



Save the Children
Australia

Submission to Australian Human Rights Commission's National Inquiry into Children in Immigration Detention

Save the Children Australia

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About Save the Children

Save the Children is a leading independent international organisation for children and child rights. Our vision is of a world in which every child attains the right to survival, protection, development and participation. Our purpose is to inspire breakthroughs in the way the world treats children and to achieve immediate and lasting change in their lives. We work towards this vision in more than 120 countries across the globe.

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1. Introduction

Save the Children welcomes the opportunity to respond to the Australian Human Rights Commission (AHRC) Inquiry into Children in Immigration Detention 2014 (*the National Inquiry*). As part of its response to the National Inquiry, Save the Children provided oral evidence at the AHRC's public hearing in Sydney on Friday, 4th April 2014 (*the public hearing*). To supplement the evidence provided at the public hearing, Save the Children now provides this written submission to the National Inquiry.

This submission focuses on Save the Children's concerns with Australia's current policy approach to the complex migration issues confronting the region. In conclusion, Save the Children proposes both immediate and long-term change to provide a fairer, more humane and human rights consistent approach to asylum seeker and refugee policy in Australia and the region.

2. About Save the Children

Save the Children is a leading independent humanitarian and development organisation, working to create positive and lasting change for children. Established in 1919, Save the Children works in 120 countries around the world. Our Founder, Eglantyne Jebb, established Save the Children to assist children impacted by the allied blockade of supplies to Europe. She lobbied for an end to the blockade and drafted the Declaration of the Rights of the Child in 1923, which formed the basis of the United Nations *Convention on the Rights of the Child*.

These original humanitarian and human rights values continue to underpin the work of Save the Children today, which strives to promote and ensure lasting equality, fairness and enjoyment of rights for all children and young people in Australia and abroad. Our vision is of a world in which every child attains the right to survival, protection, development and participation. Our purpose is to inspire breakthroughs in the way the world treats children and to achieve immediate and lasting change in their lives. This philosophy supports the work of Save the Children and guides the direction of our programs, which aim to help and assist vulnerable children most in need, wherever they may be.

Save the Children has offices in every Australian state and the Northern Territory and provides education, youth engagement and child protection programs for disadvantaged children at more than 100 sites around the country. Each year, our Australian programs reach more than 29,000 children,

young people and families from diverse backgrounds, including Aboriginal and Torres Strait Islander peoples and asylum seekers, refugees and migrants.

Globally, a significant part of our operations assist internally displaced and refugee children and their families. For example, we are currently supporting Syrian refugees and our team is active in the Za'atari Refugee Camp in Jordan, the Domiz Refugee Camp in the Kurdistan Region of Iraq, and throughout Lebanon. In East Africa we have been working with displaced persons and refugees across Kenya, Ethiopia and Somalia, including delivery of a \$120 million humanitarian program during 2011 and 2012.

Save the Children is also contracted by the Australian Government to provide education, recreation and child protection services on Nauru to asylum seekers and refugees, including unaccompanied children, children and their families, childless couples and single adult women. These services are critical for children and adults who have had traumatic experiences and help mitigate the impact of immigration detention by building normality and routine. Our primary goal is to ensure that every step is taken to provide an environment that is as safe and protective for children as the conditions allow. Further details about our programs on Nauru can be accessed at - <http://scasites.org.au/noborders/providing-support-to-vulnerable-children-on-nauru/>

In June 2014, Save the Children sent an assessment team to Nauru to gain a better understanding of the long-term development needs of all communities living on Nauru, including refugees. This assessment was funded by Save the Children and is consistent with the Republic of Nauru's Sustainable Development Strategy 2005 – 2025 and the Nauru Government's support for the 'integration' of refugees into the community.

3. Response to question on notice

At the public hearing Save the Children received a question on notice regarding whether children and young people have access to an optometrist or the ability to replace eye glasses if they are broken or lost. This is a health related question and outside the purview of Save the Children's service provision on Nauru. The health service provider on Nauru – the International Health and Medical Service – would be best placed to provide further details on this matter.

