

**Australian Children's Commissioners and
Guardians' Submission**

**Joint Select Committee on
Australia's Immigration Detention
Network**

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1. Introduction

- 1.1 This submission represents the joint position of the Australian Children’s Commissioners and Guardians (ACCG). Most members of the ACCG have a legislative mandate to advocate for, promote, and protect the rights, best interests and wellbeing of all children and young people under the age of 18 years, within our respective jurisdictions.
- 1.2 The following members of the ACCG contributed to and endorse the submission:
 - Aileen Ashford, Commissioner for Children, Tasmania
 - Megan Mitchell, Commissioner for Children and Young People, NSW
 - Alasdair Roy, Commissioner for Children and Young People, ACT
 - Michelle Scott, Commissioner for Children and Young People, WA
 - Pam Simmons, Guardian for Children and Young People, SA
- 1.3 The ACCG has particular regard for children and young people who are vulnerable or disadvantaged. The ACCG welcomes the Inquiry into Australia’s Immigration Detention Network, particularly the focus on children.
- 1.4 This submission is informed by visits to Inverbrackie and Leonora Alternative Places of Detention (APOD), discussions with the Australian Human Rights Commission and Australian Red Cross, written briefings and correspondence with the Department of Immigration and Citizenship (DIAC), and background information sourced from the DIAC website.
- 1.5 For the purposes of this submission, and unless referred to specifically, *immigration detention facilities* do not include community detention. This submission is largely confined to comments about immigration detention facilities.

2. General

- 2.1 There is an inherent tension between the right of children [Article 37, *UN Convention on the Rights of the Child*] not to be deprived of their liberty except in conformity with law and only then as a measure of last resort and for the shortest possible time, and the need to have fair and just processing of applications for humanitarian asylum. We will continue to recommend that children be accommodated outside of detention facilities while awaiting decisions on immigration status.
- 2.2 If children are to be accommodated in immigration detention facilities, including alternative places of detention, it is incumbent on us all that they receive protection from abuse and neglect, and that their wellbeing is supported.

3. Terms of reference (b) the impact of length of detention and the appropriateness of facilities and services for asylum seekers

- 3.1 We are pleased that the Australian Government is nearing its goal to have the majority of children and vulnerable family groups out of detention facilities and into community-based accommodation. The length of detention for most families is

shortening. From an adult perspective a few months may seem a short time. For a child, a month is closer to a year.

- 3.2 Consistent with the Council of Australian Government (COAG) endorsed *National Early Childhood Development Strategy* every opportunity should be taken to enhance the life chances of children, including those in immigration detention.
- 3.3 From our observations at Inverbrackie and Leonora APODs, the conditions for young children in immigration detention are unsatisfactory in several significant ways:
- At Inverbrackie APOD, notwithstanding the best efforts of the childcare worker, the children’s Playgroup is a perfunctory arrangement with very little thought given to the experiences that children have when they attend. The environment is dark, unstimulating and uninviting and appeared to be used more as an area for adults than for children. The conflicting advice about attendance has done little to engender confidence in the Playgroup being used to its full potential.
 - Also at Inverbrackie APOD, the health services appear to be provided primarily for adults with little attention paid to the physical and emotional needs of children. While two of the nursing staff are reported to have trained in child health there was little evidence that children’s health was considered a core component of the health service.
 - At Leonora APOD, despite efforts by Serco and DIAC staff, the harsh circumstances of the living conditions are compounded by the extreme weather conditions and the remote location. There was a significant lack of adequate social and recreational activities that, given the lack of purposeful activity and the indefinite periods of detention, contributes significantly to the stress and anxiety experienced by both adults and children.
 - While torture and trauma services are present in the detention centres, such as the Association for Services to Torture and Trauma Survivors (ASeTTS) in Western Australia, there is limited access to mental health services with specialist expertise in responding to children’s and parents’ needs.
- 3.4 The service agreement with IHMS should be amended to have roles specific to the health of children, and to employ staff with expertise in child health, development and mental health.
- 3.5 We urge you to consider that all detention centres which accommodate children be required to meet the standards in the *Early Childhood Development Strategy’s National Quality Agenda* and be subject to the same auditing process of all pre-schools, long-day care, family day care and out of school hours care.

4. Terms of reference (c) the resources, support and training for employees of Commonwealth agencies and/or their agents or contractors in performing their duties

- 4.1 All employees at detention facilities who have contact with children should receive training in responding to child safety issues, such as the Child Safe Environment

training in South Australia, so that they can recognise signs of abuse and neglect and know what to do in such circumstances.

