use of the Minister's discretionary powers to grant a visa under s 195A of the Migration Act. Where risk is uncertain, more use should be made of conditions and reporting which can be placed on visas or community detention orders to mitigate any suspected risk.

It is important to also consider the broader Australian context in which immigration detention operates. The Australian government and its service providers are administering the second largest detention system in Australia. Only NSW government runs a larger detention system. Even though immigration detention may be referred to as administrative rather than correctional detention, there may be lessons that can be drawn from other forms of detention. State and Territory governments have a much longer history of administering complex detention networks. There may be standards, practices and procedures which operate in correctional detention which may have relevance in the immigration sphere. This may assist in not only ensuring the duty of care owed to immigration detainees can be met but also assist in dealing with the significant challenges that government and its service providers have with increased numbers in immigration detention.

(B) The impact of length of detention and the appropriateness of facilities and services for asylum seekers.

The Ombudsman notes that several groups of asylum seekers who have arrived by boat, remain in detention for prolonged periods. These include those who have:

- not been found to be owed protection in an initial assessment of refugee status and await an independent review or a second independent review
- been found to be owed protection but await the outcome of security checks
- been found to be owed protection but have received adverse security checks
- been rejected in the protection assessment process but for whom a removal is constrained because of difficulties in repatriation.

In accordance with the immigration detention values, the Ombudsman considers that mandatory detention in secure and restrictive detention centres for these groups should be for the shortest duration practicable. In practice, the increased number of arrivals and people remaining in detention after an initial assessment in 2009 and 2010, saw overcrowding in Christmas Island facilities and the subsequent transfer of detainees to similarly restrictive mainland detention centres.

The Ombudsman reviews of detention circumstances of detainees at 6, 12 and 18 months and two years and over, raise serious concerns for the deterioration of the mental health and psychological outlook of detainees when detention is for prolonged periods.

Length of detention is inevitably associated with prolonged uncertainty and increasing despair and desolation. At interviews with the Ombudsman office, detainees regularly report intensification of feelings of depression and anxiety over time. These conditions are considered to be the precursors to the high level of mental illness amongst detainees. Criticisms have been made about the high level of use of psychotropic medication for the management of not only mental health conditions but a variety of psychological conditions which would be better treated with a change of environment.

Housing together unaccompanied men who experience increasing levels of despair, shame and guilt and decreasing levels of hope creates a dangerous environment which appears to result in contagious, dysfunctional means of problem solving. This is reflected in an increasing incidence of self-directed harm and protest.

The impact of increased numbers of detainees with negative refugee assessments at Christmas Island and other detention centres amplifies negative feelings amongst other detainees who are experiencing uncertainty. The Department and service providers have struggled to manage the impact of prolonged detention of detainees in these circumstances.

Facilities in remote locations also have limited access to mainstream medical and allied health services making access to specialist or urgent medical services difficult and expensive. These facilities are particularly unsuitable for people with chronic illnesses.

The variety, regularity and suitability of activities, is clearly an important factor in maintaining a healthy and constructive detention environment. The provision of activities varies across the network, activities on Christmas Island and Villawood detention centres have, for example, been restricted due to protests and escapes. In remote centres activities are restricted by the distance from local communities and difficulties in sustaining activities onsite. Many detainees remaining in detention for prolonged periods withdraw from activities and from socialising with other detainees.

Remote locations and difficult access to detention centres impedes the efficiency of the refugee status processing, particularly difficulties in arrangements for migration agents to travel to and consult with applicants. Systems to deal with this have in many cases led to apprehensions of unfairness amongst detainees who consider they are not being attended to chronologically.

The location of facilities in remote and difficult to access locations introduces additional problems to the good management of the centres. Travel to and accommodation on Christmas Island, for example, is limited and this constrains detainee access to legal advisors and advocates. The provision of interpreter services is reliant on interpreters staying on the island and this applies to other community service providers in the areas

of education and activities. The Department and service providers also require large numbers of staff to reside in remote locations which is costly and inconvenient. Shipping of supplies including food supplies is problematic. These concerns are mirrored in mainland remote locations where weather conditions may be extreme and access to centres subject to regular events such as flooding. The alternative places of detention which involve lower security, residential style accommodation, hostels, and community detention placements and in proximity to towns or cities where services and supplies are more readily and economically accessed, relieve many of these tensions. It is considered that these locations are more suitable for mandatory detention.

The Ombudsman is concerned about the increasing number of irregular maritime arrival asylum seekers who have been in restrictive detention for more than two years and are now being reviewed under s 486O of the Migration Act. This reflects processing delays which are beyond those anticipated as reasonable when the government introduced its immigration detention values in 2008. It demonstrates a failure to implement the government policy that the least restrictive form of immigration detention available should be used for those people who cannot be released into the community.

Moreover, it is noted that two groups of people appear to be subject to indefinite detention. These are people who have been found to be refugees but have received an adverse security assessment and people who are unable to be removed to country of origin due to external country constraints. The Ombudsman is increasingly concerned that no solution for people in these categories has yet been identified and that they continue to be detained in secure and restrictive accommodation.

As part of the solution, the Department should give consideration to developing, in consultation with the appropriate external agency, a more targeted and flexible assessment process that identifies the specific nature of the risk to the Australian community. Consideration should be given to alternative, less restrictive detention arrangements, including community detention, for those who do not pose a direct threat to the Australian community. In such cases appropriate safeguards and oversight could be put in place to address any security concerns that have been identified in the assessment process.

As an interim measure, the Ombudsman considers that the Department should make immediate arrangements for a person detained in these circumstances to be transferred to a less restrictive place of detention such as residential style immigration detention, unless the Department can demonstrate specific individual reasons why doing so would pose an immediate threat to the Australian community.

(C) The resources, support and training for employees of Commonwealth agencies and/or their agents or contractors in performing their duties.

The Ombudsman acknowledges that the Department, Serco, and International Health and Medical Services staff face very difficult tasks in the day to day management of detainees who are detained for prolonged periods in circumstances of deteriorating hope and ongoing uncertainty. Department staff must struggle with the problem of having no news for people who are desperately waiting for decisions over a long period of time.

All department and service provider staff should be trained in the development of skills for maintaining an empathic and constructive approach to resolving the day to day issues in detention communities. Such training and support should also assist officers in dealing with their own personal and political views in order to maintain an objective capacity to work constructively in the detention environment. Service provider staff should have a good framework for understanding the administrative nature of mandatory detention which separates it from punitive detention and provides a basis for their work in contributing to a safe and healthy community awaiting administrative outcomes. They should understand their duty of care responsibilities to detainees.

It is important that de-escalation strategies are part of the training for staff. Our office is concerned about the level of complaints which involve instances in which situations have been escalated by an officer's response and when unnecessary use of force is evident.

Both Department and Serco staff require personal, psychological and mental health support on a regular and consistent basis. Working with refugee claimant groups in detention can take a substantial emotional toll on workers including issues related to vicarious trauma. Training in resilience skills is recommended.

Remote locations can also cause difficulties for officers with families and there are challenges in recruiting experienced staff and supporting them through training and in their employment at detention facilities.

(D) The health, safety and wellbeing of asylum seekers, including specifically children, detained within the detention network.

The Department and service providers including Serco and International Health and Medical Services have a duty of care towards people in immigration detention taking into account the special dependence created by detention and the vulnerability of the person in detention. Department guidelines note that the Department will work together with its service providers to provide a holistic range of services in the discharge of a duty of care to individuals. The Department's duty of care and respect for human rights in immigration detention is predicated on the appropriate placement within the immigration detention network.

In discharging its holistic care and regard for placement the Department should consider that centres which are remote or difficult to access, and conditions of overcrowding in detention facilities place a strain on the provision of services within those facilities and create an environment which is a risk to the health and wellbeing of people detained in those facilities. In addressing such risks there is scope for improved communication and case management integration between Department caseworkers, Serco officers, and medical caseworkers to determine the appropriate detention arrangements for individuals. The Ombudsman is concerned that the Department, in the provision of its reviews of cases to the Ombudsman, now relies more on generalised policy for its assessment of the appropriateness of a person's detention arrangements than the individual circumstances.

