



Australian  
Human Rights  
Commission

Immigration detainees with  
adverse security assessments  
v Commonwealth of  
Australia (DIBP)

[2014] AusHRC 92

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#### **Contact details**

For further information about the Australian Human Rights Commission, please visit [www.humanrights.gov.au](http://www.humanrights.gov.au) or email [communications@humanrights.gov.au](mailto:communications@humanrights.gov.au). You can also write to:

Communications Team  
Australian Human Rights Commission  
GPO Box 5218  
Sydney NSW 2001

**Immigration detainees with  
adverse security assessments  
v Commonwealth of Australia  
(Department of Immigration  
and Border Protection)**

Report into arbitrary detention

[2014] AusHRC 92

Australian Human Rights Commission 2014



**Australian  
Human Rights  
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**Australian  
Human Rights  
Commission**

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November 2014

Senator the Hon. George Brandis QC  
Attorney-General  
Parliament House  
Canberra ACT 2600

Dear Attorney

I have completed my report pursuant to s 11(1)(f)(ii) of the *Australian Human Rights Commission Act 1986* (Cth) into the complaints made by 10 people in immigration detention with adverse security assessments.

I have found that the following acts of the Commonwealth resulted in arbitrary detention contrary to article 9(1) of the *International Covenant on Civil and Political Rights* (ICCPR):

- (a) the failure by the Department of Immigration and Border Protection (the department) to ask ASIO to assess the complainants' individual suitability for community based detention while awaiting their security clearance (either at all, or for an extended period without reasonable explanation); and
- (b) the failure to assess on an individual basis whether the circumstances of each individual complainant indicated that they could be placed in less restrictive forms of detention.

In relation to one of the complainants, Mr GG, I have found that his continued detention in an immigration detention facility amounts to cruel, inhuman or degrading treatment within the meaning of article 7 of the ICCPR and is therefore inconsistent with or contrary to the rights recognised in that article.

The department and the Hon. Scott Morrison MP, Minister for Immigration and Border Protection, provided written responses to my findings and recommendations on 9 October 2014 and 23 October 2014 respectively. I have set out the responses of the department and the Minister in their entirety in part 9 of this report.

I enclose a copy of my report.

Yours sincerely

A handwritten signature in black ink, reading "Gillian Triggs".

Gillian Triggs  
**President**  
Australian Human Rights Commission

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Australian Human Rights Commission

Level 3, 175 Pitt Street, Sydney NSW 2000  
GPO Box 5218, Sydney NSW 2001

Telephone: 02 9284 9600

Facsimile: 02 9284 9611

Website: [www.humanrights.gov.au](http://www.humanrights.gov.au)

# 1 Introduction

1. This is a notice setting out the findings of the Australian Human Rights Commission (the Commission) and the reasons for those findings following an inquiry into complaints lodged by ten people against the Commonwealth of Australia alleging breaches of their human rights.
2. All ten complainants have been assessed as being refugees. All ten received adverse security assessments. All ten have been placed in immigration detention for extended periods. In December 2013, as a result of a review of his security assessment conducted by the Independent Reviewer of Adverse Security Assessments, one of the complainants, Mr GA, received a revised security assessment, was granted a temporary visa, and was released from immigration detention.
3. The Commission's inquiry initially included the complaint of an eleventh person in immigration detention, Mr GH. The Commission's preliminary view, issued to all parties on 24 September 2013, included discussion of and tentative findings made in relation to Mr GH's complaint. Mr GH subsequently informed the Commission that he did not wish to pursue his complaint, and consequently the Commission terminated his complaint on 13 June 2014.
4. This inquiry has been undertaken pursuant to s 11(1)(f) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act).
5. Seven of the complainants requested that their names not be disclosed. I have therefore directed that the identities of those complainants not be disclosed in accordance with s 14(2) of the AHRC Act. I have made a similar direction with respect to Mr GH. For the purposes of this report each complainant whose identity has been suppressed has been given a pseudonym beginning with 'G'.
6. All members of this group made complaints in writing in which they allege that their ongoing immigration detention is arbitrary and therefore inconsistent with the human rights recognised in article 9(1) of the *International Covenant on Civil and Political Rights* (ICCPR). (As he has been released from detention, Mr GA's complaint relates to his immigration detention up until that time).
7. In addition to his complaint in relation to article 9(1), Mr GE also made a complaint that the location of his immigration detention has arbitrarily interfered with his family, and is therefore inconsistent with the human rights recognised in articles 17(1) and 23(1) of the ICCPR.
8. In addition to his complaint under article 9(1), Mr GG also made a complaint that his continued immigration detention in the context of a deterioration of his mental health constitutes cruel, inhuman or degrading treatment, and is therefore inconsistent with the human rights recognised in article 7 of the ICCPR.
9. In addition to their complaints under article 9(1), Messrs GA and Razamiya have made complaints under article 7 of the ICCPR. I am conducting a separate inquiry into those complaints; they are not dealt with in this notice.

10. The situation of the present complainants is substantially similar to the situation of the complainants who were the subject of the Commission's reports *Sri Lankan refugees v Commonwealth of Australia (Department of Immigration and Citizenship)* [2012] AusHRC 56 and *Immigration detainees with adverse security assessments v Commonwealth of Australia (Department of Immigration and Citizenship)* [2013] AusHRC 64. In the course of this inquiry I have relied on material produced by the Commission in the course of previous inquiries and on material previously provided to the Commission including submissions by the Minister and the Department of Immigration and Border Protection (formerly the Department of Immigration and Citizenship) (the department). I informed the Commonwealth that I intended to adopt this approach, and the Commonwealth made no objection. In this notice I have at times referred to matters dealt with in detail in these two previous reports. Where indicated, I have not repeated those discussions in full in this notice.
11. As a result of this inquiry, I find that the following two acts of the Commonwealth were inconsistent with or contrary to the rights of the complainants recognised under article 9(1) of the ICCPR:
  - (a) the failure by the department to ask the Australian Security Intelligence Organisation (ASIO) to assess their individual suitability for community based detention while awaiting their security clearance (either at all, or for a lengthy period without reasonable explanation)
  - (b) the failure to assess on an individual basis whether the circumstances of each individual complainant indicated that they could be placed in less restrictive forms of detention.
12. I find that Mr GG's continued detention in an immigration detention facility amounts to cruel, inhuman or degrading treatment within the meaning of article 7 of the ICCPR and is therefore inconsistent with or contrary to the rights recognised in that article.
13. I find that Mr GE's complaint that the location of his detention in immigration detention facilities interfered with his family in a manner inconsistent with the rights recognised in articles 17(1) and 23(1) of the ICCPR has not been substantiated.

