**National Inquiry into Children in Immigration Detention 2014**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Submission prepared by Amy Miller, Caitlin Reid, Danielle Hagan and Siobhan Caulfield *on behalf of:*

Refugee Action Network Newcastle

23.05.2014

**Table of Contents**

1. Introduction………………………………………………………. 1-2
2. Background………………………………………………………. 3-4
3. Key Issues Relating to Children in Immigration Detention……… 5
   1. Appropriateness of Facilities..……………….................... 6
   2. The Impact of Length of Detention of Children…………. 7
   3. Provision of Education, Recreation, Maternal and Infant Health Services…………………..………………………………. 8
   4. Safety of Children in Immigration Detention …………… 9-10

3.5 Unaccompanied Children in Immigration Detention……. 11-12

1. Conclusions………………………………………………………. 13-14
2. Recommendations………………………………………………... 15-16

Sources…………………………………………………………………… I

**1.0 Introduction**

# Refugee Action Network Newcastle is a community group campaigning for the rights of refugees and asylum seekers locally and nationally. We support the fundamental human right to seek asylum when fleeing persecution or torture and believe that we have an obligation to protect this right.

# At RANN we have four core values that provide a foundation for our actions:

# Refugees are welcome

# No one is illegal

# Let them land, let them stay

# End mandatory detention. RANN CORE VALUES 1. Refugees are welcome 2. No one is illegal 3. Let them land, let them stay 4. End mandatory detentionRANN CORE VALUES 1. Refugees are welcome 2. No one is illegal 3. Let them land, let them stay 4. End mandatory detentionWe are supporters of the fundamental human right to seek asylum when fleeing persecution or tortureWe are supporters of the fundamental human right to seek asylum when fleeing persecution or tortureWe are supporters of the fundamental human right to seek asylum when fleeing persecution or tortureand abroad

Our mission to end mandatory detention has prompted us to provide a submission to this inquiry. It will address four components of the terms of reference and provide recommendations on these issues. This submission will:

1. Evaluate the appropriateness of facilities in which children are detained and discuss possible alternatives.
2. Look at the short-term and long-term impacts of the length of detention on children including effects on physical and mental well-being.
3. Analyses how well safety measures are utilized in detention to protect children; and
4. Address the issue of families being separated across detention facilities in Australia and the impact on children in particular.

Furthermore, this submission will expose the lack of domestic legislation to protect human rights in Australia and how children in detention are slipping through the cracks. It will provide cases of children in prolonged detention and describe the trauma they have experienced.

## **2.0 Background**

Most children in detention centres across Australia are there as a result of their parent’s migration status (Saul, 2013 p. 69). They must remain there until they are either granted a visa or removed from the country.

As of March 31 there are currently 895 children in detention centres across Australia with another 1560 in residence determination (Australian Government Department of Immigration and Border Protection, 2014 p.3). In July 2013, the number of children in detention reached a peak of 2000. This number sparked conversation for another inquiry into children in immigration detention and since then the number continues to fluctuate (Australian Government Department of Immigration and Border Protection, 2014, p.8).

It has been ten years since the last inquiry “A last Resort? National Inquiry into Children in Immigration Detention” and as mentioned above, there has been significant rises in the number of children in detention. Prolonged detention is having a significant impact on the physical and mental health of children with the average child being detained for 3-12 months (Australian Government Department of Immigration and Border Protection, 2014, p.10).

This is a serious issue for children in immigration whose welfare and safety is being overlooked. Australia is a signatory to the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights but we have not enacted these rights into state laws. It is for this reason that we are receiving international pressure to review our public policy in human rights (Australian Human Rights Commission, 2014, para.16). This inquiry has been called to deal with this international pressure and to determine whether we are meeting our international human rights obligations (Australian Human Rights Commission, 2014 para. 1). According to CRC article 19(1)

“The state shall take all appropriate legislative, administratvie , social and educational means to protect the child from any form of physical or mental violence, injury, abuse or neglect.”

## **3.0 Key Issues Relating to Children in Immigration Detention**

*“The wounds of war can be healed, but the anxiety and indignity of indefinite detention will throw a shadow over the rest of their lives.”*

*- Niko, Refugee Action Network Newcastle*

Australia is the only country in the world with a policy of mandatory detention of children. The Australian Department of Immigration signed an agreement on 27 February 1998 regarding the management of facilities and healthcare at Immigration Detention Centres. At the present, Australia is not providing children with adequate heath care facilities in immigration detention centres.

