



Australian  
Human Rights  
Commission

---

# Mr Pjetri v Commonwealth of Australia

---

## (Department of Home Affairs)

---

**[2024] AusHRC 170**

---

July 2024

---

ABN 47 996 232 602  
GPO Box 5218, Sydney NSW 2001  
General enquiries 1300 369 711  
National Info Service 1300 656 419  
TTY 1800 620 241

Australian Human Rights Commission  
[www.humanrights.gov.au](http://www.humanrights.gov.au)



# **Mr Pjetri v Commonwealth of Australia (Department of Home Affairs)**

[2024] AusHRC 170

*Report into inhuman treatment and use of force*

Australian Human Rights Commission 2024

The Hon Mark Dreyfus KC MP  
Attorney-General  
Parliament House  
Canberra ACT 2600

Dear Attorney

I have completed my report pursuant to s 11(1)(f) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act) into the human rights complaint of Mr Pjetri, alleging a breach of his human rights by the Department of Home Affairs (Department).

Mr Pjetri was confined in closed immigration detention for a period of eight years, from the point of his arrival in Australia in September 2013, until he was removed to his country of nationality, Albania, in September 2021.

In a thematic report on detainees in long term detention, which is yet to be finalised, I formed the preliminary view that the Department's failure to refer Mr Pjetri's case to the Minister to consider alternatives to detention, save for on one occasion after five years of detention, may have been contrary to article 9(1) of the *International Covenant on Civil and Political Rights* (ICCPR).

I have found this same failure to refer Mr Pjetri's case to the Minister to be relevant to Mr Pjetri's complaint under article 7 of the ICCPR. Based on all the information before me, I find that the Department's failure to refer Mr Pjetri's case to the Minister to consider alternatives to detention, save for on one occasion after five years of detention, resulted in the prolonged detention of Mr Pjetri that directly inflicted serious psychological and physical harm (including risk of death) and amounted to cruel, inhuman or degrading treatment within the meaning of article 7 of the ICCPR.

I am not however, satisfied that the force used during an attempt to remove Mr Pjetri from Australia was inconsistent with his rights under article 10(1) of the ICCPR.

On 16 February 2024, I provided the Department with a notice issued under s 29(2) of the AHRC Act setting out my findings and recommendations in this matter. The Department provided its response to my findings and recommendations on 19 June 2024. That response can be found in Part 8 of this report.

I enclose a copy of my report.

Yours sincerely,

A handwritten signature in black ink that reads "Rosalind Croucher". The signature is written in a cursive style with a large initial 'R'.

Emeritus Professor Rosalind Croucher AM FAAL

**President**

Australian Human Rights Commission

July 2024

## Contents

<b>1</b>	<b>Introduction .....</b>	<b>6</b>
<b>2</b>	<b>Summary of findings and recommendations .....</b>	<b>6</b>
<b>3</b>	<b>Legal framework.....</b>	<b>7</b>
<b>3.1</b>	<b><i>Functions of the Commission .....</i></b>	<b>7</b>
<b>3.2</b>	<b><i>Scope of ‘act’ and ‘practice’ .....</i></b>	<b>8</b>
<b>4</b>	<b>Background .....</b>	<b>8</b>
<b>4.1</b>	<b><i>Health and medical treatment in detention .....</i></b>	<b>8</b>
<b>4.2</b>	<b><i>Incident of 8 November 2019.....</i></b>	<b>16</b>
<b>5</b>	<b>Human rights relevant to this complaint.....</b>	<b>17</b>
<b>5.1</b>	<b><i>Cruel, inhuman or degrading treatment .....</i></b>	<b>17</b>
<b>5.2</b>	<b><i>Right to be treated with humanity and dignity.....</i></b>	<b>18</b>
<b>6</b>	<b>Consideration.....</b>	<b>21</b>
<b>6.1</b>	<b><i>Act or practice of the Commonwealth.....</i></b>	<b>21</b>
<b>6.2</b>	<b><i>Article 7 complaint – Inhuman treatment.....</i></b>	<b>22</b>
<b>6.3</b>	<b><i>Article 10 complaint – Use of force.....</i></b>	<b>28</b>
<b>7</b>	<b>Recommendations.....</b>	<b>29</b>
<b>7.1</b>	<b><i>Compensation.....</i></b>	<b>29</b>
<b>7.2</b>	<b><i>Food/fluid refusal policy.....</i></b>	<b>30</b>
<b>7.3</b>	<b><i>Use of body cameras during unplanned use of force incidents .....</i></b>	<b>32</b>
<b>8</b>	<b>The Department’s response to my findings and recommendations ..</b>	<b>33</b>

# 1 Introduction

1. The Australian Human Rights Commission (Commission) has conducted an inquiry into complaints by Mr Mirand Pjetri against the Commonwealth of Australia, Department of Home Affairs (Department) alleging a breach of his human rights. The inquiry has been undertaken pursuant to section 11(1)(f) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act).
2. Mr Pjetri complains about the length of his immigration detention, the impact of his detention on his health, and a use of force incident that occurred during an aborted attempt to remove Mr Pjetri from Australia.
3. Mr Pjetri's complaint raises possible breaches of articles 7, 9(1) and 10(1) of the *International Covenant on Civil and Political Rights* (ICCPR) as scheduled to the AHRC Act.
4. Mr Pjetri's complaint as it relates to the length of his detention and article 9(1) of the ICCPR has been considered by the Commission as part of a thematic inquiry into long-term detention.
5. This inquiry focuses on whether Mr Pjetri's prolonged detention constituted cruel or inhuman treatment, contrary to article 7 of the ICCPR, due to the deterioration in Mr Pjetri's health that arose while he was detained, and also whether the force used during an aborted attempt to remove Mr Pjetri from Australia was consistent with article 10(1) of the ICCPR.
6. This document comprises a report of my findings in relation to this inquiry and my recommendations to the Commonwealth.

## 2 Summary of findings and recommendations

7. As a result of this inquiry, I find that Mr Pjetri's continued detention in closed immigration detention facilities over an 8-year period constituted cruel, inhuman or degrading treatment, contrary to article 7 of the ICCPR.
8. I am not satisfied that the force used during an attempt to remove Mr Pjetri from Australia was inconsistent with his rights under article 10(1) of the ICCPR.
9. I make the following recommendations:

### **Recommendation 1**

The Commission recommends that the Commonwealth pay to Mr Pjetri an appropriate amount of compensation to reflect the loss and damage he has

suffered as a result of the breach of his human rights under article 7 of the ICCPR identified in the course of this inquiry.

### **Recommendation 2**

The Commission recommends that all detainees whose detention has become, or is likely to become, protracted, should be referred for consideration by the Minister for an alternative to held detention. The fact that a detainee may be engaging in food/fluid refusal should not prevent this from occurring.

### **Recommendation 3**

The Commission recommends that the Department should provide additional training to all staff to highlight the importance of prioritising a detainee's health when perceived to be engaging in food/fluid refusal in light of the duty of care owed by the Commonwealth to detainees.

### **Recommendation 4**

The Commission recommends that the Serco policy on domestic transfers and charters, when next reviewed, be updated to include a responsibility to enable body cameras for unplanned use of force incidents, where sufficient time exists to do so.

## **3 Legal framework**

### **3.1 Functions of the Commission**

10. Section 11(1)(f) of the AHRC Act provides that the Commission has the function to inquire into any act or practice that may be inconsistent with or contrary to any human right.
11. Section 20(1)(b) of the AHRC Act requires the Commission to perform this function when a complaint is made to it in writing alleging that an act is inconsistent with, or contrary to, any human right.
12. Section 8(6) of the AHRC Act requires that the functions of the Commission under section 11(1)(f) be performed by the President.
13. The rights and freedoms recognised by the ICCPR are 'human rights' within the meaning of the AHRC Act.<sup>1</sup>



## 3.2 Scope of 'act' and 'practice'

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

## 4 Background

17. Mr Pjetri was in immigration detention from the date of his arrival in Australia on 16 September 2013 until he was removed to his country of nationality, Albania, on 21 September 2021 – a period of 8 years.
18. The Commission has found that Mr Pjetri's detention was arbitrary, in breach of article 9(1) of the ICCPR: *Immigration Detainees in Prolonged or Indefinite Detention v Commonwealth of Australia (Department of Home Affairs and Minister for Immigration, Citizenship and Multicultural Affairs)* (Thematic Report).
19. I note that the United Nations Working Group on Arbitrary Detention also found that Mr Pjetri's detention was arbitrary.<sup>3</sup>
20. The background to Mr Pjetri's migration to Australia and how he came to be placed in held detention is outlined in the Thematic Report, and is not repeated in this report.

