



Australian  
Human Rights  
Commission

# The Forgotten Children

National Inquiry into Children  
in Immigration Detention

2014



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President  
\_\_\_\_\_  
Professor Gillian Triggs

November 2014

Senator the Hon George Brandis QC  
Attorney-General  
PO Box 6100  
Senate  
Parliament House  
CANBERRA ACT 2600

Dear Attorney,

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

I am pleased to present *The Forgotten Children*, the Commission's report of the National Inquiry into Children in Immigration Detention 2014.

The report is furnished to you under the functions and powers conferred by sections 11(1)(e), 11(1)(f)(ii), 11(1)(g), 11(1)(j), 11(1)(k), 11(1)(p) and 13 of the *Australian Human Rights Commission Act 1986* (Cth). As such, it is subject to the tabling requirements in section 46 of that Act.

Yours sincerely,

A handwritten signature in black ink that reads "Gillian Triggs".

Gillian Triggs  
**President**

---

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# Foreword

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Australia currently holds about 800 children in mandatory closed immigration detention for indefinite periods, with no pathway to protection or settlement. This includes 186 children detained on Nauru.

Children and their families have been held on the mainland and on Christmas Island for, on average, one year and two months. Over 167 babies have been born in detention within the last 24 months.

This Report gives a voice to these children.

It provides compelling first-hand evidence of the impact that prolonged immigration detention is having on their mental and physical health. The evidence given by the children and their families is fully supported by psychiatrists, paediatricians and academic research. The evidence shows that immigration detention is a dangerous place for children. Data from the Department of Immigration and Border Protection describes numerous incidents of assault, sexual assault and self-harm in detention environments.

Importantly, the Government recognises that the fact of detention contributes significantly to mental illness among detainees.

The aims of the Inquiry have been to:

- Assess the impact of prolonged immigration detention on children's health, wellbeing and development by collecting the evidence of children and their families, scholarly research, Department of Immigration and Border Protection data and the views of medical experts and the Australian community
- Promote compliance with Australia's international obligations to act in the best interests of children.

There is nothing new in the finding that mandatory immigration detention is contrary to Australia's international obligations. The Australian Human Rights Commission and respective Presidents and Commissioners over the last 25 years have been unanimous in reporting that such detention, especially of children, breaches the right not to be detained arbitrarily. The aim of this Inquiry was not to revisit the Commission's settled view of the law, but rather to assess the evidence of the impact of prolonged detention on children.

As the medical evidence has mounted over the last eight months of the Inquiry, it has become increasingly difficult to understand the policy of both Labor and Coalition Governments. Both the Hon Chris Bowen MP, as a former Minister for Immigration, and the Hon Scott Morrison MP, the current Minister for Immigration, agreed on oath before the Inquiry that holding children in detention does not deter either asylum seekers or people smugglers. No satisfactory rationale for the prolonged detention of children seeking asylum in Australia has been offered.

Australia is unique in its treatment of asylum seeker children. No other country mandates the closed and indefinite detention of children when they arrive on our shores. Unlike all other common law countries, Australia has no constitutional or legislative Bill of Rights to enable our courts to protect children. The *Convention on the Rights of the Child* is not part of Australian law, although Australia is a party. The Convention is, however, part of the mandate of the Australian Human Rights Commission to hold the Government to account for compliance with human rights. This Convention accordingly informs the findings and recommendations made by the Inquiry.

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This Report is fundamentally different from previous reports by the Commission as it focuses in both a qualitative and quantitative way, on the impact of immigration detention on children as reported by children and their parents. The Commission conducted interviews with 1,129 children and parents in detention, providing a much needed foundation for objective research findings. Standard questions were used in all interviews so that the reported impacts are measurable.

The evidence documented in this Report demonstrates unequivocally that prolonged detention of children leads to serious negative impacts on their mental and emotional health and development. This is supported by robust academic literature.

It is also clear that the laws, policies and practices of Labor and Coalition Governments are in serious breach of the rights guaranteed by the *Convention on the Rights of the Child* and the *International Covenant on Civil and Political Rights*. The United Nations High Commissioner for Human Rights also suggests in his opening address to the Human Rights Council that Australia's policy of offshore processing and boat turn backs is 'leading to a chain of human rights violations, including arbitrary detention and possible torture following return to home countries'.

## Asylum seeker policy in context

Australia's policy of prolonged and indefinite detention of asylum seeker children should be understood in context. Last year saw tumultuous global and regional conflict and persecution, leading to an unprecedented flow of boat arrivals in Australia. The Australian community has been shocked by the tragic deaths of over a thousand asylum seekers taking the perilous voyage by sea, including at least 15 children between 2008 and 2013.

In an attempt to stop illegal people smuggling and drowning at sea, the Labor Government reintroduced offshore transfers to Nauru and Manus Island. As from 13 August 2012, that Government froze the assessment of claims to refugee status under the 'no advantage' principle, leaving about 31,000 asylum seeker families and children in a legal black hole in which their rights and dignity have been denied, in some cases for years. The current Government has maintained this policy.

The Commission acknowledges that the surge in asylum seekers arriving in Australia by boat in 2013 placed considerable pressures on the Department of Immigration and its resources, especially on Christmas Island. The Government's policy, 'Operation Sovereign Borders', under which Australian authorities use force to intercept and turn back boats, has prevented asylum seekers from reaching our shores. The consequence is that it has become possible to focus on those 5,514 asylum seekers who are currently detained in Australia and on Nauru and Manus Island (as of 30 September 2014).

## Commission decision to conduct an Inquiry

By July 2013, the number of children detained reached 1,992.

As the federal election was imminent, I decided to await the outcome of the election, and any government changes in asylum seeker policy, before considering launching an Inquiry. By February this year, it became apparent that there had been a slowing down of the release of children. Over the first six months of the new Coalition Government the numbers of children in detention remained relatively constant. Not only were over 1,000 children held in detention by February 2014, but also they were being held for longer periods than in the past, with no pathway to resettlement.

In these circumstances, I decided to exercise the Commission's powers under the *Australian Human Rights Commission Act 1986* (Cth) to hold a National Inquiry into Children in Immigration Detention.

## Methodology

The Inquiry, conducted over eight months from February to October 2014, has adopted a rigorous methodology, both qualitative and quantitative, to ensure that our statistics and findings stand up to scrutiny as accurate, fair and balanced.

Commission teams, including the President, the Children's Commissioner and the Commissioner for Human Rights visited 11 detention centres, including two visits to Christmas Island.

We asked children and their families to answer a standardised questionnaire about the health impacts of detention, providing data from 1,129 participants. Five public hearings were held, with 41 witnesses, including the Hon Chris Bowen MP and the Hon Scott Morrison MP. A total of 239 submissions were received from schools, medical service providers and NGOs, including the Refugee Advice and Casework Service, ChilOut and Amnesty International. Focus groups have been held with young adults who, as children, were detained, and can attest to the continuing impact of their detention.

Vital to this Report has been the inclusion of internationally recognised medical experts in all detention centre visits. A range of different child psychiatrists, paediatricians, and health professionals assisted the Commission throughout the Inquiry. One paediatrician concluded that 'almost all the children on Christmas Island are sick'. Further advice was provided by International Health and Medical Services, a global company contracted by the Government to provide services to the detention centres. The medical evidence, some subsequently reported in the *Australian Medical Journal*, provides an authoritative basis for many of the findings in this Report and amply confirms the data collected by the Commission from the children themselves.

As the impact of detention varies depending on the child's age and stage of life, this Report contains separate chapters on babies, preschoolers, primary school aged children and teenagers. Separate chapters are also allocated to unaccompanied children, children detained indefinitely, and children detained on Nauru. Chapter 5 sets out the applicable international law and chapter 2 contains a table linking specific findings with the relevant breach of treaty obligations.

Direct quotes from children have been included in this Report. As the names of the children are confidential, citations are confined to the date, age of the child and location of the source.

While the Commission cannot exercise its powers in Nauru, a sovereign country, we retain jurisdiction to consider the legality of Commonwealth activities on the island as they affect the 186 children currently held there. We have relied on the expert evidence of service providers, medical professionals and communications from detainees to make findings about the impact of detention on the children.

This Report owes a considerable debt to the many people who assisted the Inquiry, including medical experts, lawyers, NGOs, student interns and the wider Australian community. The Commission is deeply grateful for their generous contributions over the last eight months.

## Inquiry findings

The evidence collected in this Report is powerful.

The overarching finding of the Inquiry is that the prolonged, mandatory detention of asylum seeker children causes them significant mental and physical illness and developmental delays, in breach of Australia's international obligations.

The following is a snapshot of the findings:

- Children in immigration detention have significantly higher rates of mental health disorders compared with children in the Australian community.
- Both the former and current Ministers for Immigration agreed that holding children for prolonged periods in remote detention centres, does not deter people smugglers or asylum seekers. There appears to be no rational explanation for the prolonged detention of children.
- The right of all children to education was denied for over a year to those held on Christmas Island.
- The Minister for Immigration and Border Protection, as the guardian of unaccompanied children, has failed in his responsibility to act in their best interests.
- The Commonwealth's decision to use force to transfer children on Christmas Island to a different centre breached their human rights.
- The numerous reported incidents of assaults, sexual assaults and self-harm involving children indicate the danger of the detention environment.
- At least 12 children born in immigration detention are stateless, and may be denied their right to nationality and protection.
- Dozens of children with physical and mental disabilities are detained for prolonged periods.
- Some children of parents assessed as security risks have been detained for over two years without hope of release.
- Children detained indefinitely on Nauru are suffering from extreme levels of physical, emotional, psychological and developmental distress.

## Changes in law and Government policy since the Inquiry was launched

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:

- A few days before being invited to give evidence to the Inquiry, the Minister 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.
- 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.
- In July 2014, the Department of Immigration and Border Protection provided funds to the Western Australian Catholic Education Office to establish a school on Christmas Island, improving the access by asylum seeker children to education.

- Some asylum seeker children with physical and mental illness have been brought to the Australian mainland and given medical care, or have been released into the community on humanitarian grounds.
- The High Court has ruled that the Minister may not impose a cap on protection visas and must make a decision whether to deport or allow an asylum seeker to apply for a protection visa 'as soon as is reasonably practicable'.

The Commission is pleased to recognise these changes as being in the best interests of many asylum seeker children.

## Departmental Task Force

Once the Inquiry was established, the Department created a Task Force dedicated to supporting its work headed by a senior executive officer. The Commission thanks the Task Force for their cooperation in arranging detention centre visits and responding to requests for information and documents.

## Recommendations

It is recommended that:

- All children and their families be released into community detention or the community on bridging visas with a right to work.
- Legislation be enacted to ensure that children may be detained under the Migration Act for only so long as is necessary for health, identity and security checks.
- Assessment of refugee status be commenced immediately according to the rule of law.
- No child be sent offshore for processing unless it is clear that their human rights will be respected.
- An independent guardian be appointed for unaccompanied children seeking asylum in Australia.
- An independent review be conducted into the decision to approve the use of force to transfer unaccompanied children on Christmas Island on 24 March 2014.
- All detention centres be equipped with sufficient CCTV or other cameras to capture significant incidents in detention.
- ASIO review the case of each parent with an adverse security assessment in order to identify whether their family can be moved into the community.
- Alternative community detention be available for children of families assessed as security risks.
- Children in immigration detention be assessed regularly using the HoNOSCA mental health assessment tool.
- Children currently or previously detained at any time since 1992 have access to government funded mental health support.
- Children in detention who were denied education on Christmas Island for a year be assessed to determine what educational support they require.

- Children and families in immigration detention receive information about the provision of free legal advice and access to phones and computers.
- Legislation be enacted to give direct effect to the *Convention on the Rights of the Child* under Australian law.
- A royal commission be set up to examine the continued use of the 1992 policy of mandatory detention, the use of force by the Commonwealth against children in detention and allegations of sexual assault against these children and to consider remedies for breach of the Commonwealth's duty of care to detained children.
- An independent review of the implementation of these recommendations be conducted in 12 months.

It is troubling that members of the Government and Parliament and Departmental officials are either uninformed about, or ignore, the human rights treaties to which Australia is a party. The High Court of Australia in *Teoh* has confirmed that, when making decisions that affect children, government officials should take account of the rights guaranteed by the *Convention on the Rights of the Child*.

My hope is that the evidence detailed in this Report will prompt fair-minded Australians, Members of Parliament and the Federal Government to reconsider our asylum seeker policies and to release all children and their families immediately, or as soon as practical.

It is of profound concern that the Government has recently introduced amendments to the Migration Act to redefine the definition of 'refugee' to meet government policy rather than international law. It is also proposed that people may be removed from Australia under the Act even if this does not comply with Australia's international non-refoulement obligations. If passed, this will be a rare and internationally embarrassing instance in which Australia has explicitly declared that its laws remain valid, even if they violate international law.

It is imperative that Australian governments never again use the lives of children to achieve political or strategic advantage. The aims of stopping people smugglers and deaths at sea do not justify the cruel and illegal means adopted.

Australia is better than this.

As the arrival of asylum seeker children by sea without visas has ended for the moment, it is time to refocus on the plight of the 800 children who remain in Australian detention centres and on Nauru.

Australia should return to its historical generosity of spirit by welcoming to our shores those who seek our protection from conflict and persecution.



**Gillian Triggs**

President

Australian Human Rights Commission

November 2014



*My hope finished now.  
I don't have any hope.  
I feel I will die in detention.*

Unaccompanied 17 year old, Phosphate Hill Detention Centre,  
Christmas Island, 4 March 2014



Drawing by primary school aged child, Darwin detention centre, 2014.

# 1. Introduction

Asylum seeker issues are among the most hotly debated in Australian politics. They divide opinion and evoke strong emotional responses across the community.

The issues involved are complex and challenging.

We know that asylum seekers are often vulnerable people, desperately fleeing civil unrest, warfare and persecution from across the world.

We know that Australia is a destination of choice for many people seeking to embark on a new life in safety.

And we know that there are people who will exploit the vulnerability of asylum seekers by offering them unsafe passage by sea to our shores.

How we treat asylum seekers goes to the core of our identity as a nation:

In what circumstances are we prepared to provide safe haven to those in need?

What relationship do we aspire to have with our regional neighbours?

How do we respond to those who ask for our help?

Ten years ago, the Australian Human Rights Commission published its landmark report: *A last resort?* This was the report of an extensive three year national inquiry that investigated the circumstances of children and their families in Australia's immigration detention centres.

The Commission conducted the previous inquiry in response to concerns about the significant number of children in immigration detention. Numbers of children in detention reached 842 at the highest point. The inquiry found detention had a deleterious impact on their wellbeing; particularly their mental health.

At the time, the Commission was subject to intense scrutiny and hostility regarding the inquiry. The Howard Government was initially dismissive of its findings.

But over subsequent years, we began to see significant improvements in the treatment of asylum seeker children and their families. By mid-2005, the Howard Government had removed all asylum seeker children from immigration detention centres.

Ten years on, the situation has changed dramatically.

By July 2013, under the Labor Government, a record number of 1,992 children were in detention. The numbers of children in detention remained relatively constant at approximately 1,100 children from September 2013 to February 2014 under the new Coalition Government led by Prime Minister Tony Abbott.

This significant increase in numbers created substantial pressures on the Department of Immigration and Border Protection. Particularly with the provision of services in detention centres on Christmas Island.

By August 2014 there were 869 children in detention, including 222 children detained on Nauru. This was a significant reduction on the 2013 figures, but still in excess of the figures in the early 2000s.

How have the gains that were so hard-fought, and of which the Howard Government was so rightly proud, disappeared?

## 1. Introduction

How did we move so far away from the explicit guarantee in section 4AA of the *Migration Act 1958* (Cth) that 'a minor shall only be detained as a measure of last resort'? How had we reached the situation where Prime Minister Rudd had declared that any person (including children) who arrived by boat would enjoy 'no advantage' and never be settled in Australia?

There are complex reasons why people choose to seek asylum and there are certainly global factors at play.<sup>1</sup> The increased number of people seeking to arrive in Australia by boat in recent years has coincided with a global rise in the number of asylum seekers, predominately as a result of civil unrest in the Middle East that has continued since the 'Arab Spring'.

Indeed, the Office of the United Nations High Commissioner for Refugees has noted that 2013 saw the largest number of asylum seekers worldwide in a decade. Despite this, Australia's share of refugee applications at the end of 2013 was only one percent of the global total for the year.

This significant increase in the number of asylum seekers in Australia was accompanied by tragedy. 1,072 people, including at least 15 children lost their lives at sea between 2008 and 2013 while attempting to make the journey to Australia by boat.

Images of shipwrecked boats off Christmas Island remain etched in the memories of many Australians. These memories have often been cited by the Abbott Government as informing its steely determination to 'stop the boats'. This has been a priority of the Abbott Government since coming to office with its Operation Sovereign Borders policy.

And 'stop the boats' it has. The flow of boat arrivals has steadily decreased over the past year. There have been no recorded deaths at sea since the start of 2014.

But this is not the whole story.

While 2012 and 2013 saw the largest number of boat arrivals and people in detention, these years also saw the progressive tightening of asylum seeker policy, the re-introduction of offshore transfers and a lack of processing of asylum claims.

In August 2012, the Labor Government adopted a recommendation from its specially convened Expert Panel to apply a 'no advantage' principle. A range of associated and inter-connected recommendations by the Expert Panel were not, however, implemented. The 'no advantage' principle stipulated that refugees arriving by boat should not receive an 'advantage' over refugees overseas who are waiting to be resettled.

The Labor Government's implementation of the 'no advantage' principle resulted in the suspension of processing for asylum seekers who had arrived by boat, on or after, 13 August 2012.

Further announcements tightening asylum seeker policy by Prime Minister Rudd on 19 July 2013 left the vast majority of asylum seekers in detention in limbo. The policy implemented by the Labor Government and continued by the Coalition Government, specifies that anyone who arrives by boat without a visa since this date in July is liable to transfer to Nauru or Manus Island and will never be settled in Australia. The claims of these asylum seekers have not been processed and they face uncertainty as to their future.

The suspension of processing has had a profound impact on the time that people have waited to have their refugee claims assessed. It has also prolonged the detention of children in onshore and offshore facilities.

By 2014, this has resulted in a significant lengthening of time that asylum seekers have spent in detention. In March 2014, children had been detained for 231 days on average.

At the time of writing this report, children and adults have been detained for over a year and two months on average – over 413 days. There are currently over 100 babies who have been born in detention – with no life experience outside the confines of the detention centres.

It is in this context that the President of the Australian Human Rights Commission launched a national inquiry into children in immigration detention on 3 February 2014.

The decision to conduct this Inquiry was part of the Commission's regular annual planning processes in mid-2013. This was during the lead up to the federal election at which asylum seeker policies were high profile.

The Commission waited until six months after the election to observe any changes to the policies and the situation affecting asylum seekers under the new Government.

While the number of people in detention started to drop from its peak numbers in mid-2013, the Commission had significant concerns at the increasing time periods that children were spending in detention.

The purpose of this Inquiry is to investigate the impact of immigration detention on the health, wellbeing and development of children and assess whether laws, policies and practices relating to children in immigration detention meet Australia's international human rights obligations.

Asylum seeker issues have been a focus of the Commission's work over the past ten years. The findings from this work also informed the decision to conduct this Inquiry.

The Commission has made annual detention centre inspections from 2004 to 2012. The Commission has provided reports to federal Parliament emanating from our complaint-handling jurisdiction. The Commission has been involved in litigation, including in the High Court as intervenor. The Commission has made a multitude of submissions to inquiries related to asylum seeker matters. In 2013, the Commission produced a 'state of the nation' report on the asylum seeker system – *Asylum seekers, refugees and human rights: Snapshot report 2013*.

In 2012 the Commission conducted a national inquiry into the methods used to determine the ages of Indonesian crew members who were working on boats bringing asylum seekers to Australia. The inquiry report was entitled: *An age of uncertainty: Inquiry into the treatment of individuals suspected of people smuggling offences who say that they are children*.

But a national inquiry of this current scope is different. Most significantly, it is a process aimed at giving voice to the otherwise unheard – and now largely unseen – the asylum seekers detained in remote parts of Australia.

Ultimately, it is the Commission's hope that this report contributes to an understanding that children are suffering harm in detention – and that their detention is not part of a policy which is used to 'stop the boats'.

All sides of politics have emphasised that mandatory detention in Australia's immigration detention centres is **not** designed to operate as a deterrent to asylum seekers. It does not stop people from coming to Australia to seek asylum.

What then is the purpose of detaining children for over a year?

Australia is the only country in the world with a policy that imposes mandatory and indefinite immigration detention on asylum seekers as a first action. While other countries detain children for matters related to immigration, including Greece, Israel, Malaysia, Mexico, South Africa and the U.S.; detention in these countries is not mandatory and does not occur as a matter of course.

## 1. Introduction

In fact there are other options to detention in Australia. What is not well recognised by the public is that the majority of asylum seekers are not in locked detention, they are living in community arrangements. These people reside in the Australian community and are subject to some restrictions while they wait to have their refugee status assessed. Only some asylum seekers are detained in locked detention facilities. And only the Minister for Immigration and Border Protection has the power to release children and their families into community arrangements.

There is minimal risk to the community from having a more humane, less restrictive form of detention while the refugee status of asylum seekers is assessed. There are limited reports of community disharmony and almost no incidents of absconding from Community Detention.

It is time to return to bipartisan support for the humane treatment of asylum seeker children and their families. Successive governments have failed children in locking them in immigration detention for prolonged periods.

This is the report of the Commission's national Inquiry.

This report is different to most reports you will read about immigration detention. It is focused on the impact that long term and indefinite detention has on children as told by those who have first-hand experience of life in immigration detention facilities.

It considers children at their different life stages and it records their voices and their experiences of detention.

This report looks firstly into the situation of babies in detention. It describes the impact of detention on the key determinants of their wellbeing; namely the ability to ensure:

- responsive and sensitive parenting;
- appropriate motor, sensory and language stimulation;
- adequate nutrition and health care; and
- protection from physical danger.

When looking at the situation of teenagers in detention, the Commission has inquired into how it impacts on their emotional maturation and the key developmental needs that they have to a safe environment where they can explore themselves and their place in wider society.

Similar questions have been asked about the impact of the detention environment on the key developmental elements for preschoolers and primary school aged children.

In undertaking this analysis we have been assisted by professionals from many fields – including paediatricians and child psychiatrists.

Ultimately we found that locked detention environments harm children, and children need to be removed from these environments as soon as possible. This is an urgent requirement for the health and wellbeing of these children.

It is our sincere hope that the evidence, stories and ultimately the findings and recommendations of this report can contribute to this end.

# 1.1 A snapshot of children in detention

## (a) The global context

The numbers of asylum seekers arriving on Australian shores reached a peak in 2013. This reflected a global increase in refugees, with unrest in a number of countries contributing to increasing numbers of people fleeing Syria, Iran, Afghanistan and Somalia. The United Nations High Commissioner for Refugees reports that there were 16.7 million refugees globally by the end of 2013. Half of these refugees were children, the highest figure in ten years. In the 2012–13 financial year, Australia resettled 12,515 refugees.

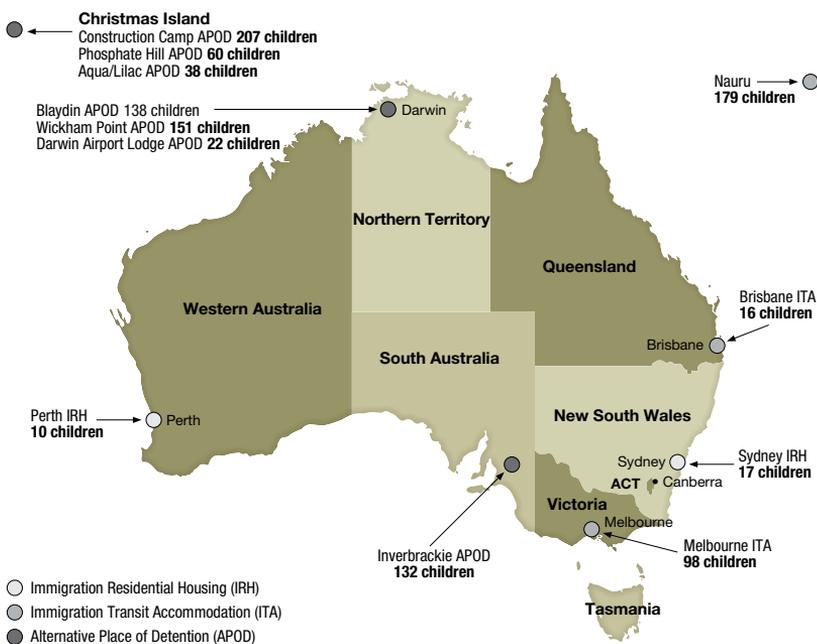
Australia receives a proportionally small number of asylum seekers when compared with other countries. In fact, the 13,559 asylum seeker applications that Australia had by the end of 2013, constituted just over one percent of more than a million applications for asylum submitted worldwide in that year.

By comparison, Pakistan a relatively less resourced country, hosts the largest number of refugees in the world.

## (b) The Australian context

There were **584** children detained in immigration detention centres on mainland Australia and **305** children on Christmas Island. A further **179** children were detained on Nauru as at 31 March 2014.

**Chart 1: Children in detention by location, 31 March 2014**

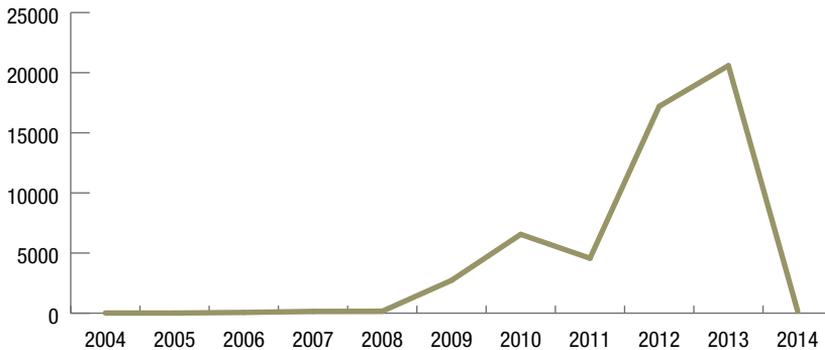


Source: Adapted from Department of Immigration and Border Protection map<sup>2</sup>

## 1. Introduction

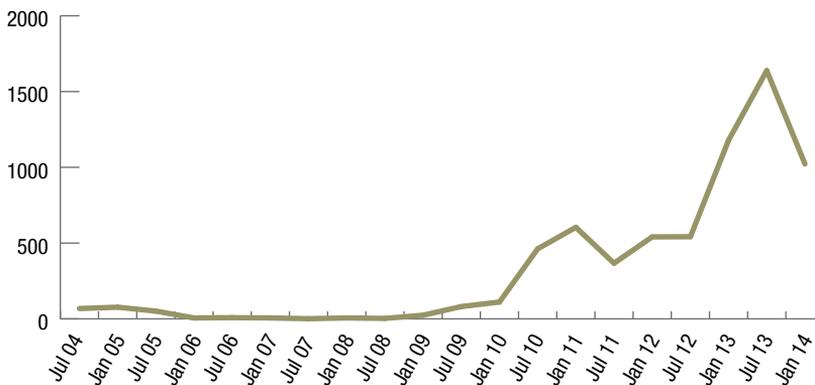
Almost all children in Australian detention centres either travelled to Australia by boat without a visa or were born in detention. The number of people arriving by boat rose substantially from 2011 and peaked in 2013.

**Chart 2: Number of people arriving by boat to Australia since 2004**



Source: J Phillips and H Spinks, *Boat arrivals in Australia since 1976*, Parliamentary Library Research Paper<sup>3</sup>

**Chart 3: Number of children in detention, July 2004 to January 2014**



Source: Australian Human Rights Commission analysis of data from the Department of Immigration and Border Protection<sup>4</sup>

They came from over **20** different countries:

- the largest group of children were born in Iran;
- the second largest group are identified as 'stateless' and were predominantly of Rohingya ethnic origin; and
- other major groups of children were from Sri Lanka, Vietnam, Iraq, Afghanistan and Somalia.

Many children in detention have experienced significant trauma before arriving in Australia.

The children in detention in Australia (as at 31 March 2014) are by age group:

- 153 babies
- 204 preschoolers (aged 2 to 4 years old)
- 336 primary school aged children
- 196 teenagers

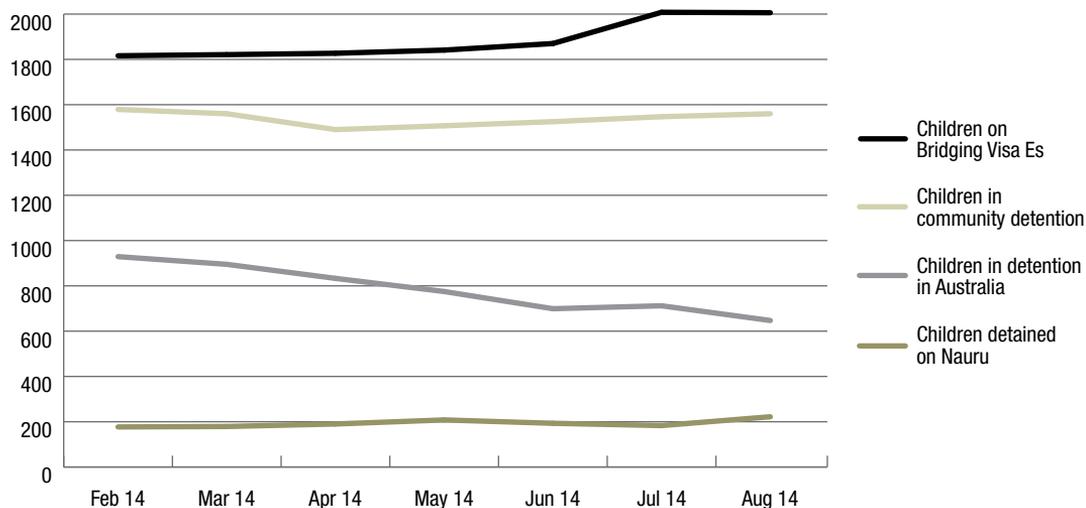
From January 2013 to March 2014, there were 128 babies born to mothers in detention centres in Australia.

In March 2014 there were 56 unaccompanied children in detention centres in Australia. A further 27 unaccompanied children were detained on Nauru. The majority of unaccompanied children came from Afghanistan, Myanmar, Somalia and Iran. All are teenagers aged between 15 years and 17 years.

Most children in detention arrived between June 2013 and September 2013. Under current Government policy all asylum seekers who arrived by boat on or after 19 July 2013 are to be transferred to detention centres on Nauru or Manus Island, unless the Minister determines otherwise. Approximately 523 children, including 48 unaccompanied children arrived on or after 19 July 2013 and are subject to possible transfer to Nauru.

At the time of the Inquiry, the number of children in detention facilities on mainland Australia and Christmas Island was reducing as a result of children being released on bridging visas, being moved into Community Detention; or being transferred to detention on Nauru.

**Chart 4: Numbers of children in detention in Australia, on Bridging Visa E, in Community Detention and in detention on Nauru by month, February 2014 to August 2014**



Source: Australian Human Rights Commission analysis of data from the Department of Immigration and Border Protection<sup>5</sup>

## 1. Introduction

The average length of detention of children at March 2014 was almost 8 months; **231** days.

Seventy-one percent of children and parents in detention reported that they had been moved between different detention centres at least once. Children are moved for many reasons, including access to healthcare, or for other services that are not available in their current centre.

**Twenty-eight** children in detention were assessed as having a **disability**. These children have spent 11 months in detention on average and are aged between 2 and 17 years old. **Thirty-six** children in detention have been diagnosed with a mental health disorder.

On 19 August 2014, the Minister for Immigration and Border Protection announced that the Australian Government will release all children under 10 and their families from detention into the community on bridging visas. This will not include children who arrived on or after 19 July 2013.

### 1.2 Australian law and the detention of children

Australia's system of mandatory immigration detention was introduced by the Labor Government in 1992. This system has been maintained by successive Australian governments – meaning that over the past 22 years, non-citizens who arrive in Australia without a valid visa must be detained. The *Migration Act 1958* (Cth) ('the Migration Act') refers to such people as 'unlawful non-citizens'. Unlawful non-citizens may have arrived in Australia without a visa, or they may have arrived in Australia with a visa that has later expired.

If unlawful non-citizens arrive in Australia by sea, they are referred to as 'unauthorised maritime arrivals'. Unlawful non-citizens (including unauthorised maritime arrivals) who are detained may only be released from immigration detention if they are granted a visa, if they are moved into Community Detention, or if they are being removed from Australia.

In the case of people who are detained after arriving in Australia by boat, the first two options are only available at the personal discretion of the Minister for Immigration and Border Protection. Asylum seekers who have arrived by boat may not apply for any visa unless the Minister considers that it would be in the public interest to allow such an application. The Minister generally has the power to grant a visa of any class to a person who is in immigration detention. However, the Migration Act provides that the Minister does not have a duty to consider whether to exercise this power, even if a request is made by a person in immigration detention.

The Minister also has the power to make a residence determination in favour of a person in immigration detention. The residence determination scheme is more commonly referred to as Community Detention. Again, this is a power that may only be exercised by the Minister. The Migration Act provides that the Minister does not have a duty to consider whether to exercise this power, even if a request is made by a person in immigration detention.

Under current legislation, asylum seekers who arrive by boat must be taken 'as soon as reasonably practicable' to a Regional Processing Country unless the Minister determines otherwise. This scheme of offshore processing applies to all people who arrived by boat; on or after 19 July 2013. This date represents the day on which former Prime Minister Rudd implemented new policies to prevent the settlement in Australia of any person who was an unauthorised maritime arrival.

If a person in immigration detention is not granted a visa or a Community Detention placement, then they may continue to be detained while arrangements are made to remove them from Australia.

The High Court has held in *Al-Kateb v Godwin* that it is not contrary to Australian law to keep a person in immigration detention even if the removal of that person from Australia is not reasonably practicable in the foreseeable future. The Department of Immigration and Border Protection submitted to the Inquiry that, as a result of this decision, ‘there is no time limit on the lawfulness of detention under Australian law’.

However, a more recent unanimous judgment of the High Court in *Plaintiff S4/2014 v Minister for Immigration and Border Protection* casts some doubt on indefinite detention. In this case, the Court confirmed that the Migration Act does not authorise detention at the unconstrained discretion of the Executive. Rather, detention under the Migration Act can only be for the purposes identified in the Act.

### 1.3 Does the Government owe a duty of care to children in detention?

The Department of Immigration and Border Protection recognises that it has a duty of care to all people in immigration detention facilities. The Department has undertaken the care, supervision or control of people in detention in circumstances where those people might reasonably expect that due care will be exercised.

The Commonwealth Ombudsman and New South Wales Coroner have separately argued that due to the particular vulnerability of detainees, as well as the high degree of control exercised by the Department over detainees, the scope of this duty of care should be set at a **high level** and extends to a **positive** duty to take action to prevent harm from occurring.

### 1.4 International law and the detention of children

International human rights law sets out a number of requirements which must be satisfied if a government decides that there are no acceptable alternatives and that detention is necessary. The *Convention on the Rights of the Child* states clearly that:

- The detention of a child must only **be a measure of last resort**.
- **Detention must not be arbitrary.**<sup>6</sup>

To avoid being arbitrary, detention must be necessary and reasonable in all the circumstances of the case, and a proportionate means of achieving a legitimate aim. If that aim could be achieved through less invasive means than detaining a person, then that person’s detention **will** be arbitrary.

The Commission acknowledges that use of immigration detention may be legitimate in some circumstances for a strictly limited period of time. For example, in particular cases a brief period of detention may be necessary to conduct health, security and identity checks.

In order to avoid detention being arbitrary, however, there must be an individual assessment of the necessity of detention for each person, taking into consideration their individual circumstances. A person should only be held in an immigration detention facility if they are individually assessed as posing an unacceptable risk to the Australian community, and if that risk cannot be mitigated in a less restrictive way. Otherwise, they should be permitted to reside in the community while their immigration status is resolved – if necessary, with appropriate conditions imposed to mitigate any identified risks. According to the *Convention on the Rights of the Child*:

## 1. Introduction

- Any child deprived of their liberty should be able to **challenge the lawfulness** of their detention.

For detention to be 'lawful', it must not only comply with domestic law but also international law. This requires that a court must have the authority to order the person's release if the detention is found to be arbitrary.

Currently, Australia does not provide access to such review. While people in immigration detention may be able to seek judicial review of the domestic legality of their detention, Australian courts have no authority to order that a person be released from detention on the grounds that the person's continued detention is arbitrary. This is in breach of the *Convention on the Rights of the Child*. The Convention also states:

- If detention of children is necessary in order to achieve a particular aim, then the length of detention should be **the shortest appropriate period** for the achievement of that aim.

In instances where children are detained, a review process is required to monitor detention effectively and assess whether it is justified. The Commission has previously recommended that this review process should occur within 72 hours of being detained and be conducted by an independent body, consistent with the *Convention on the Rights of the Child*.

- In all actions concerning children, **the best interests of the child shall be a primary consideration**.

The best interests of the child should be a primary consideration in individual decision making about a child and when developing legal frameworks and policies affecting children. If laws or policies lead to results that are not in the child's best interests, review is necessary.

Aspects of Australia's migration policy therefore sit at odds with the *Convention on the Rights of the Child*. Examples include the requirement to detain child asylum seekers on arrival in Australia, and the requirement to transfer children who are unauthorised maritime arrivals to a Regional Processing Country. Officers are required by the Migration Act to carry out these tasks, regardless of whether it would be in the child's best interests. The *Convention on the Rights of the Child* provides:

- Refugee children and unaccompanied children are likely to be vulnerable and **require particular assistance**.

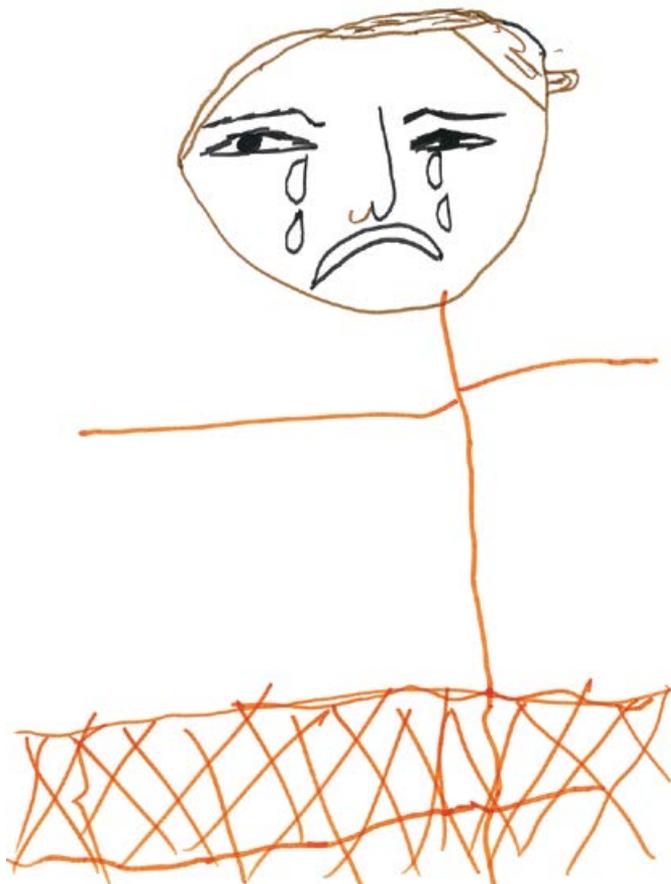
Article 22 of the *Convention on the Rights of the Child* requires that governments ensure that children seeking refugee status are provided with appropriate protection and humanitarian assistance. Article 20 of the *Convention on the Rights of the Child* provides that special protection and assistance be available for unaccompanied children.

**Minimum standards for the protection of children in detention** are set out in the *Convention on the Rights of the Child*. These standards include:

- Children in detention should be treated with humanity and respect;
- Children have a right to remain with their parents (unless contrary to their best interests), and to have their family protected from arbitrary or unlawful interference;
- Children should not suffer torture or cruel, inhuman or degrading treatment or punishment; and
- Children should be protected from all forms of physical or mental violence, injury or abuse while in the care of parents, legal guardians or any other person that has the care of the children.

There are a range of international obligations on countries to ensure that **children can develop and thrive**. Key rights contained in the *Convention on the Rights of the Child* are:

- the right to life, survival and development;
- the right to health and access to healthcare services, including pre- and post-natal healthcare for their mothers;
- the right to education, and to play and engage in recreational activities; and
- respect for the child's rights without discrimination.



Drawing by primary school aged child, Christmas Island, 2014.

## 2. Findings and recommendations

This Inquiry report considers the impact of detention on children at different life stages and of children affected by different circumstances.

The findings and recommendations are broadly designed to reflect the ages, stages and life circumstances of children in detention.

| FINDINGS  | FINDINGS AGAINST THE CONVENTION ON THE RIGHTS OF THE CHILD   |
|---|--|
| Findings relevant to all children in detention  |  |
| <p>The mandatory and prolonged immigration detention of children is in clear violation of international human rights law.</p> <p>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.</p> <p>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.</p> <p>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.<sup>7</sup></p> | <p>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. Mandatory detention does not consider the individual circumstances of children nor does it address the best interests of the child as a primary consideration (article 3(1)).</p> <p>Detention for a period that is longer than is strictly necessary to conduct health, identity and security checks breaches Australia's obligations to:</p> <ul style="list-style-type: none"> <li>• detain children as a measure of last resort and for the shortest appropriate period of time (article 37(b))</li> <li>• ensure that children are not arbitrarily detained (article 37(b))</li> <li>• ensure prompt and effective review of the legality of their detention (article 37(d)).</li> </ul> <p>Given the profound negative impacts on the mental and emotional health of children which result from prolonged detention, the mandatory and prolonged detention of children breaches Australia's obligation under article 24(1) of the <i>Convention on the Rights of the Child</i>.</p> <p>At various times children in immigration detention were not in a position to fully enjoy their rights under articles 6(2), 19(1), 24(1), 27 and 37(c) of the <i>Convention on the Rights of the Child</i>.</p> |

## 2. Findings and recommendations

| FINDINGS  | FINDINGS AGAINST THE CONVENTION ON THE RIGHTS OF THE CHILD   |
|---|--|
| <p>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.</p> <p>The numerous reported incidents of assaults, sexual assaults and self-harm involving children indicate the danger of the detention environment.</p> <p>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.</p> <p>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.</p> <p>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.</p> |  |
| <h3>Findings in relation to conditions of detention on Christmas Island</h3>  |  |
| <p>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.</p> <p>Conditions of detention vary widely across the detention network and this has a differential impact on the physical health of children.</p>   | <p>At various times children detained on Christmas Island were not in a position to fully enjoy the following rights under the <i>Convention on the Rights of the Child</i> as a result of their living conditions in detention:</p> <ul style="list-style-type: none"> <li>• the right to enjoy ‘to the maximum extent possible’ the right to development (article 6(2))</li> </ul> |

| FINDINGS  | FINDINGS AGAINST THE CONVENTION ON THE RIGHTS OF THE CHILD   |
|---|--|
| <p>The harsh and cramped living conditions on Christmas Island create particular physical illnesses amongst children.</p> <p>The children in detention on Christmas Island live in cramped conditions. Families live in converted shipping containers the majority of which are 3 x 2.5 metres. Children are effectively confined to these rooms for many hours of the day as they are the only private spaces that provide respite from the heat. Up until July 2014, families living in the (now closed) Aqua and Lilac Detention Centres shared common bathroom facilities with everyone in those centres.</p> <p>Children currently detained on Christmas Island had almost no school education for the period; from July 2013 to July 2014. The Department rectified the situation in July 2014.</p> | <ul style="list-style-type: none"> <li>• the right to the highest attainable standard of health (article 24(1))</li> <li>• the right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development (article 27(1))</li> <li>• the right to be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age (article 37(c)).</li> </ul> <p>The failure of the Commonwealth to provide education to school aged children on Christmas Island between July 2013 and July 2014 is a breach of the right to education in article 28(1) of the <i>Convention on the Rights of the Child</i>.</p> |
| <h3>Mothers and babies</h3>   |  |
| <p>Detention impedes the capacity of mothers to form bonds with their babies.</p> <p>There are unacceptable risks of harm to babies in the detention environment.</p> <p>Babies born in detention in Australia to stateless parents may be sent to Nauru without any recorded nationality.</p> <p>The Commonwealth has a responsibility to provide babies with a nationality when they are born to stateless parents in detention; <i>Convention on the Rights of the Child</i>, articles:</p> <p><i>7(1): The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.</i></p>   | <p>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"> <li>• the right to the highest attainable standard of health (article 24(1))</li> <li>• 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))</li> <li>• the right to be protected from all forms of physical or mental violence (article 19(1)).</li> </ul>   |

## 2. Findings and recommendations

| FINDINGS  | FINDINGS AGAINST THE CONVENTION ON THE RIGHTS OF THE CHILD  |
|---|---|
| <p><i>7(2): States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.</i></p>  |   |
| <h3>Preschoolers</h3>   |   |
| <p>Detention is impeding the development of preschool aged children and has the potential to have lifelong negative impacts on their learning, emotional development, socialisation, and attachment to family members and others.</p> <p>Preschoolers are exposed to unacceptable risks of harm in the detention environment.</p> <p>Lack of access to preschool activities for children who arrived on or after 19 July 2013 has learning and development consequences for children at this critical stage of brain development.</p>                     | <p>At various times preschoolers 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"> <li>• the right to the highest attainable standard of health (article 24(1))</li> <li>• 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))</li> <li>• the right to be protected from all forms of physical or mental violence (article 19(1)).</li> </ul>                |
| <h3>Primary school aged children</h3>   |   |
| <p>Detention is disrupting the normal development of primary school aged children and is damaging their emotional health and social development.</p> <p>There are unacceptable risks of harm to primary school aged children in the detention environment.</p> <p>The lack of school education on Christmas Island for primary school aged children who arrived in Australia on or after 19 July 2013 has had negative impacts on their learning and may have long term impacts on the cognitive development and academic progress of these children.</p> | <p>At various times primary school aged children 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"> <li>• the right to the highest attainable standard of health (article 24(1))</li> <li>• 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))</li> <li>• the right to be protected from all forms of physical or mental violence (article 19(1))</li> </ul> |

| FINDINGS  | FINDINGS AGAINST THE CONVENTION ON THE RIGHTS OF THE CHILD   |
|---|--|
|   | <ul style="list-style-type: none"> <li>• the right to be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age (article 37(c)).</li> </ul> <p>The failure of the Commonwealth to provide education to primary school aged children on Christmas Island between July 2013 and July 2014 is a breach of the <i>Convention on the Rights of the Child</i>, article:</p> <p><i>28(1): States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:</i></p> <p><i>(a) Make primary education compulsory and available free to all.</i></p>   |
| <b>Teenagers</b>  |  |
| <p>Detention puts teenagers at high risk of mental illness, emotional distress and self-harming behaviour.</p> <p>Detention impedes the social and emotional maturation of teenagers.</p> <p>The lack of school education on Christmas Island for teenagers who arrived in Australia on or after 19 July 2013 has had negative impacts on their learning and may have long term impacts on the cognitive development and academic progress of these children.</p> | <p>At various times teenagers 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"> <li>• the right to the highest attainable standard of health (article 24(1))</li> <li>• 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))</li> <li>• the right to be protected from all forms of physical or mental violence (article 19(1))</li> <li>• the right to be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age (article 37(c)).</li> </ul> |

## 2. Findings and recommendations

| FINDINGS   | FINDINGS AGAINST THE CONVENTION ON THE RIGHTS OF THE CHILD   |
|--|--|
|  | <p>The failure of the Commonwealth to provide education to teenagers on Christmas Island between July 2013 and July 2014 is a breach of the <i>Convention on the Rights of the Child</i>, article:</p> <p><i>28(1): States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:</i></p> <p><i>(b) ...make [different forms of secondary education] available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need.</i></p>  |
| <h3>Unaccompanied children</h3>  |  |
| <p>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.</p> <p>There are causal links between detention, mental health deterioration and self-harm in unaccompanied children.</p> <p>The detention environment poses unacceptable risks of harm to these vulnerable children.</p> <p>Detention is not a place where unaccompanied children are able to recover from past trauma.</p> <p>As their legal guardian, the Minister for Immigration and Border Protection has failed to act in the best interests of unaccompanied children by not releasing unaccompanied children into community alternatives.</p> <p>The Minister cannot be an effective guardian for unaccompanied children as he has conflicting roles as both Minister responsible for immigration detention and as legal guardian.</p> | <p>The failure of the Commonwealth to remove unaccompanied children from detention environments which inhibit recovery from past trauma is a breach of the <i>Convention on the Rights of the Child</i>, article:</p> <p><i>39: States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.</i></p> <p>The failure of the Minister for Immigration and Border Protection to release unaccompanied children from detention breaches the <i>Convention on the Rights of the Child</i>, articles 3(1) and</p> |

| FINDINGS  | FINDINGS AGAINST THE CONVENTION ON THE RIGHTS OF THE CHILD   |
|---|--|
| <p>The decision of the Commonwealth to approve the use of force to transfer unaccompanied children from Charlie Compound to Bravo Compound on 24 March 2014 meant that children were not treated with humanity and respect and in a manner which took into account their vulnerability and their age.</p> | <p><i>18(1): ...Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.</i></p> <p>Current guardianship arrangements do not afford unaccompanied children special protection and assistance as required by the <i>Convention on the Rights of the Child</i>. This breaches article:</p> <p><i>20(1): A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.</i></p> <p><i>20(2): States Parties shall in accordance with their national laws ensure alternative care for such a child.</i></p> <p>The failure of the Commonwealth to appoint an independent guardian for unaccompanied children in immigration detention breaches the <i>Convention on the Rights of the Child</i>, article 20(1).</p> <p>The decision of the Commonwealth to approve the use of force to transfer unaccompanied children from Charlie Compound to Bravo Compound on 24 March 2014 breaches article 37(c) of the <i>Convention on the Rights of the Child</i>.</p> |
| <p><b>Children indefinitely detained</b></p>  |  |
| <p>Some children have been detained for longer than 27 months because at least one of their parents has an adverse security assessment by ASIO. The indefinite detention of these children raises special concerns for their physical and mental health and their future life opportunities.</p>          | <p>Children with at least one parent who has an adverse security assessment by ASIO may be subject to extremely long periods of detention. The failure of the Commonwealth to consider less restrictive detention alternatives for these families would be a breach of the <i>Convention on the Rights of the Child</i>, article 37(b).</p>  |

## 2. Findings and recommendations

| FINDINGS  | FINDINGS AGAINST THE CONVENTION ON THE RIGHTS OF THE CHILD   |
|---|--|
| <h3>Children in detention on Nauru</h3>   |  |
| <p>Children on Nauru are suffering from extreme levels of physical, emotional, psychological and developmental distress. The Commission is concerned that detention on Nauru is mandatory for children and that there is no time limit on how long they will be detained.</p> | <p>The Commission finds that the inevitable and foreseeable consequence of Australia’s transfer of children to Nauru is that they would be detained in breach of article 37(b) of the <i>Convention on the Rights of the Child</i>.</p> <p>The Commission finds that Australia transferred children to Nauru regardless of whether this was in their best interests, in breach of article 3(1) of the <i>Convention on the Rights of the Child</i>.</p> <p>The Commission has serious concerns that the conditions in which children are detained on Nauru are in breach of the <i>Convention on the Rights of the Child</i>, articles 19(1), 20(1), 24(1), 27(1), 27(3), 28, 31 and:</p> <p><i>16(1): No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.</i></p> <p><i>34: States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.</i></p> <p><i>37(a): No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.</i></p> |

| FINDINGS   | FINDINGS AGAINST THE CONVENTION ON THE RIGHTS OF THE CHILD   |
|--|--|
| <b>Continuing impacts of detention</b>   |  |
| <p>While children show noticeable improvements in social and emotional wellbeing once released from detention, significant numbers of children experience negative and ongoing emotional impacts after prolonged detention.</p> <p>The Commonwealth is under an obligation to provide medical and associated support services to promote the physical and psychological recovery, rehabilitation and reintegration of children who have had their mental health affected by their time in detention.</p> | <p>The Commission makes the general finding in chapter 4 (supported by the evidence in chapters 4 and 6 to 11) that the mandatory and prolonged detention of children breaches Australia's obligation under article 24(1) of the <i>Convention on the Rights of the Child</i> because of the impact of prolonged detention on the mental health of people detained.</p> <p>The Commonwealth is under an obligation under article 24(1) of the Convention to provide medical and associated support services to promote the physical and psychological recovery, rehabilitation and reintegration of children who have had their mental health affected by their time in detention.</p> |

| RECOMMENDATIONS  |
|--|
| <p><b>Recommendation 1</b></p> <p>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.</p>  |
| <p><b>Recommendation 2</b></p> <p>It is recommended that the <i>Migration Act 1958</i> (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.</p> |
| <p><b>Recommendation 3</b></p> <p>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.</p>   |

## 2. Findings and recommendations

| <b>RECOMMENDATIONS</b>  |
|---|
| <p><b>Recommendation 4</b></p> <p>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.</p>  |
| <p><b>Recommendation 5</b></p> <p>It is recommended that all immigration detention facilities on Christmas Island be closed.</p>  |
| <p><b>Recommendation 6</b></p> <p>It is recommended that an independent guardian be appointed for unaccompanied children seeking asylum in Australia.</p>   |
| <p><b>Recommendation 7</b></p> <p>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.</p>  |
| <p><b>Recommendation 8</b></p> <p>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.</p>   |
| <p><b>Recommendation 9</b></p> <p>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:</p> <ul style="list-style-type: none"><li>• whether there is a risk in granting the family a visa or placing them in community detention; and</li><li>• how any risk could be mitigated, for example by a requirement to reside at a specified location, curfews, travel restrictions, reporting requirements or sureties.</li></ul> |
| <p><b>Recommendation 10</b></p> <p>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.</p>  |

## RECOMMENDATIONS

### 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 July 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, be implemented by legislation as directly applicable Australian law.

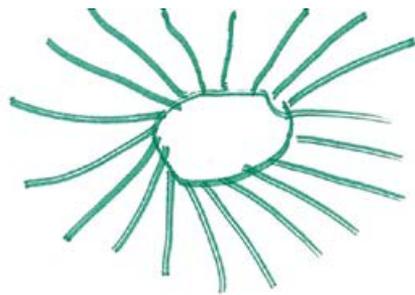
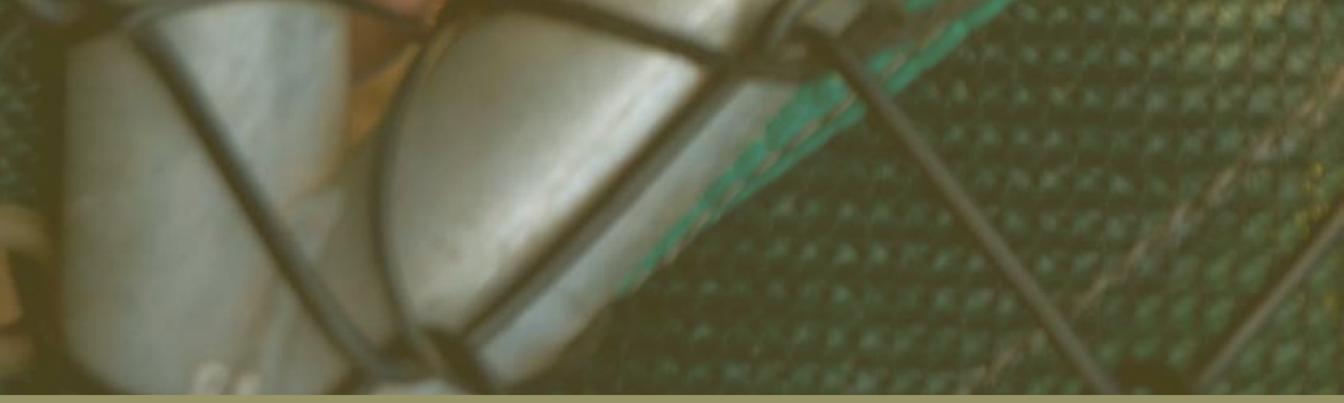
### Recommendation 15

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 offshore 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.



Drawing by preschool age boy, Christmas Island, 2014.

# 3. Methodology

On 3 February 2014, the President of the Australian Human Rights Commission launched the National Inquiry into Children in Immigration Detention.

The purpose of the Inquiry was to investigate the ways in which life in immigration detention affects the health, wellbeing and development of children. The Inquiry assessed the impact of detention on children currently detained as well as seeking the views of people who were previously detained.

## 3.1 Terms of Reference

The Terms of Reference for this Inquiry are as follows:

The President will inquire into the impact of immigration detention on the health, well-being and development of children. The President will assess whether laws, policies and practices relating to children in immigration detention meet Australia's 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 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.

The President undertook the Inquiry under the Commission's functions in section 11(1) of the *Australian Human Rights Commission Act 1986* (Cth), most notably sub-sections (e), (f), (g), (j) and (k).<sup>8</sup>

### 3.2 Methodology

The Inquiry was led by Professor Gillian Triggs, President of the Commission, with assistance from Megan Mitchell, the National Children’s Commissioner and Tim Wilson, the Human Rights Commissioner.

In response to the Inquiry, the Department of Immigration and Border Protection formed an Inquiry Taskforce led by an SES officer. The role of the task force was to assist with and support the Inquiry.

The Commission acknowledges and is grateful to the Department for its continued efforts over the course of the Inquiry.

The Department has provided assistance in many forms, including by:

- facilitating each visit to immigration detention centres;
- appearing at four of the public hearings;
- providing the Inquiry with detailed information on cases of concern;
- providing a submission to the Inquiry;
- facilitating specialist meetings with International Health and Medical Services; and
- responding promptly to three Notices to Produce. The Commission acknowledges that these responses contained an extensive amount of information.

Throughout the Inquiry, the Department has provided various documents which set out the legal, policy, procedural and training requirements which guide the Department and its service provider staff. A summary of Departmental policies and procedures is set out in Appendix 7.

#### **INQUIRY METHODOLOGY:**

#### **A quick snapshot**

239 submissions received

1129 children and parents in detention interviewed

104 children and parents formerly in detention and now living in the community interviewed

13 visits to 11 different immigration detention centres

9 health specialists participated in detention centre visits and 6 expert reports were published

5 public hearings convened with 41 witnesses

5 Notices to Produce issued

The Inquiry team gathered evidence through the following methods:

### **Visits to detention centres**

A total of 13 visits to detention centres were made over the course of the Inquiry. From March to July 2014, the Inquiry staff visited 11 separate detention centres across mainland Australia and Christmas Island. Two centres on Christmas Island were revisited in July following concerns about a series of incidents of self-harm among detainees. The Department Inquiry Taskforce assisted the Inquiry team by facilitating these detention visits.

All visits were supported by independent paediatric and / or child mental health specialists. Following the visits, these health specialists submitted expert reports to the Commission. These have been incorporated into the chapters of this report and are available on the Commission's Inquiry website.

At the conclusion of each detention centre visit, the Inquiry team raised cases of concern with the Department of Immigration and Border Protection. These related to children and adults who required immediate attention for physical or mental health reasons or children who claimed to be incorrectly age assessed.

The Department acknowledges that this interaction with the Commission has been a practical and useful exercise as it is an opportunity to share knowledge and expertise in the pursuit of tangible improvements.

### **Detention centre interviews**

The Inquiry staff conducted 486 interviews in detention centres. Most interviews were conducted with family groups and responses were recorded for each individual family member using a standardised questionnaire. A total of 1,129 children and parents were interviewed. The first-hand accounts from people living in detention provide substantial quantitative and qualitative data for this report. Interviewee testimony and quotes have been incorporated throughout the report. The Commission does not identify the names of asylum seekers to protect their privacy.

A copy of the interview questionnaire is provided at Appendix 6 and detailed information about the interview methodology is at Appendix 2.

### **Submissions**

A call for submissions to the Inquiry was made on 3 February 2014 at the commencement of the Inquiry. Of the 239 submissions received, 105 submissions were published with the author's name, 69 were published with the author's identity kept confidential; and 65 submissions were confidential and not published. Submissions were received from different stakeholders including from children in detention in Australia and on Nauru; professionals working in the detention system, past and present; professional associations; doctors and former detainees. A list of all public submissions is provided at Appendix 3 of the report and the submissions are available on the Commission's Inquiry website.

### **Community interviews**

From April to August 2014, the Inquiry team interviewed 92 children and 12 parents who had previously been in detention and were now living in the community. These respondents were waiting to have their refugee cases assessed. They agreed to be interviewed on a strictly confidential basis. All interviews were conducted using the same questionnaire. A copy of this is provided at Appendix 6 of this report.

## 3. Methodology

### Public hearings

Five public hearings were conducted by the President between April and September 2014. Pursuant to section 21(5) of the *Australian Human Rights Commission Act 1986* (Cth), a number of witnesses were compelled to attend and answer questions. Others appeared and gave evidence voluntarily. All evidence was given under oath or affirmation. A full list of witnesses and dates of each hearing is provided at Appendix 4 of this report.

### Evidence provided pursuant to Notices to Produce

Pursuant to Division 3 of Part II of the *Australian Human Rights Commission Act 1986* (Cth), the Commission can require the production of documents and information. The Department of Immigration and Border Protection was issued with three separate Notices to Produce on 31 March 2014, 11 July 2014 and 12 August 2014. International Health and Medical Services was issued with two Notices to Produce on 24 July 2014 and 24 September 2014.

The Commission acknowledges the extensive work involved with the collation of the material for the Notices to Produce.

### Confidentiality

Pursuant to Division 3 of Part II of the *Australian Human Rights Commission Act 1986* (Cth), the President of the Commission issued confidentiality directions on 3 April 2014 to preserve the anonymity of asylum seekers who had provided information to the Commission for the purposes of the Inquiry.

## 3.3 Definitions

Throughout this report, the following terms are used:

**Asylum seeker:** An asylum seeker is someone who has fled their own country and applies to the government of another country for protection as a refugee.

**Babies:** Children under the age of 2.

**Child:** A child is defined by the *Convention on the Rights of the Child* as anyone aged under 18 years.

**Community Detention:** Community detention refers to people living at a specific house in the community while their immigration status is resolved. People in Community Detention are generally not under physical supervision, however there are conditions attached to their living in the community and they are not permitted to work.

**Department:** The Department of Immigration and Border Protection. This is the Commonwealth agency responsible for implementing Australia's immigration laws and policies.

**Detention:** Locked detention environments where children are held. This does not include Community Detention.

**Detention Centre:** The report identifies different detention facilities using the location of the facility followed by the generic term: 'Detention Centre'. This includes facilities which the Department calls 'Alternative Places of Detention' (APODs), Immigration Residential Housing, and Immigration Transit Accommodation, including: Pontville Alternative Place of Detention, Perth Immigration Residential Housing, Construction Camp Alternative Place of Detention, Phosphate Hill Alternative Place of Detention, Aqua/Lilac Alternative Place of Detention, Blaydin Alternative Place of Detention, Wickham Point Alternative Place of Detention, Darwin Airport Lodge Alternative Place of Detention, Melbourne Immigration Transit Accommodation, Brisbane Immigration Transit Accommodation, Sydney Immigration Residential Housing, and Inverbrackie Alternative Place of Detention.

**Minister:** The Minister for Immigration and Border Protection.

**Notice to Produce:** The Commission has the power to compel the production of documents and information from individuals and organisations under s 21 of the *Australian Human Rights Commission Act 1986* (Cth). These are known as 'Notices to Produce'.

**Preschoolers:** Children aged 2 to 4 years old.

**Primary school aged children:** Children aged 5 to 12 years old.

**Regional Processing Centre:** Collective term referring to the detention facilities in Nauru. Within the Regional Processing Centre there are different Offshore Processing Centres.

**Regional Processing Country:** Countries designated under the *Migration Act 1958* (Cth) as places where asylum seekers who arrived by boat after 13 August 2012 can be sent for processing. Currently Nauru and Papua New Guinea are designated as Regional Processing Countries.

**(Actual) Self-harm:** Defined in the Serco Incident Reporting Guideline (version 2) as any deliberate act of causing harm or injury to body tissue. This includes but is not limited to cutting, hanging, head banging, burning, severe scratching (so as to break the skin and bleed). It includes any attempt to cause self-harm. This is the definition that applies throughout this report.

**Serco:** Serco Australia Pty Limited is the current detention service provider delivering onshore immigration detention facilities and detainee services, which includes facilities management services, security and escort services, and welfare and engagement services.

**Teenagers:** Children aged 13 to 17 years old.

**Threatened self-harm:** Defined in the Serco Incident Reporting Guideline (version 2) as a client who threatens but does not attempt or complete an act of self-harm. This is the definition that applies throughout this report.

**Unaccompanied child:** A child who arrives in Australia without a parent, legal guardian or caregiver.

### 3.4 Timeframe for the report

Data collected for the purposes of the Inquiry covers the period 1 January 2013 to 30 September 2014. The law and policy review of this Inquiry spans a 10 year period; 2004 to 2014.

Where identified, the statistical data referred to in the report has been either:

- provided by the Department of Immigration and Border Protection or its contractors; or
- derived from interviews conducted by the Inquiry staff during visits to detention centres in Australia.

The qualitative information referred to in each chapter has been obtained from interviews conducted during visits to detention centres as well as from letters from children detained on Nauru.

A draft report setting out the Commission's preliminary findings was provided to the Department of Immigration and Border Protection for comment pursuant to s 27 of the *Australian Human Rights Commission Act 1986* (Cth) on 3 October 2014.

The Department responded on 27 October 2014. In respect of the preliminary findings of breaches of international human rights law the Department observed:

that 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.

On 31 October 2014 the Commission provided the Department with the final report and recommendations pursuant to s 29 of the *Australian Human Rights Commission Act 1986* (Cth). The Department responded in November 2014 at Appendix 8.

### 3.5 Commission's previous work concerning children in detention

This is the Commission's second national inquiry into children in immigration detention.

Ten years ago, the Australian Human Rights Commission published *A last resort? Report of the National Inquiry into Children in Immigration Detention*. That report found that Australia's system of mandatory immigration detention of children was fundamentally inconsistent with Australia's human rights obligations, and that children detained for long periods of time are at high risk of serious mental harm.

The Commission has maintained an ongoing program of work relating to asylum seekers and the rights of children in immigration detention over the decade since.

The Commission has conducted regular visits to immigration detention facilities in which children are held in order to monitor whether the conditions of detention meet internationally-accepted human rights standards. Public reports detailing the Commission's findings and concerns about conditions in immigration detention have been published every year as follows:

- In 2006, 2007 and 2008, the Commission conducted annual visits to all detention centres on the Australian mainland and produced annual reports containing the Commission's findings and recommendations.<sup>9</sup>

- In 2009 and 2010 the Commission visited the detention centres on Christmas Island and published reports which raised particular concerns about children in detention.<sup>10</sup>
- In 2010 the Commission also visited and reported on the immigration detention centres in Darwin where children were detained.<sup>11</sup>
- In 2011 the Commission visited and reported on the conditions in the detention facilities at Villawood in New South Wales and in Leonora in Western Australia.<sup>12</sup>
- In 2012 the Commission returned to Christmas Island to assess whether the conditions had improved for the adults and children detained there and reported its findings.<sup>13</sup>
- In 2013 the Commission published *Human rights standards for immigration detention*, which set out minimum standards for the protection of human rights in detention.<sup>14</sup> These include standards relating to the detention of children.

