

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

23 October, 2014

Dear Sir / Madam

Re: Guardian for Unaccompanied Children Bill 2014

The Australian Churches Refugee Taskforce ('the Taskforce') is an initiative of the National Council of Churches in Australia ('NCCA') which came together in early 2013.

The welfare and treatment of refugee and asylum seeker children has been a particular concern of the Taskforce since our inception. To this end, in July 2014 the Taskforce launched the *Protecting the Lonely Children: Recommendations to the Australian Government and the UN Committee on the Rights of the Child with respect to unaccompanied children who seek asylum and refuge in Australia*.

As we set out extensively in *Protecting the Lonely Children* the roles of the Minister as 'guardian, judge and jailer' of unaccompanied children is an undeniable conflict of interest, and the single most fundamental problem which pervades and undermines the integrity of the entire system of care and treatment of unaccompanied children.

It has led to Australia breaching its international legal obligations, and more critically a failure to properly care for these often vulnerable and traumatised young people. Our investigations into this system and ongoing conversations with care workers, concerned community advocates, and young people, led the Taskforce to conclude that at its worst, the detention of these young people amounted to state sanctioned child abuse.

This arrangement must change.

For this reason, and those detailed in our *Protecting the Lonely Children* report, we strongly support the establishment of an independent Office of Guardian for Unaccompanied Non-citizen Children through the introduction of the **Guardian for Unaccompanied Children Bill 2014**.

We attach the full *Protecting the Lonely Children* report, as part of our submission, and for your reference. In addition to the report we make the following brief observations:

Timing of Guardianship and Age determination

Whilst there is some provision in the Bill for the Guardian to be present and consent to "personal identifiers" being provided (Schedule 1), and for the Guardian to provide evidence of a child being an unaccompanied minor (s 7), it is not entirely clear at which point in time the role of the Guardianship is assumed, in particular where there may be a question of age. The Taskforce suggest a need to make this explicit, for instance that Guardianship is assumed *as soon as a claim is made* to any Australian official or delegate, as to being an unaccompanied minor.

The Taskforce also has ongoing concerns with the related administration of age determination processes.¹ In this regard, it might be assumed that the Guardian has some responsibility for age determinations, but again this is not explicit in the existing Bill. Consideration should be given to making explicit that the Guardian has responsibility for all age determinations. UNHCR processes and standards should be guiding reference points in this respect.²

Concern for the position of Minister

There is one aspect of the current regime related to unaccompanied children that is often given short shrift, but which the Taskforce also wishes to highlight. That is the untenable personal position in which the Minister is placed. As we noted in *Protecting the Lonely Children*:

Guardianship of these vulnerable children and young people is not a mere legislative function to be discharged. It is a multifaceted responsibility that encompasses statutory duties, duties under common law, the fulfilment of Australia's international obligations, and a serious moral and ethical concern for the wellbeing of a child that flows from such responsibility.

To stand *in loco parentis* (in place of the parent) is a grave responsibility. Yet the current legislative regime, and practices surrounding it, makes it practically impossible for the Minister to fulfil this role. It should be of great concern to the Australian Parliament that the current legislative arrangement in effect denigrates the role and importance of parenthood and would deny its full exercise to any child. It is unconscionable that our Parliament should place such an impossible, conflicted burden on *any* Minister.

The passage of this Bill would help set right a legislative and ethical imbalance. It would institute an independent Guardian able to truly look out for the best interests of the child and thus affirm our commitment to the role and importance of parenthood; and allow for greater clarity and responsibility in Ministerial decision making, thus providing protections for both unaccompanied children and the Minister.

We strongly support the establishment of an independent Office of Guardian for Unaccompanied Non-citizen Children, and urge the Committee and Parliament to support and expedite this endeavour.

Yours in Christ

The Very Rev'd Dr Peter Catt
Chair, ACRT

¹ Please see in more detail our discussion at p.27 & p.35 of *Protecting the Lonely Children*. See also attached our Correspondence of 19 May 2014, with the Australian Government regarding this. Given the reality of the current offshore processing arrangements, it is also vital that a close working relationship is established between the Guardian and DIBP in relation to on-water, Christmas Island and offshore activities involving minors.

² For instance in decision making process such as age determinations the 'benefit of the doubt' should be a guiding principle, given the increased vulnerabilities of unaccompanied minors. See for example the UNHCR *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* 1997.