### 4.1 Health and medical treatment in detention

21. The Department provided the Commission with detailed information in relation to Mr Pjetri's health and medical history. The information provided disclosed that Mr Pjetri had an extensive history of engagement with the International Health and Medical Services (IHMS) and other health services throughout his time in immigration detention.
22. As early as 20 March 2014, Mr Pjetri expressed to an IHMS psychologist suicidal ideation when presented with the possibility of return to Albania.

23. In January 2015, Mr Pjetri presented to an IHMS psychologist with a flat mood and reduced appetite. The psychologist noted that he was smoking excessively and drinking multiple cups of coffee per day.
24. In March 2017, Mr Pjetri was seen by an external counsellor, to whom he expressed loneliness and frustration at his ongoing detention. He reported that he was 'constantly ruminating about his past and was experiencing fatigue, insomnia and a depressed mood'.
25. On 11 April 2017, Mr Pjetri again reported a low appetite, and informed an IHMS mental health nurse that he was only drinking coffee and smoking cigarettes. The IHMS record provided to the Commission stated that he 'said his lack of appetite was not a protest but that he just did not feel like eating'.
26. Mr Pjetri was reported by IHMS to have lost 11kg by 26 April 2017, at which time he weighed 67kg. He presented to an IHMS nurse as teary, and said that he felt 'forgotten by everyone'.
27. Mr Pjetri's physical and mental health appeared to have declined further by 20 May 2019, when he reported to an IHMS GP that he was experiencing palpitations in bed at night, that he was not eating, and drinking 7 cups of coffee per day. His weight on this date was 65.3kg. He was prescribed psychotropic medications.
28. On 30 May 2019, Mr Pjetri weighed 63.3kg. He reported to the GP that 'the medication had numbed him but had not taken away his anxiety'. An IHMS counsellor noted on 31 May 2019 that Mr Pjetri had 'exhausted coping mechanisms due to stress compounded with dysthymic demeanour'.
29. An IHMS primary health nurse weighed Mr Pjetri on 6 June 2019, at which time he weighed 62.2kg. He reported feeling dizzy and experiencing headaches.
30. An IHMS psychiatrist saw Mr Pjetri on 7 June 2019, and deemed him fit to travel. The psychiatrist's opinion was that Mr Pjetri did not have a mental illness but was 'experiencing a stress/grief-like reaction to deportation'.
31. On 3 July 2019, an IHMS GP reported that Mr Pjetri weighed 58kg, and had experienced two collapses due to low blood pressure.
32. On 15 July 2019, Mr Pjetri was noted by an IHMS GP to have 'concentrated and malodorous urine' which tests revealed contained blood and nitrites, which the GP noted 'could be indicative of infection, renal stone or other renal

pathology'. Mr Pjetri declined taking antibiotics or submitting to scans of his renal tract.

33. On 17 July 2019, an IHMS psychiatrist considered that 'Mr PJETRI was suffering major depression and that nutrition was required to improve his mental state'.
34. After refusing to attend a series of IHMS nurse appointments, Mr Pjetri agreed to be admitted to hospital on 2 August 2019.
35. On 7 August 2019, Mr Pjetri was admitted to the Melbourne Clinic for psychiatric services by way of detention at an 'alternative place of detention' (APOD). While there he was administered Transcranial Magnetic Stimulation (TMS). On discharge from the Melbourne Clinic on 1 November 2019, this treatment was recommended to continue by way of readmission every 4 weeks. Mr Pjetri weighed 60.2kg on discharge.
36. Some positive indications appear on the IHMS record about the impact of the TMS on Mr Pjetri's mental health and appetite, but by 11 November 2019, an IHMS mental health nurse was advised by Serco that Mr Pjetri had not eaten or drunk anything so far that day.
37. IHMS reported that Mr Pjetri ceased taking his medication around 14 November 2019.
38. Between 25 November 2019 and 1 December 2019, Mr Pjetri was admitted again to the Melbourne Clinic for a further 10 treatments of TMS. At this point, IHMS requested an extension of funding for further treatments, but this was declined by the Department, 'as the care provided had exceeded an Australian community standard and it was considered that Mr PJETRI's symptoms were not improving with further TMS'.
39. From 16 December 2019, Mr Pjetri declined attending multiple appointments with various health professionals. On 2 January 2020, an IHMS mental health nurse and psychiatrist visited him in the compound. The following notes were made:

It was noted that Mr PJETRI had been refusing to attend medical appointments and stakeholders were concerned about his deteriorating physical health. He refused to have his pulse and blood pressure checked. He said that he did not trust IHMS staff and alleged he had been abused by Serco staff when they put him on a plane. Mr PJETRI complained that a medical officer witnessed the event and did not speak out. ... Mr PJETRI was noted to have insight into the significant change he had gone through in the past eight months which appeared tied to his visa situation. Mr PJETRI described his recent admission to the Melbourne Clinic as being an experience of feeling cared for which enabled him to start having hope

about his future again. Mr PJETRI said he did not believe that IHMS staff cared about him and would act in his interests. He said he had given up and felt dead already. Mr PJETRI said he was not eating due to a lack of appetite and said he tended to vomit after eating. He denied experiencing suicidal ideation. The psychiatrist concluded that Mr PJETRI was suffering from depression in the context of facing deportation to his home country with deterioration in physical health due to poor oral intake. Mr PJETRI was encouraged to resume taking his antidepressant medication and to attend medical appointments.

40. On 20 January 2020, an IHMS nurse noted that Mr Pjetri reported feeling paranoid that his food was being poisoned.
41. On 24 January 2020, Mr Pjetri described severe flank pain and was taken to Northern Hospital Emergency Department. He was diagnosed with a 1mm kidney stone and discharged to allow it to pass naturally. This occurred again on 26 January 2020.
42. A number of IHMS notes refer to Mr Pjetri's hygiene becoming poor, and described him as unkempt and dishevelled.
43. On 23 February 2020, Mr Pjetri reported to an IHMS nurse that he had been speaking to his deceased uncle the night before and that morning. He declined mental health support.
44. On 15 March 2020, Mr Pjetri self-reported weighing 45kg.
45. On 19 March 2020, an IHMS psychiatrist saw Mr Pjetri, and the following notes appear on IHMS records:
 

He denied suffering suicidal thoughts but expressed passive death wishes: *"I don't care if I live, I am destroyed already"*. He appeared emaciated and poorly groomed. Mr PJETRI was noted to be unhappy with having been moved to Sydney. The psychiatrist noted: *"On cross sectional review presents with severe major depressive disorder bordering on psychosis (overvalued persecutory and nihilistic ideas)"*. [italics in original]
46. On the same date, a dietician noted their assessment as 'moderate to severe malnutrition with loss of 30kg over 10 months. Current intake providing less than 25% of daily needs'.
47. On 25 March 2020, an IHMS psychiatrist referred Mr Pjetri to the emergency department and scheduled him under the *Mental Health Act 2007* (NSW).
48. At the Liverpool Hospital and while admitted overnight to the Psychiatric Emergency Care Centre, the psychiatrist there assessed him as

not suffering a major depressive or psychotic illness and had the capacity to choose whether he wished to eat and drink or not. BMI: 17.4. He said he had lost 20kg over the previous eight months. He said he would eat if the poor treatment of him, including allegations of physical assault, ceased. He was considered not to be detainable under the Mental Health Act.

