QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING : 23 February 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(AE15/080) - Human Rights Commission Inquiry - Programme 2.1 Refugee and Humanitarian Assistance (Administered)

Senator Reynolds, Linda (L&CA 119) asked:

Senator REYNOLDS: Thank you very much, Mr Pezullo. In deference to time, if you could take on notice on that point—the other things that I am interested in are the untested claims and subjective observations where it was said that there are armed guards at immigration facilities in Australia, which clearly you have refuted. But also—
Mr Pezullo: If I remember, Mr Bowles did it when he appeared before the president and her officers. I think it is actually quoted in the report. I recall him giving evidence to that effect in July or August of last year directly refuting the claim. How it has ended up or how the imputation continues to be in the debate about this issue, I just do not know. Mr Bowles dealt with that at the time.
Senator REYNOLDS: Thank you. There was that one—if you could take on notice for any other examples like that—but the ones that I was particularly concerned about were in relation to physical health and welfare. You cite one example here: we witness many children with respiratory infection and that they were always sick and it was particularly prevalent. Your evidence is almost completely opposite to that which you have provided here: in fact, there wasn't a high respiratory rate and a number of other issues. If you could take that on notice as well and any other health and welfare issues that you have disputed.
Mr Pezullo: I think, Senator Reynolds, just so that my office is clear is what you are asking—and I think I am hearing you to say—is not by nine o'clock tomorrow morning but in the regular notice period.
Senator REYNOLDS: Certainly for my request, because I realise that it is a lot of information, so under normal circumstances.
Mr Pezzullo: We will catalogue those as comprehensively as possible on notice under each of the headings that appear in the attachment. Am I understanding your question?

Answer:

On 27 October and 10 November 2014, the Department of Immigration and Border Protection (the department) responded to the draft and final reports of the Australian Human Rights Commission's *National Inquiry into Children in Immigration Detention*. In its response to the draft report, the department set out its concerns, including specific examples illustrating a range of thematic concerns. The department's full response to the draft and final reports are on its website at: http://www.immi.gov.au/pub-res/Pages/reviews-and-inquiries/immigration-detention-inquiry.aspx

The table below catalogues further examples against those same themes, as has been requested by the Committee.

Theme 1: Claims not affording procedural fairness right of reply

Previously used example – Threats relating to police dogs

Further examples:

Page	Statement in AHRC Report	DIBP Comment
89	"The mother explained that she was constantly fearful of being returned to Nauru and that Serco officers had threatened to separate her from her baby with the words: 'Not getting out of the room won't stop you from going back to Nauru."	The department notes that this allegation is from a de-identified source and that no evidence was offered by the Commission in support of the assertion prior to the publication of its Report. The department remains open to receiving any such information. It is also unclear how this particular quotation has been construed as a threat to separate mother and baby, in the absence of further information.

Page	Statement in AHRC Report	DIBP Comment
99	"In response to the message, it was reported that parents started screaming and shouting and threatening to set the camp on fire. According to the adults interviewed at Construction Camp, the 'big guards' arrived in response to the protest. These were Serco officers from the single male camp. Adults living in Construction Camp told the Inquiry team that the officers were threatening to hit people."	The department notes that this allegation is from a de-identified source and that no evidence was offered by the Commission in support of the assertion prior to the publication of its Report. The department remains open to receiving any such information.

Page	Statement in AHRC Report	DIBP Comment
100	"A mother of an 11 month old baby said: *After they read me my rights again I tried to kill myself. I put a rope around my neck, but a Serco guard caught me before I could finish. He was from the single male camp and said to me 'If you want to kill yourself I'll tell you a better way'."*	The department notes that this allegation is from a de-identified source and that no evidence was offered by the Commission in support of the assertion prior to the publication of its Report. The department remains open to receiving any such information.

Theme 2: Untested claims and subjective observations

Previously used example – Claims of armed guards

Further examples:

Page	Statement in AHRC Report	DIBP Comment
190	"There is no blood bank on Nauru."	This is incorrect. A blood bank was established in February 2014.

