

National Inquiry into Children in Immigration Detention 2014

Sydney Public Hearing

Tuesday, 9 September 2014

	<i>Affirmation taken by witness</i>
President	Thank you very much Mr Bowen and I will pass to Ms Sharp.
Ms Sharp	Yes, Mr Bowen do you wish to make an opening statement before I ask some questions?
Mr Bowen	<p>Yes. Thank you Madam President, thanks for the opportunity of contributing to what I regard is an important inquiry on your behalf. No area of policy or decision making in the immigration space is more vexed than the issue of children arriving on boat and there is a special obligation on governments and ministers and all involved in relation to children. Children don't make the decision to come here by boat, the decision is made for them and most importantly we all know the importance of emotional and intellectual development in a child's early years, the need for a loving environment and as far as possible, stress free environment for a child's early years for their future. Now, also let it be clear, against this all Ministers do, or at least should be cognisant of any of the news that would encourage people smugglers to load boats of children, therefore clearly endangering their lives. I'll say a little bit more about that at the conclusion of my opening statement. I also want to make it clear in my view that on-shore detention should not be regarded or used as a deterrent to boat travel. It is not an effective deterrent and the cost on children, in particular, is too great for any deterrence value. It does play a role in the management of irregular arrivals, particularly health, identity and security checks and the initial processing of asylum claims. I'm happy to share with the Commission my perspective on some of these issues based on my experience as Immigration Minister. I became Minister for Immigration and Citizenship on 14 September 2010, as already outlined and the week after being sworn in as Minister I travelled to Christmas Island. It was effectively on Christmas Island that I took the decision to begin using my powers to release children from detention. The decision to begin using my powers under section 197A of the Migration Act was my first major decision as Minister for Immigration and Citizenship. It was a decision requiring considerable input and</p>

contemplation with other ministers, most particularly the Attorney General in relation to security implications and the Minister for Family, Community and Services in regards to support for the people released into the community. Accordingly I sought Cabinet endorsement for my decision although it was a personal decision for me to take under the Act. Obviously I won't be breaching cabinet confidentiality Madam President but I am comfortable in telling you that Cabinet endorsed my decision unanimously on 18 October 2010. Now Madam President that was the easy bit, there was a considerable degree of challenges to this task. Some people said at the time that all children should be immediately released. That was naïve and simplistic and would have risked considerable harm to the children. As I said at the time we don't simply drop families and children out of detention at Central Station or Flinders Street Station and say good luck. It was necessary to source a very considerable amount of accommodation spread throughout the country. It was also necessary to arrange appropriate carers for unaccompanied minors in particular and more generally care and advice for families who were making the considerable adjustment of moving into the community in a country which they had never been to before. After consulting with my Department and with the sector I set the target of having the majority of children out of detention by July 2011, that is nine months after my initial decision. It was estimated by the Department at this time that this would require the release of 1400 people, that's parents and children. A taskforce was established within my Department at my instruction to ensure that this would be achieved. I want to take this opportunity of acknowledging the work of the Department and most particularly Kate Pope who headed the taskforce, a very fine public servant who without her very considerable efforts in this task it would not have been achieved. Also we engaged Red Cross as our principle partner in the non for profit sector. We had many partners but Red Cross was the coordinating partner and I worked very closely with Robert Tickner and want to acknowledge his work and also of course consulting closely with the committee which was then known as SISA and is now known as MCASD, Paris Aristotle is of course the Chair of that Committee and they were integral to ensuring the success of what was a very large undertaking. The target was met and the majority of children were in the community by July 2011. Now my recollection Madam President is that as we were approaching time I left the portfolio the time of children spent in detention was, was low and was, people were moving through detention and children in particular in well under three months and in some cases that was one month. That is my recollection of the turnaround time at the time I left the portfolio in February 2010 and eventually as other people have provided evidence to you 10,000 people were accommodated in community under this program, so this was a very significant undertaking. Now I have noted that Minister Morrison evidenced to you earlier that it was necessary to improve care for people under 10, children under 10 and if I interpret this evidence here correctly, that he had not released children

	<p>under ten earlier because it proved care was necessary. I do not accept this evidence I think the evidence of the program we had in place would indicate that there was appropriate care and support if he wished to make improvements it was certainly open for him to do so. I do not believe it was justified if he has delayed the release of children using this as a reason or an excuse. Now I said at the beginning that there were tough decisions required in the immigration portfolio, anybody who had visited Christmas Island and stood at the memorial to SIEV X in which 353 people lost their lives, the majority of children cannot fail to be moved but more importantly if you are a policy maker cannot fail to see the need to make tough decisions to stop this from happening again. When I was Immigration Minister I had the practice where appropriate and where it was welcomed of visiting survivors of the tragedies at sea, in some cases the parents of children who had seen their children drown, that is not something that is duly issued Madam President and it does remind you, and reinforce to you the need for tough decisions, hence my support for off-shore resettlement but I was commissioned to stress which is obviously not the purpose of this inquiry but I raise it in terms of the decisions that Ministers for Immigrations and Government do need to take from time to time but in relation to onshore detention as I said at the outset, onshore detention should not be used as a deterrent, it is not an effective one, it should be used only for processing for health, identity and security measures. Once the security agencies are satisfied that someone is suitable to be released in the community and their passport checks, there needs to be a good reason not to do so in relation to onshore detention and that was the system in which I put in place and again I should acknowledge the support of cooperation of the security agencies in doing that, most particularly ASIO who devoted a considerable amount of resources to ensure the success of the release into the community program. Madam President I am happy to the best of my ability to assist the inquiry obviously subject to my recollection of events which are in some cases four years ago and obviously also subject to restrictions with cabinet confidentiality but within those restrictions I am very happy to support your inquiry and assist in anyway.</p>
President	Thank you very much Mr Bowen.
Ms Sharp	<p>Mr Bowen as you mentioned in your opening statement in October 2010 you announced that the Government would release a significant number of families and children out of closed immigration detention and into the community in the period agreed to, the next nine months. Now between 18 October 2010 and 19 July 2012 4,234 had been moved for community detention including 2008 children. Can you explain to us why the decision was made in October 2010 to</p>

