



**Hotham Mission
Asylum Seeker Project**



Monday, 28 May 2012

Julie Dennett
Committee Secretary
Senate Standing Committees on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Ms Dennett

Inquiry into the Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012

Hotham Mission Asylum Seeker Project (HMASP) thanks the Legal and Constitutional Affairs Legislation Committee for their invitation to make a submission to the parliamentary **Inquiry into the Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012**

Please find following the Hotham Mission Asylum Seeker Project's submission to the Inquiry.

If you have any questions please do not hesitate to contact me on _____, or by email

This submission is supported by International Detention Coalition (letter attached), Brotherhood of St Laurence (letter provided directly to you), Refugee Council of Australia (letter sent separately) and the Asylum Seeker Welcome Centre (letter attached)

Thank you for the opportunity to participate in this important inquiry.

Helga Svendsen
Chief Executive Officer
Hotham Mission Asylum Seeker Project

1. Who we are

Hotham Mission Asylum Seeker Project (HMASP) is based in Melbourne and works with asylum seekers who are lawfully awaiting an outcome on their refugee or humanitarian protection claim, but who face destitution without community support. HMASP provides: professional casework support; housing; a basic living allowance; help with utilities and emergencies; a volunteer program of one-to-one support ; men's and women's support groups; state and national policy advocacy; and research towards a better reception framework for the future.

In addition to providing housing and support to people seeking asylum in the community, HMASP also provides housing and support to unaccompanied minors, families and other vulnerable people seeking asylum who have been released from closed detention into community detention.

2. The proposed legislation

HMASP supports the proposed **Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012**

HMASP notes that the Bill refers to *children in Australia*. We are pleased to see this wording used in the Bill, as it means that all children in Australia, regardless of immigration status, will be within the remit of the Commissioner. This includes children seeking asylum who have been placed in closed or community detention, as well as children residing in the community who are seeking asylum.

We also note that the subsection 46MB(4) gives the Commissioner a discretion, when performing any of his or her functions, to focus on particular groups of children who are at risk or vulnerable. The explanatory memorandum accompanying the Bill names these groups as:

- children with a disability,
- Aboriginal and Torres Strait Islander children,
- homeless children or
- those who are witnessing or subjected to violence.

We strongly recommend that the following vulnerable group of children be added to this list:

- **children who are seeking asylum**

The following sections outline the reasons why children seeking asylum should be included in the Commissioner's focus as particularly vulnerable, and why their absence from this list, as it stands, is a serious omission.

3. Children in Detention

The detention of children breaches many covenants to which Australia is currently a signatory. The United Nations Convention on the Rights of the Child (CROC), adopted by the United Nations General Assembly in 1989, and signed by Australia in August 1990, gives children a comprehensive set of rights. The paramount obligation under the Convention is that States act in children's "best interests". This is set out in Article 3(1) of CROC which provides:

- 1. 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.*
- 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being*

The distress that detention causes to children, especially unaccompanied children is well documented in the 2004 HREOC Report *A Last Resort*. The report shows there is evidence from current and former detainee children and their parents, former ACM medical staff, department management reports, state child protection agencies, independent mental health experts, torture and trauma services and community groups involved with current and former detainees all confirming the detrimental impact that long term detention of children has on their mental health

The report also shows that unaccompanied children are particularly vulnerable to the actions of other adults in the detention compounds. They see the other adults committing acts of self harm in order to try and end their detention and the children mimic their actions.

The Victorian Foundation for the Survivors of Torture has reported children who were in detention for longer periods had significantly higher scores on the stress assessment schedule as the effect of length of stay appears to result predominantly from increased exposure to traumatic events within detention centres.

The HREOC Report confirmed that children in detention are likely to suffer from developmental problems, depression and post traumatic stress disorder and suicidal thoughts and acts of self harm. Again unaccompanied children are particularly vulnerable because they don't have the same familial support as accompanied children. This was recognised by one Doctor, who worked at Woomera, and stated to the 2004 HREOC inquiry:

I can only say that the longer they spent, the worse the effects that I saw. And that was in some way dependant on the age and the support, whether they were an unaccompanied minor or whether they simply still had the support of their parents or even one parent

In February 2012, there were 479 minors held in immigration detention facilities, and of these 254 were unaccompanied minors. There were a further 544 minors in community detention, of which 130 were unaccompanied minors. In total, there were 1,107 children seeking asylum in closed and community detention¹.

