



Commissioner for Children and Young People
Western Australia

All enquiries

Telephone: (08) 6213 2211
Email: trish.heath@ccyp.wa.gov.au
Our reference: 14/2711

Professor Gillian Triggs
President
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001

Dear Professor Triggs

National Inquiry into Children in Immigration Detention 2014

As Commissioner for Children and Young People in WA I have a statutory responsibility to promote and monitor the wellbeing of all children and young people under the age of 18 years. In undertaking my functions I must give priority to Aboriginal and Torres Strait Islander children and young people and children and young people who are vulnerable or disadvantaged for some reason. I must also have regard to the United Nations Convention on the Rights of the Child.

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 included visiting the Leonora Alternative Place of Detention (APOD) in December 2010 when it housed families with children, and speaking with the children, their families, staff and members of the Leonora community.

The United Nations Convention on the Rights of the Child (the Convention) makes specific provision for children who are refugees to receive special protection and help (Article 22) in addition to the other rights set out in the Convention.

It has always been the position of my office that, consistent with Article 37 of the Convention, mandatory detention of children should cease and children and young people should only be placed in detention as a last resort and for the shortest possible time.

According to the Department of Immigration and Border Protection's statistics,ⁱ as at 31 March 2014 there were 895 children and young people under the age of 18 years in

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an immigration detention facilityⁱⁱ in Australia. While this is a significant reduction since July 2013 when the numbers of children and young people in immigration detention peaked at nearly 2000, the number remains unacceptably high.

I note that in September 2013 the average age of a child in immigration detention was just 10 years old.ⁱⁱⁱ

The harmful effects of detention on children and young people have been well documented, including in the Australian Human Rights Commission's (AHRC) 2004 report, *A last resort? National Inquiry into Children in Immigration Detention*.^{iv}

The Royal Australian and New Zealand College of Psychiatrists in their position statement on children in immigration detention^v state,

'There is now a large body of evidence to suggest that prolonged detention, particularly in isolated locations, with poor access to health and social services and uncertainty of asylum seeker claims, can have severe and detrimental effects.'

In relation to the impact on children particularly Professor Louise Newman, Royal Australian and New Zealand College of Psychiatrists and a member of the then Department of Immigration and Citizenship's Detention Health Advisory Group, in her evidence to the AHRC's Inquiry in 2004 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.'

In this context I will address the Inquiry's terms of reference drawing on the experience on my office with children and young people who have been in detention and the service providers who are working with them.

The appropriateness of facilities in which children are detained

The young people and families at Leonora who spoke with my office reported significant concerns about the facilities in which they were detained. These included:

- the 'institutional' nature of the accommodation where family groups were not able to cook for themselves and live as a normal family unit but rather had to attend a canteen for meals during scheduled meal times
- having to be transferred to different facilities or separated from family members in order to access medical or other required services
- the lack of appropriate play areas made worse by the extreme temperatures and the dusty conditions
- the lack of activities for different age groups
- the limited facilities for computer access for young people to do homework with many people wanting to access the few facilities available.

I appreciate that families are no longer housed at the Leonora APOD and that this particular facility is scheduled to close, if it has not already done so. However the concerns that were raised were illustrative of the issues faced by families in detention and I note that many of these issues have been raised about other facilities, particularly those in remote locations and harsh physical environments.

These issues remain of significant concern particularly given the length of time children and young people remain in detention and the unknown living conditions and facilities in off-shore processing centres.

The impact of the length of detention on children

Of particular concern is the fact that the average period of time people are held in detention is increasing and is currently 275 days with the vast majority of people held in detention for over 6 months.

One of the most significant concerns that have been raised with my office by the young people and their families has been the length of time they had been held in detention and the indefinite nature of the process. Young people particularly reflected on the stress they experienced in seeing their parents and siblings worried and distressed.

The Royal Australian and New Zealand College of Psychiatrists highlight the combination of the experiences that have led to seeking refuge in another country with the detention experience, and the consequence on parenting stress and capacity to provide support and nurturing to children in their care, results in considerable developmental risk to children and young people who are seeking asylum.^{vi}

The high rates of suicide, depression, Post-Traumatic Stress Disorder, post-natal depression and anxiety in asylum seeking populations held in detention have been documented.^{vii}

Parental mental illness is known to have an adverse impact on developmental outcomes for children and young people in their care.^{viii}

Children and young people in immigration detention therefore experience the double burden of both the impact of trauma relating to their own asylum seeking experiences and living in the detention environment, and the impact of their parent's mental health and wellbeing on their own mental health and developmental needs.

The long periods of detention and the uncertainty of both the duration of detention and the outcome of their visa applications, significantly add to this burden on the mental health of these vulnerable children and young people.