## 2 Background

14. The individuals identified in the table below have made complaints in writing to the Commission. The table sets out the date on which each of them was detained, the date that they were found to be a refugee, and the date that the department received an adverse security assessment (ASA) in respect of them from ASIO.

Complainant	Arrived in Australia	Refugee finding	ASA finding
Mr GA	11 September 2009	29 October 2009 (although not notified until 23 November 2010)	12 October 2010
Mr GB	23 September 2009	14 April 2010 (although not notified until 17 December 2010)	18 February 2011
Mr GC	23 September 2009	14 April 2010 (although not notified until 8 April 2011)	28 March 2011
Mr Razamiya Razamiya	9 November 2009	21 December 2009 (although not notified until 26 November 2010)	16 September 2011
Mr GD	10 December 2009	13 March 2010 (although not notified until 24 October 2010)	3 November 2011
Mr GE	10 December 2009	13 March 2010 (although not notified until 24 October 2010)	20 February 2012
Mr GF	10 December 2009	15 July 2010	18 February 2011
Mr Satheeskumar Bonifass	1 March 2010	15 June 2010 (although not notified until 27 October 2010)	18 August 2011
Mr Premakumar Subramaniam	20 March 2010	9 July 2010 (although not notified until 7 February 2011)	15 March 2011
Mr GG	21 December 2010	15 April 2011	8 December 2011

15. Messrs GA and Razamiya are Rohingya, originally from Burma. Messrs GB, GC, GD, GE, GF, Bonifass and Subramaniyam are Tamil, and nationals of Sri Lanka. Mr GG is a stateless 'Bidun' person, born in Kuwait.
16. All of the complainants arrived in Australia at Christmas Island by boat and were detained on behalf of the Commonwealth under s 189(3) of the *Migration Act 1958* (Cth) (Migration Act) immediately upon their arrival.
17. The Commonwealth has determined that all of the complainants are refugees within the meaning of the *1951 Convention Relating to the Status of Refugees* and the *1967 Protocol relating to the Status of Refugees*. With the exception of Mr GF, all complainants were determined to be refugees on assessment by a departmental delegate. Mr GF was found to be a refugee following review by an independent merits review panel.
18. Each of the complainants has received an adverse security assessment from ASIO.

## 3 Legislative framework

### 3.1 Functions of the Commission

19. Section 11(1) of the AHRC Act identifies the functions of the Commission. Relevantly s 11(1)(f) gives the Commission the following functions:
  - to inquire into any act or practice that may be inconsistent with or contrary to any human right, and:
    - (i) where the Commission considers it appropriate to do so – to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry; and
    - (ii) where the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect such a settlement – to report to the Minister in relation to the inquiry.
20. Section 20(1)(b) of the AHRC Act requires the Commission to perform the functions referred to in s 11(1)(f) when a complaint in writing is made to the Commission alleging that an act is inconsistent with or contrary to any human right.
21. Section 8(6) of the AHRC Act requires that the functions of the Commission under s 11(1)(f) be performed by the President.

## 3.2 What is a 'human right'?

22. The rights and freedoms recognised by the ICCPR are 'human rights' within the meaning of the AHRC Act.<sup>1</sup> The following articles of the ICCPR are relevant to the acts and practices the subject of the present inquiry.
23. Article 7 of the ICCPR provides:
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...
24. Article 9(1) of the ICCPR provides:
- Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
25. Article 17(1) of the ICCPR provides:
- No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
26. Article 23(1) of the ICCPR provides:
- The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

## 3.3 What is an 'act' or 'practice'?

27. The terms 'act' and 'practice' are defined in s 3(1) of the AHRC Act to include an act done or a practice engaged in by or on behalf of the Commonwealth or an authority of the Commonwealth or under an enactment.
28. Section 3(3) provides that the reference to, or to the doing of, an act includes a reference to a refusal or failure to do an act.
29. The functions of the Commission identified in s 11(1)(f) of the AHRC Act are only engaged where the act complained of is not one required by law to be taken;<sup>2</sup> that is, where the relevant act or practice is within the discretion of the Commonwealth, its officers or agents.

# 4 The complaints

30. I have given consideration to the following acts of the Commonwealth in relation to each of the complainants:
- Act 1:** The failure by the department to ask ASIO in a timely fashion to assess their individual suitability for community based detention while awaiting their security clearance.
- Act 2:** The failure to assess on an individual basis whether the circumstances of each individual complainant indicated that they could be placed in less restrictive forms of detention.
31. Each of these acts is considered in the context of article 9 of the ICCPR. In the case of Mr GG, these acts are also considered in the context of article 7 of the ICCPR.

32. With respect to Mr GE, I have also considered the following act in the context of articles 17(1) and 23(1) of the ICCPR:

**Act 3:** The failure to place Mr GE in an immigration detention facility closer to his brother in Perth.

33. For the reasons set out below, my findings are as follows:

- a. Acts 1 and 2 were inconsistent with or contrary to the rights of all the complainants under article 9 of the ICCPR;
- b. Acts 1 and 2 were inconsistent with the rights of Mr GG under article 7 of the ICCPR; and
- c. It has not been substantiated that Act 3 was inconsistent with the rights of Mr GE under articles 17(1) and 23(1) of the ICCPR.

## 5 Arbitrary detention

34. The following principles relating to arbitrary detention within the meaning of article 9 of the ICCPR arise from international human rights jurisprudence:

- (a) 'detention' includes immigration detention;<sup>3</sup>
- (b) lawful detention may become arbitrary when a person's deprivation of liberty becomes unjust, unreasonable or disproportionate to the Commonwealth's legitimate aim of ensuring the effective operation of Australia's migration system;<sup>4</sup>
- (c) arbitrariness is not to be equated with 'against the law'; it must be interpreted more broadly to include elements of inappropriateness, injustice or lack of predictability;<sup>5</sup> and
- (d) detention should not continue beyond the period for which a State party can provide appropriate justification.<sup>6</sup>

35. In *Van Alphen v The Netherlands* the UN Human Rights Committee found detention for a period of two months to be arbitrary because the State Party did not show that remand in custody was necessary to prevent flight, interference with evidence or recurrence of crime.<sup>7</sup> Similarly, the Committee considered that detention during the processing of asylum claims for periods of three months in Switzerland was 'considerably in excess of what is necessary'.<sup>8</sup>

36. The UN Human Rights Committee has held in several cases that there is an obligation on the State Party to demonstrate that there was not a less invasive way than detention to achieve the ends of the State Party's immigration policy (for example the imposition of reporting obligations, sureties or other conditions) in order to avoid the conclusion that detention was arbitrary.<sup>9</sup>

37. The United Nations Working Group on Arbitrary Detention has expressed the view that the use of administrative detention for national security purposes is not compatible with international human rights law where detention continues for long periods or for an unlimited period without effective judicial oversight.<sup>10</sup> A similar view has been expressed by the UN Human Rights Committee, which has said:<sup>11</sup>

... if so-called preventive detention is used, for reasons of public security, it must be controlled by these same provisions, i.e. it must not be arbitrary, and must be based on grounds and procedures established by law ... information of the reasons must be given ... and court control of the detention must be available ... as well as compensation in the case of a breach.

