

Submission to the Australian Human Rights Commission

National Inquiry into Children in Detention 2014

Prepared by Australian College of Nursing (ACN) and Maternal, Child and Family Health
Nurses Australia (MCaFHNA)

May 2014

General comments

Australian College of Nursing (ACN) and Maternal, Child and Family Health Nurses Australia (MCaFHNA) believe that the policy of detaining children in immigration detention centres is in contravention of Australia's responsibilities under the United Nations Convention on the Rights of the Child (UN CRC), which was ratified by Australia in December 1990. It is the position of ACN and MCaFHNA that detaining children is detrimental to their physical, social, emotional and cultural wellbeing.

The early years of a child's life lay the foundations for his or her future growth, development and happiness. A large body of evidence exists demonstrating that early child development and experiences affect health, well-being and competence across the lifespan. Nurturing and stimulating environments promote children's welfare and resilience. Strengthening the life prospects of children in turn strengthens the social and economic fabric of society.

Psychosocial trauma and lack of health care in childhood is known to have a negative impact on a child's social, emotional, cognitive and physical development. This may later result in the child experiencing learning difficulties, behavioural problems and physical and mental ill health. For this reason, it is imperative that children accompanying asylum seekers are provided with positive social and physical environments and access to health care and education.

Children who have arrived in Australia as asylum seekers may already have experienced significant trauma. After health and basic security checks have been conducted, ACN and MCaFHNA believe children and their families should be placed in community detention rather than closed immigration detention centres. If children continue to be detained in Australian detention centres, their right to appropriate health care, education and suitable living environments must be protected without exception.

Issues relating to the treatment of detainees are of direct interest to the nursing profession because nurses deliver the majority of health services to asylum seekers in both detention centres and in community settings. Nurses are acutely aware of the unique health care needs of children being assessed, processed and detained under Australian immigration policy. The availability of adequate and appropriate health care services delivered by suitably qualified health care professionals is fundamental to meeting these health care needs and to protecting the rights of children in detention as set out in the UN CRC. These rights include:

- The right to privacy (Article 16)
- The right to protection from violence, abuse and neglect (Article 19)
- The right of children with a disability to special care and support (Article 23)
- The right to good quality health care (Article 24)
- The right to a standard of living which is good enough to meet their physical and mental needs (Article 27)

- The right to education which develops each child's talents to the full (Article 29)

OVERARCHING RECOMMENDATIONS

It is recommended that:

- Every effort is made to ensure that children are not negatively impacted by the experience of detention.
- All children in detention have access to adequate and appropriate health care services delivered by suitably qualified health care professionals. Appropriate staffing is fundamental to the protection of children's rights.
- After health and basic security checks have been conducted, children and their families are placed in community detention rather than closed immigration detention centres.

The role of nurses in caring for children and young people

Nurses play a primary role in promoting the physical, social, emotional and cultural wellbeing of children and young people, their families and carers in the Australian health care system generally and in the provision of health care to asylum seekers. Registered nurses with additional qualifications in maternal, child and family health and community health have a key role in caring for children and young people. These nurses are educated to support families and children by:

- undertaking comprehensive childhood growth and development assessments and identifying areas of concern;
- routine health screening;
- conducting home visits;
- providing nursing care to children and young people experiencing illness;
- providing breastfeeding support;
- educating parents about immunisation and providing vaccinations;
- providing advice on child behaviour, nutrition, toilet training, mental health and sleeping;
- providing health promotion and illness and injury prevention education;
- supporting parents with perinatal anxiety and depression;
- advocating for children and their families, and;
- providing referrals to other health professionals and community services.

Families and children who have arrived in Australia as refugees or asylum seekers may have additional and more complex health needs in comparison to the wider community. Asylum seekers may have been exposed to communicable diseases such as tuberculosis (Trauer and Krause 2011), and asylum seeker children are likely to be at higher risk for certain preventable diseases such as rickets and iron deficiency (Munns et al. 2012; Tiong et al 2006). They may not have the immunisation status shared by the majority of the

Australian population. Psychological distress and certain mental illnesses such as post-traumatic stress disorder (PTSD) may also be more prevalent in this population (Fazel et al. 2005).

