

Appendix 4

Action taken by ACM



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6 February, 2004

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PREVIOUSLY SENT BY FACSIMILE

Dr Sev Ozdowski
Commissioner
Human Rights and Equal Opportunity Commission
Level 8
Piccadilly Tower
133 Castlereagh Street
SYDNEY NSW 2000

Dear Commissioner

National Inquiry into Children in Immigration Detention

We refer to your letter dated 22 January 2004 addressed to our client ACM and the enclosed Section 29 Notice comprising the Inquiry's findings and recommendations.

ACM acknowledges that the Commission in reporting to the Attorney-General in accordance with Section 29 must inform the Attorney-General what action ACM has taken or is taking as a result of the findings and recommendations made by the Inquiry. Accordingly, the Commission has requested that ACM inform the Commission what action it intends to take as a result of the findings and recommendations made by the Inquiry.

The requirement to confine ACM's response to the findings and recommendations made is also acknowledged.

In doing so we first ask the Commission to note that ACM will not have responsibility for the operation of the Detention Centres the subject of the Inquiry from the end of February 2004. The operation of these Detention Centres has been progressively transitioned to another service provider since December 2003. This change necessarily affects ACM's ability to take action as a result of the Inquiry's findings and recommendations.

ACM therefore responds to the Inquiry's findings and recommendations in its capacity as the service provider for much of the period of this Inquiry and to the extent of its ability to implement any recommendations pertinent to ACM.

Second, we observe that the Major Findings and Recommendations made in Chapter 17 of the Report largely concern the legislative and administrative framework for immigration detention. These matters of legislation and policy are not matters upon which ACM makes comment. Therefore, in responding to the Section 29 Notice, only those findings and recommendations pertinent to ACM are addressed.

We further observe that those findings pertinent to ACM are contained in some of the detailed Chapters 5 to 16. ACM therefore responds to the Section 29 Notice in this regard by setting out in the attached table its position on the action that it intends to take as a result of the Inquiry's findings. As a general matter, in considering ACM's response, we ask the Commission to report to the Attorney-General two matters. First, that ACM does not agree with a number of the Inquiry's detailed findings pertaining to ACM for reasons that are acknowledged in some places of the Inquiry's Report and others that have previously been communicated to the Commission. Second, that many changes have already been made by ACM to practices of concern to the Commission and these changes were made continuously, often at ACM's and the Department's own initiative. ACM does not exhaustively reiterate those changes now, some of which are acknowledged in the Inquiry's Report.

Finally, we are instructed to express ACM's appreciation to the Commission for its acknowledgment in the Report of the complexities of managing detention centres and the efforts of the staff who undertook a challenging task, sometimes in difficult circumstances. It is further appreciated that the Commission has also recognised in its Report that the inappropriate behaviour of a small minority of staff does not detract from the commitment of the majority of staff working in immigration detention who treated child detainees with dignity and respect.

ACM thanks you for the opportunity to respond to the findings and recommendation of the Inquiry.

Yours faithfully

FISHER JEFFRIES

A handwritten signature in cursive script, appearing to read "Fisher Jeffries".

ACM RESPONSE TO THE FINDINGS AND RECOMMENDATIONS OF THE NATIONAL INQUIRY INTO CHILDREN IN IMMIGRATION DETENTION

Chapter 17 - Major Findings and Recommendations of the Inquiry

Chapter 17 – Recommendations

Recommendation 1

Children in immigration detention centres and residential housing projects as at the day of the tabling of this report should be released with their parents as soon as possible but no later than four weeks after tabling.

Recommendation 2

Australia's immigration detention laws should be amended as a matter of urgency to comply with the Convention of the Rights of the Child.

Recommendation 3

An independent guardian should be appointed for unaccompanied children and they should receive appropriate support

Recommendation 4

Minimum standards for treatment for children in immigration detention should be codified in legislation.

Recommendation 5

There should be a review of the impact on children of legislation that creates 'excised offshore places' and the 'Pacific Solution'

ACM Response:

Because these recommendations relate exclusively to legislative and policy matters that are not pertinent to ACM, ACM does not make any comment.

Chapter 17 – Major Findings

Major Finding 1 (c): Failure to Treat Children with Humanity and Respect

Australia's immigration detention laws as administered by the Commonwealth have created a detention system that is fundamentally inconsistent with the Convention on the rights of the Child (CRC).

