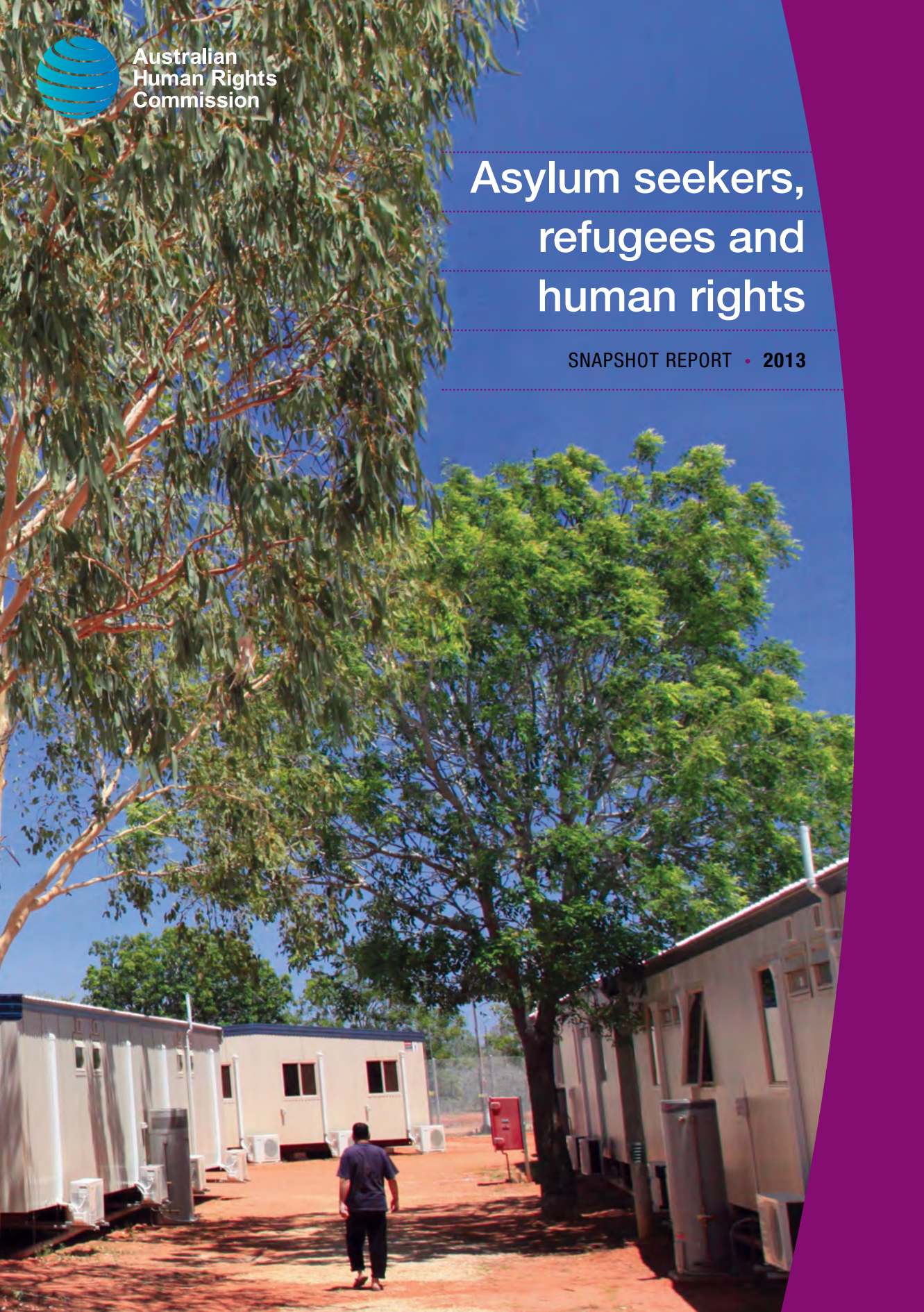




Australian
Human Rights
Commission

Asylum seekers, refugees and human rights

SNAPSHOT REPORT • 2013



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Lisa Thompson, JAG Designs

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Executive Summary

The purpose of this report is to provide an overview – or ‘snapshot’ – of the key human rights issues that arise from Australia’s approach to asylum seekers and refugees who arrive by boat.

The report focuses on mandatory immigration detention and third country processing. It concludes with observations on some of the policy changes proposed by the newly elected Australian Government.

The report is not intended to address all the issues facing asylum seekers and refugees in Australia.

Asylum seeker and refugee policy remains one of the most contentious issues in contemporary Australia. In recent times we have seen a number of policy changes in this area. The speed at which they occur can make it challenging to stay on top of the facts. It is my hope that this report will provide parliamentarians, key commentators and the community with a clear understanding of the human rights issues that arise from the situation facing asylum seekers and refugees who arrive in Australia by boat.

This report reveals a significant gap between Australia’s human rights obligations under international law and the current treatment of asylum seekers and refugees.

Australia maintains one of the most restrictive immigration detention systems in the world. It is mandatory, not time limited, and people are not able to challenge the need for their detention in a court of law. The Commission has for many years called for an end to this system because it leads to breaches of human rights obligations under treaties to which Australia is a party.

While doing so, the Commission has also acknowledged that immigration detention may be legitimate for a strictly limited period of time. However, the need to detain a person should be assessed on a case-by-case basis taking into consideration their individual circumstances.

The United Nations Human Rights Committee’s most recent finding against Australia related to the indefinite detention of refugees with adverse security assessments. The Committee not only found that these refugees’ indefinite detention was arbitrary, it also found that it was ‘inflicting serious psychological harm upon them’, which amounted to cruel, inhuman or degrading treatment.



As at 5 September 2013, there were 6,579 people in closed immigration detention facilities in Australia, including 1,428 children. As at 6 August 2013 there were 52 refugees being held in indefinite detention as a result of receiving an adverse security assessment. The detrimental mental health impact of prolonged and indefinite detention is well-documented. In 2012–13 there were 846 reported incidents of self-harm across Australia's immigration detention network.

While numbers in closed detention remain high, Australia has taken significant steps towards implementing a system of community placement on the mainland for asylum seekers and refugees. This has been achieved through the use of community detention and bridging visas, building on measures introduced by successive Australian governments. This is a welcome development, aspects of which align with the Commission's recommendations and international human rights standards.

The Commission continues, however, to hold significant concerns that the denial of work rights to asylum seekers on bridging visas (reported on 2 September 2013 to be over 21,000) may force individuals and families into poverty and lead to breaches of multiple human rights.

Of particular concern is the introduction of an 'enhanced screening process' for all unauthorised maritime arrivals from Sri Lanka. The Commission considers that this process does not constitute a fair asylum procedure and risks excluding those with legitimate claims for protection.

In 2012 the Australian government reinstated third country processing. This was prompted by the rising number of asylum seekers undertaking dangerous sea journeys to seek protection in Australia and by the tragic loss of lives at sea. The Commission acknowledges that preventing further deaths at sea is a complex challenge with no simple solutions.

As at 5 September 2013 there were 1,254 asylum seekers detained on Nauru and Manus Island in Papua New Guinea.

In June 2013 the Parliamentary Joint Committee on Human Rights, having examined the laws and legislative instruments underpinning the regional processing regime, concluded that there was a significant risk that the regime was incompatible with a range of human rights. The Commission concurs with this assessment.

Australia has resettled around 800,000 refugees since World War II, building one of the world's most successful multicultural societies. Today, Australia continues to have a generous resettlement programme and, along with the United States and Canada, has ranked consistently among the world's top three resettlement countries.

While we have seen a significant increase in asylum seekers seeking protection in Australia in recent times, Australia's share of asylum applications remains a very small fraction of the global total (about 2.2%). I urge the Australian Government to ensure that all asylum seekers and refugees are treated humanely regardless of their mode of arrival, and to continue to uphold our proud history of providing protection to some of the world's most persecuted and vulnerable people.

A handwritten signature in black ink that reads "Gillian Triggs". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gillian Triggs

President

2 October 2013

1. Introduction

This report draws upon the extensive work the Australian Human Rights Commission has undertaken in the area of Australian law, policy and practice relating to asylum seekers, refugees and immigration detention. The Commission's work has included conducting national inquiries, examining proposed legislation, monitoring and reporting on immigration detention, and investigating complaints from individuals subject to Australia's immigration laws and policies.¹

The report considers immigration detention law, policy and practice, bridging visas, the enhanced screening process, third country processing and proposed Government reforms. The Commission acknowledges that there are further policies and programs relating to the experience of asylum seekers and refugees that are beyond the scope of this report.

Australia's key human rights obligations which are relevant to asylum seekers, refugees and people in immigration detention are outlined at Appendix 1.

The Commission acknowledges the assistance provided by the Department of Immigration and Border Protection (the Department) in providing information for publication in this report.

1.1 Background

For over 20 years successive Australian governments have adopted various policies aimed at deterring asylum seekers from arriving by boat. During this period mandatory immigration detention and offshore processing have been key policies in attempts to reduce the number of boat arrivals. A timeline of these policies (as well as other relevant developments) can be found at Appendix 2 of this report.

Australia's mandatory immigration detention system was introduced in 1992. Amendments to the *Migration Act 1958* (Cth) (Migration Act) in 1992 required the detention of certain 'designated persons' and prevented any judicial review of detention.² These amendments did, however, impose a 273 day time limit on immigration detention.³

In 1994 the mandatory detention regime was expanded to apply to all non-citizens in Australia without a valid visa, and the 273 day time limit was removed.⁴ At this time a system of bridging visas was introduced to allow persons to be released from immigration detention in certain circumstances.⁵

The next major change in Australia's policies regarding asylum seekers occurred in 2001, prompted by what became known as the 'Tampa crisis'.⁶ In September 2001 the Australian Government introduced a suite of legislative measures known as the 'Pacific Solution'.⁷ Under this policy, asylum seekers who arrived by boat were transferred to offshore processing centres on Nauru and Manus Island in Papua New Guinea (PNG) where they were detained while their asylum claims were processed.

In 2008 the Pacific Solution was dismantled by the Australian Government and the remaining asylum seekers detained on Nauru were resettled in Australia.

In September 2012 the Australian Government reinstated third country processing for asylum seekers who arrive unauthorised by boat after 13 August 2012. This followed the release of the report of the Expert Panel on Asylum Seekers, which recommended the re-commencement of regional processing as part of a package of measures to deter asylum seekers from making boat journeys to Australia.⁸ After designating Nauru and PNG as 'regional processing countries',⁹ in September 2012 the Australian Government began transferring asylum seekers to Nauru, and in November 2012 to Manus Island.

On 19 July 2013 the Australian Government announced a Regional Settlement Arrangement (RSA) with the Government of PNG.¹⁰ Under the RSA asylum seekers arriving unauthorised by boat after 19 July 2013 will be transferred to PNG 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 also signed a new Memorandum of Understanding with Nauru which provides that the Nauruan Government will enable individuals whom it has determined are in need of international protection to settle in Nauru, 'subject to agreement between Participants on arrangements and numbers'.¹¹

1.2 Global and domestic context

In 2012, 17,202 people arrived by boat to Australia.¹² From January 2013 to 30 June 2013 a further 13,108 people arrived.¹³

Despite the recent increase in boat arrivals, Australia still receives very small numbers of asylum seekers, by international standards.