38. The Working Group emphasised that people who are administratively detained must have access to judicial review of the substantive justification of detention as well as sufficiently frequent review of the ongoing circumstances in which they are detained, in accordance with the rights recognised under article 9(4) of the ICCPR.<sup>12</sup>
39. A short period of administrative detention for the purposes of developing a more durable solution to a person's immigration status may be a reasonable and appropriate response by the Commonwealth. However, detention for immigration purposes without reasonable prospect of removal may contravene article 9(1) of the ICCPR.<sup>13</sup>
40. The UN Human Rights Committee has held that Australia's policy of detaining asylum seekers with adverse security assessments in immigration detention facilities on an indefinite basis without demonstrating on an individual basis that that detention is justified is in violation of article 9(1) of the ICCPR.<sup>14</sup>

## 5.1 Act 1: Failure by the department to ask ASIO in a timely manner to assess the individual suitability of the complainants for community based detention while awaiting their security clearance

41. The department asked ASIO to provide security assessments in relation to all of the complainants.
42. The security assessment process has been discussed in detail in previous Commission reports.<sup>15</sup> Relevantly for the purposes of the present inquiry:
  - a. The department asks ASIO to provide a security assessment for all persons in the position of the complainants (that is, asylum seekers who have arrived in Australia by boat and been found to be refugees who wish to apply for protection visas). These security assessments relate to granting a person a visa that would allow them to reside permanently in Australia (I shall hereinafter refer to these security assessments as 'permanent visa security assessments');
  - b. ASIO also provides, on the request of the department, security assessments in relation to allowing persons in immigration detention to be placed in community detention. These assessments can frequently be completed within 24 hours. I shall hereinafter refer to these assessments as 'community detention security assessments'.
43. In respect of six of the complainants, the department only asked ASIO to conduct permanent visa security assessments. The department did not ask ASIO to conduct community detention security assessments. Each of these six complainants was held in immigration detention for between 12 and 18 months before receiving their adverse permanent visa security assessment. The relevant complainants, and the time they had been held in immigration detention at the time the department received their adverse permanent visa security assessments are given below:
  - a. Mr GA (13 months)
  - b. Mr GB (16 months)
  - c. Mr GC (18 months)
  - d. Mr GF (14 months)
  - e. Mr Bonifass (17 months)
  - f. Mr Subramaniam (12 months).

44. I find that the failure of the department to request that ASIO conduct community detention security assessments in relation to the complainants listed above was inconsistent with or contrary to article 9(1) of the ICCPR. A community detention security assessment could have been conducted quickly and might have led to these complainants being held in a less restrictive form of detention.<sup>16</sup>
45. The department did ask ASIO to conduct community detention security assessments for four of the complainants. In the case of Mr GG, the department requested the assessment after he had been detained for just under four months. The other three complainants had each been detained for at least 19 months before the department asked ASIO to conduct a community detention security assessment. The relevant complainants and the lengths of their detention at the time the community detention security assessments were conducted are given below:<sup>17</sup>
- a. Mr Razamiya (19 months)
  - b. Mr GE (22 months)
  - c. Mr GD (21 months)
  - d. Mr GG (4 months).
46. In each case, ASIO advised that it would not be in the public interest for the Minister to exercise his powers under s 197AB of the Migration Act – that is, to make residence determinations and so to allow the complainants to reside in community detention.
47. Each of these four complainants subsequently received an adverse permanent visa security assessment.
48. Despite the fact that the above four complainants ultimately received adverse community detention security assessments, I consider that the significant delays by the department in requesting those assessments were arbitrary. The delays were in the majority of cases very significant, and no reasonable explanation has been provided for them. A community detention security assessment could have been conducted quickly. The department has not demonstrated that at the time the complainants were placed in detention it had any reason to expect that ASIO would issue them negative community detention security assessments. In the absence of such security assessments, the department could not have been satisfied that ongoing detention was justified. As discussed above, detention for an extended period without demonstrating on an individual basis that that detention is justified is arbitrary within the meaning of article 9 of the ICCPR.

## 5.2 Act 2: Failure to assess on an individual basis whether the circumstances of each complainant indicated that they could be placed in less restrictive forms of detention

49. As has been discussed previously by the Commission,<sup>18</sup> the Minister at all relevant times had the power to make a residence determination under s 197AB of the Migration Act, which would have allowed the complainants to be placed in community detention. The Minister also had the power to grant temporary visas under s195A, or to approve some other less restrictive place (or places) to be a place (or places) of ‘immigration detention’ under s 5.
50. The department did not refer any of the complainants’ cases to the Minister for consideration of the exercise of his discretionary powers. That was as a result of the negative security assessments received from ASIO.

51. However, a negative community detention security assessment constitutes an assessment by ASIO that an individual would pose a risk to the community if placed in community detention. A negative permanent visa security assessment constitutes an assessment by ASIO that an individual would pose a risk to the community if granted a permanent visa (in the case of each of the complainants, a protection visa).<sup>19</sup>
52. The department did not conduct any individualised assessment of whether the risk that each complainant posed to the Australian community could be mitigated in a way that would allow them to reside in the community or some other less restrictive place of detention consistently with national security. Nor did the department ask ASIO to consider whether any risk each complainant posed to the community could be mitigated.
53. It may well be that there are alternatives to prolonged detention in secure facilities which can appropriately address the risk posed by each complainant. These alternative options may include less restrictive places of detention than immigration detention centres as well as community detention, if necessary with conditions to mitigate any identified risks. Conditions could include a requirement to reside at a specified location, curfews, travel restrictions, regular reporting and possibly even electronic monitoring.<sup>20</sup>
54. I find that in failing to consider whether any risks could be mitigated, the department has failed to assess on an individual basis whether the circumstances of each individual complainant indicated that they could be placed in less restrictive forms of detention. For the reasons given above, that failure is inconsistent with the rights protected in article 9(1) of the ICCPR.
55. The breach identified above arises from a failure adequately to consider less restrictive forms of detention or alternatives to detention taking into account the circumstances of each complainant. The Commission does not express any view as to what the outcome of any such consideration in each particular case would be.

