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headspace submission: Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010

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Introduction

headspace welcomes the opportunity to submit a response to the Migration Amendment (Detention Reform and Procedural Fairness Bill) 2010 to the Senate Legal and Constitutional Affairs Committee. The Bill seeks to amend the way in which the Migration Act 1958 currently operates, by ending offshore processing and the excision policy, ensuring that detention is only used as a last resort; ending indefinite and long-term detention; and introducing a system of judicial review of detention beyond 30 days.

headspace advocates against policies and practices that are detrimental to the wellbeing of children and young people, this includes laws and policies that **headspace** believes harms the health and welfare of young asylum seekers. The impact of detention on children and young people is significant and has long term implications. **headspace** appreciates the current complexities surrounding immigration issues, asylum seekers, and the requirement of the government to protect Australia's borders. It is a complex issue that requires a range of policy responses and programs. **headspace** acknowledges that the current government has implemented a range of improvements to immigration laws and policies. In particular, **headspace** welcomes the recent announcement by government of increased funding to mental health services for refugees through the funding of the new Program of Assistance for Survivors of Torture and Trauma (PASTT). However, we believe that further work is required to protect the health and wellbeing of asylum seekers in particular children and young people. **headspace** believes that the proposals in the Bill are necessary to protect some of the most vulnerable people in the world.

In this submission we will discuss the current system and the impact on mental health, explore myths and facts about asylum seekers, and put forward a case as to why the Bill should be supported. In particular we will:

- (1) advocate for the adoption of the Bill; and
- (2) focus on the needs of children and young people specifically commenting on Australia's obligations under the Convention on the Rights of the Child

About headspace

headspace, the National Youth Mental Health Foundation, is funded by the Australian Government. Established in 2006, **headspace** has provided services to more than 37,000 young people at 30 centres in metropolitan, regional and remote areas across Australia.

The national work is driven through four core platforms: community engagement and awareness raising, provision of training and education, driving service sector reform and building knowledge in evidence based treatment.

headspace centres sees young people aged from 12 to 25 years. Our centres provide high quality early intervention services for mental health challenges commonly experience by young adults, with the aim of preventing long-term adverse effects.

headspace centres provide physical health, drug and alcohol and vocational assistance and advice and we aim to empower young people to seek assistance early. Any young person who needs support, advice or just someone to talk to about a mental health problem, can walk into a **headspace** centre and be treated with respect and compassion, within a confidential and safe environment. A family member can also refer a young person to **headspace**.

headspace believes all young people are important and deserve the best care possible. Our workers listen to and try to understand the needs of young people so they can realise better health and wellbeing. We also work with other mental health and community agencies to improve the lives of young people.

The Independent Evaluation of **headspace**ⁱ was favourable in its view of the **headspace** model, its acceptability among young people, and the quality of care provided across the four core streams.

Background: The current system

Australia is one of the few nations in the world which imposes mandatory detention on asylum seekers.ⁱⁱ In May 2011 there were 6,729 people in immigration detention (5,117 on the mainland and 1,612 on Christmas Island). A total of 1,082 children (aged under 18) are in detention: 818 on the mainland and 264 on Christmas Island.ⁱⁱⁱ Seventy percent of the children are male (759). The latest data (May 2011) does not provide information on the number of unaccompanied children but in January 2011 there were 465 in total.^{iv} Of the 6,729 people in immigration detention facilities eighty three per cent of people had been detained for three or more months. Nearly a quarter had been detained between 12 to 18 months.^v No figures were available on the average length of detention for children and young people.

