

Thank you Senator MacDonald for the opportunity to make this opening statement.

In recent weeks, questions have been raised about the decision by the Commission to conduct a national Inquiry into the health and developmental impacts of prolonged immigration detention on children. I would like to take a few minutes to respond to these questions by setting out the Commission's statutory functions and the work of the Commission in respect of these children in 2013-14 and by explaining why the Inquiry was called.

The Report of the Commission's Inquiry into the impact of immigration detention on children, *The Forgotten Children*, has now been tabled in Parliament and is available to the public. The Inquiry took place from January 2013 to October 2014, covering the periods of both the former and current governments.

The medical and other data in the Report provide credible and objective evidence that mandatory, prolonged, often isolated and indefinite detention, has a significantly damaging effect on children. The bipartisan nature of government responsibility for this damage is clear on any fair reading of this balanced Report.

May I begin by wholeheartedly welcoming the release by the Government of about 700 children over the last few months. We hope that our Inquiry has played some role in encouraging this change in policy. However, on the latest figures available to the Commission, about 330 children remain in closed detention in Australia and Nauru and while the numbers in Australia are declining, the numbers in Nauru have steadily increased.

In summary, the Inquiry was called in response to mounting concern about the health impacts of prolonged detention on children, and to the significant numbers that remained in detention.<sup>1</sup>

The AHRC has been on record since mandatory detention was first introduced in 1992, reporting to Parliament that prolonged detention of children amounts to arbitrary detention under the ICCPR and the CROC. The law is well settled : arbitrary detention without charge or trial by our peers, is contrary to the rule of law and to the international obligations to which Australia has agreed.

The aim of the Inquiry was not to revisit this well settled law but rather to conduct an indepth assessment of the medical and developmental impacts on children of lengthy immigration detention.

The Australian Human Rights Commission Act 1986 provides the Commission with functions to inquire into:

*‘any act or practice that may be inconsistent with or contrary to any human right’.*

A ‘human right’ is defined by reference to certain human rights treaties to which Australia is a party, including the ICCPR and the CROC. These treaties have not been legislated directly as part of Australian law by Parliament. The consequence is that, while the government of the day may act according to Australian laws, these actions may well be contrary to our international legal obligations.

In the absence of national laws that apply international human rights in Australia, the Commission provides a necessary independent and respected check and balance on Government to ensure our democracy is a just one.

Most of the work of the Commission and commissioners who have joined me today, attracts bipartisan support from governments, whether it concerns the discrimination on the basis of race, sex or sexual orientation, age or disability, social justice for Aboriginal and Torres Strait islanders or the rights of children. Some of our work, especially in respect to refugees, does not always command the support of the government of the day. It is for this reason that the independence of the Commission is protected by statute, allowing us to conduct our work without fear or favour.

With this legal background I would like to turn to two issues that have been raised about the Inquiry into the impacts of lengthy detention of children.

#### **The first concerns the program of work on refugees in 2013-14**

The Commission has worked tirelessly over the last decade, especially the last 3 years, reporting on the failure of both governments of the time to comply with their international obligations.

I would like to table a document that summarises the more than 180 separate pieces of work completed by the Commission on immigration detention over the past five years.

It is useful to start with the Report of my predecessor, the Hon Catherine Branson, who completed, in July 2012, an Inquiry into the Age determination process for children held in detention.

Following that Inquiry, the Commission conducted a range of activities in 2013 in respect of the rising number of refugee children detained in Australia and offshore, a programme that is fully documented in our Report. For example,

- We conducted monitoring visits to detention centres in mainland Australia and Christmas Island; within 8 weeks of my appointment in July 2012, I was at Villawood Detention Centre and 4 weeks later I was on Christmas Island interviewing children and their families. The Report of these visits was the first of three such reports in my first 15 months as President.
- The Commission issued 36 reports to Parliament in relation to 89 complainants between 2010-2014 in respect of immigration detention and asylum seekers, each of which must be independently assessed.
- We researched and provided a Report to Parliament in October 2013 -the "Snapshot Report"- a state of nation report which considered the continued detention of all detainees
- We provided many submissions to Parliamentary Committees examining proposed changes to the *Migration Act* and other legislation.
- We intervened in High Court cases relating to the detention of asylum seekers, (*CPFC* and *Megaming v The Queen*)
- I regularly met and wrote to Ministers of Immigration raising concerns about children in detention centres in Curtin, Manus Island and Christmas Island, about the situation of unaccompanied minors and those of differing sexual orientation; and I repeatedly urged the Government to ensure that the detention of children is a matter of last resort.
- The documents you have received show that issues relating to children in detention were raised in every meeting that I had with the Minister.

In summary, throughout 2012 and 2013 the Commission was fully committed to monitoring and reporting on the conditions of the hundreds of children in detention.

**Secondly, questions have been raised about the precise timing of the Inquiry.**

I shall try to be as clear as possible.

The decision to hold an Inquiry was one that evolved gradually through 2013 and reflected many factors. *There was no one trigger, but a combination of many*

- Of overarching importance were the high numbers of children held in detention, numbers that fluctuated considerably over the year.
- Other factors were the increasing periods of time for which the children were being held, the need to ensure the Commission had the necessary resources to conduct an Inquiry, especially as we had just completed an Inquiry in 2012 and a full Report to Parliament in 2013 and the forthcoming election in September when information would not be available through the caretaker period.
- Finally, ~~of relevance to the decision to hold an Inquiry was that~~ Good governance of the Commission requires annual planning. The Commission confirmed its work plan for 2013-14 on 26 June 2013 that envisaged a '10 year review' in 2014 of the situation of children in detention that was to commence only once the Snapshot Report was completed and subject to resources.

I would like to table two graphs which detail evidence that informed the Commission's decision to hold an Inquiry. These graphs show the following:

- Between the peak time in July 2013 and October 2013, the former government released about ~~250~~ *900* children. *In light of our continuing work on children in detention* There was no urgency to call an Inquiry at that time, even were the Commission in a position to do so.
- It soon became clear however that after October 2013, the numbers of children being released stagnated so that 4 months later, by February 2014, about the same number of children remained in detention as at the election.
- Obviously, the period of time for which children were being held was lengthening as each month went by.
- These evolving factors led to the decision by the Commission on the 12 December 2013, that the long-planned 10year review should be a full Inquiry with powers to compel the production of evidence.
- The Attorney and the Dept of Immigration were advised accordingly on the 22<sup>nd</sup> January 2014.

The documents we have given you confirm my earlier advice to this Senate Committee that I regularly discussed concerns about children in immigration detention with all ministers for immigration. I did not however specifically refer to the proposed review or Inquiry with any Minister in the former government.

## **Conclusions**

Over the last 10 years, the Commission's extensive work for children in immigration detention documents beyond doubt the trauma and damage that is being inflicted on them. The Report speaks for itself. Australians can now read it and make up their own minds about the consequences of Australia's detention policy for children.

May I respectfully ask that members of the Senate read the Report, consider the findings and act on the recommendations we have made.

The Commissioners and I are happy to answer any questions you may have.