WHO WILL BE FOR ME?

Humanitarian Research Partners
Open Source Project on Asylum

WHO WILL BE FOR ME?
Report on the Ombudsman’s 2013 reviews on asylum seekers in long-term detention under s486O of the Migration Act 1958 (Cth)

Report 1

Research and analysis: Ben Pynt (BA/LLB, GDLP – ANU)
HRP/OSPA/ImmOmb/486O/2013

MAY 2014
Humanitarian Research Partners (HRP) is a non-profit human rights research and advocacy organization based in Perth, Western Australia. We are a group of like-minded volunteers with a commitment to the human rights of asylum seekers in Australia or under its effective control.

HRP provides a complementary advocacy service for asylum seekers in immigration detention. We assist asylum seekers to make robust complaints to the Department and Minister of Immigration, the Ombudsman and Human Rights Commission. We connect asylum seekers in difficult situations with lawyers and relevant support services, wherever they may be. HRP conducts quiet as well as open advocacy, connecting asylum seekers with media if and when appropriate.

This report was written with no funding as part of the Open Source Project on Asylum. To contribute to HRP’s work, z

This report may be freely quoted, cited and copied for academic, educational, advocacy or other non-commercial purposes without prior permission from Humanitarian Research Partners, provided that the source is acknowledged.

This report is available online at www.humanitarianresearchpartners.org/publications.html
# CONTENTS

- Executive Summary ........................................................................................................................................................................... 4
- 1. Introduction ......................................................................................................................................................................................... 7
- 2. Purpose ........................................................................................................................................................................................................................................... 8
- 3. The Reviews ........................................................................................................................................................................................................................................... 9
- 4. Data Collected - Definitions ............................................................................................................................................................................. 10
- 5. Research Methodology ....................................................................................................................................................................................... 11
- 6. Results .............................................................................................................................................................................................................................................. 15
  - 6.1 Statistics Total .................................................................................................................................................................................................................................... 15
  - 6.2 Graphs Global ................................................................................................................................................................................................................................... 16
- 7. Analysis ............................................................................................................................................................................................................................................. 18
  - 7.1 Statistical Challenges ........................................................................................................................................................................................................ 18
    - 7.1.1 Dark Reviews ........................................................................................................................................................................................................ 18
    - 7.1.2 Missing Reviews .......................................................................................................................................................................................................... 19
    - 7.1.3 Missing Reviewees ..................................................................................................................................................................................................... 19
  - 7.2 Standards of Detention ........................................................................................................................................................................................................ 20
  - 7.3 Mental Health .................................................................................................................................................................................................................................. 22
    - 7.3.1 Case Studies ................................................................................................................................................................................................................ 22
    - 7.3.2 Statistical Analysis ....................................................................................................................................................................................................... 24
  - 7.4 Average Time In Detention .................................................................................................................................................................................. 27
  - 7.5 Pregnant Women ............................................................................................................................................................................................................. 27
  - 7.6 Unaccompanied Minors ...................................................................................................................................................................................... 28
  - 7.7 Review Recommendations and Ministerial Responses ......................................................................................................................................................................... 28
  - 7.8 Human Rights .................................................................................................................................................................................................................................. 30
    - 7.8.1 Indefinite Detention ........................................................................................................................................................................................................... 30
    - 7.8.2 Children In Detention ....................................................................................................................................................................................................... 30
    - 7.8.3 The Right To Health ....................................................................................................................................................................................................... 31
    - 7.8.4 No Improvement Since 2005 ....................................................................................................................................................................................................... 33
- 8. Conclusions ........................................................................................................................................................................................................................................... 34
  - 8.1 Mental Health In Detention ..................................................................................................................................................................................... 34
  - 8.2 Shortcomings: Secrecy And Non-Compellability ........................................................................................................................................................................ 36
  - 8.3 Ombudsmen’s Recommendations ................................................................................................................................................................................. 36
- 9. Bibliography ....................................................................................................................................................................................................................................... 38
- Annexes ............................................................................................................................................................................................................................................. 41

---

**Humanitarian Research Partners May 2014**

---

**WHO WILL BE FOR ME?**
Report on the Ombudsman’s 2013 reviews on asylum seekers in long-term detention under s486O of the Migration Act 1958 (Cth)
WHO WILL BE FOR ME?
Report on the Ombudsman’s 2013 reviews on asylum seekers in long-term detention under s486O of the Migration Act 1958 (Cth)
EXECUTIVE SUMMARY

1. This report is a review of the 2013 Ombudsman’s reviews and highlights the effect that prolonged mandatory detention has on the mental health of asylum seekers.

2. The Ombudsman tabled 686 reviews including 754 asylum seekers in Parliament throughout 2013 pursuant to s 486O of the Migration Act. This is a fourfold increase of the 2012 numbers, in which 297 reviews including only 184 asylum seekers were conducted.

3. 468 asylum seekers were still in detention facilities at the time of their review.

4. 286 people were released from detention facilities into the community as lawful non-citizens, however continued to be in detention at the time their review was triggered.

5. Figures from the 2013 review period were broadly comparable with the 2012 statistics, suggesting the mental health effects of detention do not necessarily become more problematic when the population of long-term detainees rises.
   (a) 72.41% of asylum seekers reviewed in 2013 suffered from mental health problems.
   (b) 68.44% of asylum seekers reviewed reported mental health problems as a direct result of, or exacerbated by their detention.
   (c) 281 reviewees (37.27%) threatened or attempted self-harm during their detention, and 71 (9.42%) had threatened or attempted suicide.

6. Not all asylum seekers who reported pre-existing mental health issues (including torture or trauma) had those issues exacerbated by their detention. Equally, not all asylum seekers who reported detention-induced or – exacerbated mental health problems had a history of generalised mental illness or torture and trauma, suggesting an imperfect correlation between these indicators.

7. The Ombudsman’s capacity to comprehensively evaluate all asylum seekers who are due to be reviewed according to s486 of the Migration Act 1958 (Cth) is in question. The rate of recommendations has dropped significantly from 2012. The Ombudsman made recommendations in 11.7% of cases, and the Minister responded to only a handful of those recommendations with substantive action.

8. Dark reviews present a significant statistical challenge to the data presented, and are a worrying sign that the Ombudsman’s resources are overstretched and it is unable to comprehensively review all asylum seekers in long-term detention.

9. The Government is aware of the severe harm caused by its mandatory detention policy, and refuses to take any action to account for particularly vulnerable asylum seekers.

10. Conditions of detention in Australia do not comply with the UNHCR’s Detention Guidelines 2012, particularly in terms of provision of physical and mental health care.

11. Long-term detention as an overall proposition is an unacceptable threat to mental health, and violates international human rights law.

12. Some detention conditions have worsened since the 2005 Palmer Report, and any progress made over the past decade has been eroded in the past two years.
WHO WILL BE FOR ME?

Report on the Ombudsman’s 2013 reviews on asylum seekers in long-term detention under s486O of the Migration Act 1958 (Cth)
1. INTRODUCTION

IF I AM NOT FOR MYSELF, WHO WILL BE FOR ME?
IF I AM FOR MYSELF ALONE, WHAT AM I?
AND IF NOT NOW, WHEN?
HILLEL THE ELDER, 110BCE – 10CE.

It’s almost unthinkable that these reviews go by largely unnoticed, but they do. Not even the Ombudsman reviews the reports he has tabled, and there is barely any news coverage of their coming to pass. The problem is, s486O reviews are the only regular accountability mechanism for immigration detention. Journalists are banned from any meaningful detention visits, and human rights observers and community supporters often have restrictive measures placed on their visits if their reports are made public (as the author of this report has experienced personally). This information is available nowhere else in such detail or quantity, and its production is facilitated by the Ombudsman’s status as a government agency and unequalled access to immigration detainees.

This report provides a comprehensive quantitative picture of how detention is affecting asylum seekers, and aims to contribute to the national dialogue regarding the proportionality of long-term immigration detention. By identifying trends in open data, the costs and complications of the research process are minimised; no ethics approval is required to access already-published data, and the reviews are freely available online.

In terms of logistics the process is simple. The reviews are available on the Ombudsman’s website and are neatly grouped by tabling session. Reviews come in one of two formats (see Section 2 below), and specific information is quickly and easily identifiable after some familiarisation with the flow of the documents.

The difficult part is reducing these reviews to numbers and checklists of mental illness, in what seems to be a veritable catalogue of state-sanctioned human rights abuse. The hardest part of all is writing ‘none’ in the column reserved for recommendations made by the Ombudsman.

It is too easy to forget (but important to remember) over the course of reporting that each review examines the life of at least one person who has been incarcerated without having committed a crime, and without a trial. These people suffer disproportionate rates of mental illness, and over a third will attempt self-harm or suicide at some point. 35 of the asylum seekers reviewed will likely remain in detention for the remainder of their lives (ASIO negative refugees).

Some of the reviews are more deeply troubling than others. A series of reviews in December 2013 involved a group of unaccompanied minors, one of whom (1001031) was first reviewed thirty months into his detention. He was diagnosed with Hepatitis B eighteen months into his detention, and was exposed to tuberculosis at some point after arriving in Australia. This child was only 13 when he arrived in Australia, and was found not to be owed protection on two occasions. Despite the disturbing health and procedural fairness issues in this case, the Ombudsman made no recommendations.

This report voices concerns for asylum seekers in long-term detention who cannot be for themselves.
2. PURPOSE

This report confirms what we already know; detention causes mental harm\(^1\). However, the wholesale nature of the Ombudsman’s reviews permits us to quantify the amount and type of harm caused by detention for long-term immigration detainees. The results are not surprising, but nonetheless provide powerful evidence of the government’s knowledge of the problems caused by its policies, and catalogue its failure to take any meaningful action to alleviate the harm that results.

The incredible part of this project is that it is based on freely available information. The Ombudsman’s office can barely manage to comply with its own statutory reporting obligations, let alone analysing the impact of its own reports longitudinally.

