Humanitarian Research Partners

Submission to Australian Human Rights Commission Inquiry into children in immigration detention

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Thank you for the opportunity to make a late submission to the Australian Human Rights Commission's inquiry into children in immigration detention. Our submission is based on health indicators extracted from the Immigration Ombudsman's section 486O (of the *Migration Act*) reviews of asylum seekers in long-term detention, and first-hand testimony from detention.

It is important to appreciate the context of these s486O reviews. Reviews are conducted if a person has been in immigration detention for two years or more. Regular reviews are mandated every six months if a person remains in immigration detention, pursuant to s486M(b) *Migration Act*. All reviews are available online on the Ombudsman's website at: http://www.ombudsman.gov.au/reports/immigration-detention-review/

Although those convicted of people smuggling are almost always first reviewed after 24 months in detention and then regularly every six months, asylum seekers have their first review on average after 32 months in detention, and are reviewed irregularly. The Ombudsman's office is clearly stretched and unable to keep up with the rapid increase in long-term immigration detainees.

Humanitarian Research Partners' report, *Who will be for me?*[1] analysed the Ombudsman's 2013 reviews of long-term immigration detainees, focusing on mental health outcomes for asylum seekers. We found that 83% of asylum seekers in detention for two years or more suffered mental health problems. 77% had detention-induced or –exacerbated mental health problems. 43% had attempted self-harm and 15% had contemplated and/or attempted suicide, usually more than once.

We found that children were affected at roughly the same rate as adults, although it was difficult to accurately quantify the nature of mental harm due to reporting constraints. Children travelling as part of a family group were not reviewed individually and usually had fewer details reported about their time in detention.

What was abundantly clear is that children are no more likely to access specialist treatment in a timely manner than their parents. Anecdotal evidence from detention visits and regular communication with asylum seekers confirms that children face the same months-long waiting times for advanced medical care, and often go without meaningful mental health management altogether. Examples of this include those shown in:

- Ombudsman's Review number 1001137, relating to a 12 year old boy with paralysis due to a brain injury at birth (not detention related). The boy was scheduled for surgery in June 2013, but IHMS were unable to confirm the following month whether or not the surgery had taken place.
- Ombudsman's Review number 1001460 (tabled on 9 July 2014), relating to a 7 or 8 year old boy who was referred to a child psychiatrist for behavioural issues, stress and loneliness. The review advised that the referral was approved (by IHMS) on the 3rd June 2013, but was still

[1] B Pynt, *Who will be for me? Report on the Ombudsman's 2013 reviews of asylum seekers in long-term detention under s486O of the Migration Act*, Humanitarian Research Partners, 2014, available at: www.humanitarianresearchpartners.org/publications.html

outstanding in late February 2014. It is unlikely that the boy's behavioural issues had improved in the intervening period.

The reviews tabled on 11 December 2013 included a series of reviews regarding 14 unaccompanied minors aged between 11 and 17. These reviews were especially troubling. All of these unaccompanied minors had been in detention for 30 months at the time of their review, and for all it was their first assessment.

The first issue is procedural: the majority of these children were on a removal pathway after being found not to be owed protection. It is unclear whether they had any assistance in formulating their claims, and if so how much. The Department claims that unaccompanied minors in detention are provided with an Independent Observer, who is responsible for ensuring that `the treatment of minors is fair, appropriate and reasonable …'[2] Independent Observer services were provided under contract by Life without Barriers until some time during the 2012-13 reporting period, and since that date by MAXimus Solutions.

The Independent Observer should be present during formal interactions between the child and the Department and at other events such as medical appointments. However, they are not permitted to advocate on behalf of a child, and do not have training or expertise in asylum matters or in making claims under the Refugee Convention. It would be informative to determine whether Independent Observers are mandated child protection reporters, and whether they are permitted (or required) to refer cases to child protection authorities under the terms of their service agreements and where the circumstances warrant such a referral.

