

Submission No. 04

(RPC Manus Island)

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Save the Children
Australia

Submission to the Parliamentary Standing Committee on Public Works' inquiry into: *infrastructure and upgrade works to establish a regional processing centre on Manus Island, Papua New Guinea*

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EXECUTIVE SUMMARY

Introduction

1. Save the Children welcomes the opportunity to respond to the Parliamentary Standing Committee on Public Works' inquiry into the *'infrastructure and upgrade works to establish a regional processing centre on Manus Island, Papua New Guinea' (the Inquiry)*.
2. The primary focus of this submission is on those issues which Save the Children is in a unique position to comment on; namely, our concerns about the impact of detaining children and families, and suggestions for alternative approaches to ensure an effective, humane and human rights compliant response to children seeking asylum. This submission is informed by Save the Children's work with child asylum seekers and refugees throughout the world, and particularly Save the Children's experience providing services to children and families currently detained at the existing temporary Regional Processing Centre on Manus Island, Papua New Guinea (*the Centre*).
3. The submission also addresses the matter of the infrastructure and upgrade works to the regional processing centre on Manus Island.
4. The devastating consequences of immigration detention,¹ particularly the effects it has on people's mental health and children's development, are well known and documented. These impacts are severe and long-lasting, with many people often requiring five to ten years of psychological therapy and support following their release from immigration detention.²
5. There are ongoing examples in Australia of suicide attempts, self-harm, protests, and hunger strikes in immigration detention facilities which all speak of the desperation, hopelessness and despair experienced by asylum seekers, including children. However, Australia still continues to send asylum seekers to immigration detention centres where the cycle of mental harm and despair repeats. In doing this, Australia appears to be acting inconsistently with its obligations under international law, particularly the Convention on the Rights of the Child (*the Convention*),³ and we are failing to provide the necessary supportive, nurturing and learning environment that enables children to grow, develop and realise their potential.

¹ For the purposes of this submission the term 'immigration detention' refers to the detention of asylum seekers in regional processing centres, immigration detention centres and facilities referred to as 'alternative places of detention'. Whether child asylum seekers are detained in regional processing centres, immigration detention centres as listed on the Department of Immigration and Citizenship's website, or alternative places of detention, all such places look and feel like immigration detention centres and have the same detrimental effects on detainees health and well-being.

² Guy Coffey, Submission to the Joint Select Committee on Australia's Immigration Detention Network, 8.

³ United Nations *Convention on the Rights of the Child* (entered into force September, 1990; and ratified by Australia in December, 1990), particularly article 37(b) that requires no child be deprived of his or her liberty unlawfully or arbitrarily. In its 2004 report (*A Last Resort?*), the Australian Human Rights Commission found that Australia's mandatory immigration detention system was fundamentally inconsistent with Australia's obligations under the *Convention on the Rights of the Child* (for more information go to - <http://www.humanrights.gov.au/publications/immigration-detention-and-human-rights>).

6. The majority of the children and young people in immigration detention will be granted refugee status.⁴ However, when they do settle in the community many of them may be behind in their schooling, experience developmental delays and many will be dealing with physical and mental health issues as a result of their detention. These effects can then impede their ability to engage in further education and career pathways, establish and maintain relationships, and participate fully in their community. We need to break this cycle by rethinking our approach to asylum seeker and refugee policy.

7. As a starting point, we should not be building more accommodation for children and families in immigration detention centres. Because of children's vulnerabilities and special needs they should not be held in immigration detention; they should be living in the community on mainland Australia with adequate access to education, health and other community services. Instead of considering works and/or the expansion of family accommodation at the Centre on Manus Island, we should be investigating and investing in opportunities so that child asylum seekers can live with their families in the Australian community.

⁴ Phillips J, *Asylum Seekers and Refugees: What are the facts?* (Parliamentary Library), 11 February 2013, p 9; and Department of Immigration and Citizenship, *Asylum Trends Australia* (2011-2012); and Menadue J, *Counting the Cost of Immigration Detention* (2011), The Drum, available at <http://www.abc.net.au/unleashed/2693018.html> See also <http://www.humanrights.gov.au/publications/9-mental-health-children-immigration-detention>

Summary of Recommendations

Recommendation 1:

Stop the practice of transferring child asylum seekers to a third country while they wait processing of their refugee applications.