In particular, Australia's mandatory detention system fails to ensure that:

(c) children are treated with humanity and respect for their inherent dignity (article 37(c) CRC)

17.2 Reasons for the Finding (17.2.3)

The following matters have been identified by the Inquiry as being inconsistent with the JDL Rules throughout this report: instances of obtrusive head count procedures; periods during which children were called by number rather than by name; the absence of clear procedures to ensure the special protection of children when tear gas, water canons and other security

measures were used; the failure to make routine assessments regarding the mental health of children on arrival in order to ensure that the appropriate services were provided (for instance torture and trauma assessments); instances where detention staff used offensive language around children: inadequate provision of preventative and remedial dental and ophthalmological care; periods of great overcrowding; instances of unsanitary toilet facilities; the failure to promptly assess the needs of children with disabilities and provide them with the appropriate aids, adaptations and services; the failure to promptly send children to community schools and ensure education appropriate to the cultural and language needs of children in detention; and the failure to ensure an appropriate curriculum for children above the compulsory school age. Finally there was a failure to act upon repeated recommendations from health professionals that certain children be removed from detention centres in order to protect their mental health.

All these findings result in breach of article 37(c) of the CRC.

ACM Response:

Some of these findings concern the conduct and practices of ACM, some of which are past practices or concern isolated incidents not condoned by ACM management.

Instances of obtrusive head counts.

ACM procedures have been developed to ensure head counts are as unobtrusive as possible. Obtrusive head counts were only conducted during or immediately following incidents of major detainee disturbances. However ACM as service provider can and will review procedures to ensure the needs of children are better addressed in situations requiring obtrusive head counts.

Periods during which children were called by number.

This practice occurred in some but not all detention centres. An instruction was issued in 2002 to ensure detainees were not referred to by number. Detention centre managers were instructed to scrutinise compliance with the instruction.

The absence of clear procedures to ensure the special protection of children when tear gas, water cannons and other security measures were used.

ACM considers that the principles contained in existing procedures for security including the use of chemical agents and the use of force relates to and provides for maximum protection of all detainees, including children. It is implicit in these procedures that the use of force is proportionate to the circumstances of the incident concerned and therefore the best interests of children are inherent in the policies and their implementation.

Nonetheless, where ACM is the service provider it can and will review procedures in accordance with any Departmental policy changes or directions in relation to additional strategies for protecting children during major detainee disturbances where the use of security measures is critical to ensuring the safety of all detainees, staff and members of the public.

The failure to make routine assessments regarding the mental health of children on arrival in order to ensure that the appropriate services were provided.

Health assessments of children were undertaken during the admission process. Although no specific mental health screening instrument was systematically used to assess children, it must be recognised that mental health screening instruments for children are neither readily available nor culturally adapted to the diverse detainee population. Children were regularly seen by qualified doctors and nursing staff who provided ongoing health care. Indicators of mental health problems were continuously addressed as part of the ongoing health care provided to detainee children.

The provision of appropriate torture and trauma assessments and treatment is problematic because it was ACM's experience that experts in this area actually refused to provide the services while detainees remained in detention.

Instances where detention staff used offensive language around children.

The ACM code of conduct has been in place since it was contracted as the service provider. The use of offensive language in the work place is not accepted or condoned by ACM and disciplinary procedures apply to any contraventions of that code of conduct.

The absence of specific guidelines regarding the use of medical observations rooms for children.

It has never been routine practice to use medical observation rooms for children. In the one case relied on by the Inquiry, a medical observation room was used for a teenage boy who was assessed by professionals as highly suicidal. In this case the age and needs of the child were taken into account in practice.

However, where ACM is the service provider it can and will review procedures to codify in writing procedures specific to the use of medical observation rooms for children if required.

Inadequate provision of preventative and remedial dental and ophthalmological care.

ACM provided services in accordance with then current service requirements that, with hindsight, did not contemplate lengthy periods of detention for children. Where ACM is the service provider ACM will liaise with the Department to establish required service standards relevant to the length of a child's time in detention.

Unsanitary toilet facilities.

The maintenance of sanitary toilet facilities has been an ongoing challenge due to the combination of cultural differences in the detainee population and the infrastructure of detention centres. Daily hygiene inspections have been introduced by ACM. The provision of culturally appropriate toileting facilities is a matter not within the responsibility or control of the service provider.