It is equally unclear whether the Department makes special provisions for unaccompanied children who need assistance claiming protection, and whether requirements might be relaxed to cater to their particular vulnerabilities. Young children, in particular, may be unable to provide the necessary detail to substantiate a claim for protection. The Ombudsman's Reports include unaccompanied minors as young as 11, and whose protection visa applications had been refused – it is difficult to imagine how a child as young as this could successfully meet the Department's requirements of demonstrating a genuine fear of persecution, even with the possible assistance of an IAAAS provider and an untrained Independent Observer who was not allowed to advocate on their behalf.

We find it difficult to comprehend how unaccompanied children could be returned safely to a country such as Afghanistan, Iraq, Iran, Sri Lanka or Somalia under the best of circumstances. After the trauma many asylum seekers suffer in their home countries (63% of s486O reviewees) combined with the traumatic experience of travelling to Australia in a clandestine fashion, and the abject conditions of detention, it is surprising that any of these children are fit to travel back to countries that are best described as war zones.

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[2] DIAC Annual Report 2012-2013, Commonwealth of Australia, 2013, p.207, available online at: http://www.immi.gov.au/about/reports/annual/2012-13/pdf/2012-13-diac-annual-report.pdf

The next set of issues are environmental. Restrictive detention centres are encircled by layers of electrified fences crowned with razor wire, and monitored from every angle by hundreds of CCTV cameras. Children must line up with their parents for up to two hours at each meal time, and often queue for up to an hour for each dose of medication.

At Wickham Point IDC and Blaydin Point APOD outside of Darwin, and at Christmas Island IDC, we have serious concerns regarding the management of biting insects. On Christmas Island there are also serious problems with centipedes which can inflict a very painful bite, which may require hospitalisation for pain relief. A biting insect survey commissioned by the Inpex Ichthys LNG project (mere metres from the Wickham/Blaydin site) found that at dawn and dusk during a full moon, up to 10,000 midge bites could be expected per hour on an area of exposed skin equivalent to a single leg (p.23). This report, attached at Annex B, also explains that mosquitos in the area carry diseases including malaria, dengue fever, Barmah Forest virus, Murray River encephalopathy and Ross River virus.

Asylum seekers in those facilities often present with large welts all over their bodies that can take weeks or months to heal. Hundreds of children are detained at the Wickham and Blaydin facilities, including newborn infants.

Detention facilities in which children are held produce shocking mental health outcomes. The unaccompanied minors reviewed in December 2013 participated in hunger strikes, experienced depression, anxiety, sleep problems, attempted self-harm and had complex health needs. One child who arrived aged 13 (review 1001031) was diagnosed with hepatitis B 18 months after he arrived in Australia and was exposed to tuberculosis in detention. If not exposed to hepatitis B in detention, it is unacceptable it took so long to diagnose the illness.

Children in detention are still addressed by number rather than by name, despite repeated denials by service providers and the Department that this is the case. We are confident it is true, as virtually every advocate in our extended network witnesses it occur on a regular basis, and asylum seekers often complain about this dehumanising practice.

Unaccompanied minors have no prospect of release from the detention system until they reach 18 years old, and this weighs heavily on them. Although many are moved into community detention, for the most part they live in custody rather than care.

Some children have limited or no access to education in detention. Until very recently there were only around a dozen school places available at Christmas Island for hundreds of children. In Western Australia, asylum seekers are not allowed to attend public schools and often have to travel over an hour each way on public transport to get to private schools. Many children in community detention aged 16 and over attend English classes instead of comprehensive schooling. They are told there is ‘no point’ sending them to school for only one year or less.

Access to education, and to follow up health care, is also affected by the constant movement of asylum seekers in detention and by the high turnover of contracted service provider staff in detention facilities. All detainees, including families and

unaccompanied minors are subject to transfers from facility to facility. Many of the Ombudsman`s Reviews detail children and families transferred three and four times before then moving into community detention – each of these moves would impact on a child`s ability to maintain relationships with friends, school teachers, medical staff or even service provider staff. Schooling would be interrupted, health care follow up would suffer, and children`s socialisation skills would be severely tested.

This constant movement is often a surprise to asylum seekers. We are regularly informed that a detainee has received notice at 4 or 5pm that they will be moved the next morning, without explanation or justification of the need for the transfer. Sometimes even the destination is not disclosed. Air crew on these flights have confided that they have on occasion been directed not to disclose the destination of the flight to detainees. The uncertainty arising from these circumstances adds to the severe stress of detention.

