



**Commissioner for Children and Young People**  
Western Australia

**All enquiries**

Telephone: (08) 6213 2212  
Email: [alison.watters@ccyp.wa.gov.au](mailto:alison.watters@ccyp.wa.gov.au)  
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Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Sir/Madam

**Submission to the Senate Legal and Constitutional Affairs Committee  
Inquiry into 'Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre.'**

Thank you for the opportunity to provide a submission to this Inquiry on this very important and sensitive issue, affecting the human rights of vulnerable people seeking asylum in Australia.

In my role as Commissioner for Children and Young People in Western Australia, I have a statutory responsibility to promote and monitor the wellbeing of all children and young people under the age of 18. In undertaking my functions, I must specifically give priority and special regard to the interests and needs of children and young people who are vulnerable or disadvantaged for any reason.<sup>1</sup> This includes children and young people from refugee and asylum seeking backgrounds.

I am also required to have regard to the United Nations Convention on the Rights on the Child (UN Convention). As a signatory to the UN Convention, Australia's obligations include ensuring that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration (Article 3). The Convention also makes specific provision for children who are refugees to receive special protection and help, in addition to these other rights (Article 22).

In line with my statutory remit, this submission is focussed on the effects and impact of the allegations of abuse, self-harm and neglect on asylum seekers aged under 18, though it is noted that the collective impact of these issues affect both adults and children and young people, both directly and indirectly.

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<sup>1</sup> Commissioner for Children and Young People Act 2006 (WA), section 20 (1(a)).

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According to the Department for Immigration and Border Protection, at 31 July 2016, there were less than five children (aged less than 18) in Immigration Transit Accommodation and Alternative Places of Detention in Australia, and 49 children at the Nauru offshore processing centre<sup>2</sup>.

### **Vulnerability of asylum seeking children and young people**

Asylum seekers are a particularly vulnerable group, with those under 18 especially sensitive to conditions in offshore immigration processing centres in such a significant developmental period of their lives. The Australian Human Rights Commission report '*The Forgotten Children: National Inquiry into Children in Immigration Detention*' investigated the impact of detention on children and young people in detail, but key findings included that:

- children in immigration detention have significantly higher rates of mental health disorders compared with children in the Australian community
- there were numerous reported incidents of assaults, sexual assaults and self-harm involving children highlighting the danger of the detention environment
- at least 12 children born in immigration detention are stateless, and may be denied their right to nationality and protection
- dozens of children with physical and mental disabilities are detained for prolonged periods
- some children of parents assessed as security risks have been detained for over two years without hope of release
- children detained indefinitely on Nauru are suffering from extreme levels of physical, emotional, psychological and developmental distress<sup>3</sup>.

All asylum seekers in Australian detention centres whether on or off-shore, should be treated with compassion, respect and dignity. This will enable them to build trust and feel secure in their new communities – factors which are critical to successful settlement over the longer term. They should be able to access the same level of services as all Australia citizens. In addition, their special needs, including cultural, linguistic and any health-related requirements, should be addressed in both policy and service provision that is developmental and age appropriate.

Since its inception, my office has undertaken work to promote and monitor the wellbeing of children and young people who are in immigration detention in WA due to their particular vulnerability. This advocacy work extends to all children and young people seeking asylum in Australia.

Last year my office consulted almost 300 children and young people from culturally and linguistically diverse (CALD) backgrounds, including refugees, about the positive things in their lives, the challenges they face, their experiences settling in Australia and their hopes for the future. The findings from the consultation provide key insights into the views and experiences of these children and young people and should be

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<sup>2</sup> Department of Immigration and Border Protection, Immigration Detention and Community Statistics Summary (31 July 2016) 4.

<sup>3</sup> Australian Human Rights Commission 2014. *The Forgotten Children: National Inquiry into Children in Immigration Detention* 2014.



considered by the committee. A copy of the report *'Children and Young People from Culturally and Linguistically Diverse backgrounds Speak Out'* is available on my website [ccyp.wa.gov.au](http://ccyp.wa.gov.au).

This consultation also highlighted that children and young people who arrive in Australia as unaccompanied minors are especially vulnerable. Asylum seeker children and young people who arrive in Australia alone without a parent or guardian are subject to mandatory detention the same way accompanied children are.

Australia has an obligation under the UN Convention to 'ensure alternative care' for children who arrive in Australia unaccompanied, especially those who are seeking asylum, to ensure that they receive special protection and assistance.

An important element of the care of unaccompanied children is effective guardianship. In the absence of their parents, the legal guardian of an unaccompanied child has the 'primary responsibility for the upbringing and development of the child', and is under an obligation under the UN Convention to act in the best interests of the child. Under Australian law, the Minister for Immigration and Border Protection is the legal guardian of 'non-citizen' unaccompanied children.

I have a range of concerns relating to unaccompanied children in immigration detention. Most significantly, I believe that the Minister's role as guardian of unaccompanied children creates a conflict of interest, as the Minister is also responsible for administering the immigration detention regime under the Migration Act and for making decisions about granting visas and transferring children to Nauru. Given these multiple roles, it is difficult for the Minister, or his delegate, to make the best interests of the child the primary consideration when making decisions concerning unaccompanied children. I believe that the Minister for Immigration and Border Protection should not be the legal guardian of unaccompanied children.