- 4.2 It appears that there is no national policy on child safety and associated training for either Serco or DIAC staff, beyond criminal history background checks prior to employment.
- 4.3 We advise that Child Safe Environment training be delivered to all employees as a matter of urgency. This training should include:
- how to provide appropriate care and protection for children in detention;
 - recognition of possible causes of abuse;
 - correct reporting/notification procedures;
 - the circumstances under which staff may intervene in family life when there are reasonable grounds to believe that a child is at risk of abuse or neglect;
 - appropriate information sharing among agencies in the interests of child safety;
 - how to assist families to carry out their responsibilities to care for and protect their children; and
 - appropriate treatment of unaccompanied minors.

5. Terms of reference (d) the health, safety and wellbeing of asylum seekers, including specifically children, detained within the detention network

- 5.1 There is no national consistency regarding child safety in immigration detention. Arrangements should be in place around Australia to ensure that all concerns about child safety are addressed, consistent with the obligations in the *National Framework for Protecting Australia’s Children*.
- 5.2 We are aware that in at least one detention facility there are no dedicated child protection workers. DIAC has explained, in one facility, that this is because all children are accompanied by an adult and that Serco welfare officers act as child safety officers. Serco, however, has advised that none of the welfare officers have special training in child safety or welfare and a child being accompanied by an adult is not an adequate protective measure.
- 5.3 We are deeply concerned about the lack of appropriate policies and procedures for the management of child protection matters in some detention facilities. We are aware that in at least one detention facility there is an over-reliance on mandatory reporting by health professionals.
- 5.4 The arrangements for notification, investigation and response to suspected abuse of children vary significantly from one detention centre to the next. Other than in South Australia, there are no clear protocols in place between the Commonwealth Government and the relevant statutory child protection agencies for the reporting of child abuse and neglect.

- 5.5 We are keen to see a uniform, high quality arrangement for child protection measures across immigration detention which would include sound policies for child safety and wellbeing and agreements with state and territory departments for investigation of allegations of harm. This is consistent with the Commonwealth Government’s commitment to the *National Framework for Protecting Australia’s Children* as endorsed by COAG in 2009.
- 5.6 See, also, our comments in 3 and 4 above.

6. Terms of reference (e) impact of detention on children and families, and viable alternatives

- 6.1 The harmful effects of detention on children and young people are well documented. In recognition of this evidence, the United Nations *Convention on the Rights of the Child* says that children should only be kept in detention “as a measure of last resort and for the shortest appropriate period of time.”
- 6.2 The Australian Human Rights Commission (AHRC) has continued to raise significant concerns about the impact of immigration detention on children and young people. Its 2004 *National Inquiry into Children in Immigration Detention* concluded that:
- ...the deprivation of liberty is rarely in the best interests of the child. Indeed, many studies have considered the impact of institutionalisation on children and conclude that the social and psychological effects can be long term and serious.¹
- 6.3 Professor Louise Newman, Royal Australian and New Zealand College of Psychiatrists and Chair of the Detention Health Advisory Group in her evidence to the AHRC’s Inquiry stated:
- These are children who even if they are very young, are witnessing extremes of disturbed behaviour in adults. They frequently have parents who themselves are traumatised, distressed and despairing who are unable to parent effectively in the detention context. The developmental effects, I think, are added to by the depriving and harsh nature of the environments with very clearly inadequate opportunities for play, for exploration for learning and other crucial experiences that children need if they are to develop normally.²
- 6.4 Whilst we appreciate the government’s commitment to not detaining children in high security Immigration Detention Centres, the detention of children in other facilities remains a serious concern. The government’s decision to move children and vulnerable families from facility detention to community detention as soon as possible is welcome. We are aware, however, that some children and their

¹ Human Rights and Equal Opportunity Commission 2004, *A last resort? National Inquiry into Children in Immigration Detention*, Canberra, p. 162.

² *ibid.*, p. 397.

families remain in detention facilities. For a child, even a short time in institutional detention is too long.

- 6.5 Detainees from one detention facility have raised a range of issues with one of our members. These include:
- the indefinite nature of the detention and the uncertainty of asylum seekers’ migration status;
 - the lack of accurate information about the process of their visa application;
 - the harsh circumstances of their living conditions;
 - the institutionalised nature of the facility where families are not able to cook for themselves and live as a normal family unit contributes to the difficulties in being able to parent effectively;
 - the lack of support programs for parents in their parenting role; and
 - parental stress and the impact on children and young people.
- 6.6 As previously stated, we recommend that all children and their families be housed outside of detention facilities whilst their refugee claims are assessed. Whilst community detention is a favoured alternative, it is not without challenges in finding and supporting suitable accommodation and settlement services. We must ensure that children in community detention have access to quality early childhood services and that school aged children are well supported in the schools that they attend. It is also important that parents are well supported in ensuring that their children attend childcare, kindergarten and school. As part of formal agreements about the use of local services, the Commonwealth Government should fund the full costs of additional provision to ensure that agencies do not have to make unacceptable decisions about further rationing of resources.