The public service faces funding cuts, and the community of non-government organisations that provide advocacy and support through government contracts are facing a similar challenge as their roles are simply being expunged. Organisations that raise funding primarily through donations are now competing with both increased demand and increased competition for funding in the not-for-profit competition. Research grants are, as always, limited for this kind of work.

While the 2013 reviews do not cover every person held in long-term immigration detention, they provide the most comprehensive insight available into the actual impacts of immigration detention on the mental health of individual asylum seekers.

This year’s report is part of ongoing analysis of the back catalogue of s486O reviews to show the extent of mental harm over the duration of Australia’s policy of mandatory detention in HRP’s Open Source Project on Asylum. The Ombudsman’s reviews are available online from 2005 to the present.

3. THE REVIEWS

This report analyses the Commonwealth and Immigration Ombudsman’s reviews of asylum seekers as tabled in Parliament under s 486O of the Migration Act 1958 (Cth) in 2013. Detention reviews are to be conducted if a person has been in immigration detention for two years or more. Regular reviews are mandated every six months if a person remains in immigration detention, pursuant to s486M(b) Migration Act. All reviews are available online on the Ombudsman’s website at: http://www.ombudsman.gov.au/reports/immigration-detention-review/

Although those convicted of people smuggling are almost always first reviewed after 24 months in detention and then regularly every six months, asylum seekers have their first review on average after 32 months in detention, and are reviewed irregularly.

There are two standard formats of reviews. The first is a ‘narrative review,’ which is presented in paragraph format with the all or some of following headings:

1.  Previous reviews;
2.  Principal facts:
   (a)  Personal details;
   (b)  Detention history;
   (c)  Visa applications/case progression;
   (d)  Current immigration status;
3.  Ombudsman considerations:
   (a)  Extrinsic material considered;
4.  Key issues:
   (a)  Health and welfare;
   (b)  Other detention matters; and
5.  Ombudsman assessment/recommendation.

The second format has been designated as the ‘dark review’ model². Dark reviews appear in tabulated format and contain less information than the ‘regular review’ format. Typically dark reviews contain some or all of the following sections:

1.  Personal details;
2.  Family details;
3.  Detention history;
4.  Visa applications/case progression;
5.  Health and welfare;
6.  Other matters;
7.  Case status; and
8.  Date of DIAC’s report, days in detention at time of DIAC’s report.

This report does not analyse reviews of immigration detainees who have not claimed asylum. Those convicted of people smuggling, visa overstayers, and lawful non-citizens convicted of a serious crime who are in immigration detention are equally beyond the scope of this report.

² Dark Review is not an official term; this designation has been assigned for ease of reference only.

Humanitarian Research Partners May 2014
## 4. DATA COLLECTED - DEFINITIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>#:</td>
<td>Identifying number of the review with a hyperlink to the report for cross-verification.</td>
</tr>
<tr>
<td>A/S:</td>
<td>Total asylum seekers included in those reviews.</td>
</tr>
<tr>
<td>COMP:</td>
<td>Companions (included in the same review)</td>
</tr>
<tr>
<td>Detention:</td>
<td>Type of detention</td>
</tr>
<tr>
<td>LNC:</td>
<td>Total lawful non-citizens subject to review. These people were in detention for over 2 years and have been released into the community.</td>
</tr>
<tr>
<td>UNC:</td>
<td>Unlawful non-citizens (still in detention at the time of review).</td>
</tr>
<tr>
<td>In Det:</td>
<td>Number of months in detention at time of review.</td>
</tr>
<tr>
<td>Rev:</td>
<td>Number of Ombudsman reviews conducted under s486O of the Migration Act and tabled in Parliament for the detainee in question.</td>
</tr>
<tr>
<td>Notes:</td>
<td>Case notes including detention and visa history.</td>
</tr>
<tr>
<td>HN:</td>
<td>Health notes.</td>
</tr>
<tr>
<td>MH:</td>
<td>Mental health issues</td>
</tr>
<tr>
<td>TT:</td>
<td>A history of torture and trauma was indicated.</td>
</tr>
<tr>
<td>DIMH:</td>
<td>Detention-induced or -exacerbated mental health issues reported.</td>
</tr>
<tr>
<td>Depn:</td>
<td>Depressive disorder indicated.</td>
</tr>
<tr>
<td>Anx:</td>
<td>Anxiety disorder indicated.</td>
</tr>
<tr>
<td>Sleep:</td>
<td>Sleep disorder indicated.</td>
</tr>
<tr>
<td>SH:</td>
<td>Threatened, attempted or actual self-harm indicated.</td>
</tr>
<tr>
<td>Suicide:</td>
<td>Threatened or attempted suicide indicated.</td>
</tr>
<tr>
<td>Vol Starv:</td>
<td>Voluntary starvation (hunger strike) reported.</td>
</tr>
<tr>
<td>Rx:</td>
<td>The Ombudsman made one or more recommendations.</td>
</tr>
<tr>
<td>Action:</td>
<td>Minister or DIAC took action on the Ombudsman’s recommendation(s).</td>
</tr>
</tbody>
</table>
5. RESEARCH METHODOLOGY

This report is based on the Immigration Ombudsman’s s 486O reviews, related documents including the Minister’s Tabling Statements, the Ombudsman’s covering letters, and extrinsic documents referred to in the reviews as necessary and where it has been possible to do so (particularly prior s486O reviews).

This report extracted mental health information from each review using the following methodology:

1. Is the person an asylum seeker?
   Determining factor: did the person apply for a protection visa of any kind?
   Record: 1/0 (Y/N).
2. Are there any companions in this review?
   Determining factor: the review covers more than one person.
   Record: number of companions.
3. What kind of detention is the person in?
   Determining factor: where does the person reside/what are their visa conditions?
   Record:
   - IDC - immigration detention centre;
   - APOD - alternative place of detention;
   - CD - community detention;
   - BV - bridging visa;
   - PV - protection visa;
   - RPBV- removal pending bridging visa;
   - R - returned;
   - VR - voluntarily returned;
   - Ptnr - partner visa;
   - SHV - special humanitarian visa;
   - Gaol - prison.
4. Is the person a lawful or unlawful non-citizen?
   Determining factor: migration status.
   Record: lawful non-citizen (LNC) or unlawful non-citizen (UNC)
5. How long has the person been in detention?
   Determining factor: date of arrival to date of review (months).
   Record: number of months in detention at time of tabling.
6. Has this person been reviewed by the Ombudsman previously?
   Determining factor: if there is no prior review indicated this is the first review.
   Record: 0 for ‘no prior reviews’ or identifier of previous review with hyperlink to the review. Divide cell if more
   than one previous review.

7. Case notes
   Record: complex visa history, detention history, significant events.

8. Health notes
   Record: physical and mental health issues encountered throughout detention, including causes if available and
   any recommendations by health professionals.

9. Does the person have mental health issues that are not directly attributable to their detention?
   Record: 1/0 (Y/N)

10. Does the person have a history of torture and/or trauma?
    Record: 1/0 (Y/N)

11. Does the person have mental illness as a result of, or exacerbated by their detention (DIMH)?
    Indicators include:
    · a statement that mental health has deteriorated over the person’s time in detention (exacerbation);
    · a statement that detention is a causative factor in the presence or seriousness of the person’s mental illness,
      including recommendations by health professionals that the person be moved to a less restrictive environment;
    · mental health treatment plans issued at least six months after initial detention;
    · prescriptions for anti-depressant, anti-anxiety, anti-psychotic or sedative medication issued at least six months
      after initial detention;
    · evidence of increased withdrawal from activities and social interactions; and
    · evidence of increased anxiety, frustration, hopelessness, desperation or insomnia during their time in detention.
    Record: 1/0 (Y/N).

12. Did the review record evidence of a depressive disorder?
    Factors for determining evidence of depression were drawn from the Australian Bureau of Statistics’ 2007
    National Survey of Mental Health and Wellbeing, and Beyond Blue’s fact sheet on types of depression³. For a
    reviewee to be considered as having a depressive spectrum disorder, they must have been diagnosed with a
    depressive disorder, or fulfill the criteria for one of the following disorders as listed in ABS 2008 or on
    the BeyondBlue website, including:
    · Major depressive disorder;
    · Melancholia;
    · Psychotic depression;
    · Antenatal and postnatal depression;
    · Bipolar disorder;
    · Cyclothymic disorder;

³ Australian Bureau of Statistics, National Survey of Mental Health and Wellbeing: Summary of Results, 2007, Australian Government: Canberra,
beyondblue.org.au/the-facts/anxiety/types-of-anxiety
WHO WILL BE FOR ME?
Report on the Ombudsman’s 2013 reviews on asylum seekers in long-term detention under s486O of the Migration Act 1958 (Cth)

Humanitarian Research Partners May 2014

- Dysthymic disorder; and
- Seasonal affective disorder.
  Record: 1/0 (Y/N).

13. Did the review record evidence of an anxiety disorder?
   Factors for determining evidence of depression were drawn from the ABS 2008 and Beyond Blue’s fact sheet on types of anxiety. For a reviewee to be considered as having an anxiety spectrum disorder, they must have been diagnosed with an anxiety disorder, or fulfill the criteria for one of the following disorders as listed by ABS 2008 or as on the BeyondBlue website, including:
   - Generalised anxiety disorder;
   - Social phobia;
   - Specific phobia;
   - Obsessive compulsive disorder;
   - Post traumatic stress disorder; and
   - Panic disorder.
   Record: 1/0 (Y/N).

14. Did the review record evidence of sleep problems?
   - Insomnia
   - Nightmares
   - Poor sleep
   Record: 1/0 (Y/N).

15. Did the person threaten, attempt or actually self-harm?
   Record: 1/0 (Y/N).

16. Did the person threaten or attempt suicide?
   Record: 1/0 (Y/N).

17. Did the person engage in voluntary starvation (hunger strike)?
   Record: 1/0 (Y/N).

18. Did the Ombudsman make any recommendations at the conclusion of the review?
   Record: recommendations, significant observations.