Measures to ensure the safety of children

My office was concerned following the visit to the Leonora APOD about the lack of policies and processes for the management of child protection matters within the APOD. I note that these concerns were also raised by the AHRC following inspections of the Christmas Island and Darwin detention facilities in 2010.^{ix} My office raised these matters with both the then Minister for Immigration and Citizenship and the WA Department for Child Protection and Family Support.

My office was advised in June 2011 that the relevant departments had agreed to develop a detailed schedule on the provision of child protection services to children

and young people in immigration detention facilities within WA. In January 2012 the schedule had still not been completed and I have not received further advice as to its current status.

The mental health status of people held in immigration facilities and the overcrowded conditions increases the vulnerability of the children and young people housed in these environments to abuse and neglect. Ensuring that clear policies and processes are in place and that appropriately trained and qualified staff are in situ to monitor and manage the safety and wellbeing of children and young people in all immigration detention facilities housing children and young people, should be considered as a matter of the highest priority.

Provision of education, recreation, maternal and infant health services

Consistent with the rights for children and young people set out in the Convention, children and young people detained in immigration facilities must have access to appropriate education, recreation and health services.

When my office visited the Leonora APOD the children in the facility were attending the local school. The children and young people we spoke with, the school staff and students from the local community spoke very positively about this arrangement as it allowed the children from the detention facility to participate in many school and community activities to the mutual benefit of both the detention and the local population.

I understand that the education arrangements vary between different individual immigration facilities. The benefits of the local school model my office saw in Leonora were clear, both to the children in the local community and those detained in the APOD. However it was also clear that the school needed to be resourced to effectively support the children and young people from the detention facility, many of whom had missed significant periods of education, due to their disrupted life, and who also had limited literacy in English.

As previously stated, recreation facilities for children and young people within the APOD were very much lacking, despite the best efforts of the staff at the facility. It was disappointing that the children and young people were not allowed to participate in more community activities, such as the school holiday program at the local youth service which had invited their involvement, due to the then Department of Immigration and Citizenship declining.

Access to recreation and play is significant to mitigating some of the mental health stress previously identified and also provides an opportunity for learning to integrate into the Australian community once the visa application process has been completed.

The provision of maternal and infant health services is essential for obvious reasons. My office remains concerned about the limited access to such services, particularly in the remote locations and the additional demands on the existing services in those areas if they are relied upon to provide the necessary services. Conversely however, having to transport women and infants long distances to access services is also undesirable due to the impact of travel and the possible need to separate family members for periods of time.

Additional to those items listed in the Term of Reference I would add the need for parenting support and services. As previously identified, the impact of many asylum

seekers journeys and the impact of detention can have serious deleterious effects on parenting. Also the adjustment to parenting standards and conventions and the change in children's roles and responsibilities in Australia has caused some concern in the child protection field with families from refugee and diverse cultural backgrounds facing some unique challenges that may impact on their involvement with the child protection system.^x

I appreciate the challenges of providing both mental health and parenting services given the uncertainty of the outcome of their application for asylum and the limitations of the environment in the detention facility. However, there is an opportunity in detention facilities to provide, in addition to appropriate mental health services, some parenting programs to improve the capability of parents to support and nurture their children and young people.

The separation of families across detention facilities in Australia

Under the Convention on the Rights of the Child, a child is not to be separated from his or her parents against their will (Article 9). As already previously stated, children and young people in immigration detention have suffered considerable disruption to their family life and may also have suffered significant trauma resulting in a range of mental health issues including loss and grief.

Promoting healthy attachment relationships between children and their parents, or another primary caretaker, is critical to the recovery from trauma and healthy development of the child and further separations should be avoided unless essential.^{xi}

The guardianship of unaccompanied children in detention in Australia

This matter has previously been raised in the *Joint Select Committee on Australia's Immigration Network* report^{xii} which recommended that the Minister for Immigration be replaced under the *Immigration (Guardianship of Children) Act 1946* as the guardian for unaccompanied minors arriving in Australia to seek permanent residence.

I note that the government in its response to the Joint Select Committee's report did not accept this recommendation.^{xiii}

Concerns were raised about the role of the Minister as the guardian for unaccompanied minors in immigration detention and the potential conflict of interest as ultimately the Minister is also responsible for the detention and visa determination processes.

I appreciate that the guardianship duties of the Minister are delegated away to other staff of the Department. However, the independence of the guardian to act solely in the best interest of the child or young person remains of fundamental importance, and I would support the establishment of an independent guardian for unaccompanied children and young people in seeking to remain in Australia.

Assessments conducted prior to transferring children to be detained in 'regional processing countries'

My office has been contacted in the past year by senior health clinicians concerned about the health care available to children mooted to be transferred to facilities in countries outside of Australia. Their concerns raised not only the issue of the lack of specialist medical care and the likelihood of poor living conditions having an impact on

the fragile health of these children, but also highlighted considerable confusion at the time of the assessment process and criteria for transfer. I understand that in the cases my office was contacted about the views of the health clinicians did influence the assessment process, at least in the short term, after some initial difficulties with mis-information and poor communication regarding the assessment process.

