



**Submission to the Senate Standing Committee on Legal and  
Constitutional Affairs regarding its Inquiry into the Conditions and  
Treatment of Asylum Seekers and Refugees at the Regional  
Processing Centres in the Republic of Nauru and Papua New Guinea**

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## Introduction

ChilOut - Children Out of Immigration Detention - has been advocating for the rights of children seeking asylum since its establishment in 2001. It calls for an end to the mandatory and remote detention of children and for laws and policies that prioritise the wellbeing of children and uphold their human rights. The arbitrary and prolonged detention of children in Nauru causes severe physical, emotional, mental and developmental harm to children and often has long-lasting impacts on their wellbeing. ChilOut's first-hand experience in this area, which includes direct communication with children in detention, attests to this. Further, these harms have been well documented by expert bodies since children were first detained at the detention centre in Nauru.

ChilOut welcomes the opportunity to provide a submission to the Senate Standing Committee on Legal and Constitutional Affairs on the conditions and treatment of asylum seekers at the regional processing centres on the Republic of Nauru and Papua New Guinea. Our submission will focus entirely on the detention centre in Nauru, as it is currently the sole regional processing centre at which children are detained.<sup>1</sup> ChilOut holds the view that the harm that children are subjected to at the Nauru Detention Centre has not been alleviated by the recent 'open' nature of the centre.

## Children in detention in Nauru

The Australian Government, under Prime Minister Howard, first started detaining children in Nauru in 2001. The Nauru Detention Centre was later closed in 2008, but was reopened in 2012 under Prime Minister Gillard. Since 13 September 2012, children and families seeking asylum in Australia have been transferred to the Nauru Detention Centre.<sup>2</sup> Current Australian law requires all children who arrive by boat without a valid visa to be sent to an offshore processing centre as soon as reasonably practicable, unless the Minister determines otherwise.<sup>3</sup>

According to the latest statistics published by Australian Border Force and dated 29 February 2016, 50 children remain detained at the Nauru Detention Centre.<sup>4</sup> According to the same statistics, people in immigration detention, including children, spend an average of 464 days in detention<sup>5</sup>. Over 25% of people in detention have been there for more than two years.<sup>6</sup> Generally, children and their families are not given any information as to when their asylum claim will be processed and how long they will spend in detention. With so many children spending large portions of their childhood in detention, including passing through key development stages of their life whilst in detention, it is imperative that the conditions and treatment of children in detention be carefully scrutinized. The

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<sup>1</sup> Since 4 July 2014, children seeking safety have been transferred only to the Nauru Detention Centre. E. Karlsen, "Australia's offshore", [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1516/Quick\\_Guides/Offshore](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1516/Quick_Guides/Offshore) (Accessed 1 March 2016).

<sup>2</sup> Philip Moss, "Final Report of the Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru", 6 February 2015, at <http://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/review-conditions-circumstances-nauru.pdf#search=moss%20review> ("The Moss Review") (Accessed 1 March 2016), at 2.2.

<sup>3</sup> This applies to all children who arrived by boat on or after 19 July 2013. This is stipulated under s 5AA of the *Migration Act 1958* (Cth). Any children arriving by boat between 13 August 2012 and 19 July 2013 could also be transferred to the Nauru or Manus Island Detention Centres under law.

<sup>4</sup> Department of Immigration and Border Protection, "Immigration Detention and Community Statistics Summary", 29 February 2016, at <http://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-29-feb-2016.pdf>, (Accessed 1 March 2016), p. 4.

<sup>5</sup> Human Rights Commission, *The Health and Well-being of children in immigration detention* (2015), at <https://www.humanrights.gov.au/sites/default/files/document/publication/Health%20and%20well-being%20of%20children%20in%20immigration%20detention%20report.pdf>, ("AHRC Health and Well-Being report") (Accessed 2 March 2016), p. 12; Department of Immigration and Border Protection, "Immigration Detention and Community Statistics Summary", 29 February 2016, p. 11. <http://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-29-feb-2016.pdf>, (Accessed 1 March 2016).

<sup>6</sup> *Ibid* at 4, p. 11.

evidence is clear – the long-term detention of children is detrimental to their overall wellbeing and the Nauru Detention Centre is an especially inappropriate environment for children.<sup>7</sup>

## (a) Conditions and treatment of children

ChilOut has grave concerns for the physical safety, emotional welfare, education, healthcare and recreational needs of all children currently in detention in Nauru and those subject to future transfer there. This submission will undertake an analysis of the conditions and treatment of children held at the Nauru Detention Centre based on medical opinion, expert evidence and first-hand information obtained by ChilOut.

### (i) Physical and sexual abuse

The Moss Review clearly states that people in detention in Nauru “are apprehensive about their personal safety.”<sup>8</sup> This, coupled with evidence of physical and sexual abuse against children in detention in Nauru, illustrates that the centre is not a safe environment for children. Children, no matter how they arrive in Australia, are entitled to live in a secure environment free from abuse and harm.<sup>9</sup> The Australian Government, in consultation with the Nauruan Government, must urgently address the credible allegations of violence and harassment within the Nauru Detention Centre, as the evidence suggests there is a direct and ongoing threat to the safety of children detained there. ChilOut holds the view that the detention centre in Nauru is not safe for children.

These allegations of abuse and harassment have been documented in several investigations into the treatment of children at the Nauru Detention Centre:

- The Physical and Mental Health Subcommittee of the Joint Advisory Committee for Nauru Regional Processing Arrangements stated in a 2014 report that the Nauru Detention Centre presented a “significant and ongoing risk of child abuse, including physical and sexual abuse”.<sup>10</sup>
- The Australian Human Rights Commission’s (“AHRC”) 2014 investigation into children in immigration detention, which culminated in *The Forgotten Children Report*, noted that it had “received evidence from staff working in Nauru of incidents of harassment, bullying and abuse” against children at the Nauru Detention Centre.<sup>11</sup>
- The Moss Review, conducted by Mr Philip Moss in 2014 to 2015, found credible allegations of physical and indecent assault, sexual exploitation and rape against children, which included assaults and harassment conducted by contracted service providers. The Moss

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<sup>7</sup> Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 8 February 2016, p.21; Human Rights Commission, *The Health and Well-being of children in immigration detention* (2015), at <https://www.humanrights.gov.au/sites/default/files/document/publication/Health%20and%20well-being%20of%20children%20in%20immigration%20detention%20report.pdf>, (Accessed 2 March 2016); Dr. D. Isaacs, ‘Nauru and Detention of Children’, *Journal of Pediatrics and Child Health*, Volume 51 (2015), pp. 353-4; Australian Psychological Society, ‘A Submission by the Australian Psychological Society to the Australian Human Rights Commission, National Enquiry into Children in Immigration Detention 2014. June 2014; S. Mares, ‘Fifteen Years of Detaining Children who Seek Asylum in Australia – Evidence and Consequences’, *Australas Psychiatry*, 24 February 2016, p. 11-14; Physical and Mental Health Subcommittee of the Joint Advisory Committee for Nauru Regional Processing Arrangements, Nauru Site Visit Report, 16-19 February. Published by Guardian Australia, 30 May 2014, at <http://www.theguardian.com/world/interactive/2014/may/29/nauru-family-health-risks-report-infull>, (accessed 2 March 2016).

<sup>8</sup> The Moss Review (accessed 2 March 2016), at 3.141.

<sup>9</sup> The Moss Review (accessed 2 March 2016), at 3.145.

<sup>10</sup> The Guardian, “Nauru family health risks – the report in full”, 30 May 2014, at <http://www.theguardian.com/world/interactive/2014/may/29/nauru-family-health-risks-report-in-full>, (Accessed 2 March 2016).

<sup>11</sup> Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Detention* (2014), at [https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten\\_children\\_2014.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf) (“The Forgotten Children Report”)(Accessed 3 March 2016), p. 62.