19. Was action taken on the Ombudsman’s recommendations?
   The Minister’s Tabling Statement, tabled in response to the Ombudsman’s reviews in each session, indicate the Minister’s acknowledgement of the reviews’ existence and record any action taken on behalf of the Minister or Department to address identified shortcomings.
   Indicators of action include:
   - the Minister intervened to implement the recommendation;
   - the Minister actively considered the recommendation;

---

· the Minister responded to the recommendation;
· the Minister decided to remain seized of the matter;
· DIAC took action to implement the recommendation;
· DIAC is investigating third country resettlement options;

A note that the Minister acknowledges the Ombudsman’s recommendation alone was not sufficient evidence of action.

Record: action taken.

20. Other relevant information collected, including:
· whether a reviewee was pregnant during the time of their detention, taking care to list any associated details;
· whether a reviewee was a minor at any stage of their detention;
· any recommendations by health professionals regarding detention arrangements;
· criminal proceedings including sentencing;
· proceedings in the High Court of Australia or any international body;
· judicial review of visa decisions;
· merits review of visa decisions;
· complaints to:
  - the Australian Human Rights Commission;
  - the UN Human Rights Council;
  - a UN Treaty Body;
  - a UN Special Procedures mandate holder; or
  - the Immigration Ombudsman;
· complaints about detention service providers;
· inquiries undertaken by the Ombudsman or DIAC as a result of complaints made; and
· the nature of delays in security, identity or visa assessments or procedures.

Record: relevant information.
6. RESULTS

6.1 STATISTICS: TOTAL

**TABLE A1: TOTALS FOR 2013**

<table>
<thead>
<tr>
<th></th>
<th>MAR-13</th>
<th>JUN-13</th>
<th>NOV-13</th>
<th>04-DEC-13</th>
<th>11-DEC-13</th>
</tr>
</thead>
<tbody>
<tr>
<td>AS</td>
<td>48</td>
<td>335</td>
<td>89</td>
<td>186</td>
<td>96</td>
</tr>
<tr>
<td>MH</td>
<td>39</td>
<td>254</td>
<td>74</td>
<td>116</td>
<td>63</td>
</tr>
<tr>
<td>TT</td>
<td>34</td>
<td>240</td>
<td>63</td>
<td>72</td>
<td>34</td>
</tr>
<tr>
<td>DIMH</td>
<td>39</td>
<td>243</td>
<td>71</td>
<td>112</td>
<td>51</td>
</tr>
<tr>
<td>Depression</td>
<td>30</td>
<td>194</td>
<td>51</td>
<td>93</td>
<td>43</td>
</tr>
<tr>
<td>Anxiety</td>
<td>24</td>
<td>122</td>
<td>31</td>
<td>85</td>
<td>38</td>
</tr>
<tr>
<td>Sleep</td>
<td>25</td>
<td>121</td>
<td>31</td>
<td>54</td>
<td>32</td>
</tr>
<tr>
<td>Self Harm</td>
<td>18</td>
<td>128</td>
<td>38</td>
<td>67</td>
<td>30</td>
</tr>
<tr>
<td>Suicide</td>
<td>10</td>
<td>27</td>
<td>13</td>
<td>7</td>
<td>14</td>
</tr>
<tr>
<td>Vol Starvation</td>
<td>6</td>
<td>49</td>
<td>12</td>
<td>25</td>
<td>13</td>
</tr>
</tbody>
</table>

**TABLE A2: TOTAL PROPORTIONATE**

<table>
<thead>
<tr>
<th></th>
<th>MAR-13</th>
<th>JUN-13</th>
<th>NOV-13</th>
<th>04-DEC-13</th>
<th>11-DEC-13</th>
<th>AVERAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>MH</td>
<td>81.25%</td>
<td>75.82%</td>
<td>83.15%</td>
<td>62.37%</td>
<td>65.63%</td>
<td>73.64%</td>
</tr>
<tr>
<td>TT</td>
<td>70.83%</td>
<td>71.64%</td>
<td>70.79%</td>
<td>38.71%</td>
<td>35.42%</td>
<td>57.48%</td>
</tr>
<tr>
<td>DIMH</td>
<td>81.25%</td>
<td>72.54%</td>
<td>79.78%</td>
<td>60.22%</td>
<td>53.13%</td>
<td>69.38%</td>
</tr>
<tr>
<td>Depression</td>
<td>62.50%</td>
<td>57.91%</td>
<td>57.30%</td>
<td>50.00%</td>
<td>44.79%</td>
<td>54.50%</td>
</tr>
<tr>
<td>Anxiety</td>
<td>50.00%</td>
<td>36.42%</td>
<td>34.83%</td>
<td>45.70%</td>
<td>39.58%</td>
<td>41.31%</td>
</tr>
<tr>
<td>Sleep</td>
<td>52.08%</td>
<td>36.12%</td>
<td>34.83%</td>
<td>29.03%</td>
<td>33.33%</td>
<td>37.08%</td>
</tr>
<tr>
<td>Self Harm</td>
<td>37.50%</td>
<td>38.21%</td>
<td>42.70%</td>
<td>36.02%</td>
<td>31.25%</td>
<td>37.14%</td>
</tr>
<tr>
<td>Suicide</td>
<td>20.83%</td>
<td>8.06%</td>
<td>14.61%</td>
<td>3.76%</td>
<td>14.58%</td>
<td>12.37%</td>
</tr>
<tr>
<td>Vol Starvation</td>
<td>12.50%</td>
<td>14.63%</td>
<td>13.48%</td>
<td>13.44%</td>
<td>13.54%</td>
<td>13.52%</td>
</tr>
</tbody>
</table>

**TABLE C2: PROPORTIONATE WITHOUT DARK REVIEWS**

**See Sections 3 The Reviews, and 7.1.1 Statistical Challenges: Dark Reviews**
6.2 GRAPHs: GLOBAL

GRAPH A1: REVIEW STATISTICS BY REVIEW PERIOD (TOTAL)

GRAPH A2: REVIEW STATISTICS BY REVIEW PERIOD (PROPORTIONATE)
7. ANALYSIS

7.1 STATISTICAL CHALLENGES

7.1.1 DARK REVIEWS

36% (245) s486O reviews qualified as dark reviews in 2013, and these reviews covered a total of 370 asylum seekers, or 49.07% of the annual review population. These reviews are presented in the second format described in Section 2 of this report.

These reviews contained little or no information about the reviewee’s health problems, as appears in other reviews tabled in the narrative format. Although this mostly affected those who were lawful non-citizens (LNC) at the time of their review, it is a statistical anomaly that has impacted the final results. The information available in dark reviews is inconsistent, and there is no way of verifying whether the reviews are complete as tabled. Instead of interrogating and looking behind each review, this report accounts for their lack of information with seasonal adjustment based on the average variance between narrative and dark reviews on mental health indicators. Table C3 below shows the rates of dark reviews for the 2013 tabling year.

<table>
<thead>
<tr>
<th>TABLE C3</th>
<th>ASYLUM SEEKERS WITH DARK REVIEWS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>MAR-13</td>
</tr>
<tr>
<td>TOTAL AS</td>
<td></td>
</tr>
<tr>
<td>48</td>
<td>335</td>
</tr>
<tr>
<td>DARK LNC</td>
<td>9</td>
</tr>
<tr>
<td>DARK UNC</td>
<td>6</td>
</tr>
<tr>
<td>DARK TOTAL</td>
<td>15</td>
</tr>
<tr>
<td>DARK %</td>
<td>31.25%</td>
</tr>
</tbody>
</table>

Table C4 illustrates the average variance of mental health indicators for the 2013 review period when including and excluding dark reviews. This table shows the significant impact dark reviews pose to the statistical integrity of the s486O reviews. The Mental Health set is the most dramatically varied set of data. However, it is also important to take into account that non-specific mental health problems often abate when a person is released from restrictive detention, and that dark reviews are more frequently used for the LNC set.

Out of 370 asylum seekers who had dark reviews in 2013, 215 (58%) were of LNCs and 155 (42%) were UNCs. The only period in which dark reviews were more common for LNCs than UNCs was in the June tabling session, which saw by far the largest number of asylum seekers reviewed (335). This suggests that stretched resources in the Ombudsman’s office might have something to do with the frequency of dark reviews in a given tabling session. This conclusion is supported by the data in Table C3 above.
Removing dark reviews from the data set raises trends significantly when viewed in proportionate rather than brut terms (see Figure 1.3). There is an average positive variance of +5.88% when considering reported mental health conditions when dark reviews are removed from the data set.

With the implementation of the No Advantage principle from August 2012, the effect of which still waiting to be defined, we can expect a dramatic increase in the number of people in long-term immigration detention (as defined by s486 of the Migration Act) from August 2014. If the Ombudsman’s review capacity does not increase proportionately to the increase in long-term detainees, dark reviews will likely take over as the ‘regular review’, with narrative reviews being reserved for special cases.

The importance of maintaining a narrative review style is paramount in order to preserve the integrity of the data set. Although it is possible that dark reviewees did not have mental health problems at the same rate as other detainees, it is unlikely that such dramatic variance between dark reviews and narrative reviews would be apparent.

### 7.1.2 Missing Reviews

Two reviews were not available, and are missing from the data set. This seems to be a problem with the web site rather than the reviews not having taken place. Some information was recoverable through extrinsic material and having regard to the Minister’s Tabling Statements. The Ombudsman has been notified of these missing reviews.

### 7.1.3 Missing Reviewees

Only eight asylum seekers were reviewed twice in 2013. 35 asylum seekers were part of the ASIO negative group who have been found to be owed protection but received a negative security assessment and cannot be released from detention. According to documents lodged with the UN Human Rights Council, there are 48 ASIO-negative refugees. This begs the question: why were the remaining 13 ASIO-negative detainees not reviewed in 2013? And how many others were simply not reviewed?
7.2 STANDARDS OF DETENTION

The UNHCR 2012 Detention Guidelines set out minimum standards for the conditions of detention of asylum seekers. It states that "detention should not be arbitrary, and any decision to detain must be based on an assessment of the individual’s particular circumstances." According to reports by the Ombudsman’s own motion, by the UN Working Group on Arbitrary Detention and the UN Human Rights Committee, the prohibition on arbitrary detention is being violated.