4. Tackling a wicked problem

Asylum seeker policy in Australia has been categorised as a ‘wicked problem’.¹ In other words, it is a complex policy problem; it is difficult to define, variable, with multiple causes, unstable and often requires changing people’s behavior and addressing social divides. In some instances, attempts to address wicked problems often lead to unforeseen consequences and/or chronic policy failure, where the problem becomes intractable. There is no definitive solution or quick fix. As a result, effective responses to address ‘wicked problems’ require reassessment of traditional ways of working and solving problems.²

In 2012 and 2013 Australia faced a significant increase in asylum seekers arriving by sea, seeking protection under the Refugee Convention.³ In July 2013 alone, for example, an estimated 4,236 asylum seekers landed on Australian shores.⁴ Tragically, the consequence was an increase in asylum seekers drowning at sea, including a number of children.⁵

The increase in people seeking asylum in Australia needs to be understood in the global context. Over recent years, throughout the world there has been a significant and steady increase in the number of individuals forcibly displaced as a result of persecution, conflict, generalised violence, or human rights violations.⁶ At the end of 2013, there were 51.2 million refugees, asylum-seekers and internally displaced people worldwide.⁷ It is the first time in the post-World War II era that this number has exceeded 50 million people.⁸ The numbers of asylum seekers arriving in Australia are, by comparison to other parts of the world, quite small.⁹ Indeed, Save the Children in the United States is currently assisting with the significant increase in numbers of unaccompanied children (approximately 50,000 since October 2013) who are crossing the border from Mexico.¹⁰

¹ Ben Eltham, *Asylum Seekers A Wicked Problem*, New Matilda (26 June 2012).

² Lynelle Briggs, *Tackling wicked problems: A public policy perspective*, Australian Public Service Commissioner (2007). Available at: <http://www.apsc.gov.au/publications-and-media/archive/publications-archive/tackling-wicked-problems>

³ United Nations *Convention Relating to the Status of Refugees* (1951); United Nations *Protocol Relating to the Status of Refugees* (1967).

⁴ ABC Factcheck, *Immigration Minister Scott Morrison not telling the full story on asylum seeker arrivals*, 4 February 2014. Available at - <http://www.abc.net.au/news/2013-12-10/scott-morrison-not-telling-full-story-asylum-seeker-arrivals/5119380>

⁵ Australian Border Deaths Database - <http://artsonline.monash.edu.au/thebordercrossingobservatory/publications/australian-border-deaths-database/> [Accessed on 26 June 2014].

⁶ United Nations High Commissioner for Refugees, *Global Trends 2013* (20 June 2014). Available at - <http://apo.org.au/research/unhcr-global-trends-2013> [Accessed on 26 June 2014]

⁷ Ibid, *Global Trends 2013*.

⁸ Ibid, *Global Trends 2013*.

⁹ Janet Phillips, *Asylum Seekers and Refugees: What are the Facts*, Parliamentary Library (11 February 2013). Available at - http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/AsylumFacts#_Toc348096475

¹⁰ See: *US border patrol struggles to shelter thousands of unaccompanied children*, The Guardian (19 June 2014); and *Fernanda Santos, Border Centers Struggle to Handle Onslaught of Young Migrants*, New York Times (18 June 2014). Both articles are available at: <http://www.theguardian.com/world/2014/jun/18/us-border-patrol-children-detained-texas-arizona> and http://www.nytimes.com/2014/06/19/us/border-centers-struggle-to-handle-onslaught-of-children-crossers.html?_r=0

As a result of the increasing numbers of asylum seekers reaching Australia, successive Governments made significant changes to asylum seeker policy in an attempt to address what could be considered a ‘wicked’ or intractable problem.¹¹ In combination, the measures enacted by the former Labor Government and the current Abbott Government sought to stop people arriving by sea, and thereby reduce the risk of drowning, through deterrence (i.e. mandatory and prolonged immigration detention, offshore processing, no resettlement in Australia and temporary protection) and a focus on border protection (i.e. turning back boats).¹²

Some of these measures reflected advice provided to the Labor Government in August 2012 by the Expert Panel on Asylum Seekers (*Expert Panel*). At the time, the Expert Panel noted that there are “no quick or simple solutions to the policy dilemmas and the humanitarian challenges that asylum seeking creates”¹³ and that “the only viable way forward is one that shifts the balance of risk and incentive in favour of regular migration pathways and established international protections and against high-risk maritime migration.”¹⁴