Review upheld the importance of maintaining the safety of all people located at the detention centre in Nauru, including children.<sup>12</sup>

- The 2015 Senate Select Committee Inquiry into the Nauru Detention Centre stated in its report that people detained in Nauru, including children, experienced a distinct lack of personal safety and that children were directly exposed to acts of violence at the detention centre.<sup>13</sup> Transfield services (now known as Broadspectrum), the primary service provider at the Nauru Detention Centre, provided evidence that it received 67 allegations of child abuse as of May 2015, with 30 of these allegations involving detention centre staff.<sup>14</sup>
- The AHRC's recent 2016 report into the health and wellbeing of children held at Wickham Point Detention Centre (most of whom had been detained in Nauru prior to being transferred to Wickham Point) concluded that "the only appropriate management of the situation is the removal of children from the toxic detention environment which is causing and/or exacerbating mental ill-health". The AHRC's report included discussion of the trauma experienced by children as a result of being detained in Nauru and the extreme fear of these children at the thought of being returned to Nauru.<sup>15</sup>
- Former employees/contractors who worked at the Nauru Detention Centre expressed in an open letter the occurrence of physical and sexual assault against children at the detention centre. This open letter stated that despite making the government aware of credible sexual assault allegations, the Australian Government failed to remove these children from the detention centre where they may experience risk of further assault.<sup>16</sup>

In light of this evidence of abuse, harassment and bullying of children at the Nauru Detention Centre, ChilOut concurs with the view of leading medical professionals that the detention centre presents a significant and ongoing risk to the safety of children.<sup>17</sup> ChilOut has spoken directly to children who have experienced abuse in Nauru and other children who speak about how unsafe they have felt in detention in Nauru. Children have told ChilOut they are reluctant to report abuse given the lack of accountability and fear of reprisal. For example, one teenager told us:

**"Some of the girls get hassled by the guards and they can't do anything. Who you going to complain to about it? The guards?" 17-year-old in detention**

The placement of large numbers of adults and children in cramped-style living areas at the Nauru Detention Centre also provides an environment in which children are not given privacy.<sup>18</sup> Children must live in spaces designated for 18-20 people<sup>19</sup> and, as such, are denied any personal privacy or

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<sup>12</sup> The Moss Review (accessed 3 March 2016).

<sup>13</sup> Parliament of Australia, Senate Select Committee on the Recent Allegations Relating to the Conditions and Circumstances at the Regional Processing Centre in Nauru. 'Taking Responsibility: Conditions and Circumstances at Australia's Regional Processing Centre in Nauru.' 31 August 2015, at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regional\\_processing\\_Nauru/Regional\\_processing\\_Nauru/Final\\_Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report) (Accessed 3 March 2016).

<sup>14</sup> Ibid at 14, pp. 23 and 162; J. Norman, 'Transfield: Nauru detention centre operator receives dozens of sexual and other abuse allegations', ABC, at <http://www.abc.net.au/news/2015-07-16/nauru-detention-centre-operator-transfield-abuse-allegations/6626110>, 16 July 2015 (accessed 24 March 2016).

<sup>15</sup> AHRC Health and Well-Being report (Accessed 3 March 2016), p.13.

<sup>16</sup> J. Om, 'Immigration Department aware of sexual abuse allegations against children for 17 months but failed to act, say former Nauru workers', ABC, at <http://www.abc.net.au/news/2015-04-07/nauru-letter-of-concern-demands-royal-commission/6374680>, 8 April 2015 (accessed 2 March 2016).

<sup>17</sup> Australian Psychological Society, 'A Submission by the Australian Psychological Society to the Australian Human Rights Commission, National Enquiry into Children in Immigration Detention 2014', June 2014, at <https://www.humanrights.gov.au/sites/default/files/Submission%20No%202008%20-%20Australian%20Psychological%20Society.pdf> (Accessed 3 March 2016).

<sup>18</sup> Physical and Mental Health Subcommittee of the Joint Advisory Committee for Nauru Regional Processing Arrangements, Nauru Site Visit Report, 16-19 February. Published by Guardian Australia, 30 May 2014, at <http://www.theguardian.com/world/interactive/2014/may/29/nauru-family-health-risks-report-infull>, (accessed 2 March 2016); The Moss Review (accessed 2 March 2016) at 3.141.

<sup>19</sup> Ibid at 4.

reprieve from possible perpetrators of abuse. The exposure of children to abuse is also exacerbated by the lack of a legislative child protection framework on Nauru.<sup>20</sup> Where a child makes an allegation of abuse, there is no framework in place to ensure that he or she is removed from the situation of perceived or actual danger and taken to a safe environment or put at a physical distance from the assailant.<sup>21</sup> ChilOut asserts that a child protection framework with an independent review panel must be established and implemented to protect all children at the detention centre.

The Moss Review urged the Australian Government to support the Nauruan Government to enhance its legal and policy framework for the protection of children.<sup>22</sup> The Moss Review also found that working with children checks are not required for employees at the detention centre and there is no mandatory requirement for reporting child abuse.<sup>23</sup> This situation is unacceptable and does not comply with best practice in child protection. ChilOut understands that a previous service provider attempted to remedy the absence of a child protection framework in light of the seriousness of allegations, with Save the Children establishing a Child Safeguarding Protocol to support the protection of children at the centre.<sup>24</sup> The protocol served to ensure that a child-safe environment was maintained at all times and promoted the reporting of abnormal behavior amongst children.<sup>25</sup> It is presumed that this protocol no longer remains in operation due to the removal of Save the Children from Nauru. The status of a child protection framework in Nauru is unclear.

The Child Protection Panel established by the Australian Government in 2015 provides advice on the protection and wellbeing of children at the Nauru Detention Centre.<sup>26</sup> However, the effectiveness of the Panel's advice is questionable, as it appears that advice does not extend to the Nauruan Government.<sup>27</sup> Based on the information that is publically available, it is unclear what advice the Panel has provided and what, if any, measures have been implemented to address concerns held by advocacy groups regarding a child protection framework. As such, ChilOut submits that a child protection framework with an independent review system must be implemented without further delay to address the credible allegations of child abuse and to prevent abuse occurring in future.

## (ii) Poor living conditions

ChilOut is deeply troubled by the extremely poor living conditions in which children are forced to live at the detention centre in Nauru. Sub-standard accommodation at the detention centre is made worse by the remote location of the centre and the hot and humid conditions. The remoteness of the Nauru Detention Centre raises some critical issues. Children are placed at a physical distance from neighbouring communities whom are not living in detention and do not have access to an

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<sup>20</sup> The Guardian, "Nauru family health risks – the report in full", 30 May 2014, at <http://www.theguardian.com/world/interactive/2014/may/29/nauru-family-health-risks-report-in-full>, (Accessed 2 March 2016) ; Human Rights Law Centre, Submission 58, p. 3.

<sup>21</sup> Ms. Viktoria Vibhakar, Submission to the Senate Select Committee on the Recent Allegations Relating to the Conditions and Circumstances at the Regional Processing Centre in Nauru. 'Taking Responsibility: Conditions and Circumstances at Australia's Regional Processing Centre in Nauru.' p. 5.

<sup>22</sup> The Moss Review (Accessed 2 March 2016), p. 9.

<sup>23</sup> Ibid.

<sup>24</sup> Save the Children, 'Protecting Children on Nauru', Children without Borders, at <http://scasites.org.au/noborders/providing-support-to-vulnerable-children-on-nauru/>, (accessed 3 March 2016); Save the Children, 'Child Protection Implementation Guidelines', at <http://resourcecentre.savethechildren.se/sites/default/files/documents/5607.pdf>, June 2011, p. 8.

<sup>25</sup> Senate Legal and Constitutional Affairs Select Committee, Parliament of Australia, *Select Committee on the Recent allegations relating to conditions and circumstances at the Nauru Regional Processing Centre* (2015), p. 104.