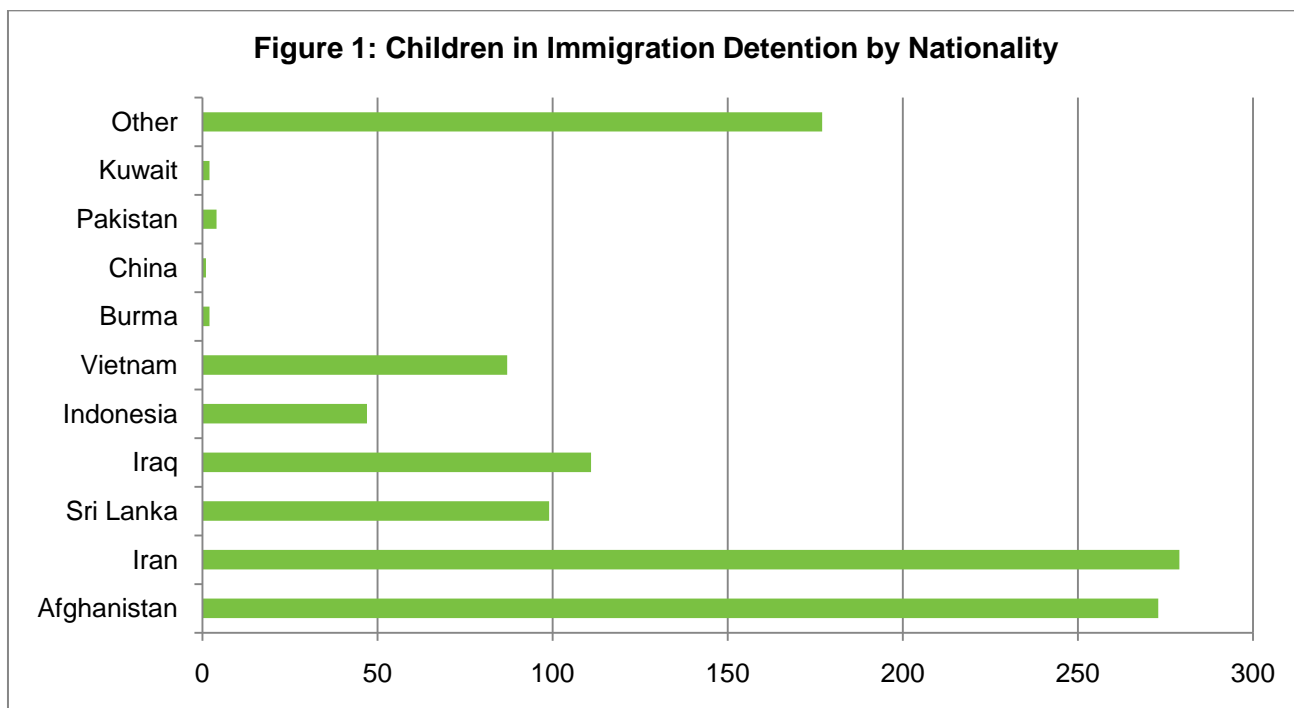
Since 2005 children are no longer detained in immigration detention ‘centres.’ They are detained in ‘alternative locations’ or ‘detention facilities’. Table 1 shows the different type of immigration detention children are currently residing in. Children in these facilities are fenced in with limited freedom of movement and the places are under guard 24 hours a day. Some facilities have no play areas and supervised visits to local parks are allowed for one hour every two weeks.^{vi} Children held in detention facilities have limited access or no access to schooling.^{vii}

Table 1: Children in Immigration Detention as at 20 May 2011

Type	Total
Immigration residential housing	25
Immigration transit accommodation	98
Alternative temporary detention in the community	693
Community detention	266
Total	1082

Source: Detention Operations Division, Immigration Detention Statistics Summary, DIAC 20 May 2011.

The DIAC data shows that children currently residing in detention facilities are from a range of countries (see Figure 1) with the majority originating from Iran and Afghanistan.



Source: Detention Operations Division, Immigration Detention Statistics Summary, DIAC 20 May 2011.

It is important to note the DIAC data is divided into under 18s and over 18s with an assumption that over 18s are adults and should be treated within adult systems and services. **headspace** challenges these assumptions and advocates for youth specific services for 18 to 25 years and removal from adult services that are not developmentally appropriate for this group. With this in mind we believe that the current system of mandatory detention is not only detrimental to those under 18s but also to young people aged 18 to 25 years old. **headspace** believes that the needs and rights of this group have been overlooked.