The Commission has also made several submissions to parliamentary committees, panels and the United Nations which raised concerns about the rights of children subject to immigration detention and/or third country processing. These include submissions to:

- Inquiry into the administration and operation of the *Migration Act 1958* (August 2005)<sup>15</sup>
- Inquiries into the redevelopment of the Villawood Immigration Detention Centre and the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006<sup>16</sup>
- Joint Standing Committee on Migration Inquiry into Immigration Detention in Australia (2008)<sup>17</sup>
- Inquiry into the Migration Amendment (Immigration Detention Reform) Bill 2009<sup>18</sup>
- United Nations High Commissioner for Human Rights consultation on the protection of the rights of the child in the context of migration in 2010<sup>19</sup>
- Inquiry of the Joint Select Committee on Australia's Immigration Detention Network<sup>20</sup> and the Inquiry into Australia's agreement with Malaysia in relation to asylum seekers in 2011<sup>21</sup>
- Expert Panel on Asylum Seekers in 2012<sup>22</sup>
- Joint Parliamentary Committee on Human Rights' inquiry into the 'regional processing' of asylum seekers in 2013<sup>23</sup>

In 2011 the Commission intervened in the High Court of Australia in the matter of *Plaintiff M106/2011 v Minister for Immigration and Citizenship*,<sup>24</sup> a case concerning the transfer of unaccompanied children to Malaysia.

The Commission has also investigated many complaints made by (or on behalf of) children regarding alleged breaches of their human rights while in immigration detention. Between January 2009 and September 2014, the Commission received 159 complaints in relation to children in immigration detention. The President of the Commission found that there had been breaches of children's rights in a number of these matters. The Commission has tabled numerous reports identifying human rights breaches in Parliament, including:

- *Mr Parvis Yousefi, Mrs Mehrnoosh Yousefi and Manoochehr Yousefi v Commonwealth of Australia (Department of Immigration and Citizenship)* [2011] AusHRC 46<sup>25</sup>

### 3. Methodology

- *Miss Judy Tuifangaloka v Commonwealth of Australia (Department of Immigration & Citizenship)* [2012] AusHRC 53<sup>26</sup>
- *BZ and AD v Commonwealth of Australia (Department of Immigration and Citizenship)* [2012] AusHRC 55<sup>27</sup>
- *Sri Lankan refugees v Commonwealth of Australia (Department of Immigration and Citizenship)* [2012] AusHRC 56<sup>28</sup>
- *Immigration detainees with adverse security assessments v Commonwealth of Australia (Department of Immigration and Citizenship)* [2013] AusHRC 64<sup>29</sup>
- *Abdellatif v Commonwealth of Australia (Department of Immigration and Border Protection)* [2013] AusHRC 40<sup>30</sup>

In 2012 the Commission also conducted a national inquiry into the age assessment and detention of children engaged as crew members on vessels suspected of people smuggling. This resulted in the publication of the report *An Age of Uncertainty: Inquiry into the treatment of individuals suspected of people smuggling offences who say that they are children*.<sup>31</sup>

This monitoring work over the past decade has identified serious ongoing concerns about the detention of children in Australia.

This is despite the significant positive developments over this time period, including the removal of children from high security immigration detention centres, the creation of the Community Detention system and the use of bridging visas for asylum seekers who arrive by boat.

## 3.6 Structure of the report

The report is divided into four sections:

- **Section 1** (chapters 4 and 5) provides an overview of the children in detention: Who are they? How long are they detained and where? What is their background? What does the law say about detaining children?
- **Section 2** (chapters 6 – 9) describes the circumstances of children in detention at different life stages: babies, preschoolers, primary school aged children and teenagers
- **Section 3** (chapters 10 – 12) describes the circumstances of specific categories of children in detention: unaccompanied children, children of parents with adverse security assessments and children on Nauru
- **Section 4** (chapter 13) considers the continuing impacts of detention on children once released

The report includes the following appendices:

- Appendix 1 – Review of detention policy and practices 2004–2014
- Appendix 2 – Detailed Inquiry methodology
- Appendix 3 – List of public submissions
- Appendix 4 – Schedule of public hearings and witness list

- Appendix 5 – Notices to Produce
- Appendix 6 – Inquiry questionnaire forms
- Appendix 7 – Departmental policies and procedures
- Appendix 8 – Departmental responses to findings and recommendation of the Inquiry
- Appendix 9 – Acknowledgements



*My country and my religion is a target for Taliban. There were many bomb blasts and always big wars and terrible attacks. Shia people have arms, legs, noses hacked off, necks slashed, plus there is rocket fire and missiles. This is because I am Shia. All this means no one is safe and now because I escaped. I am in detention.<sup>32</sup>*

Unaccompanied child, Nauru Regional Processing Centre, May 2014



Drawing by primary school aged child, Christmas Island, 2014.

# 4. An overview of the children in detention

In March 2014 there were 584 children in detention centres on mainland Australia and 305 children detained on Christmas Island. A further 179 children were detained on Nauru.

This report gives voice to these 1,068 children. It describes their circumstances and the impacts that detention has had on their lives and on the lives of their parents.

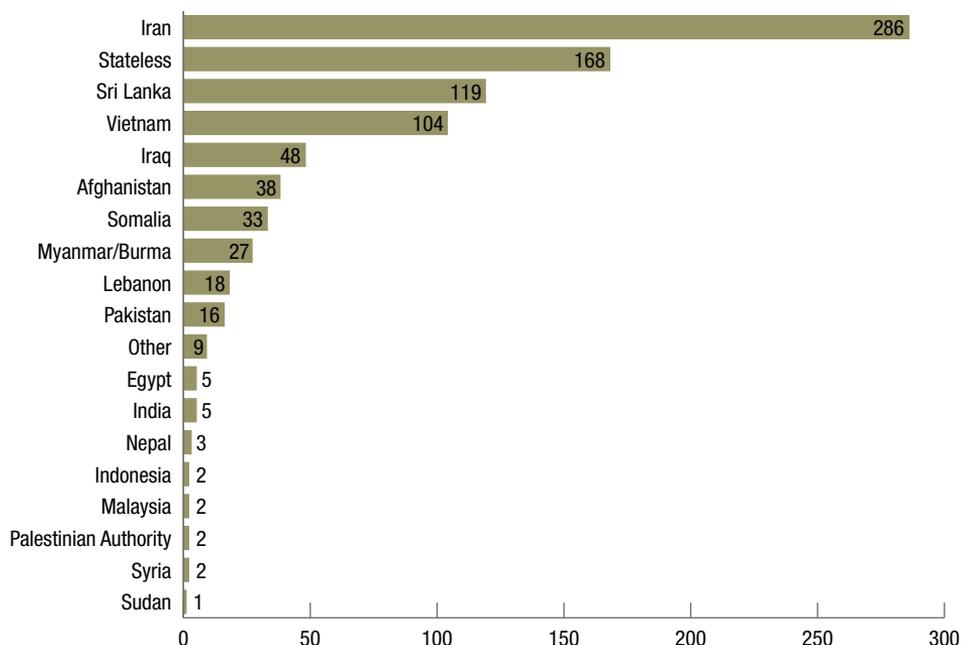
Overwhelmingly, the children who were interviewed for this Inquiry describe detention in negative terms. While they feel safe from the physical harms they escaped in their home countries, they describe detention as ‘prison-like’, ‘depressing’ and ‘crazy-making’.

## 4.1 Nationalities of the children in detention

The majority of children in detention centres travelled to Australia by boat without a visa. They came from over 20 different countries, the largest group being born in Iran. The second largest group were children with no recorded citizenship or nationality who identified as ‘stateless’ and are predominantly of Rohingya ethnic origin; a minority group who suffer systematic discrimination in Myanmar.<sup>33</sup>

Other major groups of children include those from Sri Lanka, Vietnam, Iraq, Afghanistan and Somalia respectively. See Chart 5 for information about the recorded nationalities of children in detention.

**Chart 5: Children in detention by nationality, 31 March 2014**



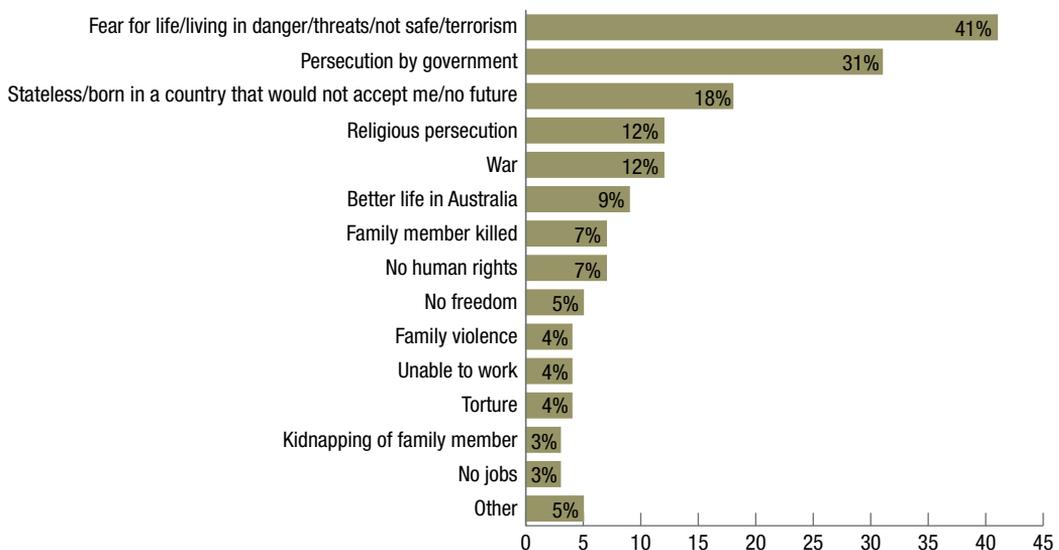
Source: Australian Human Rights Commission analysis of data from Department of Immigration and Border Protection<sup>34</sup>

## 4.2 Reasons for seeking asylum

Almost all of the children in detention centres are asylum seekers who arrived in Australia by boat and are classified under the Migration Act as ‘unauthorised maritime arrivals’.<sup>35</sup>

As part of the Inquiry interview process, children and their parents were asked to explain why they decided to come to Australia. The most common response was ‘fear for life or safety’. The second most common response was that they were ‘escaping persecution by government’. Their responses are detailed in Chart 6.

**Chart 6: Responses by children and parents to the question: Why did you come to Australia?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia 2014, 833 respondents (Note: respondents can provide multiple responses)

Many children and parents spoke of conflict and a lack of safety in their homeland.

*You know I'm Syrian, my country has war that's why I'm here. If my country was good I don't need Australia.*<sup>36</sup>

(Child, Nauru Regional Processing Centre, May 2014)

*There was no safety or assurance of life in [country], we do miss our country but we have to safeguard our lives.*

(Mother of 6 week old baby, Inverbrackie Detention Centre, Adelaide, May 2014)

Children and parents spoke of being targeted and persecuted for belonging to particular religious or ethnic minorities in their home countries.

*I am originally from Iraq, I am Kurdish, and was forced to go to Iran. In 1982, they killed my father during a period of political unrest and conflict. They singled out our family ... arrested my older brother, he was sent to prison for four or five years, we were under surveillance, we had to move.*

(Father of two children aged 7 and 11 years, Melbourne Detention Centre, May 2014)

*I am a person who came from Myanmar. In our country, our Muslim people were unable to live properly. Our Muslim people were killed, tyrannised, persecuted and treated unjustly. Our religious institutes were burnt down. Our Muslim peoples were not allowed to sleep at night. Although the Thein Sein government knew about such unjust treatments, nothing was said, nothing was solved. As we could not bear these problems, we came to Australia to build a new life.<sup>37</sup>*

(Child, Nauru Regional Processing Centre, May 2014)

Children and their parents were at pains to explain that their decision to come to Australia was not opportunistic, but rather borne out of necessity to escape the dangers in their homeland.

*I am a thirteen years old boy that came to Australia with my parents and my eight years old brother for better and brighter future. We took the risk of this dangerous way because we had no other option. I heard Australian politicians say Iranian people come to Australia because of their economic problems. But we weren't poor in our country. We weren't hungry, homeless, jobless and illiterate. We immigrate because we had no freedom, no free speech and we had [a] dictatorship.<sup>38</sup>*

(13 year old boy, Nauru Regional Processing Centre, May 2014)

Many children described instances of significant trauma that occurred before they arrived in Australia. For some, the difficult or terrifying boat journey to Australia from Indonesia compounded the horrors that they experienced in their home country.

*My father and brother were killed. I saw death on the way here. I wouldn't be here if I didn't have to be.*

(Unaccompanied child, Construction Camp Detention Centre, Christmas Island, 4 March 2014)

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.

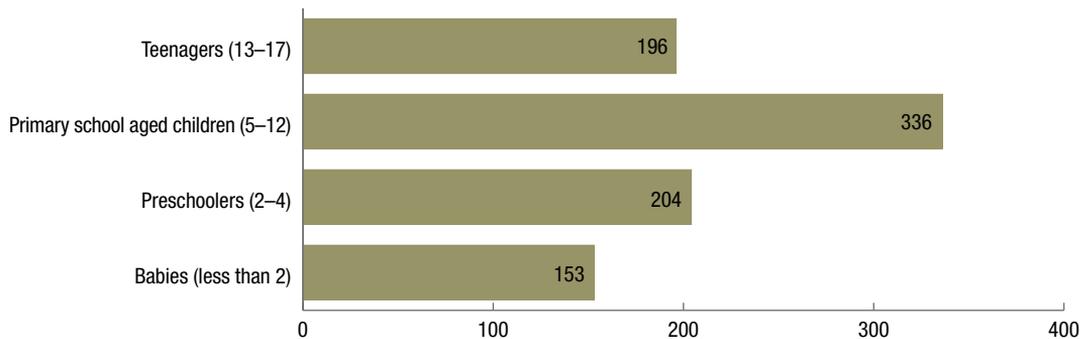
## 4.3 Age of children in detention

The majority of children in detention in Australia are of primary school age. The second largest group is that of preschoolers; being children aged 2 to 4 years old. Babies make up 17 percent of all children in detention. From January 2013 to March 2014, there were 128 children born to mothers in detention centres in Australia.<sup>39</sup>

Chart 7 details the ages of children in detention in Australia.

## 4. An overview of the children in detention

**Chart 7: Children in detention by age, 31 March 2014**



Source: Australian Human Rights Commission analysis of data from Department of Immigration and Border Protection<sup>40</sup>

### 4.4 Unaccompanied children

Some children make the journey to seek asylum in Australia without parents or an adult guardian.

In March 2014 there were 56 unaccompanied children in detention centres in Australia. Seventeen unaccompanied children were detained on the Australian mainland and 39 were held on Christmas Island. A further 27 unaccompanied children were detained on Nauru. The majority of unaccompanied children came from Afghanistan, Myanmar, Somalia and Iran. All are teenagers aged between 15 years and 17 years.<sup>41</sup>

While in Australia, under the *Immigration (Guardianship of Children) Act 1946* (Cth) their legal guardian is the Minister for Immigration and Border Protection.

Unaccompanied children are particularly vulnerable in detention because they are without any family.

*Sometimes I have nightmares about the past but there's no parent figure here to assist. I live in fear and I have lost my parents.*

(Unaccompanied child, aged 16 years, Phosphate Hill, Christmas Island Detention Centre, 4 March 2014)

*Being without my family, I was very alone and sad. At 14, I didn't know what to do. I had to find an Iranian family who I got friends with. They helped me. If they didn't help me I would have been sick and sad.*<sup>42</sup>

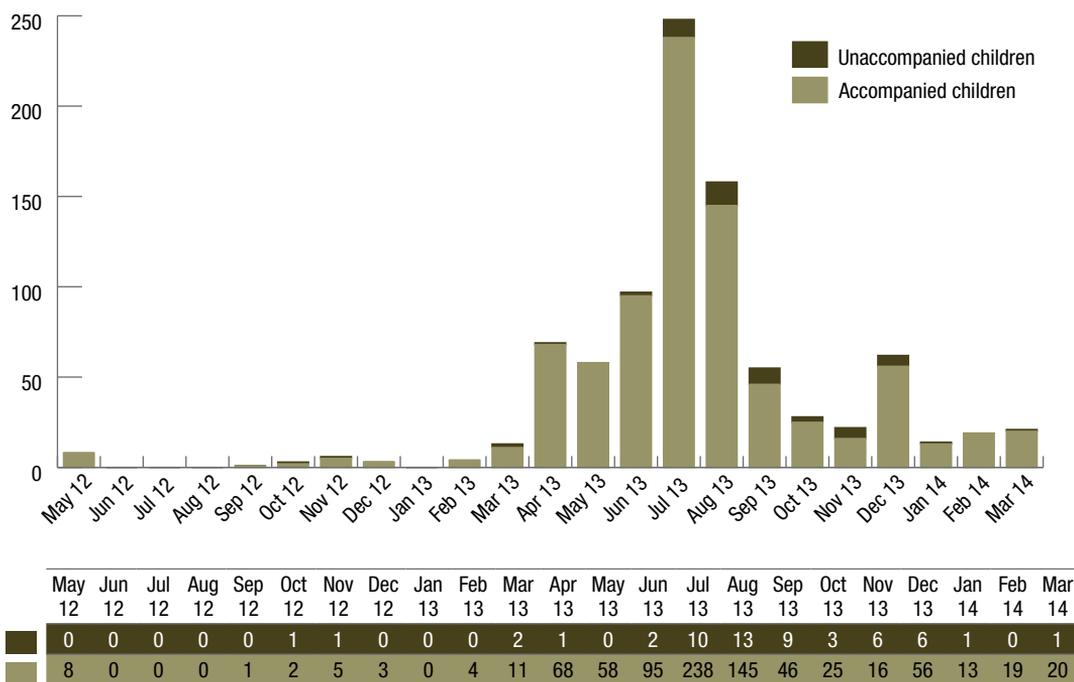
(Unaccompanied child, previously detained on Christmas Island, May 2014)

### 4.5 When did the children arrive in Australia?

Under current Government policy all asylum seekers who arrived by boat on or after 19 July 2013 are to be transferred to Nauru or Manus Island detention centres unless the Minister determines otherwise.<sup>43</sup> This policy was introduced by the previous Labor Government in 2013 and has been continued by the current Coalition Government.

Chart 8 shows that most of the children in detention arrived between June 2013 and September 2013. There are approximately 520 children in Australia, including 50 unaccompanied children, who arrived on or after 19 July 2013, and are subject to transfer to Nauru.<sup>44</sup>

**Chart 8: Children detained as at 31 March 2014 by month of arrival, May 2012 to March 2014\***



\*Includes babies born in detention and six children in detention who are not unauthorised maritime arrivals.

Source: Australian Human Rights Commission analysis of data from Department of Immigration and Border Protection<sup>45</sup>

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.

## 4.6 How long are children kept in detention?

Under Australian law, there is no prescribed limit to the time a child can be detained. Asylum seekers have no idea when their refugee status will be assessed or how long they will be held in detention. Many children and their parents lamented the uncertainty of their detention and the lack of information about what to expect in the future. Some told the Inquiry that even prisoners know the end date to their sentence.

## 4. An overview of the children in detention

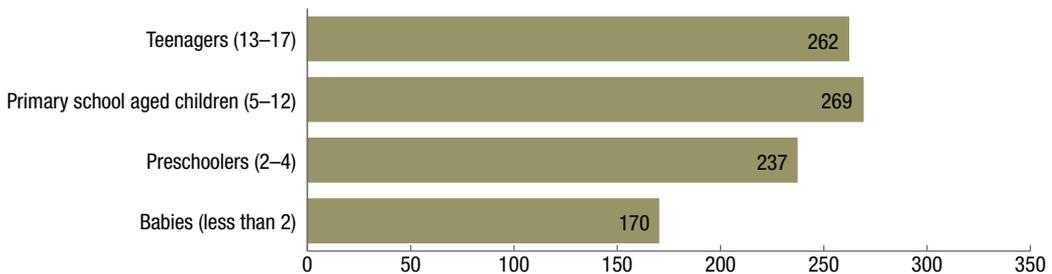
*Prisoners have better treatment. We don't know when we will be free ... Our hope is slowly going. Maybe I will be killed like Reza Berati on Manus Island.*

(Unaccompanied child, Phosphate Hill Detention Centre, Christmas Island, 4 March 2014)

In March 2014, children in Australian detention centres had been held for 231 days (approximately 8 months) on average. By September 2014, the average length of detention for children and adults was one year two months.<sup>46</sup>

Chart 9 shows that teenagers and primary school aged children have been detained for the longest period of time compared with preschoolers and babies.

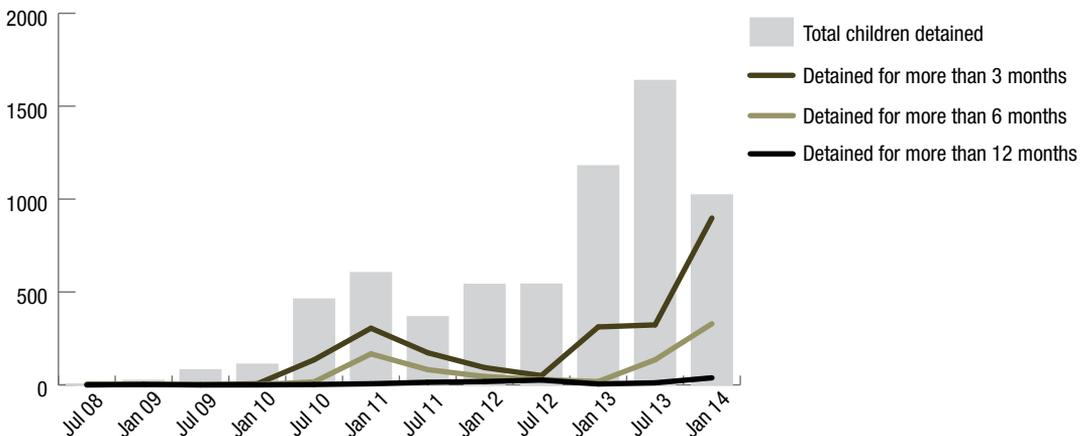
**Chart 9: Average length of detention (days) by age group, March 2014**



Source: Australian Human Rights Commission analysis of data from Department of Immigration and Border Protection<sup>47</sup>

Chart 10 shows that the population of children in detention dropped in the period July 2013 to January 2014 while the length of detention increased.

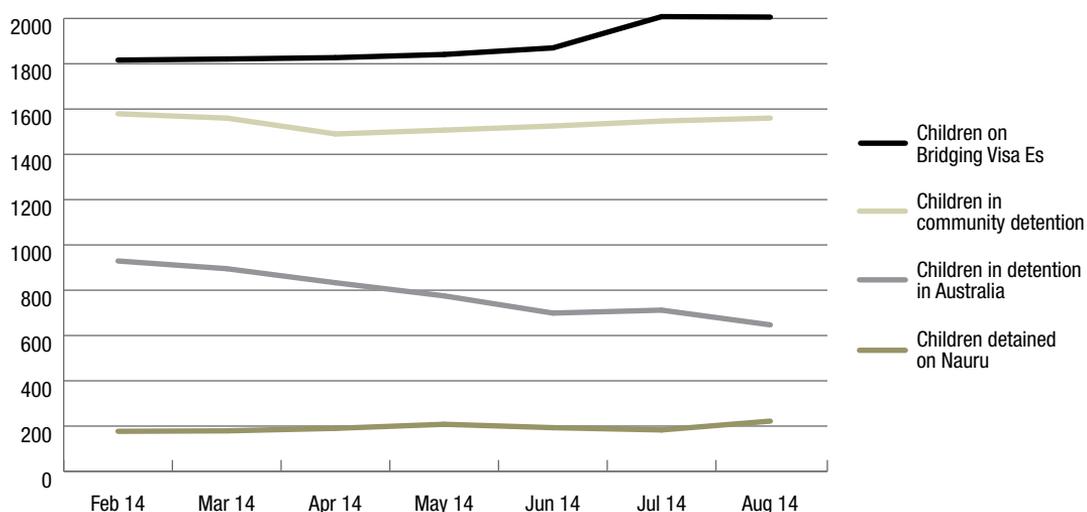
**Chart 10: Number of children in detention and length of time in detention, July 2008 to January 2014**



Source: Australian Human Rights Commission analysis of data from Department of Immigration and Border Protection<sup>48</sup>

During the period of the Inquiry, the numbers of children in detention on mainland Australia and Christmas Island were reducing. The reasons for this reduction were that children were being released on bridging visas, children were being moved into Community Detention, or children were being transferred to detention on Nauru. Chart 11 shows the reducing numbers of children in detention in Australia and the increase in numbers of children released into the community or moved to detention on Nauru.

**Chart 11: Numbers of children in detention in Australia, on Bridging Visa E, in Community Detention and in detention on Nauru by month, February 2014 to August 2014**



Source: Australian Human Rights Commission analysis of data from Department of Immigration and Border Protection<sup>49</sup>

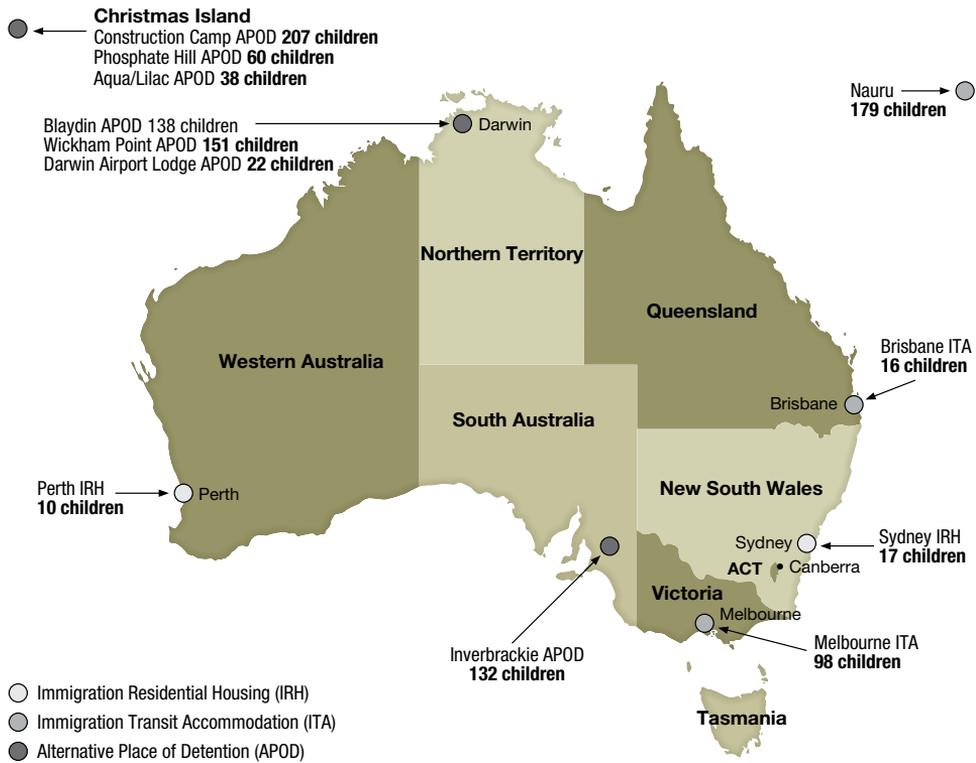
## 4.7 Movement of children across the detention network

Many children detained in Australia have been moved between different detention centres. Children are moved for many reasons, including access to healthcare, or other services that are not available in their current centre. Seventy-one percent of children and parents reported that they had been moved at least once.<sup>50</sup>

Some children had been moved to Australia from Nauru for health reasons. Others were brought back from Nauru or Papua New Guinea because they were incorrectly age assessed. Families are also temporarily moved to the mainland from Christmas Island or Nauru for health reasons and mothers are moved for the delivery of their babies.<sup>51</sup> Within a few weeks of delivery, new mothers are returned to Christmas Island. Mothers of newborns from Nauru had not been returned to Nauru at the time of writing this report.

Chart 12 shows the number of children in immigration detention in Australia and Nauru and the facilities where they are being held.

**Chart 12: Children in detention by location, 31 March 2014**

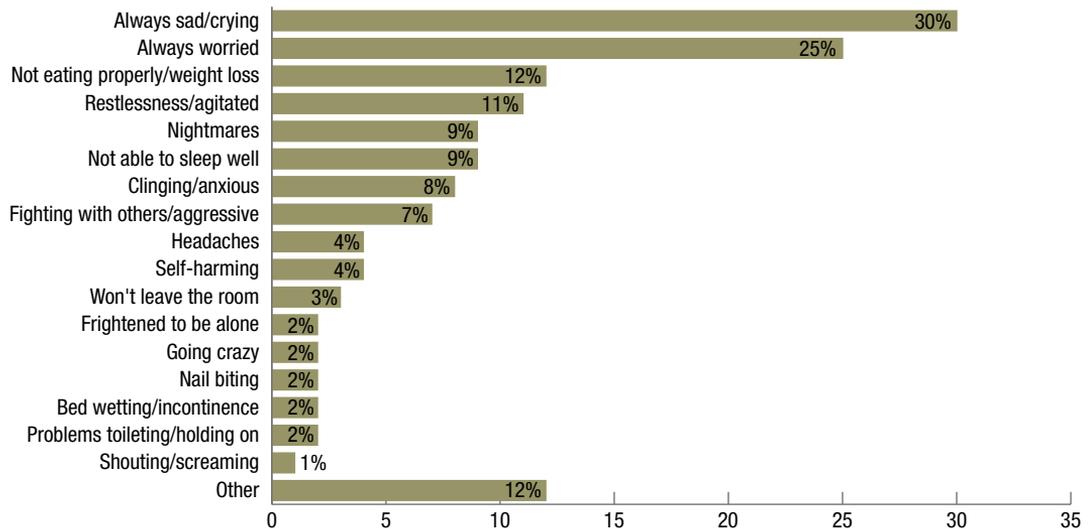


Source: Adapted from Department of Immigration and Border Protection map<sup>52</sup>

## 4.8 Mental health and wellbeing of children in detention

Evidence to this Inquiry indicates that detention has significant negative impacts on the mental health and wellbeing of children. Eighty-five percent of children and parents indicated that their emotional and mental health had been affected since being in detention. There were no positive responses to detention – the most common impact on the emotional health of children and their parents were feelings of sadness and ‘constant crying’. Almost all children and their parents spoke about their worry, restlessness, anxiety and difficulties eating and sleeping in detention. Their responses are at Chart 13.

**Chart 13: Responses by children and parents to the question: How has your emotional and mental health been impacted by detention?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia 2014, 327 respondents (Note: respondents can provide multiple responses)

The mental health screening of children in detention shows alarming results both in the rates of mental disorder in these children and in the severity of their symptoms.

Detention medical staff conducted mental health assessments of 243 children aged between 5 to 17 years in detention centres in Australia and on Christmas Island from April 2014 to June 2014.

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.<sup>53</sup> Less than two percent of children in the Australian population have mental health disorders at this level.

The former Director for Mental Health, International Health and Medical Services described these results as ‘very concerning’.<sup>54</sup>

... it’s quite clear that we’ve got a large number of children with significant mental distress and disorder in this population.<sup>55</sup>

The screening tool used to assess children and adolescents in detention from April to June 2014 was the *Health of the Nation Outcomes Scales for Children and Adolescents* (HoNOSCA). While this tool is used as part of routine clinical practice in mental health services in Australia, it has only recently been introduced into detention centres for assessing children.<sup>56</sup> Therefore this 2014 data is the only clinical data that can be used as a baseline to assess the mental health of children in detention as a cohort.

... the HoNOSCA is ... used in Australian mental health services universally ... it’s part of the standard outcome measures ... it’s considered to be reliable and a measure which is useful to apply in different populations and that’s why it’s chosen for that purpose.<sup>57</sup>

## 4. An overview of the children in detention

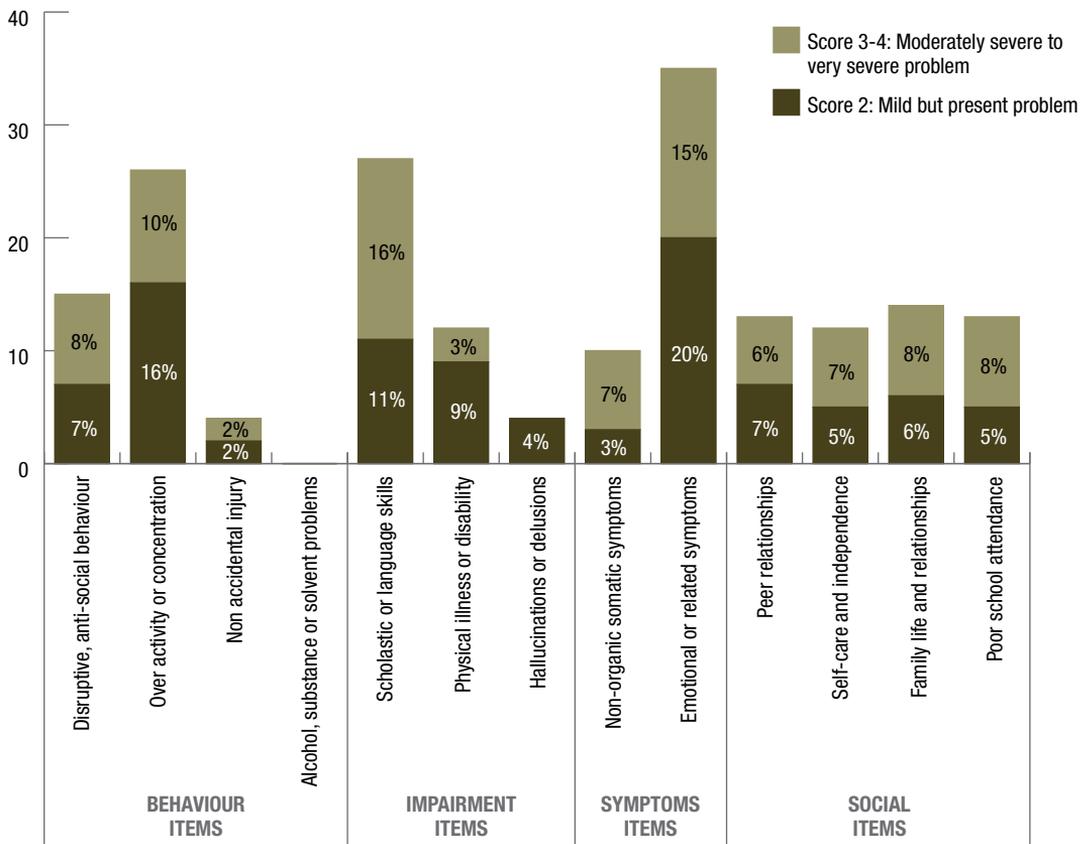
The HoNOSCA has a 5 point scale which measures the severity of mental health disorders across different behaviours, symptoms and social functioning.

0 = no problem, 1 = minor problem requiring no action, 2 = mild problem but definitely present, 3 = moderately severe problem, 4 = severe to very severe problem.<sup>58</sup>

The HoNOSCA assesses mental health across four domains: behavioural items, impairment items, symptom items and social items. According to HoNOSCA assessments, children in detention show very high levels of emotional disorder, over activity, poor concentration and impairments in scholastic and language development.

Chart 14 shows the HoNOSCA scores of children with (i) mild but present mental health problems and (ii) moderately severe to very severe mental health problems.

**Chart 14: Percentages of children with (i) mild but present mental health problems and (ii) moderate to very severe mental health problems; HoNOSCA scores of children in Australian detention centres, April – June 2014<sup>59</sup>**



Research demonstrates that prolonged and uncertain periods of detention both cause and exacerbate mental illness; for example:

- In 2004 psychiatric assessments of families held in immigration detention for more than two years revealed that ‘adults displayed a threefold and children a tenfold increase in psychiatric disorder subsequent to detention’ and that ‘the majority of adults and children had more than one psychiatric disorder’; and
- In 2010 the Australian Government commissioned a study by Janette P Green and Kathy Eagar to analyse the health records of 700 people in immigration detention. The study found that ‘there is a clear association between time in detention and rates of mental illness’.<sup>60</sup>

The Department of Immigration and Border Protection, the Australian Government and the Opposition accept the detrimental mental health impacts of prolonged detention on children.<sup>61</sup> In evidence to the Inquiry at the third public hearing, the Secretary of the Department of Immigration and Border Protection discussed the negative impacts of prolonged detention:

... there is a reasonably solid literature base which we’re not contesting at all which associates a length of detention with a whole range of adverse health conditions.<sup>62</sup>

Despite acknowledging these long term impacts, when the Department was presented with the first HoNOSCA data, the Head of *Detention Health Operations* 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.<sup>63</sup>

The HoNOSCA assessments provide the first set of comprehensive clinician-rated data which allow for assessments of the long term impacts of detention on children as individuals and as a cohort. This data is essential to track and map how children are progressing over time and whether the detention environment has specific impacts on children. It is the most reliable method for medical staff to assess whether the mental health of children is deteriorating or improving. It can tell the Department of Immigration and Border Protection this same information.

Children in detention have had periodic mental health assessments for several years. This involves an initial mental health assessment when they enter detention, a more comprehensive follow up assessment that occurs between 10 and 30 days in detention, and periodic assessments at 6 months, 12 months and every 3 months thereafter. At 18 months there is a separate review by a psychiatrist. The assessments were conducted in the same way for adults and children and involved a general health questionnaire and the use of a self-reporting instrument.

However, prior to 2014, no consistent child-specific mental health assessment tool has been applied during the years that children have been detained in Australian detention centres.

There is no doubt that the children themselves have noticed the impacts of detention on their emotional and mental health. Children spoke openly about the stressors of the detention environment to Inquiry staff.

*Living here is hard. The tension in here and the tension from home. Too much sad[ness] ... whenever I call home they ask when I will be released. I tell them Inshalla (God willing) ... Many people here are hurting themselves. Boys cutting hands, arms ... I was thinking about that.*

(Unaccompanied child, Christmas Island, 4 March 2014)

## 4. An overview of the children in detention

*I've changed a lot, I'm not fun anymore. I'm just thinking about bad stuff now ... I was thinking of become a doctor but not anymore.*

(15 year old child, Nauru Detention Centre, May 2014)<sup>64</sup>

*We are getting crazy in here.*

(Unaccompanied child, Nauru Detention Centre, May 2014)<sup>65</sup>

*It affects the people's mind and the children too. They have 10 months on the detention that means they get crazier and upset.*

(Unaccompanied child, Nauru Detention Centre, May 2014)<sup>66</sup>

### 4.9 Detention is a dangerous place

From January 2013 to March 2014 there were numerous assaults and self-harm incidents in detention centres in Australia where children are held. They include:

- 57 serious assaults
- 233 assaults involving children
- 207 incidents of actual self-harm
- 436 incidents of threatened self-harm
- 33 incidents of reported sexual assault (the majority involving children); and
- 183 incidents of voluntary starvation/hunger strikes (with a further 27 involving children).<sup>67</sup>

The Commission is deeply concerned by these numerous incidents of assault, sexual assault and self-harm. The Commission has viewed the case files detailing incidents of reported sexual assault involving children. Given the seriousness of these incidents, the Commission considers that some may come within the scope of the terms of reference of the Royal Commission into Institutional Responses to Child Sexual Abuse. The Commission intends to communicate these concerns to the Royal Commission.

In instances where Commission staff were advised of sexual assaults involving children, these were reported to the Department of Immigration and Border Protection. It is understood that the Department is investigating all incidents of sexual assault.

### 4.10 Rates of self-harm amongst children

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. One hundred and seventy-one children threatened self-harm.<sup>68</sup> The age of children involved in self-harm ranged from 12 to 17 years old.<sup>69</sup>

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.<sup>70</sup>

The following extracts from the Department's 'Incident Detail Reports' document individual acts of self-harm by children.<sup>71</sup> These reports reveal that many children attribute their self-harming behaviour to the conditions and length of time in detention; their feelings of isolation and uncertainty; and their reactions to news about their immigration status.

*Client stated to Serco his sister is getting married next Monday back in his country and he was really angry and frustrated because he can't make his presence in the family function. He also said he is getting more upset whenever he thinks too much about his prolonged detention life.*

(Report concerning a 17 year old boy who was found with ten self-inflicted cuts to his forearm)

*He told me that he had been feeling stressed for the last two days, mainly because he missed his friends and Auntie in Canada ... he had been having thoughts race through his head and wanted to stop them.*

(Report concerning a 16 year old boy who drank insect repellent)

*When asked, M said that he had cut himself due to being in detention for a long time and that he was tired of being here.*

(Report concerning a 17 year old boy who during a 15 month period self-harmed on nine occasions and threatened self-harm on two occasions)

*[He] inflicted several small cuts to his right arm and attributed this to a feeling of sadness as he is still in detention and cannot provide support for his family. This has been made worse by other clients telling Master B that he would be in detention for at least 9 months because he has family in Australia.*

(Report concerning a 15 year old boy who inflicted several cuts to his forearm).

## 4.11 Mental health of parents

Parents in detention are suffering from high rates of mental distress, mental ill-health and trauma according to evidence provided to the Inquiry. According to the Regional Director of Medical Services for International Health and Medical Services, 30 percent of adults have a mental health problem and the severity and rates of these problems increase with the length of time in detention.<sup>72</sup>

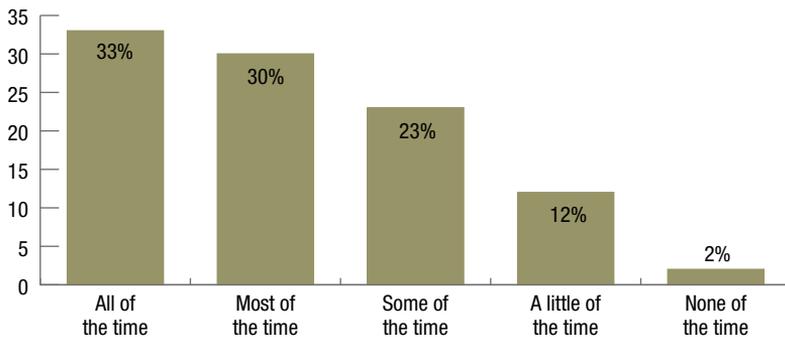
... a clinician rated tool ... shows that as in adults we have about 30% of people with mental health issues and that is linked and increases with the length of the time in detention. We would assume that that is a similar picture in children and adolescents...<sup>73</sup>

The mental health assessments show that 30 percent of adults had moderate to severe mental health conditions when they were tested between January and March 2014.<sup>74</sup>

Only two percent of parents reported to the Inquiry that they were not depressed at any time while 33 percent of parents reported that they felt depressed *all of the time*. Their responses are at Chart 15.

## 4. An overview of the children in detention

**Chart 15: Responses by parents to the question: How often do you feel depressed?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia 2014, 253 respondents

The Harvard Trauma Questionnaire is the tool that is used to test for Post-Traumatic Stress Disorder (PTSD). Medical staff in detention centres conducted an assessment of 251 adults in detention; specifically adults who reported torture and trauma experiences. These assessments found high rates of elevated trauma scores, with 38 percent having a score that is indicative of a clinical diagnosis of PTSD.<sup>75</sup>

These rates are significantly higher than in the Australian population where 6.4 percent of the population is likely to be suffering from this condition at any given time.<sup>76</sup>

According to the *Detention Health Framework* and the Departmental policy for *Identification and Support of Survivors of Torture and Trauma*, people with symptoms of PTSD should be in less restrictive community based detention and all should have their refugee cases dealt with expeditiously.<sup>77</sup>

Mentally unwell adults can have negative impacts on the development of children. When parents are mentally unwell, the probability of harm increases because parents have a crucial role in shaping the trajectory of their child's life.<sup>78</sup>

... offspring of depressed parents have rates of depression that are between two and four times higher than their counterparts from homes without parental illness. These offspring also have an increased risk for a range of mental health disorders.<sup>79</sup>

The high rates of depression and unhappiness amongst parents are causing anxiety amongst children in detention.<sup>80</sup> Parents expressed their concerns about these impacts on children.

*It's not very safe – their father is sad and depressed. [We] try not to show kids but they see. When I cry, my daughter asks 'why crying?'*

(Mother of preschooler, a primary school aged child and baby, Blaydin Detention Centre, Darwin, 12 April 2014)

A number of parents reported serious mental health problems and attempts at suicide or self-harm. In one case a mother who had made three suicide attempts reported that she had thoughts of harming her children.

*Dying is better than living ... I want to die ... I cannot tolerate this environment.*

*[I] lock myself in room; I lose it sometimes; I become agitated. They [Department of Immigration and Border Protection] made me sick ... [I am] no longer having thoughts of harming my children, but they are surviving, not living ... my children say we don't want Australia, we want you alive.*

(Mother of children aged 6 months, 8 and 11 years who has attempted suicide three times and has ongoing suicidal ideation, Melbourne Detention Centre, 7 May 2014)

A mother who had been transferred from Nauru to Melbourne Detention Centre for medical reasons after making two suicide attempts said: 'I'm a nervous wreck'.<sup>81</sup>

*Every day they come home [from school] and ask us [is there any news]...The only thing that keeps me going is my children and hope for my children.*

(Father of two children aged 11 and 7 years, Melbourne Detention Centre, 7 May 2014)

A mother of three who had self-harmed on Christmas Island expressed her distress:

*Enough is enough. I have had enough torture in my life. I have escaped from my country. Now, I prefer to die, just so my children might have some relief. I have reached the point I want to hand over my kids.*

(Mother of three children, Construction Camp Detention Centre, Christmas Island, 17 July 2014)

Medical experts assisting the Inquiry described mental health impacts on both parents and their children in the following terms:

Almost all parents reported that they themselves had symptoms of depression, anxiety or were on anti-depressant medication, and that their children had poor sleep, nightmares, poor appetite and behavioural problems.<sup>82</sup>

## 4.12 Children with disabilities

In July 2014 there were 28 children in detention who were assessed as having a disability.<sup>83</sup> These children had spent 11 months in detention on average and are aged between 2 and 17 years old.<sup>84</sup>

The types of disabilities include:

- Hearing disabilities
- Vision disabilities
- Developmental disabilities including autism, developmental delays, conduct disorder, reactive attachment disorder
- Functional impairments including congenital heart disease and muscular dystrophy
- Epilepsy
- Spinal deformity
- Congenital kidney anomaly<sup>85</sup>

In July 2014 there were 36 children in detention who were assessed as having a mental illness or a mental health disorder. Chart 16 shows the ages of these children and types of mental health disorder.

#### 4. An overview of the children in detention

**Chart 16: Children in detention assessed as having a mental health disorder / illness, 10 July 2014**

| AGE OF CHILD | NATURE OF MENTAL HEALTH DISORDER  | MONTHS IN DETENTION AT JULY 2014 |
|--------------|---|----------------------------------|
| 2            | Childhood or adolescent disorder or social functioning attachment disorder                    | 11                               |
| 3            | Depression  | 11                               |
| 7            | Adjustment disorder; mixed anxiety disorder of social functioning; attachment disorder        | 9                                |
| 7            | Adjustment disorder; depressive disorder  | 11                               |
| 7            | Adjustment disorder   | 11                               |
| 7            | Anxiety disorder; post-traumatic disorder   | 11                               |
| 8            | Anxiety disorder; personality disorder (post-injury)  | 11                               |
| 8            | Anxiety disorder; major depressive disorder   | 16                               |
| 9            | Depressive disorder   | 12                               |
| 9            | Mixed anxiety and depressive disorder; post-traumatic stress disorder                         | 11                               |
| 9            | Adjustment disorder; mixed anxiety and depressive disorder; post-traumatic stress disorder    | 11                               |
| 9            | Adjustment disorder; mixed anxiety and depressive disorder                                    | 12                               |
| 9            | Anxiety disorder  | 15                               |
| 10           | Post-traumatic stress disorder  | 12                               |
| 10           | Anxiety disorder; post-traumatic stress disorder  | 11                               |
| 11           | Depression  | 11                               |
| 11           | Depressive disorder   | 11                               |
| 12           | Post-traumatic stress disorder  | 12                               |
| 12           | Adjustment disorder; depressive disorder  | 11                               |
| 13           | Depression – psychotic; mixed anxiety and depressive disorder; post-traumatic stress disorder | 11                               |

| <b>AGE OF CHILD</b> | <b>NATURE OF MENTAL HEALTH DISORDER</b>   | <b>MONTHS IN DETENTION AT JULY 2014</b> |
|---------------------|---|---|
| 13                  | Post-traumatic stress disorder  | 7                                       |
| 14                  | Depression; disorder – adjustment   | 12                                      |
| 14                  | Adjustment disorder; anxiety disorder; depressive disorder; post-traumatic stress disorder    | 11                                      |
| 14                  | Depressive disorder; mixed anxiety and depressive disorder                                    | 11                                      |
| 15                  | Adjustment disorder; depressive disorder  | 11                                      |
| 15                  | Anxiety disorder; depressive disorder; personality disorder; post-traumatic stress disorder   | 11                                      |
| 15                  | Mixed anxiety and depressive disorder   | 11                                      |
| 15                  | Depressive disorder   | 11                                      |
| 16                  | Adjustment disorder; mixed anxiety and depressive disorder                                    | 11                                      |
| 16                  | Post-traumatic stress disorder  | 7                                       |
| 16                  | Depression  | 14                                      |
| 16                  | Post-traumatic stress disorder  | 8                                       |
| 16                  | Mixed anxiety and depressive disorder; post-traumatic stress disorder                         | 12                                      |
| 17                  | Adjustment disorder; post-traumatic stress disorder   | 10                                      |
| 17                  | Anxiety with depression; disorder – bipolar; mood disorder; depressed mood                    | 11                                      |
| 17                  | Depression; disorder – bipolar; adjustment disorder; attention deficit hyperactivity disorder | 11                                      |

Source: Data from Department of Immigration and Border Protection<sup>96</sup>

## 4. An overview of the children in detention

### CASE STUDY 1:

#### Family with hearing disability in detention

The following case study is of a family comprising two profoundly deaf adults and their profoundly deaf child. This family initially met the Inquiry team on Christmas Island in March 2014. They were later moved to a detention centre in Darwin where the Inquiry team met them for a second time in April 2014. At the second meeting the child was 19 months old.

The parents reported that their hearing aids had been ruined on the boat journey to Australia. Their 19 month old daughter had no hearing aid. At the time Inquiry staff met with the family they had been in detention for over six months, being three months on Christmas Island and three months in Darwin. During this time they had no hearing aids and were unable to communicate with anyone in the detention centre without extreme difficulty.

The parents said that they felt socially isolated because they could not communicate with other people and they were unsure about what their future held because they didn't understand the conditions of their detention. They also reported concerns about their baby's language development without a hearing aid, telling the Inquiry that their baby was 'not using her voice at all'.

They said that they struggled to communicate and to play with her, and were not able to hear when she was crying.

The first language of both parents is sign language and they reported that they often had to rely on a Farsi interpreter to communicate with Departmental officials, Serco officers and medical staff. The lack of a sign language interpreter meant that the parents had to lip-read. This made communication and comprehension extremely difficult.

The parents had their hearing assessed in December 2013 and were fitted with hearing aids in May 2014, seven months after they first arrived in Australia. The child also had an audiology appointment in December 2013. As of August 2014 she was being assessed for the most appropriate hearing assistance.

### 4.13 Children's views about detention

Children and their parents consistently described detention as a 'prison'. Many described the sense of injustice they felt at having fled unsafe situations to now be held in detention.

*I left my country because there was a war and I wanted freedom. I left my country. I came to have a better future, not to sit in a prison. If I remain in this prison, I will not have a good future. I came to become a good man in the future to help poor people ... I am tired of life. I cannot wait much longer. What will happen to us? What are we guilty of? What have we done to be imprisoned?<sup>87</sup>*

*I'm just a kid, I haven't done anything wrong. They are putting me in a jail. We can't talk with Australian people.*

(13 year old child, Blaydin Detention Centre, Darwin, 12 April 2014)

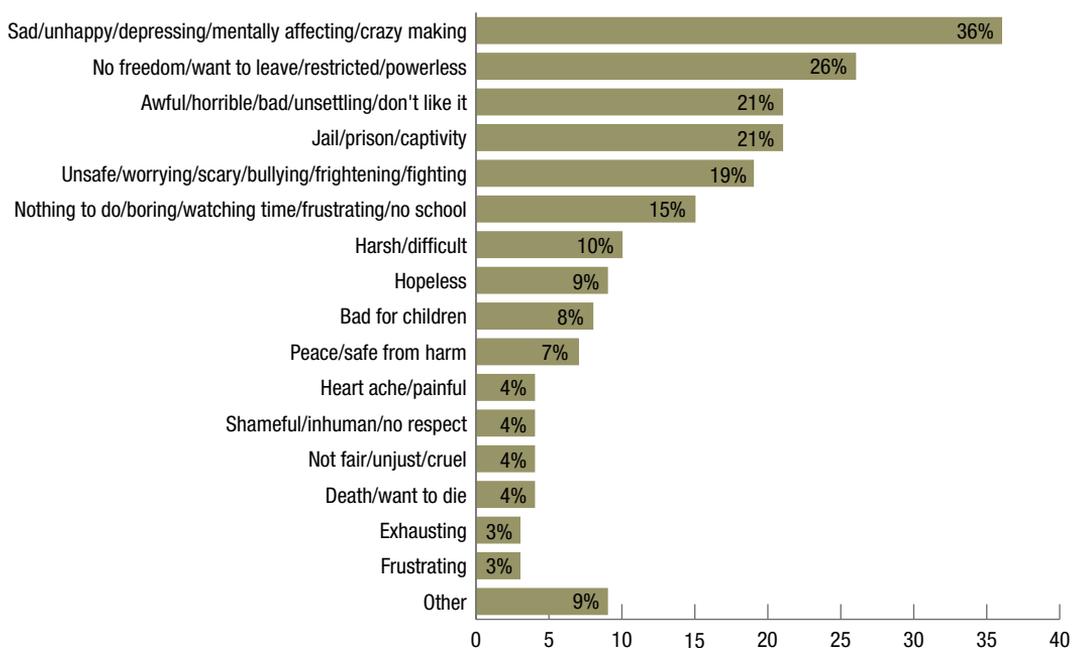
*We came from war and were hoping for freedom here. My own country never locked me up. Here there are women's rights but we are locked up.*

(Mother of a 9 month old baby, Inverbrackie Detention Centre, Adelaide, 12 May 2014)

Children in detention live in very different circumstances depending on where they are detained and their housing conditions vary dramatically. They range from tents on Nauru, to 'containerised accommodation' on Christmas Island to suburban style housing villas at Inverbrackie, Adelaide.

As part of the Inquiry questionnaire, Inquiry staff asked children and their parents to describe their experience of immigration detention in three words – positive or negative. Their responses in Chart 17 reveal overwhelmingly negative sentiments.

**Chart 17: Responses by children and parents to the question: Use three words to describe the experience of detention**

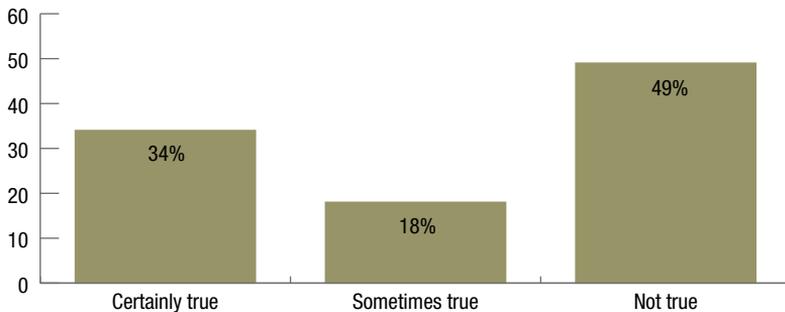


Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia 2014, 723 respondents (Note: respondents can provide multiple responses)

Children and their parents were asked to describe their emotional state since arriving in Australia and living in detention. Despite having left conflict zones or having fears for their safety in their home country, 49 percent of children and their parents were not happier since arriving in Australia. Their responses are at Chart 18.

#### 4. An overview of the children in detention

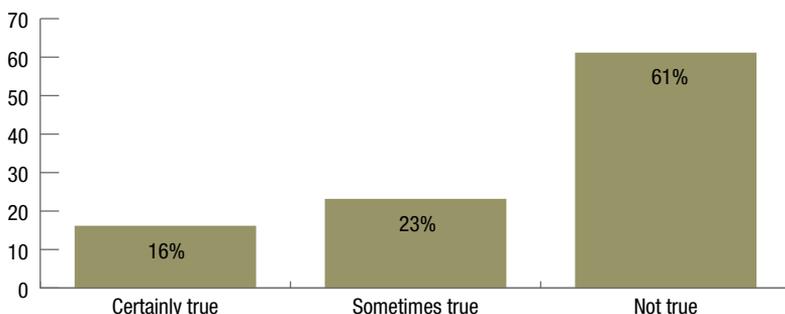
**Chart 18: Responses by children and parents to the question: Are you happier since coming to Australia?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia 2014, 530 respondents

The high levels of unhappiness amongst children and their parents may be partially explained by the fact that 61 percent of children and their parents were not relaxed in the detention environment. Only 16 percent of respondents described feeling relaxed in detention. Their responses are at Chart 19.

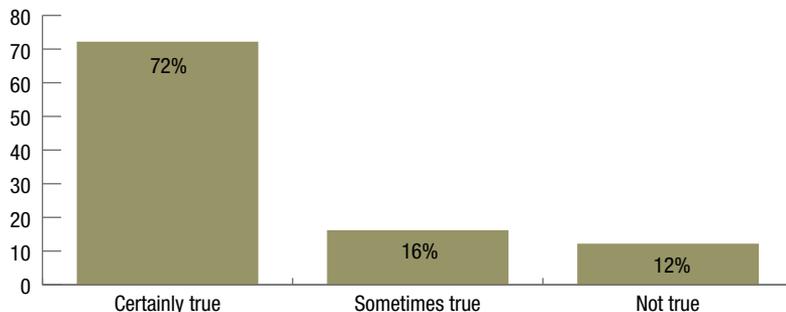
**Chart 19: Responses by children and parents to the question: Are you relaxed in your current living arrangements?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia 2014, 459 respondents

High numbers of children and parents reported that they have many worries in detention. Seventy-two percent of children and their parents said that they often feel worried at Chart 20.

**Chart 20: Responses by children and parents to the question: Do you have many worries or often feel worried?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia 2014, 462 respondents

Many children and their parents described the boredom and frustration of the detention environment with few opportunities for recreation or education.

*There is nothing to do here, only eating, sleeping, [and] English classes.*

(Unaccompanied child, Construction Camp Detention Centre, Christmas Island, 4 March 2014)

*I want to study more; I can't study when I am living here. At my age I can't learn with other children. When I go to school the Principal says I can't be with Australian children, they keep us separate. I want to be with Australian children. I am waiting for the day I can study like Australian children. It's very awful.*

(14 year old girl, Wickham Point Detention Centre, Darwin, 11 April 2014)

*Can we have some toys please? Here there are only baby toys. We'd like some cars to play with, Lego, a bicycle. We have no visitors, no toys.*

(Child aged 12, Melbourne Detention Centre, 7 May 2014)

*Children should not be in detention because there is nothing to do, just eat, sleep ... no school, no sport, nothing, no idea about what will happen ... One day I tried to go to gym but they said I am too young for gym. It was very hot. We just slept.<sup>88</sup>*

Children spoke of the hopelessness which they felt about the future, the lack of certainty about a timeframe for the assessment of their refugee claims and the fear of being sent to Nauru or Manus Island.

*I have many problems in the camp. I cannot find peace. If I am released from the camp that would be good, if not, I will go crazy in this camp.<sup>89</sup>*

(Unaccompanied 17 year old, Nauru Regional Processing Centre, May 2014)

*My hope finished now. I don't have any hope. I feel I will die in detention.*

(Unaccompanied 17 year old, Phosphate Hill Detention Centre, Christmas Island, 4 March 2014)

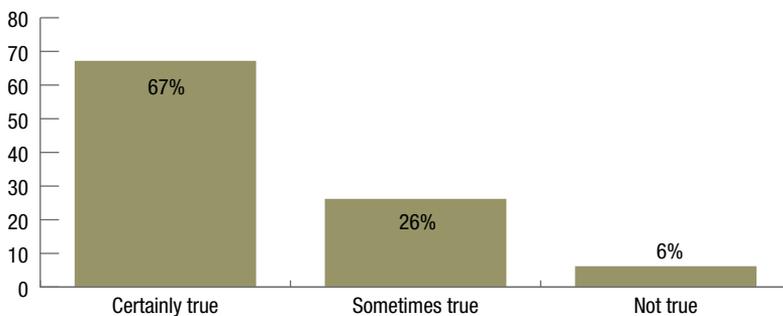
## 4. An overview of the children in detention

*Now I have lost my motivation to learn or speak English and this has stopped me from being able to learn. I came here for a better future. I feel pretty hopeless and that I won't get anything out of this. Every time I go to bed I have flashbacks from the times I was on the sea and the situation we are in now ... it is hopeless.*

(Unaccompanied 15 year old, Bravo Compound, Christmas Island Detention Centre, 16 July 2014)

Chart 21 shows that 67 percent of children and their parents were often unhappy, depressed or tearful.

**Chart 21: Responses by children and parents to the question: Are you often unhappy, depressed or tearful?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia 2014, 483 respondents

### 4.14 The right to identity

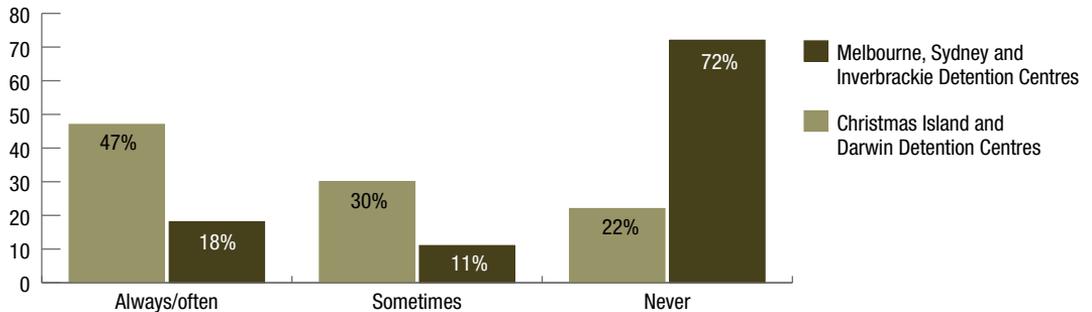
*People were called by boat ID. People had no value. No guards called me by name. They knew our name, but only called by boat ID.*

(Boy who was detained as a 16 year old, Community Interview, Sydney, 5 August 2014)

Almost 50 percent of detainees who spoke with the Inquiry at Christmas Island and Darwin detention centres reported that Serco officers called them by a boat ID rather than their name. A boat ID comprises a few letters and numbers given to asylum seekers who arrive by boat. It is a unique identifier provided to each individual by the Department of Immigration and Border Protection.

Asylum seekers who are subject to the 19 July 2013 policy of transfer to Nauru or Manus Island are much more likely to be called by their boat ID than other asylum seekers. Asylum seekers who arrived on or after 19 July 2013 are detained at Christmas Island and large numbers are temporarily located at Darwin where they can receive health treatment. Chart 22 shows how often people in different detention centres reported being identified by their boat ID.

**Chart 22: Responses of children and parents to the question: How often are you identified by your boat ID?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia 2014, 234 respondents

Paediatrician Professor Elliott noted that on Christmas Island ‘detainees refer to themselves by their ‘boat number’ in written and oral communication.’<sup>90</sup> More than 30 percent of children on Christmas Island signed their drawings with their boat ID before presenting them to Inquiry staff.

*Boat number has become like our first name.*

(13 year old child, Blaydin Detention Centre, Darwin, 12 April 2014)

Australia has an obligation under article 8(1) of the *Convention on the Rights of the Child* to ‘respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.’

A child rights NGO, ChilOut, reported that ‘children in detention respond to their boat ID numbers and know their friends’ ID numbers.’<sup>91</sup>

So institutionalised are people, that families with newborn babies were worried when their babies had no ID tag. Some families were at a loss to understand where their baby officially fitted given he/she was not Australian, was not a national of the parent’s homeland and did not even have a Serco ID tag.<sup>92</sup>

The Commission has long held that referring to children by a boat ID is dehumanising.<sup>93</sup> This view is supported by Dr Mares and Professor Elliott who assisted the Inquiry team on visits to Christmas Island.<sup>94</sup> Some of the children told Inquiry staff that it made them feel like criminals. One unaccompanied 17 year old detained on Christmas Island said ‘I feel like a killer when they use my boat number’.

## 4.15 Inquiry findings relevant to *all* children in detention and to children held on Christmas Island

The findings of this chapter relate to *all* children in detention and cover the issues that affect children in detention as a *total* cohort. The findings in this chapter are also relevant to children held on Christmas Island.

The findings in other chapters are divided according to the child's stages of life. Chapters 6 to 9 contain findings about babies, preschoolers, primary school aged children and teenagers, respectively.

Chapters 10 to 12 contain findings in relation to specific cohorts of children including unaccompanied children, children who are indefinitely detained and children on Nauru.

### Findings relevant to all children in detention

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.

**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. Mandatory detention does not consider the individual circumstances of children nor does it address the best interests of the child as a primary consideration. This is contrary to Australia's obligations under article 3(1) of the *Convention on the Rights of the Child*.**

**Detention for a period that is longer than is strictly necessary to conduct health, identity and security checks breaches Australia's obligations under the *Convention on the Rights of the Child* to:**

- **detain children as a measure of last resort (article 37(b)) and for the shortest appropriate period of time (article 37(b))**
- **ensure that children are not arbitrarily detained (article 37(b))**
- **ensure prompt and effective review of the legality of their detention (article 37(d)).**

The fact of detention and the environment in which children are detained impact on children's health, development, safety and dignity.

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.<sup>95</sup> 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.

The clinical data collected by International Health and Medical Services is consistent with extensive medical research about the mental health impacts of detention on children and adults.

Eighty-five percent of children and parents indicated that their emotional and mental health had been affected since being in detention.

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.

**Given the profound negative impacts on the mental and emotional health of children which result from prolonged detention, the mandatory and prolonged detention of children breaches Australia's obligation under article 24(1) of the *Convention on the Rights of the Child*.**

Article 24(1) provides that children have the right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. The Committee on the Rights of the Child has explained that 'health' in article 24 should be understood as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity' (see General Comment No 15, paragraph 4). The right to the highest attainable standard of mental health is an essential aspect of the guarantee provided by article 24(1).

The Committee on the Rights of the Child has stated that it interprets children's right to health in article 24 as an inclusive right, which extends 'to a right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health'. (General Comment No 15, paragraph 2).

The fact of detention and the environment in which children are detained also have a range of impacts on children's development, safety and dignity. Chapters 6 to 13 of this report examine in more detail the impact of detention experienced by children at different stages of their development. Based on the work undertaken in the course of the Inquiry, the Commission concludes that **at various times children in immigration detention were not in a position to fully enjoy their rights under articles 6(2), 19(1), 24(1), 27 and 37(c) of the *Convention on the Rights of the Child*.**

Under articles 6(2) and 27 of the Convention, children have a right to a standard of living adequate for their physical, mental, spiritual, moral and social development (article 27(1)), and States have an obligation to ensure this development 'to the maximum extent possible' (article 6(2)). The Committee on the Rights of the Child has reminded States in General Comment No 7 (at paragraph 10):

## 4. An overview of the children in detention

that article 6 encompasses all aspects of development, and that a young child's health and psychosocial well being are in many respects interdependent. Both may be put at risk by adverse living conditions, neglect, insensitive or abusive treatment and restricted opportunities for realizing human potential.

The restrictive detention environment clearly limits children's opportunities for development in terms of experiences and social interactions.

Children are also entitled to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse (article 19(1) of the *Convention on the Rights of the Child*). This is consistent with their right to the highest attainable standard of (physical) health in article 24(1) of the Convention.

However, children in detention 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. There are also significant rates of incidents of violence (including assaults and sexual assaults) in detention centres in which children are detained; many of the incidents directly involve children.