### 5.3 Third country resettlement

56. Prior to his release in December 2013, Mr GA was detained in immigration detention for well over four years. All of the other complainants in this matter remain in closed detention, and have been detained for over three and a half years. A number have been detained for almost five years.
57. The department has stated that it is exploring options to resettle the complainants in third countries. Where the complainants have provided details of family members in third countries, the department has approached those countries to see if they will resettle those complainants. The department has also made 'cohort approaches' including all complainants to a number of countries.
58. Mr GC provided details of a relative in a third country, however that country has refused to resettle him.
59. My Subramaniyam has also provided details of a relative in a third country. The department has approached that country asking if it is willing to resettle Mr Subramaniyam. On 19 December 2012, in the last update it has provided on this issue, the department informed me that it was still waiting for a response.
60. It appears that the only prospect of resettlement for all complainants (except, possibly, Mr Subramaniyam) is through the department's 'cohort approaches' to third countries. The department does not have 'high expectations' that this will lead to resettlement. It appears that a number of the countries approached by the department have already indicated that they will not accept the complainants.

61. In my preliminary view dated 24 September 2013, I invited the department to provide an update about the progress of its cohort approaches in relation to the complainants, and in particular, provide an updated list of which third countries have indicated that they will not consider resettling the complainants (or those in the position of the complainants), and which third countries the department has approached that are still considering the request. I further invited the department to provide an update about the family reunion request made to a third country on behalf of Mr Subramaniam. I have to date received no response to these requests.
62. I am concerned about the time it has taken to find a durable alternative to detention for people with adverse security assessments. I note the lack of progress and prospects of the third country resettlement approaches. This situation places even greater emphasis on the need to find domestic solutions. I and the former President of the Commission have expressed similar concerns about the complainants the subject of reports [2012] AushRC 56 and [2013] AushRC 64.

## 6 Articles 17(1) and 23(1) of the ICCPR – complaint by Mr GE

63. Mr GE has complained that the location of his detention has interfered with his relationship with his brother.
64. Article 17(1) of the ICCPR states:  
No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
65. Article 23(1) of the ICCPR states:  
The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
66. Professor Manfred Nowak states that ‘since life together is an essential criterion for the existence of family, members of a family are entitled to a stronger right to live together than other persons.’<sup>21</sup>
67. For the reasons set out in Commission report [2008] AushRC 39,<sup>22</sup> the Commission is of the view that in cases alleging a State’s arbitrary interference with a person’s family, it is appropriate to assess the alleged breach under article 17(1). If an act is assessed as breaching the right not to be subjected to an arbitrary interference with a person’s family, it will usually follow that that breach is in addition to (or in conjunction with) a breach of article 23(1).
68. In its General Comment on Article 17, the UN Human Rights Committee confirmed that a lawful interference with a person’s family may nevertheless be arbitrary, unless it is in accordance with the provisions, aims and objectives of the Covenant and is reasonable in the particular circumstances.<sup>23</sup>
69. It follows that the prohibition against arbitrary interference with family incorporates notions of reasonableness.<sup>24</sup> In relation to the meaning of reasonableness, the UN Human Rights Committee stated in *Toonen v Australia*:<sup>25</sup>  
The Committee interprets the requirement of reasonableness to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

70. Whilst the *Toonen* case concerned a breach of Article 17(1) in relation to the right to privacy, these comments would apply equally to an arbitrary interference with the family.
71. Since 20 November 2012, Mr GE has been detained at Melbourne Immigration Transit Accommodation (MITA). Prior to that, he has been detained on Christmas Island, at the Northern Immigration Detention Centre (NIDC) in Darwin, the Darwin Airport Lodge (DAL), and Port Augusta Immigration Residential Housing (PAIRH).
72. Mr GE states that he has requested a transfer to a detention facility in Perth, so that his brother who lives there can visit him. He claims that the department's failure to agree to this transfer constitutes arbitrary interference with his family.
73. The department agrees that Mr GE has requested a transfer to a detention facility in Perth. It submits that he first made that request in February 2012.
74. The department maintains two immigration detention facilities in metropolitan Perth, the Perth Immigration Detention Centre (Perth IDC) and the Perth Immigration Residential Housing (Perth IRH). However the department submits that neither is appropriate to accommodate Mr GE.
75. The department submits that both Perth IDC and Perth IRH are only suitable for short-term accommodation. It states that both are small facilities with limited capacity, and limited space and facilities.
76. With respect to Perth IDC, the department states:  
  
Perth IDC is only suitable for short term accommodation. Long term accommodation would carry substantial risks to client wellbeing and potentially mental health.  
  
Perth IDC is a small, medium security facility that under normal circumstances accommodates up to around 37 clients. The facility has a total area (including both administrative and client areas) of only around 1100m<sup>2</sup>. Perth IDC's small size means that it has limited recreational space, and the range of activities available to clients is therefore also limited. The department's operational approach is to minimise the time clients are housed in Perth IDC by seeking to:  
  
a) resolve their immigration status; or  
b) transfer them into more suitable detention arrangements as soon as possible.<sup>26</sup>
77. With respect to Perth IRH, the department states:  
  
Perth IRH is also unsuitable for Mr GE because it is a low security facility designed to house 'low risk' clients who only require transit or short-term accommodation.  
  
Moreover, Perth IRH generally only accepts asylum seeker families where one or more family members have special health needs for placement. Single adults are generally not accepted for placement at this facility as it is most important to maintain a safe, supportive, family-friendly environment. Clients (such as Mr GE) with adverse security assessments or are otherwise assessed as being of 'medium' or 'high' risk are as a rule not accepted for placement at the Perth IRH.  
  
