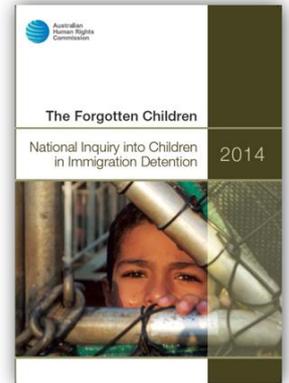


The Forgotten Children: National Inquiry into Children in Immigration Detention 2014

The Inquiry report was **transmitted** to the Attorney-General for tabling on **11 November 2014**. According to law, the Attorney-General has 15 parliamentary sitting days to table the report. The latest date it can be tabled is **11 February 2015**.

The children are our responsibility and we have a duty of care to treat them humanely



- Once asylum-seeking children arrive on Australian shores, they become the responsibility of our country and our Government. This report sets out the impacts of immigration detention on children in detention centres in Australia and on Nauru with reference to their human rights as defined in the *Convention on the Rights of the Child*.
- Evidence in this report shows that prolonged detention damages children. Clinical data collected by the detention health service (IHMS) shows that **34 percent of children in detention centres had mental health disorders** of sufficient seriousness that if they were living in the Australian community they would require referral to mental health services for psychiatric treatment. Less than two percent of children in the Australian community have such high levels of mental ill-health.
- We have an obligation to treat children humanely. International human rights standards make clear that children should only be detained as a last resort. The UK, New Zealand, the United States do not detain children as an option of first resort. In the UK, children seeking asylum are quickly screened and then moved into the community. Children are sometimes detained on removal from the UK. The maximum length of detention in these circumstances is 72 hours. With ministerial approval, it can be extended to seven days.
- At the end of the Inquiry reporting phase (October 2014), children had been in detention in Australia for 14 months on average.
- The parents of children in detention have high rates of mental illness. Thirty percent of adults in detention have moderate to severe mental health conditions and of those adults who report torture and trauma, 38 percent were assessed to have PTSD in 2014.
- Detention is a dangerous place. From **January 2013 to March 2014** the following numbers of assaults and self-harm incidents occurred in detention centres where children are held:
 - **207 incidents of actual self-harm (128 children)**
 - 210 people engaged in voluntary starvation/hunger strikes (27 children)
 - 436 incidents of threatened self-harm (171 children)
 - 57 serious assaults
 - 233 assaults involving children
 - 33 incidents of reported sexual assault (the vast majority involving children)
- Dozens of children with physical and mental disabilities were detained for prolonged periods with limited or no access to specialist services.
- More than 100 children on Christmas Island were without education for over a year.
- In the early months of 2015, children are being released into the community from Australian detention centres. Those sent to Nauru have no date for release and are suffering extreme levels of physical, emotional, psychological and developmental distress.

- Both the former and current Ministers for Immigration agree that holding children for prolonged periods in detention centres does not deter people smugglers or asylum seekers. In other words, **detaining children does not 'stop the boats.'**
- Immigration detention is costly. In 2013-14 **\$3.3 billion was spent on onshore and offshore immigration detention.**

This is a robust and evidence-based report

- The data and findings in this report are nationally and internationally significant. This report reflects the views and experiences of **638 children**; the largest cohort of children ever surveyed about prolonged immigration detention. In total, 1129 children and parents participated in interviews in detention centres. 104 former detainees participated in interviews in community settings.
- The Inquiry team was led by Professor Triggs and comprised human rights lawyers, expert researchers, 4 child psychiatrists, 5 paediatricians and a data analyst.
- The Inquiry team visited 11 different detention centres with a repeat visit to two detention centres on Christmas Island after a spate of self-harm incidents there.
- At the 5 public hearings a total 41 witnesses gave evidence. Transcripts are available at: <http://www.humanrights.gov.au/transcripts-inquiries-public-hearings>
- 239 submissions were made to this Inquiry. Public submissions are available at: <http://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/national-inquiry-children-immigration-detention-2014-0> Submissions were received from a variety of stakeholders. Some submissions were confidential.
- The *Department of Immigration and Border Protection* and its contractors provided the Commission with demographic data, information about the provision of education and health services, information about the length of time that children had been detained and information about critical incidents in detention centres where children were held.

This is an opportunity for change

- This report should serve as a record and a reminder of the damage that detention does to children. It should steel our determination to ensure that children are not detained for lengthy periods of time again.
- The Commission has welcomed the Government's announcement that it will move all children out of detention in Australia. The latest figures from the *Department of Immigration and Border Protection* confirm that 420 children remain in detention in Australia, along with a further 135 children on Nauru.
- History has shown that children are likely to be detained in future in Australia. The release of the report is an opportunity for governments to pledge bipartisan support for legislation that will stop the detention of children in this country.
- Australia is the only country in the world to detain asylum-seeking children as a first option and for decades Australia has been criticised internationally for its harsh immigration detention policies, including by the United Nations *Committee Against Torture*.
- This is an opportunity to bring the children back from Nauru. These children first arrived on Australian shores. Most children have been in detention for 16 months, living in tents and sleeping on stretcher beds in the heat with no date for future settlement.