In 2008, the Department introduced the Psychological Support Program across the detention network. The roll out of this program was completed in November 2010. The Ombudsman notes that the high incidence of suicide and self-harm incidents in the detention network indicates that the circumstances of detention are not conducive to the health and wellbeing of people involved in these incidents. The Ombudsman's own

motion investigation into suicide and self-harm in immigration detention office will examine the nature of this problem and the effectiveness of the psychological support program.

The Ombudsman is concerned about the impact of long term detention on the health, welfare and wellbeing of detainees and the continuing problems which may be associated with long term detention for vulnerable people. The Ombudsman is also concerned about the number of people who are placed in detention or remain in detention including restrictive detention facilities, when the person has been identified as a survivor of torture and trauma. Such people should not only get access to health and counselling services but should also be placed in more appropriate detention arrangements.

The Ombudsman has concerns that despite the psychological and mental health implications for refugees and asylum seekers and the impact of detention, in four of the seven immigration detention centres, there are no dedicated rooms for assisting people in the acute stage of psychological distress or at times where close observations are required. Similarly, Sydney and Brisbane Immigration Residential Housing and, with the exception of Leonora, the alternative places of detention are without dedicated rooms for detainees requiring psychological support.

Observations and advice received during our visits indicates that the lack of suitable rooms within proximity of mental health service providers makes the management of suicide and self-harm prevention much more difficult. It places pressure on mental health service providers and requires a heavy reliance on Serco officers who may or may not have the required skills to monitor and assist people on the psychological support program.

Some current arrangements for psychological support, for example the Annexure to Blaxland compound at Villawood immigration detention centre, appear unsuitable for psychological recovery. The Ombudsman also raises concerns about the practice of combining behavioural management rooms adjacent to psychological recovery rooms such as the Blaxland Annexe and the Murray Unit at Villawood and Red Compound at Christmas Island. Feedback from detainees gathered from complaints and interviews suggest that detainees become fearful of being moved to these units because the action is associated with what is perceived as punitive behavioural management. In addition, a higher security environment is not considered conducive to psychological wellbeing and recovery.

Our office is concerned about the lack of onsite medical and psychological support for people in immigration residential housing facilities where detainees remain prone to psychological stresses and intervention requires an offsite appointment or the disruption of transfer to a more restrictive area of detention. This prospect is sometimes perceived as punitive and is otherwise a deterrent to seeking treatment. Given the number of families and children housed in immigration residential facilities and alternative places of detention facilities, it would appear essential to have appropriate mental health and psychological support services available.

Given the long term problems associated with mental illness even after release from detention, the Ombudsman would also highly recommend pro-active prevention of mental illness across the detention network. From our observations this would include detention arrangements to maximise the normalcy of people's daily lives while their immigration status is resolved. When people are detained in immigration detention

centres, for initial checks or for other justified reasons, provision of non-crisis counselling as well as psychological support for crisis situations, may assist.

(E) Impact of detention on children and families, and viable alternatives.

The Ombudsman supports immigration detention value three which states that children including juvenile foreign fishers and, where possible their families, will not be detained in an immigration detention centre.

The Ombudsman is concerned that outcomes following previous detention of children in immigration detention facilities indicate that there is a risk of long term mental illness and emotional problems. The Department's policy of keeping family units together and placing families into community detention is well founded and in line with international conventions on the rights of the child.

The Ombudsman notes a recent review case which demonstrates worrying inflexibility in the Department's approach to current detention issues. In this particular case a couple with a four year old child spent several months in Sydney Immigration Residential Housing after being transferred from Christmas Island, all had been provisionally found to be owed protection. In February 2011, the mother and child were released into the community with protection visas while the father remains in detention because he received an adverse security clearance. Despite reports of emotional and psychological distress in mother and child, at the time of this submission this situation remained unresolved. The family reported living in a community setting on Christmas Island and had been assessed as suitable for community detention while waiting for the results of the security clearance. The man has now been detained for over two years.

The Ombudsman recognises that the Department has more recently transferred a significant number of families to community detention and alternate places of detention. However many families with children remain in quite restrictive detention facilities across the network. The Ombudsman notes that larger alternative places of detention are not far removed from conditions in immigration detention centres and children in these places remain prone to the effects of an environment populated by people in confinement and distress. The Ombudsman notes several families with children and unaccompanied minors amongst the group of people in restrictive detention on Christmas Island who are not being assessed for the range of alternative placement options. Across the network families are still being housed in rooms designed for limited duration and single occupancy.

The Ombudsman considers that children and families should remain together as family units unless there are exceptional circumstances to justify other arrangements, and that it is not necessary or suitable to detain children with families in restrictive compounds. The Ombudsman suggests more use of the variety of options for alternative detention with small groups of detainees close to established Australian communities where children can attend regular pre-school and school environments and enjoy as normal an amount of freedom as possible.

(F) The effectiveness and long-term viability of outsourcing immigration detention centre contracts to private providers.

The outsourcing of immigration detention centre management needs to recognise the cycle of boat arrivals and the potential for surges which result in significant changes and pressures on immigration detention infrastructure. Contracts negotiated when the detention population is low may not be suitable when numbers increase significantly and place strains on the system, detention facilities and services. The Department should consider incorporating greater flexibility in its tendering and contract development to enable it and the government to be more responsive to detention needs.

The effectiveness of outsourcing detention centre contracts is dependent on the ability of the Department to provide a suitable framework for the operation of administrative based detention and to deliver its duty of care to detainees through the service provider. Conversely, the service provider needs sufficient flexibility to respond to changes in circumstances in order to best utilise its resources to achieve the aims of the contract. Communication between the Department and service provider needs to be constructive and focussed on effective delivery of services rather than rigid application of penalties which may impede the achievement of good centre management. The tensions and increasing problems arising in detention facilities indicates that these aims are not being met consistently.

Our office considers that the case management system for detainees is fractured and not working as well as it should. The Department and their main service providers, Serco and International Health and Medical Services, each have areas of responsibility for case management. Our office observes that the unclear and at times uneasy sharing of responsibility risks gaps forming in the system's ability to resolve a range of issues relating to detainee health and welfare. It would be beneficial to establish which party is the leading case manager responsible for oversighting and ensuring the co-ordination and integration of case management activities.

While the Department states in its detention reviews that the health, welfare and detention placement of a detainee will be monitored through its case management system, this oversight does not include case management activities. The Department's case managers have a role limited to ensuring case resolution and making sure no health and wellbeing issues which might impact on resolution are left unmanaged. Serco has responsibility for the preparation of an individual management plan for each detainee which includes a log of health, welfare and other detainee concerns and behavioural issues. Serco officers are also expected to monitor the welfare of detainees on a daily basis, particularly with concern for any mental health behaviours which should be discussed with the health service provider.

This fragmented nature of case management reduces its effectiveness and is not adequate to ensure that the duty of care obligations towards detainees is met. The system would be improved by the establishment of a lead case manager and a governance structure for integrating and ensuring case management activities and the resolution of problems with quality control and assurance mechanisms.

Our office has worked to ensure that complaint processes operate in detention centres but continues to find unresolved welfare matters which require very simple remedies, delays and inadequacy in the investigation of incidents involving allegations against detention service provider officers, and a lack of concern for alleged victims in these

cases. The issues raised in complaints from detainees provide valuable information for the Department, Serco and International Health and Medical Services about the experience and perceptions of detainees regarding detention circumstances and may raise matters systemic in nature which can contribute to improvements.

(G) The impact, effectiveness and cost of mandatory detention and any alternatives, including community release.

The Ombudsman remains concerned about the number of people being processed and in restrictive detention for extended periods. Mandatory detention for the period necessary to determine health, identity and security risks, can be achieved across a variety of low and minimal security alternative detention placements as well as through community detention.

