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Ms Sophie Dunstone
Committee Secretary
Senate Standing Committees on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Ms Dunstone

Guardian for Unaccompanied Children Bill 2014

The Asylum Seeker Resource Centre (ASRC) thanks the Legal and Constitutional Affairs Legislation Committee for the invitation to make a submission to the parliamentary inquiry into the **Guardian for Unaccompanied Children Bill 2014**.

The ASRC welcomes the principles of the bill as it establishes an independent statutory position of Guardian for Unaccompanied Non-citizen Children (the Guardian) to be the guardian of every unaccompanied child who arrives in Australia. The Guardian will ensure that the rights of unaccompanied children are protected and their rights are represented in decisions that affect them.

It is the ASRC's experience that the relevant safeguards for children are not in currently in place with the conflict of interest as their Guardian being the Minister of Immigration and Border Protection.

Please find following the ASRC's submission to the Inquiry.

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

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Background

The Asylum Seeker Resource Centre (ASRC) protects and upholds the human rights, wellbeing and dignity of asylum seekers. We are the largest provider of aid, advocacy and health services for asylum seekers in Australia. Most importantly, at times of despair and hopelessness, we offer comfort, friendship, hope and respite.

We are an independent, registered non-governmental agency and we do not receive any direct program funding from the Australian Government. We rely on community donations and philanthropy for 95 per cent of our funding. We employ just 53 staff and rely on over 1000 dedicated volunteers. We deliver services to over 1,500 asylum seekers at any one time.

Our submission is based on 13 years of experience working with asylum seekers in Victoria.

The proposed bill

The ASRC supports the proposed Guardian for Unaccompanied Children Bill 2014 as it establishes an Office of the Guardian for Unaccompanied Non-citizen Children as an independent statutory position.

Key issues

- Conflict of interest with the Minister of Immigration and Border Protection as Guardian of unaccompanied children.
- Mandatory detention.
- Access to education.
- Mental health.

Conflict of interest

Children and adolescents under the age of 18 arriving in Australia alone are among the most vulnerable asylum seekers as they are living in Australia without any formal guardian or support. The ASRC is deeply concerned that the Minister for Immigration and Border Protection ('the Minister') is the legal guardian of all unaccompanied minors seeking asylum.¹ The Minister can delegate those powers to DIAC officers.² This situation creates a clear conflict of interest. The Minister or a DIAC officer cannot ensure their primary consideration is the best interests of an unaccompanied minor when their roles are simultaneously guardian **and** the detaining authority and the visa decision-maker.

The Australian Human Rights Commission (AHRC) and the Commonwealth Ombudsman's Office only have recommendatory powers. They are unable to force the government to accept their recommendations and the AHRC and the Ombudsman have made several recommendations in regards to unaccompanied children, which have not been implemented.

The recommendation of the Joint Select Committee on Migration in its March 2012 Report on Australia's Immigration Detention Network was that:

*Relevant legislation be amended to replace the Minister for Immigration as the legal guardian of unaccompanied minors in the immigration detention system.*³

Recent examples highlight that the current Minister is not acting in the best interest of children and has been compromised by the conflict of interest. The conditions under which children are detained have been compared to a prison by the AHRC⁴.

Caroline de Costa, Professor of Obstetrics and Gynaecology at James Cook University School of Medicine described Nauru as 'a very unsuitable environment for children, who are generally more

¹ See *Immigration (Guardianship of Children) Act 1946* (Cth), s 6

² See *Immigration (Guardianship of Children) Act 1946* (Cth), s 5

³ Recommendation 19 of the Joint Select Committee on Australia's Immigration Detention Network, Report (March 2012), xxi.

⁴ <http://www.abc.net.au/news/2014-08-22/moral-burden-will-not-impede-border-policies-morrison/5687820>

susceptible than adults to all sorts of infections, including many serious tropical conditions such as dengue⁵.

Conditions facing asylum seekers, including children, are so dire that 15 doctors wrote a 92-page letter of concern regarding the Christmas Island detention centre. The letter documents case studies, including situations of 'inadequate medical care for children'⁶. Further, the Doctors witnessed "numerous unsafe practices and gross departures from generally accepted medical standards which have posed significant risk to patients and caused considerable harm". This is no place for a child, yet children are on Christmas Island at the authority of their Guardian, the Minister for Immigration and Border Protection.

Case study 1

A 16 year old girl is in the detention environment where there are single men and families in the same centre. The girl is unprotected in the environment as the contracted carer within detention centre leaves at 5pm each evening, leaving 16 year old girl in the centre alone. Numerous recommendations from the ASRC have been made to the Minister's office for her release for her protection however they have been ignored.