Background and rationale for calling the Inquiry

In **2004** Australian Human Rights Commission released an inquiry report into children in detention entitled: *A last resort? The report of the National Inquiry into Children in Immigration Detention 2004*

In April 2013, the Commission commenced planning for a 10 year review into the immigration detention of children. The project was scheduled for **2014**, 10 years since the previous national inquiry.

A significant reason for calling the Inquiry was to investigate the changes to policy, law and practices affecting children in detention.

This Inquiry commenced in February 2014 with terms of reference describing an investigation into the **impact** of immigration detention on children and a review of immigration policy over the past 10 years. In February 2014, children had been detained for 226 days on average with very few children released from detention since September 2013.

Local and international research is unanimous in the finding that **prolonged detention** causes and exacerbates serious social, emotional and developmental problems in children. It was for this reason that the Commission decided to focus on the **impact** of detention on children, with reference to Australia's obligations under the *Convention on the Rights of the Child*; an international treaty to which we are a party.

The Commission has been monitoring the human rights situation of asylum seekers and refugees for decades. In 2012, under a Labor Government, the Commission conducted a national inquiry into the situation of children working as crew on boats that bring asylum seekers to Australia. These children had been detained in adult prisons as a result of incorrect age assessments.

An extensive and continuous body of work on asylum seekers is available for view on the Commission's website at: <http://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees>

Case study examples

When asked, most families in detention said they were treated well by the staff of the detention centres. The most difficult aspects of detention for asylum seeking families and children were the severe limits on their freedom; the feeling that they been 'imprisoned'; the lack of certainty about whether they would be released; and the inability of families to cook for themselves or operate as normal families; the inability of families to seek help for themselves when they needed access to medical specialist services when required; and the fact that they lived behind fences with head counts of detainees during the day and night. The following examples give some idea of these difficulties:

1. The Inquiry team met a single father on Christmas Island who fled Syria with his five sons. The father was experiencing pain from a hernia and had difficulty walking to the communal bathrooms in the detention centre, including taking his young sons to the bathrooms. The doctor advised him to limit his walking as it could exacerbate his condition. In December 2013 the father fainted due to dehydration. His eight year old son was seeing the mental health team every fortnight and was taking medication for bed-wetting. In December 2013 the son became incontinent during the day and needed to wear pads. Despite these health problems, the family were transferred to Nauru where their medical condition deteriorated. In September 2014 the father underwent surgery in Nauru for the hernia and developed an infection as a result. The 8 year old son is taking anti-depressants and recently started to suffer fecal incontinence.
2. The Inquiry team met a teenage boy with a missing front tooth and rotting gum who told the Inquiry doctor he'd had no treatment for 7 months. He estimated his level of pain to be 8 out of 10 when eating. In detention centres on Christmas Island, people can't get immediately help when they are desperate. They must simply wait for the service to be provided to them. We heard numerous stories of children waiting for glasses and children unable to see for months, dealing with dizziness and headaches. One seven year old girl had been without glasses for more than 11 months. Access to specialist health services was very limited on Christmas Island for many months from August 2013 to March 2014. Any person in detention requiring specialist treatment had to wait months for a visiting specialist.
3. The Inquiry team met many unaccompanied teenagers who spoke of the murder of parents or other family members. One 16 year old spoke of the murder of both his parents. This teenager has no siblings and is the only surviving member of his immediate family. He has an aunt living in Australia but he was one of the unlucky unaccompanied children to be transferred to Nauru. He was assessed to be a refugee on Nauru and is living in a crowded house with other refugee children. He is desperate to see his aunt and he is terribly sad and distressed since the death of his parents. He has no idea what his future will hold and is currently receiving psychiatric help.
4. The Inquiry team met a distressed seven year old girl on Christmas Island who had been banging her head and having regular nightmares during which time she would wet the bed. Her parents said she had stopped making sense to them when she spoke. The family had been requesting help from the medical health provider (IHMS), but were told to wait. After many months, the child was referred to a psychologist and is receiving ongoing support. Bed wetting problems are common amongst children in detention of all ages. Many children spoke of their fear of the night headcounts. At approximately 11pm and 5am every night, a guard shines a torch into the rooms of sleeping families and asks for the identification of people in the room. Many children described these head counts as the 'visit of the ghosts'.

Terms of reference

The Inquiry terms of reference are directed to an assessment of the impact of immigration detention on the health, well-being and development of children.

The Inquiry team was tasked with assessing Australia's compliance with international human rights obligations, with particular attention to:

- the appropriateness of facilities in which children are detained;
- the impact of the length of detention on children;
- measures to ensure the safety of children;
- provision of education, recreation, maternal and infant health services;
- the separation of families across detention facilities in Australia;
- the guardianship of unaccompanied children in detention in Australia;
- assessments conducted prior to transferring children to be detained in 'regional processing countries'; and
- progress that has been made during the 10 years since the Commission's 2004 report: *A last resort? National Inquiry into Children in Immigration Detention*.

'Children' means any person under the age of 18. Community detention is not part of the scope of this inquiry.

Perimeter Fence at Wickham Point Detention Centre Darwin where Children are Held



Interviews with detainees and former detainees

The Inquiry team undertook intensive fieldwork to assess the impact of detention on children.

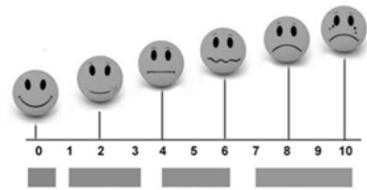
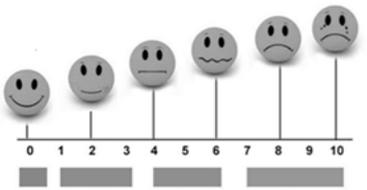
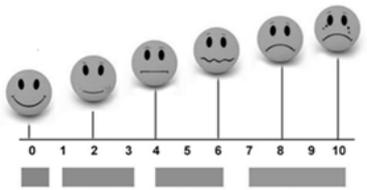
1129 children and parents responded to set questions about their emotional, social and developmental health and the impact that detention was having on them over time.

104 former detainees responded to the questions about the impact of detention on their health and well-being and their ability to recover over time.

Interviews were conducted over a 6 month period and in total, **1,233** current and former detainees were interviewed.

This study is the most extensive collection of data about the impacts of detention on children and their families. It is nationally and internationally significant in its scope and in the numbers of participants in the study.

Page Example from Inquiry Questionnaire

<ul style="list-style-type: none"> What are the three words that most closely / accurately describe the experience of detention for you / your children? 			
<ul style="list-style-type: none"> Since being in detention, how true are the following statements about you / your children. Reply per child with C1, C2 per Q. 	Certainly true C1: C2: C3: C4: C5:	Sometimes true C1: C2: C3: C4: C5:	Not true C1: C2: C3: C4: C5:
<ul style="list-style-type: none"> Happier since coming to Australia 			
<ul style="list-style-type: none"> Often unhappy, depressed or tearful 			
<ul style="list-style-type: none"> Relaxed in current living arrangements 			
<ul style="list-style-type: none"> Has many worries or often seems worried 			
Circle the face identified by each child distinguishing children by C1, C2, C3 etc.			
My face before I came to Australia when I was living in my home country: 	My face when I first arrived in Australia: 	My face today: 	
<ul style="list-style-type: none"> Do you think the emotional and mental health of you / your children has been affected since being in detention? If so, in what ways? Identify children: e.g. C1, C2 	YES NO SOMETIMES NOT SURE	EXPLAIN?	

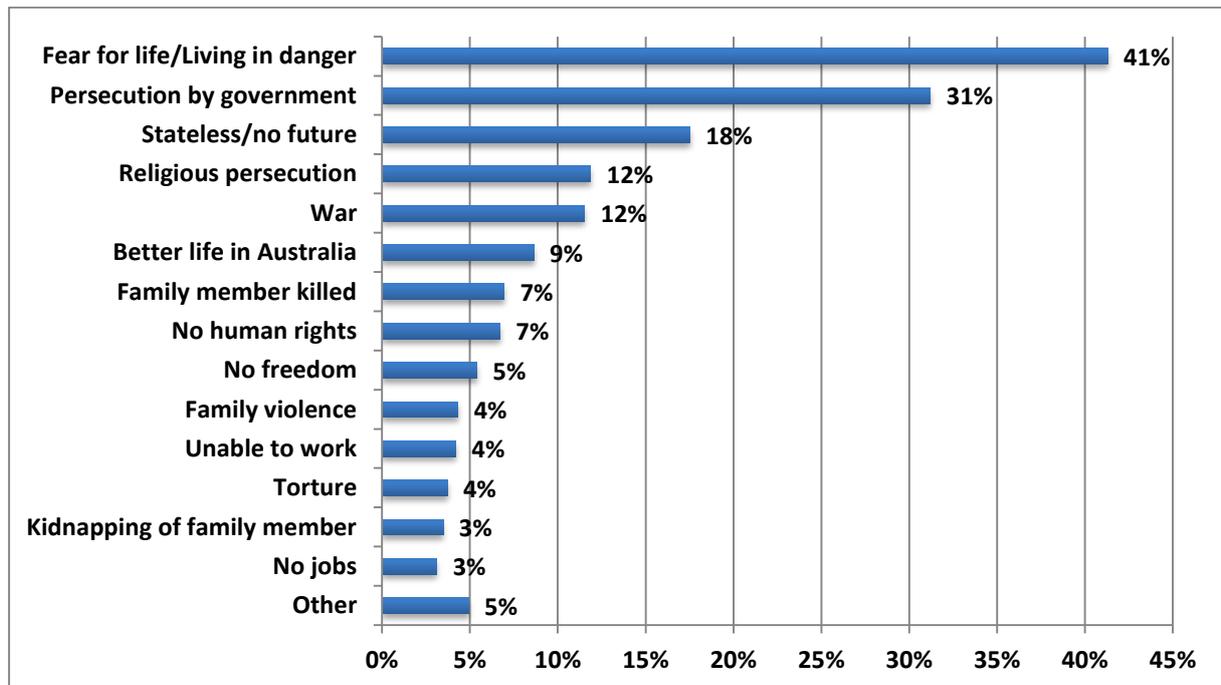
Detainees provided extensive information about their physical and emotional health in response to the Inquiry questionnaire.