Guideline 4.3 states that alternatives to detention need to be considered. While most of the unlawful non-citizens in the 2013 review were in community detention rather than a detention centre (241 and 53 respectively), the restrictions placed on these people render their lives extremely frustrating. Asylum seekers in community detention are not allowed to work, and are forced to live on a meager sustenance allowance that barely allows for rent and food. Although these people are allowed to live in the community, they are certainly not free, and not always safe.

The government is in effect forcing many asylum seekers into poverty under the guise of community detention. This is certainly not indicative of an effective alternative detention arrangement according to the Guidelines, which require asylum seekers be "treated with dignity, humanity and respect and to be provided with adequate material support [and] accommodation... or access to means of self-sufficiency (right to work)."

This report confirms that while mental health conditions seem to improve slightly when a person is released into community detention, however the greatest amelioration of symptoms seems to occur after a person is living freely in the community, at which time they would not be covered by s486O reviews.

The Guidelines also recommend that an “ethic of care - and not enforcement – needs to govern interaction with asylum seeking children, including children in families, with the best interests of the child as a primary consideration.” This ethic of care is not present in detention.

---

9 See generally the RightToWork website online at http://righttowork.com.au/
11 Radio National, Sunday 8am as part of Sunday Extra, Presented by Jonathon Green, No advantage: asylum seekers in community limbo, 9 June 2013, available at: http://ab.co/1ilXhdQ
12 UNHCR, 2012, Guideline 4.3 at §41.
As the author has witnessed, it is common practice for children to be addressed by boat ID number (in the format ABCXXX, ABC being the first three letters of the name of the boat they arrived on, and XXX being the number they exited the boat – for example SIT012). Children continue to be detained for prolonged periods of time, and these practices add to the negative mental health outcomes seen in this report.

The physical conditions of most detention centres in Australia are relatively bleak. Razor wire and/or electrified fences often circle immigration detention centres. Some centres like Yongah Hill, Wickham Point, Northern IDC, Villawood, Marybrynong and Inverbrackie have prison-style airlock doors between compounds with narrow walkways throughout. CCTV cameras cover almost every inch of all centres.

According to asylum seekers in mainland facilities, guards often barge into rooms unannounced in the middle of the night for roll call, and even walk in on them in the bathroom. Many asylum seekers do not have enough underwear.

Conditions of detention at Christmas Island IDC have come under particular scrutiny as an especially tough centre. Asylum seekers continue to report being addressed by ID number rather than by name, rooms are crowded and the facilities are very basic.

All of these factors contribute to mental health problems. Being treated like a felon, living in a place that resembles a high security prison and not having basic freedoms are enormous stressors that contribute to poor mental health. Evidence of collective depressive syndrome found in 2002 persists today.

Pictures 1 and 2: Wickham Point Immigration detention Centre

---


7.3 MENTAL HEALTH

7.3.1 CASE STUDIES

CASE STUDY 1

This man had been in detention for 24 months, and was still in detention (IDC) at the time of review.

The Health Notes column of review 1000967 (11 December tabling session) state:

Thoughts of self-harm; depression; adjustment disorder; T&T; psychiatrist’s report stated: “Mr X’s lowered mood and anger is consistent with the impact of prolonged detention, his sense of wellbeing would improve if released from detention or given clarity re his visa situation; psychiatrist recommended “urgent decision be made in relation to transfer to CD or grant of BV”; worsening depression; detention fatigue; IHMS psychiatrist recommended urgent decision.

The Ombudsman strongly recommended that the Minister consider placing this person in a less restrictive environment pending resolution of security concerns. The Ombudsman also recommended that concerns about the asylum seeker’s character could be resolved in the community through measures such as strengthened reporting requirements.

The Minister’s response encompassed three other reviewees who had the same recommendation made by the Ombudsman:

I note the Ombudsman’s recommendation in regard to each of these people. The Government’s policy is currently being implemented in regard to the detention placement of detainees. Once implemented, and if appropriate, my Department will prepare advice to me, in relation to the detention placement of these people.17

ANALYSIS

This man is already markedly affected by his time in detention. The government is now on notice (on the public record) that continued detention will only worsen his health, and that there are alternatives available to restrictive detention.

The Minister’s statement did not address the concerns raised in the Ombudsman’s review, and did nothing to improve quality of life for this person. The Minister’s statement in effect reinforces the indefinite nature of this person’s detention.

CASE STUDY 2

Review 1000065 (11 December 2013) was of a man who had been in detention for 48 months at the time of his review. He had only been reviewed once previously. He was found to be owed protection but cannot be released from detention due to a negative security clearance. A previous proprio motu investigation by the Ombudsman found that this man, a landmine victim and amputee, had gone without shoes for a substantial period of time, as those he had been given were extremely uncomfortable.

This man also suffered from Bell’s Palsy and situational depression. He has self-harmed and attempted suicide in detention.

The Ombudsman recommended the Minister reconcile the management of any extant security threats with the Minister’s duty of care to the person in question. The Minister responded: Until such a time as this security assessment is reviewed, government policy is that negative security assessment people will not reside in the community.

**ANALYSIS**

The Minister’s response fails to consider legitimate alternatives to restrictive detention, or this man’s specific circumstances or needs. The Minister’s response to this particular person’s review was included in a response to a dozen reviews with the same content. No indication has been given, and none will be, regarding the estimated time of return for security assessments, according to ASIO and DIBP policy.

Despite the considerable need for this man to be placed in a less restrictive environment and to provide support for his mental health needs, the mandatory nature of detention for people without security clearances does not provide room for movement without ministerial intervention.18

**CASE STUDY 3**

Review 1001040 (11 December 2013) discusses two girls who arrived here aged 11 and 13, who had spent 30 months in detention before their first s486Q review. The following is an extract from the review:

Miss Y (aged 11 or 12 at this time):

9 September 2011: Commenced voluntary starvation. Provided with supportive counseling and placed on voluntary starvation observations. She commenced eating again on 12 September 2011.

25 November 2011: Referred to a psychologist after her school reported that she was feeling sad. She was advised about self-referral to counseling should she feel it was appropriate.

A complaint was submitted on behalf of these children and 42 other unaccompanied minors in detention to the Immigration Ombudsman regarding their prolonged detention. The complaint was closed ‘following a decision that no investigation was warranted in the circumstances.’

These two girls were awaiting the outcome of a Refugee Review Tribunal (RRT) decision at the time of their review.

**ANALYSIS**

It is unclear whether these children, who had already spent thirty months in detention at the time of their review, had any more help than a migration agent in presenting their case to the initial case officer at Protection Obligations Evaluation stage, although they should have had access to assistance under the IAAAS at their appeal to the RRT. These girls remained in community detention while they were awaiting the outcome of their RRT application, despite the clear detrimental effect of detention on their wellbeing.

No recommendation was made as to the detention of these young girls, although their continued detention violates both s4AA of the Migration Act and art.37(b) of the Convention on the Rights of the Child. As no recommendation was made, the Minister merely acknowledged the tabling of the report and no more is known about these two children.

18 ss195A, 197AF Migration Act 1958 (Cth).
7.3.2 STATISTICAL ANALYSIS

Asylum seekers in long-term immigration detention suffer depression at a rate of 61.41%, anxiety at 48.41% and sleep problems at 42.34%.19

It was found that there were always more asylum seekers general mental health issues than cases had a history of torture or trauma. This indicates that torture and trauma are not the sole cause of mental health issues for asylum seeker detainees.

There is no correlation between prior torture or trauma, and detention-induced or –exacerbated mental health problems (DIMH), with an average variance of +14.6 between the two factors. Nor is there evidence to suggest a history of torture or trauma is causative of DIMH.

Reviews in which prior mental health issues and detention-induced or –exacerbated mental health issues were reported only coincide in one review session (March 2013), although this seems to be pure statistical coincidence. In other periods there is a consistent relationship between the two factors, with an average variance of -6 across the year.

<table>
<thead>
<tr>
<th>Table A3 UNC Mental Health</th>
<th>Table A4 LNC Mental Health</th>
</tr>
</thead>
<tbody>
<tr>
<td>UNC</td>
<td>LNC</td>
</tr>
<tr>
<td>MH</td>
<td>468</td>
</tr>
<tr>
<td>TT</td>
<td>335</td>
</tr>
<tr>
<td>DIMH</td>
<td>320</td>
</tr>
<tr>
<td>Depression</td>
<td>254</td>
</tr>
<tr>
<td>Anxiety</td>
<td>199</td>
</tr>
<tr>
<td>Sleep</td>
<td>163</td>
</tr>
<tr>
<td>Self Harm</td>
<td>183</td>
</tr>
<tr>
<td>Suicide</td>
<td>41</td>
</tr>
<tr>
<td>Vol Starv</td>
<td>66</td>
</tr>
</tbody>
</table>

These indicators have been influenced by the absence of comprehensive data in dark reviews. Using the average variances in Table C4, the figures in Tables A3 and A4 have been seasonally adjusted to compensate for the dark review effect. Those figures, rounded to the nearest whole number, are in Tables A5 and A6 below. The raw number is then divided by the unvaried total (UNC or LNC) to obtain an Adjusted Percentage.

This adjusted percentage more accurately reflects the rates of mental health problems experienced by long-term immigration detainees than the raw figures reported in the Immigration Ombudsman’s s486O Reviews.

19 See Table A2 above.
WHO WILL BE FOR ME?
Report on the Ombudsman’s 2013 reviews on asylum seekers in long-term detention under s486O of the Migration Act 1958 (Cth)

Humanitarian Research Partners May 2014

Mental illness indicators for asylum seekers in long-term detention are unusually high when compared to Australian statistics on mental health. In its 2007 National Survey of Mental Health and Wellbeing, the Australian Bureau of Statistics found that one in five Australians suffers from mental illness.\textsuperscript{20} Four times that number suffers mental illness in detention.