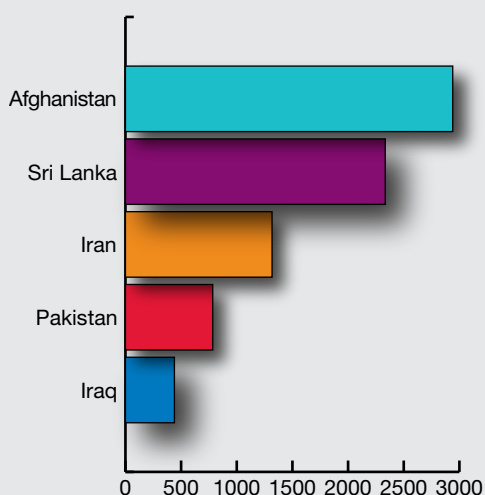
As at 31 December 2012, there were 45.2 million people in the world who had been forcibly displaced from their homes as a result of persecution, conflict, generalised violence and human rights violations – the highest number in 18 years.¹⁴ During 2012 an average of 23,000 people per day were forced to abandon their homes due to conflict and persecution.¹⁵

The United Nations High Commissioner for Refugees (UNHCR) has reported that at the end of 2012 globally there were 15.4 million refugees.¹⁶ The escalating crisis in Syria was one of the key drivers of the increase in the refugee population in 2012. Last year the conflict in Syria forced 647,000 people to seek refuge in Egypt, Iraq, Jordan, Lebanon, Turkey and other countries in the region.¹⁷

In 2012 Australia received 15,963 applications for asylum,¹⁸ which constituted 2.2% of the total number of applications for asylum submitted worldwide.¹⁹ The number of persons seeking asylum in 2012 equated to less than 7% of Australia's immigration intake,²⁰ and 4% of the overall growth in Australia's population in that year.²¹

In 2012 the majority of the people who arrived by boat in Australia and lodged asylum applications were from Afghanistan.²² The top five source countries for asylum seekers who arrived by boat and made asylum applications are displayed in the graph below.²³

Top five source countries for asylum seekers who arrived in Australia by boat and made asylum applications in 2012



2. Onshore detention and processing

2.1 Mandatory immigration detention

It is mandatory under the Migration Act for every non-citizen who is in Australia without a valid visa to be detained, regardless of his or her individual circumstances.²⁴ Once detained, unlawful non-citizens must remain in detention until they are either granted a visa or removed from Australia.²⁵

The majority of unlawful non-citizens are detained in closed immigration detention facilities. Of the 9,375 people in immigration detention on 5 September 2013, 6,579 (or 70%) of these people were held in secure immigration detention facilities.²⁶ The remaining 2,796 were in community detention.²⁷

Of the people being held in closed immigration detention facilities in Australia as at 31 August 2013:

- 6,136 people (75%) had been detained for 3 months or less
- 1,881 people (23%) had been detained between 3 and 12 months
- 189 people (2%) had been detained for longer than one year.²⁸

As at 13 September 2013 there were 25 secure immigration detention facilities operating in Australia, including four on Christmas Island.²⁹ A map produced by the Department showing the location of all these facilities is at Appendix 3 of this report.³⁰

As shown on the map, there are four different categories used to classify immigration detention facilities:

- Immigration Detention Centre (IDC): high security detention facility
- Immigration Residential Housing (IRH): secure detention in a domestic environment
- Immigration Transit Accommodation (ITA): closed detention facility which has less intrusive security measures than an IDC

- Alternative Place of Detention (APOD): place designated by the Department for detaining unlawful non-citizens who are assessed as posing minimal risk to the Australian community.

(a) Human rights issues

The Commission has raised concerns over many years that the system of mandatory detention leads to breaches of Australia's international human rights obligations. For instance, Australia has binding obligations under article 9(1) of the *International Covenant on Civil and Political Rights* (ICCPR)³¹ and article 37(b) of the *Convention on the Rights of the Child* (CRC)³² to ensure that no one is subjected to arbitrary detention.

The Commission's concerns about Australia's system of mandatory detention are shared internationally.³³ The United Nations Human Rights Committee has repeatedly found Australia to be in breach of its international obligations under article 9(1) of the ICCPR.³⁴

According to the UN Human Rights Committee, the prohibition on arbitrary detention includes detention which, although lawful under domestic law, is unjust or disproportionate.³⁵ Therefore, in order for the detention of a person not to be arbitrary, it must be a reasonable and necessary measure in all the circumstances.³⁶

Under Australia's system of mandatory detention, the detention of an unlawful non-citizen is not based on an individual assessment that the particular person needs to be detained. Persons who are detained cannot seek judicial review of whether or not their detention is necessary. Under the Migration Act there is no time limit on how long a person can be detained.

These aspects of Australia's immigration detention regime can result in people being subjected to prolonged and indefinite detention, in breach of Australia's international obligations.

The Commission has repeatedly raised concerns about the significant human impacts of mandatory immigration detention, including the deterioration of the mental health of detainees (see section 2.4 below).

The Commission has long recommended that, instead of requiring the mandatory immigration detention of broad groups of people, a person should only be detained if it is shown to be necessary in their individual case. Further, time limits for detention and access to judicial oversight of detention should be introduced to ensure that if a person is detained, they are not detained for any longer than is necessary.

A further concern is that the conditions for and treatment of people in immigration detention must comply with Australia's international human rights obligations. Key amongst these is the obligation under article 10 of the ICCPR to ensure that all persons who are detained are treated with humanity and respect for their inherent dignity. Guidelines for the implementation of this obligation and other human rights standards are contained in the Commission's publication *Human rights standards for immigration detention*.³⁷

The Commission has conducted several visits to immigration detention centres to monitor conditions of detention.³⁸ The Commission has raised concerns about the conditions in many of Australia's immigration detention facilities and has found that many are not appropriate places in which to hold people, especially for prolonged periods of time.

Australia's mandatory detention system has also attracted criticism due to its cost. In 2011–2012 immigration detention cost the Australian taxpayers \$1.235 billion.³⁹ It has also been questioned whether mandatory detention effectively deters people from seeking asylum.⁴⁰

2.2 Children in detention

There are particular challenges relating to the situation of children in immigration detention. The Commission has repeatedly raised concerns about the mandatory detention of children, the number of children in immigration detention and the prolonged periods for which some children are detained.⁴¹ As at 5 September 2013, there were 1,428 children in closed immigration detention.⁴² The average age of children in closed detention facilities was 10 years old.⁴³

The Commission welcomes the movement of a significant number of families and unaccompanied minors from closed detention facilities into community detention since October 2010. As at 5 September 2013, there were 1,395 children in community detention.⁴⁴

(a) Mandatory detention of children

The CRC requires that a child should only be detained as a measure of last resort and for the shortest appropriate period of time.⁴⁵ Australia's system of mandatory detention requires that children remain in closed immigration detention until they are granted a visa or removed from Australia, unless the Minister for Immigration and Border Protection (the Minister) decides to make a residence determination allowing them to live in community detention.⁴⁶

The Commission requested from the Department information regarding the length of time children had been held in immigration detention. This information had not been provided at the time of publishing.

In 2004 the Commission released *A last resort?*, the report of the National Inquiry into Children in Immigration Detention (National Inquiry).⁴⁷ The National Inquiry found that Australia's system of mandatory immigration detention of children was fundamentally inconsistent with Australia's obligations under the CRC; one reason being that the detention of children is used as a first (rather than last) resort.

2. Onshore detention and processing

Since the release of *A last resort?*, the Commission has welcomed positive changes including that children are no longer detained in high security immigration detention centres and the affirmation by the Federal Parliament in 2005 that minors should only be detained as a measure of last resort.⁴⁸ However, as mentioned above, as at 5 September 2013, there were still a large number of children being detained in closed immigration detention facilities.⁴⁹

(b) Conditions of detention for children

In addition to its general obligation in relation to all persons in detention under article 10 of the ICCPR, Australia has a specific obligation under article 37(c) of the CRC to ensure that children in detention are treated with humanity and respect for their inherent dignity.

The 1,428 children in closed immigration detention as at 5 September 2013 were held in the following facilities:

- Construction Camp APOD, Aqua/Lilac APOD and Phosphate Hill APOD on Christmas Island
- Wickham Point APOD, Blaydin APOD and Darwin Airport Lodge APOD in the Northern Territory
- Brisbane and Melbourne ITA
- Perth and Sydney IRH
- Leonora APOD in Western Australia
- Inverbrackie APOD in South Australia
- Pontville APOD in Tasmania.⁵⁰

The Commission has raised concerns about the conditions of detention in some facilities in which children are detained. For example, the Commission has concerns about the impact of detention in harsh physical environments in remote locations (such as at the Leonora APOD),⁵¹ and the lack of appropriate recreational spaces, activities and access to education in facilities such as those on Christmas Island.⁵²

The National Inquiry also found that children who are detained for long periods in immigration detention facilities are at high risk of serious mental harm, which may amount to cruel, inhuman or degrading treatment in breach of the CRC.⁵³ The impacts of detention on mental health are discussed in section 2.4 below.

(c) Unaccompanied minors in immigration detention

As at 19 August 2013 there were 358 unaccompanied minors in immigration detention facilities around Australia.⁵⁴ Their ages ranged from 7 to 17 years.⁵⁵ In 2013 the majority of unaccompanied minors were held at Pontville APOD.

The Commission visited Pontville in May 2013. The Commission raised concerns about the prison-like nature of the infrastructure at Pontville, which gave the facility a harsh and punitive feel. The Commission was also deeply concerned by the level of despair and anxiety expressed by those unaccompanied minors who had been held there for a prolonged period of time. 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.⁵⁶

At 5 September 2013 there were 227 unaccompanied minors held at Pontville. Since this date the Australian Government has transferred a significant number of unaccompanied minors from this facility into community detention. On 21 September 2013 it was reported that there were no unaccompanied minors detained at Pontville.⁵⁷

Australia has obligations to children who arrive in Australia unaccompanied, especially those who are seeking asylum, to ensure that they receive special protection and assistance.⁵⁸ Australia has an obligation under the CRC to 'ensure alternative care' for these children.⁵⁹

An important element of the care of unaccompanied minors is effective guardianship. In the absence of their parents, the legal guardian of an unaccompanied minor has the 'primary responsibility for the upbringing and development of the child', and is under an obligation under the CRC to act in the best interests of the child.⁶⁰ Under Australian law, the Minister is the legal guardian of 'non-citizen' unaccompanied minors.⁶¹

The Commission has a range of concerns relating to unaccompanied minors in immigration detention. Most significantly, the Commission is concerned that the Minister's role as guardian of unaccompanied minors creates a conflict of interest, as the Minister is also responsible for administering the immigration detention regime under the Migration Act and for making decisions about granting visas. Given these multiple roles, it is difficult for the Minister, or his delegate, to make the best interests of the child the primary consideration when making decisions concerning unaccompanied minors.

The Commission has repeatedly recommended that an independent guardian be appointed for all unaccompanied minors in immigration detention, to ensure that their rights are protected.⁶² In 2012 the Parliamentary Joint Select Committee on Australia's Immigration Detention Network also recommended that the legal guardianship of unaccompanied minors in immigration detention be transferred from the Minister.⁶³

2.3 Refugees with adverse security assessments

As at 6 August 2013 there were 52 refugees in immigration detention facilities in Australia who had been denied a protection visa as a result of receiving an adverse security assessment from the Australian Security Intelligence Organisation.⁶⁴ A number of these individuals have been detained for over four years.⁶⁵

There were also five young children who are living in detention with a parent who has received an adverse security assessment.⁶⁶ One child was born in immigration detention.

