



Children Out of Immigration Detention

**Submission to the Parliamentary Standing Committee
on Public Works**

**Infrastructure and upgrade works to establish a regional
processing centre on Manus Island, Papua New Guinea**

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ChilOut – Children Out of Immigration Detention

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SECTION 1 - INTRODUCTION

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

ChilOut has for over a decade, seen the impacts of indefinite detention on children and families. The short and long-term effects are devastating for a child’s development, learning, social skills, physical and mental health. Unaccompanied minors and children with family experience anxiety, fear and a sense of helplessness in immigration detention. The very nature of indefinite detention, compounded with remote locations and the conditions of many detention environments creates a situation that is anything but in the best interests of that child.

SECTION 1.1 - KEY CONCERNS OF THIS INQUIRY

ChilOut is firmly opposed to offshore processing and the use of Manus Island as a location for detention of asylum seekers applying for protection. In particular ChilOut does not believe that any child or family should be detained at the Regional Processing Centre (RPC) on Manus Island. Our opposition would remain even if facilities were state-of-the-art. The indefinite, remote and at the moment, arbitrary detention of asylum seekers is not in keeping with Australia’s international or domestic obligations. Our specific concern relates to the best interests of the child and rights afforded under CROC.

ChilOut acknowledges that the Government and Opposition are committed to establishing a more permanent detention facility on Manus Island. Due to this fact, we are making a submission to this the Parliamentary Standing Committee on Public Works (the Committee) but we wish to very clearly state that in doing so, **in no way do we condone or support the detention of children on Manus Island or in any secure facility.**

If the RPC is to be used to house children and families ChilOut makes 9 key recommendations to this Committee. Our recommendations are outlined below and ChilOut believes that the best interests of children be at the forefront of every decision the Committee makes. Our domestic and international obligations are clear, but so too is our moral imperative.

Whilst we acknowledge that this Committee's focus is Public Works and not immigration policy, we strongly believe this Committee must consider the 'users' of the development and keep in mind the context of the Government's 'no advantage' asylum policy. In particular the fact that this policy means that adults and children are likely to spend around five years detained in the facility should be seriously considered.

We wish to see the Australian Human Rights Commission's (AHRC) guide – *Human Rights Standards for Detention*¹ – used as a foundation for all decisions regarding the construction of any detention facility on Manus Island. Staff and contractors aside, this facility is to house people held against their will who have committed no crime. Many will be children in the critical years of their development. In some families one or both parents may be suffering the effects of torture and or trauma. Across the whole population, children and adults, there will be people who have or develop mild through to severe mental health conditions; a known and well-established effect of prolonged and remote detention. The physical environment will need to respond to and as far as possible, combat these life-threatening facts.

¹ Human Rights Standards for Immigration Detention. April 2013
http://www.humanrights.gov.au/human_rights/immigration/201304_HR_standards_immigration_detention.pdf

Our premise may seem over the top or to be painting a ‘worst-case’ scenario. It is not. Advocacy groups and mental health professionals have seen and charted the impacts of indefinite detention over the last decade. Many agencies still assist those who were impacted by the first ‘Pacific Solution’ and detention on Manus Island.

The naming of this facility is a factor that we feel requires consideration. Presently people have been detained on Manus Island for over five months with no processing of their asylum claims. This amounts to arbitrary detention and is not regional processing – as per the Houston Report recommendations – or what is widely accepted by states engaged in the Bali Process as being ‘regional processing’. As it stands, the centre whether the facilities are temporary or permanent, amounts to a detention facility and nothing more.

In this submission ChilOut will focus on the needs of families and children. We acknowledge that the facility is intended for use by staff and perhaps single adult detainees.

SECTION 2 - RECOMMENDATIONS

Recommendation 1

That the Committee in its entirety visit the proposed site and have a complete tour of the current temporary facilities.

Recommendation 2

That the Committee, the proponent, Project Manager and any key tender winners engage and actively work alongside an advisory panel comprising experts from the fields of child welfare, education and child psychology as well as engaging in meaningful consultation with the families and children presently detained on Manus Island.

