

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Australian Human Rights Commission

Question No. AE15/001

Senator O'Sullivan asked the following question at the hearing on 24 February 2015:

Senator O'SULLIVAN: I am interested in a copy of the work plan 2013, the April draft, without redactions.

Ms O'Brien: We can certainly take that question on notice.

Senator O'SULLIVAN: Do you have a copy with you—an unredacted copy?

Senator WONG: She has taken it on notice.

Ms O'Brien: I have taken the question on notice.

The answer to the honourable senator's question is as follows:

Please see attached document.



Immigration detention, asylum seekers and refugees program

Workplan 2013-14 (April 2013)

This workplan is intended to cover from April 2013 until the end of the 2013-2014 financial year. If the federal election results in a change of government this plan may need to be reassessed in September 2013.

This program of work consists of three key elements:

1. Ongoing work: general monitoring, engagement and 'reactive' work
2. Issue specific engagement and advocacy
3. Projects for 2013-2014

In practice there is considerable overlap between elements 1 and 2, in that much (but not all) of the engagement on our specific priority issues under element 2 is carried out through our regular engagement mechanisms under element 1. They are included as two elements of work in this workplan to distinguish between our ongoing monitoring and engagement on immigration detention and asylum seeker policy more generally (element 1), and the current priority issues that we are focusing on (element 2).

1 Ongoing work: general monitoring, engagement and 'reactive' work

1.1 Internal work

- Coordination:
 - Fortnightly meeting with President
 - Monthly complaints update with ICS
 - Quarterly meeting with ICS and Legal (re. current priority issues)
- Administrative:
 - Distribution of Commission posters for display in detention facilities
 - Updates to immigration content on AHRC website and Something in Common
 - Correspondence for President, responding to correspondence from advocates and members of public
- Management:
 - Input to Commission Policy Papers
 - Preparation of Senate Estimates briefs
 - Policy Management Group meetings
 - Organise training and counselling for staff doing detention visits (talk to other agencies re. training manuals and sessions, counselling providers, debriefing)
- Input to work across the Commission:
 - Input to treaty reporting processes (CAT, ICCPR, UPR)
 - Review of draft AHRCA reports (in particular draft recommendations)
 - Input to BURR working group
 - Presentations to IPU visiting delegations

1.2 *External monitoring and engagement*

- NGOs / other agencies:
 - Immigration detention coordination monthly teleconference (UNHCR, Red Cross, Ombudsman re. detention visits and key concerns across detention network)
 - NSW Asylum Seeker Interagency meeting every two months (Detention Working Group, plus NGOs working with asylum seekers in community)
 - Immigration media officers' network monthly teleconference (with key NGOs re. upcoming public campaigns / media)
 - High level immigration quarterly meeting (President with Commonwealth Ombudsman and heads of UNHCR, Red Cross and MCASD)
 - Human Rights Council of Australia periodic roundtables on regional processing
 - Periodic liaison with state and territory children's commissioners
- DIAC:
 - Six weekly teleconferences
 - FAS, Status Resolution Services and AS, Detention Operations
 - FAS, Onshore Protection
 - FAS / AS, Community arrangements and children
 - Onshore Protection Consultative Group meetings twice per year
 - President periodic meetings with DIAC Secretary
- Minister's office:
 - President periodic meetings with Minister for Immigration and Citizenship (last one in February; consider two more in 2013)
 - Engagement with Minister's Chief of Staff and/or Adviser on key issues of concern as needed
- Coalition:
 - President to meet with Shadow Minister for Immigration and Citizenship in March 2013; further engagement to be determined after that

1.3 *'Reactive' work*

- Input to President speeches on immigration issues as needed
- Input to media releases and talking points as needed
- Participation in relevant parliamentary inquiries:
 - Submissions
 - Briefing materials for President's appearances
 - Possible media release on submission or on report release
 - Committee report review and follow up as needed
 - Current inquiries: ASIO Bill (possible appearance, report due 20 April), Excision Bill (Bill and amendments in Parliament), Regional Processing Package (report due by end June); PWC inquiry into proposed regional processing centre on Manus Island (April)
 - Possible upcoming inquiries: TPV Bill
- Responding to DIAC requests for comments on draft policies (where capacity allows, which it often does not). Note: DIAC has indicated that it is intending to

develop its own standards for immigration detention. They have indicated a desire for feedback on their draft standards (possibly around mid-2013). This may present an opportunity for human rights to be integrated into DIAC standards. However, taking this work on might require that other work is delayed or dropped. Another alternative might be to consider whether the Legal team has capacity to assist.

2 Issue specific engagement and advocacy

2.1 Screening process and involuntary returns

- Done: Engagement with DIAC in January; President letters to former and current Ministers in January-February
- Gather information from ICS re. current complaints
- Monitor removals to Sri Lanka (and other countries) through confidential weekly statistics from DIAC
- Further engagement with DIAC, Secretary, Minister's office re. any changes made to screening process to address our concerns
- Continue informal engagement with UNHCR (and Red Cross, Ombudsman and HRLC); monitor Ombudsman's investigation into the screening process
- Monitor Government response to UN Special Rapporteur
- Include on agenda for next quarterly high level immigration meeting
- Factsheet for website (distribute via ebulletin and external emails once others are completed)
- Possible President opinion piece or other media engagement once factsheet online (see media release issued re. Geraldton group)
- If no progress made with amending the process and involuntary returns continue in significant numbers, consider further letter to Minister (and possibly cc AG and Foreign Minister)

2.2 Refugees with adverse security assessments

- Done: Number of letters to Minister and AG; number of submissions; 2012 UNHCR Roundtable; 2012 AHRCA report; M47 intervention; addressed in 2011 Curtin report and 2012 Community Arrangements report
- Monitor number of refugees with ASAs, number of children impacted
- Monitor Government response to M47 (via DIAC, David Manne, HRLC)
- Monitor Stone Review process
- Continue engagement with DIAC, Minister's office and Attorney-General to encourage consideration of less restrictive places of detention and community detention, access to AAT review, focus on durable solutions. Started with letter to new Minister and AG in early 2013. Awaiting response to that letter.
- Distribute factsheet via ebulletin and external emails once other fact sheets are completed
- Continue officer level engagement with UNHCR, Ombudsman, Red Cross re. their advocacy on this issue; include on agenda for next quarterly high level immigration meeting
- Further steps to consider (and discuss with Legal where relevant):
 - distribution / media opportunities for release of next AHRCA report

- possible opportunities for direct (behind the scenes) advocacy with DIAC and/or Minister's office on a few individual cases (e.g. those involved in AHRCA reports, cases involving children, cases involving serious self-harm attempts).

2.3 Prolonged detention of persons of interest to AFP

- Done: addressed briefly in 2012 Community Arrangements report; raised in meeting with Minister O'Connor in February
- Update section 501 background paper to include short section on character issues following 2011 legislative changes and new Ministerial Direction
- Gather information from ICS and Legal re. current complaints from POIs (and keep ICS and Legal updated on an info we receive from DIAC)
- Engage with UNHCR, Ombudsman, Red Cross re. their advocacy on this issue (in particular Red Cross research and report)
- Follow up stats requested from DIAC after 20 May teleconference; discuss with Fiona Andrew at next DIAC SRSD teleconference. After that discussion, consider:
 - Engagement with Minister's advisers (Stephen had said he would be happy to discuss with us after DIAC had provided the info we had requested in writing)
 - Letter to Secretary, Minister (cc to AG) if scope of problem is significant enough
- Consider factsheet for Commission website (base on relevant section of 2012 Community Arrangements report plus new info from DIAC)
- Consider meeting with POIs as part of any detention visits we do in 2013-14

2.4 Community arrangements

- Done: 2011 Curtin report (section on alternatives to detention), 2012 Community Arrangements report
- Monitor use of Community Detention and Bridging Visas through DIAC statistics and six weekly teleconferences
- Continue to advocate for use of community arrangements through media engagement and high level meetings with Government and Coalition
- Bridging visas and work rights:
 - Engage with Minister's office and DIAC re. work rights for post 13 August arrivals on bridging visas
 - Distribute factsheet via ebulletin and external emails once other factsheets are completed
 - Consider President opinion piece
 - Monitor Asylum Seeker Resource Centre campaign on work rights (communicate with Jana at ASRC)
- Community arrangements and alternatives to detention – develop factsheet for website based on 2012 report and 2011 section of Curtin report

2.5 Immigration detention standards

- Continue distribution and promotion of the Commission's Immigration Detention Standards wherever relevant / possible.

- Publicise Standards in snapshot report to be released in October 2013.
- Integrate relevant parts of the Immigration Detention Standards into any public reports we produce in 2013-14 (e.g. refer to relevant children's standards in ten year review report of *A Last Resort*).