The failure to promptly assess the needs of children with disabilities and provide them with the appropriate aids, adaptations and services.

ACM disagrees with this finding.

The children to whom the assessment refers (Case 1 – Port Hedland) suffered from a rare disorder. Assessments of these children commenced early in their period of detention and were undertaken by qualified internal and external medical professionals. The accurate diagnosis of their condition was eventually made despite the disorder being extremely rare in Australia and in the world. There is no evidence to suggest that an accurate diagnosis would have been made more expeditiously in the community.

In relation to the child with cerebral palsy (Case 2 - Curtin), ACM considers that within the confines of detention, the geographical location of the centres and the span of control available to the service provider, the boy was managed to the best possible standard. It is acknowledged that management strategies improved progressively across the period of his detention. Carers were employed for 24 hours, 7 days per week for this boy and all required aids were provided progressively without cost to the boy or his mother.

ACM does acknowledge difficulties in engaging State disability organisations to provide assistance and where ACM is the service provider its policies can and will be changed to ensure immediate assistance is sought from these agencies.

The failure to promptly send children to community schools and ensure education appropriate to the cultural and language needs of children in detention.

ACM has complied with all agreements between DIMIA and State educational jurisdictions for children in detention to attend external schools and will continue to facilitate the attendance of children in accordance with the relevant agreements where ACM is the service provider.

Major Finding 3 (17.1):

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

- a) the right to be protected from all forms of physical or mental violence (article 19(1) – see Chapter 8
- b) the right to enjoy the highest attainable standard of physical and mental health (article 24(1) – see chapter 9.10)
- c) the right of children with disabilities to 'enjoy a full and decent life in conditions which ensure dignity promote self reliance and facilitate the child's active participation in the community' (article 23(1) – see chapter 11)
- d) the right to an appropriate education on the basis of equal opportunity (article 28(1) – see Chapter 12)
- e) the right of unaccompanied children to receive special protection and assistance (article 20(1) – see Chapters 6,7,14)

Major Finding 3 (17.2.6):

Failure to ensure appropriate services and conditions in detention centres.

Major finding 3 concerns the conditions within detention centres which is discussed in earlier chapters in this report. These chapters set out why the Department's administration of Australia's detention centres has resulted in breaches of children's rights relating to safety (Chapter 8), mental health (Chapter 9), physical health (Chapter 10), children with disabilities (Chapter 11), education (Chapter (12) and unaccompanied children (Chapter 14)

ACM Response:

These findings are premised on issues identified in the respective chapters. A number of the issues relate to ACM service delivery and ACM's response to these issues has been made in answer to the detailed findings of the respective chapters.

Chapter 8: Safety of Children in Immigration Detention

Finding:

The Inquiry does not suggest that there be no security measures in detention facilities. However the security standards, policies and procedures examined by the Inquiry are general in nature. They do not highlight the priority that should be given to the protection of children. The Inquiry finds the absence of such specificity has meant that the best interests of the child is not a primary consideration in decisions made regarding the maintenance of security in detention centres.

ACM Response:

The finding of the Inquiry is noted. Where ACM is the service provider it could and will accommodate child specific security procedures and corresponding practices if required. However, the Commission should note the following issues that impact on the practicality of the Commission's implicit recommendation that operational policies and procedures should expressly acknowledge the best interests of the child.

First, it is important to recognise that the Inquiry's concern arises almost exclusively from incidents during periods of major detainee unrest. In practice, establishing and implementing management strategies which are in the best interests of the children concerned is a complex task. The service provider has a limited range of options and must at times give priority to the interest of saving life and property. The accommodation of procedures with the best interests of children as the 'primary' objective would require the resolution of the inherent tensions in operational priorities manifest in times of major detainee disturbances. Implementation of these procedures would also require consideration of factors including infrastructure, Departmental policy and translation of policy into relevant performance requirements for the service provider.

Chapter 9: Mental Health and Development of Children in Detention**Finding:**

However, the Inquiry finds that there was no routine assessment of the mental health problems facing children on arrival. There were insufficient numbers of mental health staff to deal with the problems emerging in children, and there was insufficient access to external mental health experts. No torture and trauma services were available to children who needed that specialist care.

ACM Response:

ACM disagrees with the findings concerning routine mental health assessments or insufficient staffing numbers.

