

29 May 2018

National Children's Commissioner
Australian Human Rights Commission
kids@humanrights.gov.au

Dear Commissioner,

Australia's Progress in Implementing the Convention on the Rights of the Child

Global Mobility Immigration Lawyers welcomes the opportunity to make submissions to the Australian Human Rights Commission (AHRC) in relation to Australia's report to the United Nations Committee on the Rights of the Child ("the Committee").

Global Mobility Immigration Lawyers

Global Mobility Immigration Lawyers ("GloMo") is a Melbourne firm of immigration lawyers and registered migration agents. We are committed to giving our clients a voice in their dealings with institutions, and have concerns about the impact of Australia's migration policies on children and their rights.

Compliance with the Convention on the Rights of the Child

It is our submission that Australian migration policies have an effect on children that does not comply with the Convention on the Rights of the Child (CRC).

In particular, we submit that Australia is not complying with the CRC in relation to article 3, the best interests of the child.

Migration Decisions and Best Interests

We note that in their 2012 report on Australia's compliance with the CRC, the Committee were concerned that in the making of migration decisions the best interests of the child are not the primary consideration, and that the determination of what is in the best interests of the child is not undertaken by suitably qualified professionals.¹

The Minister for Home Affairs and Guardianship

We further note that in their 2012 report, the Committee raised concerns regarding the risk of a conflict of interest arising from the Minister for Home Affairs being the legal guardian of

¹ United Nations Committee on the Rights of the Child, 29 May – 15 June 2012, 60th sess UN Doc CRC/C/AUS/CO/4, [80].

unaccompanied minors as well as being responsible for immigration detention and determinations of migration applications.²

Similarly, the AHRC has also raised concerns about the vesting of guardianship of unaccompanied children in the Minister for Home Affairs.³

Disability, Basic Health and Welfare

It is our submission that current policies of the Australian government in relation to the treatment of migrant children are inconsistent with rights under the CRC in relation to health and welfare, in particular articles 24, 26 and 18(3).

Health Care of Migrant Children

It is highly problematic that the health care entitlements of children in Australia are dependent on their migration status and mode of arrival.⁴

Further, on a global scale, Australia ranks low in terms of its provision of healthcare to migrant children. A study published in the *European Journal of Public Health* states ‘the restricted rights of health care for asylum seeking children in detention on the Pacific islands outside of Australia or in detention centres on the mainland, despite the well documented dire conditions under which these children and their families live, is another low water mark among the countries in this study.’⁵

We urge the Australian government to implement policies that provide equal healthcare to all children, irrespective of their migration status, adhering to the ‘CRC view of children as children first and foremost instead of migrants with different legal status.’⁶

Social Welfare and the Rights of Children

We draw your attention to the inadequacy of welfare payments to many migrants in the Australian community, in particular families with children.

² United Nations Committee on the Rights of the Child, 29 May – 15 June 2012, 60th sess UN Doc CRC/C/AUS/CO/4, [80].

³ Megan Mitchell, National Children’s Commissioner, *Children’s Rights Report (2017)* Australian Human Rights Commission, 69.

⁴ Liv Stubbe Østergaard, Marie Norredam, Claire Mock-Munoz de Luna, Mitch Blair, Sharon Goldfeld, Anders Hjern, ‘Lack of entitlements to health care for migrant children’ *European Journal of Public Health* (2017) 27(5), 870.

⁵ Liv Stubbe Østergaard, Marie Norredam, Claire Mock-Munoz de Luna, Mitch Blair, Sharon Goldfeld, Anders Hjern, ‘Lack of entitlements to health care for migrant children’ *European Journal of Public Health* (2017) 27(5), 871.

⁶ Liv Stubbe Østergaard, Marie Norredam, Claire Mock-Munoz de Luna, Mitch Blair, Sharon Goldfeld, Anders Hjern, ‘Lack of entitlements to health care for migrant children’ *European Journal of Public Health* (2017) 27(5), 871.

We are also concerned by the announcement of plans to discontinue Status Resolution Support Services (SRSS) payments, with a spokesperson for the Department of Home Affairs stating that the SRSS payments are ‘not a social welfare program’ and that ‘individuals on a bridging visa with work rights and who have the capacity to work are expected to support themselves.’⁷

We are concerned about the impact this will have on the children of asylum seekers. We submit that the concerns raised by immigration lawyers, immigration agents and refugee advocates should be considered by the Committee. For example, the Asylum Seeker Resource Centre has stated that ‘the impact of the government cuts to income support is very real. People won’t be able to afford rent or to feed themselves and we are seeing this at our doors more and more each week.’⁸

Further and separate to the cutting of SRSS payments is the recent cancellation of accommodation and income support for asylum seekers from offshore detention centres who are in Australia for medical treatment. This cohort includes ‘more than 60 people from families with children under 18.’⁹

Immigration Detention

We submit that placing children in immigration detention, both on and offshore, results in the violation of numerous rights under the Convention.

As you are no doubt aware, there have been two inquiries into children in immigration detention, the first in 2004, and a more recent report released in 2014. In the 2004 report it was found that the failure ‘to protect and promote the mental health and development of children...not only constitutes a breach of a child’s right to mental health, development and recovery, it also amounts to cruel, inhuman and degrading treatment.’¹⁰ This is in violation of articles 37(1) and 28(2) of the Convention.

The 2014 report came to a similar conclusion: ‘Prolonged, mandatory detention of asylum seeker children causes them significant mental and physical illness and developmental delays, in breach of Australia’s international obligations.’¹¹

We also highlight the Committee’s concerns regarding the mandatory detention of children without time limits or judicial review under the Migration Act; the continued use of “offshore

⁷ Ben Doherty, ‘New dose of cruelty’: up to 7,000 asylum seekers to lose income support’ *The Guardian Australia* 30 March 2018.

⁸ Ben Doherty, ‘New dose of cruelty’: up to 7,000 asylum seekers to lose income support’ *The Guardian Australia* 30 March 2018.

⁹ Helen Davidson, ‘Asylum seekers ‘face destitution’ as income support and housing cut off’ *The Guardian Australia*, 17 May 2018.

¹⁰ Human Rights and Equal Opportunity Commission, *A last resort? National inquiry into children in immigration detention* (2004) Sydney: Human Rights and Equal Opportunity Commission, 13.

¹¹ Australian Human Rights Commission, *The forgotten children: National inquiry into children in immigration detention* (2014) Sydney: Australian Human Rights Commission, 15.

processing” of asylum and refugee claims;¹² and note that to date the recommendations of the Committee have not been implemented by the Australian authorities.

Summary

We continue to have reservations about Australian migration policy, and call on the Government and Opposition to rise above politics and commit to upholding the rights of all children irrespective of migration status.

We thank the AHRC for its consideration, and remain at its service in relation to its report to the Committee.

Your faithfully

[sent electronically without signature]

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¹² United Nations Committee on the Rights of the Child, 29 May – 15 June 2012, 60th sess UN Doc CRC/C/AUS/CO/4, [80].