3 Projects for 2013-2014

- The above sections outline the ongoing monitoring, engagement and advocacy work involved in the immigration detention, asylum seekers and refugees program.
- In addition to this work, it is proposed that the team undertake the following projects in 2013-14. These proposals relate to:
 - Community engagement
 - Public report on the 'state of the system' (onshore and offshore)
 - 10 year review of *A Last Resort*?
- Our current staffing capacity consists of:
 - Acting EL 2 – 3 days per week (management / oversight)
 - EL 1 – 3 days per week
 - APS 6 – approximately half time
 - APS 5 – approximately half time

3.1 Community engagement

Why?

- Meaningful policy and legislative change in this area requires broad public support. There is a significant level of misunderstanding in the community in relation to asylum seekers and refugees.
- One of the key findings of the recent evaluation was that the Commission needs to examine new ways to engage with the broader Australian community about these issues.

What?

- Review information currently on Commission website (AHRC webpages re. immigration detention, asylum seekers and refugees; information in Face the Facts) and on Something in Common.
- Coordinate and collaborate with CET and Communications to:
 - investigate how regularly various parts of our websites (AHRC site and Something in Common) are accessed for immigration information
 - develop new content for Something in Common (e.g. facts aimed at countering key myths, stories, photos, actions)
 - develop a strategy for promoting and distributing our key work products (e.g. media releases, reports, submissions, detention photos) more widely using traditional and new media (e.g. twitter, facebook, updated email lists, you tube etc.)
- Develop a plan for updating information on our AHRC webpages to make it more accessible and engaging, including:
 - reconsidering and updating the information that is provided
 - restructuring the way information is presented
 - more use of photos

- new short factsheets on key issues (adverse assessments, persons of interest, screening process, bridging visas and work rights, alternatives to detention)
- consideration of a page of key statistics / facts and figures
- Consider President opinion piece on each of above key issues in connection with publication of factsheet (in order: bridging visas and work rights; ASAs; alternatives to detention; screening process; POIs)
- Coordinate with President's media adviser to develop key messages for President's media engagement on immigration issues (which can be periodically updated), including:
 - positive aspects to keep encouraging e.g. use of community detention and bridging visas, increase in humanitarian intake
 - key issues of concern to keep emphasising e.g. indefinite detention in third countries, mandatory and prolonged detention of children
- Engage with key NGOs on opportunities to share appropriate web content or to link to appropriate web content (e.g. Amnesty's Rethink Refugees website, ASRC campaign on work rights)

When?

- An initial period of focused work might take a month or two (May-July 2013), after which it will be a matter of periodic updates as needed.
- Note: While this is included here as a new project proposal, in practice it should be part of our ongoing work. In the past, due to continually heavy workloads we have not been able to dedicate sufficient resources to do anything other than minor updates to the existing content on the AHRC webpages and some minimal content for Something in Common. It is therefore included here to ensure that we dedicate sufficient resources to the strategic planning side of the work.

Who?

- The majority of this work would be done by APS 5 and APS 6 officers, with EL2 oversight as required.

Key challenges / considerations

- Need to ensure we are clear on what our key messages are for different audiences; need to communicate these messages in accessible and appropriate formats through a wide range of traditional and new media.
- This work will have minimal budget implications (unless we decide there is value in having particular work products designed and printed).
- There will be cross-team implications for Communications and CET, but they should not be too onerous.
- Periodic evaluation of this work would be useful, in order to monitor the extent to which our key messages and work products are reaching our target audiences.

3.2 *Annual report on 'the state of the system' (onshore and offshore)*

Why?

- Meaningful policy and legislative change in this area requires broad public and political support. There is a significant level of misunderstanding in the community and amongst some Parliamentarians.
- The Commission provides ongoing commentary on these issues, but often on a technical issue by issue basis, rather than with a broader perspective. It is strategically important to take a broader view from time to time.
- A brief, simply drafted summary of the immigration detention and asylum system and our key concerns and priorities would be useful for general public awareness raising, and would be an advocacy tool for us and NGOs to use in meetings with decision makers and in appropriate international forums.
- With either the current Government or a new Coalition Government it is likely that the transfer to and detention of asylum seekers in third countries is going to continue for years. The Commission has the power to investigate the extent to which the third country processing arrangements are compliant with Australia's international human rights obligations. That power should be leveraged to gather, analyse and publish relevant information that the public and other organisations are not able to access. In this way the Commission can make a significant contribution to increasing transparency and accountability.

What?

- Produce a brief public report on immigration detention and asylum seeker policy that provides a holistic look at the key issues across the system (both onshore and offshore). Identify the key human rights issues at stake, indicate progress in meeting key human rights standards, reference work the Commission has done on key issues over the course of the year, and highlight key issues and work priorities moving forward.
- To the extent possible, measure against key human rights indicators (e.g. freedom of movement, arbitrary detention, prolonged detention, access to health, self-harm statistics, access to education, processing speed, access to durable solutions for recognised refugees).
- The report would probably not include new recommendations, but it might reflect on whether key recommendations made by the Commission (and possibly other key bodies) have been implemented.
- The report would be brief and high level, with links to more substantive and comprehensive work already produced by the Commission. It would be similar in tone to the annual UPR implementation reports (approximately 15 pages).
- The 2013 report would be based on work already conducted (not, for example, on a new series of fact-finding detention visits).
- Consider producing an updated annual report each year around the same time, measuring progress against the same key indicators.

When?

- Do draft structure of public report June. Prepare content of draft report July-August. Finalise draft report after federal election in September.
- Release report in October 2013 (post-election). Consider a public launch event.
- Conduct meetings with key Parliamentarians in October-November 2013.

Who?

- Preparation of report would be mostly done by EL1 with assistance from APS 5 or 6 as needed, and with EL2 oversight.

Key challenges / considerations

- Controlling the scope and size of this project will be the key challenge, along with ensuring that the content is as current as possible when the report is published.
- The result of the federal election may lead to significant policy and/or legislative changes that could require changes to the draft report.
- Consider whether to publish an informal report of the type we have released in the past, or prepare a formal report to be tabled in Parliament.
- Consider whether to engage with DIAC and/or the Minister's office in advance of the report release and whether to give them an opportunity to provide a written response.
- This work would have minimal cross-team implications including for Legal (possible review of some report sections) and Communications and CET (input into media and community engagement surrounding the report).
- This work would have some budget implications, in particular design of the annual report (and printing if it is to be tabled in Parliament) and potentially some travel to Canberra for DIAC / Ministerial engagement.
- We should build in an evaluation component so that we can assess the impact of the report and apply any lessons learned.

3.3 10 year review of A Last Resort?

Why?

- Mid-2014 will mark the ten year anniversary of the release of *A Last Resort?*, the report of the Commission's national inquiry into children in immigration detention. While there have been some significant legal and policy improvements since that time, there are still hundreds of children in detention facilities in Australia (and on Manus Island, PNG). Australia's system continues to fundamentally breach obligations under the CRC.
- The Commission has a firm legal mandate to review and report on Australia's compliance with the CRC. The rights in the CRC encompass both civil and political as well as economic, social and cultural rights.
- There is community expectation that the Commission will continue to work in this area. That expectation has been heightened by the appointment of the Children's Commissioner.
- Focusing on children allows the best opportunity to engage the general public, and to reach bipartisan political agreement on making policy and legal changes to the system of mandatory and indefinite detention.

What?

Monitoring and engagement:

- With DIAC:
 - Discuss ten year review project with key DIAC contacts; seek detailed information on current children's initiatives e.g. on child protection

- MOUs with states, guardianship arrangements for children in the community, changes to IGOC Act etc.
- Monitor number of children (including UAMs) in immigration detention in Australia, Nauru and/or Manus Island
- Seek statistics on length of time children are spending in detention facilities prior to Community Detention or Bridging Visas
- Seek self-harm statistics among children in detention
- Follow up on DIAC guidelines for best interests analysis; options provided to Minister re. potential changes to guardianship policy
- Seek information re. guardianship arrangements for any UAMs transferred to Nauru or Manus Island
- With Minister's office:
 - Discuss *A Last Resort?* and ten year review project with Minister's adviser
 - Follow up with letter to Minister to draw attention to key recommendations re. children in detention and Minister's guardianship of UAMs, foreshadow ten year review project (cc to AG)
- Consider further engagement with state and territory children's commissioners and guardians (next meeting in May 2013)
- Engage with key stakeholders (e.g. MCASD, federal-state working group/s on child protection etc) and NGOs e.g. IDC (re. their global campaign to end detention of children), Amnesty, ChilOut, RCOA; coordinate with NGO sector Joint Campaign (which is likely to focus on children)
- Consider one or more expert roundtables on key issues (e.g. alternatives to detention and overseas models, guardianship of unaccompanied minors, child protection)
- Consider trying to speak with some individuals who were detained during the period of *A Last Resort* about the lasting impacts of prolonged detention on families and children; include their stories in the review report and in community engagement work

Detention visits

- Conduct a number of visits to detention facilities housing families with children and UAMs in order to measure progress against key findings and recommendations in *A Last Resort*
- Current facilities housing children include Christmas Island, Darwin, Leonora, Perth IRH, Inverbrackie, Brisbane ITA, Melbourne ITA, Sydney IRH, Pontville, Port Augusta (and Manus Island). We will most likely only have capacity to do up to four visits (depending on the distance and time involved). Top priorities at present would include Christmas Island, Darwin and Leonora. Curtin might also be used for families later in the year.
- Decisions about visits should be taken after coordinating with Ombudsman, Red Cross and UNHCR regarding their visit schedules
- We should engage a consultant psychiatrist with experience working with children and refugees to accompany us on any visits we undertake
- Follow up and engagement with DIAC and Serco after each visit (detailed letter, teleconferences regarding key issues and improvements made in response to our concerns, follow up on individual issues raised with us by detainees during visits)
- Consider whether we have capacity to conduct visits to families with children and/or UAMs in community detention and/or on bridging visas (or whether

materials gathered for our 2012 community arrangements report will be sufficient).