In terms of raw figures, the detention environment has a direct and predictable impact on mental health. Anxiety is higher when asylum seekers in detention (42.52% UNC, 35.31% LNC). The rate of self-harm is also higher for the UNC group (39.10% UNC, 34.27% LNC), although the inverse applies to instances of threatened or attempted suicide, which increases for those outside of restrictive detention settings (8.76% UNC, 10.49% LNC). Depression, whilst slightly higher for LNCs than UNCs, is broadly comparable between the two groups (54.27% UNC, 55.59% LNC). It must also be noted that the UNC category covers almost double the amount of asylum seekers as the LNC category (468 UNC, 286 LNC).

One important note when assessing Table D1 is that a large proportion of Australians living in the community do not report mental health problems;\textsuperscript{21} while those in detention are routinely asked about their mental health. The results below speak for themselves; rates of mental illness in long-term immigration detainees are extremely high when compared to Australian averages. Prison statistics are taken from 2012.\textsuperscript{22}

\textbf{Table A5}

<table>
<thead>
<tr>
<th>Category</th>
<th>UNC</th>
<th>MH</th>
<th>TT</th>
<th>DIMH</th>
<th>Depression</th>
<th>Anxiety</th>
<th>Sleep</th>
<th>Self Harm</th>
<th>Suicide</th>
<th>Vol Starv</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>468</td>
<td>366</td>
<td>270</td>
<td>345</td>
<td>272</td>
<td>213</td>
<td>172</td>
<td>194</td>
<td>42</td>
<td>68</td>
</tr>
<tr>
<td>MH</td>
<td></td>
<td>78.28%</td>
<td>57.69%</td>
<td>73.68%</td>
<td>58.02%</td>
<td>45.54%</td>
<td>36.66%</td>
<td>41.44%</td>
<td>8.98%</td>
<td>14.52%</td>
</tr>
<tr>
<td>TT</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DIMH</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depression</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anxiety</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sleep</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Self Harm</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Suicide</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vol Starv</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\textbf{Table A6}

<table>
<thead>
<tr>
<th>Category</th>
<th>LNC</th>
<th>MH</th>
<th>TT</th>
<th>DIMH</th>
<th>Depression</th>
<th>Anxiety</th>
<th>Sleep</th>
<th>Self Harm</th>
<th>Suicide</th>
<th>Vol Starv</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>286</td>
<td>235</td>
<td>195</td>
<td>212</td>
<td>170</td>
<td>108</td>
<td>105</td>
<td>104</td>
<td>31</td>
<td>40</td>
</tr>
<tr>
<td>MH</td>
<td></td>
<td>82.21%</td>
<td>68.34%</td>
<td>74.22%</td>
<td>59.44%</td>
<td>37.82%</td>
<td>36.80%</td>
<td>36.31%</td>
<td>10.76%</td>
<td>14.04%</td>
</tr>
<tr>
<td>TT</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DIMH</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depression</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anxiety</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sleep</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Self Harm</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Suicide</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vol Starv</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


Table D1 shows the incredible disparity in mental health indicators in three populations. Australians on average experience mental health problems at a rate of 1 in 5 or 20% of the population. In prisons, which most closely resemble the detention environment in IDCs, that rate is more than doubled (46%). In immigration detention, the rate is four times that experienced by the general population. Four out of five (80%) asylum seekers in long-term detention have mental health problems; almost twice the rate experienced by prisoners.

The rate of torture or trauma in the general population is 6%. In s486O asylum seekers, the rate is ten times that (60%).
Australian depression rates are 1457% less than asylum seekers at a rate of 4% in the general population, compared with 58% of asylum seekers in long-term detention. The Australian average for anxiety is 14%, while amongst s486O asylum seekers it is 44.24%, an increase of 316%. Long-term immigration detainees suffer anxiety at 22 times the rate prescribed anxiolytic medication in Australia’s prison population (2%).

Perhaps most worryingly, asylum seekers in long-term detention are six times more likely to threaten or attempt suicide than Australians (13.92% vs 2.30%), and twice as likely than the prison population (7% at risk of self-harm or suicide).

### 7.4 AVERAGE TIME IN DETENTION

Despite the legislative requirement that asylum seekers are reviewed after 24 months in detention and then every six months thereafter, this does not take place.

The 754 asylum seekers reviewed in 2013 had spent a cumulative 24,333 months (2,027.75 years) in detention at the time of their review. Asylum seekers are first reviewed after an average 28 months in detention. The range of time in detention for s486O reviewees in 2013 was 24 months to nine years; around 32 months each.

By way of contrast, those convicted of people smuggling are reviewed immediately after being in detention for 24 months (with two exceptions proving the rule), and then regularly at six month intervals.

The Ombudsman’s failure to regularly review asylum seekers in long-term detention whilst maintaining statutory review cycles for those convicted of people smuggling is concerning. Those convicted of people smuggling are held in corrective facilities where access to services is far greater than those available in immigration detention. The predictable nature of gaol for people smugglers also has an impact on their mental health; this group has a defined time to be detained (almost exclusively five years with a three year non-parole period), and know that they are being punished for breaching a law. Asylum seekers have no such certainty or knowledge.

### 7.5 PREGNANT WOMEN

37 women who were reviewed in 2013 had been pregnant at some point during their detention, many of them multiple times. Most pregnancies resulted in the birth of healthy children, and there was no reported link between problems encountered during pregnancy and conditions of detention. Two women reported a miscarriage, one with severe problems resulting from an “incomplete miscarriage” that required surgery and hospitalization (review 1537/13, tabled 04/12/2013).

It is possible that not all unsuccessful pregnancies were recorded in the 2013 s486O reviews. HRP lodged an FOI request in 2013 for information regarding perinatal and neonatal mortality and morbidity rates in detention (FA 13/12/00153), and the Department stated that this information is not reportable and that the Department does not keep this type of data.

Due to privacy constraints in releasing personal medical records and the prohibitive cost of FOI staff undertaking a quoted “more than 500 hours” to sift through thousands of personal medical files to find relevant data and redact personal information for release, this data is to all intents and purposes unavailable.

---

23 The rate prescribed anxiolytic medication in prison is the most relevant data available on anxiety in Australia’s prison system, although it is notable that in AIHW, 2013 Western Australian prisoners were excluded from the survey population.

24 Table D2
7.6 UNACCOMPANIED MINORS

Section 4AA of the Migration Act 1958 (Cth) reads: ‘a minor shall only be detained as a measure of last resort.’

Eleven unaccompanied minors were reviewed in 2013. It is important to note that the Minister for Immigration is the legal guardian of unaccompanied children in detention and has a duty of care in relation to them.

The bulk of children were reviewed in the 11 December tabling session. These children suffered from mental health problems approximately proportionate to the rest of the long-term detention population. Three children participated in voluntary starvation, and one child was exposed to tuberculosis during his detention. That same child was diagnosed with Hepatitis B eighteen months into his detention, which is particularly concerning (even if he didn’t become infected in detention, why did it take so long to detect?). Several other children reported angst regarding their refugee status determination.

Three children aged 11 to 14 participated in voluntary starvation, and one had threatened self-harm (1001039). Three reported symptoms of depression, including an 11 year old (1001040).

Several unaccompanied minors were subject to involuntary return to their countries of origin due to failure at the Protection Obligations Evaluation and merits review stages.

The Ombudsman made no recommendations regarding unaccompanied minors, including those who were subject to involuntary return to their country of origin. No mention was made of whether these children had access to legal counsel or migration agent support in lodging their protection applications.

7.7 REVIEW RECOMMENDATIONS AND MINISTERIAL RESPONSES

The Ombudsman may make recommendations at the conclusion of s 486O reviews, however the Minister is not bound to take action on those recommendations (s 486O(4) Migration Act). In 2013, the Ombudsman made substantive recommendations in 88 out of a total 686 reviews (12.83%). 35 of these recommendations were regarding ASIO negative asylum seekers who have been found to be owed protection, but cannot be released due to a negative security assessment. The majority of the remaining 53 recommendations were mostly regarding people have not been found to be owed protection, but who cannot be involuntarily returned to their country of origin due to the result of a Federal Court ruling. Those people remain, for the most part, in restrictive detention while they await a change of circumstances in their home country.

The other recurring comment is regarding people who have been found not to be owed protection, but cannot be involuntarily returned to their home country due to a ruling by the Federal Court. The Minister’s standard response to this recommendation was ‘if the reviewee is unwilling to return voluntarily, they will remain in detention until such a time as removal can occur.’

The Minister’s Tabling Statements accompanying each review session fail to adequately address the concerns raised by the Ombudsman’s reviews. Although the Minister always notes the Ombudsman’s recommendations, the Minister took substantive action personally or through the Department on a handful of those recommendations. The Minister does not consider or respond to reviews without a substantive recommendation, although their tabling is acknowledged in the Minister’s Tabling Statement.

25 The Ombudsman recommended that ‘the Minister give priority to resolving the legal and policy position for this cohort of people in immigration detention, given the serious risk that long-term detention and uncertainty about return to country of origin poses to a detainee’s physical and mental health.’ NB: This recommendation is set in green with white text in the review tabulation.
The Ombudsman noted his concern at severe delays in processing of security assessments, and raised concerns of undue delay on the part of the Department of Immigration in several cases. Some people had experienced delays of up to 26 months in processing, with others spending months waiting for a decision to be communicated to them. Several cases were granted protection visas a full two years after being found to be owed protection, while others waited more than two years for security clearances.

The Ombudsman consistently noted failures by the International Health and Medical Service (IHMS) to undertake routine six-monthly detainee mental health status examinations. The reviews also noted that detention was a major causative factor of mental illness, however only recommended transfer of asylum seekers to a less restrictive environment in cases where a serious mental health issue was already present and posed an immediate threat to the person’s welfare as identified by a mental health professional.

The Ombudsman recommended that 15 asylum seekers be moved into less restrictive environments in order to alleviate mental health symptoms, out of a total of 67 cases in which health professionals recommended that the person under review be moved to a less restrictive form of detention due to mental health considerations.

