

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

<p>34</p>	<p>'It is the Department's view that the draft report does not provide the level of detail and legal analysis necessary to make the case for how the Commonwealth has breached any or all of the articles listed against those findings... The Department remains open to receiving a clearer link between the evidence made available to the Commission, the Commission's impartial analysis of that evidence with a broader context, and the application of this, against what international law requires.'</p>	<p>In order to make clearer the link between the evidence and the breaches of international law, the Commission provided further elaboration in the findings sections of the report on what the articles in the <i>Convention on the Rights of the Child</i> require in practice. Pertinent detail from General Comments produced by the UN Committee on the Rights of the Child was added, along with recitation of relevant facts from the body of the chapters which demonstrated that the requirements on international law were at various times not being met.</p> <p>For example, in the findings section in relation to mothers and babies (section 6.13), further detail was added to the findings regarding the right to health and development to read:</p> <p>'Detention impacts on the health, development and safety of babies. At various times mothers and babies in detention were not in a position to fully enjoy the following rights under the <i>Convention on the Rights of the Child</i>:</p> <ul style="list-style-type: none"> <li>• the right to the highest attainable standard of health (article 24(1)); and</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> </ul> <p>The Committee on the Rights of the Child has emphasised that:</p> <p style="padding-left: 40px;">Among the key determinants of children's health, nutrition and development are the realization of the mother's right to health and the role of parents and other caregivers. (See General Comment No 15, paragraph 18)</p> <p>The Committee has also recognised that 'parenting under acute material or psychological stress or impaired mental health' is likely to</p>
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		<p>impact negatively on the wellbeing of young children (See General Comment No 7, paragraph 18).</p> <p>The negative impact of detention on mothers has consequences for the health and development of their babies. For example, mothers who are distressed or depressed in the detention environment can struggle to form healthy attachments with their babies. This in turn has consequences for the social development of those babies. Also, the limits that the detention environment places on the ability of mothers to make decisions about their babies' care can have adverse impacts on the development and health of their babies.</p> <p>Babies' right to development is also directly compromised by the physical detention environment. For example, the physical environment in the Christmas Island detention facilities does not provide safe spaces for babies to learn to crawl or walk.'</p>
35	<p>'With respect to findings that the Department has breached Article 28(1) of the <i>Convention of the Rights of the Child</i>, the Department observes that there appears to be no acknowledgement by the Commission that this right is progressively realisable, a point particularly relevant when viewed in the context of the surge in irregular maritime arrivals in mid-2013 in particular.'</p>	<p>To address the Department's concern, the Commission provided further detail in the report about the content and breach of the right to education in article 28(1), for example in section 8.7:</p> <p>'The Commission notes that article 28(1) provides that the right to education can be achieved progressively. However, the Committee on the Rights of the Child has made clear that 'States need to be able to demonstrate that they have implemented [article 28(1)] "to the maximum extent of their available resources"' and that 'States are required to undertake all possible measures towards the realisation of the rights of the child, paying special attention to the most disadvantaged groups.'(See General Comment No 5, paragraphs 7 and 8).</p> <p>Section 8.5 in this chapter describes in detail the lack of education provided to</p>

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

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