Recommendation 3

That any facility constructed on Manus Island be an open one.

Recommendation 4

The new facility should adhere to the best practice Australian educational standards. All children detained on Manus Island should have the same access to education as a child on the Australian mainland.

Recommendation 5

That the facility be designed to accommodate a complete age range of children.

Recommendation 6

Recreational facilities suited to the needs of children, families and adults must be built. These need to be appropriate to the climate and the length of time people will spend detained on Manus Island.

Recommendation 7

That privacy be a consideration in all facets of planning and construction.

Recommendation 8

That there is a clear distinction between the areas housing children and people not in a family group.

Recommendation 9

No asylum seekers should be detained in the temporary facility during construction of the permanent facility. All people presently detained at the Manus Island RPC should be transferred to the Australian mainland.

SECTION 3 - CHILOUT RECOMMENDATIONS OUTLINED IN DETAIL

1. COMMITTEE TO VISIT MANUS ISLAND

The location is so unique and the challenges presented are so out of the ordinary for an Australian public works project, even for a team who may have worked in Port Moresby. We feel it is essential that the Committee understand the location, climate, humidity, dampness, mosquitoes, isolation, community setting and other factors that simply cannot translate by only looking at plans or even computer-generated models.

2. EXPERT PANEL

The unique needs of asylum seeker children and family groups be considered. People may have suffered trauma, and may have mental health issues caused by persecution or their prolonged detention on Manus Island. ChilOut recommends a panel comprising child welfare experts, psychologists and even planning experts with knowledge of designing communal spaces to meet the needs of families to advise DIAC, the engaged Project Manager and successful contractors running the construction and integration phases of this project.

We envisage that this panel may recommend **consultation with people presently detained on Manus Island** who are likely to be detained long-term in any new facility constructed. ChilOut firmly supports the views of these families and children being heard by your Committee and by those carrying out the construction. DIAC, in their submission to this Inquiry, has noted many serious issues with the present living arrangements at the RPC on Manus Island. People who have been detained there for nearly six months already have a good understanding of improvements required, constraints, climate and other factors that will greatly impact of their physical and mental wellbeing for the duration of their detention. It must be remembered that the 'users' of this facility have committed no crime, they are being punished already, their physical environment should reflect a safe, healthy place to live, not a prison.

3. OPEN CENTRE

In discussing problems at the temporary RPC on Manus Island, PNG's Prime Minister Peter O'Neill stated that "If children are on board, we have already offered to the Australian government and everybody that the refugees must be allowed to interact with our communities."² The UNHCR considers that "steps should be taken immediately to make the Assessment Centre an open centre for those who demonstrably pose no security or health risk to the PNG community".³ Houston Panel member Paris Aristotle recently expressed his view that children should not be detained as they currently were and for prolonged periods on Manus Island. Mr Aristotle specifically stated; "If they (detainees / children) were free to move around, if there were adequate services available for them and so forth, then that may have been an acceptable option."⁴

4. EDUCATION

Again, we refer to the fact that children could potentially spend five years detained on Manus Island. This could encompass their entire primary or secondary school education. Learning English, craft and cooking (taught in most other detention facilities) do not – by any measure – equate to an 'adequate education'. In fact the Australian Human Rights Commission (AHRC) has specifically stated that primary school education is compulsory for asylum seekers in immigration detention.⁵ Access to education is a right enshrined in the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) at Article 13 and in the CROC at Articles 28 and 29.

