



Catholic Social Services
Australia

Telephone 02 6285 1366
Facsimile 02 6285 2399

PO Box 326
Curtin ACT 2605
22 Theodore Street
Curtin ACT 2605
admin@cssa.org.au
www.cssa.org.au
ABN 18 810 059 716

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam,

Thank you for the opportunity to comment on the Guardian for Unaccompanied Children Bill 2014. Catholic Social Services Australia (CSSA) supports the aim of the Bill which is to *“establish an independent statutory office of Guardian for Unaccompanied Non-citizen Children (the Guardian) to advocate for the best interests of non-citizen children who arrive in Australia or Australian external territories to seek humanitarian protection, who are unaccompanied by their parents or another responsible adult”*.ⁱ

We also emphasise the role of the Guardian as set out in the objects of the Bill: *“to protect the rights of unaccompanied children, promote their needs, involve them in decision making and monitor their condition particularly when they are being accommodated in held detention.”*ⁱⁱⁱ

CSSA’s position is already on the public record, that the Minister for Immigration and Border Protection should not be the legal guardian of unaccompanied children. Our primary concern is that the Minister’s wide ranging powers under *The Migration Act 1958* have the potential to conflict with protecting the best interests of unaccompanied children.

CSSA is the Catholic Church’s peak national body for social services. For over 50 years, CSSA has assisted member organisations to promote a fairer, more inclusive society that reflects and supports the dignity, equality and participation of all people. Our 59 member agencies employ around 12,000 people, with 4,000 voluntary contributors to this work.

Some of our member organisations support newly arrived individuals and families, refugees and humanitarian entrants, and new and emerging migrant communities and groups with the following services: settlement case management, employment services, community education and development, youth work and advocacy services. Others have worked in onshore Immigration Detention Centres providing pastoral support.

Several CSSA members also work in partnership with local community organisations to provide asylum seekers who are unaccompanied minors in Australia (for example those who are part of Community Detention Programmes) with accommodation, case management, transition planning, living skills programmes, education and cultural support services while they await the outcomes of their applications for refugee visa status.

Importantly CSSA and its members have a long history of working in child protection, family support and social services generally. Our members provide intensive support to some of society's most vulnerable people – children at risk, families experiencing violence, people who are marginalised because of disability or mental illness, people who are homeless and people who experience entrenched poverty and disadvantage, within the complexities of geography and ethnicity.

As a result of this experience, CSSA is particularly alert to upholding a duty of care, especially towards vulnerable persons such as children. CSSA recognises that duty of care is founded upon recognising the inherent dignity and rights of each individual person. Processes for ensuring that a duty of care is met must be independent, accountable and transparent. This requirement was fully recognised in the establishment of a National Children's Commissioner, and must apply equally in relation to the guardianship of children in the humanitarian protection system. The lack of a truly independent guardian for vulnerable children seeking asylum in Australia and those detained offshore is contrary to current best practice.

Due to their dependence on the care of adults for access to the requirements of life (food, shelter, education, health care), children are inherently vulnerable and, in times of crisis, are in need of special protection. Their vulnerability is increased by attendant imbalances of power between children and adults, as adults are both the providers of services and holders of authority.ⁱⁱⁱ This vulnerability is even more evident when children are subject to the traumas associated with seeking asylum in another country or are separated from their families.

In our recent submission^{iv} to the Human Rights Commission's National Inquiry into Children in Immigration Detention 2014, CSSA made the following three recommendations with the third recommendation stating that the Minister for Immigration and Border Protection should not be the legal guardian of unaccompanied children in detention:

1. Children should never be held in Immigration Detention Centres and, if detention is absolutely required, Community Detention is preferable. We have provided evidence and practitioner experience as to why the current practice of housing children within Immigration Detention Centres is contrary to basic human rights and is not in the best interests of the child;
2. Families should not be separated. The collective and accrued experience of our member agencies is that the emotional, educational, spiritual, and physical well-being of children is contingent on the sense of security that they feel in their family; and

3. The Minister for Immigration (and Border Protection) should not be the legal guardian of unaccompanied children due to inherent conflicts of interest. Our submission suggests alternatives.^v

There are also a number of human rights instruments, to which Australia is a signatory, that challenge the present situation, such as the UN Convention on the Rights of the Child, the UN Declaration of Human Rights and the UN International Convention on the Status of Refugees. We therefore fully support the final clause of the Object of the proposed Bill, *“that the office of the Guardian is to assist Australia in meeting its international obligations under the Convention on the Rights of the Child, particularly articles 4, 6, 12 and 37.”*^{vi}

Legal obligations are only a part of the picture. CSSA’s view is that the obligation for any society to care for children is primarily a moral one. Our member organisations take this responsibility seriously and have worked hard over decades to ensure injustices to children and other vulnerable people are redressed. While no society or institution is perfect, we must remain committed to protecting all people who are vulnerable, whether citizens or not.

For the above reasons, CSSA strongly supports an independent position be established to take on the role as guardian of unaccompanied children seeking humanitarian protection.

We would be happy to further elaborate on our submission and please contact me or Liz de Chastel, Senior Policy Officer on the contact details provided in this submission.

Yours sincerely,

Marcelle Mogg
Chief Executive Officer
17th September 2014

ⁱ Guardian for Unaccompanied Children Bill 2014 – *Explanatory Memorandum P2 General Outline*
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs968%22>

ⁱⁱ Ibid

ⁱⁱⁱ Adapted from Truth Justice and Healing Commission (2013) *Issues Paper 3: Child Safe Institutions* Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse P8

^{iv} Human Rights Commission – *National Inquiry into Children in Immigration Detention 2014* CSSA Submission - No 126 can be viewed here - <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/national-inquiry-children-immigration-detention-2014-0>

^v There are models that can be drawn upon such as those operating at the National level and in the States/Territories where Children's Commissioners and/or Guardians have been established. These existing models should be further investigated to assess whether they provide the adequate level of care and protection for children. Whilst a children's commissioner works to improve and ensure better services for all children, a children's guardian works solely to help improve the services for children in the care of a department (not all states and territories have a commissioner *and* a guardian).

^{vi} Guardian for Unaccompanied Children Bill 2014 - *Explanatory Memorandum Clause 3*
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs968%22>