<sup>26</sup> Peter Dutton MP, Minister for Immigration and Border Protection, 'Child Protection Panel and Extra Police Officers to Start Work', 9 May 2015, at <http://www.minister.border.gov.au/peterdutton/2015/Pages/child-protection-panel-extra-police-officers.aspx>, (accessed 3 March 2016)

<sup>27</sup> Based on publicly available information, the Child Protection Panel serves only to advise the Australian Government on its dealings with the Nauruan Government regarding child abuse. However, it is unclear whether the Panel directly advised the Nauruan Government. Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 8 February 2016; Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 8 February 2016, p.21.

adequate standard of healthcare or play and recreation facilities. Numerous investigations have reported the living conditions in the Nauru Detention Centre to be extremely hot, humid, and overcrowded<sup>28</sup>. RPC 3 is the housing facility at the detention centre for families and children and is located in an area that receives little shade from the hot sun.<sup>29</sup> RPC 3 contains “flimsy partitioning” within tents that accommodate up to 18-20 people.<sup>30</sup> Save the Children has urged the Australian Government to equip all tents in RPC 3 with air conditioning in order to alleviate heat issues<sup>31</sup> and has reported that only some tents, in which very young children are accommodated, have air-conditioning.<sup>32</sup>

Children have conveyed directly to ChilOut their day-to-day struggle with the overbearing heat in Nauru and the poor accommodation at the Detention Centre, with one child exclaiming: “The air was so dirty, when I woke up in the middle of the night, I could see a lot of dirt on the surface of my pillow.” A teenager told ChilOut:

**“We were in a mouldy tent in a phosphate mine where it was 40 degrees. Our tents were so hot, the fans just blew the hot air around” 18-year-old in detention**

The AHRC’s *Forgotten Children Report* documented the impact of the harsh sun on the tent accommodation at the Nauru Detention Centre, which often led to holes forming on the ceilings of tents, which presented trouble in wet weather.<sup>33</sup> In the AHRC’s recent 2016 report, it noted that “almost universally, people complained about the duration of showers and the water shortages” at the Nauru Detention Centre. People who had spent time in detention in Nauru told the AHRC that showers were limited to 2 minutes if the guards were nice, but showers were otherwise shorter. This is consistent with what children have told to ChilOut, with one child explaining that often “water was only available for two to four hours a day”. Another child spoke to ChilOut about being taunted by guards about the lack of water:

**“Sometimes my brother or I were really thirsty so we would ask those giant guards to bring water for us but they would laugh at us and drink their own water” 14-year-old in detention**

### (iii) Emotional and psychological damage to children

ChilOut has serious concerns for the emotional and psychological welfare of children detained in Nauru. Data recently obtained from the detention centre healthcare provider, International Health

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<sup>28</sup> ChilOut, ‘Submission to the Australian Human Rights Commission Inquiry Into Children in Immigration Detention’, May 2014;

The Guardian, “Nauru family health risks – the report in full”, 30 May 2014, at <http://www.theguardian.com/world/interactive/2014/may/29/nauru-family-health-risks-report-in-full>, (Accessed 2 March 2016); Senate Legal and Constitutional Affairs Select Committee, Parliament of Australia, *Select Committee on the Recent allegations relating to conditions and circumstances at the Nauru Regional Processing Centre* (2015); Department of Immigration and Border Protection, “Immigration Detention and Community Statistics Summary”, 29 February 2016, at <http://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-29-feb-2016.pdf>, (Accessed 3 March 2016).

<sup>29</sup> Save the Children, ‘Submission to the Select Senate Inquiry into Recent Allegations to Conditions and Circumstances at the Regional Processing Centre in Nauru’, April 2015, at [https://www.savethechildren.org.au/\\_\\_data/assets/pdf\\_file/0006/92787/SCA\\_Submission\\_Senate\\_Inquiry\\_Nauru\\_PUBLIC.pdf](https://www.savethechildren.org.au/__data/assets/pdf_file/0006/92787/SCA_Submission_Senate_Inquiry_Nauru_PUBLIC.pdf), (Accessed 3 March 2016).

<sup>30</sup> AHRC Health and Well-Being report (Accessed 9 March 2016) p. 12.

<sup>31</sup> Ibid at 29.

<sup>32</sup> Ibid.

<sup>33</sup> The Forgotten Children Report (Accessed 9 March 2016), p. 181.

and Medical Services (“IHMS”), revealed that children at the detention centre aged 5-17 are being diagnosed with mental health illnesses at almost twice the rate of adults.<sup>34</sup> Children under the age of 5 are also being diagnosed with mental health illnesses.<sup>35</sup> The data revealed that depression is the most common mental illness present in children at the detention centre.<sup>36</sup> Children are spending increasingly long periods of time in detention and the data obtained from IHMS also revealed that the prescription of anti-depressants, antianxiety and antipsychotic medications had increased by 150% from 2014 to 2015 for both adults and children at the Nauru Detention Centre.<sup>37</sup> On the basis of this evidence and other compelling evidence, the urgent need to remove children from the Nauru Detention Centre is plain.

Medical evidence also illustrates the detrimental impact of detention on the mental health of parents, which in turn impacts adversely on children. Research found that 60% of parents in immigration detention reported feeling depressed ‘most or all of the time’, and parents of infants report feelings of hopelessness ‘most or all of the time’.<sup>38</sup> On this basis, the risk of the mental health of parents impacting on their children cannot be ignored. This risk extends to a child’s emotional and cognitive development due to the crucial role played by parents in their children’s lives.<sup>39</sup> This issue is particularly salient for infants, as medical research evidences that exposure to mental illness from a young age has long-term consequences on a child’s mental health.<sup>40</sup> A mental health disorder in a mother of an infant, such as depression, can result in her being disengaged and unresponsive to her child, and in turn infants may appear depressed.<sup>41</sup> The physical and emotional interaction between mother and child can become disconnected.<sup>42</sup>

The AHRC’s 2016 report on children in immigration detention promulgated that, in a medical study of children who had spent a period of 3-17 months at the Nauru Detention Centre, all were troubled by sentiments of despair.<sup>43</sup> Additionally, 90% of these children reached the highest possible score for despair.<sup>44</sup> High levels of despair go hand-in-hand with a risk of developing anxiety and depression<sup>45</sup>, forming part of the patchwork of mental health illnesses experienced by children at the Nauru Detention Centre. The level of despair experienced by children at the centre has also been conveyed to ChilOut through communication with children in detention. Children have told ChilOut that they “feel hopeless” and are “tired of this life”. A 6-year-old child said that he was “always sad because I have stayed such a long time in detention”, whilst another child told ChilOut:

**“I hate this environment. I just see long fences and gates and officers.” 9-year-old in detention**

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<sup>34</sup> International Health and Medical Services Health Data obtained by The Guardian. B. Doherty and N. Evershed, ‘Child detainee mental trauma will last, immigration healthcare provider warns’, *The Guardian*, 18 January 2016, at [http://www.theguardian.com/australia-news/2016/jan/18/child-detainee-mental-trauma-will-last-immigration-healthcare-provider-warns?CMP=soc\\_567](http://www.theguardian.com/australia-news/2016/jan/18/child-detainee-mental-trauma-will-last-immigration-healthcare-provider-warns?CMP=soc_567) (Accessed 4 March 2016).

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Paxton et al. ‘The Forgotten Children: National Inquiry into Children in Immigration Detention (2014)’, *Journal of Paediatrics and Child Health*, Vol. 51(4), April 2015, p. 366-8, at <http://onlinelibrary.wiley.com/doi/10.1111/jpc.12873/epdf> (Accessed 4 March 2016).

<sup>39</sup> ChilOut, ‘Submission to the Australian Human Rights Commission Inquiry Into Children in Immigration Detention’, May 2014, (Accessed 4 March 2016) p. 21; The Forgotten Children Report (Accessed 4 March 2016) p. 64.

<sup>40</sup> B. Doherty and N. Evershed, ‘Child detainee mental trauma will last, immigration healthcare provider warns’, *The Guardian*, 18 January 2016, at [http://www.theguardian.com/australia-news/2016/jan/18/child-detainee-mental-trauma-will-last-immigration-healthcare-provider-warns?CMP=soc\\_567](http://www.theguardian.com/australia-news/2016/jan/18/child-detainee-mental-trauma-will-last-immigration-healthcare-provider-warns?CMP=soc_567) (Accessed 4 March 2016).