4. Children seeking asylum who are living lawfully in the community

Asylum seeker children in detention are only part of the picture of asylum children in this country. In addition to asylum seeker children held in detention, there are asylum seeker children living lawfully in the community with their parents while they wait for a decision on their case.

The issues facing these children, whilst different to the issues facing children in detention, are nonetheless critical.

In 2010/11, there were 1,566 dependents on people seeking asylum, who had arrived by plane and who were living in the community². Many of these dependents are children although the actual number of children who are seeking asylum whilst residing in the community is very difficult to estimate. Some family's applications for Permanent Residency can take many years. HMASP have had clients, including families with children, who have been in Australia for over ten years.

Asylum seeker children living lawfully in the community fall into the following categories:

Children in families who are awaiting a decision at the first two stages of the refugee determination process

Families who are awaiting a decision at the first two stages of the refugee determination process are deemed vulnerable if they have children under 18 years, and are therefore eligible for the Commonwealth funded Asylum Seeker Assistance Program (ASAS), administered by the Red Cross.

It is important to note, however that ASAS payments are currently 89% of a Centrelink Special Benefit payment which keeps asylum seekers below the poverty line. Also, families receiving ASAS payments are ineligible for any government concessions, including the Pharmaceutical Benefits Scheme. Finally, the ASAS scheme does not include housing support, so many asylum seeker families with children face homelessness as they face significant barriers to accessing government funded housing.

¹ Department of Immigration Citizenship at http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20120430.pdf

² Department of Immigration and Citizenship Asylum statistics – quarterly tables – March Quarter 2012 pg 5

Children in asylum seeker families who are appealing the Minister's decision on humanitarian grounds

To complete the picture, it is necessary to also consider children in families who are humanitarian appellants. A humanitarian appellant is a person who has not been found to be a refugee and who has appealed to the Minister for Immigration for humanitarian intervention to remain in Australia on humanitarian grounds. The number of people holding a Bridging Visa awaiting the outcome of a request for the Minister to intervene in December 2009 was around 1700³.

Critically, ASAS support is withdrawn from those families who are not successful following the Refugee Review Tribunal stage of the refugee determination process, leaving them with no income or supports for the later stages of the determination process. Families with children are left to rely on charity to support their children's most basic needs of food, shelter and healthcare.

The ASP has recently conducted research into the rights of children of humanitarian appellants living in the community with their family⁴. Research participants were clients of the Hotham Mission Asylum Seeker Project who held a Bridging Visa E at the ministerial stage of their application for protection and humanitarian processing.

The research found that many children did not have their most basic needs met and could not access their rights as per the CROC. A summary of the most troubling findings are as follows:

- **The right to social security**

None of the families studied received any kind of social security from the government. The dependent income for some was the Basic Living Allowance provided by Hotham Mission Asylum Seeker Project. This is \$33 per person per week; a modest sum, but extremely important for families who would otherwise have no income at all.

"You can't imagine. \$33 divided by 7. It's \$4.90 per day."

Parents reported extreme difficulty finding employment, whether due to a lack of suitable vacancies, illness or long-term physical and psychological health problems or visa constraints. Employers are not willing to take on employees who cannot commit beyond two or three months due to the visa renewal system. In only two cases had a parent succeeded in finding work, and only one of those had ongoing, stable employment.

³ Parliament of Australia, Question taken on notice, Additional Budget Estimates Hearing, 9 February 2010, Immigration and Citizenship Portfolio, (134) Program 3.1: Border Management. http://aph.gov.au/senate/committee/legcon_ctte/estimates/add_0910/diac/134_qon.pdf In the 2008–09 financial year 2816 requests for ministerial intervention were received under section 417 of the Migration Act: Department of Immigration and Citizenship, Annual Report 2008–09. <http://www.immi.gov.au/about/reports/annual/2008-09/html/>

⁴ See <http://hothammission.org.au>

Despite having the right to work, these parents are not entitled to any unemployment or illness benefit. If they were unable to secure employment, their family had no income. Neither are the children entitled to any type of social security regardless of the employment status of their parents. They are not entitled to Youth Allowance while studying like their peers.

