



Australian Government
Department of Home Affairs

Submission

For information

PDMS Ref. Number M519-000971

To Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Subject Department of Home Affairs response to the Australian Human Rights Commission report into the Use of Force in Immigration Detention

Timing At your convenience.

Recommendations

That you:

1. note the Department of Home Affairs' response to the Australian Human Rights Commission (AHRC) inquiry into the use of force in immigration detention; and noted / please discuss
2. note that in accordance with the *Australian Human Rights Commission Act 1986*, the AHRC will submit this inquiry report to the Attorney-General who is required to table the report in Parliament. noted / please discuss

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Signature.....

Date:...../...../2019

NFA
Overtaken by events

s. 22(1)(a)
(ii)

30/8

Released by Department of Home Affairs
under the Freedom of Information Act 1982

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. In accordance with the *Australian Human Rights Commission Act 1986* (AHRC Act), the Australian Human Rights Commission (AHRC) will submit their inquiry report to the Attorney General, who is required to table the report in Parliament.
2. Under section 29(2)(e) of the AHRC Act, the report to the Attorney-General must state whether, to the knowledge of the AHRC, the respondent has taken or is taking any action as a result of the findings and recommendations.
3. The section 29 notice includes findings in relation to 14 complaints and makes 24 recommendations, based on these findings and the themes that emerged from a comparison of those complaints.
4. The AHRC found that in six of the 14 complaints, they were not satisfied that the use of force was disproportionate or inconsistent with or contrary to the complainants human rights. The Department accepts these findings.
5. In the remaining eight complaints, the AHRC found that the complaints detail circumstances that are contrary to the detainees' rights under article 10 of the *International Covenant on Civil and Political Rights* (ICCPR) and in one case, an additional finding that the Department's actions were contrary to article 17(1) (right to privacy).
6. In two of these eight complaints, the AHRC has also made findings relating to circumstances contrary to article 37(c) and 9 of the *Convention on the Rights of the Child* (CRC) respectively.
7. The Department does not accept the findings of the AHRC for the remaining eight complaints as set out in the notice and maintains that the use of force in relation to all complainants was appropriate, reasonable and justified in the circumstances. It further does not accept the AHRC's findings that the Department's conduct was contrary to the CRC in the complaints involving two minors.

 Released by Department of Home Affairs
under the Freedom of Information Act 1982

Background

8. On 1 March 2019, Emeritus Professor Croucher, President of the AHRC wrote to the Department enclosing a notice under section 29 of the AHRC Act of the AHRC's final findings from their inquiry into the use of force in immigration detention (**Attachment A**).
9. The aim of the inquiry was to "provide some constructive observations drawn from a number of similar complaints that may contribute to practical systemic improvements in managing people in detention".
10. The inquiry dealt thematically with 14 separate complaints received by the AHRC from 10 adult individuals and four family groups relating to use of force incidents between February 2014 and February 2016, with the majority occurring in 2015.
11. The Department's response to Emeritus Professor Croucher, the AHRC's findings and the 24 recommendations is included at **Attachment B**.

Consultation – internal/external

12. The Australian Border Force Commissioner was consulted on the Department's response to the AHRC.
13. The following areas were consulted on the content of the Department's response:
 - Property & Major Contracts Division;
 - Detention & Offshore Operations Command;
 - Legal Division.

Consultation – Secretary and Commissioner

14. The Secretary of Home Affairs was consulted on the Department's response to the AHRC.

Client service implications

15. Nil.

Sensitivities

16. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team on media@homeaffairs.gov.au.

Financial/systems/legislation/deregulation/media implications

17. Nil.

Attachments

Attachment A Letter from Emeritus Professor Rosalind Croucher AM, President of the AHRC dated 1 March 2019, enclosing the AHRC's Notice under section 29 of the Australian Human Rights Commission Act 1986 (Cth) – use of force in immigration detention.

Attachment B Letter to Emeritus Professor Rosalind Croucher AM, President of the AHRC, and the Department of Home Affairs response to recommendations made in the Notice under section 29 of the *Australian Human Rights Commission Act 1986 (Cth)* – use of force in immigration detention.