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

Children in detention also have the right to be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age (article 37(c) of the *Convention on the Rights of the Child*). Practices in detention centres on Christmas Island and in Darwin of referring to children by their boat IDs rather than their names do not respect the inherent dignity of those children. The requirement that Serco officers conduct head counts four times a day, including by entering children's bedrooms at night, also encroaches upon children's dignity. Article 37(c) is most relevant to the conditions faced by children detained on Christmas Island.

### Findings in relation to conditions of detention on Christmas Island

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. The harsh and cramped living conditions on Christmas Island create particular physical illnesses amongst children.

The children in detention on Christmas Island live in cramped conditions. Families live in converted shipping containers the majority of which are 3 x 2.5 metres. Children are effectively confined to these rooms for many hours of the day as they are the only private spaces that provide respite from the heat. Up until July 2014, families living in the (now closed) Aqua and Lilac Detention Centres shared common bathroom facilities with everyone in those centres.

Children currently detained on Christmas Island had almost no school education for the period; from July 2013 to July 2014. The Department rectified the situation in July 2014.

**At various times children detained on Christmas Island were not in a position to fully enjoy the following rights under the *Convention on the Rights of the Child* as a result of their living conditions in detention:**

- **the right to enjoy ‘to the maximum extent possible’ the right to development (article 6(2))**
- **the right to the highest attainable standard of health (article 24(1))**
- **the right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development (article 27(1))**
- **the right to be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age (article 37(c)).**

In relation to the right to be treated with humanity and respect, the Committee on the Rights of the Child has emphasised that in all situations where children are in detention they should:

be provided with a physical environment and accommodations which are in keeping with the rehabilitative aims of residential placement, and due regard must be given to their needs for privacy, sensory stimuli, opportunities to associate with their peers, and to participate in sports, physical exercise, in arts, and leisure time activities. (General Comment No 10, paragraph 89)

The Commission finds that **the failure of the Commonwealth to provide education to school aged children on Christmas Island between July 2013 and July 2014 is a breach of the right to education in article 28(1) of the *Convention on the Rights of the Child*.**



Drawing by 14 year old, Darwin detention centre, 2014.

# 5. What does the law say about detaining children?

Both domestic and international human rights law are clear when it comes to the detention of children. The detention of a child must only be a measure of last resort.<sup>96</sup>

In fact, section 4AA of the Migration Act explicitly states that ‘a minor shall only be detained as a measure of last resort’.

Contrary to this principle however, in practice the detention of children is the first action of the Australian Government. By requiring the mandatory detention of all non-citizen children in Australia without a valid visa, the law as it currently stands, results in ‘exactly the opposite’ of what is required.<sup>97</sup>

If a government decides that detention is necessary and that there are no acceptable alternatives, there are a number of legal requirements which must be satisfied. Detention must be lawful, must not be arbitrary, and must only be for the shortest appropriate period of time (*Convention on the Rights of the Child*, article 37(b)).

This chapter discusses each of these three legal requirements and assesses current policy and practice against them. This chapter also discusses the requirements of the *Convention on the Rights of the Child* and sets out the minimum obligations necessary to comply with Australia’s duty of care to children in detention; the positive steps that Australia is required to take to ensure that children can develop and thrive; and the ways in which decisions should be made in relation to children.

## 5.1 Mandatory detention and lawfulness

Australia has had a system of mandatory immigration detention since 1992.<sup>98</sup> This means that any non-citizen who is in Australia without a valid visa must be detained.<sup>99</sup> The Migration Act refers to such people as ‘unlawful non-citizens’.<sup>100</sup> Unlawful non-citizens may have arrived in Australia without a visa, or they may have arrived in Australia with a visa which has later expired.

If unlawful non-citizens arrive in Australia by sea, they are referred to as ‘unauthorised maritime arrivals’.<sup>101</sup> Unlawful non-citizens (including unauthorised maritime arrivals) who are detained may only be released from immigration detention:

- (a) if they are granted a visa,<sup>102</sup>
- (b) if they are moved into Community Detention,<sup>103</sup> or
- (c) if they are being removed from Australia.<sup>104</sup>

The first two options are only available at the personal discretion of the Minister for Immigration and Border Protection. Asylum seekers who have arrived by boat may not apply for any visa unless the Minister considers that it would be in the public interest to allow a visa application.<sup>105</sup> The Minister generally has the power to grant a visa of any class to a person who is in immigration detention.<sup>106</sup> However, the Migration Act provides that the Minister does not have a duty to consider whether to exercise this power, even if a request is made by a person in immigration detention.<sup>107</sup>

The Minister also has the power to make a residence determination in favour of a person in immigration detention.<sup>108</sup> The residence determination scheme is more commonly referred to as Community Detention. Again, this is a power that may only be exercised by the Minister.<sup>109</sup> The Migration Act provides that the Minister does not have a duty to consider whether to exercise this power, even if a request is made by a person in immigration detention.<sup>110</sup>

## 5. What does the law say about detaining children?

Under current legislation, asylum seekers who arrive by boat must be taken 'as soon as reasonably practicable' to a Regional Processing Country unless the Minister determines otherwise.<sup>111</sup> Under a combination of policy and law, this scheme of offshore processing applies to all people who arrived by boat, on or after 19 July 2013.

If a person in immigration detention is not granted a visa or a Community Detention placement, then they may continue to be detained while arrangements are made to remove them from Australia.

The High Court has held in *Al-Kateb v Godwin* that it is not contrary to Australian law to keep a person in immigration detention even if the removal of that person from Australia is not reasonably practicable in the foreseeable future.<sup>112</sup> This has been interpreted as authorising immigration detention for an indefinite period of time. For example, the Department of Immigration and Border Protection submitted to the Inquiry that, as a result of this decision, 'there is no time limit on the lawfulness of detention under Australian law'.<sup>113</sup>

However, a more recent unanimous judgment of the High Court in *Plaintiff S4/2014 v Minister for Immigration and Border Protection* casts some doubt on indefinite detention.<sup>114</sup> In this case, the Court confirmed that the Migration Act does not authorise detention at the unconstrained discretion of the Executive. Detention under the Migration Act can only be for the purposes identified in the Act.

The purposes for which a person can be detained under the Migration Act are as follows: determining whether to permit a person to apply for a visa; assessing whether a visa applied for should be granted; and removing a person from Australia. In each case, the purposes must be 'pursued and carried into effect as soon as reasonably practicable' and the duration of lawful detention is 'fixed by reference to what is both necessary and incidental' to carrying out those purposes.<sup>115</sup>

These recent statements by the High Court suggest an interpretation of domestic law that is more in line with a prohibition on arbitrary detention.

The United Nations Committee on the Rights of the Child has expressed deep concern about Australia's policy of mandatory detention and repeatedly recommended that Australia bring immigration and asylum laws into conformity with the *Convention on the Rights of the Child*.<sup>116</sup> Similarly, the United Nations Committee against Torture and the United Nations Human Rights Committee have expressed concern and recommended that Australia abolish mandatory detention.<sup>117</sup>

### 5.2 Arbitrariness

International human rights law requires that detention must not be arbitrary.

Arbitrariness includes elements of inappropriateness, injustice or lack of predictability.<sup>118</sup> To avoid being arbitrary, detention must be necessary and reasonable in all the circumstances of the case, and a proportionate means of achieving a legitimate aim.<sup>119</sup> If that aim could be achieved through less invasive means than detaining a person, their detention will be arbitrary.<sup>120</sup>

The detention of children must be judged in every individual case against legitimate aims which justify detention.

Successive Australian Governments have emphasised that detention is not used as a deterrent to potential asylum seekers.<sup>121</sup> Deterrence is not a legitimate aim which justifies detention.

The Commission acknowledges that use of immigration detention may be legitimate, in some circumstances, for a strictly limited period of time. For example, in particular cases, a brief period of detention may be necessary to conduct health, security and identity checks.<sup>122</sup> In order to avoid detention being arbitrary, however, there must be an individual assessment of the necessity of detention for each person, taking into consideration their individual circumstances. A person should only be held in an immigration detention facility if they are individually assessed as posing an unacceptable risk to the Australian community, and if that risk cannot be met in a less restrictive way. Otherwise, they should be permitted to reside in the community while their immigration status is resolved – if necessary, with appropriate conditions imposed to mitigate any identified risks.

The United Nations Human Rights Committee published a Draft General Comment on arbitrary detention under article 9 of the *International Covenant on Civil and Political Rights* as follows:<sup>123</sup>

Detention in the course of proceedings for the control of immigration is not *per se* arbitrary, but the detention must be justified as reasonable, necessary and proportionate in light of the circumstances, and reassessed as it extends in time. Asylum-seekers who unlawfully enter a State party's territory may be detained for a brief initial period in order to document their entry, record their claims, and determine their identity if it is in doubt. To detain them further while their claims are being resolved would be arbitrary absent particular reasons specific to the individual, such as an individualized likelihood of absconding, danger of crimes against others, or risk of acts against national security. The decision must consider relevant factors case-by-case, and not be based on a mandatory rule for a broad category; must take into account less invasive means of achieving the same ends, such as reporting obligations, sureties, or other conditions to prevent absconding; and must be subject to periodic re-evaluation and judicial review. The decision must also take into account the needs of children and the mental health condition of those detained. Any necessary detention should take place in appropriate, sanitary, non-punitive facilities, and should not take place in prisons. Individuals must not be detained indefinitely on immigration control grounds if the State party is unable to carry out their expulsion.

In a number of cases, the United Nations Human Rights Committee has made findings that Australia's system of mandatory immigration detention results in detention that is arbitrary. This was primarily because:

- prolonged immigration detention, pending the determination of refugee status, was not justified in the light of the individual's circumstances;<sup>124</sup> and
- there was a failure by Australia to demonstrate, in the light of the individual's particular circumstances, that there were not less invasive means of achieving compliance with Australia's immigration policies, such as by the imposition of reporting obligations, sureties or other conditions rather than detention.<sup>125</sup>

Protracted arbitrary detention can also amount to inhuman or degrading treatment. The United Nations Human Rights Committee recently considered two cases dealing with 46 people in immigration detention in Australia who had received adverse security assessments and who had been detained for periods of between 14 months and two years and five months (at the time their complaint was made). The Committee found that their detention amounted to inhuman or degrading treatment in violation of the *International Covenant on Civil and Political Rights*. These findings were based on the combination of the arbitrary character of their detention; its protracted and/or indefinite duration; the refusal to provide them with information and procedural rights; and the difficult conditions of detention which were cumulatively inflicting serious psychological harm upon them.<sup>126</sup>

## 5. What does the law say about detaining children?

### 5.3 Review of detention

Under Australia's international human rights obligations, any child deprived of their liberty should be able to challenge the lawfulness of their detention. Article 37(d) of the *Convention on the Rights of the Child* provides children the right to a review before a court or another competent, independent and impartial authority.

The United Nations Human Rights Committee has declared that for detention to be 'lawful' in this context, it must not only comply with domestic law but also international law. This means that detention must not be arbitrary. Accordingly, in order to guarantee the prohibition on arbitrary detention in article 37(b) of the *Convention on the Rights of the Child*, judicial review of the decision to detain, or to continue to detain, is essential. The court must have the power to review the lawfulness of detention under both domestic legislation and Australia's binding international obligations, including under article 37(b) of the *Convention on the Rights of the Child* to not subject anyone to arbitrary detention. The court must also have the authority to order the person's release if the detention is found to be arbitrary.<sup>127</sup>

Currently, Australia does not provide access to such review. While people in immigration detention may be able to seek judicial review of the domestic legality of their detention, Australian courts have no authority to order that a person be released from detention on the grounds that the person's continued detention is arbitrary and in breach of the *Convention on the Rights of the Child*. This view has been confirmed by the United Nations Human Rights Committee in two recent cases in relation to the equivalent provision in the *International Covenant on Civil and Political Rights*. The Committee said:<sup>128</sup>

In view of the High Court's 2004 precedent in *Al-Kateb v. Godwin* declaring the lawfulness of indefinite immigration detention, and the absence of relevant precedents in the State party's response showing the effectiveness of an application before the High Court in similar more recent situations, the Committee is not convinced that it is open to the Court to review the justification of the authors' detention in substantive terms.

The Committee found in those cases that there had been a breach of article 9(4) of the *International Covenant on Civil and Political Rights*.

### 5.4 Shortest appropriate period of time

The *Convention on the Rights of the Child* makes clear that if the detention of children is necessary in order to achieve a particular aim, then the length of detention should be the shortest appropriate period for the achievement of that aim.<sup>129</sup>

This principle appeared to be supported by both the current and former Ministers for Immigration, who gave evidence to the Inquiry. After announcing new arrangements in relation to bridging visas for children under 10 years old, the Minister for Immigration and Border Protection, the Hon Scott Morrison MP said:

so it is our intention after health, security and identity checks and things of that nature that you are able to move families wherever possible and consistent with the prevailing government policy of offshore processing to have families and children placed in the community so that is our intention and that is our practice.<sup>130</sup>

Similarly, former Minister for Immigration the Hon Chris Bowen MP said that detention:

should be used only for processing for health, identity and security measures. Once the security agencies are satisfied that someone is suitable to be released in the community and their passport checks, there needs to be a good reason not to do so in relation to onshore detention ...<sup>131</sup>

The Commission considers that children should not be detained for longer than is necessary for health, identity and security checks. In instances where children are detained, a review process is required to monitor detention effectively and to assess whether it is justified. The Commission has previously recommended that this review process should occur within 72 hours of being detained and be conducted by an independent body.<sup>132</sup>

Other countries such as Sweden and the United Kingdom generally permit detention for only 48 hours.<sup>133</sup> In Sweden children are normally not to be detained for a period in excess of 72 hours, for ongoing detention further authorisation and exceptional circumstances are required.<sup>134</sup>

If children continue to be detained by Australia after an initial period of assessment, the law should be amended to provide for prompt and periodic review by a court. This review should assess whether detention continues to be justified and guided by four human rights principles:<sup>135</sup>

- detention of children must be a measure of last resort and for the shortest appropriate period of time
- the best interests of the child must be a primary consideration
- the preservation of family unity
- special protection and assistance for unaccompanied children.

## 5.5 Decision-making in relation to children

International human rights law requires that in all actions concerning children, the best interests of the child shall be a primary consideration (*Convention on the Rights of the Child*, article 3). The United Nations Committee on the Rights of the Child describes this as one of the fundamental values of the Convention.<sup>136</sup>

The best interests of the child should be a primary consideration in individual decision-making about a child, and when developing legal frameworks and policies affecting children.<sup>137</sup> If laws or policies lead to results that are not in the child's best interests, review is necessary.<sup>138</sup>

The Department of Immigration and Border Protection's Procedures Advice Manual contains principles for the treatment of children in detention.<sup>139</sup> This guidance requires officers to consider Australia's obligations under the *Convention on the Rights of the Child* when making decisions concerning children. The Department explains the content of the guidance principles as follows:

the guidance requires that officers should consider Australia's obligations under the CRC when making decisions concerning children. In particular, it highlights the obligations under Articles 2 (entitlements without discrimination), 3 (best interests), 6 (survival and development of the child), 7 and 9 (preserving the family unit), 10 (dealing with reunification positively), 12 (consideration of the child's views), 20 (special assistance for children without family), 28 (education) and 37 (detention as a last resort).

## 5. What does the law say about detaining children?

The guidance notes that Australia has an obligation to treat the best interests of the child as a primary consideration in all actions concerning children, but that the best interests of the child must be considered with other considerations, including those that arise under the Migration Act and the Migration Regulations. As such, it notes that consideration of the best interests of a child does not necessarily require a decision to allow the child or the child's family to remain in Australia and may be outweighed by other primary considerations.<sup>140</sup>

A summary of Departmental policies and procedures is set out in Appendix 7.

Aspects of Australia's migration policy therefore sit at odds with the *Convention on the Rights of the Child*. Examples include the requirement to detain child asylum seekers on arrival in Australia, and the requirement to transfer children who are unauthorised maritime arrivals to a Regional Processing Country as soon as is reasonably practicable. Officers are required by the Migration Act to carry out these tasks, regardless of whether it would be in the child's best interests.

In addition to this broad principle, the *Convention on the Rights of the Child* identifies refugee children and unaccompanied children as likely to be vulnerable and require particular assistance.

Article 22 requires that governments ensure that children seeking refugee status are provided with appropriate protection and humanitarian assistance. Article 20 provides that special protection and assistance be available for unaccompanied children.

### 5.6 Minimum conditions of detention

Minimum standards for the protection of children in detention are set out in the *Convention on the Rights of the Child*:

- Children in detention should be treated with humanity and respect.<sup>141</sup>
- Children in detention have the right to prompt access to legal and other appropriate assistance, and the right to challenge the legality of their detention before a court or other independent body.<sup>142</sup>
- Children have a right to remain with their parents (unless contrary to their best interests), and to have their family protected from arbitrary or unlawful interference.<sup>143</sup>
- Children should not suffer torture or cruel, inhuman or degrading treatment or punishment.<sup>144</sup>
- Children should be protected from all forms of physical or mental violence, injury or abuse while in the care of parents, legal guardians or any other person that has the care of the children.<sup>145</sup>

The Convention sets out a range of obligations on countries to ensure that children can develop and thrive.

Key rights contained in the *Convention on the Rights of the Child* are:

- Every child has a right to life, to survival and to development.<sup>146</sup>
- Children have the right to health and access to healthcare services, including pre- and post-natal healthcare for their mothers.<sup>147</sup>
- Children have the right to education, and to play and engage in recreational activities.<sup>148</sup>
- Every child is entitled to respect for his or her rights without discrimination.<sup>149</sup>

The Commission has published *Human rights standards for immigration detention*, which sets out benchmarks for the humane treatment of people held in immigration detention.<sup>150</sup>

## 5.7 Duty of care

The Department of Immigration and Border Protection recognises that it has a duty of care to all people in immigration detention facilities.<sup>151</sup> The Department has undertaken the care, supervision or control of people in detention in circumstances where those people might reasonably expect that due care will be exercised.<sup>152</sup>

The Commonwealth Ombudsman has considered the scope of this duty and found that:<sup>153</sup>

detainees are particularly vulnerable to harm – especially psychological harm – for a range of reasons. These include the circumstances that caused them to seek refuge in Australia in the first place, which often includes a history of torture and trauma; their loss of connection with family and community and their social isolation; their inability to provide or make meaningful decisions for themselves; and the anxiety caused by the lack of certainty about their future. These vulnerabilities can be exacerbated by the conditions of their detention, particularly overcrowding, exposure to self-harm incidents, and lack of meaningful activities. These vulnerabilities can also be exacerbated by anxiety about, and frustrations with, immigration decision-making processing, and especially by the length of their detention.

Because the department has a high level of control over particularly vulnerable people, its duty of care to detainees is therefore a high one. It is not enough for the department to avoid acting in ways that directly cause harm to detainees. It also has a positive duty to take action to prevent harm from occurring.

Similar comments have been made by the New South Wales Coroner, who noted that people in detention are ‘at much greater risk of suicide than the general community’ due in part ‘to the loss of their families, freedom, status and work’.<sup>154</sup> For this reason, those responsible for people in detention ‘owe a greater than normal duty of care to those persons regarding their health and wellbeing’.<sup>155</sup>

## 5.8 Findings in relation to detention law, policy and practice

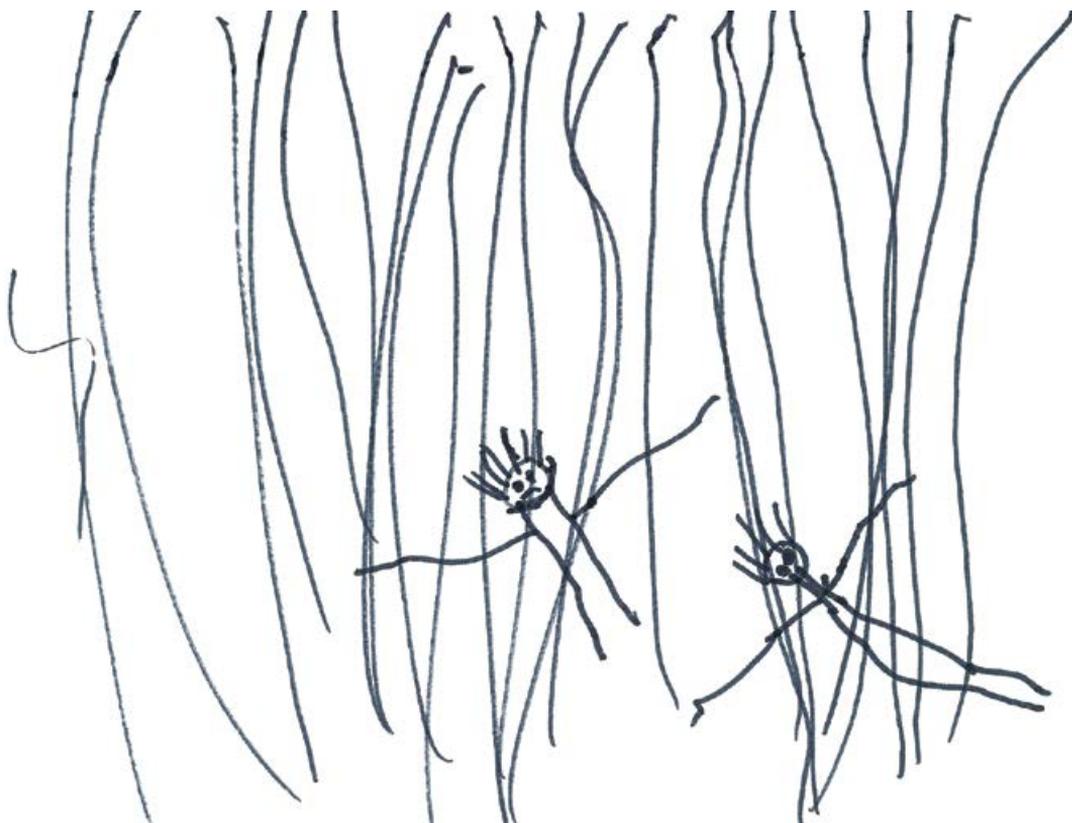
Current detention law, policy and practice does not address the particular vulnerabilities of asylum seeker children nor does it afford them special assistance and protection. Mandatory detention does not consider the individual circumstances of children nor does it address the best interests of the child as a primary consideration (article 3(1)).

Detention for a period that is longer than is strictly necessary to conduct health, identity and security checks breaches Australia’s obligations to:

- detain children as a measure of last resort and for the shortest appropriate period of time (article 37(b))
- ensure that children are not arbitrarily detained (article 37(b))
- ensure prompt and effective review of the legality of their detention (article 37(d)).

*Nothing, not even the birth of my child can make me feel happy. I don't know what family means. I haven't been able to form a bond since the birth of my two month old daughter because of how I feel being in detention...No one can understand – you have to see what it's like here, even for just one hour...be thankful you have your home.*

Mother of a 2 month old baby, Melbourne Detention Centre, 7 May 2014



Drawing by preschool age girl, detained 420 days, Christmas Island, 2014

# 6. Mothers and babies in detention

The early years of a child's life provide the foundation for mental, physical and emotional health and wellbeing.<sup>156</sup> The World Bank *Early Childhood Framework* sets out some key requirements for children under the age of 2 years. These include:

- responsive and sensitive parenting
- appropriate motor, sensory and language stimulation
- adequate nutrition and health care
- protection from physical danger.<sup>157</sup>

This chapter reports on the impacts of the detention environment on the physical and emotional health and wellbeing of children under the age of 2 years through the four domains set out by the World Bank. The chapter concludes with a description of a serious self-harm event involving mothers and babies on Christmas Island in July 2014.

In March 2014 there were 153 children under the age of 2 years living in immigration detention across the Australian mainland and on Christmas Island.<sup>158</sup> On average, babies under the age of 1 had been detained for 118 days and children aged between 1 and 2 years had been detained for 226 days.<sup>159</sup> From the period January 2013 to March 2014, 128 babies were born into detention.<sup>160</sup>

## 6.1 Responsive and sensitive parenting

The initial attachment that a baby has with parents or caregivers provides them with a secure base for exploration and learning.<sup>161</sup> If the caregiver has a mental illness or is severely distressed, it is more difficult to see and provide for the child's emotional and physical needs.<sup>162</sup> This may impact on the child's social, emotional, cognitive and language development.<sup>163</sup>

*Due to my mental state, I feel that my baby is being neglected.*

(Mother of baby, Melbourne Detention Centre, 7 May 2014)

*I cannot tolerate this environment. I was given Diazepam to help with sleep but I don't want to take the drug as it affects my ability to feed my baby.*

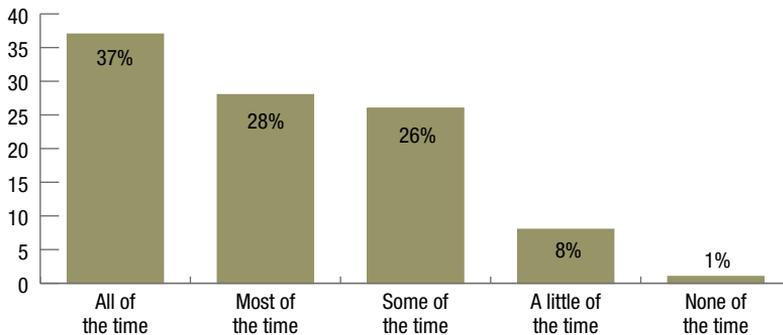
(Mother of a 6 month old baby, Melbourne Detention Centre, 7 May 2014)

At the second public hearing, Professor of Developmental Psychiatry, Dr Louise Newman made the following observation about babies and their ability to bond with parents:

The very young children are more likely ... [to] have attachment difficulties. We saw young children in detention environments with very poor relationships with their parents who are distressed, depressed, unable to interact with the children in the way they normally would. So in that case children develop what we would call an indiscriminate attachment, trying to have attachments with anyone.<sup>164</sup>

Parents of infant children were asked how often they felt sad as part of the Inquiry questionnaire. A majority of parents (65 percent) reported that they felt sad 'most of the time' or 'all of the time'. Chart 23 shows the responses of 103 parents of infants under 2 to this question.

**Chart 23: Responses by parents with children under the age of 2 to the question: How often do you feel sad?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 103 respondents

Elizabeth Elliott, Professor of Paediatrics and Child Health accompanied the Inquiry team to Christmas Island in July 2014. She reported:

The mask and gag of the profound depression we saw in so many desperate young mothers will disrupt the mother-child bond, with lasting adverse impacts on development and mental health of their children.<sup>165</sup>

### 6.2 Pregnant women in Australian detention centres

Pregnant women and women who have recently given birth are especially vulnerable to their physical and emotional environment.<sup>166</sup> The detention environment can be very difficult for pregnant women and new mothers as birthing often occurs in isolation from familiar people, with limited access to interpreters.<sup>167</sup>

The Inquiry received evidence from various sources regarding mental ill-health and post-natal depression amongst mothers who had given birth in detention:<sup>168</sup>

... many [mothers] showed a decrease in self-care, a wooden facial expression and slowed movements. Typical of severe depression, some mothers were observed to be unresponsive to increasingly distressed babies. This is a red flag warning for later infant's psychosocial and developmental difficulties unless the mother is helped.<sup>169</sup>

Guy Coffey, a Clinical Psychologist with extensive experience in detention environments described the traumatic histories of some pregnant women in detention:

Some expectant mothers have very significant trauma histories which predispose them to post natal psychological complications. For example one pregnant woman had lost an infant at sea; another had a history of political persecution which included rape, the kidnapping of siblings, and ongoing death threats and intimidation by government authorities.<sup>170</sup>

Pregnant women and their partners told the Inquiry staff that they were having many difficulties in the detention environment.

*They gave her antidepressant[s] even though she is pregnant. Then they said, 'just go back then if you don't like it'.*

(Husband of pregnant woman, Christmas Island Detention Centre, March 2014)

*It is very difficult to be pregnant here ... I am not happy to be pregnant here.*

(Pregnant mother of two children, Melbourne Detention Centre, 7 May 2014)

Dr Sarah Mares, Child and Family Psychiatrist described the limited support for pregnant women and the difficulties in caring for a baby at Christmas Island in her report to the Inquiry:

The harsh, hot and public environment in detention with limited antenatal care, limited neonatal and paediatric expertise, limited facilities or supports for infant care and no choice about diet and exercise, contribute to high levels of anxiety and depression. This in turn makes caring for a new baby very difficult and can reduce maternal emotional availability and sensitivity, increasing the developmental risks for the baby.<sup>171</sup>

## 6.3 Pregnancies on Nauru

Evidence to this Inquiry shows a pattern of fear amongst pregnant women about the conditions of detention on Nauru.<sup>172</sup> Dr Sue Packer, a Paediatrician who accompanied the Inquiry team to Inverbrackie Detention Centre, reported that parents of newborns were terrified of being taken to Nauru and that they particularly feared for their babies there.<sup>173</sup>

The Inquiry team spoke to the parents of a 2 month old baby at the Melbourne Detention Centre who had spent five months detained on Nauru before being transferred to the mainland for the birth of their baby. The mother described the difficulties of being pregnant and having to line up for showers on Nauru and living in tents. She claimed she was suicidal on Nauru and since the birth of her baby in Melbourne she had hardly left her room. 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'.<sup>174</sup>

Clinical Psychologist, Guy Coffey, confirms the difficulties of detention on Nauru for pregnant women and new mothers:

The mothers I have spoken with regard a return to Nauru as unconscionable. Their views are of course informed by their recent experience ... there appears to be a high incidence of post-natal depression in women who have been transferred from Nauru to the mainland for the birth of their infant and ... this requires further investigation.<sup>175</sup>

Dr Sanggaran, a General Practitioner who had previously worked at Christmas Island, gave evidence to the Inquiry about a pregnant woman being sent to Nauru:

So this is the lady who came to Christmas Island and due to the lack of capabilities in terms of antenatal care we were unable to determine whether or not she had twins. She believed that she had twins and thinking that she did have twins she was sent to Nauru. In the context of a conversation with the medical director about the capabilities of Nauru, the discussion progressed and I was told that she was sent to Nauru as an 'example' of how this was to show that even [though] you're pregnant with twins there will be no advantage and you [will] still be sent to Nauru.<sup>176</sup>

## 6.4 Babies with no nationality

Since 1 October 2013, at least 12 babies have been born in detention to mothers who have no recorded nationality.<sup>177</sup> These mothers are generally of Rohingya ethnic origin and come from Myanmar where they have no status as citizens and are not recorded in the census.<sup>178</sup>

Under the *Convention on the Rights of the Child*, Australia has obligations to newborns. Article 7 requires that newborns:

shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

Under the *Convention on the Rights of the Child*, Australia is obliged to ensure the rights of children to a nationality 'where the child would otherwise be stateless'.<sup>179</sup>

Australia has addressed this obligation through section 21(8) of the *Australian Citizenship Act 2007* (Cth) which provides that people born in Australia who would otherwise be stateless are eligible to become Australian citizens. Children who are born in Australia to stateless asylum seekers can apply for Australian citizenship.<sup>180</sup>

The Federal Circuit Court has recently held that a baby born in Australia to stateless asylum seeker parents was an 'unauthorised maritime arrival'.<sup>181</sup> If a person is an unauthorised maritime arrival, an officer must take the child to a regional processing country as soon as reasonably practicable.<sup>182</sup>

The lawyers for the plaintiff in the Federal Circuit Court case have indicated that they intend to appeal. There are also two Bills currently before Parliament that propose to deal with the status of babies born in Australia of asylum seeker parents in different ways.

The Migration Amendment (Protecting Babies Born in Australia) Bill 2014 (Cth), a private members bill introduced by Greens Senator Hanson-Young, proposes that any children born in Australia not be considered to be unauthorised maritime arrivals.

The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 (Cth), introduced by the Government, proposes that children born in Australia to unauthorised maritime arrivals be considered to be unauthorised maritime arrivals.

## 6.5 Miscarriages, deaths and terminations

The Department of Immigration and Border Protection advised that for the period 1 January 2013 until 31 March 2014, there were 19 reported miscarriages in detention centres.<sup>183</sup>

Between 1 January 2013 and 31 March 2014, eight detainees died in immigration detention facilities; seven adults and one baby. The baby died at Royal Darwin Hospital on 15 October 2013.<sup>184</sup>

The Commission requested information about pregnancy terminations but was advised by the Department that this information is not available.

In a submission to this Inquiry, the Asylum Seeker Resource Centre reported on requests for pregnancy terminations from women living in the Nauru Detention Centre.

... three women who have terminated their pregnancy because they believed that their babies would die in detention ... these are often first babies for the couples and the mothers have told me that the conditions on Nauru are so harsh that they do not believe their babies would survive. These women report hours in queues for meals, medication, showers, toilets and clothing. They are exhausted from these days of standing in queues.<sup>185</sup>

A further submission from a child's rights NGO, ChilOut, provided information about requests for terminations from women on Nauru.

...at least four requests and that two terminations (at least) have been carried out – all four families were transferred from Nauru to the Australian mainland. In all cases, the motivating factor for exploring the termination option has been that the family cannot perceive how they can raise a baby on Nauru ... Women (not just these four) are fearful of their health whilst pregnant detained on Nauru, they are terrified of giving birth on Nauru and extremely worried about the health impacts the environment may have on a newborn child. In all four cases, the women have expressed that if it were not for their immigration detention on Nauru, they would very much want to have these babies.<sup>186</sup>

## 6.6 Family separation

Pregnant women held offshore on Nauru and women held on Christmas Island are transferred to mainland Australia when they are 34 weeks pregnant.<sup>187</sup> The Inquiry received evidence that this process has regularly resulted in separation of mothers from partners and children and that these separations are extremely distressing and have impacts on child-parent relationships.<sup>188</sup>

Clinical Psychologist, Guy Coffey, reported on these separations of families on Nauru:

A number of mentally unwell pregnant mothers transferred from Nauru waiting between a week and a month to be joined by their husbands... found the separation distressing and did not understand why it needed to occur.<sup>189</sup>

One father of a 6 month old baby and a 5 year old boy at Construction Camp Detention Centre, Christmas Island, explained that his wife had been transferred alone to Darwin to give birth to their daughter. After one month the family was reunited in Darwin. The father said that for some time during the separation, his son hated his mother as he thought she had abandoned him. The father explained that his son has serious mental health issues. The boy was abducted in Iran and this trauma was compounded when he was separated from his mother for the birth of his sister. The mother was under 24 hour surveillance for self-harm or suicide risk when the Inquiry team visited her at Construction Camp Detention Centre, Christmas Island, in July 2014.<sup>190</sup>

The Australian Red Cross reports provided to the Inquiry by the Department for the period from 1 July 2013 to 31 May 2014 contain accounts of 15 pregnant women (or their partners) separated from their families either during pregnancy or when they had been transferred to give birth.<sup>191</sup>

In its submission to this Inquiry, the Forum of Australian Services for Survivors of Torture and Trauma reported on the impact of family separation at the time that the mother gives birth:

A mother in detention was flown to Darwin to give birth to her baby, being separated from her husband and 4 year old daughter who had to stay behind on Christmas Island. She found the birth traumatic as a result of her husband and child not being allowed to be with her. Her husband was only flown to Darwin 3-4 weeks after the baby was born, and the mother feels that the father missed out on the opportunity to bond with his newborn son.<sup>192</sup>

## 6. Mothers and babies in detention

The Department of Immigration and Border Protection reported that there are policies to ensure that nuclear family members remain together wherever possible, including when pregnant women are transferred to the mainland for medical assessment or birth.<sup>193</sup> However the Department acknowledged:

... on some occasions in the past, there were temporary separations of family when medical assessment or treatment have been sought for one member in a different location.<sup>194</sup>

In May 2014 the Department advised that the policy and practice of keeping members of nuclear families together had recently been reinforced and strengthened.<sup>195</sup>

In instances where families or individuals are moved between detention centres, it is usually without notice. The approach to notifying detainees about when and where they will be transferred is a source of both anxiety and uncertainty. According to the International Health and Medical Service staff, it is against policy to notify people of the intent to transfer them to the mainland for 'security reasons'. On the day of transfer, often in the early morning, 'clients are notified and extracted from their accommodation'.<sup>196</sup>

### 6.7 Mental health disorders in new mothers

The Department of Immigration and Border Protection advised that, from the period 1 January 2013 until 10 July 2014, 18 mothers were diagnosed with mental illnesses after giving birth, including four mothers who were diagnosed with post-natal depression and subsequently hospitalised.<sup>197</sup> This constitutes mental illness rates of approximately 14 percent amongst new mothers in detention.

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.

A regular visitor to the Melbourne Detention Centre from the Asylum Seeker Resource Centre reported:

Of the nine new mothers and babies at the MITA [Melbourne Detention Centre], five have been or are currently admitted to Mother Baby hospital units in Melbourne because of severe post natal depression. The mothers anguish over their babies but are unable to lift themselves out of the deep depression. Their husbands express utter helplessness and some are now 24 hour carers for their wives refusing to leave them alone for fear that they will harm themselves ... Detention is breaking families.<sup>198</sup>

### 6.8 Parent disempowerment

Although the Department acknowledges the importance of parents maintaining the role as decision makers and care providers for their children, evidence to this Inquiry indicates that the detention environment has a negative impact on the ability of parents to assume the parental role.<sup>199</sup>

*Having to ask for everything, like nappies and things for my baby affects my ability to parent.*

(Mother with baby, Melbourne Detention Centre, 7 May 2014)

*We missed our [medical] appointment by fifteen minutes due to changing a nappy and could not reschedule.*

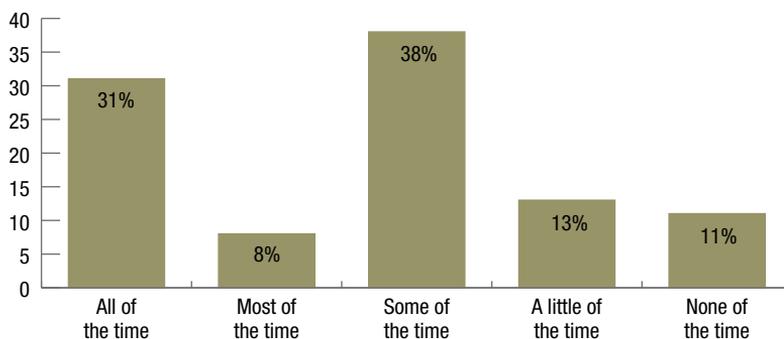
(Mother of 2 month old, Melbourne Detention Centre, 7 May 2014)

Dr Jon Jureidini, Child Psychiatrist who accompanied the Inquiry team to the Inverbrackie Detention Centre in Adelaide, reported that the detention environment can be a reminder to parents that they have failed their children:

A primary function of a parenting relationship is to protect a child from harm and parents in immigration detention are repeatedly being reminded of their failure to do that.<sup>200</sup>

When responding to the Inquiry questionnaire, 39 percent of parents with infants identified that they felt hopeless 'most of the time' or 'all of the time'. Their responses are at Chart 24.

**Chart 24: Responses of parents with children under the age of two to the question: How often do you feel hopeless?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 85 respondents

Parents are less likely to ask for help or to present at the clinic when they feel depressed, disempowered or guilty.<sup>201</sup>

(Dr Mares, child and family psychiatrist, Christmas Island detention centres, March 2014)

Dr Nick Kowalenko, Child and Adolescent Psychiatrist, who assisted the Inquiry team on a visit to the Sydney Detention Centre reported on the restrictions to parenting:

Parents complained that in their parenting roles their independence about making parenting decisions was consistently compromised and their autonomy to make decisions about their children and implement them was severely restricted. Parents complained that arbitrary limits to their decision making about acting in the best interests of their children persisted, and described feeling powerless in their role as parents.<sup>202</sup>

Professor Elizabeth Elliott spoke about the distress of parents at Christmas Island with an infant who had a facial abscess that required surgical drainage. This family had no idea when their child would be treated.<sup>203</sup>

... the parents grew increasingly anxious over the several days of our visit. Although they had seen the paediatrician, they had been given no indication of transfer and approached us with their concern. When we questioned IHMS and immigration staff we were told the child was to be transferred to Perth the next day for surgery, but that they were not at liberty to inform the family in advance.<sup>204</sup>

## 6. Mothers and babies in detention

During the March 2014 visit to the Christmas Island detention centres, parents of babies reported having to line up to get their daily allocation of three nappies, three baby wipes and three scoops of formula.<sup>205</sup> If they required more than this ration, which was likely, they needed to line up again. They would queue for long periods in extreme heat or torrential rain and often holding a newborn baby.<sup>206</sup>

The Commission acknowledges that this practice has changed since the Inquiry commenced. Nappies are currently distributed by sealed packs of eight, 10 or 12, depending on the infant's size.<sup>207</sup>

In a submission to the Inquiry, a health professional who had worked on Christmas Island reported that limited clothes were available for babies and that mothers were constantly washing in order to keep their babies clean.<sup>208</sup>

One mother at Inverbrackie Detention Centre in Adelaide reported that she was told by detention staff that babies would need to 'wear out' their clothes before they would be replaced.<sup>209</sup> Another mother reported that she could not get additional socks for her toddler, even though her toddler frequently got her feet wet and needed to change them.<sup>210</sup>

One of the things that would touch me is that it was so often to see that one [of] the child's first words spoken would be 'officer'.<sup>211</sup>

(Professional working at the Christmas Island detention centres, May 2014)

### 6.9 Motor, sensory and language development in babies

*States must recognise the right of the child to engage in age appropriate play and recreational activities. (Article 31 Convention on the Rights of the Child)*

*He is [18 months old] and he refuses to eat anything except milk. His sleep is very poor. 15 times a night he wakes and cries. He hasn't started to talk yet.*<sup>212</sup>

(Parent of 18 month old child, Construction Camp Detention Centre, Christmas Island, 2 March 2014)

During the March 2014 visit to the Christmas Island detention centres, the Inquiry team was informed that a Mothers' Group is run each month by International Health and Medical Services. Issues discussed at this group include the lack of appropriate surfaces for young children to crawl and fear of children getting splinters.<sup>213</sup>

Dr Sarah Mares observed a level of disengagement amongst parents and little expectation that their attendance at groups such as Mothers' Group will be worthwhile.<sup>214</sup>

The Department of Immigration and Border Protection advised in July 2014 that a crèche and play centre had been established with classes underway at the Christmas Island detention centres.<sup>215</sup> During the July 2014 visit, the Inquiry team observed these facilities – a newly decorated play room with air-conditioning and new toys at Construction Camp Detention Centre, Christmas Island. The Inquiry team was advised that the space was for women with young children to take their children to play. Access to the crèche was on a limited and rostered basis, being for an hour each day.<sup>216</sup>

Other improvements at Christmas Island included a shade cloth over one outdoor playground and the construction of a new playground at Phosphate Hill Detention Centre.

Prior to the upgrade, Dr Sarah Mares observed in March 2014 that there were ‘very few toys and few books in languages that parents can read to their children’ at Christmas Island.<sup>217</sup>

At the Inverbrackie Detention Centre in South Australia, early childhood classes are available to babies and their parents each morning. In addition, smaller ‘attachment’ groups for the very depressed mothers and their babies take place each afternoon.<sup>218</sup> Regardless of these opportunities, paediatrician Dr Sue Packer, observed that:

Without exception, every adult, young person and older child I saw was distressed, with a feeling of deep hopelessness – perhaps a little hope as they came willingly to see us – and they conveyed that they were in despair, with absolutely no control over their lives and all anticipated being sent offshore with their infants and little children.<sup>219</sup>

A representative from child’s rights NGO ChilOut, Ms Sophie Peer reported at the second public hearing:

Some may argue that the right to play exists in detention but ... [i]s it play if there’s a toy library that is six metres by 2.4 metres and open for two hours a day and you can’t borrow the toy? Is it play if your parents are too traumatised to sit and do a puzzle with you?<sup>220</sup>

Medical professionals observed that the physical environment at Christmas Island was not a place where babies could learn to walk or crawl:

The Aqua and Lilac Detention Centres on Christmas Island were all concrete and stone and unsuitable for babies to crawl.<sup>221</sup>

(Paediatrician, Associate Professor Zwi, describing the facilities within the Aqua and Lilac Detention Centres, Christmas Island, 4 April 2014)

The accommodation in the Christmas Island detention facilities is incredibly cramped. Often there is a bunk bed and then if you have a cot beside that bed, and put in there a small cupboard and a small fridge, then there’s very little space for a child to walk around or play. Perhaps a metre squared, which is totally unsatisfactory for children who are in developmental phases.<sup>222</sup>

(Paediatrician, Professor Elliott, describing Construction Camp Detention Centre, Christmas Island, July 2014)

The physical space is harsh and uninviting to exploration.<sup>223</sup>

(Child and Family Psychiatrist, Dr Mares, describing the Christmas Island detention centres, March 2014)

## 6.10 Adequate nutrition and healthcare

*States must recognise the right of the child to the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. (Article 24 Convention on the Rights of the Child)*

*States must take appropriate measures to ensure appropriate pre-natal and post-natal health care for mothers (Article 27 (2)(d) Convention on the Rights of the Child)*

A baby’s development begins before birth. Appropriate antenatal care and adequate support for pregnant women is vital to the health and wellbeing of the developing baby.<sup>224</sup>

The purpose and importance of antenatal care was detailed by specialist obstetrician and gynaecologist Professor Caroline de Costa, at the second public hearing:

## 6. Mothers and babies in detention

[T]here [are] really two main purposes with antenatal care. There's medical care, specifically medical care and obstetric care but there is also a very large social and family and mental health element because we want to have an outcome where the baby goes home to the best possible social and family circumstances. The same is true of the mother so mental issues are very, very important in antenatal care.<sup>225</sup>

The paediatricians and child psychiatrist accompanying the Inquiry team to Melbourne Detention Centre in May 2014 observed that the antenatal appointments and screening appeared to be appropriate, but noted that women described the environment as a difficult place to be pregnant.<sup>226</sup>

In November 2013 a group of 15 doctors working at the Christmas Island detention centres sent a letter of concern ('the doctors' letter of concern') to detention medical provider, International Health and Medical Services. The letter outlined concerns about the standard of medical care and practice at the Christmas Island detention centres.<sup>227</sup> The doctors reported that the antenatal care was far below any accepted Australian standard and could potentially put pregnant women and their babies at unnecessary risk of harm.<sup>228</sup>

In its submission to the Inquiry, the Royal Australasian College of Physicians detailed concern about insufficient resources on Christmas Island and Nauru to adequately monitor the developing baby in utero. This monitoring was only available once pregnant women were transferred to the mainland.<sup>229</sup>

At the second public hearing, Professor Caroline de Costa detailed instances where receiving hospitals on the mainland were not informed of the impending arrival of pregnant women.<sup>230</sup> This resulted in women arriving at hospital unannounced and in labour. Some of these women were without medical records and without interpreters.<sup>231</sup>

*When they took me to hospital for an ultrasound, and when I was hospitalised for three days, I didn't have [an] interpreter.*

(Pregnant woman, Blaydin Detention Centre, Darwin, 12 April 2014)

The Inquiry heard evidence that at least two women had been transferred from Christmas Island to Darwin to give birth without their partner and without an interpreter. In one instance, a woman could not understand why she was having a caesarean section.<sup>232</sup>

In July 2014, a mother of an 11 month old boy on Christmas Island spoke about her experience of having her son. The woman said that she and her husband were transferred from Christmas Island to Darwin in preparation for the birth. When the woman left to go to the hospital, her husband was not allowed to accompany her in the ambulance. Although she did go into labour naturally, the woman was told that she had to have a caesarean. She explained that there was no interpreter present when she signed the consent form for the procedure. She said that there was a Serco officer outside her hospital room at all times.<sup>233</sup>

The provision of services and resources to mothers and newborns differs across the detention system. For example, while parents detained at Inverbrackie Detention Centre were generally happy with the support for their babies, parents at the Christmas Island detention centres voiced concerns.<sup>234</sup>

Mothers at Christmas Island reported that sometimes the baby food was out of date. One mother said:

*Many mums can't read but when I showed immigration that they had given me expired baby food they took it but said nothing.*<sup>235</sup>

The Royal Australasian College of Physicians outlined the impact of inadequate services on babies and infants in a submission to this Inquiry:

... lack of access to appropriate weaning foods and lack of flexibility with infant and toddler meals may result in young children failing to thrive and developing nutritional deficiencies.<sup>236</sup>

The Royal Australian College of General Practitioners has published *Guidelines for preventative activities in general practice*. These Guidelines set out standards for assessing developmental progress, including vision and hearing, at the ages of two, four and six months of age.<sup>237</sup>

The Christmas Island doctors' letter of concern reported that the medical care for babies was inadequate and that there was no regular monitoring of child health.<sup>238</sup>

The doctors' letter also asserts that in November 2013 there was no reliable test of growth, development, visual acuity or hearing for children at the Christmas Island detention centres:

Physical growth and development also remains unmonitored. Children with failure to thrive are easily missed with no established protocols for regular monitoring of physical development. In fact, none of the scheduled physical and developmental assessments that would normally occur in the community ... occur at [the] Christmas Island [detention centres].<sup>239</sup>

Dr Sarah Mares observed that at the Christmas Island detention centres:

[International Health and Medical Services] did not complete any regular or standardized developmental assessments or keep growth charts. We were told that daily health and weight checks are done on infants and that there is a "project" to set up a regular 12 month developmental assessment.<sup>240</sup>

The Department of Immigration and Border Protection provided the following statistics for the completion rate of routine health checks for babies detained at the Christmas Island detention centres as at 19 March 2014:

- six week check: 19 of 33 babies (58 percent)
- six to nine month check: 11 of 24 babies (46 percent)
- 18 to 24 month check: 29 of 76 babies (38 percent).<sup>241</sup>

While not all babies had received health checks in March 2014, there is evidence that the services are improving on Christmas Island. The Department advised that as at May 2014, all development checks for children detained at the Christmas Island detention centres had been completed.<sup>242</sup>

An International Health and Medical Services letter to the Commission in September 2014 confirmed improvements in medical services on Christmas Island, reporting that all children in detention are up to date with their checks and vaccinations as per the community schedule.<sup>243</sup>

## 6.11 Protection from physical danger

At the Christmas Island detention centres, various environmental risks exist for babies and infants. Professor Elizabeth Elliott reported:

Young children are vulnerable to a range of infectious diseases and in these overcrowded conditions infections spread quickly. We witnessed many children with respiratory infections (including bronchiolitis in infants, probably due to respiratory syncytial virus) and there had been outbreaks of gastroenteritis.

## 6. Mothers and babies in detention

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 ... onset of asthma may relate to the environment.<sup>244</sup>

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).

Mothers at Christmas Island reported concerns at not having cots for their babies. They were worried about sleeping with their babies and they were concerned for the safety of their babies including the risk of them rolling off beds.<sup>245</sup>

The National Association for Prevention of Child Abuse and Neglect reported that in Darwin there were insufficient cots during times of overcrowding. This resulted in 'babies having to sleep with their mothers, causing distress to parents [who were] concerned about accidentally injuring their child'.<sup>246</sup>

At Christmas Island small children can crawl under the 'containerised accommodation' because there are no barriers to prevent access. Dr Mares reported:

The physical space is ... at times unsafe, for example puddles of water and unfenced areas under "donga" accommodation.<sup>247</sup>

In a submission to this Inquiry, a child rights NGO, ChilOut expressed concern about the ability of parents to safely wash their newborn babies:

There are no baby baths on CI [Christmas Island], women are standing in these dirty shower areas and holding their 28 day-old babies under the water.<sup>248</sup>

### 6.12 July 2014 unrest at Construction Camp Detention Centre, Christmas Island

In mid-July 2014, the Inquiry team became aware of reports regarding unrest and self-harm incidents by mothers of babies at Construction Camp Detention Centre, Christmas Island.<sup>249</sup> News about the protest on Christmas Island came through emails and messages to the Commission:

*today 8 women who that how babys they cut them self in bad way  
and everybody start to broking every the in the camp and now we how big officers from single comp  
and we cannot move because they will fight with us  
pleas helpp us  
i'm scard*

(Email from Construction Camp Detention Centre, Christmas Island, 8 July 2014)

The Inquiry team returned to Christmas Island on 15 July 2014 and spoke with mothers, staff members and witnesses to the unrest.

The head of the medical team advised the President of the Commission that the incidents of self-harm had increased in the three months leading up to July 2014. Numbers of people on self-harm and suicide watch had risen from two to 14 people in recent months.<sup>250</sup> Many families were coming up to the one year anniversary of their time in detention and tensions were heightened.

Dr Sarah Mares described Construction Camp as a harsh and cramped environment for parents and babies with a hard and stony ground and very little grass.<sup>251</sup> A volunteer at the Christmas Island detention centres described the environment in the following terms:

[It] puts children directly in the path of harm. The family compound on Christmas Island is bordered with jungle and there was a constant scuttling of giant centipedes around the pathways. Red crabs would enter both the compounds and the individual rooms. They have claws strong enough to remove a human toe with ease. Children taking their first steps at 12 months of age would be wandering past these creatures daily.<sup>252</sup>

A medical doctor who had worked on Christmas Island in 2013 reported at the third Inquiry public hearing:

The ground is phosphate, rock and dust. It was very unsuitable for kids to crawl or learn how to walk on and was [a] very tough surface to fall on.<sup>253</sup>

Residents of Construction Camp reported the following sequence of events about the self-harm and suicide attempts.<sup>254</sup>

On Friday 4 July 2014, mothers of babies born in Australia staged a peaceful protest for better facilities for their babies. The mothers were concerned that the conditions at Construction Camp were detrimental to their babies' development. They requested that they be transferred to the mainland with their families, pending the court decision regarding the rights of babies of asylum seekers born in Australia.<sup>255</sup>

Immigration officials agreed to meet with the mothers on Monday 7 July 2014. At the meeting mothers were informed that they would not be relocated to mainland Australia due to their arrival in Australia after 19 July 2013. They were told: 'you will never be settled in Australia. You will be going to Nauru or Manus Island and that's the end of the story'.<sup>256</sup>

In response to the message, it was reported that parents started screaming and shouting and threatening to set the camp on fire.<sup>257</sup> 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. Police were also seen outside Construction Camp.<sup>258</sup> While there were reports that mothers had broken glass and mirrors, others denied that this had occurred.<sup>259</sup>

The Department of Immigration and Border Protection has confirmed that immediately following the unrest on 7 July 2014:

- seven individuals made threats of self-harm and four actually self-harmed
- ten mothers were placed on International Health and Medical Services' guided supportive monitoring and engagement under the Psychological Support Program and eight of these mothers were assessed as requiring constant supervision and monitoring.<sup>260</sup>

The Department confirmed that on 14 July 2014 there were ten mothers on 'guided supportive monitoring and engagement' under the Psychological Support Program. These women were receiving constant supervision and monitoring.<sup>261</sup> This means 24 hour surveillance by a Serco officer.

## 6. Mothers and babies in detention

Professor Elizabeth Elliott described the 24 hour surveillance in the following terms:

Supervision is provided by a guard ... rather than a nurse or member of the medical staff (as would occur elsewhere in Australia). This level of surveillance necessitates the door of the home to be open constantly and results in a lack of privacy, including during feeding the baby and sleeping.<sup>262</sup>

During the visit, the Inquiry team met with many mothers who had been involved in the unrest.

One mother of a 6 month old infant under 24 hour surveillance described how she had attempted to self-harm using a broken melamine plate.<sup>263</sup> She spoke to the Inquiry team while remaining in her bed – where she had been confined for days.<sup>264</sup>

*We need somewhere for our kids to crawl. They keep repeating 'you have to go to Nauru' whenever we ask for anything.*<sup>265</sup>

One mother under 24 hour surveillance commented:

*I want to end of my life. We asked to be moved from here to the mainland. They said you have to go to Nauru. The room is too small, my baby wants to crawl but she can't. It's dirty. All the kids are sick and all the babies. Eye infections ... ear infections.*<sup>266</sup>

One mother of an 8 month old infant under 24 hour surveillance had tried to suffocate herself using a plastic bag.<sup>267</sup> At the time of the Inquiry team's visit, the mother had been bedbound for over a week.<sup>268</sup> Her husband commented:

*She doesn't sleep. Nothing to help her sleep – she doesn't want to talk to anyone. Sometimes she just stares for 3 or 4 hours. She only has water...*<sup>269</sup>

Another mother under 24 hour surveillance reported:

*When I am upset I self-harm. Three days ago I was very depressed because I couldn't breathe (from asthma), the children wouldn't eat, the boy was coughing a lot... I hit my head on the wall. Let us out. We are tired. Our children are sick and they are getting sicker. And we are sick too.*<sup>270</sup>

According to the husband of another mother under 24 hour surveillance, the following occurred after the unrest:

*She locked the toilet door. I realised she had taken the Gillette razor and was about to cut her wrists. I hit her and she cut her arm further up instead. After that, despite the guard, she made another attempt. She broke a rigid cup and tried to harm herself. She is still on watch. She is no better. She is on no medication because she is breast feeding. They offered a tranquillizer but she is looking after a baby. That is no solution.*<sup>271</sup>

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'.*<sup>272</sup>

Another mother said that following the protest she:

*hit the glass in the window with my head. Then 3-4 Serco officers held me back, then I gorged my forearms. I have been here for year. I just asked for more space for my baby to grow.*<sup>273</sup>

A mother of two children aged 6 and 10 months who was under surveillance had self-harmed and threatened further harm:

*I will do it if my kids stay in this situation. And I already have a plan.*<sup>274</sup>

The mother continued:

*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.*<sup>275</sup>

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

A father of a 5 year old boy and 6 month old girl whose wife was under 24 hour surveillance said:

*My wife has been on suicide watch for around ten days now as she has tried to commit suicide a few times. She only wants to save her children. She used to speak to her mother every day, but now she won't go out of her room. I beg you to help her. I have lost my wife.*<sup>276</sup>

At the fourth public hearing, in discussion regarding the unrest at the Christmas Island detention centres, counsel assisting the Inquiry put to the Minister for Immigration and Border Protection:

... do you understand Minister, why the mothers are asking to be moved to the mainland? ...<sup>277</sup>

Minister Morrison replied:

... for these young mothers I can understand how they might feel. I can't specifically understand. I have not been in that situation personally but I can at least attempt to understand it and I have spoken to many, many people who are in detention over many years but at the end of the day the Government has to make assessments about the broader policy environment which I'm responsible for as Minister and I'm accountable for the results that those policy environments produce and that's what the Government continues to remain focussed on. Now where there are medical reasons where someone might be transferred to the mainland and the Secretary will correct me if I'm wrong but I understand one of those people/persons has been transferred to the mainland and are receiving mental health support in a dedicated facility. Now that's appropriate. There is a medical reason for the person's transfer. But otherwise the policy is as it is and the policy's effectiveness is maintained by its consistency. One of the reasons we had so many children in detention and why over 8,000 children got on boats is [be]cause they thought they would get what they were paying for. Now that has changed and they're not getting on the boats anymore.<sup>278</sup>

## 6.13 Findings specific to mothers and babies

Detention impedes the capacity of mothers to form bonds with their babies.

There are unacceptable risks of harm to babies in the detention environment.

Babies born in detention in Australia to stateless parents may be sent to Nauru without any recorded nationality.

The Commonwealth has a responsibility to provide babies with a nationality when they are born to stateless parents in detention, *Convention on the Rights of the Child*, articles:

*7(1): The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*

*7(2): States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

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 *Convention on the Rights of the Child*:**

- **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)).**

The Committee on the Rights of the Child has emphasised that:

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)

The Committee has also recognised that ‘parenting under acute material or psychological stress or impaired mental health’ is likely to impact negatively on the wellbeing of young children (See General Comment No 7, paragraph 18).

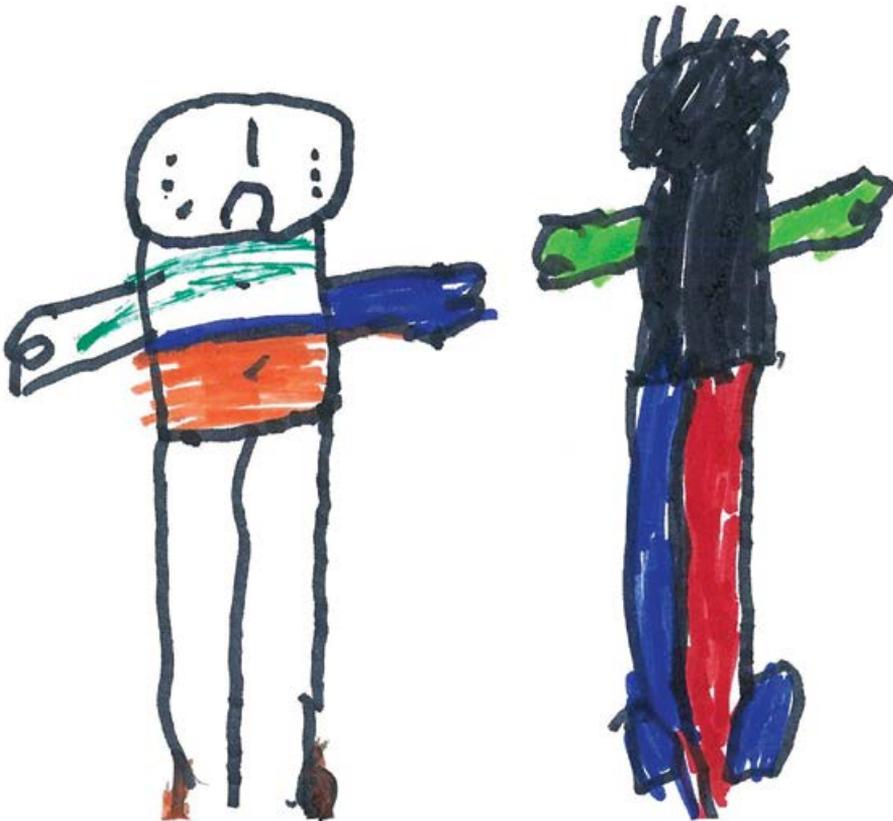
The negative impact of detention on mothers has consequences for the health and development of their babies. For example, mothers who are distressed or depressed in the detention environment can struggle to form healthy attachments with their babies. This in turn has consequences for the social development 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.

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.

- **the right to be protected from all forms of physical or mental violence (article 19(1))**

The self-harm and distress of mothers on Christmas Island in July 2014 created risks for their babies.

*In preschool children we have seen regressed or disturbed behaviour such as needing to cling to parents at night and refusing to sleep in their own bed; separation anxiety; incontinence; uncharacteristic aggression; the development of a stammer; and slowed language development. In nearly all cases the behaviour has emerged during detention, and often after a series of distressing incidents such as family separations and witnessing violence.<sup>279</sup>*



Drawing by child, Christmas Island, 2014.

# 7. Preschoolers in detention

The first five years of a child's life are the vital building blocks for development. The child's brain develops more at this time than at any other stage in life.<sup>280</sup> The experiences that the child has during these years will help to form the adult that he or she will become.<sup>281</sup>

The Inquiry has received extensive evidence that the detention centre environment is having a negative impact on the emotional and cognitive development of the 204 preschoolers (aged 2 to 4 years) in detention in Australia (at March 2014).<sup>282</sup> The negative impacts of detention on children have been comprehensively documented in Australian and international research.<sup>283</sup>

The Australian Government's *Early Years Learning Framework* describes the preconditions for healthy childhood growth and progress. It sets out three foundations for preschooler development: 'belonging, being and becoming.'<sup>284</sup> Throughout this chapter, the development of preschool children in detention will be framed using the three pillars of this Framework.

## 7.1 Forming relationships

The first pillar of the *Early Years Learning Framework* explains that preschoolers need to belong to a family and a community. According to the Framework, a child needs to establish secure relationships with parents, family and community to develop a healthy sense of self.<sup>285</sup>

**Belonging** is the basis for living a fulfilling life. Children feel they belong because of the relationships they have with their family, community, culture and place.<sup>286</sup>

All evidence to this Inquiry indicates that the institutionalised structure and routine of detention disrupts family functioning and the relationships between parents and children.<sup>287</sup>

... children do not have access to a private family home where it would be expected families would spend time away from other people sharing meals, engaging in shared activities, and having rest-time on their own.<sup>288</sup>

In the normal family environment, parents make most decisions about their child's development. They determine food choices, play activities and the culture which they want in the family home. Detention limits this autonomy.<sup>289</sup> Along with the children, parents must follow the regime, the rules and the timetable of the detention environment. A child psychiatrist who accompanied the Inquiry team to Christmas Island, Dr Sarah Mares, described the environment in these terms:

Parents are undermined and their powerlessness is reinforced to them and their children in daily humiliations and routines. Families line up in the sun or rain (there is little shelter) and wait, then show ID cards for food (carrying their own issued plastic cup, plate and cutlery), for medicines to be handed out, to see the nurse or doctor.<sup>290</sup>

There are considerable limits to the ways in which parents are able to take on a parental role.

*Our son asks us why we need to ask the guards for everything. It is the parent that should provide, but I feel powerless. Our son says that the guards are stronger than we are. Now he is only a child, but I am scared he will be worse when he is a teenager. Already he doesn't listen to us anymore, I am worried he won't listen as he gets older and will get into trouble.*

(Father of 4 year old child, Melbourne Detention Centre, 7 April 2014)

## 7. Preschoolers in detention

The authority of parents is subordinate to the rules of the detention environment and children pick up on this power dynamic.

... parents would teach their children to fear and/or respect officers. If they were asking their child to get into a stroller and they weren't listening. They would say to their child, 'officer is coming'. The child would then look at you and get into the stroller. The child growing up in an environment where the parents can use a higher authority to put fear into their child is foreign to me.<sup>291</sup>

Associate Professor Karen Zwi, a paediatrician who accompanied the Inquiry to Christmas Island described the limits to family life in the following terms:

There's nowhere where you can feel empowered as a mother, father, to have a family conversation or discipline your children, talk about the future or do things that normal families do.<sup>292</sup>

Children of preschool age are learning socialisation and absorbing society's values and rules for behaviour. A child of this age does not have the ability to interpret the environment. Rather, he or she will accept the actions and activities of the people around them as normal.<sup>293</sup>

*Our son says that he feels that we are robbers, but we are not robbers. He always talks about jail and punishment.*

(Mother of 4 year old child, Melbourne Detention Centre, 7 April 2014)

Preschoolers in detention cannot be sheltered from the distress of adults. Children and their parents reported that they heard screaming and crying in the night and witnessed acts of violence, psychosis, self-harm and distress.<sup>294</sup> Children also witness the daily struggles of their parents as they cope with the detention environment. In many cases this leads to a decline in mental health of a mother or father or both.<sup>295</sup>

Over 60 percent of parents in detention reported that they felt depressed 'most of the time' or 'all of the time' when they were asked to respond to the Inquiry questionnaire.<sup>296</sup> Poor parental mental health impacts directly on preschool aged children. Parents are the primary role models and providers of emotional comfort at this important stage of development.<sup>297</sup>

*I'm very concerned about wife's health... [she's] very depressed. IHMS gave her medicine, made her sleepy. Children crying a lot, irritable, not obedient, my child said to me 'go to hell - why did you bring me here?'*

(Father of 4 year old child and a baby, Darwin detention centre, 13 April 2014)

According to the Australian Research Alliance for Children and Youth, parents play a critical role in determining the development of the child:

An increasing body of evidence demonstrates how brain development in the early years can set trajectories for learning and development throughout the child's life. Parents play the most critical role in helping their children's early development...<sup>298</sup>

Ultimately, children in detention 'belong' to a detention community. They learn to relate and form relationships by observing and imitating the adults in the detention environment.