The Commission has for several years raised concerns about people in this situation.⁶⁷ Refugees with adverse security assessments cannot be returned to their country of origin as they have been found to have a well-founded fear of persecution. Australian Government policy requires that they remain in immigration detention facilities unless a third country agrees to resettle them. Third country resettlement appears not to be a realistic solution and therefore individuals, including children, are effectively facing a life sentence in detention, this is despite having not been charged with or convicted of any crime.

In October 2012 the Australian Government appointed an Independent Reviewer for Adverse Security Assessments. The Independent Reviewer has recommended in 10 cases that ASIO's adverse assessment be maintained.⁶⁸ ASIO has accepted a recommendation by the Independent Reviewer to overturn adverse security assessments in two cases.⁶⁹ One of these cases involved a family of five who had spent over four years in detention as a result of receiving an adverse security assessment.⁷⁰ The parents and their three young children (one of whom was born in detention) were released into the community in June 2013 as a result of the Independent Reviewer's recommendation. No reasons were provided as to why the assessment that led to their prolonged detention was overturned. ASIO is currently reviewing another four cases where adverse security assessments were made after receiving new evidence from the Independent Reviewer.⁷¹

These decisions highlight the need for greater transparency and accountability in the application of ASIO security assessments to asylum seekers and refugees. The Commission strongly supports independent review of adverse security assessments.

2. Onshore detention and processing

Refugees with adverse security assessments and their children remain indefinitely detained in closed immigration detention facilities. Some adults are detained in high security immigration detention centres such as the Villawood IDC; extremely restrictive environments in which to hold people who could be facing a very long period in detention. While others are detained in lower security immigration detention facilities with less restrictive physical environments, they nevertheless remain detained and are not free to come and go.

In August 2013 the UN Human Rights Committee found that the indefinite detention of a group of 46 refugees with adverse assessments was inflicting serious psychological harm upon them, amounting to cruel, inhuman or degrading treatment under article 7 of the ICCPR, and was arbitrary contrary to article 9(1) of the ICCPR.⁷²

The Commission holds grave concerns for the wellbeing of refugees with adverse security assessments. The Commission requested from the Department information on the incidents of self-harm and attempted suicide in relation to this group. This information had not been provided at the time of publishing.

The Commission is of the view that alternative options to indefinite detention in closed facilities should be considered. These alternative options may include, in particular, community detention, if necessary with conditions to mitigate any identified risks. Conditions could include a requirement to reside at a specified location, curfews, travel restrictions, regular reporting and, possibly, electronic monitoring.

2.4 Mental health impacts of detention

Between January 2011 and February 2013 there were 4,313 incidents of actual, threatened and attempted serious self-harm recorded in immigration detention facilities in Australia.⁷³ In the 2012–2013 financial year there were 846 incidents of self-harm across the immigration detention network.⁷⁴

Between 1 July 2010 and 20 June 2013, there were 12 deaths in immigration detention facilities. Coroners have found that six of those deaths were suicides.⁷⁵

These figures on self-harm reflect the longstanding concern that Australia's system of mandatory and indefinite detention has a detrimental impact on the mental health of those detained.⁷⁶ Rates of mental health problems in the immigration detention population in Australia have been found to be high,⁷⁷ and range from depression, anxiety and sleep disorders to post-traumatic stress disorders, suicidal ideation and self-harm.⁷⁸

The UN Human Rights Committee found that Australia breached the right not to be subjected to cruel, inhuman or degrading treatment or punishment, and the right of people detained to be treated with dignity, by continuing to detain people in the knowledge that it was contributing to mental illness.⁷⁹

In May 2013, the Commonwealth Ombudsman published a report following a two year-long investigation. The investigation was prompted by the increasing number of self-harm incidents in immigration detention.⁸⁰ The Ombudsman's findings in relation to the impact of detention on the mental health of asylum seekers align with the observations of medical practitioners and the Commission.⁸¹ In particular, it has been clearly established that detention for prolonged and uncertain periods of time both causes and exacerbates mental illness,⁸² and that there is a strong link between the length of time spent in detention and the deterioration of mental health.⁸³ It is also known that detention in remote, climatically harsh and overcrowded conditions, and a lack of meaningful activities and adequate services have a negative impact on the mental health of detainees.⁸⁴

Research has also found that bringing together groups of people in the same situation, experiencing frustration, distress and/or mental illness, can result in a 'contagion' effect;⁸⁵ 'dysfunctional thinking' can be magnified;⁸⁶ behaviours such as self-harm and rioting are reinforced as responses to problems;⁸⁷ and witnessing others self-harm can increase the risk of self-harming behaviour in imitation.⁸⁸

The impact of mental illness on detainees extends to impaired cognitive function, memory and concentration.⁸⁹ This can have a negative impact on a detainee's case for asylum by impairing their ability to present a coherent, consistent, fact-based claim.⁹⁰

The mental health impacts on asylum seekers held in detention can continue to affect a person after they have been released into the community.⁹¹ Studies have found a strong association between past detention, particularly detention for over six months, and ongoing poor mental health in people now living in the community.⁹² There are particular concerns about the long-lasting impact of detention on the mental health of children.⁹³ Further, the medical cost of treating mental illnesses exacerbated or initiated by prolonged detention is conservatively estimated at an average of \$25,000 per person.⁹⁴

Since 2011 steps have been taken by the Department to strengthen the mental health services and response across the immigration detention network.⁹⁵ The Ombudsman noted in particular the efforts to strengthen the Psychological Support Program and the new Programs and Activities Framework,⁹⁶ as well as other reforms to the Department's systems.⁹⁷ However, as many medical professionals have indicated, often it is the detention environment itself which causes mental health concerns.⁹⁸ Accordingly, it is the removal of people from immigration detention facilities which, in many cases, will prevent the deterioration of mental health.

2.5 Alternatives to detention

Since October 2010 the Australian Government has moved increasing numbers of asylum seekers and refugees from closed immigration detention into the community, pending resolution of their claims for protection. This has been achieved through the use of community detention and bridging visas.

This approach builds on measures introduced by previous Australian governments, in particular the introduction of the community detention mechanism in 2005. At this time the Migration Act was amended to give the Minister the power to make a 'residence determination' in respect of a person in immigration detention, which allows that person to live in a specified residence in the community.⁹⁹ A person in this position is said to be in 'community detention'.

As at 5 September 2013 there were 2,796 asylum seekers in community detention.¹⁰⁰

The Minister also has the discretion to grant a bridging visa to a person in immigration detention when it is in the public interest to do so.¹⁰¹ On 23 September 2013 the Minister stated that there were over 20,000 asylum seekers living in the community on bridging visas.¹⁰²

The Commission welcomes the increased use of community arrangements which brings the Australian Government's treatment of asylum seekers and refugees closer into alignment with its international human rights obligations.

In addition to greater compliance with Australia's international obligations, there are practical benefits of using alternatives to closed immigration detention. For example, as community arrangements entail fewer risks to the health, safety and wellbeing of asylum seekers and refugees, they are likely to lead to lower rates of self-harm as well as fewer claims for compensation.¹⁰³ Effective community arrangements allow for a smoother transition to life as an Australian resident for people who are granted protection. Moreover people who are found not to be owed protection have been

2. Onshore detention and processing

shown to be more willing and able to return to their countries of origin when they have been living in the community than when held in closed detention.¹⁰⁴ There are also very low rates of absconding from community arrangements.¹⁰⁵ Further, community placement is generally much cheaper than closed detention.¹⁰⁶

Finally, community placements allow for the full enforcement of migration law and conditions can be applied within a community setting which enable mitigation of any identified risks.

(a) Comparative jurisdictions

Comparable countries across the world use a variety of community-based alternatives to mandatory and indefinite detention of asylum seekers. For example, in most Member States of the European Union there is a presumption against detention, meaning that asylum seekers are not routinely detained and are usually allowed to reside in the community while their claims are processed.¹⁰⁷ Some examples of countries that use community-based alternatives are discussed below.

In 2012 Sweden received 43,900 new asylum applications.¹⁰⁸ Sweden does not generally detain asylum seekers during the processing of their asylum claims.¹⁰⁹ When an asylum seeker arrives in Sweden and applies for asylum, they do so at a reception unit, where they can also be housed for a few days until accommodation is found for them in the community.¹¹⁰ A person seeking protection is issued with identification documents which are used by immigration officials to track the person's case and which allows them access to some basic services, including health care.¹¹¹ They are given a daily allowance.¹¹² They are permitted to work in a range of circumstances, and if they do, they must contribute to the costs of their food and accommodation.¹¹³

In 2012 the United Kingdom (UK) received 27,978 new asylum applications.¹¹⁴ The majority of asylum seekers are not detained during processing in the UK.¹¹⁵ They are generally housed in areas outside London by private sector housing agencies contracted by the Home Office.¹¹⁶ They may apply for a small allowance,¹¹⁷ and have access to free health care.¹¹⁸ Asylum seekers may be required to report regularly to the local UK Border Agency staff or over the telephone.¹¹⁹

In 2012 Spain had 2,580 new asylum claims.¹²⁰ In Spain persons in asylum proceedings are not detained.¹²¹ Asylum seekers are either released into the broader community or accommodated in an open reception centre from which they are free to come and go, while their asylum claims are processed. Asylum seekers can be housed in the open reception centres for up to six months, after which time they are assisted to find independent housing and employment or, if they are vulnerable, they may apply for an extension. Asylum seekers are provided with a small allowance and access to medical and psychological services, a social worker, and educational opportunities. They are also permitted to work.¹²²

2.6 Bridging visas without the right to work

On 21 November 2012 the Minister for Immigration and Citizenship announced that some asylum seekers who had arrived by boat since 13 August 2012 and remained in Australia would be given bridging visas and permitted to live in the community while their claims for protection were assessed.¹²³ The Minister stated that those asylum seekers would not be permitted to work,¹²⁴ and would receive 'only basic accommodation assistance, and limited financial support'.¹²⁵

The Commission strongly supports the use of bridging visas as an alternative to detention. However, the Commission is concerned about the consequences of prohibiting asylum seekers from working.

Australia has an obligation under article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)¹²⁶ to ensure, as a minimum, 'the right of access to employment, especially for disadvantaged and marginalised individuals and groups'.¹²⁷ Australia may be in breach of this obligation if it denies asylum seekers access to the labour market, especially if this forces them into poverty.¹²⁸

As at 2 September 2013 it was reported that there were over 21,000 asylum seekers living in the community on bridging visas that were prohibited from working.¹²⁹

Asylum seekers on bridging visas who experience financial hardship may be eligible for limited financial assistance.¹³⁰ Such assistance may be available for a period of up to six weeks to help with the transition from immigration detention to living in the community,¹³¹ or, if certain vulnerability criteria are met, for a longer period.¹³²

The Commission has raised concerns that the levels of financial assistance available are inadequate to address basic needs. There is evidence that the prohibition on asylum seekers supporting themselves through work has placed a considerable strain on the resources of charitable and other community organisations.¹³³

UNHCR has raised concerns about the 'negative impact of an extended period of insecurity' and has suggested (in relation to Europe) that asylum seekers should not be denied access to the labour market for any longer than six months.¹³⁴

There have already been considerable delays in the processing of asylum seekers who arrived after 13 August 2012. From August 2012 until the end of June 2013, asylum claims from this group were not processed.¹³⁵ This led to a reported backlog of over 25,000 claims to be processed.¹³⁶ A consequence of this is that there are many asylum seekers who may potentially be living on bridging visas without the right to work for years while waiting for their claims to be processed.

