

Ananda Van Boeyen

June 15, 2004

The Secretary  
Senate Community Affairs References Committee  
Suite S1 59  
Parliament House  
CANBERA ACT 2600

Dear Sir / Madam

**Senate Community Affairs References Committee Inquiry  
Into Children In Institutional Care**

It is with pleasure that I enclose a submission in response to your invitation.

The submission highlights unsafe practices that have occurred in immigration detention centres across Australia and breaches of any relevant statutory obligation.

As a 21 year old student I hope that this submission will be seen as a reflection of the concern and interest that the youth of today have for our country.

I thank you for the opportunity to write this submission and I am more than happy to answer any questions. Should you seek any further information please do so via email at [ananda-johanna.vanboeyen@studentmail.newcastle.edu.au](mailto:ananda-johanna.vanboeyen@studentmail.newcastle.edu.au).

I hope that this information will be helpful to you.

Yours sincerely

Ananda Van Boeyen

## **1. EXECUTIVE SUMMARY:**

Of all the members in society children are one of the most, if not most vulnerable to abuse and neglect. Children in immigration centres are not only vulnerable to abuse and neglect but also have needs that are beyond the established needs of a child.

The estimate of the scale of unsafe and improper activities in immigration detention centres is wide – ranging and comprehensive due to language barriers and the systems of reporting mechanisms that are in place.

This submission calls for children in immigration detention centres to be treated with the upmost care and as children who are in extraordinary conditions. The key recommendation being that children are to removed form any form of accommodation that intends to act or inadvertently act as a detention centre or prison and placed in alternative arrangements including Residential Housing Projects, foster care arrangements and community-care placements. This submission calls that that the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) has not effectively implemented alternative arrangements due to the number of children that still remain in detention centres.

## **2. INTRODUCTION:**

I am writing this submission as an Australian born student who has been given all the opportunities of education, freedom of speech and the liberty to choose my own religion. This includes the freedom to write this submission with no ramifications. It is with these liberties that I feel a strong sense of responsibility

to advocate for those who have not been so fortunate.

The events that have occurred in detention centres have been made aware to me through media attention. The standards of living that have been portrayed in these institutions are inhumane and personally beyond any level of comprehension. It is understood that the government has the responsibility to ensure that people do not enter our country unlawfully and as a 'sovereign country Australia has the right to decide who is allowed to enter and stay in our country'.<sup>1</sup> In spite of this, I believe that the government should perform these rights in accordance to fundamental human rights and to treat all children in immigration institutions with the care and knowledge that they are children with special needs who are being placed in extraordinary conditions.

The Terms of reference that this submission wishes to address are:

- 1. (a) (iii) *“an estimate of the scale of any unsafe, improper, or unlawful care or treatment of children in such institutions or places;”***
  
- 2. (a) (ii) *“whether any serious breach of any relevant statutory obligation occurred at any time when children were in care or under protection and”***
  
- (a) (iii) *“an estimate of the scale of any unsafe, improper, or unlawful care or treatment of children in such institutions or places;”***

### **3. BACKGROUND:**

Australia's Migration Act 1958 requires that all non-Australian citizens who are unlawfully in Australia be detained.<sup>2</sup> Those who are detained include people who are unlawful non-citizens because they have arrived in Australia

without a visa, overstayed their visa, or had their visa cancelled.<sup>3</sup>

Detention services are provided in accordance with the Immigration Detention Standards (IDS) developed by the department in consultation with the Commonwealth Ombudsman's office and the Human Rights and Equal Opportunity Commission.<sup>4</sup> The IDS specify the standard of facilities, services and programs at detention centres including the requirement to provide safe and secure detention, this includes the requirement that 'respect for and the dignity of immigration detainees is to be observed and maintained in culturally, linguistically, gender and age appropriate ways'.<sup>5</sup>

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) states that children are detained only as a last resort in immigration detention centres.<sup>6</sup> Despite this fact while this submission was being written there were still 86 children in immigration detention in.<sup>7</sup> In addition to this a total of 976 children were in immigration detention in 1999-2000, 1,923 children in 2000-2001, 1,696 children in 2001-2002 and 703 children in 2002-2003.<sup>8</sup>