Recommendation 2:

Move the children and families from the Regional Processing Centre on Manus Island to the Australian mainland, to live in the community while they await determination of their refugee claims.

Recommendation 3:

Amend government policy and practice to ensure that no child asylum seeker is held in immigration detention (either onshore or offshore), and instead provide for child asylum seekers and their families to live in the Australian community while they wait processing of their refugee applications.

Recommendation 4:

Amend the Migration Act 1958 so that there is a presumption in the legislation against the detention of children for immigration purposes.

Recommendation 5:

That the Committee have regard to the vulnerabilities and special needs of child asylum seekers and ensure that decisions relating to the infrastructure and upgrade works at Manus Island are consistent with government policy, the full recommendations of the Expert Panel Report on Asylum Seekers, and the government's obligations under international law.

BACKGROUND

Overview of Save the Children

8. Save the Children is considered to be one of the world's leading independent emergency relief and development organisations for children. In Australia, our humanitarian team frequently responds to events in Australia, the Pacific, Asia, Africa, and the Middle-East. This work focuses on service delivery for internally displaced and refugee children and their families, as well as wider communities.
9. Our team is currently working in countries including Somalia, Kenya, Ethiopia, Afghanistan, Pakistan, Thailand, Indonesia, Cambodia, Myanmar and Laos. For example, in East Africa we have been working with displaced persons and refugees across Kenya, Ethiopia and Somalia, including delivery of a \$120 million humanitarian program during 2011 and 2012. In the Middle East we are currently delivering a \$100 million humanitarian program that assists displaced persons and refugees across Syria, Jordan, Lebanon and Iraq.
10. As of November last year, Save the Children also now provides education and child protection services to children living at the regional processing centre on Manus Island. Within Australia, Save the Children works with asylum seekers in the Villawood Immigration Detention Centre and we provide support services to migrant and refugee women and children in the community through our 'It Takes a Village' program, which has been specifically designed and resourced to address the barriers to community participation that migrant and refugee women and children face.
11. Save the Children makes this submission drawing on its extensive experience working with asylum seekers in source, transit and destination countries, and because we are uniquely placed to offer a perspective that is focused on promoting and protecting the rights of children.

Promoting and protecting the rights of children

12. Australia ratified the *Convention on the Rights of the Child* in 1990. In accordance with the Convention the Australian government must respect, protect and fulfil the rights contained within it, including the rights that apply specifically to child asylum seekers. Save the Children is of the view that "Australia's human rights obligations apply extraterritorially to asylum seekers transferred offshore to Manus island" and elsewhere.⁵

⁵ Human Rights Law Centre, *Submission to the Parliamentary Joint Committee on Human Rights 'Examination of the Migration (Regional Processing) package of legislation'* (2013). For more information on the <http://www.hrlc.org.au/australia-must-uphold-human-rights-obligations-to-asylum-seekers-it-transfers-offshore>

13. In all situations, children must be treated as individuals with rights, regardless of their immigration status. Save the Children supports the use of a rights framework to assess the effectiveness of policy and practice to achieve the best outcomes for children.⁶ Save the Children believes that a rights-based approach is a powerful tool for ensuring the inclusion of children in policy-making, monitoring and evaluation.
14. There are four key principles that are important to a children's rights based approach, they are: 1) the right to non-discrimination; 2) the best interests principle; 3) the right to survival and development; and 4) participation of children in decisions that affect them. The best interests principle is contained within article 3(1) of the Convention, which requires that the best interests of the child be a primary consideration in all actions concerning children. The UN Committee on the Rights of the Child has stated that this obligation means that a child-impact assessment and evaluation should be conducted in relation to all legislative and policy developments.⁷
15. The Convention also provides that children can only be detained 'as a measure of last resort and for the shortest appropriate time' and imposes strict limitations and conditions on the detention of children.⁸ Save the Children recommends that the Committee examine the impact of maintaining and expanding facilities for the detention of children on Manus Island within a children's rights framework.