They were asked to describe the detention environment. The vast majority of parents and children described detention in extremely negative terms. See the most common responses below.

Detainee responses to key Inquiry questions

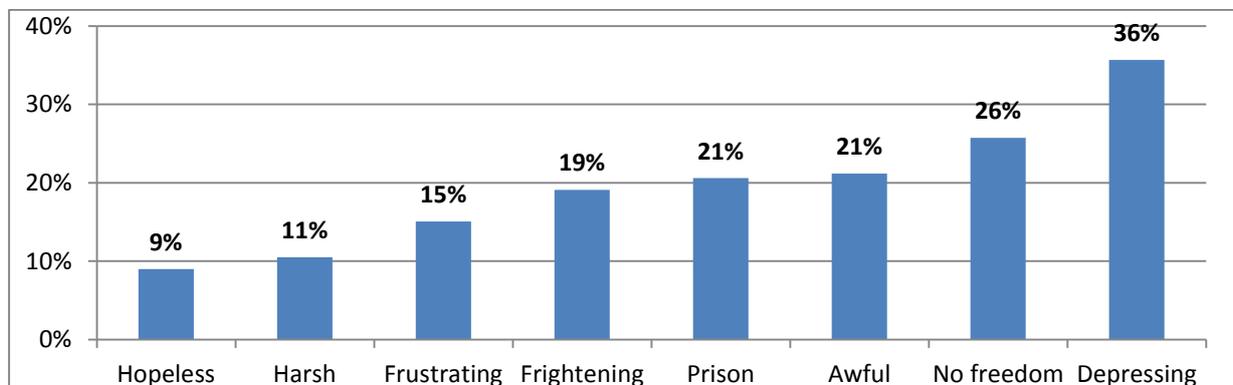
Reasons for seeking asylum in Australia

The majority of asylum seekers explained that their reasons for seeking asylum in Australia were because they had fears for their safety and the safety of their families. Their reasons are described in the graph following:

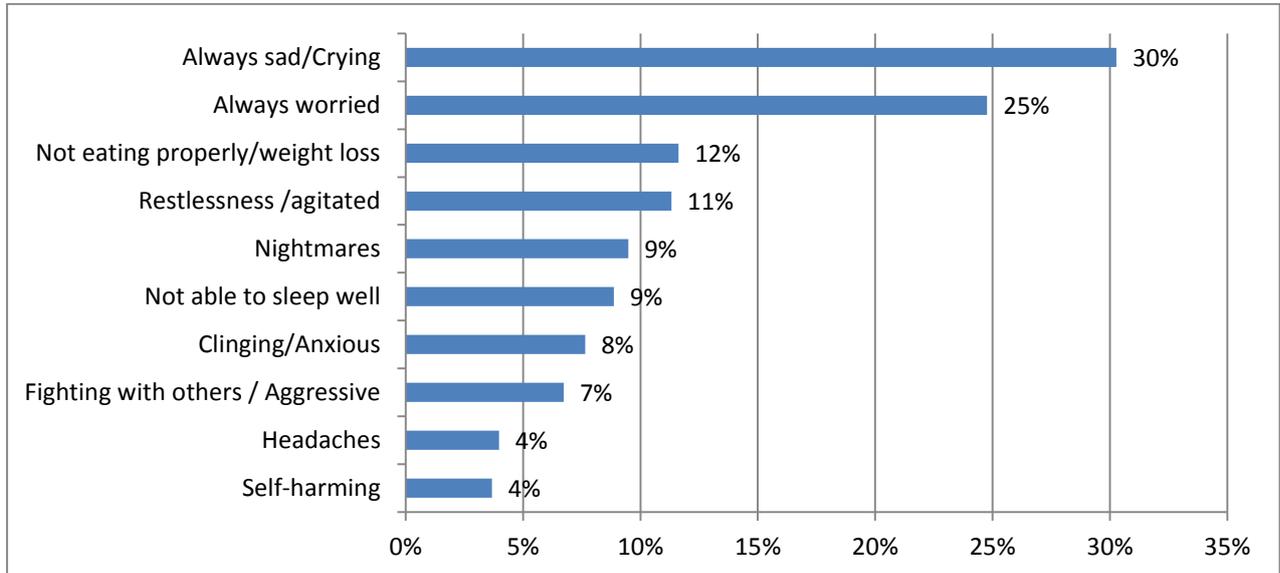


Most common descriptions of detention

Almost every response to the question about the conditions of detention was negative. Regardless of where people were detained, the responses to the lack of freedom were consistently negative. Nearly 20 percent of respondents found detention to be a frightening place. Generally children and their parents were frightened of other detainees given the high rates of mental ill health.

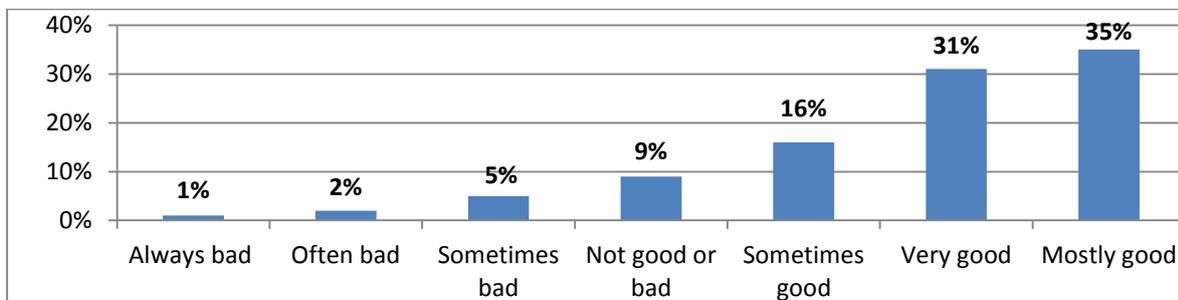


Most common descriptions of the emotional state of children and their families in detention

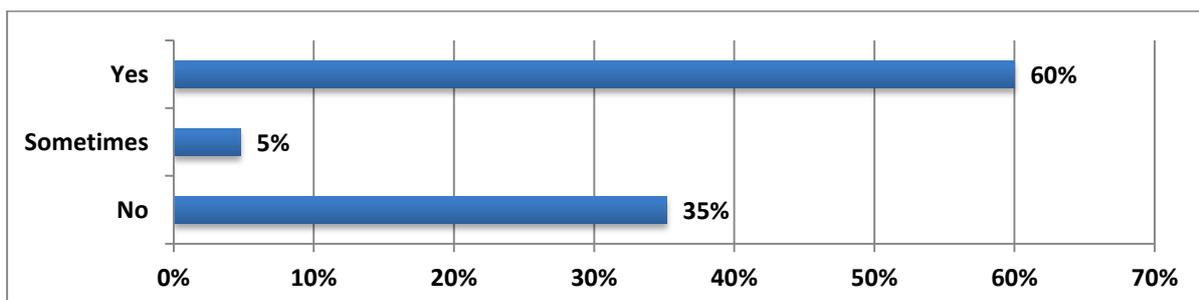


Treatment in detention - Responses to the question: 'How do SERCO guards treat you?'

While detainees described detention as a depressing place and a prison-like environment, they were at pains to honestly describe their situation. For example, they indicated that they were generally well treated by the SERCO Guards. See graph below. They explained that it was the lack of freedom and the fact of the restrictive detention environment that was causing their mental distress.



Parent responses to the question: Are you concerned about your child's development including their ability to speak, crawl, walk, run, and learn?



Medical experts assisting the Inquiry

Consultant child psychiatrists and paediatricians accompanied the Inquiry team to detention centres to provide medical expertise.

Medical experts conducted Inquiry interviews and reported on individual children and the overall health and well-being of children and their parents in detention.