The DIMIA have announced that they developed a number of innovative approaches to provide appropriate alternatives to long-term residence in an immigration detention centre for those detainees with specialised needs including children.<sup>9</sup> This includes the establishment of Residential Housing Projects, foster care arrangements with state child welfare authorities and community-care placements for people with special needs.<sup>10</sup>

Despite this in 2003, 12 children were still detained more than three years and the longest a child has ever been detained in immigration detention is five years

(the last resort).<sup>11</sup> These figures are alarming and more distressing due to the fact that more than 92 % of all children arriving by boat since 1999 have been recognised by Australian authorities to be refugees<sup>12</sup>, including the child that was detained for five years and five months.<sup>13</sup> For this reason this submission calls that alternative arrangements have not been effectively implemented and that there is an inadequate system of process for arriving illegal immigrants.

#### **4. TERMS OF REFERENCE:**

##### **4.1 (a) (i) *“whether any unsafe, improper, or unlawful care or treatment of children occurred in these institutions or places”***

The incidents that have been shown through the media are valid evidence that unsafe and improper treatment of children have occurred at detention centres throughout Australia. These incidents include riots and children being exposed to violent detainees and protesters. Despite this there are a number of other incidents that have occurred that the public have not made witness and been exposed too though the media. The national inquiry into children in immigration detention centres - a last resort recorded the number of unsafe and improper care of children that have occurred:

1. Between July and December 2001 there were 25 incidents of self harm and 19 alleged, actual or attempted assaults involving children across detention centres across all detention centres.<sup>14</sup>

2. Between January and June 2002 there were 25 incidents of self harm and 16 alleged, actual or attempted assaults involving children across detention centres across all detention centres.<sup>15</sup>

3. In January 2002 more than 30 children participated in hunger strikes at the Woomera detention centre alone and two unaccompanied children swallowed shampoo and detergent.<sup>16</sup>

In addition to this children were present and or actively participating in riots at Woomera during Easter 2002 were detainees climbed onto roofs, threatened to set themselves on fire, used fencing, bricks and rocks as weapons and while water cannons and tear gas was being used to subdue detainees.<sup>17</sup>

**Recommendations:**

- That the service provider remove all children from riots should they occur including attempted acts of violence and or suicide attempts unless removing them would cause any further harm or danger.
- That the service provider ensures that appropriate conditions for children are in place and that children are under constant supervision so as to prevent and detect the intention and application of hunger strikes and suicide attempts.
- That the service provider counsel children whether they are directly or indirectly involved in a hunger strike, suicide attempt, riot, alleged, actual or attempted assaults or any other form of violence. The counselling sessions are determined by how many times it requires for the children to fully recover and understand such an event.
- That the service provider informs children that the events are not customary and should be prevented at all costs.

**4.1 (a) (ii) “whether any serious breach of any relevant statutory obligation occurred at any time when children were in care or under protection and”**

All actions relating to the detention and care of detainees are to be consistent with relevant Commonwealth and State/territory laws.<sup>18</sup> The service provider is to efficiently manage the operations related to the detention function as a contracted agent of the DIMIA although the ultimate responsibility for the detainees remains with the DIMIA at all times.<sup>19</sup> For this reason any breach of statutory obligation in this submission is made against the DIMIA not an individual person. This submission treats any breach of statutory obligation as serious. The breaches put forward are for the senate to consider, rather than to be seen as accusations or finger pointing.

1. Under the Migration act (1958) unlawfully being in Australia is an act of crime, for this reason it is a commonwealth offence therefore any procedures must be compliant with the CRIMES ACT 1914.<sup>20</sup> This submission puts forward that the DIMIA is breaching SECT 3ZQH by not carrying out the procedure in a manner consistent with appropriate medical standards and other relevant professional standards.<sup>21</sup> The breach is put forward due to the fact that medical attention exceeds demand and that language barriers between the children and medical staff are compromising correct diagnosis of health conditions. Children of all races and in all conditions find medical examinations daunting and children in detention centres are doing so in extraordinary circumstances.