The Immigration Detention Values places limits on the use of immigration detention centres as a last resort and for the shortest practicable duration. For unlawful non-citizens detention in an immigration detention centre is used as a last resort. When a person overstays a visa or otherwise becomes unlawful, mandatory detention is dispensed with, in most cases, by the issuing of a bridging visa in the first instance. Detention only becomes necessary when an unlawful non-citizen represents a unacceptable risk to the community or has repeatedly refused to comply with visa conditions. The Department's reporting on its compliance program indicates that outcomes are usually successful and only a small proportion of the group need to be detained. This program demonstrates the application of the immigration detention values and the effectiveness of using detention as a last resort.

The practice of granting bridging visas to unlawful non-citizens who have breached the conditions of their visas, or for those who make an onshore application for protection, is not regularly applied to people who arrive by boat seeking protection in Australia. The reason for this is, in principle, because a person granted a visa would then be eligible to make an onshore application for a protection visa. Our office highlights the outcomes of administrative processes which differentiate between applications for protection made on the mainland and those made by people arriving on boat. In the current circumstances they have resulted in significant numbers of people remaining in prolonged detention onshore in circumstances not conducive to the humane and compassionate approach to detention outlined in the Government's 2008 announcement of the immigration detention values. The Ombudsman questions whether the current situation was foreseen and whether this was an intended consequence of the structure of this legislation.

Notwithstanding this, the Minister has broad discretion to release detainees on a visa under s 195A of the Migration Act and removal pending bridging visas. Conditions can be placed on such visas including the requirement for regular reporting to the Department. If people do not adhere to such conditions or are found to be a security risk to the community then the visa may be cancelled and the person could be placed in detention. More utilisation of this discretion could be made in individual cases which find people provisionally found to be refugees remain in prolonged detention.

Due to the significant number of people in long term detention, the effectiveness of mandatory detention policy has become unclear. The purpose of mandatory detention, as set out in the immigration detention values and in department policy has not been consistently applied. Detention goes beyond the initial checks for health, identity and security. Detention continues when there are unreasonable delays in completing these

checks. The Ombudsman notes that health and identity checks are not generally causing prolonged detention. Long time frames for refugee status assessments and independent reviews along with external security checks continue to have the biggest impact on extending the time in detention.

Low security alternative detention accommodation in the community, community detention, or release on a visa once initial identity, health and security checks are made, may provide protection seekers with a more appropriate environment in which to wait for the completion of the processing of their protection claims. It will not necessarily counteract prolonged delay in these processes nor the mental illness associated with prolonged uncertainty. However, it should prevent the harms which occur in prolonged detention centre environments – the malignancy of community depression and loss of hope, institutionalisation, stunted social interactions, violence, and the development and circulation of misinformation.

It may be beneficial for the committee to consider the costs of providing services and supplies to detention centres in remote locations. Substantially higher costs apply for the Department and service provider staff, family relocations, travel costs, and shipment of regular necessities. Emergency response is more difficult and costs are substantially higher.

The distance from mainstream, specialist medical and allied health services greatly increases the cost of provision of these services. The provision of specialist medical services or assessment requires air flights or long distance travel. Service providers are faced with the problems of limiting services on the basis of these additional costs.

(H) The reasons for and nature of riots and disturbances in detention facilities.

Our office has observed several factors which may contribute to detainees' anxieties and concerns which may result in certain actions they take including riots and disturbances in detention facilities. The prolongation of detention periods during which detainees are awaiting decision increases levels of uncertainty and anxiety. This is combined with a common despair and concern for the welfare of families remaining in the country of origin.

Restrictive, overcrowded detention facilities, where services and activities are put under strain and are often inadequate, adds to detainee anxiety and concern. In such an environment, the potential for riots and disturbances are heightened. The amount of information provided to detainees about the processing of their claims and decisions is often inadequate, and this appears to contribute to frustration and mistrust. Detainees remaining in detention see others from the same boat released, and others who they perceive to have the same or less meritorious claims as themselves, receive visas. These events are often construed into perceptions of inequality and confusion about the process. Detainees are also aware of the political debates about refugees arriving by boat and interviews with detainees indicate that this causes further distress.

Detainee complaints and interviews frequently include claims that the detainee is being treated punitively by the detention system. Detainees often make statements indicating that they feel demeaned and disempowered. They are often ashamed of their situation and feel that they have failed their families.

Tension builds across the detainee community especially in overcrowded facilities or centres. Detainees feeling disempowered and desperate utilise dysfunctional problem solving strategies such as voluntary starvation, threats and acts of self-harm. These strategies often become more common and at times are encouraged within the detention community.

The outbreak of disturbance results in increased restrictions within detention centres and places additional pressure on the service provider staff. The relationship between staff and detainees is also placed under pressure. It is likely that these outcomes only increase the tension and frustration amongst detainees. The outbreak of disturbance results in increased restrictions within detention centres and places additional pressure on service provider staff.

With a significantly increased number of long term detainees now in the detention system, the level of mental and psychological illness amongst detainees is high. Being surrounded by people in the same situation also experiencing mental illness and emotional despair is not conducive to recovery and threatens to worsen outcomes. Males between the ages of 20 to 40 years seem to be at greater risk of suicide and self-harm.

Drawing on our discussions with detainees, there may be a contagion effect which magnifies dysfunctional thinking in these circumstances. Inter-ethnic agitation, competition and perceived favouritism of ethnic groups or negativity towards ethnic groups by reviewers have emerged as issues in some centres. Impulsive and dysfunctional methods for problem solving and drawing attention to the perceived problem may include behaviours seen in riots and disturbance. A key preventative may be the recognition of acts of self-harm as measures of desperation and deterioration. An assumption that these acts and threats are contrived would in our view be misguided and may contribute to repeat acts by failing to provide a healthy resolution and increasing detainees' feelings of alienation. The Ombudsman is currently conducting an own motion investigation into suicide and self-harm in immigration detention.

The remedies for these problems will be multifaceted. Central to the causal issues are the length of time the detainee remains in a state of uncertainty and the impact of a negative decision (at any stage of the process) and the conditions of detention. The Ombudsman refers again to the immigration detention values and notes the premise, based on the outcomes of previous practices in immigration detention, that restrictive detention should be used only as a last resort and for the shortest practicable duration. For the reasons outlined above, immigration detention centres are unsuitable places for extended periods of mandatory detention.

(I) The performance and management of Commonwealth agencies and/or their agents or contractors in discharging their responsibilities associated with the detention and processing of irregular maritime arrivals or other persons.

It is important that the Department's management of the performance of service providers for the management of immigration detention centre management and provision of health services not only reflects the contractual arrangements but is sufficiently flexible to cope with significant surges in the number of detainees. Strains on this management may have compounded limitations in sourcing and utilising a

broader range of alternative detention placements at an earlier stage. Contracts negotiated when the detention population is low may not be suitable when numbers in detention increase significantly which place significant pressures on the system and detention facilities.

It is important in the contracting out of services that access to relevant information and data be made available to appropriate review and advisory bodies such as the Detention Health Advisory Group and the Council for Immigration Services and Status Resolution. Under the Ombudsman Act our office can review the administrative actions of contracted service providers. Our office also believes that there is scope for significant improvements in the providers’ current complaint handling services.

It is important to stress that the Department and service providers have joint responsibility for duty of care towards detainees. There is a risk that in the contracting out of services the responsibility for the welfare of detainees, the Department remains a step removed from those responsibilities. Our office would like to see more active monitoring of outcomes than a rigid focus on contractual clauses and penalties.

(J) The health, safety and wellbeing of employees of Commonwealth agencies and/or their agents or contractors in performing their duties relating to irregular maritime arrivals or other persons detained in the network.