The Expert Panel recommended, among other things, a regional processing framework including the establishment of offshore processing capacity in Papua New Guinea and Nauru, and a ‘no advantage’ principle to ensure that no benefit would be gained through circumventing regular migration arrangements.¹⁵ Importantly, however, the Expert Panel also recommended other measures including a strong regional protection framework, an increase in Australia’s intake of humanitarian refugees and the development of a more effective whole-of-government strategy for engaging with source countries.¹⁶

Like the Expert Panel, Save the Children acknowledges that there are no easy solutions in balancing the need to act compassionately and humanely towards people fleeing persecution, and the need to be mindful that in doing so Australia’s policy settings do not incentivise travel by dangerous maritime voyages that can result in the mass loss of life. We also acknowledge that the existing policy settings that seek to balance these concerns have, to a large degree, bi-partisan political support and the support of the majority of Australians.¹⁷

However, Save the Children is concerned that the current policy settings represent a piecemeal and incomplete policy response, aspects of which are driven more by political considerations than any desire

¹¹ Prime Minister Kevin Rudd, Transcript of Joint Press Conference, 19 July 2013. Available at:

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2611766%22>

¹² Ibid; Janet Phillips and Harriet Spinks, *Immigration Detention in Australia*, Parliamentary Library (20 March 2013); and *The Coalition’s Operation Sovereign Borders Policy* (July 2013).

¹³ Report of the Expert Panel on Asylum Seekers (August 2012), pg 7.

¹⁴ Ibid, pg 13.

¹⁵ Ibid, pg 14 (Recommendation 1).

¹⁶ Report of the Expert Panel on Asylum Seekers (August 2012), pg 14 – 18.

¹⁷ Alex Oliver, *The Lowy Institute Poll 2014*, pg 10.

to find a sustainable and humane approach that reflects Australia's obligations under international law. Moreover, the response violates the human rights and dignity of people who lawfully seek asylum and are in need of protection.

The policy response makes no serious attempt to establish a regional protection framework and has failed to recognise the particular migration challenges facing the Asia-Pacific region, which continues to have the world's largest refugee population overall at 3.5 million people.¹⁸ Indeed, if anything, the response has caused a deterioration in diplomatic relations with some of our largest and most important potential partners in a genuine regional framework, including Indonesia.¹⁹

The Expert Panel set out a comprehensive framework for asylum-seeker policy in Australia, which included mechanisms to both deter sea voyages and to create safer pathways to asylum. Unfortunately, successive Governments have cherry-picked some of the harsh, deterrent focused measures, at the expense of the safeguards and regional focus necessary to ensure the protection of human rights and durability of the policy response.

5. Mandatory and prolonged immigration detention is a violation of children's rights

The AHRC has expert human rights knowledge to determine the extent to which mandatory and prolonged immigration detention of children is or is not consistent with international human rights law. In this regard, we note the findings of the AHRC in 2004, which found that Australia's mandatory detention system breached a number of human rights, including that:²⁰

- Children should only be detained as a measure of last resort and for the shortest appropriate period of time (article 37(b) of the *Convention on the Rights of the Child*);
- Children should not be arbitrarily detained (article 37(b) of the *Convention on the Rights of the Child*; article 9(1) of the *International Covenant on Civil and Political Rights*);
- Children are entitled to prompt and effective review of the legality of detention (article 37(d) of the *Convention on the Rights of the Child*; article 9(4) of the *International Covenant on Civil and Political Rights*);

¹⁸ United Nations High Commissioner for Refugees, *Global Trends 2013* (20 June 2014).

¹⁹ Indonesia has openly criticised and rejected the Australian Government's turning back of asylum seeker boats. See: ABC Online, *Tension over asylum seekers* (11 November 2013), <http://www.abc.net.au/news/2013-11-11/tension-over-asylum-seekers/5084562?section=act> See also <http://www.smh.com.au/federal-politics/political-news/indonesia-rejects-abbott-plan-to-turn-back-boats-20130531-2nh7v.html>

²⁰ Human Rights and Equal Opportunity Commission (HREOC), *A Last Resort? National Inquiry into Children in Immigration Detention* (2004), pg. 231.

