

Obj File Ref: CYP12/0409-001

Ms Julie Dennett
Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Dennett

Thank you for the opportunity to provide a submission on the Migration Amendment (Health Care for Asylum Seekers) Bill 2012 (the Bill).

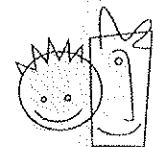
The Australian Children's Commissioners and Guardians (ACCG) has representation from every Australian jurisdiction and while all members do not have the same mandate and functions, there are significant areas of shared work in relation to upholding the rights and interests of children and young people.

The co-signatories support the Bill's intention to introduce an Expert Panel to monitor, assess and report on the health of people taken to Regional Processing Centres, particularly children and young people. It is important that such safeguards are implemented and that they are appropriately underpinned by effective legislation.

Concerns raised by the Australian Human Rights Commission and others in relation to the inadequacy of health and mental health services for asylum seekers in onshore detention and the added social and psychological effects of detention on children are likely to be exacerbated by the remoteness of Regional Processing Centres and scarcity of services on Nauru and Manus Island. Therefore every effort should be made to monitor the health and wellbeing of children and young people and meet any healthcare needs identified. Our comments and concerns on particular aspects of the Bill are outlined below.

Structure and operation of the Expert Panel

In relation to the structure and operation of the Expert Panel, we are pleased that the need for child health expertise on the Expert Panel has been recognised. However as the structure of the panel is not stipulated, we would support the mandatory inclusion of a child health expert in any panel formed.



The proposed Bill is also unclear as to how often the Expert Panel members will visit the Regional Processing Centres. In our view there needs to be an assurance that the health of children and young people will be monitored on a regular and frequent basis.

Informed Consent

It is not a requirement in the Bill for members of the Expert Panel to seek the informed consent of asylum seekers prior to undertaking a health assessment. Informed consent of children and young people, or assent through their parents or guardians, should be a prerequisite to any screening and monitoring processes.

Rights of entry

The *Bill's Digest* also notes that the proposed amendments do not empower the Expert Panel to enter a detention facility to undertake monitoring and assessment activities and there is no requirement on the health contractor to cooperate with the Expert Panel in the case of asylum seekers who are free to move around Nauru or Manus Island, potentially undermining their effectiveness.

Response to assessments

It is also unclear whether the Expert Panel's role is confined to systemic assessment and reporting or extends to recommendations at the individual level. Of particular concern, there is no requirement on the Government or the health contractor to provide additional care where the Expert Panel identifies a need or to detail how they will address the Expert Panel's recommendations. It is of concern that children and young people could have significant health problems identified without any recourse to the provision of necessary care. Without clarification of the requirement to action the Expert Panel's recommendations, the Bill risks creating an oversight body without capacity to influence health and wellbeing outcomes for vulnerable children in Regional Processing Centres.

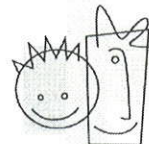
Application to persons in onshore detention

The overall purpose of the Bill is to help safeguard the health and wellbeing of asylum seekers under the care of the Commonwealth. While the Bill goes on to more narrowly specify that it relates to persons in offshore detention, the health of children and young people onshore and awaiting transfer to a third country (including those cases where it is determined that it is not reasonably practicable for the person to be taken to the Regional Processing Centre for the foreseeable future) is an ongoing concern. Our understanding is that in accordance with *Departmental Guidelines for Assessment of Persons Prior to Transfer Pursuant to Section 198AD(2) of the Migration Act 1958*, it is not reasonably practicable to take unaccompanied minors to a Regional Processing Centre until a best interest determination has been completed. Notwithstanding the intention to consider the best interests of the child before making any determination as to their placement, the health and wellbeing of such vulnerable children should be closely monitored during these interim processing



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stages. Children with their families may also be detained for extended periods onshore prior to their transfer to Nauru or Manus Island if there are limited places. To this end, consideration should be given to extending the panel proposal to cover asylum seekers awaiting transfer as well as those in offshore detention facilities.

While we support the establishment of an Expert Panel to oversee the health of asylum seekers detained offshore, this is with the caveat that the detention of children should always be a measure of last resort, and for the shortest possible period of time. Prolonged offshore detention in itself is likely to be seriously detrimental to the physical and mental health of children and young people.

If you would like more information about this, please contact Jacquelin Plummer on
or via email at

Yours sincerely

Megan Mitchell

NSW Commissioner for Children and Young People

22 October 2012

For and on behalf of

- **Alasdair Roy, Children and Young People Commissioner, ACT**
- **Pam Simmons, Guardian for Children and Young People South Australia**
- **Aileen Ashford, Commissioner for Children, Tasmania**
- **Dr Howard Bath, Northern Territory Children's Commissioner**