Given their potential health care needs, it is extremely important that asylum seeker and refugee families have access to the range of health care services provided in the broader Australian community. These services should include access to appropriately qualified maternal, child and family health nursing services, whether they are living in the community or in immigration detention centres.

Comments against the Inquiry's Terms of Reference

1. The appropriateness of facilities in which children are detained

A living environment equipped with appropriate physical facilities is essential to support the health, well-being and development of children. Opportunities for physical play are vital to children's gross motor development. In addition, physical activity contributes to children's ability to socialise, promotes confidence and independence and supports mental health.

ACN and MCaFHNA believe a guiding principle should be that children in detention should have access to physical facilities comparable to those generally experienced by children in Australia. We recommend that the Australian Children's Education & Care Quality Authority's (ACECQA) *National Quality Standard – Quality Area 3: Physical environment* could be used as a benchmark for the appropriateness of facilities in which children are detained (ACECQA 2013).

However, the circumstances and characteristics of children in detention differ in a number of ways from those of Australian children in child care:

- Detention centres are both a home environment for children and an educational environment;
- Detention centres hold children for weeks, months or years at a time, rather than for hours a day;
- The children detained in detention centres are highly culturally and linguistically diverse, and may speak little or no English;
- The parents of children in detention centres may have a relatively low level of health literacy with regard to environmental factors such as sun exposure.

As a result, detention facilities that hold children should also meet the following specific requirements:

- Adequate protection from the physical environment at all times (including hot and cold weather, excessive sun exposure and insects);
- Appropriate outdoor recreational areas, with adequate shade;
- Access to the natural environment, including grass and trees;

- An area for indoor exercise and physical games and play;
- A dedicated space for educational activities;
- A library with reading materials in the languages spoken by the children;
- An accessible meal preparation area for parents to use at any time; and
- Privacy for individuals and families, including separate areas for attending to children’s needs (such as areas of bathing and quiet areas for daytime naps).

The ability of parents to support, care for and make decisions for their children

Immigration detention centres should be designed and administered to support the parenting capacity of refugees. Parents in immigration detention centres should be enabled to meet the basic needs of their children, manage their children’s behaviour and engage in family rituals. As far as possible, the routines of the immigration detention centre should not undermine family intimacy or parental authority. Parents should be consulted on decisions affecting their children, for example regarding food choices, health care, education and activities. It is also important to promote the mental health of all members of the family, because the mental health of parents can have a significant detrimental impact on the behaviour, cognitive development and mental health status of children (Reupert et al. 2012).

Freedom from exposure to violence

There is evidence that violence has occurred in Australian detention centres, including riots and incidents of self-harm. It is essential that children held in immigration detention centres are protected from exposure to violence, including witnessing violence. This may require separating families with children from the general population of detainees, or providing safe places for children and families to retreat to in the event of violent incidents.

It is recommended that:

- The physical facilities in which children are detained support children’s development and are comparable to those generally experienced by children in Australia.
- Children are protected from exposure to violence, including witnessing violence.
- The design and administration of immigration detention centres take into account the particular needs of children and families in immigration detention.

2. The impact of the length of detention on children

Childhood is a critical period for physical growth, skill acquisition, emotional attachment, socialisation and cognitive development. If children fail to develop foundational skills or are exposed to physical or mental harm during important developmental periods, they may develop life-long deficits and be more likely to experience disadvantage as adults. We believe that the conditions children experience while in immigration detention are likely to be suboptimal for their health, development and education. While the effects of detention

may vary according to a child's age, family situation, previous life experiences and the length of detention, ACN and MCAFHNA believe that the precautionary principle should be applied and we recommend that all children should be kept in detention for the shortest period of time possible.