	release these families into community detention?
Mr Bowen	<p>Well as I mentioned it was the first major decision I took as Immigration Minister, effectively I took the decision on Christmas Island, seeing the conditions on Christmas Island although there was a considerable amount of work to be done, I remember travelling back from Christmas Island and instructing the officers who were travelling with me to begin the process which would lead to me using my powers under section 197A of the Migration Act to begin releasing people from detention, most particularly children and also families with an emphasis on vulnerable families, pregnant women and others in need of the most urgent transfer to the community. I took the view, as you know then, and still to some degree know that technically children were not in detention centres they were in what was called APODs, Alternative Places of Detention some of which are better than others but none of which were entirely appropriate for the long term accommodation of children. So while APODs could be improved I took the view that clearly onshore detention was not working as a deterrent and therefore people, most particularly children should be removed as soon as possible bearing in mind all the accommodation and care and support measures that were necessary to put in place. When I returned to Canberra I briefed the Prime Minister, the then Prime Minister, on my intention to exercise those powers she indicated she would be supportive of that with all the necessary arrangements put in place and I must say the Cabinet process was particularly fast, being sworn in on 14 September and the Cabinet approving that decision, endorsing that decision on 18 October. It was a fast turnaround for a significant government process.</p>
Ms Sharp	And Mr Bowen what advice led you to make this decision in October 2010?
Mr Bowen	<p>Well it was a personal decision although of course I did quickly consult with the then Secretary of my Department Andrew Metcalfe, he was again, supportive of the decision and indicated the Department would do whatever it took to make it work. Obviously there were some risks which were identified both by my Department and other Departments in the consultation process which goes with a Cabinet decision. Those risks that were identified were the risk of absconding but that was regarded as low and I think that's the way it's panned out through the number of people who have absconded compared to the number of people in the community has been low. The advice from my Department was that the ability to persuade people to return to the country of their origin if their claim for asylum was not approved would actually be increased in the community because there would be less of a confrontational arrangement between the Department and the</p>

	<p>asylum seeker, that the person in the community would feel more trusting of the advice the Department was giving that their claim hadn't succeeded, was at the end and it was time to return and last I saw the return figures I think there was evidence [<i>inaudible</i>] although the Department would be able to provide more detail on that. So it wasn't particular advice to me which led me to make that decision, the Department had obviously indicated they would implement any decision I took, there was no advice to me from the Department that this was necessary. It was a decision I took seeing the conditions at Christmas Island that it was not suitable for the long term accommodation of children and subsequently I've visited every detention centre in Australia and every Alternative Place of Detention, and as I said whilst some of them were more suitable than others none of them were suitable for long term accommodation.</p>
Ms Sharp	<p>Mr Bowen can you explain why community detention was underutilised by your Government prior to 2010?</p>
Mr Bowen	<p>I can only explain the period for which I was Minister; I was in cabinet 12 months before I became Minister for Immigration I only looked closely at these issues when I was commissioned as Minister for Immigration. I took the view quickly on becoming Minister that there was a better way.</p>
Ms Sharp	<p>Now initially why do you only use community detention rather than bridging visas when people were being released into the community?</p>
Mr Bowen	<p>Because with bridging visas there is not the ability or at least the requirement to provide the necessary degree of care for children and unaccompanied minors in particular. With a bridging visa accommodation is by and large not supplied so with a bridging visa which we did use later, but by and large that was used for single adult males who were more able to look after themselves in the community. We didn't have the duty of care that we had to the children involved and there was a degree of confidence they would be able to source their own accommodation and source their own sources of income rather than, much more than was the case than with unaccompanied minors or with families.</p>
Ms Sharp	<p>Under your Government, the number of children in detention centres soared to unprecedented levels with over 1,600 on 30 April 2013 and reaching 1,992 children by July 2013. Can you explain why despite, your commitment to community placement alternatives to detention, why so many children were detained?</p>

Mr Bowen	Well the release of children was being undertaken as fast as the system would be, as fast as the accommodation could be sourced, as fast as the carers could be arranged, this was not a matter of resourcing within the Department, the Department was authorised, was instructed by me to apply every available resource to this task. We had weekly meetings with directives to my Department that this was one of the key messages to be discussed, progress in relation to releases into the community. One thing I will say is that we have a high degree of arrivals, high rate of arrivals, it does make it hard to release children into the community at a rate which keeps up with the arrivals that is almost a truism and we did have a period of a high rate of arrivals. I think the Department did as well as they could under the circumstances of getting children through the system as quickly as possible and out into the community.
Ms Sharp	Now I take it from your opening statement that your view is that onshore detention should not be a deterrent is that correct?
Mr Bowen	That is correct. Should not be seen or used as a deterrent.
Ms Sharp	What is your view with respect to off-shore processing and its use as a deterrent?
Mr Bowen	Well my view is that off-shore processing in and of itself was seen to be a process to other countries but automatically resettled to Australia, is of limited deterrence value and I think the evidence would suggest that. Offshore resettlement, I think the evidence would suggest, is a significant deterrent.
Ms Sharp	Do you accept Mr Bowen that the prolonged detention of children causes serious mental health problems for them?
Mr Bowen	I accept that would unprecedentedly be the case in many instances.
President	I think Mr Bowen you will be aware of course that we have <i>[inaudible]</i> , where evidence has already become available on the impact that detention is having on families and in this case children but in light of knowing that likely outcome of detention of children did you take that into consideration and if not – why not?
Mr Bowen	Well every Minister of Immigration takes everything into consideration, pros and cons of every approach but as I said before on shore detention is not a deterrent or at least nowhere near as effective deterrent as to justify the costs for the