2.7 Enhanced screening process

Between August and October 2012 there was a significant increase in boat arrivals from Sri Lanka. As a result, in October 2012 the Australian Government implemented an 'enhanced screening process' that has since been applied to all unauthorised maritime arrivals from Sri Lanka.¹³⁷

Under the enhanced screening process an individual is interviewed by two officers from the Department. If the Department determines that an individual raises claims that may engage Australia's *non-refoulement* obligations, they are 'screened in' to the refugee status determination and complementary protection system that applies under the Migration Act. If the Department determines that an individual does not raise claims that engage Australia's *non-refoulement* obligations then they are 'screened out' of the protection assessment process and removed from Australia.

Between 27 October 2012 and 12 August 2013, the Department conducted 3,195 screening interviews and returned 1,070 people from Australia to Sri Lanka as a consequence.¹³⁸

The Commission is concerned that the enhanced screening process may not contain sufficient safeguards to protect people from being removed to a country where they face a real risk of significant harm (*refoulement*).¹³⁹

The principle of *non-refoulement* requires Australia to provide asylum seekers with effective access to fair and efficient asylum procedures.¹⁴⁰

The Commission has raised concerns that the enhanced screening process does not constitute a fair asylum procedure and risks excluding those with legitimate needs for protection. The Commission's key concerns include:

- people subjected to the enhanced screening process are not informed of their right to seek asylum
- screening interviews may be brief and not sufficiently detailed or probing to ensure that all relevant protection claims are raised

2. Onshore detention and processing

- the process may in fact be used not for screening but for substantive assessment of protection claims without the normal safeguards
- persons subject to the screening process are not informed of their right to seek legal advice and are only provided with reasonable facilities to contact a legal adviser if they make a specific request.

The Commission is also concerned that persons who are 'screened out' are not given a written record of the reasons for the decision, nor do they have access to independent review of such decisions.

It is particularly problematic that unaccompanied minors who arrive unauthorised by boat from Sri Lanka are subject to the enhanced screening process and may not receive adequate support through the process.¹⁴¹ As at 5 September 2013 two unaccompanied minors had been screened out and returned to Sri Lanka.¹⁴²

UNHCR has labelled the enhanced screening process 'unfair and unreliable'.¹⁴³ This accelerated form of processing without access to independent merits review is particularly troubling given that in 2011–12 the Refugee Review Tribunal (RRT) overturned 81.6% of primary decisions by the Department and 86.9% of Sri Lankan asylum seekers arriving by boat were determined to be refugees.¹⁴⁴

The Commission has recommended that the enhanced screening process be discontinued. Where protection claims are raised, all asylum seekers should be 'screened in' and should have their claims fully assessed under the refugee status determination and complementary protection system that applies under the Migration Act, with access to legal or migration advice and assistance, independent merits review and judicial review.

3. Third country processing

As at 23 September 2013 there were 710 asylum seekers detained in the ‘regional processing centre’ on Nauru and 798 asylum seekers detained in the centre on Manus Island.¹⁴⁵ It is estimated that there are currently at least 44 children in the regional processing centre on Nauru, all of whom were transferred with their families as part of the new RSA, having arrived in Australia after 19 July 2013.¹⁴⁶ The Commission is not aware that there are any children currently on Manus Island.

As at 30 June 2013, 66 asylum seekers had voluntarily returned to their countries of origin from Nauru and Manus Island.¹⁴⁷

3.1 Human rights concerns with third country processing

International law does not prohibit third country processing of the claims of asylum seekers. However, this does not mean that Australia can avoid its international human rights obligations by transferring asylum seekers to third countries. Australia may remain liable for the consequences of its action of transferring them,¹⁴⁸ and must ensure that adequate safeguards are in place in those countries.

The Commission recognises the need for appropriate regional and international cooperation on issues relating to asylum seekers, refugees and the complex challenges associated with forced and mixed migration. The Commission also appreciates that associated initiatives must recognise the legitimate sovereign interests of Australia and other countries, while safeguarding human rights and upholding Australia’s international obligations.

The Commission would expect that arrangements for third country processing would comply with the following requirements:

- **Be consistent with the principle of non-refoulement** by ensuring protection for asylum seekers from removal to a country where they face a real risk of significant harm.

- **Not breach the requirement to ensure protection from arbitrary detention.**
- **Provide adequate safeguards for children** – particularly those who are unaccompanied.
- **Ensure appropriate conditions for detention** which respect the inherent dignity of the human person and do not amount to cruel, inhuman or degrading treatment.
- **Provide for independent monitoring and oversight of facilities** – to ensure compliance with human rights standards, including the adequacy of conditions.

The Commission has repeatedly expressed concerns about how the current approach to third country processing addresses these issues.¹⁴⁹

In June 2013 the Parliamentary Joint Committee on Human Rights (PJCHR), having inquired into the regional processing legislation, concluded that the ‘measures as currently implemented carry a significant risk of being incompatible with a range of human rights.’¹⁵⁰

The Commission’s analysis of the key human rights issues arising from the existing third country processing regime is outlined below.

(a) Non-refoulement

The Commission is concerned that the third country processing arrangements may not protect asylum seekers from being removed to a country where they face a real risk of significant harm. The PJCHR has expressed similar concern ‘that the regional processing arrangements do not ensure that Australia’s *non-refoulement* obligations will be respected’.¹⁵¹

Under the third country processing arrangements, the Minister has the discretion to consider assurances from a country that it will not send asylum seekers to another country where they are at risk of *refoulement*, and to exempt a person from being transferred to a ‘regional processing country’ if issues arise in relation to Australia’s *non-refoulement* obligations.¹⁵²

3. Third country processing

The Commission is concerned that these discretionary powers do not provide adequate safeguards against breaches by the Australian Government of its *non-refoulement* obligations. Broad and non-compellable discretionary powers leave the Minister with the power to decide whether or not to expose individual asylum seekers to the risk of violations of their human rights.

In addition, the principle of *non-refoulement* under the *Convention Relating to the Status of Refugees* and its Protocol (Refugee Convention)¹⁵³ requires States to provide asylum seekers with effective access to 'fair and efficient asylum procedures'.¹⁵⁴ UNHCR has expressed concern about the refugee status determination framework and procedures currently provided in Nauru and PNG.¹⁵⁵

There have also been delays in processing that have led to prolonged periods in detention. Processing in Nauru took six months to begin and no determinations had been made as of September 2013. Preliminary interviews had just begun in PNG in June/July 2013, prior to the post-13 August 2012 transferees being taken back to Australia. Interviews for the post-19 July 2013 transferees were expected to begin in PNG on 26 August 2013.¹⁵⁶

The Commission has particular concerns about the removal of any lesbian, gay, bisexual, transgender or intersex (LGBTI) asylum seekers to a country in which homosexual activity is criminalised, as it is in PNG.¹⁵⁷ The Australian Government stated that LGBTI asylum seekers arriving after 19 July 2013 would not be exempt from transfer to PNG.¹⁵⁸

(b) Arbitrary detention

The stated intention of the Australian, Nauruan and Papua New Guinean Governments is that both regional processing centres will be open, with asylum seekers free to come and go.¹⁵⁹ However, currently both the Nauru and Manus Island processing centres are still closed detention centres, allowing asylum seekers no freedom of movement.¹⁶⁰

No timeframe has been given as to when the facilities will be transitioned to open facilities.

So far all transferees, including children, have been subjected to mandatory detention. The detention of transferees on Nauru and Manus Island involves no individualised assessment of the need for detention. Further, asylum seekers on Nauru and Manus Island have been subjected to lengthy periods in detention during which no processing was taking place. No information was provided to them as to when refugee status determination processing would commence, nor were they given any indication of how long their detention was expected to last.¹⁶¹

The Commission requested statistics from the Department on the length of time that transferees have spent detained in regional processing centres. This information had not been provided at the time of publication.

In its consideration of the regional processing package of legislation, the PJCHR raised similar concerns to the Commission regarding arbitrary detention, and concluded that the delays in processing and continued detention of asylum seekers 'appears to constitute arbitrary detention'.¹⁶² Similarly, in June 2013, UNHCR found that the practice of mandatory and indefinite detention on Manus Island was arbitrary and therefore in breach of the ICCPR.¹⁶³

(c) Conditions of detention

The Commission is concerned about the numerous reports that highlight the poor conditions in the regional processing centres, and the impacts on the physical and mental health of detainees. In particular, claims have emerged of repeated incidents of self-harm and attempted suicide on both Nauru and Manus Island, as well as claims of rape and ill-treatment on Manus Island.¹⁶⁴ Since transfers began in September 2013, the Department reports that there have been 105 incidents of self-harm on Nauru, and 24 incidents of self-harm on Manus Island.¹⁶⁵

Prolonged detention had devastating impacts on some asylum seekers who were detained on Nauru and Manus Island between 2001 and 2008.¹⁶⁶ Some were diagnosed with a range of mental illnesses including depression, anxiety, post-traumatic stress disorder, adjustment disorder and acute stress reaction.¹⁶⁷ There were also high levels of actual and threatened self-harm among these people.¹⁶⁸ Further, there was heavy use of medication including anti-depressants, anti-anxiety, psychotropic and sleeping medication among people in detention on Nauru and Manus Island.¹⁶⁹

The Manus Island regional processing centre remains temporary. Accommodation for single adult males is in tents, and families (when they were on the island), were housed in demountable dongas. In June 2013 UNHCR noted cramped, crowded, hot conditions, hygiene concerns, and insufficient division between families and single adult males. UNHCR found that the conditions on Manus Island were harsh and remained below international standards.¹⁷⁰ Permanent facilities are planned for a location in the main town on Manus Island, Lorengau, and the Australian Government recognised the urgency of completing such facilities.¹⁷¹ Building was expected to start in July 2013 and be completed by December 2013.¹⁷² However, building has not yet started and there is no clear timetable for when works will commence. Instead, the temporary facilities are being expanded to accommodate post-19 July 2013 arrivals.¹⁷³

In December 2012 UNHCR found the conditions in the Nauru regional processing centre to be 'harsh and unsatisfactory' with similar concerns to those on Manus Island: the extreme heat, overcrowding, and lack of privacy.¹⁷⁴

Since that time, construction of more permanent structures on Nauru improved the accommodation for a time. However, following the riot in July 2013, asylum seekers are again accommodated primarily in tents. After the riot, staff from the Nauru regional processing centre published a statement describing the conditions for those in detention as 'cruel and degrading'.¹⁷⁵

The Commission considers that detaining asylum seekers for a prolonged period of time in temporary facilities where some must live in tents, are subjected to harsh weather, have little privacy, and access to only basic facilities, may breach international human rights standards regarding the conditions and treatment of people in detention.

The harsh conditions of detention may also lead to breaches of other human rights, such as the right to an adequate level of health care.

