

National Inquiry into Children in Immigration Detention 2014

Canberra Public Hearing

Friday, 22 August 2014

President	Thank you all we might proceed then with the second part of these fourth hearings and I would like to welcome if I may the Minister's Council on Asylum Seekers and Detention, Mr Paris Aristotle and Professor Nicholas Procter. I thank you both for coming, I know you have travelled here, I wonder if you could state your name in the capacity in which you hear and then we would have the swearing in and now I understand you would like to make a statement.
Mr Aristotle	My name is Paris Aristotle and I'm here in my capacity as Chair of the Minister's Council on Asylum Seekers and Detention.
Professor Procter	My Name is Nicholas Procter, I'm here in my capacity as a member of the Minister's Council on Asylum Seekers and Detention.
President	Thank you.
	<i>Swearing in of witnesses</i>
President	Thank you very much. So in welcoming you and thanking you for giving your time to this hearing, can I pass you to assistant counsel? Thank you.
Ms Sharp	Firstly, did either of you wish to make an opening statement?
Mr Aristotle	Yes please
Professor Procter	Yes please
Ms Sharp	Mr Aristotle could I ask you to go first?
Mr Aristotle	<p>Thank you.</p> <p>On behalf of the Minister's Council on Asylum Seekers and Detention (MCASD) I'd like to say we believe this issue that the inquiry is focussed upon is an extremely important one. We welcome the focus on it and appreciate an opportunity to contribute to the inquiry's important work.</p> <p>Just a bit about my position, with respect to my role on the MCASD specifically, I've held the position of Chair for MCASD and its predecessor, the Council for</p>

Immigration Services and Status Resolution (CISSR) since 2009. And along with my colleagues have provided independent advice to all Governments throughout that period. Prior to that I also served on the Immigration Detention Advisory Group for 7 years under the previous Howard Government. I make this point to highlight my commitment to providing independent advice regardless of who is in Government.

MCASD was originally formulated as the Council for Immigration Services and Status Resolution by the then Minister, the Honourable Chris Evans, subsequently and without change to the membership, the Honourable Chris Bowen re-appointed the Council under its current title during his period as Minister. The current Minister, the Honourable Scott Morrison decided to retain the MCASD as an independent source of advice upon taking up the portfolio in 2013. The Council provides independent advice to the Minister and does not have any decision-making authority. The Council's advice can be accepted in full, in part with some variation or not at all. The current membership, apart from myself, is Retired Air Marshall Ray Funnell, Dr Maryanne Loughry, Professor Nicholas Procter, beside me, Ms Kerrin Benson, Ms Caz Coleman, Associate Professor Mary Anne Kenny, Mr Noel Clement, Dr Jamal Rifi, Bishop Eugene Hurley and Ms Libby Lloyd.

If I could just read from the terms of reference for the Council so that can be clear for the purpose of the proceedings.

The principal purpose of the Council is to provide independent advice to the Minister on policies, processes, services and programs necessary to achieve the timely fair and effective resolution of immigration status for people seeking migration outcomes in Australia. This includes people whose immigration status is unresolved residing either in the community or in any form of immigration detention. In particular the Council will provide advice on policies, services and programs designed to support the timely resolution of immigration status outcomes, the appropriateness and adequacy of services available to assist people whose immigration status is unresolved. Immigration detention matters including but not limited to the suitability of facilities, accommodation and service arrangements.

The terms of reference however do not include providing advice about certain aspects of Government policy. At present the Minister has been very clear that this is particularly the case with regards to matters relating to Operation Sovereign Borders. MCASD has no input into the workings of the Joint Agency Task Force co-ordinated by General Angus Campbell and in particular does not have a role in determining policy about whether or not certain cohorts of asylum seekers should have their claims determined in Australia, transfers to or monitoring or processing centres on Nauru and Manus Island and no input into what is often referred to as on water activities.

If I may I would just like to contextualise the complex and highly politicised area of policy that we attempt to provide advice in. It's often described as a wicked problem

which is a term conceived by urban planners in the US in the 1970s and often utilised by the Australian Public Service Commission to sharpen understanding about how to deal with complex issues such as climate change and indigenous disadvantage. Some of the characteristics of this area are they are highly resistant to resolution, there is often disagreement about the causes of the problems and the best way to tackle them. Attempts to address a wicked problem, often lead to unforeseen consequences. Wicked problems usually have no clear solution, may never be completely solved and the challenge is to find the best way to manage them instead and wicked problems are socially complex, they involve co-ordinated action by a range of Governmental and civil society stakeholders. This is an appropriate description of the context in which MCASD finds itself formulating and providing advice.

With regards to the Inquiry's terms of reference, I would like to stipulate from the outset that MCASD and its predecessor, CISSR, has always held the view that arbitrary non-reviewable indefinite detention is harmful to the mental health and well-being of anyone, regardless of age and in particular children. It is our view that all children are vulnerable to psychological harm if forced to reside in held detention arrangements and that children that have been exposed to traumatic events prior in their countries of origin, in transit countries or while on dangerous boat journeys to Australia are particularly vulnerable to having previous traumas compounded in such environments. As a consequence we have always held the view that held detention of children should be avoided or when required that it only occur for the shortest possible time. This has been the Council's view and advice to successive Governments regardless of the fact that Government legislation has consistently allowed for such arrangements to exist and that people have continued to be detained for excessive periods. MCASD understands that governments past and present are confronted with the extremely complex challenges associated with the issue of people smuggling. As a Council we have always sought to provide advice that acknowledges the complexities inherent in this policy area and which also enables governments to maintain our human rights and convention obligations. We have found every Minister and their officers to have engaged genuinely with us and have taken our advice seriously including the current Minister and his office who have met with us formally on several occasions and with whom I have had the opportunity to express our views in other context also.

Now of course as I said earlier it does not mean all of our advice is always accepted. Sometimes it's been accepted in full, on other occasions aspects of the advice have been accepted and at other times Ministers have not agreed.