Clinical research into the effects of detention on family relationships shows evidence of attachment disorders in 30 percent of children. After a year of detention, the rates of attachment disorder increase.<sup>299</sup>

## 7.2 The detention environment

The limitations of the physical environment of detention centres are acute for preschoolers. At a time when children should be exploring their world and testing their abilities, many are confined to living quarters of 3 x 2.5 metres for many hours of the day. These rooms are the only private spaces at Christmas Island detention centres. In Darwin the rooms are slightly bigger. Both places have average daytime temperatures of 30 degrees and these small rooms provide the only respite from the heat:

*the housing is dirty, sub-standard, hard to be there. The child keeps hitting his head on items in the room – the bed, the shelf – because of the lack of space.*

(Father of 2 year old child, Construction Camp Detention Centre, Christmas Island, 16 July 2014)

*He is only four years old and he has as many scars as a Vietnam soldier – he's had lots of falls, and has scars from mozzie bites.*

(Father of 4 year old child, Construction Camp Detention Centre, Christmas Island, 16 July 2014)

A Professor of Paediatrics and Child Health who assisted the Inquiry team on Christmas Island, Elizabeth Elliott, described the health hazards of this detention environment:

A remote, inaccessible island closer to Jakarta than Australia is no place for young children. Cramped living conditions intended for temporary use and overcrowding have dire health consequences, enabling rapid spread of infections. Asthma is common, with episodes of wheeze exacerbated by infection, dust and life lived in air-conditioning in a punishing climate. The long wait for transfer to the mainland for medical or surgical treatment is incomprehensible to families. From a paediatrician's perspective these delays in treatment – for children with delayed speech, poor hearing, rotten teeth, sleep apnoea and infection – are unacceptable and may have lifelong consequences.<sup>300</sup>

The limitations of the physical environment may have specific impacts on the way in which the child develops a sense of identity. A mother on Christmas Island reported:

*I'm worried about my kid. He can't draw himself because there is no mirror he can reach to see. He has lost the meaning of living in a home. Even at four years he had never seen a mandarin till this week.*

(Mother of 4 year old child, Construction Camp Detention Centre, Christmas Island, 16 July 2014)

The Darwin detention centres are surrounded by dense mangroves and at certain times there are sand-flies and mosquitoes. According to a former professional working in Darwin, these environments are dangerous:

[There are] few open spaces for play and the place is elevated and set up on various levels with walkways throughout. The elevation means kids can run under buildings and walkways in an environment where snakes and spiders are prolific.<sup>301</sup>

Christmas Island detention centres are located in carved out sections of the tropical rain forest. The fences of the detention centres do not keep out the crabs, giant centipedes and wild chickens that are prolific on Christmas Island. There are 20 types of crabs on Christmas Island, some of them the size of a football. Children and parents complained of painful stings from the centipedes which find their way into clothing and bedding.

## 7. Preschoolers in detention

*We have found centipedes in our room. They grow to 30 cm and they sting. There are two kinds. The large black one which is not as harmful and the small red one with a painful sting. The authorities spray them then they come into the rooms. Four persons I know have been bitten. There are huge crabs in the camp. The robber crabs live under the huts and come out in cool weather. The red crabs are everywhere.*

(Parent of preschool aged children, Construction Camp Detention Centre, Christmas Island, 16 July 2014)

The wildlife on Christmas Island holds a kind of gothic horror for some of the preschool aged children.

*Our son is frightened to go outside. He thinks he will be dragged into the forest by an evil spirit and the animals will get him.*

(Father of 3 year old child, Construction Camp Detention Centre, Christmas Island, 16 July 2014)

The Melbourne Detention Centre is behind a military complex. It is surrounded by high fences and the families live in converted shipping containers.

*My child has increased anxiety; [he is] worried about snakes.*

(Mother of 2 year old child, Melbourne Detention Centre, 7 May 2014)

The Sydney and Inverbrackie Detention Centres consist of share houses for families and provide more living space. Nevertheless, the houses are part of a locked environment and parents are not free to take their children to local parks, to the ocean, or to play centres.

In all detention environments, children share living spaces with other adults. Children mix with adults on the walkways between their living quarters, in the dining halls and in all areas outside their family rooms.

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)

At a time when children are learning toilet training, the shared bathrooms posed many problems. Parents described difficulty in encouraging their children to use the bathrooms because they were dirty.

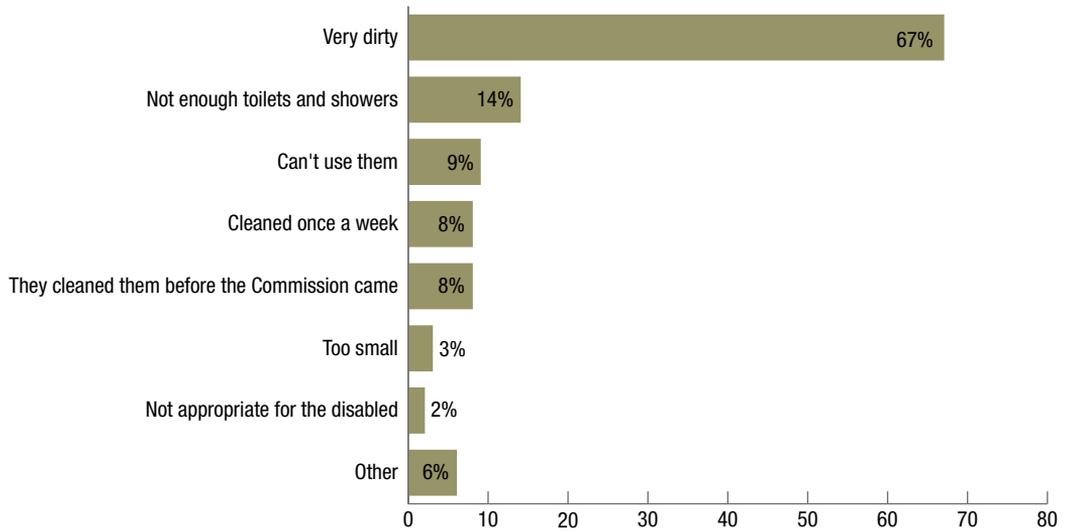
*[The] shared bathroom and toilet is extremely dirty. Children are walking in adult urine, faeces on the floor.*

(Parent of 2 year old child and 5 year old child, Aqua Detention Centre, Christmas Island, 3 March 2014)

At Construction Camp Detention Centre where most families on Christmas Island now live, most people said that there were sufficient toilets and showers but several complained that the soap was cheap and hard to lather.

Parents who were not satisfied with the bathroom facilities reported that they were very dirty at 67 percent of responses at Chart 25.

**Chart 25: Responses by children and parents to the question: What are the limitations of the toilet and bathroom facilities?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 64 respondents, (Note: respondents can provide multiple responses)

At the Melbourne Detention Centre and at some of the centres on Christmas Island, two families share a 1m x 2.5m bathroom in between their adjoining rooms. In Darwin, each sleeping room has its own bathroom. At the Sydney and Inverbrackie Detention Centres, bathrooms are shared in house accommodation.

Opportunities for physical play are vital to children’s gross motor development. In addition, physical activity contributes to children’s ability to socialise, promotes confidence and independence and supports mental health...<sup>302</sup>

The Australian College of Nursing and Maternal, Child and Family Health Nurses Australia described a number of physical requirements for children to develop during the early years in a submission to this Inquiry.<sup>303</sup> Chart 26 sets out these physical requirements against the availability of resources in each detention centre using the criteria described by the College.

**Chart 26: Physical requirements for children in detention**

|   | <b>CHRISTMAS ISLAND Construction Camp Detention Centre</b> | <b>CHRISTMAS ISLAND Aqua and Liliac Detention Centres</b> | <b>DARWIN Wickham Point Detention Centre</b> | <b>DARWIN Blaydin Detention Centre</b> | <b>DARWIN Airport Lodge Detention Centre</b> | <b>MELBOURNE Detention Centre</b> | <b>SYDNEY Detention Centre</b> | <b>ADELAIDE Inverbrackie Detention Centre</b> |
|---|--|---|--|--|--|-----------------------------------|--------------------------------|---|
| <b>PHYSICAL REQUIREMENTS FOR CHILDREN</b>   |  |   |  |  |  |                                   |                                |   |
| Adequate protection from the physical environment at all times (including hot and cold weather, excessive sun exposure and insects)                           | NO   | NO  | NO   | NO                                     | NO   | NO                                | YES                            | YES   |
| Appropriate outdoor recreational areas, with adequate shade   | NO   | NO  | NO   | YES                                    | NO   | NO                                | YES                            | YES   |
| Access to the natural environment, including grass and trees  | NO   | NO  | YES<br>Access to grass ovals no trees        | YES<br>Access to grass ovals no trees  | YES<br>Access to grass ovals                 | YES                               | YES                            | YES   |
| An area for indoor exercise and physical games and play   | NO   | NO  | NO   | NO                                     | NO   | NO                                | YES                            | YES   |
| A dedicated space for educational activities  | NO   | NO  | YES<br>Playgroup room                        | YES                                    | YES  | YES                               | YES                            | YES   |
| A library with reading materials in the languages spoken by the children  | NO   | NO  | YES  | YES                                    | NO   | NO                                | NO                             | NO  |
| An accessible meal preparation area for parents to use at any time  | NO   | NO  | NO   | NO                                     | NO   | NO                                | YES                            | YES   |
| Privacy for individuals and families, including separate areas for attending to children's needs (such as areas for bathing and quiet areas for daytime naps) | NO   | NO  | NO   | NO                                     | NO   | NO                                | YES                            | YES   |

Source: Physical requirement categories from Australian College of Nursing and Maternal, Child and Family Health Nurses Australia<sup>304</sup>

Chart 26 shows that both Sydney and Inverbrackie Detention Centres provide most requirements necessary for the development of preschool children. However, Christmas Island Detention Centres are lacking in every necessary resource for child development. Darwin and Melbourne Detention Centres provide limited resources for children, but lack recreation activities and private places for parents to prepare meals and spend time with their children.

### 7.3 Opportunities for play, learning and development

*States must recognise the right of the child to engage in age appropriate play and recreational activities. (Article 31 Convention on the Rights of the Child)*

The Australian Government’s *Early Years Learning Framework* has a strong emphasis on play-based learning because play provides the most appropriate stimulus for brain development. The Framework describes this as the second pillar in childhood development:

**Being** is about living here and now. Childhood is a special time in life and children need time to just ‘be’ – time to play, try new things and have fun.<sup>305</sup>

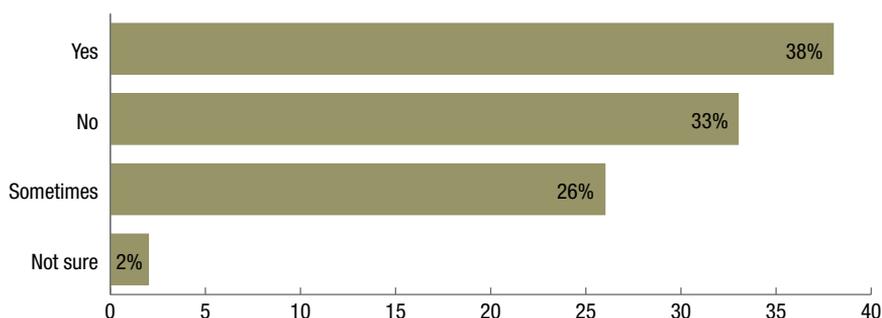
At the early stages of childhood development, the child needs to be able to develop fine motor skills and explore his or her independence.<sup>306</sup> Preschool children are likely to be ‘imitating adult actions, speaking and understanding words and ideas’ and developing connections with others.<sup>307</sup> Much of this development occurs through play.

*My youngest child has no toys. He only pushes a chair around.*

(Parent of preschooler, Aqua Detention Centre, Christmas Island, 6 March 2014)

The availability of toys and play activity for preschool children varies across the detention network. Families with preschool children were asked by the Inquiry team whether there were enough toys and activities for their preschool aged child or children. Chart 27 shows that 33 percent of parents thought that there were not enough resources, while 38 percent were satisfied with the toys and preschool education for their children.

**Chart 27: Responses by parents of preschoolers to the question: Are there enough toys, activities and facilities?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 87 respondents

## 7. Preschoolers in detention

Most detention centres have a room with some share toys. In most centres there was a timetable for this toy room / playroom and parents needed to pre-book and accompany their child to the session.

The Inquiry team noticed that new toys were bought on the day of the Inquiry visit to the Darwin detention centres. New X-Boxes were also set up in Melbourne Detention Centre for the Inquiry visit. Children and their parents reported that these had never been used.<sup>308</sup>

There were no toys at the Christmas Island detention centres in March when the Inquiry team first visited. At the second visit, toys were seen in the new playroom for children. It is not known whether the children had been able to use them as the playroom was not yet open.<sup>309</sup>

Given that many asylum seeking children have come from places where they have experienced significant trauma, there is arguably a greater need for these children to have access to a stimulating environment with 'different activities' and 'plenty of ways to play and learn.'<sup>310</sup>

Play has been shown to be a vital component in overcoming trauma. Play deprivation has been assessed as a significant contributing factor in a lack of physical brain development, repressed emotions and social skills, depression and withdrawal, as well as behaviour that has been described as bizarre and aggressive, anti-social and violent.<sup>311</sup>

Play is also a human right. Article 31 of the *Convention on the Rights of the Child* recognises:

... the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

Structured activity is also important for the developing child. Parents living in mainland detention centres reported that preschool activities were available for their children. Parents at Christmas Island detention centres were not satisfied with the offerings for their children as there were no formal or informal preschool activities for the 89 preschoolers there. Chart 28 shows the preschool, crèche or play offerings at the detention centres.

**Chart 28: Preschool for children in Australian detention centres**

| LOCATION  | NUMBER OF HOURS OF PRESCHOOL EDUCATION, NUMBER OF PLACES OFFERED <sup>312</sup>   | TWO YEAR OLDS | THREE YEAR OLDS | FOUR YEAR OLDS | TOTAL PRESCHOOLERS |
|---|---|---------------|-----------------|----------------|--------------------|
| <b>Inverbrackie Detention Centre, Adelaide, South Australia</b> | 4 year old children can attend kindergarten offsite on Tuesday and Wednesday and in the morning on Thursday.<br>No information about services for children aged 2 and 3.  | 18            | 5               | 10             | <b>33</b>          |
| <b>Darwin detention centres, Northern Territory</b>             | 4 year old children attend external preschool two days per week from 8:00am to 3:00pm.<br>The detention service provider delivers playgroup activities for children aged 1-4 years and average attendance is approximately 30 children per day. | 15            | 25              | 17             | <b>57</b>          |
| <b>Sydney Detention Centre, New South Wales</b>                 | There were no 4 year old children at the detention centre. Any other activities are not specified.  | 0             | 1               | 0              | <b>1</b>           |
| <b>Melbourne Detention Centre, Victoria</b>                     | There are two one-hour programs run by the detention services provider each weekday.<br>Approximately 5 children attend in the morning and between 3 and 5 children attend in the afternoon session.  | 6             | 5               | 8              | <b>19</b>          |
| <b>Christmas Island detention centres</b>                       | There were no scheduled activities for preschool aged children. In July 2014 a playroom was established for children to use on a rotational, rostered basis under parental supervision.   | 36            | 31              | 22             | <b>89</b>          |

Source: Australian Human Rights Commission analysis of data from the Department of Immigration and Border Protection<sup>313</sup>

## 7. Preschoolers in detention

Some parents reported that their children felt singled out when they attended preschool activity outside the detention environment.

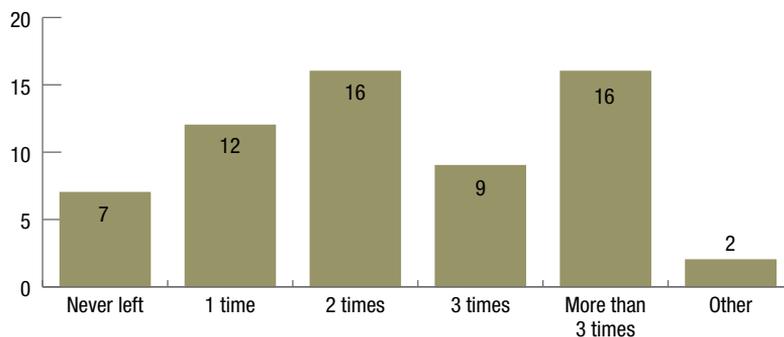
*A parent struggles when his child sees other children in the community who are free and can play, eat what they want. Baby cried last time at playgroup wanted to eat what other children are eating, father feels sad he can't provide for child.*

(Parent of 3 year old child, Wickham Point Detention Centre, Darwin, 11 April 2014)

When children leave the detention centre they are required to take the food provided by Serco officers. When children leave the detention centre for activities, they pass through security checks at the gate. This includes bag searches and in some circumstances, body searches.

In addition to preschool, some children have limited opportunities to leave detention centre for excursions under guard by Serco officers. Parents accompany their children on these excursions. Chart 29 sets out the numbers of times that children were able to go on excursions other than preschool.

**Chart 29: Responses by parents of preschoolers to the question: How often have your children left the detention centre for an excursion?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 62 respondents

Excursions provide some change from the monotony of the detention environment. Of the 62 respondents to the question about excursions, seven reported that their preschooler had never left the detention centre for an excursion, 12 preschoolers had been on one excursion, 16 had been on two excursions and only 3 respondents reported that they had been on an excursion more than once a week.

*One time we left the detention centre to go to the park. It was very good. Our son now asks why we don't go to the park anymore. He asks us to tell him stories of that one day we were allowed to go to the park.*

(Mother of 4 year old child, Melbourne Detention Centre, 7 May 2014)

## 7.4 Impacts on preschoolers

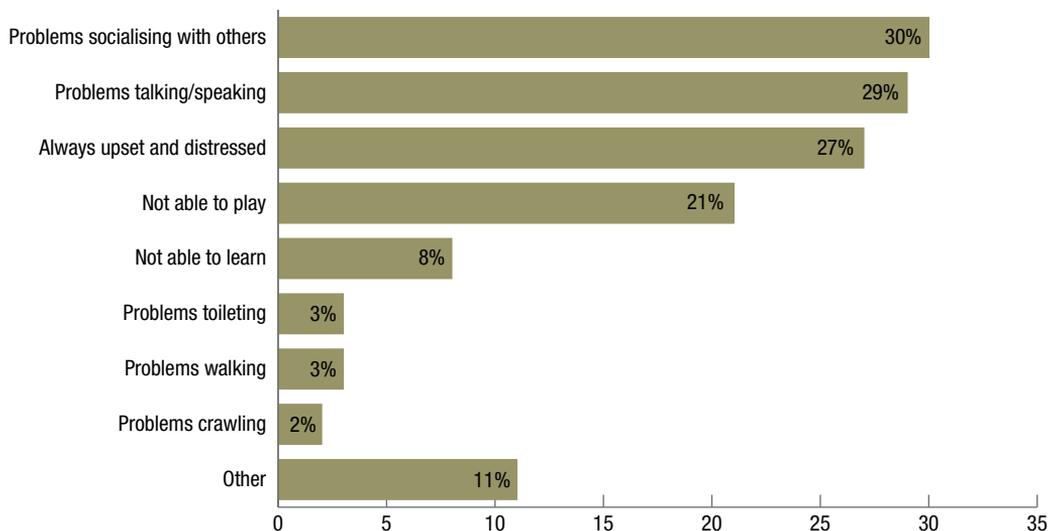
Information provided by the Department of Immigration and Border Protection advised that in March 2014 there were five preschoolers having individualised mental health counselling on Christmas Island. Three of these children were aged 2 years old, one was aged 3 years and one was 4 years old.<sup>314</sup>

The Australian Government *Early Years Learning Framework* explains that a child forms key aspects of identity during the formative preschool years. The third pillar of the Framework is ‘becoming’:

**Becoming** is about the learning and development that young children experience.<sup>315</sup>

The most common concern that parents in detention had for their children was the way in which their child was acquiring socialisation skills. Many parents reported that their preschooler was unable to get along with other children. Chart 30 sets out the concerns that parents had about this development.

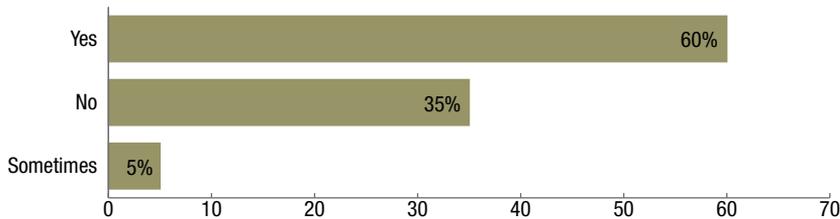
**Chart 30: Responses by parents of preschoolers to the question: What are your concerns about the development of your child?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 63 respondents (Note: respondents can provide multiple responses)

Sixty percent of parents reported concerns about their child’s development at Chart 31.

**Chart 31: Responses by parents of preschoolers to the question: Do you have concerns about your child's development including speaking / crawling / walking / running?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 125 respondents

*I've spoken to IHMS about my children's symptoms (anxiety, stress, crying) and was told this was normal for detention.*

(Parent of children aged 6, 4, and 2 years, Inverbrackie Detention Centre, Adelaide, 12 May 2014)

Concerns about the development of preschool aged children are echoed in a submission to this Inquiry by Occupational Therapy Australia.<sup>316</sup> Occupational Therapy Australia provided weekly support to children in Brisbane Detention Centre during 2013.

Clinical observations by the occupational therapists involved in the program indicate that almost all children in the detention facility experience delays in one or more areas of development (learning, play, social skills, emotional regulation, cognition, physical development)... Engagement in childhood activities decline and social and emotional skills deteriorate the longer children live in a detention environment.<sup>317</sup>

The occupational therapists at Brisbane Detention Centre reported that children are not meeting the same developmental milestones as children in the Australian community:

[There are] notable delays in almost all children in the centre, as compared to children of a relative age in an Australian demographic ... We could say that these children are not meeting developmental milestones according to Australian research ...

Children in detention struggle with awareness of routine, accessing age appropriate spaces and activities, emotional regulation (especially self-calming when upset or over-excited), coping with loss, skills for engaging in groups or with peers, and experiencing success and positive attention.<sup>318</sup>

Parents and visitors to detention centres report that some children lack motivation and show signs of regressing.

Parents explained that their children (some under 5) are unmotivated and 'sit in the room all day'.<sup>319</sup>

It was common for parents to tell the Inquiry team that they were concerned about the learning ability of their preschool aged child.

*My child has gone backwards with his learning.*

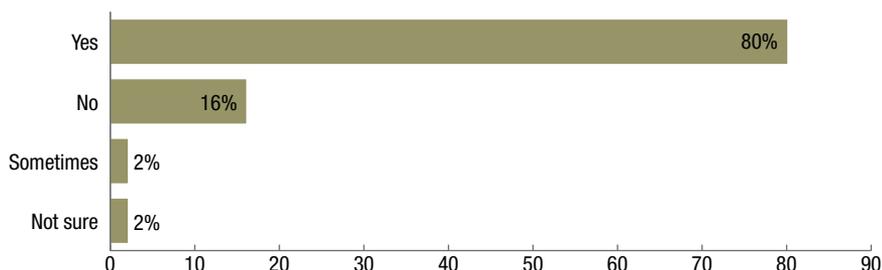
(Parent of 4 year old boy, Melbourne Detention Centre, 7 May 2014)

*I am concerned my child is not speaking.*

(Mother of 2 year old child, Melbourne Detention Centre, 7 May 2014)

Eighty percent of parents reported that the mental health of their preschool aged child had been affected by detention at Chart 32.

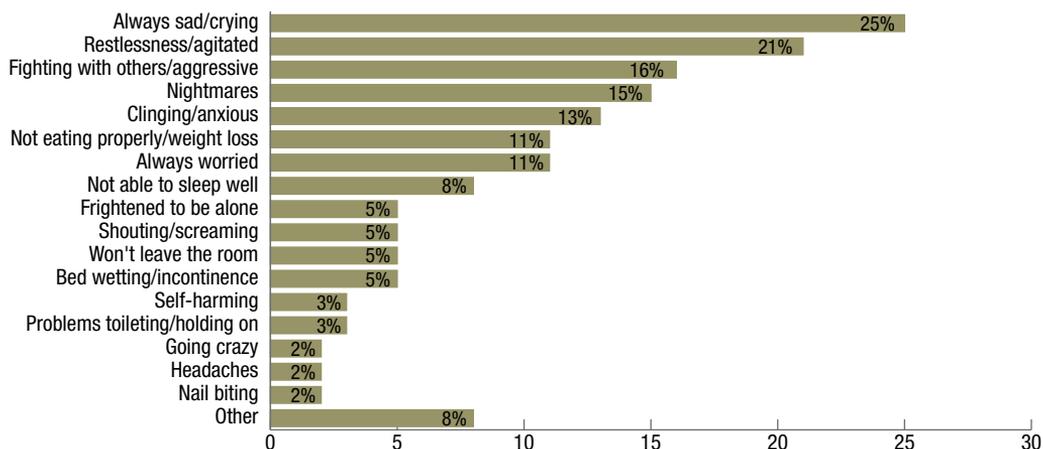
**Chart 32: Responses by parents of preschoolers to the question: Do you think the emotional and mental health of your child has been affected since being in detention?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 96 respondents

Parents were asked to explain the emotional impacts of detention on their children. The most common response was that their child was always sad and crying at 25 percent of responses. Parents also expressed concern that their children showed worrying levels of restlessness and agitation at 21 percent; while 16 percent of respondents said that their child was aggressive and fighting with others. Parental responses to questions regarding the emotional impacts of detention are at Chart 33.

**Chart 33: Responses by parents of preschoolers to the question: What are the emotional and mental health impacts on your child?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 61 respondents (Note: respondents can provide multiple responses)

## 7. Preschoolers in detention

Child and Family Psychiatrist Dr Sarah Mares who visited Christmas Island with the Inquiry team noted a combination of developmental and emotional impacts on children in detention there:

The distress of even very young children was evident in many of those we met, with tearfulness or anxiety, delayed or absent speech and parental reports of children crying themselves to sleep at night, nightmares and regression such as bedwetting.<sup>320</sup>

At Christmas Island there were almost no opportunities for structured learning, no toys and very limited activity. Dr Mares noted the following:

Children who are prevented from playing and learning, are frightened or frustrated can develop difficult behaviours such as emotional outbursts/tantrums, sleep disturbance, nightmares, nail biting, head banging, poor concentration, walking around in an agitated state, failure to listen to parents' requests and playing out their distress in their games...This was evident in many of the children we saw.<sup>321</sup>

Parents provided examples of these behaviours to the Inquiry.

*My daughter is 2 years old. Five months ago she started behaving abnormally. She wakes up screaming and crying in the middle of the night. She always hits us; she pulls my hair and scratches our faces. She has tantrums every day. She broke my glasses. She gets upset without any reason. We sent a request to mental health and we are still waiting our turn.*

(Parent of 2 year old girl, Wickham Point Detention Centre, Darwin, 11 April 2014)

*He's different from other lads. He is scared. The first time he went outside [the detention centre] he cried.*

(Parent of preschool aged child, Wickham Point Detention Centre, Darwin, 11 April 2014)

*[My] son is very scared of the officers, says we should get out of here.*

(Father of 2 year old, Inverbrackie Detention Centre, Adelaide, 12 May 2014)

### 7.5 Findings specific to preschoolers

Detention is impeding the development of preschool aged children and has the potential to have lifelong negative impacts on their learning, emotional development, socialisation and attachment to family members and others.

Preschoolers are exposed to unacceptable risks of harm in the detention environment.

Lack of access to preschool activity for children who arrived on or after 19 July 2013 has learning and developmental consequences for children at this critical stage of brain development.

Detention impacts on the health, development and safety of preschoolers. **At various times preschoolers in detention were not in a position to fully enjoy the following rights under the *Convention on the Rights of the Child*:**

- 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)).

The Committee on the Rights of the Child recognises that:

Under normal circumstances, young children form strong mutual attachments with their parents or primary caregivers. These relationships offer children physical and emotional security, as well as consistent care and attention. Through these relationships children construct a personal identity and acquire culturally valued skills, knowledge and behaviours. (General Comment No 7, paragraph 16).

The Committee has accordingly urged States parties:

to take all necessary steps to ensure that parents are able to take primary responsibility for their children; to support parents in fulfilling their responsibilities, including by reducing harmful deprivations, disruptions and distortions in children's care (See General Comment No 7, paragraph 18).

The institutionalised structure and routine of detention distorts the relationships between parents and children and the care which parents can provide for their children.

The detention environments in all centres in which children are held also limit children's development by restricting their opportunities for physical play and learning, both alone and with other children. Children in detention have very few opportunities to explore new environments outside of the centres. The Committee on the Rights of the Child has emphasised that:

Play is one of the most distinctive features of early childhood. Through play, children both enjoy and challenge their current capacities, whether they are playing alone or with others. The value of creative play and exploratory learning is widely recognized in early childhood education. Yet realizing the right to rest, leisure and play is...hindered by a shortage of opportunities for young children to meet, play and interact in child centred, secure, supportive, stimulating and stress free environments. (General Comment No 7, paragraph 34)

- **the right to be protected from all forms of physical or mental violence (article 19(1))**

Preschoolers in detention cannot be sheltered from the distress of adults who engage in acts of violence and self-harm. The Committee on the Rights of the Child highlights in General Comment 7 at paragraph 36(a) that '[y]oung children are least able to avoid or resist, least able to comprehend what is happening and least able to seek the protection of others.'



*[They are] crying all day long ... tortured by sadness.  
Take the children out and keep us in.*

Parent of three children, Construction Camp Detention Centre,  
Christmas Island, 2 March 2014



Drawing by primary school aged child, Christmas Island, 2014.

## 8. Primary school aged children in detention

In March 2014 there were 336 primary school aged children between 5 and 12 years old living in detention centres on the Australian mainland and on Christmas Island. On average, these children had been detained for seven months.<sup>322</sup> At the time of drafting this report, children and adults in Australian detention centres had been held on average for over a year.<sup>323</sup>

### 8.1 Needs and development of children at this stage of life

The primary school years mark a key developmental phase. According to the World Bank, children at this age need ‘protection from danger’ and an environment that allows them to ‘make choices’, ‘learn cooperation’, ‘engage in problem-solving ...[and] acquire basic life skills and attend education’.<sup>324</sup>

Despite the best efforts of the Department of Immigration and Border Protection to provide services to children, evidence to this Inquiry indicates that primary school aged children face severe impediments to normal development. The information contained in this chapter indicates that it is the detention environment itself that impedes childhood development.

The first and perhaps most fundamental requirement for normal childhood development is protection from danger. Australia has obligations at international law to protect children from harm. The *Convention on the Rights of the Child* requires that governments should take all appropriate ‘measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment’.<sup>325</sup>

Detention environments expose children to danger because children live in close proximity to traumatised adults. Up to 30 percent of people in detention are suffering from ‘severe’ mental health problems including depression, stress and anxiety.<sup>326</sup> Children are living in closed, cramped spaces where incidents of violence, self-harm and psychotic behaviour are common.<sup>327</sup>

In the 5 to 12 age group, three children self-harmed and 18 children threatened self-harm between 1 January 2013 and 31 March 2014.<sup>328</sup>

During one afternoon alone, at a detention centre in Darwin, the Inquiry team observed two adult men exhibiting psychotic behaviours. One man was screaming and crying and had to be restrained on the ground in front of children and others. Another man started screaming and tearing at his clothes and making aggressive gestures to children and families as they queued for food in the dining room.<sup>329</sup>

At Christmas Island and Darwin detention centres, families reported that they spend many hours in their rooms to avoid exposure to distressing incidents. By September 2014, most families had been detained for over a year; many confined in spaces of 2.5 x 3 metres.

*They’ve seen a lot. One kid tried to hurt himself, another broke a window. We keep the kids in the room. A lot of people are trying to kill themselves in front of kids.*

(Parent of two children, Aqua Detention Centre, Christmas Island, 3 March 2014)

In a Darwin detention centre a 7 year old boy reported seeing a man smash a window and cut his wrists with the glass. After the incident his parents explained:

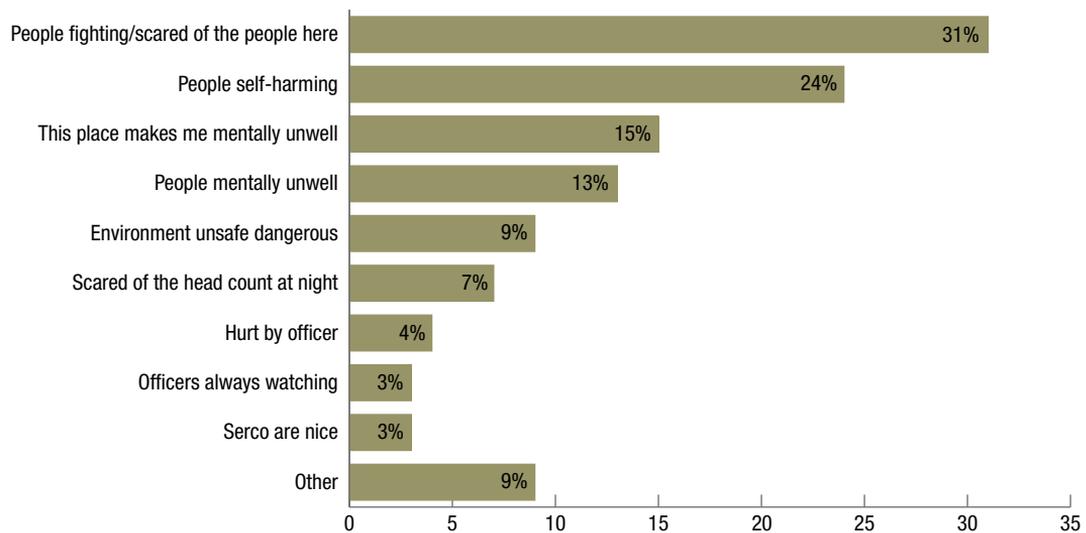
*... the child has started wetting the bed and is being given daily sleeping tablets.*<sup>330</sup>

## 8. Primary school aged children in detention

Children have no alternative but to mix with adults when they eat in the dining halls, use communal bathrooms or participate in any recreation activity. Sixty-one percent of primary school aged children said that they did not feel relaxed in detention.<sup>331</sup>

When asked to explain their views on safety, 31 percent of children said that they were scared of the other people in detention, 24 percent were frightened of people self-harming and 13 percent responded that they felt unsafe because people were mentally unwell. Overwhelmingly, children explained that their lack of safety was linked to the mental ill-health amongst detainees. Their responses are at Chart 34.

**Chart 34: Responses by primary school aged children to the question: Explain why you feel unsafe**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 68 respondents (Note: respondents can provide multiple responses)

A father of children on Christmas Island described the exposure of children to suicidal behaviour.

*The word of 'suicide' is not an unknown word to our children anymore. They are growing up with these bitter words. Last week a lot of women took action to suicide in Construction Camp. All the kids were scared and crying. How do we remove these bad scenes from our kids' memories?*<sup>332</sup>

A 12 year old girl whose mother had attempted suicide on Christmas Island wrote a letter to the Inquiry. This child had not eaten in three days and was refusing to leave her room. Her mother was on 24 hour suicide watch at the time of the Inquiry team visit in July 2014.

*Some people they are free but I'm not free. I feel upset when I see them. I am 12 years old and my life is really bad and deth [death] I leave in a jail. Why I have a bad life. I think to stay in the room for ever when I go because if I stay in room no eat no drink. I will die. Better I kill myself.*<sup>333</sup>

## 8.2 Emotional health and wellbeing

*My child is mentally unwell. Everyone is mentally ill, upset and worried.*

(Parent of 7 year old boy, Melbourne Detention Centre, 7 May 2014)

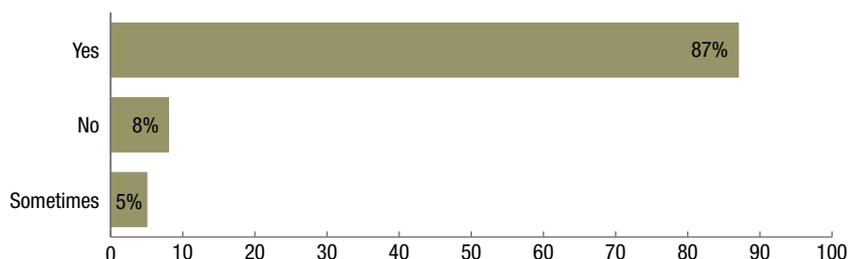
The majority of parents reported that their child's mental health had been negatively impacted by the detention environment.<sup>334</sup>

*If you tried to sit and talk to them, they would cry and scream because they are scared. They are not like normal kids. They have been affected mentally. They don't make eye contact. If you look into their eyes they are about to cry.*

(Mother of four children including two primary school aged daughters, Inverbrackie Detention Centre, Adelaide, 12 May 2014)

Primary school aged children were asked whether they felt their emotional health had been affected by the detention environment. Eighty-seven percent of children identified changes to their emotional or mental health. Their responses are at Chart 35.

**Chart 35: Responses by primary school aged children to the question: Do you think your emotional and mental health has been affected since being in detention?**

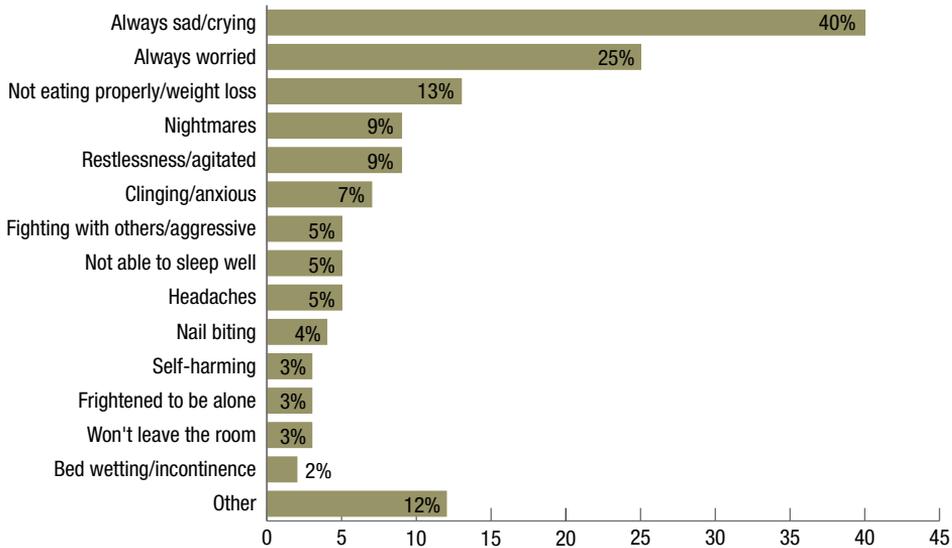


Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 183 respondents

Children were asked to explain how detention had affected them. Forty percent of children said that they felt sad and were crying all the time. Twenty-five percent said that they were always worried; 13 percent had problems with eating or weight loss; nine percent reported nightmares; and seven percent were frightened to be apart from their parents. Chart 36 sets out these impacts:

## 8. Primary school aged children in detention

**Chart 36: Responses by primary school aged children to the question: What are the emotional and mental health impacts on you?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 126 respondents (Note: respondents can provide multiple responses)

Primary school aged children were asked to identify their emotional state at different points in time. The Inquiry team asked children to look at a series of faces and identify the face which best described them (1) in their home country; (2) when they first arrived in Australia; and (3) their mood at the present.

### Continuum of mood faces used in Inquiry Questionnaire for Children and Parents in Detention

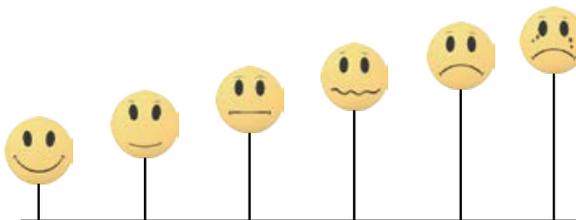
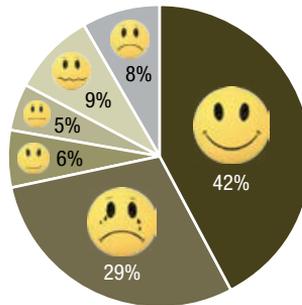


Chart 37 illustrates the face that best exemplifies the mood of primary school age children in their home country. Forty-two percent of children were happy and 29 percent were very sad.

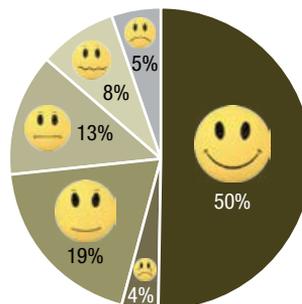
**Chart 37: Responses by primary school aged children to the question: My face when I was living in my home country**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 153 respondents

Chart 38 illustrates the second point in time, when children first arrived in Australia. Fifty percent of primary school aged children were happy and only four percent were very sad.

**Chart 38: Responses by primary school aged children to the question: My face when I first arrived in Australia**

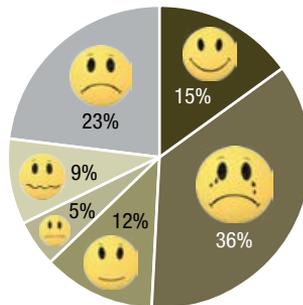


Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 155 respondents

The third and final Chart 39 shows the faces of children after being in detention for a period of time. The numbers of happy children drop from 50 percent on arrival to 15 percent after a period in detention. The numbers of very sad children increase from four percent on arrival to 36 percent.

## 8. Primary school aged children in detention

**Chart 39: Responses by primary school aged children to the question: My face today in detention**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 159 respondents

These responses show a clear correlation between the detention environment and deterioration in the mood of primary school aged children.

The mother of a 6 year old girl in Darwin Airport Lodge Detention Centre explained changes in her daughter after 11 months in detention:

*My daughter, L has changed dramatically in the last three weeks. We have been in detention for 11 months, and she used to have lots of other children to play with ... Before L was happy ... She was full of life and loved to play to sing and dance in the rain and enjoyed most activities but now she does not like anything. For the past few weeks her moods have become volatile, and she has been wetting the bed, which she hasn't done for three years ... She's become hot tempered and loses it frequently.*<sup>335</sup>

Some parents expressed guilt at their decision to come to Australia even though the majority reported that they feared for their safety in their home countries.<sup>336</sup>

*In Iran I was the only one being tortured, and now my children are being tortured here [in Australia].*

(Father of three children, Construction Camp Detention Centre, Christmas Island, 7 March 2014)

*I feel like I have destroyed my children's lives. Life is not just about food. My son asks the same question over and over: why can't we leave here? I'm in pain watching my children here – children are fighting over toys – they aren't free to do and see what they want.*

(Parent, Wickham Point Detention Centre, Darwin, 11 April 2014)

Research into the impacts of immigration detention on children and adults indicates that long term detention has a detrimental impact on the mental and physical health of those detained, be they children or adults. One study concludes that there is a direct correlation between time detained and mental health deterioration.<sup>337</sup>

*My child's emotional state is getting worse as time passes.*

(Mother of 9 year old child, Melbourne Detention Centre, 7 May 2014)

Evidence to the Inquiry indicates that the movement of people around the detention network can disrupt the ability for children to form social attachments with peers. Inquiry questionnaire data confirms that 74 percent of primary school aged children have been moved at least once to a different detention centre, and of this group, 36 percent have been moved twice.<sup>338</sup> Families may be transferred for medical appointments or moved to Nauru and then brought back to the mainland for medical reasons. These movements happen without notice and children can wake to find that their friends have disappeared overnight.

*They take families away in the night. We wake up and our friends are gone and our children are crying. Who would do this to a family? Why do they hate us?*

(Mother of 5 year old child, Construction Camp Detention Centre, Christmas Island, 15 July 2014)

Families who arrived in Australia on or after 19 July 2013 are subject to transfer to Nauru. There is a level of fear about Nauru as many families have heard about the conditions in the detention centre, the tent accommodation and the heat.

*We got told in front of our children that we were getting sent to Nauru and that made us scared.*

(Father of three children, Melbourne Detention Centre, 7 May 2014)

Some families return to the Australian mainland for medical treatment after living in detention in Nauru. A mother who had been transferred to Melbourne Detention Centre from Nauru reported that her children's mental health had improved since leaving Nauru. She also noted that her children continue to worry about being sent back to Nauru and 'can't sleep properly because of conditions overseas'.<sup>339</sup> Children who are moved from Nauru or Christmas Island to detention centres on the mainland live with the uncertainty that they may be returned to these centres where the living conditions are harsh and the services limited.

*He [child] doesn't sleep well, he has a lot of concerns, he sees a psychologist, and he has a lot of fears about being sent back to Christmas Island.*

(Mother of boy, Melbourne Detention Centre, 7 May 2014)

*Please help me. I need help. Please I don't happy in this camp. Please I need freedom I am in here 1 years.*

(11 year old child, Construction Camp Detention Centre, Christmas Island, July 2014)<sup>340</sup>

The Royal Australasian College of Physicians made the following observation about the appropriateness of detention for children:

The experience of detention for children, parents, and families has a significant and long-term negative impact on the physical and mental health, and development of children and adolescents.<sup>341</sup>

This view was corroborated by The Royal Australian and New Zealand College of Psychiatrists:

... detention of children is detrimental to children's development and mental health and has the potential to cause long-term damage to social and emotional functioning.<sup>342</sup>

A 2004 clinical study of children in detention found that all children interviewed met the criteria for Post-Traumatic Stress Disorder (PTSD) and depression. Other symptoms included anxiety, enuresis, somatic symptoms and self-harm.<sup>343</sup> All children aged 6 or more had evidence of multiple psychiatric disturbances, with major depression and PTSD being the most common, as well as separation anxiety disorder, oppositional defiant disorder, enuresis, problems with eating, sleeping and pain, suicidal ideation and self-harm.<sup>344</sup>

### 8.3 The role of parents in detention

Detention environments are designed so that adults and children passively receive services rather than manage their own environments. Adults are restricted in their ability to carry out routine parental functions and have limited decision making authority.

In the detention centres of Darwin, Melbourne and Christmas Island, parents are not able to cook, so they line up along with their children for meals each day. Parents are unable to decide what health service their children receive or when. They do not make the decisions about their child's school education. If school is not available, parents in detention are powerless to change this situation. Parents are not allowed to accompany their children to school and they cannot take their children to the local park. All decisions are made by the Department of Immigration and Border Protection or by Serco officers. A volunteer at the Christmas Island and Darwin detention centres described the deterioration of normal family functioning after long term detention:

After six months I observed families deteriorate in their capacity for self-care; washing less, sleeping through day hours and restlessly at night. Men would stop shaving, women (who previously were meticulous in their grooming as a sign of pride) appeared dishevelled. Food refusal occurred and coherence in thought and speech decreased. After one year, many were losing hope and preparing to harm themselves or act against others.<sup>345</sup>

A number of parents reported that their children no longer respected their authority. Children can see that their parents are disempowered and they witness their parents' deteriorating mental health.<sup>346</sup>

*The kids feel they [security staff] are watching us. The children see us as parents who have no authority anymore; they listen only to the officers. We no longer feel as parents.*

(Parent of children, Melbourne Detention Centre, 7 May 2014)

*We are stressed and can't provide for our children.*

(Father of three children, Melbourne Detention Centre, 7 May 2014)

A child psychiatrist and two paediatricians accompanying the Inquiry staff to the Melbourne Detention Centre described parents as 'demoralised, disempowered and undermined by the uncertainty' of the detention environment.<sup>347</sup>

*My children think I am a liar for bringing them here when I had told them we were coming to a safe new country.*

(Father of three children, aged 2, 7 and 10 years old, Melbourne Detention Centre, 7 May 2014)

*We have no control over the situation here in detention.*

(Parent of two children aged 8 and 11 years old, Melbourne Detention Centre, 7 May 2014)

*...we can't make the food we want.*

(Mother of 7 year old boy, Melbourne Detention Centre, 7 May 2014)

In a submission to the Inquiry, the Royal Australasian College of Physicians made the following observation about detention environments on families.

Normal family function is undermined by dehumanising management practices, difficult living conditions and restricted freedom of movement. Child health and safety is jeopardised by inadequate accommodation facilities, poor hygiene and sanitation and a lack of safe recreational spaces for children.<sup>348</sup>

## 8.4 Physical environment of detention and resources

Children in detention have limited access to toys and recreation spaces such as playrooms, libraries and playground equipment. Children are not free to leave the centre or to explore new places. Many families described the lived experience as monotonous and prison-like. When primary school aged children were asked to describe detention in three words, 22 percent described it as a 'prison', 30 percent described it as a 'sad place' and 30 percent described it as a place of 'no freedom'.<sup>349</sup>

*I feel like I am in a prison. I am so bored and sometimes I think of killing myself.*

(12 year old child, Wickham Point Detention Centre, Darwin, 11 April 2014)

Regular visitors to the Melbourne Detention Centre report that '[t]here are no bikes, no scooters, no play equipment and during school holidays the children stay in the detention centres because excursions were considered a risk'.<sup>350</sup>

The living arrangements in detention differ from location to location. The most restrictive living environments are on Christmas Island.

Families on Christmas Island live in converted shipping containers and the majority of these rooms are 2.5 x 3 metres. These rooms can contain up to four family members.<sup>351</sup> Each room contains a bunk and mattresses on the floor. The bed arrangements occupy the majority of the space.

At Construction Camp and Phosphate Hill Detention Centres, two families share a toilet and shower that adjoins their room. Families living in Lilac and Aqua Detention Centres on Christmas Island shared common bathroom facilities with everyone in the centre.

*There is a share bathroom and shower with the whole camp. There are limited times for men and woman to use the bathrooms. They locked the women's bathroom for the AHRC visit and now women have to use the men's. Children make a mess because there is no potty. We put a container in the room for the children to pee because we can't get toilet access. There are lots of containers in rooms. Four people in one small room, bunk for kids and mattresses on the floor. Four square metres.*

(Parent of two children, Lilac Detention Centre, Christmas Island, 6 March 2014)

Children detained in Melbourne and Darwin live in similar accommodation, being converted shipping containers filled with beds and little space for anything else. At Melbourne, families live in rooms of approximately 2.5 x 3.5 metres. At Darwin the rooms are slightly larger at 3 x 3.5 metres. These are extremely cramped spaces for energetic children but are the only private space for families.

According to Professor of Paediatrics and Child Health Elizabeth Elliott who accompanied the Inquiry team to Christmas Island, the environment can contribute to physical illness:

*The cramped, contaminated and overcrowded living conditions on Christmas Island not only restrict motor development but facilitate the spread of infections. We witnessed many children with respiratory infections and there had been outbreaks of gastroenteritis. We repeatedly heard the refrain 'my kids are always sick.' I have significant concerns about the safety of children who develop serious illness in this remote, tropical environment – an emergency medical evacuation could take at least 10 hours.<sup>352</sup>*

## 8. Primary school aged children in detention

The Inverbrackie Detention Centre in Adelaide comprises 75 houses. Sydney Detention Centre also provides houses. Unless the houses are occupied by a large family they are usually shared with other families. These houses provide a friendlier environment for children. Families have some privacy and while they may share a kitchen space, they are able to cook and eat together. Nevertheless, there are reminders that Inverbrackie and Sydney are detention centres. There are four head counts per day and people are not free to leave the fenced communities.

Families at all detention sites complained that the regular head counts invade their privacy and that the night checks at 11pm and 6am can frighten primary school aged children. A worker who conducted these night checks on families described the responses of children in the following terms:

Children who were awake while these checks were being conducted would just look at you when you enter their room. I assume they don't understand why it is being done.<sup>353</sup>

Dr Sarah Mares, a child psychiatrist who accompanied the Inquiry team to Christmas Island, noted that the night time head counts 'add to the disturbed sleep in children and adults which is very common'.<sup>354</sup>

A volunteer who regularly visited the Darwin detention centres offered the Inquiry an illustration of how some of the staff at the detention centres consider the place to be a prison.

Yesterday my family and I visited a 9 year old [at] Wickham Point for her birthday. One of the small gifts we took for her was not allowed, air-dry clay. After losing the astonished look on my face I asked why on earth she could not sculpt with plasticine and I was told it is because they can use it to copy keys. A SERCO Officer (seemingly in charge) came in to tell me that he has worked in prisons long enough to know what people will do. I pointed out that the birthday girl is not in prison.<sup>355</sup>

### 8.5 School education

*The most important thing is my study. I want to be a doctor. I need to go out of the centre to study.*

(11 year old girl, Construction Camp Detention Centre, Christmas Island, 2 March 2014)

The *Convention on the Rights of the Child* requires Australia to provide children in detention with access to the same level of education as any other child in Australia with similar needs (Article 28). Article 22(1) requires that appropriate efforts be made to cater to the special needs of asylum seeking and refugee children.

School opportunities differ dramatically for children in detention depending on where they are detained and whether they arrived on or after 19 July 2013.

Up until recently, children on Christmas Island had almost no school education, while children in mainland detention were able to attend school if they had been enrolled.

According to the Department of Immigration and Border Protection, 24 children aged between 5 and 12 years were able to attend school on a part-time rotational basis on Christmas Island.<sup>356</sup> The Department also reported that schooling was unavailable for large portions of 2013.<sup>357</sup> Evidence to the Inquiry indicated that most children on Christmas Island had schooling of not more than two to four weeks over an eight month period and that this was for two hours each day with a snack break.<sup>358</sup>

*Our friends are going to school in Iran and we are not ... [child crying]. This was a mistake to come to Australia.*

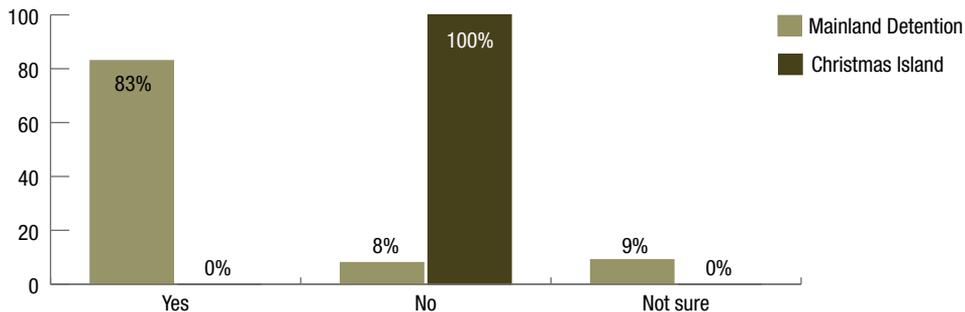
(9 year old girl, Construction Camp Detention Centre, Christmas Island, 2 March 2014)

*[Our child age 7 has had] one week of school for the whole seven months. Some other language groups are going more often. When we complain, Serco says they don't know why Vietnamese children go to school less.*

(Parent of two children, Lilac Detention Centre, Christmas Island, 6 March 2014)

The poor satisfaction with education provision on Christmas Island is reflected in Chart 40.

**Chart 40: Responses by primary school aged children and their parents to the question: Are you satisfied with your/your child's ability to learn?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 144 respondents

At the Inquiry's first public hearing, the President of the Commission expressed concern that the children on Christmas Island had been without adequate schooling for many months. This concern was shared by the Department of Immigration and Border Protection. A senior Departmental official stated: 'it's not adequate to the needs of the children there and we are working very hard to address that as quickly as possible'.<sup>359</sup> In its submission to the Inquiry, the Department noted that the Government had allocated \$2.6 million in the 2014–15 Commonwealth budget to ensure that full time schooling was available to children detained on Christmas Island.

The Commission acknowledges the infrastructure and logistical challenges of providing education on Christmas Island but notes that there were places in detention on mainland Australia (particularly the Darwin detention centres) where these children could have attended school.

In July 2014, the Department of Immigration and Border Protection negotiated an arrangement with the Western Australian Catholic Education Office to provide education to children on Christmas Island. Most of the children who will benefit from this schooling have been in detention for 10 to 12 months. For many of these children, this will be the first full-time school education that they have received since arriving in Australia.

The Department reported to the Inquiry that all school aged children detained on Christmas Island are now attending school through a newly constructed learning centre opened on July 2014 and operated by the Western Australian Catholic Education Office.

## 8. Primary school aged children in detention

School can be a protective factor for children who are unhappy in the detention environment:

*As soon as I leave that gate, I feel happy.*

(13 year old child, Blaydin Detention Centre, Darwin, 12 April 2014)

*She is still worried that at any time she might have to go back to Christmas Island and school will stop.*

(Mother of 6 year old girl, Blaydin Detention Centre, Darwin, 12 April 2014)

For the most part, children in detention on mainland Australia who were able to attend school were satisfied with the educational experience. Eighty-three percent of parents and children reported that they were satisfied with school.<sup>360</sup>

An Australian Government-funded mental health and wellbeing initiative for primary schools describes the benefits and protective factors that school provides vulnerable children:

A sense of belonging to school is an important protective factor for children's mental health and wellbeing. It helps to reduce the impacts of risks that children may be exposed to. School staff can help children gain a sense of belonging to school by taking an interest in their wellbeing, and by relating to them in ways that are consistently respectful and caring. This can provide children with a sense of stability and security through periods of stress and challenge.<sup>361</sup>

The lack of school for children on Christmas Island may have had impacts on the health and wellbeing of these children. Only a longitudinal study of these children will determine whether there are developmental, educational and mental health impacts as a result of one year without school or any other structured activity.

### 8.6 Excursions out of detention

Although excursion opportunities were advertised at the Melbourne Detention Centre, few children and families had been outside except for school or medical appointments. When asked if they were able to leave one family replied:

*Are you kidding me? They [the children] beg me to go to a park!*

(Parent of three children aged 6 months, 8 years and 11 years, Melbourne Detention Centre, 7 May 2014)

*We haven't been out to the community of Australia to see what it is like.*

(11 year old boy, Melbourne Detention Centre, 7 May 2014)

*We are never allowed out of the compound, except for medical visits. We were supposed to go on our first excursion, our daughter was very excited, and then it was cancelled.*

(Father of 10 year old girl, Melbourne Detention Centre, 7 May 2014)

The submission of a former professional working in detention centres on Christmas Island described the desperation of children to leave the centre:

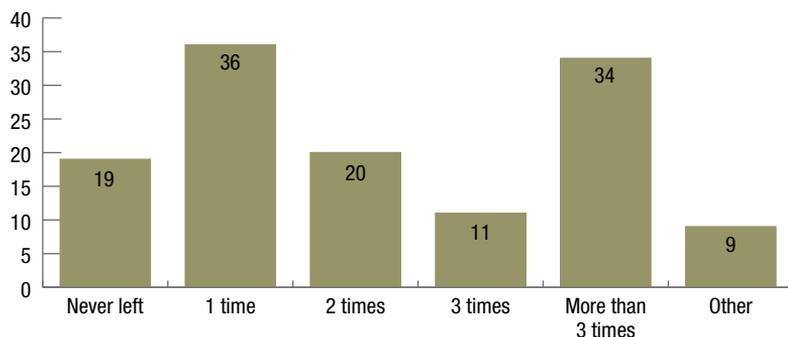
As I observed children who would come to the gate, whether it be leaving for an excursion to see parts of the island or to go to a dentist appointment, simply leaving the confines of the detention centre was a bonus.

There were numerous situations when due to high numbers or an error in paperwork, a family would wait at the gate to leave. Once the time came to leave, they would be told 'no sorry, you can't go'. Children would not understand the reasons behind this and often have a tantrum or walk away crying.

The department who managed activities decided to create a backup list for activities so if people on the original lists didn't attend, then people on the back up list could attend. I witnessed children on a back-up list to attend school wait for 2 hours at the gate, in the hope that they would be allowed to go. This would also apply to other excursions and activities.<sup>362</sup>

Chart 41 shows that primary school aged children across the detention network had very few opportunities to leave the centres.

**Chart 41: Responses by primary school aged children to the question: How often have you left the detention centre for an excursion? (Excluding for school)**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 129 respondents

*I went with my 5 year old son to the recreation centre. They frisked us to check we have not stolen toys. It was degrading so we prefer not to go.*

(Mother of 5 and 7 year old children, Christmas Island detention centre, 5 March 2014)

## 8.7 Findings specific to primary school aged children

Detention is disrupting the normal development of primary school aged children and is damaging their emotional health and social development.

There are unacceptable risks of harm to primary school aged children in the detention environment.

The lack of school education on Christmas Island for primary school aged children who arrived in Australia on or after 19 July 2013 has had negative impacts on their learning and may have long term impacts on the cognitive development and academic progress of these children.

**At various times primary school aged children in detention were not in a position to fully enjoy the following rights under the *Convention on the Rights of the Child*:**

- **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)).**

Detention has a negative impact on the health and development of primary school aged children both directly and through its effect on their parents. Primary school aged children become aware that their parents are disempowered in the detention environment, and may witness their parents’ deteriorating mental health.

The Committee on the Rights of the Child has urged States parties to support parents to fulfil their responsibilities towards their children and avoid harmful ‘distortions in children’s care’ (See General Comment No 7, paragraph 18).

Detention also restricts opportunities for children to develop through play and exploration. Primary school aged children in detention have limited access to toys and recreation spaces such as playrooms, libraries and playground equipment. The children are not free to leave the centre or to explore new places, and have very few opportunities to leave the centres other than for school.

- **the right to be protected from all forms of physical or mental violence (article 19(1))**

The Committee on the Rights of the Child has emphasised in General Comment 7 (at paragraph 36) that ‘[y]oung children are especially vulnerable to the harm caused by...being surrounded by conflict and violence or displaced from their homes as refugees, or any number of other adversities prejudicial to their well being.’ The Committee explains that this is because:

Young children are less able to comprehend these adversities or resist harmful effects on their health, or physical, mental, spiritual, moral or social development. They are especially at risk where parents or other caregivers are unable to offer adequate protection...young children require particular consideration because of the rapid developmental changes they are experiencing; they are more vulnerable to...distorted or disturbed development, and they are relatively powerless to avoid or resist difficulties and are dependent on others to offer protection and promote their best interests.

Detention environments expose primary school aged children to harm because they are forced to live in confined living arrangements in close proximity to adults suffering from mental health problems including depression, stress and anxiety, where incidents of violence, self-harm and psychotic behaviour are common.

- **the right to be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age (article 37(c)).**

Primary school aged children in detention live in a state of uncertainty about their future. They are subject to practices which can cause them to feel scared, such as the head counts which are conducted four times a day, including at night. They are also aware of the Government policy that those families who arrived on or 19 July 2013 are subject to transfer to Nauru at any time, and this exacerbates their sense of uncertainty and fear for the future.

**The failure of the Commonwealth to provide education to primary school aged children on Christmas Island between July 2013 and July 2014 is a breach of the *Convention on the Rights of the Child*, article:**

***28(1) States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:***

***(a) Make primary education compulsory and available free to all.***

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).

Section 8.5 in this chapter describes in detail the lack of education provided to 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.

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.

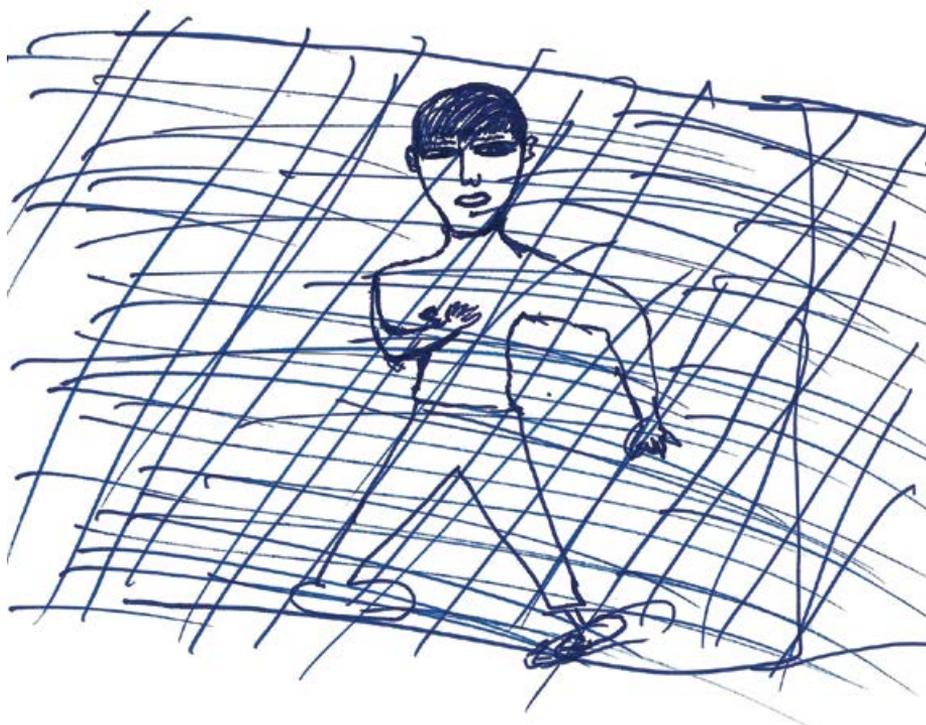
The failure of the Commonwealth to take either of these measures for a year is a breach of article 28(1).

The Commission notes that all school aged children detained on Christmas Island are now attending school full time, consistent with article 28(1).



*I am a bird in a cage.*

14 year old girl, Christmas Island detention centre, 15 July 2014



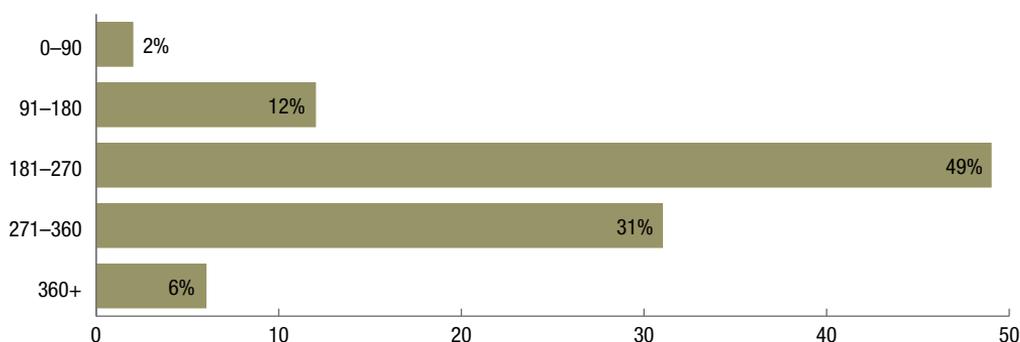
I am 16. HELP!

Drawing by 16 year old boy, Christmas Island, 2014.

## 9. Teenagers in detention

In March 2014 there were 196 teenage children aged 13 to 17 years old in detention centres in Australia. On average, these children had been detained for 262 days. The number of days that teenagers spent in detention is detailed in Chart 42.

**Chart 42: Number of days teenagers have spent in detention in Australia, 31 March 2014**



Source: Australian Human Rights Commission analysis of data from Department of Immigration and Border Protection<sup>363</sup>

### 9.1 Needs and development of teenagers

Adolescence is broadly defined as the phase between childhood and adulthood. It is a critical period in terms of physical, social and emotional development.<sup>364</sup> During adolescence, children begin to think in abstract terms and develop an understanding of concepts such as morality, justice and equity.<sup>365</sup> It is during this phase that young people develop a sense of identity and belonging and seek a higher degree of privacy and independence.<sup>366</sup>

Intellectual understanding typically precedes emotional maturity in teenagers, meaning that teenagers may be able to understand their situation and surroundings before they are able to deal emotionally with troubling circumstances.<sup>367</sup>

Adolescence is also a time when many mental illnesses emerge, influenced by biological and environmental factors.<sup>368</sup>

Key developmental needs at this stage of life include a safe environment within which teenagers can explore themselves and their place in wider society. Teenagers also need an opportunity to develop healthy relationships with peers and parents, access to quality education and the freedom to engage in leisure and extra-curricular activities.<sup>369</sup> As is the case in earlier childhood, the environment in which a teenager is exposed can shape their future life trajectory and wellbeing.<sup>370</sup>

## 9.2 Physical environment of detention

Teenagers require a safe environment where they can explore who they are and how they fit into the wider world.<sup>371</sup> The physical detention environment can prevent such exploration, limiting autonomy and restricting opportunities for social interaction and integration.<sup>372</sup>

The physical environment of detention centres varies across the immigration detention network. While there are individual differences in accommodation, all detention centres are fenced and locked and asylum seekers are not free to come and go. If they are permitted to leave the detention centre for school or an excursion, they must be accompanied by a Serco officer. All detention centres have daily head counts of detainees. These happen four times a day and are a reminder that the detention centre is not an open, free environment.