- Unaccompanied children are entitled to special protection (article 20(1) of the *Convention on the Rights of the Child*);
- The best interests of the child must be a primary consideration in all actions concerning children (article 3(1) of the *Convention on the Rights of the Child*).²¹

As a child rights organisation, it is our view that children should only ever be detained as a measure of last resort and for the minimum necessary duration. Mandatory and prolonged immigration detention explicitly undermines this right. We therefore concur with the previous findings of the AHRC and submit that the current mandatory and protracted nature of Australia's immigration detention system remains in breach of the human rights of children, young people and adults.

While Save the Children strives to provide children and young people with good quality education, recreation and child protection services on Nauru, this does not equate to facilitating access to or enjoyment of rights. This is because human rights are indivisible and interdependent. When one human right is undermined or denied, it can adversely affect the advancement of other rights. For example, prolonged immigration detention has been associated with developmental regression and poor physical and mental health,²² which can in turn affect a child's ability to fully engage in education and enjoy the highest attainable standard of health. Accordingly, despite our best efforts, it is our view that children cannot have their rights fully realised, or protection guaranteed, while they are in immigration detention.

6. Prolonged immigration detention is harmful to children

Save the Children has always maintained a strong objection to the mandatory and prolonged detention of all asylum seekers, especially children. Our experience, both on Nauru and previously on Manus Island, shows that sending people to offshore immigration detention centres threatens their physical, mental and emotional wellbeing. At the public hearing, we highlighted our concerns regarding the negative impact of prolonged immigration detention on children held at the Nauru Centre. Further information regarding our concerns and observations can be obtained through Save the Children's transcript of evidence from the public hearing, which can be accessed at: <https://www.humanrights.gov.au/transcripts-inquirys-public-hearings>

²¹ Human Rights and Equal Opportunity Commission (HREOC), *A Last Resort? National Inquiry into Children in Immigration Detention* (2004), pg. 231.

²² International Detention Coalition, *Captured Childhood* (2012).

Save the Children's concerns and observations are reinforced by existing research and evidence, which shows that immigration detention has a severe and detrimental impact on the physical and mental health of children detained.²³ Research also indicates that while the impact of immigration detention on children is similar to the experience of adults, because of children's special needs and vulnerabilities, detention can cause additional problems for children's developmental, physical and psychosocial health.²⁴ Moreover, these effects can be exacerbated by a number of factors, including: the experience of previous trauma and/or torture; prolonged and lengthy detention; uncertainty around refugee applications; poor and unsafe conditions; and lack of access to basic needs including food, health and education.²⁵ The long-term damage caused by prolonged immigration detention should not be underestimated, with experts suggesting that people can require five to ten years of psychological therapy and support following their release.²⁶

Given our observations, and the existing evidence, Save the Children is concerned that further protracted and drawn-out detention of children will cause them long-term harm. It is therefore our firm view that all efforts should be made by the Australian Government to ensure timely processing of refugee status determinations and to facilitate genuine and safe options for resettlement. Arrangements for the resettlement of asylum seekers currently in immigration detention should be a national priority.

In the meantime, the Government should also consider adopting strategies that would mitigate some of the harmful effects of the offshore immigration detention system. For example, on Nauru, the immigration detention centre should either be open, giving asylum seekers freedom of movement, or children and their families should be housed within the community. Given its size and geographic isolation, this change would not undermine the Government's overall policy goals and may reduce costs by providing more flexibility and lessening the negative social impacts associated with the current approach. These changes would not only provide people with a degree of independence and autonomy, as well as the opportunity to engage and participate in the community, but support integration efforts when people are granted refugee status.

²³ There is unequivocal evidence from various sources that immigration detention has a severe and detrimental impact on the physical and mental health of children detained. For example: Guy Coffey, Ida Kaplan, Robyn Sampson and Maria Tucci, *The meaning and mental health consequences of long-term immigration detention for people seeking asylum*, *Social Science & Medicine*, Vol 70, Issue 12 (June 2010); Human Rights and Equal Opportunity Commission (HREOC), *A Last Resort? National Inquiry into Children in Immigration Detention* (2004); International Detention Coalition, *Captured Childhood* (2012); Joint Select Committee on Australia's Immigration Detention Network, *Final Report* (March 2012); Royal Australian and New Zealand College of Psychiatrists, *Children in immigration detention – position statement 52* (September 2011); Steel Z, Momartin S, Bateman C, Hafshejani, Silove D, Everson N, Roy K, Dudley M, Newman L, Blick B and Mares S, *Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia* (2004) *Australian and New Zealand Journal of Public Health*, 527 – 536; Robjant K, Hassan R, Katona C, *Mental health implications of detaining asylum seekers: systematic review* (2009), *British Journal of Psychiatry*, 306 – 312.