Page	Statement in AHRC Report	DIBP Comment
76	"The harsh and cramped conditions on Christmas Island create particular physical illnesses amongst children."	This finding in relation to conditions of detention on Christmas Island appears to be based on anecdotal evidence. The department is not aware of statistical evidence to support this claim. Note: Following the passage of the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*, the Government has since moved all families and children off Christmas Island.

Theme 3: Over reliance on the Commission's own experts

Previously used example – Claims of high numbers of children with asthma triggered by detention

Further examples:

Page	Statement in AHRC Report	DIBP Comment
190	"The Commission is concerned about the adequacy of the medical assessments, particularly those conducted within a 48 hour time frame. For example, a doctor who worked on Christmas Island told the Inquiry that a woman understood to be pregnant with twins and a 4 year old boy with cerebral palsy were sent to Nauru."	The department's medical services provider, IHMS, has advised that it is not aware of any boy with cerebral palsy who has been transferred to Nauru. The testimony upon which the AHRC appears to have relied, set out below, is from the AHRC's third public hearing in Sydney on 31 July 2014. ***AHRC Counsel:*** *Was it your opinion that certain of the children that you examined were sent to Nauru when they were not physically or mentally sufficiently fit to being sent to Nauru?* ***AHRC Witness (Dr Sanggaran):*** *So it's hard for me to answer because the type of assessment that I was able to do doesn't*

		allow me to even answer that question. It was so cursory that I can't tell you for sure if there were children that had gone through had been seen by myself that actually should not have been sent to Nauru. ***AHRC Counsel:*** *And Dr Ferguson did you want to add anything to that?* ***AHRC Witness (Dr Ferguson):*** *Yes we are aware of a four year boy who was sent with cerebral palsy to Nauru and that was shortly after, when I first arrived we were given a guideline as to who was or wasn't suitable for offshore centres, based on the facilities available there and it was a traffic light category so red meant not to transfer and red included pregnant women and children under 7 and when I was asked about that I was told that the facilities are not suitable for them there. It was unsafe to send those people there and it ends up policies changed before you knew it you have a pregnant woman with suspected twins being sent to Nauru and a 4 year old boy with cerebral palsy so obviously inappropriate people have been sent offshore.*

Page	Statement in AHRC Report	DIBP Comment
191	"[A] professional adds that some assessments were 'conducted in advance with a large window of time; anywhere from a few days to one month prior to transfer to other centres'. Given the volatility of health conditions in detention, these alleged delays raise doubts as to the currency of the medical assessment."	Before an individual is transferred or moved to another detention facility, the department's contracted health services provider reviews the person's fitness for travel and to reside at the new location. This involves a physical examination if there is clinical information indicating that one is required.

Theme 4: Little no weight afforded to policy and procedure of the department and its contracted services providers

Previously used example – Failure to mention Serco wellbeing programme

Further examples:

Page	Statement in AHRC Report	DIBP Comment
150-171	"Unaccompanied children require higher levels of emotional and social support because they do not have a parent in the detention environment. Detention is not a place where these children can develop the resiliencies that they will need for adult life."	The department notes that limited acknowledgement is made of the arrangements that have been put in place to ensure that unaccompanied minors have a separate and independent source of support. In its submission to the Inquiry, the department more fully notes: *The introduction of specific care and support arrangements underpins the Minister's responsibility to provide for the day-to-day care and welfare of children under his guardianship in held detention. In respect of IGOC minors, this complements the role of the delegated guardian.* *At the same time, the arrangements have ensured compliance with Article 20 of the CRC, which requires that a child temporarily or permanently deprived of his or her family environment shall be entitled to special protection and assistance provided by the State, and that States shall ensure alternative care for such children. The arrangements are also in line with the principle of non-discrimination in Article 2 of the CRC.* *One of the criticisms made in the Commission's last report in relation to support for unaccompanied minors was that Departmental staff did not have child welfare expertise and were, therefore, in no position to monitor the care arrangements by the detention service provider or fulfil that role themselves. A MAX Client Support Worker is required to obtain and hold an Australian Federal Police check and, if relevant in the jurisdiction within which they work, a Working with Children Check, and hold at least a certificate IV in Social, Community or Child Welfare.* *Independent Observer services, currently delivered by MAX, are available to all IMA*

