



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

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

Dear Ms Dennett

**Migration Amendment (Health Care for Asylum Seekers) 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 Conventions on the Rights of the Child and give a special priority to children and young people who are vulnerable or disadvantaged in some way.

*The impact of immigration detention on children and young people's health and wellbeing*

On the 30 September 2012<sup>1</sup> there were 664 children, aged under 18 years, in immigration detention facilities and alternative places of detention. This includes children as a part of family groups and unaccompanied minors.

There is ample evidence of the deleterious impact of immigration detention on the health and wellbeing of people seeking asylum generally, and that children and young people are a particularly vulnerable group with unique needs in this regard.

The United Nations Convention on the Rights of the Child (UNCROC)<sup>2</sup> in recognition of children and young people's vulnerability declares that children should only be kept in detention '*as a measure of last resort and for the shortest appropriate period of time.*'

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<sup>1</sup> Department of Immigration and Citizenship. Immigration Detention Statistics Summary 30 September 2012.  
<http://www.immi.gov.au/managing-australias-borders/detention/pdf/immigration-detention-statistics-20120930.pdf>

<sup>2</sup> United Nations Convention on the Rights of the Child [www.ohchr.org](http://www.ohchr.org)

*Caring for the future growing up today*

The Australian Human Rights Commission (AHRC) has continued to raise significant concerns about the impact of immigration detention on children and young people stating in its report following a national inquiry into children in detention in 2004:

*'the deprivation of liberty is rarely in the best interests of the child. Indeed, many studies have considered the impact of institutionalisation on children and conclude that the social and psychological effects can be long term and serious<sup>3</sup>'.*

Professor Louise Newman, Royal Australian and New Zealand College of Psychiatrists and a member of the Department of Immigration and Citizenship's Detention Health Advisory Group in her evidence to the AHRC's Inquiry stated:

*'These are children who even if they are very young, are witnessing extremes of disturbed behaviour in adults. They frequently have parents who themselves are traumatised, distressed and despairing who are unable to parent effectively in the detention context. The developmental effects, I think, are added to by the depriving and harsh nature of the environments with very clearly inadequate opportunities for play, for exploration for learning and other crucial experiences that children need if they are to develop normally.<sup>4</sup>'*

In 2010 I visited the Department for Immigration's Leonora Alternative Place of Detention (APOD) in Western Australia. At that time it was used to detain family groups of asylum seekers. I also continue to liaise with agencies that provide services to asylum seekers in immigration detention and to those who have been granted asylum and are now living in our community.

During my visit to the Leonora APOD I spoke with a number of people in detention, including children, and various staff working in the facility. Some of the issues raised with me on my visit included:

- the indefinite nature of the detention and the uncertainty of asylum seekers' migration status
- the lack of accurate information about the process of their visa application
- the harsh circumstances of their living conditions
- the institutionalised nature of the facility where families are not able to cook for themselves and live as a normal family unit contributes to the difficulties in being able to parent effectively
- the lack of support programs for parents in their parenting role.

The young people I spoke with were clearly impacted by the stress of the detention environment and the uncertainty of their future and were particularly worried about the impact of the stress they viewed their parents and siblings experiencing.

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<sup>3</sup> Human Rights and Equal Opportunity Commission (2004) A Last Resort? National Inquiry into Children in Detention. pp 162. [www.hreoc.gov.au](http://www.hreoc.gov.au)

<sup>4</sup> Newman, Louise. Royal Australian New Zealand College of Psychiatrists, Transcript of Evidence, Sydney, 17 July 2002, pp52-53. In, Human Rights and Equal Opportunity Commission (2004) A Last Resort? National Inquiry into Children in Detention pp 396-397.



I was also concerned about the lack of clarity regarding processes for reporting and responding to concerns about children's welfare and safety, and the limited access to mental health and other health services given the remote location of Leonora.

The AHRC has also continued to raise concerns regarding access to appropriate health and mental health services for people in immigration facilities and particularly for those in facilities in remote locations where provision of local services is very limited.

I am very concerned that the health and wellbeing of children and young people who are seeking asylum in Australia and are detained in offshore facilities could be at increased risk given the isolation of such facilities and the consequent limited access to appropriate services.

I strongly support that such facilities that services are provided to address any health concerns, including the mental health needs, of children and young people detained in these facilities and are closely monitored.

*Monitoring requirements for children and young people in immigration detention facilities*

In order to ensure that Australia meets its international obligations and protects the health and wellbeing of children and young people in its care it is important that systems for external, independent monitoring are robust.

In their report in 2010 regarding immigration detention facilities on Christmas Island the AHRC stated:

*The Commission remains of the view that there is a need for a more comprehensive monitoring mechanism for Australia's immigration facilities, particularly those in remote locations such as Christmas Island. Currently there is no monitoring body with all of the key features necessary to be fully effective: independence from DIAC; adequate funding to fulfil the role; the capacity to maintain an ongoing and regular presence on Christmas Island; a specific statutory power to enter immigration detention facilities; comprehensive public reporting for transparency; and the capacity to require a public response from government.<sup>5</sup>*

In addition, the current situation where the Minister for Immigration and Citizenship is the guardian for unaccompanied children in immigration detention is untenable. In 2004 the AHRC<sup>6</sup> called for the appointment of an independent guardian for unaccompanied children in the care of the DIAC. I have also called for the appointment of an independent guardian with statutory responsibility to protect the rights and monitor the treatment and wellbeing of unaccompanied children and young people under the jurisdiction of the Commonwealth Government. I note that the Chair of the Senate Legal and Constitutional Affairs References Committee, in the recent report on

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<sup>5</sup> Australian Human Rights Commission. 2010. *Immigration detention on Christmas Island*. [http://www.hreoc.gov.au/human\\_rights/immigration/idc2010\\_christmas\\_island.pdf](http://www.hreoc.gov.au/human_rights/immigration/idc2010_christmas_island.pdf)

<sup>6</sup> Australian Human Rights Commission. 2004. *A last resort? National Inquiry into Children in Immigration Detention*. [http://www.hreoc.gov.au/human\\_rights/children\\_detention\\_report/report/PDF/alr\\_complete.pdf](http://www.hreoc.gov.au/human_rights/children_detention_report/report/PDF/alr_complete.pdf)

the *Detention of Indonesian Minors in Australia*<sup>7</sup>, supported the establishment of a guardian.

I would support the establishment of a robust mechanism to monitor the health and wellbeing of asylum seekers detained in offshore facilities and the Health Advisory Panel proposed in the Migration Amendment (Health Care for Asylum Seekers) Bill 2012 may be a useful part of such a mechanism.

Further I would seek to ensure that such a mechanism does include relevant personnel with expertise in assessing the health and mental health of children and young people given their unique vulnerability in this regard.

Yours sincerely

MICHELLE SCOTT

Commissioner for Children and Young People WA

15 October 2012

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<sup>7</sup> Parliament of Australia, Senate Legal and Constitutional Affairs References Committee (2012) *Detention of Indonesian Minors in Australia*. Parliament House, Canberra pp 67.