In terms of school room sizes the National guidelines for teaching overseas students stipulate a teacher to student ratio of no more than 1:18.⁶

² PNG PM urges changes for Manus detainees 5 April 2013 AAP <http://news.smh.com.au/breaking-news-world/png-pm-urges-changes-for-manus-detainees-20130405-2hc4e.html>

³ Report on the UNHCR Mission to Manus Island, Papua New Guinea January 15-17 2013. Released 4 February 2013 <http://unhcr.org.au/unhcr/images/2013-02-04%20Manus%20Island%20Report%20Final.pdf> Point 62, pg 14

⁴ *Children should leave Manus: Aristotle* 4 April 2013 AAP <http://news.smh.com.au/breaking-news-national/children-should-leave-manus-aristotle-20130404-2ha83.html>

⁵ Human Rights Standards for Immigration Detention. April 2013 Point 16.2 http://www.humanrights.gov.au/human_rights/immigration/201304_HR_standards_immigration_detention.pdf

⁶ ELICOS National Standards 2007 p7 <https://aei.gov.au/Regulatory-Information/Education-Services-for-Overseas-Students-ESOS-Legislative-Framework/foundationstandards/Documents/National%20%20ELICOS%20Standards.pdf>

Allowances must be made for the delivery of a complete educational curriculum (for example science, art, technology etc).

The needs of pre-school, infants, primary and high school aged children should be catered for in the facility. (*discussed further at pt5 below) While adults do not fall into ChilOut's purview, we see no reason why adults could not take part in open university or higher education schemes if they so wish via the internet or through the provision of a more traditional learning environment. An adult population given a purpose (education, if not work) will contribute tremendously to the wellbeing of children.

We note that DIAC has advised there is no issue with provision of telecommunications at the site. This infrastructure must carry into the education sphere to ensure that children detained on Manus Island receive an education comparable to that of Australian children.

5. CATERING TO A RANGE OF AGES*

ChilOut does not wish to see any changes to the present practice that no child under the age of seven is transferred to detention on Manus Island. As noted we do not agree with offshore processing on the whole, nor the detention of children. The present practice relating to age is not legislated and is an operational matter that could change at any time. This Committee must seek clarity from DIAC on whether children younger than seven will be forced to live in this facility. If there is any chance of this, public works must reflect the very particular needs of this younger age group. This would include toilets and taps of varying heights, rooms suited to uses by infants and pre-school aged children, relevant safety standards and infrastructure along with the inclusion of age-appropriate recreation amenities.

6. RECREATION

At s2.5 of their submission to this Inquiry DIAC refer to the current recreation facilities in the temporary facility as being 'limited and in a poor state' and the associated effects this can have on people's health. It is essential that recreation facilities meet a wide range of needs, in terms of age groups, gender, mixed usage, interests and are specifically designed to suit the extreme climate of the site.

ChilOut has visited detention facilities (specifically Christmas Island and Leonora) that do not adequately take into consideration hot and humid temperatures, in both locations there is a need for air conditioned recreational facilities and many more shaded recreation areas. The climate on Manus Island is even more extreme, people will be there for longer periods and there is consideration of 600 people using the facility.

Meeting these needs will require many recreational options to combat (to some degree) the boredom, frustration and angst that will no doubt be present in many people as they move from month to month and year to year of detention.

There will likely be many problematic stages and combinations in terms of detainees' ages, development and the like. Children will go from their late teens to adulthood in the centre, families will be of child-bearing age and stage, parents will be unable to provide for their families as they would see necessary. Carefully considered recreation facilities will be essential for all these reasons and more.

In no way do we suggest that a sensational gymnasium can make up for denied freedom, but it will be a necessary tool for many in managing their own wellbeing. Furthermore, the proponent suggests at s2.3 of its submission that a 'basic gymnasium' be included in the facility. We think that the needs and specific nature of this client group will require more than a 'basic gymnasium'. Physical activity, a range of sporting options, safety and areas for different age groups would all be features essential to a gymnasium at the RPC and may fall outside the parameters of a 'basic' facility.

At s2.8 of its submission, DIAC notes the need for a library (among other amenities, all of which we agree are required). Having seen the library in other detention facilities we are concerned about the standard to which this will be provided. The library at the Leonora Alternative Place of Detention is small, hot, un-inviting, lacking in technology and severely lacking in resources. We wish the Committee to specify the uses of the library space, consider that it may be used as a place of reprieve from the heat and that it will be used by children as well as adults and that design take these factors into account.

