



Commissioner for Children and Young People  
Western Australia

**All enquiries**

Telephone:

Email:

Our reference: 12/8778

Your reference:

Ms Julie Dennett  
Committee Secretary  
Standing Committee on legal and Constitutional Affairs  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Ms Dennett

**Migration Amendment (Unauthorised Maritime Arrivals and Other Measures)  
Bill 2012**

Thank you for the opportunity to provide comment on this Bill.

As Commissioner for Children and Young People in Western Australia I have a statutory responsibility to monitor the wellbeing of children and young people in Western Australia. In undertaking my role I must have regard for the United Nations Convention on the Rights of the Child<sup>1</sup> and give a special priority to children and young people who are vulnerable or disadvantaged in some way.

In a previous submission to this Committee regarding the treatment of children and young people who are seeking asylum in Australia I have raised my concerns about the current policy of indefinite mandatory detention and the placement of children and young people in detention facilities in remote locations<sup>2</sup>.

The *Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012* (the Bill) seeks to ensure that all asylum seekers arriving by sea receive the same treatment regardless of whether they reach the Australian mainland or are intercepted at an offshore site. This will see all asylum seekers who arrive by sea subject to the mandatory detention policy, detention in a remote facility, and without access to legal recourse.

The Convention on the Rights of the Child (the CRC) under Article 3 requires that State parties to the CRC consider the best interests of the child to be a primary consideration in all actions concerning children. Determining what is in the best interests of the child requires the balancing of a range of factors. I understand that the intent of the Bill is to deter people from undertaking dangerous boat journeys consistent with the Government's 'no advantage' policy, and whilst under Article 6 of the CRC the State has an obligation to '*ensure to the maximum extent possible the survival and*

*Caring for the future growing up today*

*development of the child*' it is also necessary to consider the impact of the Bill on other Articles contained in the CRC.

Particularly, Articles 22, 37 and 39 of the CRC set out provisions relating to the treatment of children who seek refugee status, the detention of children, and the promotion of physical and psychological recovery in children who may be victims of torture, abuse, inhumane treatment or armed conflict, respectively. Under these Articles children seeking refugee status should receive appropriate protection and humanitarian assistance to access their rights under the CRC; only be held in detention as a measure of last resort and for the shortest possible time; be able to challenge their detention before a court or other independent authority; and be in an environment which *'fosters the health, self-respect and dignity of the child.'*

I note the Australian Human Rights Commission<sup>3</sup> and the Human Rights Law Centre's<sup>4</sup> concerns regarding the Government's regional processing policy.

I am therefore concerned that the proposed legislation is not in the best interests of children and young people and could be in breach of a number of Australia's specific obligations under the CRC.

Yours sincerely

MICHELLE SCOTT

Commissioner for Children and Young People WA

15 December 2012

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<sup>1</sup> United Nations Convention on the Rights of the Child. <http://www2.ohchr.org/english/law/crc.htm>

<sup>2</sup> Submission to the Senate Legal and Constitutional Affairs Legislation Committee, Migration Amendment (Health Care for Asylum Seekers) Bill 2012 Inquiry, 15 October 2012.

<sup>3</sup> Australian Human Rights Commission. *Human rights issues raised by the transfer of asylum seekers to third countries*. 15 November 2012. [http://humanrights.gov.au/human\\_rights/immigration/transfer\\_third\\_countries.pdf](http://humanrights.gov.au/human_rights/immigration/transfer_third_countries.pdf)

<sup>4</sup> Human Rights Law Centre. *Request for Inquiry into Migration Legislation Amendment (Regional Processing and other measures) Act 2012*. Letter to Harry Jenkins MP, Parliamentary Joint Committee on Human Rights. <http://www.hrlc.org.au/letter-to-the-parliamentary-joint-committee-on-human-rights-requesting-inquiry-into-australias-new-offshore-processing-laws>