In addition to the impact of the length of time spent in detention, there is evidence that repeated involuntary relocations within the immigration detention system are harmful to children. Involuntary relocations disrupt children's routines and involve a loss of peer relationships and community connectedness. The loss of agency and feelings of powerlessness associated with involuntarily relocations may also undermine family functioning, which can in turn have an impact on children's well-being. Children aged 12 to 17 may be at heightened risk of experiencing mental distress when they are involuntarily relocated while in detention due to the importance of peer and mentor relationships in this period (Zwi and Mares, 2013). Relocations should be minimised where possible.

It is recommended that:

- Children are detained for the shortest period of time possible.
- Involuntary relocations are minimised.

3. Measures to ensure the safety of children

Authorities in detention centres must consider all aspects of child safety, including children's mental and physical health, sexual health and protection from physical, emotional and sexual abuse. All members of staff who interact in any way with children in immigration detention centres must have Australian working with children checks (or equivalent), regardless of their nationality or the nationality of their employer. In addition, detention centres must ensure that the skill base of their staff matches the needs of the children for whom they are caring.

Some children may be particularly vulnerable when placed in immigration detention, and appropriate measures must be taken to ensure their safety. These children include:

- **Unaccompanied minors.** Children who are no longer with their families are at higher risk of harm, including exposure to physical and sexual abuse. Unaccompanied minors must not be detained with adults to whom they are not related. Appropriate guardianship arrangements must be in place to ensure that these children have an adult to advocate on their behalf. As discussed below (see page 8), ACN and MCAFHNA believe that the current guardianship arrangements give rise to a fundamental conflict of interest, as the Minister for Immigration is expected to be both the children's legal guardian and responsible for immigration detention policy.
- **Children with disabilities.** Children with physical and intellectual disabilities may be at particular risk of maltreatment and abuse due to a number of factors including

physical limitations, lack of understanding and knowledge about sexuality and communication difficulties (Tomison 1996). It is vital that all detention centre staff working with these children have adequate education about the particular needs and vulnerabilities of children with disabilities. Children with disabilities may also need access to specialised health services, such as specialist medical care, physical therapy, and speech pathology services. A lack of access to these services may undermine children's immediate physical safety and long-term health outcomes. In some cases, it may be impossible to adequately address the needs of a disabled child in a detention centre.

- **Children who have experienced pre-migration trauma.** Some children in immigration detention have experienced trauma prior to arriving in Australia. This includes violence, traumatic loss and forced displacements. It is important that children are screened for PTSD and other mental health problems arising from exposure to pre-migration trauma and that they receive appropriate care if needed. It is essential that this screening is conducted by a health professional with specific expertise in childhood mental health, as appropriate screening and therapeutic interventions for children and adolescents differ from those appropriate to adults (ACPMH 2013).

ACN and MCaFHNA are also concerned that off-shore detention centres pose an additional risk to the safety of children because of the lack of local health care services and the distance to Australian hospitals. This poses an unacceptable risk to the health and safety of children, particularly children with a high level of health needs.

Determining the age of people who claim to be children

Given the risks associated with placing children in populations of adult detainees and the risks associated with placing people who may in fact be adults with children, ACN and MCaFHNA believe that the age assessment process should be careful, methodical and evidence-based. Every effort should be made to source the primary identity documents of people claiming to be children from their country of origin. If these documents are not available and there is a possibility that the person is a child, they should not be placed in the general population of refugees. It is equally important that people who claim to be children but may in fact be adults are not placed with children to whom they are not related.

It is recommended that:

- Children are detained for the shortest period of time possible
- Involuntary relocations are minimised.
- All members of staff who interact in any way with children in immigration detention centres have Australian working with children checks (or equivalent).
- Particular care is taken to ensure the safety of unaccompanied minors, children with disabilities and children who have experienced pre-migration trauma.
- Every effort should be made to make an accurate determination of the age of any person claiming to be a child.

