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Submission to the
Joint Select Committee on Australia's Immigration Detention Network
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We are meant to provide protection to men women and children seeking asylum, not incarcerate them in a system which causes them further harm.

I have a Masters Degree in Human Rights and am gravely concerned that the present implementation of Australia's policy in relation to the treatment of refugees and asylum seekers breaches our international obligations, fails to uphold the inherent dignity of the human person, causes unnecessary harm and suffering and damages children.

INTERNATIONAL AND DOMESTIC LEGAL OBLIGATIONS

I note that if Australia had a Human Rights Act, many aspects of our detention regime would be held to be unacceptable. These include:

- In breach of CROC, Article 37b. children continue to be detained as a first resort and not for the shortest practicable time
- In breach of CROC, Article 3.1, the best interests of children are not the primary consideration
- In breach of ICCPR, Article 9.1 mandatory detention is arbitrary in nature
- Depriving a person of their liberty is the ultimate legal sanction yet in this instance it is practised on an administrative basis without judicial justification or review. The Department of Immigration and Citizenship does not have to justify a person's detention on any grounds except that they do not yet have a visa.
- There are circumstances, for example, where someone is stateless and has no state to be returned to, where our legal provision means there is no other option than indefinite incarceration.
- Excision laws allow for processing of asylum seeker claims outside Australia's migration laws. They attempt to remove legal rights and processes that are enshrined in our domestic legal system and Constitution.
- Acceptance rates for protection claims in offshore locations are far lower than onshore,[1] which suggests that refugees with valid protection claims have been rejected and inevitably suffer refoulment to places of danger or persecution.
- The overarching duty of care owed to unaccompanied minors rests with the Minister of Immigration and Citizenship in his capacity as their legal guardian. There is a conflict of interest between acting in children's best interests (CROC: Article 3.1) and serving as their gaoler and the ultimate decider of visa grants.
- In breach of CROC, Article 37.d, children deprived of their liberty do not have prompt access to legal and other appropriate assistance, as well as the right to

[1] Australian Government, Department of Immigration and Citizenship, Estimates, October 2010, response to Question on Notice 122, http://aph.gov.au/senate/committee/legcon_ctte/estimates/sup_1011/diac/122qon.pdf

challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action

- Protection laws do not apply to children in immigration detention. The Family Court has no jurisdiction in Commonwealth matters of immigration detention and so cannot order the release of children who are detained in an immigration detention centre or make any orders concerning the welfare of children who are held in immigration detention.[2]
- Each jurisdiction in Australia mandates different child protection requirements. However, there is *no* legal mandate to enforce such requirements and as Federal law trumps State, effectively children detained in Commonwealth facilities are denied the protection of mandatory reporting.
- Treating people who arrive by boat differently from those who arrive by air is discriminatory and has no legal basis.
- The Commonwealth Ombudsman can review but has no authority to compel compliance with recommendations made.
- Other external agencies charged with oversight responsibility have indicated they have neither the financial or human resources to continue monitoring immigration detention to the extent they have been. The proliferation of detention facilities has not been matched by increasing the capacity of these agencies.

UNNECESSARY HUMAN SUFFERING

Apart from the Human Rights law infringements, I deplore the needless human suffering that occurs within the existing detention regime. This is manifest by:-

- Five detainee suicides, one staff member suicide and an undisclosed number of suicide attempts.
- Suicide attempts by children as young as ten
- The re-emergence of a culture of self-harm, lip-sewing and hunger strikes
- High levels of anxieties and depression in the detainee population.
- The incidence of Post Traumatic Stress Syndrome among former detainees.
- The risk of acquiring long-term mental health issues increasing exponentially with the length of detention.

COSTS

As well as the human costs, I have deep misgivings about the profligate use of resources in the implementation of current policy.

I understand the commissioning and operation of the remote facilities of Christmas Island, Curtin and Scherger must run into billions of dollars, which could have been otherwise directed towards relieving refugee-causing situations or allocated to the UNHCR.

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[2] *Minister for Immigration and Multicultural and Indigenous Affairs v B* [2004] HCA 20; 219 CLR 365; 206 ALR 130; 78 ALJR 737, http://www.austlii.edu.au/au/cases/cth/HCA/2004/20.html

I am not aware that any analysis has been done on the impact of transporting all the food, fuel, personnel and everything else required to operate the remote centres but it must have a significant, and arguably unnecessary, environmental impost.

Most of all, I am appalled at the cost to our society of the ongoing dehumanisation of people seeking protection. Wedge politics, dog whistling and fearmongering are dividing us as a community and authenticating negativity and intolerance. It is instrumental in allowing racism to come back on our sports fields and de-sensitising our responses to situations of human suffering.

It is incomprehensible not only that there is no public outcry about the levels of suicide and self-harm rampant in government-run facilities but that some sectors of the community seemingly applaud them and are unable to express any empathy whatsoever with the plight of fellow human beings.

It is time to mend, heal and reassert our collective humanity.

RECOMMENDATIONS

1. Abolish the mandatory and indefinite detention of asylum seekers.
2. Legislate to ensure children are never detained for immigration reasons.
3. Asylum seekers who arrive without a valid visa should have their claims for asylum assessed while living in the community in publicly owned and managed open reception centres, with entry and exit unrestricted except where necessary for medical or security reasons
4. We must Increase the share of places for off-shore refugees and humanitarian entrants from Malaysia and Indonesia. Taking 4,000 pa instead of the paltry 47 or 49 we have been accepting from Indonesia in itself would provide a recognisable, safe alternative to the boat journeys and do much to eliminate the people smugglers trade.
5. To assuage the community fears that have been purposefully stirred up for political gain, a public education program should be instituted to provide regional and international perspectives of Australia’s responsibilities to asylum seekers
6. Restore the Australian migration zone to match Australia's territory and accept responsibility for processing all asylum seekers who seek Australia's protection within the migration zone.
7. Ensure asylum seekers are fully informed of their rights on arrival and given immediate access to legal assistance. Asylum seekers' legal right to challenge decisions that affect them in the courts should be unhindered.
8. Ensure that initial assessment of refugee status is completed within 90 days.

Quite simply, compared to many other countries we do not have a problem with the scale of irregular arrivals. Yet our response to it is draconian, excessive, politically motivated and damaging our social fabric.

As a civilised and developed country we have a responsibility to set a regional example in the observance of human rights and just and fair treatment of people seeking protection. By locking them up as if they are criminals even though they have committed no crime, we are patently failing to do this. Our insistence on trying to off-load our responsibilities to neighbouring countries such as Papua New Guinea and Malaysia is flawed, unworkable policy which will consistently fail. A lasting solution will only be found when the nexus between this issue and domestic political hubris is broken.

In the meantime, can we keep at the forefront in any policy development that it is people's lives we are dealing with?