Case study 2

A 15 year old boy had not disclosed on arrival at Christmas Island that he had been kidnapped and sexually assaulted prior to arrival in Australia. On arrival at Christmas Island, there is a tick box mental health assessment, which is unlikely to elicit disclosure of torture and trauma. It took 12 months for him to speak of his abuse.

He became mentally ill while in detention; unable to sleep for fear of another attack, was hearing voices and exhibited psychotic behaviour. Despite recommendations from the ASRC for his immediate release, this did not occur.

Case study 3

A boy was re-detained following a complaint by a carer. He was distressed and suicidal on return to detention. He took a full pack of cold tablets given to him by the detention medical service. He cut himself and attempted to hang himself from the outdoor light fitting, saved only by a quick thinking guard. This boy had been quiet and compliant in detention before his community release. The change in his mental state was extraordinary.

He disclosed to the ASRC that the carer, who had complained about him, had taken him to a gay club with the carer's friends who tried to touch him. He was terrified out of his wits and ashamed to say anything. There was no significant trusted adult to whom he could speak so he used to stay at another community house nearby, as late as allowed each night after school. He only slept in his house and escaped each day to school as early as possible. He did this to avoid the carer. This made trouble for him in the house.

The ASRC reported the disclosure to immigration and police with his consent. Police officers came and questioned him at the detention centre and nothing more was ever done or reported back. The agency sacked the worker and refused to discuss the matter. This boy remained in detention for another five months. On release the ASRC were able to place him with a member of the Australian community who remarkably restored his faith, trust and confidence.

There is clearly an urgent need for an independent guardian for children in detention.

⁵ <http://blogs.crikey.com.au/croakey/2014/04/29/grim-prospects-for-pregnant-asylum-seekers-on-nauru-and-links-to-the-four-corners-manus-report/>

⁶ <http://www.theguardian.com/world/2013/dec/19/revealed-doctors-outrage-over-unsafe-refugee-patients>

Mandatory detention

As of 30 September 2014, there are 603 children in detention on the Australian mainland and Christmas Island. 186 children are detained on Nauru⁷.

The AHRC has repeatedly recommended that if children are to be detained, they should be placed in community detention with their families or with a suitable carer if they are unaccompanied.⁸ While children are no longer being held in places designated as Immigration Detention Centres, they are still subject to constant supervision and experience a severely restricted freedom of movement. Children continue to be held in places under guard and constant supervision - behind locked gates and doors - in buildings and camps that are detention centres in all but name. The government calls these locked environments, 'Alternative Places of Detention' or APODS.

Mandatory detention is not in the best interest of any child. In their concluding observations from 2005, the UN Committee on the *Convention on the Rights of the Child* (CRC) cited the mandatory detention of all children pending assessment of their claims for refugee status as a matter of primary concern⁹. More recently, in 2013 the Committee concluded that detention is "never in [children's] best interests and is not justifiable"¹⁰. The UNHCR believes that detention should be conducted with an "ethic of care - and not enforcement"¹¹.

Signatories to the CRC are obliged to hold children in detention solely as a measure of **last resort and only for the shortest appropriate period of time**.¹² Australia's current immigration detention policy fails to satisfy this requirement. All children entering Australia as unauthorised maritime arrivals are mandatorily detained in non-reviewable administrative detention for an unspecified time upon arrival. This means that the Minister is simultaneously the Guardian and detainer of children.

Mental health

Detainees routinely suffer from anxiety, depression, symptoms of trauma and behavioural withdrawal. Children's normal developmental pathways are severely disrupted by detention. They suffer from anxiety and are also adversely impacted by the anxiety and depression manifested by those around them. The motels, lodges and other facilities (including offshore processing on Nauru) currently being used to house children are not designed for young people. Professor Louise Newman, child psychiatrist and head of the then Australian Government's health advisory panel on immigration detention (DeHAG) argues that detention in such places compounds the effect of previous trauma and exacerbates the grief and loss that these children have already suffered.

In several instances, the exacerbation of pre-existing stresses by prolonged detention has led to self-harm. Teenagers in detention have reported to our staff cutting and slashing themselves 'to release the pressure' in their heads. There have also been reports of children fasting and refusing to eat.

In early 2014, the situation facing children in detention (on and offshore) become so dire that the AHRC launched an inquiry into Children in Immigration Detention. As highlighted by the submissions received and hearings (including from the ASRC¹³), onshore and offshore detention is no place for a child. In particular, the submission by ChilOut details in depth the devastating impact of detention on children's on healthcare, education, recreation and language.