4. Provision of education, recreation, maternal and infant health services**Education**

Access to education is a universal right for children. It is both inherently valuable and one of the key determinants of a child's future health status. Lower educational attainment is linked to poorer health outcomes across the lifespan (Ross and Mirowsky 1999). It is important that children in detention centres have access to high-quality, age-appropriate education provided by qualified teachers with experience teaching children from culturally and linguistically diverse backgrounds.

Maternal, infant and child health services

Women in detention centres must have appropriate access to antenatal education, breastfeeding support and screening for postnatal depression. The lack of access to these services can have a significant impact on a woman's health, the outcome of her pregnancy and the health of children after birth. Women with high risk pregnancies (i.e., women who are pregnant with babies which are small for their gestational age, women with gestational diabetes or pre-eclampsia, women with severe perinatal depression) must not be kept in detention centres without access to appropriate health care as to do so poses an unacceptable risk to the women and their unborn babies.

Appropriate staff, including midwives and nurses, must be available to support the delivery of maternal and child health services. Detention centres must ensure that asylum seekers have access to qualified midwives, child and family health nurses and nurses with experience in assessing child and maternal mental health. Access to appropriately qualified midwives and nurses will ensure that women receive appropriate antenatal and perinatal care and that their children receive infant and childhood checks. It is not acceptable for maternal and child health care to be delivered by generalist nurses without specific education and experience in maternal and child health. A lack of suitably qualified staff could endanger children's health and development and represent a professional risk to registered nurses if they are employed to deliver these services without having appropriate qualifications. Contracts for companies delivering health care in detention should specify

that only nursing staff with appropriate qualifications and experience in maternal, child and family health nursing should be employed to provide these nursing services.

It is recommended that:

- Children in detention centres have access to high-quality, age-appropriate education provided by qualified teachers with experience teaching children from culturally and linguistically diverse backgrounds.
- Asylum seekers have access to appropriate maternal and child health services.
- Women with high-risk pregnancies are not kept in detention centres.
- Appropriate staff, including midwives and qualified maternal, child and family health nurses, are available to support the delivery of maternal and child health services.

5. The separation of families across detention facilities in Australia

It is of critical importance that every effort is made to keep families together while they are detained, including when women are giving birth. Allowing families to remain together is a simple way to reduce the stress associated with being kept in immigration detention and promote family resilience.

It is recommended that:

- Families are kept together while they are detained, including when women are giving birth.

6. The guardianship of unaccompanied children in detention in Australia

Under Australian law, specifically the *Immigration (Guardianship of Children) ACT 1946*, the Minister for Immigration and Border Protection is the guardian of unaccompanied children who are not Australian citizens. The Minister also has responsibility for detaining people who arrive without authorisation and for approving or rejecting visa applications under the *Migration Act 1958*. In our view, the Minister's multiple roles create the potential for a significant conflict of interest. The first responsibility of a child's legal guardian is to protect and promote the child's best interests. This obligation is difficult to reconcile with the Minister's other roles. ACN and MCAFHNA believe that guardianship arrangements for unaccompanied children in detention should be reviewed, and an independent guardian should be appointed for unaccompanied children. The independent guardian should have unlimited access to children in detention and be empowered to advocate for all aspects of children's wellbeing.

It is recommended that:

- A review the guardianship arrangements for unaccompanied children in detention is conducted.
- An independent guardian is appointed for unaccompanied children.

7. Assessments conducted prior to transferring children to be detained in ‘regional processing countries’

It is appropriate that asylum seekers undergo health assessments prior to being detained in immigration detention facilities. ACN and MCAFHNA maintain that adequate time must be allowed for all appropriate health and development assessments to be conducted, particularly if children have complex needs.

In our view, it is inappropriate for any child to be placed in closed immigration detention facilities. However, if the policy of detaining children remains in place, exclusion criteria should be introduced. These exclusion criteria should include, at a minimum, children with developmental delays, physical or intellectual disabilities, mental health disorders, high risk physical disorders and communicable diseases. In order to assess children against these criteria, appropriately trained staff must have adequate time to conduct thorough developmental and health checks. If any pathology testing or additional psychological screening is required, children must not be relocated before these assessments have been analysed and completed. Children who meet any of the exclusion criteria must be placed in community detention (or, at a minimum, in on-shore detention facilities) with their families.

It is recommended that:

- Adequate time is allowed for all appropriate health and development assessments to be conducted prior to transferring children to be detained in regional processing countries.
- Exclusion criteria are introduced to ensure that children with special physical or intellectual health needs are not placed in detention.

8. Progress that has been made during the 10 years since the Commission’s 2004 report: *A last resort? National Inquiry into Children in Immigration Detention*

In 2004, the Commission made five key recommendations:

1. Children in immigration detention centres and residential house projects as of the tabling of this report should be released with their parents, as soon as possible, but no later than four weeks after tabling.
2. Australia’s immigration detention laws should be amended, as a matter of urgency, to comply with the *Convention on the Rights of the Child*.
3. An independent guardian should be appointed for unaccompanied children and they should receive appropriate support.
4. Minimum standards of treatment for children in immigration detention should be codified in legislation.

5. There should be a review of the impact on children of legislation that creates 'excised offshore places' and the 'Pacific solution.'

To the best of our knowledge, very little progress has been made on any of these recommendations, despite significant activity by human rights, health and refugee advocacy groups. Indeed, with the introduction of the new government policy to process all asylum seekers offshore, Australia has gone backwards with regards to the Commission's recommendations.

References

Australian Centre for Posttraumatic Mental Health (ACPMH) 2013, *Australian Guidelines for the Treatment of Acute Stress Disorder and Posttraumatic Stress Disorder*, ACPMH: Melbourne, Victoria.

Australian Children's Education & Care Quality Authority (ACECQA) 2013, *Guide to the National Quality Standard* <<http://files.acecqa.gov.au/files/National-Quality-Framework-Resources-Kit/NQF03-Guide-to-NQS-130902.pdf>>

Fazel M, Wheeler J, Danesh J 2005, 'Prevalence of serious mental disorder in 7000 refugees resettled in western countries: a systematic review', *Lancet* 15 (365): 1309-14.

Munns C F, Simm P J, Rodda C P, Garnett SP, Zacharin M R, Ward L M, Geddes J, Cherian S, Zurynski Y and Cowell C W 2012 'Incidence of vitamin D deficiency rickets among Australian children: an Australian Paediatric Surveillance Unit study', *Medical Journal of Australia* 196 (7): 466-468.

Reupert A E, Maybery D J, Kowalenko N M 2012, 'Children whose parents have a mental illness: prevalence, need and treatment', in *Medical Journal of Australia* Open 2012, suppl 1:7-9.

Ross C E and Mirowsky J 1999, 'Refining the association between education and health: effects of quantity, credential and selectivity', *Demography* 36 (4): 445-60.

Tiong A C D, Patel M S, Gardiner J, Ryan R, Linton K S, Walker K A, Biggs B-A 2006, 'Health issues in newly arrived African refugees attending general practice clinics', *Medical Journal of Australia* 185 (11): 602-606.

Tomison A M 1996, *Child maltreatment and disability*, National Child Protection Clearing House Issues Paper no. 7, Australian Institute of Family Studies: Melbourne, Victoria.

Trauer J M and Krause V L 2011, 'Assessment and management of latent tuberculosis infection in a refugee population in the Northern Territory', *Medical Journal of Australia* 194 (11): 579-582.

Zwi K and Mares S 2013, 'Commentary: Reducing further harm to asylum-seeker children. The global human rights context', *International Journal of Epidemiology* 43 (1): 104-106.