The PJCHR expressed concern with the 'absence of legally-binding requirements relating to minimum conditions in regional processing facilities', and considered that the Australian Government had not demonstrated that the conditions were consistent with the provisions of the ICCPR, the ICESCR, the CRC and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT).¹⁷⁶ The PJCHR found that the cumulative effect of the third country processing arrangements was likely to have a significant impact on the physical and mental health of asylum seekers, contrary to the right to health,¹⁷⁷ and the prohibition against degrading treatment.¹⁷⁸

(d) Transfer of children and unaccompanied minors to third countries

The Commission has repeatedly stated that hot, remote locations are not appropriate places to send asylum seeker children, or other vulnerable groups.¹⁷⁹ The mandatory and prolonged detention of children on Nauru and Manus Island breaches the requirement under the CRC to detain children only as a measure of last resort and for the shortest appropriate period of time.¹⁸⁰ Additionally, the conditions of detention may lead to breaches of other children's rights, for example their right to the highest attainable standard of health and access to health care services, and their right to education.¹⁸¹

3. Third country processing

Private healthcare provider International Health and Medical Services,¹⁸² has recommended to the Department that children younger than five and pregnant women should not take anti-malaria medicine and should therefore not travel to Manus Island, which has endemic rates of malaria.¹⁸³ The PJCHR considered that the conditions on Manus Island in particular were unfit for children and vulnerable individuals, and fell short of the standards of treatment required under the CRC.¹⁸⁴ The PJCHR suggested that further transfers of such individuals should be suspended until more appropriate living conditions were established.¹⁸⁵

As discussed in section 2.2(c) above, the CRC requires the Australian Government to ensure that children who are unaccompanied by their parents, (especially those who are seeking asylum), receive special protection and assistance. Also, as the assigned legal guardian of unaccompanied minors, the Minister is under an obligation to act in their best interests. For a range of reasons, it is difficult to see how, in the vast majority of cases, transferring unaccompanied minors to a third country for processing of their claims for protection could be in their best interests.

The Commission is not aware of any unaccompanied minors currently on Nauru or Manus Island. However, the Commission continues to have significant concerns regarding the arrangements for the care and custody of unaccompanied minors that in the future may be transferred to Nauru and Manus Island. The Minister ceases to be the guardian of unaccompanied minors who are transferred from Australia to a 'regional processing country'.¹⁸⁶ It is unclear what arrangements will be put in place for the guardianship of any unaccompanied minors transferred to PNG. The Minister for Justice in Nauru is the guardian for unaccompanied minors.¹⁸⁷

(e) Independent monitoring

Regular independent monitoring of immigration detention facilities is essential in order to increase accountability and transparency, and thereby guard against human rights abuses. In the past, the Commission has emphasised the need for a more comprehensive monitoring mechanism to ensure that conditions in immigration detention facilities meet human rights standards. The need for such a mechanism is heightened on Nauru and Manus Island due to the limited transparency surrounding the detention operations there, and because the remote locations makes them less accessible to media and monitoring bodies.

Currently, there is no monitoring body with all of the key features necessary to be fully effective: independence from the Department; adequate funding to fulfil the role; the capacity to maintain an ongoing or regular presence at immigration detention facilities; a specific statutory power to enter immigration detention facilities; comprehensive public reporting for transparency; and the capacity to require a public response from government.

Currently, in relation to the regional processing facilities in Nauru, there is a joint advisory committee, jointly chaired by Nauruan and Australian officials, and including a number of members of the Minister's Council on Asylum Seekers and Detention. There is currently no monitoring or advisory body regarding the Manus Island regional processing facilities.

There have been reports that access to the facilities by the media is being restricted.¹⁸⁸ The Department maintains that 'access to [regional processing] centres is a matter for the host countries'.¹⁸⁹

The creation of a more comprehensive and independent monitoring mechanism, to ensure that conditions in immigration detention meet human rights standards, could be achieved through the ratification of the *Optional Protocol to the Convention against Torture* (OPCAT).¹⁹⁰ The Commission urges the Australian Government to ratify and implement OPCAT as a matter of priority.

4. Proposed policy changes

Prior to the federal election on 7 September 2013, the then Opposition announced a number of policies which it would implement, if elected, to deter asylum seekers arriving in Australia by boat and to reform Australia's refugee status determination process.

Some of the key proposals which are relevant to the Commission's mandate are briefly considered below.

4.1 Temporary Protection Visas

When in opposition, the newly elected Australian Government announced that it intends to introduce Temporary Protection Visas (TPVs) for all unauthorised maritime arrivals in Australia who are determined to be refugees. The Government has stated that the conditions which will attach to these TPVs (which will be granted for no longer than three years at a time, but will be renewable), will include that the holders:

- will not be entitled to permanent residence in Australia, unless the Minister exercises his power to decide otherwise
- will have no right to bring family members to join them in Australia
- will not be able to leave and re-enter Australia
- will have the right to work, subject to certain restrictions.

Temporary protection for refugees is not prohibited under the Refugee Convention. However, UNHCR recommends that it is only used in limited circumstances to meet urgent needs in the event of mass cross-border displacement.¹⁹¹

The Commission raised serious concerns about TPVs when they were last used in Australia (with very similar conditions attached) from 1999 to 2008,¹⁹² and opposes their reintroduction for a range of reasons.

First, the granting of protection to refugees on a temporary basis, and the resulting uncertainty about their future, had a detrimental impact upon the mental health of TPV holders in the past.¹⁹³ It also affected their capacity to participate fully in social, employment and educational opportunities offered in Australia.

Second, the absence of a right to family reunion, combined with the effective ban on overseas travel, meant that some people faced prolonged and indefinite periods of separation from their families.¹⁹⁴ This had further serious impacts on some people's mental health and wellbeing. Furthermore, the lack of family reunion rights may have encouraged some family members, particularly women and children, to undertake the boat journey to Australia.¹⁹⁵

Third, by limiting the grant of TPVs to refugees, on the basis that they arrived by boat without authorisation, Australia may be discriminating against this group contrary to the ICCPR and the Refugee Convention.¹⁹⁶

While the Commission does not support the introduction of TPVs, it strongly welcomes the proposal to allow refugees the right to work.

4.2 Reform of the refugee status determination process

When in opposition the newly elected Australian Government announced the following proposed reforms to the refugee status determination system:

- A 'rapid audit' of the refugee status determination process, 'with a view to removing appeals to the Refugee Review Tribunal'.¹⁹⁷ The proposal was to have a non-statutory assessment and review process that would not include independent merits review of negative decisions.

4. Proposed policy changes

- A new ‘fast track assessment and removal process’ which is to be modelled on the ‘Detained Fast Track’ (DFT) system in the UK.¹⁹⁸ In this process, cases considered ‘less likely to be successful’ and able to be ‘determined readily’ would be put into a ‘rapid assessment’ stream. The aim would be for those cases to be determined by a departmental officer within 14 days. If initially unsuccessful, an asylum seeker would have the case reviewed by another departmental officer within another 14 days. Where the review is unsuccessful, the intention would be for removal to be effected within 21 days. It is intended that the total process would be completed within 3 months.¹⁹⁹
- Withdrawing the Immigration Advice and Application Assistance Scheme (IAAAS) for asylum seekers who arrive unauthorised by boat.

Australia’s compliance with its human rights and *non-refoulement* obligations is dependent on the existence of a robust and fair refugee status determination system.

UNHCR has identified several key procedural safeguards for a fair and efficient refugee status determination procedure. These include that an appeal should be considered by an authority different from and independent of that making the initial decision, and that where an appeals process is expedited, it is particularly important that asylum seekers have prompt access to legal advice, interpreters and information about procedures.²⁰⁰

The Commission is concerned that the proposals of the new Government risk stripping away procedural safeguards and the protection of fundamental freedoms which could ultimately lead to refugees being returned to situations of danger, in breach of Australia’s human rights obligations.

In 2011–12 the RRT overturned 82.4% of primary decisions by the Department to refuse protection visas for asylum seekers who arrived by boat.²⁰¹

During this period around 90% of asylum seekers arriving by boat were granted a protection visa.²⁰² This high rate of approval has generated significant debate about the effectiveness of the refugee status determination process in Australia. However, the Expert Panel on Asylum Seekers noted in August 2012 that this high approval rate was ‘broadly consistent with UNHCR refugee status decision approval rates for similar caseloads in Malaysia and Indonesia’.²⁰³

The Commission opposes any proposal to remove an independent merits review process from refugee status determination in Australia.

The Commission acknowledges that there is a significant backlog of asylum claims to be processed and the need for efficient processing. The Commission will wait to see how the proposed ‘fast track assessment and removal process’ provides safeguards such as independent merits review.

There has been significant criticism of the UK’s DFT system.²⁰⁴ Determining straight forward cases has proven to be difficult in that screening process; groups who are not supposed to be placed in the fast-track system (such as victims of torture and children) have ended up there, and tight timeframes are often not able to be met, resulting in prolonged detention of asylum seekers.²⁰⁵ It should be noted that in the UK only about 10% of asylum seekers are subject to the DFT system which is intended to apply to straight forward cases.²⁰⁶

The Commission is also concerned that withdrawing free legal assistance under the IAAAS may increase the chance asylum seekers will be returned to situations of danger. UNHCR considers that ‘free and independent legal counselling’ from the beginning of the asylum procedure is required to ‘ensure the effectiveness of the protection system’.²⁰⁷ Without legal assistance asylum seekers, many of whom are vulnerable and do not speak English, may face difficulty in navigating the complex legal migration framework, negatively impacting on their ability to present their claims adequately.

Appendix 1

Key human rights obligations

Australia's key human rights obligations which are relevant to asylum seekers, refugees and people in immigration detention are set out below.

People **should not be returned to a country where their life or freedom would be threatened** (referred to as '*refoulement*')¹

Everyone has the right **not to be subjected to arbitrary detention**²

Children should only be detained as a measure of last resort, and for the shortest appropriate period of time³

In all actions concerning children, **the best interests of the child should be a primary consideration** (and in the case of their legal guardian, *the* primary consideration)⁴

Anyone who is detained has the right to **challenge the legality of their detention in court**⁵

All persons who are detained should be **treated with humanity and respect** for their inherent dignity⁶

No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment⁷

Everyone is entitled to **respect for their human rights without discrimination**⁸

Asylum seekers **should not be penalised** for arriving in a country without authorisation⁹

Everyone has the right to **work**, and to an **adequate standard of living**, including food, clothing and housing¹⁰

Everyone is entitled to enjoy the highest attainable standard of **mental and physical health**¹¹

Everyone has the right to have their **family protected** from arbitrary or unlawful interference¹²

Children who are unaccompanied and/or seeking asylum have a right to **special protection and assistance**¹³

1 Art 33 *Convention Relating to the Status of Refugees*, as amended by its 1967 Protocol (Refugee Convention); at least arts 6 and 7 *International Covenant on Civil and Political Rights* (ICCPR); arts 6 and 37 *Convention on the Rights of the Child* (CRC); arts 3 and 16 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT).