Table 2: A Summary of Common Myths and Facts about Immigration and Asylum Seekers

Myth	Fact
Australia is swamped by asylum seekers	In 2010 Australia received 8,250 onshore asylum applications (2.2% of the 358,840 applications received across 44 industrialised nations). ^{viii}
Australia takes more than its fair share of refugees	Compared with other countries Australia is ranked 47 th in the number of refugees it hosts and 68 th in refugees per capita. For example in 2009 Germany hosted 590,000 refugees and asylum seekers compared to Australia's total of 22,500. ^{ix}
Australia is inundated with people arriving by boat	Very few asylum seekers arrive in Australia by boat each year. They make up less than 2% of Australia's annual migration intake. ^x The majority of asylum seekers arrive by plane ^{xi}
Asylum seekers who arrive by boat are illegal	Seeking asylum is a legal right guaranteed under Australian and international law. It is legal to seek asylum even if you arrive on a boat without a visa. As a signatory to the UN Convention relating to the Status of Refugees, Australia must provide protection to people fleeing persecution regardless of whether they arrive by boat or plane. More than 90% of asylum seekers who arrive by boat prove to be genuine refugees. ^{xii}

<p>Mandatory detention is necessary to stop thousands more refugees coming to Australia</p>	<p>There is no evidence that mandatory detention deters refugees from coming to Australia. Refugee flows are primarily affected by civil war, violence, political unrest and human rights violations. The majority of people do not want to leave their homes, families and countries. Seeking asylum in Australia is their last resort.^{xiii}</p> <p>xiv</p>
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Mental health issues and mandatory detention

“Children and young people have a range of developmental needs including physical activity, competence and achievement, self-definition, creative expression, positive social interactions, structures and clear limits and meaningful participation. The ability to meet the developmental needs of children is greatly compromised in the artificial and restricted environment of a detention centre”^{xv}

There is a growing body of evidence that supports our view that the current system of mandatory detention has significant detrimental effects on the mental health and welfare of young people.^{xvi xvii xviii}

Subsequently there have been many calls for the system to change by many health and welfare organisations including the Australian Medical Association and the Australian Psychological Society.^{xix}

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People seeking asylum are often vulnerable and susceptible to mental health issues resulting from their pre-migration trauma. Children are particularly vulnerable.^{xxii} It is likely that exposure to trauma will lead to a range of psychological reactions including posttraumatic stress disorder, depression, anxiety, substance misuse, and psychotic disorders. Trauma related syndromes include significant distress or impaired functioning, intrusive thoughts and emotions about the traumatic events, avoidance, emotional numbing and/or hyper-arousal.

Research has shown that the prevalence of mental health problems reduces significantly over the course of resettlement if that experience is positive. It is critical that refugees are supported and welcomed into their new communities. However, post migration stressors (e.g. restricted access to support and limited educational and employment opportunities) have a significant impact on mental health outcomes, and detention in particular exacerbates the impacts of other traumas.^{xxiii xxiv}

There are a range of factors that have been identified as contributing to the existence of mental health issues of children and young people in detention. These include:

- torture, trauma and loss prior to arrival
- the length of detention
- uncertainty of future
- negative visa decisions and reasons for these decisions
- uncertainty of visa process
- the breakdown of families within detention
- living in a closed and isolated environment
- children and young people's perception that they are not safe within detention facilities
- seeing people self-harm and attempt suicide
- inadequate recreation and educational opportunities ^{xxv xxvi}

Mental health problems experienced by children and young people in detention include: suicidal ideation and acts of self harm, post traumatic stress disorder (PTSD), major depressive disorders (MDD), anxiety, nightmares, bedwetting, dissociative behaviour, impaired cognitive development, emotional numbing and a sense of hopelessness.^{xxvii xxviii} It has been reported that in 2010 self-harm rates amongst asylum seekers in detention facilities had increased by 400% from the previous year and that in particular there had been an increase in children and young people self-harming.^{xxix}

Some commentators have stated that the severity of mental health issues is linked to children's ongoing detention and that the impact of detention outweighs that of pre-migration experiences in the development of mental health issues. One study of 20 children found that after two years in detention all children were diagnosed with at least one psychiatric disorder and 80% were diagnosed with multiple disorders compared with only one child from initial assessment (time of arrival).^{xxx}

In addition to the mental health impacts mandatory detention often has a negative impact on family cohesion and the ability of parents to care for their children. The detention environment takes away the normal family environment where parents provide food, income, discipline etc. The declining mental health of parents in detention facilities has a significant impact on their children. The longer families are in detention the further the capacity of parents to care for their children is compromised. This further exacerbates mental health problems for children and young people.

Why support the Bill?