THE DETENTION OF CHILDREN ON MANUS ISLAND IS NOT IN THEIR BEST INTERESTS

16. Save the Children opposes the detention of children because of the incontrovertible evidence that mandatory immigration detention is not in the best interests of children and has long-term harmful effects. Set out below is the evidence that clearly shows that detention is not in the best interests of children; indeed, it is inconsistent with a number of other rights of the child. Rather than upgrading and expanding the family accommodation on Manus Island, the government should be considering alternatives that are consistent with the rights of children and that would provide a supportive environment for them to grow, learn and develop. After all, the majority of children in immigration detention will be granted refugee status and many will live in our community in the future; we should be giving them the best start so that they can contribute to, and be a part of, our society.
17. Save the Children makes a number of recommendations below, which promote an alternative approach to expanding and upgrading the family accommodation facilities on Manus Island.

⁶ J Tobin "Beyond the Supermarket Shelf: Using a Rights Based Approach to Address Children's Health Needs" (2006) 14 *The International Journal of Children's Rights* 275 at 279.

⁷ UN Committee on the Rights of the Child, *General measures of implementation of the Convention on the Rights of the Child – General Comment No. 5*, CRC/GC/2003/5 (27 November 2003), 11.

⁸ *Convention on the Rights of the Child*, Article 37(b). See also: Human Rights Law Centre, *Submission to the Expert Panel on Asylum Seekers*, (2012) 7.

Detention adversely impacts on children’s mental health and wellbeing

18. There is clear and unequivocal evidence that immigration detention has a severe and detrimental impact on the physical and mental health of children detained.⁹ The impact of immigration detention on children is similar to the experience of adults however, because of children’s special needs and vulnerabilities, detention can cause additional problems for children’s developmental, physical and psychosocial health.¹⁰ Often these effects are exacerbated by a number of factors, including: the experience of previous trauma and/or torture; prolonged and lengthy detention; uncertainty around refugee applications; poor and unsafe conditions; and lack of access to basic needs including food, health and education.¹¹
19. While detention can maintain and aggravate children’s existing trauma,¹² there is irrefutable evidence that the detention environment is one of the major causes of mental illness for child detainees.¹³ Mental health experts have argued that it is difficult to effectively treat children experiencing mental health issues while they remain in the detention environment.¹⁴ Children in detention are constantly exposed to significant conflict, adult distress and self-harming behaviour.¹⁵ They may witness riots, suicide attempts, protests, arrests and violence. They are also at risk of violence and exploitation themselves while in detention.¹⁶ This is a highly distressing and unsafe environment for children. Children living in such inappropriate and hazardous surroundings are at risk of suffering serious “mental illness and post-traumatic symptoms including anxiety, distress, sleep and behavioural disturbances, bed wetting, suicidal ideation and self-destructive behaviour including attempted and actual self-harm.”¹⁷ Detention has a detrimental impact even only for short periods but the longer children are in detention, the more likely they are to suffer mental harm.¹⁸

⁹ Human Rights and Equal Opportunity Commission (HREOC), *A Last Resort? National Inquiry into Children in Immigration Detention* (2004); International Detention Coalition, *Captured Childhood* (2012); Joint Select Committee on Australia’s Immigration Detention Network, *Final Report* (March 2012); Royal Australian and New Zealand College of Psychiatrists, *Children in immigration detention – position statement 52* (September 2011); Steel Z, Momartin S, Bateman C, Hafshejani, Silove D, Everson N, Roy K, Dudley M, Newman L, Blick B and Mares S, *Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia* (2004) *Australian and New Zealand Journal of Public Health*, 527 – 536; Robjant K, Hassan R, Katona C, *Mental health implications of detaining asylum seekers: systematic review* (2009), *British Journal of Psychiatry*, 306 – 312.

¹⁰ International Detention Coalition, *Captured Childhood* (2012), 48.

¹¹ *Ibid*, 49.

¹² *Ibid*.

