

# National Inquiry into Children in Immigration Detention

Sydney Public Hearing

Friday, 4 April 2014

**President** May I now call the President of the Refugee Council of Australia, Mr Phil Glendenning.

Mr Glendenning do you want to make an opening statement?

**Mr** I would thank you.

**Glendenning**

Well thank you very much for having us today, much appreciated and we warmly welcome the Human Rights Commission's Inquiry into the detention of children and hope it will become the catalyst for long-term reforms of Australia's Immigration Detention System. We think it is probably the cutting edge issue of where we sit with regards to mandatory detention when we speak about children.

The Council met last week and we hold great concerns as to the situation of children in detention and would like to put those to you today.

We believe that the impacts of immigration detention on children are well established. The Council would like to make the point that much of the evidence that we will provide today is not new, but for as long as Australia's policy of mandatory indefinite detention has existed, the Refugee Council and its members have been drawing attention to the negative impacts of prolonged indefinite detention on the health and well-being of asylum seekers and especially children. We believe the evidence is comprehensive, is consistent and it's irrefutable. We know that holding people in detention unnecessarily and for indefinite periods can have serious negative impacts on their health, particularly their mental health, well-being and can hamper their recovery from pre-arrival experiences of torture and trauma and this is exacerbated we believe in the case of children.

We know that these negative impacts of detention worsen as time spent in detention lengthens and we know that the restrictiveness of the detention environment and often remote locations of detention facilities hamper access to adequate education and health services and community support.

We know that detention can have, does have, continues to have and will always have egregious impacts on children, resulting in developmental delays and serious mental health issues. We believe and we know the community based alternatives to detention are practical, humane and effective. Provided that asylum seekers have adequate support to ensure a decent standard of living. Now despite these facts, which we believe are well known, detention continues to be used as a measure of first, rather than last resort. Asylum seekers who pose no identifiable threat to the

community to continue to be held in detention arbitrarily and we believe that includes children and that is fundamentally wrong.

There is still no time limit on detention, no process for regular judicial review of decisions, children continue to be held in detention in large numbers which we believe is a source of national shame.

For over a decade under successive Governments we have watched these policies go through the same cycle. People are kept in indefinite detention unnecessarily for prolonged periods until the human and financial costs of doing so, become so high, as to compel the Government to make greater use of community-based alternatives and we believe it is time we put an end to that cycle.

We also believe that the impacts of detention on children must also be viewed in light of their pre-arrival experiences. Many of the children detained in Australia and offshore would have already lived in situations of great insecurity, uncertainty and fear and in which they and their families have had little control over their lives. Some children may have experienced serious trauma, such as torture, armed conflict, violence, physical and/or sexual abuse, the death of loved ones or they have witnessed these things. Some may have already been held in immigration detention in other countries. Their education is typically disrupted by forced displacement and some children, particularly those born into a situation of displacement, may never have had the opportunity to attend formal education at all. Health issues may also go unaddressed for years in these situations.

Now holding these children in an environment of pervasive uncertainty in which they have little independence or control over their lives where access to educational opportunities and health services may be limited, in which they are surrounded by many other traumatised individuals is not only distressing in itself, but it further compounds the trauma experienced by these children prior to their arrival in Australia and we believe very clearly that Australia's Detention Policy are seriously at odds with the principle that in all actions concerning children, the best interests of the child shall be a primary consideration.

Detaining children solely on the basis of their immigration status is always a violation of the rights of the child. The UN Committee of the rights of the child has recently called on States to completely cease the detention of children on this basis. In detaining children as a measure of first rather than last resort, without an individualised assessment of whether the detention is somehow necessary, which we believe it's not, Australia is failing in its duty to protect the best interests of children in its care. The Refugee Council has long expressed concern about the conflict of interest that exists between the Minister's role as guardian of unaccompanied children and also he is the decision maker on matters relating to detention and Visa

grants. This conflict has been thrown into particular sharp relief by the recent transfers of unaccompanied children to Nauru. In the Council's view, current guardianship arrangements and pre-transfer assessment processes are incompatible with best interest considerations. And we believe there are no circumstances, no circumstances under which it could be in a child's best interest to be sent to an off-shore processing centre, particularly if they are unaccompanied. The Refugee Council considers the conditions in the detention centres in Nauru and Papua New Guinea to be tantamount to cruel, inhuman and degrading treatment. These environments are inappropriate for adults let alone for children. We do not accept, under any circumstances, the Government's argument that its treatment of asylum seeker children can be justified on the basis that it will protect the best interests of other children by deterring asylum seekers from undertaking dangerous boat journeys. It is not acceptable to mistreat children on this basis to send a message potentially to somebody else who may or may not be paying attention. It would not be considered permissible for any example to deny a child medical assistance as a warning as a deterrent to other children.

So in conclusion of these opening remarks, may I say how much we do warmly welcome the Australian Human Rights Commission's Inquiry into the detention of children, we congratulate the Commission for the recent investigation that took place into Christmas Island. Collectively in our meeting last week the gravity of what we're talking about was underpinned by those images of children in Nauru who drew pictures that had all of them had signed with their boat id number and not with their name. The children referred to each other by their boat id number and not their name. If ever there was a canary in the mine over what we are doing with regards to this issue, it's the eloquent testimony of those children themselves. Thank you.

**President**

Well thank you very much Mr Glendenning and can I also recognise Lucy Morgan who is with us as well from the Refugee Council of Australia, you're the Information Policy Co-ordinator. Thank you very much indeed.

Well thank you and thank you for that very strong statement based on what I know what a lot experience in observing this policy for a very long period of time, so your evidence and your statement carries a great deal of weight in terms of how we finally draw together the witnesses that we have had.

I would like if I may to take up some of the points that you have made, but one in particular that concerns us is in light of the best interests of the child test, as a matter of international law and the Children's Convention, what do you think of the pre-transfer assessment processes that are being made in order to determine which children should be sent to Nauru and in asking that question, we have observed a recent flurry of activity in which unaccompanied minors are now being sent to Nauru

but there are now 315 children, when I was there, maybe a few fewer, but basically a very high number of children on Christmas Island who expect only to go to either Nauru or if policy changes to Manus. So what is your view of that pre-transfer assessment?

**Mr Glendenning** Look I honestly believe it is starting from the wrong premise. There are no circumstances when it's in the child's best interest to be sent to an off-shore processing centre. I think if we surrender that ground, we don't fight for that particular issue, we are on a slippery slope. Particularly if they are unaccompanied. I cannot see a reason why an unaccompanied minor should be sent offshore to a detention centre that would further harm the harm that they are in. That doesn't make any logical sense to me, so I think basically from our position, that's a fundamental. I think if most Australians were to put their own children in that situation, they would come to a pretty sharp conclusion as to what the answer to that question is. We have to go back to say what is in the best interests of the child and I know people say, oh the best interest for the child is to keep the child with the family, well I think the best interest for the child is to keep the family with the child. It's the wrong way round. By saying we are sending the family off to Nauru so the child goes to keep the family together, that is absolutely not in the best interest of the child and I think we should not surrender that ground.

**President** You raised a particular matter that has been very troubling for us at the Commission and we raised on numerous occasions and I imagine you have as well, and that is the apparent inconsistency in a position in which the Minister is the guardian of unaccompanied minors, but is the person who also makes the key decisions as to whether and when they are to be transferred to Nauru. What is your view of this of the way in which the Minister is carrying out his functions as guardian of these children?

**Mr Glendenning** Well this is a conflict of interest for the Minister and we believe it is impossible to properly discharge his duty as guardian, whoever the Minister is, when they are simultaneously responsible for protecting a child's best interest and make a decision about whether or not that child will be detained, granted a visa, go to off-shore protection for processing. Past and present experiences demonstrated to us that when that conflict occurs usually it's the child's best interests that lose out. The current framework for unaccompanied minors we know here was not designed with asylum seeker children in mind. It was designed for child migrants sent out to Australia for safety reasons during World War II. It's high time I mean, look at the clock, it's a fair distance away from World War II and I think that that framework needs to be urgently revised, so it actually reflects the needs of the children to whom it nowadays most often applies and ensures their best interests can be generally

considered in this decision making. To be fair to the Minister, it's a very difficult situation but it's the wrong system and it's a conflict of interest. When that happens the child loses.

**President** You make the very powerful point that it is wrong to use children and policies in relation to children to deter others and over and over again in the media the Minister and those who speak for him emphasise their view that the interests of the child is a primary consideration but not the primary consideration. My understanding is that in relation to the Minister's role as guardian, there is only one test and that is that it is the primary interest, is that your understanding?

**Mr Glendenning** Yes that is our understanding. I think when the language used like "a" best interest as opposed to "the" refers to the very few cases where a particular child may have been found to have committed some horrible crime somewhere. But that is the long stretch. I cannot think of one myself. But that is a terribly long stretch from applying that test to every single child that comes to this country and I think what is missing here and what has been missing through the debate are two things. One, is the Refugee Convention is not simply something that provides for legal obligations. When Robert Menzies signed that document on behalf of Australia in 1954, he committed Australia to the humanitarian purpose of that Refugee Convention which has legal obligations, political obligations, moral obligations and practical obligations that are recognised in our law to not to detain people and not to punish people when they come to this country for their method of their arrival. Now, I think those things need to be taken seriously, particularly if I go back to what I said in the beginning, what is missing here is the ethics of this. A consideration of the ethics. So you don't kidnap a child to prevent other kidnappings. You don't take a child hostage in order that other people don't do the same thing. Frankly to detain children to seek some political outcome or a gain in public popularity or a good run in the polls or a tick of a box from particular parts of the press is reprehensible. We are effectively holding children hostage in offshore detention to send a message to other people who may or may not be listening. The rights of that child, the punishment of an individual who has done no wrong. When I was growing up, I thought under Australian law was something that was an offence. I have deep difficulties with that.

**President** With your wider understanding of the global movement of peoples and the treatment of refugees, what is your answer to an argument that I think has some resonance with the Australian public and that is these extreme and harsh penalties and the use of children and their parents and other adults as a means of deterring has saved thousands of lives at sea and is justifiable because it is actually forcing consideration of their position and also protecting and giving opportunities to those who've sat for years in other refugee camps. What is your argument in response to that?

**Mr Glendenning** There are a few things. I would say first of all that none of us wanted to see deaths at sea of course. But that includes people who die in the sea on the other side of Indonesia also that we don't know about. That includes the people who die in sea on the way here that we don't know about. Our concern isn't limited to the geographic boundary is the first thing I would say. But somehow the notion that the prevention of deaths at sea requires the cruelty of others, I have problems with that. I don't think that is necessary. I do think it's interesting that if you look at both political parties and their policies, they still require people to get in a boat and come to Australia before those punitive policies are engaged. At a time when Australia is spending billions of dollars at a moment when the United Nations is only spending \$3.3 billion last year to care for 42 million people. It seems to me that if creative minds are put to this and people within the region were able to access health care, work rights, education rights, it would be of interest to them and their children. First of all to be able to not get into a boat but those things haven't been tried. I think we have seen a cycle in this and so at the moment with the monsoon season and towing back of boats ok we see boats decline and a decline in boats is a good thing. The method to do that is a bad thing. It seems in a civilised state we have to do better than that. There is no justification for the punishment of children under any terms. There is no punishment for the death of Reza Barati. I had heard someone say recently well one death but 1200 people died at sea. The death of a man like that, a young man is not justified under any circumstance because other people have died. So it doesn't work. I think my colleague Lucy might like to say something at this point.

**Ms Morgan** I would just like to add something based on the conversations that we have with NGOs working with refugees in the Asia Pacific Region. I really think there is not a lot of evidence to support the assertion that by stopping the boats we are saving lives. It is the case that Australia's policies are having an impact on whether or not people choose to come to Australia by boat. That certainly doesn't mean that their lives have been saved or that they have somehow had access to protection as a result of that. I once heard somebody describe this phenomenon as squeezing a balloon so it doesn't simply stop people from moving they just go somewhere else and usually what happens in these kind of circumstances is people go down a route that is even riskier and more dangerous and more exploitative than the route they were choosing in the first place. So as bad as boat journeys to Australia are, there are many other routes and many other products that people, if I can put it that way, the people smugglers will try to sell to those who are desperate and are without protection and I think if we are simply shutting a door without opening a window, then there is no guarantee that we are saving lives. In fact we could potentially be putting lives at greater risk and I think the argument that we are opening up resettlement places for people. The majority of people that come by boat, they come from

situations where access to resettlements is very limited or is quite literally not there at all. In some countries people have no access to resettlement and so I think the idea that we can play one off the other, it doesn't really make sense when you look at it in terms of the reality on the ground that people are facing. And just a final point I'll make quickly is I think the way that Australia is implementing its policies at the moment, on the longer term, I think it could have a really really problematic impact on protection standards in region in general. We already know from our conversations with NGOs in other countries that Australia's detention policies have an impact on how their countries implement their detention policies and we are seen in the region rightly so as one of the wealthier nations, a multicultural nation with a very long history of humanitarian settlement, one of the few signatories to the Refugee Convention and when we are implementing our policies in this way, when we are turning away the relatively small number of people who arrive here you can imagine the kind of message that sends to the other countries in the region who are far less wealthy, who have no history of humanitarian settlement, who aren't Refugee Convention signatories and are getting far larger numbers and one of our NGO counterparts in another country described after one policy change implemented by the Australian Government, said this is like the nail in the coffin for us because the tiny gains that we are able to make with our Government become so much harder when we have the country in the region that is better placed than any other to protect refugees behaving in this way.

**President**

And that leads me actually to explore just a slightly different angle from the way you have been discussing it so far and that is when I raise the if you like the ethical as well as legal problem of using children as a vehicle for deterrence I am met with the response that we have to be tough on children because if we don't people smugglers will send boats with loads of children or we will see more families and children. Now that may or may not be true but my question is in your experience of refugees and how they embark on this journey, are they aware of the nuances of Australian policy? Do they understand the Nauruan option or the Manus Island option? Is this influencing their behaviour, or is it really only they have the muddled ideas and hope basically that by the time they get to Australia they will be at least able to be assessed as refugees and have the protection of Australia?

**Mr  
Glendenning**

I think what is missing in that scenario is basically why people leave. I have a picture, an image, in my office of a bombing that went on in Quetta and truck bomb exploded in the market at about 8:30am and there were 78 people killed mainly woman and children who were on the way to the market and school and the people picking up the dead and carrying them away, Taliban attack. Up behind the square is a gigantic poster of a picture of one of those boats that asylum seekers get in when they come to Australia and in Dari script written next to is: "Don't risk your life coming to

Australia by boat". I think there is a complete lack of understanding at the political level and in general in Australia about why people come. A part of that is because we don't have experience of war or that type of conflict and that is a blessing. But it is a curse when it comes to our understanding of the pain and harm that others suffer. In Kabul last year, I had a range of people who were on Nauru who had been returned and with their families. Some of those people had been killed when they went back including children. They said to me this is a good move that we are here in Australia but once upon a time there was one place where we could get processed and resettled in a signatory country and that was Australia, but now there is Papua New Guinea and Nauru as well, there is three. So, this notion that you can somehow send a message here and that people in the region are going to understand what is going on with Australian politics or Australian nuance of policy, in my experience is a bit of a convenient myth for here. And you would need to turn that around. Whenever any of us travel outside the country, how much information of Australia do you pick up? You don't. So I think one of the things that is missing here is an understanding of what it is like and in the great words of Paul Keating at the Redfern speech "We do these things because we can't understand what it would be like if it was done us". I think the understanding of why people flee and the trauma that people live in, what Australia is doing at the end of the journey is secondary to them.

**President** You have touched on this but I would be interested again in your experience if you could give us some examples of how you think immigration detention and the growing length of time of immigration detention on children, closed detention, what the impact is on their lives and developmental potential once they are finally released if indeed they are because of course not all children have been.

**Mr Glendenning** Well that is true, I had to look at my notes here because the list is long. Long term impacts can include developmental delays, a range of mental health issues, depression, anxiety, post traumatic stress disorder, impacts on memory and concentration. An erosion of trust with authorities which can in turn effect engagement with other support services and institutions and these impacts can compound the effects of and have a recovery from pre-arrival experiences of trauma and of course children whose relatives have been through similar traumatic experiences may experience knock on effects, you know family conflict, breakdown, the stress of witnessing the impacts of trauma on parents or other relatives and seeing what is happening to their parents. Now whilst we believe children and young people are resilient remarkably often and can recover from negative impacts. However, a core prerequisite for recovery from traumatic experience is the establishment of safety and security it is what we would want for our own kids. The environment in which children and young people are being released is anything but secure at the moment. So we have big concerns about the impact that this has. I

know from personal experience of watching children in detention who basically disintegrate. There is evidence of that in the work that the Commission has done recently on Christmas Island where every image has the face of someone crying including of a baby in a womb. We are talking about children here. Our Government should not be traumatising, terrorising or adding trauma upon trauma to children who have experienced trauma. You know it seems to me that the measure of a civilised society is how we treat our most vulnerable people and there is perhaps no one more vulnerable in the mix than those young children, those unaccompanied minors who are here. The measure of our civilisation is tested by how we treat them. So how we treat them often says more about us than it does about them and I have deep concerns for the soul of my nation when it comes to the things that we are doing to children. Children who have experienced what I think it was Patrick McGorry of the Australasian Society of Psychiatrists referred to asylum seeker syndrome, a new form of mental illness. You know I think our taxes could be put to better work to help prevent and protect rather than punish these people who are among the most vulnerable people in the world.

**President** Thank you.

**Ms Morgan** Also sorry just briefly in terms of the impact of detention on children, I think there is an added factor here which may not have been present before in Australia in our history of our detention policies and that is as Phil briefly touched on, the environment into which people are being released and it is very different to what we have seen before with community alternatives in that now people are facing very lengthy delays in processing, years in some cases, they have got very limited access to support services, they are locked out of education and employment opportunities, they are often facing indefinite and possibly permanent separation from their family members particularly in the case of young people who have arrived unaccompanied and have turned 18. Their options for re-uniting with their families even if they are granted a visa eventually are basically nil and they are also coming into an environment where the debate on refugees in Australia is very hostile and the level of community support which may have been there is quite different and I think this is something that I have certainly picked up on in the consultations that the Refugee Council does is that previously when we talked about community alternatives the impact on mental health was always more positive than in detention and now we are hearing, not that it is at the same level as it would be in detention but that mental health is deteriorating in quite an alarming way because of the situation that people are living in, the situation of destitution, of constant uncertainty of being separated from family members, of feeling very isolated and marginalised. So having come out of this detention experience after already their traumatic pre-arrival experiences they are now being released into an environment which is really inimical to being able to recover from

trauma and potentially facing that long term. So while I think it's, as I said the impacts of detention itself might be the most significant in terms of their mental health, the fact that they are now being released potentially into an environment where they can't recover from those experiences means that the way that these policies play out could be quite different to the way we have seen it before and different, unfortunately, in a negative way.

**President** Actually Ms Morgan you have touched on what was going to be my next question. At the Commission we have taken the view that we would like the Government to release the children from closed detention into community detention because we have seen that as a better alternative than being literally in prisons. But my question to you was going to be do you think community detention is an appropriate compromise and you have really explained your concern that conditions there are also declining and that that isn't actually a solution.