49. On 30 March 2020, Mr Pjetri told an IHMS GP that he had lied to the hospital doctor in order to be discharged, that he was not taking his psychotropic medication and that he felt sad about having been transferred to Sydney from Melbourne where he had supports in the community.
50. An IHMS psychiatrist reviewing him again on 9 April 2020 opined that Mr Pjetri was competent to make decisions, and that his insight was intact.
51. On 11 May 2020, Mr Pjetri reported to IHMS that he suffered a panic attack the night before. He appeared to the nurse dishevelled and malodorous.
52. A physiotherapist visited Mr Pjetri on 3 June 2020 and noted that he was using a crutch to walk. Mr Pjetri stated this was because he had low energy and his legs were weak. He sought a second crutch but the physiotherapist advised him this would only lead to further weakening of his legs, and to instead try exercises.
53. On 4 June 2020, Mr Pjetri was again seen at an emergency department. The notes say:

Mirand is not acutely mentally ill, and not at acute risk of harm to himself or others. His low mood, sense of hopelessness and anxiety is entirely congruent with his long and traumatic detention for 7 years in various centres ... Admission to hospital is unlikely to be of any benefit, and may lead to further traumatisation by once again depriving Mirand of his civil liberties.
54. On 24 June 2020, an IHMS psychiatrist made the following notes of their impression, and identified Mr Pjetri's reason for not eating was for self-punishment:

Prolonged partial food and fluid restriction. Underweight but not medically compromised. Chronic reactive depression related to prolonged detention and prospect of being deported back to a country he perceives as dangerous. Continues to have capacity to make decisions including the decision to restrict his eating.
55. Mr Pjetri collapsed on 25 June 2020, but refused to be transferred to hospital by ambulance workers who assessed him.

56. A dietician discussed Mr Pjetri with the IHMS Medical Director on 5 August 2020. They noted that he was at severe risk of refeeding syndrome, arrhythmias, hypoglycaemia, and organ failure.
57. On 7 August 2020, referrals were sought at a number of hospitals for admission for nutritional rehabilitation, and for an external forensic psychiatrist with a view to their conducting a report into Mr Pjetri's capacity.
58. On 8 August 2020, Mr Pjetri was again assessed at Liverpool Hospital, and was noted to be experiencing
 

Acute behavioural/emotional disturbance likely in context of hyperarousal symptoms secondary to PTSD. No ongoing signs of confusion, psychosis. Ongoing major depressive symptoms. Unlikely to benefit from acute hospital inpatient admission, and, in fact, likely to be counter-therapeutic. However, he retains insight into his condition and is willing to engage with treatment. In view of management in least restrictive environment, discharge back to Villawood is recommended.
59. Between 10 August and 2 September 2020, the possibility of Mr Pjetri being admitted again to the Melbourne Clinic was discussed but refused by Mr Pjetri, unless guaranteed that he would be placed in community detention upon discharge. He attended one telehealth conference with the Melbourne Clinic psychiatrist on 28 August 2020, but was reticent to accept ongoing consults because he did not want false hope.
60. On 23 August 2020, Mr Pjetri was admitted again to the Liverpool Hospital emergency department; IHMS notes record a doctor discussed with him the possibility of sudden death from his condition.
61. Mr Pjetri spoke to the Melbourne Clinic psychiatrist again on 4 September 2020, and the following notes were recorded:

He appears to be expecting to die in the near future and seems resigned to this expected outcome as 'his fate'. He continues to say that he is not on a hunger strike, is not demanding a positive outcome for his visa status and has long lost all hope. He continues to emphasise: 'It was not about that. I have been treated like an animal for so long. I have been assaulted by security guards. I have been a nobody for seven years'.

Whilst his restrictive eating patterns likely started as an expression of anger and a coping mechanism for his distress, over time, with prolonged starvation, his physiology is nearly identical to extreme Anorexia Nervosa and at this stage faces risks of significant mortality and morbidity. Paradoxically, this is helping him avoid feeling any emotions including any hope for his future, and may be his only avenue for retaining some sense

of control over his body, while he feels completely disempowered in every other aspect of his life due to his prolonged detention. Starvation has become his way of coping with restrictions due to detention.

62. IHMS were informed by the Liverpool Hospital that Mr Pjetri could be admitted to the General Medicine Unit, but he declined on 22 September 2020.
63. On 24 September 2020 the IHMS psychiatrist noted:

There is little further that myself, as a psychiatrist, or the mental health team can offer. Mirand has refused transfer to psychiatric and medical inpatient care. In my opinion, he has capacity to make such a decision. He is aware that this decision poses a risk to his life.
64. On 12 October 2020, a consultation was held with an external psychiatrist for the purpose of a capacity assessment. Mr Pjetri was concerned that the assessment had only taken place by zoom.
65. On 13 October 2020, Serco staff reported hearing Mr Pjetri saying he would be 'better off dead' and that he could not 'take any more of this torture' to IHMS. Mr Pjetri declined a mental health assessment.
66. Between 21 and 26 October 2020, Mr Pjetri was admitted to Liverpool Hospital. He was reviewed by the psychiatric team and commenced on antidepressants. A CT scan was conducted which showed abnormalities. The psychiatrist discharged him with recommendations for ongoing medication and an MRI scan.
67. On 28 October 2020, the NSW Public Guardian was appointed guardian over Mr Pjetri by the NSW Civil & Administrative Tribunal on the basis of the external psychiatrist's report dated 26 October 2020.
68. Between 28 October and 4 November 2020, Mr Pjetri was admitted to Liverpool Hospital and diagnosed with reduced oral intake in the context of major depression and post-traumatic stress disorder. A dietician reviewing him while in hospital reported that he was unlikely to benefit from forced nasogastric feeding. An MRI conducted did not show any abnormalities.
69. Upon discharge from Liverpool hospital, Mr Pjetri was admitted to the psychiatric unit of the Westmead Hospital until discharged on 9 November 2020. A psychiatrist there reported 'no clear evidence of a depressive illness'.
70. On 18 November 2020, an IHMS psychiatrist noted the discrepancy between the opinion of the external psychiatrist on whose recommendation guardianship orders were made, and those of the two hospitals to which Mr

Pjetri was admitted. The IHMS psychiatrist was of the view that Mr Pjetri's presentation was

not severe depression and I concur that we should not coercively treat. I believe Mirand does have capacity to make decisions. I do not think he is substantially cognitively impaired and he is well aware of the dangers associated with his low body mass.

71. Relatively positive reports appear on the IHMS records between 19 November and 6 December 2020, with Mr Pjetri accepting his medication.
72. This changed again on 7 December. Mr Pjetri thereafter agreed to admission to the Melbourne Clinic on condition that he not be contacted by IHMS while there.
73. Following numerous requests to return to Melbourne, Mr Pjetri was transferred to MITA on 21 December 2020. He was required to quarantine there for 14 days prior to admission to the Melbourne Clinic. He was admitted on 10 January 2021.
74. On 15 January 2021 the treating psychiatrist provided an update to IHMS, informing them that the constant security presence was 'counterproductive to purposes of a therapeutic admission'. It seems from the later discharge summary from the Melbourne Clinic of 30 August 2021 that Mr Pjetri self-discharged due to the presence of the officers.
75. Between 21 and 27 May 2021, Mr Pjetri was admitted to Epworth Hospital where he was diagnosed with adrenal insufficiency following tests (Addison disease).
76. Mr Pjetri was readmitted to the Melbourne Clinic on 16 June 2021 and discharged on 30 August 2021. The discharge notes contained the following:
 

Request IHMS to escalate concerns around ongoing detention leading to ↑ psychological distress / chronic PTSD / Depression with permanent sequelae & ↑ [illegible] of morbidity & mentality & consider community Detention.
77. A GP consultation note appearing on 7 September 2021 raised concerns that Mr Pjetri would 'develop Addison crisis if continues to refuse treatment'.
78. On 6 September 2021, Mr Pjetri was deemed fit to travel with a medical practitioner and on a charter flight. He was removed from Australia on 21 September 2021.



## 4.2 Incident of 8 November 2019

79. On 8 November 2019, with Mr Pjetri having exhausted all options for remaining in Australia, the Department attempted to remove him by way of an escorted flight to Albania.
80. The version of events described below was provided to the Commission by the Department. It is supported by incident reports and other contemporaneous documents completed by Serco.
81. Serco was requested by the Australian Border Force (ABF) to carry out the escort. An IHMS doctor and nurse were both in attendance throughout the escort.
82. The planned force applied to Mr Pjetri during the escort included application of mechanical restraints (Saf Lock Mark V) at MITA at 12.43pm. These were removed at the airport in the ABF holding rooms at 1.25pm.
83. In the lead-up to boarding the aircraft, Mr Pjetri complained of chest pains. Serco notes record the doctor indicating that this was nothing serious and likely due to nerves. Mr Pjetri was offered medication but refused. The doctor took his blood pressure at 2.39pm.
84. Once boarded, the Department alleges that Mr Pjetri became non-compliant by refusing to sit in his allocated seat.
85. The Department says the three Serco officers escorting him attempted to negotiate with Mr Pjetri.
86. The Department describe Mr Pjetri as kneeling in his seat facing the opposite direction. One of the officers placed both hands on Mr Pjetri's waist to stand him up and turn him around so that he could be seated and his seatbelt could be secured.
87. Mr Pjetri allegedly resisted by using his arms and legs to block attempts. The second officer straightened Mr Pjetri's legs, and the third secured his seatbelt once seated.
88. One of the officers left to speak to the flight crew, and at this point Mr Pjetri removed his seatbelt and stood up. The remaining two officers, one from behind and one from in front, attempted to force him back to a seated position.
89. Mr Pjetri is reported to have stood up and started yelling loudly. As other passengers had commenced boarding by this stage, the pilot advised that Mr Pjetri must be removed from the aircraft.