<sup>41</sup> ChilOut, ‘Submission to the Australian Human Rights Commission Inquiry Into Children in Immigration Detention’, May 2014, p. 21.

<sup>42</sup> Ibid.

<sup>43</sup> The Forgotten Children Report, p. 17.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.



ChilOut is further concerned by the common practice at the Nauru Detention Centre of staff using children's boat ID numbers in place of their names. ChilOut has observed the continuation of this practice for many years<sup>46</sup> and has observed that the practice permeates many aspects of children's lives in detention centres. It reinforces the institutionalised manner in which children live at the Nauru Detention Centre. This practice has occurred when children receive medical attention<sup>47</sup> and for identification in school.<sup>48</sup> Some children have used their 6-digit boat ID number as a form of identification on artworks at school in place of their name. The practice of detention centre staff calling children by their boat ID numbers also serves to intimidate children and has been recognised as being a source of distress for children. One teenager exclaimed to ChilOut:

**“For three years I’ve been known as a number!” 18-year-old in detention**

ChilOut calls for an end to the dehumanising practice of calling children by their ID numbers and for the removal of all children from the Nauru Detention Centre in order to stop the continued psychological harm that is caused to children detained there.

**(iv) Insufficient access to healthcare**

There is a large amount of evidence, including credible investigative reports and opinions of medical experts, that demonstrates the inadequacy of health and medical services available to children at the Nauru Detention Centre. The dire need of children to access specialised and quality health treatment is especially pressing in Nauru due to the severe mental harm caused to children held at the detention centre and the harsh environment at which the centre is located. In 2013, the UN High Commissioner for Refugees expressed concern about the detention centre's "proximity to phosphate mining, which causes a high level of dust."<sup>49</sup> In the AHRC's *Forgotten Children Report*, paediatrician Elizabeth Elliott conveyed concerns for children's health as a result of the phosphate, which resulted in "recurrent asthma and irritation of the eyes and skin."<sup>50</sup>

There is also substantial evidence regarding the lack of adequate access to health services in Nauru, which is illustrated by the well-known practice of the Australian Government of transferring children and adults from Nauru to Australia in order to receive required medical care. The lack of access to specialised medical treatment was also acknowledged in the AHRC's *Forgotten Children Report* which stated that there were "limits to specialist health services in Nauru" and noted that, at the time of the report, IHMS did not employ a paediatrician on Nauru and there were no staff with "neonatal or early childhood resuscitation experience, advanced paediatric life support training or child protection experience."<sup>51</sup> The AHRC also documented the inefficiencies and excessive waiting periods reported by children and their families in accessing medical treatment.<sup>52</sup>

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<sup>46</sup> ChilOut, 'Submission to the Australian Human Rights Commission Inquiry Into Children in Immigration Detention', May 2014, (Accessed 9 March 2016), p. 27.

<sup>47</sup> S. Scott and N. Robinson, 'Leading Australian doctor challenges Malcolm Turnbull, Bill Shorten over 'torture like conditions' at detention centres', *ABC*, at <http://www.abc.net.au/news/2016-01-26/doctor-challenges-pm-over-immigration-detention-centres/7113966>, 26 January 2016 (accessed 2 March 2016); Senate Legal and Constitutional Affairs Select Committee, Parliament of Australia, *Select Committee on the Recent allegations relating to conditions and circumstances at the Nauru Regional Processing Centre* (2015), p. 72.

<sup>48</sup> M. Chalmers, 'Detention on Nauru: Children Now Identify More with Boat Number than Names, Says Former Worker', *New Matilda*, 29 June 2015, at <https://newmatilda.com/2015/06/29/detention-nauru-children-now-identify-more-boat-number-names-says-former-worker/> (Accessed 4 March 2016).

<sup>49</sup> The *Forgotten Children Report* (accessed 30 March 2016), p. 181.

<sup>50</sup> *Ibid.*

<sup>51</sup> The *Forgotten Children Report* (accessed 30 March 2016), p. 188.

<sup>52</sup> The *Forgotten Children Report* (accessed 30 March 2016), p. 189.

This information is consistent with the first-hand information ChilOut has received from children regarding the adequacy of health care at the Nauru Detention Centre. Many children have told us about the poor quality of medical services and the long delays in accessing medical care, even when a health issue is urgent. One child said to ChilOut that, at the Nauru Detention Centre, it would “sometimes take 1 to 2 hours for an ambulance to come. It doesn’t matter how urgent your situation is.” Other children have spoken to us about the dismissive treatment they receive when seeking medical help. As ChilOut has previously reported, children have received for many years a ‘standardised’ prescription of two Panadol tablets and a glass of water when attending appointments with IHMS.<sup>53</sup> One child told ChilOut:

**“Whoever became sick, medical staff used to come to us, with a briefcase, and tell us to drink water.” 15-year-old in detention**

The views expressed by children show that they do not feel their medical issues are taken seriously, which has resulted in a reluctance of children and their parents to attend appointments with IHMS.<sup>54</sup> In addition, IHMS services are considered slow and inefficient with 25-30% of patients not attending their appointments.<sup>55</sup> Other factors contributing to adults and children failing to attend medical appointments include the recent ‘open’ nature of the centre and fears about venturing outside of the detention centre.<sup>56</sup> ChilOut does not believe that children at the Nauru Detention Centre are receiving adequate and sufficiently tailored medical care. ChilOut submits that access to suitably specialised and quality medical care must be made a priority for children detained in Nauru.

#### (v) Inadequate education

ChilOut’s position is that all children must be given a standard and quality of education that fulfills Australia’s international human rights obligations under the *Convention on the Rights of the Child*.<sup>57</sup> ChilOut has particular concerns regarding the standard of education provided to children in detention in Nauru resulting from their recent integration into the Nauruan educational system and attendance at local Nauruan schools. ChilOut asserts that for children seeking asylum, it is especially important that they are placed in a learning environment in which teachers understand the impact of past traumas on their development and trauma is not re-triggered or exacerbated.

In August 2013, Save the Children was contracted by the Australian Government to provide a curriculum-based educational program for school-aged children in the Nauru Detention Centre.<sup>58</sup> However, this contract has later ceased and all children at the Nauru Detention Centre now attend

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<sup>53</sup> ChilOut, ‘Submission to the Australian Human Rights Commission Inquiry Into Children in Immigration Detention’, May 2014, (Accessed 9 March 2016), p. 16, IHMS (International Health and Medical Services) is the medical care provider for the Nauru Detention Centre. Senate Legal and Constitutional Affairs Select Committee, Parliament of Australia, *Select Committee on the Recent allegations relating to conditions and circumstances at the Nauru Regional Processing Centre* (2015), p. 80.

<sup>54</sup> The Forgotten Children Report (accessed 30 March 2016), p. 146.

<sup>55</sup> Ibid, Parliament of Australia, Senate Legal and Constitutional Affairs Select Committee, Parliament of Australia, *Select Committee on the Recent allegations relating to conditions and circumstances at the Nauru Regional Processing Centre* (2015), at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regional\\_processing\\_Nauru/Regional\\_processing\\_Nauru/Final\\_Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report), p. 104.

<sup>56</sup> B. Doherty and N. Evershed, ‘Child detainee mental trauma will last, immigration healthcare provider warns’, *The Guardian*, 18 January 2016, at [http://www.theguardian.com/australia-news/2016/jan/18/child-detainee-mental-trauma-will-last-immigration-healthcare-provider-warns?CMP=soc\\_567](http://www.theguardian.com/australia-news/2016/jan/18/child-detainee-mental-trauma-will-last-immigration-healthcare-provider-warns?CMP=soc_567) (Accessed 4 March 2016).

<sup>57</sup> A discussion of Australia’s obligations under the United Nation Convention of the Right of the Child including Article 28 is located below under section (d) of this Submission.

<sup>58</sup> Senate Legal and Constitutional Affairs Select Committee, Parliament of Australia, *Select Committee on the Recent allegations relating to conditions and circumstances at the Nauru Regional Processing Centre* (2015), at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regional\\_processing\\_Nauru/Regional\\_processing\\_Nauru/Final\\_Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report), p. 76.