2 Art 9(1) ICCPR; art 37(b) CRC.

3 Art 37(b) CRC.

4 Arts 3(1) and 18(1) CRC.

5 Art 9(4) ICCPR; art 37(d) CRC.

6 Art 10 ICCPR; art 37(c) CRC.

7 Art 7 ICCPR; arts 2 and 16 CAT; art 37(a) CRC.

8 Arts 2(1) and 26 ICCPR; art 2 CRC; art 2(2) *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

9 Art 31 Refugee Convention.

10 Arts 6(1) and 11(1) ICESCR.

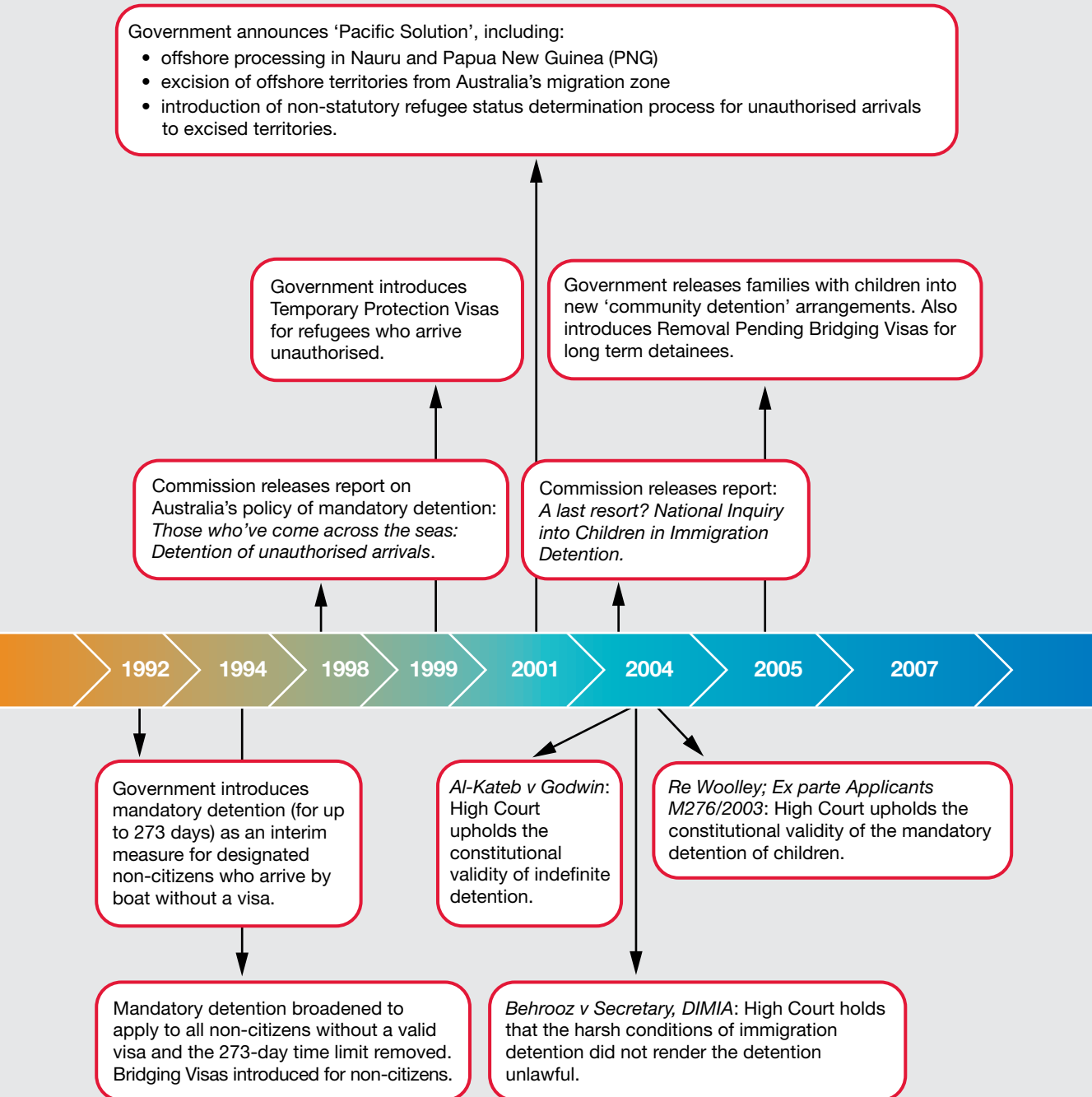
11 Art 12 ICESCR.

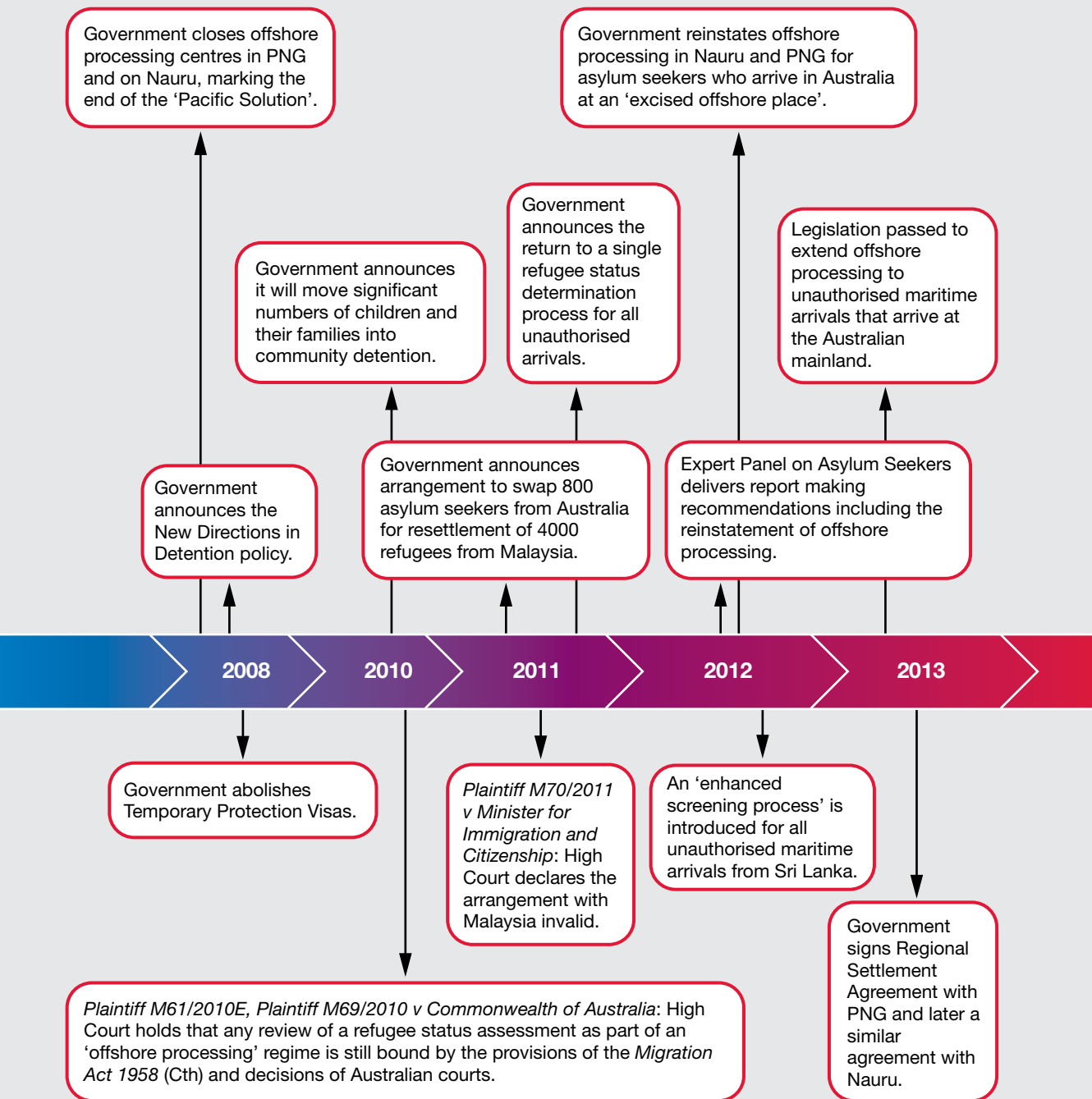
12 Arts 17 and 23 ICCPR; art 8(1) CRC.

13 Arts 20 and 22 CRC.

Appendix 2

Timeline of key developments since the introduction of mandatory immigration detention in Australia





Endnotes

- 1 Links to all of the Commission's work in this area, including national inquiries, submissions and reports on immigration detention visits and individual complaints, are available at www.humanrights.gov.au/immigration-detention-asylum-seekers-and-refugees (viewed 1 October 2013).
- 2 *Migration Act 1958* (Cth), s 183.
- 3 See *Migration Amendment Act 1992* (Cth), s 3, which inserted (then) s 54Q(2)(b) into the *Migration Act 1958* (Cth).
- 4 See *Migration Reform Act 1992* (Cth), s 13. Note that s 2 of the *Migration Laws Amendment Act 1993* (Cth) deferred the commencement of certain amendments contained in the *Migration Reform Act 1992* (Cth) until 1 September 1994.
- 5 See *Migration Reform Act 1992* (Cth), s 10.
- 6 For a description of the Tampa crisis see, for example, M Crock, B Saul and A Dastyari, *Future Seekers II: Refugees and Irregular Migration in Australia* (2006), pp 113-117.
- 7 See *Migration Amendment (Excision from Migration Zone) Act 2001* (Cth) and *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001* (Cth).
- 8 A Houston, P Aristotle and M L'Estrange, *Report of the Expert Panel on Asylum Seekers*, Australian Government (2012). At <http://expertpanelonasylumseekers.dpmc.gov.au/report> (viewed 1 October 2013).
- 9 Under the Migration Act certain documents must be tabled with the designations of 'regional processing countries'. Copies of the designation documents tabled by the Minister are available on the Commission's website at <https://www.humanrights.gov.au/transfer-asylum-seekers-third-countries>.
- 10 *Regional Resettlement Arrangement between Australia and Papua New Guinea* (19 July 2013). At www.refworld.org/docid/51f61a504.html (viewed 1 October 2013). See also *Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to, and assessment and settlement in, Papua New Guinea of certain persons, and related issues* (6 August 2013). At www.dfat.gov.au/geo/png/joint-mou-20130806.html (viewed 1 October 2013).
- 11 *Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues* (3 August 2013). At www.dfat.gov.au/issues/people-smuggling-mou.html (viewed 1 October 2013).
- 12 See J Phillips and H Spinks, *Boat arrivals in Australia since 1976*, Parliamentary Library Research Paper (updated 23 July 2013), Appendix A. At www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/boatarrivals (viewed 1 October 2013).
- 13 See Phillips and Spinks, above.
- 14 United Nations High Commissioner for Refugees (UNHCR), *UNHCR Global trends 2012, Displacement: The New 21st Century Challenge* (19 June 2013), p 3. At <http://unhcr.org/globaltrends2012/> (viewed 1 October 2013).
- 15 UNHCR, above, p 5.
- 16 UNHCR, above, p 3.
- 17 UNHCR, above, p 14.
- 18 Department of Immigration and Citizenship, *Asylum statistics – Australia, Quarterly tables – March Quarter 2013* (2013), p 1. At www.immi.gov.au/media/publications/statistics/asylum/ (viewed 1 October 2013).
- 19 UNHCR, *UNHCR Global trends 2012*, note 14, p 3.
- 20 Australian Bureau of Statistics, *3101.0 – Australian Demographic Statistics, Dec 2012*. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/7B8C452A1CDFAB9FCA257BF100136758?opendocument> (viewed 1 October 2013).
- 21 Australian Bureau of Statistics, above.
- 22 Department of Immigration and Citizenship, *Asylum statistics – Australia*, note 18, p 10.
- 23 This table is based on the statistics from Department of Immigration and Citizenship, *Asylum statistics – Australia*, above.
- 24 *Migration Act 1958* (Cth), s 189.
- 25 *Migration Act 1958* (Cth), s 196.
- 26 Department of Immigration and Citizenship, *Response to the Australian Human Rights Commission's (AHRC) 13 August 2013 request for information concerning detention and asylum seekers*, provided by email to the Commission on 16 September 2013 (DIAC response), p 5.
- 27 For a discussion on community detention, see section 2.5 of this report.
- 28 DIAC response, note 26, p 5.
- 29 See the Department's map of Australia's immigration detention facilities, attached as Appendix 3 of this report.
- 30 The map is also available on the Department's website at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/> (viewed 1 October 2013).
- 31 *International Covenant on Civil and Political Rights*, 1966, (ICCPR). At www.austlii.edu.au/au/other/dfat/treaties/1980/23.html (viewed 1 October 2013).
- 32 *Convention on the Rights of the Child*, 1989, (CRC). At www.austlii.edu.au/au/other/dfat/treaties/1991/4.html (viewed 1 October 2013).
- 33 See, for example, Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia*, UN Doc A/HRC/WG.6/10/L. 8 (2011), paras 28, 42, 49, 78, 86.123, 86.127, 86.131 and 86.132. At www.ohchr.org/EN/HRBodies/UPPR/PAGES/AUSession10.aspx (viewed 1 October 2013);