The current practice of children being placed into immigration is not a matter of last resort, as the rise in numbers of children in detention over the last ten years indicates. The last inquiry tabled to parliament on the 13th of May 2004, titled: “A Last Resort? Report of the National Inquiry into Children in Immigration”, demonstrated Australia’s detention policy did not protect the mental or physical health of children adequately, concluding that the detention of children caused numerous breaches of human rights. While the report made significant positive changes in moving children from detention centres, the figure has recently risen to at least 1,023 children in detention today.

“Indefinite detention is bad for a child's physical and mental wellbeing. We see severe and chronic post-traumatic stress disorder among asylum seekers during and after detention.”

* Dr Choong-Siew Yong, Vice President of the Australian Medical Association, 2006

***3.1 Appropriateness of Facilities***

Current immigration policies in Australia do not give refugee children equal access to healthcare, safety and education that children who are citizens of Australia have access to. Refugee children have higher needs in regards to health and emotional support due to the trauma they often experience in their country of origin. This means better access to healthcare and services that offer comprehensive psychological treatment is needed. “Services for refugees tend to be fragmented, reactive, non-government organisation-funded, and reliant on the development of services by interested individuals, as opposed to systematically provided, co-ordinated long-term services.” (Royal Australasian College of Physicians, 2007)

Children in detention centres have reported numerous preventable health concerns. Overcrowding in refugee camps encourages the spread of disease, and access to healthcare is less obtainable. A study by *The Medical Journal of Australia* on the health of people in Australian immigration detention centres showed that people in detention had an estimated 1.2 health encounters per person a week. Those detained for longer periods of time had particularly poor health, both mental and physical. (P, Green & Eager, 2010)

Australian psychiatrist and Australian of the Year (2010) Professor Patrick McGorry has described immigration detention centres as “factories for producing mental illness and mental disorder”. According to the Royal Australasian College of Physicians, “Traumatised refugee children may show a range of behaviours including poor school performance, behavioural problems, withdrawal from parents and other children, lack of confidence and trust, anxiety, depression, post traumatic stress disorder (PTSD), sleeping and eating disorders, bed wetting, sleep walking, speech problems and psychosomatic symptoms.”(2007)

***3.2 The Impact of Length of Detention of Children***

A child coming from a warzone or a threatening place is likely to have already undergone stress and exposure to violence before reaching Australia. “A second trauma, no matter how minor, could trigger a relapse of mental illness and worsen it. This was the risk of secondary injury that asylum seekers faced when they were detained for long periods in poor conditions”. (Australian Labor Party, 2014)Self-harm or suicide becomes a factor when children are at risk of developing psychotic disorders from exposure to constant trauma.

Human Rights advocate Ben Pynt has said that UN officials are appalled at facilities in Australia’s detention centres. He describes the healthcare sector as having “inadequate medical facilities and an unacceptable risk of contracting malaria, dengue fever, cholera or infectious diarrhoea. They can’t believe we do this to pregnant women and newborn babies. But we do.” (Pynt, 2014)

***3.3 Provision of Education, Recreation, Maternal and Infant Health Services***

Non-for-Profit community organisation ‘ChilOut’ seeks to raise awareness on public policies posed by the government regarding children in Australia’s immigration detention facilities and to research issues affecting children in immigration detention and their human rights. ChilOut says it will continue operating until there is Federal legislation to “ensure no child is detained in an Australian immigration detention centre for more than 14 days” (ChilOut.org). The group visited Darwin Alternative Places of Detention in December 2013 and discovered a low standard of education services were provided. ChilOut also concluded the education services were inadequate and under resourced. “There is no option of childcare, playgroup or developmental activities that provide parents with any respite or are tailored to the anxiety, depression and stress affecting both children and parents.”(ChilOut, 2014)

According to the Royal Australasian College of Physicians, there is no early childhood education or equivalent for the majority of detained children under the age of four. (2007) President of the Australian Human Rights Commission Professor Gillian Triggs has said, “We're not against mandatory detention for a period that is appropriate and proportionate to establishing the identity of children”. It is important to consider the psychological and physical suffering of these children detained in facilities for periods of time well over what is necessary.”

Government policies internationally should be informed by evidence from studies of the health of this marginalised and often traumatised group.

“They can call me illegal, but don’t call my baby illegal”

- Pregnant mother speaks about her first child who will be born into *detention.*

***3.4 Safety of Children in Immigration Detention***

Children in detention require special responsibility due to their vulnerability; they are fleeing from their home country where acts of violence, and war have threatened their life. Unfortunately when they arrive in Australia children are detained for extended periods of time where facilities are overcrowded and also violent. This is not in their best interest and well being, “children should only be detained as a measure of last resort, and for the shortest appropriate period of time” (Australian Human Rights Commission, 2014, p.5 ).