I have not been privy to the specific processes or criteria related to the assessment of children for transfer to facilities outside of Australia. The limited information and uncertainty about the living conditions and the access to health and other services in detention facilities outside of Australia raises serious concerns about the safety and wellbeing of children and young people placed in these facilities regardless of any assessment prior to transfer.

Progress that has been made during the 10 years since the Commission's 2004 report: A last resort? National Inquiry into Children in Immigration Detention

It was pleasing to see the increased use of community detention particularly for families with children, which, despite concerns about the level of support provided to families living in community detention, is a much preferred alternative to the closed detention facilities.

The re-introduction of 'third country' processing in 2012 which has seen the transfer of asylum seekers to Nauru and Manus Island has been very concerning and has, I understand, included the transfer of children from Australia to Nauru. In addition to this perpetuating the mandatory detention and the indefinite timeframe issues, the difficulty in ascertaining the conditions in these facilities makes it impossible to know if children and young people are receiving the care and support they require.

I also note that if unaccompanied children and young people are transferred to third countries they are no longer under the guardianship of the Minister for Immigration and Border Protection, however the replacement guardianship arrangements in these circumstances is unclear and is a cause for concern given the particular vulnerability of these young people.

Under the Convention on the Rights of the Child, as a signatory, Australia has committed to:

'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.'^{xiv}

It has been well established that the detention of children and young people has a significant deleterious impact on their mental health and wellbeing and is not in their best interests. In this regard, the continuing use of mandatory detention remains contrary to Australia's obligations under the Convention. It is important that where detention is unavoidable, that policies take into account the best interests of the child as a primary consideration and that the length of time in detention is minimised for children and young people.

In summary, consistent with Australia's international obligations under the Convention on the Rights of the Child, children and young people should only be placed in immigration detention as a last resort. When it is considered necessary to place children and young people in immigration detention it is important that:

- the period of detention is for the shortest possible time
- services and programs are provided to ensure their health and wellbeing needs are met
- an independent Guardian be appointed to ensure the wellbeing of any unaccompanied minors held in immigration detention, and
- independent, external scrutiny of immigration detention facilities takes place to ensure the wellbeing of all children and young people is maintained.

I appreciate the opportunity to provide these comments to the Inquiry.

Yours sincerely



JENNI PERKINS

A/Commissioner for Children and Young People WA

26 May 2014

ⁱ Department of Immigration and Border Protection (2014) Immigration Detention and Community Statistics Summary: 31 March 2014. Australian Government. www.immi.gov.au/managing-australias-borders/detention/pdf/immigration-detention-statistics-march2014.pdf

ⁱⁱ Includes Immigration Residential Housing, Immigration Transit Accommodation and Alternative Places of Detention

ⁱⁱⁱ Australian Human Rights Commission (2013) Asylum seekers, refugees and human rights. Snapshot report 2013. Sydney, NSW. p. 7

^{iv} Human Rights and Equal Opportunity Commission (2004) *A Last Resort? National Inquiry into Children in Immigration Detention*. Sydney, NSW.

^v Royal Australian and New Zealand College of Psychiatrists (2011) Children in Immigration Detention. Position Statement 52, September 2011. www.ranzcp.org/Files/Resources/College_Statements/Position_Statements/ps52-pdf.aspx

^{vi} *ibid*

^{vii} *ibid*

^{viii} Royal Australian and New Zealand College of Psychiatrists (2009) Children of parents with a mental illness. Position Statement 56, October 2009. www.ranzcp.org/Files/Resources/College_Statements/Position_Statements/ps56-pdf.aspx

^{ix} Australian Human Rights Commission reports: 2010 immigration Detention in Darwin and 2010 immigration Detention on Christmas Island. www.hreoc.gov.au

^x Kaur, J (2012). Cultural Diversity and Child Protection: Australian research review on the needs of culturally and linguistically diverse (CALD) and refugee children and families. Queensland, Australia.

^{xi} Royal Australian and New Zealand College of Psychiatrists (2011) Children in Immigration Detention. Position Statement 52, September 2011. www.ranzcp.org/Files/Resources/College_Statements/Position_Statements/ps52-pdf.aspx

^{xii} Joint Select Committee on Australia's Immigration Detention Network. March 2012. www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/immigrationdetention/report/~media/wopapub/senate/committee/immigration_detention_ctte/report/report_pdf.ashx

^{xiii} Government's Response to the Joint Select Committee on Australia's Immigration Detention Network Report. November 2012. www.immi.gov.au/media/publications/pdf/2012/response-recommendations-joint-select-committee-aust-immi-detention.pdf

^{xiv} Office of the High Commissioner for Human Rights. (1990) Convention on the Rights of the Child - Article 3. www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx