



## **Children Out of Immigration Detention**

Submission to the Senate Legal and Constitutional Affairs Committee:

Crimes Amendment (Fairness for Minors) Bill 2011 for inquiry and report.

31 January 2012

ChilOut supports the Crimes Amendment (Fairness for Minors) Bill 2011 in its entirety as it stands today - with the noted alteration in Recommendation 1 below.

ChilOut is a not-for-profit community group of Australians who are concerned with the plight of children under 18 years held in immigration detention. ChilOut began its campaign in 2001, and quickly drew the support of many thousands of Australians who were against the detention of children. Our campaign was put on hold after the 2005 changes made by the Howard Government to release children from secure detention facilities, with its amendment to the Migration Act to include the principle that children should only be detained "as a measure of last resort" in accordance with article 37(b) of the Convention on the Rights of the Child (CROC). As the practice of indefinitely detaining children returned to be part of Australia's approach to asylum seekers, ChilOut revived itself and support for our campaign continues to grow.

ChilOut has for over a decade, seen the impacts of indefinite detention on children and families. The short and long-term effects are devastating for a child's development, learning, social skills, physical and mental health. For children who are without a parent (the category into which most minors affected by this Bill would fit), the fear and helplessness is further compounded. Adding to that the situation that many children have found themselves in, being locked in an adult facility with no age appropriate services and conditions creates a situation that is anything but in the best interests of that child.

ChilOut has long raised concerns over the methods used to determine the age of suspected minors. In our work this relates to asylum seekers who are held in detention and to children who are held in adult prisons and remand centres.

### **Recommendation 1**

The only amendment we suggest to this Bill as it stands, is the inclusion of a provision that any 17year old charged in Queensland with a criminal offence is treated as they should be under international law; as a child. In flagrant disregard for the UN Convention on the Rights of the Child, the Queensland criminal system treats these minors as adults and holds them in adult facilities, a situation to which ChilOut is opposed.

### **Recommendation 2**

Giving note to Rec 1, ChilOut recommends this Bill be passed.

In relation to the use of wrist x-rays to determine age, we refer the Committee to Submission No.7 received to this Inquiry, as written by the Royal Australian College of Physicians (RACP). This submission by medical experts states “that wrist x-rays should not be used to determine age as this method is not reliable or validated for this purpose”. Further, the RACP does not support the use of dental examinations as a method for age determination. ChilOut supports the proposal put forward by RACP that a more comprehensive and holistic approach be sought to age determination. We understand this may take some time to research and establish and maintain that in the meantime, no child or suspected child be held in an adult facility and that the process be expedited as far as possible.

ChilOut welcomes legislation that requires authorities to accurately determine the age of a suspected minor and to do so within a defined and short timeframe. Failing to do so and having a system, as we currently have, that results in children being detained in adult prisons is in breach of Australia’s international obligations, domestic legislation and is completely at odds with the treatment Australian officials and the Australian public expect that Australian children would receive abroad.

Whilst any age determination of process is being conducted the suspected child should not be held in an adult facility.

It is vital to have a defined period for charges to be laid. In recent times we have seen up to 32 children detained in adult prisons for approximately 6 months, some without any charge being laid at all. Such a system is completely unacceptable at law and is not something Australia would tolerate happening to a child with Australian citizenship detained overseas on suspicion of any crime.

Australia’s present treatment of minors in this area is at odds with our obligations under the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. Rather than re-state this for the Committee, ChilOut refers to and completely supports the submission made by the Human Rights Law Resource Centre and particularly the direct legal citations made within their submission on this Bill.

It cannot be said with any credibility that punishing children will break any people smuggling ring. The vast majority of children who have been engaged in these practices in the past fall into two categories:

- a) those who have genuinely not known what they are getting themselves into until the boat is being loaded with asylum seekers at port. They were 'employed' on the guise of taking part in a commercial fishing journey.
- b) from poverty stricken families, lured into taking part with the promise of quick and easy financial gain.

The child in question is hardly likely to be the boats' owner or the coordinator of the passage. The child cannot be held to account for arranging the transit of asylum seekers or for jeopardising the lives of passengers, himself and crew in boarding and overfilling the boat. There needs to be some leniency in dealing with these children who themselves are victims of a dangerous and flawed practice.

*'We had one boy in a maximum-security adult jail for two years who has just been sent home. I don't understand why couldn't his age be determined in two months instead of taking two years,' he said (head of the Indonesia Institute, Ross Taylor).<sup>1</sup>*

In order to avoid unlawful and personally devastating situations like this from continuing to occur in Australia we need legislation like the Crimes Amendment (Fairness for Minors) Bill 2011.

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<sup>1</sup> <http://www.smh.com.au/national/lifeline-for-jailed-indonesian-children-20111210-1oons.html>