The Ombudsman’s recommendations were followed with action on the part of the Minister or Department in less than 10% of cases where a recommendation was made, however there is only follow-up reporting if the person is still in detention at the conclusion of another six months. If the person is not in immigration detention at that time, no review is conducted. This leaves an accountability gap for the government, where a person is removed from detention a short time after a s486O review is conducted.

The above case studies (at 7.3.1) exemplify the response of the Minister’s Tabling Statements and responses to substantive recommendations and serious concerns raised by the Ombudsman.

I note the Ombudsman’s recommendation in regard to each of these persons. The Government’s policy is currently being implemented in regard to the detention placement of detainees. Once implemented, and if appropriate, my Department will prepare advice to me, in relation to these persons’ detention placement.26

---

7.8 HUMAN RIGHTS
7.8.1 INDEFINITE DETENTION

Indefinite detention of asylum seekers under the no advantage principle contravenes Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR). Despite declarations to the contrary, the UN Human Rights Committee administering the ICCPR found in 2013 that immigration detention does constitute arbitrary detention, amongst 142 other human rights violations.

The Government’s failure to define the no advantage principle violates Australia’s obligation to process claims fairly and expeditiously. In 2012 President of the Australian Human Rights Commission Professor Gillian Triggs surmised that the principle ‘appears to have no legal content.’ The same remains true today; no definition has been provided for the ‘principle,’ which remains a core plank of Australia’s policy of refugee deterrence. A failure to define the length of time to which asylum seekers will be subject to detention is, in and of itself, a violation of art.9(1) ICCPR.

The indefinite nature of detention causes mental harm in and of itself, and has been argued to fall under the definition of torture relating to death row inmates.

At least 38 reviewees in the 2013 period, if not all, are subject to indefinite detention under the current regime.

7.8.2 CHILDREN IN DETENTION

Children should only be held in administrative detention where strictly necessary (as assessed on an individual basis), and for the shortest time possible. Conditions of detention that result in mental or physical harm violate the majority of the Convention on the Rights of the Child (CRC), art.9(1) of the ICCPR, and the right to the highest attainable standard of health embodied in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). It is quite clear that the Minister for Immigration’s status as guardian of unaccompanied children in detention has created a conflict of interest, and that he often prefers to apply policy rigidly rather than acting in the best interests of the child.

The reviews of unaccompanied minors are the most distressing. In several of the reviews above at 7.6, the children were on a removal pathway after an unsuccessful application for asylum and Protection Obligations Evaluation. The Ombudsman does not report whether the child had a solicitor and/or migration agent to advocate on their behalf, but it is concerning that the Government has a policy of deporting unaccompanied minors to hostile situations where their lives would be at risk simply by virtue of being an unaccompanied minor.
The fact that children are threatening self-harm, participating in hunger strikes and suffering depression because they are in detention is distressing. The government should urgently reconsider the application of s4AA of the Migration Act 1958 (Cth), as well as the recommendations of the Australian Human Rights Commission. The Immigration Ombudsman should make more recommendations relating to the nature and particular circumstances of detention for children under s486O review.

7.8.3 The Right to Health

The Australian Government has obligations to protect, respect and fulfil the right to the highest attainable standard of health. The Committee on Economic, Social and Cultural Rights (CESCR) made a point of noting in 2000 that countries must refrain from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants to [health services].

These obligations are being violated by Australia actively and knowingly causing mental harm to asylum seekers through prolonged immigration detention. Conditions of detention in Australian facilities are in breach of the UN Standard Minimum Rules on the Treatment of Prisoners among multiple other human rights standards by its failures to provide adequate mental health support and. It appears the government has not instituted sufficient measures to improve access to mental health facilities to address the overwhelming needs of long-term detainees, in violation of Article 12.2(d) of the ICESCR.

It seems clear that these violations transpose to also constitute breaches of the Australian Human Rights Commission’s Human Rights Standards for Immigration Detention. Indeed, directly under the title of section 4 Duty of Care, is the requirement ‘to develop effective procedures to manage the risk of self-harm with input from appointed or nominated health experts.’ By disbanding the IHAG, the government has directly undermined the pre-requisites to achieving this standard.

Standard 3.1 requires that ‘all detainees are treated with humanity and with respect for the inherent dignity of the person.’ Evidence suggests disrespect for this standard is endemic, with almost all immigration detention centres recording asylum seekers being addressed by number rather than by name. The constant unavailability of sanitary items (particularly for women), and of basic items such as underpants, and the Ministerial direction that asylum seekers be called ‘illegals’ and ‘detainees’ violate the inherent dignity of the person.

---

36 General Comment 14 at §34.
The Ombudsman’s reports reveal a pattern of mental illness far beyond what would be expected even in prison populations.40 Humanitarian Research Partners continues assist with complaints regarding lack of physical and mental health care, particularly at Christmas Island detention centre.41 Fourteen medical staff at the Christmas Island detention centre wrote a letter of concern regarding the pressure they were facing to process asylum seekers quickly and in inhumane conditions.42 They noted that this pressure to process quickly meant that it was impossible to prevent those with mental health vulnerabilities from being sent to offshore detention centres.

The case of P43 exemplifies the effects of this intentional abrogation of duty of care. P arrived at Christmas Island and had their mental health disability medication disposed of by immigration officials, as is standard practice. P was not able to see a doctor to have their prescription renewed for over a month and their mental health started declining immediately. P became aggressive, extremely anxious and profoundly depressed. The entire family suffered from depression and anxiety as a result of the effects on P’s mental health.

P and family were not able to recall the exact names and doses of regular medication. P’s mental health declined to the point where they had to be moved to a mainland facility, as appropriate care was not possible on Christmas Island. The damage done to P’s mental health, and that of their family, was profound to the point where medical injunctions were lodged on their behalf and media were contacted to increase the chances of being relocated to a community setting. Another month later, P and family were moved into community detention and their mental health immediately improved, but the effects of the detention linger with the family today.

The government is fully aware that its policies and systems, as well as conditions of detention breach human rights standards; it has been repeatedly warned by both domestic44 and international agencies45 that Australian policy falls foul of international law and breaches Australia’s duty of care to people in detention.

The Government’s refusal to consider alternatives to detention (as required by UNHCR, 2012 and international human rights law) is directly affecting mental health outcomes for asylum seekers.46 This refusal is reasserted in each Ministerial Tabling Statement responding to the Ombudsman’s recommendation that alternatives to restrictive detention be considered: “If they are unwilling to return voluntarily, they will remain in Detention until involuntary removal can occur,” or “Until such a time as their cases are reviewed, it is the Government’s policy that persons with adverse security assessments not reside in the community.”

The most concerning aspect of these stock-standard responses, which are reiterated in each and every Ministerial Tabling Statement, is that they do not consider the individual needs of asylum seekers, nor do they even feign concern for those whose lives are so deeply affected by this arbitrary policy.

43 This person’s identity has been concealed due to the delicate nature of, and government sensitivity to their case.
44 Australian Red Cross, Inaugural Vulnerability Report: Inside the process of seeking asylum in Australia, Red Cross, June 2013, available at: http://bit.ly/1im1YUY
The Government is not respecting, protecting or fulfilling the right to health for asylum seekers in long-term detention. This report reveals it is doing quite the opposite by knowingly introducing vulnerable people into a deleterious detention environment, and for contributing to mental health problems by refusing to offer alternatives to detention for long-term detainees with little prospect of release.

The likely consequence for long-term immigration detainees, were they to ever re-enter society, is prolonged reliance on mental health support following their release. As evidenced by the higher incidence of mental health problems in the LNC category (Tables A3-A6), problems are not necessarily alleviated upon release from restrictive detention. This is confirmed by the corpus of research that exists on the generalized mental health consequences of detention.

Immigration detention centres are modeled on correctional facilities. This has influenced the nature of life inside the centres and the way in which they are run. The Palmer Inquiry noted the prison-like nature of centres ‘does not sit comfortably with the objectives of the government’s immigration detention policy.’ It certainly does not sit comfortably with the asylum seekers interned in the facilities, who are under the impression that they have broken a law by seeking asylum.

A failure to address the stressors created by the restrictive, prison-like detention environment has actively contributed to the mental health problems suffered by asylum seekers in detention.

7.8.4 NO IMPROVEMENT SINCE 2005

In July 2005 Mick Palmer AO APM published his findings in his inquiry into the prolonged immigration detention of a mentally disabled Australian citizen, Cornelia Rau. The Palmer Inquiry investigated the procedures and oversight mechanisms that led to a failure to identify Ms Rau as an Australian citizen, and to provide proper care and treatment for her given her particular vulnerabilities.

The Inquiry found that “there [were] serious problems with the handling of immigration detention cases. They stem from deep-seated cultural and attitudinal problems within DIMIA and a failure of executive leadership in the immigration compliance and detention areas.” The report concluded that change could only come from the top level, and had to include attitudinal as well as procedural changes to prevent a repetition of the failure of duty of care that led to Ms. Rau’s prolonged detention.

These problems have not abated in the last ten years. The rhetoric of exclusion and illegality has instead become more pervasive. In November 2013 the Abbott Government directed the Department of Immigration and detention service providers to address asylum seekers as ‘illegals’ or ‘detainees.’

---


49 See Figures 1.1 and 1.2 above for an example of how closely detention facilities resemble prisons.


51 Palmer Inquiry, Main Findings at §17, 20.
The Government insists on calling boat arrivals ‘illegal’ despite being unable to point to any law that they break in seeking asylum in Australia by sea. Perplexingly, it continues to argue that detention of ‘illegal’ asylum seekers does not violate the Refugee Convention Article 31(1) prohibition on penalties for asylum seekers based on their method of entry into a state party. Information was sought regarding the legal justification for this argument under freedom of information processes, however the $12,000 quote made the 80,000 pages of the Attorney General’s Department’s advice provided during 2013 effectively inaccessible.\(^\text{52}\)

Recommendations 6.10-6.13 of the Palmer Report discussed the need for the strengthening of health services and facilities in immigration detention, with a focus on mental health care. This included a recommendation that the Government introduce a detention health oversight group.