		unaccompanied minors seeking asylum in Australia from the time of arrival until an immigration outcome is determined. The role of the Independent Observer is to ensure that the treatment of unaccompanied minors during migration procedures is fair, appropriate and reasonable, and to provide support to unaccompanied minors in immigration detention to ensure their physical and emotional wellbeing. The Independent Observer builds rapport with the child so that they can more effectively assist and reassure them while their immigration status is being resolved.

Page	Statement in AHRC Report	DIBP Comment
62	**<u>Rates of self-harm amongst children</u>** "The level of mental distress of children in detention is evident by very high rates of self-harm. … One hundred and five children in detention were assessed under the Department's Psychological Support Program as being of 'high imminent risk' or 'moderate risk' of suicide or self-harm and required ongoing monitoring. Ten of these children were aged 10 years or younger."	It is incorrect to suggest that 105 children were assessed as being of 'high imminent' or 'moderate' risk of suicide or self-harm (including ten children aged 10 or under). This is the full response provided to the Commission's request for the number of children on PSP for the period 1 January 2013 – 31 March 2014. *The department refers the Commission to section 2 of the Psychological Support Program (PSP) policy, which indicates that the PSP applies to all persons in immigration detention. A component of this policy is that people identified with a potential vulnerability are managed under one of three supportive monitoring and engagement levels (Ongoing, Moderate or High Imminent). Detainees, including children and their families, who are supported at one of these levels are managed by a PSP committee at the detention facility.* *The total number of children assigned one of the three supportive monitoring and engagement levels between 1 January 2013 and 31 March 2014 was 105*. The ages of these children when they were first assigned one of these levels are indicated in the table below.* *[Table omitted]*

		**Includes people identified with a potential vulnerability or for whom additional support may be required.* As policy documents also provided to the Commission make clear, 'Ongoing monitoring' does not indicate a 'moderate' or 'high imminent' risk of self-harm. Rather, it generally involves no intrusive measures or changes to normal accommodation arrangements and is implemented as a protective and supporting factor, with clinical review every seven days.

Theme 5: Dismissal of evidence provided to the Commission

Previously used example – Failure to recognise evidence provided regarding number of mental health staff present on Christmas Island

Further examples:

Page	Statement in AHRC Report	DIBP Comment
53	"The Inquiry team requested statistics on children referred for torture and trauma counselling in detention. The Department of Immigration and Border Protection and the medical provider for detention centres, International Health and Medical Services, were unable to provide this information. Nevertheless, as this report demonstrates, there are many children who have experienced death close up, including murder of immediate family members. Many children in detention are extremely vulnerable and many are receiving torture and trauma counselling."	The department and its health services provider did provide the information that was available and within the constraints of the timeframes provided for response. On 24 July 2014 the AHRC issued the department's contracted health services provider, IHMS, with formal notice to produce particular statistics and information (including information on torture and trauma referrals) within five days. On 29 July 2014, IHMS responded to the Commission as follows: ***Question:*** ***Torture and trauma*** ***4. For the period 1 June 2013 to the date of this notice, indicate with totals for unaccompanied children separated from total of other children, the following:*** ***a. Number of children who report to have experienced torture and trauma;*** ***b. Number of children receiving torture and trauma counselling;*** ***c. Number of children referred for torture and trauma counselling who refused;*** ***d. Number of children who have***