“By definition, refugees are survivors. They have survived because they have the courage, ingenuity and creativity to have done so. These are qualities which we value in Australia. The challenge for Australia is to assist newly arrived refugees to process the experiences of their past and rebuild their lives in Australia. If we do this we will reap the benefits of the qualities and experiences they bring to Australia.” xxxi

The current system breaches several United Nation’s conventions and treaties in particular the Convention on the Rights of the Child

The Convention in the Rights of the Child enshrines a child’s right to protection and was signed by Australia in 1990. The CRC is underlined by the key principles of non-discrimination (Article 2), best interests of the child (Article 3), respect for the views of the child (Article 12), right to be heard, and recognition of the evolving capacities of the child (Article 5). It incorporates basic human rights such as; the right to privacy, bodily integrity (the right not to have your body interfered with) and autonomy (the right to make decisions about your life), including the right to control ones health and body.

The CRC states that signatories should recognise the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development and ensures that *no child shall be deprived of his or her liberty unlawfully or arbitrarily*. In addition Article 37 of the CRC states that holding children in detention shall be used as a measure of the last resort and only for the shortest possible time. The CRC also imposes a special obligation to children seeking asylum and article 37 requires signatories to uphold their right to live in ‘an environment which fosters the health, self-respect and dignity of children’ in order to ensure recovery from past trauma. By maintaining the current system of mandatory detention it is our view that Australia is in breach of the Convention.

We have obligations as international citizens to treat people with dignity and respect

“Children are some of the most vulnerable people in our community. How we treat children shapes their future, impacts what sort of adults they will be, affects what contribution they will make to society and influences how our society will function for years to come.” xxxii

The period of youth is one of transition during which young people transition from dependence to independence. Through this time, young people have to negotiate a number of physical and psychological changes and make important decisions about friendships, relationships, sexuality,

education, career and general lifestyle which may have long term implications for their life. For some young people, the pathway from childhood to adulthood is less smooth. Various physical and psychosocial health issues may impede their progress and create significant difficulties in the short, medium, and long term.

The intersection of adolescence with seeking asylum places young people in a particularly vulnerable position given the backdrop of adolescence with settling into another country with different cultural norms and practices.^{xxxiii} These challenges are further compounded for young people in detention facilities where their freedom is limited and their future is uncertain. Those who arrive alone without family or guardians are doubly disadvantaged as they also suffer the trauma of being separated from their family and have to navigate the migration process alone/unassisted. Our current system fails to recognise and acknowledge the inherent vulnerabilities of children and young people in detention facilities.

In addition to the breach of the CRC the current system is in breach of the other human rights conventions and laws. It penalises desperate and vulnerable people who have committed no crime and are in need of protection and assistance. **headspace** believes that treating people with dignity and respect and presuming innocence rather than guilt helps to reinforce their trust in the system.

It is in line with our current mental health policy: prevention and intervention and a renewed focus on young people

“The irony is that the long-term impact of this system on children is likely to be borne by Australian society as a whole, since almost all children in detention centres eventually become members of the Australian community. They will carry the effects of their experience with them throughout their lives.”^{xxxiv}

Our current mental health policies have recognised the high rates of mental illness in young people and the benefits of prevention and early intervention with this age group. The current government has recognised this through generous financial support of these services. Young refugees are at increased risk of developing mental health issues compared to the general population. We know that detention causes and prolongs mental health problems in young refugees. Our immigration policies need to align with our health policies and recognise that by abolishing mandatory detention, this will prevent mental health problems occurring and provide access to early intervention programs to reduce the impact of mental health issues from pre-migration experiences. The continued policy of mandatory detention will result in long term mental health issues for young refugees and the need for more costly long term support and treatment. Research carried out by the Refugee Council of Australia has shown that refugees make important economic, civil and social contributions to Australian Society.^{xxxv}

headspace position and recommendations

headspace welcomes the Migration Amendment (Detention Reform and Procedural Fairness) Bill.

headspace position:

headspace acknowledges the inherent strengths of refugees and the potential contribution that refugee communities can make to Australia.

headspace believes that detention has serious detrimental effects on people's mental health.

headspace believes that children and young people should not be held in detention centres and should be allowed to integrate into the Australian community.

headspace believes that children and young people seeking asylum should be supported and protected.

headspace believes that any decision making process about children and young people should adopt the "best interests of the child" principle which is integral to the Convention on the Rights of the Child.

Recommendations:

The Bill is adopted in full.

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