	<p>people who are detained. If you can have a system which is an effective deterrent which may involve some form of detention and offshore resettlement and that leads to less people dying at sea, that is the sort of equation that a Minister, reluctantly will have to undertake in any decision that the Minister takes or the Board of Government has to take.</p>
President	<p>But that suggests that you think there is a connection between holding children in detention and stopping deaths at sea?</p>
Mr Bowen	<p>No, I believe there is a link between off shore resettlement and stopping deaths at sea. I do not believe there is a link between on shore detention and stopping deaths at sea.</p>
President	<p>What evidence do you have to support this distinction in your mind between the deterrence effects of off-shore detention as distinct from detention in Australia?</p>
Mr Bowen	<p>Well I think...</p>
President	<p>Including presumably Christmas Island?</p>
Mr Bowen	<p>Well I can answer that question two ways Madam President with your acknowledgements I'll try both to try and fully explain my views. Firstly people who are making the difficult decision by boat are making a generational decision, by that I mean they are making a decision to give their children or their grandchildren a life in Australia. They are prepared in many instances to take the risk of long term detention for themselves. If they believe they have a chance eventually for themselves and for their families of resettlement in Australia. That would apply to those who eventually are found to have legitimate claims for asylum and those who are not. They have both made a similar choice so, and I think the evidence [<i>inaudible</i>], we had high arrivals when we had onshore detention and even when I became Minister of indefinite detention for children we had high rates of arrivals so the evidence which it is not an effective deterrent. The evidence I would argue would suggest that processing people in another country, whether it be Nauru or PNG or anywhere else is also of limited value as a deterrent people know that they have to spend time in another country but still have that a chance of resettlement in Australia hence the difficult decisions which I know aren't subject to the terms of reference to this inquiry but I'll answer your question to the best of my ability, hence the difficult decision the governments took and in some instances I had to take in relation to resettlement in Malaysia</p>

	and in Papua New Guinea in particular which occurred after my time as Minister for Immigration but I certainly and clearly understood the reasons why that decision would be made and the evidence would suggest a dramatic fall in arrivals after that Papua New Guinea decision was made.
President	Thank you
Ms Sharp	Mr Bowen can I now move on, I wanted to raise the decision to reintroduce the off-shore processing in response to the expert panel report. Now it was in June 2013 that the Parliamentary Joint Committee on Human Rights considered that the conditions on Manus Island were unfit for children and fell short of the standards of treatment under the Convention on the Rights of the Child. With those observations in mind can you tell us please what advice did you receive about the impact of detention on children offshore during previous offshoring processing regime between 2001 and 2007?
Mr Bowen	I received several pieces of advice, the first piece of advice to me was that any decision to provide blanket exceptions to offshore processing i.e. that any particular class of people would be completely abject from the risk of transfer and resettlement elsewhere would provide a very significant incentive for people smugglers to plug boats with that type of person whether it be children, women or any other particular class of person that was advice based on evidence to the Government by various agencies. Secondly, obviously I took that advice very seriously obviously we incorporated all the other advice we had about the best practice in relation to managing detention. It was always my hope and desire that centres in Nauru and Papua New Guinea would be effectively open centres i.e. not detention it would be up to others to provide updates to what degree that has been implemented in the period after I left the portfolio. Also I think pre-transfer vetting was very important to ensure that any vulnerabilities were assessed prior to transfer that was something that we were working to put in place. I think I am right in saying that no children were transferred to Nauru during my time as Minister certainly it was our intention to work closely with the Papua New Guinea Government to ensure appropriate care initiatives were in place for the centre in Papua New Guinea that was being established under those arrangements.
Ms Sharp	Now there is evidence that people detained on Nauru have, and Manus Island have been diagnosed with a range of mental illnesses including depression, anxiety, post-traumatic stress disorder, adjustment disorder and acute stress reactions. Do you accept that the prolonged detention in these offshore

	processing centres had devastating impacts on people there?
Mr Bowen	<p>Well I would say that almost everybody who has come to Australia by boat is at risk of being emotionally fragile and disturbed because of fairly obvious trauma that they have already been through either which has caused them to come to Australia or they have experienced it on the journey to Australia and in fact there are as I observed both as my time as Minister and since there is no panacea for that. There have been suicides in the community of asylum seekers which have, to my understanding accompanied negative decisions i.e. Department of Immigration or an appellate body informing them that their case has not been approved. So that happens in the community and it happens in detention. I fully accept the cause of detention is a very difficult environment for anybody whether it be in Australia, on shore or off shore, a very, very difficult environment indeed. Ministers and governments will need to weigh up the deterrence effect of different arrangements, ministers and governments should always in my view, and in my view I always did be sure that the detention arrangements that were put in place providing whatever best possible emotional care could be provided in that environment for the asylum seekers who were thus being detained. Hence, as I have said in my opening statement my view which I reached very quickly that onshore detention was not a deterrent and should not be used for those purposes.</p>
Ms Sharp	Mr Bowen I might put the question a bit more bluntly do you accept that off-shore detention has had devastating impacts on the people so detained?
Mr Bowen	<p>I accept that there have been devastating impacts on the people who are involved in this terrible saga, there are devastating impacts on those who have died at sea, there are devastating impacts on those who have been detained in some instances. However how a detention centre is run is very, very important I can't, I can only vouch for the decisions I took when I was Minister and the steps that I was seeking to put in place some of which have continued after I left the portfolio to ensure appropriate care and support for people regardless of whether they were in the community or detained offshore. Of course you are working with other governments so there are restraints there. Other governments are sovereign in what they choose to provide but these are matters that have been traversed well by the Commission across the board in relation to offshore processing.</p>
Ms Sharp	Mr Bowen before transferring children and families to Manus Island what steps did you take to mitigate the harm that they may suffer by reason of that detention?