The conditions faced by detainees detained in immigration detention centres for prolonged periods, as outlined in previous sections, and the emotional and psychological distress and trauma experienced by detainees will inevitably impact on the health, safety and wellbeing of staff employed in the running of and service delivery to detention centres and department staff, in particular staff working in detention centres. It is important that staff get appropriate regular training and support to assist them in their duties and to cope with these challenges.

(K) The level, adequacy and effectiveness of reporting incidents and the response to incidents within the immigration detention network, including relevant policies, procedures, authorities and protocols.

The Ombudsman has investigated complaints and matters arising from detention reviews and visits to detention centres which have raised serious concerns about the consistency, competency and integrity of incident reporting within the detention network.

Incident reports relating to allegation of assaults examined by the Ombudsman have contained inaccuracies and omission of material crucial to any investigation of the incident. Competent and consistent descriptions of circumstances and actions taken including use of force have been lacking. Witness statements from detainees are not regularly taken.

Our investigations, some of which are not finalised, have identified preliminary concerns with the processes for investigation of unreasonable use of force by Serco officers towards detainees. The issues include a lack of concern, or action to demonstrate concern, for the victim of unreasonable force and the effect that this has

on the person's welfare as well as others who have witnessed the incident. The length of time to finalise investigations, the lack of interim contact with the victim, the extent to which monitoring and interest in the matters of the investigation are taken by the Department are also factors.

Although the Department has advised our office that Serco are required to report all alleged assaults to the police for investigation, our complaints suggest that detainees are told by some Serco officers that it is the responsibility of the detainee to report a matter to the police.

A recent case revealed confusion over whether the New South Wales or Australian Federal Police were responsible for investigating general criminal matters at Villawood immigration detention centre. The Ombudsman understands that the Department is pursuing memorandum of understanding agreements with state and federal police and is concerned that this initiative has remained un-finalised for a number of years. Police reports in cases which were investigated indicated that matters were not pursued because the alleged perpetrator was pending resolution of immigration status. Our office is concerned by a number of review reports and complaints which indicate violence by detainees in Blaxland compound at the Villawood detention centre which do not appear to have been addressed.

The Ombudsman suggests that the Department review the quality and management of incident reporting across the detention network and Serco's capacity to monitor adherence to reporting guidelines. Our office is aware through its interviews with detainees that incidents of unreasonable use of force or perceived unreasonable use of force, and subsequent failure to adequately resolve those matters are issues which increase tension and unrest within the detention network. They may also be indications of a failure in the duty of care responsibilities of Serco and the Department.

Our office has also dealt with complaints in which incidents have been recorded against a detainee without the detainee's knowledge. This appears to be a general practice. An incident so recorded may be considered in detention placement assessment considerations and submissions to the Minister. This practice is not only a breach of natural justice but a failure to inform the detainee of behaviour which is considered inappropriate. A detainee should have the opportunity to dispute the facts of a reported incident or, if the incident is accepted, to demonstrate a change of behaviour.

(L) Compliance with the Government's immigration detention values within the detention network.

The Ombudsman is concerned that the detention values are not being implemented as originally envisaged. We acknowledge that since the values were announced in July 2008, the detention network and the refugee assessment processes have been put under significant strain. The significant and rapid increase in the number of people in immigration detention is largely due to irregular maritime arrivals, seeking asylum in Australia. Under this changing and challenging environment, detention facilities, services and administrative arrangements have not kept pace. This also puts pressure on the processes involved in assessing and people's claims, including merits review and security clearances.

The Department's response to this surge in irregular maritime arrivals has been to source and establish more secure and restrictive facilities. In taking this approach it has also adopted a narrower approach to the case management and placement of

detainees within the detention network. This is contrary to the immigration detention values and department guidelines. This is also reflected in the review reports the Department provides to the Ombudsman which now rely on generically applied justifications for continued detention in an immigration detention facility rather than a genuine assessment of the circumstances of the individual. The Department takes insufficient account of evidence available to it to make a more flexible assessment of individual risk and needs to determine an appropriate form of detention for those who cannot be released.

Our office acknowledges that the Department faces complex problems in developing options for certain groups of people, for example those who have been found to be refugees but have received an adverse security assessment and those who have not been found to be refugees but for whom removal to country of origin is not easily facilitated. The practice of keeping people in secure immigration centres who have been assessed as requiring protection detention either pending prolonged security clearances or negative security clearances is also contrary to the value that detention that is indefinite or otherwise arbitrary is not acceptable.

The Ombudsman does not agree that the management of security risks in all cases requires a security clearance by the external agency. The Department's introduction of a security triage for screening out people it considers do not need such a referral is a welcome improvement. Our office also considers that in certain individual circumstances and general circumstances such as the risk of indefinite detention of refugees with adverse security outcomes that it should also be possible for the Department to make an assessment about the amount of risk presented to the Australian community so that individuals can be placed in less restrictive accommodation. The Ombudsman considers that people facing long term or indefinite detention should also be considered for the granting of a visa under s 195A or a removal pending a bridging visa. In these cases conditions, to mitigate risk regular reporting regimes can be established. In the case of non-compliance with these conditions or new information about risk any such visa could be cancelled and the person returned to a detention facility.

The immigration detention values are operating in the processing of people who become unlawful non-citizens through overstaying or otherwise having a visa cancelled and people making protection claims onshore. Detention in these cases is used as a last resort and utilised for the minimum time required. These people are eligible for a bridging visa in the first instance and it is generally in situations where repeated non-compliance with the visa conditions that more restrictive detention applies.

Irregular maritime arrivals are ineligible for a department issued bridging visa. Although the Minister has the discretion to grant a visa for irregular maritime arrivals under s 195A this option has not been generally utilised. Detention in an immigration detention centre has become a first resort for this group.

Mandatory detention does not have to continue in a restrictive facility. In accordance with the immigration detention values, detention in an immigration detention centre should be a last resort and for the shortest practicable time. The Department has not generally utilised other less restrictive options for the mandatory detention period required for health, identity and security checks for the irregular arrival caseload.

Ongoing or indefinite detention in restrictive centres for the purpose of processing refugee claims seems to be in conflict with the Immigration Detention Values. The surge in arrivals placed pressures on initial processing and review processes, which has extended the completion times and has significantly prolonged the detention period in the current system.

Applying the detention values, which focus on administering humane and risk-based detention practices, is not inconsistent with the mandatory detention legislative and policy framework. Focusing on these more humane and risk-based values become even more of an imperative where there are pressures within the detention, refugee and security clearance systems caused by increased numbers. The increased pressure on these systems places detainees' health and wellbeing at much greater risk of harm. Under such circumstances the detention values need to be genuinely, comprehensively and consistently applied if such risks are to be addressed and if the overall duty of care obligations to detainees is to be achieved. The duty of care responsibilities apply to the Government, the Department and the service providers.

Whilst we recognise a recent increase in families and children placed in community detention we unfortunately continue to see children and families placed in secure or restrictive immigration detention facilities. Even though these facilities may not be defined as 'immigration detention centres' they are not consistent with the spirit and intent of the detention values relating to placement of children and families.

We are concerned that the implementation of the detention value of regular review of the detention conditions for individual detainees, including the appropriateness of both the accommodation and the services provided has not been consistently and regularly applied. People detained in immigration detention centres over the last 18 months are liable to have been exposed to an increasing number of people engaging in suicide or self-harm, an environment in which adults are suffering from increasing despair and confusion, disturbances and other incidents of violence and other risks associated with prolonged detention and overcrowding in these circumstances. This environment is at odds with the detention value of ensuring the inherent dignity of the human person and lacks sensitivity to the traumatic circumstances from which many people have fled.

Whilst we believe that the detention values provide a good framework to administer an immigration detention system we do not believe they are being consistently complied with. Importantly, detention operational procedures and practices should be thoroughly reviewed to ensure that they genuinely reflect the detention values. This may require more co-operative approach between the Department, Serco and International Health and Medical Services. It may also require a stronger governance and quality control and assurance of procedures in practice to ensure that the detention values are embedded in practice. The detention values should also be better reflected in the Department's contracting out of detention services, including in tender and contractual arrangements made with providers. Ideally the detention values should be enshrined in legislation.

