

# **Appendix 3 Action taken by the Department**



Australian Government

Department of Immigration and Multicultural and Indigenous Affairs

Secretary

Dr Sev Ozdowski  
Human Rights Commissioner  
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Dear Dr Ozdowski

Thank you for your letter of 22 January 2004, in which you provided the Department with the final findings and recommendations of the Inquiry into children in immigration detention and child asylum seekers.

I understand that, under section 29 of the *Human Rights and Equal Opportunity Commission Act 1986* (the HREOC Act), 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 of any intended action by the Department in response to the Inquiry and its report.

Primarily, the findings and recommendations of the report relate to the legal and policy settings for immigration detention. These are matters for response by the Government. I expect that the Government will consider your report, including its findings and recommendations, after it is tabled.

In relation to matters of administration, as advised on a number of occasions during your Inquiry, the Department has progressively and over a period of time developed a range of initiatives relating to children in immigration detention. This reflects the Department's strong focus on our duty of care for children in detention and the importance of responding to their needs. The Department is continuing to seek further opportunities to manage our legal obligations in an innovative way, which responds to the evolving needs of children in immigration detention.

In providing the Department's response to your letter, I do so in consideration of the report as a whole. I have previously made the point that it is disappointing the Inquiry has not adequately reflected the positive actions taken by the Department to date. Nor, in my view, has the Inquiry adequately recognised the complexities involved in immigration detention, particularly in relation to children. It has not, in particular, adequately noted the extreme pressures created by the sizeable numbers of unauthorised arrivals in 1999-2001.

11/04

Consistent with section 29 of the HREOC Act, please find below a table of comments against the Inquiry's major findings which outlines what action has been taken or is being taken, both during and after the period of the Inquiry.

There are some key points which need to be highlighted:

- The detention caseload consists of two broad categories: unauthorised boat arrivals, and people detained as a result of compliance activities.
- In the first category, there are currently only 17 children in mainland immigration detention centres. The Department is working actively to establish appropriate alternative arrangements for children.
- In the second category, the great majority of people who come to the Department's attention through compliance activities are not placed in a detention centre. Over the last six months of 2003, some 94% of children were dealt with in other ways, primarily by the grant of a bridging visa. Of those children who are placed in detention (principally because a judgment is made that the family is a risk of flight), the median stay for women and children who are new arrivals in detention is currently less than ten days.
- A very significant change has taken place during the past two years, as the Department has developed Residential Housing Projects, worked with community groups to establish alternative detention arrangements and to support prospective bridging visa applicants, and worked with child welfare authorities to support unaccompanied and other vulnerable minors in foster care arrangements.
- The Department is working actively to develop further options for children, including consideration of metropolitan Residential Housing Projects and a wider range of arrangements with community groups.

More detailed comments against each of the findings are provided below.

<p><b>Major finding 1</b></p> <p><i>Australia's immigration detention laws, as administered by the Commonwealth, have created a detention system that is fundamentally inconsistent with the Convention on the Rights of the Child (CRC). In particular, Australia's mandatory detention system fails to ensure that:</i></p> <p><i>a) detention is a measure of last resort, for the shortest appropriate period of time and subject to effective review</i></p> <p><i>b) the best interests of the child are a primary consideration in all actions concerning children</i></p> <p><i>c) children are treated with humanity and respect for their inherent dignity</i></p> <p><i>d) children seeking asylum receive appropriate assistance to enjoy, 'to the maximum extent possible' their right to development and their right to live in 'an environment which fosters the health, self-respect and dignity' of children in order to ensure recovery from past torture and trauma.</i></p>
<p><b>Key comments</b></p> <ul style="list-style-type: none"> <li>• In order to address the needs of children in detention, it is necessary to understand the profile and individual circumstances of those detained. While the report does not clearly identify this, a significant proportion of women and children in immigration detention come to the Department's attention as a result of compliance activities. These people are only detained as a last resort and generally for a very short period. This is clear from the statistics. From 1 July 2003 to 31 December 2003, of the 1,237 unlawful non-citizen children located by compliance, only 6% were detained (the majority of children were dealt with in other ways, primarily by the grant of a bridging visa). Of those women and children detained as a result of compliance activities, the median stay in detention is currently less than ten days;</li> <li>• While the Inquiry report has focussed on the average period of all children in immigration detention in making its findings, as noted by the Department during the course of the Inquiry</li> </ul>

the report has not properly drawn out the facts behind the statistics. Following the significant decline in unauthorised boat arrivals, the detention caseload has changed dramatically over the course of the Inquiry. This is not evident from the Inquiry report, which continues to provide statistics in a manner that does not clearly distinguish between the different detainee caseloads.