In addition I want to acknowledge that the Council receives excellent support from the Department and has been able to work closely with many outstanding officers to develop more detailed advice and to monitor the implementation of important initiatives. I make this point because too often the problems and sometimes

confronting aspects of the work undertaken by the Department while implementing government policy receives most of the attention.

As the Chair of MCASD I have witnessed over the years how their efforts often ameliorated the harsher elements of government policy and were generated positive outcomes for many individuals, families and children. That recognition does not aim to invalidate well founded or necessary criticism of the Department which MCASD has always felt able to provide. However it is unfortunate that the very good work they undertake while attempting to operate in this complex and highly politicised space is rarely acknowledged and so I'd like take the opportunity to acknowledge it here today.

In addition I also want to acknowledge how in recent years there's been a dramatic expansion in the involvement of non-government and civil society participation in this area which has also made a very positive and constructive contribution to the wellbeing and care for thousands of asylum seekers including children and unattached minors.

MCASD believes that continuing to foster greater involvement and collaboration between Government, NGOs and civil society and refugee communities should be encouraged and expanded in order to improve the management and support to families, children and men in the future.

In concluding I would just like to summarise and give you a couple of examples of MCASD work which relates to the concerns of the Commission in this inquiry which illustrate our long running commitment to improving conditions for families and children.

Firstly I'd like to refer to the expanded use of residence determinations. In 2010 MCASD, as a consequence of the work of a number of people, Dr Maryanne Loughry, Caz Coleman, Libby Lloyd and others, produced a proposal for the then Minister Chris Bowen for a dramatic expansion of residence determination arrangements, euphemistically referred to as community detention. At the time there was a great deal of scepticism about the viability of such a proposal, however the then Minister endorsed the pilot and the Department, through the leadership of people like Kate Pope and Katie Constantinou, worked in a collaborative manner with NGOs to establish what is now a substantial and effective alternative to held detention. In particular, this program has been used to accommodate families and children, unattached minors and other particularly vulnerable individuals.

Somewhere in the vicinity of 10,000 people have been accommodated and cared for in these arrangements since that time and I note that the current Minister and current Government continue to support these arrangements and it is an area that Governments, the Department and NGOs can justifiably be proud of.

We've also sought to expand the availability of the CAS (Community Assistance Support) program and the ASAS (Asylum Seeker Assistance Scheme) program so

that they would enable more people to live in the community with greater levels of support. We've developed continual advice in this area and it's pleasing that in his recent announcement, the Minister has allowed for increased assistance through those programs for the families that will be able to be released into the community.

Another area that relates directly to the Commission's concerns and the Commission has raised on a number of occasion was educational programs for children on Christmas Island. Following a visit by members of the Council earlier this year, we briefed the Minister and his office and the Department about our deep concerns about the lack of educational facilities and opportunities for children on Christmas Island. I have to say the Minister's response was immediate and he instructed his Department to begin preparing proposals that would allow for full scale educational services to be implemented. That process has now been completed and with additional assistance from MCASD, the West Australian Catholic Educational Office is now delivering educational programs for every child on Christmas Island and the Government has established the funding necessary for that to be achieved through the strong advocacy of the Minister and we are relieved that that is now the case.

The other area that we are now talking with the Minister about that relates to your concerns is that while we felt and expressed in our reports that the most optimal way of dealing with people, families and children in the circumstances on Christmas Island would be to bring them to the mainland, to accommodate them in other arrangements, that's not the current government policy. Our view is that if that is not possible, is that we should look to change the arrangements on Christmas Island to resemble residence determination arrangements or be it in the notion of a communal village type model, where families would be able to move more freely, where the school would be able to function as a hub for activity for parents with children, where catering would be able to be done and mothers and fathers could cook for and enjoy meals together as families do. So at the very least, attempt to restructure the way in which programs and people are managed on Christmas Island to resemble and to be in fact like how people could be accommodated on the mainland of Australia. Now the Minister has been supportive of us pursuing that option and members of the Council are currently engaged in work with the Department to look at what could be done to infrastructure, to make it much more appropriate for families, to make it a more supportive environment and what additional programs could be put in place to enable those families to function as well as they possibly can.

There are other examples but they are ones that I have just selected for the purposes of this introductory comment and you may want to discuss some of them in detail later.

As I said I am hopeful that the work of this inquiry will help us advance these issues in a positive and constructive way and I'm very very pleased to be here to assist with that, thank you.

Ms Sharp	Professor Procter did you have an opening statement?
Professor Procter	<p>Yes. Thank you for the opportunity to read a short opening statement. I have been working with refugees and asylum seekers across the life span within and released from held detention for about 15 years. As mentioned by the Chair of MCASD, Mr Paris Aristotle, the main function of MCASD is to provide independent advice to the Minister. We have access to detention centres and visit regularly across Australia. For example, and in recent times I have visited Christmas Island and Inverbrackie. The methodology that underpins advice is for a range of processes including but not limited to the following direct observation and interaction with people in detention at the time of site visits specifically soliciting the lived experiences and perspectives of the asylum seeker. This is done through focus groups and individual interviews and sometimes through handwritten notes. Soliciting the perspectives of service providers; detention service providers, health service providers, MAXimus Solutions and other visitors to detention centres and evidence based practice. All MCASD members hold long term concerns about the adverse impacts of held detention on adults and children and have expressed these in their various reports particularly in relation to mental health. There is a considerable body of evidence detailing the relationship between adverse events in childhood and negative psychological outcomes with strong associations between childhood risk factors and mental health problems later in life. It is now widely acknowledged that childhood adversity plays a causal role in most mental health problems including anxiety and depression. The interrelated nature of ongoing length of time in detention effects: mental deterioration, lack of personhood, futurelessness and lack of hope, uncertainty, fear of being removed, being under stimulated and engaged, absence of a structured education and learning program, all interact with each other. The evidence is clear in this regard. Previous studies on adverse childhood experiences have demonstrated just how powerful such determinates are as predictors of adult mental health outcomes. There is a dose-response relationship between risk factor exposure and mental health outcomes demonstrating the cumulative effect of exposures during the formative years. While some positive changes for people in detention have happened as a result of MCASD advice, in particular, the involvement of the Council in respect of the development of community detention and the provision of schooling and education on Christmas Island, the advice given is not always acted on. It should also be noted that the advice we give is part of a range of advice from within and available to government including the recently disbanded Immigration Health Advisory Group and its predecessor, the Detention Health Advisory Group, non-government organisations and external bodies such as the Australian Human Rights Commission.</p> <p>And just finally Madam President, any specific questions you have that I feel I cannot answer, I will take these on notice and get back to you.</p>