Public report

- Produce a public report containing a ten year review of *A Last Resort?* Measure progress against the key findings and recommendations. This will not be a national inquiry of the size and scope of *A Last Resort?* (which took around three years to investigate and produce). It will be a more focused look at what has or has not improved for children since 2004 in relation to the key findings and recommendations in *A Last Resort?*
- Consider whether we seek to table the report in Parliament (as *A Last Resort* was) and seek a response from Government after tabling; or whether we publish a report online and give DIAC and the Minister's office the chance to provide a written response before publication.
- Consider making four or five key recommendations to the Parliament, in an attempt to build bipartisan support.
- Hold a public event to launch the report.
- Coordinate with key NGOs, state and territory children's commissioners to endorse, promote and distribute the report and its key recommendations.
- Work with CET and Communications to develop a promotion and distribution strategy for the report and a community engagement strategy around the key findings and recommendations.
- Commission President meet with key decision makers (including both government and opposition) to advocate for implementation of its recommendations

When?

- Internal planning with other teams (Children's Rights, Legal, CET, Communications): June-July 2013
- Conduct internal review of *A Last Resort?* to identify key findings and recommendations we are going to measure against in the ten year review; prepare draft structure of review report: July-Aug 2013
- Monitoring and engagement with DIAC, Minister's office and key NGOs: start in June 2013 and continue throughout
- Organisation of and preparation for detention visits: Aug-Oct Sept 2013
- Detention visits: October (post-election) to Feb 2014 (with possible Pontville visit 18 June 2013)
- Interviews with children detained during *A Last Resort* Oct 2013-Feb 2014
- Expert roundtable/s early 2014
- Prepare public report early-mid 2014
- Public report to be released in mid 2014, promotion and distribution strategy
- Follow up advocacy, community engagement, media engagement mid-2014

Who?

- Monitoring and engagement would be done by CRPT EL2 and EL1 officers
- Detention visits would be organised by CRPT EL 1 officer with EL 2 oversight and APS 5/6 logisitcs assistance
- Detention visits would be conducted by EL2 or EL1 officer from CRPT, along with President (or Children's Commissioner) and a number of other officers as

- appropriate for the detention facility in question (including for example, a member of the Children's Rights Team and/or a Legal officer)
- Public report would be prepared by CRPT EL1 officer with EL 2 oversight and assistance from APS 5 and 6 as needed. Officers from other teams who took part in detention visits would provide some input or review of relevant sections of report.

Key challenges / considerations

- This work would have significant budget implications, primarily for travel costs for President / Children's Commissioner and officers to conduct detention visits to several sites (some of which will be remote). Additional costs will include contracting a psychiatrist to conduct visits with us, and designing and printing the public report.
- It is important that we allocate sufficient budget and time for organisation and implementation of some basic training for staff doing detention visits (in advance of any visits) as well as a system of post-visit debriefing and counselling.
- We may need to seek some expert advice on child protection issues. If that cannot be done through the Children's Rights Team or their contacts we may want to consider contracting an expert.
- There would be cross-team implications of this work, potentially including Legal and/or Children's Rights Team officer/s coming on detention visits and reviewing some sections of the public report as well as Communications and CET input into media and community engagement work surrounding the report.



SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
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Australian Human Rights Commission

Question No. AE15/002

Senator Collins asked the following question at the hearing on 24 February 2015:

Ms O'Brien: And that is what I was referring to also. Any specific issues that were raised we took on board, and the report was amended accordingly. There were some general observations made but, so far as they were not particularised, we were not able to pick them up and make specific amendments in relation to those general, perhaps more thematic concerns. But all of the specific issues raised by the department, I understand, were picked up and amended, and the report was amended accordingly.

Senator JACINTA COLLINS: Is there any reason we could not have those amendments made available to us?

Ms O'Brien: I might have to take that on notice.

Senator JACINTA COLLINS: I understand you may have to consider matters such as public interest immunity in responding to such matters, which the Attorney seems quite satisfied about in respect of other matters. But I am happy for you to do so.

The answer to the honourable senator's question is as follows:

A table identifying changes made to the report, directly in response to the feedback received from DIBP, is attached.



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| <p>No.</p> <p>Department's comment in response to preliminary findings</p> | <p>Commission's response</p> |
| <p>1</p> <p>'The report appears to rely on subjective statements which are largely unverifiable by the Department. It appears to be selective in its use of information in support of its findings.'</p> | <p>In response to these comments, the Commission elaborated on the methodology adopted for the Inquiry in Appendix 2 of the Inquiry report. Under sections 2.7 and 2.8 the following explanations were added:</p> <p>'2.7 Approach to incorporating evidence</p> <p>... The focus of the Inquiry was to capture the voice of children and their parents. Testimonies, quotes, quantitative data and case studies are incorporated into the report using the words of the asylum seeker where possible.</p> <p>Evidence to the Inquiry was also provided by the Department of Immigration and Border Protection and its contractors, medical professionals, peak bodies, former detention staff and legal academics. Where possible, this evidence was incorporated in the form in which it was received.'</p> <p>'2.8 Assessment of probative value</p> <p>While the stories and experiences of children and their parents were not given under oath or affirmation nor subjected to cross-examination, as this is an impact assessment report, the testimonies were crucial to understanding the impact of detention on the health, wellbeing and development of children.</p> <p>Evidence from primary sources, for example, from the Department of Immigration and Border Protection, children and parents in detention, professionals working in detention and Inquiry consultants was given considerable weight in this report. Secondary source information was used to</p> |

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| | | <p>corroborate Inquiry findings or to frame the stages of childhood development.’</p> <p>Also in the letter sent by the President on 31 October 2014 in relation to the Department’s response, it was explained that:</p> <p>‘Unlike the Commission’s previous Inquiry, <i>A Last Resort?</i>, this Inquiry (The Forgotten Children) adopts a qualitative and quantitative methodology to assess the impact of closed immigration detention on the health, well-being and development of children. Quantitative data was obtained through standardised interviews with 1129 children and parents in closed immigration detention. This data provides robust and measurable information about the impact of detention as reported by the people directly affected by it. This data is fully supported by the academic literature.’</p> <p>The report supplements this data with quotes from children and their families in detention. I respectfully disagree with the Department’s view that the inclusion of ‘anonymous and de-identified quotations’ has occurred at the expense of other more robust research. An effective way in which the impact of detention can be demonstrated is through the voices of those who have experienced it. The identities of parents and children in detention who are quoted have not been published for obvious reasons. Statements from them are included where they describe events that support the quantitative data they accompany.’</p> |
| 2 | <p>‘Nor does the report make any specific and practical recommendations for improvement or change, beyond the immediate release of all children from held immigration detention.’</p> | <p>In the letter sent by the President on 31 October 2014 in relation to the Department’s response, it was explained that:</p> <p>‘The recommendations are, on the whole, systemic recommendations. You have asked the Commission to consider also making ‘specific, practical recommendations’ to improve the Department’s management of immigration detention arrangements.</p> <p>The Inquiry has not adopted this course for the same reasons that this was not done in <i>A Last Resort?</i> The failure by the Commonwealth to comply with its legal obligations to children under its unique system of mandatory detention lies at the heart of the Commission’s concerns. It is this system that must change. The focus of the Inquiry has been on the harm done to children and the need to act in their best</p> |

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| | | interests.’ |
| 3 | ‘the report relies extensively on anonymous quotes, both from detainees and individual service provider staff, which cannot be objectively verified or corrected and which, by any fair measure, should not be extended to create general findings’ | These are the same concerns as expressed in comment No 1 above. Commission’s response is the same as for that comment. |
| 4 | ‘the report does not take account of the context of the recent circumstances facing the Department and its contracted service providers, particularly with respect to the surge of IMAs from 2011 to mid-2013, which placed considerable strain on the resources of the Department and its service providers in the immediate term.’ | To address the Department’s concern, the Commission added a new paragraph to section 4.5 of the report (‘When did the children arrive in Australia?’) which reads: ‘The Department of Immigration and Border Protection informed the Inquiry that the significant increase in boat arrivals during 2013 placed increased pressure on detention centre services, particularly those on Christmas Island. The Department acknowledges that the significant increase of boat arrivals was not a justification for inadequacies in service provision. The Department continued to work in an effort to meet the changed circumstances with the support of its service providers.’ |
| 5 | ‘the report does not take account of the fact that much of the ‘evidence’ provided by the particular individuals was only relevant to a particular place and time, most notably, Christmas Island during the surge in 2013.’ | The report covered the period from January 2013 through to October 2014. The Inquiry team collected evidence from 1,129 people detained in 11 different detention facilities. The visits to the Christmas Island facilities were conducted in 2014 – in March and in July. Where observations are particular to Christmas Island, or to a particular period of time, this has been noted in the report. |