		finished torture and trauma counselling. *<u>IHMS Response:</u>* *IHMS has been able to review the files of children who entered into immigration detention between 1 June 2013 and 30 June 2014, and who are still in immigration detention as of late July 2014 when the data extract was completed. Our records do not distinguish between minors who are unaccompanied and those who are members of a family group, therefore we cannot report on those separately.* *From these records, we find that torture and trauma has been reported, identified or suspected in the cases of 98 minors.* *Torture and trauma counselling is provided by independent, external providers and IHMS does not supervise the provision of services; therefore we do not hold data regarding whether people are receiving treatment, have refused to engage with the torture and trauma counselling services, or have finished treatment.* *There are some cases where there is a torture and trauma disclosure to an IHMS staff member and the person declines a referral. In these cases, the person is informed that they may re-refer at any time in the future and if there are any mental health issues the team continues to engage with the client and work with them around any symptoms that they might have.* On 8 August 2014, the department also provided the following supplementary information to the Commission: *<u>DIBP Response:</u>* *The following information, provided by IHMS, supplements that provided to the Commission by IHMS on 29 July 2014, in response to a separate Notice to Produce.* *a. Per IHMS's response to the Commission of 29 July 2014, data is available for children who entered into immigration detention between 1 June 2013 and 30 June 2014 and who were still in an immigration detention facility in Australia as of late July 2014. IHMS advises that within these reporting parameters, 98 children were identified or suspected to be survivors of torture or trauma and 36 children were referred for torture and trauma counselling. Although all known or suspected survivors of torture and trauma are*

		offered referral to specialist counselling, in many cases detainees decline referral, which accounts for the difference in the number of identified or suspected survivors of torture and trauma and the number of referrals. A history of torture or trauma may be self-reported by a detainee, or may be suspected or identified by a clinician during a consultation. Data relating to how a possible history of torture or trauma is determined is not recorded. *b. to d. Torture and trauma counselling is provided by multiple external providers. Neither IHMS nor the Department are able to aggregate and provide the information in the way it has been requested as this would require a significant diversion of resources to manually analyse a large volume of records and reports and given the differing levels of detail currently reported by the counselling providers, it would be unlikely to produce the information with sufficient accuracy.*

Theme 6: Generalisations and lack of full context

Previous used example – A comment in the draft report that "it has become common practice in Australia to hold people for indefinite periods."

Further examples:

Page	Statement in AHRC Report	DIBP Comment
59	"Results from these assessments show that 34 percent of children had mental health disorders that would be comparable in seriousness to children referred to hospital-based child mental health out-patient services for psychiatric treatment. [53] Less than two percent of children in the Australian population have mental health disorders at this level."	The Australian Human Rights Commission Report compares Health of the Nation Outcome Scales for Children and Adolescents (HoNOSCA) data, collected over three months within immigration detention facilities, with the proportion of children in the Australian community referred to hospital-based child mental health out-patient services for psychiatric treatment, from 1 July 2010 to 30 June 2013. The department does not consider that these are comparable measures.
	Endnote 53: International Health and Medical Services, *Data on screening children (HoNOSCA),Quarter 2; Apr to Jun 2014*, Attachment 3, Second Notice to Produce, 24 September 2014. Data from IHMS was compared with data from the Australian Mental Health Outcomes and Classification Network for patients from 1 July 2010 to 30 June 2013.	The department's Independent Health Advisor's review of mental health screening in immigration detention has advised that HoNOSCA is 'not designed for use as a community screening tool' and that 'the tool is not considered suitable to compare the detention network directly to external populations.' Furthermore, 'HoNOSCA is not

		considered suitable as an initial child and adolescent screening tool and its use should be restricted to use by clinicians to monitor individual response to treatment.' All people in immigration detention, including children, are provided with access to appropriate mental health support, commensurate with Australian community standards.

Page	Statement in AHRC Report	DIBP Comment
85	Current detention law, policy and practice does not address the particular vulnerabilities of asylum seeker children nor does it afford them special assistance and protection.	The department provided the Commission with extensive documents and information, including all relevant policies, over the course of the Inquiry. Appendix 5 of the Report illustrates the extent of information requested by the Commission and provided by the department. While a brief summary of relevant policy and procedure is provided at Appendix 7, the summary does not make clear how the Commission has assessed the extensive information provided.