President	Thank you very much indeed.
Ms Sharp	Thank you. Mr Aristotle I may direct this first question at you as Chair. Can you tell us how often the Council advises the Minister and by what method that advice is provided?
Mr Aristotle	Well the Council has a cycle of meetings each year and it varies a bit but we probably have full general meetings 4 to 5 times a year but we have a series of sub-groups or sub-committees that meet on specific issues so there's been sub-committee meeting on service development and integration which is where we're focussed the CAS and ASAS expansions and programs. There was a working group that was established to look at the community of resident's determination arrangements and there has been working groups established to look at Christmas Island. There is working group chaired by Ray Funnell that co-ordinates visits to different centres. So we meet frequently as a whole group but also as sub-groups and we provide advice directly to the Department through those discussions and those meetings. At our general meetings since we've begun there's usually been someone from the Minister's office present at those meetings to ensure that there's a direct relay of information and where I've needed to have additional conversations with Ministers or senior officers of the Department they've always made themselves available and while not wanting to take up all of their time I've certainly been able to do that with them and the current Minister has been very open with his time and prepared to have conversations outside of formal meetings.
Ms Sharp	Thank you. Now one of the ways in which you report is by providing written reports.
Mr Aristotle	Yes.
Ms Sharp	Outlining the results of your inspections at various detention facilities. Do those written reports go straight to the Minister's office?
Mr Aristotle	They do go to the Minister's office but also to Council members. They are presented to Council members as well and sometimes there are aspects of that which other people that were on the visit may have wanted to edit or something Ray (Funnell) has often been the person whose produced several of those reports because he's led that process. At other times specific members such as the report that was produced by Dr Loughry, Associate Professor Kenny and Nicholas, early this year, I think it was April this year, is produced subsequent to a visit and those reports would come to the Council and then they would go off up to the Minister's office.
Ms Sharp	Thank you Mr Aristotle. You visited Christmas Island in February of this year and a report was subsequently made to the Minister about that visit. I may take it that you're familiar with that written report?

Mr Aristotle	Yes I am. I think I've got it here.
Ms Sharp	Can I, I'm not sure that you have the report with you, but what it says at page one and I quote is that "The Council visitors have all had considerable experience of detention facilities and in working with people held in detention all were disturbed by what they observed in these visits." Was that your view too?
Mr Aristotle	Yes.
Ms Sharp	What was it that was disturbing, if you can comment with particular reference to children?
Mr Aristotle	<p>Sure. Well, post the change of government there had been a very large build-up of people in detention in the run up to the election over the course of the years beforehand and so the centres had large numbers of people including children in them and there are often comments about the fact that large numbers of children were in detention but that was in part due to the fact that there were such regular arrivals that even if you were moving families out of detention there were always other families arriving with children as well. But that build up and impact on the capacity of the detention network was put under great strain. Post the election the government came in with what it believed was its mandate to implement its policies and lot of things were changing around the way in which the arrangements were going to occur into the future. That was being led through the Operation Sovereign Borders process. So there was a great degree of flux occurring over a period of time post the election as they were trying to change arrangements adapt to what new policy requirements were and so forth and what struck me was when I got there was that it had had a dramatic impact on: (1) the stalling of processing of cases which had begun before the election and therefore the length of time that some families had already been in detention. There seemed to have been problems with the way in which the services were being coordinated and organised such that and the best example is the education that there appeared to be terribly inadequate educational opportunities and programs available for children at the centres and this was having an impact on the way in which the children were coping in their environments and some of the accommodation in particular the Aqua and Lilac compounds disturbed us and we felt strongly that they ought to be closed. We presented those views to the Minister and what he in fact did it was an example of an area advice that he took on board, was concerned about, and then subsequently acted on. But it was the combination of all of those things that were occurring and I think the difficulty that the department or the service providers were having to manage those changing and dynamic arrangements, but I think was beginning to have a detrimental impact on the scope of services that were available for children in particular and that was affecting children in a way that we felt was unacceptable....</p>

Ms Sharp	Can I ask you some specific questions about the facilities available for school aged children?
Mr Aristotle	Yes
Ms Sharp	Now I understand that the Minister has recently announced a development of some further learning facilities at Christmas Island but prior to that can you describe what school facilities were available to school aged children on Christmas Island?
Mr Aristotle	Previously there had been pretty good schooling arrangements with the Christmas Island schools system. But that seemed to have come under quite a bit of pressure and there were, as I understand it, difficulties in establishing agreements with the Western Australian State Education Department that was having an impact on how much education could be offered. There appeared to be no adequate classroom structures outside of that school and as the numbers of children were increasing, there was simply not enough infrastructure in place to be able to provide education for all of those children. In addition though, there were not enough teaching staff. And so children were getting a few hours a week of schooling which is not acceptable and the Minister agreed that that was not appropriate and we recommended very strongly that it needed to be addressed immediately and that was taken very seriously. But it just seemed as though the whole focus on education for children had collapsed because there were to be transfers off island to processing centres offshore. All of those changing arrangements were having an impact on the service providers and the Department's ability to plan and we just felt that no matter what else was happening with the policy arrangements and coming to grips with the new policies, this area needed to be addressed.
President	Paris Aristotle thank you. We are trying to understand exactly what was available for children for the last year or so until the new school started three weeks ago, I think. You said that several hours a week. The evidence we are receiving is much more worrying that you have suggested. We have been told that it might be a couple of hours and then only over two week period over eight months and it wasn't curriculum based education, it was a play group. So we are told that most of those children over the last year have had approximately two weeks in a year and in those two weeks it was probably only two hours a day as a play group. Is it that bad is what I really want to know?
Mr Aristotle	I can't confirm those sorts of figures for you. I am happy to take down notes and go and ask.
President	Will you did say several hours a day that rather suggests that there is a system, there was a system going.