Yaren primary school, Nauru primary school, Nauru College or Nauru Secondary School.<sup>59</sup> ChilOut's concerns for children attending these local Nauruan schools relate to first-hand information we have received from children as well as the recent allegations of harassment at these schools carried out by fellow students and teachers, which has been reported in the Australian media.<sup>60</sup>

Children from the Nauru Detention Centre who attend local schools have allegedly been subject to verbal discrimination, name-calling and physical abuse at school, which was reported to the Australian media through the organisation *Offshore Processing Centre Voice*.<sup>61</sup> Children have stated that they have experienced swearing from teachers, offers of sexual intercourse from fellow students, with one child saying he was urinated on by fellow students within the school grounds.<sup>62</sup> ChilOut asserts that this type of treatment is completely unacceptable and, at the very least, requires further investigation by an independent body. ChilOut has also spoken to children who have complained about the lack of "decent education" on Nauru. One child describing Nauruan students to ChilOut as "aggressive" which led to that child not attending school because:

### **"Going to school was a nightmare for me." 14-year-old in detention**

It is also of concern to ChilOut that 32% of teachers in Nauruan schools do not possess any teaching qualifications.<sup>63</sup> School attendance is also a significant issue affecting Nauruan schools as, on average, school students do not attend 34% of classes.<sup>64</sup> The literacy and numeracy standards at these schools is also troubling, with only 10% of grade 6 students meeting the minimum expected numeracy score compared with Australian standards.<sup>65</sup> The Australian Government maintains that the quality of education at Nauru schools is "at least as good as" Australian schools.<sup>66</sup> However, based on first-hand information and reports to date, ChilOut's adopts the view that Nauruan schools attended by children from the Nauru Detention Centre are not a safe environment for these children and that the quality of education received is inadequate.

#### **(vi) Lack of play and recreation opportunities**

ChilOut has previously expressed concerns that the Nauru Detention Centre does not provide adequate recreational areas, equipment or toys for children who are detained there. These concerns centre on the lack of exposure to the natural environment at the detention centre and the absence of grass areas available for children to play on. It has been well documented that, at the Nauru Detention Centre, children are left with no choice but to play with rocks on hard coral ground.<sup>67</sup> This

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<sup>59</sup> P. Farrell, 'Nauru plan to move asylum seeker children to local schools sparks concern', *The Guardian*, 30 June 2015, at <http://www.theguardian.com/australia-news/2015/jun/30/nauru-plan-to-move-asylum-seeker-children-to-local-schools-sparks-concern>, (Accessed 4 March 2016).

<sup>60</sup> H. Davidson and B. Doherty, 'Child refugees tell of bullying on Nauru: 'They are rude to us they punch us'', *The Guardian*, at <http://www.theguardian.com/australia-news/2016/jan/21/child-refugees-tell-of-bullying-on-nauru-they-are-rude-to-us-they-punch-us>, 21 January 2016 (accessed 2 March 2016)

<sup>61</sup> H. Davidson and B. Doherty, 'Child refugees tell of bullying on Nauru: 'They are rude to us they punch us'', *The Guardian*, at <http://www.theguardian.com/australia-news/2016/jan/21/child-refugees-tell-of-bullying-on-nauru-they-are-rude-to-us-they-punch-us>, 21 January 2016 (accessed 4 March 2016).

<sup>62</sup> N. Hasham, 'Asylum seeker children on Nauru abused, sexually harassed at school: former teacher', *Sydney Morning Herald*, at <http://www.smh.com.au/federal-politics/political-news/asylum-seeker-children-on-nauru-abused-sexually-harassed-at-school-former-teacher-20160107-gm1mdh.html>, 8 January 2016 (Accessed 4 March 2016).

<sup>63</sup> Schedule to the Nauru-Australia Partnership for Development. Partnership Priority Outcome 2: Improved Education. Implementation Strategy. Partnership for Development between the Government of Nauru and the Government of Australia. Page 3

<sup>64</sup> B. Doherty, 'School in Nauru detention centre to be closed', *The Guardian*, at <http://www.theguardian.com/australia-news/2015/mar/31/asylum-seeker-children-start-campaign-to-save-their-nauru-school-from-closure> (Accessed 4 March 2016).

<sup>65</sup> Department of Foreign Affairs and Trade, 'Schedule to the Nauru-Australia Partnership for Development', p. 3.

<sup>66</sup> H. Aston and S. Whyte, 'Peter Dutton defends Nauru hospitals as better than some in Australia as Cambodia takes a step forward', *Sydney Morning Herald*, 26 March 2015, at <http://www.smh.com.au/federal-politics/political-news/peter-dutton-defends-nauru-hospitals-as-better-than-some-in-australia-as-cambodia-deal-takes-a-step-forward-20150326-1m81fj.html>, (Accessed 5 March 2016).

<sup>67</sup> ChilOut, "Submission to the Australian Human Rights Commission Inquiry into Children in Immigration Detention", May 2014, at <https://d3n8a8pro7v7hmx.cloudfront.net/chilout/pages/25/attachments/original/1416283555/1.pdf?1416283555>, p. 11.

situation is made worse by the unsafe level of heat in open areas at the detention centre<sup>68</sup> and the threats to children's personal safety and their consequent fear of engaging in play and recreation in certain areas of the detention centre.<sup>69</sup> This is consistent with first-hand information ChilOut has received from both parents and children, with one child stating simply:

**"I cannot relax or play here." 9-year-old in detention**

## (b) Transparency and Accountability

The Nauru Detention Centre is largely shielded from scrutiny due to its remote location and the fact that media and monitoring bodies are placed at distance from the centre; members of the Australian media are generally not granted visas to visit Nauru.<sup>70</sup> ChilOut believes that access to first-hand information about the conditions in which children live at the Nauru Detention Centre is critical to a functioning system of democracy and good governance. The recent introduction by the Australian Government of the *Border Force Act 2015* (Cth) further calls into question Australia's adherence to principles of accountability and transparency. The *Border Force Act* provides for sanctions against the reporting and distribution of information by current and former Australian Government employees and contractors engaged in a broad range of activities at the Nauru Detention Centre, subject to few exceptions.

### (i) The *Border Force Act*

Under section 42 of the *Border Force Act*, if a person who has been, or is currently employed or contracted by the Department for Immigration and Border Protection ("DIBP") makes a record or discloses "protected information" regarding anything they see at immigration detention facilities, they will be subject to two-years imprisonment.<sup>71</sup> The term "protected information" appears to have an extremely wide reach as it encompasses information obtained in the completion of a task "in any capacity".<sup>72</sup> ChilOut has serious concerns about the inference drawn from these provisions that a current or previous DIBP employee or contractor who has physically or electronically recorded an instance of child abuse within the Nauru Detention Centre will be in breach of the *Border Force Act* and accordingly may face imprisonment.<sup>73</sup> The exemptions under the secrecy provisions in the Act appear to act as a little safeguard for employees and contractors who find themselves in this situation.

It is noted that section 42 of the Act provides exemption where the recording or disclosure of "protected information" is required by a Commonwealth, State or Territory law,<sup>74</sup> or by an order or

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<sup>68</sup> Senate Legal and Constitutional Affairs Select Committee, Parliament of Australia, *Select Committee on the Recent allegations relating to conditions and circumstances at the Nauru Regional Processing Centre* (2015), at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regional\\_processing\\_Nauru/Regional\\_processing\\_Nauru/Final\\_Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report), pp. 79 and 80.

<sup>69</sup> *Ibid.*

<sup>70</sup> Human Rights Commission, 'Asylum Seekers, Refugees and Human Rights – Snapshot Report', Publications, at <https://www.humanrights.gov.au/publications/asylum-seekers-refugees-and-human-rights-snapshot-report/3-third-country-processing>, (accessed 5 March 2016) Chapter 3; H. Davidson, 'Nauru bans entry for Australians and New Zealanders without a visa', *The Guardian*, 19 February 2016, at <http://www.theguardian.com/world/2016/feb/19/nauru-bans-entry-australians-new-zealanders-without-visa>, (Accessed 30 March 2016).