¹³ Human Rights and Equal Opportunity Commission (HREOC), *A Last Resort? National Inquiry into Children in Immigration Detention* (2004); Guy Coffey, *Submission to the Joint Select Committee on Australia’s Immigration Detention Network*, 15; International Detention Coalition, *Captured Childhood* (2012).

¹⁴ Guy Coffey, *Submission to the Joint Select Committee on Australia’s Immigration Detention Network*, 15.

¹⁵ Royal Australian and New Zealand College of Psychiatrists, *Children in immigration detention – position statement 52* (September 2011).

¹⁶ International Detention Coalition, *Captured Childhood* (2012).

¹⁷ Royal Australian and New Zealand College of Psychiatrists, *Children in immigration detention – position statement 52* (September 2011). Suicide rates in immigration detention centres are up to 10 times that of the general population and serious suicide attempts have been documented in young children and adolescents.

¹⁸ International Detention Coalition, *Captured Childhood* (2012), 50; and Human Rights and Equal Opportunity Commission (HREOC), *A Last Resort? National Inquiry into Children in Immigration Detention* (2004), 429.

20. Other harms associated with detention include developmental delays, related to a lack of interaction and stimulation owing to the distress of parents, which impairs their ability to effectively parent. Existing evidence indicates that detention can cause and contribute to parents' mental health problems, which can "damage their ability to provide the emotional and physical support children need for healthy development."¹⁹ Often parents are powerless to comfort distressed children who may experience feelings of hopelessness and depression.
21. Save the Children holds significant concerns for the mental health and wellbeing of children and families being detained at the Centre on Manus Island. We agree with the observations made by the United Nations High Commissioner for Refugees (**UNHCR**) following its recent visit to Manus Island, and are deeply worried that "children are showing signs of the trauma of both their boat journey to Australia and the ongoing detention on Manus Island, as well as the worries and stresses being expressed by their parents 'rubbing off' on them and causes additional anxiety in children."²⁰ Save the Children is providing child protection and support services to all children and families at the Centre and has referred numerous children for specialised mental health treatment. As a result of these referrals, Save the Children is engaging a number of children and families in more intensive support services.
22. Save the Children is particularly concerned by the deterioration in the mental health of parents and caregivers at the Centre, and is concerned that this may undermine the family unit and further negatively impact on the mental health and wellbeing of children at the Centre. While Save the Children is providing support to both children and families in these circumstances, it is extremely difficult to effectively address these issues at the Centre when it is the very nature of their detention that is creating and exacerbating mental health problems for children and families there.
23. It is apparent that the general mental health and wellbeing of children and parents/guardians has diminished since their arrival last year, and is likely to deteriorate further the longer they remain in detention at the Centre. The ongoing detention of children at the Centre, which may cause serious and long-term mental illness for children and families, actively denies children and families the opportunity to enjoy the highest attainable standard of health and does not provide them with the conditions necessary to be treated or rehabilitated in relation to existing illness and trauma.²¹ Immigration detention is also inconsistent with the right to health as it causes and exacerbates health problems for children and families.

¹⁹ International Detention Coalition, *Captured Childhood* (2012), 49.

²⁰ United Nations High Commissioner for Refugees, *UNHCR Mission to Manus Island, Papua New Guinea 15-17 January 2013* (4 February 2013), 17.

²¹ *Convention on the Rights of the Child*, article 24(1).

The very nature of detention restricts children’s development

24. The very nature of the detention environment itself can also have a substantial adverse effect on children’s development and mental health, and impacts on their enjoyment of other human rights. Guy Coffey, clinical psychologist from Foundation House, has highlighted how the majority of people find the immigration detention experience to be punitive and criminalising after six to nine months.²² For children, “the prison like environment, the lack of freedom of movement and constant surveillance and control is confusing and intimidating.”²³
25. On Manus Island, the living conditions are inadequate.²⁴ Children and families are living in cramped conditions with limited space and privacy, enduring high temperatures and without air-conditioning in their accommodation.²⁵ Children are also confined to the Centre and have limited opportunities and physical space within which to enjoy leisure and play activities. While Save the Children is running a recreation program and has conducted excursions for children outside of the Centre, we remain concerned by the children’s lack of freedom of movement and the long-term impacts of confinement to the Centre. These conditions raise human rights concerns, particularly the rights of a child to a standard of living that is adequate for the child’s development.²⁶ The right to freedom of movement is also an issue for children and families given the closed nature of the Centre.²⁷