The proponent has suggested (p10) 'swimming at local beaches' as a possible recreational activity. We hope that the Committee consider, and seek the input of the afore-mentioned expert panel, whether learn-to-swim classes are first required in a pool setting. Many people detained on Manus Island will have never attempted swimming and may be very reluctant to try in an ocean setting. Given the likelihood that they will be resettled in Australia and the efforts made to ensure children here can swim, consideration should be given to the provision of a pool. This point illustrates the need for this Committee to think in incredible, practical detail of how the permanent Manus Island RPC will be used. Citing 'swimming at local beaches' makes many presumptions about staffing, accreditation and children's safety. If these factors are not all in place, there will be a need for public works and added resourcing to overcome shortfalls.

7. PRIVACY

Interview rooms must be safe spaces where very sensitive information can be shared with confidence. Asylum seekers must be able to use telephones and Skype facilities with privacy. It is very likely that there will be difficult family conversations with relatives overseas as well as conversations with advocates and legal representatives where the person would require privacy. As parents and children are sharing very confined spaces day in day out, month after month and year after year there must be reprieve for all and spaces where adults or children can safely have privacy.

8. SEPARATE ZONES

Children currently detained on Manus Island have already been witness to self-harm, unrest and constant obvious despair from the area housing single adult males. The DIAC submission (at section 2.6) refers to accommodating single adult males in family style facilities separated by gated fences. ChilOut is incredibly concerned at the practicalities of this. If there is an influx of single adult males, can areas be physically sectioned off from one another, what constitutes this gated fence? How will communal spaces be organised to ensure the wellbeing of both the children and the single adult males. As a child rights organisation, the safety of these children is our primary concern however we note that the single adult males should not face increased isolation because facilities are inadequate to meet the needs of both groups at once.

9. VACATE SITE DURING CONSTRUCTION

The present stresses of the living conditions in the detention facility on Manus Island are well documented by the UNHCR and now also by DIAC in their submission to this Committee. Adding at least seven months of construction noise, dust, work and all other factors that come with a building site would simply compound the existing problems. With no time frame for the processing of people's asylum claims, all of these factors combined could make for a very harmful and possibly volatile environment.

ChilOut understands the request of the PNG Government that local contractors be used as far as possible. If the facility is not vacated, we seek clarity on whether the Australian standards of Working With Children checks would apply as they do to contractors who are on-site with children in Australia.

Section 4 - Addressing specific aspects of the proponents submission

DIAC s2.7 Accommodation Types

ChilOut welcomes the plan for two and three bedroom accommodation. It must be stipulated that these 'units' should only ever be used for families, a single adult asylum seeker cannot be accommodated with a family unit even if there is a spare bedroom (unless of course request and consent process has occurred). Family configurations living together must be a decision process made on an individual and consultative basis, for example if there is a brother / uncle of the family unit also on Manus Island, there may be reasons for or against accommodating the wider family unit as a whole. As DIAC has accurately pointed out, there are difficulties in feeding children from a buffet. However, it must also be noted that there will be great difficulties in getting sufficient and appropriate fresh food to the facility for people to cook and eat. The excessive costs associated with transport, storage and logistics will need to be factored into the development and of course costed into the Australian taxpayer funded facility.

ODA

At s3.5 DIAC clearly states that the facility will not directly benefit the local population on Manus Island. Whilst aid and infrastructure are not the areas of ChilOut's expertise, we can see some serious social cohesion issues in this approach. If the facility is built to Australian Standards and if the children and adults detained there have access to water, power, amenities, healthcare and education akin to that which would be available in Australia, there is very likely to be concern by the local population who will remain with notably less in all of these areas. Prime Minister O'Neill has stated that he wishes to see the asylum seekers and the local Manus Island population integrating and we agree. However, if the facility itself sets up a situation where harmony is not possible, positive community relationships could be seriously jeopardised.

Design Considerations

ChilOut is exceptionally disappointed to read that design will be 'constrained by a compressed delivery program and the availability of suitable prefabricated accommodation buildings'. We agree with DIAC that the current temporary facilities are problematic and with the UNHCR who call for 'the current process of detaining children (on Manus Island in the closed centre) to be terminated as a matter of priority'.⁷ However, we would argue that no-one should be accommodated in a facility that is known to be sub-standard, is incomplete and was most definitely rushed. Current detainees should be relocated to the mainland and a usual and full timetable for design and construction should be allocated before anyone lives in the facility.

