



30 May 2014

National Inquiry into Children in Immigration Detention 2014
Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001
Australia

NSW Council for Civil Liberties Submission to the National Inquiry into Children in Immigration Detention 2014

Introduction

1. NSW Council for Civil Liberties

The NSW Council for Civil Liberties (**NSWCCL**) was founded in 1963 and is one of Australia's leading human rights and civil liberties organisations. Its aim is to secure the equal rights of everyone and oppose any abuse or excessive power by the State against its people. To this end NSWCCL attempts to influence public debate and government policy on a range of human rights issues. NSWCCL prepares submissions to government, conducts court cases defending infringements of civil liberties, engages regularly in public debates, produces publications, and conducts many other activities.

We are grateful for the opportunity to make a submission to this inquiry.

2. NSWCCL's work with Children in Detention

NSWCCL advocates strongly to protect and to advance the rights of asylum seekers and refugees. The NSWCCL has a dedicated Asylum Seeker Action Group in recognition of the importance of this work. Members of NSWCCL have been attending detention centres to visit and provide assistance to asylum seekers for many years. Our members have encountered children in detention on many occasions.

As we are aware that the Commission would like to hear from professionals who have experience and knowledge about the impact of immigration detention on children, this submission is partially based on an interview conducted on Thursday 13 March 2014 with NSWCCL member, Trish Highfield. Trish Highfield is an early childhood professional and refugee activist who visited and provided assistance to asylum seekers and refugees over the past 16 years from 1998 to the present. Following the release of all children from Detention Centres under 18 years of age by Minister Amanda Vanstone in June 2005, Trish ceased visiting the onshore centres. Trish is a member of Social Justice in Early Childhood (SJEIC), which is a not for profit organisation working for social justice issues pertaining to the lives of children that has undertaken campaign work relating to children in detention. Excerpts from the interview are included throughout the submission.

Summary

NSWCCL believes that by keeping children in detention and sending children to offshore processing centres, the Australian Government is seriously failing to comply with its international obligations in relation to children. Specifically the Australian Government is breaching the following international conventions by detaining children:

(a) *Convention for the Rights of the Child (CRC)*

The CRC was ratified by Australia in 1990. It imposes obligations on Australia to give all children, including asylum-seeking children, special treatment, and to place children in detention centres as a measure of last resort.

(b) *International Covenant on Civil and Political Rights (ICCPR)*

The ICCPR was ratified by Australia in 1980 and provides that no one shall be subject to arbitrary arrest or detention.

(c) *International Covenant on Economic Social and Cultural Rights (ICESCR)*

The ICESCR was ratified by Australia in 1976 and includes rights relevant to this inquiry such as the right to health, the right to education and the right to family life.

(d) *1951 Convention relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees (Refugee Convention)*

The Refugee Convention defines who is a refugee and sets out the legal obligations of states in relation to refugees. Australia was among the earliest states parties to the Refugee Convention, acceding to the treaty on 22 January 1954. Australia ratified the 1967 Protocol on 13 December 1973.

NSWCCL is extremely concerned that although detention of children is to be used as a measure of 'last resort', there were 895 children in low security detention facilities and a further 179 children in offshore detention on Nauru as at 31 March 2014.¹ NSWCCL submits that this is unacceptable and that it is fundamentally inconsistent with Australia's obligations under international law.

NSWCCL recommends that the Australian Government place the best interests of the child as paramount when making decisions about the detention of children. NSWCCL urges the Australian Government to release all children from held detention and make more appropriate arrangements for them to live with their families in community detention, or on bridging visas with adequate support.

NSWCCL also calls on the Australian Government to return all children and their families currently being held in offshore detention centres to the mainland and to release them into community detention or on bridging visas with necessary support.

NSWCCL also recommends that an independent body be established as a priority to provide guardianship for unaccompanied minors. This is necessary to address the obvious conflict of interest that arises out of the current arrangement where the Minister for Immigration and Border Protection is also the guardian for unaccompanied minors.

¹Department of Immigration and Border Protection, Immigration Detention and Community Statistics Summary, 31 March 2014, available at: <http://www.immi.gov.au/managing-australias-borders/detention/pdf/immigration-detention-statistics-march2014.pdf> [Accessed 26 May 2014]

Submission

1. The appropriateness of facilities in which children are detained

NSWCCL believes that the mandatory detention of children is an indefensible policy that can significantly impair their development.

While seated in the visitor area, I noticed the place was just dusty and dry there was just a little slippery dip for a child, exposed to sun with no shade-cloth or other shelter and therefore too hot to be used. There was just a contraption for swings but it was very dangerous. There was no concession to safety here at all it was dreadful.

Trish Highfield, observations from a visit to Villawood Immigration Detention Centre, 2000

(a) Detention centres on the Australian mainland

The Department of Immigration and Border Protection website contains the following statement in relation to detention facilities for children:

It is government policy that children will not be held in immigration detention centres. Children might be accommodated in low security facilities within the immigration detention network to manage health, security and identity risks to themselves or their guardians. Facilities include immigration residential housing, immigration transit accommodation and alternative places of detention.²

NSWCCL believes that children should not be detained. The statement above describes 'low security' facilities for families; however the NSWCCL considers this terminology to be misleading. Although preferable to high security facilities, these centres still constitute held detention where alarmed fences ensure people are not free to come and go as they please. In addition, NSWCCL is also aware of instances where children are being held in more restrictive environments, such as this example provided by Trish Highfield:

An Iraqi father and his little two and a half year old child were transferred to Port Hedland after a hunger strike. They were locked up in a 15 square metre cell and could use the toilet once a day for 13 days, before a lawyer helped them to get back to Villawood. The little boy was only two and a half and he could not control himself and the father told me, 'I used to put some clothes in a corner and empty the defecations in the toilets when we were allowed to use the bathrooms and I would wash that out'.

Trish Highfield, recollections from Port Hedland Immigration Reception and Processing Centre, 2000

NSWCCL considers that such incidents are unacceptable and constitute cruel, inhuman and degrading treatment. In addition, NSWCCL is confident that the current numbers of children in detention do not indicate that these facilities are being used as a measure of 'last resort'.

(b) Offshore detention centres

Although NSWCCL members have not had the opportunity to visit the offshore detention centres in Christmas Island, Nauru and Manus Island, the available evidence overwhelmingly suggests that the conditions in the offshore centres is significantly more alarming than on the mainland.

²Department of Immigration and Border Protection, Fact Sheet 82 – Immigration Detention, <https://www.immi.gov.au/media/fact-sheets/82detention.htm#fam> [Accessed 26 May 2014]

(i) Christmas Island

Families, children and unaccompanied minors continue to be detained on Christmas Island. A report of the Australian Human Rights Commission following a visit to Christmas Island in 2012 described the Aqua Compound where 35 children were living at the time:

The compound has extremely limited internal recreation areas, and no dedicated external recreation area. There is also no grass, and little shade. There is no play equipment provided for children.³

NSWCCL believes the conditions of detention in Christmas Island are not suitable for families, children and unaccompanied minors.

(ii) Nauru

There were 179 children in the processing centre on Nauru as at 31 March 2014⁴; this is despite the following findings made by UNHCR following a visit to Nauru in October last year:

Overall, the harsh and unsuitable environment at the closed RPC is particularly inappropriate for the care and support of child asylum-seekers. UNHCR is also concerned that children do not have access to adequate educational and recreational facilities.

In light of the overall shortcomings in the arrangements, highlighted in this and earlier reports, UNHCR is of the view that no child, whether an unaccompanied child or within a family group, should be transferred from Australia to Nauru.⁵

NSWCCL submits that the transfer of children to Nauru should be stopped and that all children on Nauru should be returned to the mainland with their families and be placed in community detention or on bridging visas with adequate support.