(M) Any issues relating to interaction with States and Territories regarding the detention and processing of irregular maritime arrivals or other persons.

It is important that Commonwealth and State agencies cooperate to provide seamless service and consistency of standards and services across the detention network. There should not be any specific state differences in this service provision.

As a result of the High Court decision many irregular maritime arrivals are now taking the opportunity to apply for a judicial review of unsuccessful independent merits review decisions. In addition to the increased access to judicial processes of review, boat crew facing criminal charges are also being processed by the court systems. The locations and sizes of detention centres have resulted in disproportionate applications for Legal Aid assistance across the states. Due to lack of resources some state Legal

Aid offices will no longer take applications for judicial review from irregular maritime arrivals. This presents an inconsistent approach to access to legal aid based on state lines in an area of administration which falls within Commonwealth jurisdiction.

A major area of concern is getting appropriate police coverage in detention centres. Presently there is no Memorandum of Understanding between the Department, the Australian Federal Police and the State Police as to which agencies have carriage of the application of law in detention centres. This was of particular concern during the April 2011 disturbances at Villawood Immigration Detention Centre, as it was not apparent whether the maintenance of order was a state or federal police responsibility.

The Ombudsman's office is also concerned that there are gaps in the continuation of health care regimes for irregular maritime arrivals once they enter community detention. Access to health care in the community could be better facilitated if irregular maritime arrivals were provided by International Health and Medical Services with complete health care plans for the continuation of their treatments once they leave the detention facility.

(N) The management of good order and public order with respect to the immigration detention network.

The Ombudsman notes that the operation of a detention network of this size and nature is a considerable undertaking which carries significant risks. The detention network is comparable to correctional detention but, in contrast, has been established rapidly and is not subject to the legislative controls and regulations which ensure correctional standards and practices and the rights of prisoners.

Running detention facilities presents considerable challenges for maintaining good order. The significant increase in the number of people in detention in the last three years has resulted in overcrowding, inadequate servicing and the consequent risk of disturbances. This has been compounded by detainees receiving negative outcomes for their claims for asylum and delays in the review process and security clearances.

The stresses caused by these factors emphasise the importance of having well trained staff able to effectively utilise de-escalation strategies so that minor incidents do not develop into major disturbances.

A large number of adult males, many of who have been in detention for more than a year and have received a negative outcome to their application for asylum, have been located at Curtin and Scherger immigration detention centres which are at defence bases in remote locations. The location of these centres compounds the sense of isolation for detainees, with a lack of sufficient meaningful activities and excursions, creating boredom and a sense of helplessness and lack of control over their own lives. Evidence suggests that a coalescence of these factors may contribute to disruptive behaviour.

Inadequate communication from the Department about the progress of claims for asylum is another factor contributing to unrest. This can include no information about the progress of claims or requests for review, and the apparent unfairness of newer arrivals having claims for asylum approved before those who arrived earlier. The Ombudsman has received a number of complaints from detainees who have had little meaningful contact with their case manager and who do not know when they will hear of the outcome of their claim for asylum or why the matter is taking so long to resolve.

The Ombudsman is also concerned about intervention for non-critical incidents. As reflected in complaints received by this office, relatively simple matters can subsequently escalate into more serious issues simply because the matter was not resolved while it was still of a minor nature. Language or communication challenges in the detention environment reinforce the need for staff to be properly trained and supported. Greater use of interpreters would ensure more clarity for resolving issues at an early stage, an issue highlighted in our report released in February of this year.

It is common for people who have received a negative outcome to their claim for asylum to complain to the Ombudsman that they do not know what is going to happen to them. In most instances they feel that they are unable to return to their home country and are unaware of what options are available to them. This is particularly so for those who have been found to be refugees but who have received a negative security clearance and who are not eligible to be granted a visa to stay in Australia.

The Ombudsman's office is of the view that if more effort could be put into regularly, comprehensively and contextually informing detainees about the status of their claim for asylum and providing similar information and counselling people found not to be refugees, then the level of dissatisfaction with the process would be reduced and there would be less unrest within the detention network.

The use of high security facilities within immigration detention centres to isolate perceived 'trouble makers' at times of protest activity is also a concern. Anecdotal feedback to the Ombudsman's office suggests that such facilities can be used as a threat and/or for punishment, after order has been restored. Prolonged periods in such facilities, particularly Red Compound on Christmas Island, have had a demonstrated adverse effect on the mental health of some of those detained there.

Our office is concerned that the use of detention centres should be for short durations only and that the emphasis within the detention network should be strongly focussed on strategies to reduce the risk of unrest by identifying and pro-actively attending to its precursors. This focus should be on approaches that build a positive, healthy detention environment providing a more supportive environment and better communication.

The Ombudsman has recently conducted an own motion investigation into the use of force on Christmas Island and will release this report publicly when it is finalised. There are currently reports being prepared for Government on the March and April disturbances at Christmas Island and Villawood IDCs, and this submission does not intend to pre-empt the findings of those reports.

Australian communities located close to immigration detention centres have the right to expect that disturbances within centres will not adversely impact on their own safety and the amenities of their communities.

(O) The total costs of managing and maintaining the immigration detention network and processing irregular maritime arrivals or other detainees.

(P) The expansion of the immigration detention network, including the cost and process adopted to establish new facilities.

The detention network has seen a considerable expansion in what is a relatively short period of time, largely in response to the surge in irregular maritime arrivals. The expansion has placed considerable strain on existing immigration detention centres where numbers have risen above the surge capacity while waiting for new immigration detention centres to come online.

The Department has utilised more readily available locations suitable for a new immigration detention centre in the existing facilities at defence bases. While it is understandable that such facilities are the first preference for new detention facilities, in most, if not all, cases these are of limited suitability for reasons of the type of accommodation, which is generally designed for very short term durations, and the location.

Such facilities, whilst commissioned and brought on line as immigration detention centres reasonably quickly are expensive to operate and maintain. The remoteness of the locations means transport, such as charter flights to move detainees between immigration detention centres and to hospitals when required; transport of food and medical equipment; relocation of staff and access by oversight agencies, legal representatives and advocates, are expensive, difficult and time consuming.

It is a concern to the Ombudsman that less costly and more accessible and serviceable alternatives, particularly community detention and other less restrictive forms of detention closer to major metropolitan centres have been under-utilised.

(Q) The length of time detainees have been held in the detention network, the reasons for their length of stay and the impact on the detention network.

(R) Processes for assessment of protection claims made by irregular maritime arrivals and other persons and the impact on the detention network.

Since 2005, the Ombudsman has reviewed the detention circumstances of people in detention for more than two years and with the government introduction of the immigration detention values in 2008, the Ombudsman has reviewed the detention circumstances of people in detention for more than six months.

Until more recently, the majority of people in detention for more than two years were onshore arrivals and included people whose visas had expired or had been found to be invalid and who had often subsequently applied for a protection visa and were awaiting review of a Refugee Review Tribunal decision; people whose visas had been cancelled under s 501 of the migration act having been convicted of an offence or offences which placed them within criteria for visa cancellation; cases where identity has not been established; situations where there are external constraints to the removal of the

person such as the inability of the Department to obtain a travel document without the person's co-operation; and a situation where there are international treaty obligations which auger against removal but the person has been assessed as being a risk to the Australian community.

The Ombudsman has raised concerns with the Minister in the two year detention review reports about a static approach to risk assessment for people whose visas have been cancelled under s 501 and who have remained in detention for several years. These people experience extended periods of immigration detention often due to long review processes and in some cases the lack of resolution of issues relating to international treaties which prevent removal. The Ombudsman is concerned that people remain in detention only for the reason that the Department contests these appeals or its international treaty obligations. The Ombudsman has recommended more use of community detention and discretionary visa grants for these people including the use of removal pending bridging visas.

