

NATIONAL ENQUIRY INTO CHILDREN IN IMMIGRATION DETENTION

The Australian Association for the Welfare of Child Health (AWCH) is a national organisation of parents and professionals which advocates for and raises awareness of the psychosocial needs of children, young people and their families within the health care system in Australia. AWCH advocates a holistic family-oriented approach to the care of children and young people, acknowledging the vital role the family plays in that care.

No group is more disadvantaged in the political process than children – they cannot vote, cannot hold political office, and rarely can speak publicly for their interests. They have no access to any of the traditional levels of political power. Children need the advocacy voice of parents, health care providers, and interested members of the community to speak on their behalf and represent their interests.

The health rights of children and young people were encapsulated in the UN Convention on the Rights of the Child 1990 to which Australia is a signatory. This submission highlights the primary issues of concern about the well-being and healthy development of children who find themselves in immigration detention facilities in Australia and makes recommendations to ensure the best interests of detained children are met.

Psychological and Social Well-being

Immigration detention in any form will never be in the best interests of children and is a breach of the Convention on the Rights of the Child (CRC). These rights include rights of freedom, to a normal social life and to education. Detention of a child interferes with all of these rights. This is true whether it is an unaccompanied child or a child who is made subject to the detention of his/her parents. AWCH is concerned that there is a tendency to overlook the rights that the child has as an individual and a failure to ensure that the child is given the opportunity to assert those rights and that those rights are upheld and protected. This concern is expressed both in relation to those children who are unaccompanied and those children who are with their families.

Issue 1

Right to detention only as a last resort

The detention of children in immigration facilities poses long-term risks to the psychosocial well-being of children and young people and is not in the best interests of the child (CRC article 3). Extended stays can lead to behavioural extremes in children and young people and those without family members in particular can experience depression, apathy, delinquent behaviour, aggressive acts, mental disturbances, drug abuse and suicide.

AWCH is deeply concerned about reports that children are being detained for long periods of time and that some of these children and young people have attempted suicide and participated in hunger strikes. Recent press reports have alleged that detention centres are unclean, extremely hot, and lack ventilation or adequate outdoor recreation space. There are also reports that adults have sexually assaulted detained children. If these reports are true the situation needs to be urgently addressed.

There is no legal limit on the length of immigration detention in Australia and some children may spend years in detention. Detaining children is strongly discouraged under the Convention on the Rights of the Child and is discriminatory. It also should not be used in an arbitrary way (CRC article 2 & 37): they are the only group of children in Australia subject to automatic detention. The CRC provides that children should be detained only as a last resort, and then only for the shortest appropriate period of time. Any detention of children must be subject to periodic judicial review.

Detained children have the same social welfare rights (health, education, standard of living) as the general population (CRC article 2). If it is necessary to detain children in immigration detention facilities, all the needs of the child must be met while they are being detained and the child's best interests must be the primary consideration (CRC article 21). Freedom of movement outside detention should be an option so that children have access to the outside world and to enjoy their own culture, practice their own religion and use their own language (CRC article 14 & 17). In this way the mental and social well-being of children can be more effectively assured by the quick re-establishment of normal community life.

No child should be subjected to torture or other cruel, inhuman or degrading treatment or punishment (CRC article 37) and appropriate measures to promote physical and psychological recovery and social reintegration of a child victim must be taken.

Documented evidence has shown detention centre environments are inadequate to meet the special needs of any child, let alone children who have suffered human rights abuses and the trauma of fleeing their home. There are also fears that children housed in detention centres may be at heightened risk of abuse and the dehumanising effect of being treated as illegal.

Children are vulnerable, and detention has a harsher impact on them than on adults. The continued detention of children, who are innocent of any crime, causes physical, emotional and developmental damage, which has been extensively documented. It also violates the international conventions governing the welfare of children.

Every child has the right to a standard of living adequate for physical mental spiritual, moral and social development (CRC article 24). The detention of children places them in an abnormal environment and risks impeding their development. Australia, as a signatory to the CRC, must ensure the

development of the child to the maximum possible extent (CRC article 6) and every effort should be made to minimise the physical and emotional distress to children and their families.

Recommendation 1

- Children and young people should not be housed in detention centres for extended periods of time. Special arrangements must be made for living quarters which are suitable for children and their families, who must be kept together.
- Children and young people must have access to the same local services as children in the general community eg health, education, recreation and freedom of movement in and out of the facility.
- Alternative non-custodial measures, such as reporting requirements, should always be considered before resorting to detention.
- Unaccompanied minors should never be detained.

Issue 2

Right to family support and unity

The best way to promote the psychosocial well-being of children and young people is to provide appropriate support to their families, who need to be fully involved in their child's development and to be living in as normal an environment as possible. The need for a functioning family becomes even more important when we consider the developing needs of children and young people who have had their normal structure taken away by the refugee situation and/or by being detained. In these situations the normal social rules, values and controls begin to break down and parental distress and anxiety can seriously disrupt the emotional development of the child. A child's role models can be lost and there can be growing alienation between the child and parent.

According to the Convention on the Rights of the Child, all children are entitled to grow up in a healthy family environment. Families do not operate in vacuums and they are influenced by what is happening around them. Most detention centres do not have the capacity to separate families from the general adult detainee group - a specification in international guidelines on refugees. A family that is under severe stress will not be able to meet fully the physical and emotional needs of their children. Family unity and support to the family should be maintained in a family friendly environment.