6 medical reports were produced following detention centre visits and are available at the Commission's website: <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/national-inquiry-children-immigration-detention-2014/expert>

Detention centre	Medical consultants	Contact details
Christmas Island 5 Detention Centres (2 centres revisited)	Paediatrician, Professor Elizabeth Elliott	elizabeth.elliott@health.nsw.gov.au Mobile: 0409 253 390 Secretary: (02) 9845 3448
	Paediatrician, Associate Professor Karen Zwi	Contact through Sarah Bamford (02) 9284 9758
	Consultant Child and Family Psychiatrist, Dr Sarah Mares	mobile +61 401 245 146
Sydney Immigration Residential Housing	Child and Adolescent Psychiatrist, Dr Nick Kowalenko	Through Christine Gounder the RANZCP's media contact Mobile: 0497979711 C/-christine.gounder@ranzcp.org
Darwin 3 Detention Centres	Consultant Child and Family Psychiatrist, Dr Sarah Mares	mobile +61 401 245 146
	Paediatrician, Associate Professor Karen Zwi	Contact through Sarah Bamford (02) 9284 9758
Melbourne Immigration Transit Accommodation	Consultant Paediatrician, Dr Georgie Paxton	No media
	Consultant Child Psychiatrist Dr Sanjay Patel	No media
	Senior Paediatric Trainee, Dr Shidan Tosif	TBC
Inverbrackie	Child Psychiatrist, Professor Jon Jureidini	0881617226 (Preferred) 0418 897 530
	Community Paediatrician Dr Suzanne Packer	Packer, Sue (Health) Sue.Packer@act.gov.au Out of Australia – available by email

Does detention of children ‘stop the boats’? Public hearings with former Ministers of Immigration

As part of the Inquiry process, five public hearings were held so that witnesses could give evidence under oath.

Two former Ministers with responsibility for Immigration detention appeared before the President at public hearings.

The former Coalition Government *Minister for Immigration and Border Protection*, the Hon Scott Morrison MP (who held this Ministerial portfolio from September 2013 until December 2014) appeared at the fourth public hearing in August 2014.

The former Labor *Minister for Immigration and Citizenship* (who held this Ministerial portfolio from September 2010 until February 2013), the Hon Chris Bowen MP, appeared at the fifth and final public hearing in August 2014

Both former Ministers made explicit at these hearings, that the detention of children had no bearing or impact on ‘stopping the boats’.

At the third public in July 2014, witnesses were compelled to appear. Under these terms, witnesses are **required** to appear, and they also give evidence under oath. Witnesses appearing at the third public hearing included a number of former detention centre workers and detention medical staff. Their testimony is available online at: <http://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/national-inquiry-children-immigration-detention-2014-1>

At the 5 public hearings a total 41 witnesses gave evidence. Transcripts are available at: <http://www.humanrights.gov.au/transcripts-inquirys-public-hearings>

The Hon Scott Morrison MP, Minister for Immigration and Border Protection; Mr. Martin Bowles, Secretary of The Department Of Immigration And Border Protection appear at the Fourth Public Hearing in Canberra, Parliament House, 22nd August 2014



Submissions to the inquiry

239 submissions were made to this Inquiry. Public submissions are available at: <http://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/national-inquiry-children-immigration-detention-2014-0> Submissions were received from a variety of stakeholders. Some submissions were confidential. Submissions were received from a number of different stakeholders:

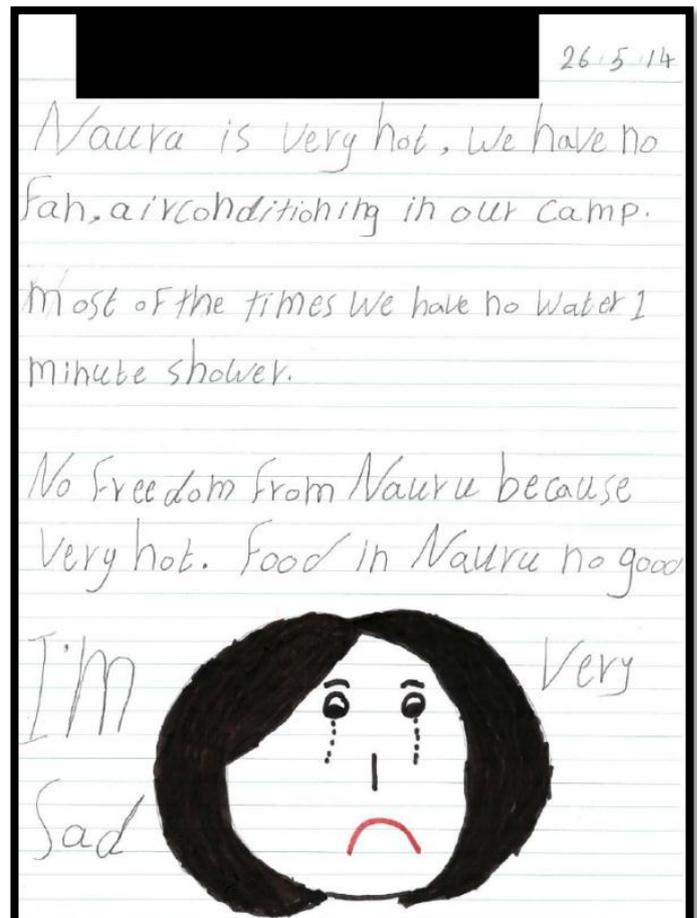
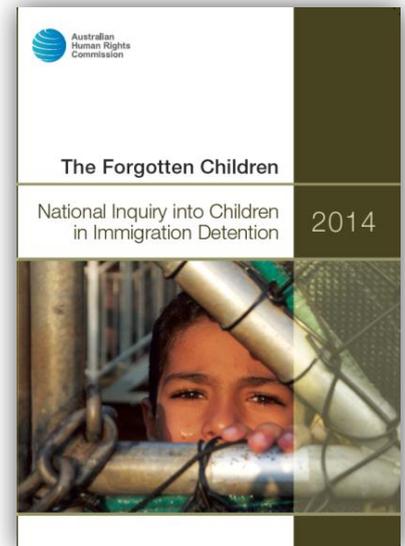
- 63 submissions from people held in detention or formerly held in detention, of which 42 were from children held in detention;
- 8 submissions from churches or religious organisations including: Wesley Mission, Jesuit Social Services, MacKillop Family Services, Catholic Care, Australian Churches Refugee Taskforce, Baptist Care Australia;
- 24 submissions from medical bodies or health professionals include:
 - Children's Hospital at Westmead
 - Royal Australian & NZ College of Psychiatrists
 - Royal Australasian College of Physicians
 - Australian College of Nursing (ACN) and Maternal, Child and Family Health Nurses Australia
 - Royal Children's Hospital (Melbourne)
 - Australian Medical Students' Association
 - Australian College of Children and Young People's Nurses Australian Psychological Society
 - Forum of Australian Services to Survivors of Torture and Trauma

Submission 60 National Inquiry into Children in Immigration Detention 2014

From child in detention on Nauru

For all submissions, see the Commission's website:

<https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/national-inquiry-children-immigration-detention-2014-0>



Data from the Department of Immigration and Border Protection and its contractors

The *Department of Immigration and Border Protection* and its contractors provided the Inquiry with extensive data and information about policy, practices, health reports and critical incidents related to children (and their parents) in detention.

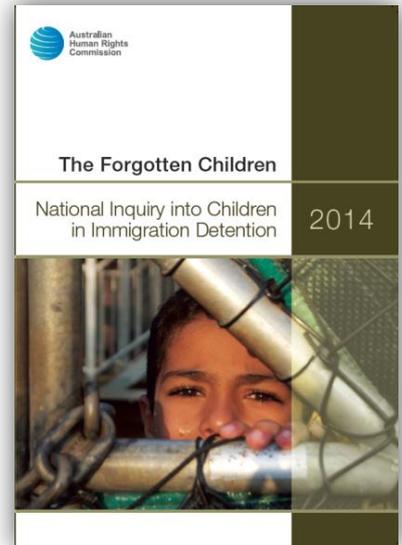
This information was requested under the powers of the Australian Human Rights Commission (the Commission) relevant to an inquiry under Division 3 of Part II of the *Australian Human Rights Commission Act 1986* (Cth).

The Department provided the Commission with demographic data, information about the provision of education and health services, information about the length of time that children had been detained and information about critical incidents in detention centres where children were held. Some of the critical incident report headings include the following:

- (a) Serious accident/injury
- (b) Assault involving a client under the age of 18
- (c) Serious assault
- (d) Sexual assault
- (e) Death
- (f) Food/fluid refusal
- (g) Food/fluid refusal by client under the age of 18
- (h) Serious public health risk
- (i) Riot
- (j) Actual self-harm
- (k) Threatened self-harm
- (l) Strip search
- (m) Use of force (including use of restraints).

The Department's medical contractor for detention centres in Australia, IHMS, provided information and data about clinical mental health assessments of children and their parents in detention. The most concerning statistic from IHMS is the rate of mental ill-health amongst children – at 34 percent. Over a third of children in detention have mental health conditions of such seriousness that they would require psychiatric services if located in the Australian community.

Information obtained from the Department and its contractors appears throughout the Inquiry Report.



Findings

The mandatory and prolonged immigration detention of children is in clear violation of international human rights law.

Both current and former Ministers of Coalition and Labor governments stipulate that the detention of children is (and was) not intended as part of deterrence policy. They confirm that the detention of children would not, in fact, *be* a deterrent.