Detention should be a measure of last resort

26. At the time of writing, children and families have been detained at the Centre on Manus Island for approximately four to five months. There was no apparent rationale for sending these families to the Centre in 2012 other than to promote the principle of ‘no advantage’, which effectively operates to allow detention of children as the first option. This appears to be inconsistent with Australia’s obligation under the Convention to ensure that the detention of children is “used only as a measure of last resort and for the shortest appropriate period of time.”²⁸ No further families have been transferred to Manus Island this year.
27. Since children and families arrived at the Centre last year, they have received little to no information about their status and the processing of their claims. Interviews have not taken place and it appears that the legislative mechanisms that will facilitate processing of their

²² Guy Coffey, Submission to the Joint Select Committee on Australia’s Immigration Detention Network, 4.

²³ International Detention Coalition, *Captured Childhood* (2012), 50.

²⁴ United Nations High Commissioner for Refugees, *UNHCR Mission to Manus Island, Papua New Guinea 15-17 January 2013* (4 February 2013).

²⁵ *Ibid.*

²⁶ *Convention on the Rights of the Child*, article 27.

²⁷ *International Covenant on Civil and Political Rights*, article 12.

²⁸ *Convention on the Rights of the Child*, article 37(b).

claims for asylum are yet to be established under law in Papua New Guinea. It is therefore likely that, under current circumstances, they will remain at the Centre for a prolonged period of time, which puts them at significant risk of suffering further and serious mental harm, as we know that one of the most destructive aspects of detention is its indefinite nature.

28. Given the arbitrary nature of children's detention on Manus Island, and the lack of information and support that has been provided to children and families on Manus Island with regard to the refugee application process, Save the Children has no confidence that upgrading the Centre to accommodate more children and families would be in the best interests of child asylum seekers. We are concerned that upgrading the facility would result in the arbitrary and prolonged detention of a greater number of children and we cannot support it, particularly because there are less restrictive and human rights compatible options available including moving child asylum seekers and their families to live in the community while they await determination of their refugee claims.

Children and families should not be detained on Manus Island

29. Given the mental health impacts and the apparent human rights breaches that occur as a direct result of prolonged detention of children, Save the Children strongly holds the view that it is not in the best interests of children to continue to be detained at the Centre. For these reasons, Save the Children opposes the establishment of permanent facilities for families on Manus Island and instead urges the government to move all children and their families from the Centre to Australian mainland to live in the community while they wait processing of their refugee claims.
30. The approach recommended by Save the Children is more humane and consistent with Australia's obligations under international law. The Australian Human Rights Commission has also highlighted that such an approach has a number of additional benefits, including that it is likely to be "cheaper; [has] been shown to yield high rates of compliance with immigration processes; and [will] enable a readier transition into the Australian community for those who are found to be owed protection and a greater preparedness to return amongst those who are not."²⁹
31. Moving children and families from the Centre on Manus Island to live in the Australian community while they await determination of their claims for asylum and refugee status is humane, fair and consistent with Australia's obligations under international human rights law; it is also a common-sense and economically responsible approach.

²⁹ Australian Human Rights Commission, *Submission to Joint Select Committee on Australia's Immigration Detention Network* (2011), 7.

Recommendation 1:

Stop the practice of transferring child asylum seekers to a third country while they wait processing of their refugee applications.

Recommendation 2:

Move the children and families from the Regional Processing Centre on Manus Island to the Australian mainland, to live in the community while they await determination of their refugee claims.

Recommendation 3:

Amend government policy and practice to ensure that no child asylum seeker is held in immigration detention (either onshore or offshore), and instead provide for child asylum seekers and their families to live in the Australian community while they wait processing of their refugee applications.

Recommendation 4:

Amend the Migration Act 1958 so that there is a presumption in the legislation against the detention of children for immigration purposes.