The United Nations High Commission for Refugees (UNHCR) has clearly stated that refugees who are most at risk of sexual violence are children in detention or detention-like situations - particularly girls and unaccompanied minors. Current detention practice takes away parents' ability to protect their children from unnecessary violence and fear. Alleged cases of child sexual abuse in the Curtin Detention Centre highlighted the dangers of detaining children in cramped conditions with adults, many of whom may be suffering depression and post-traumatic stress disorder. Unless special measures are taken to ensure that children are protected, to keep them and their families apart from the rest of the detainee population, and to provide staff specially

trained to attend to children's special needs, children detained in these centres may be at continued risk of attack and abuse.

Children are able to apply for a "Bridging Visa", which enables them to leave detention. The reality of this is that they are then separated from their families and placed into foster care. Numerous studies provide strong evidence that such separation is strongly detrimental to the health and well being of the child. Studies on children of refugees support the need for a parental bond or continuous relationship in order to protect a child's mental health. Research into the psychological well being of children demonstrates that they suffer less if they remain with their parents, even under dangerous and stressful conditions.

Recommendation 2

- Families should be housed as family units in appropriate accommodation that is separate from other families and detainees.

Issue 3

Right to play and education facilities

Articles 25 and 29 of the Convention on the Rights of the Child state the right to education and the preparation of the child for responsible life in a free society. Detention may preclude or inhibit the child's access to education. In particular, exclusion from mainstream education deprives children of the social environment of the school. No child is prepared for a responsible life in a free society by being held in detention.

Article 31 of the Convention on the Rights of the Child supports the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. Children are developing emotionally, physically, intellectually and socially, and are effected negatively when they are deprived of developmental essentials like play and education. Play and social interaction are vital to the healthy development of children and young people. It is the way children and young people make sense out of their experiences. It is a way of relaxing and relieving tensions. The predictability of being able to access play and education facilities to the same level as children in the general population will create a sense of normalcy which is of paramount importance to their development.

Children living in detention centres do not enjoy the full range of rights they are entitled to. Reports indicate there is no consistent full-time education system, insufficient play and leisure areas and limited - if any - contact with the outside world. Children learn best in the mainstream system and they need to learn more than just English to advance their education suitable to their age. They learn much more from interaction with peers at school than they would in an isolated environment. The long-term implications for children are worrying in terms of their development and ability to integrate. Although asylum-seeking children may initially face difficulties in schools, they are nevertheless probably the best ambassadors for building links with their



community. Going to school is a vital and integral step in the integration process, even if children are only resident in Australia for a short period.

Recommendation 3

- Children and young people should attend daily school, preferably in the local community
- Teachers should be specially trained in the needs of the families
- Children should have play facilities available to them outside school hours. There should be a range of gross motor, fine motor, imaginative and social play experiences in appropriately child and family friendly facilities
- Sun protection shady areas should be available

Issue 4

Right to access health services

Inadequate educational and recreational facilities, inadequate trauma and torture support, and the prolonged period in detention will contribute to the deleterious effect on psychosocial health. Children in detention may have difficulty in accessing a whole range of health care services and this may compromise their right under the convention to access equity and quality of health care to the same level as the general population (Article 24).

Recommendation 4

- Children and young people's access to health care must be met to the same level as the general population.

Issue 5

Right for unaccompanied children to access all the social services and legal protections

Unaccompanied children who are not being cared for by their families face a high risk of not receiving proper protection and care: the physical and developmental needs of these children will not be fully met unless they receive appropriate alternative care and guardianship arrangements.

Supervision of the care of unaccompanied children should be undertaken by national or local child welfare services, who are experienced and trained to deal with children and young people. Children should only be entrusted to an agency if that agency's qualifications and ability to care for children has been proven and the agency ensures the needs of these children is its first priority.

Unaccompanied children seeking asylum belong to one of the most vulnerable groups in the world. Without the care and support of parents or other family members, they face particular difficulties in making applications for asylum. They have often experienced horrific torture and subsequent trauma. Many children have been made to witness the rape, torture and killings of their parents, brothers or sisters.

Unaccompanied children should never be detained other than in the most exceptional circumstances and then only overnight with appropriate care if

they arrive alone. It should only be in the most exceptional circumstances that local social services departments are unable to provide an immediate, emergency response when children arrive alone. Immigration detention is not the appropriate place for newly arrived unaccompanied children and it would be a rare circumstance indeed in which a child cannot be taken into the care of social services immediately upon arrival.

Recommendation 5

- Unaccompanied children should be provided with all the social services and legal protections available to children in the general community
- Unaccompanied children should be cared for in the community in foster families or groups of similar ethnic, cultural, linguistic and religious background
- Unaccompanied children must be kept informed at each step about plans being made for them
- Well-trained staff equipped with the skills to meet the unique needs of these children should be employed to monitor these children
- Should unaccompanied children be in detention then there needs to be adequate procedures and mechanisms to deal with complaints involving ill-treatment

Summary

AWCH is very concerned about the impact of immigration detention on the psychosocial well-being of children and young people. AWCH strongly opposes the mandatory detention of children and young people and recommends that families with children be housed in family friendly units with access to health, education and recreation services to the same level as the general population. Unaccompanied minors should be placed in the community with a continuous care-giver who is loving and nurturing, and who meets the developmental needs of each child.

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