Mr Aristotle	Sorry it wasn't several hours a day for every child. It was schooling going on for a few hours a day. But not every child had the opportunity to participate
President	Thank you, that is what I wanted to clarify.
Mr Aristotle	which was one of the disturbing parts for us.
Ms Sharp	Can I ask you do you have any comments on the availability of learning aids or other toys for the children?
Mr Aristotle	Our views were that they were inadequate that it was an area specifically referred to in our reporting where we felt as though the approach of the service provider to the provision of toys for the children was grossly inadequate and we made strong representations about the need to provide appropriate learning aids, books, toys but not just to provide them but to do so in such a way where children could access them and utilise them appropriately in those environments as well. I think that was an area where the service provider had not satisfied what was necessary.
Ms Sharp	Now of course preschool aged children have very specific developmental needs, what comments do you have on the services and facilities that are and were available for preschool aged children on Christmas Island.
Mr Aristotle	Well preschool aged children are a part of the revamped educational model that has been developed but I don't have the details on that. There are other members of the Council that have focused on that issue, Dr Loughry in particular. So my understanding is that there has been significantly greater investment in that area and the Catholic Education Commission has been focused on that aspect as well. Beforehand, I think there was very little. I just need to be clear our view was that preschool, primary school, secondary school, educational opportunities for children on Christmas Island, when we went to visit at that point in time, were grossly inadequate. Sort of the degree of it in some respects is not the point, it was not adequate and it needed to be changed and improved dramatically. That was the advice we gave the Minister. He accepted that advice and acted on it.
Ms Sharp	Thank you. Now I might direct this question to you if I may, Professor Procter, and if you can answer in addition Mr Aristotle, please do. I have a report from the Council from April 2014 and I take it you gentlemen are both familiar with that report?
Mr Aristotle	Yes
Ms Sharp	Yes. If I go to page 4 of the report under the heading "Recommendations" it is stated and I quote "In our view, families, children and complex cases would be better managed if the detainees were transferred to mainland detention centres, APODs or

	in community detention.” Now that is the advice you provided to the Minister?
Professor Procter	Correct
Ms Sharp	And it has not been acted upon?
Professor Procter	Correct
Ms Sharp	Have you been given any reasons for why it has not been acted upon?
Professor Procter	I have not been given a specific reason other than it is not government policy to do that.
Mr Aristotle	And that would be my response to it as well. It is one of the examples where we will provide the best advice we think we can provide. In the end the Minister makes a determination as to whether that would be consistent with government policy and with respect to that advice I don't think the Minister agreed with that view because they haven't established a policy.
Ms Sharp	And I take it that notwithstanding these recent developments in the schooling at Christmas Island that remains the recommendation of the Council.
Mr Aristotle	Yes. What, ideally that would be the most appropriate way to go. The issue really isn't, the issue really is that wherever children are being managed and accommodated and families, they need to be able to function, as far as possible, as a family, that the children's needs need to be able to be met in ways in which you would expect children's needs to be able to be met, preschool, primary school, secondary school, appropriate play, good opportunities for recreational activities, an ability for the nurturing relationship which is an important protective factor, the most important protective factor for children usually, to be able to be maintained. If that can be done, if the policy is that people can't come to the mainland then our advice is that it should be made available on Christmas Island. How that is done and what it costs is a matter for government.
Ms Sharp	Mr Aristotle, the data shows that detainees are now being held in detention for longer periods of time. That applies equally to child detainees. The data is now showing that the average length of detention is in the order of 350 days, just short of a year. Has the Council done any research into the impact of long term detention on children?
Mr Aristotle	The Council doesn't have a research budget. We have recommended over the years to multiple Ministers that there be an investment in research in this area. We haven't

	<p>had a great deal of success getting there. There was some investment in research in 2012 but not for the Council. ANU I think has some funding for a research programme in this area. There were small projects done but nothing that would get to that level of detail. However, there have been other research projects undertaken by academic institutions and mental health professionals over the years that have indicated, including by my own organisation which I work for not as chair as MCASD that clearly indicates that the long term detention of children and families is harmful to their mental health. But I want to be clear it is harmful to every body's mental health. The option, what we should be trying to do is develop other mechanisms for managing this issue that don't require people to be held for long periods of time. I suspect the Minister agrees with that view as well as did previous Ministers but for some reason the ability to produce that is being compromised because of, in part, because of the complexity of managing this issue overall. Our view is that regardless of complexity you need to invest adequately to ensure that the wellbeing of children and their families is able to be preserved.</p>
Ms Sharp	<p>Now I am particularly mindful of Professor Procter's very powerful opening statement. Has the Council provided advice to the Minister on the impact that long term detention is having on children?</p>
Professor Procter	<p>Yes, through the report that you have just referred to and it is, if I may say, it is just for our business as a Council, it has been a constant narrative as a Council.</p>
Ms Sharp	<p>Sorry what you mean by that is that you have constantly provided advice to the Minister on the impact that long term detention is having on children.</p>
Professor Procter	<p>Yes, correct</p>
Ms Sharp	<p>And the negative impact that long term detention is having on the children.</p>
Professor Procter	<p>Correct</p>
Mr Aristotle	<p>To every Minister</p>
Professor Procter	<p>To every Minister and if I may say I have even published you know in the academic literature on that topic.</p>
Ms Sharp	<p>Thank you. Professor Procter could I address some questions to you now because of your involvement in the Mental Health Sub-committee of the Council. I would like to show you a slide if I could of some recent information that was made available to the Commission. Can you read it, is my first question</p>