²⁴ International Detention Coalition, *Captured Childhood* (2012), 48.

²⁵ *Ibid*, 49.

²⁶ Guy Coffey, Submission to the Joint Select Committee on Australia's Immigration Detention Network, 8.

While we understand that resettlement of refugees in Australia is not considered an option by the current Government in respect of those who arrived after 19 July 2013, we strongly recommend that any bi-lateral or regional resettlement agreements include, long-term arrangements for:²⁷

- Permanent protection;
- Access to free and quality healthcare;
- Access to free and quality education for children (both primary and secondary), and access to vocational and skills training for adults;
- Access to child protection services;
- Access to work rights for adults;
- Planning and support to ensure sustainable employment and income options, which will ensure an adequate standard of living;
- A resettlement support program, including access to case-management and counselling support as well as tailored and intensive support (i.e. accommodation and income support) for unaccompanied children;
- Continuing engagement by the Australian Government to support countries of resettlement in the region to sign and ratify the Refugee Convention and international human rights treaties,²⁸ and to build the capacity of resettlement countries so that they can offer protection mechanisms and better services for asylum seekers and refugees; and
- Investment by the Australian Government in countries of resettlement in the region to ensure access to healthcare, education and training, work rights, adequate livelihoods and a resettlement support program for refugees.

Over the past six months in Australia there have not been any reported arrivals of asylum seekers by sea. However, the policy is inhumane, inconsistent with our human rights obligations and unsustainable as, in its current form, it cannot resolve the challenges of continuous migration flows that confront the region. Indeed, there is an unsustainable paradox at the heart of Australia's practice of mandatory and prolonged detention in remote, offshore places like Nauru and Manus Island: they deter maritime arrivals *because* they offer temporary and untenable 'solutions' which inherently violate human rights.

We believe that there are alternative policy solutions available that would prevent maritime arrivals while also promoting a more humane approach. A key element of such an approach requires the

²⁷ In specifying long-term we mean that refugees' access to health care, education, employment should not be time limited. Refugees should receive permanent protection and should have access to the social services available in the country of resettlement. In addition, they should receive ongoing resettlement support services (i.e. for longer than 12 months) given the likelihood of long-term damage as a result of prolonged detention.

²⁸ For example: United Nations *Convention Relating to the Status of Refugees* (1951); United Nations *Protocol Relating to the Status of Refugees* (1967).

development of safe and more regular pathways for people fleeing persecution and seeking protection. These pathways should be established within the context of a strong and coordinated regional protection framework. This would deliver a more balanced, integrated and sustainable policy approach to migration flows affecting Australia and the region.

7. Consequences of offshore immigration detention arrangements for host communities

The adverse consequences of the offshore immigration detention system may not be limited to the experiences of asylum seekers. An unintended consequence of the offshore immigration detention centre on Nauru is that it may also have negative long-term impacts on the Nauruan community.

The presence of the offshore immigration detention centre on Nauru appears to be providing short-term economic benefits for local Nauruans. For example, the Government of Nauru has indicated that approximately 800 Nauruans are employed at the offshore immigration detention centre and both the salaried income as well as broader tax arrangements are creating a mini-boom in the Nauruan economy.²⁹

However, after conducting consultations with a number of stakeholders, our assessment team observed that the offshore immigration detention centre may also be having some negative impacts on the Nauruan community, which unless addressed might stall progress across a number of areas of the Nauru Sustainable Development Strategy.³⁰ For example, our consultations revealed anecdotal reports of:

- teachers quitting employment in schools to take higher paying, lower skilled jobs at the offshore processing centre;
- traditional family models changing as both parents take jobs (with older children dropping out of school to look after their siblings, and/or children being neglected);
- children, youth and parents de-prioritising longer-term education and skills development for the shorter-term gains offered through employment at the offshore processing centre.

²⁹ Save the Children's Assessment Team consultations in Nauru (16 – 19 June 2014).