(iii) Manus Island

Although the Department of Immigration and Border Protection states there are currently no children on Manus Island⁶, NSWCCL is particularly concerned about reports that asylum seekers who have declared themselves as unaccompanied minors have been transferred to Nauru. NSWCCL also

³Australian Human Rights Commission, Immigration Detention on Christmas Island, Observations from Visit to Immigration Detention Facilities on Christmas Island, 2012, pages 16-17, available: <https://www.immi.gov.au/media/publications/pdf/2012/ahrc-report-christmas-island.pdf> [Accessed 26 May 2014]

⁴Department of Immigration and Border Protection, Immigration Detention and Community Statistics Summary, 31 March 2014, available at: http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-march2014.pdf [Accessed 26 May 2014]

⁵UNHCR, UNHCR monitoring visit to the Republic of Nauru 7 to 9 October 2013, page 2, available: <http://unhcr.org.au/unhcr/images/2013-11-26%20Report%20of%20UNHCR%20Visit%20to%20Nauru%20of%207-9%20October%202013.pdf> [Accessed 25 May 2014]

⁶Department of Immigration and Border Protection, Immigration Detention and Community Statistics Summary, 31 March 2014, available at: http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-march2014.pdf [Accessed 26 May 2014]

considers it particularly disturbing that reports indicate that unaccompanied minors may have been present at the centre during the riots on 17 February 2014.⁷

NSWCCL urges the Australian Government to release children and their families from onshore detention centres into more appropriate community detention or bridging visa arrangements. NSWCCL also asks that children and their families in offshore processing centres are returned to the mainland and placed into community detention or on bridging visas with appropriate support.

2. The impact of the length of detention on children

Article 37(b) of the CRC provides that:

The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

The CRC does not prescribe any limit to the length of time that a child may spend in detention as a 'last resort' measure.

NSWCCL is certain that extended periods of time in a detention environment has a significant and irreversible impact on the development of a child. Trish Highfield recounts:

The father's observation to me that his child was deteriorating physically and psychologically the longer he spent in detention was all too obvious to me. The isolation of detention was affecting the emotional and social development of the child and threatening his physical growth.

Trish Highfield, observations after visiting a father and his child in Villawood IDC over a period of 6 months, 2000

The restrictive detention environment offers limited access to the outside world can significantly inhibit a child's development. Trish Highfield recalls:

I read this little child a story, and I was reading this story to him about little animals and I became aware he couldn't relate to any animals at all...animals were outside his experience because he had spent his entire life in a detention centre.

Trish Highfield, recollections of a visit to Villawood IDC, 2000

NSWCCL is gravely concerned about the children of refugees with adverse security assessments who, in some instances, have spent more than 4 years in detention. Although the children themselves do not have adverse security assessments, they generally remain in detention where they can be cared for by their parents. NSWCCL is extremely disappointed that the Australian Government has not taken any real steps to pursue alternative housing arrangement, such as releasing families into community detention with suitable reporting measures in place and recommends that alternative arrangements be put in place as a matter of urgency.

3. Measures to ensure the safety of children

NSWCCL is extremely concerned that spending every day in a detention centre surrounded by guards can have the effect of severely re-traumatising children who have fled from war-torn countries.

⁷ Laughland, O, Sydney Morning Herald, Manus Island Rioting Could Have Been Witnessed by Asylum-Seeker Children, available: <http://www.theguardian.com/world/2014/feb/21/manus-island-rioting-could-have-been-witnessed-by-asylum-seeker-children> [Accessed 24 May 2014]

One of the biggest concerns of NSWCCCL is self-harm behaviours developing in children as a result of prolonged detention. An environment of confinement, restriction, uncertainty and boredom can have severe detrimental effects on the mental health of children.

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

(a) Education and recreation

The Department of Immigration and Border Protection website describes the education and recreation facilities provided in detention centres as follows:

The detention service provider runs cultural and lifestyle classes, sporting activities, excursions such as fishing or shopping trips, and educational programmes and English language classes for detainees in immigration detention.

