

# SENATE STANDING COMMITTEE ON COMMUNITY AFFAIRS

concerning the

## Commonwealth Commissioner for Children and Young People Bill 2010

### SUBMISSION

by Tony Arch

#### **Introduction**

Currently, there are approximately 800 children and teenagers held in immigration detention around Australia and Christmas Island. Around half of those children and teenagers are unaccompanied minors (UAMs) who are travelling alone with no parent or guardian. These UAMs range in age from 9 to 17 years . At 18 years they are deemed to be adult and moved to a Detention Centre in most cases. Many of these children bear the physical, mental and emotional scars of abuse, having seen family members killed and suffered persecution both in their countries of origin and en route to Australia. The Minister for Immigration and Citizenship, The Honourable Chris Bowen MP (the Minister), has recently acknowledged that immigration detention centres are not suitable institutions of care for children given that “protracted detention can have negative impacts on their development and mental health”. The government has subsequently commenced a program of staged release of children from detention into community-based accommodation.

Among the aforementioned group are 5 teenage girls UAMs. Two are in the Construction Camp with hundreds of boys, men, families and the Indonesian crew of the fishing boats which brought them to Australia. There are two Life Without Barriers workers to provide care for over two hundred UAMS including the girls in the Construction Camp on Christmas island. Three teenage girls in the Darwin Airport Lodge in a room in the family section alongside families, with whom they do not share a culture or language, and over 200 boys. One of the girls is terrified and weeping constantly. She arrived by air in Melbourne, was kept in a motel guarded by Department of Immigration and Citizenship for weeks and then taken to Darwin. Her father was taken by the Taliban and her school attacked - unspeakable things were done to the Principal of the school. She is now alone among hundreds of strangers.

The Minister as Guardian has been notified that these girls are at risk. All the key agencies have been notified. Weeks later - nothing has been done. There is as yet no policy for the care and protection of Girl UAMs because they arrive so seldom.

#### **International Legal Obligations**

As a signatory to the various International Conventions relating to Human Rights, including those of children under the Convention on the Rights of the Child 1989 (CRC), and Refugees, Australia is obligated to protect individuals and groups against human rights abuses and to take positive action to

facilitate the enjoyment of basic human rights, which include the right to life, liberty and security of person, freedom from arbitrary arrest or detention, and the right to equal protection of the law.

Australia as a Duty Bearer has explicit obligations under international human rights conventions to “respect, protect and fulfill children's rights” as outlined in the CRC. Article 20 of the CRC clearly states, “a child temporarily or permanently deprived of his or her family environment...shall be entitled to special protection and assistance provided by the State”, which “shall in accordance with their national laws ensure **alternative care for such a child**”, which “could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children”. Article 22 states that States Parties shall ensure that “a child who is seeking refugee status...whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.” Article 37 of the Convention states that holding children in detention shall be used **as a measure of last resort and only for the shortest possible time.**

Australia is therefore in breach of the CRC and its own Migration Act. Australia is not devoid of humanitarian options for housing children seeking refugee status, as the Minister's own recent announcement demonstrates.

#### **Recommendation**

If Australia had an Office of the Commonwealth Commissioner for Children and Young People, there would be an appropriate statutory authority to ensure that the proposed Object of the Act is fulfilled for all children, particularly in assisting Australia to meet its international obligations under the United Nations Convention on the Rights of the Child. Having children's rights to protection enshrined in Australian law will ensure that future UAMs like the aforementioned, particularly the girls in question who are at immediate risk, will not be placed in potentially physically, mentally and emotionally damaging or dangerous situations.

I therefore support:

1. the establishing of a Commissioner for Children and Young People to protect the rights of children
2. the establishing of a *Commonwealth Commissioner for Children and Young People Act 2010* to protect the rights of children
3. the functions and powers of the Commissioner applying to “all children and young people in Australia, including every external territory, regardless of their citizenship or residency status”, as defined under the proposed Bill under Part 2 — Office of the Commonwealth Commissioner for Children and Young People, Division 2, 9 Functions and powers of Commissioner, (3)(c).

-----