Mr Bowen	I put in place plans and processes for appropriate vetting and discussions were well in place with the Papua New Guinea Government, Red Cross, Salvation Army and others to work out what support and care could be provided.
Ms Sharp	I refer to the expert panel report previously it of course recommended that Australia should establish facilities at Nauru and PNG to process correction claims however one of the members of the panel Paris Aristotle has since said that the panel never intended for asylum seekers to be arbitrarily detained, this is a very different, it's very different to the policy that was implemented, what's happening now is very different to the policy that was imposed. Do you accept that you sent children and families to Manus Island, to detention facilities that weren't open where they had no freedom of movement?
Mr Bowen	We were working closely with the Papua New Guinea Government to work towards an open centre.
Ms Sharp	And what consideration did you give, and what efforts did you make towards establishing open detention facilities?
Mr Bowen	Well considerable efforts in discussions with the relevant other governments, others can provide you with updates of what occurred after I left the Department.
Ms Sharp	But is it right that during your term there was no success in achieving that?
Mr Bowen	Well Madam President can I clarify whether this is an inquiry into on shore detention or an inquiry into off shore detention?
President	This is an inquiry into the holding of children in detention by Australia or through the acts and activities of Australia. That includes mainland Australia, Christmas Island and wherever children are currently detained which is of course Nauru but we are concerned also by the fact that during your period children were detained on Manus Island and we're trying to understand how and why that occurred and why you were willing to under your period of Ministerial management, willing to accept children into closed arbitrary detention, or apparently arbitrary detention certainly determined to be so in some ways by the United Nations.
Mr Bowen	Sure, I am more than happy to assist. The expert panel report was a good one, in as good as any report can be in a wicked policy area in which three very

	<p>accomplished individuals provided their best advice possible to government. Their advice was to recommence off shore processing and that report introduced the non-disadvantage principle for the first time and the Government accepted the report. My recollection is that very, very few children were sent to Manus Island during my time as Minister because I was not yet satisfied that the appropriate care and support was in place, and that is my recollection. Against that a Minister should never go out and say I should not send a child to Manus Island or I will not send a child to Nauru or I will never send a child offshore because that is a guarantee Madam President that people smugglers will then send boats of children, that is a guarantee. Hence the balance for a minister is to not send that broad signal that there is an exempted class of person but to work intensely to ensure that if children are sent there is that necessary care and support in place. There were others saying that I had not sent enough children including the present Minister, who said, who was critical of me, who was the Shadow Minister at that point who said that not enough children had been sent because I was taking too long, and I was taking time before I authorised the transfer of a child because I was not do so until and unless I was satisfied.</p>
President	<p>I respect what you're saying, of course what you're saying and how you attempted to analyse this at the time but one thing that we are really trying to understand is that when we see evidence for forming this policy you said you've been told that if you made a class distinction, if you like about children that would lead to more children on the boats and perhaps by implication more losses and deaths what's your evidence for this?</p>
Mr Bowen	<p>Well there was very clear advice to government from various agencies including intelligence agencies that, that was the case, very clear advice.</p>
President	<p>By that you mean ASIO?</p>
Mr Bowen	<p>And others</p>
President	<p>And others. Were you to make a difficult decision in relation to children?</p>
Mr Bowen	<p>And a blanket exemption, a publicised announced blanket exemption, yes,</p>
President	<p>So as far as you were concerned it was a matter of making a balanced judgment?</p>

Mr Bowen	Correct
President	You knew that the consequences or you had been advised of the mental consequences or physical health consequences for children but as far as you were concerned you were prepared to make that determination on the higher value that it could prevent more coming.
Mr Bowen	<p>What I was not prepared to do is make an announced decision that children would not be sent. I was not prepared to do that. Because the implications of that were very clear and Madam President I was not going to be in a situation where a blanket exemption that I had authorised led to a boat load of children sinking at sea. I was not prepared to do that. Having said that with no alacrity did I want to send children to Manus Island or to anywhere else so there was a need for me to take my time, put in place whatever steps could reasonably put in place to ensure the necessary care and support and to have vetting arrangements in place so that ideally vulnerable children would not be sent to Manus Island while frankly what's signalling that, the way in which could be used for people smugglers and, because people smugglers all the advice to me and the advice I accepted I think correctly is that people smugglers will do anything with the view only to profit and they will profit on the risk of children on boats which were unseaworthy being sent to Australia, I did not want to see the situation where children were deliberately and calculatingly put on boats to exploit some blanket exemption which I had issued. I would not do that and I would not do that today if I was in the same situation.</p>
President	<p>Well I think of course one must take into account your concerns about stopping people smuggling that's something no Australian wanted to see nor does anybody globally. But the difficulty that the Commission has with that determination is that as a matter of international law on the Refugees Convention you may not use any asylum seeker but perhaps most particularly children as a vehicle for a deterrent policy that may or may not be linked, by the evidence, to stopping people smugglers. Did you consider Australia's international legal obligations in not using children as a deterrent because in effect that constitutes a penalty in relation to those children to achieve another objective?</p>
Mr Bowen	<p>At all times of course our international obligations were not only considered, I would use stronger terms, they were always honoured. In fact again I was criticised by my Shadow Minister for caring too much about what UNHRC thought. I worked closely with UNHCR with Commissioner Guterres with Deputy</p>