Theme 7: Misleading use of quotations

Previously used example – An anonymous quotation suggesting improper use of medications

Further examples:

Page	Statement in AHRC Report	DIBP Comment
108	"Up until July 2014, families living in the (now closed) Aqua and Lilac Detention Centres shared common bathroom facilities. One parent described the impacts of almost 500 people sharing 4 toilets: ***The nightmare of Aqua will stay with me the rest of my life.*** (Parent of preschool aged children, Construction Camp Detention Centre, Christmas Island, 16 July 2014)"	The statement by the Commission that there were four toilets for 500 people (a ratio of 1 toilet for every 125 people) is incorrect. • 64 of the accommodation rooms in Lilac included their own ensuite. • A further 36 accommodation rooms in Lilac were supported by 4 ablution blocks, each containing 10 toilets and 10 showers. • The 200 accommodation rooms in Aqua were supported by 40 toilets and 40 showers. The department's submission to the Inquiry, which was submitted in May 2014, provides details of the Aqua/Lilac facilities including the following: - *The accommodation blocks consist of air-conditioned rooms with a number of shared bathroom blocks, and kitchenette facilities.* and - *Double bunk rooms with shared bathroom facilities in Aqua Compound, and a mix of single rooms, some with ensuites, in Lilac Compound.* The department notes that the Aqua and Lilac facilities were taken out of operation on 30 June 2014 and have since been closed.

Page	Statement in AHRC Report	DIBP Comment
61	"Despite acknowledging these long term impacts, when the Department was presented with the first HoNOSCA data, the Head of Detention Health Operations [sic] asked that this data not be provided in future reports, pending further consideration. The email making this request is reproduced below: *We'd be grateful if both the HoNOS and HoNOSCA data could be withheld from both of the quarterly data sets pending further consideration by the Department and discussion with IHMS."*	It is the department's view that this statement required further context. As early as 31 July 2014 during the third public hearing in Sydney, the department has clarified for the Commission that it was seeking further advice to establish whether the HoNOSCA tool was the most appropriate to be used in the held detention environment. From that public hearing: ***AHRC Counsel:*** *This morning we had some evidence from Dr Peter Young who is the former medical director of mental health services at IHMS and he gave the Commission some evidence that IHMS has introduced a new scale for measuring mental health amongst children in detention called the HoNOSCA, have you heard of that measure before?* ***DIBP Secretary Bowles:*** *Yes I have* ***AHRC Counsel:*** *Dr Young reported that IHMS had determined on the basis of the HoNOSCA that I believe one third of all children in immigration detention were suffering signs of mental distress and the like at rates that were a third higher than those reported amongst children already engaging in community mental health services. Are you aware of that data?* ***DIBP Secretary Bowles:*** *I wasn't as I indicated earlier, I wasn't here this morning for Dr Young. I just might add that the HoNOSCA reporting is a national scale reporting it's not specific to immigration detention, sorry Ms Sharp, I just want to make a its quite a specific point. The HoNOSCA reporting is a national outcome scale on mental health related issues for children and adolescents it is not specific to an immigration setting, so I make that point. So I'm happy to look at all of these issues but as I*

		understand it the IHMS, through Dr Young and others, have been looking at introducing new data into the scale and I see you very helpfully got it up on the wall there, into the detention network. We are currently actually making an assessment of that about how we can actually incorporate that. This is a relatively new thing that has been introduced by IHMS and we are considering how to use this. We have, I have a Chief Medical Officer and he is currently assessing how we can actually do that. I also have an independent health advisor who will also do that and it is more than likely that we will introduce this into our system but equally we want to be sure that it is actually pointing to the right issues for us to manage given this is a broader scale and we are now talking quite specifically about immigration detention but I don't have any objection to the broad use of some scales like this.

Theme 8: Expectations that the Department must refute claims made

Previously used example – selective presentation of medical information providing little or no context.