On Christmas Island, asylum seekers are housed in converted shipping containers in rooms 2.5 metres by 3 metres.<sup>373</sup>

A former worker at the Pontville Detention Centre in Tasmania, where unaccompanied children were previously held, described conditions in the centre as:

like a prison with high forbidding fences, checkpoints with big locks and lots of rules about what detainees could or couldn't do. These things were obviously designed to limit the movement of the children and to control the perceived threat of a riot.<sup>374</sup>

The Commission found that most detention facilities on mainland Australia were well maintained and clean. However, evidence provided from Christmas Island detailed dirty toilets and showers, particularly in 2013.

*When we were in Christmas Island, the toilets and showers were so dirty, we got sick. Every man and woman from every country went to the same toilet. Some people just went nearby to the toilet.*

(Teenager, community interview, Sydney, 5 August 2014)

Fifty-two percent of teenagers reported that they did not feel relaxed in their current living arrangements.<sup>375</sup> Many described feeling like they were in jail:

*I'm just a kid, I haven't done anything wrong. They are putting me in a jail; we can't talk with Australian people.*

(13 year old boy, Darwin detention centre, 11 April 2014)

*I feel like I was a criminal. There was no difference between a criminal and us. What is the difference? We're both in closed detention.*

(17 year old boy, community interview, Sydney, 5 August 2014)

*Living behind a fence is like being in prison.*

(15 year old boy, Melbourne Detention Centre, 7 May 2014)

## 9.3 Emotional wellbeing and self-harm

*I have never seen happiness in my life. Now I am in detention since June 2013. I am underage. Who can I ask to support me?*

(17 year old boy, Inverbrackie Detention Centre, Adelaide, 30 May 2014)

*At least kids shouldn't be in closed detention. They can't help themselves. I've seen them crying. I was sick of closed detention.*

(17 year old boy, community interview, Sydney, 5 August 2014)

*I am going crazy, back then [in home country] I didn't have an easy life, but it's not easy here.*

(15 year old boy, Darwin detention centre, 12 April 2014)

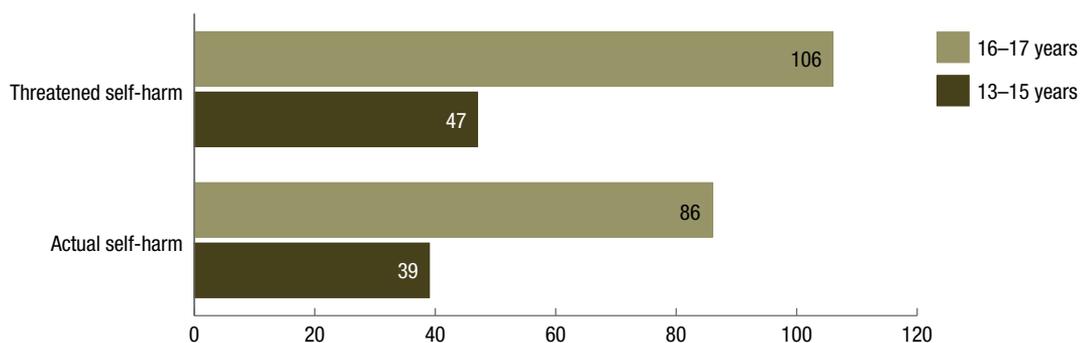
In the Inquiry team's interviews with teenagers in detention, there was a high level of self-reported emotional and mental ill-health. Ninety-one percent of respondents reported that they felt their emotional and mental health had been affected since being in detention.<sup>376</sup>

The most frequent manifestations of self-reported mental ill-health include being always sad, crying or worried, not eating properly and losing weight.<sup>377</sup>

In addition to high levels of reported emotional distress, there are high levels of self-harm amongst the teenage detention population. Between January 2013 and March 2014, 125 teenagers aged 13 to 17 years old engaged in actual self-harm, and 153 teenagers engaged in threatened self-harm.<sup>378</sup>

The number of incidents of actual and threatened self-harm varied with age. The highest number of incidents concerned teenagers aged between 15 and 17 years old, as seen in Chart 43.

**Chart 43: Number of teenagers who engaged in actual and threatened self-harm, 1 January 2013 to 31 March 2014**

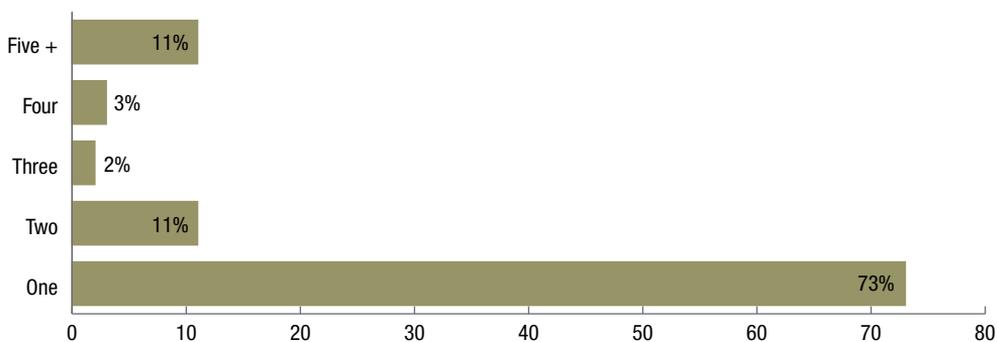


Source: Australian Human Rights Commission analysis of data from Department of Immigration and Border Protection<sup>379</sup>

## 9. Teenagers in detention

Amongst the teenagers who self-harmed between January 2013 and March 2014, several self-harmed repeatedly. Twenty-seven percent self-harmed twice or more and 11 percent self-harmed five or more times, as seen in Chart 44.

**Chart 44: Number of incidents of actual self-harm among teenagers in detention, 1 January 2013 to 31 March 2014**



Source: Australian Human Rights Commission analysis of data from Department of Immigration and Border Protection<sup>380</sup>

The Inquiry received detailed evidence of the circumstances in which teenagers engaged in self-harm:

- A 14 year old boy self-harmed seven times, six of which were within a one month period. On one occasion this involved putting his head through a glass window.<sup>381</sup>
- A 17 year old boy self-harmed ten times during a 15 month period, with nine incidents occurring between January and March 2014. The methods of harm for this individual included attempting to jump off a building, punching through a window, and cutting himself.<sup>382</sup>
- A 16 year old girl was witnessed hitting herself in the face and banging her head against the wall on separate occasions.<sup>383</sup>
- A 16 year old boy on Christmas Island told a welfare officer that he would ‘cut myself every day until I am released into community detention’.<sup>384</sup>

A submission from a teenager who had been in detention talked of the ‘normality’ of self-harm in detention:

*Boys (and me) cut themselves; my friend cut his throat and went to hospital. Another boy ran at the flag pole and hit his head. One tried to hang himself with his clothes but other boys saved him. Boys had bad mental health. Cutting themselves became normal if you weren't happy. We didn't have normal people around to show us what's normal. Kids should never be locked up like that.*<sup>385</sup>

The level of self-harm in detention is of particular concern given that teenagers are prone to imitating the behaviour of others, particularly peers.<sup>386</sup>

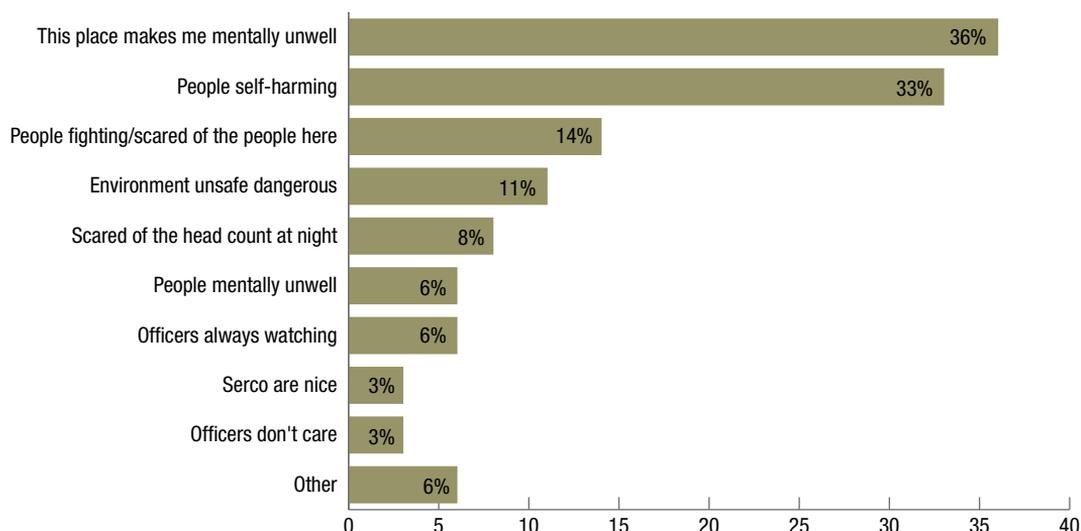
## 9.4 Safety

States have an obligation to take all appropriate measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation that includes sexual abuse (Article 19 Convention on the Rights of the Child)

The evidence collected by the Inquiry found that 71 percent of teenagers said that they felt physically safe in detention.<sup>387</sup>

For those teenagers who reported feeling unsafe, the most common reasons were that detention made them feel mentally unwell and that they were exposed to people who were self-harming.<sup>388</sup> More detailed responses to the question about safety are in Chart 45.

**Chart 45: Responses by teenagers to the question: Explain why you feel unsafe**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 36 respondents (Note: respondents can provide multiple responses)

## 9.5 Security measures and dignity

Every child deprived of his or her liberty should be treated with humanity and respect for the inherent dignity of the human person, in a manner which takes into account the needs of persons of his or her age (Article 37(c) Convention on the Rights of the Child)

Teenagers are subject to some policies and procedures which encroach upon their dignity in detention.

The Commission found that in many instances, Serco officers used boat identification numbers to identify children rather than their names.

## 9. Teenagers in detention

When teenagers were asked how often they needed to identify themselves by boat IDs rather than their names, 36 percent of respondents answered 'always' or 'often', while 35 percent of respondents answered 'never'.<sup>389</sup> Of those that responded 'always' or 'often', 72 percent were in detention in Darwin.<sup>390</sup> Of those that reported that they were never identified by their boat IDs, 33 percent were detained in Inverbrackie, 29 percent in Darwin and 25 percent in Melbourne.

Child and Family Psychiatrist, Dr Sarah Mares reported on the difficult procedures involving identification for detainees on Christmas Island.

Days are structured around frustrations and potential humiliations that involve lining up for food and medications and showing ID cards at every point.<sup>391</sup>

Many asylum seekers raised concerns with Inquiry staff about the four welfare checks that Serco is contractually obliged to conduct each day.<sup>392</sup> The Department of Immigration and Border Protection submits that the purpose of the checks is to 'ensure that all detainees are present and to ensure that all people in immigration detention are safe and well'.<sup>393</sup>

These welfare checks can involve Serco officers entering bedrooms shining torches or roll-calling parents. Evidence to this Inquiry is that these checks have never identified any unauthorised absences.<sup>394</sup> Child psychiatrist, Dr Jureidini, who accompanied the Inquiry to Inverbrackie Detention Centre, reported that head counts were breaches of privacy and appeared to make people uncomfortable.<sup>395</sup>

*At night at 10pm they went in the room when I was in the bathroom. It happened three times.*

(16 year old girl, Wickham Point Detention Centre, Darwin, 11 April 2014)

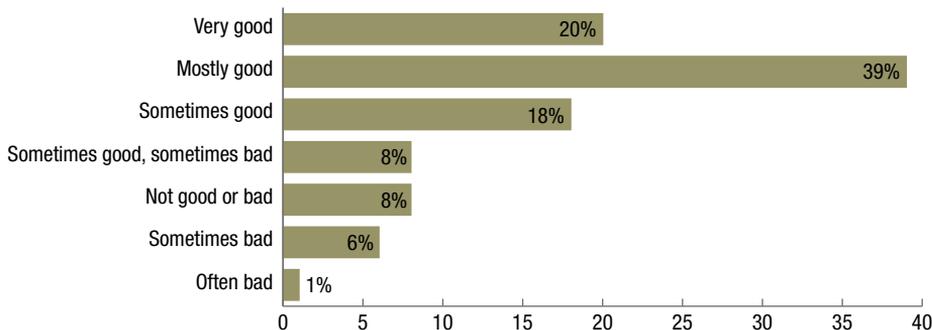
*When they wake me up at night time and knock on the door, they look like ghosts.*

(14 year old girl, Wickham Point Detention Centre, Darwin, 11 April 2014)

Such security measures may have an adverse impact upon teenage wellbeing, especially given that adolescence is a time when privacy and autonomy are sought and one's personal identity is shaped.<sup>396</sup>

Despite these systemic issues, the Commission found that individual staff at detention centres treated teenagers well. Chart 46 shows that the majority of teenagers thought that Serco treated them well.

**Chart 46: Responses by teenagers to the question: How do Serco treat you?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 106 respondents

## **CASE STUDY 2:**

### **24 hour supervision of 15 year old boy**

HD is a 15 year old boy from Iraq who arrived in Australia with his father in August 2013.

When HD and his father were detained at Perth Detention Centre allegations were made that HD had engaged in sexualised behaviour. HD denied the allegations and to date the Western Australia police have not interviewed him or laid any charges.

For medical reasons HD and his father were transferred to the Melbourne Detention Centre in March 2014.

The WA Department for Child Protection and Family Support recommended that HD should not have any unsupervised contact with children and referred the case to Child Protection Services in Victoria.

As a result of this recommendation HD was placed under 24 hour watch by a Serco officer for about five months and was prevented from attending school. These arrangements have caused HD and his father anxiety and distress and are stigmatising.

On 10 April 2014 a paediatrician advised that HD should be engaged in formal education as soon as possible as his non-attendance at school is 'significantly detrimental to his mental health'.

The Department of Immigration and Border Protection, Serco and International Health and Medical Services had concerns about the impact of the constant supervision on HD and proposed that the constant monitoring be reduced and that HD's father supervise him around children.

However, on 13 June 2014, Child Protection Services in Victoria interviewed HD and his father and recommended that the 24 hour monitoring continue and did not support the Department's proposal. Child Protection Services queried why HD was not attending school given that he is constantly supervised. In response the Department stated that it was inappropriate to 'send a guard to school with HD'.

On 19 June 2014 a psychiatrist assessed HD as being a very low risk of engaging in inappropriate behaviour:

HD's risk of engaging in sexualised behaviour is likely to be very low, and could be considered lower than an average male adolescent, particularly give[n] his cultural background that enforces appropriate behaviour. HD can be considered suitable to attend mainstream school. I would not anticipate any difficulties in the future.

On 25 July 2014, a psychologist from International Health and Medical Services reviewed HD's file after mental health concerns were raised that he was prevented from attending school and was socially isolated. The psychologist reported to the Department that:

There appears to be nothing in his file that to me justifies clinically his need to be closely supervised by Serco, his not attendance at school and his social isolation from other members of the MITA [Melbourne Detention Centre] community.

That same day a Department Regional Manager emailed the First Assistant Secretary of the Community Programmes and Children Division recommending that the Department follow the advice of International Health and Medical Services to reduce the supervision arrangements and allow HD's father to be responsible for his son from 10pm to 8am. Further, it was recommended that at other times Serco keep watch from a distance, rather than at arms-length, and that HD should attend school.

On 8 August 2014 the detention centre manager wrote to the Department Regional Manager to follow up HD's case. In that email, it is noted that a forensic psychiatrist stated in relation to HD:

The notion of constant supervision would appear to be grossly excessive and incongruent to the level of allegations. The DHS (Department of Human Services) perhaps need [to be] reminded that registered sex offenders are not supervised in the community.

The detention centre manager wrote that she is 'struggling to understand why this situation is being allowed to continue' and that:

all stakeholders concur with the independent psychiatrist assessment that the current supervision arrangements are grossly excessive. Denial of access to school and social interaction with peers is detrimental to HD and continuation of these arrangements is causing serious harm.

The Commission understands that the 24 hour monitoring of HD was finally discontinued in mid-August 2014. At the time of writing this report, HD was still prevented from attending school.

### 9.6 Relationships with parents

*Sometimes I had to take the role of the parent.*

(16 year old boy, community interview, 5 August 2014)

Of the 196 teenagers aged between 13 and 17 who were detained on 31 March 2014, 140 were accompanied by one or both parents.<sup>397</sup>

Relationships between teenagers and parents can be affected by the detention environment and it can be difficult for parents to assume normal parental roles. Some parents reported that they felt disempowered and were not able to take responsibility for their children or to appropriately assert their authority.<sup>398</sup> Given that adolescence is recognised as a time when young people challenge parental authority yet, still need the safety of boundaries, any undermining of parental authority can be particularly damaging for a parent's relationship with their teenage child and the health and wellbeing of that child.<sup>399</sup>

A submission from the Darwin Asylum Seeker Support and Advocacy Network described a 13 year old child who had been detained for more than 12 months. In addition to concerns about the child's general emotional wellbeing, the submission noted that:

the child's relationship with her father is appearing to break down, with the child appearing to lose respect for her father and expressing frustration about his lack of ability to change her circumstances.<sup>400</sup>

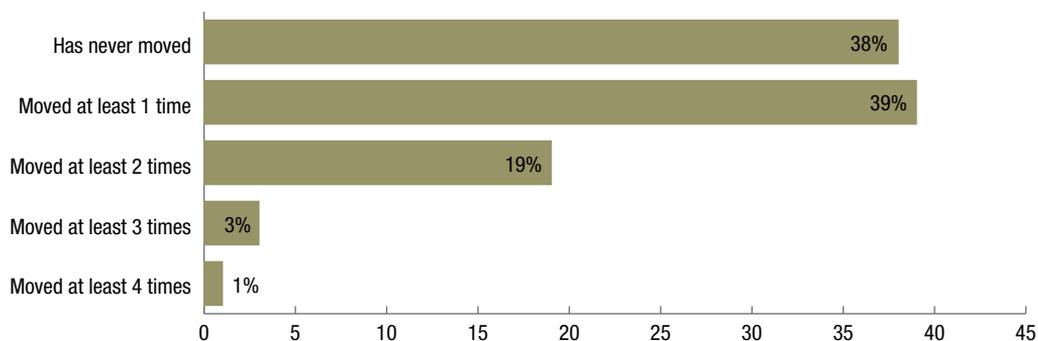
Teenagers may also be affected by parental mental illness which can deprive them of adequate emotional and physical support and care. This may compound the distress and anxiety that the young person has about his or her parent's emotional wellbeing.<sup>401</sup>

Teenagers who have parents with mental illness may have to take the role of primary caregiver for younger siblings. This can force them to assume responsibility for which they are not sufficiently mature. It may also force them to ignore or suppress their own developmental needs as young people.<sup>402</sup>

## 9.7 Relocations

The majority of teenagers in detention in Australia have been moved between detention centres. Thirty-nine percent of teenagers said that they had been relocated once, while 23 percent had relocated two or more times. The figures are at Chart 47.

**Chart 47: Number of times teenagers were transferred between detention centres**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 137 respondents

Relocations can be detrimental to teenage development. They can disrupt peer relationships and restrict the development of a sense of belonging, both of which are crucial for healthy development at this stage of life.<sup>403</sup>

Several young people threatened suicide or self-harm if they were going to be moved away from friends and relocated to another centre.

- A 17 year old boy threatened to end his life if not transferred back to his friends who were detained in a different Christmas Island compound<sup>404</sup>
- A 13 year old boy on Christmas Island told Serco staff that he wanted to be reunited with his friend in another compound and on being told that this wasn't possible, threatened to kill himself<sup>405</sup>
- A teenager at Wickham Point Detention Centre, Darwin, advised staff that he was feeling suicidal due to two of his friends being moved from the detention centre<sup>406</sup>

- A 14 year old girl in the Darwin Airport Lodge Detention Centre reportedly threatened to kill herself if she and her family were relocated once again<sup>407</sup>
- A 15 year old boy made a statement to Serco officers that he would kill himself if he and his mother were not returned to Darwin<sup>408</sup>

### 9.8 Provision of medical services

Medical services were available at all detention centres. Dr Young, former Director of Mental Health Services at International Health and Medical Services noted that specialist mental health services are required for children on Christmas Island.<sup>409</sup>

Dr Young stated that, in 2013, there was no full-time child psychiatrist or child psychologist based on Christmas Island.<sup>410</sup> Two doctors working at Christmas Island stated in evidence to the Inquiry that they believed that there were no child specific health services offered on Christmas Island from July 2013 to November 2013.<sup>411</sup> Child and adolescent mental health specialists are especially critical for teenagers, as this is the stage of life with the greatest risk of onset of mental disorder.<sup>412</sup>

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.<sup>413</sup>

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.

A paediatrician accompanying the Inquiry staff on a visit to Christmas Island reported that many children felt that their medical conditions were not being taken seriously:

People did not feel heard by the health service. They felt that if they had a list of complaints ... the doctor said to us or the nurse said to us, 'you just want a transfer' or 'you are telling us this for some ulterior motive'. They often indicated that they didn't feel believed that these were real medical issues ... [they were] reluctant to go to the health services.<sup>414</sup>

### 9.9 Education

*States have expressly recognised the right of the child to education (Article 28 Convention on the Rights of the Child)*

Access to education is vital for healthy teenage development. Schooling provides opportunities to build social networks and to develop knowledge and skills to facilitate the transition to adulthood.

The Department of Immigration and Border Protection policy for teenagers aged 13-17 years is that enrolment and attendance at school is mandatory.<sup>415</sup>

Yet adequate schooling was not readily available on Christmas Island for most of 2013-14.<sup>416</sup> Two hours of schooling was available each day, provided on a rotational basis to all school age children on Christmas Island.<sup>417</sup>

The Department of Immigration and Border Protection publicly recognised this deficiency in education services at the first public hearing.<sup>418</sup> Schooling has been made available to teenagers since July 2014. The Western Australian Catholic Education Office is the provider of education services on Christmas Island.

On mainland Australia, the Commission found that the majority of teenagers were enrolled in local public schools and were attending. However, those arriving late within the school term and those transferred from Christmas Island or Nauru for medical treatment were generally prevented from attending.<sup>419</sup>

The Inquiry heard evidence that some children at the Melbourne Detention Centre were not allowed to attend school because they were subject to offshore transfer and they would be going back to Christmas Island. This prevented some teenagers from attending school even though they stayed in Melbourne for periods of up to 13 months.<sup>420</sup> Another teenager detained in Melbourne was told at 17 that there was no point in him attending school because once he turned 18 he would have to stop going.<sup>421</sup>

The Commission found that 76 percent of teenagers always had their bags searched when they returned to detention.<sup>422</sup> At Inverbrackie Detention Centre all children are searched on their way to and from school.<sup>423</sup> One 17 year old told the Inquiry that he stopped going to school because of these security measures.<sup>424</sup>

Being in detention can have a negative impact upon teenage learning, even where educational facilities are available and adequate. Research into children in detention shows that the stress of the detention environment can affect the ability of a child to concentrate and absorb new information.<sup>425</sup> In a submission provided to the Inquiry, the Darwin Asylum Seeker Support and Advocacy Network reported that it had received reports from teachers that:

children's behaviour at school deteriorates over time in detention, along with their ability to learn. [Teachers] report that there is lot of fighting among the children from the centres and that the children while initially bright and keen to learn, over time begin presenting as unhappy, angry, rude and unenthusiastic about learning.<sup>426</sup>

## 9.10 Recreation

*States have recognized the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts (Article 31 Convention on the Rights of the Child)*

The opportunity to engage in recreational and extra-curricular activities is crucial for healthy adolescent development. Such activities are important at this phase of life, allowing teenagers to exercise autonomy and choice, to discover their own interests, and to establish peer relationships.<sup>427</sup>

A lack of sufficient activities in detention can lead to boredom and isolation, as well as reinforce feelings of hopelessness, all of which can have negative impacts upon teenager wellbeing.<sup>428</sup>

Recreational facilities and access to equipment varies between detention centres. Although some sporting and extra-curricular activities are available for children, 25 percent of interviewed teenagers said that they were not given enough time for recreation.<sup>429</sup>

Complaints about a lack of activity for teenagers were prevalent amongst parents and teenagers.

*One week ago you said you were coming here, so they set everything up. It's not always like this.*

(Father of four children, Inverbrackie Detention Centre, Adelaide, 12 May 2014)

## 9. Teenagers in detention

*The Xbox arrived yesterday and the controls have been hidden... they have never been used.*

(15 year old child, Melbourne Detention Centre, 7 May 2014)

Excursions from detention centres were infrequent across the detention network. Forty-six percent of teenagers had left the detention centre no more than three times during their entire time in detention (excluding for school).<sup>430</sup>

The Inquiry received reports that teenagers on Christmas Island were regularly taken to the nearby oval. Children were also taken on bus trips around the island but were not allowed to get out of the bus. Consequently, many teenagers found these trips pointless and stopped attending.<sup>431</sup>

The Department of Immigration and Border Protection advised that in July 2014 a gymnasium and recreation equipment, including pool tables, had been installed at Phosphate Hill Detention Centre on Christmas Island. The Department also reported that there are plans for further recreational facilities on Christmas Island.<sup>432</sup> The Inquiry welcomes these improvements but notes the long delay given that Christmas Island detention centres have been used to detain children for many years.

### 9.11 Findings specific to teenagers

Detention puts teenagers at high risk of mental illness, emotional distress and self-harming behaviour.

Detention impedes the social and emotional maturation of teenagers.

The lack of school education on Christmas Island for teenagers who arrived in Australia on or after 19 July 2013 has had negative impacts on their learning and may have long term impacts on the cognitive development and academic progress of these children.

**At various times teenagers in detention were not in a position to fully enjoy the following rights under the *Convention on the Rights of the Child*:**

- **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 to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development (article 27(1))**
- **the right to be protected from all forms of physical or mental violence (article 19(1))**

The Committee on the Rights of the Child has stressed the importance of providing teenagers a safe and supportive environment in which to develop:

The health and development of adolescents are strongly determined by the environments in which they live. Creating a safe and supportive environment entails addressing attitudes and actions of both the immediate environment of the adolescent – family, peers, schools and services – as well as the wider environment. (General Comment No 4, paragraph 14)

The detention environment is not a safe and supportive environment for teenagers. Teenagers in detention have limited activities designed specifically for them, and limited opportunities to leave the centres, other than for school. The restrictions on their freedom and autonomy can result in boredom and isolation. They are also subject to relocation between detention centres, which disrupts peer relationships and a sense of belonging.

Teenagers in detention are exposed to risk as they are kept in confined areas with other teenagers and adults who are mentally unwell and who engage in self-harming behaviour. Between January 2013 and March 2014, 125 teenagers aged 13 to 17 years old engaged in actual self-harm, and 153 teenagers engaged in threatened self-harm. The level of self-harm in detention is of particular concern given that teenagers are prone to imitating the behaviour of others, particularly peers.

- **the right to be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age (article 37(c))**

Teenagers in detention are subject to policies and procedures which encroach upon their dignity. If they leave the detention centre for school or an excursion, they are required to be accompanied by a Serco officer. Within the detention centres, they are subject to head counts four times a day, including at night.

Also, on Christmas Island and in Darwin, there are occasions of Serco officers using boat identification numbers to identify teenagers, rather than their names.

**The failure of the Commonwealth to provide education to teenagers on Christmas Island between July 2013 and July 2014 is a breach of the *Convention on the Rights of the Child*, article:**

***28(1): States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:***

***(b) make [different forms of secondary education] available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need.***

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)

Section 9.9 in this chapter describes in detail the lack of education provided to teenagers 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.

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.

The failure of the Commonwealth to take either of these measures for a year is a breach of article 28(1).

The Commission notes that all school aged children detained on Christmas Island are now attending school full time, consistent with article 28(1).

*I feel like I'm in jail, no one here to help us. It's just me and God.*

17 year old unaccompanied child, Christmas Island detention centre, 16 July 2014

*I was particularly distressed by the utter despair of the unaccompanied boys I spoke with on Christmas Island – despair underpinned by past, present, and anticipatory trauma.*

*Young men, in the prime of their lives, who face the intolerable realisation that any hope of a better life had almost evaporated...*<sup>433</sup>



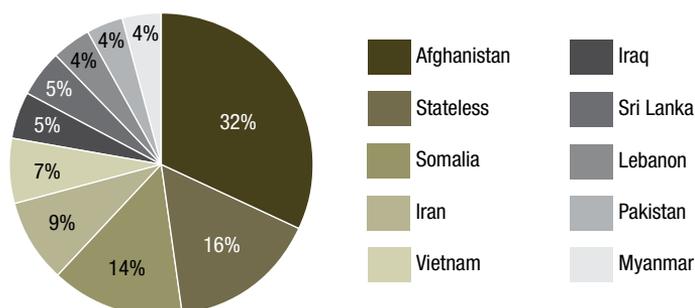
Drawing by primary school aged girl, Christmas Island, 2014.

# 10. Unaccompanied children in detention

In March 2014 Australian detention centres held 56 children who had travelled to Australia without parents or a legal guardian.<sup>434</sup> These children, aged between 13 and 17 years of age, are known as ‘unaccompanied children’ or ‘unaccompanied minors’. Inquiry staff interviewed 49 of the unaccompanied children in detention.

The majority of the unaccompanied children are from Afghanistan, followed by children from Somalia. Other children originated from Iran, Iraq, Lebanon, Myanmar, Pakistan, Sri Lanka, and Vietnam. Nine unaccompanied children were stateless, most likely of Rohingya ethnic origin and originating from Myanmar.<sup>435</sup> The percentages of unaccompanied children from the different countries of origin are detailed at Chart 48.

**Chart 48: Country of origin or citizenship status of 56 unaccompanied children in detention, 31 March 2014**



Source: Australian Human Rights Commission analysis of data from Department of Immigration and Border Protection<sup>436</sup>

The average length of time that unaccompanied children had been detained in March 2014 was 217 days.<sup>437</sup>

Over the past five years there has been a surge in children arriving in Australia without parents or a legal guardian. On 1 January 2009 there were eight unaccompanied children in detention; by 1 January 2014 this number had risen to 575. Four hundred and ninety-two of these unaccompanied children were in Community Detention.<sup>438</sup> This increase in children fleeing their home countries without parents reflects a worldwide trend. According to the United Nations High Commissioner for Refugees, in 2013 more than 25,300 asylum applications were lodged by unaccompanied or separated children. This is the highest number on record since the High Commissioner started recording such data in 2006.<sup>439</sup>

The acute vulnerability of unaccompanied children has been widely documented. As the Australian Churches Refugee Taskforce stated in their report *Protecting the Lonely Children*:

Regardless of their legal status or method of entry to Australia, refugee and asylum seeker children are among ‘society’s most vulnerable’. An extensive body of research and literature has clearly established the unique developmental challenges that frequently manifest within this cohort.

Unaccompanied children are a particularly vulnerable sub-group. Separated from their families, many have experienced lengthy periods without safety or stability in transit and detention, be that overseas or in Australia, have histories of trauma and as a result many have serious and complex mental and physical health needs.<sup>440</sup>

## 10. Unaccompanied children in detention

Clinical Psychologist Guy Coffey states that: '[a] high proportion of unaccompanied minors have strikingly high levels of trauma, loss and material deprivation in their histories'.<sup>441</sup>

The United Nations High Commissioner for Refugees reports that unaccompanied children should not be detained, and that detention cannot be justified on the basis of their migration status.<sup>442</sup> Despite their vulnerabilities, however, unaccompanied children are detained by the Australian Government as a measure of first, rather than last, resort.

### 10.1 Impact of detention on emotional and mental wellbeing

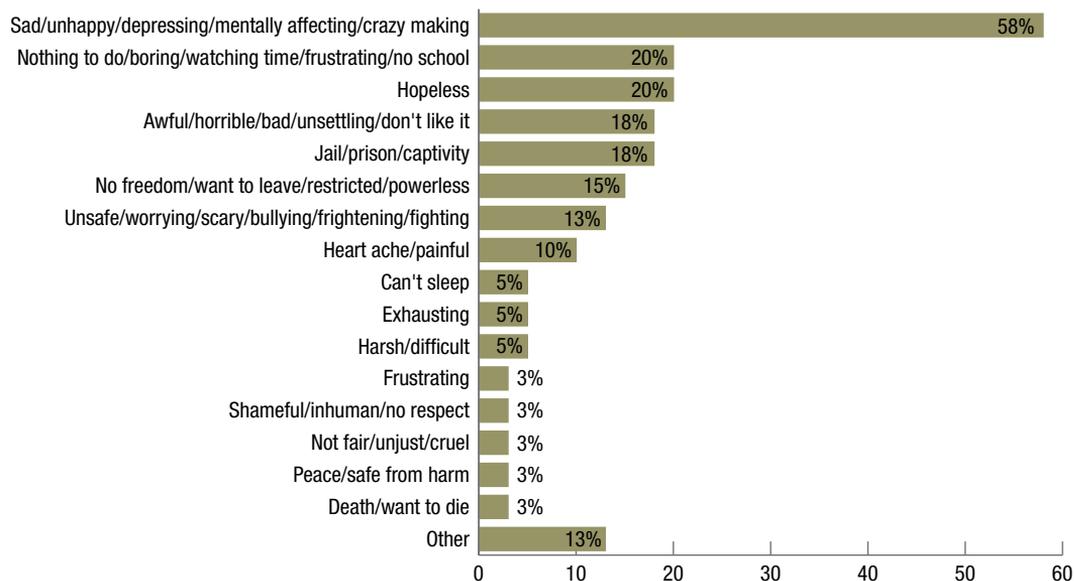
*I don't care about a visa any more. I want to finish everything. My life is very difficult. I don't understand why I am here. I am beginning to feel crazy; my situation is very bad and getting worse. I am alone, no family, nobody here. I've been here 15 months, I need to do something.*

(17 year old unaccompanied child, Melbourne Detention Centre, 7 May 2014)

The detention environment has particular impacts on unaccompanied children who have to process and recover from past traumatic experiences without the benefit of any parental support. Their sense of isolation and distress is compounded by the daily challenges of the detention environment.

When asked to describe detention in three words, 58 percent of unaccompanied children described it as 'crazy-making' and 'depressing' at Chart 49.

**Chart 49: Responses by unaccompanied children to the question: Use three words to describe the experience of detention**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia, 2014, 40 respondents (Note: respondents can provide multiple responses)

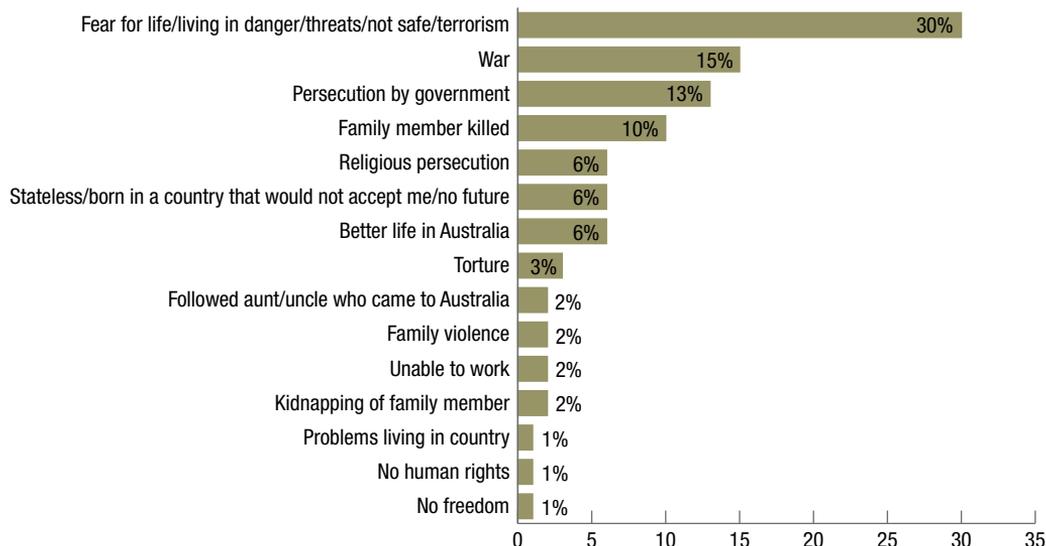
Professor of Developmental Psychiatry, Louise Newman, reported to the Inquiry that unaccompanied children suffer high rates of mental health disorders.<sup>443</sup> According to Professor Newman, many unaccompanied children suffer ‘from ongoing fear and anxiety about the welfare of their families and communities ... that sense of exile, sense of alienation, contributes to their vulnerability and depression’.<sup>444</sup>

A former volunteer in the detention facilities on Christmas Island and in Darwin submitted the following description of unaccompanied children to this Inquiry:

[They] were young, alone, afraid and deeply distressed. I noted them attempt to act as adults to cope without the appropriate time, age and circumstance to transition into this role. I believe that their childhood was lost in this environment and they will never be able to truly recover.<sup>445</sup>

When Inquiry staff asked unaccompanied children why they came to Australia they were most likely to respond that they feared for their life, at 30 percent of responses. The second most reported reason for fleeing their home country was war. The reasons for unaccompanied children coming to Australia are set out in Chart 50.

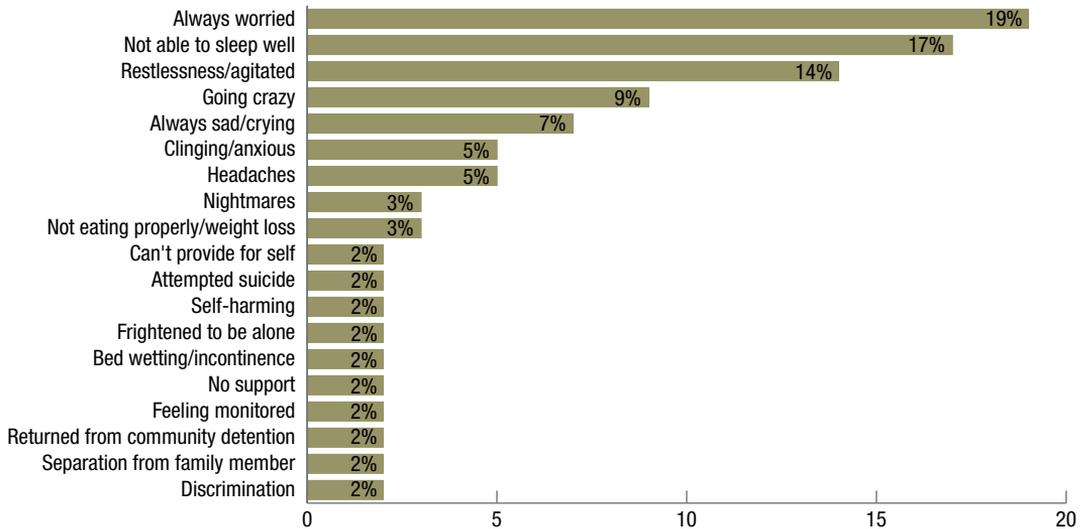
**Chart 50: Responses by unaccompanied children to the question: Why did you come to Australia?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia 2014, 47 respondents

It is clear that being held in detention places an additional burden on these young people, who are already affected by their past experiences. When Inquiry staff asked whether their emotional and mental health had been affected since being in detention, every one of the 42 respondents answered yes.<sup>446</sup> The detailed explanations of the mental health impacts on unaccompanied children are shown at Chart 51.

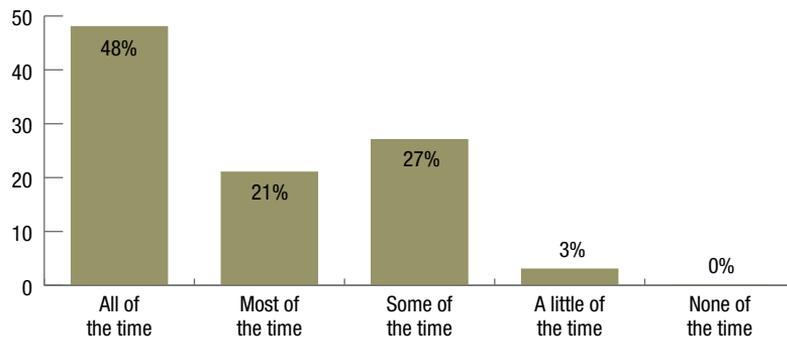
**Chart 51: Responses by unaccompanied children to the question: What are the emotional and mental health impacts on you?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia 2014, 37 respondents (Note: respondents can provide multiple responses)

When asked how they felt in detention, 48 percent of the unaccompanied children said that they felt depressed all of the time. Forty-five percent said that they felt hopeless all of the time. Chart 52 shows the responses to how often they felt depressed.

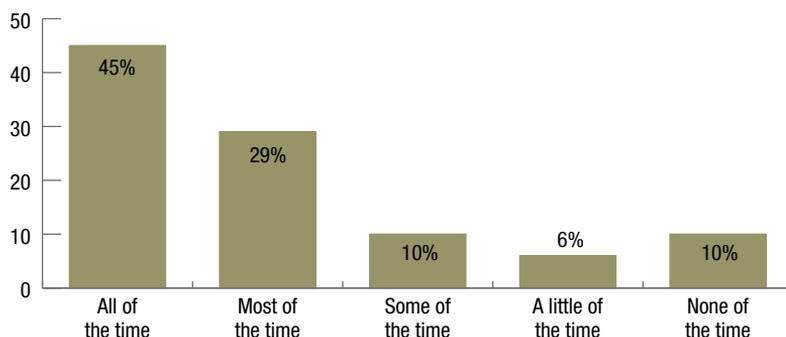
**Chart 52: Responses by unaccompanied children to the question: How often do you feel depressed?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia 2014, 33 respondents

Chart 53 shows the responses to how often the unaccompanied children reported that they felt hopeless.

**Chart 53: Responses by unaccompanied children to the question: How often do you feel hopeless?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents in Detention, Australia 2014, 31 respondents

When Inquiry staff visited the detention facilities on Christmas Island in March 2014 they met with most of the unaccompanied children detained there. The majority of them had been detained for six to eight months.

The child psychiatrist who assisted the Inquiry on visits to the Christmas Island and Darwin detention centres recorded the mental state of unaccompanied children she met:

most [children] reported fear, loneliness and boredom, [one] boy said 'I am crying all night in my bed. I can't sleep'. Another said, 'Even though we go to English class sometimes, I can't concentrate or remember'.

Many boys had symptoms consistent with major depression, PTSD [Post-Traumatic Stress Disorder] and generalised anxiety disorder. One or two appeared potentially psychotic with confused and bizarre mood or presentation. There is an intense shared anxiety about transfer to the adult compound or to Manus Island, and of concern is a sense [of] loss for peers who have been 'extracted' and transferred. For some of the boys, this anxiety and despair includes suicidal ideation. Some told us they would rather die than be transferred to Manus but asked us not to tell anyone in case they were moved in to [the Psychological Support Program] and away from their friends. ...

They asked us: 'Who can I speak to?'; 'Who looks after me?' None had spoken to a lawyer or were aware they might have a right to do so.

Young people who don't have other family with them, who often are orphans develop strong bonds particularly within the same language groups. At times the 'extraction' of boys deemed to have turned 18, had meant that one young man no longer had anyone else who spoke his language. There is a very pervasive anxiety about being transferred, and about that happening without warning, which contributes to disturbed sleep.<sup>447</sup>

## 10. Unaccompanied children in detention

In some instances, unaccompanied children have been sent to Manus Island because they were assessed as being 18 when in fact they are younger. In these situations, unaccompanied children are returned to mainland detention centres, usually Christmas Island. One unaccompanied child who had been detained on Manus Island told the Inquiry team:

*I witnessed horrible things, people throwing chairs, protesting ... those who had self-harmed were taken to [a] place...*

(Unaccompanied child sent to Manus Island, Papua New Guinea, after an incorrect age assessment)

### 10.2 Self-harm by unaccompanied children

In July 2014, the Commission received the case files of 37 unaccompanied children who were either in detention or had been in detention.<sup>448</sup> The case files revealed some alarming details about the nature of self-harm and suicide attempts amongst this group. Seven of the 37 children (19 percent) had engaged in actual self-harm in detention and nine children (24 percent) had threatened self-harm.

The Incident Reporting Guidelines require Serco to report to the Department of Immigration and Border Protection using two categories of self-harm: 'threatened' or 'actual' self-harm.<sup>449</sup> There is no category for attempted suicide. The Commission is concerned that these descriptions do not adequately reflect the severity of some incidents. It is only through reading all notes associated with each incident, especially clinical reports, that any light is shed on what actually occurs when a child self-harms.

Four of the seven unaccompanied children who engaged in what was recorded as 'actual self-harm' by Serco, were attempting suicide according to clinical records. The suicide attempt of one 16 year old unaccompanied Somali boy on Christmas Island was very near fatal. The description in the incident report reads:

On Saturday [date] a nurse called out to me because at approx 03:10AM client [number] had hung himself in the toilet with the door locked. ... I held him up while the nurse raced to get scissors to cut him down. We got him down and layed [sic] him on the bed and the nurse and I started chest compressions and after approx. 1 minute he started breathing again.

The 16 year old boy had been in detention for less than one month. He had a history of trauma prior to coming to Australia. In May 2014 the Department of Immigration and Border Protection referred the boy to the Minister for Immigration and Border Protection for a Community Detention placement. In the referral to the Minister it was noted that the boy was diagnosed with mixed depression, anxiety disorder, Post-Traumatic Stress Disorder and bipolar disorder. The referral submission then stated that the boy 'attempted self-harm while in held detention'.

No detail appears to have been provided in the referral submission to the Minister about the nature of the incident or the severity of the behaviour. This possibly accounts for why the Minister declined the recommendation that the boy be released into Community Detention. The Minister wrote that it was 'not clear to me why he cannot be transferred to Nauru'. As of July 2014 this teenager remains in detention on mainland Australia.

The six case studies that are contained in this chapter demonstrate how detention can cause mental health deterioration in unaccompanied children including self-harm and suicide attempts.

### **CASE STUDY 3:**

**DC**<sup>450</sup>

DC is a 17 year old boy who arrived alone on Christmas Island in July 2013. He fled Pakistan after being abducted by the Taliban and witnessing the murder of his friend. A few days after arriving in Australia he disclosed a history of torture and trauma. Five months after being held in detention centres on Christmas Island and Darwin his mental health deteriorated significantly. He commenced self-harming behaviour in December 2013. The Department notes that DC has been involved in 50 incidents, most relating to actual or threatened self-harm.

In February 2014 the Director of Mental Health at International Health and Medical Services, Dr Peter Young, noted that DC was:

considered at Hi [sic] level of self-harm risk secondary to mental health deterioration caused by conditions of prolonged detention. ... Recommendations to DIBP [the Department] to ameliorate conditions of detention have not been acted on.

DC spent seven weeks at a private hospital in Melbourne for mental health treatment. He was diagnosed with Post-Traumatic Stress Disorder and dissociative psychotic like symptoms. After DC was discharged from hospital and returned to an immigration detention facility Dr Young noted that his mental health symptoms:

had been exacerbated by previous detention environment and improved when removed to therapeutic environment but his condition has quickly [sic] on return to restricted detention setting resulting in rapid increase in risk of self-harm and suicide requiring constant level of SME [Supportive Monitoring and Engagement] to manage.

In July 2014, following a recommendation from a child psychiatrist, DC was referred to the Minister for consideration of Community Detention. It is not clear from the case file provided to the Commission whether the Minister has decided to release DC into the community.

### **CASE STUDY 4:**

**NS**<sup>451</sup>

NS is a 17 year old Somali girl who arrived alone in Australia during September 2013. She had experienced multiple violent traumas in Somalia, including the death of her father and siblings in a bomb blast. However, she had no history of mental illness prior to being detained in Australia. NS was detained for three weeks on Christmas Island before being informed that she would be taken to Nauru. The morning of the transfer she made two attempts to hang herself.

In Nauru NS developed increasing depression with suicidal ideation and anxiety, leading to self-harm on multiple occasions. She was reviewed by a psychiatrist who recommended that she be removed to Australia, advising that if she remained on Nauru her mental health would deteriorate further and 'her risk of suicide is high as she has reached the end of her resources'.

## 10. Unaccompanied children in detention

In November 2013, NS was transferred to a hospital on mainland Australia. She was diagnosed with a Major Depressive Disorder, her unresolved asylum seeker status being a prominent contributing factor. She was kept in hospital for three months. When she was released, the discharge summary recommended that 'the least restrictive possible setting will mitigate against risk of relapse and rehospitalisation'. She was transferred to the Brisbane Detention Centre. In March International Health and Medical Services prepared an assessment which concluded that she would be able to access the support that she needed to manage her mental health condition if she was allowed to live in the community.

NS was readmitted to hospital in May 2014 following deterioration in her mental health and self-harming behaviour. On readmission she reported 'loss of hope in the context of her prolonged detention'. She was discharged from hospital later that month. As of July 2014, 22 months after she was initially detained on Christmas Island, NS was still in detention on the Australian mainland.

### **CASE STUDY 5:**

CA<sup>452</sup>

CA, a 17 year old boy, arrived alone on Christmas Island in August 2013. His family sent him to Australia to seek safety after his father was killed by the Taliban in Pakistan.

He disclosed a history of torture and trauma in August 2013. In March 2014 a psychiatrist diagnosed CA with adjustment disorder with anxious and depressed mood and advised that he may require hospitalisation if his mental state deteriorated further. In April 2014 the psychiatrist advised that CA was 'gradually getting worse with time in detention'.

In May 2014 CA attempted to hang himself, and had to be cut down by a Serco officer. On 1 June 2014 CA turned 18. In June 2014, CA engaged in a number of self-harm incidents including cutting, head-banging and biting. On 11 June 2014, after a further self-harm incident, the Mental Health Team Leader wrote to the Director of the International Health and Medical Services that he was:

highly concerned that [CA] will suicide and should not currently be in detention. He is in need of 24 hour inpatient psychiatric care with long term psychotherapy.

On 18 June 2014 CA was transferred to the mainland for mental health treatment.

### **CASE STUDY 6:**

RT<sup>453</sup>

RT, a 16 year old unaccompanied boy from Iraq, had been in detention for about four months on Christmas Island. He was found lying in his bed crying, having caused multiple lacerations to his left arm, stomach and abdomen in an attempt to commit suicide. He had an argument with his Arabic friends in detention about a month before and was socially isolated. He said that voices in his head had been telling him to commit suicide. He had been diagnosed with Post-Traumatic Stress Disorder from experiences in Iraq.<sup>454</sup>

#### **CASE STUDY 7:**

**RE**<sup>455</sup>

RE is a 15 year old unaccompanied boy from Afghanistan who arrived in Australia in April 2013. After being detained for one month on Christmas Island he was transferred to Pontville. He had been in detention in Pontville about one month before he started to self-harm by making several cuts to his arm. He had no history of self-harm or contact with mental health services prior to coming to Australia. He said 'in here [Pontville] I learnt it from other boys because I was getting sad'. He self-harmed on a further three occasions while in detention, inflicting cuts to his chest and arms. He was transferred to Community Detention in August 2013. He self-harmed once more while in Community Detention.

#### **CASE STUDY 8:**

**ZN**<sup>456</sup>

ZN is a 16 year old unaccompanied boy from Pakistan who was detained in Pontville. He cut his left arm to such an extent that he was transferred to a hospital for stitches. At that point he had been in detention for about two months, one month on Christmas Island and one month in Pontville. He had no history of depression or any contact with mental health services prior to his journey to Australia.

Within weeks of the first incident the boy engaged in further and multiple incidents of self-harm, including cutting his arm, removing the stitches in his arm with nail clippers, and banging his head against the wall. On some occasions Serco officers used force to restrain the boy from continuing to self-harm. He said that he could not be in detention any longer and threatened to kill himself if the Department refused to transfer him into the community. About a month later he was moved into Community Detention. He continued to engage in self-harm incidents in Community Detention.

## 10.3 Pontville Detention Centre

In 2013, the majority of unaccompanied children detained in Australia were held at Pontville Detention Centre in Tasmania. In July 2013 there were 254 unaccompanied children detained there.<sup>457</sup> Between 1 January 2013 and 14 August 2013 there were reports of 50 incidents of actual self-harm and 49 incidents of threatened self-harm at Pontville.<sup>458</sup>

The Commission visited Pontville in May 2013 and raised concerns with the Department about its prison-like nature and high fences. The Commission expressed concern about the level of despair and anxiety expressed by the unaccompanied children who had been held there for prolonged periods.

In September 2013 the Australian Government transferred a significant number of unaccompanied children from Pontville into Community Detention. On 21 September 2013, the Department of Immigration and Border Protection reported that there were no unaccompanied children detained at Pontville. Pontville was closed in February 2014.<sup>459</sup>

## 10.4 Forcible transfer of children to Bravo Compound at Christmas Island

*Under the Convention on the Rights of the Child, children in detention should be treated with humanity and respect, and in a manner which takes into account the needs of persons his or her age (article 37(c)).*

When the Inquiry team visited Christmas Island in July 2014, a number of unaccompanied children complained that the Serco officers had used force against them when they moved them from a compound known as 'Charlie' to another compound known as 'Bravo' on 24 March 2014. The following is a description of what happened during this move.

On 21 March 2014, in response to safety concerns arising from an incoming tropical cyclone, all families and children were transferred from the family detention centres at Christmas Island to the single men's detention centre at North West Point. The single men's compound at North West Point is a large high security complex; purpose-built to hold single men on Christmas Island.

The cyclone caused significant damage to two of these family detention centres and they were deemed uninhabitable until repairs could be made. Extra space was needed for families and the Department decided that as there was space at the Charlie Compound, this was the best place to move families. This necessitated the move of the 38 unaccompanied children from 'Charlie' Compound to the adjacent 'Bravo' Compound.

On 23 March 2014, the evening before the scheduled transfer, the children were informed of the planned move by an officer of MAXimus Solutions – the care and welfare provider for unaccompanied children.

MAXimus sent an email to the Department's Regional Manager, the children's delegated guardian, and the Phosphate Hill Centre Manager indicating that the children would be refusing to leave Charlie compound. In the email, MAXimus said that it 'wanted to alert stakeholders to this so we can minimise any negative behaviours tomorrow'.

### (a) The incident

On 24 March 2014, the day of the transfer, the children reiterated that they did not want to move. According to Serco officers the relocation was urgent because families at North West Point were frustrated and 'were involved in a number of incidents including peaceful demonstrations and a minor disturbance'.

At 1:15pm the children were officially notified that they were to pack their belongings and move to Bravo. According to Serco, the children refused and 'showed no signs of conceding their position'.

At 1.30pm, the Commander of the Emergency Response Team arrived on site at the request of the Serco Centre Manager to provide a briefing to him on the use of force.

Written authorisation was sought for the use of force by way of an 'enhanced escort position', if children would not move voluntarily. Permission for the use of force was given by the Department's Regional Manager on Christmas Island. Prior to force being used, there was further 'verbal negotiation by both Serco and MAXimus staff' until 3.00pm.

Between 3:00pm and 3.15pm the Emergency Response Team entered Charlie Compound and facilitated the transfer of the children to Bravo Compound.

The Inquiry has viewed hand-held camera footage of the transfer and reviewed the Serco incident report, as well as an investigation report by an external consultant engaged by Serco. The Commission has also seen a feedback report from MAXimus.

According to the Serco incident report, three children allegedly 'became aggressive with incidents of biting, spitting and (possible) attempts to escape' when they were encouraged to move. As a result the Emergency Response Team used restraint techniques including wrist locks and arm bars to forcibly transfer those children. One child had his head held by one officer while wrist locks and arm bars were being used by two other officers.

The footage viewed by the Inquiry depicts a distressing scene. The three children are seen screaming and resisting Serco officers as they are being forcibly moved. There is no evidence of biting or spitting during these moves.

One of the children is seen being forcibly removed from his bedroom by two Serco officers. The officers are seen struggling with the child to remove him from the room. Immediately after passing through the doorframe the child starts to scream 'my head' or 'my hand' multiple times. The Inquiry is concerned that in response to the child's screaming one of the Serco officers using force against the child yells at him four times to 'shut up'. The Commission considers this to be an inappropriate response by the Serco officer to a child in distress.

## (b) Decision to approve use of force

The Department's Detention Service Manual specifies that all use of force 'should be proportionate to the situation, objectively justifiable and only used as a measure of last resort. ... In the first instance, staff should seek to achieve the desired objective, whenever possible, by de-escalation techniques such as discussion, negotiation, or verbal persuasion'.<sup>460</sup>

The Inquiry acknowledges the logistical challenges caused by the tropical cyclone on 23 March 2014 and the need to remove families from North West Point. Real questions remain, however, about the degree of urgency to the move, the speed with which a decision to use force was made, and whether the decision to approve the use of force was taken only as a measure of last resort, particularly in light of available alternatives.

The Managing Director of MAXimus, Ms Deborah Homewood, answered questions about the incident during the Inquiry's public hearing in Canberra on 22 August 2014. One alternative identified by Ms Homewood was to move the unaccompanied children directly from North West Point to Bravo Compound, rather than returning them to Charlie Compound first. From there, they could have been individually taken back to Charlie Compound to collect their belongings.<sup>461</sup>

Further, it appears that there was a range of de-escalation techniques such as discussion, negotiation or verbal persuasion that could have been used more effectively prior to an authorisation for the use of force being sought.

The independent reviewer of the incident, engaged by Serco, was **not** asked to advise about the circumstances leading to the approval for the use of force. It appears that the Serco decision to seek approval from the Department was made quickly – within 15 minutes of the children being formally asked to move.

## 10. Unaccompanied children in detention

While there was some negotiation after authorisation was sought, the evidence before the Inquiry, particularly that of Ms Homewood, suggests that this negotiation could have been better handled. In particular, it appears that:

- MAXimus, the care and welfare provider for the unaccompanied children, was not consulted before an authorisation was sought to use force
- No interpreter was used during the period of negotiation with the children at Charlie Compound after they had been asked to move, while interpreters were available the evening before when the children were at North West Point
- No psychologist (or other professional mental health worker who was familiar with the children) was present at the time of transfer
- No trained negotiator was engaged

While some of the children have a good grasp of English, it is imperative that interpreters are made available for effective communication in challenging situations. Without interpreters, it is unclear how the concerns of the children were adequately addressed when the boys were told of the decision to move them to Bravo Compound.

It is also unclear on the evidence whether any regard was given to the age of the children, their particular vulnerabilities and their mental health histories.

The post-incident reports do not discuss the reasons why the children did not want to relocate to Bravo Compound. Some children told the Inquiry that they preferred the attached bathrooms at Charlie Compound and did not like the communal bathrooms at Bravo Compound. The Inquiry has received anecdotal evidence that there are incidents of bedwetting amongst unaccompanied children. Some children told the Inquiry that they do not like the high fences at Bravo Compound and that they feel like they are in a prison.<sup>462</sup>

Following the transfer, MAXimus provided a feedback report to the Department. In the report MAXimus expressed concern about the lack of interpreters used during the negotiations and the lack of communication to MAXimus, particularly regarding the use of force.

Force should only be used against children as a measure of last resort. All other alternatives to the use of force should be explored. Evidence indicates that such alternatives were not adequately considered. Accordingly, the Commission finds that the decision to approve the use of force to transfer unaccompanied children from Charlie Compound to Bravo Compound on 24 March 2014 was in violation of article 37(c) of the *Convention on the Rights of the Child*. The Commission finds that the children were not treated with humanity and respect and in a manner which takes into account their vulnerability and age.

### (c) Use of force

Serco advised the Commission that they used two handheld cameras to record the transfer. Of those two cameras, one was not working, and the footage from the other was of poor quality. There was no closed-circuit television coverage of the compound areas at 'Charlie Compound' where the children had been living. The footage viewed by Commission staff is seven minutes and 10 seconds long. It does not show any discussion or any incidents of biting, spitting or resistance by the boys before they were forcibly moved to Bravo Compound. Based on the post-incident review by Serco, it cannot be said to be a complete record. The Inquiry notes with concern that there are gaps in the footage where nothing of relevance is captured.

The footage was described by the external consultant as follows:

The video footage is of very poor quality and it is apparent that the camera operator/s had very limited experience in the use of video equipment. This makes analysis difficult as the [unaccompanied children] are not always in frame for the entire [use of force] incident/s or the video footage commences after the [use of force] has already commenced.

Serco states that the restraint techniques were only used 'where all other attempts at verbal de-escalation techniques failed'. The head control technique was said to be used to prevent biting or spitting.

The Managing Director of MAXimus, Ms Deborah Homewood, told the Inquiry that she was concerned about the use of force:<sup>463</sup>

I think force was over-used. Yes I do. I don't think it was necessary. I think that the whole thing could have been handled very differently from the start.

There is insufficient evidence before the Inquiry to determine whether the use of force by the Serco officers was more than strictly necessary.

10. Unaccompanied children in detention



Images of children being forcibly moved from Charlie Compound to Bravo Compound taken from video footage provided by the Department of Immigration and Border Protection



## 10.5 Guardianship and welfare

Australia has obligations to ensure that unaccompanied children seeking asylum receive special protection and assistance.<sup>464</sup> Article 20 of the *Convention on the Rights of the Child* requires Australia to 'ensure alternative care' for these children.

An important element of the care of unaccompanied children is effective guardianship.<sup>465</sup> In the absence of a child's parents, the legal guardian of an unaccompanied child has the 'primary responsibility for the upbringing and development of the child', and is under an obligation under the *Convention on the Rights of the Child* to act in the best interests of the child.<sup>466</sup>

The United Nations Committee on the Rights of the Child has emphasised that, in order to ensure proper representation of an unaccompanied child's best interests, it is important:

- 1) that his or her guardian 'have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered by, inter alia, the guardian acting as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child'; and
- 2) that '[a]gencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship'.<sup>467</sup>

The Commission considers that, in ensuring a child's best interest, a guardian would advocate:

- that the child not be held in detention
- for the shortest possible period of detention in conditions appropriate for children
- for the adequacy and appropriateness of accommodation, education, language support and access to health services.<sup>468</sup>

### (a) Concerns about guardians' lack of expertise

Under the *Immigration (Guardianship of Children) Act 1946* (Cth), it is the Minister for Immigration and Border Protection who is also appointed the legal guardian of certain 'non-citizen' unaccompanied children. In this role the Minister has the same 'rights, powers, duties, obligations and liabilities as a natural guardian of the child'.<sup>469</sup> The responsibilities of a guardian under section 6 of the *Immigration (Guardianship of Children) Act 1946* (Cth):

include the responsibilities which are the subject of the Convention [on the Rights of the Child]. They are responsibilities concerned with according fundamental human rights to children.<sup>470</sup>

Under the current arrangements, the Minister has delegated his guardianship responsibilities to nominated Departmental officers at Executive Level 2. They are either Detention Centre or Regional Managers, or occupy higher positions within the Department.<sup>471</sup> The Department states that:

The delegation has been made at this level as the delegated guardian is required to make important decisions which relate to the care and welfare of children, such as decisions about medical treatment or education.<sup>472</sup>

The Commission notes that the nominated Department officers are not required to have specific qualifications or experience relating to children.<sup>473</sup> The Commission has previously raised concern about the ability of the guardians to monitor properly and ensure the appropriate care and progress of an unaccompanied child if they do not have appropriate qualifications or specific child welfare experience.<sup>474</sup>

The Commission notes that there has been a positive development in this regard. The Department states:

At the time of the Commission's last report, there was no specific services provider to provide care and support to UAMs [Unaccompanied children]. Rather, UAMs were allocated a mentor from the adult population. Since 2009, when [Illegal Maritime Arrivals] began to increase, the Department has engaged a specialist pastoral care service for UAMs, to ensure that this particularly vulnerable group has a separate and independent source of support. Welfare officers are involved in the development of programmes, activities and excursions. They also provide oversight and support to ensure that children attend school, complete homework, and observe a normal and healthy daily routine.<sup>475</sup>

The Department currently contracts MAXimus Solutions to provide these services, and has stated that all MAXimus Solutions Client Support Workers are required to hold a certain level of qualification in social, community or child welfare.<sup>476</sup>

The Commission welcomes this development, noting that it would be entirely inappropriate for Serco officers to be undertaking this role. However, the Commission remains concerned that as the nominated guardians, Departmental officers are not sufficiently qualified to make important decisions relating to the care and welfare of vulnerable children.<sup>477</sup>

## (b) Concerns about guardians' conflict of interest

The Commission has repeatedly stated that the effectiveness of the Minister's role as guardian of unaccompanied children conflicts with his additional responsibilities for administering the immigration detention regime under the Migration Act and for making decisions about granting visas, removals, and transfers to Nauru and Manus Island. Given these multiples roles, it is difficult for the Minister, or his delegate, to make the best interests of the child the primary consideration.

In its submission to this Inquiry, the Department provided the following explanation about 'actual' conflict of interest:

The Government's view is that this is a perceived conflict of interest rather than an actual conflict of interest because exercise of the powers is generally separated and because steps, such as the provision of independent advice or assistance to [*Immigration (Guardianship of Children) Act*] minors, are taken to manage the possibility of a conflict between the Minister's different roles.<sup>478</sup>

The Commission respectfully disagrees with the Government's position that the current arrangements for the guardianship and support of unaccompanied children avoid any actual conflict of interest.

In the event of any conflict between guardianship obligations and migration policies, the Minister and the delegated guardians are required to give priority to their roles under the Migration Act. In August 2012 the *Immigration (Guardianship of Children) Act 1946* (Cth) was amended to make clear that the Minister or his delegated guardians can only exercise 'the same rights, powers, duties, obligations and liabilities as a natural guardian' of an unaccompanied child in immigration detention to the extent that those duties do not affect the performance or exercise of any function, duty or power under the migration law.<sup>479</sup>

## 10. Unaccompanied children in detention

In some instances, the law or the policies relating to immigration detention are in direct conflict with the best interests of the child. For example, there was no formal education available for children on Christmas Island in the period from July 2013 to July 2014. However, the Government policy was that unaccompanied children who arrived in Australia after 19 July 2013 were to be held in detention on Christmas Island.

It would have been difficult for the relevant delegated guardian to advocate effectively for these children to be sent to the Australian mainland to attend school when Government policy was (and is) that these children must be detained on Christmas Island. The constraints on the ability of Departmental staff to be effective guardians are illustrated by the comments of one delegated guardian:

*I have a dual role but I do not see any conflict. We are bound by the policy ... I act in their best interests and advocate where I can ... I worry about there being no education or meaningful activities.*<sup>480</sup>

The Committee on the Rights of the Child states that the potential for conflict in the roles of those appointed to be guardians of unaccompanied children should be sufficient to disqualify them from assuming the guardianship role. The Commission agrees with the principle set out in a University of New South Wales submission to the Inquiry:

A person discharging duties as a guardian should not discharge any other statutory duties in relation to a child for whom they are providing assistance.<sup>481</sup>

### (c) Lack of independent advocate for unaccompanied children

Unaccompanied children in detention do not have an independent advocate. MAXimus Solutions workers who are employed as Independent Observers can only play a limited role in terms of protecting the best interests of unaccompanied children. The Department makes clear that '[t]he Independent Observer has no casework, legal advocacy, or investigative responsibilities and cannot act as a qualified interpreter or advocate on behalf of an unaccompanied minor'.<sup>482</sup>

The Department describes the role of the Independent Observers in these terms:

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.