³⁰ Government of Nauru, Nauru Sustainable Development Strategy 2005 – 2025.

8. A new approach: adopting a regional protection framework

Australia's continuing engagement and participation in a regional protection framework has been supported by a number of commentators as the missing piece of the asylum seeker policy response.³¹ Refocussing our policy approach to ensure safer and regular humanitarian pathways for refugees in the region would create a more balanced and fairer system.³² This would maintain the sovereignty of Australia's borders, whilst benefiting refugee children, young people and families by promoting better safeguards and protection measures in the region. It would also reduce Australia's reliance on the immigration detention system. The ultimate aim of such a policy should be the eventual closure of offshore immigration detention centres.

For these reasons, Save the Children is in favour of the Australian Government taking steps to genuinely engage neighbouring countries in a regional solution, which focuses on cooperation and protection. There is substantial commentary and reporting about the composition of a potential regional solution, and there is much consistency across various proposals.³³ Save the Children considers that some of the key elements of Australia's contribution to a regional solution would include:

- 1. Australia's humanitarian settlement program should be immediately increased to 20,000 places with a phased increase to 30,000 places over five years.**³⁴ Many commentators suggest that a substantial increase in Australia's humanitarian settlement program is essential to improving our current asylum seeker policy approach.³⁵ This change is a necessary first step towards better regional cooperation; it is a symbol of goodwill and would indicate Australia's commitment to sharing the burden posed by the complex migration challenges confronting the region. Alongside an expansion of Australia's humanitarian settlement program, a

³¹ For example: Andrew & Renata Kaldor Centre for International Refugee Law, *Factsheet: Regional Cooperation* (29 October 2013); Penelope Mathew and Tristan Harley, *Refugee Protection and Regional Cooperation in Southeast Asia: A Fieldwork Report*, the Australian National University (March 2014); Nicholas Reece, *How to Make our asylum-seeker policy firm but fairer*, the Age (24 March 2014); Robert Manne, *On refugees, both the left and the right are wrong. The solution: compromise*, The Guardian (12 March 2014); and Peter Browne, *The asylum-seeker plan that keeps disappearing over the horizon*, Inside Story (9 April 2014).

³² Nicholas Reece, *How to Make our asylum-seeker policy firm but fairer*, the Age (24 March 2014).

³³ For example: Andrew & Renata Kaldor Centre for International Refugee Law, *Factsheet: Regional Cooperation* (29 October 2013); John Menadue, Arja Keski-Nummi and Kate Gauthier, *A New Approach: Breaking the stalemate on refugees and asylum seekers* (August 2011); Australia 21, *Refugees and Asylum Seekers: Finding a Better Way* (2013); Refugee Council of Australia, *A Regional Refugee Protection Framework* (2010); *Report of the Expert Panel on Asylum Seekers* (August 2012); Penelope Mathew and Tristan Harley, *Refugee Protection and Regional Cooperation in Southeast Asia: A Fieldwork Report*, the Australian National University (March 2014); Nicholas Reece, *How to Make our asylum-seeker policy firm but fairer*, the Age (24 March 2014); and Peter Browne, *The asylum-seeker plan that keeps disappearing over the horizon*, Inside Story (9 April 2014).

³⁴ While the Report of the Expert Panel on Asylum Seekers recommended that 'the Humanitarian Program be immediately increased to 20,000 places per annum [and]... to around 27,000 [places] within five years', SCA concurs with the proposal of Peter Browne, of Swinburne University, that a rise in the humanitarian program to 20,000 places 'would simply restore Australia's program to its numbers in 1980-81... Taking account of population growth, those 20,000 places would translate to 30,000 in 2013-14'. For further information see: *The Report of the Expert Panel on Asylum Seekers* (August 2012), pg. 14; and Peter Browne, *The asylum-seeker plan that keeps disappearing over the horizon*, Inside Story (9 April 2014).

³⁵ For example: Australia 21, *Refugees and Asylum Seekers: Finding a Better Way* (2013); *Report of the Expert Panel on Asylum Seekers* (August 2012); Nicholas Reece, *How to Make our asylum-seeker policy firm but fairer*, the Age (24 March 2014); Peter Browne, *The asylum-seeker plan that keeps disappearing over the horizon*, Inside Story (9 April 2014); Sandy Gifford, *Resettling refugees: the evidence supports increasing our intake*, The Conversation (27 July 2012).

significant number of resettlement places should be allocated for applicants from countries of first asylum that are sources of asylum seeker flows to Australia as well as key transit countries in the region, such as Indonesia and Malaysia.