Further examples

Page	Statement in AHRC Report	DIBP Comment
62	"The level of mental distress of children in detention is evident by very high rates of self-harm. The Department of Immigration and Border Protection confirmed that during a 15 month period from January 2013 to March 2014, 128 children in detention engaged in actual self-harm."	The department did not confirm that 128 children in detention engaged in actual self-harm for the period 1 January 2013 – 31 March 2014, as has been stated in the AHRC's draft and final report. This figure misrepresents the number of individuals who engaged in actual self-harm over the period in question. The department notes that a number of attempts have been made to clarify what this number represents:

		• When the figure of 128 was first provided to the AHRC (in response to a notice to produce dated 31 March 2014), the department made clear in its full response to the question that: - the count of 128 is based on a systems (database) query - the database query counted the number of "Participants" recorded on DIBP systems (including 'alleged victim', 'alleged offender' and 'involved') - an incident can have more than one participant type. • The then Secretary Martin Bowles PSM attempted to point out that the figure of 128 was being used inaccurately at the AHRC's third public hearing Sydney on 31 July 2014. From the hearing: ***AHRC Counsel:*** *Mr Secretary, data that has been provided by your Department to the Commission reveals that 128 children in closed detention in mainland Australia or on Christmas Island self-harmed in a 15 month period from January 2013 to 31 March this year and in the same period 89 adults self-harmed. May I ask you this, why do you think the rate of self-harm is so high amongst children?* ***DIBP Secretary Bowles:*** *Firstly, can I just correct you because my understanding is its 128 incidents, not children.* ***AHRC Counsel:*** *I accept that correction.* ***DIBP Secretary Bowles:*** *And I think the adults it's the same issue. Its incidents not people.* ***AHRC Counsel:*** *Yes.* ***DIBP Secretary Bowles:*** *And I think that…and what you do find when you get into this base it's the same person who may have multiple incidents so we can't necessarily extrapolate the numbers to number of people…* • The department again raised its reservations about the AHRC's use of its data, when responding to the AHRC's draft report. The department's response stated:

		"Owing to the complex nature of data and statistical reporting in the immigration detention context, it is the department's preference that statistical responses and data sets should only be used to answer the original question. To the extent that the Commission elects to modify these answers, in presentation or through further analysis, the department respectfully requests that the Commission…check 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…"** It should also be noted that the count of 128 also includes some duplicate records, some records incorrectly classified as self-harm and a small number of records created in error (a record shell). The AHRC was provided with the full incident reports under the same notice to produce and so has the ability to undertake its own count of the number of incidents, individuals involved as well as the number of children who actually self-harmed during the period in question. The department has undertaken such a review and counts 77 individuals under the age of 18 who self-harmed during the period, with some individuals being involved in multiple incidents. It is a matter for the AHRC to decide whether this affects the qualitative assessments it has made with respect to the rates of actual (and threatened) self-harm during the period. From the department's perspective, any amount of self-harm amongst minors is concerning. However the department also notes that it would have been beneficial for the AHRC to have included some level of reference to the Australian community, in order to help readers of the report to appreciate the situation in a fuller context.

		While not a perfect comparison, the Australian National Epidemiological Study of Self-Injury (ANESSI) report into self-injury in the Australian community is based on a nationwide survey. Self-injury "is defined as the deliberate destruction or alteration of body tissue without suicidal intent". This report shows a four-week prevalence of self-injury of 2.4% amongst people aged 10-17 years. That means that 2.4% of people in that age bracket declared that they had self-injured in the four weeks prior to the survey. This compares (for the 10-17 years bracket), with a monthly prevalence of self-harm in immigration detention ranged from 0.2% to 3.1% for the period 1 January 2013 to 31 March 2014. In fact, for 14 of the 15 months in question, the rate was below the national average of 2.4% Of course, there are differences between the ANESSI report and the reporting that is done by the department (self-reported versus reported by the detention services provider; four week versus monthly, self-injury versus self-harm), but it does provide at least a reference point between the detention environment and the Australian community.