ADDITIONAL CONCERNS REGARDING THE OFFSHORE DETENTION OF CHILD ASYLUM SEEKERS

32. In the context of this inquiry, we recommend that children and families be moved from the Centre on Manus Island to live in the Australian community, and that no further transfers of children or families occur. We also recommend further changes to government policy and law to provide for more humane and human rights compliant treatment of child asylum seekers. If these recommendations were implemented, there would be no need to establish permanent family accommodation at the Centre. The rationale and evidence in support of this position is set out in the preceding paragraphs. However, we wish to make a number of additional comments on the broader government policy of transferring and arbitrarily detaining child asylum seekers and refugees in third countries.
33. Save the Children opposes any form of offshore processing, particularly the forced transfer of child asylum seekers to third countries (such as Manus Island, PNG) where they are held in immigration detention for indefinite periods of time. This policy is contrary to children's best interests and appears inconsistent with Australia's obligations under international law.³⁰ In our view, children should never be detained for immigration reasons alone.³¹ Instead, Save the Children believes that the processing and assessment of child asylum

³⁰ Human Rights Law Centre, *Submission to the Expert Panel on Asylum Seekers* (July 2012), 7. See also <http://www.hrlc.org.au/new-offshore-processing-law-flagrantly-violates-human-rights>

³¹ Heaven Crawley and Trine Lester (Save the Children, UK), *No Place for a Child*, ix.

seeker claims should take place on mainland Australia and, while they await the determination of their applications, children should be able to live with their families in the Australian community.

34. Child asylum seekers are children first and foremost, and such they require special protection and support.³² Because child asylum seekers are especially vulnerable members of an inherently vulnerable group, they face far greater dangers to their safety and wellbeing than the average child.³³ The unique vulnerabilities of children, their developmental requirements, and other special needs should be taken into account when decision-makers consider whether a law, policy, practice or program is in the best interests of children. Importantly, this was recognised by the Report of the Expert Panel on Asylum Seekers (*the Report*) which highlighted that “there should be provision for [asylum seekers] in Nauru who are determined to have special needs, or to be highly vulnerable... to be transferred to Australia.”³⁴ The same provision was to be put in place at processing facilities elsewhere in the region, including in Papua New Guinea.³⁵ It is concerning that the Australian government has ignored this aspect of the Report and continues to detain vulnerable children, which is inconsistent with its obligations under international law and the recommendations of the Expert Panel.
35. Save the Children agrees with the recommendation of the Expert Panel, namely; that asylum seekers who are vulnerable and have special needs should be transferred to Australia. In Save the Children’s view, within the asylum seeker and refugee cohort, children are the most vulnerable and most in need of special attention. Accordingly, child asylum seekers should be transferred to Australia. They should not be detained at the Centre on Manus Island.
36. We note that the submission of the Department states that there is public value in developing a regional processing facility that meets the recommendations of the Expert Panel. The Department’s submission proposes a 600 person regional processing centre that is able to accommodate families and other vulnerable groups, which would also be suitable for other cohorts such as single adult males if required. The basis of the Expert Panel’s recommendations was that the vulnerable and those with special needs should not be detained in places like Manus Island and Nauru. It is the position of Save the Children that children fit within the vulnerable category outlined in the recommendations of the Expert Panel.
37. As we have highlighted above, the detention of children on Manus Island is not a last resort and there are alternative options available, which are less costly and consistent with the

³² UNHCR, *Refugee Children: guidelines on Protection and Care* (1994).

³³ Human Rights Law Centre, *Submission to the Expert Panel on Asylum Seekers* (July 2012), 7; and UNHCR, *Refugee Children: guidelines on Protection and Care* (1994).

³⁴ *Report of the Expert Panel on Asylum Seekers* (August 2012) para 3.48, page 48.

³⁵ *Ibid* para 3.56, page 49.

rights of the child under international law. The ongoing detention of children on Manus Island is also not likely to be for the shortest practicable period, nor is it likely to be considered reasonable and proportionate, given that they have already been there for four to five months and there is no timeline or plan for the processing of their refugee applications. At present, their future is uncertain and the length of their detention is indeterminate. These circumstances are incongruous with government values that purport to reject arbitrary detention and uphold reasonable timeframes for detention.³⁶

Recommendation 5:

That the Committee have regard to the vulnerabilities and special needs of child asylum seekers and ensure that decisions relating to the infrastructure and upgrade works at Manus Island are consistent with government policy, the full recommendations of the Expert Panel and the government's obligations under international law.