Immediately increasing the humanitarian program to 20,000 places simply restores Australia's program to the numbers of places offered in the early 1980s. For example, in 1979-80, Australia's refugee and humanitarian program granted 19,954 visa places and in 1980-81, approximately 22,545 visa places were offered.³⁶ Taking into account population growth over the past 30 years,³⁷ those 22,545 places equate to approximately 35,000 places in 2014. A gradual increase in the humanitarian settlement program, to 30,000 places over the next five years, is therefore a reasonably conservative increase and well in line with Australia's population growth and social and economic capacities.

2. Australia should **work with neighbouring countries to develop a coordinated and consistent approach to ensuring timely resettlement of those who are found to be refugees**. Providing genuine and durable solutions for those seeking protection will be key to an effective regional protection framework. This is likely to require additional support and targeted development funding for countries in the region in order to strengthen capacity to resettle refugees (see element 4 below for further details).³⁸ It is also important to ensure options for complementary protection where people face human rights violations on return, as well as safe repatriation of those who are found not to be refugees and are ineligible for complementary protection.³⁹

3. **Build the capacity of countries in the region to conduct timely, effective and fair refugee status determinations and/or support the United Nations High Commissioner for Refugees (UNHCR) to provide such services**. The Expert Panel highlighted how regular humanitarian pathways are "failing to provide confidence and hope."⁴⁰ There is a need to improve and expand these regular pathways, which requires support for the UNHCR and processing in the region. Additional funding for the expansion of UNHCR or local Refugee Status Determination offices in Thailand, Malaysia and Indonesia is required, with the focus on ensuring timely, effective and fair processing.⁴¹ The ultimate aim should be a regional UNHCR refugee determination process that is fair and common, and that complies with international

³⁶ Refugee Council of Australia, *National and Global Statistics*.

³⁷ In 2012, Australia's population was approximately 22.7 million. In 1980, Australia's population was approximately 14.7 million. Australia's population increased by approximately 55 per cent over the three decades between 1980 – 2012.

³⁸ Andrew & Renata Kaldor Centre for International Refugee Law, *Factsheet: Regional Cooperation* (29 October 2013).

³⁹ *Ibid.*

⁴⁰ *Report of the Expert Panel on Asylum Seekers* (August 2012), pg 28.

⁴¹ Andrew & Renata Kaldor Centre for International Refugee Law, *Factsheet: Regional Cooperation* (29 October 2013).

standards.⁴² In addition, support and capacity building in the region should also work towards ensuring that certain safeguards are in place, including: humane reception, legal recognition and adequate living conditions for asylum seekers awaiting determination of refugee claims; real access to the UNHCR / refugee status determination process; the right to appeal; procedural fairness; the right to remain in country while determinations and appeals take place.⁴³

It is likely to be more cost effective in the long-term for Australia to invest in UNHCR expansion over the system of mandatory immigration detention currently adopted by the Australian Government. At present, Australia is spending between \$2.5 - \$3 billion per year on its offshore detention centres that hold a few thousand asylum seekers on Christmas Island, Australia, and Nauru and Manus Island, Papua New Guinea.⁴⁴ This is equivalent to around half of the cost of running UNHCR programs on every continent.⁴⁵ With less reliance on the immigration detention system, particularly the offshore component, the Australian Government could redirect the resultant savings to assist UNHCR expansion, the increased humanitarian intake proposed above, and to support local integration programs and the promotion of human rights as proposed below.

- 4. Funding and investment in local integration programs and better services for asylum seekers and refugees.** To support and strengthen regular humanitarian pathways, steps should be taken throughout the region to improve living conditions, access to essential services (such as education and healthcare), employment options and livelihood support for both asylum seekers during the processing of their refugee claims and for refugees who have been resettled or who are awaiting resettlement. As a wealthy, developed nation Australia has an important role to play in building the capacity of countries in the region to resettle refugees. This will require additional funding for development programs and more support for NGOs, in particular local NGOs, that provide vital services to asylum seekers and refugees.