Section 4.2 of DIAC's submission states that 'furniture will be basic and function and the facilities would reflect an Australian immigration centre'. This is most concerning to us as no detention facility in the country has been purpose-built for the needs of children. We are aware that there was some community and sector consultation in relation to plans for re-development at the Villawood Immigration and Detention Centre and associated Residential Housing but this still has not been child-centric. No immigration detention facility is constructed with the projection that an entire childhood could be spent inside it.

⁷ Report on the UNHCR Mission to Manus Island, Papua New Guinea January 15-17 2013. Released 4 February 2013 Recommendation K.
<http://unhcr.org.au/unhcr/images/2013-02-04%20Manus%20Island%20Report%20Final.pdf>

This is the reality for the RPC on Manus Island and is one of many reasons we wish to see an expert panel and ample time for design and construction.

The physical environments of Australia's onshore and offshore immigration detention facilities have significant problems, most especially when it comes to child or family-friendly accommodation, schools, play equipment and recreation. This construction on Manus Island represents a real opportunity to ensure that the design and planning processes are considered, that the resulting environment is one of minimum harm catering to the specific needs of those who will be detained there.

5.3 Cost Effectiveness

Again, perhaps outside the remit of this Committee. However, when considering public value and cost-effectiveness of public expenditure, this project must be compared to its policy alternatives. Housing 600 people in the community would cost a fraction of this facility, both in terms of infrastructure needed and ongoing expenses of running the facility. The figure of 600 people must be considered in the context of the world's 15 million refugees and asylum seekers, the approximately 14,000 onshore asylum applications made in Australia each year and the money that is required for areas such as targeting people smuggling rings, increasing contribution to UNHCR in the region and efforts of genuine regional cooperation to better protect refugees and asylum seekers in our region.

Section 5 - Further information sought

ChilOut prompts the Committee to seek clarity from the proponent on the following matters:

- Section 4.2 of the DIAC submission includes the statement 'the design of facilities has also been influenced by the expected ethnic mix of transferee cohorts'. Does this refer to segregation of ethnic groupings? Does it simply allow for two or more spaces of separate religious worship? Does this reflect family groupings, possibility of extended families arriving together and living together? We would be very interested to hear more about this claim and what design elements are incorporated and whether any consultation with the ethnic groups referred to has been carried out.

- In s5.1 DIAC refers to 'the Managing Contractor collaborating with stakeholders'. Does this include people currently detained on Manus Island? We strongly suggest that it should and hope that the children as well as parents are viewed as stakeholders and consulted accordingly.
- At s4.4 and elsewhere in their submission, DIAC refer to the facility housing 600 people in family groups and 'other vulnerable groups'. Who are the former? Could this include unaccompanied children? Mentally ill adults? In both cases, very specific accommodation, health and support infrastructure would be required. It is essential that the Committee have a complete understanding of who the intended 'clients' are for this facility and can therefore make recommendations according to their needs. ChilOut is opposed to the detention of unaccompanied minors on Manus Island (or anywhere, but particularly such a remote location and with guardianship issues far from resolved).
- Medical care was not adequately addressed in the DIAC submission to this Committee. We are concerned that children and families will be at risk, particularly of developing mental health illnesses. When asked about treating mental illness and conducting suicide prevention inside immigration detention facilities Professor Patrick McGorry likened the move to 'treating malaria in a swamp'.⁸ There is no clarity on how the Manus Island RPC will prevent or treat children and adults with mental illness. There is however clear acknowledgement that the facility will add to and even create mental health problems for people detained there.

SUBMISSION END

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⁸ *Watchdog to probe treatment of asylum seekers*. The Australian Lani Vasek 15 April 2011 <http://www.theaustralian.com.au/national-affairs/watchdog-to-probe-treatment-of-asylum-seekers/story-fn59niix-1226039377906>