Many parents felt their limited income impinged on the human rights of their children. All said that some form of financial support would be extremely useful in enabling them to provide a decent standard of living for their children. It would also enhance their dignity and autonomy by enabling parents to pay for things without being completely reliant on charity.

Every child has a right to social security. In fulfilling this right, Australia must “tak[e] into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child” (CROC Art. 26). The Committee on the Rights of the Child notes that social security and material assistance programmes enable children to enjoy their other human rights, including “a standard of living adequate for the child’s physical, mental, spiritual, moral and social development” (Art. 27).

- **The right to the highest attainable standard of health**

“It doesn’t matter who you are, I mean whether you are black, white, a citizen or a permanent resident, or an asylum seeker, you can get sick ... We should be able to see a doctor, it is our right . . . We all get sick and we should all get treatment. All of us are human beings.”

Health care was a major concern of the families participating in the study. All had experienced difficulty accessing doctors and other health professionals, and all reported instances of seeking medical attention for their children without success. One family, unable to take their fevered toddler to the doctor, had to settle for paracetamol. Most families were thankful their children had not experienced serious illness during their time in Australia, as they were extremely concerned about their ability to access treatment.

Approximately half of the families interviewed had access to Medicare at the time of the interview, while most had experienced periods with and without Medicare during their time in Australia. In either case, humanitarian appellants are not eligible for Health Care Cards or the Pharmaceutical Benefits Scheme.

Without Medicare, health care is expensive, and especially unaffordable to those without an income. When children become ill, families either go without, try to find a sympathetic doctor who is prepared to waive their fee, or approach a charity such as the Asylum Seeker Resource Centre (ASRC). Doctors, dentists and other healthcare professionals volunteer their services at the ASRC, and will refer as necessary. The ASRC also assists with medication and treatments. These services are available free of

charge to asylum seekers and humanitarian appellants without Medicare. It is often the sole way such children access medical care.

"It's wonderful. Otherwise we wouldn't be able to survive here in Australia. It's really hard."

However, the ASRC cannot meet the demand on its services so there is often a wait of multiple days for an appointment, which is not ideal when a child is ill. It can also be difficult for parents to take sick children to appointments when a long journey by public transport is involved.

Families on Medicare are able to see doctors and some health professionals, but often cannot afford medications prescribed. One father felt he was better off without Medicare, because at least he could then get treatment and medication from the ASRC. Lacking an income, he cannot afford to purchase medicines, limiting the usefulness of visiting the doctor.

Some further cases:

A woman with Medicare received healthcare during her pregnancy, but her son, once born, was not eligible for Medicare. Her partner tried for 12 months to enrol their son in Medicare, but the problem soon became irrelevant when the entire family was removed from Medicare. Not long after this, their one year-old son fell and knocked his head and was vomiting, and his parents were worried that he may have concussion or some other problem. It was late at night so they went to the emergency department of their local hospital and were sent to the GP across the road. The GP's fee was \$58. This family survives on a living allowance [from Hotham Mission Asylum Seeker Project] of \$33 per person per week. Fortunately, the boy did not require any treatment, because after paying for the doctor, they would not have been able to afford any medication.

A primary school-aged boy developed coughing and wheezing symptoms but his parents could not afford to take him to see a doctor. His mother had been diagnosed an asthmatic when previously on Medicare. The boy was able to use her medication which seemed to help. When the medication runs out, the family will not be able to obtain a new prescription unless Medicare is reinstated.

An adolescent girl had a severe toothache but could not afford to see a dentist. She tried going to a community health centre, but was told they couldn't see her without a Health Care Card.

The *Convention on the Rights of the Child* is unequivocal: Australia must ensure that no child is denied access to "facilities for the treatment of illness and rehabilitation of health" (CROC Art. 24 (1)).

‘Access’ is understood broadly by the Committee on the Rights of the Child: “Health facilities, goods and services should be known and easily accessible (economically, physically and socially) to all.”⁵

Medicare was made available to some humanitarian appellants in July 2009, but not all, while all are excluded from the Pharmaceutical Benefits Scheme. Humanitarian appellant families unable to afford health care and pharmaceuticals are unlikely to enjoy the “highest attainable standard of health” as is their right.