Detainees in immigration detention facilities have access to resources and equipment for self-education and or shopping trips, and educational programmes and English language classes for detainees in immigration detention.⁸

Trish Highfield's experience does not necessarily accord with the Department's description. Trish explained that in her experience, that the lack of stimulation and organised activities often gave rise to boredom and a search for playthings. All too often she said this would lead to the children shaking the perimeter fences of their compounds, causing further friction with staff that had to respond to the triggering of the alarms. Trish Highfield recounts:

An 8-year old child was sitting outside a meeting room looking forlorn. When asked why he was not inside with the other children, he responded 'There is just never anything to do here'. He had the demeanour of an old man.

Trish Highfield, recollections from a visit to Villawood IDC, 2000

Trish also recalls that there were insufficient play areas for children and the equipment provided was unsuitable:

Inadequate playground equipment is invariably exposed to extreme temperatures and has no "soft-fall" area. There appears to be no concern for the provision of appropriate equipment to develop gross-motor skills. One detainee told me that he was concerned because his son was not developing physically and had poor muscle tone.

Trish Highfield, recollections from a visit to Villawood IDC, 2000

Children living in detention are physically and psychologically isolated. Their centres they live in are surrounded by fences and barbed wire and they enjoy limited, if any, contact with the outside world. The children do not have the confidence to form happy and secure relationships because of the changing population in the detention centres.

If they go to school, children only get to see the bus and the classroom, knowing at the end of their classes they will have to return to the detention centre. This also limits the friendships they are able to develop with their classmates. Trish Highfield tells of the experience of a six-year-old child who'd spent nearly half their life in detention:

⁸Department of Immigration and Border Protection website, available: <http://www.immi.gov.au/About/Pages/detention/services-for-people-in-immigration-detention.aspx> [Accessed 25 May 2014]

On release, they experienced a fear reaction to trains and buses. Abstract examples in picture books could not prepare them for reality. There was also a story of a sympathetic guard who allowed a smuggled kitten into their room. The only experience this child ever had of an animal!

Trish Highfield, recollections from visits to Villawood IDC, 2000

(b) Maternal and infant health services

NSWCCL also expresses serious concern about maternal and infant health services in detention centres. Trish Highfield was involved in a particularly severe case when a young mother risked septicaemia after being separated with her baby. The details are set out below.

On Friday 20 February 2004, a Department of Immigration and Multicultural and Indigenous Affairs Compliance Team member raided a chicken factory in the Western suburbs of Sydney. A woman who had overstayed her visa was taken to Villawood Immigration Detention Centre. Her 5-month old breastfed baby was left behind in the care of her male partner. Someone in Villawood alerted advocates to the plight of this family. When they arrived, they found the mother was suffering from engorged breasts. Meanwhile the baby was rejecting bottles and rapidly dehydrating. The father was despairing at his incapacity to care for the baby.

Advocates notified NSW Department of Community Services and senior managers at the Department of Immigration in both Sydney and Canberra, warning them that the child's life was at risk. Following increasing pressure from advocates on a Senior Detention official at the Head Office of the Department of Immigration in Canberra, the woman was released on three days later on Monday afternoon and reunited with her distressed infant and her partner.

5. The separation of families across detention facilities in Australia

NSWCCL is convinced that separating children from their parents is harmful for children's development and health. Forced separation is likely to be particularly harmful to a child who has been exposed to violence in their home country, who fled leaving behind relatives and friends and everything with which they are familiar.

Trish Highfield met a lot of children who were separated from their parents and can testify to the damage forced separation causes to children. Trish has provided details of a couple of particularly memorable examples:

Noura⁹

In 2003, a 7-year old Iranian child, who had been in the sole care of her father over three years in Curtin and Baxter Detention Centres, reported to advocates that she had been treated 'very roughly' by officers from the Department of Immigration.

