



**AUSTRALIAN CATHOLIC BISHOPS CONFERENCE**  
**Australian Catholic Migrant and Refugee Office**



**Submission to the  
Senate Legal and Constitutional Affairs Legislation Committee  
on the  
Guardian for Unaccompanied Children Bill 2014**

23 October 2014

**Introduction**

The Australian Catholic Bishops Conference (ACBC) is a permanent institution of the Catholic Church in Australia and the instrumentality used by the Australian Catholic Bishops to act nationally and address issues of national significance.

The Australian Catholic Migrant and Refugee Office (ACMRO) was established by the ACBC on 1 July 1995. The work of the Office is to advise and serve the ACBC at both a national and international level on migrant and refugee issues, including the development of Church policy. ACMRO acts as an official Church voice as approved by the Bishops Conference on issues relating to migrants and refugees.

The Catholic Church contributes in a wide variety of ways across the spectrum of Australian society. As an integral part of its core mission, the Church seeks to assist people experience the fullness of life. It is concerned with all that impacts on human wellbeing.

The Catholic Church through its various entities provides pastoral care to asylum seekers in detention facilities throughout Australia's detention network, works with asylum seekers in the community and educational facilities, provides pastoral and resettlement services including counselling and specialist care and conducts various research and advocacy campaigns to promote the human dignity of asylum seekers.

**Summary**

ACMRO will argue that:

- The Minister for Immigration and Border Protection has a fundamental conflict of interest acting as legal guardian for unaccompanied children in detention when the Minister also has responsibility for Operation Sovereign Borders;
- Children and their representatives are reluctant to speak out about the difficulties of their situation when their legal guardian is also responsible for their detention and for decisions on their immigration status; and
- An independent legal guardian should be a person or organisation that has a track record of using participatory methods to listen to and work with children. The

guardian should operate with regard to the United Nations Convention on the Rights of the Child.

ACMRO fully supports the *Guardian for Unaccompanied Children Bill 2014*.

### **What the Catholic Church teaches on Asylum and migration**

The Catholic Church teaches that all people have the right to live a dignified life in their homeland.<sup>i</sup> Tragically, over 45 million people around the world are displaced.<sup>ii</sup> This festering wound typifies and reveals the imbalances and conflicts of the modern world.<sup>iii</sup> War, natural calamities, persecution and discrimination of every kind have deprived millions of their home, employment, family and homeland.<sup>iv</sup>

Anyone whose life is threatened has the right to protection.<sup>v</sup> Whether because of persecution, armed conflicts, natural disasters, or economic conditions that threaten their lives or physical integrity. It is the element of persecution, threat or danger, or being forcibly displaced that gives rise to a right to seek asylum rather than to migrate through ordinary channels.<sup>vi</sup>

Human life is sacred because each person is created in the image and likeness of God<sup>vii</sup>. Human dignity is inalienable<sup>viii</sup>. The human dignity and human rights of asylum seekers must be respected, regardless of their citizenship, visa status or mode of arrival.<sup>ix</sup>

The demands of human dignity always come before the national interest.<sup>x</sup> All nations have a right to regulate migration across their borders.<sup>xi</sup> This right is coupled with the duty to protect and help innocent victims and those fleeing for their lives.<sup>xii</sup> The right of nations to regulate their borders is an extension of the right of all persons to live a dignified life in their community. Borders are for the protection of people, not for the exclusion of people seeking protection.<sup>xiii</sup>

The purpose of the law is to serve justice and mercy (c.f. Matthew 23:23). Laws which subject asylum seekers to arbitrary and prolonged immigration detention or banish them from seeking protection, fail to uphold justice and mercy and are immoral. It is not illegal to seek asylum<sup>xiv</sup>. Many asylum seekers are survivors of crimes, torture and trauma. Indefinite detention adds further stress and suffering, impacting on their mental and physical health. The Catholic Church advocates the implementation of just and rapid procedures to determine each person's claim for protection.

Every nation has a duty to protect the family unit from marginalisation, disintegration and to provide the necessary social services to empower each family to live a peaceful and dignified life together.

### **Background to our submission**

This submission is informed by interviews with people who have been held in immigration detention, various pastoral agents who have visited people in immigration detention, the professional experience of members of the Catholic community, various Catholic agencies and the staff of ACMRO. Many people who were interviewed in preparation of this submission expressed acute feelings of apprehension and fear that speaking out would make conditions worse for people in detention or for pastoral visits.

ACMRO is concerned that the cruel treatment of asylum seekers is eroding Australia's rule of law. Many people are fearful of our own government as it appears to be acting out of a fierce determination to punish asylum seekers and is willing to manoeuvre around the law or disregard it completely. Australia's treatment of asylum seekers reflects the violence and oppression which asylum seekers were subject to in their homeland.

There is a real danger that Australia is, even if unintentionally, practicing an oppressive culture by degrading the human dignity of a vulnerable group. How Australia treats asylum seekers speaks volumes about how much we respect diversity and the lives of others in our own society. Asylum seekers should be treated compassionately as an important part of maintaining Australia's social cohesion, cultural respect for human rights and our multicultural integrity.