It is policy that an Independent Observer should be present whenever the Department or other Government agency interviews an unaccompanied minor.<sup>483</sup>

The impact that the lack of an independent advocate for unaccompanied children has is illustrated by one unaccompanied boy's experience of his age assessment interview.

### **CASE STUDY 9:**

#### **AB's age assessment interview<sup>484</sup>**

When the Inquiry staff visited Christmas Island in March 2014, they met with an unaccompanied boy from Afghanistan ('AB') who other children said had been wrongly assessed as being over 18 and had been transferred to the single adult male compound – North West Point Detention Centre. When Inquiry staff asked AB about the age assessment interview, AB became visibly distressed, to the point that he required a break from talking to staff.

He described the age assessment interview as 'the worst thing I will never forget', 'I was very very upset, they didn't believe me'. He said that there was 'no one there to help me ... I was very upset and I cried ... there were questions non-stop, I was very very nervous and upset ... I was very dizzy'. He said that there was an Independent Observer present who 'didn't say anything but was upset afterwards'.

He said he was then asked to sign a form, which he said he didn't understand, and he was then immediately transferred to the adult male compound, where he was detained for several months. After the Inquiry raised concerns with the Department, the Department reviewed AB's age determination decision and in light of new information provided decided that AB was under 18 and returned him to Charlie Compound where the other unaccompanied children are detained.

## **10.6 Findings specific to unaccompanied children**

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.

There are causal links between detention, mental health deterioration and self-harm in unaccompanied children.

The detention environment poses unacceptable risks of harm to these vulnerable children.

Detention is not a place where unaccompanied children are able to recover from past trauma.

As their legal guardian, the Minister for Immigration and Border Protection has failed to act in the best interests of unaccompanied children by not releasing unaccompanied children into community alternatives.

The Minister cannot be an effective guardian for unaccompanied children as he has conflicting roles as both Minister responsible for immigration detention and as legal guardian.

The decision of the Commonwealth to approve the use of force to transfer unaccompanied children from Charlie Compound to Bravo Compound on 24 March 2014 meant that children were not treated with humanity and respect and in a manner which took into account their vulnerability and their age.

As all of the unaccompanied children in detention are teenagers, the finding in chapter 9 that at various times teenagers were not in a position to fully enjoy the rights in articles 6(2), 19(1), 24(1), 27(1) and 37(c) of the *Convention on the Rights of the Child* applies to the unaccompanied children discussed in this chapter.

In addition the failure of the Commonwealth to remove unaccompanied children from detention environments which inhibit recovery from past trauma is a breach of the *Convention on the Rights of the Child*, article:

**39: States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.**

The Committee on the Rights of the Child has explained that the right in article 39 of the Convention is connected to the right in article 24(1) to health. The Committee states that in ensuring the access of unaccompanied children to health care:

States must assess and address the particular plight and vulnerabilities of such children. They should, in particular, take into account the fact that unaccompanied children have undergone separation from family members and have also, to varying degrees, experienced loss, trauma, disruption and violence. Many such children, in particular those who are refugees, have further experienced pervasive violence and the stress associated with a country afflicted by war. This may have created deep-rooted feelings of helplessness and undermined a child's trust in others. ...The profound trauma experienced by many affected children calls for special sensitivity and attention in their care and rehabilitation. (General Comment No 6, paragraph 47).

The particular vulnerabilities of unaccompanied children cannot be addressed in the detention environment, which exacerbates the effects of previous trauma, rather than fostering the health, self-respect and dignity of unaccompanied children.

**The failure of the Minister for Immigration and Border Protection to release unaccompanied children from detention breaches the *Convention on the Rights of the Child*, articles 3(1) and**

**18(1) ...Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.**

**Current guardianship arrangements do not afford unaccompanied children special protection and assistance as required by the *Convention on the Rights of the Child*. This breaches article:**

**20(1): A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.**

**20(2): States Parties shall in accordance with their national laws ensure alternative care for such a child.**

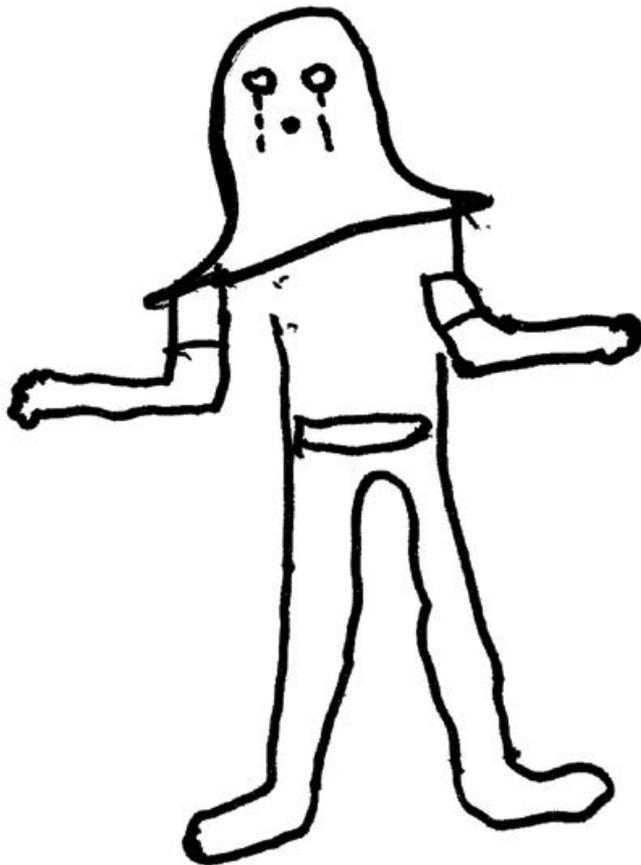
**The failure of the Commonwealth to appoint an independent guardian for unaccompanied children in immigration detention breaches the *Convention on the Rights of the Child*, article 20(1).**

For the reasons set out in this chapter, the Minister for Immigration and Border Protection does not meet the criteria set out by the Committee on the Rights of the Child (in para 33 of General Comment No 6) to effectively perform the role of guardian for unaccompanied children. Specifically, the conflict between his obligations as guardian and his role and functions as Minister under the Migration Act, and the lack of expertise in the field of childcare on the part of the Minister or those within the Department to whom he delegates his guardianship responsibilities, render the Minister an inappropriate and ineffective guardian.

**The decision of the Commonwealth to approve the use of force to transfer unaccompanied children from Charlie Compound to Bravo Compound on 24 March 2014 breaches article 37(c) of the *Convention on the Rights of the Child*.**

Force should only be used against children as a measure of last resort. All other alternatives to the use of force should be explored. Further, force should be used only when the child poses an imminent threat of injury to him or herself or others (Committee on the Rights of the Child, General Comment 10, para 89).

The evidence indicates that alternatives to the use of force were not adequately considered. Accordingly, the Commission finds that the decision to approve the use of force to transfer unaccompanied children from Charlie Compound to Bravo Compound on 24 March 2014 was in violation of article 37(c) of the *Convention on the Rights of the Child*. The Commission finds that the children were not treated with humanity and respect and in a manner which takes into account their vulnerability and age.



Drawing by 7 year old girl in detention, 2014.

# 11. Children indefinitely detained

As of August 2014 there were nine children in detention centres in Australia with parents who had received adverse security assessments from the Australian Security Intelligence Organisation (ASIO). These children are indefinitely detained in Australia because at least one of their parents has received an adverse security assessment.

These families have also been assessed as refugees, however, and therefore cannot return to their country of origin because of a well-founded fear of persecution.

This chapter contains case studies which illustrate the detrimental impact of indefinite detention on the children and their families. These case studies are based on Department of Immigration and Border Protection case files, health files and submissions and interviews conducted by Inquiry staff from the Commission.

## 11.1 Refugees with adverse security assessments

Present government policy requires that refugees with adverse security assessments remain in detention unless or until a third country agrees to resettle them. The chance of third country resettlement for a refugee with an adverse security assessment is extremely unlikely. As a result, these individuals and their children face an uncertain future in indefinite detention.

Refugees who have received adverse security assessments have not been charged with or convicted of any crime. They are being detained on the basis that they pose a risk to security according to an assessment by ASIO.

For many years the Commission has raised concerns about these refugees and their children.<sup>485</sup> The Commission has repeatedly urged the Australian Government to consider and utilise alternatives to indefinite detention while other solutions are explored.

In July 2012, the Commission provided a report to the then Attorney-General about the situation of ten Sri Lankan refugees and three children indefinitely detained as a result of adverse security assessments.<sup>486</sup> The report found that the Commonwealth failed to consider alternatives to detention for children in a way which would be in their best interests, while mitigating any risks to security. Ultimately, the Commission assessed that the detention of the children was arbitrary and in breach of article 37(b) of the *Convention on the Rights of the Child* and article 9(1) of the *International Covenant on Civil and Political Rights*.

In October 2012, the Attorney-General announced an independent review process for refugees not granted a permanent visa as a result of an ASIO adverse security assessment.<sup>487</sup> The Independent Reviewer commenced work in December 2012.<sup>488</sup>

In May 2013, the Commission released a second report regarding eight refugees with adverse security assessments and one child.<sup>489</sup> The report found that the Commonwealth failed to consider available alternatives to locked detention for the child and its mother in a way that would be consistent with the best interests of the child, while mitigating any risks to security. In this case, ASIO chose to reassess the adverse security assessment of its own motion and the mother and child were released from detention and were able to apply for a protection visa.<sup>490</sup>

## 11. Children indefinitely detained

In June 2013, the Independent Reviewer recommended that ASIO reassess the adverse security assessments of the parents of the three children who were the subject of the Commission's July 2012 report. In accordance with those recommendations, ASIO withdrew the adverse security assessments and the family with three children was released on bridging visas subject to reporting conditions.<sup>491</sup>

In July 2013 the United Nations Human Rights Committee found that the indefinite detention of 46 people with adverse security assessments (including the two families with children identified in the Commission's reports) was arbitrary contrary to article 9(1) of the *International Covenant on Civil and Political Rights*.<sup>492</sup> The Committee recommended that the Australian Government provide each of the people with an effective remedy, including their release under individually appropriate conditions, rehabilitation and appropriate compensation. The Australian Government has yet to respond to the Committee's decision, as was required by February 2014.

This chapter explains the cases of the nine children who are currently in indefinite detention in Australia as at August 2014.

### 11.2 Sydney Detention Centre

*This is a beautiful graveyard.*

(16 year old girl, Sydney Detention Centre, 30 March 2014)

There are nine children with parents who have adverse security assessments living at Sydney Detention Centre. In March 2014 the Inquiry visited Sydney Detention Centre and spoke to the children and families detained there.

Sydney Detention Centre is a low security detention centre, predominantly used to detain families with children, unaccompanied children and individuals with particular vulnerabilities. Unlike many of Australia's detention centres, Sydney Detention Centre was purpose-built. The facility contains four duplex houses, each of which has three bedrooms, two bathrooms, shared kitchen, living and dining areas and a garage area that can be used for visits. The houses face a common area which contains grassy space and a small garden. There is a children's playground, a basketball half-court and a small undercover recreation area. It is next to Villawood Detention Centre.

The facilities are highly preferable to other detention facilities in Australia. However, Sydney Detention Centre is still a locked detention facility where people are not free to come and go.

The Inquiry team noticed a high level of surveillance and strict security measures at the Sydney Detention Centre. For example, children's bags are checked daily before and after school. The movement of children is closely monitored and recorded through closed-circuit television cameras throughout the facility. Video recordings are used to discuss the conduct of children and their parents. The Inquiry team was told that after a child spilt some food in the visiting area, a Serco officer showed the parents CCTV footage to prove that the child caused a mess. The parent described this practice as embarrassing and humiliating.

## **CASE STUDY 10:**

### **The trauma of detention for two young brothers<sup>493</sup>**

In 2012, a Sri Lankan woman and her two sons, RP aged 5 years, and NP, aged 7 years, sought asylum in Australia after arriving by boat. The mother and her two sons were transferred across many detention centres on Christmas Island and mainland Australia before being reunited with the boys' father in a detention centre in 2013. Their father had arrived in Australia in 2010. He has remained in detention since his arrival because he received an adverse security assessment.

In January 2013, a referral for a Community Detention placement was made for the two boys and their mother. However, as the father received an adverse security assessment he is ineligible for Community Detention. Rather than being separated, the family advised the Department in August 2013 that they no longer wished to be considered for a community placement, as they wanted to stay together. The child psychologist treating both boys recommended against the family separation as it would increase the risk of psychological harm.

Both RP and NP arrived in Australia with a history of trauma and the detention environment has negatively impacted on their development and psychological wellbeing.

NP's mother described his experiences before arriving in Australia:

[NP] left Sri Lanka when he was 4 years old. When we were trying to escape we had to hide in bunkers to protect ourselves from the shelling by the Sri Lankan army. It was during one of these incidents that [NP] witnessed the death of his maternal grandmother ... [He] was brought up in an environment of violence due to the war.

RP witnessed his father being shot by the Sri Lankan army and recalled traumatic incidents of the boat journey to Australia, which lasted 45 days. Prior to travelling to Australia, both boys were detained in an Indonesian jail with their mother.

Both boys have regularly met with a child psychologist in detention. The psychologist observed that the boys' previous traumatic experiences increased the likelihood that detention would have a negative impact on their psychological wellbeing:

[They] have witnessed and recall the trauma they have experienced. Their extensive history of trauma, to name a few, witnessed people being shot, experienced being bombed, lived in bunkers, significantly increases the possibility of being re-traumatised by current stressors.

#### **Impact of detention on RP**

RP told the psychologist that his house reminds him of a bunker and he is unable to stay alone at night. He suffers from nightmares and sleep walking. He stated that being in detention was making him sad and he would often cry. The psychologist reported that:

His sleep walking could be due to past trauma, uncertainty of leaving detention, and retriggered by being in detention, which he associates as being in jail.

The detention environment has impacted on RP's sense of self-worth. In sessions with his psychologist he spoke about not being the same as other children. The psychologist noted that RP was:

## 11. Children indefinitely detained

Unable to experience aspects of his childhood due to the limitations posed by being in detention. He appears to have low self-worth contributed by being in detention.

In July 2014 the psychologist found that:

[RP's] development has been impacted due to the trauma he experienced and being detained indefinitely at this stage. He exhibits anxiety and depression symptoms at present.

### **Impact of detention on NP**

The detention environment has also negatively impacted on NP's development:

[NP's] development continues to be impacted whilst remaining in detention as his symptoms continue to fluctuate and continue to be impacted by living in a restricted environment.

NP expressed concern to the psychologist that his family had been detained because he was 'bad'. NP questioned whether he was bad, speaking of incidents in which he observed himself to be 'good'.

In March 2014, the psychologist reported that the negative thoughts experienced by NP 'would consistently resurface as he continues to remain in detention ... it appears remaining in detention continues to trigger him and will impact his development'.

During sessions with the psychologist both brothers consistently asked when they would leave detention.

Both boys were described by detention staff as being happy and respectful to their parents and others and as showing enjoyment in attending school and engaging in activities. However, the psychologist reported that:

[The] brothers mask their true feelings in order to function on a daily basis. Therefore a false perception that they are doing well is given to service providers.

In July 2014, the psychologist concluded that the detention environment was not appropriate for either brother:

[Their] symptoms and behaviours are a reflection of the trauma they have experienced, uncertainty of leaving detention, length of time in detention and the impact of the parent's current mental health. The above concerns significantly increase the risk of re-traumatisation and psychological harm. These issues are only likely to be exacerbated if left unaddressed. Given their age and the above concerns, this matter needs to be resolved as a matter of urgency.

The psychologist has repeatedly recommended that the family be moved to Community Detention as a family unit, adding that separation would increase the risk of psychological harm to both boys:

The children are best placed in the care of both parents in the community. If the children are placed in the care of only the mother, this would increase the risk of further psychological harm and neglect as the mother is unable to provide full time care for the children due to her current mental health at this stage.

The family remains in detention.

## **CASE STUDY 11:**

### **Mother with adverse security assessment**

SC is a mother who travelled to Australia by boat with her two young sons aged 7 and 4, to seek asylum in 2010. She and her sons were detained for over one year before being released into Community Detention in 2011. They were found to be refugees that same year. While in Community Detention, SC met JC and they were married in April 2012.

One month later SC received an adverse security assessment and was re-detained with her sons in Sydney Detention Centre. Shortly after being re-detained, SC found out she was pregnant. SC and JC's son, Baby M, was born in detention in January 2013.

Although SC's two eldest sons received permanent protection visas in June 2013, they initially continued to live in detention with their mother. During their time in detention they were reported to have been bullied at school because they lived in detention and were escorted to school by Serco officers. They were reportedly spat on, called names and had water tipped on them by other students. The bullying reportedly occurred for 18 months at one school. The boys subsequently refused to attend school, crying in the morning and pretending to be sick. The boys' exposure to the detention environment reportedly resulted in the development of behavioural issues.

In January 2014, SC decided that the boys should move in with their stepfather in the community. Both boys have been experiencing nightmares. The eldest boy sometimes sleepwalks and has problems with bowel and bladder control. The younger son is bedwetting, not eating well, and is always crying. A psychiatrist has noted that 'it is highly likely that the boys are suffering from anxiety disorders'.

While at the Sydney Detention Centre, SC and Baby M occupy one bedroom in a three-bedroom house, which they share with two other female detainees and a child. SC requested that she and her baby be moved to a one room unit where she and Baby M can have more space and privacy. This was refused by the Department.

SC is allowed to visit her husband and sons in their family home on a weekly basis. However a Serco officer is continually present, and this creates tension and stress for the family. Two Serco officers accompany SC and sit on the family sofa while she engages with her family. JC reports that on one occasion SC was breastfeeding in the bedroom and a male Serco officer tried to walk into the bedroom saying 'this is the way the rules are'.

SC is not allowed a mobile phone. According to SC, her sons become angry and frustrated when they cannot contact her.

SC's mental health began to decline significantly in 2014, culminating in a brief period of hospitalisation in July 2014. On her discharge, SC was diagnosed with major depression. In July 2014 her mental health was such that she was not able to care for Baby M, who was then transferred to the care of his father for a brief period of time. During this time he would visit SC daily to enable SC to breastfeed.

## 11. Children indefinitely detained

A psychiatric assessment of SC by Dr Michael Dudley in July 2014 noted a 'significant progressive deterioration of her mental health' and diagnosed SC with clinical depression. The report states that: 'immigration detention is substantially contributing to SC's mental illness and it is also adversely affecting everyone else psychologically, especially the children'.

The report notes that SC's access to mental health support while in detention has been limited, on account of SC's lack of confidence in engaging with health professionals from International Health and Medical Services. She has had limited access to counselling sessions due to the cancellation of counselling appointments by Serco officers. There has not been an ongoing psychiatric assessment of SC by the International Health and Medical Services. The report notes that the children had not been assessed by a mental health professional during their time in detention, despite the obvious impacts that the detention environment was having on them.

The psychiatrist recommended that SC be released into the community to be reunited with her children and husband and suggests that failure to do so will create enduring mental problems for SC in the future.

Despite this assessment, SC remains in detention with her baby, separated from the rest of her family.

### **CASE STUDY 12:**

#### **Family with six children**

*We are suffocating like a fish that is kept out of water.*<sup>494</sup>

A family of two parents and six children arrived at Christmas Island by boat in May 2012, seeking asylum in Australia. As at August 2014, the mother and children are detained in Sydney Detention Centre. The father has received an adverse security assessment from ASIO and is detained in the adjacent Villawood Immigration Detention Centre. The family had asked not to be separated. When the Inquiry team conducted interviews at Sydney Detention Centre, the four older daughters were 18, 16, 15 and 13 years old. The sons were 10 and 3 years old.

Prior to arriving in Australia, the family had been in immigration detention for a number of years in the United Kingdom and Iran. They spent two years in Indonesia before taking a boat to Australia. The older girls wrote to the Commission during the course of the Inquiry and said:

We have been traveling from one to another for many years, seeking protection, trying to find out what it means to be free and safe. We have been persecuted and discriminated against throughout our life. Unfairly we spent almost 8 years in detention only based on our race. Finally we were released after spending most [of] our childhood locked up without any reason. Again we had to travel to a couple of countries in our search for safety and a normal life. We followed all legal methods available; we waited for the UNHCR in Indonesia for two years in which we never received any reply at all. After losing hope, the only choice we had was to risk our lives by taking a dangerous journey on a little wrecked boat to seek refuge to Australia. Our two younger brothers are detainees since birth and we have spent most our life in detentions! Only God knows when this suffering will end.

We came to Australia with our hearts full of hope that our sufferings, fear and looking over our shoulders will come to an end. Unfortunately, Australia had welcomed us with a new chapter of two years and a half of sufferings and pain for more than two years and a half, adding to the already existing devastating past.

Only to make things worse for us, the Immigration department has separated us from our dad within the same detention centre for almost one a half year. We have been threatened, mentally tortured, discriminated and provoked against all the time we have been in this dark cage.<sup>495</sup>

The 15 and 13 year old girls were born while the family was in the United Kingdom. TA, the 15 year old girl, told the Inquiry that she felt insecure and lonely in detention. IA, the 13 year old girl, said:

I feel like I'm always sad. I have lost hope and everything. Whenever I think about what's happening to us, I feel like crying. ...

I really thought everything was going to end when I got to Australia. I was going to be like the others – like other kids. I don't think that my dad or my family have done anything wrong but we've always been treated unfairly. We weren't expecting this to happen. We thought that we would be treated fairly – the way it's supposed to be.

IA said that she had nightmares about her father in the detention centre next door. She said:

I always dream that he is never going to come back to us.

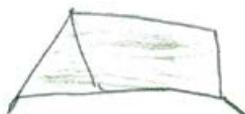
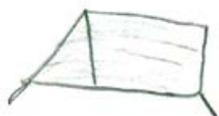
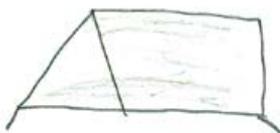
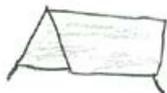
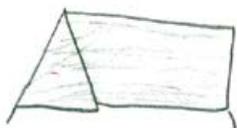
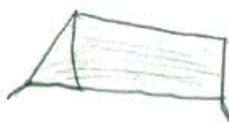
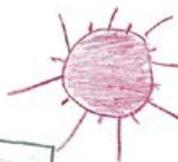
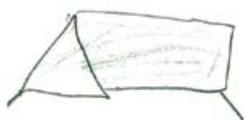
## 11.3 Findings in relation to children indefinitely detained

Some children have been detained for longer than 27 months because at least one of their parents has an adverse security assessment by ASIO. The indefinite detention of these children raises special concerns for their physical and mental health and their future life opportunities.

Children with at least one parent who has an adverse security assessment by ASIO may be subject to extremely long periods of detention. **The failure of the Commonwealth to consider less restrictive detention alternatives for these families would be a breach of the *Convention on the Rights of the Child*, article 37(b).**



MAR @



Drawing by child, Christmas Island, 2014.

# 12. Children in detention on Nauru

Nearly every first-hand account of Nauru makes reference to its overwhelming heat. The average temperature on Nauru is 31 degrees. Inside the detention centre tents, temperatures regularly reach 45-50 degrees.<sup>496</sup> One child living in detention reports that 'the weather here is so hot that if you sit outside in the sun for a period of time you lose consciousness'.<sup>497</sup>

Nauruan climate is also distinctly tropical. Humidity ranges between 75-90 percent. Rainfall is irregular and annual figures vary from less than 300 mm to more than 4000 mm per year.<sup>498</sup> This means that for most of the year the environment is sparse, dusty and without grass or greenery. When it rains it pours, with flooding and leaking roofs common.<sup>499</sup>

Offshore Processing Centre 3 is the name of the camp where children and families are housed on Nauru. It is a gravel construction site. The tent accommodation is situated on loose and uneven rocks. Parents expressed concern that thongs wear out 'almost immediately on the gravel' and children described walking and running in the centre as 'painful'.<sup>500</sup> A former doctor who worked at the Regional Processing Centre said she could barely walk from her car to the detention centre without risking a sprained ankle.<sup>501</sup> These rocks also reflect the harsh glare of the sun. According to a former employee of Save the Children, staff need to wear strong eye protection and hats. Neither of these are readily available for children on Nauru.<sup>502</sup>

The Island of Nauru is the site of heavy open-pit mining for phosphate. The United Nations High Commissioner for Refugees noted concern in 2013 over the camp's 'proximity to phosphate mining, which causes a high level of dust'.<sup>503</sup> Paediatrician, Professor Elizabeth Elliott, expressed concerns about the 'causal effect of atmospheric phosphate' on 'recurrent asthma and irritation of the eyes and skin'.<sup>504</sup>

## 12.1 Accommodation

*No child should be subject to arbitrary interference with his or her privacy, home or correspondence (Article 16 Convention on the Rights of the Child)*

The United Nations High Commissioner for Refugees visited Nauru in October 2013 and described the detention centre tents as 'large vinyl marquees with individual family areas separated by vinyl partitions'. The tents have 'wooden flooring and ceiling fans. There was no air conditioning'.<sup>505</sup> The tents appear to contain very little furniture besides beds. The Commission was told at the Inquiry's third public hearing that there are no chairs or tables and families cannot sit with their children to do homework or to eat with them.<sup>506</sup>

The harsh environment on Nauru has affected the condition of the tents. A child living in detention described their deterioration.

Our marquees are very dirty. Because of the weather, after sometime, there is mould in the marquees and because of the strong sun, the roof of the marquees has holes and when it rains, we get a lot of water inside the marquees. There is so much water that we have collected all our belongings and empty the water with buckets.<sup>507</sup>

Each of these tents houses 12 to 15 families.<sup>508</sup> Save the Children employees claim that as a result of these cramped conditions there is 'little privacy [and] high noise levels at all times'.<sup>509</sup> A Child Protection and Support Worker on Nauru added, '[b]ecause they are only separated from other families by cloth, there is no ability to have private conversations'.<sup>510</sup> The lack of privacy appears to unsettle some children, with the noise and exposure preventing them from getting adequate rest. One 14 year old girl expressed her embarrassment about sharing a small space with her stepfather and stated that she was embarrassed having her underwear seen by him.<sup>511</sup>

## 12. Children in detention on Nauru



Living arrangements on Nauru, 2012. Top and bottom photos by the Department of Immigration and Border Protection, reproduced under a CC BY 2.0 license.

## 12.2 Facilities

*Children within detention must be treated with humanity and respect (Article 37(c) Convention on the Rights of the Child).*

Submissions to the Inquiry identified serious shortages of even the most basic needs on Nauru, especially water. Showers may be restricted to 30 seconds each day.<sup>512</sup> At other times water appears to run out altogether. According to employees of Save the Children, '[t]here have been multiple times that Offshore Processing Centre 3 has "run out" of water, resulting in overflowing and blocked toilets with faeces on the toilets or on the floor of the toilet'.<sup>513</sup>

Even when water supply is secure there are ubiquitous concerns with hygiene. The Inquiry heard evidence that the grounds of Offshore Processing Centre 3 are frequently littered with refuse and garbage bins were left overflowing.<sup>514</sup> According to one submission, the Health and Safety Manager of the centre suggested that Save the Children hold a 'Clean-up Day' during which children would be invited to pick up the trash.<sup>515</sup>

Problems of cleanliness and hygiene appear to be especially serious as they relate to toilets and showers. The Inquiry heard evidence that at times the Regional Processing Centre ran out of soap.<sup>516</sup>

One child in Offshore Processing Centre 3 claims that 'the toilets are very dirty and unhygienic. Most of them do not work and are unusable. The bathroom floors are always covered in dirty water' and the water shortages '[cause] filthiness and increase the number of flies'.<sup>517</sup> Another child writes:

Because of this situation, new diseases came out like skin rashes, mosquitoes discovered and new flies ... Disease got worse in the camp and still expanding. Sometimes because of the smell, our camp it's like a sewer. The cleaners cleaning the toilets whenever they want. Around the toilets are mountain of toilet paper and pee and poo and water up to your ankle.<sup>518</sup>

At the third public hearing the Inquiry was told by a doctor who had worked on Nauru that the state of the toilets and the lack of water contributed to dehydration.

And the dehydration was often related to both the fact that they didn't have access to water throughout the day on demand and the other reason was that a lot of them, particularly women and children, didn't want to drink water during the day because they didn't want to use the shared toileting facilities.<sup>519</sup>

## 12.3 Provision of clothing and footwear

*The State is responsible for providing material assistance such as nutrition, clothing and housing where a child is in need (Article 27(3) Convention on the Rights of the Child)*

The Inquiry heard evidence that the provision of clothing and footwear is inadequate for many children on Nauru. Employees of Save the Children report that there is a particular shortage of appropriate footwear:

Many children are wearing adult sized thongs with holes placing them at risk and resulting in numerous foot injuries... Staff are not allowed to enter OPC3 without closed toe shoes for workplace health and safety reasons. However, children and adults have been forced to 'make do' with thongs that are often broken, have holes or are not the appropriate size despite waiting months for replacement shoes.<sup>520</sup>

The same employees add that there is a lack of appropriate clothing for the climate, with children wearing 'long sleeved flannel shirts ... in 45 degrees and 90 percent humidity'.<sup>521</sup>

## 12. Children in detention on Nauru

There are also many accounts of shortages of underwear for children and a lack of bed sheets.

A 13 year old girl 'had only two pairs of underwear and only one she could use while on her period. She felt shame because she was an adolescent girl and each day she had to wash her underwear and hang them to dry in front of her father which was not culturally appropriate. She went for months without additional underwear despite multiple written requests'.

A boy on Nauru had his genitals exposed because he was only given two pairs of shorts, one of which was badly torn, and no underwear.

One 13 year old boy who wets the bed did not receive new sheets and detergent, even after repeated requests from STTARS.<sup>522</sup>

### 12.4 Recreation and play

*States have recognised the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts (Article 31 Convention on the Rights of the Child)*

There has been some progress on building the infrastructure for play and meaningful activities on Nauru. The Department constructed a new playground in Offshore Processing Centre 3 in February 2014 and also opened a soccer field in Offshore Processing Centre 1 next to the school.<sup>523 524</sup>

However, the Commission remains concerned that there are insufficient toys, books and play equipment. The Inquiry heard evidence from a former Save the Children employee that children played with rocks and stones.<sup>525</sup>

### 12.5 Education

*States have expressly recognised the right of the child to education (Article 28(1) Convention on the Rights of the Child)*

All school aged children on Nauru have access to school. Primary school consists of 4 hours of class time within Offshore Processing Centre 3. Secondary school is located in Offshore Processing Centre 1 and children are transported by bus to class. There is also a pilot program to integrate asylum seeker children into local Nauruan high schools. As of February 2014, four early high school students were attending Nauru College and 11 late high school students were studying at Nauru Secondary College.<sup>526</sup>

There are concerns that the schooling environment in detention is not conducive to learning on Nauru. Save the Children workers claim that the provision of education has been 'largely inadequate due to the lack of appropriate facilities'. They cite 'high noise levels, not enough chairs ... lack of air conditioning and temperatures that were 45 to 50 degrees Celsius.'<sup>527</sup> In addition, the detention centres are insufficiently equipped with 'books, lesson plans, writing implements, paper' to provide adequate education.<sup>528</sup>

Evidence suggests that the high school students studying in Nauruan schools are faring better and exhibiting improved mental health and wellbeing.<sup>529</sup> However, the average class size in Nauruan schools is 40 students and it is estimated that there are 'no classrooms, furniture or resources at Nauruan schools to support additional children from the Regional Processing Centres'.<sup>530</sup> There are concerns that this program will not proceed beyond its pilot stage.

The Inquiry received evidence suggesting that Nauruan schools may soon face teacher shortages for their own students. As an Education Bill mandating teaching qualifications takes effect at the end of 2014, an estimated 60 percent of the current teaching staff in Nauruan high schools may be let go because they do not have the relevant qualifications.<sup>531</sup>

Classes in the detention centres have students of disparate ages and abilities, making them difficult to manage. One teacher on Nauru claims that '[b]ecause there is such a wide diversity of what level of education the students have enjoyed previously, it can at times be challenging to cater for everyone.... I teach a group of students aged 14 to 18, most of whom are beginners in English and may be illiterate'.<sup>532</sup> A former worker adds 'we have teenage children in class with much younger kids and 11 year olds in classes with high school kids'.<sup>533</sup>

The biggest barrier to education remains the fact of detention itself. A former worker on Nauru concludes, 'they feel very hopeless about their future and do not see the point of trying to learn in school because they will just "stay here forever"'.<sup>534</sup>

## 12.6 Security measures

*Every child deprived of his or her liberty should be treated with humanity and respect for the inherent dignity of the human person, in a manner which takes into account the needs of persons of his or her age (Article 37(c) Convention on the Rights of the Child)*

The Inquiry received submissions that the security measures on Nauru create the feeling of imprisonment.<sup>535</sup> The Sub-Committee of the Joint Advisory Committee for Nauru highlights that 'the perimeter is fenced and there are entry checkpoints'.<sup>536</sup> A former trauma counsellor for Save the Children concludes, the 'centre is set up as a prison'.<sup>537</sup>

## 12.7 Policy guiding the transfer of children to Nauru

On 19 July 2013 the Australian Government announced a Regional Settlement Arrangement with the Government of Papua New Guinea.<sup>538</sup> Under the Regional Settlement Arrangement, asylum seekers arriving unauthorised by boat after 19 July 2013 will be transferred to Papua New Guinea for processing and resettlement (if found to be refugees). If found not to be refugees they will be returned to their country of origin or a country where they have a right of residence. On 3 August 2013 the Australian Government signed a similar Memorandum of Understanding with Nauru.<sup>539</sup>

Current government policy is that families and children will only be transferred to Nauru, not Papua New Guinea. Single adult men are transferred to both Papua New Guinea and Nauru.

At 31 July 2014 there were 695 men, 268 women and 183 children detained at the regional processing centre on Nauru.<sup>540</sup> At least 27 unaccompanied children have been transferred to Nauru since 31 March 2014.

## 12.8 Impact of detention on children

*States have an obligation to take all appropriate measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation that includes sexual abuse (Article 19(1) Convention on the Rights of the Child)*

*Children are also entitled to enjoy the highest attainable standard of healthcare and facilities (Article 24(1) Convention on the Rights of the Child)*

The Inquiry has received significant evidence regarding the deteriorating health of children in detention on Nauru.

A social worker employed by Save the Children described witnessing ‘a marked deterioration in children’s mental health as children began to realise that they would be in Nauru for a long time’.<sup>541</sup>

A doctor who worked in Nauru for six weeks between February and March 2014 stated that ‘every day ... there were teenagers and unaccompanied children who were either on suicide or self-harm watch’.<sup>542</sup>

On 27 September 2014 it was reported that a 15 year old girl was evacuated from Nauru to Australia after attempting self-harm.<sup>543</sup>

According to the Joint Advisory Committee on Nauru, over the 14 month period between September 2012 and November 2013 there were 102 incidents of self-harm in adult males.<sup>544</sup> The incidence of self-harm among adult detainees on Nauru is revealing in two important respects. First, it is a reflection of the damaging effect of the conditions on Nauru on the mental health of all detainees. Second, the incidents of self-harm by adults are an additional aspect of life in detention with which children must contend. As employees of Save the Children note:

each day the children are in detention exposes them to witnessing additional traumatic situations ... which serves as triggers to past traumatic events and delays their ability to recover from previous trauma.<sup>545</sup>

The impact of detention on mental health appears to be compounded by a number of conditions. The Inquiry received evidence that:

As children develop challenging behaviours due to their deteriorating mental health, increased anger, and helplessness regarding their detainment; they also begin to experience more stigmatisation from the community by peers and their adult caregivers.<sup>546</sup>

One 16 year old boy experiencing issues with aggression, anger and depression, was said to have received so much ‘taunting, ridiculing, threats, exclusion and aggression’ that he was temporarily removed to Offshore Processing Centre 1 – the adult centre.<sup>547</sup>

Family separation has a similarly damaging effect on mental health. A teacher on Nauru claims that ‘I know most of the residents in Offshore Processing Centre 3 are separated from at least one person in their immediate family’.<sup>548</sup> The same teacher adds:

Children suffer when they are separated from their families. This is especially noticeable in the many unaccompanied minors [children] that live here. Their behaviour indicates that they respond even more strongly when something happens that upsets them, e.g. when something changes in a class – new teacher, new room, new internet time, ... – they might play up in class, get angry, get upset, start misbehaving, refuse to follow instruction, or even have a complete meltdown, for some even on a daily basis. Having multiple incidents in one day in a class is not unusual.<sup>549</sup>

The Commission heard evidence of a 13 year old boy detained in Nauru who had experienced significant weight loss. The child expressed to the treating doctor ‘a complete loss of hope; despair’.<sup>550</sup> The doctor described how ‘[h]e had no appetite and no will to eat. He lost over 10 kilograms which would be about a quarter of his body weight’.<sup>551</sup>

The Inquiry has received evidence that the practice of referring to children by boat number is pervasive in some detention centres. Employees of Save the Children claim that Nauru is no exception.

This is a common practi[s]e that occurs among ALL service providers including Save the Children Australia, a child rights organisation which seeks to show that even the most fervent advocates of child’s rights begin [adapting] practises that are prevalent in the institution despite awareness of the detrimental impacts of these practises.<sup>552</sup>

Employees of Save the Children report that children have disclosed that they are ‘just a number’ and that they feel like ‘animals and not people’.<sup>553</sup> Children on Nauru have signed their artworks and have referred to themselves by their boat number rather than by their name.<sup>554</sup>

The detention environment and the limitations of healthcare on Nauru have also posed serious challenges to the physical health and development of children.

Conditions in detention are crowded and often unhygienic. As a result, even a minor incidence of communicable diseases is likely to result in a serious outbreak. Employees of Save the Children report ‘outbreaks of lice, gastroenteritis, and school sores that are difficult to contain due to the use of common toilets and showers, common eating areas and close living conditions’.<sup>555</sup>

The impact that long term detention has on the physical and mental health of asylum seekers detained offshore has been well-documented.<sup>556</sup> Previous reports about Nauru and Manus Island document the incidence of people with a range of mental illnesses, including depression, anxiety, post-traumatic stress disorder, adjustment disorder and acute stress reaction. High levels of actual and threatened self-harm have also been documented over past years.<sup>557</sup>

In 2005, Mr Paris Aristotle, as the Director of the Victorian Foundation for the Survivors of Torture, accompanied a former Immigration Minister John Hodges on a visit to Nauru. Mr Aristotle reported that ‘it had reached a point where none of those interventions were going to prevent a rapid decline in their mental health’.<sup>558</sup> Immigration Minister Amanda Vanstone agreed that 25 of the remaining 27 detainees on Nauru should be brought back to Australia ‘on the expert advice of health professionals because of serious mental health concerns’.<sup>559</sup>

Given the well documented evidence regarding the negative impacts of lengthy detention on Nauru, the Australian Government can be considered to be on notice as to the risk of serious harm to the children and families that are detained there.

## 12.9 Transfer of unaccompanied children

*Children who are separated from their family environment shall be entitled to special protection and assistance provided by the state (Article 20(1) Convention on the Rights of the Child)*

*What is our fault? That we came to Australia after 19 July? We are not criminals. Already 10 months we are in detention centre. It will be great if we put in jail instead of detention centre. We are thirsty for freedom.*

(Unaccompanied child in detention)

## 12. Children in detention on Nauru

The Commission is aware of at least 27 unaccompanied children who have been transferred to Nauru and remain in detention.

The Nauruan Minister for Justice and Border Protection is the legal guardian of unaccompanied children who are transferred to Nauru. Some of the Minister's powers have been delegated to Save the Children. The Director of Policy and Public Affairs at Save the Children told the Inquiry that unaccompanied children receive 24-hour care from his staff and that they are housed in a separate and secure compound with air-conditioning.<sup>560</sup>

Given the impacts of detention on unaccompanied children on Christmas Island the Commission holds grave concerns for the wellbeing of these children on Nauru.

### 12.10 Child protection and allegations of abuse

*States have undertaken the obligation to take all appropriate measures to protect children from all forms of physical or mental violence (Article 19 Convention on the Rights of the Child)*

*Further States have undertaken the obligation to protect children from all forms of sexual exploitation and sexual abuse (Article 34 Convention on the Rights of the Child)*

The Inquiry has received evidence from staff working in Nauru of incidents of harassment, bullying and abuse.

In November 2013 a 16 year old boy was allegedly sexually assaulted by a cleaner, in view of security staff. It is understood that the cleaner was removed from the centre indefinitely.<sup>561</sup>

An 8 year old boy was allegedly sexually assaulted by adult detainees in view of a security staff member.<sup>562</sup>

The Commission is concerned by reports that there is no child protection framework for children detained in the detention centres and that Nauru itself has no child protection framework.<sup>563</sup> The Commission is further troubled about claims by children's welfare service providers that they are unable to remove children from situations of abuse except in extreme circumstances and then only for a limited period of time.<sup>564</sup>

### 12.11 Health services

*States recognize the right to enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health (Article 24(1) Convention on the Rights of the Child).*

International Health and Medical Services is the health provider to detainees on Nauru. It employs 48.5 full-time equivalent staff on site at the Nauru regional processing centres. On an average day, the International Health and Medical Services receives 50 to 60 written requests for healthcare and around the same number for mental health care.<sup>565</sup> In response to a written request, the International Health and Medical Services makes an appointment for the detainee and provides them with an appointment docket. In reality, International Health and Medical Services medical staff see a total of 50 patients in a day. There is a 'fail to attend' rate of approximately 25 to 30 percent.<sup>566</sup>

There are some limits to specialist health services on Nauru. The medical provider does not currently employ a paediatrician. There is no one on staff who has neonatal or early childhood resuscitation experience, advanced paediatric life support training or child protection experience.<sup>567</sup> According to the Subcommittee of the Joint Advisory Committee on Nauru, this places children at risk.

...children deteriorate quickly when they are unwell, and the 24-36 hour timeframe for medical evacuation will not allow support during the critical early period of severe illness.<sup>568</sup>

The Commission was also advised about inefficiencies in access to health care. Detainees told the Joint Advisory Committee that they 'wait too long' for care and that they had to submit four to five requests before they received an appointment.<sup>569</sup> Employees of Save the Children raised concerns over transport and response to emergencies. They cited the following case of one 'limp and non-responsive child':

The Save the Children worker found that although the parents believed they were waiting for an ambulance, as she liaised with Wilson's Security guards, she was informed that an ambulance was 'not available' and that the child and his parents would have to take a bus to IHMS which would not be available for at least 30 minutes. She noted that the Wilson's Security guards were 'casual' in their approach to this child's serious health concern.<sup>570</sup>

Many detainees reported that even once appointments were secured, the quality of the International Health and Medical Services care was inadequate. One 15 year old child claims:

They will give us panadol for any problem or they will tell us to drink water. Or they will send us to a terrible room / tent call isolation room / tent. This room is dirty, no air condition, really hot, smelly, not a place for sick person. So everybody hide their problems from IHMS.<sup>571</sup>

Evidence suggests that there are challenges in managing vaccination programs on Nauru. International Health and Medical Services reports that 80 percent of detainees had completed immunisation and that the remaining 20 percent had scheduled a follow-up.<sup>572</sup> However, the Joint Advisory Committee found a contrary situation.

... we asked people about immunisation in all compounds, on a brief history, no one (adults or their children) had completed three sets of vaccines, suggesting that no one was up to date.<sup>573</sup>

Even if detainees are fully vaccinated, the Nauru immunisation schedule does not include the mumps, varicella, rotavirus, human papilloma virus or pneumococcal vaccines contained in the Australian Immunisation Schedule.<sup>574</sup>

## 12.12 Republic of Nauru Hospital

There is one hospital on Nauru. The Republic of Nauru hospital services 42 to 50 beds. It includes a two bed emergency room, a two bed high dependency unit, 12 acute adult beds, four acute paediatric beds, 16 long stay beds, two delivery rooms, six maternity beds and a single operating theatre. It also has an additional renovated four bed ward for the use of International Health and Medical Services.<sup>575</sup> While there have been very few recent referrals of asylum seekers to the hospital, referrals are reserved for the acute clinical care of illnesses that cannot be treated at the detention centre.<sup>576</sup> This includes surgery, cardiology, paediatrics, optometry and dental services.

The Joint Advisory Committee has raised concerns that 'conditions at the hospital are difficult, particularly following the 2013 fire'.<sup>577</sup> In particular, there appears to be a shortage of the most basic equipment. The Committee writes:

There is no bed linen (patients families usually provide this when they are admitted), there are limitations with infection control procedures, the medical incinerator has not been functioning for some time, and the buildings have structural issues, including the use of asbestos sheeting. Visiting medical specialists are asked to bring their own equipment and supplies, including drapes.<sup>578</sup>

## 12. Children in detention on Nauru

Certain hospital services are not offered in Nauru, partly due to shortages in resources. As of February 2014, there was no obstetrician at the hospital and hospital maternity services were provided by midwives.<sup>579</sup> There is no blood bank on Nauru. In situations requiring a transfusion, relatives are needed to donate blood at the hospital. There is no facility for antibody testing or blood borne virus screening.<sup>580</sup>

### 12.13 Mental health services

Mental healthcare is provided by International Health and Medical Services and by the NSW Service for the Treatment and Rehabilitation of Torture. As of February 2014 the full-time equivalent staff on Nauru included three mental health team leaders, one psychologist, four mental health nurses and three counsellors. There was a sleep management program operating at the detention centres, including the short-term use of benzodiazepines where necessary. Approximately 60 adults in detention on Nauru were taking psychotropic medications. This constitutes 6.3 percent of all adults detained there.<sup>581</sup>

The Joint Advisory Committee reported in February 2014 that the child psychiatrist position had been vacant but claimed that a psychiatrist would start work a week after their visit.<sup>582</sup> They also raised uncertainty about whether the psychologists or mental health nurses had paediatric qualifications or experience.<sup>583</sup>

People requiring intensive mental health support are put on a Psychological Support Program. As of February, there were three people on the Psychological Support Program, with staff reporting that the numbers of people on the Program ranged from 0 to 15 at any given time.<sup>584</sup> In the 14 month period from September 2012 to November 2013, there were 102 incidents of self-harm among adult males.<sup>585</sup> The Commission has concerns therefore, with the low number of people on the Psychological Support Program.

### 12.14 Pre-transfer assessment processes for people being sent to Nauru

Prior to the transfer of asylum seekers and children to Nauru, the Department conducts a Pre-Transfer Assessment to 'consider whether appropriate support and services are available at the [Offshore Processing Place] and to confirm that there are no barriers to the transfer'.<sup>586</sup>

As a part of the Pre-Transfer Assessment, an International Health and Medical Services clinician, usually a nurse, performs a medical assessment and informs the Departmental officer as to the individual's fitness to travel and fitness for placement.

To assess fitness to travel, clinicians review individual health records and, in some circumstances, they perform a physical examination. This occurs if an individual makes significant medical complaints or has a known communicable disease. Clinicians then categorise individuals into one of four groups:<sup>587</sup>

Category 1: Fit to fly to an OPC site

Category 2: Short-term NOT Fit to fly (anywhere)

Category 3: Fit to fly, not recommended for OPC site medium term

Category 4: Fit to fly, not recommended for an OPC site long-term.

During this assessment, clinicians also evaluate an individual's fitness for placement. According to internal guidelines, clinicians must review 'ongoing healthcare needs' and 'escalate' any 'concerns as to the suitability of the receiving site'.<sup>588</sup>

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.<sup>589</sup>

Health clinicians have expressed similar concerns about the haste of the assessments:

A number of healthcare clinicians were uncomfortable completing these assessments and there was a sense of pressure from the healthcare service and immigration department to complete assessments quickly and indicate a client is 'fit to fly' based on clinical history. This process sometimes made it feel like the healthcare service was there to protect and serve the needs of the immigration department.<sup>590</sup>

This view is supported by the Royal Australasian College of Physicians. They add:

an adequate medical assessment is not possible within 48 hours. Initial health assessments conducted on asylum-seeker arrivals involves taking a detailed history and conducting a thorough examination of the patient, identifying any chronic or acute conditions and ensuring immunisations are up to date. Conducting the health assessment once the person seeking asylum has arrived at the centre is just not acceptable.<sup>591</sup>

The Inquiry team also heard several concerns regarding the standard of the medical assessments. A professional working in immigration detention wrote that there is a lack of expertise among the clinicians conducting the assessment of children:

There appeared to be a lack of developmentally-appropriate pre-transfer mental health assessment for children. There was no specialised assessment protocol that responds to children and young people who are high risk to prevent them in being transferred [to] a RPC.<sup>592</sup>

The same 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'.<sup>593</sup> Given the volatility of health conditions in detention, these alleged delays raise doubts as to the currency of the medical assessment.

An additional limitation of the Pre-Transfer Assessment is that it does not consider mental health illnesses or identify people who have suffered torture and trauma. Mental health screening appears to occur after transfer. This concern is shared by the United Nations High Commissioner for Refugees:

Post-transfer mental health screening by IHMS continues to identify mental health cases and survivors of torture and/or trauma. This raises concerns about the reliability and comprehensiveness of Australia's pre-transfer assessments.<sup>594</sup>

Employees from Save the Children claim that a female unaccompanied child with a history of 'anxiety attacks, depression, hopelessness and self-harming behaviour' had been transferred to Nauru from Christmas Island.<sup>595</sup>

As part of the transfer process, Department officers review health recommendations, along with any special needs or logistical concerns that may affect the transfer. Officers consider family unity, individual protection claims against the Regional Processing Country and whether the transferee is someone who the Minister has exempted from the Migration Act.

## 12. Children in detention on Nauru

Departmental officers conduct interviews with asylum seekers to make the final assessment of their fitness for transfer. During interviews with children, an adult family member or an independent observer must be present.

Officers complete a Best Interests Assessment for children before they are deemed fit for travel. As a part of this assessment, officers consider whether the education, accommodation, services, activities, care and welfare arrangements at the detention centre are appropriate for the child.<sup>596</sup>

Under current Australian Government policy, all families and children who arrive by boat on or after 19 July 2013 **must** be transferred to Nauru. There are no exceptions to this policy.<sup>597</sup> This means that there are only two possible outcomes to a Pre-Transfer Assessment – officers may clear the transfer or postpone it until such a time when a transfer is reasonably practicable. The Government has instructed that, where possible, the Department will complete the Pre-Transfer Assessment within 48 hours.<sup>598</sup>

### 12.15 Failure to consider the best interests of the child

Under Article 3 of the *Convention on the Rights of the Child*, Australia has an obligation to treat the best interests of the child as a primary consideration in all actions concerning children. This obligation is explicitly acknowledged in the Department's Best Interests Assessment process for children.<sup>599</sup> However, the Department's Best Interest Assessment appears to be irrelevant in the decision to transfer a child to Nauru. This is because the Australian Government has made a blanket decision that, in every case, the best interests of the child are outweighed by **other** primary considerations:

... the Australian Government's view is that in making the transfer decision, the best interests of such children are outweighed by other primary considerations, including the need to preserve the integrity of Australia's migration system and the need to discourage children taking, or being taken on, dangerous illegal boat journeys to Australia.

Accordingly, while this assessment considers a range of factors to ensure that care, services and support arrangements are available to meet the needs of the individual child, it does not consider whether the best interests of the child would be served by the individual child being transferred to an RPC.<sup>600</sup>

By the Department's own explanation, the best interests of an *individual* child has no bearing on whether that child is to be transferred to Nauru. Given the very serious resource limitations and the poor living conditions on Nauru, it is the view of the Commission that the Best Interests Assessment for children, is in name only.

The Minister's role as the guardian of unaccompanied children under the *Immigration (Guardianship of Children) Act 1946* (Cth) requires him to act in the best interests of the child. Article 18(1) of the *Convention on the Rights of the Child* states that 'the best interests of the child will be [the legal guardian's] basic concern'. Article 18(1) makes clear that the best interests of an unaccompanied child must not only be a primary consideration (as suggested by article 3(1) of the Convention), but **the** primary consideration for the person acting as a child's legal guardian.

The monitoring visit by the United Nations High Commissioner for Refugees to Nauru in October 2013 found that the 'harsh and unsuitable environment at the Regional Processing Centre is inappropriate for the care and support of children seeking asylum'. It raised concerns that children did not have access to adequate education and recreational facilities and was of the view that no child should be transferred from Australia to Nauru.<sup>601</sup>

The Commission shares the view of the United Nations High Commissioner for Refugees. It is difficult to see how transferring children to Nauru for processing of their refugee claims could ever be in their best interests.

## 12.16 Lack of individual assessments of the needs of the child

All 27 unaccompanied children who were assessed under the Department's Best Interest Assessment process between 1 January 2014 and 31 March 2014 were recommended for transfer to Nauru on the basis of almost identical generalised statements of reasons. These were expressed as follows:

Appropriate arrangements are in place in Nauru, therefore the child's transfer was appropriate.

Department officers reached this conclusion by ticking a series of boxes in the Best Interest Assessment form which indicate that they have 'considered advice from relevant areas in the Department of Immigration and Border Protection about the services available in the Regional Processing Centre and think that these services will be appropriate'.

It is unclear how Departmental officers made these findings as none of the Best Interest Assessments document any individualised assessment of the unaccompanied child's educational, care, welfare and service related needs. There is also no information provided about the quality of the facilities and services on Nauru to support the findings that these facilities and services are appropriate to support that child's needs.

In the many instances where children aged 16 to 17 years old were recorded as having little to no schooling, the Departmental officer declared that the educational services in Nauru would be appropriate for the child without providing any information about what remedial educational services are available in Nauru.

Similarly, there appeared to be no consideration of other interests affecting the child; for example, whether the child had adult relatives such as aunts, uncles and cousins residing in Australia (including in immigration detention).

The Best Interest Assessment form provides space for a Departmental officer to record specific considerations about the services that a child might need in the Regional Processing Country. In **all** of the Best Interest Assessment forms reviewed by the Commission, this space was left blank. This strongly suggests a lack of assessment of the individual needs of the child.

### **CASE STUDY 13:**

#### **Transfer of a single father with a hernia condition and his sick child to Nauru**

In March 2014 the Inquiry spoke to a father who fled Syria with his five sons. At the time the family were detained at Aqua Detention Centre on Christmas Island.

The father was experiencing pain from a hernia and had difficulty walking to the communal bathrooms in the compound. The doctor had 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 his son started to wet his pants during the day and needed to wear pads.

Despite these health problems, the family were transferred to Nauru.

The father claims that the health service on Nauru ran out of medication for bed-wetting leaving his child without medication for months.

The father does not eat meals regularly because he is required to walk 10 mins each way in the heat and then stand in a long line three times each day in order to receive food.

The father was offered surgery for his hernia twice at the local hospital in Nauru. The first time the operation was cancelled as a result of a power failure. The second time the surgeon refused to operate because the father had arrived 15 minutes late. He was unable to attend on time because he was reliant on the detention authorities to transfer him to the hospital. The father has lost confidence in the Nauruan hospital and remains in pain from his hernia.

### 12.17 The scope of the Commission to inquire into detention on Nauru

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.<sup>602</sup>

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 *Australian Human Rights Commission Act 1986* (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:

- 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.

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'.<sup>603</sup>

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.<sup>604</sup> The Department wrote back advising that it maintained its previously expressed position.<sup>605</sup>

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.

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:

- 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 services to people detained at the Regional Processing Centre on Nauru.

## 12.18 Findings in relation to children on Nauru

Children on Nauru are suffering from extreme levels of physical, emotional, psychological and developmental distress. The Commission is concerned that detention on Nauru is mandatory for children and that there is no time limit on how long they will be detained.

The Commission finds that the inevitable and foreseeable consequence of Australia's transfer of children to Nauru is that they would be detained in breach of article 37(b) of the *Convention on the Rights of the Child*.

The Commission finds that Australia transferred children to Nauru regardless of whether this was in their best interests, in breach of article 3(1) of the *Convention on the Rights of the Child*.

The Commission has serious concerns that the conditions in which children are detained on Nauru are in breach of the *Convention on the Rights of the Child*, articles 19(1), 20(1), 24(1), 27(1), 27(3), 28, 31 and:

*16(1): No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.*

*34: States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.*

*37(a): No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.*

*Both my children are nervous.  
They were scared of everything in detention.  
They are still nervous, still scared of everything.  
The welfare checks really affected their mental health.*

Mother of 5 year old child and 16 year old child, Community Interview, Adelaide, 13 May 2014



Drawing by primary school aged girl, Christmas Island, 2014.

# 13. Continuing impacts on children once released

This chapter contains the responses of children and parents to questions about the impacts of detention on their lives after they had been released into the Australian community. Commission staff conducted interviews with 104 former detainees between April and August 2014.

Children and parents reported improvements in their mood and behaviours once released from the detention environment. However, a significant number reported ongoing negative and emotional impacts of detention.

The respondents to the Inquiry interviews were people waiting to have their refugee cases assessed and were either living in Community Detention arrangements in Australia, or living in private housing on a Bridging Visa E.

There were 1,560 children living in Community Detention arrangements in Australia in August 2014. There were 2,006 children living in the community on a Bridging Visa E in August 2014.<sup>606</sup>

The Inquiry team interviewed 92 children and 12 parents now living in the community. On average, the children who were interviewed had previously been held in detention for 11 months.<sup>607</sup>

The interviewees had been living in the community for varying periods. Chart 54 shows the length of time they had been out of detention.

**Chart 54: Length of time children had been out of detention**

| TIME OUT OF DETENTION | NUMBER OF CHILDREN |
|-----------------------|--------------------|
| 0 – 3 months          | 8                  |
| 4 – 6 months          | 5                  |
| 7 – 9 months          | 13                 |
| 10 – 12 months        | 20                 |
| 13 – 15 months        | 14                 |
| 16 – 18 months        | 7                  |
| 19 – 21 months        | 2                  |
| 22 – 24 months        | 2                  |

Australian Human Rights Commission, Based on data from Inquiry Questionnaire for Children and Parents Released from Detention, Australia, 2014, 71 respondents

## 13. Continuing impacts on children once released

Twenty-three of the child interviewees were from Afghanistan; 22 were from Iran; 16 were from Sri Lanka; eight were from Iraq; eight were stateless; seven were from Pakistan; three were from Lebanon; two were from Burma/Myanmar, and the remaining three did not specify their country of origin.

The Commission found it difficult to secure interviews with people who had previously been in detention. They reported that they feared negative consequences from the Australian Government if they were found to have spoken to the Inquiry team. Some feared being sent back to detention. One unaccompanied child told the Inquiry about his reluctance to talk in these terms:

*I am in Community Detention and have code of behaviour ... and will be sent back into detention ... Detention has made me more afraid of detention. I lost the feeling of being a human being. Do I have the right to be annoyed? What, how can I talk to an Australian guy who is in his country, who can report me to the police and send me back to detention?*

(Unaccompanied child, 17 years old, Community Interview, Sydney, 5 August 2014)

### 13.1 How are children faring once released?

*My eldest daughter has phobias and stomach pain from detention. She's frightened when she sees people being angry or aggressive. My youngest daughter still doesn't sleep well, she wakes 2 or 3 times a night.*

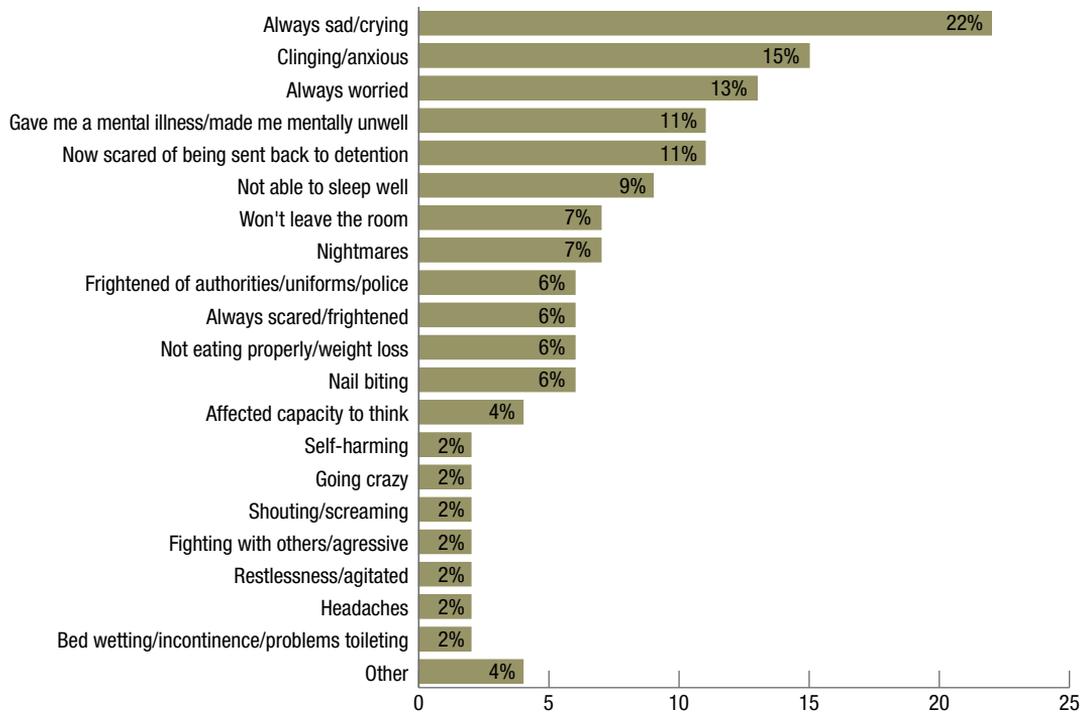
(Mother of 10 year old child, 6 year old child and 4 year old child, Community Interview, Melbourne, 5 May 2014)

The impacts of detention can persist long after the child has left the detention environment. Mental health experts report that closed detention has 'undeniable immediate and long-term mental health impacts on asylum-seeking children and families'.<sup>608</sup> Child psychiatrists who work with children after their release have reported that recovery can occur in some cases, but that in others, mental health effects may be prolonged.<sup>609</sup>

As part of the Inquiry questionnaire, children and parents were asked if their emotional and mental health had been negatively affected when in detention. Seventy-six percent of respondents answered yes, 15 percent answered no, six percent answered sometimes and three percent said that they were not sure.<sup>610</sup>

When asked to describe the emotional impacts, children and parents gave the responses at Chart 55.

**Chart 55: Responses of children and parents released from detention to the question: What were the emotional and mental health impacts on you/your children when in detention?**



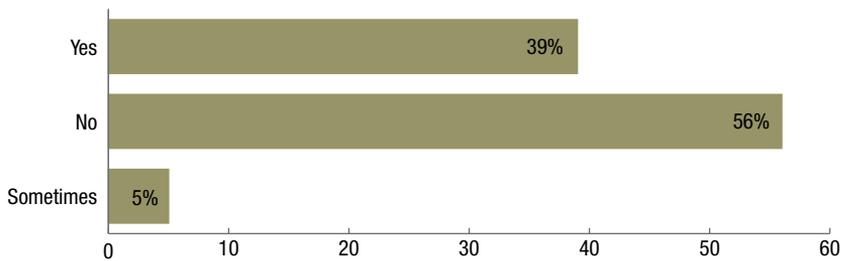
Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents Released from Detention, Australia, 2014, 75 respondents (Note: respondents can provide multiple responses)

Children and their parents were asked if it was difficult to talk about their time in detention. Forty-four percent of respondents reported difficulties in talking about detention.<sup>611</sup> Of those who reported difficulties, 87 percent said that they ‘didn’t want to talk about it’; that they ‘couldn’t talk about it’; that it was ‘too hard’; that they were ‘scared to talk about it’; or that it ‘reminded them of detention’.<sup>612</sup>

Thirty-nine percent of respondents told the Inquiry team that after release from detention they needed help for emotional problems as shown in Chart 56.

### 13. Continuing impacts on children once released

**Chart 56: Responses of children and parents released from detention to the question: Since out of detention, have you/your children needed help for emotional problems?**

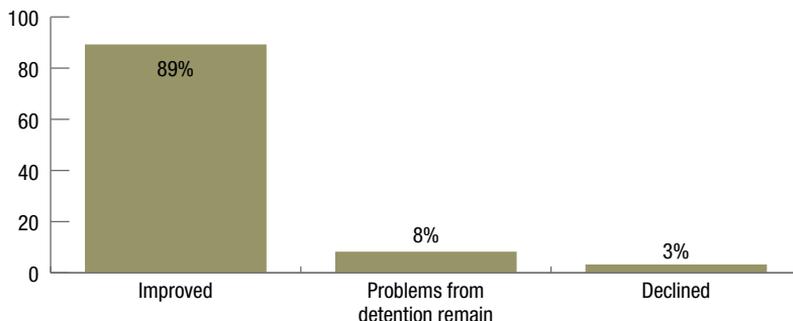


Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents Released from Detention, Australia 2014, 77 respondents

Despite the ongoing difficulties after detention, children and their parents reported improvements and progress since being in the community.

When asked whether the behaviour of the child had changed since being released from detention, 70 percent said yes.<sup>613</sup> An overwhelming majority (89 percent) of respondents said that there had been an improvement in the behaviour of the child once released as shown in Chart 57.

**Chart 57: Responses of children and parents released from detention to the question: Did you/your children show any changes in behaviour once released from detention?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents Released from Detention, Australia, 2014, 64 respondents

When asked whether the child was meeting development milestones (including reading and writing), 62 percent of respondents answered yes, 33 percent said sometimes, three percent said no, and two percent were unsure.<sup>614</sup> A majority (66 percent) reported that the child did not have any difficulties playing and getting along with other children since being out of detention.<sup>615</sup> When asked whether the child needed behavioural assistance at school, 81 percent answered no, 16 percent said yes, and three percent said sometimes.<sup>616</sup>

## 13.2 Continuing impacts of detention on infants and preschoolers

The Inquiry team spoke with the parents of 14 children who were aged 4 years or under while in detention. Parents of four of the children reported that they thought that detention had an impact on the development of their child's ability to talk and to bond.<sup>617</sup>

According to a Professor of Developmental Psychiatry, the 0 to 4 age group is particularly vulnerable to damage in detention:

The group I'm particularly concerned about are the very young. We saw some children who were born in detention, in the first round of detention, who spent the first 3 to 4 years of their lives in these sorts of environments, witnessing major trauma, who developed attachment difficulties, who continue to have problems in their overall level of functioning related to that. ...

I think this is absolutely a significant concern, and we know that those sorts of experiences in early childhood and infancy are much more likely to lead to long term poor outcome and mental health and developmental problems.<sup>618</sup>

Some parents expressed their concern about the impacts of detention on their young children. These concerns included developmental problems, evident in children who had spent comparatively short periods in detention.

A father of a child who spent two months in detention as a 10 month old infant, told the Inquiry:

*At 2 years old, my daughter can't talk. Her speech development has been affected. The doctor has said the trauma of detention has affected her speech, which will be delayed ...*

*My child is so scared she can't play with other children. She can't play with her own baby sister. She weeps at noise. She still wakes up at 12.00 am – every night at 12 she starts weeping ... in detention she would wake up at 12 screaming, the head count would terrify her.*

(Parent of 2 year old child, Community Interview, conducted by phone, 12 June 2014)

Another parent told the Inquiry that her daughter:

*wakes 3 times in the night. She now sleeps with her father because she is very frightened of the police ... . She can't believe that she is free. She thinks if she does something wrong, she will go back to detention.*

(Mother of 3 year old child, Community Interview, conducted by phone, 12 June 2014)

Some parents reported that their children were frightened as a result of detention. One parent told Inquiry staff that her child, detained at age 4 on Christmas Island:

*has great fears today and can't tell the difference between in or outside detention. She is still not confident. She's frightened that the police will take her.*

(Parent of 5 year old child, Community Interview, Darwin, 15 April 2014)

Her daughter now needs 'constant attention' from her mother, as she is:

*too trusting, she wants to go with everyone, she would ask people in the park outside 'can you take me home?' I can't work because I need to look after her full time she is terrified and needs a lot of attention. She has problems with making friends.*

(Parent of 5 year old child, Community Interview, Darwin, 15 April 2014)

### 13.3 Continuing impacts of detention on primary school aged children

*Before my children go to bed, I have to put them in nappies. When they are walking around and a police car goes by they feel scared, they don't feel safe.*

(Father of 6 and 7 year old children, Community Interview, Sydney, 16 April 2014)

The Inquiry interviewed 20 children who were aged between 5 and 12 years when in detention. Interviewees reported that the development of some of these children had been impaired and that they required ongoing support. One mother reported that her child had spent three months on Christmas Island and had witnessed violent incidents. She told Inquiry staff:

*My 6 year old child is in kindergarten rather than school. Her development was affected so much that she cannot keep up with other children. But she has received treatment to help her with play and for aggressive, angry behaviour.*

(Mother of 7 year old child, 6 year old child and 2 year old child, Community Interview, Melbourne, 5 May 2014)

The mother explained that her daughter had been receiving support from a psychiatrist and occupational therapist since her release from detention.

