

The Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

19 November 2010

Dear Secretary

Submission to the Senate Inquiry into the proposal for a Commonwealth Commissioner for Children and Young People

Introduction

Thank you for the opportunity to make a submission to this inquiry. I am a long term advocate for refugees and asylum seekers and have recently completed a doctoral thesis into the journeys of Iraqi refugees to Australia¹. My submission argues for the need for a Commonwealth Commissioner for Children and Young People based on the treatment of children and young people in the immigration detention system which includes asylum-seeking children and the children of visa overstayers.

It is somewhat baffling to me, and deeply disturbing, that the act of detaining children in prison-like and other environments appears to be acceptable to large sections of the Australian community, including many politicians.

SBS recently aired a documentary about the cruelties visited on Australian children raised in institutional care in the twentieth century until the 1980s². This reminded me that it was not that long ago when children were subject to abuse in a systemic manner that was widely supported by respected members of the community. That such things occurred was a reflection in part of the norms of the time.

There is no question in my mind that immigration detention is a form of state-sanctioned child abuse. The report by the Human Rights and Equal Opportunity Commission (HREOC) found that:

Australia's immigration detention laws, as administered by the Commonwealth, and applied to unauthorised arrival children, create a detention system that is fundamentally inconsistent with the Convention on the Rights of the Child (CRC).

....

Children in immigration detention for long periods of time are at high risk of serious mental harm. The Commonwealth's failure to implement the repeated recommendations by mental health professionals that certain children be removed from the detention environment with their parents amounted to cruel, inhumane and degrading treatment of those children in detention (CRC, article 37(a)).

It is notable that former HREOC Commissioner, Dr Sev Ozdowski, has spoken of being

¹ *Fear, Insecurity and Risk: Refugee journeys from Iraq to Australia*. PhD thesis, Murdoch University, Perth, under examination.

² *The Forgotten Australians* shown on 17 November 2010 on SBS.
<http://www.sbs.com.au/documentary/program/forgottenaustralians/about/synopsis>

warned by the then Immigration Minister of the consequences of conducting an inquiry into children in detention.

After HREOC approved the Terms of Reference for the Inquiry I met with Minister Ruddock and informed him of the Commission's decision. The Minister in response expressed his utmost displeasure in no uncertain terms. The Minister simply told me that "if you dare to conduct the Inquiry there will be no job for you as long as I sit around the Cabinet table".³

This is a reminder that unfortunately one cannot rely upon our elected representatives to make decent and moral judgements or to hold the interests of the most vulnerable above political considerations.

For this reason alone (and there are others that no doubt other submissions to this inquiry will canvass), I strongly support the call for an independent Commonwealth Commissioner for Children and Young People.

My research and the vulnerability of young asylum seekers

As part of my doctoral thesis, I considered the psychological affects of the refugee experience which can be considered as falling into three broad stages – pre-flight, the journey to safety, and post-arrival in the destination country.

The pre-flight experiences may include living under an authoritarian regime, war, torture, imprisonment and the death of loved ones. The journey to find safety typically means abandoning homes, jobs, family and social networks for an unknown future. It can necessitate travelling on false papers, sometimes reliant on people smugglers whose trustworthiness was questionable. Refugees seeking asylum may find themselves intercepted by authorities and detained in a country whose law, language and customs are unknown.

In short, they live for protracted periods under conditions of uncertainty and fear with high levels of stress. Research has shown that this has a detrimental and cumulative effect on psychological health, aspects of which can sometimes be irreversible. Therefore when a person is detained in an Australian detention centre, they have to cope not only with the stress of that environment but the cumulative effects of their experiences up to that point; they have been given no opportunity to recover from these. That is unlikely to occur until they feel safe and secure about their future. This is the situation of both parents and children.

Research has shown that when parents cope well, this offers some protection to the children. However when the parents are taken beyond their ability to cope – which prolonged detention can do – then there is no protection for the children.

Participants in my research spoke about children who are still exhibiting symptoms from being detained years earlier (this applies to adults also, some of whom became distressed recalling that time). At the time of writing there are over 800 children and young people in the immigration detention system. Hundreds of them are classed as unaccompanied minors. They have no adult caring for them.

³ Dr Ozdowski (2008) *An absence of human rights: Children in Detention*. Speech given at the Human Rights Law and Policy Conference, Melbourne.
http://www.uws.edu.au/equity_diversity/equity_and_diversity/tools_and_resources/reportsandpubs/an_absence_of_human_rights_children_in_detention HREOC was replaced by the Australian Human Rights Commission (the Commission) in 2008/9 with a reduction in powers and budget. Although HREOC undertook a major inquiry in 2002 and 2003 into children in immigration detention, this was an exceptional circumstance. The Commission, with its broad mandate and limited resources, cannot be relied upon to be an adequate voice for children.

The political dimension

These issues have been broadly canvassed for more than ten years. Numerous reports were provided to the Howard government (1996 to 2007) of the detrimental effect of detention upon children which were derided or ignored. I have referred above to the Immigration Minister's response to an inquiry into the system over which he had responsibility. It was only when it became politically unwise to deny the growing discontent about children in detention that changes were made in 2005.

Further changes to the detention regime were introduced after ALP came to power in 2007. Unfortunately, the numbers of children in detention have grown since then. While this government has not administered the detention system as harshly as occurred under the Howard government, people are locked up for long periods. Unrest in detention centres is growing, with increases in the incidence of self harm.

Refugee advocates have, with some difficulty, been able to find out the numbers and conditions of children in detention. When the media steps in, the problems are highlighted. However this comes months too late. One would hope that a Commissioner with special interest in children would be able to monitor the situation before it became critical and take steps to ameliorate it.

The issue of asylum seekers and detention centres is highly politicised with little regard given to the welfare of those detained. I believe that in a few short decades, Australians will look back on the incarceration of children and others in immigration detention in much the same way many Australians now view the stolen generation, the child migrants and the forgotten Australians. Perhaps if there had been a Commonwealth Commissioner for Children and Young People 50 years ago some of these abuses would not have occurred.

I would be pleased to provide further information to the Committee if required.

Yours sincerely

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