In response, the Howard Government established the Immigration Health Advisory Group (IHAG). IHAG was abolished in early 2014 by the Abbott Government, and was replaced by a single military health advisor.\(^\text{53}\) Criticism from human rights advocates was met with disdain from the Prime Minister, who labeled the IHAG ineffective and inconsistent.\(^\text{54}\)

Recommendations 4.12 and 4.13 of the Palmer Inquiry suggested that ‘intermediate facilities’ be used for people with particular vulnerabilities who cannot be released into the community, but who require special attention that cannot be provided in regular detention accommodation.

The current circumstances represent a regression, rather than positive change, in the oversight mechanisms that guard detention against abuse of power and gross violations of the government’s duty of care. The provision of mental health services for immigration detainees shows no improvement since 2005.

\(^\text{52}\) FOI 13/209 and 13/210, merged into one request. Original quote for $12,259.08 reduced by half on appeal to $6,129.59. HRP was unable to raise this amount in time to access the information.

\(^\text{53}\) Lucy Carter, ‘Independent Immigration Health Advisory Group Disbanded,’ ABC AM, 16 December 2013, available online at: http://ab.co/1ncxCYs

\(^\text{54}\) Anna Henderson, Lucy Carter, Staff, ‘Abbott says criticism over axing of Immigration Health Advisory Group is ‘complete beat-up’,’ ABC AM, 16 December 2013, available online at: http://ab.co/1ncxqZp
8. CONCLUSIONS

8.1 MENTAL HEALTH IN DETENTION

The unprecedented access to asylum seekers given to the Immigration Ombudsman and made public by their tabling in Parliament provide a unique insight into the kinds of problems facing asylum seekers.

Data previously only attainable through extrapolation of figures in smaller data sets is available en masse and has simply not been collated. The fact that this is no longer theoretical but rather a real problem of immense proportion should put the government on notice that it is causing harm to an entire class of people: long-term immigration detainees.

This accumulation of data provides quantitative analysis of a known; prolonged detention causes mental illness — we just didn’t know quite how much. It should come as no surprise that mental health issues were reported by 83% of reviews (adjusted for the impact of the dark review set). It should come as even less surprise that detention-induced or —exacerbated mental health problems were not far behind at an average of 77.13% (adjusted).

411 asylum seekers suffered from depression, 300 had anxiety problems, 263 had sleep problems and 105 participated in hunger strikes (voluntary starvation). 281 asylum seekers threatened or attempted self-harm. 71 threatened and/or attempted suicide.

Only 67 reviews contained recommendations made by mental health professionals to the effect that a person should be moved to less restrictive detention due to their deteriorating mental health. This represents around 12% of asylum seekers whose mental health deterioration was directly attributable to their detention.

These recommendations were made too late to prevent mental harm to 67 asylum seekers. By the time these recommendations were made, most of these reviewees had attempted self-harm or suicide, and their mental health was deteriorating rapidly.

These 67 recommendations by medical personnel do not account for the total number of asylum seekers who attempted suicide (71 – 9.42%), and does not even come close to the number who threatened or attempted self-harm (281 – 37.79%). This begs the question of by what standard recommendations are deemed necessary to prevent imminent harm.

The slow speed of the review process means that by the time the Ombudsman notices severe cases, the damage has often been caused and sometimes redressed through award of a BV, or mitigated with a community placement. The Ombudsman does not pass on medical recommendations if the person has been released from restrictive detention (in an IDC) by the time their s486O review takes place.

The Ombudsman has not made overall recommendations relating to mental health of long-term detainees in s486O reviews, and usually reserves recommendations for those cases where a mental health professional has already requested action be taken due to mental health considerations.

55 As well as systematic reviews of academic data: see Zachary Steel and Derrick M Silove, The mental health implications of detaining asylum seekers, Med J Aust 2001; 175 (11): 596-599.
56 8.89% of reviewees: Table D1.
8.2 SHORTCOMINGS: SECRECY AND NON-COMPPELLABILITY

This problem of governmental silence on the conditions and impact of detention is compounded on a number of levels. On the top level, there is a culture of secrecy in the Department of Immigration\(^{57}\) and a statutory prohibition on revealing personal information about asylum seekers in detention.\(^{58}\) This goes some way to creating an information blackout on persons in detention, and renders provision of advocacy, visitation and legal services outside of government-provided services very difficult.

The information blackout is deepened by a ‘war footing’ mentality adopted under the auspices of Operation Sovereign Borders (September 2013).\(^{59}\) Now no information being released on how many boats are arriving in Australian waters, how many are being sent back to Indonesia, or how many asylum seekers have been transferred to the mainland for medical attention.

The non-compellability of the Ombudsman’s recommendations is a significant shortcoming in the s486O review process. It means that the Ombudsman can only raise issues such as the likely impact of restrictive detention on a person’s mental health. The Minister seldom responds with action to ameliorate conditions, as the system of mandatory detention has become entrenched in the national psyche as a normal and proportionate response to the inflow of asylum seekers by boat.

The Ombudsman’s failure to make more substantive recommendations in the vast majority of reviews is allowing the Government to ignore the plight of most people in long-term detention.

The increasing incidence of dark reviews reflects the Ombudsman’s stretched capacity in dealing with long-term immigration detainees. As effectively the sole public record of government-acknowledged conditions of detention and the effects thereof on individual asylum seekers, the Ombudsman is failing in its duty to act as an oversight and accountability mechanism.

More funding will be required for the Ombudsman’s office in the coming year, when we can expect a ballooning of numbers of asylum seekers in long-term immigration detention due to the impending two year anniversary of the no advantage policy.

It is extremely concerning that the Ombudsman has not been allowed to exercise its mandate to investigate complaints made from Manus Island and Nauru. There are over 2000 asylum seekers in offshore detention\(^{60}\) who will remain voiceless, whose conditions of detention and deteriorating mental health will not be reported.

8.3 OMBUDSMAN’S RECOMMENDATIONS

The Ombudsman does not make recommendations based on its accumulated knowledge of the effects of detention, such as the deleterious mental consequences for particularly vulnerable people. Nor does the Ombudsman make recommendations for people who have been released from restrictive detention into the community, whether under community detention arrangements or as lawful non-citizens, or on policy more generally at the time of tabling.

\(^{58}\) s336E Migration Act 1958 (Cth).
The Minister’s failure to take substantive action to rectify problems raised by the Ombudsman’s reviews could amount to a serious breach of the government’s duty of care, particularly when failure to act on concerns raised results in further deterioration of health conditions, self-harm or suicide.

The Ombudsman should consider the human rights implications of long-term immigration detention when reviewing long-term immigration detainees, and investigate whether policies give rise to actionable breaches of its duty of care to detainees. If overall recommendations were made in more reviews, the Government would be compelled to respond. This would, at the very least, bring about some public examination of the high rates of mental illness in the immigration detention system.

The Ombudsman’s review recommendations are seldom followed with substantive action, and are not subject to holistic analysis either by the Ombudsman’s office or any other body. Low rates of recommendations and a lack of enforceability and long-term accountability render the process largely ineffectual.

Under-resourcing is clearly becoming a burden that is preventing the Ombudsman’s office from carrying out full narrative-style reviews for all asylum seekers in strict accordance with the Migration Act rules (after 24 months then once every subsequent six months).
9. BIBLIOGRAPHY

TREATIES AND LEGISLATION

1. Migration Act 1958 (Cth)
2. Parliament of Australia House of Representatives, Explanatory Memorandum to the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012, Circulated by authority of the Minister for Immigration and Citizenship, the Hon. Chris Bowen MP.

ARTICLES, SUBMISSIONS AND REPORTS

15. Louise Newman, Michael Dudley & Zachary Steel, ‘Asylum, Detention, and Mental Health in Australia,’ Refugee


MEDIA


23. Lucy Carter, ‘Independent Immigration Health Advisory Group Disbanded,’ ABC AM, 16 December 2013, available online at: http://ab.co/1nCxCYs

24. Anna Henderson, Lucy Carter, Staff, ‘Abbott says criticism over axing of Immigration Health Advisory Group is ‘complete beat-up’,’ ABC AM, 16 December 2013, available online at: http://ab.co/1nCqxZp


27. Ben Pynt, ‘You’re in detention, this isn’t a hotel’ The New Matilda, 28 August 2013, available at: http://bit.ly/1iITJ5g


31. Radio National, Sunday 8am as part of Sunday Extra, Presented by Jonathon Green, No advantage: asylum seekers in community limbo, 9 June 2013, available at: http://ab.co/1lXhDQ

**UN DOCUMENTS**


**WEB**


41. RightToWork website online at http://righttowork.com.au/
WHO WILL BE FOR ME?

Report on the Ombudsman’s 2013 reviews on asylum seekers in long-term detention under s486O of the Migration Act 1958 (Cth)

Humanitarian Research Partners May 2014

Annexes

Annex A

Immigration Ombudsman’s s486O Reviews Tabled in 2013

ANNEX A: Ombudsman’s s486O review statistics
WHO WILL BE FOR ME?
Report on the Ombudsman’s 2013 reviews on asylum seekers in long-term detention under s486O of the Migration Act 1958 (Cth)

ANNEX B

Immigration Ombudsman’s s486O Reviews Tabled in 2013

ANNEX B: Ombudsman’s s486O review statistics

Table B1
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>AS</td>
<td>22</td>
<td>18</td>
<td>22</td>
<td>18</td>
<td>22</td>
<td>22</td>
<td>22</td>
<td>22</td>
<td>22</td>
<td>22</td>
</tr>
<tr>
<td>MH</td>
<td>36</td>
<td>34</td>
<td>36</td>
<td>34</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
</tr>
<tr>
<td>TT</td>
<td>36</td>
<td>22</td>
<td>36</td>
<td>22</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
</tr>
<tr>
<td>Depression</td>
<td>36</td>
<td>22</td>
<td>36</td>
<td>22</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
</tr>
<tr>
<td>Anxiety</td>
<td>36</td>
<td>22</td>
<td>36</td>
<td>22</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
</tr>
<tr>
<td>Sleep</td>
<td>36</td>
<td>22</td>
<td>36</td>
<td>22</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
</tr>
<tr>
<td>Suicide</td>
<td>9</td>
<td>4</td>
<td>9</td>
<td>4</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>Total</td>
<td>9</td>
<td>4</td>
<td>9</td>
<td>4</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
</tr>
</tbody>
</table>

