Centre for Excellence
in Child and Family Welfare Inc.

POSITION PAPER: CHILDREN IN IMMIGRATION DETENTION

ABOUT THE CENTRE

For over 100 years we have advocated for the rights of children and young people to be heard, to be safe, to access education and to remain connected to family, community and culture.

We represent over 100 community service organisations throughout Victoria working across the continuum of child and family services, from prevention and early intervention to the provision of out-of-home care.

Our member agencies are at the forefront of supporting vulnerable children, young people and families. Through our advocacy, training, sharing of good practice and research we support our members to meet their goals.

Over 200 organisations and 90,000 medical professionals and concerned citizens have voiced their dismay at the ongoing detention of children. The Centre adds its voice to this critical issue.

POLICY POSITION

All children have a right to live in peace, prosper and thrive. They have the right to grow up in a safe environment, to be healthy and to reach their potential.

In any decisions concerning children, the best interests of the child must be the paramount consideration.

These rights are enshrined in the UN Convention on the Rights of the Child, to which Australia is a signatory[1] and extend to children seeking asylum.

The Government has a responsibility to protect and uphold the rights of children.

The Issue

Australia is the only country in the world that mandates the indefinite detention of children seeking asylum.

The Australian Government has held children in detention for as long as five years, denying them their fundamental rights, appropriate protection and humanitarian assistance as set out in the Convention on the Rights of the Child.

The negative impact of indefinite detention on anyone is significant – but even more so on children. There are currently children in Australia and Nauru that are detained in abhorrent conditions in Australian-run detention centres. This is a punitive measure that arbitrarily applies to a small group of people based on when and how they arrived in Australia. All people seeking asylum who arrive by plane are living in the community in Australia.

There is no reasonable basis upon which any child remains in detention.

[1] United Nations (20 November 1989) Convention on the Rights of the Child, accessed at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx

Number of Children in Detention

As at 30 October 2015, there were:

- 112 children in detention facilities on the Australian mainland
- 92 children in detention in Nauru
- 354 children in community detention – i.e. being detained in the community until their residency in Australia has been determined
- 4,013 children living in the community on Bridging Visas

It is not known how many of these children are unaccompanied minors or living with family members.

The average length of time in detention is 434 days.

We are the only country in the world that mandates the indefinite detention of children seeking asylum.

The Right to Grow Up in a Safe Environment

Children have a right to be safe. Any person caring for a child must ensure they are in a safe, secure and nurturing environment. Our Government has a responsibility to protect children from harm and abuse and take action when children are unsafe.

Children seeking asylum are safe in the community. Australia has a successful community-based program for people seeking asylum. Children can be released into this program, where they live freely in our community, go to school, make friends and grow and develop in a safe and nurturing home.

Their parents can generally access work rights, provide for their children, stabilise their family and progress with their lives.

This program has operated successfully for decades. It has allowed people seeking asylum to live safely in our community while their case is examined.

Impact of Detention

Children are not safe in detention. They live in cramped conditions with little privacy. They live in these conditions with adults who are often suffering from deteriorating mental health because of the indefinite nature of their detention.

This leaves children vulnerable to a range of serious safety risks, including from the guards who are meant to watch over them.

A number of reports have highlighted the unsafe and traumatising conditions in which children in detention live.[2]

---

[2] Australian Human Rights Commission (2014) *The Forgotten Children: National Inquiry into Children in Immigration Detention.* Australian Human Rights Commission: Sydney; Australian Government, *Review into recent allegations relating to conditions and circumstances at the Regional Detention Centre on Nauru*, Philip Moss, February 2015.

During a 15 month period from January 2013 to March 2014 alone, there were:

- 233 assaults involving children
- 33 incidents of reported sexual assault with the majority involving children
- 27 incidents of voluntary starvation/hunger strikes involving children
- 128 children in detention engaged in actual self-harm
- 171 children who threatened self-harm. [3]

The Right to Health and Development

Children have the right to be healthy. Healthy children reach their developmental milestones and enjoy a standard of living that meets their physical and mental health needs.

Living in the community, rather than in detention, children seeking asylum are able to access healthcare and participate in developmentally appropriate activities fundamental to their well-being and growth.

Allowing children to live in the community while their claim for protection is considered means they can live in a healthy environment and can enjoy the same basic rights and freedoms as other children and are better able to overcome past trauma, rather than have that trauma compounded by indefinite detention.

Impact of Detention

The Australian Human Rights Commission's (AHRC) *Forgotten Children* report highlights the significant damage detention inflicts on children and their families.

Psychiatrists and psychologists, health-care and child-welfare workers gave independent evidence to the AHRC inquiry about the serious mental and emotional harm of indefinite mandatory detention. The evidence is unequivocal.

The report found at least one in three children in detention suffers from a serious mental illness requiring psychiatric care.

The mental health screening of children conducted during the inquiry showed 'very high levels of emotional disorder, poor concentration and impairments in scholastic and language development'.[4]

The weight of evidence clearly highlights that children are suffering serious mental health disorders as a result of their detention, which is likely to affect them for the rest of their lives.