A contributing factor to the mental illness experienced by children in detention is witnessing mental illness in others. When volunteers visited Wickham Point IDC in August 2013 they met several children who had been detained at Manus Island for approximately nine months. One young girl (12 years old) recounted that she had witnessed thirty to forty people attempt suicide during her time there. This kind of experience is to be expected after any substantial length of time in detention.

Evidence has been presented that children have attempted self-harm in a multitude of ways: banging heads against walls, cutting themselves, jumping from heights and poisoning. We would like to point out that we take issue with the Government's (and Serco's) definitions of self-harm and attempted suicide. In our view, where the person believes their actions will cause death, no matter how futile the attempt, that is an instance of attempted suicide.

The categorisation of, for example, attempted poisoning by drinking shampoo as an instance of self-harm where the person intended to end their life distorts statistics and suggests the level of mental harm is lower than it actually is.

Other children are living with parents or guardians who are themselves seriously depressed or unwell and whose capacity to parent their children is impaired by their illness and the restrictive nature of their detention.

- Ombudsman`s Reviews 1001007 and 1001263 – this family arrived in 2011, with daughters aged 9, 7 and 5. When first reviewed in late 2013, the father was suffering from depression, and the mother was an unstable diabetic. A further child was born in detention. Despite two referrals to a hearing specialist, in March 2013 and January 2014, there had still been no follow up of this issue by late April 2014. The child's untreated hearing problems would severely limit her language learning, engagement in education and ability to pursue social relationships.
- Ombudsman's Review 1001130 (tabled on 9 July 2014) – details a family with a 12 year old son. Both parents were suffering from depression, and a further child born while the family was in detention was suffering from a brain tumour. This family was severely stressed.

The Department claims that medical services provided to immigration detainees in Australia are of a similar standard to those available to the general community. The remote nature of many of the immigration detention facilities means that this statement is unlikely to be correct. However, the statement also ignores the fact that the detainee and asylum seeker population have different and, in many respects, greater health needs than the general population, most of whom have not been subject to indefinite detention, to torture and trauma or to the experiences of violent death and loss of homes and family members.

The 11 December 2013 tabling session also recorded seven children being born in detention, out of a total of 37 reviewees who fell pregnant during their time in detention. Reporting on perinatal complications was not comprehensive enough to determine whether or to what extent a causative link exists between detention and infant mortality and morbidity.

The Department of Immigration denied a freedom of information request lodged by Humanitarian Research Partners (FA 13/12/00153) regarding infant mortality and morbidity in detention. After extensive consultations we were assured that no such information existed except in individual medical records, and that it would be impractical (in its meaning under the *Freedom of Information Act 1982* (Cth)) to fulfil the request. We were surprised that such statistics were subsequently presented to this inquiry.

The Ombudsman makes recommendations in some reviews regarding the nature of detention, health conditions, and handling of visa processing. The Ombudsman made no recommendations regarding these 14 unaccompanied minors despite the serious problems they faced.

In fact, the Ombudsman seems to have given up altogether in making recommendations regarding systemic problems including the prolonged detention of children, issues of procedural fairness and unacceptable delays in accessing medical care.

The Minister for Immigration responds to the Ombudsman's s486O reviews by commenting on recommendations made by the Ombudsman. Where no recommendation is made, the Minister simply acknowledges their existence and moves on. The Minister for Immigration did not comment on any reviews of unaccompanied minors in 2013.

As all evidence presented to this inquiry suggests, detention is no place for children. The mental and physical health of a generation of children is far too high a price to pay for the goal of deterrence, which in any case is inhumane, internationally unlawful[3] and ineffective in the long-term.[4]

The government suggests it is 'saving lives at sea', but at the same time it is knowingly and intentionally destroying lives here in Australia.

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[3] S Kneebone, *Refugees, Asylum Seekers and the Rule of Law*, Cambridge, Cambridge University Press, 2009 at 281.

[4] H Spinks, *Destination Anywhere? Factors affecting asylum seekers' choice of destination country*, Research Paper 1-2012-13, Parliament of Australia, Department of Parliamentary Services, 2013.