- Given that the purpose of immigration detention is to establish whether people have a lawful reason to remain in Australia, quite appropriately a major focus of the Department's efforts in 1999-2001 was to ensure speedy processing of applications.
- The report overlooks the intensive efforts on the part of the Department, in response to the unprecedented numbers of unauthorised arrivals, to streamline and improve processing times. As a result of Departmental efforts, by mid 2001 the time taken for the Department to process protection visa applications for 80 per cent of applicants had decreased from an average of seven and a half months to twelve and a half weeks. This improvement in processing visas was achieved in the twelve month period when around 4400 temporary protection visas were granted. By the end of 2001 the significant reduction in processing times meant there was greater throughput in detention facilities. Many detainees were in facilities for a short period and then released into the community on a visa.
- As has occurred throughout the Inquiry, all women and children in immigration detention continue to be reviewed by the Department against the criteria for the grant of a Bridging Visa. In many cases, as prescribed by the law, comprehensive care plans need to be developed to allow for individual or family release into the community.
- It needs to be properly acknowledged that many people in immigration detention may not be eligible for consideration of a bridging visa because they do not meet the requirements of the regulations. In that context, the Department has offered all eligible women and children the opportunity to move to a Residential Housing Project. Some have declined.
- Contrary to the description in the Inquiry report, the Residential Housing Projects have proven to be a particularly supportive environment for women and children, with many shared linguistic, cultural and national experiences. Residential Housing Projects are now available in Port Augusta, Port Hedland and Woomera. Further projects are being considered in metropolitan areas.
- This focus on meeting children's individual needs was also enhanced in the development of the new Immigration Detention Standards (IDS), which form part of the contract with the detention services provider. While extensive information on the new detention services contract was provided to the Inquiry, improvements in the contractual framework were not analysed or reviewed in the Inquiry report. This approach seems to overlook the current operation of the detention program and downplay the process of continuous improvement.
- A case management approach to respond to individual needs has also been introduced at the Baxter Immigration Detention Facility (IDF), with a view to expanding this at other centres. This approach will further enhance the focus on providing appropriate support to children and their families.

### **Major finding 2**

*Children in immigration detention for long periods of time are at high risk of serious mental harm. The Department's failure to implement the repeated recommendations by mental health professionals that certain children be removed from the detention environment with their parents is cruel, inhumane and degrading treatment of those children in detention.*

### **Key comments**

- The Department noted in its response to the draft report that mental health is a much broader and more complex issue than detention. In addition to detention, previous trauma, family violence and inadequate behaviour management are amongst the range of risk factors that may lead to mental health problems. These are factors over which the Department has little or no control.
- Within this context, the Department and services provider have sought to ensure that, whenever possible, the effects of risk factors are minimised and protective factors are maximised or enhanced. Protective factors, to a large extent, focus on supporting parents to

in turn support their children, ensuring good school environments and good physical health.

- For example, the Department has established arrangements with State education authorities for children to attend schools in the local community. The majority of school-age detainee children are now spending a large portion of their waking hours each week outside the detention facility, learning and interacting with Australian children.
- The benefits of Residential Housing Projects, described above, are also particularly relevant to this finding. Contrary to the report's description, there is clear evidence that Residential Housing Projects can assist individuals who are having difficulties coping in an immigration detention facility. Evidence of this was provided to the Inquiry by the Department but was omitted from the report.
- There has been a marked increase in the proportion of long-term detainee women and children who are accommodated in alternative detention arrangements. Of this group, approximately 15% were in alternative detention in July 2003 and as at 21 January 2004, 43% were in alternative detention. The majority are in Residential Housing Projects. A small number are in community based detention arrangements, where a Housing Project is not appropriate to meet their specific needs.
- In response to emerging and evolving mental health needs, children in immigration detention are provided with a standard of mental health services that is comparable to those available in the Australian community. As described earlier, the Department works closely with the detention services provider and specialists to ensure appropriate responses to individual needs. State child welfare authorities are also closely involved in any cases involving children.
- As in the community, individual cases can be complex and health professionals will not always agree on the best treatment plans. Where this occurs, the Department works closely with the families involved and relevant specialists to develop a treatment plan which is practical and can be implemented.
- With regard to the recommendations of professionals, as explained during the course of the Inquiry, such professionals are not necessarily familiar with or experienced in the requirements of the *Migration Act 1958*. Given this, they may make recommendations for options that are not legally available to the Department. In these circumstances, the Department works with relevant professionals to develop suitable options that focus on the needs of the individuals and take account of the legal framework.

### **Major finding 3**

*At various times between 1999 and 2002, children in immigration detention have not been in a position to fully enjoy the following rights:*

- a) the right to be protected from all forms of physical or mental violence*
- b) the right to enjoy the highest attainable standard of physical and mental health*
- c) the right of children with disabilities to 'enjoy a full and decent life in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community'*
- d) the right to an appropriate education on the basis of equal opportunity*
- e) the right of unaccompanied children to receive special protection and assistance*

### **Key comments**

- This finding of the report focuses on a period of time that no longer bears any comparison to current immigration detention of children, families and adults.
- Within that context, the information provided by the Department on the actions it took during that period does not seem to have been appropriately considered or reflected in the report in coming to the findings. This information is key to understanding the Department's actions during the period 1999 to 2002.
- During the time of sizeable numbers of arrivals from, in particular, 1999 to 2001, the Department's focus was necessarily on meeting their basic needs and on making strenuous efforts to hasten visa processing.
- There are clearly a number of practical factors to consider when dealing with such a dynamic and changing population. For example, on the issue of education alone, when there were large numbers and a high turnover of children in detention it was not practical to place

children in local schools. In September 2001, there were over 450 children at the Woomera IRPC; the local school had a student population of around seventy children. The practicalities of integrating the detainee children, many of whom moved out within a short time, would have been unmanageable.

- While the report comments on Departmental action that could have been taken during this period (such as the placement of all families in community based detention), it does so without proper consideration of the purposes of immigration detention and Government policy, and with little consideration of the practicalities and circumstances applying at the time in question. These issues were fully described by the Department during the course of the Inquiry, but appear to be minimised or dismissed by the Inquiry in coming to its findings.

In light of the Department's concerns with the manner in which evidence and information provided to the Inquiry have been extracted and summarised inappropriately, I ask that this response to the section 29 notice be included in its entirety in the final report.

Yours sincerely



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W.J. Farmer

6 February 2004