7. Terms of reference (k) the level, adequacy and effectiveness of reporting incidents and the response to incidents within the immigration detention network, including relevant policies, procedures, authorities and protocols

- 7.1 This section is responded to in terms of reporting cases of suspected child abuse or neglect. The existing Memorandum of Understanding (MOU) between DIAC and South Australia’s Department for Families and Communities stipulates the protocols for notification, investigation and response to suspected cases of child abuse and neglect. There is no such protocol in other states and territories.
- 7.2 We urge you to ensure that a uniform protocol be agreed with each state and territory as a matter of urgency. The protocol must recognise the specific statutory requirements of each state and territory and so be negotiated with each jurisdiction.
- 7.3 The ACCG suggests that the following could be included:

- DIAC will notify and refer all cases of possible child abuse/neglect that occur at places of immigration detention to the relevant child protection authority in that state/territory;
- all staff employed at detention centres (DIAC and detention services provider) will act as mandatory notifiers;
- if, after a person/child has been granted a visa and released from detention, a DIAC officer or detention service provider employee suspects that person committed abuse/neglect while in detention or that person (being a child) suffered abuse/neglect while in detention, they must notify the relevant child protection authority in that state/territory;
- at DIAC's request, the relevant child protection authority in that state/territory will provide advice on "care concerns" for children in immigration detention;
- on request from DIAC, the relevant child protection authority in that state/territory will provide advice and assessment on appropriate care arrangements for unaccompanied minors; and
- in considering if an unaccompanied minor meets criteria for a bridging visa, DIAC will consider any assessment made by the relevant child protection authority in that state/territory regarding the best interests of the child.

8. Terms of reference (I) compliance with the Government's immigration detention values within the detention network

- 8.1 The Government's *Key Immigration Detention Values* include that:
- Children...and, where possible, their families, will not be detained in an immigration detention centre;
 - Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time; and
 - Detention that is indefinite or otherwise arbitrary is not acceptable...
- 8.2 As said above, while the decision to not detain children in Immigration Detention Centres is welcome, the secure nature of the alternative facilities, the limited opportunities to participate in social and recreational facilities and the institutionalised nature of the accommodation and dining arrangements all have a significant effect on the health and wellbeing of children and their families.
- 8.3 In recent visits to detention facilities we have noted varying periods in which people (including children) have been detained from two to eleven months with no information on when their particular situation will be resolved. Some people remain in detention pending security clearances long after their refugee status has been confirmed.
- 8.4 It appears that in at least some significant ways, the detention network practice is inconsistent with the Government's Key Immigration Detention Values.

9. Terms of reference (m) any issues relating to interaction with States and Territories regarding the detention and processing of irregular maritime arrivals or other persons

- 9.1 See comments made in 3, 4, 5 and 7 above regarding the lack of protocols in place between the Commonwealth Government and the relevant statutory child protection agencies for the reporting of child abuse and neglect.

10. Terms of reference (o) the total costs of managing and maintaining the immigration detention network and processing irregular maritime arrivals of other detainees

- 10.1 The cost of establishing and operating facilities in remote locations is significant. Additional costs include:
- relocating, transporting and accommodating staff for the facility;
 - bringing outside services into the community;
 - transporting detainees to metropolitan centres for specialist medical treatment; and
 - building physical infrastructure in remote locations.
- 10.2 It would be wiser to accommodate asylum seeker families near capital or regional cities; or if remote locations are the only option, to:
- Use existing local infrastructure or build infrastructure that will provide lasting benefit to the whole community; and
 - Make use of local programs, such as school holiday programs, child care services and recreational facilities.

11. Terms of reference (s) any other matters relevant to the above terms of reference

- 11.1 We note the recent controversy about the methods used to determine the age of a person allegedly involved in 'people-smuggling' activities, notably the use of wrist x-rays.
- 11.2 Similar methods have been used elsewhere to verify the age of asylum seekers and refugees. The evidence about wrist x-rays as a single method of determining age demonstrates that this is unreliable. Instead, it is recommended that multiple sources of evidence be reviewed by a multi-disciplinary panel to decide questions of age.
- 11.3 That such methods are relied upon and may result in the incarceration of juveniles in adult prisons is unacceptable. We therefore support the Australian Human Rights Commission's view that if there is no reliable evidence to prove an individual is an adult, then they should be treated as a juvenile and returned home.