Noura reported that her father was ordered to strip naked in front of her. When he refused he was beaten by the officers. The young girl tried to protect her father from the assault by jumping on an officer's back. Her father was dragged to isolation in the Management Unit. Noura, who was also suffering from a bad cold at the time, was placed in the clinic. Several days later, she was secretly deported without her father's knowledge. She was given no opportunity to say goodbye to her father. When an advocate managed to make contact with her at her mother's residence in Iran 24 hours later, Noura told her that the Department of Immigration officer told her she mustn't tell anyone of her deportation, she was told "it was a secret".

Farrukh¹⁰

⁹ All name have been changed.

¹⁰ All names have been changed.

An 11-year old Afghani girl, the eldest of five children was living in Woomera Detention Centre when the family was advised that their application for asylum had been rejected. The girl's mother had a breakdown on receiving the news and was placed in isolation.

Farrukh was left to care for her brothers on her own; one of them was an 18-month old baby who was still breastfeeding. The girl later said in an interview on SBS programme Insight that aired on 6 November 2003,

'They separated my mum. My brother used to drink mum's milk. They didn't even let my brother to drink my mum's milk. Yeah, he used to cry at night-time and I used to carry him and I used to say "Oh God, what can I do, it's too hard for me."

Farrukh said to the officers in detention, 'What can I do? I'm eleven years old, and I have no milk for my brother.' On one occasion, she tried to get fruit to feed her siblings and the officers wouldn't give it to her because she didn't have her ID card available at the time. In a very depressed state, she said 'then I wept, and I was very sad, and I was very tired of myself, and I went to have a drink of a bottle of shampoo.' At 11-years old the young girl had already observed how the other detainees tried to commit suicide by drinking shampoo or by cutting themselves.

Faten¹¹

Trish met with a 3-year old girl who was born in detention. At the time Trish met her she had known no life outside of detention and was becoming increasingly affected as a result. At one stage, she was so worried because she had been separated from her mother for a whole week and placed in care. Trish and other advocates worked tirelessly to get her out but the Department of Immigration would not allow it. Trish recalls:

"One day, I got a call to say that she was banging her head. So, I took a day off work and I went out for like an hour, and she had bruises on her little forehead. She was just banging her head in absolute frustration...three years old..."

It is clear that separation from their families can have incredibly traumatising effects on children. The Australian Government should treat maintaining the family unit in an environment that is suitable for children as an issue of paramount importance.

6. The guardianship of unaccompanied children in detention in Australia

NSWCCL considers that guardianship of unaccompanied minors by the Minister for Immigration and Border Protection to be a clear and unacceptable conflict of interest. NSWCCL considers it impossible for the Minister to simultaneously make decisions about visa grants and detention arrangements and act in the best interests of the child.

A key example of this is the impasse that an unaccompanied minor has in filing an application to the Federal Circuit Court for judicial review of their migration decision. The minor is not old enough to sign the court application and would normally rely on their guardian to sign the application on their behalf. In this instance, their guardian is the Minister for Immigration, who is also the first respondent in those proceedings. Accordingly, the Minister is conflicted and cannot sign those applications, although seeking a review of the decision would undoubtedly be in the best interests of that child.

7. Assessments conducted prior to transferring children to be detained in 'regional processing

¹¹ All names have been changed.

countries'

Although NSWCCCL does not have knowledge of the exact nature of the assessments that are conducted, NSWCCCL concerned about reports that there is a reported 48-hour turnaround target for asylum seekers who arrive on Christmas Island to be sent to an offshore processing centre.¹² NSWCCCL considers that this is insufficient time to properly assess people's particular vulnerabilities.

NSWCCCL is also concerned that, as mentioned above, there have been instances where unaccompanied minors have been transferred to Manus Island, a processing centre that has been declared unsuitable for children by the Minister himself.¹³

8. Progress that has been made during the past 10 years

NSWCCCL considers that the re-instatement of offshore processing has been a clear backwards step which has completely undone some of the more positive developments of the past decade, such as moving children and families from high security to low security environments. It is of significant concern to NSWCCCL that the numbers of children in onshore and offshore detention centres has increased rather than decreased over the period. It is absolutely apparent that the Australian Government continues to detain children in circumstances that cannot reasonably be considered 'last resort'.