Mr Aristotle	I might have a copy.
Professor Procter	Which report is it?
Ms Sharp	This is a report that the IHMS have provided to the Commission which shows some recent, the results of a recent HoNOSCA measure that was conducted on children. First of all Professor Procter are you familiar with the HoNOSCA?
Professor Procter	I have a general awareness and understanding of the tool.
Ms Sharp	Alright. And it is a clinician based tool
Professor Procter	Correct
Ms Sharp	And it is generally considered to be a reliable measure. Is that correct?
Professor Procter	Correct yes
Ms Sharp	Now have you, I appreciate it may be a bit difficult to see that on the screen. In your capacity as a member of the Council have you been made aware of the IHMS data on the HoNOSCA measures for children?
Professor Procter	No I have not.
Ms Sharp	Alright. Mr Aristotle have you been made aware?
Mr Aristotle	No
Ms Sharp	Alright. Professor Procter given your involvement on the, if I can call it the Mental Health sub-committee of the Advisory Council, are you generally made aware of IHMS data on mental health of immigration detainees?
Professor Procter	No I am not.
Ms Sharp	Would it be of assistance to you in your role as an advisor on the Council to be made aware of that data?
Professor Procter	Yes it would.

Ms Sharp	Right. Is it the case that you do have a copy of the slide with you Mr Aristotle that you can show to?
Mr Aristotle	No I am sorry I don't have that one. I don't have that report. We have never received that report so I don't have a copy of that report. I don't know whether or not those reports ever went to the Immigration Health Advisory group or the Detention Health Advisory group, its predecessor, which were established to deal primarily with these issues in more depth and don't exist now but I haven't seen that material no.
Ms Sharp	Thank you. Dr Young who was the format director of mental health services that at IHMS gave some evidence at the last public inquiry about this recent screening of the mental health of children using the HoNOSCA data and he was he gave evidence that the results are "very concerning". Do you think that this is information that should be made available to the Council so that the Council can effectively advise the Minister?
Professor Procter	Well I haven't seen the data but just in that very brief description that you gave yes, I do think that would be valuable to have that data.
Ms Sharp	Now that you are aware that IHMS has conducted some mental health screening on children using the HoNOSCA data will you be requesting in your capacity as a member of the Council that these results be provided to the Council?
Professor Procter	Yes and I would even go further. I would be sitting down with my colleagues on the Council and determining which data would be most useful in addition to the HoNOSCA data.
Ms Sharp	Now again I'll address this to you Professor Procter – the Commission has been provided with information that suggests that during a 15 month period from January 2013 to March 2014 there were 128 reports of self-harm involving children in detention. Are these numbers that the Council is aware of?
Professor Procter	I am not personally aware of that data.
Ms Sharp	Mr Aristotle are you aware of this data?
Mr Aristotle	No we haven't been given this data. We have asked about self-harm rates because for those of us that have been involved in this space for quite some time we know that's an indicator that should not be ignored. Again up until recently there was an advisory group specifically established to deal with. Those types of issues I don't know whether that information was routinely provided to that group or not. But it is information that would be useful for us as well in formulating advice.

President	Well these statistics are very worrying to the Commission particularly by, and they're being provided to you now, particularly because the numbers in relation to children are close to double as those in relation to adults self-harming or attempting suicide. These seem absolutely fundamental statistics for us and trying to understand the conditions of these children, I'm a little surprised that you're not aware of them. Can you perhaps explain why you haven't been able to get this information or why you haven't had answers to questions in relation to it if you asked questions?
Mr Aristotle	Well again
President	Why do we know and you don't know?
Mr Aristotle	Well as I said again there was a specific advisory group established, I actually produced the first submission to get that group established several years now that was charged with the responsibility for monitoring these sorts of things. Now I don't know without having seen the data before without having seen the definitions of self-harm how it was being assessed all of those sorts of things, it's almost impossible for me to comment on the veracity of it or the accuracy of it but nevertheless it would be it would not be surprising to me given my years of experience that this is where things could go which is why we've been providing the advice we've been providing.
President	Well thank you for that but I have to say it does concern me that you are the primary independent body advising the Minister and you're not aware of or have been making recommendations to the Minister on such a stark set of statistics that underlie the conditions in which these children are being held. You it's either not within your remit or it's another committee that you actually at least for the moment have not been advising the Minister in relation to this evidence of self-harm.
Mr Aristotle	No, we haven't been advising specifically in relation to the evidence of self-harm because we haven't received
President	You were not aware of it
Mr Aristotle	Because we haven't received that information
President	Have you asked about it
Mr Aristotle	Well we've asked I'm sure people have asked on visits. We have a lot of discussion at our meetings about these issues, we express our concerns about where things are heading but you can see from our advice that it's pretty clear what we believe it would need to occur to stop or prevent these sorts of things from taking place so whether we've seen it, seen this report or not I think the advice that we're providing is geared around preventing these sorts of things from manifesting and that's what we've done and I want to be fair where there are some areas where we've provided advice and

	we've been able to work very closely with the department to get action on them as I've given some examples of, but ultimately detaining children in families for long periods of time as I said in my opening statements and as articulated in our reports will cause serious mental health consequences for those affected by it and we should avoid it and I haven't really met many people that disagree with that view.
Ms Sharp	Professor Procter can I address this question to you, do you believe that it would assist your ability to advise the Minister if you were provided with the results of IHMS screening data on mental health in children.
Professor Procter	Yes I do.
Ms Sharp	Professor Procter again, would you have concerns if there was data showing that children, I withdraw that, it was a little bit confusing. Would you have concerns for children who are being sent to Nauru if there's evidence that they've previously self-harmed?
Professor Procter	Yes I would.
Ms Sharp	And would you have particular concerns in unaccompanied minors being transferred to Nauru if there was evidence that they had previously self-harmed?
Professor Procter	Yes I would.
Ms Sharp	Mr Aristotle the inquiry, the Commission inquiry during its visits to Christmas Island has been told by asylum seekers, by the staff who've spoken with asylum seekers that the hardest part of their situation of the uncertainty of not knowing what was going to happen to them and the interminable waiting to have their immigration status assessed. Do you think the timeframes for assessing immigration status have been acceptable?
Mr Aristotle	No. There's no effective or meaningful policy purpose for taking for these sorts of delays.
Ms Sharp	What's going on here?
Mr Aristotle	Well, I think there's a ... there's been ... there were delays before the election because of the large numbers that were arriving and the impact that was having on processing timeframes. But also because the policy overall was in a state of flux in many respects. It was moving around often. After the election the current government put in whether people agree with it or not. They were determined to