	<p>Commissioner [<i>inaudible</i>] on all these matters whether it be proposed arrangements with Malaysia, which the United Nations Commissioner for Refugees was a part of those negotiations and accepted the outcome I do not argue to you that UNHCR was entirely pleased with all our policies at all times, but the UNHCR was always part of the process, was always consulted by me and where possible was always closely involved in those decisions and the Refugee Convention as you would acknowledge Madam President is often quoted and sometimes little understood the Refugee Convention does provide obligations on Australia which were always in my time and I believe in the time of my predecessor and immediate successors honoured closely.</p>
President	<p>Well I really do need to pursue that point how could you say you were compliant with technically Article 31 of the Refugee Convention that asylum seekers should not be penalised, how can you say that you are meeting that in relation to children but when they were sent to Manus to closed mandatory detention in those conditions?</p>
Mr Bowen	<p>Well the Convention says that asylum seekers should not be penalised because of the form of their arrival. You could argue that any form of detention is penalising an asylum seeker but the decision of how to deal with asylum seekers was not based on the form of arrival it's based on whether there is a valid visa.</p>
President	<p>So whether there is a valid visa?</p>
Mr Bowen	<p>Whether there is a valid visa. Asylum seekers who arrive by aeroplane and have a valid visa who then seek asylum that is not a distinction I would form of arriving it is a distinction of whether someone came to Australia with a valid visa. But the refugee convention was always in my time as Minister, the time of my immediate predecessor and my two immediate successors, in my view always honoured.</p>
Ms Sharp	<p>Bearing in mind what you have just told this inquiry about not wanting a blanket exception for children going to off shore processing can you explain why it was in June 2013 all children were transferred off Manus Island?</p>
Mr Bowen	<p>Well I wasn't immigration Minister at the time</p>
Ms Sharp	<p>You were still a member of the government?</p>

Mr Bowen	That would be a personal decision of the Minister.
Ms Sharp	Is it your view that children should, no I withdraw that, is it your view that children should never be detained offshore? Or do you see a role in offshore detention?
Mr Bowen	Well as I have said, it is my view that a Minister is doing a very dangerous thing if they announce a blanket exemption publically. No Minister would want to send children, I don't believe, no Minister would ever want to send children to offshore detention but a Minister will always have a view to the intelligence advice being provided to him or her which may provide an incentive for people smugglers and hence, this was a very difficult balancing act for me and for other people in this area as to how not to provide that incentive but at the same time as not in alacrity sending any children to detention or offshore processing if it could be helped.
Ms Sharp	Can I move to a different topic now Mr Bowen, when you were the Minister of Immigration you were the legal guardian of children who arrived in Australia unaccompanied and without a valid visa. In that role you had the same rights, duties, obligations and liabilities as a natural guardian does toward children. However in addition to being a guardian for these unaccompanied minors you were responsible for transferring them and detaining them in offshore processing countries do you think any conflict of interest derives from your capacity as the guardian on one hand and the Minister transferring and detaining them on the other?
Mr Bowen	I think that this is an area which could potentially be reformed and I was considering a reform. I think there will always be a role, an obligation of a minister to make decisions to support the integrity of the immigration system which involves either transfer overseas or deportation I mean Minister's quietly out of the glare of the media have to make Ministers for Immigration have to make difficult decisions about deportation every day. Matters that have nothing to do with asylum seekers but a Minister for Immigration makes 5,000, on average personal visa decisions a year most of which would lead to deportation or removal from Australia and many of which involve children so the point I'm making is that the Minister for Immigration will always have to make those decisions and even if the Minister of Immigration is not the legal guardian of those people he or she still have to be authorised to make those kind of decisions so you could appoint another guardian you could appoint a Children's Commissioner or another individual as guardian but the Minister of Immigration is still going to have the power to overrule that guardian if that guardian makes a submission that the child

	<p>shouldn't be deported or transferred or any particular decision, the Minister of Immigration is always going to be the ultimate decision maker. You could consider changing that system. I always took my role as guardian very, very seriously as I think every Minister does but a Minister will always have that balancing act to do as well about the broader integrity of the immigration system.</p>
President	<p>I appreciate your point that ultimately the Minister makes the determination the difficulty that we are having is understanding how as Minister and guardian of the child you could consistently act</p>
Mr Bowen	<p>Well that would be an argument for reform Madam President, which is an argument I think you can make.</p>
President	<p>Well yes the question I've got is why that reform didn't occur under your term?</p>
Mr Bowen	<p>It's not something I ruled out, it's not something I ruled out but as I said I didn't see it as a core reform because ultimately the same person would make the decision, i.e. me, you could have a process of submission to me from a legal guardian, you could do that, and that might be a worthwhile reform but at the end of the day either me or whoever else was sitting in the chair would ultimately make that decision.</p>
President	<p>But at the end of the day it's not the question we're asking, we're really saying, it's one thing for a separately appointed person to act as guardian of the child to make a determination or recommendation and you as Minister to overrule it but there's a clear distinction between that and being both the Minister and the Guardian of the child particularly when, as you know, you are required to act in the best interest of the child and knowing the evidence, the conditions and so on, it's a concern to the Commission that you continue to hold both positions without distancing yourself and appointment somebody else as guardian that's why, I want to understand why you didn't yourself say this is at least an apparent conflict of interest, even if I had to make the final decision why did you not go ahead separate yourself from that position and appoint somebody else?</p>
Mr Bowen	<p>Well it had been an arrangement in place for many, many years, I think I'm right in saying from [inaudible] the Migration Act 1949. As I said it was something that I had considered and not ruled out and my recollection is there had been work commissioned as to how an alternative model might work and it is something, a change here is not something I would have chosen. And I do have to stress the</p>