During 2010, the number of irregular maritime arrivals at Christmas Island rose substantially. Our office has observed that resources have in some circumstances been directed away from assessments of unlawful non-citizens already in detention to deal with the increase in irregular maritime arrivals. We have seen cases of onshore arrivals assessed as suitable for community detention at an early stage, remaining in a secure immigration detention facility for over 18 months. The Ombudsman notes that the Minister has not delegated his discretion to place a person in community detention, whilst also observing the processes for referral and assessment of detainees against the guidelines for consideration by the Minister can be protracted.

Suspending the processing the claims of Sri Lankan and Afghani asylum seekers for several months during 2010 had a broader impact on the detention population. The number of negative refugee assessment status decisions increased and a growing number of people remained in detention centres awaiting an independent merits review. The increased numbers places further pressure on the initial assessment and review processes. Some of these issues have been resolved with the introduction of the protection obligations determination which replaced the refugee status assessment and independent merits review in March 2011.

In November 2010, a High Court decision found the independent merits review process lacking in procedural fairness. The Department consequently reviewed its procedures and offered a second independent merits review to all people remaining in detention who had been subject to a negative independent merits review decision.

At this time the Department's policy was that a security clearance was valid for 12 months. People whose security clearance was no longer valid after a second independent merits review could be referred to the external agency for a further security check. Referrals to the external agency for further security checks were also made when initial security clearances were still valid but new information may have been presented to the second independent merits review hearing. These processes substantially increased the time taken for protection claims to be finalised. The Department have introduced a security triage process which in operation reduces the number of referrals to the external agency, however, security clearances to the external agency are now not made until a positive refugee status is decided. This means that people with refugee status remain in detention until a security clearance is met.

The Ombudsman is concerned about the number of people found to be refugees who have remained in secure facilities during this process which far exceeds the time frame

anticipated for processing when the immigration detention values were introduced. This has caused overcrowding in detention centres, pressure on the Department and service providers in exercising duty of care obligations, and the occurrence of problems apparently associated with long term detention including deterioration in the wellbeing of detainees and staff, suicide and self-harming behaviours and protests and disturbances.

The Ombudsman observes the average processing time for refugee claims approaches 12 months at the same time there number of irregular maritime arrivals who have now been in detention for more than two years continues to rise. Within this group are those who have been found to be refugees but have subsequently received an adverse security clearance. At present the Department advises that people with an adverse security clearance will not be considered for referral against the community detention guidelines. Similarly, there are a group of people who remain in restrictive detention after a decision that they are not refugees, but for political and other reasons removal to country of origin is difficult.

The Ombudsman reiterates concern that these people currently face indefinite detention and that the Department does not yet have a policy about its resolution of these matters. As an interim measure, the Ombudsman suggests that the Department makes immediate arrangements for a person in these circumstances who has been detained for more than two years to be transferred to a less restrictive place of detention such as residential style immigration detention, unless the Department can demonstrate specific individual reasons why doing so would pose a threat to the Australian community.

The Ombudsman also suggests that a more durable solution to this issue be developed and implemented as a matter of urgency. As part of the solution, the Department should give consideration to developing, in consultation with the appropriate external agency, a more targeted and flexible assessment process that identifies the specific nature of the risk to the Australian community. Consideration should be given to alternative, less restrictive detention arrangements, including community detention, for those who do not pose a direct threat to the Australian community. In such cases appropriate safeguards and oversight could be put in place to address any security concerns that have been identified in the assessment process.

The Ombudsman notes cases where people who have subsequently been granted a protection visa, have remained in restrictive detention centres for several months while police investigations are proceeding. During this time the person is given no information about the nature of the investigations or the charges. A current example is the case where a person was found to be owed protection and received a security clearance but has remained in a high security compound on suspicion of inciting people to engage in protest. This person remained in the high security compound for four months before being interviewed by the Australian Federal Police. The Ombudsman is concerned about any blurring of processes between police investigations and protection visa processing noting that the circumstances for remanding a person in custody are subject to regular judicial review.

The Ombudsman notes that the impact of these outcomes and the increasing numbers has resulted in the establishment of new secure and restrictive immigration detention facilities. Given that the length of time for processing and the failure of established policy to resolve the complex circumstances of detainees, the Ombudsman strongly urges the implementation of the detention values in the spirit intended, that people

would be detained in immigration detention centres only as a last resort and for the shortest duration practicable.

(S) Any other matters relevant to the above terms of reference.

The Ombudsman refers the Senate Select Committee to the report on the Ombudsman's own motion investigation into Christmas Island immigration detention facilities, February 2011. This report is attached.

The Ombudsman would be happy to appear before the Committee to give evidence and provide further suggestions for improvements in Australia's Immigration Detention Network and to the processing of irregular maritime arrivals.

From:
Sent: Thursday, 15 September 2011 1:09 PM
To:
Subject: RE: Submission to Joint Select Committee [SEC=UNCLASSIFIED]

26

Security Classification:
UNCLASSIFIED

Thanks I would look forward to catching up. Just let me know when suits.
Regards

Senior Assistant Ombudsman
Immigration and Overseas Students
COMMONWEALTH OMBUDSMAN

website www.ombudsman.gov.au



FIND OUT MORE...

From:
Sent: Thursday, 15 September 2011 1:04 PM
To:
Subject: Fw: Submission to Joint Select Committee [SEC=UNCLASSIFIED]

25

Hi

Thank you for providing a copy of the Ombudsman's submission to the JSC. forwarded me your email as I look after detention-related matters for the Minister.

I would be happy to meet to discuss with you any particular issues from the submission (or any other issues) -- but perhaps best to wait until a non-sitting week when it is a little less hectic!

Cheers,

| Adviser
Office of Chris Bowen MP
Minister for Immigration and Citizenship

14/09/2011 07:00 PM

Subject

Submission to Joint Select Committee
[SEC=UNCLASSIFIED]

Protective Mark

Dear

Attached is a copy of our submission to the Parliamentary inquiry into Immigration Detention which was made public today.

As previously discussed I would be pleased to meet with you and others from your office to discuss any issues in this submission and more broadly regarding our role and matters we are identifying. I understand things must be very busy at the moment so no urgency about meeting ...maybe when things slow down a little.

Regards

Senior Assistant Ombudsman
Immigration and Overseas Students
COMMONWEALTH OMBUDSMAN

website www.ombudsman.gov.au



FIND OUT MORE...

COMMONWEALTH OMBUDSMAN - IMPORTANT CONFIDENTIALITY NOTICE

This e-mail message or an attachment to it is confidential, and it is intended to be accessed only by the person or entity to which it is addressed.

No use, copying or disclosure (including by further transmission) of this message, an attachment or the content of either is permitted and any use, copying or disclosure may be subject to legal sanctions. This message may contain information which is:

- * about an identifiable individual;
- * subject to client legal privilege or other privilege; or
- * subject to a statutory or other requirement of confidentiality.

If you have received this message in error, please call 1300 362 072 to inform the sender so that future errors can be avoided.

(See attached file: Commonwealth and Immigration Ombudsman - Submission to the Joint Select Committee on Australia's Immigration Detention Network - September 2011.pdf)

Important Notice: If you have received this email by mistake, please advise the sender and delete the message and attachments immediately. This email, including attachments, may contain confidential, sensitive, legally privileged and/or copyright information. Any review, retransmission, dissemination or other use of this information by persons or entities other than the intended recipient is prohibited. DIAC respects your privacy and has

obligations under the Privacy Act 1988. The official departmental privacy policy can be viewed on the department's website at www.immi.gov.au. See: <http://www.immi.gov.au/functional/privacy.htm>

From:
Sent: Wednesday, 21 September 2011 8:17 PM
To: Allan Asher
Subject: Malaysian solution [SEC=UNCLASSIFIED]

27

Security Classification:
UNCLASSIFIED

I just had a call from [redacted] in the Immigration Minister's office about our Malaysian solution submission. He just got it this evening. Firstly he was upset we didn't inform him that we were making a submission nor that they had a chance to test some of the claims we were making. I apologised that it was my fault that I had not checked the committee website to see if it was already up before passing it on to Department and Minister's office. I had intended to do so, as we did with the detention submission. I also said that it is not customary to inform Minister's offices that we were putting submissions to parliamentary inquiries before we do so, but I used opportunity to reinforce need to meet. I had sent a number of emails to [redacted] as well as [redacted] (the Detention Adviser) to meet to discuss our role and issues we are seeing but nothing had been set down for meeting because I had waited on appropriate date and time from them. We agreed to meet at least with [redacted] when I am in Sydney on 6 October.