90. The mechanical restraints were reapplied at 3.23pm at the airport and removed upon arrival at MITA at 4.18pm.

## **5 Human rights relevant to this complaint**

### **5.1 Cruel, inhuman or degrading treatment**

91. Article 7 of the ICCPR provides:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

92. In *C v Australia*, the United Nations Human Rights Committee found that the continued detention of C, when the State party was aware of the deterioration of C's mental health, constituted a breach of article 7 of the ICCPR. The Human Rights Committee stated:

the State party was aware, at least from August 1992 when he was prescribed the use of tranquilisers, of psychiatric difficulties the author faced. Indeed, by August 1993, it was evident that there was a conflict between the author's continued detention and his sanity. Despite increasingly serious assessments of the author's conditions in February and June 1994 (and a suicide attempt) it was only in August 1994 that the Minister exercised his exceptional power to release him from immigration detention on medical grounds (while legally he remained in detention). As subsequent events showed, by that point the author's illness had reached such a level of severity that irreversible consequences were to follow.<sup>4</sup>

93. More recently, in *F.K.A.G. v Australia* and *M.M.M. v Australia*, the United Nations Human Rights Committee expressly considered claims of violations of article 7 of the ICCPR by a number of asylum seekers detained in Australia as a result of receiving adverse security assessments, who, in consequence, suffered psychological harm. The United Nations Human Rights Committee stated:

the combination of the arbitrary character of the authors' detention, its protracted and/or indefinite duration, the refusal to provide information and procedural rights to the authors and the difficult conditions of detention are cumulatively inflicting serious psychological harm upon them, and constitute treatment contrary to article 7 of the Covenant.<sup>5</sup>

94. The Department owes a duty of care to detainees, and must consider the effect of decisions impacting the health and safety of those under its control.

This duty of care was explained in the context of detainees who self-harm in a 2013 report by the Commonwealth Ombudsman.<sup>6</sup> The report highlights that:

Because the department has a high level of control over particularly vulnerable people, its duty of care to detainees is therefore a high one. It is not enough for the department to avoid acting in ways that directly cause harm to detainees. It also has a positive duty to take action to prevent harm from occurring.<sup>7</sup>

95. The Commonwealth Ombudsman acknowledged that the duty of care cannot override the duty to detain under the Migration Act, even where that detention is likely to cause harm, but noted that the duty requires the Department to take reasonable, positive steps to ensure that detainees' physical and mental health needs are met. In particular, detention placement decisions must take into account each individual detainee's needs and risks, and the impact that different detention environments are likely to have on vulnerable individuals.<sup>8</sup>
96. Both the Department and its service providers owe a duty of care to all persons held in immigration detention. This means that they are legally obliged to exercise reasonable care to prevent detainees from suffering reasonably foreseeable harm. The Department's duty of care is non-delegable.
97. When the Department contracts out the provision of services to people in held detention to third parties, it has a responsibility to ensure the contracted service providers are qualified and can meet the standards outlined in the contract.
98. While these third parties must also discharge their own duty of care obligations to a detainee in held detention, this duty is additional to, and is not a substitute for, the Department's duty of care.
99. The Department's duties are relevant to, but not determinative of, its compliance with international human rights obligations. The relevant question for the purpose of article 7 of the ICCPR is whether Mr Pjetri's prolonged detention caused or contributed to a level of mental or physical impairment such that it amounts to cruel, inhuman or degrading treatment or punishment.

## **5.2 Right to be treated with humanity and dignity**

100. Persons subject to immigration detention are entitled to the human rights protected by the ICCPR, including special protections as persons deprived of their liberty by the State.

101. Article 10(1) of the ICCPR provides:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

102. States have a responsibility to ensure that the rights guaranteed in articles 7 and 10 of the ICCPR are accorded to detainees in privately run detention facilities.

103. Article 10(1) imposes a positive obligation on States to ensure that detainees are treated with humanity and respect for their inherent dignity.<sup>9</sup> This is in recognition of the fact that detained persons are particularly vulnerable because they are wholly reliant on a relevant authority to provide for their basic needs.<sup>10</sup> In this case, the relevant authority is the Commonwealth of Australia through the Department and the service providers who act on its behalf.

104. Professor Manfred Nowak has commented on the threshold for establishing a breach of article 10(1), when compared to the related prohibition against 'cruel, inhuman or degrading treatment' in article 7 of the ICCPR, as follows:

In contrast to article 7, article 10 relates only to the treatment of persons who have been deprived of their liberty. Whereas article 7 primarily is directed at specific, usually violent attacks on personal integrity, article 10 relates more to the general state of a detention facility or some other closed institution and to the specific conditions of detention. As a result, article 10 primarily imposes on States parties a positive obligation to ensure human dignity. Regardless of economic difficulties, the State must establish a minimum standard for humane conditions of detention (requirement of humane treatment). In other words, it must provide detainees and prisoners with a minimum of services to satisfy their basic needs and human rights (food, clothing, medical care, sanitary facilities, education, work, recreation, communication, light, opportunity to move about, privacy, etc). ... Finally it is again stressed that the requirement of humane treatment pursuant to article 10 goes beyond the mere prohibition of inhuman treatment under article 7 with regard to the extent of the necessary 'respect for the inherent dignity of the human person'.<sup>11</sup>

105. These conclusions are also evident in the jurisprudence of the United Nations Human Rights Committee, which discusses the positive obligation on relevant authorities to treat detainees with humanity and respect for their dignity.<sup>12</sup>

106. The content of article 10(1) has been developed through a number of United Nations instruments that articulate minimum international standards in relation to people deprived of their liberty,<sup>13</sup> including:

- the *Standard Minimum Rules for the Treatment of Prisoners* (Nelson Mandela Rules),<sup>14</sup> and
- the *Body of Principles for the Protection of all Persons under Any Form of Detention* (Body of Principles).<sup>15</sup>

107. In 2015, the Mandela Rules were adopted by the United Nations. They provide a restatement of a number of United Nations instruments that set out the standards and norms for the treatment of prisoners.<sup>16</sup> At least some of these principles have been determined to be minimum standards regarding the conditions of detention that must be observed regardless of a State Party's level of development.

108. Several of the Mandela Rules are relevant to the use of force on detainees by detaining officers. Rule 54(1) of the Mandela Rules provides:

Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.

109. This rule provides limits on the circumstances in which force may be used and limits the use of force in those circumstances to what is necessary.

110. Rule 94 requires that civil prisoners 'shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order'.

111. From the above, the following conclusions may be drawn:

- article 10(1) of the ICCPR imposes a positive obligation on State parties to take action to ensure that detained persons are treated with humanity and dignity
- the threshold for establishing a breach of article 10(1) of the ICCPR is lower than the threshold for establishing 'cruel, inhuman or degrading treatment' within the meaning of article 7 of the ICCPR, which is a negative obligation to refrain from such treatment
- article 10(1) of the ICCPR may be breached if a detainee's rights, protected by one of the other articles of the ICCPR, are breached – unless that breach is necessitated by the deprivation of liberty
- minimum standards of humane treatment must be observed in detention conditions, including immigration detention.

112. The Department has issued a Detention Services Manual dealing with the use of force. The manual is a procedural instruction that gives policy and procedural guidance to the ABF and Serco officers on the use of force in immigration detention facilities. The following principles, taken from the manual, are consistent with the Commonwealth's human rights obligations in relation to the use of force on detainees in their care:
- **there is a presumption against the use of force**, including restraints, during movements within an IDF, transfers between IDFs, and during transport and escort activities outside of IDFs
  - conflict resolution through **negotiation and de-escalation, where practicable, must be considered** before the UoF and/or restraint is used
  - UoF and/or restraint should **only be used as a last resort**
  - the amount of force used and the application of restraints **must be reasonable**.<sup>17</sup>

[emphasis in original]

## 6 Consideration

### 6.1 Act or practice of the Commonwealth

113. In the Thematic Report, I formed the preliminary view that the following act, among others, may have been contrary to article 9(1) of the ICCPR:
- the Department's failure to refer Mr Pjetri's case to the Minister to consider alternatives to detention save for on one occasion after five years of detention.
114. I also consider this act to be relevant to Mr Pjetri's complaint that is the subject of this inquiry – that his prolonged detention constituted cruel or inhuman treatment contrary to article 7 of the ICCPR due to the deterioration in his health that arose while he was detained.
115. Mr Pjetri also complains about the use of force by Serco during an aborted attempt to remove him from Australia on 8 November 2019.
116. Serco was acting under a contract with the Commonwealth, and therefore the act or practice of Serco is an act or practice on behalf of the Commonwealth.

117. The relevant act or practice of the Commonwealth with respect to this aspect of Mr Pjetri's complaint is therefore the decision to use force against Mr Pjetri while attempting to remove him from Australia.

## **6.2 Article 7 complaint – Inhuman treatment**

118. Mr Pjetri was detained for eight years. The Department provided detailed information relating to Mr Pjetri's mental and physical health during that time.
119. As set out in Part 4.1 above, issues with Mr Pjetri's mood and appetite were reported by IHMS as early as 2015, with significant weight loss being identified by April 2017. By May 2019, Mr Pjetri was prescribed medication for his depressed mood and in July 2019, Mr Pjetri was diagnosed by an IHMS psychiatrist as suffering major depression. The first of Mr Pjetri's hospital admissions for psychiatric services occurred in August 2019 – when Mr Pjetri was admitted to the Melbourne Clinic for three months and treated with medication and administered TMS. Upon release from the Melbourne Clinic, Mr Pjetri commenced a pattern of refusing to attend medical appointments and was non-compliant with medication.
120. By March 2020, an IHMS psychiatrist noted: 'On cross sectional review presents with severe major depressive disorder bordering on psychosis'. A dietician on the same date noted their assessment as 'moderate to severe malnutrition with loss of 30kg over 10 months'. On 25 March 2020, Mr Pjetri was scheduled under the Mental Health Act, although the following day a psychiatrist considered him not detainable under the Mental Health Act. Between March and August 2020, Mr Pjetri was taken to Liverpool Hospital for admission or assessment on four occasions – differing views of his mental health condition were expressed by different psychiatrists. By September 2020, IHMS had expressed serious concerns in relation to Mr Pjetri's physical and mental health condition and the ability of IHMS to offer further treatment. By email dated 18 August 2020, the IHMS Medical Director reported Mr Pjetri as being at risk of death:

Despite Mr Pjetri being at a critical stage of his FFR, and at risk of death from sudden cardiac death, organ failure, overwhelming infection or other effects of prolonged starvation, IHMS is unable to force Mr Pjetri to accept treatment against his will. Mr Pjetri has been thoroughly educated on the consequences of his decisions.

IHMS has exchanged communications with the Australian Border Force Surgeon General who is aware of Mr Pjetri's case.

...

IHMS holds serious concerns for the health and wellbeing of Mr Pjetri noting his critical state.

121. An IHMS psychiatrist again expressed concern in relation to the ability of IHMS to provide medical care to meet Mr Pjetri's needs in late September 2020:

There is little further that myself, as a psychiatrist, or the mental health team can offer. Mirand has refused transfer to psychiatric and medical inpatient care. In my opinion, he has capacity to make such a decision. He is aware that this decision poses a risk to his life.

122. In October 2020, a public guardian was appointed for Mr Pjetri for six months. Thereafter followed admissions to Liverpool Hospital in October and November 2020, and admission to the psychiatric unit of the Westmead Hospital in November 2020. Again, two psychiatrists formed different views as to his diagnosis, with one psychiatrist diagnosing 'reduced oral intake in the context of major depression and post-traumatic stress disorder' and another reporting 'no clear evidence of a depressive illness'. Upon return to Melbourne in late 2020, Mr Pjetri was admitted to the Melbourne Clinic on two occasions in 2021 – the second admission for more than two months with the following discharge notes:

Request IHMS to escalate concerns around ongoing detention leading to ↑ psychological distress / chronic PTSD / Depression with permanent sequelae & ↑ [illegible] of morbidity & mentality & consider community Detention.

123. The Commonwealth Ombudsman is required under section 486O of the Migration Act to report to the Minister on the appropriateness of a detainee's detention arrangements once they have been in detention for more than two years. The Ombudsman may include recommendations in the report. These reports were provided to the Commission, but are only published in a deidentified format. From 2016 to 2020, the Ombudsman made the following assessments and recommendations to the Commonwealth concerning Mr Pjetri:

- concern with the serious risk to mental and physical health prolonged detention may pose (reports tabled 29 April 2016 and 21 February 2019)
- recommendation that consideration be given to granting a bridging visa given the significant length of time he has remained in detention (reports tabled 29 April 2016 and 21 February 2019)
- noting the significant length of time Mr Pjetri has remained in detention and medical advice that his health concerns are likely to be adversely affected by continued detention, recommended community placement (report tabled 26 October 2020).



124. Despite the serious deterioration in Mr Pjetri's health, and the recommendations of the Ombudsman and medical professionals, the Department only referred Mr Pjetri's case to the Minister for consideration of the exercise of his intervention powers under s 195A of the Migration Act once (October 2018) in the eight years he was in held immigration detention, and this referral took place after Mr Pjetri had been detained for five years. As set out above, it was in the three years after October 2018 that the most serious deterioration in Mr Pjetri's physical and medical health occurred and the Department failed to refer his case to the Minister for consideration of a bridging visa or community placement at all during this time.

125. Mr Pjetri's representative received a letter from the Department dated 7 September 2020 stating:

as outlined in the Department's Food and Fluid Refusal Policy, engaging in food and/or fluid refusal will not positively or adversely affect the decision making processes. Upon commencing food and/or fluid refusal, detainees are made aware that food and/or fluid refusal will not enable them to receive special, preferential or priority treatment, and will not influence any decisions made regarding their immigration status.

126. IHMS records reflect Mr Pjetri responding poorly to this letter, as he did not perceive his actions as a food and fluid refusal, but rather the result of a reduced appetite. This letter came less than a month after the email from the IHMS Medical Director dated 18 August 2020, stating that 'IHMS holds serious concerns for the health and wellbeing of Mr Pjetri noting his critical state' and considers him at risk of death from prolonged starvation. This email was forwarded by Mr Pjetri's representative to the Department and the Minister's office on the same day.

127. I note that, at the relevant time, the Department's Food/Fluid refusal policy (reissued 18 August 2019) stated the following:

**Why persons may engage in food/fluid refusal**

The motivation of a detainee undertaking food/fluid refusal must be understood in order to effectively manage their behaviour.

Detainees may undertake food/fluid refusal for a range of reasons including, but not limited to:

- a) to influence an immigration outcome, that is, they believe the political pressure of their actions may result in a positive outcome or a change in their conditions (including preventing removal or transfer)
- b) to raise a complaint or in reaction to a negative outcome
- c) for broader political reasons

- d) self-harm: however, it should be noted that food/fluid refusal will not be managed under the Psychological Support Program (PSP) policy unless clinical assessments indicate that a PSP intervention is appropriate.<sup>18</sup>

128. The updated policy, approved on 17 December 2021 amended this list to include:

- d) a psychiatric disorder such as anxiety, stress disorders or anorexia nervosa

note – a detainee who is diagnosed with a mental health condition or eating disorder and who is either observed to be engaging, or who may be undertaking in food/fluid refusal, is **not** considered to be on food/fluid refusal but must be on a treatment plan and/or mental health plan and be closely monitored, particularly in case their health deteriorates or their motivations change

- e) an attempt to self-harm: In these cases, food/fluid refusal will not be managed under the Psychological Support Program (PSP) policy unless clinical assessments indicate that PSP intervention is appropriate. It is important to keep in mind that even if the food/fluid refusal behaviour is not specifically intended for the purposes of self-harm, the health consequences could be significant. ...
- f) illness – particularly if the reason for not eating is that they feel too sick to eat, or are trying to eat but have no appetite.<sup>19</sup>

[emphasis in original]

129. It is constructive that the Department's updated policy acknowledges a broader range of motivations for a detainee's decision to reduce or cease intake of food.
130. I note that, since issuing my preliminary view in this matter, the policy has been updated again, on 25 August 2023.<sup>20</sup> The excerpt cited in paragraph 128 has not changed in the new policy.
131. As outlined above, the United Nations Human Rights Committee has found article 7 breaches to occur where a detainee has developed a severe psychiatric illness as a result of protracted immigration detention,<sup>21</sup> and where detainees' protracted detention and difficult conditions of detention inflicted serious psychological harm.<sup>22</sup>

132. The Commission has previously found that arbitrary and prolonged detention causing and exacerbating mental health conditions may constitute a breach of article 7.<sup>23</sup>
133. In response to my preliminary view with respect to Mr Pjetri's complaint, the Department did not accept that the ongoing detention of Mr Pjetri was contrary to article 7 of the ICCPR:

The department is committed to the health and welfare of detainees held in immigration detention facilities and maintains that Mr Pjetri was afforded appropriate and adequate health and welfare services during his time in immigration detention.

The department works closely with its service providers to manage the health and welfare of detainees placed in immigration detention through a range of care, welfare and support arrangements that provide for their needs. The provision of health services to detainees within immigration detention facilities (IDF) is broadly comparable to that available in the Australian community, taking into account the particular health needs of detainees.

All detainees can choose to refuse some or all of the care and services offered; without an order for involuntary treatment, the department or the contracted Detention Health Services Provider (DHSP) cannot force a detainee to undertake medical care or treatment. During his time in immigration detention, these health care, welfare and support arrangements were available to Mr Pjetri as clinically required.

The department reaffirms its previous advice to the Commission, providing the Commission with detailed information in relation to Mr Pjetri's health and medical history. The information provided ... demonstrates that Mr Pjetri had an extensive history of engagement with the DHSP and tertiary health services throughout his time in immigration detention. The department further reiterates that Mr Pjetri's care was provided in line with the DHSP Procedure Clinical Management of Patients Refusing Food and/or Fluid. Mr Pjetri's care was regularly reviewed with the Villawood Immigration Detention Centre (VIDC) team. The DHSP Mental Health Medical Director, VIDC Medical Director and Senior Medical Director were involved in Mr Pjetri's case. Mr Pjetri's case was reviewed at the fortnightly Clinical Care Review Committee (CCRC) chaired by a Medical Officer of the Commonwealth. The DHSP had also discussed Mr Pjetri's case with the department's former Chief Medical Officer.

Mr Pjetri had multiple capacity assessments by clinicians external to the DHSP and at all times was determined to have the capacity to make decisions regarding his medical care and was cognisant of the possible ramifications of his decisions, most relevantly his refusal of certain recommended health care/treatment.

All Detention Health Policies (DHP) are regularly updated in line with the department's Policy and Procedure Control Framework. As a minimum, every three years, each policy is comprehensively reviewed to ensure that the policy remains contemporary, is clinically underpinned and provides effective guidance to staff and stakeholders.

Input into comprehensive reviews of policies is sought from a diverse range of internal and external stakeholders, including and not limited to, relevant areas within the department including the ABF, the DHSP and the Facilities and Detainee Service Provider.

DHPs are developed with input from the department's Clinical Advisory Team (CAT). The CAT provide input and guidance on current clinical practices and frameworks. Contracted Detention service providers are required to operationalise these policies and ensure that their procedures are aligned with the department's policies.

134. There can be no doubt that Mr Pjetri's physical and mental health deteriorated significantly as a result of his continued detention, in combination with the arbitrary and prolonged nature of that detention. In my view, Mr Pjetri suffered serious psychological harm as a result of his detention. The Department had been informed by its medical provider, IHMS, that by August 2020, Mr Pjetri was at risk of death, that IHMS held serious concerns for his health and wellbeing and that there was little more that the mental health team at IHMS could offer by way of medical care. It is not correct to suggest that the responsibility for Mr Pjetri's health was ultimately dependent on decisions made by him. The Department owed him a duty of care.
135. The Department had the option of referring Mr Pjetri's case to the Minister for consideration of less restrictive forms of detention. The above quoted 7 September 2020 letter may indicate that the Department chose not to, so as to avoid any perception that Mr Pjetri was being treated preferentially as a result of his food refusal.
136. The Department did not engage with either of these aspects of my preliminary view in its response. While I acknowledge that an extensive amount of health and welfare services were extended to Mr Pjetri during his time in detention, there was insufficient consideration given to providing him with an alternative to held detention as a solution to his deteriorating health.
137. Based on all the information before me, I find that the Department's failure to refer Mr Pjetri's case to the Minister to consider alternatives to detention, save for on one occasion after five years of detention, resulted in the prolonged detention of Mr Pjetri that inflicted serious psychological and physical harm

and amounted to cruel, inhuman or degrading treatment within the meaning of article 7 of the ICCPR.

### **6.3 Article 10 complaint – Use of force**

138. Mr Pjetri complains about the use of force against him during an aborted removal attempt on 8 November 2019. I understand Mr Pjetri's complaint to focus on the unplanned use of force while on board the plane, rather than the planned use of restraints applied during the escort to the plane.

139. Among the material provided to the Commission by the Department was a Serco Officer's Report containing additional detail about the specific application of force to Mr Pjetri as the three officers were attempting to place him in his seat on the plane:

Mr PJETRI was warned numerous times that if he did not comply that we would have to Use Force. Mr PJETRI commented 'do what you have to do, its [sic] not personal'. After several more attempts to have Mr PJETRI sit down, I DSO [redacted] informed Mr PJETRI you give me no choice but to Use Force. I grabbed Mr PJETRI by the waist, then used force by pulling him off the chair to sit him down. He then resisted and tangled his legs and arms as we could not place the seat belt on him to secure him to the seat. I then attempted to separate his legs and informed him stop resisting and separate his right legs [sic] which was bent and crossed of his left leg. After several attempts of straightening his leg, Mr PJETRI said AHH my leg. At that stage I herd [sic] a click as a result of Mr PJETRI resisting and being non compliant.

140. The Department informed the Commission that no surveillance footage or body camera footage of the incident was available. The Serco Policy & Procedure Manual on Domestic Transfers and Charters (version 1.2) states that one responsibility of the Escort Team Leader is 'ensuring any incident involving the use of force is videoed when planned'. I understand that the use of force against Mr Pjetri on the aircraft was not planned.

141. A Serco witness report dated 8 November 2019 states that Mr Pjetri was offered medical assistance immediately upon return to MITA, which he refused. No information is before me to record the observations of the IHMS doctor and nurse who were onboard the aircraft at the time and may have witnessed the incident. Clinical records from IHMS provided to the Commission between 8–16 November 2019 show Mr Pjetri not attending three scheduled appointments on 8, 10 and 15 November.

142. A primary health nurse was asked by Serco to speak to Mr Pjetri by phone at 8.25pm on 8 November 2019. He reported chest pain, shaking, and numbness in his left arm. The nurse advised Serco to call an ambulance, but

Mr Pjetri declined. At 9.32pm the nurse called again and was advised that Mr Pjetri was more calm and settled, and had been seen by clinic staff when provided with his evening medications.

143. On 9 November 2019, an IHMS primary health nurse attended to physically review Mr Pjetri but he refused to allow her to examine his neck, which he informed her was sore 'from being jumped on'. The nurse encouraged him to take analgesia for the pain.
144. On 14 November 2019, Mr Pjetri reported to an IHMS mental health nurse having been 'beaten and held down after last time when he was [placed] on a plane to return to Albania'.
145. In the circumstances, where Mr Pjetri has not advanced any evidence to refute the version of events provided by the Department, and he did not engage with medical practitioners to assess him following the incident, I am unable to find that Serco used more force than was necessary during the Department's attempt to remove Mr Pjetri from Australia on 8 November 2019.
146. Mr Pjetri did not provide any response to my preliminary view, and the Department had no further comments to make in respect to this aspect of the Commission's inquiry.