The Commonwealth, through the Department of Immigration and Multicultural and Indigenous Affairs, must make recognition that the children’s personality; development and behaviour depend on their environment. In numerous facilities children have been in the presence of major disturbances, which include: riots, hunger strikes, fighting, lip-sewing, water canons and tear gas. This intensity has caused physical and mental health problems, self-harm and in some incidents suicide as young as nine years old (Milman, 2012, p.45). This is obviously not a healthy environment for the child immigrants to be living in; specifically demonstrating their security is being threatened.

Reoccurring cases of self caused injury are not unusual, in Adelaide a child self-harmed more than twenty times before being appointed a psychologist eight months later. Jessie Taylor, a human rights lawyer stated that in separate incidents 16- and 17-year-old boys hurt themselves in a Melbourne detention centre: “I saw a boy cut deeply into his arm, almost as a badge of honour. They saw it as a battle wound of their time there” (Milman, 2012, p.45).

These cases demonstrate that there has clearly been escalated risk for children becoming collateral damage of security measures (Saul, 2013, p.75) and there seems to be a decrease in the focus on the distress, pain and inflicted harm the children go through because of these incidents of unrest in detention.

“Australia has an obligation to take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical and mental violence (Convention of the Rights of the Child, article 19(1))”.

Australia also has the “obligation to take all appropriate measures to ensure that the best interests of the child are a primary consideration in all actions that affect children” (Convention of the Rights of the Child, article 3(1))”.

***3.5 Unaccompanied Children in Immigration Detention***

Children who have travelled alone or lost their family in the journey to Australia are considered unaccompanied children, separated children or unaccompanied minors. The challenge and bravery these children have faced must continue when they arrive and begin their refugee determination process with the absence of any friend or family support.

It is outlined in the Convention of the Rights of the Child, article 20(1) that special protection and assistance be provided in order to find an environment suitable where their rights set out in the CRC will be exercised. A last resort? *National Inquiry into Children in Immigration Detention* (2004) found that this section of the CRC has been breached in previous years. In numerous cases children were put on individual management plans of very poor quality execution.

In January 2002 at Woomera unaccompanied children between the ages of one to twelve years were physically removed and transferred to group homes or foster care in Adelaide due to their involvement in protests, resulting in lip-sewing, hunger strikes and additional self inflicted injury. The cause of these incidents was majorly influenced by guardianship issues and sizeable gaps between information contained in case documents. This “shows the difficulties of protecting a child's best interests within that environment and the corresponding importance of ensuring that children are removed as soon as possible” (A last resort? *National Inquiry into Children in Immigration Detention,* 2004).

The alarming fact is unaccompanied children go to extreme measures and are influenced by other detainees to involve themselves in disruptions in detention causing physical and emotional damage. Though the strategies to help these lone children are improving, there is still a responsibility of the officers and de facto guardians to the child immigrants to articulate clear plans and documents to ensure their rights are being exercised correctly, and their best interests are protected.

**4.0 Conclusions**

This submission has been prepared to address some of the issues surrounding the health and safety of children in immigration detention. Through a combination of our research, academic investigation and knowledge in child immigration to Australia we have been able to identify key issues in relation to children in detention. We have found that the Australian government’s detention policies do not protect the mental and physical health of children and breach a number of human rights issues. Refugee children, especially unaccompanied children that have travelled alone, have a higher need for health and emotional support due to the added trauma that they experience in their home country. It is the government’s responsibility to ensure that these needs are accounted for through adequate health care facilities and support. We believe that inconsistent applications of the law pertaining to the rights of children in immigration detention have resulted in the mental and physical violence of children due to incidents of unrest within detention centres. We believe that it is the Commonwealth, through the Department of Immigration’s responsibility to recognise that the children’s personality, development and behavior are affected by the facilities and the health care that they provide within detention.

We propose that these issues can be addressed through legislative reform by:

* Amendment of the 1994 Migration Act
* Adoption of the Convention on the Rights of the Child into domestic legislation
* Broad and comprehensive research and data collection by the Australian Government

**5.0 Recommendations**

**Recommendation 1**

The government should amend The Migration Act so that detention only occurs when necessary with children only being detained as a measure of last resort and for the shortest possible period of time. The Migration Act should also be amended so that this occurs only when

* The need to detain has been overlooked thoroughly by a court and,
* The need to detain is in accordance with international law

These limitations should be clearly stated in The Migration Act.