- 5. Promote human rights, improve protections and remove the barriers that prevent asylum seekers from accessing refugee determination processes.** Across the region there should be

⁴² Ann McNevin, 'Why we would gain from a regional approach to refugee protection', Inside Story (31 July 2013); and Andrew & Renata Kaldor Centre for International Refugee Law, *Factsheet: Regional Cooperation* (29 October 2013).

⁴³ Andrew & Renata Kaldor Centre for International Refugee Law, *Factsheet: Regional Cooperation* (29 October 2013); John Menadue, Arja Keski-Nummi and Kate Gauthier, *A New Approach: Breaking the stalemate on refugees and asylum seekers* (August 2011) and Peter Browne, *The asylum-seeker plan that keeps disappearing over the horizon*, Inside Story (9 April 2014).

⁴⁴ See: *Mid-Year Economic and Fiscal Outlook* (MYEFO, Dec 2013); the Department of Immigration's Portfolio Additional Estimates (Feb 2014); and Peter Browne, *The asylum-seeker plan that keeps disappearing over the horizon*, Inside Story (9 April 2014).

⁴⁵ Peter Browne, *The asylum-seeker plan that keeps disappearing over the horizon*, Inside Story (9 April 2014).

consistent recognition of asylum seekers and refugees,⁴⁶ with complementary legal protections to enable them to work and live. For example, ratification of the Refugee Convention and international human rights treaties, and development of national laws that: facilitate registration of asylum seekers and refugees; guard against harassment and discrimination; and promote consistent refugee determination processes that adhere to international standards. In addition, asylum seekers and refugees should be provided with practical and unhindered access to basic government services and other relevant supports (as detailed above).

Continuous and increasing migration flows is a significant and complex challenge for the region and requires a unified and integrated regional response. Working solely within a national policy setting will not resolve this challenge. Instead, Australia must work with neighbouring countries on a true regional solution; one that includes a clear overarching agreement to work towards consistent and fair processing of asylum seekers, expanded and improved resettlement options and enhanced protection of asylum seekers and refugees throughout the region. Better resourcing and burden sharing by Australia will be central components of a regional solution.

Countries in the region need to re-engage, as equal partners, in the Bali Process and other mechanisms to establish a clear and equitable regional agreement. Alongside these efforts, the Australian Government should leverage its political and economic diplomacy and focus its efforts on addressing the root causes of displacement, including by investing in economic development, basic services, enhanced governance, capacity building and better protections in source countries. In our experience, this support is essential in reducing migration flows in source countries. For example, Save the Children is currently supporting children and families in villages along the Syrian border in Jordan so that they remain safe, protected, have access to basic services and the conditions necessary to avoid displacement and disruption as a result of the conflict over the border.

⁴⁶ Dr Savitri Taylor, *Refugee Protection in the Asia-Pacific*, FAHAMU Refugee Programme. Available at: <http://www.refugeelegalaidinformation.org/refugee-protection-asia-pacific>

9. Conclusion

Save the Children objects to the mandatory and prolonged detention of all asylum seekers, especially children. In our experience, sending people to offshore immigration detention centres threatens their physical, mental and emotional wellbeing.

Notwithstanding the somewhat intractable nature of asylum seeker policy in Australia, the current mandatory and protracted nature of Australia's immigration detention system fails the test of fairness and sustainability. It is in breach of the human rights of children, young people and adults and fails to comprehensively and effectively address significant migration flows confronting the whole Asia-Pacific region. Australia needs to rework its current approach to asylum seeker policy to ensure it protects human rights and provides a more sustainable policy response.

In our view, to mitigate the harmful and inhumane conditions in immigration detention, the Australian Government should take immediate action to reduce periods of detention, speed up processing of refugee claims and ensure safe and durable options for resettlement. To create a more sustainable solution, the Australian Government also needs to accept its shared responsibility and participate in the development and implementation of a genuine regional protection framework for refugees and asylum seekers. We have therefore recommended that such a framework should encompass five essential elements, including: (1) increase Australia's humanitarian intake; (2) timely resettlement; (3) effective and fair refugee status determination processes; (4) quality local integration programs and better services for asylum seekers and refugees; and (5) better promotion and protection of human rights in the region.