NSWCCCL believes that the current system is deeply flawed and believes that only by radically changing the nature of the way that Australia protects and supports children and unaccompanied minors will any real improvement be seen.

9. Recent confirmation of appalling circumstances

NSWCCCL notes that the conditions on Nauru described by Trish Highfield and referenced throughout this submission sadly and shamefully remain current. The Guardian (Australian edition) today made public a confidential Nauru site visit report compiled in February 2014.¹⁴ The report reveals that:

- 'Children in the Nauru detention centre are not adequately screened for disease, resulting in the likelihood that many are carrying undiagnosed blood-borne diseases and up to 50% are carrying latent tuberculosis.'
- 'There are no paediatricians employed in the centre and no paediatric life support available on Nauru.'
- 'Living conditions are "crowded, hot and humid" with children having "limited meaningful play". Children play with stones.'
- 'There is no clear child protection framework for children inside the centre and it is unclear what child protection checks are undertaken for Nauruan staff.'

¹² Laughland, O, Manus Island document mentions 14 alleged unaccompanied minors, Sydney Morning Herald, available: <http://www.theguardian.com/world/2014/mar/04/manus-island-document-mentions-14-alleged-unaccompanied-minors> [Accessed 25 May 2014]

¹³ Laughland, O, Manus Island Rioting Could Have Been Witnessed by Asylum-Seeker Children, Sydney Morning Herald, available: <http://www.theguardian.com/world/2014/feb/21/manus-island-rioting-could-have-been-witnessed-by-asylum-seeker-children> [Accessed 24 May 2014]

¹⁴ Physical and mental Health Sub Committee of the Joint Advisory Committee for Nauru Regional Processing Arrangements: Nauru Site Visit Report, 16-19th February 2014. Laughland, O: *Nauru detention: serious health risks to children revealed in confidential report* Guardian Australian Edition 30/5/14 <http://www.theguardian.com/world/2014/may/30/nauru-detention-serious-health-risks-to-children-revealed-in-confidential-report>

It appears obvious that urgent action is needed by the Australian Government to remove children from these appalling circumstances.

Recommendations

1. NSWCCCL calls on the Australian Government to release all children currently in detention into the community with appropriate support services, including education, counselling, welfare and health. Where children are living with their parents in detention, NSWCCCL also calls appropriate measures to be put in place for their parents to be released into the community to live with them.
2. NSWCCCL urges the Australian Government to return all children and their families in offshore detention centres to the mainland and release them with appropriate community detention or bridging visa arrangements and support in place.
3. NSWCCCL demands that the Australian Government put appropriate measures in place to ensure that children are only detained as a measure of last resort, and for the shortest appropriate period of time, in accordance with the CRC.
4. In circumstances where children are detained as a measure of last resort, NSWCCCL recommends that the facilities where children are detained must be appropriate. NSWCCCL strongly urges the Australian Government to ensure there are appropriate spaces for recreation and safe recreational facilities in detention centres where children are held.
5. The best interests of the child should be paramount in every decision relating to the detention of children.
6. NSWCCCL calls upon the Australian Government to ensure that all children have the right to education and health, including pre and post-natal health care for their mothers.
7. NSWCCCL requests that the Australian Government ensure that a child is not separated from his or her parents against their will.
8. NSWCCCL recommends that an independent body be created to provide guardianship for unaccompanied minors as a matter of priority.

NSWCCL hopes this submission is of assistance to the Australian Human Rights Commission in their inquiry. We are available for further discussion on any aspects of this submission.

This submission was written on behalf of the NSWCCCL by Nicola Cannon with input from the NSWCCCL Asylum Seekers Action Group.

Yours sincerely



Dr Lesley Lynch
Secretary
NSW Council for Civil Liberties

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