Research shows the importance of safe, secure and nurturing environments for the psychosocial brain development of children. Detention as it operates in Australian-run centres is not able to provide this environment. Children on Nauru are growing up in unhygienic and unsafe living

[3] Australian Human Rights Commission (2014) *The Forgotten Children: National Inquiry into Children in Immigration Detention.* Australian Human Rights Commission: Sydney.
[4] Ibid. p60.

conditions, with poor healthcare and limited capacity for play. This poses serious challenges to their physical, intellectual and emotional development.[5]

As well as causing first-hand trauma, detention also compounds past experiences of trauma for children Evidence suggests that critical windows for neurological development can be lost if the child experiences deprivation or trauma during early childhood, the effects of which cannot be reversed.[6]

A 2015 parliamentary senate inquiry into the Regional Processing Centre at Nauru found disturbing evidence of abuse, traumatisation and mental illness among children. The committee concluded that the Nauru processing centre 'is neither a safe nor an appropriate environment for children and that they should no longer be held there'.[7]

The Department of Immigration and Border Protection, the Commonwealth Government and the Opposition accept the detrimental mental health impacts of prolonged detention on children, recognising that *there is a reasonably solid literature base which we're not contesting at all which associates a length of detention with a whole range of adverse health conditions.*[8]

How can such knowledge *not* have led to action?

The Right to Reach their Potential

Education enables children to develop to their full potential, regardless of their circumstances. Every child has the right to accessible, affordable, culturally appropriate and high quality education.

Education lays the foundation for lifelong learning. Early learning allows children to engage in creative play and exploration and as children get older, education is crucial to understand others, think critically, problem solve, participate fully in the community and access opportunities.

Impact of Detention

Children in detention in Australia endure the indignity of being accompanied to school by guards. The developmental impact of detention on children seriously impacts their current and future education experience, learning and opportunities.

Children on Nauru have had limited access to education, due to the school at the detention centre being closed. Children now must attend school in an under-supported Nauru education system, which is still recovering from the near-collapse of the entire education system in the early 2000s. Between 2000 and 2005, no exams were held and there was a mass exodus of teachers from Nauru schools. Schools are often in poor condition, with dilapidated classrooms and broken toilets.

---

[5] UNHCR (2013) *UNHCR monitoring visit to the Republic of Nauru 7 to 9 October 2013.* UNHCR Regional Office ACT, Australia.

[6] Maggi, S., Irwin, L., Siddiqi, A & Hertzman, C. (2010) 'The social determinants of early child development: An overview'. *Journal of Paediatric Health* Vol 46(11): 627-35.

[7] Select Committee on the recent allegations relating to the conditions and circumstances at the Regional Processing Centre in Nauru. (2015) *Taking responsibility: Conditions and circumstances at Australia's Regional Processing Centre in Nauru*. Final report. Commonwealth of Australia.

[8] Australian Human Rights Commission (2014) *The Forgotten Children: National Inquiry into Children in Immigration Detention*. Australian Human Rights Commission: Sydney. p61.

The lack of access to education will negatively affect children for the rest of their lives, hindering their development, life opportunities and their capacity to reach their full potential.[9]

What We're Asking the Government To Do

The Government has the power to remove children from detention now and ensure that children are protected from detention into the future.

One child in detention is one child too many. These are the words of Malcolm Turnbull in February 2015, several months before he became Prime Minister.

We call on the Prime Minister, Malcolm Turnbull, to:

- **Release all children and their families into the community**

  Australia has a successful community-based program for people seeking asylum. Children and their families can be released into this program, where they live freely in our community, go to school, make friends and grow and develop in a safe and healthy home.

- **Introduce legislation to prevent the detainment of children in the future**

  This legislation should include a standard maximum time of detention of 72 hours for health and safety checks (as implemented in the United Kingdom) with a possible extension of seven days approved by the Immigration Minister. Seven days is the absolute maximum time a child should be kept in detention.

- **Appoint an independent guardian for children seeking asylum**

  An independent guardian must be appointed to make sure decisions are made in the best interests of the child. Currently, the Minister for Immigration is the guardian of unaccompanied children in detention, which is a clear conflict of interest while he is also responsible for migration decisions and transferrals to Nauru.

Australia's human rights record was recently reviewed by the UN Human Rights Council, with concerns raised about our ongoing detention of women and children in particular. Countries called on us to ensure people seeking asylum are treated with dignity, compassion and respect.

Releasing children from detention should not be a political issue. Morally and legally it is the right thing to do. Children have the right to enjoy a free, safe and happy childhood and live in peace, prosper and thrive. We call on our national leaders to act as a matter of urgency in the best interests of these children and release them into the community.

[9] Mace, AO., Mulheron, S., Jones, C., & Cherian, S. (2014) *Educational, developmental and psychological outcomes of resettled refugee children in Western Australia: a review of School of Special Educational Needs: Medical and Mental Health input*. Vol 50(12):985-92.