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| <p>6</p> <p>'the report does not take account of the extensive legal, policy, procedural and training requirements – all provided to the Commission during the course of the Inquiry – which guide departmental and service provider staff'</p> | <p>The President's letter to the Department on 31 October 2014 (and the report itself) makes clear that the focus of the Inquiry was on assessing the impact of closed detention through the collection of qualitative and quantitative data from persons directly affected by it. To address the Department's particular concern, Appendix 7 was added to the report, which provides a summary of the relevant Departmental policies and procedures. That Appendix notifies the reader that the Department's submission to the Inquiry contains further detail about the legal, policy, procedural and training requirements in place, and that this submission was publicly available on the Commission's website for those wanting further detail.</p> |
| <p>7</p> <p>'in the case of the chapter on Nauru, the Department understands that the Commission has no jurisdiction in Nauru and has not been invited by the Government of Nauru to visit its regional processing operations...</p> <p>To the extent that the Commission has provided 'facts' and 'findings' with respect to regional processing, the Department notes that it has relied on second hand and third party information.'</p> | <p>In the final section of the Chapter of the report on Nauru, the Commission had set out the scope of its Inquiry and its attempts to obtain information about children in detention on Nauru directly from the Department:</p> <p>12.17 The scope of the Commission to inquire into detention on Nauru</p> <p>This Inquiry was commenced on the Commission's own motion and the Commission drafted the Terms of Reference. The Terms of Reference indicated that the President would inquire into the impact of immigration detention on the health, wellbeing and development of children. In a discussion paper released at the same time as the Terms of Reference, the Commission confirmed that Inquiry staff would not travel to Nauru or Papua New Guinea, but that the Commission may nevertheless make observations on the transfer to and detention of children on Nauru and Manus Island.</p> <p>The Commission sought information and documents from the Department of Immigration and Border Protection pursuant to a number of compulsory notices issued under s 21 of the <i>Australian Human Rights Commission Act 1986</i> (Cth). The Department provided responses to each of the notices issued by the Commission, but did not provide certain information or documents about the following issues:</p> |

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| | <ul style="list-style-type: none"> • the transfer of children to Nauru; • the arrangements between Australia and Nauru and between Australia and its contracted service providers in relation to the detention of children at the Regional Processing Centre on Nauru; and • the impact of detention at the Regional Processing Centre on Nauru on the health, wellbeing and development of the children detained there. <p>The reason given by the Department for not providing this information was that it considered the information 'not relevant to the Inquiry, as it does not relate to the immigration detention of children in Australia and is, therefore, outside the scope of the Terms of Reference'.</p> <p>The Commission responded to the Department's objection, confirming the scope of the Commission's Terms of Reference and asking again for the production of the documents in relation to Nauru required by the compulsory notice. The Department wrote back advising that it maintained its previously expressed position.</p> <p>Given the limited timeframe for the Inquiry, the Commission did not take any further steps in relation to the refusal by the Department to fully comply with the statutory notice.</p> <p>As a result of the Commission's inability to obtain information from the Department about the transfer of children to Nauru and the detention of children on Nauru, the material contained in this chapter is drawn from submissions from:</p> <ul style="list-style-type: none"> • children and adults detained on Nauru; • eyewitness accounts of conditions on Nauru observed by the United Nations High Commissioner for Refugees during several site visits; • written submissions and oral evidence taken under oath from employees of Save the Children who worked as welfare officers with children detained on Nauru; • written evidence and oral evidence taken under oath from doctors providing medical services to children on Nauru; and • supporting material submitted to the Commission including incident reports created by organisations contracted to the Commonwealth to provide |
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| | | <p>services to people detained at the Regional Processing Centre on Nauru.</p> <p>The findings which the Commission made in the following section regarding the children detained on Nauru were appropriately qualified, based on the state of the evidence.</p> |
| 8 | <p>'to the extent that the Department is familiar with the information the Commission has relied upon as 'fact', it considers the Commission has done so in error. For example, the Department has tabled responses to the Joint Advisory Committee on Nauru Regional Processing Arrangements regarding a number of inaccuracies contained in the Health sub-committee's February 2014 Visit Report that has been circulated publicly.'</p> | <p>As the Department did not provide information to the Commission regarding the children detained on Nauru, either in response to the Notices to Produce or to specifically contradict any of the evidence provided by the sources listed in the report, the Commission was entitled to rely on this evidence.</p> <p>An example of this was the Department's response to the Joint Advisory Committee on Nauru. When the Department mentioned this response in its letter on 27 October 2014, on the same day the Commission wrote to request this response from the Department, as the Commission has been unable to locate it.</p> <p>On 31 Oct the Department advised the Commission that 'due to matters pertaining to offshore operations being both out of scope for this review and outside the jurisdiction of the AHRC, the Department will not be providing a copy of the response the Joint Advisory Committee on Nauru Regional Processing Arrangements February 2014 report.' The Commission was therefore unable to incorporate this response into the report.</p> |
| 9 | <p>'The Department is also circumspect about the Commission's use of data and information to support its findings, without demonstrating how this source data has been modified through analysis by the Commission and</p> | <p>Later in the Department's response it requested that where the Commission has modified or analysed data provided by the Department, it should identify this in the report, by wording such as 'Graph prepared by AHRC based on DIBP data' or 'AHRC analysis of data provided by DIBP'. The Commission added the line 'Australian Human Rights Commission analysis of data from</p> |

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| | <p>without greater consideration of, and reference to, the fuller context from which the information has been drawn.’</p> | <p>the Department of Immigration and Border Protection’ underneath all those graphs to which it was relevant.</p> |
| 10 | <p>‘With respect to the specific findings made by the Commission in relation to Australia’s domestic and international legal obligations...the Commonwealth and the Commission have a long history of difference on this particular point. It is the view of the Government that detainees are provided with appropriate care, support and services, are treated with dignity and respect and have their claims addressed as soon as is reasonably practicable and consistent with current policy settings.’</p> | <p>This comment from the Department was included in section 3.4 of the report as the Department’s position. The Commission’s position is that the weight of the evidence in the report, including that which was provided by the Department itself, supports the findings that Australia is in breach of its international legal obligations, particularly those in the <i>Convention on the Rights of the Child</i>.</p> |
| 11 | <p>‘encourage the Commission to include an updated section in the report to better reflect the fact that the Government continues to work toward the release of families and children from held detention arrangements through the arrangements announced by the Minister in August this year for the release of families which children under ten years old on Bridging Visas’</p> | <p>The Commission had already included references to the Minister’s announcement regarding releasing children under 10 years old onto Bridging Visas in the section ‘Shortest appropriate period of time’ (section 5.4 in the final report), and in the chapter on ‘review of detention policies and practices’ (which became Appendix 1 in the final report).</p> <p>The President also included the following section in her Forward:</p> <p>‘Changes in law and Government policy since the Inquiry was launched</p> <p>Since the Inquiry was announced, changes have been made in Government policy and practice, along with decisions of the High Court, that affect asylum seeker children in detention:</p> <ul style="list-style-type: none"> • A few days before being invited to give evidence to the Inquiry, the Minister |

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| | | <p>for Immigration and Border Protection announced his decision to release before the end of the year, all children under 10 years of age, who arrived before 19 July 2013. This new policy may lead to the release of about 150 children, but hundreds will remain in detention.</p> <ul style="list-style-type: none"> Over the period February to September 2014, the Minister released about 220 children, including unaccompanied children, into community detention or the community on bridging visas.' |
| 12 | <p>'The Australian Human Rights Commission (the Commission) has provided the Department of Immigration and Border Protection (Department) with a three week period (comprising 14 business days) to respond to the preliminary view of the facts raised in the draft Inquiry report. Despite this offer to provide the Department with sufficient time to comment on the draft report from a factual perspective, a commitment made repeatedly by the Commission during the course of the Inquiry, the brief period of time offered for the review has proved completely inadequate given the nature of the report that has been submitted.'</p> | <p>Letter from Professor Triggs to Mark Cormack, Deputy Secretary, Immigration Status Resolution Group, on 10 October 2014:</p> <p>"I consider that three weeks is a reasonable period of time for the Department to respond to the Commission's preliminary findings given that a significant portion of the evidence in the report has been provided by the Department or is already in the public domain. For example, evidence provided by witnesses at the Inquiry's public hearings, public submissions to the Inquiry and expert medical reports have been available on the Commission's website during the course of the Inquiry."</p> |
| 13 | <p>'The Department is concerned with the reliance on anonymous and de-identified quotations as credible supporting evidence throughout the report.'</p> | <p>These are the same concerns as expressed in comment No 1. Commission's response is the same.</p> |

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| 14 | <p>'on page 78 of the report, where an anonymous allegation is made, as follows, "...if you don't calm down, we will get the police dogs onto you." No evidence is provided to support this claim.'</p> | <p>This was part of a quote from a mother who was detained on Christmas Island. The exact quote (produced in full in the draft report) makes clear this was reported by the mother as a comment made by the Serco officers:</p> <p><i>There is no space for my baby, no place to put him down. There are centipedes, insects, worms in the room. Rats run through. We have no eggs, no fruit. We get out of date food. I don't want a visa, I just want somewhere safe and clean for my child. Serco is not sympathetic – they say just put them down. The guards said if you don't calm down we will get the police dogs onto you.</i></p> <p>This was a quote recorded by Professor Elizabeth Elliott in her report following her discussions with detainees on Christmas Island during the Inquiry team's visit in July 2014. Professor Elliott's report is published on the Commission's website.</p> <p>To address the Department's concern, the Commission included the Department's response directly under the quote in the final report as follows (in section 6.12):</p> <p>'The Department of Immigration and Border Protection reported to the Inquiry that there are no police dogs on Christmas Island.'</p> |
| 15 | <p>'There are many similar claims made regarding misconduct of individuals, which also provide insufficient detail or context in order to allow proper investigation. The Department notes that as early as March 2014, the Commission had been formally requested to put any substantive evidence of</p> | <p>This concern about 'similar claims regarding misconduct of individuals' was not particularised by the Department, making it difficult for the Commission to respond. The Commission generally found that individual service providers staff members treated detainees with dignity and respect (see for example Chart 46 in section 9.5 of the report).</p> |

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| | <p>misconduct directly to the Secretary.</p> <p>The Department notes that no such evidence has been advanced for the duration of the Inquiry and suggests that, given the role and standing of the Commission, it is irresponsible to advance such claims without having first sought to have their veracity investigated.'</p> |
| <p>16</p> <p>'At the fourth public hearing of the Inquiry held in Canberra on 22 August 2014, the AHRC President stated that there are 'armed guards' at Immigration Detention Facilities in Australia. While the Department has refuted this claim on multiple occasions and has separately written to the President requesting that this statement be withdrawn or evidence offered in support, no such evidence has been advanced. The Department has profound concerns that many similar claims have been made and accepted, without supporting evidence, throughout the report.'</p> | <p>There was no reference to armed guards in the preliminary draft provided to the Department on 3 October 2014, or in the final report.</p> <p>Beyond this, this concern about 'similar claims' was not particularised, making it difficult for the Commission to address such concerns.</p> |
| <p>17</p> <p>'The draft report makes extensive reference to, and gives disproportionate weight to, the opinions and submissions of the medical consultants that were engaged by the Commission to attend the site visits...</p> <p>The Department further notes that the Commission has not afforded similar weight</p> | <p>The health service provider (IHMS) did not make a submission to the Inquiry and therefore the key source of evidence to the Inquiry was that which was provided at Public Hearings. At these Hearings, IHMS corroborated the findings of high levels of mental ill-health amongst detainees as well as the important finding that it is the fact of detention that causes mental ill-health.</p> <p>IHMS is quoted throughout the report (see for example, pp 149, 63, 92, 98).</p> |

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| | <p>to the evidence provided by the health services provider”</p> | <p>Importantly, IHMS provided the data for the HoNOSCA which is quoted throughout the report.</p> <p>As a contractor to the Department with an ongoing duty of care to detainees, there were some natural limitations to the information that the IHMS could provide to the Inquiry. It was IHMS role to mitigate the detainee health problems as they were exposed throughout the course of the inquiry. IHMS responded to cases of concern in providing their ongoing health services – including by remediating health problems uncovered by Inquiry staff. IHMS was less likely to comment on the causes and the impacts of detention on detainees (as per the inquiry Terms of Reference), rather, they saw it as their role to provide the best possible health service as per their contractual obligations.</p> |
| <p>18</p> | <p>‘on page 75 of the draft report, Professor Elliott states that during a brief visit to Christmas Island, “We witnessed many children with respiratory infection (including bronchiolitis in infants, probably due to respiratory syncytial virus) and there had been outbreaks of gastroenteritis. We repeatedly heard the refrain ‘my kids are always sick’Asthma is common in childhood and was a frequent diagnosis in the camps. This is not surprising as respiratory infection is the most common reason for exacerbation of asthma. Parents expressed concern that ... the onset of asthma may relate to the environment.” ... The Department notes that its health services provider has prepared an analysis of presentations to GPs by minors on Christmas Island based on the</p> | <p>To reflect the concerns of the Department, the Commission added the following paragraph directly underneath Professor Elliott’s quote in section 6.11 of the report:</p> <p>‘The Department of Immigration and Border Protection states that there is a lower rate of respiratory illness presented by children in detention when compared to those in the Australian community. The Department notes that though viral illnesses do appear, respiratory conditions requiring antibiotics are infrequent. The Department states that as at 15 October 2014, three children under the age of 16 have asthma out of a group of 107. (Note: viral respiratory infections are not treated with antibiotics).’</p> |

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| <p>contemporaneous health records. It found that the reasons for consultation did not differ significantly from those in the Australian community, excepting a lower rate of presentations for respiratory illnesses. These figures have already been provided to the Commission. The health services provider notes that while viral illnesses do appear at times, there are very few respiratory conditions or respiratory infections requiring antibiotics at any time. As at 15 October 2014, three children under the age of 16 have asthma, out of a group of 107.’</p> | |
| <p>19 ‘little weight or consideration appears to have been afforded to the extensive policy and procedural documentation provided in support of its management of health, care and welfare for families and children in immigration detention. In the course of making its preliminary findings, the Commission appears to have placed very little emphasis on the role of domestic law, policy and practice in addressing the needs of adults, families and children in immigration detention. Nor does it appear that the Commission has made any real attempt to describe how the various policies and practices of the Department and its service providers contribute to the care and wellbeing of families and children.’</p> | <p>The focus of the Inquiry was on assessing the impact of the <i>system of mandatory detention</i> through the collection of qualitative and quantitative data from over a thousand persons directly affected by it. Domestic laws and policies relating to detention were noted in the report where relevant (see Chapter 5). However, as the President noted in her letter to the Department on 31 October 2014:</p> <p>‘The failure by the Commonwealth to comply with its legal obligations to children under its unique system of mandatory detention lies at the heart of the Commission’s concerns. It is this system that must change.’</p> |

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| 20 | <p>'on page 81 of the draft report which states that food, recreation and the culture of detention facilities is determined by the detention services provider staff and that parents' autonomy is limited by this. In fact, the service provider's policy specifies that food and recreation plans are developed and informed by information gathered through the development of individual management plans both at induction and on a regular basis (within 14 days) as per Serco policy and Contract.'</p> | <p>To address the Department's concern, the Commission amended that section of the report (section 7.1) by deleting the sentence which the Department had concerns was misleading.</p> |
| 21 | <p>'on page 120 of the draft report, where the Commission reports that <i>"it is difficult to confirm the actual availability of child mental health specialists and services on Christmas Island, though all indications suggest that any provision from July 2013 to March 2014 was intermittent."</i> The Department is concerned to note that written advice provided to the Commission from International Health and Medical Services (IHMS) on 19 September 2014 does not appear to have been appropriately acknowledged in the report....'</p> | <p>To address the Department's concern, the Commission amended section 9.8 to more clearly represent the conflicting evidence and qualify the conclusion, so that the section in the final report read:</p> <p>'In September 2014, International Health and Medical Services reported that on Christmas Island from July 2013 to July 2014 there were registered nurses with formal qualifications in child specific health services. They further reported that psychologists with qualifications in children's health were available for 366 of 396 days of this period. Additionally, IHMS stated that child psychiatrists visited in February and July 2014.</p> <p>The oral evidence given by two doctors working on Christmas Island at the time conflicts with the evidence IHMS provided on a review of their rostering. It is difficult to confirm the actual availability of child mental health specialists and services on Christmas Island during this period.'</p> |

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| <p>22</p> <p>'One such example appears on page 36 of the draft report, where it states "it has become common practice in Australia to hold people for indefinite periods." In addition to being inaccurate, this disregards the Department's Community Status Resolution approach, which works to resolve immigration status prior to the use of detention, and the work by the Department within the onshore compliance cohorts.'</p> | <p>The Commission disputes the assertion that this is an inaccurate statement. Under Australian law, there is no time limit for immigration detention. None of the 1,129 people the Inquiry team interviewed in detention had been given a release date. Further, in October 2014 the average length of time people were being held in detention was 14 months and rising.</p> |
| <p>23</p> <p>'page 65, where an anonymous detainee is quoted as saying, "They gave her antidepressants even though she is pregnant. Then they said, 'just go back then if you don't like it'" [no footnote]. Despite the Commission having a range of consultant medical specialists engaged for the purposes of the Inquiry, no comment is added to clarify that women who are pregnant can, depending on the circumstances, be prescribed antidepressants.'</p> | <p>The lack of footnote is an error. It should have included a footnote with the following: Dr S Mares, Child Psychiatrist; <i>Expert report to the Australian Human Rights Commission after visit to the Christmas Island Immigration Detention Centres</i>, March 2014, p 13.</p> <p>The purpose of this quote was not to suggest medical malpractice but rather problems with communication about the implications of the medication and a lack of explanation about its impacts. It is possible that there were high levels of distress being expressed during this exchange. The quote serves to reveal the levels of mistrust and disempowerment of detainees in the detention environment and the problems with communication.</p> |
| <p>24</p> <p>'It appears that the Commission has advanced a prosecutorial case with the expectation that it is up to the Department to then find evidence to refute the claims made by the Commission. This is unacceptable. The Department is of the view that the</p> | <p>The Commission refutes the assertion that it 'advanced a prosecutorial case'. The Commission conducted an independent and objective inquiry into the impact of immigration detention on children. The data in the inquiry report provides robust and measurable information about the impact of detention as</p> |

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| | <p>Commission is obliged to investigate and test the facts of its claims, prior to advancing them in publication. Where information is contestable, or open to interpretation, it is the responsibility of the Commission, as the inquiring agency, to consider, evaluate and present a balanced view of the issue.'</p> | <p>reported by the people directly affected by it. This data is fully supported by the academic literature.</p> <p>The Commission did test contestable information through regular meetings with the Department and service providers, public hearings and through providing the Department an opportunity to respond to the preliminary findings.</p> |
| <p>25</p> | <p>'page 69 of the draft report, where the Commission reproduces information it had requested from the department regarding the number of new mothers who were diagnosed with a mental illnesses. The Commission then states this constitutes a mental illness rate of approximately 14 per cent amongst new mothers in detention. The Commission offers no information regarding the prevalence of mental illness in the Australian community by way of context. The following examples regarding the wider Australian community put this observation into some further context (and the Department would expect the Commission to present this type of additional and relevant context)....'</p> | <p>To reflect the Department's concern, the Commission added the following sentence to section 6.7, underneath the 14% statistic:</p> <p>'The Department submits that this rate is in line with the prevalence of post-natal depression in the Australian community as per the survey conducted by the Australian Institute of Health and Welfare in 2012.'</p> |
| <p>26</p> | <p>'some of the photos, proposed to be included by the Commission in the final report, clearly identify the faces of children. The Department requests that the President take the necessary steps to protect the privacy of these individuals.'</p> | <p>The only photo used in the final report from which a child's face can be identified is on the cover. The parents of this child gave informed written permission for his photo to be used in this way.</p> |

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| 27 | <p>'the table provided on page 45, relating to persons with certain mental health conditions or impairments, provides a level of detail that may not afford reasonable privacy to those to which it makes reference.'</p> | <p>The Commission took on board this feedback and removed the date of birth of the individuals listed in the table, and replaced this with their age (in years) (Chart 16 in Section 4.12).</p> |
| 28 | <p>'The Department notes that some of the information and data provided by the Department has been utilised by the Commission to create tables and to form the basis for the Commission's own statistical analysis... To the extent that the Commission elects to modify these answers, in presentation or through further analysis, the Department respectfully requests that the Commission:</p> <p>a. checks that in all cases where data is used in the report that the appropriate caveats applied to the original data are included with the data when reproduced;</p> <p>b. makes clear that it has used original responses for a separate (even if related) purpose;</p> <p>c. where data is re-presented in a new graphical form or where further analysis is</p> | <p>The Commission added the line 'Australian Human Rights Commission analysis of data from the Department of Immigration and Border Protection' underneath all those graphs to which it was relevant.</p> |

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| | <p>undertaken, this is identified as such (eg - "Graph prepared by AHRC based on DIBP data" or "AHRC analysis of data provided by DIBP").'</p> | |
| 29 | <p>'there are some specific examples where the Commission has attempted to devise a particular statistic (such as date of arrival) based on other information provided (including days in detention) and these methodologies are not always as straightforward as they appear. For example, the Department believes that the correct figures in relation to "Chart X: Children detained as at 31 March 2014 by month of arrival (May 2012 to March 2014)" on page 35-36 should be:</p> <p>Of the 883 IMA children in detention at 31 March 2014, 442 arrived on or after 19 July 2013 who are subject to transfer to Nauru. Of these, 47 were unaccompanied minors at 31 March 2014...'</p> | <p>The Commission re-checked its figures and made changes accordingly.</p> |
| 30 | <p>'The Department notes that there appears to be counting errors in the report, (for example, there has possibly been double counting of six individuals in the 'children in mainland detention' total at page 9), and encourages the Commission to review its numbers more</p> | <p>The Commission re-checked its figures and made changes accordingly</p> |

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| | generally.’ | |
| 31 | ‘the Department notes that it has made repeated invitations through the course of the Inquiry, both in conversation and in writing, to receive evidence of any allegations regarding a breach of the human rights of individuals in immigration detention or evidence of misconduct.’ | <p>The Department did not make any specific reference to what parts of the report it was referring to with this comment.</p> <p>The Commission generally found that individual service providers staff members treated detainees with dignity and respect (see for example Chart 46 in section 9.5 of the report).</p> <p>As mentioned in the President’s letter to the Department on 31 October 2014, the report does not seek to make findings about complaints by particular individuals; rather the findings of breaches of human rights and recommendations are at the systemic level.</p> |
| 32 | ‘Page 35 - The Department notes that the Minister is not the guardian of all unaccompanied minors.’ | The Commission considered that further qualification was not necessary, given the context in which the Minister’s guardianship was discussed in that section (section 4.4). |
| 33 | ‘Page 67 - The Department offers the following correction to information it had provided the Commission. The baby in question passed away on 15 October 2013. The Department notes that date of 1 April 2013 provided in a footnote to a request for information (at Schedule 2 Item 11) was incorrect.’ | The Commission amended the date in the report in line with the Department’s correction of its information (in section 6.5) |

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| <p>34</p> <p>'It is the Department's view that the draft report does not provide the level of detail and legal analysis necessary to make the case for how the Commonwealth has breached any or all of the articles listed against those findings... The Department remains open to receiving a clearer link between the evidence made available to the Commission, the Commission's impartial analysis of that evidence with a broader context, and the application of this, against what international law requires.'</p> | <p>In order to make clearer the link between the evidence and the breaches of international law, the Commission provided further elaboration in the findings sections of the report on what the articles in the <i>Convention on the Rights of the Child</i> require in practice. Pertinent detail from General Comments produced by the UN Committee on the Rights of the Child was added, along with recitation of relevant facts from the body of the chapters which demonstrated that the requirements on international law were at various times not being met.</p> <p>For example, in the findings section in relation to mothers and babies (section 6.13), further detail was added to the findings regarding the right to health and development to read:</p> <p>'Detention impacts on the health, development and safety of babies. At various times mothers and babies in detention were not in a position to fully enjoy the following rights under the <i>Convention on the Rights of the Child</i>:</p> <ul style="list-style-type: none"> • the right to the highest attainable standard of health (article 24(1)); and • the right to enjoy 'to the maximum extent possible' the right to development (article 6(2)) and the associated right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (article 27(1)). <p>The Committee on the Rights of the Child has emphasised that:</p> <p>Among the key determinants of children's health, nutrition and development are the realization of the mother's right to health and the role of parents and other caregivers. (See General Comment No 15, paragraph 18)</p> <p>The Committee has also recognised that 'parenting under acute material or psychological stress or impaired mental health' is likely to</p> |
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| | | <p>impact negatively on the wellbeing of young children (See General Comment No 7, paragraph 18).</p> <p>The negative impact of detention on mothers has consequences for the health and development of their babies. For example, mothers who are distressed or depressed in the detention environment can struggle to form healthy attachments with their babies. This in turn has consequences for the social development of those babies. Also, the limits that the detention environment places on the ability of mothers to make decisions about their babies' care can have adverse impacts on the development and health of their babies.</p> <p>Babies' right to development is also directly compromised by the physical detention environment. For example, the physical environment in the Christmas Island detention facilities does not provide safe spaces for babies to learn to crawl or walk.'</p> |
| 35 | <p>'With respect to findings that the Department has breached Article 28(1) of the <i>Convention of the Rights of the Child</i>, the Department observes that there appears to be no acknowledgement by the Commission that this right is progressively realisable, a point particularly relevant when viewed in the context of the surge in irregular maritime arrivals in mid-2013 in particular.'</p> | <p>To address the Department's concern, the Commission provided further detail in the report about the content and breach of the right to education in article 28(1), for example in section 8.7:</p> <p>'The Commission notes that article 28(1) provides that the right to education can be achieved progressively. However, the Committee on the Rights of the Child has made clear that 'States need to be able to demonstrate that they have implemented [article 28(1)] "to the maximum extent of their available resources"' and that States are required to undertake all possible measures towards the realisation of the rights of the child, paying special attention to the most disadvantaged groups.' (See General Comment No 5, paragraphs 7 and 8).</p> <p>Section 8.5 in this chapter describes in detail the lack of education provided to</p> |

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| | <p>primary school aged children on Christmas Island for the year between July 2013 and July 2014. A senior officer of the Department acknowledged during the Inquiry's first public hearing that this was not adequate to meet the needs of the children detained there.</p> <p>There were options readily available to the Department to address the children's educational needs that were not taken. One option was moving the children to the Australian mainland so that they could access education in the same way as other children detained there. Another option was providing the necessary level of education on Christmas Island, which was not done until July 2014.</p> <p>The failure of the Commonwealth to take either of these measures for a year is a breach of article 28(1).</p> <p>The Commission notes that all school aged children detained on Christmas Island are now attending school full time, consistent with article 28(1).'</p> |
| <p>36</p> <p>'At pages 55 and 56, the Commission indicates that the decision in Plaintiff 54/2014 v Minister for Immigration and Border Protection (Plaintiff S4) represents a change in the interpretation of domestic law that is "more in line with a prohibition on arbitrary detention". However, the department is of the view that Plaintiff S4 is consistent with previous High Court authority (including <i>Al-Kateb v Godwin & Ors</i> [2004] HCA 37).'</p> | <p>The Commission did not consider that the Department's view of the decision in Plaintiff S4 necessitated any further qualification of the Commission's description of that case in section 5.1 of the report.</p> |
| <p>37</p> <p>'At page 61, the Commission states that the Department "recognises that it has a duty of care to all people in immigration detention". The Department accepts that it owes a duty of care to individuals in held detention (see Department of Immigration and Border Protection,</p> | <p>The Commission amended the statement in section 5.7 to read 'The Department of Immigration and Border Protection recognises that it has a duty of care to all people in immigration detention facilities'.</p> |

Submission 45, p13). In all other circumstances, whether a duty of care is owed will depend upon an assessment of a number of factors.'

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SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Australian Human Rights Commission

Question No. AE15/003

Senator Collins asked the following question at the hearing on 24 February 2015:

Senator JACINTA COLLINS: So adjustments were made to the draft. A final copy of the report was provided to both departments on 11 November. What precisely does that final copy of the report include from Immigration? Is it simply their response to the findings that are published with the report, or is it also expression of their more thematic concerns?

Ms O'Brien: No. Our obligation in terms of our final report to the Attorney is to identify exactly what the department has said in response to our recommendations—what action, if any, they propose to take in response to our recommendations. However, in light of procedural fairness obligations, we have annexed the more thematic concerns the department had in relation to the report generally so that that is a matter of public record as well.

Senator JACINTA COLLINS: So that is their thematic concerns, but from the report itself I could not backtrack and work out the actual amendments, could I?

Ms O'Brien: No, you could not. I could give you a particular example, but I could not address every example today.

Senator JACINTA COLLINS: Could I also ask that, in taking that on notice, you provide some more prompt consideration as to whether you might be able to make that available to the committee than in the normal question on notice type process.

Ms O'Brien: Yes.

The answer to the honourable senator's question is as follows:

See answer to AE0015/002

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Australian Human Rights Commission

Question No. AE15/004

Senator Collins asked the following question at the hearing on 24 February 2015:

Senator JACINTA COLLINS: Professor Triggs, could you detail for me all meetings you have had since 3 October with either the Attorney or officers of the Attorney-General's Department.

CHAIR: 3 October which year?

Senator JACINTA COLLINS: Last year, Chair.

Prof. Triggs: I will have to take that on notice, because I would want to be absolutely precise in answering the question, but I think, from memory, infrequently; although we did have dealings with the office to arrange for the Attorney's speech at the Human Rights Awards on 10 December. So, if you are concerned about that period, we would in particular have been responding to the usual queries with the Attorney's staff with regard to the speech and the timing et cetera.

Senator JACINTA COLLINS: So the problem at the moment is partly because of how general my question is in terms of any officer of the department. Is that correct?

Prof. Triggs: I think it is very general. I really would need to take it on notice to be able to look at exactly which officers I had spoken to and how often those meetings took place, but it was certainly very infrequent in relation to the Attorney at that time.

Senator JACINTA COLLINS: Let's start at the top then. How many meetings have you have with the secretary?

CHAIR: The Secretary of?

Senator JACINTA COLLINS: A-GD.

Prof. Triggs: I would have to take it on notice. I think there might have been one, but that is all I can recall.

The answer to the honourable senator's question is as follows:

The President met with the Secretary of the Department on 8 October 2014 (Sydney), 29 January 2015 (Canberra), and 3 February 2015 (Sydney).

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Australian Human Rights Commission

Question No. AE15/005

Senator O'Sullivan asked the following question at the hearing on 24 February 2015:

Senator O'SULLIVAN: Thank you. As at 3rd December 2013, Professor Triggs, had your commission experienced a ceasing of the delivery or sharing of information by then? Had you established that that was having an impact on the commission, that information previously provided you by the department of immigration was now not being provided to you?

Prof. Triggs: That is my understanding, yes.

Senator O'SULLIVAN: Okay. Could you tell me what areas of information had once been provided that were now no longer provided?

Prof. Triggs: I would be very happy to provide you with that information on notice.

Senator O'SULLIVAN: Okay. Do you have any independent thought on what this constriction was? Do you yourself remember thinking that the landscape had changed?

Prof. Triggs: As I said a moment ago, I will take that on notice and consult staff to see the extent to which they were observing a failure to provide information that we had traditionally been receiving.

CHAIR: We might have to leave it there, Senator O'Sullivan. You can obviously come back later on. Senator Bilyk.

The answer to the honourable senator's question is as follows:

The Commission has always maintained a good working relationship with the Department of Immigration. In the last quarter of 2013 the Commission did notice that information was taking longer to obtain from the Department and at times information was not being provided.

Examples of challenges obtaining information include the following:

- During the drafting of the snapshot report the Commission had difficulty obtaining information to publish when requested.
- The Commission used to receive confidential weekly immigration detention statistics. On 8 October 2013 the Commission was advised that 'the Department is no longer publishing this document externally'.
- The Commission also had difficulty in arranging a regular teleconference to discuss offshore processing. There was no response to this request.

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Australian Human Rights Commission

Question No. AE15/006

Senator MacDonald asked the following question at the hearing on 24 February 2015:

CHAIR: Thank you. Why was the allegation first put in the draft report? On what basis was the allegation made? What substantiation was there that there were guard dogs—police dogs, sorry.

Ms O'Brien: It was part of the evidence collected. I am not sure through what process that particular piece of evidence was collected, but it was either part of the interview process or perhaps a submission. I would have to take on notice exactly how that evidence was obtained by the inquiry.

CHAIR: You will have to take that on notice. I could go through this in detail. There is the issue about dismissal of evidence provided to the commission on child mental health systems. I think the draft report said it is difficult to confirm the actual availability of child mental health specialists and services on the island, yet the department, or someone, the IHMS, on 19 September had written to you or given you information, written advice, of exactly which mental health specialists, which child psychiatrists, were there. So how was it that the draft report said 'It is difficult to understand it', when you had direct evidence that those professionals were there?

Ms O'Brien: I am not sure whether there is some confusion as to whether they were general practitioners or whether they were specialists. We would have to take that question on notice.

CHAIR: You have read the letter from the department which sets this out in spades. You may have changed it—I don't know. What I am asking is: how was the allegation first there? You do not need to take that on notice. You have read what the department said.

Ms O'Brien: The allegation was accepted as part of the evidence collected for the inquiry.

CHAIR: Yes, I accept that. But how did it come to be in the draft report when it was clearly not factual? You had been given the evidence, yet the draft report said you could not get any figures or evidence.

Ms O'Brien: I am not sure we can conclusively say it was not factual. You are just pointing to the department's response.

CHAIR: Oh, so you're saying that the department's advice to you is not factual?

Ms O'Brien: I am saying that I do not have the information before me to talk about what specialists we are talking about, whether it is general practitioners or whether they are mental health specialists or whether they are paediatricians. I am very happy to take the question on notice, Senator.

The answer to the honourable senator's question is as follows:

In relation to the quote about police dogs:

This was part of a quote from a mother who was detained on Christmas Island. The exact quote (produced in full in the draft report) makes clear this was reported by the mother as a comment made by the Serco officers:

‘There is no space for my baby, no place to put him down. There are centipedes, insects, worms in the room. Rats run through. We have no eggs, no fruit. We get out of date food. I don’t want a visa, I just want somewhere safe and clean for my child. Serco is not sympathetic – they say just put them down. The guards said if you don’t calm down we will get the police dogs onto you.’