Health assessments of children were undertaken during the admission process. Although no specific mental health screening instrument was systematically used to assess children, it must be recognised that mental health screening instruments for children are neither readily available nor culturally adapted to the diverse detainee population nor practicable for use during arrival health assessments. Children were regularly seen by qualified doctors and nursing staff who provided ongoing health care. Indicators of mental health problems were continuously addressed as part of the ongoing health care provided to detainee children. For example, the Report identifies significant numbers of children who during the course of the Inquiry, were diagnosed with mental health problems. This demonstrates that the mental health status of children was assessed during their period in detention.

ACM does not agree with the finding that there were insufficient mental health staff generally. During periods when there were high numbers of detainee admissions following the arrival of numerous boats, there were significant demands on all health services. These instances do not reflect the general or typical situation in detention centres. It must also be recognised that determining the actual level of staff that is 'sufficient' must not be subjective and must be in keeping with community standards. There is a finite number of mental health professionals available in the community and staff for detention centres can only be drawn from the available pool.

For these reasons, ACM does not intend to take any further action as a result of the Commission's implicit recommendations that detainee children should be routinely screened for mental health problems on arrival and that there should be more mental health staff employed in detention centres.

Chapter 9: Mental Health and Development of Children in Detention

Finding:

The Inquiry also finds that the observation systems in place to prevent self-harm were successful in preventing the death of children by suicide. However there were no clear guidelines regarding the use of medical observation rooms for children. The Inquiry notes that the suicide prevention systems focused on immediate prevention of harm rather than holistic therapeutic care.

ACM Response:

These findings are noted. However, it is important for the Commission to acknowledge that the case relied upon by the Commission for its findings, related to one teenager who was considered at high risk of self-harm. Although ACM's procedure may not have expressly specified the requirement for managing a minor, the practices applied in this instance reflected the needs of the child.

ACM does not agree that the High Risk Assessment Team process is focussed on immediate prevention of harm rather than therapeutic care. The observation component of the process is for immediate prevention of self-harm. The HRAT procedure involves the operation of a high risk assessment team who implement immediate and ongoing therapeutic strategies often for considerable periods of time after the intensive observation period is completed.

Where ACM is the service provider it can and will codify in writing procedures specific to the use of medical observation rooms for children if required.

Chapter 10: Physical Health of Children in Detention

Finding:

The Inquiry also finds that food is not tailored to the needs of children and has been variable over the period. Moreover, there is no evidence that individual nutritional assessments of children were conducted over the period of time covered by the Inquiry, in order to ensure that any pre-existing nutritional deficiencies were being addressed. The provision of baby formula and special food for infants has been uneven.

ACM Response:

ACM does not intend to take any action as a result of these findings because ACM disagrees with them for the following reasons.

The menus provided by ACM were reviewed by a qualified external nutritionist and considered suitable for adult and child detainees.

While individual nutritional assessments of children were not routinely conducted, children routinely received health checks. The weight and physical health of children were assessed and monitored and any individual anomalies were addressed as required in accordance with community standards.

Baby formula was available at all times. ACM purchased only recommended brands of baby formula however some detainees did not recognise the brand and believed the correct formula was not being provided. At no time was any detainee denied baby formula.

Chapter 11 Children with Disabilities in Detention

Finding:

The Inquiry therefore finds that the Department's failure to ensure a 'full and decent life' for those children 'in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community' resulted in a breach of article 23 (1) of the CRC. The Department also failed to provide special care and assistance required by these children to ensure that they had effective access to education, health care services, aids and adaptations and recreational opportunities 'in a manner conducive to the child achieving the fullest possible social integration and individual development including his or her cultural and spiritual needs' as required by article 23 (3).

ACM Response:

While this finding expressly refers to the Department's responsibilities, the Report identifies a number of underlying factors upon which the finding is premised. ACM does not agree with the Inquiry's analysis of these factors.

For example, in relation to the case of the young boy with cerebral palsy (Case 2 – Curtin) ACM considers that within the confines of detention, the geographical location of the centres and the span of control available to the service provider, the boy was managed to the best possible standard. Management strategies improved progressively across the period of this child's detention. Carers were employed for 24 hours, 7 days per week for this boy and all required aids were provided progressively without cost to the boy or his mother.

ACM acknowledges the historical difficulties in engaging State disability organizations to provide assistance to children in detention. Where ACM is the service provider ACM policies can and will be changed to ensure immediate assistance is sought from these agencies.