"There is no word to describe this (ongoing detention). If I say bad it is not enough, if I say awful it is not enough. There are just no words"

- teen detained in Darwin, December 2013¹⁴.

There are numerous occasions where it has been advised by medical practitioners that it is in the best

⁷ <http://www.chilout.org>

⁸ 2008 - Immigration Detention Report, Australian Human Rights Commission, p. 82

⁹ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.268.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.268.En?OpenDocument)

¹⁰ http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGD-Childrens_Rights_InternationalMigration.pdf

¹¹ <http://www.unhcr.org/505b10ee9.html>

¹² CRC, note 11, art 37(b)

¹³ <https://www.humanrights.gov.au/sites/default/files/Submission%20No%20104%20-%20Asylum%20Seeker%20Resource%20Centre.pdf>

¹⁴ <https://www.humanrights.gov.au/sites/default/files/Submission%20No%20168%20-%20ChilOut.pdf>

interest of mental and physical health to release children from detention. Psychiatrists have repeatedly said that children will not recover while in the detention environment, but the Guardian has ignored the evidence, when he is supposed to be acting in best interest of the child.

In October 2014 a study of 139 paediatricians revealed that 80 per cent agree with an Australian Medical Association statement that mandatory detention of children is a form of abuse.¹⁵

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.

Access to education

There have been instances where children in detention have not been given access to school or education. It was discovered in March 2013, that the children in Pontville Immigration Detention Centre in Tasmania were not being given access to education¹⁶.

Until the recent visit by the AHRC, there were many children not attending school despite our constant requests and offers from local Catholic schools to take any children from detention. The children from Christmas Island (CI) who are in Melbourne as Transitory persons were denied access on the grounds that they would return to CIs so there was no point in their attending school. During children were begging to go to school.

¹⁵ <http://m.theaustralian.com.au/news/detention-of-asylum-seeker-children-is-child-abuse-say-paediatricians/story-e6frg6n6-1227081119002?nk=561e41ee8905dba3392b887f820ec057>

¹⁶ <http://endchilddetentionoz.com>

Conclusion

The issues facing asylum seeker children are in breach of the CRC and these children would greatly benefit from an independent statutory office to represent at a national level for their needs, rights and views.

There are numerous examples of professional recommendations, citing the deplorable conditions children are facing and calling for an independent guardian for unaccompanied children. Examples include:

- The distress that detention causes to children, especially unaccompanied children is well documented in the 2004 HREOC (Australian Human Rights Commission) Report *A Last Resort*.¹⁷
- 15 Doctors in their letter of concern detailed the abhorrent conditions in detention on Christmas Island.¹⁸
- There have been recent allegations of child sex abuse on Nauru, prompting an inquiry¹⁹.
- The UNHCR's detention guidelines outline that 'an independent and qualified guardian as well as a legal adviser should be appointed for unaccompanied or separated children'²⁰
- Repeated recommendations from the UN Committee on the *Convention on the Rights of the Child* (CRC) regarding Australia's detention of children²¹.
- In a recent visit to Nauru, the UNHCR 'shares the concerns of a number of organisations including the AHRC and the Royal Australasian College of Physicians that it is inappropriate to send asylum-seeker children to offshore processing centres in remote locations'²².

The evidence overwhelmingly highlights the need for an independent Guardian for unaccompanied children to ensure that the best interest of the child is paramount in decision-making.

The ASRC is deeply concerned that the Minister for Immigration is the legal guardian of all unaccompanied minors seeking asylum. The minister cannot ensure their primary consideration is the best interests of an unaccompanied minor when they are at the same time the guardian, the detaining authority and the visa decision-maker.

Therefore it is imperative to the welfare of asylum seeker children that an independent Guardian is appointed and is appropriately resourced with the requisite decision making powers and mandated to consider this vulnerable group as outlined in the bill.

¹⁷ <https://www.humanrights.gov.au/publications/last-resort-national-inquiry-children-immigration-detention>

¹⁸ <http://www.theguardian.com/world/interactive/2014/jan/13/christmas-island-doctors-letter-of-concern-in-full>

¹⁹ <http://www.theguardian.com/australia-news/2014/oct/03/nauru-child-sex-abuse-allegations-new-inquiry>

²⁰ <http://www.unhcr.org/505b10ee9.html>

²¹ http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGD-Childrens_Rights_InternationalMigration.pdf

²² <http://unhcr.org.au/unhcr/images/2013-11-26%20Report%20of%20UNHCR%20Visit%20to%20Nauru%20of%207-9%20October%202013.pdf>