[redacted] initially questioned why we would have anything to comment on re the Malaysian solution – I explained our jurisdiction is clear re any Australian official action or non-action and that both in Australia and in Malaysia such Australian officials were involved in elements of the solution and therefore would have jurisdiction. We were not questioning the broad policy but rather appropriately commenting on proper administrative arrangements etc. He quoted some bits of the submission that he said were either wrong or were political – eg the following

- Commentators have claimed that the Agreement amounts to little more than Australia outsourcing its international obligations to assess the claims of asylum seekers and provide protection to deserving cases. Whatever the merits of such claims, in our view it is no answer to say to those who have sought our protection that Australia will discharge those obligations by accepting another different group of refugees. (I said that we were not making any comment in relation to the merit of such claims but that such claims are being made in the public arena and that this reinforced need to have accountable and transparent checks and balances in place for the transferees and that it was not good enough to just claim that we are accepting more people as refugees)
- There seems no real assurance that transferees will be readily able to access 'complementary protection' (he said that so many people and agencies have congratulated the government on getting such complementary protection from this deal)
- human rights will not be impugned by cruel and degrading treatment such as the judicial imposition of the death penalty or punishment by caning. (I reinforced the context that there needed to be transparent processes in place to assure Australian public that such claims do not eventuate and that appropriate safeguards exist)
- \$296 million... this figure does not appear to factor in the costs of receiving and settling the 4000 transferees from Malaysia to Australia. (he claimed that we got that wrong and should have checked – he claims that all but \$76 mil will go to resettling the 4000 coming to Australia. I apologised if we got that wrong)
- At the end Accordingly, it is not clear whether it is an ongoing or durable solution to the problems caused by humanitarian movements of people. (I said that it was a statement made in the context of what would happen if/once the 800 had been sent to Malaysia)

I said if he wanted to email me about any areas we clearly got wrong then the Ombudsman could make any corrections when appearing before the committee. I don't think we will get anything from him but what he has said may give a bit of a flavour of what we may want to reinforce was the context of our submission and correct any error – eg \$296m if what he says is correct.

I will be in the DeHAG meeting for most of the day tomorrow but will check email etc.
They are obviously very sensitive about any criticism.

Senior Assistant Ombudsman
Immigration and Overseas Students
COMMONWEALTH OMBUDSMAN

website www.ombudsman.gov.au



FIND OUT MORE...

From:
Sent: Monday, 26 September 2011 7:00 PM
To:
Subject: RE: Ombudsman's submission [SEC=UNCLASSIFIED]

33

Security Classification:
UNCLASSIFIED

Thanks – 10.30 on 5th sounds good. Where are you located?

I would like to discuss the role and jurisdiction of the Immigration Ombudsman, the context in which we expanded our jurisdiction, our general approach to the oversight function and opportunities to improve engagement with your office and the Department. We can discuss some of these issues within the context of the IMAs, the Malaysian Arrangement and refugee processing.

Thanks again for the opportunity to meet.

Regards

Senior Assistant Ombudsman
Immigration and Overseas Students
COMMONWEALTH OMBUDSMAN

website www.ombudsman.gov.au



FIND OUT MORE...

From:
Sent: Thursday, 22 September 2011 4:39 PM
To:
Subject: Re: Ombudsman's submission [SEC=UNCLASSIFIED]

31

Hi

I understand that the Department has written to the Ombudsman to set out some of the concerns with, and inaccuracies in, the submission.

I remain happy to meet with you - perhaps let's aim for 10.30am on the 5th?

Can you give me some indication of what you would like to discuss? I can't speak with any great insight about issues I had assumed were of greatest interest to the Ombudsman, particularly those relating to immigration detention - which are area - but I am happy to discuss issues in my bailiwick, including the Malaysia Arrangement, Regional Co-operation Framework, refugee policy, etc to the extent those are within the Ombudsman's jurisdiction.

I am also happy to act as a contact point for you within the office should you:

- (a) have issues/concerns to bring to our attention or seek our views on; or
- (b) wish to provide us with a "heads-up" on any developments, including media releases/appearances, submissions or the like.

Sincerely,

Deputy Chief of Staff
Office of The Hon Chris Bowen MP
Minister for Immigration and Citizenship

28

21/09/2011 08:29 PM

cc

Subject Ombudsman's submission [SEC=UNCLASSIFIED]

Protective Mark

Dear

Thanks again for the call. I apologise for not providing you with a copy of our submission once it was made public on the committee's website as I had not checked it for a few days. I apologise if there are errors in the submission (such as the allocation of the Budget for the solution) and would be happy to receive any further information you want to provide in this regard. I have already conveyed to the Ombudsman the comments you have made to me.

I look forward to the opportunity to meet and can confirm that I will be in Sydney on Wednesday 5 October and I am free in the morning or late afternoon.

I reiterate my intention to work constructively with the Department and your office. In the few weeks that I have been back in the Immigration role I have already significantly increased the dialogue we have with the Department. I would like to do the same with you and with other relevant advisers in the office. I am keen that we can provide feedback about what we observe and advice about our work on a regular and professional basis.

Regards

Senior Assistant Ombudsman
Immigration and Overseas Students
COMMONWEALTH OMBUDSMAN

website www.ombudsman.gov.au



FIND OUT MORE...

COMMONWEALTH OMBUDSMAN - IMPORTANT CONFIDENTIALITY NOTICE

This e-mail message or an attachment to it is confidential, and it is intended to be accessed only by the person or entity to which it is addressed.

No use, copying or disclosure (including by further transmission) of this message, an attachment or the

content of either is permitted and any use, copying or disclosure may be subject to legal sanctions. This message may contain information which is:

- * about an identifiable individual;
- * subject to client legal privilege or other privilege; or
- * subject to a statutory or other requirement of confidentiality.

If you have received this message in error, please call 1300 362 072 to inform the sender so that future errors can be avoided.

Important Notice: If you have received this email by mistake, please advise the sender and delete the message and attachments immediately. This email, including attachments, may contain confidential, sensitive, legally privileged and/or copyright information. Any review, retransmission, dissemination or other use of this information by persons or entities other than the intended recipient is prohibited. DIAC respects your privacy and has obligations under the Privacy Act 1988. The official departmental privacy policy can be viewed on the department's website at www.immi.gov.au. See: <http://www.immi.gov.au/functional/privacy.htm>

From:
Sent: Wednesday, 21 September 2011 8:42 PM
To:
Subject: FW: Malaysian Solution submission [SEC=UNCLASSIFIED]

Security Classification:
UNCLASSIFIED

Dear
For your information the Ombudsman made a submission to the Parliamentary Committee looking at the Malaysian solution. See link to their website
http://www.aph.gov.au/Senate/committee/legcon_ctte/malaysia_agreement/submissions.htm
Also the Ombudsman will be appearing to give evidence on Friday morning.
Regards

Senior Assistant Ombudsman
Immigration and Overseas Students
COMMONWEALTH OMBUDSMAN

website www.ombudsman.gov.au



FIND OUT MORE...

From:
Sent: Thursday, 22 September 2011 1:56 PM
To: Allan Asher ;
Subject: RE: Malaysian solution [SEC=UNCLASSIFIED]
Security Classification: UNCLASSIFIED

For info –

I have spoken today to Minister Bowen's chief of staff (CoS) to advise him about Allan's 7:30 program interview re mandatory and community detention.