2. This submission puts forward that the DIMIA has breached the CRIMINAL CODE ACT 1995 - SECT 5.5 Negligence.<sup>22</sup> Whereby a person is negligent with respect to a physical element of an offence if his or her conduct involves,  
(a) such a great falling short of the standard of care that a reasonable person

would exercise in the circumstances; and (b) such a high risk that the physical element exists or will exist.<sup>23</sup>

The submission calls that the DIMIA has breached (a) due to the fact that insufficient care has taken place to prevent children from harm. Evidence of this is children being present at riots and other acts of violence. Furthermore the submission calls that the DIMIA has breached (b) due to the fact that children have participated in hunger strikes and self-harm, including two unoccupied children swallowing shampoo and disinfectant and a child physically cutting the word 'freedom' into his arm.<sup>24</sup>

It is understood that ultimately these acts are self inflicted and in cases where children are under their parent's supervision, it is the parent's responsibility as well. Despite this, the submission calls that due to the standards of living in the detention centres it is difficult for optimum parent supervision to occur. In addition, there is a lack of appropriate measures preventing unsafe incidents from occurring, including measures of reparation if unfortunate events have already occurred.

3. This submission puts forward that the DIMIA has breached CRIMES ACT 1914 - SECT 4M, whereby a child under 10 years old cannot be liable for an offence against a law of the Commonwealth.<sup>25</sup>

The immigration act 1958 act requires that all non-Australian citizens are unlawfully in Australia, there fore have to be detained.<sup>26</sup> The submission calls that if the equivalent belief behind the CRIMES ACT – SECT 4M are to be applied to illegal children under 10, the children are not responsible for their crime. Particularly children that have arrived in Australia without their parents.

For this reason the DIMIA is breaching CRIMES ACT –SECT 4M because children under the age of 10 are not accountable for their offence.

4. The *Convention of the Rights of the Child* is not statutory obligation, despite this it is the responsibility of the Federal Government to ensure that legislation and policy comply with the Convention<sup>27</sup>. This submission calls that the DIMIA have not ensured that their policies comply with;

the best interests of the child shall be primary consideration (article 3, 1), a child who is seeking refugee status or who is considered a refugee receive appropriate protection and humanitarian assistance (article 22, 1) and the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time (article 37, b).<sup>28</sup>

**Recommendations:**

- That the DIMIA ensure appropriate medical standards are in place for children and that medical staff use the language of each individual child to ensure that correct diagnosis is achieved. So that the child feels comfortable and understands each procedure including regular examinations.
- That the DIMIA readdress the contradiction that the CRIMES ACT 1914 presents in relation to the detention of children under the age of 10.
- That the DIMIA remove all children who are currently in detention conditions under the age of 10 outside of detention conditions and rather placed in substitute if it is in the best interests of the child.

- That the DIMIA provide appropriate visitation rights to parents and children in the event of a child being removed from the detention centre away from their parents.
- That the *Conventions of the Rights of the Child* be incorporated into legislation.

**4.1 (a) (iii) “an estimate of the scale of any unsafe, improper, or unlawful care or treatment of children in such institutions or places;”**

The scale of unsafe, improper or unlawful care of children is wide- ranging, and very difficult to measure due to language barriers and the absence of on going inquires. Despite this it is estimated the scale of damage could become as large as past findings, including the *Lost innocents: Righting the Records* inquiry into child migrants<sup>29</sup>.

**Recommendations:**

- That the DIMIA remove all children from any form of accommodation that intends to act or inadvertently act as a detention centre or prison and place the children in alternative arrangements including Residential Housing Projects, foster care arrangements and community-care placements. Providing that it is in the best interest of the child.
- That the DIMIA establish appropriate counselling services and other related services for children to ensure a healthy assimilation into society and out of detentions centres once their refugee status has been decided.

## 5. END NOTES:

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<sup>1</sup> Australian Human Rights and Equal Opportunity Commission (2004) *A Last Resort: A summary guide to the National Inquiry into Children in Immigration Detention*, p18, retrieved from: [http://www.hreoc.gov.au/human\\_rights/children\\_detention\\_report/summaryguide/index.html](http://www.hreoc.gov.au/human_rights/children_detention_report/summaryguide/index.html)

<sup>2</sup> Department of Immigration and Multicultural Indigenous Affairs (nd) *Immigration Detention Standards - Principles Underlying Care and Security*, p1, retrieved from: [http://www.immigration.gov.au/illegals/det\\_standards.htm](http://www.immigration.gov.au/illegals/det_standards.htm)

<sup>3</sup> Department of Immigration and Multicultural Affairs (nd) *Immigration Detention*, p1, retrieved from: <http://www.immi.gov.au/detention/index.htm>.

