

**SUBMISSION OF THE HUMAN RIGHTS AND EQUAL
OPPORTUNITY COMMISSION**

to the

**PARLIAMENTARY STANDING COMMITTEE ON
PUBLIC WORKS**

regarding

***VILLAWOOD IMMIGRATION DETENTION CENTRE
REDEVELOPMENT, SYDNEY.***

March 2006

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Introduction

1. The Human Rights and Equal Opportunity Commission (the Commission) welcomes the opportunity to make this submission to the Parliamentary Standing Committee on

Public Works (the PWC) on the Villawood Immigration Detention Centre Redevelopment Project.

2. The Commission is established by the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) (HREOC Act). It is Australia's national human rights institution.
3. Section 11 of the HREOC Act sets out the Commission's function to promote an understanding, acceptance and public discussion, of 'human rights' in Australia.¹
4. For the purposes of the HREOC Act, 'human rights' include the rights and freedoms recognised in the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC).
5. This submission focuses on the right of all detainees to be treated with humanity and respect as set out in article 10 of the ICCPR and article 37(c) of the CRC. In particular, this submission seeks to assist the Committee in identifying how the infrastructure of an immigration detention facility can have an impact on those fundamental rights.
6. Article 10(1) of the ICCPR reads as follows:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

7. Article 37(c) of the CRC similarly reads:

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age...

¹ Section 11(1)(g) of the HREOC Act.

Conditions inside immigration detention facilities

8. The Commission has undertaken extensive work relating to the conditions under which immigration detainees are held, including:

- Four major reports dealing with systemic issues that arise in the context of mandatory detention:
 - *A last resort?* – Report of the Inquiry into Children in Immigration Detention, May 2004;
 - *A Report on Visits to Immigration Detention Facilities by the Human Rights Commissioner 2001*, October 2002;
 - *Immigration Detention: Human Rights Commissioner's 1998-99 Review*, December 1999;
 - *Those who've come across the seas: Detention of unauthorised arrivals*, May 1998.²
- Numerous reports to Federal Parliament investigating individual complaints from immigration detainees:
 - Report of an inquiry into a Complaint of Acts or Practices Inconsistent with or contrary to Human Right in an Immigration Centre, May 2000;
 - Report of an Inquiry into a Complaint of Acts or Practices inconsistent with or contrary to Human Rights in an Immigration Centre, November 2000;
 - Report of an inquiry into a complaint by Ms Elizabeth Ching concerning the cancellation of her visa on arrival in Australia and subsequent mandatory detention, February 2002;
 - Report of an inquiry into a complaint by Hocine Kaci of acts or practices inconsistent with or contrary to human rights arising from immigration detention, May 2002;

² See especially section 5.4 regarding Villawood IDC.

- Report of an inquiry into a complaint by Mr Duc Anh Ha of Acts or practices inconsistent with or contrary to human rights arising from immigration detention, May 2002;
 - Report of an inquiry concerning immigration detention and the adequacy of the medical treatment received while detained, October 2002;
 - Report of an inquiry concerning the detention of 5 asylum seekers in the separation and management block at Port Hedland Immigration Reception and Processing Centre, October 2002;
 - Report of an inquiry of a child in detention, October 2002;
 - Report of an inquiry into a complaint by Ms KJ concerning events at Woomera Immigration Reception and Processing Centre between 29 - 30 March 2002, February 2004; and
 - Report of an inquiry into complaints by immigration detainees concerning their detention at the Curtin Immigration Reception and Processing Centre, February 2005.³
- Annual visits to all Immigration Detention Facilities (IDFs) by the Human Rights Commissioner.

9. Many of these reports note that Australia's mandatory detention laws contravene the article 9 of the ICCPR and article 37(b) of the CRC in that they fail to protect against arbitrary detention. In particular, the reports note that generally it is indefinite detention itself which prevents detainees from enjoying their right to be treated with humanity and dignity. The Commission therefore highlights that improvement to the conditions of detention will only partially remedy the human rights breaches suffered by immigration detainees.

10. The Commission's reports highlight problems specific to the conditions in the various immigration detention facilities. The reports also make recommendations intended to

³ These and other reports of complaints made under the *Human Rights and Equal opportunity Commission Act 1986* (Cth) are available online at http://www.humanrights.gov.au/legal/reports_hreoca.html

assist the Department of Immigration and Multicultural Affairs to ensure that all immigration detainees are treated with humanity and respect, as required by article 10(1) of the ICCPR and article 37(c) of the CRC.