38. Recent changes to the *Migration Act 1958 (Migration Act)* also highlight inconsistencies between policy and practice. As a signatory to the Convention on the Rights of the Child, Australia has an obligation to ensure that “in all actions concerning children... the best interests of the child [are] a primary consideration.”³⁷ However, recent changes to the law provide “for the removal of unaccompanied children to offshore processing locations without any obligation on the part of the Minister to consider the best interests of the child.”³⁸ As the Human Rights Law Centre has highlighted, this appears to place Australia in breach of its obligations under article 3 of the Convention.³⁹
39. In addition, the *Immigration (Guardianship of Children) Act 1946 (IGOC Act)* has been amended and as a result the Minister ceases to be the guardian of child asylum seekers when they are transferred from Australia to a ‘regional processing country’ in accordance with the Migration Act.⁴⁰ These changes raise concerns with regard to “the arrangements for the care and custody of children transferred” and may also be in breach of Australia’s obligation to provide child asylum seekers with human rights protections and humanitarian assistance.⁴¹ Save the Children holds serious reservations about these recent changes to the Migration Act and the IGOC Act and recommends that the Australian government should amend these laws to bring them into line with its obligations under international human rights law, particularly the Convention on the Rights of the Child.

³⁶ See <http://www.immi.gov.au/media/fact-sheets/82detention.htm>

³⁷ *Convention on the Rights of the Child*, article 3.

³⁸ Human Rights Law Centre, *Submission to the Parliamentary Joint Committee on Human Rights ‘Examination of the Migration (Regional Processing) package of legislation’* (2013). For more information on the <http://www.hrlc.org.au/australia-must-uphold-human-rights-obligations-to-asylum-seekers-it-transfers-offshore>

³⁹ *Ibid.*

⁴⁰ IGOC Act, ss 6(1) and (2)(b).

⁴¹ See <http://www.humanrights.gov.au/human-rights-issues-raised-transfer-asylum-seekers-third-countries>. See also *Convention on the Rights of the Child*, article 20(1).

40. Noting that Save the Children strongly opposes offshore processing and any form of immigration detention of children, if the Committee disagrees with Save the Children's recommendations, and supports the upgrading of facilities at Manus Island to accommodate families and other vulnerable groups, it must ensure that all concerns raised by the UNHCR's report on Manus Island are addressed.⁴² It must also ensure that the following matters are given priority in the establishment of the new facilities:

- Separation and distance between the family compound/facilities and the single adult male compound/facilities;
- Speedy and effective processing of refugee claims (within 90 days);
- Air-conditioning in the accommodation and other facilities; and
- Greater freedom of movement for detainees.

In addition, child protection safeguards should be a priority in the design and development of such a facility. Save the Children has significant practical and technical expertise in child protection safeguarding and can provide further advice on this, if required.

CONCLUSION

41. In 2004, the Human Rights and Equal Opportunity Commission⁴³ found that Australia's mandatory detention system failed to ensure the best interests of the child as the primary consideration in decision-making concerning children.⁴⁴ Almost a decade on the Australian government continues with the policy of mandatory detention of children despite it clearly being against their best interests and inconsistent with Australia's obligations under international law. It is time to re-think our whole approach to asylum seeker and refugee policies in Australia, taking into account the particular vulnerabilities, special needs and rights of children. Instead of going down the same path we need a new direction, one that puts human rights and the best interests of children at its centre.

⁴² United Nations High Commissioner for Refugees, *UNHCR Mission to Manus Island, Papua New Guinea 15-17 January 2013* (4 February 2013).

⁴³ Now known and referred to as the Australian Human Rights Commission (AHRC).

⁴⁴ Human Rights and Equal Opportunity Commission (HREOC), *A Last Resort? National Inquiry into Children in Immigration Detention* (2004).