Table B2
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>MH</td>
<td>92.00%</td>
<td>90.62%</td>
<td>89.68%</td>
<td>92.65%</td>
<td>91.58%</td>
<td>91.03%</td>
<td>90.35%</td>
<td>90.62%</td>
<td>90.62%</td>
<td>90.62%</td>
<td>90.62%</td>
</tr>
<tr>
<td>TT</td>
<td>92.00%</td>
<td>90.62%</td>
<td>89.68%</td>
<td>92.65%</td>
<td>91.58%</td>
<td>91.03%</td>
<td>90.35%</td>
<td>90.62%</td>
<td>90.62%</td>
<td>90.62%</td>
<td>90.62%</td>
</tr>
<tr>
<td>Depression</td>
<td>92.00%</td>
<td>90.62%</td>
<td>89.68%</td>
<td>92.65%</td>
<td>91.58%</td>
<td>91.03%</td>
<td>90.35%</td>
<td>90.62%</td>
<td>90.62%</td>
<td>90.62%</td>
<td>90.62%</td>
</tr>
<tr>
<td>Anxiety</td>
<td>92.00%</td>
<td>90.62%</td>
<td>89.68%</td>
<td>92.65%</td>
<td>91.58%</td>
<td>91.03%</td>
<td>90.35%</td>
<td>90.62%</td>
<td>90.62%</td>
<td>90.62%</td>
<td>90.62%</td>
</tr>
<tr>
<td>Sleep</td>
<td>92.00%</td>
<td>90.62%</td>
<td>89.68%</td>
<td>92.65%</td>
<td>91.58%</td>
<td>91.03%</td>
<td>90.35%</td>
<td>90.62%</td>
<td>90.62%</td>
<td>90.62%</td>
<td>90.62%</td>
</tr>
<tr>
<td>Suicide</td>
<td>92.00%</td>
<td>90.62%</td>
<td>89.68%</td>
<td>92.65%</td>
<td>91.58%</td>
<td>91.03%</td>
<td>90.35%</td>
<td>90.62%</td>
<td>90.62%</td>
<td>90.62%</td>
<td>90.62%</td>
</tr>
<tr>
<td>Total</td>
<td>92.00%</td>
<td>90.62%</td>
<td>89.68%</td>
<td>92.65%</td>
<td>91.58%</td>
<td>91.03%</td>
<td>90.35%</td>
<td>90.62%</td>
<td>90.62%</td>
<td>90.62%</td>
<td>90.62%</td>
</tr>
</tbody>
</table>
WHO WILL BE FOR ME?

Report on the Ombudsman’s 2013 reviews on asylum seekers in long-term detention under s486O of the Migration Act 1958 (Cth)

Humanitarian Research Partners May 2014

ANNEX C

Immigration Ombudsman’s s486O Reviews Tabled in 2013

Table C1

<table>
<thead>
<tr>
<th></th>
<th>Mar-13</th>
<th>Jun-13</th>
<th>Nov-13</th>
<th>4-Dec-13</th>
<th>11-Dec-13</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>AS</td>
<td>48</td>
<td>125</td>
<td>68</td>
<td>74</td>
<td>32</td>
<td>281</td>
</tr>
<tr>
<td>MH</td>
<td>97.60%</td>
<td>77.60%</td>
<td>98.11%</td>
<td>66.67%</td>
<td>75.00%</td>
<td>83.00%</td>
</tr>
<tr>
<td>TT</td>
<td>74.00%</td>
<td>77.60%</td>
<td>98.11%</td>
<td>66.67%</td>
<td>75.00%</td>
<td>83.00%</td>
</tr>
<tr>
<td>Depression</td>
<td>97.60%</td>
<td>77.60%</td>
<td>98.11%</td>
<td>66.67%</td>
<td>75.00%</td>
<td>83.00%</td>
</tr>
<tr>
<td>Anxiety</td>
<td>97.60%</td>
<td>77.60%</td>
<td>98.11%</td>
<td>66.67%</td>
<td>75.00%</td>
<td>83.00%</td>
</tr>
<tr>
<td>Suicide</td>
<td>97.60%</td>
<td>77.60%</td>
<td>98.11%</td>
<td>66.67%</td>
<td>75.00%</td>
<td>83.00%</td>
</tr>
</tbody>
</table>

Table C2

<table>
<thead>
<tr>
<th></th>
<th>Mar-13</th>
<th>Jun-13</th>
<th>Nov-13</th>
<th>4-Dec-13</th>
<th>11-Dec-13</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>AS</td>
<td>48</td>
<td>335</td>
<td>89</td>
<td>186</td>
<td>96</td>
<td>754</td>
</tr>
<tr>
<td>MH</td>
<td>73.64%</td>
<td>83.00%</td>
<td>9.36%</td>
<td>5.88%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TT</td>
<td>57.48%</td>
<td>62.56%</td>
<td>5.08%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depression</td>
<td>69.38%</td>
<td>77.13%</td>
<td>7.75%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anxiety</td>
<td>69.38%</td>
<td>77.13%</td>
<td>7.75%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Suicide</td>
<td>69.38%</td>
<td>77.13%</td>
<td>7.75%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

ANNEX D

Immigration Ombudsman’s s486O Reviews Tabled in 2013

Table D1

<table>
<thead>
<tr>
<th></th>
<th>Aust Average*</th>
<th>Prison Population**</th>
</tr>
</thead>
<tbody>
<tr>
<td>MH</td>
<td>20%</td>
<td>46.00%</td>
</tr>
<tr>
<td>TT</td>
<td>6%</td>
<td>60.40%</td>
</tr>
<tr>
<td>Depression</td>
<td>4%</td>
<td>14.00%</td>
</tr>
<tr>
<td>Anxiety</td>
<td>14%</td>
<td>58.26%</td>
</tr>
<tr>
<td>Suicide</td>
<td>2.30%</td>
<td>7% risk of SH/suicide</td>
</tr>
</tbody>
</table>

* Australian averages taken Parliament of Australia, 2011

Table D2

<table>
<thead>
<tr>
<th></th>
<th>Dark Reviews</th>
<th>Pregnancies</th>
<th>Psych Rx</th>
<th>ASIO Rx Balance</th>
<th>Substantive Rx</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>274</td>
<td>37</td>
<td>67</td>
<td>35</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>36.34%</td>
<td>4.91%</td>
<td>8.89%</td>
<td>4.64%</td>
<td>7.03%</td>
</tr>
</tbody>
</table>

Only 8 asylum seekers were reviewed twice in 2013

88 subs Rx
### ANNEX E

**Immigration Ombudsman’s s486O Reviews Tabled in 2013**

**HRP/OSPA/ImmOmb/486O/2013.Annex E**

**ANNEX E: Ombudsman’s s486O review statistics**

#### Table E1: 2013 s486O Reviews

<table>
<thead>
<tr>
<th>Category</th>
<th>Count</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asylum Seekers</td>
<td>754</td>
<td>72.41%</td>
</tr>
<tr>
<td>Mental Health</td>
<td>546</td>
<td>58.75%</td>
</tr>
<tr>
<td>History of Torture/Trauma</td>
<td>443</td>
<td>68.44%</td>
</tr>
<tr>
<td>Detention-Induced or -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depression</td>
<td>516</td>
<td>68.44%</td>
</tr>
<tr>
<td>Anxiety</td>
<td>411</td>
<td>54.51%</td>
</tr>
<tr>
<td>Sleep problems</td>
<td>300</td>
<td>39.79%</td>
</tr>
<tr>
<td>Threatened/Attempted Self Harm</td>
<td>281</td>
<td>37.27%</td>
</tr>
<tr>
<td>Threatened/Attempted Suicide</td>
<td>71</td>
<td>9.42%</td>
</tr>
<tr>
<td>Voluntary Starvation</td>
<td>105</td>
<td>13.93%</td>
</tr>
<tr>
<td>Average time spent in detention</td>
<td>32.27</td>
<td></td>
</tr>
<tr>
<td>Total time in detention</td>
<td>2,027.75</td>
<td></td>
</tr>
<tr>
<td>Dark reviews (downward statistical drag)</td>
<td>36%</td>
<td></td>
</tr>
</tbody>
</table>

#### Table E2: 19238 Mths in detention primary

- 28.17 mths per asylum seeker
- +5095 additional family months spend in detention
- 24333 months
- 2027.75 years TOTAL TIME SPENT IN DETENTION
- 32.27 months per asylum seeker
Annex F

Asylum Seekers in Manus Island have sympathy with you all. "To innocent children in Nauru and Christmas Island."

OAP

WHO WILL BE FOR ME?
Report on the Ombudsman’s 2013 reviews on asylum seekers in long-term detention under s486O of the Migration Act 1958 (Cth)
WHO WILL BE FOR ME?
Humanitarian Research Partners May 2014
It’s almost unthinkable that these reviews go by largely unnoticed, but they do. Not even the Ombudsman reviews the reports he has tabled, and there is barely any news coverage of their coming to pass. The problem is, s486O reviews are the only regular accountability mechanism for immigration detention. Journalists are banned from any meaningful detention visits, and human rights observers and community supporters often have restrictive measures placed on their visits if their reports are made public.

This information is available nowhere else in such detail or quantity, and its production is facilitated by the Ombudsman’s status as a government agency and unequalled access to immigration detainees.

This report confirms what we already know; detention causes mental harm. However, the wholesale nature of the Ombudsman’s reviews permits us to quantify the amount and type of harm caused by detention for long-term immigration detainees. The results are not surprising, but nonetheless provide powerful evidence of the government’s knowledge of the problems caused by its policies, and catalogue its failure to take any meaningful action to alleviate the harm that results.

The Government’s refusal to take any action to account for particularly vulnerable asylum seekers is a clear violation of its duty of care to immigration detainees, and of international human rights law.