	<p>point, ultimately if people are arguing that appointing a separate commissioner, a guardian, a Children's Commission is what the model suggested, would lead to a different outcome that is in most cases not going to be the case. The Minister for Immigration is ultimately going to make the decision which the Minister will need to make as the current minister and every other minister has made, as I said on roughly 5,000 individual decisions a year, the majority of which are adults obviously but some of whom are children there are decisions taken to deport where the person is not authorised to be, and they are difficult decisions for any Minister to make, the Ministerial dimension power is very substantial one and in most cases the guardian makes submissions to the Minister to say I don't want to leave and I don't think my child should either and the Minister has to make the ultimate call.</p>
President	<p>Yes I appreciate that, I'm trying to get to the point</p>
Mr Bowen	<p>Well I don't think the reason, I don't think, I think we understand each other Madam President it's not a reform I think would be a bad one, I think it's potentially a good one ... but I didn't see it as a first order reform, because in many cases it wouldn't change the outcome</p>
President	<p>You can see it might have been something you could have usefully done to avoid apparent conflict</p>
Mr Bowen	<p>Perceptions, potentially but I was more interested in the realities than the perceptions</p>
President	<p>Thank you very much</p>
Ms Sharp	<p>Mr Bowen just to follow up on the President's questioning in April 2012 when you were the Minister the Parliamentary Joint Select Committee on Australia's Immigration and Detention Network actually recommended the legal guardianship of unaccompanied children in immigration detention be transferred away from the Minister. What was your response to this recommendation, what did you do about this?</p>
Mr Bowen	<p>Well my recollection is I commissioned work from the Department as to how an alternative model would work and what process could you govern, for government consideration of an alternative model that is my recollection and that that work</p>

	was underway
Ms Sharp	And it is in your evidence that there is some good sense in transferring the guardian, obligation of guardianship away from the Minister?
Mr Bowen	It is my evidence that it could be worthwhile reform, but people should be clear that in many cases, in almost all cases it would not change the outcome.
Ms Sharp	Tell me while you were Minister and while you were the guardian of unaccompanied minors did you ever exempt any unaccompanied children from being sent offshore?
Mr Bowen	Inevitably I would have because not many children were sent offshore when I was Minister but I wouldn't have announced it
Ms Sharp	Mr Bowen in 2012 you reopened the Pontville detention centre in Tasmania and you authorised the detention of unaccompanied children there at one point in 2013 almost 300 unaccompanied children were detained some of whom were detained for over 8 months can you explain why you didn't immediately release these vulnerable children into the community?
Mr Bowen	Well because people were being released, children were being released as fast as the system, and I said in my opening statement as fast as the system would allow, it was a system I have reintroduced that children and unaccompanied minors be released in the community but we needed to source the accommodation, which was a very substantial task. We had some assistance in the end from religious groups because when religious groups would come and see me and ask for a fast transfer of children out of detention I would ask for accommodation and some obliged. The Catholic church when they came to see me to argue that children should be released quicker have you got any former monasteries or convents that I could have to accommodate people and to their credit they did. That's an example of the kinds of challenges that we were dealing with in terms of getting children out of the system as quickly as possible. I couldn't authorise to nobody they had to have accommodation supplied and I think the fact that 10,000 people were accommodated under the community release program is testament to the fact that the Department did at my instruction and the instruction of government apply the necessary resources to it. Would you have liked it to have happened faster? Of course, but it was happening pretty fast when you look at the number of people who were being released on a monthly basis. Of course

	<p>what was happening is that people were moving through the system, people get released into the community their claim ultimately gets accepted or rejected, if it gets accepted then they would move out of community detention and into the general settlement program if they were rejected then the process to return commences but in any event they would move through community detention, I always thought community detention was a misnomer because it's not detention at all apart from the fact that they were obliged to live at the address nominated by the Minister they were free to come and go of course at any time of the day or night and participate in community activities so it's not community detention but the process was working as well as it could considering the challenges that were very clearly being dealt with by the Government.</p>
President	<p>Can I explore just a little, in greater depth why it was so difficult to find community detention? During that period there were facilities being developed in the detention centres, Christmas Island and mainland Australia at significant expense we're understanding. Why weren't more efforts put into developing community detention partly because of course that would have been significantly less expensive and 8 months does seem to be an unnecessarily long period of time?</p>
Mr Bowen	<p>As I said Madam President my recollection is that the through-put time was much less than that at various points including when I ceased being Minister. The Department if you ask them hopefully would be able to follow that historical data</p>
President	<p>We do, that, we are citing Departmental data</p>
Mr Bowen	<p>There's no doubt at some times it was long</p>
President	<p>Yes</p>
Mr Bowen	<p>But I put to you in my evidence, my recollection is that it was much shorter than that for much of the time. One month to three months.</p>
President	<p>But I just want to explore the point that you have made several times that it was extremely difficult to move them through the pipeline into community detention, why was that so difficult?</p>
Mr Bowen	<p>Well, it simply came down to sourcing suitable housing. We took the decision not to use public housing because we didn't want to compete with the very real need</p>

	<p>of people for public housing so we refused, we declined to interact with state governments about using public housing because the public housing is under enough pressure as it is I think that was the right decision, we each engaged with Red Cross and others about how we sourced rental accommodation which is what we did. We looked at alternative models including towards the end of my time, or getting towards the end of my time, the homestay which was a system under which international students were accommodated that was a model which I thought could work and did indeed accommodate significant number of people, I can't recall exactly but a significant number of people, so we did put in place those kinds of innovative measures to try and accommodate more people but we rejected a lot of housing as well as being substandard there was Departmental, obviously Departmental decision but often with particularly sensitive cases I was keen to get out of detention for some reason or other I was aware of as Minister I would ask the Department to source some accommodation and they would come back to me and say we've checked through today and none of it was suitable, for example so it wasn't just simply any accommodation we wanted to put people in suitable not luxurious but a suitable standard of accommodation. Some of them were houses some of them were apartments and simply the Department was working as hard as it could to identify what that accommodation was and also it's not just accommodation I mean people, particularly unaccompanied minors needed supervisors, you're not going to put five 14 year olds in a house and leave them. I think we could all imagine what the implications of that would be, it would not be good and those carers needed to be in most cases bilingual, not languages which are commonly spoken in Australia, they were ones which the asylum seekers would commonly speak whether they be Hazara, Pashtun, Tamil, they're not languages which are abundantly available in the Australian workforce so carers, not only you needed to find the carers who were bilingual and who had been through all the appropriate checks, police checks, custody of children checks etc, and this is not a workforce that is just a click of a finger available in Australia. I think it's remarkable that the Department working with its partner agencies actually managed to accommodate so many people in the community considering the sorts of challenges that were being undertaken.</p>
<p>Ms Sharp</p>	<p>Mr Bowen there are currently over 20 unaccompanied minors on Christmas Island being detained there pending their transfer to Nauru many of these minors have been detained for over a year now. Do you, having the benefit of having been the Minister, do you think that this is in their best interests to detain them indefinitely on Christmas Island pending their transfer to Nauru or do you think they should be released into the Australian community?</p>