As with the Perth IDC, the recreational areas and facilities are limited.... The department's operational approach is to minimise the time clients are housed in Perth IRH by escalating their cases and seeking to transfer them into more suitable detention arrangements, as soon as can possibly be effected.<sup>27</sup>

78. The department states that it has offered to move Mr GE to Northam Immigration Detention Centre (Northam IDC), which it says is located a 70 minute drive from Perth. It states that Mr GE has refused this transfer.
79. Given the offer to relocate Mr GE to Northam IDC, and the limitations identified by the department on the capacities and the facilities available at Perth IDC and Perth IRH, I find that Mr GE's complaint that the department's failure to relocate him to a detention facility closer to Perth (designated as 'Act 3' in paragraph 32 above) arbitrarily interfered with his relationship with his brother has not been substantiated.

## 7 Article 7 of the ICCPR – complaint by Mr GG

80. Whilst the claim is not clearly particularised, Mr GG appears to claim that the adverse impact of detention on his mental health amounts to a breach of his human rights.
81. Article 7 of the ICCPR states:
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.
82. In *C v Australia*<sup>28</sup>, the United Nations Human Rights Committee found that the continued detention of C when the State party was aware of the deterioration of C's mental health constituted a breach of article 7 of the ICCPR. The Committee stated:
- ...the State party was aware, at least from August 1992 when he was prescribed the use of tranquilisers, of psychiatric difficulties the author faced. Indeed, by August 1993, it was evident that there was a conflict between the author's continued detention and his sanity. Despite increasingly serious assessments of the author's conditions in February and June 1994 (and a suicide attempt) it was only in August 1994 that the Minister exercised his exceptional power to release him from immigration detention on medical grounds (while legally he remained in detention). As subsequent events showed, by that point the author's illness had reached such a level of severity that irreversible consequences were to follow.<sup>29</sup>
83. The relevant question for the purposes of article 7 of the ICCPR is whether Mr GG's detention has caused a level of mental impairment such that it amounts to cruel, inhuman or degrading treatment or punishment.
84. Mr GG has been assessed by a number of different psychiatrists over what is now a period of years. The psychiatrists who have assessed Mr GG have expressed different opinions about the degree to which he is psychiatrically impaired and the extent to which this condition is caused by his placement in immigration detention.
85. For example, in a report dated 24 November 2011, Professor Jon Jureidini, Child Psychiatrist, states that Mr GG 'is clearly significantly psychiatrically impaired'. Professor Jureidini was of the view that Mr GG clearly met the criteria for major depressive disorder and that his range of symptoms was such that his condition was considered severe. Professor Jureidini notes that Mr GG appears to have experienced a period of depression while resident in Indonesia before travelling to Christmas Island, but considers that his condition at the time of assessment by Professor Jureidini was separate to whatever Mr GG experienced in Indonesia.

86. Conversely Dr Joel Aizentros, who examined Mr GG on 23 December 2011, was of the opinion that Mr GG was in remission from chronic adjustment disorder with anxious and depressed mood. However, Dr Aizentros was of the view that Mr GG was at risk of developing a major depressive illness and/or Post Traumatic Stress Disorder. Dr Aizentros considered that Mr GG's difficulties in Australian detention centres had aggravated his pre-existing psychological difficulties. Dr Aizentros was of the opinion that the manner and level of treatment that was being provided to Mr GG at that time was sufficient to ensure his health and safety.

87. In the latest psychiatrist's report that has been provided to the Commission, dated 17 May 2012, Dr Roman Onilov states:

I still believe that he presents with Chronic Adjustment Disorder and maladaptive personality traits. No doubt that a number of presenting symptoms are conditioned by ongoing detention in low stimulus environment and ongoing stay in current APOD is contraindicated for his mental well being.

88. It may be expected that there have been fluctuations in Mr GG's psychiatric health over time and that that is reflected in the opinions of the mental health professionals who have assessed him. However, it is not disputed that Mr GG has engaged in serious acts of self-harm. Mr GG sewed his lips together in July 2011 and attempted to hang himself in November 2011. Mr GG has engaged in acts of self-cutting on several occasions whilst he has been in detention. The medical information before me indicates that these acts continue to occur on a reasonably frequent basis.

89. Whilst it appears that Mr GG exhibited symptoms of mental illness before arriving in Australia, the information before me suggests that his condition has been exacerbated as a result of his detention by the Commonwealth. Whilst Mr GG does not appear to be irreversibly psychologically impaired at this time, his detention is continuing and is having serious adverse effects on his mental health.

90. The UN Human Rights Committee has recently expressly considered claims of violations of article 7 of the ICCPR by a number of asylum seekers detained in Australia as a result of receiving adverse security assessments, who have, in consequence, suffered psychological harm. The Committee stated:

... the combination of the arbitrary character of the authors' detention, its protracted and/or indefinite duration, the refusal to provide information and procedural rights to the authors and the difficult conditions of detention are cumulatively inflicting serious psychological harm upon them, and constitute treatment contrary to article 7 of the Covenant.<sup>30</sup>

91. Based on all of the information before me, I find that the same reasoning applies to Mr GG. As a result, I find that Mr GG's continued detention amounts to cruel, inhuman or degrading treatment within the meaning of article 7 of the ICCPR.

# 8 Conclusions and Recommendations

## 8.1 Conclusions

92. I find that the following acts amount to a breach of article 9(1) of the ICCPR:
- a. the failure by the department to ask ASIO to assess the complainants' individual suitability for community based detention while awaiting their security clearance (either at all, or for an extended period without reasonable explanation); and
  - b. the failure to assess on an individual basis whether the circumstances of each individual complainant indicated that they could be placed in less restrictive forms of detention.
93. The failure to take these steps raises the real possibility that each of the complainants was either detained unnecessarily or detained in a more restrictive way than their circumstances required. The detention of the complainants in these circumstances was arbitrary.
94. I find that Mr GG's continued detention in an immigration detention facility amounts to cruel, inhuman or degrading treatment within the meaning of article 7 of the ICCPR and is therefore inconsistent with or contrary to the rights recognised in that article.
95. I find that Mr GE's complaint that the location of his detention in immigration detention facilities interfered with his family in a manner inconsistent with the rights recognised in articles 17(1) and 23(1) of the ICCPR has not been substantiated.
96. Where, after conducting an inquiry, the Commission finds that an act or practice engaged in by a respondent is inconsistent with or contrary to any human right, the Commission is required to serve notice on the respondent setting out its findings and reasons for those findings.<sup>31</sup> The Commission may include in the notice any recommendations for preventing a repetition of the act or a continuation of the practice.<sup>32</sup>

## 8.2 Independent review process

97. Before making my recommendations in relation to the present inquiry, I note the submissions made by the Commonwealth with regard to the review of the complainants' adverse security assessments by the Independent Reviewer of Security Assessments.
98. The Commission has welcomed the introduction of the independent review process. I have previously discussed that process in Commission report [2013] AusHRC 64.<sup>33</sup>
99. Under the Government's terms of reference, the primary review function of the Independent Reviewer is to:
- conduct an independent review of each relevant adverse security assessment;
  - examine all of the ASIO material that was relied upon by ASIO in making the adverse security assessment;
  - form and record in writing an opinion as to whether the assessment is an appropriate outcome based on the material ASIO relied upon (including any new material) and provide such opinion to the Director-General of ASIO, including recommendations as appropriate;
  - provide a copy of that written opinion to the Attorney-General, the Minister and the Inspector-General of Intelligence and Security; and
  - advise the subject of the security assessment in writing of the outcome of the review.