	implement their policies framework which includes changing the processing arrangements for people and the work being undertaken for changing that system, as I understand it, has not been completed yet and as a consequence people aren't having their cases processed and it's resulting in people being in that situation for very, very long periods of time.
Ms Sharp	Do you agree that these delays in processing people is causing significant mental harm to people?
Mr Aristotle	I think those sorts of delays where you are living in those sorts of environments generate deep feelings of not just uncertainty but hopelessness and so forth which are features of depression and other mental health problems. So, yes, long delays in understanding what your status is going to be, whether it's positive or negative is harmful.
Ms Sharp	And, Professor Aristotle, it's right that following ... I beg your pardon, I withdraw that from Mr Aristotle.
Mr Aristotle	But thanks for the promotion, yeah.
Ms Sharp	Following your visit to Christmas Island in February this year, the Council expressly recommended in its written report to the Minister, that those detainees subject to offshore processing have the processing commenced at Christmas Island. What happened to that recommendation?
Mr Aristotle	It wasn't accepted. It was a ... it was part of the advice that was formulated by Ray who produced that report and we put it up as an option for consideration but it didn't sit with the Government's policy and that's what happens to advice sometimes. If it doesn't sit with the core elements of the Government's policy they reserve the right as always to not, not to accept it. But we just felt that there needed to be other ideas being thrown in the mix for managing this.
Ms Sharp	And Professor Procter do you have any comments on the delays in processing the asylum seekers?
Professor Procter	I think it's directly related to mental deterioration, the stress and you know it's delay in certain conditions, the environment being crowded and with limited capacity for particularly parents and children to create a loving attachment and loving bond. It's extremely difficult for people to have childhood. I mean, in a sense, it's a further delay where childhood ends when people enter detention. Childhood as they knew it ends at the time that they enter detention. So I have significant and deep concerns about those delays.
Ms Sharp	Mr Aristotle, you have an extensive knowledge and experience in working with torture

	and trauma victims, can you tell the Commission what kinds of torture and trauma experiences has unaccompanied minors been speaking about?
Mr Aristotle	I haven't undertaken myself a lot of assessments with unaccompanied minors but often times when someone is referred to my organisation, not if my capacity here as nascent, unaccompanied minors had witnessed atrocities. For example, I can think of one who ... that ... Where there was suicide bomb attacks, one not far from his house, where he witnessed people blown up and the consequences of that. Not long after there was another suicide attack out the front of his school where children were killed and so forth. They are sometimes directly assaulted themselves. Sexually assaulted, beaten and so forth. There is in situations where countries are at war or regimes seek to persecute their population there are no boundaries or rules about who they target and children are unfortunately seen as legitimate and sometimes are even more important targets because of the impact they have on the general social fabric of those communities as well. It's the same reason why women are targeted specifically often also.
Ms Sharp	Is Nauru ever going to be an appropriate place to send a child who has experienced torture or trauma?
Mr Aristotle	Wherever people are sent, whatever the circumstances, it can only be done appropriately if certain standards and safeguards are met. Whether it's in Australia or anywhere else. My comments at the beginning about arbitrary long-term detention being harmful to people is not confined to a geographical location. It applies anywhere and therefore whatever happens, wherever people are transferred to, there needs to be for starters, you wouldn't have those ... You would not, you would maintain the same principle. I would maintain that same principle.
Mr Sharp	Mr Aristotle, do you have a view about the torture and trauma assessments that are conducted on asylum seekers when they first arrive in Australia?
Mr Aristotle	As I understand it, the assessments are fairly cursory at this point in time. In terms of the assessments that I commence we do, if it's indicated there's been a requirement historically to refer them to a specialist torture and trauma service for assessment. One was established on Christmas Island at the Christmas Island hospital. You would have to speak to them about how well that's been able to work. Whether they have adequate resources. My understanding is that there's ... that's been a pressure point for the service there. Certainly here in my own experience we have received several referrals. Always facilitated in the end. There's never been ... we're not experiencing blocks at providing services but sometimes it's a challenge to do that. I'm not sure though of the situation on Christmas Island at present so I would have to take that on notice and get information and come back to you about it if you would want me to.

Ms Sharp	Is that okay?
President	Yes I think so.
Ms Sharp	Yes what would be good thank you Mr Aristotle. What if any advice has the Council provided to the Department about assessing for torture and trauma on arrival?
Mr Aristotle	Well the largest body of work was undertaken by DHAC which was the group charged with responsibility for looking at this and I think Nicholas may have something to contribute to this as well and they developed protocols for that process that were accepted by the Department and they were protocols that I saw and the proposal that was developed by DHAC was the proposal that I had the opportunity to see and contribute to because they consulted torture and trauma services about that and it's a very good protocol and my advice and our advice has always been that there should be specialised assistance made available where it is required for anyone who has been through an experience of torture and trauma.
Ms Sharp	Did the Council make any recommendations that torture and trauma assessment be undertaken recently for the 157 Sri Lankan asylum seekers who were held at the Curtin Detention Centre?
Mr Aristotle	No we weren't asked, that process was seen as a part of Operation Sovereign Borders and as I said in my introduction the Minister has been clear with us that he doesn't seek our input into that.
Ms Sharp	Does the Council happen to know whether those assessments were done with respect to those asylum seekers?
Mr Aristotle	No we received no information whatsoever about that process as we don't receive information about on water activities.
President	Can I ask why you would see that as not within your jurisdiction when these people had been [inaudible]?
Mr Aristotle	No I said the Minister wouldn't consider it because it was part of an exercise that was being managed and overseen by Operation Sovereign Borders.
President	So that rather suggests that you won't give advice on these matters unless the Ministers asked you to?
Mr Aristotle	Well in that situation the Council was meeting and didn't have a scheduled meeting, I was away for part of that time and if the Minister says he's not interested in receiving advice about a particular issue from us then he means it.

