



ATTORNEY-GENERAL

CANBERRA

Professor Gillian Triggs
President
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001

Dear President

A handwritten signature in blue ink, appearing to read 'Gillian', written over the word 'President'.

Thank you for providing me with the Australian Human Rights Commission's report
The Forgotten Children: National Inquiry into Children in Immigration Detention 2014.

As required by section 46 of the *Australian Human Rights Commission Act 1986*, I have
tabled the report in Parliament, with the enclosed tabling statement.

Yours faithfully

/(George Brandis)/

Encl: Tabling statement – National Inquiry into Children in Immigration Detention 2014

Statement by the Attorney-General for Australia, Senator the Hon George Brandis QC

Tabling of the Australian Human Rights Commission Report

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

I hereby table the enclosed Report, *The Forgotten Children – National Inquiry into Children in Immigration Detention 2014*, from the President of the Australian Human Rights Commission, pursuant to section 46 of the *Australian Human Rights Commission Act 1986*.

The Report details an investigation by the Australian Human Rights Commission into children in immigration detention including progress made since the Commission's previous report: *A Last Resort? National Inquiry into Children in Immigration Detention* in 2004.

The Government is disappointed and surprised that the Australian Human Rights Commission did not start this inquiry until 2014, considering the problem was at its most acute prior to the 2013 election, when the number of children in detention peaked at 1,992 under the former Labor Government in July 2013. There were no children from illegal maritime arrivals in detention when the Howard Government left office in 2007. The Rudd Government's dismantling of the Howard Government's successful border protection policies directly resulted in more than 51,000 illegal maritime arrivals, including more than 8,400 children, while it has been estimated that at least 1,200 people (including hundreds of children) perished at sea.

The Abbott Government has stopped the boats and the flow of large numbers of children entering detention. Importantly, the Government has also significantly reduced the Labor Government's legacy of nearly 2,000 children in detention from the peak in July 2013 to fewer than 200 today. That number will continue to fall. Many of the remaining cases involve complex security concerns, or other matters, around their parent or parents and the parents' wish for the children to remain with them in held detention.

This Government, like the Howard Government before it, is committed to removing all children from detention. In short, children in detention is a problem created exclusively by the former Labor Government which has been largely solved by the current Abbott Government.

The Government notes that there has been significant progress and improvement in policies and practices since the inquiry was initiated in 2014 and many of the circumstances it refers to are now of historical interest only. A substantial number of the recommendations from this Report simply reflect existing government policies and practice and therefore offer little in the way of new insights or initiatives.

Since the last inquiry in 2004, the Parliament has affirmed the principle that no minor shall be detained except as a last resort – a position supported by all sides of politics. Following the 2004 report, the Howard Government introduced legislation which allowed for children and their families to reside outside held detention under the community detention programme. This essential step ensured that by the time the Howard Government left office it had moved all illegal maritime arrival children out of held detention arrangements. The measures became viable because of the regional processing and temporary protection measures which prevented children entering detention in the first place.

Over the course of this inquiry, the Government has consistently stated its intention to restore these former arrangements as the most effective means of preventing further loss of life at sea and in order to ensure that children, once processed and removed from held detention, are not simply replaced by the next wave of illegal maritime arrivals.

The recent passage of the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* has meant that the Government has been able to move all families and children off Christmas Island, as it had committed to do. The passage of this legislation has also meant that the Government can now commence processing the former Labor Government's legacy caseload of some 30,000 illegal maritime arrivals already living in the Australian community.

As a result of these recent events, a number of issues raised by the Report with respect to the Australian immigration detention network are no longer relevant – the removal of children from Christmas Island is a prime example. Similarly, the concerns raised by the Commission regarding the impact of prolonged periods of detention on health, mental health and welfare are now being addressed by removing all eligible children from held detention arrangements following the passage of the Government's temporary protection legislation.

To the extent that the Commission has sought to extend its inquiry to an evaluation of the regional processing arrangements occurring in the Republic of Nauru, it remains the position of the Government that these arrangements are beyond the jurisdiction of the Australian Human Rights Commission; a position that has been made clear to the Commission for the duration of the Inquiry. The Commission has not been invited by the Government of the Republic of Nauru to undertake any form of visit or inspection of its regional processing arrangements.

With respect to the Report's findings asserting that the Commonwealth is in breach of its international obligations under *Convention on the Rights of the Child*, this has been a longstanding point of difference between the Government and the Commission and the Government does not accept the Commissions' findings. The Commission is an independent statutory agency, and will reach its own views as to the content of Australia's human rights obligations. However, its views are contestable and not supported by the Government.

All people in immigration detention, including families and children, are provided with appropriate care, treated with dignity and respect, and have their claims addressed as soon as is reasonably practicable and consistent with Government policy. The Government considers

that the best interests of the child are appropriately considered, consistent with international law, and it continues to work towards the release of all children from held detention arrangements, as it has committed to do since it was elected in late 2013.

Of course, the best way to eliminate all of the concerns raised by this Report is to end the people smuggling trade. This Government has achieved that outcome.