100. All the complainants have had, or are in the process of having, their security assessments reviewed by the Independent Reviewer. On 2 June 2014, the department provided the following update of their reviews:
1. Mr GA's security assessment was reviewed in December 2013. Following the outcome of that review, he was subsequently granted a Removal Pending Bridging visa and now resides in the community.
  2. Mr GB is currently scheduled to provide oral submissions as part of the review of his security assessment in October 2014....
  3. Mr GC is currently scheduled to provide oral submissions as part of the review of his security assessment in July 2014....
  4. Mr [Razamiya] is currently scheduled to provide oral submissions as part of the independent review of his security assessment in June 2014....
  5. Mr GD is currently scheduled to provide oral submissions as part of the independent review of his security assessment in September 2014....
  6. Mr GE is currently scheduled to provide oral submissions as part of the independent review of his security assessment in July 2014....
  7. Mr GF is currently scheduled to provide oral submissions as part of the independent review of his security assessment in June 2014....
  8. Mr [Bonifass] provided oral submissions in support of in Independent Review of his security in November 2013 and is awaiting the outcome of this review....
  9. Mr [Subramaniyam] provided oral submissions as part of the independent review of his security assessment on 30 April 2013. A new adverse security assessment (ASA) was issued by ASIO on 13 December 2013 which superseded the previous ASA issued on 29 March 2011. On the 10 February 2014 the Independent Reviewer agreed that both ASA decisions were appropriate in the circumstances....
  10. Mr GG provided oral submissions as part of the independent review of his security assessment on 19 November 2013. On 7 March 2014, the Independent Reviewer agreed that the adverse security assessment was appropriate in his circumstances....
101. With the exception of Mr GA, all the complainants remain detained in immigration detention facilities.
102. As noted in report [2013] AushRC 64, the department has informed the Commission that each of those persons covered by the independent review process has been contacted about the process and has formally requested a review of their circumstances. The department has said that, 'consistent with previous Government policy, while this review process is undertaken the Minister is not minded to exercise his non-compellable powers under section 46, section 195A or section 197AB'.<sup>34</sup>
103. The circumstances of the complainants demonstrate:
- a. in the case of Mr GA – that the government's policies can lead to the detention of persons for very long periods (Mr GA was detained for over four years) in circumstances where on review it is found that their adverse security assessment was not justified; and
  - b. in the cases of all complainants – that the government's policies can lead to the continued detention of persons for lengthy periods while they wait for the Independent Reviewer to review their security assessments.

## 8.3 Recommendation to the Minister

104. As noted above, it is a possible outcome of the independent review process that the Independent Reviewer will form the view that the adverse security assessment furnished by ASIO to the department in relation to the grant of a permanent visa to a particular person was an appropriate outcome. In the cases of Messrs Subramaniam and GG, that has occurred.
105. The Independent Reviewer has not been asked to separately consider whether it would be consistent with the requirements of security for a person to be placed into community detention, along with any conditions necessary to mitigate any security risk.
106. A possible outcome of the independent review process is that one or more people with adverse security assessments in relation to the grant of a permanent visa will continue to be kept in held detention without an assessment of whether their circumstances indicated that they could be placed in less restrictive forms of detention. This is a result of the government's policy that:
- individuals who have been assessed by ASIO to be directly or indirectly a risk to security should remain in held detention, rather than the community, until such time as resettlement in a third country or removal is practicable.<sup>35</sup>
107. This policy has been discussed in paragraph [57] in the Commission's report [2013] AusHRC 64 and in the Commission's report [2012] AusHRC 56 at paragraphs [71]-[83].
108. The result of the Government's policy is that a person refused a visa on security grounds is precluded from consideration for community detention or other forms of community placement. However, it may be that ASIO would not assess that person as a risk to security if placed in community detention, or would consider that any risk that a person might pose if placed in community detention could be mitigated through imposing other conditions.
109. As a result of these considerations, in Commission report [2013] AusHRC 64 I made a recommendation to the then Minister in the following terms:
- The Minister for Immigration and Citizenship indicate to his department that he will not refuse to consider a person in immigration detention for release from detention or placement in a less restrictive form of detention merely because the department has received advice from ASIO that the person not be granted a visa on security grounds.<sup>36</sup>
110. The Minister did not accept that recommendation.
111. Since I made the recommendation described above, the current Minister has in fact further entrenched the current policy. On 18 February 2014, the Minister issued revised guidelines to the department about when the department should refer cases to him to consider the exercise of his power to make a residence determination under s 197AB of the Migration Act. In these revised guidelines, the Minister states that cases should generally not be referred to him:
- where a person [has been issued by ASIO] an adverse security assessment which states that "ASIO assesses [the person] to be directly or indirectly a risk to security, within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*".
112. This guideline does not preclude the department referring a case where there are 'exceptional circumstances'.

113. In these circumstances, I consider it is appropriate to make a recommendation to the Minister in the following terms.

**Recommendation 1**

*The Minister for Immigration and Border Protection indicate to his department that he will not refuse to consider a person in immigration detention for release from detention or placement in a less restrictive form of detention because the department has received an adverse security assessment in relation to that person from ASIO, unless the department has taken appropriate steps to determine whether any risks the individual might pose could be mitigated (for instance, through the imposition of appropriate conditions).*

## 8.4 Recommendations to the department

114. I consider it is appropriate to make recommendations in relation to the present complainants in the same terms as those I made in Commission report [2013] AusHRC 64, for the reasons given in that report. These recommendations are not made with respect to Mr GA, as he has now been released from immigration detention.

