

26 September 2011

Committee Secretary  
Joint Select Committee on Australia's Immigration Detention Network  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

Dear Secretary,

I refer to the call for submissions to the Joint Select Committee on Australia's Immigration Detention Network established by Parliament on 16 June 2011 (the "Committee").

### **The National Children's and Youth Law Centre ("NCYLC")**

NCYLC is Australia's only national legal centre for children and young people under 18 years. It seeks to increase access by children and young people to legal assistance and to improve the legal status of all children and young people in Australia. NCYLC provides information and advice to children and young people through its *LawMail* service and via its *Lawstuff* website ([www.lawstuff.org.au](http://www.lawstuff.org.au)).

In all of its work, NCYLC takes a child rights-based approach. Founded on the Articles of the *Convention on the Rights of the Child* ("CROC") this approach reflects the understanding that children are holders of unique human rights. These include not only basic survival and development rights and the special rights associated with protection from harm, but also rights of participation including the right to be consulted and heard on issues affecting them.

As such, NCYLC is pleased to provide comment to the Committee but will confine same to matters concerning the "impact of detention on children and families, and viable alternatives."

### **The Rights of Children in Immigration Detention**

It is NCYLC's position that the current circumstances in which children and young people under 18 years are detained for the purposes of administering the *Migration Act 1958* (Cth) constitutes a clear breach of Australia's international obligations, including those under CROC.

Article 22 of CROC considers children seeking refugee status. It requires the Australian government to afford those children and young people appropriate protection and enjoyment of their human rights.

Notwithstanding the introduction of the *New Directions* policy in 2008, children arriving in Australia continue to be placed in facilities where they are under constant guard and supervision, from which they are not free to come and go and in which they have limited access to services.

The detention of these children is not subject to any independent assessment; there is no time limit on periods of detention and no guaranteed periodic review of detention. This is despite Articles 3 (requiring that the child's best interests be the primary considerations in all actions concerning them) and 37 (requiring that the detention of children be a measure of last resort) of CROC.

The difficulties associated with current detention procedures are compounded by the fact that guardianship and support of unaccompanied minors remains the responsibility of the Minister for Immigration or his or her delegate. This raises a serious conflict of interest between the Minister's roles as guardian, detaining authority and final visa decision-maker.

Procedures for administering guardianship seem ill-defined and resources for unaccompanied children (such as access to Case Managers and Independent Observers) are severely limited. Unaccompanied minors continue to be detained in isolated areas such as Christmas Island and Leonora contrary to UNHCR guidelines.

The detention of children in offshore facilities such as Christmas Island (whether they are accompanied or unaccompanied) also denies those children access to justice. The classification of such facilities as "offshore" has resulted in minimal access to legal assistance and appeal processes.

Of significant concern is the health and development of those children presently detained by the Australian government. Despite evidence of both physical and mental health issues amongst children in detention (including health concerns arising as a direct result of their detention), there is not adequate provision of services to address them. There is also evidence to suggest that access to education for children in detention is limited, in contravention of Article 28 of CROC.

Additionally, the lack of co-operation and clarity between various State and Federal government agencies concerning responsibility for the welfare of children exposed to abuse and neglect in immigration detention is alarming. Protection from abuse and neglect is the responsibility of government under Article 19 of CROC.

Finally, access to social security is a right enshrined in Article 26 of CROC. Recognition of this right is essential to these vulnerable children whose parents or other family members are often unable to work to provide for their basic needs. This in turn affects other CROC rights, such as those under Article 24 (standards of health) and Article 27 (standards of living).

### **The *Listen to Children* Report**

The above concerns are highlighted and expanded upon in *Listen to Children*, the 2011 Report to the United Nations concerning Australia's compliance with CROC. The Report was prepared by the Child Rights Taskforce, a coalition of organisations committed to the protection and promotion of child rights in Australia and was project managed by the NCYLC.

A copy of the Report is attached for the Committee's consideration. Although other sections of the Report may also be of interest, information specifically pertaining to children in immigration detention may be found on pages 29 to 31.

A summary of recommendations made by the Child Rights Taskforce can be found in Appendix 1 of the Report. I would particularly commend to the Committee Recommendations 97 to 107, which specifically relate to the detention and care of children and young people under the *Migration Act*. They outline practical steps that can be taken by the Australian government to ensure it complies with its international obligations and meet the basic human rights needs of refugee and asylum seeker children.

~~Yours sincerely~~

Matthew Keeley  
Director

Encl.: *Listen to Children*, 2011 Child Rights NGO Report Australia, Child Rights Taskforce, May 2011