**Recommendation 2**

That all commonwealth legislation pertaining to children in immigration detention should adopt the rules of The Convention on the Rights of the Child as set out by the United Nations. These include rights pertaining to the wellbeing and safety of children in detention stating that:

* Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them (Convention on the Rights of the Child, article 19).
* Children who cannot be looked after by their own family must be looked after properly by people who respect their religion, culture and language (Convention on the Rights of the Child, Article 20).
* When children are adopted the first concern must be what is best for them. The same rules should apply whether children are adopted in the country of their birth or taken to live in another country (Convention on the Rights of the Child, Article 21).

These rights need to be clearly enforced into domestic legislation.

**Recommendation 3**

That the Australian government should adopt the rules of The Convention on the Rights of the Child pertaining to health care and facilities for children into domestic legislation, specifically:

* Children have the right to good health care, clean water, nutritious food and a clean environment so that they will stay healthy (Convention on the Rights of the Child, Article 24).
* Children have the right to a standard of living that is good enough to meet their physical and mental needs. The government should help families who cannot afford to provide this (Convention on the Rights of the Child, Article 27).

**Recommendation 4**

That the Australian Government should undertake broad and comprehensive research and data collection on the mental and physical health of children in immigration detention centers. Specifically in the areas of

* Unaccompanied children
* Mental health and self harm
* Physical health and safety
* The appropriateness of facilities in which children are detained

This research should inform government policies internationally.

**Sources**

Australian Government Department of Immigration and Border Protection. (2014, March 31). Be Informed, Stats and Reports. Retrieved from Chilout: <http://www.chilout.org/statsreports>

Australian Government Department of Immigration Detention. 2014. Fact Sheet 82 -Immigration Detention. [ONLINE] Available at: https://www.immi.gov.au/media/fact-sheets/82detention.htm#fam. [Accessed 15 May 14].

Australian Human Rights Commission. (2014, February). National Inquiry into Children in Immigration Detention2014: Discussion paper. Retrieved from Australian Human Rights Commission: <https://www.humanrights.gov.au/publications/national-inquiry-children-immigration-detention-2014-discussion-paper>

Australian Human Rights Commission. (1996). *Convention on the Rights of the Child*. Retrieved from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

Chilout. 2014. Children Out of Immigration Detention. [ONLINE] Available at: http://www.chilout.org/statsreports. [Accessed 14 May 14].

Commonwealth of Australia. 2014. Immigration Detention in Australia. [ONLINE] Available at: http://www.aph.gov.au/About\_Parliament/Parliamentary\_Departments/Parliamentary\_Library/pubs/BN/2012-2013/Detention. [Accessed 19 May 14].

Australian Human Rights Commission. (2014, February). National Inquiry into Children in Immigration Detention 2014: Discussion paper. Retrieved from Australian Human Rights Commission: <https://www.humanrights.gov.au/publications/national-inquiry-children-immigration-detention-2014-discussion-paper>

Human Rights Commission to assess welfare of children in immigration detention. 2014. Immigration Detention in Australia. [ONLINE] Available at: http://www.abc.net.au/news/2014-02-03/human-rights-inquiry-into-asylum-children- in-detention/5233496. [Accessed 07 May 14].

Human Rights Commission. (2014). National Inquiry into Children in Immigration Detention 2014. Retrieved from <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/national-inquiry-children-immigration-detention-2014>.

Human Rights and Equal Opportunity Commission. (2004). A last resort? National Inquiry into Children in Immigration. Retrieved from https://www.humanrights.gov.au/sites/default/files/document/publication/alr\_complete.pdf.

Hurst, D. 2014. Labor MPs push for rethink of party's support for offshore processing. [ONLINE] Available at: http://www.theguardian.com/world/2014/may/12/labor-mps-push-for-rethink-of-partys-support-for-offshore-processing. [Accessed 15 May 14].

Milman, O. (2012). Australia's disgrace. *New Internationalist*, 456, 44-45.

Royal Australasian College of Physicians, R, 2007. Towards better health for refugee children and young people in Australia and New Zealand. Refugee Children Health, 1, 17-33.

Peer, DeCosta & Adams, P, C & E, 2013. Education, Health Concerns Across All Sights. Darwin Detention: Damaging Children, [Online]. 1, 16-21. Available at: http://media.virbcdn.com/files/11/7ab4e1dd0c5ca616-DarwinReportF.pdf [Accessed 15 May 2014].

Pynt, B. 2014. Sleepless nights until the Manus nightmare ends. [ONLINE] Available at: http://www.smh.com.au/comment/sleepless-nights-until-the-manus-nightmare-ends-20140422-zqxq2.html. [Accessed 14 May 14].

Saul, B. (2013). Indefinite security detention and refugee children and families in Australia: International human rights law dimensions. *Australian International Law Journal*, 2055.