**Recommendation 2**

*The department refer each of the complainants specified below to ASIO and request that ASIO provide a security assessment pursuant to s 37(1) of the ASIO Act relevant to the following prescribed administrative actions:*

- (a) (with respect to all complainants except Mr GA) granting the complainant a temporary visa and imposing additional conditions necessary to deal with any identified risk to security, for example, a requirement to reside at a specified location, curfews, travel restrictions, reporting requirements or sureties;*
- (b) (with respect to Messrs GB, GC, GF, Bonifass and Subramaniyam) making a residence determination under s 197AB of the Migration Act in favour of the complainant;*
- (c) (with respect to all complainants except Mr GA) making a residence determination in favour of the complainant, if necessary subject to special conditions to ameliorate any identified risk to security, for example, curfews, travel restrictions, reporting requirements or sureties.*

**Recommendation 3**

*To the extent that the security assessment carried out in Recommendation 2 would result in an adverse security assessment, the department ask ASIO to advise it of any measures that could be taken to allow the complainants to be placed in a less restrictive form of detention consistently with the requirements of national security.*

**Recommendation 4**

*The department seek advice from ASIO of the kind identified in Recommendations 2 and 3 in respect of each person held in immigration detention who has received an adverse security assessment from ASIO.*

### **Recommendation 5**

*As the department receives advice sought from ASIO in relation to Recommendations 2, 3 and 4, the department refer the cases of each relevant person to the Minister for consideration of the exercise of appropriate public interest powers. The submissions accompanying the referrals should include details of how any potential risk identified by ASIO can be mitigated.*

### **Recommendation 6**

*The Commonwealth continue actively to pursue alternatives to detention, including the prospect of third country resettlement, for each of the complainants and for other people in immigration detention who are facing the prospect of indefinite detention. The Commonwealth inform each of these individuals on a regular basis of the steps taken to secure alternatives to detention and the Commonwealth's assessment of the prospects of success of these steps.*

## 9 The Minister's and department's responses to my conclusions and recommendations

115. On 27 August 2014 I provided a notice to the Minister for Immigration and Border Protection, Mr Scott Morrison MP, and the department under s 29(2)(a) of the AHRC Act setting out my findings and recommendations in relation to the complaints dealt with in this report.
116. By letter dated 23 October 2014 the Minister provided the following response to Recommendation 1:
- I do not accept this recommendation.
- It is Government policy that individuals who have been assessed to be directly or indirectly a risk to Australia's security will remain in held immigration detention until such time that a durable solution for individuals with adverse security assessments is found that is consistent with Australia's international obligations.
- Given the serious nature of the assessment by ASIO, and in light of Government policy, I am not minded to exercise my Ministerial intervention powers in respect of individuals with adverse security assessments.
117. By letter dated 9 October 2014 the department provided the following response to my findings:

### **Response to finding 1**

As per the response to the AHRC's preliminary views, the Department did request that ASIO assess the individual suitability for community detention (CD) for four of the complainants (Messrs [Razamiya], GD, GE and GG) prior to receiving the security assessment.

Mr [Bonifass] was not referred to ASIO for an assessment as no particular vulnerabilities were identified in his case. From January 2011, only Illegal Maritime Arrival (IMA) single adult males with particular vulnerabilities were considered for a CD placement and Mr [Bonifass] was not identified as part of this cohort.

Mr GA was the subject of an adverse security assessment prior to the expansion of the CD programme in January 2011 and a further request for security advice from ASIO was not sought as the Department considered this advice as equally applicable to the appropriateness of a CD placement.

The remaining four complainants were referred for consideration of a CD placement after receipt of their adverse security assessment. As per the case of Mr GA and in light of Government policy that people who have been assessed to be directly or indirectly a risk to Australia's security will remain in held immigration detention until such time that a durable solution for individuals with adverse security assessments is found that is consistent with Australia's international obligations, no further security advice was requested.

### **Response to finding 2**

The Department considers less restrictive detention placements for each individual in line with Government policy that people who have been assessed to be directly or indirectly a risk to Australia's security will remain in held immigration detention until such time that a durable solution for individuals with adverse security assessments is found that is consistent with Australia's international obligations.

As at 5 September 2014, five of the complainants (Messrs GC, GD, GE, [Bonifass] and GG) are placed at the Melbourne Immigration Transit Accommodation (MITA), one of the least restrictive detention placements available to the department.

The remaining four complainants are placed at Villawood Immigration Detention Centre (VIDC) Hotham. While VIDC Hotham is a more restrictive detention placement, it comprises 24 single occupancy ensuited rooms, and residents have access to visits, the medical centre and communal activities space in close proximity to the complex.

Following the issuance of a qualified security assessment, Mr GA was granted a Removal Pending Bridging visa on 24 December 2013 and released from detention.

### **Response to finding 3**

The Department considers less restrictive detention placements in line with Government policy as outlined above.

In line with this policy, and in light of the health reports in Mr GG's case, Mr GG is currently detained at the MITA, one of the least restrictive options available to the Department.

### **Response to finding 4**

The Department notes the AHRC's finding. The Department has no further comment to add in regards to Mr GE's complaint.

118. The department provided the following response to my recommendations:

### **Response to Recommendations 2 to 5**

It is Government policy that individuals who have been assessed to be directly or indirectly a risk to Australia's security will remain in held immigration detention until such time that a durable solution for individuals with adverse security assessments is found that is consistent with Australia's international obligations.

The Department is aware that the same threshold is applied to a security assessment whether it is requested for the purpose of Public Interest Criterion 4002 (PIC4002) or for CD purposes. This means that recipients of an adverse security assessment for permanent visa purposes would receive a further adverse response to any subsequent requests for security advice. As such, the Department does not consider there to be any utility in making a further request for information in circumstances where the outcome is already known.

The Department notes that ASIO and the Independent Reviewer of Adverse Security Assessments are currently reviewing all adverse security assessments. While two of the complainants (Messrs [Subramaniam] and GF) have had outcomes confirming that their adverse security assessments remain appropriate, the remaining complainants will have their assessments reviewed as part of this process.

#### **Response to Recommendation 6**

The Department continues to explore options for these people, including third country resettlement, together with taking prompt action regarding any independent reviewer assessments or ASIO internal review process that may change the status of a security assessment. As a result of the independent review and ASIO review process, ten people who formerly held adverse security assessments have been granted visas and released from detention.

Case managers have regular discussions with people in detention to advise them of the outcome of detention placement decisions and other steps that are being pursued to resolve their case.

119. I report accordingly to the Attorney-General.

A handwritten signature in black ink, appearing to read 'Gillian Triggs', with a long horizontal stroke underneath.