**Mr Glendenning** Well it would be a solution if, and it is an important if, it was adequately resourced and so that it could be effective and sustainable. It is essential that the asylum seekers who are in that situation have adequate support to ensure a decent standard of living and at the moment they don't.

**President** Well given that we are concentrating on the children in this inquiry we had hoped, without yet having done an inquiry into community detention so that may be down the track, but basically we are concerned about the children and our sense was that children in community detention go to school, they are integrated, they can go to friend's birthday parties at the weekend, they can play sport, they go to the various recreational things that schools put on. Are your observations in the more recent months where we are seeing this level of impoverishment becoming important, do you feel that maybe the children are still suffering even in community detention?

**Mr Glendenning** I think they are not suffering as much as if they were in closed detention. That is the first thing that has got to be made but we have got at the moment 1,816 children living in the community on bridging visas and some young people who arrive as unaccompanied minors are now transitioning onto bridging visas when they turn 18 and I have got concerns for those post-18 groups as well who are supposedly adult but anyone who has got an 18 year old knows that is not necessarily always the case. So I think the point to be made is that community based alternatives do result in more positive health outcomes but they do need to be properly supported and I think there is room to move there.

**President** And my last general question and you have just touched on it, is what are your views about the assistance and support that is currently being given to unaccompanied

minors in immigration detention?

**Ms Morgan** I think the problem is the detention environment is always a difficult place to support people because it is by nature an environment, as I was saying earlier, where it is difficult to recover from experiences of trauma and while I think we do have some good models in Australia for supporting unaccompanied minors I think if you talk just about trying to make the services in detention better then its missing the point. They need to be out of detention and I think we have, as I was saying earlier, excellent community models of community based alternatives but we do need to make sure that those do allow, particularly children and young people to live as normal a life as possible. They are in abnormal circumstances so how can we try and make their lives as normal as possible and if you are doing that within a detention environment you can make the services as world class as they can be but at the end of the day they are still in detention and that is the environment really that is creating the problem in the first place.

**President** And that is the key question.

**Ms Morgan** Yes that is the key.

**Mr Glendenning** I guess the other thing I would add to that is the rise in the length of time that people are spending in immigration detention, which is at its highest level now in over 2 years. The average length of detention now is 253 days and most people, close to 80%, have spent 6 months or more in detention and the standard of education that children get in detention, despite the best efforts of officials, is sub-standard compared to what they would get in the community so I just think Lucy has nailed that point very clearly that they should not be in detention. So we are back where we started. It is inappropriate, it is wrong, to have children in detention I think 30 years from now we will probably see a Prime Minister in the Australian parliament stand up and offer an apology on behalf of the nation for what has been done to these young people as we stand. And you would think a nation like this, that has had a history of realising years down the track the trauma that the State has manifested upon the lives of children - and has apologised for why would we be repeating the sins of our history. At some point we have to learn from that and at the moment, the notion of having children in detention for such a length of time traumatises them. These are not good days for our country.

**President** May I just finish by asking again, I imagine you do follow families once they have been released from detention and the children are in school and moving on. Do you have any evidence as to how damaging that is on their ability to concentrate at school as we heard in some evidence earlier today and to progress with their lives. Is this a

frequent problem?

**Mr  
Glendenning** I think in the early stages, yes. Of course I don't have any statistical information in front of me that I can share with you. Anecdotally I would say that the transition is difficult but if the appropriate supports are available in terms of family and expertise in those schools after 6 months or so those children do tend to flourish.

**President** Well I think we may be hearing an example of that in a very few minutes so thank you both very much for taking the time to talk to us and if you do have some data or anecdotal evidence that you can share with us we would very much like to have that because you have such a depth of experience that the things that you would provide us would be very helpful. So thank you very much indeed.

**Mr  
Glendenning** Thank you very much, thank you for your time.