This was a quote recorded by Professor Elizabeth Elliott in her report following her discussions with detainees on Christmas Island during the Inquiry team’s visit in July 2014. Professor Elliott’s report is published on the Commission’s website.

To address the Department’s concern, the Commission included the Department’s response directly under the quote in the final report as follows (in section 6.12):

‘The Department of Immigration and Border Protection reported to the Inquiry that there are no police dogs on Christmas Island.’

In relation to the issue of availability of children mental health specialists:

To address the Department’s concern, the Commission amended section 9.8 to more clearly represent the conflicting evidence and qualify the conclusion, so that the section in the final report read:

‘In September 2014, International Health and Medical Services reported that on Christmas Island from July 2013 to July 2014 there were registered nurses with formal qualifications in child specific health services. They further reported that psychologists with qualifications in children’s health were available for 366 of 396 days of this period. Additionally, IHMS stated that child psychiatrists visited in February and July 2014.

The oral evidence given by two doctors working on Christmas Island at the time conflicts with the evidence IHMS provided on a review of their rostering. It is difficult to confirm the actual availability of child mental health specialists and services on Christmas Island during this period.’

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Australian Human Rights Commission

Question No. AE15/008

Senator Reynolds asked the following question at the hearing on 24 February 2015:

Ms O'Brien: Sorry, if I could just finish. Because we had not started the inquiry by December; we were just thinking about what the terms of reference would be—

Senator REYNOLDS: Sorry, December?

Ms O'Brien: 2013. The inquiry was not launched until early in the following year. So were thinking about what powers we were going to need to rely on, what the terms of reference were going to look like. We had noticed that information was not flowing as freely, so it looked like we were going to need to use our inquiry power. It was as simple as that.

Senator REYNOLDS: Would it be safe to say then that the situation up to this point, you had some observations—and I will come back to those on Operation Sovereign Borders—that you had a very collegiate and good working relationship? The secretary for the Department of Immigration and Border Protection confirmed that last night. So you had a good working relationship and the information that you needed was freely provided by the department until the change of government and the change of policy in terms of Operation Sovereign Borders. Before we move on, can you just clarify at that point what information specifically did you not get from the government that triggered this concern?

Ms O'Brien: When this passage of evidence took place this morning I think I agreed to take that question on notice to give you some specific examples of information that we had been provided in the past that we were no longer able to access in the future.

Senator REYNOLDS: I accept that you will take that little sliver on notice. We had General Campbell here last night giving evidence and also the secretary. My understanding of Operation Sovereign Borders and the restriction of information publicly was in relation to the on-water operations. Operation Sovereign Borders, as I understand it, is just the on-water operations. So the restriction on information under Operation Sovereign Borders was only not to telegraph to people smugglers what their operational activities were on the water. So that is on water. But Operation Sovereign Borders, as I understand it, did not relate to the operations of the detention networks and the relationship of the department of immigration—Senator Hanson-Young, if you would like to give evidence please feel free to ask the chair, but my question is to Professor Triggs. I please ask you to allow her to finish—

Ms O'Brien: That may well be the case, and I can certainly take it on notice. My understanding—

The answer to the honourable senator's question is as follows:

Please refer to answer AE015/005.

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Australian Human Rights Commission

Question No. AE15/010

Senator Reynolds asked the following question at the hearing on 24 February 2015:

Senator REYNOLDS: You saw over a period of time, going back even before the caretaker period, that there had been a general drying up—

Prof. Triggs: I would have to check my records; because, again, with regard to precise dates, I would like to check my records. And I would have to ask the staff of the commission at what time did they feel that the weekly meetings were not working. Usually, our staff could pick up the phone to their equivalent and get a very friendly and cooperative response; and, with whatever information they could properly give to us, they did. I need to get some dates, if that would help you, as to when we started to get the feeling that that level of cooperation with information was not at the same level.

Senator REYNOLDS: But clearly if you had written to him 11 days after the caretaker period, you already had considerable issues. I presume you would have rung him. If you had not got an answer or you had got his response, you would have got on the phone to your colleague and said: 'Look, Martin, we've got an issue here. We're not getting the information we need anymore. What can we do to fix it?' What was his response? Did you contact him?

Prof. Triggs: Again, we had good relations. I would have to take it on notice as to exactly what he said.

Senator REYNOLDS: Thank you very much.

The answer to the honourable senator's question is as follows:

Please see attached timeline.

**Timeline regarding request for information from Department of Immigration and
Citizenship/Border Protection to publish in *Asylum seekers, refugees and human rights: Snapshot
report 2013***

| Date | Event |
|------------------|---|
| 31 July 2013 | In teleconference with Department, Commission staff flagged that the Commission required information from the Department for its 'state of the system' report. |
| 2 August 2013 | <p>Commission staff sent information request to the Department. Email makes clear that information is for the Commission's report, and 'may be published in our report'. Deadline for response was 2 September 2013.</p> <p>Department responded 'We will look at your request for information and get back to you just as soon as we can'.</p> |
| 7 August 2013 | Commission staff emailed Department to discuss the information request. Email stated 'We intend to publish the report as soon as possible after the federal election therefore ensuring we receive information from the Department in a timely manner will be critical.' |
| 8 August 2013 | Commission staff sent further information request to the Department. Email makes clear that information is for the Commission's report, and 'may be published in our report'. Deadline for response was 2 September 2013. Email also says 'If you consider that there will be difficulties in meeting this timeframe or in the publication of certain information please let me know as soon as possible. We are working to publish the report shortly after the federal election.' |
| 2 September 2013 | Department advised Commission staff that they were 'unlikely to meet the deadline of 2 September 2013'. |
| 3 September 2013 | Commission staff called Department about the request for information – noted expectation that it would be received by the end of the week (6 September 2013) |
| 5 September 2013 | Following a further email enquiry from the Commission about the response, the Department advised that it was unable to give a time frame for the response. |
| 6 September 2013 | President sent an urgent letter to the Secretary of the Department Martin Bowles, noting the delay in receiving the information and consequences for the Commission's publication of the report, and that the Department had not given a timeframe for providing the information. Requested information by Monday 9 September 2013. |

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| 8 September 2013 | <p>Department provided a response to the request for information. The response was provided with proviso '<i>Please note that some of the information in this document is not publicly available and is not for further dissemination or publication without permission from DIAC</i>'</p> <p>Commission staff emailed Department to query the proviso, given 'The information was requested on the basis that it would be published in the Commission's report'.</p> |
| 9 September 2013 | <p>Commission staff emailed the Department regarding 'a few responses that require clarification or further information'.</p> |
| 10 September 2013 | <p>Department emailed Commission staff and confirmed 'the department does require the Commission to seek permission before publishing any of the information that was transmitted on Sunday 8 September 2013.'</p> <p>Department sent further email stating 'the version of the response provided to the Commission on Sunday is incorrect and we wish to retract the information. It would be appreciated if you can confirm deletion of all copies held by the Commission'.</p> <p>Commission staff emailed the Department and noted 'As discussed we are on an extremely tight deadline and would be grateful if the Department can provide us with an updated response as well as permission to publish by COB 12 September.'</p> <p>Commission staff sent a request for permission to publish the information requested.</p> <p>Commission staff and Department had teleconference to discuss permission to publish information in the report.</p> |
| 12 September 2013 | <p>Department emailed Commission staff to notify them that they could not meet 12 September deadline, but expected to provide the information on 13 September 2013.</p> |
| 13 September 2013 | <p>Department emailed Commission staff to advise that it was expected the response would be provided on 16 September 2013.</p> <p>Commission staff emailed Department notifying them that the Commission's deadline for completing the draft report was that night, and that 'We have already pushed back our publishing deadline and cannot do so again without incurring costs'.</p> |
| 16 September 2013 | <p>Department provided response to request for information, which was several pages shorter than response provided on 8 September 2013.</p> <p>Internal Commission emails between members of asylum seeker team show that significant information which was requested was missing from the response.</p> <p>Commission emailed Department staff thanking them for the response.</p> |

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| 17 September 2013 | <p>President sent letter to the Secretary of the Department Martin Bowles, noting the Department's withdrawal of the initial response, and its refusal to give permission to publish some of the data. President requested that the Commission be provided with all the data requested.</p> <p>Commission staff make decision to push back release of report, because of delays in receiving the information from the Department.</p> |
| 19 September 2013 | Commission staff emailed Department re inaccurate information which was included in response regarding operational detention facilities. |
| 20 September 2013 | <p>Department emailed Commission an updated table of the facilities</p> <p>Commission staff emailed Department raising concerns that the updated table of facilities sent was also inaccurate</p> |
| 22 October 2013 | <i>Asylum seekers, refugees and human rights: snapshot report 2013</i> was released |
| 5 November 2013 | Secretary of the Department Martin Bowles wrote to the President in response to her letter dated 17 September 2013, apologising for the delay in the Department's provision of information for the report. |