11. While the Commission does not wish to repeat the extensive findings and recommendations in those reports, the following list indicates the types of infrastructure-related conditions which have lead to a breach of the ICCPR or CRC:

- Overcrowding
- Failure to separate families from other detainees
- Failure to separate men and women
- Failure to separate criminal deportees from asylum seekers
- Failure to ensure the removal of children and other bystanders from violent situations occurring within detention facilities
- Harsh physical environments (eg absence of grass and trees, visible razor wire and oppressive-looking fences)
- Inadequate space for recreation, inadequate play equipment and inadequate recreational infrastructure
- Inappropriate restrictions on movement within a detention facility
- Inadequate educational infrastructure
- Inadequate heating and cooling
- Unsanitary and inadequate toilet facilities
- Toilet facilities located too far from living areas
- Inadequate facilities and access for detainees with disabilities
- Inappropriate single cell observation rooms
- Overly intrusive surveillance methods
- Inadequate access to phones, televisions and other outside communication
- Inadequate access to prayer areas.

12. The Commission recognises that there have been improvements in some of these areas and that not all of these observations have been in relation to the Villawood centre specifically. However, it is important for the PWC to understand the types of issues that may lead to a breach of human rights so that any new infrastructure is designed with a view to preventing such a breach.
13. The Commission also emphasises that the CRC requires that children only be detained as a measure of last resort. Therefore, while attempts to provide 'domestic style residential housing' for children and families is clearly an advance from the traditional style detention facilities, this is an *alternative form* of detention rather than an *alternative to* detention and may therefore fall short of international human rights obligations.
14. This concern was discussed in *A last resort?* where it was said in relation to residential housing projects and home-based detention arrangements:
- The Inquiry agrees that these initiatives represent a positive step forward regarding the conditions in which women and children are detained. However, it must be remembered that these places are not alternatives *to* detention, but rather alternative *forms* of detention. The Department retains full control and responsibility for everything that happens to children in these places.⁴
15. As such, the transfer of children and their families into more friendly detention environments may still raise issues in terms of Australia's international obligations.⁵

⁴ *A last resort?*, section 6.4.

⁵ For a discussion on the meaning of detention under international law see for example *Amuur v France* (1992) 22 EHRR 533.

Guidelines on how to ensure compliance with Australia's human rights obligations

16. The United Nations Human Rights Committee has stated that the *United Nations Standard Minimum Rules for the Treatment of Prisoners* and the *United Nations Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment* represent the minimum requirements for compliance with article 10 of the ICCPR.⁶
17. In addition the United Nations Committee on the Rights of the Child has indicated that the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* should be used to ensure compliance with article 37 of the CRC.⁷
18. In March 2000, the Human Rights and Equal Opportunity Commission developed *Immigration Detention Guidelines* (the Guidelines) which sought to provide practical guidance on how to ensure the appropriate treatment of immigration detainees. The Guidelines were based on the international instruments mentioned above. A copy of the Guidelines is attached as an Appendix to this document.⁸
19. Clause 1 of the Guidelines sets out the fundamental principles which ought to guide the design and operation of an immigration detention facility, including compliance with the ICCPR, CRC and the United Nations guidelines discussed above.
20. In particular, clause 1.4 of the Guidelines states:

In the design and delivery of services, facilities, activities and programs, immigration detention authorities should seek:

(a) to minimise differences between life in detention and life at liberty and

⁶ Human Rights Committee, *General Comment 21: Replaces General Comment 9 concerning humane treatment of persons deprived of liberty (article 10)*, para 5.

⁷ Committee on the Rights of the Child, *Guidelines for Periodic Reports*, 1996, para 138. See also, Human Rights Committee, *General Comment 8: Right to Liberty and Security of Persons (art 9)*.

⁸ See also http://www.hreoc.gov.au/pdf/human_rights/asylum_seekers/idc_guidelines.pdf

(b) to meet the individual needs of each detainee taking into account his or her history and experiences, age, gender and cultural, religious and linguistic identity.

21. Clause 9 of the Guidelines deals specifically with the standard of accommodation which ought be provided, for example – climatic conditions, cubic content of air, minimum floor space, lighting, heating, ventilation, window area, sanitary facilities, sleeping arrangements, provision of separate accommodation for men, women, families etc.

22. Clause 17 of the Guidelines specifies that no person should be held in solitary confinement or placed in a dark cell, amongst other forms of punishments. This should be kept in mind when considering the design and construction of any 'management units'.

Commission Recommendations

23. The Commission commends the 'key objectives' in paragraph 2 of the PWC Statement of Evidence which seek to improve the detention experience for detainees, in particular the decision to incorporate any relevant recommendations of the Palmer Report to inform the improvement of infrastructure.

24. However, the Commission recommends the addition of the following objective in paragraph 2 of the PWC Statement of Evidence:

Ensuring that all infrastructure is designed with a view to protecting the human right of every detainee to be treated with humanity and dignity, using the Human Rights and Equal Opportunity Commission Immigration Detention Guidelines as a point of reference.

25. The Commission further recommends that paragraphs 87-90 of the Statement of Evidence (Immigration Detention Infrastructure Standards) include discussion of the Guidelines.

26. The Commission also recommends that paragraph 91 should include the Guidelines as one of the 'Standards' to which the new facilities ought conform.

27. The Commission would be happy to provide any further information about human rights standards in immigration detention facilities should it be of any assistance to the PWC.