At the time of writing this report, adults and children have been in detention for over one year and two months on average, over 413 days.

Children who arrived on, or after 19 July 2013, are to be transferred to Nauru. This transfer can happen at any time. Children are detained on Nauru and there is no timeframe for their release.

Prolonged detention is having profoundly negative impacts on the mental and emotional health and development of children. In the first half of 2014, 34 percent of children in detention were assessed as having mental health disorders at levels of seriousness that were comparable with children receiving outpatient mental health services in Australia. Less than two percent of children in the Australian population were receiving outpatient mental health services in 2014.

Children are exposed to danger by their close confinement with adults who suffer high levels of mental illness. Thirty percent of adults detained with children have moderate to severe mental illnesses.

The numerous reported incidents of assaults and self-harm involving children indicate the danger of the detention environment.

Prior to 2014, the mental health assessments of children in detention were not conducted using child-specific, clinician-rated measuring tools.

Therefore, there is limited clinical data about the mental health impacts of detention on children over time.

The introduction of the mental health assessment tool (the HoNOSCA) into the detention system in 2014 provides a standardised measure for mental health assessments of children and benchmark data against which to assess the mental health progress of individuals and cohorts over time.

Despite the best efforts of the Department of Immigration and Border Protection and its contractors to provide services and support to children in detention, it is the fact of detention itself that is causing harm. In particular the deprivation of liberty and the exposure to high numbers of mentally unwell adults are causing emotional and developmental disorders amongst children.

Children and their families frequently describe detention as punishment for seeking asylum. The feeling of unfairness is particularly strong amongst people who arrived on or after 19 July 2013.

Conditions of detention vary widely across the detention network and this has a differential impact on the physical health of children.

Recommendations

Recommendation 1

It is recommended that all children and their families in immigration detention in Australia and detained on Nauru be released into the Australian community as soon as practicable and no longer than four weeks after the tabling of this report.

Recommendation 2

It is recommended that the *Migration Act 1958* (Cth) be amended to provide that children and parents may be detained only for a strictly limited period of time necessary to conduct health, identity and security checks. Continued detention beyond this period of time should only be permitted following an individual and periodic assessment by a court or tribunal of the necessity for this continued detention.

Recommendation 3

It is recommended that the Department of Immigration and Border Protection commence processing refugee applications within four weeks of the tabling of this report and that those found to be refugees be granted Protection visas.

Recommendation 4

It is recommended that no child or parent be taken to a regional processing country where they will be detained unless that country can provide a rule of law based regime for their assessment as refugees and unless the conditions of detention meet international standards.

Recommendation 5

It is recommended that all immigration detention facilities on Christmas Island be closed.

Recommendation 6

It is recommended that an independent guardian be appointed for unaccompanied children seeking asylum in Australia.

Recommendation 7

It is recommended that an independent review be conducted into the Department of Immigration and Border Protection's decision to approve the use of force to transfer unaccompanied children from Bravo Compound to Charlie Compound on 24 March 2014.

Recommendation 8

It is recommended that all detention centres be equipped with sufficient CCTV or other cameras to adequately capture significant incidents in detention. All recordings of such incidents in detention centres should be maintained so that these recordings are available as evidence in any review process.

Recommendation 9

It is recommended that ASIO review the case of each family in detention with a parent that has received an adverse security assessment in order to identify:

- whether there is a risk in granting the family a visa or placing them in community detention; and
- how any risk could be mitigated, for example by a requirement to reside at a specified location, curfews, travel restrictions, reporting requirements or sureties.

Recommendation 10

It is recommended that in light of the significant mental health impacts of immigration detention children currently in immigration detention continue to be assessed at regular periods using the HoNOSCA mental health assessment tool to ensure consistency in screening methodology.

Recommendation 11

It is recommended that in light of the significant mental health impacts of immigration detention children currently and previously detained, at any time since 1992, have access to government funded mental health support.

Recommendation 12

It is recommended that those children held on Christmas Island who have been denied adequate education from July 2013 to August 2014 be assessed to determine the support they require to meet the learning benchmarks appropriate for their age and stage of development.

Recommendation 13

It is recommended that all families and unaccompanied children in immigration detention receive information about organisations that provide free legal advice and have regular access to facilities such as phones and IT equipment.

Recommendation 14

It is recommended that the *Convention on the Rights of the Child* to which Australia is a party to, be implemented by legislation as directly applicable Australian law.

Recommendation 15

It is recommended that a royal commission be established to examine the:

- long term impacts of detention on the physical and mental health of children in immigration detention;
- reasons for continued use of this policy since 1992, including off shore detention and processing; and
- remedies for any breaches of the rights of children that have been detained.

Recommendation 16

It is recommended that an independent review be conducted in 12 months to identify the implementation of these recommendations.