As a universal organisation the church is witness to the heartbreaking plight of millions of children around the world who have been forcibly displaced. The detention of children exacerbates a global concern and does nothing to contribute to humanity. In our view the Australian government is failing to uphold the human dignity of children in immigration detention. We are gravely concerned that children are placed in immigration detention for political gain and as a deterrent effect to people considering seeking asylum in Australia. This is immoral.

### **The guardianship of unaccompanied children in detention in Australia**

In our view the Minister for Immigration and Border Protection should not be the legal guardian for unaccompanied children in detention. The current asylum policy employs a military style approach to prevent asylum seekers reaching Australia. It places the objective of stopping the boats over the duty to safeguard and protect children. This style of response lacks compassion, empathy and fails to see children well cared for.

The responsibility for implementing Operation Sovereign Borders directly conflicts with the responsibility for the legal guardianship of children seeking asylum. The situation demands alternative steps be taken to ensure unaccompanied children in detention are legally protected by a guardian who is independent of the political environment. This is imperative.

Particularly problematic in assigning guardianship to the immigration minister is that it inhibits children's full participation in decision-making processes. Our pastoral workers report that many children and their representatives expressed acute feelings of apprehension when being interviewed and were worried that their situation might worsen as a result of speaking out.

Evidence heard by the Australian Human Rights Commission in its recent inquiry into children in detention further emphasises the fear associated with the minister for immigration and current policies. The ability for unaccompanied minors to participate in decision-making processes is essential if we are to empower them, meet their needs and help them to participate as members of the community.

Participation in decision-making processes is also a fundamental right as is stipulated in this Bill as well as in the United Nations Convention on the Right of the Child. (Article 12).

ACMRO therefore strongly recommends that the independent Guardian should be an individual or organisation that has a track record of using participatory methods to listen and work with children. They should have full understanding and expertise in implementing the

Convention of the Rights of the Child. By using the Convention on the Rights of the Child as a guide, we ensure that the human rights implemented are in line with international standards. The Convention further encourages positive outcomes to be continually sought in delivering inalienable rights to unaccompanied children. This will allow their childhood to be best lived out and enjoyed.

ACMRO fully supports the *Guardian for Unaccompanied Children Bill 2014*.

ACMRO reiterates the need for an independent and consistent body with experience and expertise in safeguarding the rights of children.

Sincerely yours in Christ,

Fr Maurizio Pettena,  
National Director  
Australian Catholic Migrant and Refugee Office

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<sup>i</sup> “No one would exchange his country for a foreign land if his own afforded him the means of living a decent and happy life” (Pope Leo XIII, *Rerum Novarum [On Capital and Labor]* [May 15, 1891], no. 47. Retrieved from Vatican website: [www.vatican.va](http://www.vatican.va)). Pope Pius XII Apostolic Constitution *Exsul Familia Nazarethana* (The Holy Family in Exile), 1 August 1952. Pope John XXIII, *Pacem in Terris (Peace on Earth)* (April 11, 1963) (Washington, D.C.: USCCB, 1963), no. 25.

<sup>ii</sup> UNHCR Global Trends Report 2012.

<sup>iii</sup> Pope John Paul II, *Sollicitudo Rei Socialis (On Social Concern)* (December 30, 1987) (Washington, D.C.: USCCB, 1988), no. 24.

<sup>iv</sup> Ibid

<sup>v</sup> Pope John Paul II, Migration with a View to Peace, Message, For the 90<sup>th</sup> World Day of Migrants and Refugees 2004.

<sup>vi</sup> Welcoming Christ in Refugees and Forcibly Displaced Persons, Pastoral Guidelines Pontifical Council for the Pastoral Care of Migrants and Itinerant People and Pontifical Council Cor Unum, Vatican City, 2013, N 61.

<sup>vii</sup> Compendium of the Social Doctrine of the Church, Pontifical Council for Justice and Peace, 2005, n 108.

<sup>viii</sup> Ibid, n 105.

<sup>ix</sup> Welcoming Christ in Refugees and Forcibly Displaced Persons, Pastoral Guidelines Pontifical Council for the Pastoral Care of Migrants and Itinerant People and Pontifical Council Cor Unum, Vatican City, 2013, N 60-61.

<sup>x</sup> Ibid, N 14. (cf Refugees: A Challenge to Solidarity, Pontifical Council for the Pastoral Care of Migrants and Itinerant People and Pontifical Council Cor Unum, Vatican City 1992, n 9.) Compendium of the Social Doctrine of the Church, Pontifical Council for Justice and Peace, 2005, n 106-7.

<sup>xi</sup> Pope Benedict XVI *One Human Family*, Message 97<sup>th</sup> World Day of Migrants & Refugees 2011.

<sup>xii</sup> Compendium of the Social Doctrine of the Church, Pontifical Council for Justice and Peace, 2005, n 504-5.

<sup>xiii</sup> Welcoming Christ in Refugees and Forcibly Displaced Persons, Pastoral Guidelines Pontifical Council for the Pastoral Care of Migrants and Itinerant People and Pontifical Council Cor Unum, Vatican City, 2013, N 57 and Pope John XXIII, *Pacem in Terris (Peace on Earth)* (April 11, 1963) (Washington, D.C.: USCCB, 1963), no. 103-6.

<sup>xiv</sup> Pope John Paul II, Migration with a View to Peace, Message, For the 90<sup>th</sup> World Day of Migrants and Refugees 2004.