Authorising Officer

Cleared by:

Tony Smith
Acting Assistant Commissioner
Strategic Border Command

Date: 5 April 2019

Ph: s. 22(1)(a)(ii)

Contact Officer Don Smith, Commander, ABF Governance, s. 22(1)(a)(ii)

CC Secretary
ABF Commissioner
Deputy Secretary Executive
Deputy Commissioner Support
Deputy Commissioner Operations
FAS Integrity Security and Assurance

Released by Department of Home Affairs
under the Freedom of Information Act 1982



**Australian
Human Rights
Commission**

President

Emeritus Professor Rosalind Croucher AM

Our ref: GDE:2016/222 and 2018/697

Your ref: G023 – OHR-17-00264 and OHR-18-00186

1 March 2019

Mr Michael Pezzullo
Secretary, Department of Home Affairs
PO Box 25
Belconnen ACT 2616

By email: s. 47E(d) @homeaffairs.gov.au

Dear Mr Pezzullo,

Complaints in relation to use of force

I refer to my letter dated 4 April 2018 and enclose a notice of my findings and recommendations in relation to my inquiry into complaints about the use of force in immigration detention.

This notice incorporates my findings and recommendations in relation to the more recent complaint by the s. 47F(1). For completeness, a full list of each of the complainants is attached as a schedule to this letter, along with the pseudonyms given to them in the notice.

The Commission will now report to the Attorney-General in accordance with s 11(1)(f)(ii) the AHRC Act as it stood prior to the amendments made by the *Human Rights Legislation Amendment Act 2017* (Cth) (see item 58(1) of Schedule 2 of that Act). As a result of these transitional provisions, under s 46 of the AHRC Act the Attorney-General is required to table the report in Parliament. Once the report has been tabled, it will be available to the public.

Under s 29(2)(e) of the AHRC Act, the report to the Attorney-General must state whether, to the knowledge of the Commission, the respondent has taken or is taking any action as a result of the findings and recommendations. Accordingly, please advise the Commission whether the Commonwealth has taken or is taking any action as a result of the findings and recommendations outlined in the notice and, if so, the nature of that action.

Could you please ensure that any response is provided by no later than **29 March 2019** and is strictly confined to the above issues.

The lawyer assisting me is Graeme Edgerton. Mr Edgerton can be contacted on s. 47F(1) or by email to s. 47F(1)

Yours sincerely,
s. 47F(1)

Emeritus Professor Rosalind Croucher AM

President

T +61 2 9284 9614

F +61 2 9284 9794

E president.ahrc@humanrights.gov.au

Cc: Mark Brown, s. 22(1)(a)(ii) @homeaffairs.gov.au
Penny McKay, s. 22(1)(a)(ii) @homeaffairs.gov.au
s. 22(1)(a)(ii) s. 22(1)(a)(ii) @homeaffairs.gov.au

Schedule

Complaints referred to the President

Name	Pseudonyms	AHRC file	Home Affairs ref
s. 47F(1)	Mr KE Mrs KF Ms KG Mr KH Master KI	s. 47F(1)	
	Ms LC		
	Mrs NL Mr NM		
	Mrs MD Mr ME		
	Mr BC		
	Mr EJ		
	Mr CE		
	Mr AY		
	Mr GH		
	Mr DB		

Released by Department of Home Affairs
under the Freedom of Information Act 1982

s. 47F(1)	Mr JB	s. 47F(1)
	Mr HF	

	Mr FE	



Australian Government
Department of Home Affairs

SECRETARY

Emeritus Professor Rosalind Croucher AM
President
Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001

Rosalind

Dear Emeritus Professor Rosalind Croucher AM

On 4 April 2018, you provided a notice under section 27 of the *Australian Human Rights Commission Act 1986* to the Department of Home Affairs (the Department) of your preliminary findings in relation to complaints involving the use of force in immigration detention.

The Department acknowledges your preliminary findings and notes the advice that this preliminary view is based on 14 separate complaints, made by 10 adult individuals and four family groups.

The Department notes your views that in five of the 14 complaints, the level of force used was not inappropriate or inconsistent with or contrary to the complainant's human rights.

The Department does not accept the preliminary view that the remaining nine of the 14 complaints detail circumstances that are contrary to the detainees' rights under article 10 of the International Covenant on Civil and Political Rights (ICCPR). Nor does the Department accept the preliminary view that one of those nine complaints also details circumstances contrary to the rights of the child under article 37(c) of the Convention on the Rights of the Child (CRC) or that one of the complaints details circumstances contrary to the rights of the child under article 9 of the CRC.

The Department recognises however, that administrative errors in record keeping were made in some instances. The Department seeks to assure the Commission that it has taken concerted action and continues to focus on addressing these administrative errors since the incidents contained in the Commission's report occurred.

The Department's response to the findings in your preliminary view is attached.

You also requested information about the detention/immigration status and contact details for the complainants. The Department provided this information to the Commission on 9 April 2018.

Yours sincerely

regards
MP

Michael Pezzullo
Secretary
Department of Home Affairs

2- July 2018

Released by Department of Home Affairs
under the Freedom of Information Act 1982