- Committee on the Rights of the Child, *Concluding observations: Australia*, UN Doc CRC/C/AUS/CO/4 (2012), paras 80-81. At www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf (viewed 1 October 2013).
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- 35 Human Rights Committee, *A v Australia*, above, para 9.2; Human Rights Committee, *Van Alphen v Netherlands*, Communication No. 305/1988, UN Doc CCPR/C/39/D/305/1988 (1990), para 5.8. At www1.umn.edu/humanrts/undocs/session39/305-1988.html (viewed 1 October 2013).
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- 39 Australian National Audit Office, *Individual Management Services Provided to People in Immigration Detention*, Report No 21 (2013), p 12. At www.anao.gov.au/Publications/Audit-Reports/2012-2013/Individual-Management-Services-Provided-to-People-in-Immigration-Detention (viewed 1 October 2013).
- 40 See A Edwards, *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, UNHCR Legal and Protection Policy Research Series (2011), p 1. At <http://www.refworld.org/docid/4dc935fd2.html> (viewed 1 October 2013).
- 41 See, for example, Human Rights and Equal Opportunity Commission (HREOC), *A last resort? National Inquiry into Children in Immigration Detention* (2004). At www.humanrights.gov.au/last-resort-report-national-inquiry-children-immigration-detention-2004 (viewed 1 October 2013). See also the Commission's reports on visits to immigration detention facilities in Darwin in 2010, in Leonora and Villawood in 2011, and on Christmas Island in 2012, which are all available at www.humanrights.gov.au/immigration-detention-reports-and-photos (viewed 1 October 2013).
- 42 DIAC response, note 26, p 1.
- 43 DIAC response, above.
- 44 DIAC response, above.
- 45 CRC, art 37(b).
- 46 See the discussion on alternatives to detention in section 2.5 of this report.
- 47 Human Rights and Equal Opportunity Commission, *A last resort?*, note 41.
- 48 See *Migration Act 1958* (Cth), s 4AA.
- 49 DIAC response, note 26, p 1.
- 50 DIAC response, above. See also the map at Appendix 3.
- 51 See Australian Human Rights Commission, *2011 Immigration detention in Leonora: Summary of observations from visit to immigration detention facility in Leonora* (2011). At www.humanrights.gov.au/publications/2011-immigration-detention-leonora (viewed 1 October 2013).
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- 54 DIAC response, note 26, p 3.
- 55 DIAC response, above.
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- 57 B Mounster, 'Pontville detention centre empty and more than 200 staff fear for jobs', *Herald Sun*, 21 September 2013. At www.heraldsun.com.au/news/national/pontville-detention-centre-empty-and-more-than-200-staff-fear-for-jobs/story-fnjf6013-1226724074247 (viewed 1 October 2013).
- 58 CRC, arts 20 and 22.
- 59 CRC, art 20(2).
- 60 Article 18(1) of the CRC states that 'the best interests of the child will be [the legal guardian's] basic concern'.
- 61 *Immigration (Guardianship of Children) Act 1946* (Cth), s 6(1). See also Department of Immigration and Border Protection, *Fact Sheet 69 – Caring for Unaccompanied Minors*, at www.immi.gov.au/media/fact-sheets/69unaccompanied.htm (viewed 1 October 2013).
- 62 See, for example, HREOC, *A last resort?*, note 41, Recommendation 3; Australian Human Rights Commission, *Submission to the Joint Select Committee on Australia's Immigration Detention Network* (August 2011), Recommendation 26. At <http://www.humanrights.gov.au/australian-human-rights-commission-submission-joint-select-committee-australia-s-immigration#s3> (viewed 1 October 2013).
- 63 Joint Select Committee on Australia's Immigration Detention Network, Parliament of Australia, *Final Report* (2012), paras 5.95-5.96. At www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/immigrationdetention/report/index (viewed 1 October 2013).

- 64 DIAC response, note 26, p 11. Previously, most classes of visas, including protection visas, contained a requirement that the applicant meet public interest criterion 4002 (the security requirement). This criterion required that an applicant not be assessed by ASIO to be a risk to security. In October 2012 the High Court of Australia in *Plaintiff M47/2012 v Director General of Security & Ors* [2012] HCA 46 held that the security requirement was invalid on the basis that it was inconsistent with the provisions of the *Migration Act 1958* (Cth). The Government has not yet announced a response to the High Court's decision.
- 65 See Human Rights Committee, *F K A G et al v Australia*, Communication No. 2094/2011, UN Doc CCPR/C/108/D/2094/2011 (2013). At www.ohchr.org/EN/HRBodies/CCPR/Pages/Jurisprudence.aspx (viewed 1 October 2013).
- 66 DIAC response, note 26, p 11.
- 67 Links to the Commission's work in this area, including a recent fact sheet, are available at www.humanrights.gov.au/refugees-adverse-security-assessments (viewed 1 October 2013).
- 68 M Gordon, 'ASIO to review security findings against detainees', *The Sydney Morning Herald*, 11 September 2013. At www.smh.com.au/federal-politics/political-news/asio-to-review-security-findings-against-detainees-20130910-2tiak.html (viewed 1 October 2013).
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- 70 D Flitton, 'Refugee family free as ASIO assessment overturned', *The Sydney Morning Herald*, 12 June 2013. At www.smh.com.au/federal-politics/political-news/refugee-family-free-as-asio-assessment-overturned-20130612-2o4vq.html (viewed 1 October 2013).
- 71 Gordon, note 68.
- 72 Human Rights Committee, *F K A G et al v Australia*, note 65, paras 9.4 and 9.8; Human Rights Committee, *M M M et al v Australia*, Communication No. 2136/2012, UN Doc CCPR/C/108/D/2136/2012 (2013), paras 10.4 and 10.7. At www.ohchr.org/EN/HRBodies/CCPR/Pages/Jurisprudence.aspx (viewed 1 October 2013).
- 73 Commonwealth Ombudsman, *Suicide and Self-harm in the Immigration Detention Network* (2013), p 150. At www.ombudsman.gov.au/reports/investigation/2013 (viewed 1 October 2013).
- 74 DIAC response, note 26, p 5.
- 75 On 22 August 2010, an Afghan Irregular Maritime Arrival died in Curtin Immigration Detention Centre. On 20 September 2010, a Fijian national detained in relation to visa compliance issues died in Villawood Immigration Detention Centre, his death was ruled a suicide. On 16 November 2010 an Iraqi Irregular Maritime Arrival died in Villawood Immigration Detention Centre, his death was ruled a suicide. On 8 December 2010 a British man died in Villawood Immigration Detention Centre, his death was ruled a suicide. On 17 March 2011, an Afghan Irregular Maritime Arrival died at Scherger Immigration Detention Centre, his death was ruled a suicide. On 28 March 2011, an Afghan Irregular Maritime Arrival died at Curtin Immigration Detention Centre, his death was ruled a suicide. On 26 October 2011, a Sri Lankan Irregular Maritime Arrival died at Sydney Immigration Residential Housing, his death was ruled a suicide. On 27 February 2012, an Iranian national detained in relation to visa compliance issues died in Sydney Immigration Residential Housing. On 19 April 2013, a Papua New Guinean national detained after his visa was cancelled died in hospital in NSW after being transferred from immigration detention. On 1 May 2013, a Sri Lankan Irregular Maritime Arrival died in Wickham Point Immigration Detention Centre. On 20 June 2013, an Afghan man detained in Villawood Immigration Detention Centre died in hospital.
- 76 Commonwealth Ombudsman, note 73, para 7.85; I Katz *et al*, *The experiences of Irregular Maritime Arrivals detained in immigration detention facilities: Final Report* (2013), section 6.2.2. At <http://www.immi.gov.au/media/publications/research/> (viewed 1 October 2013).
- 77 See, for example, HREOC, *Those who've come across the seas: The report of the Commission's Inquiry into the detention of unauthorised arrivals* (1998), pp 153, 154, 167, 218. At www.humanrights.gov.au/publications/those-who-ve-come-across-seas-detention-unauthorised-arrivals-1998 (viewed 1 October 2013); Joint Select Committee on Australia's Immigration Detention Network, note 63, Chapter 5. An Australian study of families who had been in detention for over 2 years found that 100% of adults in the study in a remote detention centre were diagnosed with a major depressive disorder, 86% with post-traumatic stress disorder and 93% experienced persistent thoughts of killing themselves: Z Steel *et al*, 'Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia' (2004) 28(6) *Australian and New Zealand Journal of Public Health* 527, p 533.
- 78 See HREOC, *Those who've come across the seas*, above, p 218; Z Steel and D M Silove, 'The mental health implications of detaining asylum seekers' (2001) 175(11) *Medical Journal of Australia* 596; Joint Select Committee on Australia's Immigration Detention Network, note 63, Chapter 5; Commonwealth Ombudsman, note 73, Part 7.
- 79 Human Rights Committee, *C v Australia*, note 34, para 10; Human Rights Committee, *Madafferi v Australia*, Communication No. 1011/2001, UN Doc CCPR/C/81/D/1011/2001 (2004), para 9.3. At www.unhcr.org/refworld/country,,HRC,,ITA,,4162a5a36,0.html (viewed 1 October 2013).
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- 82 Ipsos Social Research Institute, *Evaluation of the Psychological Support Program (PSP) Implementation* (June 2012), pp 50-51; J P Green and K Eagar, 'The health of people in Australian immigration detention centres' (2010) 192(2) *The Medical Journal of Australia* 65; Z Steel *et al*, 'Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia' (2004) 28(6) *Australian and New Zealand Journal of Public Health* 527; L K Newman *et al*, 'Suicide and self-harm in immigration detention' (2011) 195(6) *The Medical Journal of Australia* 310, p 219.
- 83 Green and Eagar, above, p 65; Ipsos Social Research Institute, above, pp 50-51.
- 84 Commonwealth Ombudsman, note 73, paras 7.37-7.44, 7.50-7.56; HREOC, *Those who've come across the seas*, note 77; Australian Human Rights Commission, *Immigration detention at Curtin observations from visit to Curtin Immigration Detention Centre and key concerns across the detention network* (2011). At www.humanrights.gov.au/publications/2011-immigration-detention-curtin (viewed 1 October 2013).
- 85 Commonwealth Ombudsman, note 73, paras 7.31-7.36.
- 86 Commonwealth Ombudsman, above, para 7.33.
- 87 Commonwealth Ombudsman, above, paras 7.33-7.36.
- 88 Commonwealth Ombudsman, above, para 7.34.
- 89 G J Coffey *et al*, 'The meaning and mental health consequences of long-term immigration detention for people seeking asylum' (2010) 70(12) *Social Science & Medicine* 2070.
- 90 Coffey *et al*, above; Joint Select Committee on Australia's Immigration Detention Network, note 63, paras 5.27-5.30.
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- 92 Z Steel *et al*, 'Impact of immigration detention and temporary protection on the mental health of refugees' (2006) 188 *British Journal of Psychiatry* 58.
- 93 M Fazel *et al*, 'Mental health of displaced and refugee children resettled in high-income countries: risk and protective factors' (2012) 379 *Lancet* 266, p 278; Steel *et al*, (2004), note 82.
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- 95 Commonwealth Ombudsman, note 73, Part 9.
- 96 Commonwealth Ombudsman, above, p 1 and paras 7.46-7.49.
- 97 For example Commonwealth Ombudsman, above, para 6.36, Parts 8 and 9.
- 98 M Bull *et al*, 'Sickness in the System of Long-term Immigration Detention' (2013) 26 *Journal of Refugee Studies* 47; Katz *et al*, note 76, section 7.13.2; Newman *et al*, note 82, p 219.
- 99 See *Migration Act 1958* (Cth), s 197AB.
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- 101 *Migration Act 1958* (Cth), s 195A.
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- 106 Joint Select Committee on Australia's Immigration Detention Network, note 63, paras 2.61-2.62, and 7.59-7.69; International Detention Coalition and La Trobe Refugee Research Centre, note 103, box 12.
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- 123 Minister for Immigration and Citizenship, 'No advantage onshore for boat arrivals', (Media Release, 21 November 2012). At www.minister.immi.gov.au/media/cb/2012/cb191883.htm (viewed 16 August 2013).
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- 156 DIAC response, note 26, p 8.
- 157 Section 210 of the PNG *Criminal Code Act 1974* makes male homosexual acts criminal and provides for punishment of up to 14 years' imprisonment. UNHCR