<sup>71</sup> Section 42 of the *Border Force Act* applies to all "entrusted persons". This is defined under s 4 as inclusive of "an Immigration and Border Protection worker" and "a person who is engaged as a consultant or contractor to perform services for the Department".

<sup>72</sup> *Border Force Act 2015* (Cth) s4.

<sup>73</sup> Hoang, J. Migration Law: Of secrecy and enforcement: Australian border force act [online]. LSJ: Law Society of NSW Journal, Vol. 2, No. 7, August 2015: 78-79.

<sup>74</sup> *Australian Border Force Act 2015* (Cth) s42(2)(d). Similarly, s 44 permits disclosure of "protected information" to bodies including the Australian Federal Police, Australian Commonwealth Departments, or the police force of a state or territory.

direction of a Court or tribunal.<sup>75</sup> Section 48(a) of the Act provides an exemption where “the entrusted person reasonably believes that the disclosure is necessary to prevent or lessen a serious threat to the life or health of the individual”. With terms including “serious” and “threat to life” being undefined in the Act, the exception lacks clarity which may result in medical professionals, guards and others within the ambit of these secrecy provisions erring on the side of personal caution and, rather than face imprisonment, abstaining from reporting child abuse.

## (ii) Impact

ChilOut holds three primary concerns regarding the implications of the secrecy provisions in the *Border Force Act*: (a) Curtailing the reporting of harms against children; (b) Discouraging legitimate whistleblowers from reporting suspected or actual harms<sup>76</sup> and, (c) Shielding the Australian Government from public scrutiny concerning its conduct, and responsibility for conduct, at the Nauru Detention Centre.

### (a) The reporting of harm

The secrecy provisions of the *Border Force Act* are a strong deterrent to government employees and contractors recording or alerting the media or advocacy bodies to concerns regarding child welfare at the Nauru Detention Centre. Medical professionals have strongly advocated against the secrecy provisions of the *Border Force Act*, stating they are legally and ethically obliged to report child abuse and the unacceptable conditions in which children are detained at the Nauru Detention Centre.<sup>77</sup> The explicit threat of a two-year prison sentence is likely to prevent doctors and nurses who are employed or contracted by the Australian Government from acting in the best interests of their patients, including children to whom they owe a duty of care.<sup>78</sup> Under their medical code, doctors may face a revocation of their license where they do not take “all reasonable steps to address the issue if you have reason to think that patient safety has been compromised”.<sup>79</sup>

### (b) Whistleblowers

Whistleblowers raise public awareness about breaches of human rights, and as such have played a key role in bringing to light allegations of sexual abuse at the Nauru Detention Centre.<sup>80</sup> Owing to this important role, ChilOut supports legitimate whistleblowing and asserts that anyone who

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<sup>75</sup> *Australian Border Force Act 2015* (Cth) s42(2)(d).

<sup>76</sup> The Law Council of Australia, *Submission to the Senate Legal and Constitutional Affairs Committee: Australian Border Force Bills 2015*, 9 April 2015, at [http://www.lawcouncil.asn.au/lawcouncil/images/2969\\_-\\_Final\\_Submission\\_Border\\_Force\\_Bills\\_2015.pdf](http://www.lawcouncil.asn.au/lawcouncil/images/2969_-_Final_Submission_Border_Force_Bills_2015.pdf), (Accessed 10 March 2016), p. 13; Combined Refugee Action Group, *Submission to the Senate Legal and Constitutional Affairs Committee*, (Accessed 10 March 2016), p. 2; G. Newhouse, ‘Let me clear up the government’s clarification of the Border Force Act’, *The Guardian*, 8 July 2015, at <http://www.theguardian.com/commentisfree/2015/jul/08/let-me-clear-up-the-governments-clarification-about-the-border-force-act>, (Accessed 10 March 2016)

<sup>77</sup> ‘Open letter on the Border Force Act: ‘We challenge the department to prosecute’, *The Guardian*, 1 July 2016, at <http://www.theguardian.com/australia-news/2015/jul/01/open-letter-on-the-border-force-act-we-challenge-the-department-to-prosecute>. (Accessed 10 March 2016); P. Farrell, ‘Detention centre staff speak out in defiance of new asylum secrecy laws’, *The Guardian*, 1 July 2015, at <http://www.theguardian.com/australia-news/2015/jul/01/detention-centre-staff-speak-out-in-defiance-of-new-asylum-secrecy-laws> (Accessed 10 March 2016); P. Farrell, ‘Why we spoke out: former detention centre workers explain’, *The Guardian*, 1 July 2015, at <http://www.theguardian.com/australia-news/2015/jul/01/why-we-spoke-out-former-detention-centre-workers-explain> (Accessed 10 March 2016); Sanggaran, J.P., Haire, B., and Zion, D. (2016) ‘The Health Care Consequences Of Australian Immigration Policies’, *PLOS Med* 13(2), at <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001960> (Accessed 10 March 2016).

<sup>78</sup> P. Farrell, ‘Why we spoke out: former detention centre workers explain’, *The Guardian*, 1 July 2015, at <http://www.theguardian.com/australia-news/2015/jul/01/why-we-spoke-out-former-detention-centre-workers-explain> (Accessed 10 March 2016);

<sup>79</sup> Medical Board of Australia 2014, *Good Medical Practice: A Code of Conduct for Doctors in Australia*, Medical Board of Australia (Accessed 10 March 2016).

<sup>80</sup> Asylum Seeker Resource Centre, *Submission into the inquiry into Australian Border Force Bill 2015*, 9 April 2015, (Accessed 10 March 2016), p. 5.

witnesses or receives first-hand information regarding child abuse should be legally protected in reporting and/or speaking out about the abuse. However, under the secrecy provisions of the *Border Force Act*, legitimate whistleblowers are arguably discouraged from reporting instances of actual or suspected child abuse at the Nauru Detention Centre.<sup>81</sup>

Where an Australian Government employee or contractor in a detention facility seeks to ‘blow the whistle’, the *Public Interest Disclosure Act 2013* (Cth) stipulates how the disclosure of information must occur in order for the person to have legal protection. Under the *Public Interest Disclosure Act*, a whistleblower must first report their concerns internally to their superiors.<sup>82</sup> This means the concern would need to be reported to DIBP as the authority of an “entrusted person” under the *Border Force Act*. A potential whistleblower is strictly prevented from the disclosure of information where it *solely* relates to asylum seeker and refugee policy, including the conditions at the Nauru Detention Centre.<sup>83</sup> Further, a potential whistleblower cannot publically release information on the *sole* basis of disagreement with an action that has been taken, is currently being taken, or is proposed to be taken by the Minister for Immigration and Border Protection.<sup>84</sup> ChilOut is very troubled by the impact of these provisions in relation to discouraging disclosure of important information relating to the conditions and treatment of children in immigration detention. Consequently, ChilOut is concerned that children are at greater risk of harm as a result of the *Border Force Act*.

### (c) Public scrutiny of government actions

ChilOut believes that the Australian public plays a critical role in placing pressure upon the Australian Government to comply with its human rights obligations in relation to the protection of children who come to Australia seeking asylum. The public, through access to information via media and other sources, holds the Government to account through the system of representative government. The secrecy provisions of the *Border Force Act*, and the inadequacy of protection for whistleblowers under the *Public Information Disclosure Act*, effectively shield the public from obtaining new and significant information about children in immigration detention. ChilOut asserts that, without this information, the actions of the Australian Government regarding the conditions and treatment of children in detention cannot be sufficiently called into question by the public through avenues such as engaging with local Members of Parliament on the issue.

For the reasons outlined above, ChilOut recommends that the Australian Government repeal the secrecy provisions of the *Border Force Act*. These provisions restrict the reporting of harm against children at the Nauru Detention Centre, which in turn will likely result in a lack of investigation and/or prosecution of allegations of physical and sexual assault and will perpetuate an environment of impunity for perpetrators.