President	Is that what the Minister said in relation to the 157 Sri Lankans?
Mr Aristotle	No we were never consulted about the 157
President	You weren't consulted?
Mr Aristotle	No didn't have a discussion with the Minister.
President	Did you have the impression you didn't, what I am trying to get to is did the Minister intimate to you that he didn't want advice on this question?
Mr Aristotle	No, he was clear with us from when he met with us originally about which areas he wanted us he would be wanting advice from us from, and which areas he felt were within the purview of the joint agency task force and Operation Sovereign Borders which as you know is a very confidential operation and so our advice wasn't sought and we weren't given any information during that process or subsequent to it.
President	Well our understanding is that there were 50 children on that ship held at sea for nearly 4 weeks 3 or 4 weeks it didn't occur to you that this might be something you should really be advising the Minister about?
Mr Aristotle	What do you mean it didn't occur to me?
President	Why did you not offer advice to the Minister on the conditions and circumstances in particular in relation to those children but generally speaking?
Mr Aristotle	Well as I said I wasn't here for part of the time.
President	Presumably you had other members of your Council who could have taken the matter up in your absence?
Mr Aristotle	Well I mean if you are asking why were we not more activist in our orientation we don't see ourselves in that role and as I said repeatedly the Minister has been clear that as his advisory council he's not seeking and doesn't want to receive advice from us on issues related to Operation Sovereign Borders. He's not being unclear about that reference. So ...
President	But holding 157 people at Curtin in Australia is that what he considers to be part of Operation Sovereign Borders?
Mr Aristotle	You'll have to ask him but I'm assuming so.
President	But you accepted that that was not something on which you felt you had a right to make an intervention to the Minister about?

Mr Aristotle	It was something that had been made very clear to us so there would be no point in us making an intervention to the Minister about it.
President	Thank you.
Ms Sharp	Just back to torture and trauma.
Mr Aristotle	Not about those sort of issues sorry not about that specifically because we had no communications
President	Generally the Minister made it reasonably clear to you that he didn't want advice on those kinds of questions?
Mr Aristotle	Yes yes.
President	Thank you.
Ms Sharp	I'll try to be quick I am conscientious that time is running out that if I can just ask this in relation to torture and trauma assessments there's an assessment upon first arrival, is there any assessment conducted after that time to your knowledge?
Mr Aristotle	I am not, can I take that on notice? Because I think what you are referring to, actually let me ask you when you say on first arrival an assessment conducted of torture and trauma on first arrival, what do you mean?
Ms Sharp	That an assessment is conducted by IHMS staff to identify whether a person is a victim of torture or trauma?
Mr Aristotle	Can I take that on notice because I think you are giving too much weight to the notion of assessment in that context for torture and trauma. It's more an attempt to identify if there's any indicator of it, as opposed to a comprehensive assessment about whether one has and if there's an indicator of it, as developed in the protocol or identified by the protocol that was established then there's meant to be a referral made to a provider.
Ms Sharp	Alright if you could take that on notice.
Mr Aristotle	If that's not happening then as far as I am concerned it's contrary to what the protocol is and as I understand it to as it should operate.
Ms Sharp	As you satisfied with the level of torture and trauma services being provided to children and their parents in immigration detention?
Mr Aristotle	Well I haven't seen the figures of how many people are but I am conscious that there are waitlists for those services in some parts of the country. I think there have been

	waitlists in Christmas Island and in Darwin and so forth I mean they are waitlists out in the community as well but my preference would be for them to not be held in detention arrangements that would compound their experiences of trauma and torture and for them to receive that assistance outside of those environments but I think you have to appreciate that you can't deal with these issues inside adequately inside a detained environment it's just not possible.
Ms Sharp	Professor Procter and Mr Aristotle are you aware that increasing numbers of babies across the detention system are refusing food and that a number of babies have been admitted to hospital because they're failing to thrive?
Professor Procter	I'm not personally aware of that in terms of increasing numbers but I'm personally aware of in terms of the anecdote at the time of site visits that this is an issue of concern
Ms Sharp	Are you aware that at the moment there are 5 babies in this category in Melbourne alone?
Professor Procter	I'm not personally aware of that
Ms Sharp	If that information that you believe you should be made aware of in order to advise the Minister
Professor Procter	Yes it is
Ms Sharp	Is this information that concerns you?
Professor Procter	Yes it does
Ms Sharp	Do you have a view as a medical practitioner as to what may be the cause of his failure to thrive?
Professor Procter	I'm not a medical practitioner
Ms Sharp	Oh of course I withdrew that. Do you have a view based on your experience in advising the Minister in this Council as to what is likely to be the cause of this failure to thrive?
Professor Procter	Well I think it is at the heart of that is this sort of well-known difficulty of being in held detention and for parents you know to engage with their children in a loving secure way in which they would like to do that. And there's probably multiple reasons for you

