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Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600

Dear Committee Secretary,

RE: AEU Submission to the Inquiry into the administration and operation of the Migration Act 1958

Attached in electronic format (in both word and pdf versions) please find the Australian Education Union (AEU) Submission to the Senate Legal and Constitutional References Committee Inquiry into the administration and operation of the Migration Act 1958.

We would welcome the opportunity of furthering our response in person.

Should you have any inquiries regarding this submission, please contact Susan Hopgood, AEU Acting Federal Secretary in the first instance on (03) 9693 1800 or email: shopgood@aeufederal.org.au.

Yours sincerely

A handwritten signature in black ink that reads 'Pat Byrne'.

Patricia Byrne
Federal President

A handwritten signature in black ink that reads 'S Hopgood'.

Susan Hopgood
Acting Federal Secretary



**A SUBMISSION BY THE
AUSTRALIAN EDUCATION UNION
TO THE SENATE LEGAL AND CONSTITUTIONAL
REFERENCES COMMITTEE INQUIRY INTO THE
ADMINISTRATION AND OPERATION OF THE
MIGRATION ACT 1958**

JULY 2005

Authorised by:

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CONTENTS

| | |
|--|---|
| “Cruel, Inhumane and Degrading”: The Detention of Children in Australia..... | 1 |
| Australia’s International Obligations Concerning the Education of Children | 2 |
| The Inadequacy of Education Provision in Immigration Detention Centres | 5 |

The Australian Education Union represents the industrial and professional concerns of 165,000 teachers and ancillary staff in public preschools, schools, TAFE institutions, AMES, disability services and corrections education across Australia.

The AEU is opposed to the mandatory detention of children and is committed to improving the provision of education and training courses and programs for all refugees in Australia.

Within this context we welcome the opportunity to comment on the adequacy of services and assistance provided to people in immigration detention, which is a particular focus of this Inquiry.

“Cruel, Inhumane and Degrading”ⁱ: The Detention of Children in Australia

It is beyond question that children in Australian detention centres have suffered numerous and repeated breaches of their human rights.

Australia’s immigration detention policy has failed to protect the mental health of children, failed to provide adequate health care and education, and failed to protect unaccompanied children and those with disabilities.

Our mandatory detention system has seriously breached the United Nations Convention on the Rights of the Child on a number of counts. The Government has failed, as required by the Convention, to make detention a measure of ‘last resort’, for the ‘shortest appropriate period of time’, and subject to independent review.

It has also breached other key rights of the Convention, which include:

- children seeking asylum have a right to appropriate protection and assistance – because they are an especially vulnerable group of children;
- children separated from their parents have a right to special assistance;
- children in detention should be treated with respect and humanity and have the right to healthy development and to be able to recover from past trauma; and

- children seeking asylum, like all children, have rights to physical and mental health; education; culture; language and religion; rest and play; protection from violence; and to remain with their parents.

Australia's International Obligations Concerning the Education of Children

Article 28 of the United Nations Convention on the Rights of the Child remains the preeminent international statement on the rights of **all** children to education:

1. States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- a. Make primary education compulsory and available and free to all;*
- b. Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;*
- c. Make higher education accessible to all on the basis of capacity by every appropriate means;*
- d. Make educational and vocational information and guidance available and accessible to all children;*
- e. Take measures to encourage regular attendance at schools and the reduction of drop-out rates.*ⁱⁱ

The Convention sets out basic minimum obligations on the part of all its signatories and applies equally to all children within Australia, whether or not they are in immigration detention; ie. ensuring that primary education is 'compulsory and available free to all' and secondary education available and accessible to every child'.

Article 29 sets out the broad goals of education, including 'the development of the child's personality, talents and mental and physical abilities to their fullest potential.'ⁱⁱⁱ

Article 2 of the Convention asserts the fundamental principle of non-discrimination which is binding on all signatories; that within a country there must be no lesser provision of education

for any one group of children, regardless of nationality or immigration status, and regardless of how the child arrived in the country.^{iv}

The principle of non-discrimination with regard to the provision of education is also reinforced by the *Convention against Discrimination in Education* to which Australia is a party.

The Convention prohibits Australia from:

- depriving ‘any person or group of persons of access to education of any type or level’;
- ‘limiting any person or group of persons to education of an inferior standard’; or
- establishing or maintaining ‘separate educational systems or institutions for persons or groups of persons’.

It specifically requires that signatories give ‘foreign nationals resident within their territory the same access to education as that given to their own nationals’.^v

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) has argued that these conventions do not require that Australia provide education to children in detention in the same manner as to all other children in Australia, because of the particular difficulties associated with the Government’s policy requirement that they be detained.