### (c) Implementation of the Recommendations of the Moss Review

The Moss Review investigated allegations of sexual and physical assault against people, including children, held at the Nauru Detention Centre during the period of July 2013 to October 2014.<sup>85</sup> The final report of the Moss Review highlighted the inappropriateness of the Nauru Detention Centre for children seeking asylum. ChilOut fully supports the implementation of the Moss Review

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<sup>81</sup> Ibid at 76.

<sup>82</sup> Under ss 46 and 47 of the *Public Disclosure Act 2013*, “The principal officer of the allocated agency “ must investigate the report or disclosure made by the employee or contractor. A “Principle Officer” includes the Secretary of the Department of Immigration and Border Protection and the Head of the Executive Agency under s 73 of the *Public Disclosure Act 2013*.

<sup>83</sup> s 31(a) *Public Disclosure Act 2013* (Cth).

<sup>84</sup> s 31(b) *Public Disclosure Act 2013* (Cth).

<sup>85</sup> The Moss Review (accessed 16 March 2016), p. 3.



recommendations. This section of the submission will focus on the implementation of the recommendations most pertinent to children held at the Nauru Detention Centre including: (i) facilities and infrastructure, (ii) child protection issues and (iii) enhancing the framework for the identification, reporting, response and prevention of sexual and physical abuse at the centre.

### (i) Facilities and Infrastructure decisions

The first recommendation of the Moss Review provides that “the Department and the Nauruan Government take into account the personal safety and privacy of transferees when making decisions about facilities and infrastructure at the Centre”. ChilOut supports this recommendation and believes that each family should be given a separate living space in which they can conduct personal activities and are afforded privacy. The Moss Review explicitly states that the “high density accommodation in mostly non-air-conditioned, soft walled marquees in a tropical climate” raises privacy concerns for children within the detention centre. Based on information received to date, it does not appear that this recommendation has been fully implemented and there does not appear to have been any material change to living arrangements on the Nauru Detention Centre. In addition, there is no information to suggest that air-conditioning has been provided to all living spaces in order to alleviate the heat and humidity issues discussed earlier in this submission.

### (ii) Child protection issues

Recommendation 6 of the Moss Review requires the Australian Government and service providers to “continue to work with the Nauruan Government to ensure that robust child protection framework is developed”. This submission has highlighted the fact that the establishment of a Child Protection Panel by the Australian Government is inadequate in addressing this recommendation as, based on publicly available information, it serves an advisory-only function and it appears not to extend direct advice to the Nauruan Government.<sup>86</sup> The Australian Government has noted that the purpose of the panel includes: advising the Secretary of DIBP of the effectiveness and correctness of policies regarding reporting incidents involving children; and making recommendations in order to strengthen the response and reporting of child abuse incidents.<sup>87</sup> ChilOut submits that, in order to be effective and respond adequately to the Moss Review Recommendations, the Child Protection Panel must engage both the Australian and Nauruan Governments.

### (iii) Enhancing the framework for the identification, reporting, response and prevention of sexual and physical abuse at the Nauru Detention Centre

Recommendation 4 of the Moss Review requires “Nauruan Government officials and the Department to review and enhance existing policy framework for identifying, reporting, responding to, mitigating and preventing incidents of sexual and other physical assault at the Centre’. The credible allegations of physical and sexual assault of children at the Nauru Detention Centre highlight the importance of implementing a system of mandatory reporting of these harms. ChilOut asserts that all allegations of abuse against children must be taken seriously, fully investigated and, if

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<sup>86</sup> Based on publicly available information, the Child Protection Panel serves only to advise the Australian Government on its dealings with the Nauruan Government regarding child abuse. However, it is unclear whether the Panel directly advised the Nauruan Government. Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 8 February 2016. See Peter Dutton MP, Minister for Immigration and Border Protection, ‘Child Protection Panel ad Extra Police Officers to Start Work’, 9 May 2015, at <http://www.minister.border.gov.au/peterdutton/2015/Pages/child-protection-panel-extra-police-officers.aspx>, (accessed 16 March 2016).

<sup>87</sup> The Department of Immigration and Border Protection, ‘Child Protection Panel – terms of reference’, Reports and publications, at <https://www.border.gov.au/about/reports-publications/reviews-inquiries/child-protection-panel-terms-of-reference> (Accessed 16 March 2016).

appropriate, prosecuted. Furthermore, measures must be taken to immediately remove children from abusive environments and to provide them with adequate physical and mental healthcare.

The introduction of the secrecy provisions in the *Border Force Act* restricts the reporting of sexual and physical abuse of children at the Nauru Detention Centre and, as such, does not accord with recommendation 4 of the Moss Review. The secrecy provisions must be repealed in order for the Australian Government to effectively implement this recommendation and encourage a safe environment within the Nauru Detention Centre in which all allegations of abuse are taken seriously.

## (d) The extent to which the Nauru Detention Centre complies with Australia's international legal obligations

Australia has voluntarily assumed international human rights obligations under several international human rights treaties to ensure the protection of children. As such, the Australian Government must ensure that all children held in both onshore and offshore immigration detention centres enjoy the full range of rights set out in these treaties, including the *Convention on the Rights of the Child*<sup>88</sup> ("CRC"). As the CRC directly concerns the rights of children and covers these rights in a comprehensive manner, this section will briefly outline some of the key provisions of the CRC that the Australian Government is failing to comply with in relation to children detained in Nauru.

### (i) Detention in Nauru is not in the best interests of the child

Article 3(1) of the CRC requires that in all actions concerning children, the best interests of the child are a primary consideration. The mandatory and prolonged detention of children in Nauru, in which children are subject to sub-standard living conditions, quality of education, access to recreational facilities etc, is clearly not in the best interests of any child. The AHRC has stated that, as the best interests of each child do not bear on the Minister's decision as to whether they are transferred to Nauru, Australia is in breach of this provision.<sup>89</sup> ChilOut concurs with this evaluation, and urges the Senate Standing Committee to keep Article 3 of the CRC at the forefront of its considerations when inquiring into the conditions and treatment of children at the Nauru Detention Centre.

### (ii) Children in detention in Nauru are not provided with adequate healthcare

Article 24 of the CRC requires governments to recognise a child's right to enjoyment of the highest attainable standard of health and access to healthcare facilities. This submission has illustrated the inadequacy of healthcare provided to children at the Nauru Detention Centre. In particular, ChilOut submits that the delays in accessing medical care, the dismissive manner in which children's medical complaints are dealt with, and the lack of specialised medical treatment for children, cannot be considered adequate healthcare and, as such, children at the Nauru Detention Centre are denied the highest attainable standard of health.

### (iii) Mandatory detention of children in Nauru means that detention is not a 'measure of last resort', and that children are not detained for the 'shortest appropriate period'

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<sup>88</sup> Australia ratified the CRC in December 1990. Australian Human Rights Commission, *Australia's Commitment to children's rights and reporting to the UN*, October 2007, at <https://www.humanrights.gov.au/publications/australias-commitment-childrens-rights-and-reporting-un> (Accessed 30 March 2016).

<sup>89</sup> Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Detention* (2014), at [https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten\\_children\\_2014.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf) (Accessed 9 March 2016). p 192.



Article 37(b) and (d) of the CRC provides that children should only be detained as a measure of last resort, for the shortest appropriate period of time and, if detention does occur, it must be subject to effective independent review. The Australian law of mandatory offshore detention, in which children are transferred to detention in Nauru “as soon as reasonably practicable”<sup>90</sup> for an unknown and potentially indefinite period, is wholly inconsistent with this article of the CRC. ChilOut asserts that the Australian Government must implement legislative reform in order to comply with article 37 of the CRC.

#### (iv) Mandatory detention does not afford children privacy or provide an adequate living environment

Article 16 of the CRC requires that no child be subject to arbitrary interference with his or her privacy, home or correspondence. In addition, Article 28 of the CRC states that every child has the right to a standard of living adequate for their physical and mental development. This submission has already outlined the cramped, hot and humid environments in which children live at the Nauru Detention Centre. Children are uncomfortable and distressed where they must share a tent with 18-20 people with only a flimsy partition separating families within each tent.<sup>91</sup> As the Australian Government cannot guarantee a reasonable standard of living for children at the Nauru Detention Centre including a sufficient level of privacy, the centre cannot be considered to provide children with an adequate living environment.