<sup>4</sup> Department of Immigration and Multicultural Indigenous Affairs, *Women and Children in Immigration Detention*, p1, retrieved from: <http://www.immi.gov.au/detention/women.htm>.

<sup>5</sup> *ibid.*, p. 1.

<sup>6</sup> *ibid.*, p. 1.

<sup>7</sup> ABC Online, *Child detention breaches UN convention: human rights report*, May 8, 2004, retrieved from: <http://www.abc.net.au/cgi-bin/common/printfriendly.pl?http%3A//www.abc.net.au/news/newsitems/>

<sup>8</sup> Australian Human Rights and Equal Opportunity Commission, *op. cit.*, p. 8.

<sup>9</sup> Department of Immigration and Multicultural Indigenous Affairs, *Women and Children in Immigration Detention*, p2, retrieved from: <http://www.immi.gov.au/detention/women.htm>.

<sup>10</sup> *ibid.*, p. 2.

<sup>11</sup> Australian Human Rights and Equal Opportunity Commission, *op. cit.*, p. 8.

<sup>12</sup> Australian Human Rights and Equal Opportunity Commission, *op. cit.*, p. 2.

<sup>13</sup> Australian Human Rights and Equal Opportunity Commission, *op. cit.*, p. 8.

<sup>14</sup> Australian Human Rights and Equal Opportunity Commission, *op. cit.*, p. 22.

<sup>15</sup> Australian Human Rights and Equal Opportunity Commission, *op. cit.*, p. 23.

<sup>16</sup> Australian Human Rights and Equal Opportunity Commission. *op. cit.*, p. 25.

<sup>17</sup> Australian Human Rights and Equal Opportunity Commission, *op. cit.*, p. 25.

<sup>18</sup> Department of Immigration and Multicultural Indigenous Affairs (nd) *Immigration Detention Standards - Principles Underlying Care and Security*, p1, retrieved from: [http://www.immigration.gov.au/illegals/det\\_standards.htm](http://www.immigration.gov.au/illegals/det_standards.htm)

<sup>19</sup> *ibid.*, p. 1

<sup>20</sup> Scale Plus: Law Resource (nd) *Crimes Act 1914*, to find go to: <http://scaletext.law.gov.au/> and key word: [crimes act 1914 sect 3ZQH](http://scaletext.law.gov.au/), p.1.

<sup>21</sup> *ibid.*, p. 1.

<sup>22</sup> Commonwealth Consolidated Acts (nd) *CRIMINAL CODE ACT 1995 – SCHEDULE*, p4, retrieved from: [http://bar.austlii.edu.au/au/legis/cth/consol\\_act/cca1995115/sch1.html](http://bar.austlii.edu.au/au/legis/cth/consol_act/cca1995115/sch1.html)

<sup>23</sup> *ibid.*, p. 4.

<sup>24</sup> Australian Human Rights and Equal Opportunity Commission, *op. cit.*, p. 25.

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<sup>25</sup> Commonwealth Consolidated Acts (nd) *CRIMES ACT 1914 - SECT 4M: Children under 10*, p1, retrieved from: [http://www.austlii.edu.au/au/legis/cth/consol\\_act/ca191482/s4m.html](http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s4m.html)

<sup>26</sup> Department of Immigration and Multicultural Indigenous Affairs (nd) *Immigration Detention*, p1, retrieved from: [http://www.immigration.gov.au/illegals/det\\_standards.htm](http://www.immigration.gov.au/illegals/det_standards.htm)detention standards

<sup>27</sup> The Parliament of the Commonwealth of Australia (nd) *Joint Standing Committee on treaties: the Convention on the Rights of a Child*, p3, retrieved from: <http://www.aph.gov.au/house/committee/jsct/reports/report17/rept17ex.pdf>

<sup>28</sup> Refugee Action Committee (nd) *How Australia Violates Human Rights*, p3, retrieved from: <http://www.refugeeaction.org/policy/violates.htm>

<sup>29</sup> Australian Parliament. Senate. Community Affairs Reference Committee (2001) *Lost Innocents: Righting the Records inquiry into child migrants*, Canberra: Senate Community Affairs References Committee Secretariat.