	<p>know why this problem occurs but the primary one must be the conditions and the environment, the mother's response to the conditions in environment, the mother's attachment to the child and in a sense the inability to get away from the environment and get into a safe and secure environment which is facilitative of safe and loving attachment. So they're my immediate reflections and observations for that kind of situation and the effects. If you think about the effects of the kids' stress, the long term affects are dramatic and they're overwhelming for the mother and naturally they would be overwhelming for the newborn because the newborn is essentially dependent upon the mother. And this is why such a strong recommendation was made in our report that you referred to earlier because if we intervene earlier then recovery is possible in such a chronically stressful environment.</p>
Mr Aristotle	<p>Can I just make a point</p>
Ms Sharp	<p>Yes please do</p>
Mr Aristotle	<p>I wouldn't want a system to be dependent on a Ministerial Advisory council to be receiving information before action could be taken before a problem was known and action could be taken. I don't, it's not our role as advisors to monitor every element of it we all have other full time jobs. We try and provide advice about how systems should be developed and designed so that that wouldn't be necessary that the issue would be identified and that there would be measures taken appropriately to deal with those sorts of things. The last thing you would want in an arrangement like this is for it to be dependent on an advisory council to be able to gather all of the information assess it and then produce a report for a Minister before any action is taken. My understanding is that the Department does try to monitor these things – these are issues where I know of people working in the Department who have deep concerns about any issue relating to the wellbeing of children and so forth and what I would want to see happen and encouraged is that the system of health service providers welfare providers, all of those agencies engaged to provide this assistance are able to report on the basis of fact and evidence to the Department or whatever and then action is taken through that regular mechanism of operating those contracts as opposed to being dependent on a part time advisory body – and I want to be clear – we don't provide all the answers we don't make policy, we don't try to get our ambitions mixed up with our abilities, we have a clear role which is limited and confined that we provide advice to Ministers on certain areas. That's what we try to do. The issue you're trying to get to is a systematic one that should be able to be resolved without us.</p>
Ms Sharp	<p>You mentioned that you had provided some advice to the Minister in relation to releasing children into the community on bridging visas, when the Minister announced his new policy earlier this week, there was a press conference in Melbourne on the 20th August and he stated during that conference that he received</p>

	advice that placing young children in the community on bridging visas would place them at risk. Did your Council provide that advice?
Mr Aristotle	No, it would be my view that, well, we may have had a conversation at one point, my view would be that if you place children in the community without adequate assistance then they're at risk and you shouldn't do that. There have been different views that community detention is the best arrangement for dealing with families with children and so forth. My view is that arrangements could be on a bridging visa model or in a residence determination model whichever the model is, it's the level of assistance and the package of care that is the most fundamental aspect and I think I heard the Minister referring to that himself earlier on in giving you evidence around wanting to ensure that the level of service was available and in place before he made that announcement but my view is doesn't matter where they are or what the issue is, the package of care and the assistance provided has to be appropriate to maintain their wellbeing.
President	Do you accept the Minister's argument that in his view hundreds of these children and their families had been better protected in mandatory closed detention than community detention?
Mr Aristotle	I'm not sure what the Minister means by better protected, does he mean, so it's difficult for me to comment on that what the Minister's views are without having had that conversation with him.
President	You've gone to some lengths really with your opening statement in a number of your remarks to say that you really don't have a mandate to look at things like the details of self-harm, torture trauma or babies failing to thrive – you don't have that information and it's probably or possibly beyond your remit what I want to know is who is responsible for keeping across that data and information and advising the Minister on those questions. Not a fair question to ask you but you're at least making clear that it's not within your remit.
Mr Aristotle	Yes that's a question you should put to the Department and the Minister. I mean the Minister has whenever we've operated within our boundaries has always been willing to listen. I think it's important that that's understood and I believe he's expressed genuine concern for children and families and so forth so I don't... I want to be clear about that – we don't have trouble talking about the importance of these issues where it goes in turns of government policy involves many other actors and players and not just the minister. But if we were able we would comment on self-harm if we saw it. We would comment on strategies for addressing failure to thrive, learning difficulties, those sorts of things where we have the information but this again is a systemic one. We are not medical experts right across the board so you need to have the mechanisms in place to get that advice when it is required and get it to the

	department and to the Minister but I do think those questions are for the Department.
President	Thank you, and finally does it concern you that so many of your recommendations have not been accepted by the Minister?
Mr Aristotle	Umm well when you say so many, I'm not sure whether I agree, but there are significant recommendations that we have made that the Minister
President	I am talking about the key or core recommendations that you have made have not been accepted, is that a matter of concern to you with quite a large advisory body?
Mr Aristotle	Do you mean about bring people to the main land?
President	That would be one of them, yes and speeding up processing but also of course ensuring that they are assessed for refugee status. These are core recommendations I would of thought of your report. I want to know really how you feel about the fact that they are not accepted.
Mr Aristotle	I am realistic. There are aspects of our advice that we provide that the Minister will believe can be accommodated within their policy framework and he will act on it. Such as the education for the children and now this work we are doing on trying to if people cannot be brought to the main land we construct arrangements on Christmas Island to make them more appropriate for families and children. I have been on advisory committees for a long time and I am used to advice like this and I think in my opening statement that every government that we have ever provided advice to which has been the same on that core element but the legislation that governments have has never been changed based on that advice. I think this Minister has taken advice about individual cases. He has taken advice about education. He has taken advice about changing arrangements on Christmas Island. But he will do it in the context of a broader policy framework that he and the government has developed and articulated and I don't think it's a secret to anyone that they are determined in its implementation.
President	Well we have had that answer from the Minister and certainly from you that these practises reflect policy settings.
Mr Aristotle	Yes
President	What I am trying to get to is to what extent are these policy settings consistent with international legal obligations, that's our task, do you challenge those policy settings or do you simply say well they are the policy settings so we'll be pragmatists and live within those policy settings and presumably you would want to challenge?
Mr Aristotle	You have read the reports so you know what we have said and some of those

	<p>recommendations as you are just acknowledging clearly challenge the policy settings. Whether the government takes our advice on that is at the end up to the government. I'd be doing well if I had the ability to make everybody do exactly what I have said. So the reality is we provide advice as we see it. Sometimes that advice is contrary to government policy and they continue to ignore that advice. Other times, they will take it on and that's what we struggle with.</p>
President	<p>Well, we very much appreciate your advice and your views particularly in relation to the consequences of detention on all children wherever they are. It is very valuable and highly regarded advice that this inquiry will revert to in finally reporting but we really appreciate the great depth and experience, professional experience and your own in particular Paris in tortured trauma that you have been engaged to for many decades we really thank you for advice, thank you very much in deed.</p>
Mr Aristotle	<p>Thank you, thanks for your time.</p>