Mr Bowen	Well as a matter of principle I'm aware of the long term detention of people on Christmas Island and it has concerned me since this policy was implemented I think that detaining people on Christmas island with no pathway is a very unfortunate thing to do it is a matter for the current Minister but it is not a policy on the evidence available to me, it's not a decision that I would make.
President	One matter that I would like to take up with you Mr Bowen is that you've read the questions whether claims are accepted or rejected, the evidence that we've received and the comments that were made in submissions and so on have emphasised the problem that something like 30,000 probably more people, asylum seekers in Australia have not had their claims to refugee status assessed and that's a fundamental problem in terms of their right at international law to have their claims assessed and the allegations frequently made that this so called backlog of 30 or more thousand people is the responsibility of your government and partly of the time you were Minister. Can you tell us a little bit about when the assessments stopped and why and whether you knew what the consequences were going to be.
Chris Bowen	Sorry Madam President I don't follow when the assessments stopped?
President	Well what we're concerned about is that the current government has said on many occasions that the backlog of over 30,000 people whose claims have not been assessed is a reflection on your former government's policies and I'm wondering if you could tell us at what stage did this assessment process actually stop and create the backlog or was it that it was continuing slowly or too slowly to avoid a backlog is that what happened?
Mr Bowen	I think what the current Government is doing is engaging rhetoric there
President	Maybe but we have to respond to these allegations at least to determine what the facts are
Mr Bowen	Yes, yes but my interpretation of the remarks is that they are simply saying that these people arrived before us, I'm not aware that any processing stopped at all during our time in office, certainly not in my time as Minister, we continued to process, absolutely as we should.

President	But the numbers became overwhelming.
Mr Bowen	Well we were dealing with large numbers and it is difficult again, the Department was dealing with difficult circumstances where you have somebody first you have to establish the identity with no identity documents, that is a long and involved process, can be in many instances, identity may be contested the Department may have doubts about claims of identity, you're dealing with very difficult systems, no access to government documents which can be very difficult and then you have to assess claims and they can be complex claims, elaborate claims of which the Department has to fully assess and then of course there is an appeals process which can be long and involved so when dealing with big numbers you are going to have the delays within a difficult process that is almost inevitable but I, my evidence is that I am not aware, certainly not in my time we did not stop processing, I did not let them stop processing in office and I think the Government, the current Government is engaging in rhetoric.
President	There is perhaps some truth in the argument that the sheer numbers that were as yet unassessed by the time the new Government took control was a very large one and was reflective of the numbers that had accumulated over your Government.
Mr Bowen	Well it is a matter of fact if there are a large number of people being assessed [inaudible] matter of fact
President	That arose largely through the period of your Government?
Mr Bowen	Yes. I mean it's a matter of fact that we had large numbers of arrivals, hence, going back to our earlier discussion, difficult decisions taken to try and reduce or eliminate those arrivals.
President	So knowing then the numbers were growing and you were finding it more and more difficult to assess them in a speedy and prompt manner you were still prepared to hold families and children in that environment? In other words you knew that the assessment would not take place quickly, it could take some years and in many cases it is years you were still willing to hold children and families in detention pending...

Mr Bowen	No on the contrary
President	Knowing they would not be assessed for some time?
Mr Bowen	No, on the contrary that's why I released them. That's one of the reasons, the fact that it was taking so long to process people is one of the reasons I exercised my powers under section 197A of the Act, on the contrary Madam President I don't accept that assertion at all.
President	So your difficulty in releasing them, comes back again to the problem that you did not have appropriate community detention facilities in which to release them
Mr Bowen	In large enough numbers to ensure release as quickly as I always would have liked. As I said, and I stress my evidence is that my recollection is that the time it was taking was much less than eight months for much of that time, much, and I do recall times that I was briefed that the average wait in detention was one month for children.
President	Thank you very much
Ms Sharp	Just following up on some processing questions Mr Bowen. There has been a policy that asylum seekers arriving from July 2013 are to be processed offshore and then resettled offshore at the moment we have a situation where families falling into that post July 2013 cohort are detained on Christmas Island pending the transfer to Nauru. Now as the Commission understands it, no processing of those asylum seeker claims is happening on Christmas Island and it is proposed that no processing will happen until those people are transferred to Nauru whenever that may be. Do you have any comments on that policy of not processing asylum seeker claims while these people are detained on Christmas Island?
Mr Bowen	Yes again I don't have the full facts at my disposal only the Minister, the current Minister would, but that would concern me, while I support offshore resettlement if for whatever reason people have not been transferred offshore if it is because the government is having trouble with the Government in Papua New Guinea, the Government in Nauru, I'm not asserting that is the case but for some reason people aren't being transferred offshore I think the current Government has an obligation to consider how these people will be dealt with, I don't think indefinite