## **7 Recommendations**

147. Where, after conducting an inquiry, the Commission finds that an act or practice engaged in by a respondent is inconsistent with or contrary to any human right, the Commission is required to serve notice on the respondent setting out its findings and reasons for those findings.<sup>24</sup> The Commission may include in the notice any recommendations for preventing a repetition of the act or a continuation of the practice.<sup>25</sup> The Commission may also recommend other action to remedy or reduce the loss or damage suffered by a person.<sup>26</sup>

### **7.1 Compensation**

148. I consider that it is appropriate to make a recommendation for the payment of compensation to Mr Pjetri, in order to reduce the loss and damage suffered by him as a result of the cruel, inhuman and/or degrading treatment he received while in held detention, contrary to article 7 of the ICCPR. Such recommendations for compensation are expressly contemplated in the AHRC Act.<sup>27</sup> This recommendation takes into account the gravity of continuing to

detain Mr Pjetri despite his severe deterioration in health which gave rise to findings of a more serious nature than inquiries conducted by the Commission into arbitrary detention alone.

149. While the loss and damage suffered by Mr Pjetri will not be able to be fully addressed by the payment of money, I consider that it is important that he be provided compensation to acknowledge the impact that the treatment by the Commonwealth had on him.
150. In considering the assessment of a recommendation for compensation under section 35 of the AHRC Act (relating to discrimination matters under Part II, Division 4 of the AHRC Act), the Federal Court has indicated that tort principles for the assessment of damages should be applied.<sup>28</sup> I am of the view that this is the appropriate approach to take to the present matter. For this reason, so far as is possible in the case of a recommendation for compensation, the object should be to place the injured party in the same position as if the wrong had not occurred.<sup>29</sup>
151. The Commission has set out in other inquiries the jurisdictional basis for the Commission to make recommendations for the payment of compensation and the available administrative avenues for the payment of such compensation by the Commonwealth.<sup>30</sup> I do not repeat those matters again here.

### **Recommendation 1**

The Commission recommends that the Commonwealth pay to Mr Pjetri an appropriate amount of compensation to reflect the loss and damage he has suffered as a result of the breach of his human rights under article 7 of the ICCPR identified in the course of this inquiry.

## **7.2 Food/fluid refusal policy**

152. The Department's 'Food/Fluid Refusal' policy has been updated as of August 2023, and I note that the policy development included consultation with an external consultant psychiatrist and dietician. The Commission's review of the policy has not identified any issues with it, and the Commission does not have expertise that would be necessary to analyse its suitability from a medical perspective.
153. However, a conflict within the policy is highlighted in Mr Pjetri's case, in that the Department has the clear aim within the policy of ensuring that detainees who engage in food/fluid refusal do not achieve any benefit to their migration status or outcomes, even where this may result in their harm.

154. For example, section '5.2.1 Engagement – identifying and removing motivation' states:
- The most effective means to encourage a detainee to resolve food/fluid refusal is to identify and mitigate their motivation for continuing food/fluid refusal. This may be achieved by engaging directly with the detainee, recognising that complex behaviour management may be required. However, no concessions in relation to their immigration outcome will be made.
155. This sentiment is repeated throughout the policy.
156. Only at section 8, 'Medical support and intervention' does the policy state:
- The most important consideration in managing a detainee engaging in food/fluid refusal is the detainee's physical and mental health.
157. This statement existed in the August 2019 version of the policy also.
158. Mr Pjetri was transferred to hospital and external medical providers in line with recommendations made by IHMS, but when those external providers and IHMS itself indicated that Mr Pjetri's condition was so severe that no further treatment was possible, and the Melbourne Clinic recommended community detention, it appears that the Department may have prioritised its desire to disincentivise Mr Pjetri's choices over his health needs. Community detention, or a temporary bridging visa, would not have altered Mr Pjetri's 'immigration outcome' – rather, it would have permitted him to reside in the community until his removal from Australia became reasonably practicable and, based on advice from treating health practitioners, could have avoided the serious deterioration in his physical and mental health.
159. As is highlighted in the Thematic Report, the Department had available to it the option to consider an alternative to held detention for Mr Pjetri, while it progressed his asylum claim, his reviews and appeals, and finally, made attempts to remove him.
160. Regardless of whether Mr Pjetri engaged in food/fluid refusal or not, the fact that he was in prolonged immigration detention should have warranted his referral to the Minister. The Commission has made recommendations regarding this issue in the Thematic Report.
161. Instead of viewing Mr Pjetri's food/fluid refusal as behaviour seeking an outcome (as evidenced by the letter referred to in paragraph 125), it should have been recognised as a symptom of his prolonged detention. An alternative to detention in the context of prolonged detention of over eight



years would not have been a 'reward' for such behaviour – rather an acknowledgement that Mr Pjetri's removal from Australia was not reasonably practicable for a significant period of time.

162. Further training for Departmental staff may be warranted to highlight the importance of prioritising a detainee's health when engaging in food/fluid refusal in light of the duty of care owed to detainees.

### **Recommendation 2**

The Commission recommends that all detainees whose detention has become, or is likely to become, protracted, should be referred for consideration by the Minister for an alternative to held detention. The fact that a detainee may be engaging in food/fluid refusal should not prevent this from occurring.

### **Recommendation 3**

The Commission recommends that the Department should provide additional training to all staff to highlight the importance of prioritising a detainee's health when perceived to be engaging in food/fluid refusal in light of the duty of care owed by the Commonwealth to detainees.

## **7.3 Use of body cameras during unplanned use of force incidents**

163. Despite not making any findings regarding the use of force against Mr Pjetri on 8 November 2019 during the failed attempt to remove Mr Pjetri from Australia, I note that the officer's report cited at paragraph 139 above records the officer informing Mr Pjetri numerous times that he would need to resort to the use of force against him, if he continued to refuse to be seated.
164. This would suggest that, during this time, there was sufficient opportunity for the officer to switch on any body camera (if worn), knowing as they did that an unplanned use of force was about to become necessary.

### **Recommendation 4**

The Commission recommends that the Serco policy on domestic transfers and charters, when next reviewed, be updated to include a responsibility to enable body cameras for unplanned use of force incidents, where sufficient time exists to do so.

## 8 The Department's response to my findings and recommendations

165. On 16 February 2024, I provided the Department with a notice of my findings and recommendations.
166. On 19 June 2024, the Department provided the following response to my findings and recommendations:

The Department of Home Affairs (the Department) values the role of the Australian Human Rights Commission (the Commission) to inquire into human rights complaints and acknowledges the findings identified in this report and the recommendations made by the President of the Commission.

The Department does not agree that the Commonwealth engaged in acts that were inconsistent with, or contrary to Article 7 of the International Covenant on Civil and Political Rights (ICCPR).

### **Recommendation 1 - Disagree**

*The Commission recommends that the Commonwealth pay to Mr Pjetri an appropriate amount of compensation to reflect the loss and damage he has suffered as a result of the breach of his human rights under article 7 of the ICCPR identified in the course of this inquiry.*

The Commonwealth can only pay compensation to settle a monetary claim against the Department if there is a meaningful prospect of legal liability within the meaning of the Legal Services Directions 2017 and it would be within legal principle and practice to resolve this matter on those terms. Based on the current evidence, the Department's position is that it is not appropriate to pay compensation in this instance.

### **Recommendation 2- Partially agree**

*The Commission recommends that all detainees whose detention has become, or is likely to become, protracted, should be referred for consideration by the Minister for an alternative to held detention. The fact that a detainee may be engaging in food/fluid refusal should not prevent this from occurring.*

The Department partially agrees with recommendation two.

In November 2022, the Minister for Immigration, Citizenship and Multicultural Affairs agreed to the Department conducting a Detention Status Resolution Review (DSR). The DSR involves a streamlined referral of submissions for possible Ministerial Intervention under sections 195A and/or 197AB of the Act for long-term detainees in held detention and those who have complex

removal barriers; such as where there are protection obligations owed are engaged or there are significant health issues, or due to confirmed statelessness of the individual.

In accordance with the DSR authority, food and fluid refusal is not a specific factor taken into consideration when referring a case to the Minister under sections 195A and/or 197AB of the Act. However, the Department does take into account a number of case factors as outlined above, which includes significant health issues.