#### (v) The Nauru Detention Centre does not allow adequate opportunity for children to engage in play and recreational activities

Similarly, Australia is required under Article 31 of the CRC to respect a child’s right to relax, play and enjoy a range of leisure activities. As already been discussed in this submission, the Nauru Detention Centre does not provide children with adequate recreational activities or areas for leisure and play. ChilOut submits that it is deeply concerning and unacceptable that children are exposed to dangerous levels of heat in recreational areas and that children resort to playing with rocks on hard coral ground in a desperate search for something to play with.

#### (vi) Detention in Nauru exposes children to physical and mental violence

Article 19 of the CRC requires governments to implement appropriate measures to protect children from all forms of physical or mental violence, injury and abuse. ChilOut submits that, in line with evidence published in reports and expert medical opinion, children held at the Nauru Detention Centre are not protected from physical and mental violence. Furthermore, the Australian Government is knowingly placing children in an environment in which the risk of exposure to such violence is high. The lack of clarity regarding a child protection framework in Nauru and curtailing of reporting of child abuse at the Nauru Detention Centre puts children at even greater risk of harm. As outlined in this submission, the secrecy provisions of the *Border Force* mean that Government employees and contractors who have worked at the Nauru Detention Centre are fearful of penalties for reporting abuses, which is likely to mean that abuses will continue and a culture of impunity will prevail.

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<sup>90</sup> *Migration Act 1958* (Cth), s 198AD. S 5AA of the Act defines the class of persons to which this section applies.

<sup>91</sup> AHRC Health and Well-Being report (Accessed 10 March 2016), p. 12.

## (vii) Children in detention in Nauru are not provided with an adequate education

Article 28(1) of the CRC requires Australia to afford children the right to education. The recent integration of children from the detention centre into Nauruan local schools has led to concerns about the safety of children at these schools and the quality of education they are receiving. ChilOut understands that many children have stopped attending local Nauruan schools due to fear regarding their safety and potential violence. The low levels of school attendance and high drop out rates requires the Australian Government to develop strategies and measures to address issues of safety and adequacy of education in order to encourage school attendance and address attendance rates.<sup>92</sup>

## (e) Other matters

In 2015 the Nauruan Government began to implement ‘open centre arrangements’ through which certain groups of people detained at the centre were permitted to leave the centre during the day.<sup>93</sup> Prior to these arrangements, all people living at the Nauru Detention Centre were required to obtain permission from a senior manager in order to leave the facility.<sup>94</sup> The failure to obtain permission to leave the Detention Centre was punishable by up to 6 months imprisonment.<sup>95</sup> By 5 October 2015, the Nauruan Government announced that the detention centre was completely open at all times and that all people living at the Nauru Detention Centre could leave and return to the facility freely.<sup>96</sup> Since the implementation of these arrangements, ChilOut’s concerns regarding the physical and emotional welfare and safety of children at the centre have not been alleviated.

ChilOut’s position is that use of the terminology ‘open centre’ regarding the status of the detention centre is misleading. Publically available information indicates that people are subject to an evening curfew at 9pm and no one is permitted to leave the detention centre on Thursdays each week.<sup>97</sup> Furthermore, families and children have told the AHRC that, despite the new terminology, they are seriously concerned about their personal safety and are fearful of leaving the detention centre.<sup>98</sup> As such, ChilOut rejects the description of the Nauru Detention Centre under the open arrangements as “more of a hostel”<sup>99</sup> in which people will return to at the day’s end. Any utility that may come from children and their families at the centre having access to the wider Nauruan community is stifled by their perceptions of threats to their safety, and the strict requirements placed upon them to report back to the detention centre on a daily basis.<sup>100</sup> In ChilOut’s view, the open centre arrangements do not provide an environment in which children are safe and their rights protected.

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<sup>92</sup> Article 28(1)(e).

<sup>93</sup> Parliament of Australia, Senate Select Committee on the Recent Allegations Relating to the Conditions and Circumstances at the Regional Processing Centre in Nauru. ‘Taking Responsibility: Conditions and Circumstances at Australia’s Regional Processing Centre in Nauru.’ 31 August 2015, at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regional\\_processing\\_Nauru/Regional\\_processing\\_Nauru/Final\\_Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report), at 1.34.

<sup>94</sup> *Plaintiff M68/2015 v Minister for Immigration and Border Protection* [2016] HCA 1 (3 February 2016) at 319, 320.

<sup>95</sup> *Ibid.*

<sup>96</sup> Minister for Immigration and Border Protection, ‘Australia welcomes Nauru open centre’, 5 October 2015, Media releases, at <http://www.minister.border.gov.au/peterdutton/2015/Pages/australia-welcomes-nauru-open-centre.aspx> (Accessed 16 March 2016); ABC News, ‘Detainees in Nauru to be granted full freedom of movement 24 hours a day’, 3 October 2015, at <http://www.abc.net.au/news/2015-10-03/nauru-to-grant-asylum-seekers-full-freedom-of-movement/6825482>, (Accessed 16 March 2016); Save the Children, ‘Save the Children welcomes 24/7 opening of regional processing centre on Nauru’. 5 October 2015 (Accessed 16 March 2016).

<sup>97</sup> ABC News, ‘Detainees in Nauru to be granted full freedom of movement 24 hours a day’, 3 October 2015, at <http://www.abc.net.au/news/2015-10-03/nauru-to-grant-asylum-seekers-full-freedom-of-movement/6825482>, (Accessed 3 March 2016).

<sup>98</sup> ABC News, ‘Fact Check: Has the number of children in detention dropped from 2,000 to about 75 under the Coalition?’, 3 March 2016, at <http://www.abc.net.au/news/2016-02-25/fact-check-children-in-detention/7149720>, (Accessed 3 March 2016).

<sup>99</sup> Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 8 February 2016, p.17 (Michael Pezzullo).

<sup>100</sup> *Ibid.*

## (f) Recommendations

ChilOut recommends the following to the Senate Standing Committee on Legal and Constitutional Affairs in relation to the conditions and treatment of children held at the Nauru Detention Centre:

### Legislative amendments

1. That the Australian Government introduce legislative amendment to remove the discriminatory treatment of children who arrive in Australia by boat, and to reinstate the human rights of all children by introducing, as a minimum, the following amendments to the *Migration Act 1958 (Cth)*:
  - a. Children are only detained as a measure of absolute last resort and only within Australia, not at any offshore place of detention;
  - b. There is a time limit on the detention of children, upon the expiry of which, children must be released with their families. The time limit should not exceed seven days;
  - c. There is access to judicial review of any detention decision concerning children;
  - d. Minimum standards, in conformity with Australia's obligations under the CRC, are prescribed for the treatment of children in detention;
2. That the secrecy provisions of the *Border Force Act 2015 (Cth)* be repealed immediately;

### Policy and implementation

3. That the Australian Government establish more alternatives to detention to accommodate children and their families;
4. That the Australian Government establish an accessible review process for people seeking asylum who wish to challenge their detention, including permitting review by the courts. The Australian Government should ensure adequate legal aid and services are made available to people seeking asylum for this purpose;
5. That an alternative and independent guardian be appointed for unaccompanied children and the Minister for Immigration be removed as guardian for unaccompanied children;
6. That a unified, national code of mandatory reporting be introduced to report instances of child abuse or neglect occurring in detention;
7. That an independent body of medical and legal experts be appointed to assess the welfare of children in detention and respond to complaints and allegations of harm;
8. That DIBP's contractors be provided with training and undergo performance reviews in relation to their compliance with standards for child welfare and protection;

### The Nauru Detention Centre

9. That children and their families be immediately released from the Nauru Detention Centre and transferred to Australia;
10. That all allegations of sexual and other forms of abuse against children at the Nauru Detention Centre be investigated and, where appropriate, prosecuted;

### Children in detention generally

11. That the assessment of the asylum claims of children and their families in detention be given immediate priority;
12. That the Government issue directives to DIBP and its contractors to restore language and practices that respect children seeking asylum and restore their dignity.