As part of that conversation, I suggested (as requested by Allan) that it would be useful for Allan and the Minister to meet to clarify roles and responsibilities and to help prevent future misunderstandings. I advised that I was on the periphery of the discussion last night between [redacted] and [redacted] (as was the CoS) but that I was aware it had occurred. He stated that their concerns were more about timing of advice rather than content (I reiterated point that we are not required to give them notice of parliamentary submissions), but that he would give the idea of a meeting some thought and get back to me.

From:
Sent: Thursday, 22 September 2011 1:38 PM
To:
Subject: FW: Malaysian solution [SEC=UNCLASSIFIED]

As requested.

From:
Sent: Wednesday, 21 September 2011 8:17 PM
To: Allan Asher;
Subject: Malaysian solution [SEC=UNCLASSIFIED]

I just had a call from [redacted] in the Immigration Minister's office about our Malaysian solution submission. He just got it this evening. Firstly he was upset we didn't inform him that we were making a submission nor that they had a chance to test some of the claims we were making. I apologised that it was my fault that I had not checked the committee website to see if it was already up before passing it on to Department and Minister's office. I had intended to do so, as we did with the detention submission. I also said that it is not customary to inform Minister's offices that we were putting submissions to parliamentary inquiries before we do so, but I used opportunity to reinforce need to meet. I had sent a number of emails to [redacted] as well as [redacted] (the Detention Adviser) to meet to discuss our role and issues we are seeing but nothing had been set down for meeting because I had waited on appropriate date and time from them. We agreed to meet at least with Ashley when I am in Sydney on 6 October.

[redacted] initially questioned why we would have anything to comment on re the Malaysian solution – I explained our jurisdiction is clear re any Australian official action or non-action and that both in Australia and in Malaysia such Australian officials were involved in elements of the solution and therefore would have jurisdiction. We were not questioning the broad policy but rather appropriately commenting on proper administrative arrangements etc. He quoted some bits of the submission that he said were either wrong or were political – eg the following

- Commentators have claimed that the Agreement amounts to little more than Australia outsourcing its international obligations to assess the claims of asylum seekers and provide protection to deserving cases. Whatever the merits of such claims, in our view it is no answer to say to those who have sought our protection that Australia will discharge those obligations by accepting another different group of refugees. (I said that we were not making any comment in relation to the merit of such claims but that such claims are being made in the public arena and that this reinforced need to have accountable and transparent checks

and balances in place for the transferees and that it was not good enough to just claim that we are accepting more people as refugees)

- There seems no real assurance that transferees will be readily able to access 'complementary protection' (he said that so many people and agencies have congratulated the government on getting such complementary protection from this deal)
- human rights will not be impugned by cruel and degrading treatment such as the judicial imposition of the death penalty or punishment by caning. (I reinforced the context that there needed to be transparent processes in place to assure Australian public that such claims do not eventuate and that appropriate safeguards exist)
- \$296 million... this figure does not appear to factor in the costs of receiving and settling the 4000 transferees from Malaysia to Australia. (he claimed that we got that wrong and should have checked – he claims that all but \$76 mil will go to resettling the 4000 coming to Australia. I apologised if we got that wrong)
- At the end Accordingly, it is not clear whether it is an ongoing or durable solution to the problems caused by humanitarian movements of people. (I said that it was a statement made in the context of what would happen if/once the 800 had been sent to Malaysia)

I said if he wanted to email me about any areas we clearly got wrong then the Ombudsman could make any corrections when appearing before the committee. I don't think we will get anything from him but what he has said may give a bit of a flavour of what we may want to reinforce was the context of our submission and correct any error – eg \$296m if what he says is correct.

I will be in the DeHAG meeting for most of the day tomorrow but will check email etc.

They are obviously very sensitive about any criticism.

Senior Assistant Ombudsman
Immigration and Overseas Students
COMMONWEALTH OMBUDSMAN

website www.ombudsman.gov.au



FIND OUT MORE...

From:
Sent: Thursday, 22 September 2011 8:48 PM
To: Chris.Bowen.MP@aph.gov.au
Cc:
Subject: Commonwealth Ombudsman supplementary submission to the inquiry into the Malaysia arrangement [SEC=UNCLASSIFIED]
Attachments: Commonwealth Ombudsman supplementary submission to the inquiry into the Malaysia arrangement - 22 Sept 2011.pdf

Security Classification:
UNCLASSIFIED

Dear Minister

Please find attached correspondence from Commonwealth and Immigration Ombudsman Allan Asher.

Regards

Executive Officer to the Ombudsman

COMMONWEALTH OMBUDSMAN
GPO Box 442, Canberra ACT 2601

Web: www.ombudsman.gov.au

Assisting the Australian community by resolving complaints and fostering good government administration.



FIND OUT MORE...

22 September 2011

Committee Secretary
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House
Canberra ACT 2600
Email: legcon.sen@aph.gov.au

Dear Committee Secretary

Re: Inquiry into Australia's agreement with Malaysia in relation to asylum seekers

In relation to my submission to the above inquiry, I wish to clarify certain matters raised with me today by the Acting Secretary of the Department of Immigration and Citizenship (the Department) and copied to the Committee. In addition, I wish to correct an error of fact that was, regrettably, included in my submission.

3.2 Pre-transfer processes

On 25 August 2011, my office requested from the Department a copy of the operational guidelines relating to the initial handling and pre-transfer processes to be conducted at Christmas Island prior to transfer to Malaysia. On 26 August 2011, the Department advised my office that it *'would like to wait until the High Court hands down its decision on the Malaysian MOU on Wednesday 31 August before providing the requested guidelines'*.

The guidelines have yet to be received by my office.

In the absence of the requested advice, I made a general point in my submission about the need for clearly described and delineated policies with appropriate safeguards and the need for relevant and appropriate training.

I am encouraged by the Department's advice that it has developed pre-removal/transfer guidelines in close consultation with the Office of the United Nations High Commissioner for Refugees.

3.3 Transfer processes

Again, I am encouraged by the Department's advice that *'any use of force in relation to the transfer of individuals by Australia to Malaysia will be as a last resort, only if necessary and in accordance with established procedures'*.

However, I reiterate that it is important that documentation be made publicly available that demonstrates Malaysian authorities will adopt an approach that is consistent and commensurate with Australian standards.

3.5 The situation of transferees in Malaysia (including vulnerable transferees)

I acknowledge that the agreement provides Australia with an opportunity to conduct a complementary protection assessment of a transferee to Malaysia who is not determined by the Office of the United Nations High Commissioner for Refugees to be a refugee and whom Malaysia is considering forcibly repatriating to his or her country of origin.

However, my concerns are that the agreement is non-binding and there needs to be clear procedural documentation that sets out how the arrangements will be implemented.

3.8 The costs and utility of the agreement

In my submission I incorrectly indicated that the total cost over four years was \$296 million and did not appear to factor in the costs of receiving and settling the 4,000 additional transferees from Malaysia to Australia.

I thank the Department for its advice that the total is in fact \$293.2 million, and includes an allocation of \$216.4 million to accommodate the increase to Australia's humanitarian intake of an extra 1,000 places per annum over the next four years.

I understand that the remaining \$75.9 million has been allocated to the costs of transferring individuals to Malaysia and their care in that country.

In relation to the figures cited in my submission, I relied upon information that was widely reported on in the media. I should have sought confirmation from the Department regarding the costs and, accordingly, apologise for this error.

I would appreciate it if you would please provide this letter to the Committee as a supplementary submission prior to the hearing tomorrow.

Yours faithfully

Allan Asher
Commonwealth and Immigration Ombudsman

Cc: The Hon Chris Bowen MP, Minister for Immigration and Citizenship
Mr Peter Vardos PSM, Acting Secretary, Department of Immigration and Citizenship
Dr Ian Watt AO, Secretary, Department of the Prime Minister and Cabinet