Another mother described her 5 year old boy as being scared and traumatised:

*My little one is still scared of everybody. He saw a psychologist while in detention but he is still scared and traumatised, we don't know what to do and how to help.*

(Mother of 5 year old child, Community Interview, Adelaide, 13 May 2014)

### 13.4 Continuing impacts of detention on teenagers

*The detention centre made us lose confidence in ourselves. We cannot trust anybody.*

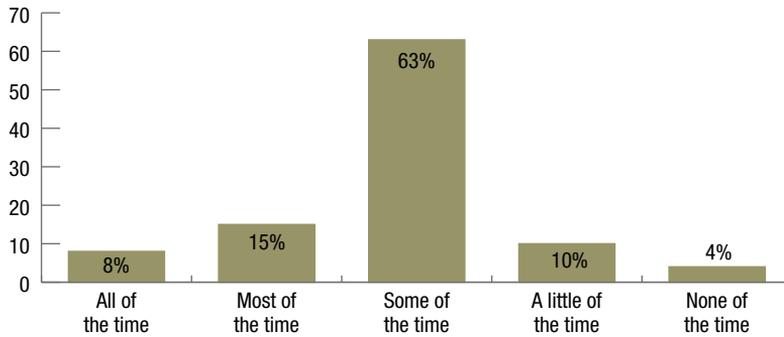
(17 year old unaccompanied child, Community Interview, Sydney, 5 August 2014)

The Inquiry team interviewed 56 children who were aged between 13 and 17 during the time they spent in detention. Thirty-one of these children were unaccompanied.

When the teenagers were asked whether they thought that their emotional or mental health was negatively affected by the experience of detention, 72 percent responded yes, five percent thought sometimes, 19 percent answered no, and four percent were unsure.<sup>619</sup>

When asked on the day of the interviews how often they felt sad, the teenagers who were now living in the community provided the responses at Chart 58.

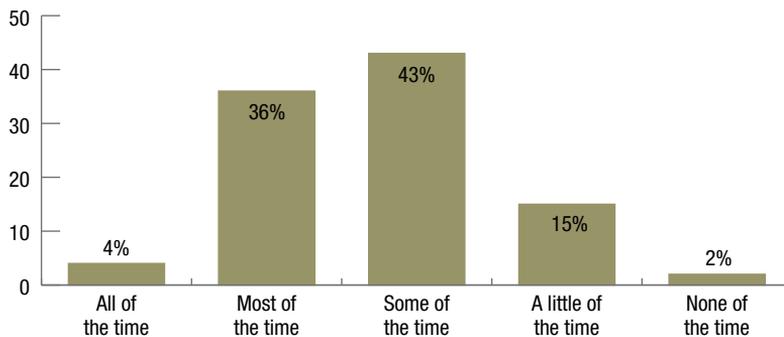
**Chart 58: Responses by teenagers released from detention to the question: How often do you feel sad?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents Released from Detention, Australia 2014, 48 respondents

When asked how often they felt happy, the teenagers who were now living in the community provided the responses at Chart 59.

**Chart 59: Responses by teenagers released from detention to the question: How often do you feel happy?**



Australian Human Rights Commission, Inquiry Questionnaire for Children and Parents Released from Detention, Australia 2014, 47 respondents

### 13. Continuing impacts on children once released

At the first public hearing, the Commission heard evidence from the Principal of Holroyd High School, in Sydney. The Principal spoke about the large population of asylum seeker children at the school and their academic performance after release from detention.

The restrictions and the institutionalisation that happens in the detention centres make them quite generally passive, depressed, slow to react when they come out of detention. What we notice is that a lot of them have difficulty with concentration, with focusing on their school work, no matter how keen they are to get back into it, and with memory. Some of the students actually have memory loss. They're not recalling things which they should recall.<sup>620</sup>

Teenagers reported to Inquiry staff that detention had affected their sense of identity and worth in the community.

*I have definitely started looking at myself from the perspective of convincing others in the community ... I am not a criminal ... I am worth what others are.*

(17 year old unaccompanied child, Community Interview, Sydney, 5 August 2014)

*I am still scared of police in the community, because in detention I always felt like I did something wrong.*

(16 year old child, Community Interview, Adelaide, 13 May 2014)

*When I came out of detention I felt very nervous. It was hard to deal with normal people.*

(16 year old unaccompanied child, Community Interview, Sydney, 5 August 2014)

Teenagers reported that detention affects their ability to trust or to feel trustworthy:

*I still have difficulties in trusting people, I only have one friend.*

(17 year old unaccompanied child, Community Interview, Sydney, 5 August 2014)

*I am not sure what people's real motives are.*

(16 year old unaccompanied child, Community Interview, Sydney, 5 August 2014)

*I am scared people won't trust me if they know I have been in detention.*

(16 year old unaccompanied child, Community Interview, Sydney, 5 August 2014)

At the first public hearing, a former detainee, Bashir Youssoufi, spoke about the impacts on his study and his ability to concentrate at school after leaving detention. Bashir was 14 years old when he arrived in Australia and was detained for almost a year on Christmas Island.

I do think about those days and I had a mental problem with those days that I spent in detention centre ... at the beginning when I was in the detention centre I was studying, learning English and later on ... I wasn't able to memorise things and I couldn't concentrate properly and I can't remember things like things my friend told me do this and after two seconds I forgot everything. I still I do carry those impacts.<sup>621</sup>

## 13.5 Ongoing impacts of long term detention

This Inquiry is not the first work that the Commission has done with people after they have left detention. From December 2011 to May 2012 the Commission conducted a series of visits and interviews with asylum seekers, including families with children and unaccompanied children.<sup>622</sup> The Commission documented the impacts of detention in a 2012 report:

The effects of prolonged, indefinite immigration detention on the wellbeing of people who have experienced detention do not dissipate immediately upon a person's release. Most of the refugees and asylum seekers in community placement with whom the Commission spoke told staff of their experiences of detention and the legacy of such experiences in their everyday lives. Some people spoke of invasive memories which interrupted their sleep and affected their appetite. Others spoke of disturbing dreams. Still others told the Commission that they had problems with their memory, concentration and ability to learn, all of which they attributed to the effects of being held in closed detention.<sup>623</sup>

From those interviews the Commission observed that the longer the person had spent in detention, the more likely they were to be affected by detention after their release. The Commission reported that:

People's recovery appeared especially pronounced when they had spent shorter periods of time in detention facilities. Those who had spent prolonged periods in detention prior to their community placement reported that they continued to be powerfully affected by difficult past experiences.<sup>624</sup>

In a submission to the Inquiry, the Royal Australasian College of Physicians noted their concern about 'the long-term impact of detention on children'. The submission noted that the 'psychological distress resulting from detention can persist for years after release'.<sup>625</sup>

Clinicians from the Children's Hospital at Westmead Refugee Clinic also reported evidence of trauma and Post-Traumatic Stress Disorder in children exiting detention:

We have seen a very large number of children who have been in detention centres. More than half of all the asylum seeker children we are currently seeing are suffering from post-traumatic stress ... A number of children have been deeply traumatised by their time in detention resulting in post-traumatic stress disorder, nightmares and self-harming.<sup>626</sup>

In evidence to the second public hearing of the Inquiry, Professor Louise Newman reported that she is currently treating adults who she met as children in detention in the period 2000 to 2005.

I treat several people who I first met during the first round of detention as children, who have ongoing post traumatic symptoms and preoccupations, who are finding it difficult to make a positive adjustment to life in the community. So some [with] very classical symptoms of having nightmares memories and recollections of things that happened to them that still remain troubling. Some have quite marked depression. Now it might be that there are other factors contributing to that but we are not sure.<sup>627</sup>

Professor Newman reported correlations between the experience of detention and poor outcomes for children:

...when we look at life time prevalence of disorder and we look at the contribution of the fact of detention, we found there to be a direct relationship between the experience of detention and children's poor outcome.<sup>628</sup>

## 13. Continuing impacts on children once released

At the first public hearing of the Inquiry, Associate Professor of Paediatrics, Karen Zwi reported on the potential for long term mental health impacts on children as a consequence of their detention.

I'm seriously concerned about the long term impact as we've heard this morning and as I know from my own patients from 10 years ago. People who have suffered a degree of trauma in their own country and come by boat have high expectations, and then sit in a state of limbo with no hope and no sense of future, experience damage as a result of that and these children have been through that process. I think many of them will have ongoing mental health issues like anxiety, post-traumatic stress of some description. They may well have developmental delay. I think it's very hard to address that after the fact.<sup>629</sup>

### 13.6 Findings regarding the continuing impacts of detention

While children show noticeable improvements in social and emotional wellbeing once released from detention, significant numbers of children experience negative and ongoing emotional impacts after prolonged detention.

**The Commission makes the general finding in chapter 4 (supported by the evidence in chapters 4 and 6 to 11) that the mandatory and prolonged detention of children breaches Australia's obligation under article 24(1) of the *Convention on the Rights of the Child* because of the impact of prolonged detention on the mental health of people detained.**

The Committee on the Rights of the Child has stressed that the Convention requires States to provide effective remedies to redress violations of the rights in the Convention, and that:

Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration... (General Comment No 5, paragraph 24).

Accordingly, **the Commonwealth is under an obligation under article 24(1) of the Convention to provide medical and associated support services to promote the physical and psychological recovery, rehabilitation and reintegration of children who have had their mental health affected by their time in detention.** This is the basis for the Commission's recommendation that government-funded mental health support be provided not only to children currently in detention, but also to those who have previously been detained at any time since 1992.

## Endnotes

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- 9 Australian Human Rights Commission, *Summary of Observations following the Inspection of Mainland Immigration Detention Facilities* (2006); *Summary of Observations following the Inspection of Mainland Immigration Detention Facilities* (2007) and *Immigration detention report: Summary of observations following visits to Australia's immigration detention facilities* (2008). At <http://www.humanrights.gov.au/immigration-detention-reports-and-photos> (viewed 22 September 2014).
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# Review of detention policy and practices 2004–2014

## 1.1 Overview

During the period between 2004 and 2014, all Australian governments maintained a legal and policy framework that supported the mandatory detention of asylum seekers who arrive in Australia without a valid visa.

Despite this bipartisan support for mandatory detention, the past decade also heralded the introduction of a number of positive changes to the legal and policy framework governing detention in Australia.

This chapter includes a review of these detention policies and practices and highlights the most significant changes over the ten year period from 2004 to 2014.

Most significantly, in 2005 amendments to the Migration Act introduced a non-compellable, non-delegable power for the Minister to issue a bridging visa or to approve the placement of individuals in residence determination arrangements in the community while their claims for protection are assessed. Another important development in 2005 was the introduction of a provision into the Migration Act which affirms the principle that a minor should only be detained as a ‘measure of last resort’.<sup>1</sup>

In 2008, a new set of immigration detention values were introduced outlining that children and where possible families were no longer to be held in immigration detention centres.<sup>2</sup>

In 2010 the government began to release significant numbers of families and children into community based alternatives to detention.

The Australian Human Rights Commission acknowledges there has been an unprecedented increase in the number of asylum seekers arriving in Australia by boat in recent years. Nevertheless, the Commission is concerned that despite the revised legal and policy framework since 2004, there continues to be significant numbers of children in locked detention and the average period of detention continues to increase.<sup>3</sup>

## 1.2 Key findings and recommendations from *A last resort?*

In 2004, the Commission (the then Human Rights and Equal Opportunity Commission) published its key report focused on children in Australia’s immigration detention system, *A last resort?*<sup>4</sup> The report made a series of findings and recommendations related to Australia’s immigration detention system ‘as it applied to children who arrived in Australia without a visa (unauthorised arrivals) over the period 1999 to 2002’.<sup>5</sup>

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1 *Migration Act 1958* (Cth), ss 4AA, 195A, 197AB.

2 See C Evans, *New Directions in Detention – Restoring Integrity to Australia’s Immigration System* (Speech delivered at the Centre for International and Public Law Seminar, Australian National University, Canberra, 29 July 2008), at <http://pandora.nla.gov.au/pan/67564/20100913-1000/www.minister.immi.gov.au/media/speeches/2008/ce080729.html> (viewed 15 September 2014).

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The report made three major findings:

1. Australia's immigration detention law and policy framework created a detention system which was 'fundamentally inconsistent' with the *Convention on the Rights of the Child*.
2. Children in detention were prevented from being able to enjoy many of the rights articulated in the *Convention on the Rights of the Child*.
3. Children are at high risk of serious mental harm and the Commonwealth's failure to remove certain children from detention with their parents as recommended by mental health professionals amounted to cruel, inhuman and degrading treatment.<sup>6</sup>

*A last resort?* made five recommendations for change:

1. That children and their parents in closed immigration detention facilities be released at the earliest possible opportunity.
2. That the law be changed, in particular to create a presumption against the detention of children for immigration purposes, to provide independent assessment within 72 hours of the need to detain children, and to provide for prompt and periodic judicial review of detention after that.
3. That an independent guardian be appointed for all unaccompanied children.
4. That minimum standards for detention of children be codified in law.
5. That there be a review of the use of 'excised offshore places' and the 'Pacific Solution' relating to their particular impact on children.

## 1.3 Key legislative and policy changes

### (a) *Migration Act 1958* (Cth)

The most significant legislative reforms to detention in the last decade have been the introduction of a suite of changes to the Migration Act introduced through the *Migration Amendment (Detention Arrangements) Act 2005* (Cth). These changes provided new Ministerial powers that allowed for 'children, families and people with special needs to be placed in detention in the community, rather than in a secure immigration detention centre'.<sup>7</sup>

Three key changes were introduced through this Act:

- **Section 197AB – Residence Determination**

The introduction of section 197AB of the Migration Act provides a 'non-compellable, non-delegable ministerial power to make a residence determination (to permit a person in immigration detention to live in the community rather than a detention facility) under the scheme more

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6 Human Rights and Equal Opportunity Commission, *A last resort? National Inquiry into Children in Immigration Detention* (2004) (A last resort?) p 5. At [www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/index.html](http://www.humanrights.gov.au/human_rights/children_detention_report/index.html) (viewed 1 September 2014).

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commonly known as community detention',<sup>8</sup> where the Minister thinks that is in the public interest to do so. This amendment enabled asylum seekers who had arrived in Australia by boat to be given the opportunity to reside in the community at a particular address, whilst being treated as if they were being kept in immigration detention in accordance with section 189 of the Migration Act.<sup>9</sup>

- **Section 195A – Bridging Visa E**

The introduction of section 195A of the Migration Act also provides the Minister with discretion to grant a visa (including a bridging visa) to an individual in immigration detention when the Minister deems it in the public interest to do so. For the first time, section 195A introduced the option of Bridging Visa E to asylum seekers who had arrived in Australia by boat, providing them temporary lawful status to reside in the community whilst their immigration status was resolved.<sup>10</sup>

- **Section 4AA – A measure of last resort**

An additional and complementary change to the Migration Act was implemented through the introduction of section 4AA, which affirmed the principle that 'a minor shall only be detained as a measure of last resort'.

## 1.4 *New Directions in Detention* policy

On 29 July 2008, the then Minister for Immigration and Citizenship, Senator Chris Evans announced the *New Directions in Detention* policy,<sup>11</sup> which he stated would 'fundamentally change the premise underlying detention policy'.<sup>12</sup> The New Directions in Detention policy introduced a set of seven immigration detention values by which the Australian Government was to be guided. These principles were:

1. Mandatory detention is an essential component of strong border control.
2. To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:
  - all unauthorised arrivals, for management of health, identity and security risks to the community;
  - unlawful non-citizens who present unacceptable risks to the community; and
  - unlawful non-citizens who have repeatedly refused to comply with their visa conditions.

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11 See C Evans, *New Directions in Detention – Restoring Integrity to Australia's Immigration System* (Speech delivered at the Centre for International and Public Law Seminar, Australian National University, Canberra, 29 July 2008), at <http://pandora.nla.gov.au/pan/67564/20100913-1000/www.minister.immi.gov.au/media/speeches/2008/ce080729.html> (viewed 15 September 2014).

12 See C Evans, *New Directions in Detention – Restoring Integrity to Australia's Immigration System* (Speech delivered at the Centre for International and Public Law Seminar, Australian National University, Canberra, 29 July 2008), at <http://pandora.nla.gov.au/pan/67564/20100913-1000/www.minister.immi.gov.au/media/speeches/2008/ce080729.html> (viewed 15 September 2014).

3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre.
4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.
5. Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.
6. People in detention will be treated fairly and reasonably within the law.
7. Conditions of detention will ensure the inherent dignity of the human person.

Under the *New Directions in Detention* policy, immigration detention was to be used as a last resort and for the shortest practicable period, and there was a presumption that people would be permitted to reside in the community unless they pose an unacceptable risk.<sup>13</sup>

As the *New Directions in Detention* policy was never enshrined in legislation, it has now been overtaken by alternative policy positions which have resulted in significant numbers of asylum seekers remaining in immigration detention facilities rather than in community arrangements while they await the resolution of their immigration status.<sup>14</sup>

## 1.5 Third country processing

In the decade from 2004 to 2014, political support for the policy of third country processing has varied. Since 2012, however, third country processing has received bipartisan support from both Labor and Coalition Governments.

On 28 June 2012, former Prime Minister Julia Gillard announced the appointment of the *Expert Panel on Asylum Seekers* (the Expert Panel) to provide advice and recommendations to the Australian Government on policy options to prevent asylum seekers risking their lives on dangerous boat journeys to Australia.<sup>15</sup>

Following the release of the report by the Expert Panel on 13 August 2012, the former Labor Government introduced a system of third country processing for asylum seekers arriving by boat.<sup>16</sup> The third country processing regime applied to all asylum seekers arriving by boat after 13 August 2012 unless the Minister for Immigration determined otherwise. Transfers commenced to Nauru in September 2012 and to Manus Island,

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13 See C Evans, *New Directions in Detention – Restoring Integrity to Australia’s Immigration System* (Speech delivered at the Centre for International and Public Law Seminar, Australian National University, Canberra, 29 July 2008), at <http://pandora.nla.gov.au/pan/67564/20100913-1000/www.minister.immi.gov.au/media/speeches/2008/ce080729.html> (viewed 15 September 2014).

14 Department of Immigration and Border Protection, *Historical data on children in detention 2004 – 2014*, Item 25, Document 25.1, Schedule 2, First Notice to Produce, 31 March 2014; Australian Human Rights Commission, *Community arrangements for asylum seekers, refugees and stateless persons. Observations from visits conducted by The Australian Human Rights Commission from December 2011 to May 2012* (2012), sect. 5.2.

15 The Expert Panel is led by Air Chief Marshall Angus Houston AC AFC (retired), and also comprises Mr Paris Aristotle AM, Director of the Victorian Foundation for the Survivors of Torture (‘Foundation House’) and Professor Michael L’Estrange AO, Director of the National Security College. The Terms of Reference for the Expert Panel are provided at <http://expertpanelonasylumseekers.dpmc.gov.au/terms> (viewed 30 September 2014).

16 *The Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012* (Cth).

Papua New Guinea in November of the same year.<sup>17</sup> Although these people were processed in another country, at this time it was possible that those determined to be refugees could be resettled in Australia.

In August 2012, the Labor Government adopted the Expert Panel's recommendation to apply a 'no advantage' principle which stipulated that refugees arriving by boat should not receive an 'advantage' over refugees overseas who are waiting to be resettled.

The Government's implementation of the 'no advantage' principle resulted in the suspension of processing for asylum seekers who had arrived by boat on or after 13 August 2012.<sup>18</sup> The suspension of processing has had a profound impact on the times that people have waited to have their refugee claims assessed. It has also prolonged the detention of children detained in onshore and offshore locked detention facilities.

On 19 July 2013, former Prime Minister Kevin Rudd announced a new regional resettlement policy that asylum seekers who arrived by boat after that date would never be resettled in Australia.<sup>19</sup> This policy has been adopted by the current Coalition Government. This means that asylum seekers who arrived by boat after 19 July 2013 will not only be processed offshore but settled offshore as well.

## 1.6 Indefinite detention on Christmas Island

Most asylum seekers on Christmas Island arrived after 19 July 2013, but before the federal election on 7 September 2013. These people are subject to third country processing and are ineligible for resettlement in Australia.

The asylum seekers on Christmas Island have now been detained for over one year on average. They are not able to be transferred offshore because there are limits to the capacity of the third country processing centres. Some asylum seekers are not being transferred because they have complex medical conditions, including infectious diseases that make offshore transfers problematic. Some families have babies that were born in Australia and these babies are part of a test case that is due to be heard in October 2014.<sup>20</sup> The test case will decide whether a child who is born in Australia is entitled to apply for refugee status if the child's parents came here by boat.<sup>21</sup>

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17 B Packham, 'Labor to act quickly to reopen Nauru, PNG asylum-seeker processing centres', *The Australian*, 13 August 2012 at <http://www.theaustralian.com.au/national-affairs/immigration/labor-caucus-backs-expert-panel-on-asylum-policy/story-fn9hm1gu-1226449423972> (viewed 18 September 2014).

18 B Hall, 'No-benefits policy puts 20,000 in oblivion', *The Sydney Morning Herald*, 28 May 2013 at <http://www.smh.com.au/federal-politics/political-news/nobenefit-policy-puts-20000-in-oblivion-20130527-2n7kd.html> (viewed 2 September 2014).

19 The Hon K Rudd PM, 'Australia and Papua New Guinea Regional Settlement Arrangement', media statement (19 July 2013). At <http://pandora.nla.gov.au/pan/79983/20130830-1433/www.pm.gov.au/press-office/australia-and-papua-new-guinea-regional-settlement-arrangement.html> (viewed 15 September 2014).

20 P Taylor and P Maley, 'Families and children face stay on Christmas Island as PNG transfers in doubt', *The Australian*, 22 October 2013. At [www.theaustralian.com.au/national-affairs/immigration/families-and-children-face-stay-on-christmas-island-as-png-transfers-in-doubt/story-fn9hm1gu-1226744122598](http://www.theaustralian.com.au/national-affairs/immigration/families-and-children-face-stay-on-christmas-island-as-png-transfers-in-doubt/story-fn9hm1gu-1226744122598) (viewed 31 August 2014).

21 Maurice Blackburn Lawyers, 'Court date sought to release Australian-born baby from detention' 16 June 2014. At <http://www.mauriceblackburn.com.au/about/media-centre/media-statements/2014/court-date-sought-to-release-australian-born-baby-from-detention/#sthash.oCBAB7B1.dpuf> (viewed 17 September 2014).

## 1.7 Rapid offshore processing after September election 2013

Asylum seekers who arrived in Australia by boat following the federal election on 7 September 2013 were sent offshore, many within 48 hours as per the new Coalition Government's policy.<sup>22</sup> Rapid processing occurred on Christmas Island, with children and their families moved to Nauru and single adult men to Manus Island, Papua New Guinea.

It was a large logistical exercise to move people from Christmas Island to Nauru in 48 hours. It meant that Nauru needed to build more accommodation and staff had to be deployed to Christmas Island to assist with the 'removal' of people offshore.

## 1.8 Other policy decisions

### (a) Department Community Support and Children's Branch

In 2010, the government established a Children's Unit in the immigration detention portfolio with particular responsibility for children's issues. The original objective of the Unit was to 'support the specific needs of children and families through a cohesive policy approach'.<sup>23</sup> The Department reports that the responsibility of the Unit has expanded into the Community Support and Children's Branch. This Branch receives support from the Community Programmes and Children Division and covers matters relevant to children in detention.<sup>24</sup>

The Department has developed a specific chapter in its Procedures Advice Manual outlining a set of guiding principles to guide staff developed from Australia's obligations under the *Convention on the Rights of the Child*.<sup>25</sup>

### (b) Departmental communication policies and practices

In 2013, the current Minister for Immigration and Border Protection, the Hon Scott Morrison MP issued a directive requesting that Department employees and all service providers refer to asylum seekers who arrive by boat as 'illegal maritime arrivals' and 'detainees'. People being sent to offshore processing centres on Nauru and Manus Island, Papua New Guinea are to be referred to as 'transferees'.<sup>26</sup> This directive changed the terminology used by the previous government which was to describe asylum seekers who arrived by boat as 'clients' or 'irregular maritime arrivals' in recognition that neither Australian domestic law nor international law make it illegal to claim asylum.

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22 The Hon S Morrison MP, Operation Sovereign Borders Joint Agency Taskforce address, transcript, (23 September 2013) At <http://newsroom.customs.gov.au/channels/transcripts-operation-sovereign-borders/releases/transcript-press-conference-operation-sovereign-borders-update-a> (viewed 22 September 2014).

23 Department of Immigration and Border Protection, Submission No 45 to the National Inquiry into Children in Immigration Detention 2014, p 41. At <https://www.humanrights.gov.au/sites/default/files/Submission%20No%2045%20-%20Department%20of%20Immigration%20and%20Border%20Protection.pdf> (viewed 7 October 2014).

24 Department of Immigration and Border Protection, Submission No 45 to the National Inquiry into Children in Immigration Detention 2014, pp 41-42. At <https://www.humanrights.gov.au/sites/default/files/Submission%20No%2045%20-%20Department%20of%20Immigration%20and%20Border%20Protection.pdf> (viewed 7 October 2014).

25 Department of Immigration and Border Protection, Submission No 45 to the National Inquiry into Children in Immigration Detention 2014, p 38. At <https://www.humanrights.gov.au/sites/default/files/Submission%20No%2045%20-%20Department%20of%20Immigration%20and%20Border%20Protection.pdf> (viewed 7 October 2014).

26 B Hall, 'Minister wants boat people called illegals', *The Sydney Morning Herald*, 20 October 2013 at [www.smh.com.au/federal-politics/political-news/minister-wants-boat-people-called-illegals-20131019-2vtl0.html](http://www.smh.com.au/federal-politics/political-news/minister-wants-boat-people-called-illegals-20131019-2vtl0.html) (viewed 31 August 2014).

## 1.9 Implementation of policy

### (a) The use of community-based alternatives to detention

On 18 October 2010, the Australian Government announced that it would begin moving significant numbers of children and their families into Community Detention.<sup>27</sup> From the date of the announcement to 30 April 2014, a total of 8750 detainees had been approved for Community Detention, including 2771 children with their parents and 1813 unaccompanied children.<sup>28</sup>

A year later, on 25 November 2011, the government announced that, following initial health, security and identity checks, selected asylum seekers who arrive in Australia by boat would be placed into the community while their asylum claims were assessed.<sup>29</sup> This was to be achieved through extending the use of Community Detention to vulnerable individuals in addition to children and families. Bridging visas were granted for the first time to people who had arrived in Australia by boat.<sup>30</sup>

Since November 2011, successive Ministers have utilised their discretionary power to grant bridging visas to more than 29,000 asylum seekers who have arrived in Australia by boat.<sup>31</sup>

According to data provided by the Department of Immigration and Border Protection, 1,939 asylum seeker children were released from detention on bridging visas by 30 April 2014, including 48 babies who had been born in Australia.<sup>32</sup>

### (b) Release of children under the age of 10

On 19 August 2014, the Minister for Immigration and Border Protection announced that the government would release all children under 10 and their families from detention into the community on bridging visas. This announcement only applies to asylum seekers on the Australian mainland who arrived prior to 19 July 2013. The Minister had said previously the arrangements in place for the protection and support for families with children under 10 was not sufficient and that this needed to be rectified before children were released into the community. The Minister told the Inquiry that he had already been releasing children over 10 from detention onto bridging visas.

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27 Department of Immigration and Border Protection, Submission No 45 to the National Inquiry into Children in Immigration Detention 2014, p 27. At <https://www.humanrights.gov.au/sites/default/files/Submission%20No%2045%20-%20Department%20of%20Immigration%20and%20Border%20Protection.pdf> (viewed 7 October 2014).

28 Department of Immigration and Border Protection, Submission No 45 to the National Inquiry into Children in Immigration Detention 2014, p 27. At <https://www.humanrights.gov.au/sites/default/files/Submission%20No%2045%20-%20Department%20of%20Immigration%20and%20Border%20Protection.pdf> (viewed 7 October 2014).

29 Minister for Immigration and Citizenship, 'Bridging visas to be issued for boat arrivals' (Media Release, 25 November 2011), At <http://www.chrisbowen.net/media-centre/media-releases.do?newsId=5240> (viewed 30 September 2014).

30 Bridging visas have been used for many years to allow, among others, asylum seekers who arrive by plane to live lawfully in the Australian community. See Prime Minister of Australia and Minister for Immigration and Citizenship, 'Asylum seekers; Malaysia agreement; Commonwealth Ombudsman' (Joint Press Conference, 13 October 2011), At <http://www.minister.immi.gov.au/media/cb/2011/cb179299.htm> (viewed 10 July 2012).

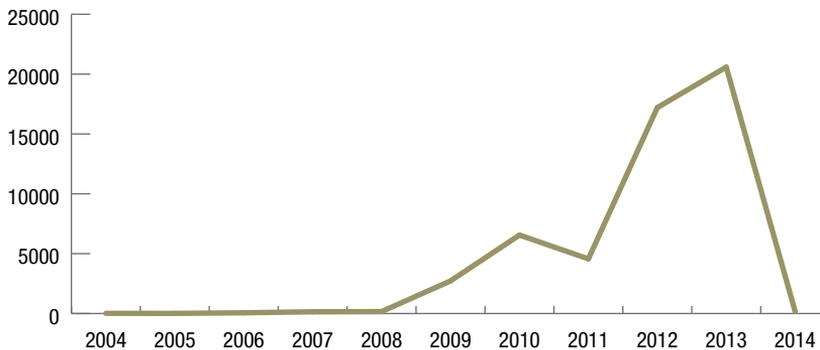
31 Department of Immigration and Border Protection, Submission No 45 to the National Inquiry into Children in Immigration Detention 2014, p 29. At <https://www.humanrights.gov.au/sites/default/files/Submission%20No%2045%20-%20Department%20of%20Immigration%20and%20Border%20Protection.pdf> (viewed 7 October 2014).

32 Department of Immigration and Border Protection, Submission No 45 to the National Inquiry into Children in Immigration Detention 2014, p 29. At <https://www.humanrights.gov.au/sites/default/files/Submission%20No%2045%20-%20Department%20of%20Immigration%20and%20Border%20Protection.pdf> (viewed 7 October 2014).

## 1.10 Numbers and length of detention of children 2004–2014

In 2008 the number of asylum seekers arriving by boat began to steadily increase and between 2009 and 2013 the number of arrivals reached unprecedented numbers. Chart 60 shows the spike in arrivals from 2011 to 2013.

**Chart 60: Number of people arriving by boat to Australia since 2004**



Source: J Phillips and H Spinks, *Boat arrivals in Australia since 1976*, Parliamentary Library Research Paper<sup>33</sup>

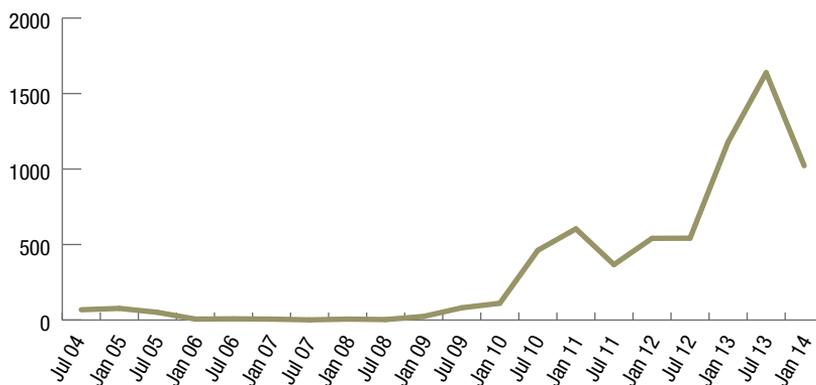
The Commission welcomes the government’s use of Community Detention and bridging visas to facilitate the removal of children and their families from locked detention facilities. However, the Commission is concerned that these mechanisms remain underutilised.

There are still a concerning number of children detained in locked detention facilities. The number of children in locked detention has risen from a total of 68 children in July 2004 to 1022 children in January 2014. In January 2014 there were 939 with at least one parent and 83 unaccompanied children.<sup>34</sup> The increase in children in detention since 2010 is shown in Chart 61.

<sup>33</sup> Based on J Phillips and H Spinks, *Boat arrivals in Australia since 1976*, Parliamentary Library Research Paper (2013), p 22. At [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1314/BoatArrivals](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1314/BoatArrivals) (viewed 2 October 2014).

<sup>34</sup> Department of Immigration and Border Protection, *Historical data on children in detention 2004 – 2014*, Item 25, Document 25.1, Schedule 2, First Notice to Produce 31 March 2014.

**Chart 61: Number of children in detention; July 2004 to January 2014**



Source: Australian Human Rights Commission analysis of data from the Department of Immigration and Border Protection<sup>35</sup>

While numbers of children in locked detention decreased since the peak of 1638 (1287 with at least one parent, 351 unaccompanied) in July 2013, Department data indicates that the average length in detention also rose significantly during the same period.<sup>36</sup>

In January 2013, children and adults had been in detention for four months (124 days) on average. At the time of writing this report, the average period of detention for children and adults is 413 days.

Notably, when the number of children in detention reached its highest levels in July 2013, the average detainee was spending 72 days in detention facilities, less than at any other time during the period between January 2013 and July 2014.<sup>37</sup>

These periods of immigration detention can be contrasted to much shorter periods in comparable countries. In 2011 the Department provided comparative data on average lengths of detention in the United States and Canada to the Senate Joint Select Committee on Australia’s Immigration Detention Network. According to those figures:<sup>38</sup>

- In 2008–09, Canada detained 14,359 individuals in immigration detention for an average of 17 days. About 60 percent of these people were detained for less than 48 hours.
- In 2009 the average time spent in immigration detention in the United States was 30 days.

The Commission is concerned by the underutilisation of community placement options and by the prolonged and indefinite detention of children in Australia.

35 Department of Immigration and Border Protection, *Historical data on children in detention 2004 – 2014*, Item 25, Document 25.1, Schedule 2, First Notice to Produce 31 March 2014.

36 Department of Immigration and Border Protection, *Historical data on children in detention 2004 – 2014*, Item 25, Document 25.1, Schedule 2, First Notice to Produce 31 March 2014.

37 Department of Immigration and Border Protection, *Immigration Detention and Community Statistics Summary: 31 August 2014* (2014), p 3. At [http://www.immi.gov.au/managing-australias-borders/detention/\\_pdf/immigration-detention-statistics-august2014.pdf](http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-august2014.pdf) (viewed 17 September 2014).

38 Department of Immigration and Citizenship, *Submission to the Joint Select Committee on Australia’s Immigration Detention Network* (September 2011), pp 213 and 224. At <http://www.aph.gov.au/DocumentStore.ashx?id=f47478f9-3792-4b5f-9346-0569382e1560> (viewed 22 September 2014).

# Detailed Inquiry methodology

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This Appendix explains the methodology adopted for the Inquiry report.

Evidence was gathered throughout the Inquiry using the following methods:

- visits to detention centres;
- interviews and questionnaires with asylum seeker children and their parents;
- expert reports from paediatricians and child psychiatrists;
- submissions to the Inquiry;
- public hearings;
- responses to Notices to Produce; and
- interviews and questionnaires with children and parents who had formerly been in detention.

## 2.1 Visits to detention centres

From March to July 2014, the Commission visited 11 separate detention centres across mainland Australia and Christmas Island. Two centres on Christmas Island were revisited after a spate of self-harms. A total of 13 visits were made.

All visits were conducted by the President, Commission staff members and supported by Inquiry consultants. The President was accompanied by the Children's Commissioner on visits to the Darwin, Melbourne and Adelaide detention centres. The President was accompanied by the Human Rights Commissioner in her visit to the Darwin detention centres.

At all visits the Inquiry team:

- inspected the facilities and available services;
- liaised with the Department of Immigration and Border Protection, Serco, MAXimus Solutions; and International Health and Medical Services;
- observed daily operations; and
- interviewed children and their parents using the Inquiry questionnaires.

### (a) Schedule

The details of each visit are as follows:

| DATES                    | LOCATION  |
|--------------------------|---|
| 1 March – 7 March 2014   | <ul style="list-style-type: none"> <li>• Construction Camp Alternative Place of Detention, Christmas Island</li> <li>• Phosphate Hill Alternative Place of Detention, Christmas Island</li> <li>• Aqua Alternative Place of Detention, Christmas Island</li> <li>• Lilac Alternative Place of Detention, Christmas Island</li> <li>• North West Point Immigration Detention Centre, Christmas Island</li> </ul> |
| 30 March 2014            | <ul style="list-style-type: none"> <li>• Sydney Immigration Residential Housing</li> </ul>  |
| 11 April – 14 April 2014 | <ul style="list-style-type: none"> <li>• Darwin Airport Lodge Alternative Place of Detention, Darwin</li> <li>• Wickham Point Alternative Place of Detention, Darwin</li> <li>• Blaydin Alternative Place of Detention, Darwin</li> </ul>   |
| 7 May 2014               | <ul style="list-style-type: none"> <li>• Melbourne Immigration Transit Accommodation</li> </ul>   |
| 12 May 2014              | <ul style="list-style-type: none"> <li>• Inverbrackie Alternative Place of Detention, Adelaide</li> </ul>   |
| 14 July –17 July 2014    | <ul style="list-style-type: none"> <li>• Construction Camp Alternative Place of Detention, Christmas Island</li> <li>• Phosphate Hill Alternative Place of Detention, Christmas Island</li> </ul>   |

## (b) Inquiry consultants

The Inquiry consultants were contracted to assist in the collection and assessment of evidence. They:

- assisted in the conduct of interviews;
- made observations regarding children in detention with particular focus on the impact of detention on the health, development and mental wellbeing of children; and
- assessed the adequacy and appropriateness of health services for children in detention.
- provided advice and assistance in the editing of Inquiry evidence for the report.

The following table sets out the Inquiry consultants and the locations of the detention centres that they visited with the Inquiry team.

## Appendix 2: Detailed Inquiry methodology

| <b>DATES</b>             | <b>LOCATION</b>   | <b>INQUIRY CONSULTANTS</b>  |
|--------------------------|---|---|
| 1 March – 7 March 2014   | Construction Camp Alternative Place of Detention, Christmas Island<br>Phosphate Hill Alternative Place of Detention, Christmas Island<br>Aqua Alternative Place of Detention, Christmas Island<br>Lilac Alternative Place of Detention, Christmas Island<br>North West Point Immigration Detention Centre, Christmas Island | Consultant Child and Family Psychiatrist<br>Dr Sarah Mares<br>Paediatrician and Child Development expert<br>Conjoint Associate Professor<br>Karen Zwi |
| 30 March 2014            | Sydney Immigration Residential Housing  | Child and Adolescent Psychiatrist<br>Dr Nick Kowalenko  |
| 11 April – 14 April 2014 | Darwin Airport Lodge Alternative Place of Detention, Darwin<br>Wickham Point Alternative Place of Detention, Darwin<br>Blaydin Alternative Place of Detention, Darwin   | Consultant Child and Family Psychiatrist<br>Dr Sarah Mares<br>Paediatrician and Child Development expert<br>Conjoint Associate Professor<br>Karen Zwi |
| 7 May 2014               | Melbourne Immigration Transit Accommodation   | Consultant Paediatrician<br>Dr Georgie Paxton<br>Consultant Child Psychiatrist<br>Dr Sanjay Patel<br>Senior Paediatric Trainee<br>Dr Shidan Tosif     |
| 12 May 2014              | Inverbrackie Alternative Place of Detention, Adelaide   | Child Psychiatrist Professor<br>Jon Jureidini<br>Community Paediatrician<br>Dr Suzanne Packer   |
| 14 July – 17 July 2014   | Construction Camp Alternative Place of Detention, Christmas Island<br>Phosphate Hill Alternative Place of Detention, Christmas Island   | Paediatrician Professor<br>Elizabeth Elliott  |

The Inquiry consultants did not conduct individual clinical assessments and nor did they engage in a health clinician/patient relationship with the children in detention.

Following the visits, the Inquiry consultants prepared expert reports.

These have been incorporated into the substantive chapters of the report. The expert reports are available at the Commission's Inquiry website.

## (c) Detention centre interviews

The Inquiry team designed questionnaires that would elicit both quantitative and qualitative data.

Interviews were conducted in group settings, in private interview settings and with an interpreter when required.

Interviews were conducted in various formats taking into consideration the preferences of interviewees. This included:

- parents with younger children together;
- families together;
- children individually; and
- unaccompanied children together.

The Inquiry staff conducted 486 interviews of children and families in detention. In total, the Inquiry staff interviewed 1129 individuals in detention.

At the beginning of each interview, interviewees (or where appropriate their parent/s or guardian) were asked for their consent to:

- the anonymous use of the information from the interview to produce the report;
- the use of the information from the interview to discuss medical needs or other requirements with the Department; and
- their file/s (including medical files, detention case reviews, documents about security decisions and documents about incidents) being requested by the Commission if necessary.

At the conclusion of each visit, the Inquiry team consolidated cases of concern about individual asylum seekers and provided information about these cases to the Department for immediate follow-up.

Interviewees' testimonies and quotes have been incorporated into the substantive chapters of the report.

Copies of the questionnaires are provided in Appendix 6 of the report. Information about the collection and collation of questionnaire data is provided in this methodology section.

## 2.2 Submissions

A total of 239 submissions were received.

Of these:

- 105 were public submissions;
- 69 were public submissions with name withheld; and
- 65 were confidential and were not published.

Submissions were received from a number of stakeholders including:

- the Department of Immigration and Border Protection;
- children currently in detention;

- children and parents who had previously been in detention;
- professionals working in detention;
- visitors to people in detention;
- peak bodies representing health, medical professionals and experts in child welfare;
- legal academics;
- refugee advocates; and
- human rights experts.

While submissions were generally in the form of written commentary, poetry, photographs, videos and drawings were also received.

Submissions from or about Nauru were accepted and incorporated into the substantive chapters of the report.

Public submissions have been made available on the Commission's Inquiry website.

In accordance with the President's confidentiality directions, names and identifying features of asylum seekers and certain other individuals have been redacted from these submissions.

A full list of the public submissions is provided in Appendix 3 of the report.

## 2.3 Public hearings

The President convened five public hearings between April and September 2014.

At the third, fourth and fifth hearings, Ms Naomi Sharp assisted the President as Counsel.

Prior to giving evidence, each witness provided an oath or affirmation.

At the commencement of each public hearing, the President gave a direction to the media prohibiting the publication of any information given in evidence that could identify a person other than the person giving the evidence.

Five public hearings were conducted as follows:

| NUMBER | DATE             | LOCATION  |
|--------|------------------|-----------|
| 1      | 4 April 2014     | Sydney    |
| 2      | 2 July 2014      | Melbourne |
| 3      | 14 July 2014     | Sydney    |
| 4      | 22 August 2014   | Canberra  |
| 5      | 9 September 2014 | Sydney    |

Pursuant to section 21(5) of the *Australian Human Rights Commission Act 1986* (Cth), a number of witnesses were compelled to attend and answer questions. Others were invited to attend and give evidence.

Witnesses were provided a copy of their draft transcript for corrections.

In accordance with the President's confidentiality directions, names and identifying features of asylum seekers and certain other individuals have been redacted from the transcripts.

Transcripts have been made available on the Commission's Inquiry website. A list of the Inquiry witnesses that appeared at public hearings is provided in Appendix 4 of the report.

## 2.4 Evidence provided pursuant to Notices to Produce

### (a) The Department of Immigration and Border Protection

Pursuant to Division 3 of Part II of the *Australian Human Rights Commission Act 1986* (Cth), the Commission compelled the production of documents and information by issuing three 'Notices to Produce' to the Department.

The first 'Notice to Produce' was issued on 31 March 2014. Topics covered by this notice include:

- data on children in detention, on bridging visas and subject to residence determinations,
- size of rooms in detention,
- availability of education,
- statistics on deaths, self-harm and incidents,
- qualification requirements for staff,
- age assessments,
- data on children in detention on Nauru including deaths, self-harm and incidents and access to services, and
- historical data.

The Department did not provide information concerning Nauru. The Department 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'.

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.

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.

The second 'Notice to Produce' was issued on 11 July 2014. Topics covered by this notice include:

- children with disabilities;
- medical evacuations;
- children born in detention;
- data on mothers with children in detention;
- data on stateless children;
- Serco incident reports;
- incidents involving children in the community;
- torture and trauma;
- capacity of compounds; and
- costs.

The third 'Notice to Produce' was issued on 12 August 2014 and related to:

- Health of the Nation Outcome Scales for Children and Adolescents; and
- video and audio-visual footage from Phosphate Hill Alternative Place of Detention.

### (b) International Health and Medical Services

Pursuant to Division 3 of Part II of the *Australian Human Rights Commission Act 1986* (Cth), the Commission compelled the production of documents and information by issuing two 'Notices to Produce' to International Health and Medical Services.

The first 'Notice to Produce' was issued on 24 July 2014 and related to:

- data on screening of children;
- staffing profiles;
- services provided to unaccompanied children;
- torture and trauma;
- transfers;
- recommendations for community placements; and
- the Complaints process.

The second 'Notice to Produce' was issued on 24 September 2014 and related to:

- data language legend;
- data on screening of children;
- data on screening of adults;
- Kessler Psychological Distress Scale; and
- Harvard Trauma Questionnaire.

## 2.5 Interviews with children and parents released from detention

### (a) Background

The Inquiry team conducted interviews with children (and some parents) that had formerly lived in detention. The purpose of these interviews was to investigate the impact of detention over time.

From the period April to August 2014, the Inquiry team interviewed 92 children and 12 parents who were currently living in the community and had previously been in detention.

The Inquiry team developed a questionnaire to gather information about the longer-term impacts of detention. The interviews were promoted through refugee and asylum seeker organisations and schools. Respondents volunteered to be interviewed on the basis of complete anonymity.

Taking into consideration the different wishes of the interviewees, interviews were conducted in varying formats, such as:

- families together;
- children individually; and
- unaccompanied children together.

A copy of the interview questionnaire is provided in Appendix 6 of the report.

### (b) Schedule

Interviews were conducted as follows:

| DATE             | LOCATION         | NUMBERS                |
|------------------|------------------|------------------------|
| 15 March 2014    | Darwin           | 5 children, 2 parents  |
| 13 May 2014      | Adelaide         | 6 children, 3 parents  |
| 5 May 2014       | Melbourne        | 12 children, 3 parents |
| 6 May 2014       | Ballarat         | 13 children, 2 parents |
| 5 August 2014    | Sydney           | 41 children            |
| June – July 2014 | Phone interviews | 15 children, 2 parents |

## 2.6 Data Management

Data and charts were drawn from various sources. These include:

- Inquiry questionnaires
- Evidence provided pursuant to the Notices to Produce.

### (a) Data from Inquiry questionnaire for children and parents in detention

The Inquiry used questionnaire forms to record answers from children and parents during their visits to various detention centres. A copy of the interview questionnaire is provided in Appendix 6 of the report.

The interview responses were both quantitative and qualitative.

Quantitative responses were entered into a data entry form using Microsoft Excel. Qualitative answers were counted and categorised according to a programmed codebook. Responses were grouped into the best fit category or an 'other' category. These codified responses were entered into the data entry forms. Data was recorded for each possible respondent from an interview.

The aggregated data for each specific question was separated into the following cohorts:

- All respondents
- Parents and their babies (children aged 0–1; answers provided by parents)
- Preschoolers (children aged 2–4; answers provided by parents)
- Primary schoolers (children aged 5–12; answers provided by children and parents)
- Teenagers including unaccompanied children (children aged 13–17; answers provided by teenagers)
- Unaccompanied children (children without a parent or guardian; answers provided by unaccompanied children)

Cohort responses to questions were tabulated and used in the report.

### (b) Data from Inquiry questionnaire for children and parents released from detention

The Inquiry used questionnaire forms to record answers from children and parents released from closed detention. A copy of the interview questionnaire is provided in Appendix 6 of the report.

The interview responses were both quantitative and qualitative.

Quantitative responses were entered into a data entry form using Microsoft Excel. Qualitative answers were counted and categorised according to a programmed codebook. Responses were grouped into the best fit category or an 'other' category. These codified responses were entered into the data entry forms. Data was recorded for each possible respondent from an interview.

Responses to questions were tabulated and used in the report.

## (c) Data from evidence received pursuant to the Notices to Produce

Data was provided by the Department of Immigration and Border Protection and International Health and Medical Services pursuant to the Notices to Produce. This was incorporated directly into the report.

Data was also extracted from documents provided pursuant to the Notices to Produce. This data was collated and tabulated as charts in the Inquiry report.

## 2.7 Approach to incorporating evidence

Australia's obligations pursuant to the *Convention on the Rights of the Child* are incorporated throughout the report.

Frameworks for childhood development and needs at different stages underpin chapters 6 to 9 of the report.

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.

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.

## 2.8 Assessment of probative value

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.

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 corroborate Inquiry findings or to frame the stages of childhood development.

## 2.9 Selection and use of case studies

The case studies in the report are based on Department of Immigration Border Protection case files, health files, submissions and interviews conducted by Inquiry staff from the Commission.

The Commission acknowledges that these case studies do not represent the experience of all children in detention. Nevertheless, the case studies do illustrate the impact of detention on the health, wellbeing and development of the children they describe.

## 2.10 Context for analysis of the evidence

The *Convention on the Rights of the Child* provided the framework for assessing the laws, policies and practices regarding the detention of children, and the framework for the findings in relation to the impact of detention on children.

Where improvements to conditions have been made during the period of the Inquiry, these have been acknowledged in the report.

## 2.11 Confidentiality

On 3 April 2014, the President of the Commission issued confidentiality directions to preserve the anonymity of asylum seekers and other certain individuals who provide information to Commission staff or those acting on behalf of the Commission in relation to the Inquiry.

The President made these directions to protect the privacy, security of employment and human rights of those persons.

The President made a further direction that in order to prevent an unreasonable disclosure of the personal affairs of persons, evidence that identifies (or could identify) any individual should not be published.

## List of public submissions

A total of 239 submissions were received by the Inquiry. Of these:

- 105 were public submissions;
- 69 were public submissions with name withheld; and
- 65 were confidential and were not published.

The following are all public submissions received by the Inquiry. These submissions have been made available on the Commission website.

| SUBMISSION   | SUBMISSION NO. |
|--|----------------|
| 11 year old detained in Nauru OPC                        | 64             |
| 12 year old detained in Nauru OPC                        | 142            |
| 15 year old detained in Nauru OPC                        | 148            |
| 15 year old detained in Nauru OPC                        | 193            |
| 16 year old detained in Nauru OPC                        | 91             |
| 17 year old asylum seeker                                | 20             |
| 17 year old detained in Nauru OPC                        | 97             |
| Adult detained on Christmas Island                       | 234            |
| Adult detained on Christmas Island                       | 237            |
| Adult living in immigration detention                    | 72             |
| Amnesty International                                    | 157            |
| Association for Services to Torture and Trauma Survivors | 165            |
| Association for the Wellbeing of Children in Healthcare  | 188            |
| Asylum Seeker (Same author as Sub 21A and 21B)           | 15             |
| Asylum Seeker Resource Centre                            | 104            |
| Australian Children's Commissioners and Guardians        | 204            |
| Australian Anthropological Society                       | 85             |
| Australian Association of Social Workers                 | 90             |
| Australian Catholic Bishops Conference                   | 159            |

## Appendix 3: List of public submissions

| SUBMISSION   | SUBMISSION NO. |
|--|----------------|
| Australian College of Children and Young People's Nurses                             | 187            |
| Australian College of Nursing and Maternal, Child and Family Health Nurses Australia | 136            |
| Australian Churches Refugee Taskforce  | 189            |
| Australian Education Union   | 49             |
| Australian Federation of Graduate Women  | 229            |
| Australian Healthcare and Hospitals Association                                      | 47             |
| Australian Medical Students' Association   | 166            |
| Australian Psychological Society   | 208            |
| Baptist Care Australia   | 57             |
| Barnardos Australia  | 160            |
| Boevink, Karen   | 16             |
| Boy currently in immigration detention   | 215            |
| Briskman, Linda  | 205            |
| Castan Centre for Human Rights Law   | 32             |
| Catholic Social Services Australia   | 126            |
| Centre for Human Rights Education, Curtin University                                 | 200            |
| Child Wise   | 155            |
| Child detained in Nauru  | 228            |
| Child detained in Nauru OPC  | 59             |
| Child detained in Nauru OPC  | 60             |
| Child detained in Nauru OPC  | 61             |
| Child detained in Nauru OPC  | 62             |
| Child detained in Nauru OPC  | 63             |
| Child detained in Nauru OPC  | 96             |

| SUBMISSION  | SUBMISSION NO. |
|---|----------------|
| Child detained in Nauru OPC                         | 98             |
| Child detained in Nauru OPC                         | 132            |
| Child detained in Nauru OPC                         | 144            |
| Child detained in Nauru OPC                         | 149            |
| Child detained in Nauru OPC                         | 150            |
| Child detained in Nauru OPC                         | 151            |
| Child detained in Nauru OPC                         | 191            |
| Child detained in Nauru OPC                         | 192            |
| Child detained in Nauru OPC                         | 194            |
| Child detained in Nauru OPC                         | 195            |
| Child protection and support worker in Nauru        | 134            |
| Child who lived in immigration detention previously | 42             |
| Child who lived in immigration detention previously | 184            |
| ChilOut   | 168            |
| Children's Hospital at Westmead Refugee Clinic      | 1              |
| Christmas Island and Darwin Volunteer 2010          | 114            |
| Cheema, Zainib                                      | 58             |
| Coffey, Guy   | 213            |
| Cole, Catherine                                     | 118            |
| Commissioner for Children and Young People WA       | 65             |
| Connor, Madeleine                                   | 17             |
| Creative arts therapist                             | 199            |
| Crock, Mary (Prof)                                  | 219            |
| Darwin Asylum Seeker Support and Advocacy Network   | 222            |

## Appendix 3: List of public submissions

| SUBMISSION   | SUBMISSION NO. |
|--|----------------|
| Dempsey, Yvette  | 196            |
| Department of Immigration and Border Protection                  | 45             |
| Due, Clemence (Dr)   | 101            |
| Early Childhood Australia  | 198            |
| Employees of Save the Children Australia in Nauru                | 183            |
| ESL Education  | 3              |
| Ethnic Communities' Council of Victoria                          | 52             |
| Father detained with baby in Nauru OPC                           | 224            |
| Father detained with children on Christmas Island                | 233            |
| Father detained with children on Christmas Island                | 236            |
| Federation of Ethnic Communities' Councils of Australia          | 154            |
| Former child in immigration detention                            | 34             |
| Former professional working in immigration detention             | 8              |
| Former professional working in immigration detention             | 28             |
| Former professional working in Nauru OPC                         | 67             |
| Forum of Australian Services for Survivors of Torture and Trauma | 210            |
| Fourer, Margarita and McConaghy, Ric                             | 163            |
| Gage, Scott  | 138            |
| Glossop, Patricia and Mollison, Martha                           | 181            |
| Goddard, Chris (Prof)  | 201            |
| Good Beginnings Australia  | 172            |
| Goodstart Early Learning   | 117            |
| Gouldthorpe, Leonor  | 6              |
| Griffin, SJ  | 185            |
| Hamonet, Nicholas  | 131            |

| SUBMISSION  | SUBMISSION NO. |
|---|----------------|
| Health Professional   | 10             |
| Humanitarian Research Partners  | 239            |
| Human Rights Committee of Law Society of NSW  | 174            |
| Human Rights Council of Australia   | 116            |
| Hughes, Stephen Thomas  | 29             |
| Hush, Julia (Dr)  | 137            |
| Immigrant to Australia  | 128            |
| International Detention Coalition   | 164            |
| Jago, Jeff  | 54             |
| Jesuit Social Services, Wesley Mission, CatholicCare Melbourne, MacKillop Family Services | 140            |
| Keay, Lindsay   | 125            |
| Kingsley, Martin  | 161            |
| Kennedy, Kathryn  | 122            |
| Kensley, Samantha   | 66             |
| Kettle, Daniel  | 135            |
| Kommonground Inc, Pledger, Jenna  | 190            |
| Kotzman, Anne   | 4              |
| Law Council of Australia  | 46             |
| Life Without Barriers   | 167            |
| Lynch, Lesley (Dr), NSW Council for Civil Liberties                                       | 139            |
| Macpherson, Ashley  | 176            |
| Maguire, Amy  | 178            |
| McGifford, Russell  | 127            |
| Medical student   | 171            |

## Appendix 3: List of public submissions

| SUBMISSION   | SUBMISSION NO. |
|--|----------------|
| Micallef, Natalie  | 180            |
| Mother with child detained in Nauru OPC                        | 221            |
| Mother detained with child on Christmas Island                 | 235            |
| Mother detained with son on Christmas Island                   | 226            |
| Murphy, Robyn Lynette  | 123            |
| Nanda, Varun   | 182            |
| National Association for Prevention of Child Abuse and Neglect | 153            |
| Occupational Justice Special Interest Group                    | 74             |
| Parent detained with child on Christmas Island                 | 227            |
| Parker, Erica  | 44             |
| Perkins, Di  | 197            |
| Person detained on Christmas Island                            | 225            |
| Plan International Australia                                   | 158            |
| Professional working in immigration detention                  | 84             |
| Professional working in immigration detention                  | 209            |
| Professional working in immigration detention                  | 232            |
| Primary teacher in Nauru                                       | 40             |
| Psychologists for Humane Asylum Seeker Treatment               | 119            |
| Queensland Law Society   | 206            |
| Quonoey, Sheila  | 39             |
| Ransome, Glen  | 179            |
| Refugee Action Network   | 186            |
| Refugee Advice and Casework Service                            | 217            |
| Refugee Council of Australia                                   | 169            |
| Rezaee, Besmellah and Brizar, Marina                           | 177            |

| <b>SUBMISSION</b>  | <b>SUBMISSION NO.</b> |
|--|-----------------------|
| Rice AM, Adele   | 56                    |
| Royal Australasian College of Physicians                   | 103                   |
| Royal Australian and New Zealand College of Psychiatrists  | 48                    |
| Royal Children's Hospital                                  | 162                   |
| Sainsbury, Peter   | 7                     |
| Saul, Ben (Prof)   | 33                    |
| Save the Children Australia                                | 216                   |
| School teacher   | 71                    |
| Secondary school teacher                                   | 100                   |
| Short, Jacki   | 53                    |
| Social Service Provider                                    | 24                    |
| St Vincent de Paul National Council                        | 152                   |
| Sweet, Melissa, Croakey Blog                               | 121                   |
| Teacher at ESL school for new arrivals                     | 19                    |
| Teacher in Nauru   | 156                   |
| Terry, John William  | 41                    |
| Tobin, John (Prof)   | 238                   |
| Uniting Justice Australia                                  | 212                   |
| Unaccompanied child asylum seeker                          | 21(A)                 |
| Unaccompanied child asylum seeker (Same author as Sub 21A) | 21(B)                 |
| Unaccompanied child detained in Nauru OPC                  | 92                    |
| Unaccompanied child detained in Nauru OPC                  | 93                    |
| Unaccompanied child detained in Nauru OPC                  | 94                    |
| Unaccompanied child detained in Nauru OPC                  | 141                   |
| Unaccompanied child detained in Nauru OPC                  | 143                   |

### Appendix 3: List of public submissions

| <b>SUBMISSION</b>                         | <b>SUBMISSION NO.</b> |
|---|-----------------------|
| Unaccompanied child detained in Nauru OPC | 145                   |
| Unaccompanied child detained in Nauru OPC | 146                   |
| Unaccompanied child detained in Nauru OPC | 147                   |
| University of New South Wales             | 207                   |
| Van Oostende, Corina                      | 102                   |
| Voice of Tamils Inc                       | 99                    |
| Wismer, Esther Parijat                    | 5                     |
| Zwi, Karen                                | 9                     |

# Schedule of public hearings and witness list

Five public hearings were convened by the Inquiry with a total of 41 witnesses giving evidence. The following is a list of all witnesses who appeared before the Inquiry.

| DATE         | LOCATION                                     | WITNESS LIST  |
|--------------|--|---|
| 4 April 2014 | SYDNEY<br>Australian Human Rights Commission | <ul style="list-style-type: none"> <li>• Ms Rim Jezan (Former child detainee)</li> <li>• Department of Immigration and Border Protection (Mr Mark Cormack – <i>Deputy Secretary, Immigration Status Resolution Group</i>;<br/>Mr Christopher Callanan – <i>First Assistant Secretary, Status Resolution Services Division</i>;<br/>Mr John Cahill – <i>First Assistant Secretary, Detention Infrastructure and Services Division</i>;<br/>Ms Kate Pope PSM – <i>First Assistant Secretary, Community Programmes and Children Division</i>;<br/>Mr Paul Windsor – <i>Assistance Secretary Detention Health Services Branch</i>; and<br/>Ms Katie Constantinou – <i>Assistant Secretary, Inquiry Taskforce.</i>)</li> <li>• Conjoint Associate Professor Karen Zwi (Paediatrician and Child Development expert and Royal Australasian College of Physicians (RACP) representative to the Inquiry)</li> <li>• Mr Mat Tinkler (Director of Policy and Public Affairs, Save The Children)</li> <li>• Dr Sarah Mares (Consultant Child and Family Psychiatrist and Royal Australian and New Zealand College of Psychiatrists (RANZCP) representative to the Inquiry)</li> <li>• Mr Bashir Yousufi (Former child detainee)</li> <li>• Refugee Council Australia (Mr Phil Glendenning – <i>President</i>;<br/>Ms Lucy Morgan – <i>Information Policy Co-ordinator.</i>)</li> <li>• Mrs Dorothy Hoddinott (Principal, Holroyd High School)</li> <li>• Professor Mary Crock (Legal academic, University of Sydney)</li> </ul> |

Appendix 4: Schedule of public hearings and witness list

| DATE         | LOCATION                                     | WITNESS LIST  |
|--------------|--|---|
| 2 July 2014  | MELBOURNE<br>Fitzroy Town Hall               | <ul style="list-style-type: none"> <li>• Professor Jon Jureidini<br/>(Child Psychiatrist)</li> <li>• Mr Kon Karapanagiotidis and Ms Pamela Curr<br/>(Asylum Seeker Resource Centre);</li> <li>• Sr Brigid Arthur<br/>(Brigidine Asylum Seekers Project)</li> <li>• International Health and Medical Services<br/>(Dr Mark Parrish; Mr Ian Gilbert; Dr Ray Gadd; and Ms Melissa Lysaght.)</li> <li>• Department of Immigration and Border Protection<br/>(Mr Mark Cormack – <i>Deputy Secretary, Immigration Status Resolution Group</i>;<br/>Mr John Cahill – <i>First Assistant Secretary, Detention Infrastructure and Services Division</i>; and<br/>Ms Katie Constantinou – <i>Assistant Secretary, Inquiry Taskforce</i>.)</li> <li>• Professor Louise Newman<br/>(Child Psychiatrist);</li> <li>• Dr Choong-Siew Yong<br/>(Child Psychiatrist, Representative of the Australian Medical Association)</li> <li>• Professor Susan Sawyer<br/>(Paediatrician, Centre for Adolescent Health, Royal Children’s Hospital)</li> <li>• Ms Sophie Peer<br/>(ChilOut);</li> <li>• Professor Caroline de Costa<br/>(Obstetrician and Gynaecologist)</li> </ul> |
| 14 July 2014 | SYDNEY<br>Australian Human Rights Commission | <ul style="list-style-type: none"> <li>• Dr Peter Young<br/>(Psychiatrist; Former International Health and Medical Services Medical Director of Mental Health Services)</li> <li>• Dr Grant Ferguson and Dr John-Paul Sanggaran<br/>(Doctors at Christmas Island Detention Centre 2013)</li> <li>• Professor Elizabeth Elliott<br/>(Australian Professor of Paediatrics and Child Health; Consultant Paediatrician)</li> <li>• Ms Kirsty Diallo<br/>(Former employee of Save the Children Nauru; Social Worker; Case Manager 2013 – 2014)</li> </ul>  |

| DATE             | LOCATION                                     | WITNESS LIST  |
|------------------|--|---|
|                  |  | <ul style="list-style-type: none"> <li>• Department of Immigration and Border Protection (Mr Martin Bowles – <i>Department Secretary</i>; Mr Mark Cormack – <i>Deputy Secretary, Immigration Status Resolution Group</i>; and Ms Katie Constantinou – <i>Assistant Secretary, Inquiry Taskforce.</i>)</li> <li>• Dr Ai-Lene Chan (Doctor at Nauru Detention Centre and Christmas Island Detention Centres 2013 – 2014)</li> <li>• Mr Gregory Lake (Former Director Offshore Processing and Transfers, Department of Immigration and Border Protection)</li> </ul> |
| 22 August 2014   | CANBERRA<br>Parliament House                 | <ul style="list-style-type: none"> <li>• The Hon Scott Morrison MP (Minister for Immigration and Border Protection) and Mr Martin Bowles (<i>Secretary – Department of Immigration and Border Protection</i>)</li> <li>• Minister’s Council on Asylum Seekers and Detention (Mr Paris Aristotle – Chair; and Professor Nicholas Procter – Member)</li> <li>• Ms Deborah Homewood (Managing Director, MAXimus Solutions)</li> </ul>  |
| 9 September 2014 | SYDNEY<br>Australian Human Rights Commission | <ul style="list-style-type: none"> <li>• The Hon Chris Bowen MP (Former Minister for Immigration and Citizenship)</li> </ul>  |

# Notices to Produce

The Commission compelled the production of documents and information by issuing Notices to Produce. Three Notices to Produce were issued to the Department of Immigration and Border Protection. Two Notices to Produce were issued to International Health and Medical Services (IHMS).