The AEU rejects this argument as a justification for Australia failing to honour its international human rights obligations. We support the view of the Human Rights and Equal Opportunity Commission [HREOC] that when Australia implements a policy that requires detention of certain children, “international law requires that special measures be taken to ensure that those children enjoy their right to education on the basis of equal opportunity.”^{vi}

Furthermore, both the Refugee Convention and the United Nations Convention on the Rights of the Child hold that refugee children are entitled to the provision of education equal to that provided for nationals of the same age with respect to primary education and equal to other non-national children with respect to secondary education and that this applies irrespective of whether they have been recognised as refugees.^{vii}

These requirements are reinforced by the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* which state that all children are fully entitled to education. Education for detained children should be provided in schools external to detention facilities, through 'programmes integrated with the education system of the country' and that children above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.^{viii}

Finally, Article 22(1) of the Convention on the Rights of the Child requires that appropriate efforts be made to cater to the special needs of asylum-seeking and refugee children.^{ix} In the context of Australia's current immigration detention system, this responsibility falls primarily on the Department.

Whatever the Department might say, or outline in their Immigration Detention Standards documents, there are no grounds in the international conventions to allow a situation whereby education for children of any age in detention can be said to be at the discretion of DIMIA or those it contracts to manage their immigration detention centres.

While those whom DIMIA has contracted to operate Australia's immigration detention centres might say there are no specific requirements or guidelines regarding curriculum, hours of education or the qualifications of teachers, this is clearly at odds with Australia's international obligations.

UN requirements stress that in all cases the best interests of the child are to be a primary consideration. It is clear then that Australia's international obligations require that DIMIA ensures educational access to children in detention on the basis of equal opportunity with other children in Australia; ie. to the same level of education as any other child in Australia with similar needs.

There is a fundamental incompatibility between "the best interests of the child" and Australia's mandatory detention laws, and the manner in which they are applied by the Minister and Department.

The Inadequacy of Education Provision in Immigration Detention Centres

The long-term detention of children in immigration detention centres inevitably compounds the impacts of their existing traumatic experiences, among which are:

- physical injuries and illnesses as well as emotional and psychological symptoms associated with their trauma which can manifest in many ways and significantly influence settling and learning at preschool and school;
- ongoing problems associated with lack of food, starvation and malnutrition, and little or no medical attention before reaching Australia;
- extended deprivation of peace and security in their home country including unrest which lead to closure of schools and severe disruption to educational services;
- wariness of adults and authority figures.

AEU members who work with children in detention and/or who have been previously detained, attest to the fact that children in detention have not, and do not, receive a comparable education to children in Australian primary and secondary schools. This view is reinforced by extensive research undertaken by the AEU.

The limitations on the quality of education provided are due to many factors including:

- the limited nature of the curriculum and programs provided;
- inadequate numbers of appropriately qualified staff;
- volatility of student numbers;
- inadequate infrastructure available to teachers and students, especially in remote centres;
- inadequacy of treatment for mental health issues associated with past and present traumas in the detention environment;
- security issues within detention centres;
- violence within the centres;
- differing cultural backgrounds; and
- differing educational levels.

As an organisation of public educators who are committed to uphold the general principles of social justice and human rights, and the fundamental principle of equality of educational provision for **all** children, the AEU has serious concerns about the inadequacy of education services provided to children in immigration detention.

While the Government maintains its policy of mandatory detention, it must, at the very least, make a commitment to provide education services to children in detention which are of the nature and standard required by the international conventions to which Australia is a signatory.

ⁱ Key findings of the Human Rights and Equal Opportunity Commission National Inquiry into Children in Immigration Detention: *A Last Resort?*, HREOC May 2004

ⁱⁱ United Nations Convention of the Rights of the Child, Article 28

ⁱⁱⁱ United Nations Convention on the Rights of the Child, Article 29

^{iv} United Nations Convention on the Rights of the Child, Article 2

^v United Nations Convention Against Discrimination in Education, Articles 1; 3

^{vi} Human Rights and Equal Opportunity Commission National Inquiry into Children in Immigration Detention: *A Last Resort?*, Chapter 12

^{vii} United Nations Refugee Convention Article 22; United Nations Committee on the Rights of the Child, UN Doc CRC/C/15/Add.38, 20 June 1995, para 9

^{viii} United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the JDL Rules), Geneva, 1990, rule 38

^{ix} United Nations Convention on the Rights of the Child, Article 22 (1)