### **Recommendation 3 - Disagree**

*The Commission recommends that the Department should provide additional training to all staff to highlight the importance of prioritising a detainee's health when perceived to be engaging in food/fluid refusal in light of the duty of care owed by the Commonwealth to detainees.*

The Department disagrees with recommendation three as there is appropriate training in place.

The Department, including Australian Border Force (ABF), is committed to the health and welfare of all detainees within the Immigration Detention Network and recognises the possible impacts of immigration detention on detainees' mental health, including the risks of deteriorating mental health where extended periods of detention apply. Further, the Department recognises that the most important consideration in managing a detainee engaging in food/fluid refusal is the detainee's physical and mental health.

Consciousness of the impacts of mental health has improved over recent years with enhancements made to departmental guidance and detention service provider practices. Staff working in immigration detention (both at facilities and performing national functions), including detention services providers, undertake ongoing training, including in the area of mental health.

The Department delivers Detention Essentials Training (DET) to all ABF officers working in immigration detention. The DET provides officers with an overview of the detention environment, including the health and welfare services provided to detainees, as well as an understanding of relevant legislation, the concept and application of duty of care and detention policies and procedures, including those related to food/fluid refusal.

The Department does not provide training to the Facilities and Detainee Services Provider (FDSP) or Detention Health Service Provider (DHSP) staff. The FDSP and DHSP train their staff in alignment with current endorsed policies and procedures.

### **Recommendation 4 - Disagree**

*The Commission recommends that the Serco policy on domestic transfers and charters, when next reviewed, be updated to include a responsibility to enable*

*body cameras for unplanned use of force incidents, where sufficient time exists to do so.*

The Department disagrees with recommendation four, on the basis that Body Worn Cameras (BWC) are not permitted to be used by FDSP officers when a detainee is in public. This includes on commercial aircraft used for domestic detainee transfers or removal operations. In relation to the use of BWC for unplanned use of force incidents in other circumstances, on 04 April 2024, the ABF formally wrote to the FDSP regarding the use of BWC and requested that the FDSP review its policy and training materials relating to the use of BWC.

On 15 April 2024, the FDSP advised the ABF in writing that they regularly send reminders to all their staff across the Immigration Detention Network who operate BWCs confirming the requirement to utilise BWCs during an incident response, noting the limitations of doing so in public. The FDSP reviews its BWC Standard Operating Procedure and associated training materials annually; the last review was conducted in October 2023 and all materials were found to be adequate with no immediate changes or updates required.

167. I report accordingly to the Attorney-General.



Emeritus Professor Rosalind Croucher AM FAAL  
**President**  
Australian Human Rights Commission  
July 2024

## Endnotes

---

- <sup>1</sup> The ICCPR is referred to in the definition of 'human rights' in s 3(1) of the AHRC Act.
- <sup>2</sup> See *Secretary, Department of Defence v HREOC, Burgess & Ors* (1997) 78 FCR 208.
- <sup>3</sup> UN Human Rights Council Working Group on Arbitrary Detention, *Opinion No. 17/2021 concerning Mirand Pjetri (Australia)*, UN Doc A/HRC/WGAD/2021/17, (4 June 2021).
- <sup>4</sup> UN Human Rights Committee, *Communication No 900/1999*, 67<sup>th</sup> sess, UN Doc CCPR/C/76/D/900/1999 (2002) ('*C v Australia*') at [8.4].
- <sup>5</sup> Human Rights Committee, *Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (108<sup>th</sup> session)*, UN Doc CCPR/C/108/D/2094/2011 at [9.8] (28 October 2013).
- <sup>6</sup> Commonwealth Ombudsman, *Suicide and Self-harm in the Immigration Detention Network* (May 2013), available at [https://www.ombudsman.gov.au/\\_data/assets/pdf\\_file/0034/286576/December-2013-Suicide-and-self-harm-in-the-Immigration-Detention-Network.pdf](https://www.ombudsman.gov.au/_data/assets/pdf_file/0034/286576/December-2013-Suicide-and-self-harm-in-the-Immigration-Detention-Network.pdf), accessed 5 January 2024.
- <sup>7</sup> Commonwealth Ombudsman, above n 6, p 27 [4.6].
- <sup>8</sup> Commonwealth Ombudsman, above n 6, p 31 [4.29]–[4.30].
- <sup>9</sup> Human Rights Committee, *General Comment No 21: Article 10 (Humane treatment of persons deprived of their liberty)*, UN Doc HRI/GEN/1/Rev.1 at 33 (10 April 1992) [3].
- <sup>10</sup> Human Rights Committee, *General Comment No 21: Article 10 (Humane treatment of persons deprived of their liberty)*, UN Doc HRI/GEN/1/Rev.1 at 33 (10 April 1992) [3].
- <sup>11</sup> Manfred Nowak, *UN Covenant on Civil and Political Rights CCPR Commentary* (N.P. Engel, 2<sup>nd</sup> ed, 2005) 250.
- <sup>12</sup> UN Human Rights Committee, *Communication No 629/1993*, UN Doc CCPR/C/60/D/639/1995 (28 July 1997) ('*Walker and Richards v Jamaica*'); UN Human Rights Committee, *Communication No 845/1998*, 74<sup>th</sup> sess, UN Doc CCPR/C/74/D/845/1998 (26 March 2002) ('*Kennedy v Trinidad and Tobago*'); UN Human Rights Committee, *Communication No 684/1996*, 74<sup>th</sup> sess, UN Doc CCPR/C/74/D/684/1996 (2 April 2002) ('*R.S. v Trinidad and Tobago*').
- <sup>13</sup> Human Rights Committee, *General Comment No 21: Article 10 (Humane treatment of persons deprived of their liberty)*, UN Doc HRI/GEN/1/ Rev.1 at 33 (10 April 1992) [5].
- <sup>14</sup> UN General Assembly, *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, United Nations Publication, UN Doc. A/CONF/611 (30 August 1955), as amended by 'the Nelson Mandela Rules', UN Doc A/RES/70/175 (17 December 2015).
- <sup>15</sup> The Body of Principles were adopted by the UN General Assembly in *Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment*, GA Res 43/173, UN GAOR, 6<sup>th</sup> Comm, 43<sup>rd</sup> sess, 76<sup>th</sup> plen mtg, Agenda Item 138, UN Doc A/43/49 (9 December 1988) Annex.
- <sup>16</sup> UN General Assembly, *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, United Nations Publication, UN Doc. A/CONF/611 (30 August 1955), as amended by 'the Nelson Mandela Rules', UN Doc A/RES/70/175 (17 December 2015), preliminary observation 2(1), 7.
- <sup>17</sup> Department of Home Affairs, *Detention Services Manual – Safety and security management – Use of force*, 10 October 2018, p 4.
- <sup>18</sup> Department of Home Affairs, 'Food/Fluid Refusal, DM-1451, 18 August 2019, accessed through LEGENDcom.
- <sup>19</sup> Department of Home Affairs, 'Detention Health: Food/Fluid Refusal' ADD2023/1714905, 17 December 2021, accessed through LEGENDcom.
- <sup>20</sup> Department of Home Affairs, 'Detention Health: Food/Fluid Refusal', DM-1451, 25 August 2023, accessed through LEGENDcom.

- <sup>21</sup> *C. v. Australia*, CCPR/C/76/D/900/1999, UN Human Rights Committee (HRC), 13 November 2002.
- <sup>22</sup> Human Rights Committee, *Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (108<sup>th</sup> session)*, UN Doc CCPR/C/108/D/2094/2011.
- <sup>23</sup> *CR and CS v Commonwealth of Australia (DIBP)* [2017] AusHRC 116, pp 8 and 11.
- <sup>24</sup> Australian Human Rights Commission Act ('AHRC Act'), s 29(2)(a).
- <sup>25</sup> AHRC Act, s 29(2)(b).
- <sup>26</sup> AHRC Act, s 29(2)(c).
- <sup>27</sup> AHRC Act, s 29(2)(c).
- <sup>28</sup> *Peacock v The Commonwealth* (2000) 104 FCR 464, 483 (Wilcox J).
- <sup>29</sup> *Hall v A&A Sheiban Pty Limited* (1989) 20 FCR 217, 239 (Lockhart J).
- <sup>30</sup> For example, see *Ms AR on behalf of Mr AS, Master AT and Miss AU v Commonwealth of Australia (DIBP)* [2016] AusHRC 110 at [196]-[205].