	<p>long term detention on Christmas Island with no pathway forward is necessarily sustainable so I do have concerns about it, but I don't profess to have the full facts at my disposal only Minister Morrison would have those but if I were Minister I would be concerned about that situation.</p>
Ms Sharp	<p>Mr Bowen you said in your opening statement that you made your policy announcement in October 2010 to release increasing numbers of children into community detention because of your experience in Christmas Island, not because you had received advice but because of your experience in Christmas Island, do you think Christmas Island is an acceptable place to detain children and families?</p>
Mr Bowen	<p>Well I think my evidence would suggest that I do not think it is a suitable place for the long term detention of children and families hence the decision I made, effectively at Christmas Island while looking at the facilities that children were being detained in, effectively I took the decision then obviously there was administrative processes to then proceed when I returned to Sydney and Canberra including my decision to seek Cabinet endorsement but I think in my evidence would lead you to the view correctly, that I did not think it was suitable, no.</p>
Ms Sharp	<p>Mr Bowen why weren't steps taken to close Christmas Island at that time?</p>
Mr Bowen	<p>You mean Christmas Island generically, all the detention?</p>
Ms Sharp	<p>Yes</p>
Mr Bowen	<p>Well of course the main facility on Christmas Island does not include children at Northwest point, it has no children in it, it was built at some considerable expense for the immediate processing of people who arrive at Christmas Island, so I don't see, if people were arriving at Christmas Island they needed to be accommodated somewhere I was, and again, the facilities at Northwest at Christmas Island, as you would be aware Madam President as someone who has visited on a number of occasions are varied, Phosphate Hill is very different from Northwest point is very different to the different facilities on Christmas Island and I took the view the facilities that children were being detained in were substandard and it led me very quickly to reach the view that we could do better. Subsequently I visited other centres some of which I took the decision to close as soon as possible, there was a hotel in Brisbane which was being used for this which as I recall was called</p>

	<p>Virginia Palms or something to that effect I took the decision after visiting there that it was unsuitable and had it closed as soon as possible. There were other facilities which were slightly more suited but still not suited for the long term accommodation of children hence my decision to exercise my powers under 197A.</p>
President	<p>I'm just wondering whether you also visited Manus where children were sent, did you go there?</p>
Mr Bowen	<p>Yes</p>
President	<p>What was your view then?</p>
Mr Bowen	<p>Well I had the view that it would take considerable work before it was suitable for any children, that again was a challenging environment but I have not visited any place where refugees are accommodated whether it be Manus Island, Christmas Island, mainland Australia, Lebanon, refugee camps around the world which are nice places but I had the view that Manus Island with the appropriate care and support and investment in infrastructure was a necessary part of a resettlement process which would stop people dying at sea. But to come back to the previous evidence which I do not wish to revisit and detain the Commission but previous evidence while I couldn't issue a blanket public exemption individual decisions and it goes to Counsel assisting's question to me whether I would have exercised my power as Minister not to transfer people, yes I would and I did but I simply didn't wish to communicate that in a way that people smugglers could capitalise on.</p>
Ms Sharp	<p>With the benefit of having visited Christmas Island and with the benefit of your unique insight as Immigration Minister in the past do you think that families and their children are currently being held for prolonged indeed indefinite periods in detention on Christmas Island to encourage those families to go home?</p>
Mr Bowen	<p>In fairness I could not comment on what the Minister's intentions are, it would be unfair of me to assert particular intentions on his behalf when I am not aware of them I'm not interested a cheap political point at his expense when I don't have the full facts at my hand.</p>
Ms Sharp	<p>Mr Bowen there are currently about 150 children being detained indefinitely on Christmas Island pending their transfer to Nauru do you have a view about</p>

	<p>whether these children should be released into the community pending that transfer?</p>
<p>Mr Bowen</p>	<p>Well I refer to my previous answer which is I would be concerned, I am concerned as a citizen and somebody who has some experience in this field I am concerned about the treatment of people who are being detained in Christmas Island for a long period from what would appear from all evidence to me, as now an informed citizen, indefinitely I am concerned about that and I would think, I would hope that the Minister would be considering what the options are there, he's saying so they'll be transferred but we've seen no evidence that they will be so it's simply not sustainable to keep them at Christmas Island forever so he has some decisions to make.</p>
<p>President</p>	<p>Well thank you Mr Bowen I think we very much appreciate first that you accepted our invitation so promptly you are very busy but secondly you've given us very direct and frank answers to our questions and I think it really will provide us with an insight into your thinking when you made these decisions at the time.</p>
<p>Mr Bowen</p>	<p>Thank you Madam President I certainly, during your time and during the time of your predecessor while we had different jobs to do and a different role to play in the body politic I think we certainly interacted generous, constructively and proactively as I could. I was certainly keen to ensure that you had full access to all our facilities at times of your request I don't recall I ever denied you access I certainly endeavoured to grant you whatever access, support and advice I could provide because I think the Commission plays a valuable role in these matters and more broadly as I said we had different roles to play as Minister of Immigration and Human Rights Commission President but both important roles to play and there should be an atmosphere where there can be an exchange of views and experiences with respect and that's always how I've tried to interact with the Commission and that's the spirit I've attempted to act with you today.</p>
<p>President</p>	<p>Well that has indeed been the case and I think the fact that we can do this it reflects a mature approach to democracy but perhaps I can finish by saying that I would like to repeat your words in both respecting and valuing the work of your Departmental officials through most of this process it's been very helpful and we have relied on the accurate documental details in order to underpin the questions that we are asking so thank you very much indeed and that does bring to an end the last of the public hearings and as I say we will now work with this evidence to hope that the facts speak for themselves we've heard from respected</p>

	<p>Ministers and I think we've had a very fair exposure of the underlying thinking for a Minister in making these very hard decisions. So thank you very much for coming today your attendance and following these proceedings and really checking that we've got facts right is very important when the report is ultimately made available so thank you very much. Thank you.</p>
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