I strongly recommend that an independent guardian be appointed for all unaccompanied children in immigration detention, to ensure that their rights are protected.

To this end, I support the creation of an independent children's advocate position to ensure that all unaccompanied children and young people's rights and interests on Nauru are protected. Furthermore, I strongly advocate that the remit of this position is extended to all children in detention, not just unaccompanied minors.

### **Immigration Detention**

I would like to take the opportunity to reiterate the position of my office that, consistent with Article 37 of the UN Convention, mandatory detention of children and young people and their families should cease, and children and young people should only be placed in detention as a last resort and for the shortest possible time. This time limit should be mandated in legislation as per practice in the United Kingdom<sup>4</sup>. Many countries have legislated against or limited immigration detention to exceptional circumstances for children and young people from 72 hours up to 7 days, including

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<sup>4</sup> 2014 Migration Observatory Briefing Paper Online. At <http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/Immigration%20Detention%20Briefing.pdf> (viewed 3 November 2016).

Belgium, Panama, Finland, France, China and the Netherlands. My preference would be for a maximum of 7 days.

As at 31 July 2016, there were less than 5 children in detention in Australia, and 49 in detention in Nauru. The majority of children and their family members who have been released have been granted bridging visas and permitted to live in the community<sup>5</sup>. I welcome the use of bridging visas as a more humane and effective approach to the treatment of asylum seekers than holding them in detention facilities for long and indefinite periods of time.

All children and young people and their families should be removed from detention centres and housed in the Australian community where they can be properly cared for. I am gravely concerned about the allegations of mistreatment in Nauru and Manus Island, especially those relating to children and young people and their families<sup>6</sup>.

Limited transparency and accountability in the operation of the facilities on Manus Island and Nauru, along with secrecy laws that impose criminal penalties for any breach, are also of concern.

### **Offshore processing arrangements**

The vulnerability of people seeking asylum is clear and Australia's policy of offshore processing of asylum seekers is detrimental to the health and wellbeing of these already vulnerable people, especially children and young people.

The United Nations High Commissioner for Refugees (UNHCR) and members of the United Nations Human Rights Council, among others in the international community, have consistently raised their concerns that the current model of third country processing breaches human rights.

Arbitrary or indefinite detention at any stage of the refugee determination process is unacceptable and people who seek asylum should live in the Australian community. Respect for their humanity demands that they have the right to work, access to basic services, and to some financial support if they cannot find work.

The UN Convention of the Rights of the Child, the UN Declaration of Human Rights and the UN Convention on the Status of Refugees, all of which are conventions to which Australia is a signatory, should guide as a minimum, the treatment of refugees and asylum seekers.

I note that at the international level, efforts continue to find responses to the estimated 65 million forcibly displaced people globally. In September this year, members of the United Nations General Assembly convened for a high-level summit to develop 'a blueprint for a better international response' to refugees and migrants.

At the summit the *New York Declaration* was agreed – including a commitment to adopt a global comprehensive framework for migration, guided by a set of common principles and approaches. A commitment to develop guidelines on the treatment of migrants in vulnerable situations was also agreed – special mention was made that

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<sup>5</sup> Department of Immigration and Border Protection, Immigration Detention and Community Statistics Summary (31 July 2016) 4.

<sup>6</sup> The Moss Review 2015: Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru.



these guidelines will be of particular importance to the increasing number of unaccompanied children on the move<sup>7</sup>. I hope that Australia will be involved in these much-needed global conversations and adopt an approach that prioritises the best interests of these children and young people.

Before concluding my submission I'd like to highlight some key points:

1. Children and young people and their families currently detained in Nauru should be released immediately into the Australia community where they can be properly cared for. No children, young people or their families should be detained on Nauru in future.
2. A legally mandated time period should be introduced if the policy of detention of children and young people and their families is continued. This should not exceed 7 days.
3. Appointment of an independent legal guardian for all children (including unaccompanied minors) in detention should be progressed immediately.
4. Children and young people and families in detention should have access to appropriate, ongoing support services for identified needs, including trauma/rehabilitation/mental health issues provided in a timely, culturally and linguistically appropriate way.
5. A mechanism for independent oversight of conditions and provision of services in off-shore processing centres should be introduced to ensure the wellbeing of these children and young people and their families. This should include relevant clinical experts, with the power to investigate and report publically on the health and welfare of asylum seekers, conditions and services available on Nauru and complaint resolution.

Thank you again for the opportunity to contribute to the Inquiry. I welcome the important role that Australia can play as part of a global effort to provide protection and resettlement to refugees, and I appreciate the opportunity to provide these comments in my role as an advocate for the best interests of children and young people in Western Australia.

Yours sincerely

COLIN PETTIT

Commissioner for Children and Young People Western Australia

4 November 2016

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<sup>7</sup> United Nations: Addressing Large Movements of Refugees and Migrants. At <http://refugeesmigrants.un.org/declaration> (viewed 3 November 2016).