- **The right to an adequate standard of living**

The CROC obliges Australia to “take appropriate measures to assist parents and others responsible for [children] to implement this right [to an adequate standard of living] and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing” (Art. 27(3)). The Committee on the Rights of the Child interprets this to mean “all possible means should be employed . . . to assure to young children a basic standard of living consistent with rights, including “implementing children’s right to benefit from social security,”⁶ as discussed above.

The present research exposed serious shortfalls in appellant children’s standard of living.

- **The right to food**

Malnutrition [has] long-term impacts on children’s physical health and development . . . inhibiting learning and social participation and reducing prospects for realizing their potential.— UN Committee on the Rights of the Child⁷

All families reported that their main source of food and household items was charities. The Hotham Mission Asylum Seeker Project and the ASRC both provide food, clothing and other material assistance that humanitarian appellant children would otherwise not be able to afford. Many families said they would simply be unable to eat were it not for this assistance.

These NGOs typically provide non-perishable food only, such as oil and sugar, tinned and dried food. Most families interviewed had difficulty obtaining fresh food such as fruit and vegetables, meat and dairy. Most were concerned about the lack of fresh food in their children’s diets and the nutritional consequences. One mother said her children would love to be able to drink fresh milk and juice but she was only occasionally able to obtain them.

⁵ Committee on the Rights of the Child (2003a) para. 41(d).

⁶ Committee on the Rights of the Child (2005b), para. 26.

⁷ *ibid.*, para. 27(a).

"You can't really buy things you like when you have no income. You survive on what you can get."

A father was concerned about the nutrition and development of his two year-old son, who had never had ready access to fresh food. Fortunately, the child's mother was able to continue to breastfeed him. The father went to a charity once a week, at a considerable distance, to obtain nappies and food items. The family was completely reliant on this food source, so he could not afford to miss a week due to illness or any other reason. Even with this assistance, it was sometimes difficult to feed the entire family; the parents often went without meals to ensure that their son had enough to eat.

"We have to feed our child. Doesn't matter if we don't have breakfast, lunch or dinner. Sometimes we need to sacrifice our meals for him. We have to."

Relying completely on charities which, in turn, depend on unreliable resources and donations, these families cannot be said to enjoy food security. The right to food is essential to their right to health, to an adequate standard of living and to life, survival and development (Art. 6), one of the four guiding principles of the CROC. Australia must respect, protect and promote the right of children to a standard of living adequate for their development (Art. 27) and take appropriate measures to combat disease and malnutrition "through the provision of adequate nutritious foods" for all children within its jurisdiction (Art. 24(2)).

- **The right to housing**

"Otherwise, I sleep in the car. A horrible life, you know?"

Currently there is no government-subsidised housing provided to asylum seekers or humanitarian appellants in Australia who live in the community on bridging visas.

Asylum seekers are unable to access government funded transitional housing, as they are not entitled to Centrelink payments, and so have no "exit plan", or way of moving on at the end of the transitional period. This makes them ineligible for this kind of housing, which is a major part of the National Homelessness Strategy.

Many children seeking asylum are housed by charitable agencies, such as HMASP. This housing is often insecure as it is provided by a donor, free of charge, and may be taken back at any time.

5. Conclusion

A right is of little value unless there is some means of enforcing that right, and for every human right, there are rights-holders and duty-bearers. The State, in all its manifestations, has primary responsibility to respect, protect and fulfil human rights.

The rights of people seeking asylum are often invisible areas of public policy which sit outside an immigration setting. It is important that the rights of children seeking asylum in Australia are included when drafting legislation that seeks to protect children's rights. As this submission has shown, children seeking asylum are a particularly vulnerable group, whose rights need protection.

In Australia, the term 'asylum seeker' refers to a person who has applied for a protection visa and who may be at any stage in the determination or appeals process, however the issues facing children of asylum seekers may depend upon whether they are in detention, residing in the community while their family awaits a decision, or are part of a family who has not been found to be a refugee and who has appealed to the Minister for Immigration for humanitarian intervention to remain in Australia on humanitarian grounds.

The issues facing children in these three groups differ, and these children would greatly benefit from an independent statutory office to advocate at a national level for their needs, rights and views. The expansion of the list of children referred to in the Explanatory Memorandum for the Bill (subsection 46MB(4)) should be expanded to include children seeking asylum, so that this vulnerable group of children's specific needs are acknowledged.