- has said that '[i]t is the policy of the UNHCR that persons facing attack, inhuman treatment, or serious discrimination because of their homosexuality, and whose governments are unable or unwilling to protect them, should be recognized as refugees': *Protecting Refugees: Questions and Answers* (2002), at www.unhcr.org/3b779dfe2.html (viewed 1 October 2013). The United Kingdom Supreme Court has held that gay refugees cannot be sent to a country in which they will be free from persecution only as long as they hide their sexuality: *HJ (Iran) v Secretary of State for the Home Department* [2010] UKSC 31 (07 July 2010).
- 158 S Ozturk, 'Dreyfus confirms: LGBTI refugees bound for Papua', *Star Observer*, 8 August 2013. At www.starobserver.com.au/news/2013/08/08/dreyfus-confirms-lgbti-refugees-bound-for-papua/107488 (viewed 1 October 2013).
- 159 The *Statement about arrangements that are in place, or are to be put in place, in the independent state of Papua New Guinea for the treatment of persons taken to Papua New Guinea* which was tabled in the Australian Parliament with the Instrument of Designation of Papua New Guinea as a 'Regional Processing Country' states that after security and health assessments, people transferred to PNG 'will be permitted to leave the Centre with an escort for approved activities' (para 2(b)). However, the Department of Immigration and Citizenship stated in Senate Estimates that the intention is for the Manus Island Regional Processing Centre to be an open centre: see Evidence to the Senate Legal and Constitutional Affairs Committee (Estimates), Canberra, 28 May 2013, p 159 (Dr Wendy Southern). At <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committee%2Festimate%2F0f70343a-b92d-45d8-b692-58b9623ba9cd%2F0000%22> (viewed 1 October 2013). The *Statement about arrangements that are in place, or are to be put in place, in Nauru for the treatment of persons taken to Nauru* provides that the Nauruan Government has advised the Australian Government that people transferred to Nauru 'will have freedom of movement throughout Nauru. It is anticipated, but not legally required, that they will ordinarily return to their accommodation by sunset.' (para 2(b)). The documents tabled in Parliament with the Instruments of Designation of Nauru and PNG can be found at www.humanrights.gov.au/transfer-asylum-seekers-third-countries (viewed 1 October 2013).
- 160 DIAC response, note 26, p 7.
- 161 See generally UNHCR, *UNHCR Monitoring Visit to Manus Island*, note 155; UNHCR, *UNHCR Mission to the Republic of Nauru*, note 155.
- 162 Parliamentary Joint Committee on Human Rights, note 150, para 2.196.
- 163 UNHCR, *UNHCR Monitoring Visit to Manus Island*, note 155, para 60.
- 164 M Davis, 'Rape and torture on Manus Island: whistleblower', Interview with Rod St George, *SBS Dateline*, 23 July 2013. At www.sbs.com.au/news/article/2013/07/24/rape-and-torture-manus-island- whistleblower and www.sbs.com.au/dataline/story/about/id/601700/n/manus-whistleblower (viewed 1 October 2013); 'Nauru detainees protest by stitching lips together', *ABC Online*, 20 February 2013. At www.abc.net.au/news/2013-02-20/an-nauru-detainees-stitch-lips-together/4529252 (viewed 1 October 2013); Refugee Action Coalition Sydney, 'More asylum seekers self-harm and hunger strike on Manus Island', 14 January 2013. At www.refugeeaction.org.au/?p=2447 (viewed 1 October 2013).
- 165 DIAC response, note 26, p 7.
- 166 See the discussion of the 'Pacific Solution' in the section 1.1 of this report.
- 167 See K Bem *et al*, *A price too high: the cost of Australia's approach to asylum seekers* (2007), section 3.4. At <http://oppenheimer.mcgill.ca/A-Price-Too-High-the-cost-of/> (viewed 1 October 2013).
- 168 Bem *et al*, above, section 3.1.
- 169 Bem *et al*, above.
- 170 UNHCR, *UNHCR Monitoring Visit to Manus Island*, note 155, Summary and Section IV.
- 171 Department of Immigration and Citizenship, *Submission to the Parliamentary Standing Committee on Public Works on the Manus Island Regional Centre Project* (20 March 2013), and *Supplementary to Submission to the Parliamentary Standing Committee on Public Works on the Manus Island Regional Centre Project* (19 April 2013). Both at www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=pwcr/regionalprocessing/subs.htm (viewed 1 October 2013).
- 172 Evidence to the Parliamentary Standing Committee on Public Works, Canberra, 1 May 2013, p 9 (Peter Douglas). At www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=pwcr/regionalprocessing/hearings.htm (viewed 1 October 2013).
- 173 Department of Immigration and Citizenship, 'Massive air lift delivers for Manus Island RPC', (Media Release, 29 July 2013). At www.newsroom.immi.gov.au/releases/massive-air-lift-delivers-for-manus-island-rpc (viewed 1 October 2013); and Department of Immigration and Citizenship, 'Cargo flights begin for Manus Island expansion', (Media Release, 28 July 2013). At www.newsroom.immi.gov.au/releases/cargo-flights-begin-for-manus-island-expansion (viewed 1 October 2013).
- 174 See generally UNHCR, *UNHCR Mission to the Republic of Nauru*, note 155.
- 175 O Laughland, 'Nauru riot was inevitable, say Salvation Army staff', *The Guardian*, 24 July 2013. At www.theguardian.com/world/2013/jul/24/nauru-riot-inevitable-salvation-army (viewed 1 October 2013).
- 176 Parliamentary Joint Committee on Human Rights, note 150, para 2.195; CAT, note 139.
- 177 ICESCR, art 12.
- 178 ICCPR, art 7; Parliamentary Joint Committee on Human Rights, note 150, para 2.195.

- 179 For example, see generally HREOC, *A last resort?*, note 41.
- 180 CRC, Art 37(b).
- 181 CRC, Arts 24 and 28. For further details see Australian Human Rights Commission, *Submission to the Joint Parliamentary Committee on Human Rights*, note 149, Chapter 13.
- 182 IHMS is contracted by the Australian Government to deliver health services to asylum seekers on Nauru and Manus Island: R de Boer, *Health care for asylum seekers on Nauru and Manus Island*, Parliamentary Library Background Note (28 June 2013). At www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/AsylumSeekersHealthCare (viewed 1 October 2013).
- 183 B Hall, 'Malaria risk for mothers and children', *The Sydney Morning Herald*, 30 July 2013. At www.smh.com.au/federal-politics/federal-election-2013/malaria-risk-for-mothers-and-children-20130729-2qv2j.html (viewed 1 October 2013).
- 184 Parliamentary Joint Committee on Human Rights, note 150, para 2.195.
- 185 Parliamentary Joint Committee on Human Rights, above.
- 186 *Immigration (Guardianship of Children) Act 1946* (Cth), sub-ss 6(1) and (2)(b).
- 187 *Asylum Seekers (Regional Processing Centre) Act 2012* (Nauru), s 15.
- 188 B Hall, 'Media barred from Manus Island', *The Age*, 28 August 2012. At www.theage.com.au/federal-politics/political-news/media-barrred-from-manus-island-20120827-24wov.html (viewed 1 October 2013); C Palmer, 'Media needs improved access to asylum seekers in detention: experts', *The Conversation*, 15 October 2012. At <http://theconversation.com/media-needs-improved-access-to-asylum-seekers-in-detention-experts-10136> (viewed 1 October 2013); Senator S Hanson-Young, 'Greens call for media access to offshore detention camps', (Media Release, 22 August 2013). At <http://greensmps.org.au/content/media-releases/greens-call-media-access-offshore-detention-camps> (viewed 1 October 2013).
- 189 DIAC response, note 26, p 9.
- 190 *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 2003. At www.refworld.org/docid/3de6490b9.html (viewed 1 October 2013).
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- 192 See, for example, HREOC, *A last resort?*, note 41, Chapter 16.
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- 194 See HREOC, *A last resort?*, note 41, section 16.2.2.
- 195 Evidence to the Senate Standing Committee on Legal and Constitutional Affairs (Estimates), Canberra, 24 February 2009, p 73 (Senator Chris Evans, Minister for Immigration and Citizenship). At <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=ld%3A%22committees%2Festimate%2F11640%2F0001%22> (viewed 1 October 2013).
- 196 See ICCPR, art 26 and Refugee Convention, art 31. See further the commentary of the Parliamentary Joint Committee on Human Rights in relation to the (now lapsed) Migration Amendment (Reinstatement of Temporary Protection Visas) Bill 2013 (Cth) in its *Third Report of 2013: Bills introduced 5-28 February 2013* (2013), paras 1.147 – 1.164. At www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/2013/32013/index (viewed 1 October 2013).
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- 199 *The Coalition's Policy to Clear Labor's 30,000 Border Failure Backlog*, above.
- 200 UNHCR, *Global Consultations on International Protection: Asylum Processes*, note 154, para 43.
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Further Information

Australian Human Rights Commission

Level 3, 175 Pitt Street
SYDNEY NSW 2000

GPO Box 5218
SYDNEY NSW 2001

Telephone: (02) 9284 9600
Complaints Infoline: 1300 656 419
General enquiries and publications: 1300 369 711
TTY: 1800 620 241
Fax: (02) 9284 9611
Website: www.humanrights.gov.au

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