Gillian Triggs  
**President**  
Australian Human Rights Commission  
November 2014

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- 1 The ICCPR is referred to in the definition of 'human rights' in s 3(1) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act). On 22 October 1992, the Attorney-General made a declaration under s 47 that the CRC is an international instrument relating to human rights and freedoms for the purposes of the AHRC Act: *Human Rights and Equal Opportunity Commission Act 1986 – Declaration of the United Nations Convention on the Rights of the Child*.
  - 2 See *Secretary, Department of Defence v HREOC, Burgess & Ors* (1997) 78 FCR 208.
  - 3 UN Human Rights Committee, General Comment 8 (1982). See also *A v Australia* Communication No 560 of 1993, UN Doc CCPR/C/59/D/560/1993; *C v Australia* Communication No 900 of 1999, UN Doc CCPR/C/76/D/900/1999; *Baban v Australia* Communication No 1014 of 2001, UN Doc CCPR/C/78/D/1014/2001.
  - 4 UN Human Rights Committee, General Comment 31 (2004), [6]. See also S Joseph, J Schultz and M Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (Oxford University Press, 2nd ed, 2004) 308, [11.10].
  - 5 *Manga v Attorney-General* [2000] 2 NZLR 65, [40]-[42], (Hammond J). See also the views of the UN Human Rights Committee in *Van Alphen v The Netherlands* Communication No 305 of 1988, UN Doc CCPR/C/39/D/305/1988; *A v Australia* Communication No 560 of 1993, UN Doc CCPR/C/59/D/560/1993; *Spakmo v Norway* Communication No 631 of 1995, UN Doc CCPR/C/67/D/631/1995.
  - 6 *A v Australia* Communication No 560 of 1993, UN Doc CCPR/C/59/D/560/1993 (the fact that the author may abscond if released into the community was not a sufficient reason to justify holding the author in immigration detention for four years); *C v Australia* Communication No 900 of 1999, UN Doc CCPR/C/76/D/900/1999.
  - 7 *Van Alphen v The Netherlands* Communication No 305 of 1988, UN Doc CCPR/C/39/D/305/1988.
  - 8 UN Human Rights Committee, *Concluding Observations on Switzerland*, UN Doc CCPR/A/52/40 (1997), [100].
  - 9 *C v Australia* Communication No 900 of 1999, UN Doc CCPR/C/76/D/900/1999; *Shams & Ors v Australia* Communication No 1255 of 2004, UN Doc CCPR/C/90/D/1255/2004; *Baban v Australia* Communication No 1014 of 2001, CCPR/C/78/D/1014/2001; *D and E v Australia* Communication No 1050 of 2002, CCPR/C/87/D/1050/2002.
  - 10 *Report of the Working Group on Arbitrary Detention*, UN Doc E/CN.4/2005/6, 1 December 2004, [77].
  - 11 UN Human Rights Committee, General Comment 8 (1982), [4]. See also the *Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile*, UN Doc E/CN.4/826/Rev.1, [783]-[787].
  - 12 *Mansour Ahani v Canada* Communication No 1051 of 2002, UN Doc CCPR/C/80/D/1051/2002, [10.2].
  - 13 *Jalloh v The Netherlands* Communication No 794 of 1998, UN Doc CCPR/C/74/D/794/1998; *Baban v Australia* Communication No 1014 of 2001, UN Doc CCPR/C/78/D/1014/2001.
  - 14 *F.K.A.G. et al v Australia* Communication No 2094 of 2011, UN Doc CCPR/C/108/D/2094/2011, [9.4]; *M.M.M et al v Australia* Communication No 2136 of 2012, UN Doc CCPR/C/108/D/2136/2012, [10.4].
  - 15 See [2012] AusHRC 56, [48]-[70]; [2013] AusHRC 64, [33]-[43].
  - 16 Compare [2012] AusHRC 56, [69]-[70]; [2013] AusHRC 64, [53]-[54].
  - 17 The department has stated that no protocols were in place for single adult males to be referred to the Minister for consideration for placement in community detention until January 2011 – see discussion in [2013] AusHRC 64, [44]-[46].
  - 18 See [2012] AusHRC 56, [85]; [2013] AusHRC 64, [71]-[79].
  - 19 See the discussion contained in [2012] AusHRC 56, [48]-[70]; [2013] AusHRC 64, [33]-[43].
  - 20 See the discussion contained in [2012] AusHRC 56, [71]-[95]; [2013] AusHRC 64, [57]-[79].
  - 21 M Nowak, *U.N. Covenant on Civil and Political Rights CCPR Commentary* (Oxford University Press, 2nd ed, 2005) 519.
  - 22 Human Rights and Equal Opportunity Commission, *Nguyen and Okoye v Commonwealth (Department of Immigration and Multicultural Affairs) and GSL (Australia) Pty Ltd* [2008] AusHRC 39 (1 January 2008), [80]-[88].
  - 23 UN Human Rights Committee, General Comment 16 (1988), [4].
  - 24 S Joseph, J Schultz and M Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (Oxford University Press, 2nd ed, 2004) 482-3.
  - 25 Communication No 488 of 1992, UN Doc CCPR/C/50/D/488/1992, [8.3].
  - 26 Departmental submission dated 28 May 2013.
  - 27 Departmental submission dated 28 May 2013.
  - 28 Communication No 900 of 1999, UN Doc CCPR/C/76/D/900/1999.
  - 29 Communication No 900 of 1999, UN Doc CCPR/C/76/D/900/1999, [8.4].
  - 30 *F.K.A.G. et al. v Australia* Communication No 2094 of 2011, UN Doc CCPR/C/108/D/2094/2011, [9.8]; *M.M.M. et al v Australia* Communication No 2136 of 2012, UN Doc CCPR/C/108/D/2136/2012, [10.7].
  - 31 AHRC Act s 29(2)(a).
  - 32 AHRC Act s 29(2)(b).
  - 33 [2013] AusHRC 64, [117]-[125].
  - 34 The Minister made similar statements in his response to a Recommendation made in Commission Report [2013] AusHRC 64, reproduced in that report at [142].
  - 35 Department's response to my preliminary view (2 June 2014).
  - 36 [2013] AusHRC 64, [131].

## Further Information

### **Australian Human Rights Commission**

Level 3, 175 Pitt Street  
SYDNEY NSW 2000

GPO Box 5218  
SYDNEY NSW 2001  
Telephone: (02) 9284 9600

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

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