## 5.1 First Notice to Produce to the Department of Immigration and Border Protection: 31 March 2014

| ITEM              | NOTICE TO PRODUCE  | PROVIDED TO THE INQUIRY? | ADDITIONAL DETAILS |
|-------------------|--|--------------------------|--------------------|
| <b>Schedule 2</b> |  |                          |                    |
| 1                 | A tabulated set of data in an excel spread sheet containing information pertaining to their detention for each child in an immigration facility in Australia (including alternative places of detention).  | Yes                      |                    |
| 2                 | The number of children born into immigration detention facilities from 1 January 2013 to the date of this notice.  | Yes                      |                    |
| 3                 | The average total length of time spent in immigration detention for specified age groups.  | Yes                      |                    |
| 4                 | The number of child asylum seekers who have arrived by boat in Australia and hold a bridging visa and the number of unaccompanied minors who hold a bridging visa.   | Yes                      |                    |
| 5                 | The number of children and unaccompanied minors who are subject to a residence determination under section 197AB of the <i>Migration Act 1958</i> (Cth) as at the date of this notice.   | Yes                      |                    |
| 6                 | The number of accompanied and unaccompanied children referred to the Minister for consideration of his residence determination power each month from 1 January 2013 to the date of this notice.  | Yes                      |                    |
| 7                 | The number of residence determinations for accompanied and unaccompanied children made by the Minister each month from January 2013 to the date of this notice.  | Yes                      |                    |
| 8                 | Information about the size of the rooms accommodating families and children on Christmas Island as at 1 March 2014 separating data for Construction Camp Alternative Place of Detention, Phosphate Hill Alternative Place of Detention, and Aqua/Lilac Alternative Place of Detention. | Yes                      |                    |

| ITEM | NOTICE TO PRODUCE  | PROVIDED TO THE INQUIRY? | ADDITIONAL DETAILS  |
|------|--|--------------------------|---|
| 9    | Information about the size of the sleeping rooms accommodating unaccompanied children and families in each of the mainland immigration detention facilities.   | Yes                      |   |
| 10   | The nature of education available for children by immigration detention facility.  | Yes                      |   |
| 11   | The number of deaths of adults and children and self-harm incidents by children as well as the number of children who were on the Psychological Support Program.   | Yes                      |   |
| 12   | The number of reported incidents at facilities in which children were held.  | Yes                      |   |
| 13   | The qualification requirements for staff employed at the immigration detention facilities who work with children in health care, delegates of the Minister and Serco staff.  | Yes                      |   |
| 14   | <p>(a) The number of people who claimed to be unaccompanied minors who had an assessment of their age</p> <p>(b) The number of unaccompanied minors who were initially assessed to be adults and transferred to a single adult male compound in an immigration detention facility in Australia, and were subsequently assessed to be children</p> <p>(c) The length of time each child referred to in (b) was detained in a single adult male compound</p> <p>(d) The number of unaccompanied minors who were initially assessed to be adults and transferred to Nauru or Manus Island and were returned to Australia after being subsequently assessed to be children</p> <p>(e) The length of time each child referred to in (d) was detained in a regional processing centre on Nauru or Manus Island</p> | Yes                      |   |
| 15   | Information containing information for each person on Nauru as at the date of this notice who was transferred to Nauru pursuant to Section 198AD of the <i>Migration Act 1958</i> (Cth) and who was a minor at the time they were taken.   | No                       | The Department considers this to be out of the scope of the terms of reference. |
| 16   | Number of people threatened and the number of actual self-harm incidents by children and adults on Nauru who had been transferred to Nauru pursuant to Section 198AD of the <i>Migration Act 1958</i> (Cth).   | No                       | The Department considers this to be out of the scope of the terms of reference. |

Appendix 5: Notices to Produce

| ITEM | NOTICE TO PRODUCE  | PROVIDED TO THE INQUIRY? | ADDITIONAL DETAILS   |
|------|--|--------------------------|--|
| 17   | The number of reported incidents involving children who are detained in the Regional Processing Centre on Nauru.   | No                       | The Department considers this to be outside the scope of the terms of reference. |
| 18   | The nature of education available for children detained in the Regional Processing Centre on Nauru at the date of this notice.   | No                       | The Department considers this to be out of the scope of the terms of reference.  |
| 19   | <p>The nature of the health care services (including but not limited to, dental, mental and preventative health care) provided to:</p> <ul style="list-style-type: none"> <li>• Pregnant women</li> <li>• Nursing Mothers</li> <li>• Babies up to 1 year old</li> <li>• Children from 1 to 17 years old</li> </ul> | No                       | The Department considers this to be out of the scope of the terms of reference.  |
| 20   | The nature of the support services provided to unaccompanied minors who have been transferred to Nauru pursuant to s 198AD of the <i>Migration Act 1958</i> (Cth).   | No                       | The Department considers this to be out of the scope of the terms of reference.  |
| 21   | List each immigration detention facility in which children have been detained for any period of time between 1 May 2004 and the date of this notice.   | Yes                      |  |
| 22   | The dates on which particular immigration detention facilities were closed between 1 May 2004 and the date of this notice.   | Yes                      |  |
| 23   | The dates on which new immigration facilities were opened between 1 May 2004 and the date of this notice.  | Yes                      |  |
| 24   | The date on which Wickham Point Immigration Detention Centre was reclassified as an alternative place of detention.  | Yes                      |  |
| 25   | A set of data containing the following information as at 1 July and 1 January of each year from 1 July 2004 to 1 January 2014 on the total number of accompanied and unaccompanied children in immigration detention, in community detention and who were held on bridging visas.                                  | Yes                      |  |
| 26   | The number of children in immigration detention facilities on 1 July and 1 January of each year from 1 July 2004 to 1 January 2014 who had been detained.  | Yes                      |  |

| ITEM              | NOTICE TO PRODUCE   | PROVIDED TO THE INQUIRY? | ADDITIONAL DETAILS |
|-------------------|---|--------------------------|--------------------|
| 27                | The maximum total length of time that any child had been detained in an immigration detention facility as at 1 July and 1 January of each year from 1 July 2004 to the date of this notice.   | Yes                      |                    |
| <b>Schedule 3</b> |   |                          |                    |
| 1                 | All high level documents regarding children in immigration detention facilities including documents in relation to:<br>(a) Pre-transfer assessments of children<br>(b) Guardianship and care of unaccompanied minors<br>(c) Making of residence determinations<br>(d) Grant of bridging visas<br>(e) Identification and/or unification of family members across the immigration detention network   | Yes                      |                    |
| 2                 | All high level documents regarding best interests assessments of children connected to<br>(a) Immigration detention placement decisions<br>(b) Transfer to regional processing countries<br>(c) Referral of children to the Minister for consideration of exercise of his residence determination power<br>(d) Referral of children to the Minister for consideration of the exercise of his power in s 195A of the <i>Migration Act 1958</i> (Cth) | Yes                      |                    |
| 3                 | All high level documents regarding the best interest determination conducted by the Guardianship Policy Section, referred to in PAM3: Refugee and Humanitarian – Regional Processing – Pre-transfer assessment guidelines section 11.   | Yes                      |                    |
| 4                 | All high level documents regarding the best interest assessment referred to in PAM3: Refugee and Humanitarian – Regional Processing – Minister’s s 198AE Guidelines.  | Yes                      |                    |
| 5                 | All high level documents regarding whether to keep family members together when a family member is transferred to a different immigration detention facility for medical treatment.   | Yes                      |                    |
| 6                 | All high level documents regarding whether to keep family members together when a pregnant woman is transferred to a different immigration detention facility for a medical appointment or to give birth.   | Yes                      |                    |

## Appendix 5: Notices to Produce

| ITEM | NOTICE TO PRODUCE   | PROVIDED TO THE INQUIRY? | ADDITIONAL DETAILS |
|------|---|--------------------------|--------------------|
| 7    | All high level documents relating to the provision made in immigration detention facilities for the health care (including but not limited to, dental, mental and preventative health care) of pregnant women, nursing mothers and children up to 17 years.                                 | Yes                      |                    |
| 8    | All high level documents relating to the care in immigration detention facilities of children with disability.  | Yes                      |                    |
| 9    | All high level documents relating to how Serco and International Health and Medical Services staff in immigration detention facilities should engage with children.   | Yes                      |                    |
| 10   | All high level documents relating to procedures to protect children in immigration detention facilities from violence, sexual abuse, child abuse or neglect.  | Yes                      |                    |
| 11   | All high level documents relating to procedures for reporting of suspected abuse or neglect of children in immigration detention facilities by staff in immigration detention facilities.   | Yes                      |                    |
| 12   | All high level documents relating to measures or procedures for protecting children in immigration detention facilities during or in relation to disturbances or major incidents including but not limited to riots, hunger strikes, and actual and attempted self-harm by others.          | Yes                      |                    |
| 13   | All high level documents relating to the use of security measures for children.   | Yes                      |                    |
| 14   | All high level documents regarding how staff should respond to children who engage in hunger protests or threatened or actual self-harm.  | Yes                      |                    |
| 15   | All high level documents regarding recreational activities and the requirements to take children on excursions.   | Yes                      |                    |
| 16   | In relation to the reclassification of Immigration Detention Centres as 'Alternative Places of Detention' capable of holding children, all high level documents relating to the reclassification of Immigration Detention Centres, especially in relation to the decision at Wickham Point. | Yes                      |                    |
| 17   | Detention Facility Client Placement Model.  | Yes                      |                    |

| ITEM | NOTICE TO PRODUCE   | PROVIDED TO THE INQUIRY? | ADDITIONAL DETAILS |
|------|---|--------------------------|--------------------|
| 18   | Case Management Placement Review Policy Guide.  | Yes                      |                    |
| 19   | Placement Review Guide (28 October 2010) referred to in PAM3: Act – CCR – Case resolution – Case management handbook – Chapter 5 – Managing a case – Placement Review.                  | Yes                      |                    |
| 20   | More Restrictive Detention (Detention Health) Instruction referred to in PAM3: Act – CCR – Case resolution – Case management handbook – Chapter 5 – Managing a case – placement review. | Yes                      |                    |
| 21   | Psychological Support Program for the Prevention of Self Harm for People in Immigration Detention Policy.   | Yes                      |                    |
| 22   | Risk Management Framework referred to in Detention Services Manual – Chapter 8 – Safety and security – incident management and reporting.   | Yes                      |                    |
| 23   | Serco 'keep SAFE' policy.   | Yes                      |                    |
| 24   | Serco health services operating manual Wellbeing of People in Detention Policy and Procedure Manual.  | Yes                      |                    |
| 25   | Serco Incident Reporting Guideline.   | Yes                      |                    |
| 26   | Serco procedural manual 'Alternative Place of Detention (APOD) Working With Minors'.  | Yes                      |                    |
| 27   | All contracts with services providers operating in detention facilities in which children are held.   | Yes                      |                    |
| 28   | Chapter 9 of the Detention Services Manual – Detention Operational Procedures.  | Yes                      |                    |
| 29   | Immigration Detention Standards, to the extent that they are current and not replaced by the Detention Operational Procedures at the date of this notice.                               | Yes                      |                    |
| 30   | Department Managers Handbook, to the extent that it is current and not replaced by the Case Management Handbook as at the date of this notice.  | Yes                      |                    |
| 31   | Standards for Design and Fit-out of Immigration Detention Centres.  | Yes                      |                    |
| 32   | Standards for Health Services in Australian Immigration Detention Centres.  | Yes                      |                    |

Appendix 5: Notices to Produce

| ITEM | NOTICE TO PRODUCE   | PROVIDED TO THE INQUIRY? | ADDITIONAL DETAILS |
|------|---|--------------------------|--------------------|
| 33   | Detention Health Framework.   | Yes                      |                    |
| 34   | The two pre-transfer assessment (PTA) forms referred to in FLI 14/02/2014 – Refugee and Humanitarian – Regional processing – Pre-transfer assessment (section 6).   | Yes                      |                    |
| 35   | The Minister for Immigration and Border Protection’s Immigration (Guardianship of Children) Delegation Instrument.  | Yes                      |                    |
| 36   | All incident detail reports which relate to incidents in immigration detention facilities which involved children from 1 January 2013 to the date of this notice.   | Yes                      |                    |
| 37   | All incident detail reports from 1 January 2013 to the date of this notice which relate to incidents involving adults in immigration detention facilities in which children were held in relation to serious assault, death and actual self-harm.   | Yes                      |                    |
| 38   | All reports from the Immigration Health Advisory Group to the Department for the period from 1 January 2013 to the date of this notice.   | Yes                      |                    |
| 39   | All reports from State and Territory child welfare authorities to the Department regarding children in immigration detention for the period from 1 January 2013 to the date of this notice.   | Yes                      |                    |
| 40   | All reports of the Psychological Support Program Team regarding children for the period from 1 January 2013 to the date of this notice.   | Yes                      |                    |
| 41   | All Memoranda of Understanding or other agreements between the Department and State or Territory authorities relating to the provision of education to children in immigration detention in force as at the date of this notice.  | Yes                      |                    |
| 42   | <p>All Memoranda of Understanding or other agreements between the Department and State or Territory child protection authorities relating to children in immigration detention in force as at the date of this notice, including agreements relating to:</p> <ul style="list-style-type: none"> <li>(a) The reporting of allegations to child protection authorities</li> <li>(b) Access by authorities to immigration detention facilities to investigate reports, and</li> <li>(c) The implementation of the recommendations of child protection authorities</li> </ul> | Yes                      |                    |

| ITEM | NOTICE TO PRODUCE   | PROVIDED TO THE INQUIRY? | ADDITIONAL DETAILS  |
|------|---|--------------------------|---|
| 43   | All Memoranda of Understanding or other agreements between the Department and State or Territory police regarding their role in relating to any incidents at immigration detention facilities in force as at the date of this notice.   | Yes                      |   |
| 44   | In relation to each unaccompanied minor transferred to Nauru from 1 January 2014 to the date of this notice:<br>(a) A copy of any pre-transfer assessment, best interests assessment and/or determination, and any health assessment that was completed in relation to the decision to transfer that minor<br>(b) A copy of any Ministerial documents relating to the decision to transfer that minor | Yes                      |   |
| 45   | The case file for each child in immigration detention as at the date of this notice who is residing with a parent who has received an adverse security assessment for the Australian Security Intelligence Organization.  | Yes                      |   |
| 46   | Each direction made under s 198AD(5) of the <i>Migration Act 1958</i> (Cth) and the submission to the Minister in relation to each direction.   | No                       | The Department considers this to be out of the scope of the terms of reference. |
| 47   | Any administrative arrangements between Australia and Nauru made pursuant to the:<br>(a) Memorandum of Understanding between Australia and Nauru signed on 29 August 2012<br>(b) Memorandum of Understanding between Australia and Nauru signed on 3 August 2013  | No                       | The Department considers this to be out of the scope of the terms of reference. |
| 48   | A document or documents setting out the recommendations made by the interim Joint Advisory Committee [for Nauru] and any permanent Joint Committee established pursuant to clause 17 of the First Memorandum of Understanding or Clause 22 of the Second Memorandum of Understanding.   | No                       | The Department considers this to be out of the scope of the terms of reference. |
| 49   | All progress reports by the interim Joint Advisory Committee and any permanent Joint Committee.   | No                       | The Department considers this to be out of the scope of the terms of reference. |

| ITEM | NOTICE TO PRODUCE   | PROVIDED TO THE INQUIRY? | ADDITIONAL DETAILS  |
|------|---|--------------------------|---|
| 50   | A document or documents setting out the response by the Australian Government to the recommendations made by the interim Joint Advisory Committee and any permanent Joint Committee.  | No                       | The Department considers this to be out of the scope of the terms of reference. |
| 51   | The most recent contract between the Commonwealth and organisations providing operational, housing, health, welfare, education, sporting, recreation and security services.   | No                       | The Department considers this to be out of the scope of the terms of reference. |
| 52   | For the period 1 January 2013 to the date of this notice, all incident reports regarding assaults and sexual assaults against children detained in the Regional Processing Centre on Nauru.   | No                       | The Department considers this to be out of the scope of the terms of reference. |
| 53   | A copy of certain policy documents created by a person employed by the Department or the service providers contracted by the Department to provide services in the Regional Processing Centre on Nauru which apply to persons working in that Regional Processing Centre. | No                       | The Department considers this to be out of the scope of the terms of reference. |

## 5.2 Second Notice to Produce to the Department of Immigration and Border Protection: 11 July 2014

| ITEM              | NOTICE TO PRODUCE  | PROVIDED TO AHRC? | ADDITIONAL DETAILS |
|-------------------|--|-------------------|--------------------|
| <b>Schedule 2</b> |  |                   |                    |
| 2                 | Information for all children in immigration detention facilities that have been assessed as having a disability.                                     | Yes               |                    |
| 3                 | The provision of care and services for children with a disability and their families in detention.   | Yes               |                    |
| 4                 | A list of all medical evacuations of children and parents from immigration detention facilities and details for the medical evacuation and transfer. | Yes               |                    |

| ITEM | NOTICE TO PRODUCE   | PROVIDED TO AHRC? | ADDITIONAL DETAILS |
|------|---|-------------------|--------------------|
| 5    | An outline of the process the Department follows to register the birth of children born in immigration detention and whether a copy of the birth registration is provided to the parents of the baby.   | Yes               |                    |
| 6    | <p>For all children born in, and currently detained in, immigration detention as at the date of this notice:</p> <ul style="list-style-type: none"> <li>(a) The location of their birth</li> <li>(b) Their current location</li> <li>(c) Their date of birth</li> <li>(d) The date the Department sought to register at their birth</li> <li>(e) The date on which the actual birth certificate was issued; and</li> <li>(f) The length of time the mother spent in hospital prior to being transferred to an immigration detention facility with their baby</li> </ul>                           | Yes               |                    |
| 7    | <p>In relation to mothers of children born in and currently in immigration detention:</p> <ul style="list-style-type: none"> <li>(a) The number of reported incidents of depression or post natal depression or other mental health illnesses in mothers in detention following the birth of their child in detention</li> <li>(b) The number of mothers receiving psychological support</li> <li>(c) The number of mothers on psychotropic medication</li> <li>(d) The number of mothers who have been hospitalised in a mother/baby unit or other facility to support for the mother</li> </ul> | Yes               |                    |
| 8    | <p>The circumstances which</p> <ul style="list-style-type: none"> <li>(a) A child in an immigration detention facility is recorded as being 'stateless' and provide data recording the country of birth and language group for each child in immigration detention who has been recorded as stateless</li> <li>(b) A child born in an immigration detention facility is registered at birth as being 'stateless' and the language group of each child currently in immigration detention that has been born in circumstances and registered as stateless</li> </ul>                               | Yes               |                    |
| 9    | Information about any allegation of a breach of Human Rights, privacy or confidentiality for a child in detention from any of the data verification sources mentioned in Schedule 4.1 s9.3 of the SERCO Performance Management Manual.  | Yes               |                    |

Appendix 5: Notices to Produce

| ITEM | NOTICE TO PRODUCE   | PROVIDED TO AHRC? | ADDITIONAL DETAILS  |
|------|---|-------------------|---|
| 10   | The number of reported incidents involving children placed in community detention or released into the community on a Bridging Visa E.  | No                | The Department considers this to be outside the scope of the terms of reference.  |
| 11   | The number of children who have been re-detained after being moved into Community Detention or Bridging Visas and reasons for the re-detention for each.  | Yes               |   |
| 12   | <p>The total number of individual children who have been referred to torture and trauma services with a breakdown of the following</p> <ul style="list-style-type: none"> <li>(a) The number referred for treatment through self-referral and through referral by service providers</li> <li>(b) The number who have received or are receiving treatment</li> <li>(c) The number who have finished treatment</li> <li>(d) The number who refused treatment</li> </ul> | Partial           | <p>Department is unable to provide parts (b)-(d).</p> <p>With respect to Item 12(a) such data is not recorded consistently and International Health and Medical Services has advised that to provide the referral information would require a manual review of over 10,500 records and would require a considerable diversion of health reporting resources over an extended period.</p> <p>With respect to Items 12(b), 12(c) and 12(d) any attempt to produce this data would require a significant diversion of resources to manually analyse a large volume of records and reports.</p> |
| 13   | The maximum capacity for each immigration detention facility compound and the actual population in that compound as at the first of each month during the period January 2013 till the date of the notice.  | Yes               |   |

| ITEM              | NOTICE TO PRODUCE   | PROVIDED TO AHRC? | ADDITIONAL DETAILS  |
|-------------------|---|-------------------|---|
| 14                | For the period 1 January 2013 to the date of this notice: <ul style="list-style-type: none"> <li>(a) The total cost of transferring a child and two parents from Christmas Island to the mainland (one way)</li> <li>(b) The total number of children and family members who have been transferred from Christmas Island for medical or psychological reasons</li> <li>(c) The total number of transfers including returns</li> <li>(d) The aggregate cost of all transfers from Christmas Island for medical and psychological treatment including the costs of returns to Christmas Island</li> </ul> | Partial           | The Department considers parts (a) and (d) are outside the scope of the terms of reference. |
| 15                | For the period 1 January 2013 to the date of this notice, the total cost of transferring pregnant women (including their family members) from Christmas Island to the mainland.   | No                | The Department considers this to be out of the scope of the terms of reference.             |
| 16                | For the period 1 January 2013 to the date of this notice, the cost of transferring children (including with their parents) from Nauru to Australia for Medical treatment.   | No                | The Department considers this to be out of the scope of the terms of reference.             |
| <b>Schedule 3</b> |   |                   |   |
| 1                 | All reports from the Commonwealth Ombudsman detailing its observations of the detention facilities as part of its 'Immigration detention centre inspection program' from 1 January 2013 to the date of this notice. Copies of all Departmental responses to these reports.  | Yes               |   |
| 2                 | All reports from the Australian Red Cross in relation to its inspection visits of immigration detention facilities from 1 January 2013 to the date of this notice. Copies of all Departmental responses to these reports.   | Yes               |   |
| 3                 | All reports from the Independent Health Advisor to the Department since the commencement of this role to the date of this notice.   | Yes               |   |
| 4                 | All reports from the Ministerial Council for Asylum Seekers and Detention from 1 January 2013 to the date of this notice.   | Yes               |   |
| 5                 | All high level documents regarding the provision of care and services for people with a disability in an immigration detention facility.  | Yes               |   |

| ITEM | NOTICE TO PRODUCE   | PROVIDED TO AHRC? | ADDITIONAL DETAILS   |
|------|---|-------------------|--|
| 6    | A copy of any statement read to parents following a birth of a child in detention.  | Yes               |  |
| 7    | A blank copy of the birth certificate template issued for children born in immigration detention.   | Yes               |  |
| 8    | All incident detail reports which relate to incidents which involved children in community detention or on a Bridging Visa E from 1 January 2013 to the date of this notice.  | No                | The Department considers this to be outside the scope of the terms of reference. |
| 9    | For the period 1 January 2013 to the date of this notice, any incident reports which include an allegation of emotional/physical/sexual abuse of a child in detention, by a service provider or departmental staff.                             | Yes               |  |
| 10   | For the period 1 January 2013 to the date of this notice, provide any incident reports which include an allegation of emotional/physical/sexual abuse of a child in detention by any person excluding departmental staff and service providers. | Yes               |  |
| 11   | For specific individuals requested and all unaccompanied minors detained as at the date of this notice, a copy of their immigration and health files.   | Yes               |  |

### 5.3 Third Notice to Produce to the Department of Immigration and Border Protection: 12 August 2014

| ITEM              | NOTICE TO PRODUCE   | PROVIDED TO THE INQUIRY? | ADDITIONAL DETAILS |
|-------------------|---|--------------------------|--------------------|
| <b>Schedule 2</b> |   |                          |                    |
| 1                 | All emails correspondence and other records of communication between the Department of Immigration and Border Protection and International Health and Medical Services related to the Health of the Nation Outcome Scales for Children and Adolescents data between 1 January 2014 and the date of this notice. | Yes                      |                    |
| 2                 | All video and audio-visual footage from Charlie Compound, Phosphate Hill, Christmas Island to Bravo Compound on 24 March 2014.  | Yes                      |                    |

| ITEM | NOTICE TO PRODUCE   | PROVIDED TO THE INQUIRY? | ADDITIONAL DETAILS   |
|------|---|--------------------------|--|
| 3    | All video and audio visual footage in the 48 hour period following the meeting between the Department of Immigration and Border Protection officials and asylum seeker mothers at Construction Camp, Christmas Island on 7 July 2014 of and relating to incidents of disturbance and self-harm. | No                       | The Department states that no footage of the incident exists |
| 4    | All video and audio-visual footage of the attempted suicide of a specified individual at Construction Camp, Christmas Island.   | No                       | The Department states that no footage of the incident exists |

## 5.4 First Notice to Produce to International Health and Medical Services: 24 July 2014

| ITEM              | NOTICE TO PRODUCE  | PROVIDED TO THE INQUIRY? | ADDITIONAL DETAILS |
|-------------------|--|--------------------------|--------------------|
| <b>Schedule 2</b> |  |                          |                    |
| 1                 | Data on the screening of children within the detention system from the period of 1 June 2013 to the date of Notice using the Health of the Nation Outcome Scales for Children and Adolescents (HoNOSCA) screening tool and any other relevant screening tools. | Yes                      |                    |
| 2                 | From the period 1 June 2013 to 28 February 2014 staffing profiles on Christmas Island.   | Yes                      |                    |
| 3                 | For the period 1 June 2013 to the date of the notice, an indication of the five most common IHMS services delivered to unaccompanied children.   | Yes                      |                    |
| 4                 | Information about children and unaccompanied minors who have reported torture and trauma, received counselling, referred for counselling who refused and who have finished counselling.  | Yes                      |                    |

| ITEM | NOTICE TO PRODUCE   | PROVIDED TO THE INQUIRY? | ADDITIONAL DETAILS                          |
|------|---|--------------------------|---|
| 5    | <p>(a) The number of children transferred from Christmas Island Immigration detention facilities to the mainland for eye, ear or dental conditions and the length of time between referral and transfer;</p> <p>(b) The number of reasons for all other transfers from Christmas Island immigration detention facilities to the mainland;</p> <p>(c) The number and reasons for all transfers from Nauru immigration detention facilities to the mainland</p> | Yes                      |   |
| 6    | For the period 8 September 2013 to 20 June 2014, the number and percentage of International Health and Medical Services recommendations for community placements of children and or their families that have been implemented by the Department and/or Minister.  | No                       | There is no data to present on this matter. |
| 7    | For the period 1 June 2013 to the date of this notice, the number of International Health and Medical Services complaints received.   | Yes                      |   |

## 5.5 Second Notice to Produce to International Health and Medical Services: 24 September 2014

| ITEM              | NOTICE TO PRODUCE  | PROVIDED TO THE INQUIRY? | ADDITIONAL DETAILS |
|-------------------|--|--------------------------|--------------------|
| <b>Schedule 2</b> |  |                          |                    |
| 1                 | A document setting out any particular terms, identifiers or rules that were used in the input process of the data and any other information that will assist to understand the data and all data tools requested in this document.   | Yes                      |                    |
| 2                 | <p>Excel data spread sheets containing the results of all Health of the Nation Outcome Scales for Children and Adolescents (HoNOSCA) [second quarter 2014 full data] scores for each child in immigration detention including:</p> <ul style="list-style-type: none"> <li>• Unique identifier for each child</li> <li>• Date of birth</li> <li>• Sex</li> <li>• Date for each score</li> <li>• Location at time screening performed</li> </ul> | Yes                      |                    |

| ITEM | NOTICE TO PRODUCE  | PROVIDED TO THE INQUIRY? | ADDITIONAL DETAILS                                |
|------|--|--------------------------|---|
| 3    | <p>Excel data spread sheets containing the results of all Health of the Nation Outcomes Scales (HoNOS) scores [first and second quarter 2014 full data]:</p> <ul style="list-style-type: none"> <li>• Unique identifier for each adult</li> <li>• Date of birth</li> <li>• Sex</li> <li>• Date for each score</li> <li>• Location at time screening performed</li> </ul>   | Yes                      |   |
| 4    | <p>Excel data spread sheets containing the results of all Kessler Psychological Distress Scale scores for each parent of a child in immigration detention during the period [1 January to 30 June 2014] including:</p> <ul style="list-style-type: none"> <li>• Unique identifier for each parent</li> <li>• Identifiers showing family members</li> <li>• Date of birth</li> <li>• Nationality/language group<sup>4</sup></li> <li>• Sex</li> <li>• Date person entered detention</li> <li>• Date for each score</li> <li>• Location at time screening performed</li> </ul> | Partial                  | No information on 'date person entered detention' |
| 5    | <p>Excel data spread sheets containing the results of all Harvard Trauma Questionnaire scores for all parents and children in immigration detention who have disclosed torture and trauma and been tested using the HTQ during the period [1 January 2013 until the date of this notice] including:</p> <ul style="list-style-type: none"> <li>• Unique identifier for each person</li> <li>• Date of birth</li> <li>• Sex</li> <li>• Date for each score</li> <li>• Location at time screening performed</li> </ul>   | Yes                      |   |

# Inquiry questionnaire forms

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National Inquiry into Children in Immigration Detention / 14  
**DETENTION CENTRE INTERVIEWS**

Initials of interviewer: [ ] INTERPRETER: TIS on 131.450 – the Commission's code is C 043991

|                    |                 |                                 |  |
|--------------------|-----------------|---------------------------------|--|
| UAM: [ ]           |                 | MAIN CONTRIBUTOR/S TO SURVEY: X |  |
| CHILD 1:           | AGE:            | ID:                             |  |
| CHILD 2:           | AGE:            | ID:                             |  |
| CHILD 3:           | AGE:            | ID:                             |  |
| CHILD 4:           | AGE:            | ID:                             |  |
| CHILD 5:           | AGE:            | ID:                             |  |
| COUNTRY OF ORIGIN: | LANGUAGE GROUP: |                                 |  |
| LOCATION:          | COMPOUND:       |                                 |  |
| PARENT / GUARDIAN: | ID:             |                                 |  |
| PARENT / GUARDIAN: | ID:             |                                 |  |

CONSENT TO INTERVIEW: We will use the information from the interview to produce a report about the experience of children in detention. We will not use your name in the report or any personal information that may reveal who you are. We may use this information to discuss your medical needs or other requirements with the Department of Immigration and Border Protection. Do you consent to the interview with you or your child/ren on these terms?  TICK HERE:

CONSENT TO REVIEW AND COPY YOUR FILE: We may request a copy of your file or the file/s of your child/ren. This could include medical files detention case reviews, documents about security decisions and documents about incidents held by the DIBP or the International Health and Medical Services. We will use this information to produce the report and in some cases to discuss your medical needs or other requirements with the DIBP. We will not use your name in the report or any personal information that may reveal who you are. You can withdraw your consent at any time by contacting the Commission. Do you consent to us reviewing and copying your/your child/ren's file/s on these terms?  TICK HERE:

**Signature of Delegated Guardian of Unaccompanied Minor:**  
 As delegated guardian/carer of the unaccompanied minor named here, I am satisfied that the minor has an informed understanding of this consent and have no objection to the minor consenting to undertake interviews with the AHIC  
 DATE: ...../...../14

PARENT/ADULT/OLDER CHILD: .....  
 INTERPRETER: .....  
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Questions

|  | Detention Centre 'A'<br>____ Months  | Detention Centre 'B'<br>____ Months | Detention Centre 'C'<br>____ Months | Detention Centre 'D'<br>____ Months |
|--|--|-------------------------------------|-------------------------------------|-------------------------------------|
| <ul style="list-style-type: none"> <li>How long have you been living here in this detention centre? Have you been in any other detention centres in Australia?</li> <li>Is all of your immediate family with you in this detention centre?<br/>Mother<br/>Father<br/>Brother/s Sister/s</li> </ul> | <p>YES NO</p> <p>IF <b>NO</b>, list immediate family <b>NOI</b> with you:</p> <p>WHO: ..... LOCATION: .....</p> <p>.....</p> <p>.....</p> <p>.....</p>   |                                     |                                     |                                     |
| <ul style="list-style-type: none"> <li>If you have family members in other detention centres in Australia, do you know why you are separated?</li> </ul>   | <p>YES NO</p> <p>IF YES, tick as appropriate for family separation:</p> <p>1. Medical <input type="checkbox"/> 2. Pregnancy <input type="checkbox"/> 3. Teenage boy turning eighteen years <input type="checkbox"/></p> <p>4. Not an immediate family member <input type="checkbox"/> 5. Other <input type="checkbox"/> EXPLAIN?</p> |                                     |                                     |                                     |
| <ul style="list-style-type: none"> <li>Can you tell me why you came to Australia?<br/>[What do you remember of your home country? What was happening when you left? Do you miss anything?]</li> </ul>  |  |                                     |                                     |                                     |

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|---|---------------------------------------|--|---------------------------------|
| <ul style="list-style-type: none"> <li>What are the three words that most closely / accurately describe the experience of detention for you / your children?</li> </ul>   |                                       |  |                                 |
| <ul style="list-style-type: none"> <li>Since being in detention, how true are the following statements about you / your children. Reply per child with C1, C2 per Q.</li> </ul>   | Certainly true<br>C1: C2: C3: C4: C5: | Sometimes true<br>C1: C2: C3: C4: C5:      | Not true<br>C1: C2: C3: C4: C5: |
| <ul style="list-style-type: none"> <li>Happier since coming to Australia</li> <li>Often unhappy, depressed or tearful</li> <li>Relaxed in current living arrangements</li> <li>Has many worries or often seems worried</li> </ul> |                                       |  |                                 |
| 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: |                                 |
| 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?                        |

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|  | YES               | NO | SOMETIMES | NOT SURE | EXPLAIN? |
|--|-------------------|----|-----------|----------|----------|
| <ul style="list-style-type: none"> <li>Have you / has your child had an increase in nightmares, bedwetting /incontinence since being in detention? Identify whether: P1, C1, C2</li> </ul>       |                   |    |           |          |          |
| <ul style="list-style-type: none"> <li><b>[If you have a baby or toddler]</b> Are you provided with enough supplies/bottles/nappies/clothing/bedding/cots/formula?</li> </ul>                    | YES               | NO | NOT SURE  |          | EXPLAIN? |
| <ul style="list-style-type: none"> <li><b>[If you have a pre-school aged child]</b> Do you have concerns about your child's development including speaking, crawling/walking/running?</li> </ul> | YES               | NO | SOMETIMES | NOT SURE | EXPLAIN? |
| <ul style="list-style-type: none"> <li>Do you / your children get to leave the detention centre? How often?</li> </ul>   | YES               | NO | SOMETIMES | NOT SURE | EXPLAIN? |
|  | <b>HOW OFTEN?</b> |    |           |          |          |
| <ul style="list-style-type: none"> <li>Do you / your children go to school?</li> </ul>   | YES               | NO | SOMETIMES | NOT SURE | EXPLAIN? |
| <ul style="list-style-type: none"> <li>Are you satisfied with your ability / your child's ability to learn, including reading and writing?</li> </ul>  | YES               | NO | NOT SURE  |          | EXPLAIN? |

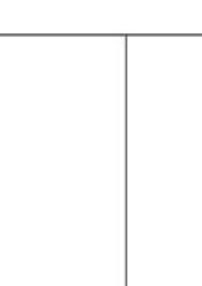
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|   | Very good                | Mostly good | Sometimes good                             | Not good or bad | Sometimes bad | Often bad | Always bad |
|---|--------------------------|-------------|--|-----------------|---------------|-----------|------------|
|   | <b>EXPLAIN/EXAMPLES?</b> |             |  |                 |               |           |            |
| <ul style="list-style-type: none"> <li>How do Serco treat you / your children?</li> </ul>   | ALWAYS                   | OFTEN       | SOMETIMES                                  | NEVER           | EXPLAIN?      |           |            |
| <ul style="list-style-type: none"> <li>How often do you need to identify yourself by your boat number rather than your name? (Meals, IHMS, Meetings, etc)</li> </ul>        | ALWAYS                   | OFTEN       | SOMETIMES                                  | NEVER           | EXPLAIN?      |           |            |
| <ul style="list-style-type: none"> <li>Are your bags / your children's bags ever searched when you leave and return to the detention centre?</li> </ul>                     | YES                      | NO          | SOMETIMES                                  | NOT SURE        | EXPLAIN?      |           |            |
| <ul style="list-style-type: none"> <li>Do you feel you / your children are safe here? Have you / your children ever been frightened by people here in detention?</li> </ul> | YES                      | NO          | SOMETIMES                                  | NOT SURE        | EXPLAIN?      |           |            |
| <ul style="list-style-type: none"> <li>Are there toys, sports, activities for you / your children?</li> </ul>   | YES                      | NO          | SOMETIMES                                  | NOT SURE        | EXPLAIN?      |           |            |
| <ul style="list-style-type: none"> <li>Have you / your children been sick in detention?</li> </ul>  | YES                      | NO          | <b>WHAT WAS THE NATURE OF THE ILLNESS?</b> |                 |               |           |            |

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|  | YES | NO | SOMETIMES | NOT SURE | EXPLAIN? |
|--|-----|----|-----------|----------|----------|
| <ul style="list-style-type: none"> <li>Is there a doctor available if you / your children are sick? What is the wait time?</li> </ul>  |     |    |           |          |          |
|  <ul style="list-style-type: none"> <li>Do you / your children need specialist treatment? If so, have you / your children seen a specialist?</li> </ul> | YES | NO | SOMETIMES | NOT SURE | EXPLAIN? |
| <ul style="list-style-type: none"> <li>Has your child ever seen a dentist? Have you asked to see one? Has anyone invited you to a check-up?</li> </ul>   | YES | NO | SOMETIMES | NOT SURE | EXPLAIN? |
| <ul style="list-style-type: none"> <li>Are there enough showers and toilets and are they working and clean? Is there soap?</li> </ul>  | YES | NO | NOT SURE  | EXPLAIN? |          |
| <ul style="list-style-type: none"> <li>Do you have access to interpreters when you need one?</li> </ul>  | YES | NO | SOMETIMES | NOT SURE | EXPLAIN? |
| <ul style="list-style-type: none"> <li>Do you have access to a lawyer?</li> </ul>  | YES | NO | SOMETIMES | NOT SURE | EXPLAIN? |

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|---|------------------|----------------------|------------------|------------------|-----------------|
| <b>FOLLOWING 5 QUESTIONS ARE FOR AN OLDER CHILD/ADULT SINCE BEING IN DETENTION</b>  |                  |                      |                  |                  |                 |
| List respondent/s P1, P2, C1, C2 etc.   |                  |                      |                  |                  |                 |
|   | None of the time | A little of the time | Some of the time | Most of the time | All of the time |
| 1. How often do you feel sad?   |                  |                      |                  |                  |                 |
| 2. How often do you feel happy  |                  |                      |                  |                  |                 |
| 3. How often do you feel depressed?   |                  |                      |                  |                  |                 |
| 4. How often do you feel hopeful?   |                  |                      |                  |                  |                 |
| 5. How often do you feel hopeless?  |                  |                      |                  |                  |                 |
| <ul style="list-style-type: none"> <li>If you could tell Australians one thing about your life, what would it be? Is there anything that you want to say to the inquiry / to me?</li> </ul> |                  |                      |                  |                  |                 |

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National Inquiry into Children in Immigration Detention / 2014  
IMPACTS OF DETENTION POST RELEASE QUESTIONNAIRE / 2014

Initials of interviewer:  INTERPRETER: TIS on 131 450 – the Commission's code is CO43991

|                    | MAIN CONTRIBUTOR/S TO SURVEY : | X | AGE AT TIME OF DETENTION |
|--------------------|--------------------------------|---|--------------------------|
| PERSON/CHILD 1:    |                                |   | AGE:                     |
| PERSON/CHILD 2:    |                                |   | AGE:                     |
| PERSON/CHILD 3:    |                                |   | AGE:                     |
| PERSON/CHILD 4:    |                                |   | AGE:                     |
| PERSON/CHILD 5:    |                                |   | AGE:                     |
| COUNTRY OF ORIGIN: |                                |   |                          |
| LOCATION:          |                                |   |                          |
| PARENT / GUARDIAN: |                                |   |                          |
| PARENT / GUARDIAN: |                                |   |                          |

CONSENT TO INTERVIEW: We will use the information from the interview to produce a report about the experience of children in detention. We will not use your name in the report or any personal information that may reveal who you are. Do you consent to the interview with you or your child/ren on these terms?  TICK HERE:

Unaccompanied Child:

**Signature of Delegated Guardian of Unaccompanied Minor:**

As delegated guardian/carer of the unaccompanied minor named here, I am satisfied that the minor has an informed understanding of the content of this consent and have no objection to the minor consenting to undertake interviews with the AHRC

DATE: ...../...../14

PARENT/ADULT/OLDER CHILD: .....

INTERPRETER: .....

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Questions

|  |                                      |                                      |   |                                      |
|--|--------------------------------------|--------------------------------------|---|--------------------------------------|
| <ul style="list-style-type: none"> <li>How many years / months have you been out of closed detention?</li> <li>How long did you spend in closed detention?</li> </ul>  | ..... Years ..... Months             |                                      |   |                                      |
|  | Detention Centre 'A'<br>_____ Months | Detention Centre 'B'<br>_____ Months | Detention Centre 'C'<br>_____ Months  | Detention Centre 'D'<br>_____ Months |
| <ul style="list-style-type: none"> <li>Was all of your immediate family with you in detention?<br/>                     Mother<br/>                     Father<br/>                     Brother/s Sister/s</li> </ul>      | YES .....                            | NO .....                             | IF <u>NO</u> , list immediate family who were <u>NOT</u> with you:<br>WHO: ..... LOCATION: .....  |                                      |
|  | .....<br>.....<br>.....              |                                      |   |                                      |
| <ul style="list-style-type: none"> <li>If you had family members in other detention centres in Australia, do you know why you were separated?</li> </ul>   | YES .....                            | NO .....                             | IF YES, tick as appropriate for family separation:<br>1. Medical <input type="checkbox"/> 2. Pregnancy <input type="checkbox"/> 3. Teenage boy turning eighteen years <input type="checkbox"/><br>4. Not an immediate family member <input type="checkbox"/> 5. Other <input type="checkbox"/> EXPLAIN? |                                      |
|  | .....                                |                                      |   |                                      |
| <ul style="list-style-type: none"> <li>Can you tell me why you came to Australia?<br/>                     [What do you remember of your home country? What was happening when you left? Do you miss anything?]</li> </ul> | .....                                |                                      |   |                                      |
|  | .....                                |                                      |   |                                      |

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|---|---|
|   | <b>YES</b> <b>NO</b> <b>SOMETIMES</b> <b>EXPLAIN?</b>   |
| <ul style="list-style-type: none"> <li>• Did you / your child have an increase in nightmares, bedwetting /incontinence <b>when living in closed detention?</b></li> <li>• Identify whether: C1, C2, C3</li> </ul>                                 |   |
| <ul style="list-style-type: none"> <li>• <b>[For school aged children]</b> Did you / your children go to school while in closed detention?</li> <li>• Identify whether: C1, C2, C3</li> </ul>   | <b>YES</b> <b>NO</b> <b>SOMETIMES</b> <b>EXPLAIN?</b>   |
| <ul style="list-style-type: none"> <li>• Did you / your child show any changes in behaviours <b>once released</b> from closed detention?</li> <li>• <b>Circle whether improved or declined</b></li> <li>• Identify whether: C1, C2, C3</li> </ul> | <b>YES</b> <b>NO</b> <b>SOMETIMES</b> <b>EXPLAIN?</b><br><b>Improved</b><br><b>Declined</b>   |
| <ul style="list-style-type: none"> <li>• <b>[For babies and toddlers]</b> Did closed detention have an impact on your child's development?</li> <li>• Identify whether: C1, C2, C3</li> </ul>   | <b>YES</b> <b>NO</b> <b>SOMETIMES</b> <b>NOT SURE</b> <b>EXPLAIN?</b><br><b>Speaking</b><br><b>Crawling</b><br><b>Walking</b><br><b>Bonding</b><br><b>Other</b> |

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|   |  |                |           |          |                 |          |                 |                |     |    |           |          |                 |              |     |    |           |          |                 |                          |     |    |           |          |                 |                            |     |    |           |          |                 |
|---|--|----------------|-----------|----------|-----------------|----------|-----------------|----------------|-----|----|-----------|----------|-----------------|--------------|-----|----|-----------|----------|-----------------|--------------------------|-----|----|-----------|----------|-----------------|----------------------------|-----|----|-----------|----------|-----------------|
| <p><b>[For babies and toddlers]</b> Did your child's development improve once out of closed detention? <b>EXPLAIN WITH EXAMPLES SPEAKING/CRAWLING/WALKING/BONDING</b></p> <ul style="list-style-type: none"> <li>Identify whether: C1, C2, C</li> </ul> | <p style="text-align: center;">YES    NO    NOT SURE</p>   |                |           |          |                 |          |                 |                |     |    |           |          |                 |              |     |    |           |          |                 |                          |     |    |           |          |                 |                            |     |    |           |          |                 |
| <ul style="list-style-type: none"> <li>Do you think your parenting skills / the parenting skills of your parents were affected during the time you lived in closed detention?</li> </ul>  | <p style="text-align: center;">YES    NO    NOT SURE</p> <p style="text-align: center;"><b>EXPLAIN WITH EXAMPLES</b></p>   |                |           |          |                 |          |                 |                |     |    |           |          |                 |              |     |    |           |          |                 |                          |     |    |           |          |                 |                            |     |    |           |          |                 |
| <ul style="list-style-type: none"> <li><b>[For school aged children]</b> Now you are out of detention are you / is your child keeping pace with children of the same age in developmental milestones?</li> <li>Identify whether: C1, C2, C3</li> </ul>  | <table border="0" style="width: 100%; text-align: center;"> <tr> <td><b>Reading</b></td> <td>YES</td> <td>NO</td> <td>SOMETIMES</td> <td>NOT SURE</td> <td><b>EXPLAIN?</b></td> </tr> <tr> <td><b>Writing</b></td> <td>YES</td> <td>NO</td> <td>SOMETIMES</td> <td>NOT SURE</td> <td><b>EXPLAIN?</b></td> </tr> <tr> <td><b>Maths</b></td> <td>YES</td> <td>NO</td> <td>SOMETIMES</td> <td>NOT SURE</td> <td><b>EXPLAIN?</b></td> </tr> <tr> <td><b>School attendance</b></td> <td>YES</td> <td>NO</td> <td>SOMETIMES</td> <td>NOT SURE</td> <td><b>EXPLAIN?</b></td> </tr> <tr> <td><b>Personal confidence</b></td> <td>YES</td> <td>NO</td> <td>SOMETIMES</td> <td>NOT SURE</td> <td><b>EXPLAIN?</b></td> </tr> </table> | <b>Reading</b> | YES       | NO       | SOMETIMES       | NOT SURE | <b>EXPLAIN?</b> | <b>Writing</b> | YES | NO | SOMETIMES | NOT SURE | <b>EXPLAIN?</b> | <b>Maths</b> | YES | NO | SOMETIMES | NOT SURE | <b>EXPLAIN?</b> | <b>School attendance</b> | YES | NO | SOMETIMES | NOT SURE | <b>EXPLAIN?</b> | <b>Personal confidence</b> | YES | NO | SOMETIMES | NOT SURE | <b>EXPLAIN?</b> |
| <b>Reading</b>  | YES  | NO             | SOMETIMES | NOT SURE | <b>EXPLAIN?</b> |          |                 |                |     |    |           |          |                 |              |     |    |           |          |                 |                          |     |    |           |          |                 |                            |     |    |           |          |                 |
| <b>Writing</b>  | YES  | NO             | SOMETIMES | NOT SURE | <b>EXPLAIN?</b> |          |                 |                |     |    |           |          |                 |              |     |    |           |          |                 |                          |     |    |           |          |                 |                            |     |    |           |          |                 |
| <b>Maths</b>  | YES  | NO             | SOMETIMES | NOT SURE | <b>EXPLAIN?</b> |          |                 |                |     |    |           |          |                 |              |     |    |           |          |                 |                          |     |    |           |          |                 |                            |     |    |           |          |                 |
| <b>School attendance</b>  | YES  | NO             | SOMETIMES | NOT SURE | <b>EXPLAIN?</b> |          |                 |                |     |    |           |          |                 |              |     |    |           |          |                 |                          |     |    |           |          |                 |                            |     |    |           |          |                 |
| <b>Personal confidence</b>  | YES  | NO             | SOMETIMES | NOT SURE | <b>EXPLAIN?</b> |          |                 |                |     |    |           |          |                 |              |     |    |           |          |                 |                          |     |    |           |          |                 |                            |     |    |           |          |                 |
| <ul style="list-style-type: none"> <li>Since out of detention, do you / your child have difficulties playing and getting along with other children?</li> <li>Identify whether: C1, C2, C3</li> </ul>  | <p style="text-align: center;">YES    NO    SOMETIMES    <b>EXPLAIN?</b></p>   |                |           |          |                 |          |                 |                |     |    |           |          |                 |              |     |    |           |          |                 |                          |     |    |           |          |                 |                            |     |    |           |          |                 |

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|  | YES | NO | SOMETIMES | EXPLAIN? |
|--|-----|----|-----------|----------|
| <ul style="list-style-type: none"> <li>• <b>Since out of detention, do you / your child have difficulties trusting people?</b></li> <li>• Identify whether: C1, C2, C3</li> </ul>                                  |     |    |           |          |
| <ul style="list-style-type: none"> <li>• <b>Since out of detention, do you / your child have difficulties telling people about the experience of detention?</b></li> <li>• Identify whether: C1, C2, C3</li> </ul> |     |    |           |          |
| <ul style="list-style-type: none"> <li>• <b>Since out of detention, do you / has your child ever needed to get help for emotional problems?</b></li> <li>• Identify whether: C1, C2, C3</li> </ul>                 |     |    |           |          |
| <ul style="list-style-type: none"> <li>• <b>Since out of detention, do you / has your child ever needed to get help with behaviour at school?</b></li> <li>• Identify whether: C1, C2, C3</li> </ul>               |     |    |           |          |
| <ul style="list-style-type: none"> <li>• <b>Since out of detention, do you / has your child ever needed to get help with school work?</b></li> <li>• Identify whether: C1, C2, C3</li> </ul>                       |     |    |           |          |

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| <p><b>FOLLOWING 5 QUESTIONS ARE FOR AN OLDER CHILD/ADULT SINCE LEAVING DETENTION</b><br/>List respondent/s P1, P2, C1, C2 etc.</p> | None of the time | A little of the time | Some of the time | Most of the time | All of the time |
|--|------------------|----------------------|------------------|------------------|-----------------|
| 1. How often do you feel sad?  |                  |                      |                  |                  |                 |
| 2. How often do you feel happy   |                  |                      |                  |                  |                 |
| 3. How often do you feel depressed?  |                  |                      |                  |                  |                 |
| 4. How often do you feel hopeful?  |                  |                      |                  |                  |                 |
| 5. How often do you feel hopeless?   |                  |                      |                  |                  |                 |
| <ul style="list-style-type: none"> <li>What are your hopes / your child's hopes for the future?</li> </ul>                         |                  |                      |                  |                  |                 |

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- Is there anything you would like to tell the inquiry about your experience / your child's experience of closed detention and life since you have left detention?



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# Departmental policies and procedures

The Department of Immigration and Border Protection has provided the Commission with various documents which set out the legal, policy, procedural and training requirements which guide the Department and service provider staff.

This Appendix is based on the Department's submission to the Inquiry. A full copy of the Department's submission is published on the Commission's website.

The Department's submission sets out the following:

- legal and policy framework of detention;
- detention population;
- alternatives to held detention;
- managing detention facilities;
- Departmental interactions with children;
- services in detention;
- guardianship;
- ensuring the safety of children;
- external scrutiny;
- community and civil society engagement;
- pre-transfer assessments prior to transfer to an offshore processing country.

## 7.1 Framework of Detention

The legal and policy framework consisting of Commonwealth, state and territory legislation, Ministerial directions and Departmental policy and procedures governs the immigration detention environment. The Department notes that this framework is informed by Australia's international law obligations and by expert advice from specialists in relevant fields.

## 7.2 Children's Unit

In 2010 the Department established a Children's Unit to support the specific needs of children and families. This Unit has more recently expanded into the Community Support and Children Branch.

## 7.3 Treatment of children

The Department's Procedures Advice Manual sets out the guiding principles for officers regarding the treatment of children when officers are undertaking compliance, detention, removal and/or case management functions. Pursuant to this guidance, when making decisions concerning children, officers should consider Australia's obligations under the *Convention on the Rights of the Child*.

## 7.4 Case managers

In addition to the coordination and management of service providers, logistics, facilities management, complaints handling, the Department staff are assigned as case managers to detainees. In this role, Department staff ensure that the best interests of the child are prioritised and staff are responsible for communicating the Department's framework and policy settings to detainees.

## 7.5 Service providers

The Department notes that detention under the *Migration Act 1958* (Cth) is administrative and not for punitive purposes.

The Department has three service providers who are responsible for different aspects of detainees' care and welfare. The service providers are required to treat children appropriately, for example, with dignity, equality, respect and fairness, in line with the *Convention on the Rights of the Child*.

The Department has detailed performance management frameworks to ensure that the service providers deliver services in line with the Department's required outcomes.

The three service providers are:

- Serco which delivers onshore immigration detention facilities and detainee services, including facilities management services, security and escort services and welfare and engagement services;
- International Health and Medical Services – the health services provider, which delivers health screening and assessment services, preventative health care, integrated primary health care, health advice, and referral to secondary and tertiary health services; and
- MAXimus Solutions – the provider of independent observer services and care and support to unaccompanied minors.

### (a) Serco

Serco is required to tailor their services to the individual needs of people in detention.

Serco is also required to ensure that staff are appropriately trained to identify and respond to the possibility of abuse or neglect of children.

Serco staff who perform the role of Client Support Worker for children must:

- have obtained a relevant Working with Children Check;
- hold (as a minimum) a Certificate III level qualification in Child Welfare; and
- have at least two years' experience in a related community service environment.

### (b) International Health and Medical Services

International Health and Medical Services' multidisciplinary team includes General Practitioners, Registered Nurses, Midwives, Psychologists and Counsellors.

Health staff must be registered with the Australian Health Practitioner Regulation Agency.

These professionals take into account the diverse and potentially complex health care needs of detainees.

International Health and Medical Services is contractually required to make appointments for detainees to see a General Practitioner within 72 hours of a request being made.

Routine mental health screening of detainees occurs at various points in time. Screening is also conducted as required, for example, by self-referral.

Specialist torture and trauma counselling services are available.

In relation to children with disabilities, health professional training includes the identification of possible physical or mental health conditions, including those related to disabilities.

### (c) MAXimus Solutions

MAXimus Solutions is a specialist pastoral care service for unaccompanied minors.

MAXimus Solutions Client Support Workers must:

- have an Australian Federal Police check;
- if relevant (depending on the jurisdiction where they work) have a Working with Children Check, and
- hold (as a minimum) a Certificate IV in Social, Community or Child Welfare.

## 7.6 Education

Where children are detained in one location for a sufficient period of time (therefore satisfying health clearances and enrolment requirements), they have access to primary and secondary education.

The Department funds access to schools through individual agreements with state and territory governments and non-government education providers.

Programs and activities in immigration detention centres include:

- early childhood educational playgroup;
- 'Introduction to Australia' classes;
- arts and crafts activities;
- cultural activities including cooking;
- library activities;
- sport and recreational facilities including gyms and swimming pools; and
- communal areas where social and religious activities can be conducted.

## 7.7 Child protection

The protection of children in immigration detention is of paramount concern to the Department.

All staff delivering services to children are required to take all reasonable care to provide a safe environment and appropriate levels of care and support.

Reporting protocols are established and implemented by the service providers.

# Departmental responses to findings and recommendations of the Inquiry



Australian Government  
Department of Immigration and Border Protection

SECRETARY

10 November 2014

Professor Gillian Triggs  
President  
Australian Human Rights Commission  
GPO Box 5218  
SYDNEY NSW 2001

BY E-MAIL: [president.ahrc@humanrights.gov.au](mailto:president.ahrc@humanrights.gov.au)

Dear Professor  Triggs

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

Thank you for your correspondence of 31 October 2014, in which you provided the Department of Immigration and Border Protection (the Department) with the final findings and recommendations of *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014* (the Inquiry).

I understand that, under section 29 of the *Australian Human Rights Commission Act 1986*, in referring your final report to the Attorney-General, you are to advise of any action, to your knowledge, that the relevant party has taken or is taking as a result of the findings and recommendations of the Inquiry. Accordingly, you have asked for my advice regarding any intended action by the Department in response to the Inquiry and its report.

On 3 October 2014, you provided the Department with the opportunity to respond to the preliminary findings of the Inquiry. On 13 October 2014, you also provided the Department with changes to your preliminary findings and some of the body of the draft report.

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The Department provided its response to the preliminary findings and the draft report on 27 October 2014 in order to comply with the three week timeframe provided by the Commission. I note that the final report, now provided to the Department, newly incorporates a series of recommendations. I also note that some substantial changes have been made to the findings and that some changes have also been made to the body of the final report.

In its response to the draft report and preliminary findings, the Department has already identified a wide range of concerns regarding the manner in which evidence and information provided to the Inquiry has been evaluated and utilised and has provided the Commission with a range of thematic concerns, supported by specific examples. A copy of that response is enclosed at Attachment A.

Whilst the Department acknowledges that the Commission has made some substantial changes to the findings and has also made some changes to the final report, I note that these changes appear to only partially address the specific examples raised and do not appear to address the underpinning thematic issues which the examples were intended to illustrate.

With respect to the findings and recommendations of the final report, the Department notes that these primarily relate to the legal and policy settings for immigration detention in Australia and other government agencies. I expect that the Government will consider the final report, including its findings and recommendations, after it is tabled. Accordingly, where the recommendations provided in your final report are practical and consistent with government policy, the Department will continue to work with the Commission to implement these as appropriate.

You may also be interested to note that, effective today, 10 November 2014, the Department is establishing a Detention Assurance Team as part of an overall integrity and assurance framework being established across the portfolio. The role of this team will be primarily to act as a triage point and support commissioned inquiries, assess trends in allegations of inappropriate behaviour by the Department's service providers and their staff, recommend action where appropriate, and provide independent advice to the Secretary and Chief Executive Officer (CEO).

The Department would like to thank the Commission for the report which is a significant body of work and looks forward to a continued productive working relationship.

Yours sincerely



Michael Pezzullo

### ADDITIONAL OBSERVATIONS – AHRC DRAFT REPORT

#### 1. GENERAL CONCERNS WITH METHODOLOGY

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.

The Department is concerned with the reliance on anonymous and de-identified quotations as credible supporting evidence throughout the report. While it is the prerogative of the individuals concerned to remain anonymous, the Department is concerned by the Commission's choice to publish these de-identified quotations so extensively, and its apparent choice to rely on these as evidence to support its findings.

In light of the limitations identified above, the Department offers the following thematic examples of the types of issues it has with the report, in lieu of countering each and every unsubstantiated claim that has been made, which would require some considerable time and which does not appear to be justifiable based on the scant legitimate evidence presented in the draft.

**Example 1 – Claims not affording procedural fairness right of reply:** One such example appears 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. In point of fact, there are no police dogs on Christmas Island and they have never been contemplated. Such allegations should be raised as formal, individual complaints, affording a right of reply and the opportunity to appropriately investigate, rather than tarnishing the reputation of individuals and service providers without evidence to back up such claims. 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 misconduct directly to the Secretary. 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.

**Example 2 – Untested claims and subjective observations:** 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.

ATTACHMENT A

**Example 3 – Over reliance on the Commission’s own experts:** 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. Without seeking to question the intentions and good standing of these highly qualified medical professionals and academics, the Department notes that their observations have often been made on the basis of cursory observations made during only brief visits to alternative places of detention. As the Commission notes, they did not conduct individual clinical assessments and nor did they engage in a health clinician/patient relationship with the children in detention. The Department notes that more rigorous testing of these observations would be required in order to effectively link these observational statements to findings of breaches of international law.

The Department further notes that the Commission has not afforded similar weight to the evidence provided by the health services provider (with some notable exceptions where the evidence supports the position taken by the Commission). The health services provider works directly with the individuals in question and its evidence should be afforded due consideration. The Commission has been afforded multiple opportunities to meet with the health services provider at its corporate headquarters and to speak with senior specialists involved in the delivery of services on site. It has been provided with extensive data on presentations of illness and treatment and has been provided with an open invitation to seek further information and advice.

For example, 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.”* [This is the full quote as provided in the draft report. The editing is done by the Commission.] The Department notes that its health services provider has prepared an analysis of presentations to GPs by minors on Christmas Island based on the 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.

**Example 4 – Little or no weight afforded to policy and procedure of the Department and its contracted services providers:** While the Department has requested that appropriate steps be taken to protect operationally and commercially sensitive documents provided to the Commission for the purposes of the Inquiry, the Department is concerned to note that 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.

One such example appears 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. This is further augmented through Detainee Consultative Committees and requests and feedback processes. The detention services provider also engages a qualified dietician to assist with food planning.

Further, the detention services provider has a range of policy frameworks and procedures designed to promote health and wellbeing including the Healthy Centre Framework and the Serco Care Model, which underpin Serco's compassionate approach to managing the immigration detention network on behalf of the Department. These are based on international best-practice principles in relation to child welfare and safety.

**Example 5 – Dismissal of evidence provided to the Commission:** One such example occurs on page 120 of the draft report, where the Commission reports that "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." 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, which states:

**Staff on Christmas Island with expertise in child and adolescent health**

*As you have seen, the health care at each site is provided by a multidisciplinary team of doctors, registered nurses, mental health nurses, psychologists, counsellors and visiting specialists. As at 17 August 2014, there were 66 IHMS health professionals on Christmas Island, including seven general practitioners. On Christmas Island, there has been a particular emphasis on including staff who have formal qualifications and experience in providing care for children and adolescents.*

*We have reviewed our records of staff deployments to Christmas Island for the period 1 July 2013 to 31 July 2014. On each day there have been both registered nurses and mental health nurses working with IHMS on Christmas Island who have formal qualifications in child and adolescent health. There have also been psychologists with formal qualifications in child and adolescent health working on Christmas Island for 366 of the 396 days of this period. Child and adolescent psychiatrists have visited in February and July 2014 and will continue to visit on a scheduled basis in addition to the monthly visits by the psychiatrist. Our staff are also able to speak with child and adolescent psychiatrists working in public or private practice for advice on particular cases on an as-needs basis and we use telehealth as necessary for consultations, as is the normal practice in remote Australia.*

To the extent that the Commission is not prepared to accept the express advice of the Department and its service providers, this should be raised directly with the Department.

ATTACHMENT A

**Example 6 – Generalisations and lack of a full context:** The report appears to be rich with unsubstantiated generalisations. 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.

**Example 7 – Misleading use of quotations:** For one example of this, see 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.

**Example 8 – Expectations that the Department must refute claims made:** The Department is particularly concerned by the selective presentation of information in the report. 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 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.

One such example appears at 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):

- *Data from the 2010 Australian National Infant Feeding Survey showed that one in five mothers of children aged 24 months or less had been diagnosed with depression. More than half of these mothers reported that their diagnosed depression was perinatal (that is, the depression was diagnosed from pregnancy until the child’s first birthday). Further, of all the cases of diagnosed depression, just over one in five were diagnosed for the first time during the perinatal period of the infant selected for the 2010 survey.<sup>1</sup>*
- *Perinatal depression refers to depression that occurs during pregnancy or the postnatal period and affects 15–20 per cent of women in Australia. The childbearing years, especially the first few weeks after childbirth, are the peak period for the onset of depression in women. Perinatal depression varies with respect to symptoms, timing of onset, causes, risk factors,*

<sup>1</sup> <http://www.blackdoginstitute.org.au/docs/Factsandfiguresaboutmentalhealthandmooddisorders.pdf>

severity and duration. It can also vary in the need for professional assessment and the type of treatment.<sup>2</sup>

- A new study by Murdoch Children's Research Institute has found almost one in six mothers with young infants who attended an emergency department suffered from post-natal depression, and many mothers hadn't been previously screened for the condition. Researchers at the Institute screened 200 mothers in the children's emergency department at The Royal Children's Hospital and found the incidence of post natal depression was 16%; more than double the reported 7.6% prevalence rate. Researchers also found that more than half (58%) of mothers hadn't been screened at their maternal health nurse or GP for post natal depression.<sup>3</sup>

## 2. SPECIFIC FEEDBACK AND TECHNICAL COMMENTS

The Department offers the following specific feedback and technical comments. Again, these do not represent a comprehensive analysis of the technical and factual accuracy of the report. While the Department has previously indicated its interest in reviewing the report for factual accuracy, the amount of information requiring verification and the limited references to sources make this unfeasible because of the way that the report is currently drafted and owing to the limited time afforded for review of such a lengthy document. Nevertheless, the Department offers the following observations:

1. The Department notes that 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.
2. The Department notes that 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. The Department asks that the President consider exercising her powers under the *Australian Human Rights Commission Act 1986* regarding the publication of such materials.
3. 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. 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:
  - 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;
  - b. makes clear that it has used original responses for a separate (even if related) purpose;

<sup>2</sup> <http://www.blackdoginstitute.org.au/docs/DepressionduringPregnancyandthePostnatalPeriod.pdf>

<sup>3</sup> <http://www.mcrl.edu.au/news/2012/november/post-natal-depression/>

**ATTACHMENT A**

- c. where data is re-presented in a new graphical form or where further analysis is undertaken, this is identified as such (eg – “Graph prepared by AHRC based on DIBP data” or “AHRC analysis of data provided by DIBP”).
4. 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:

*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.*

AND

| Family Status     | May-12   | Jun-12   | Jul-12   | Aug-12   | Sep-12   | Oct-12   | Nov-12    | Dec-12   |
|-------------------|----------|----------|----------|----------|----------|----------|-----------|----------|
| Accompanied Minor | 9        | -        | -        | -        | 6        | 2        | 11        | 2        |
| LIAM              | -        | -        | -        | -        | -        | 1        | 1         | -        |
| <b>Total</b>      | <b>9</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>6</b> | <b>3</b> | <b>12</b> | <b>2</b> |

| Family Status     | Jan-13   | Feb-13   | Mar-13    | Apr-13    | May-13    | Jun-13     | Jul-13     | Aug-13     | Sep-13    | Oct-13    | Nov-13    | Dec-13    | Total      |
|-------------------|----------|----------|-----------|-----------|-----------|------------|------------|------------|-----------|-----------|-----------|-----------|------------|
| Accompanied Minor | -        | 3        | 13        | 69        | 61        | 101        | 256        | 162        | 57        | 20        | 12        | 44        | <b>828</b> |
| LIAM              | -        | -        | 2         | 1         | -         | 2          | 10         | 14         | 8         | 3         | 6         | 7         | <b>55</b>  |
| <b>Total</b>      | <b>-</b> | <b>3</b> | <b>15</b> | <b>70</b> | <b>61</b> | <b>103</b> | <b>266</b> | <b>176</b> | <b>65</b> | <b>23</b> | <b>18</b> | <b>51</b> | <b>883</b> |

\*Does not include 6 children who are not IMAs (eg visa overstayers, illegal foreign fishers and compliance case loads).

\*\*Based on Port Arrival Date, as recorded in DIBP systems, babies born in detention have an arrival date based on their mother.

5. 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 generally.
6. As mentioned elsewhere in this response, 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. The Department remains open to, and will investigate or refer to the appropriate authorities for investigation, any such evidence if presented, in accordance with established procedures.
7. Page 35 – The Department notes that the Minister is not the guardian of all unaccompanied minors.

8. 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.

### 3. GENERAL CONCERNS WITH FINDINGS IN DOMESTIC AND INTERNATIONAL LAW

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. While the body of the report details issues that the Commission has found during its Inquiry, it appears to lack further analysis regarding how these findings demonstrate a breach of international or domestic law. It is the Department's observation that this applies to the analysis of most of the alleged breaches of international law in the draft report, for all the cohorts of children discussed, including mothers and babies; pre-schoolers; primary school aged children; teenagers; unaccompanied minors and 'children indefinitely detained'. 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.

With respect to findings that the Department has breached Article 28(1) of the *Convention of the Rights of the Child*, 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. Again, the lack of context applied by the Commission in making its findings is of considerable concern to the Department, particularly if the final report is to be published and presented by the Commission to be a rigorous and independent investigation of immigration detention and evaluation of Australia's compliance with its legal obligations at domestic and international law.

At pages 55 and 56, the Commission indicates that the decision in *Plaintiff S4/2014 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 *Al-Kateb v Godwin & Ors* [2004] HCA 37). Plaintiff S4 is authority for the proposition that immigration detention is authorised whilst it is for a legitimate migration purpose, being to: remove or transfer the detainee; consider a visa application made by the detainee; or consider whether to allow the detainee to make a valid visa application (as in the case of Plaintiff S4). These processes must be undertaken 'as soon as reasonably practicable'. What period of time is 'as soon as reasonably practicable', will depend on the circumstances of each case.

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

# Acknowledgements

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