

ACTION ALERT AA16-1: CHILDREN IN REFUGEE DETENTION

This Alert refers to recent moves to have children removed from detention centres, and to legislation amended by the Senate to support such moves. It includes details of international standards and expectations, and suggests action by Friends to act on their concerns.

Background

Many Australians have been deeply concerned at the fate of children held for long periods in immigration detention centres both within Australia and on Nauru and Manus Island. The Australian Human Rights Commission published the following information in January:

Under Australia's system of mandatory immigration detention, all non-citizens who are in Australia without a valid visa must be detained. This includes children. The vast majority of children who are in immigration detention are children who arrived in Australia by boat, seeking asylum. Some of them came with family members, but some of them came alone.

There have been significant improvements over recent years, including the transfer of many children into community – based alternatives to closed detention. However, the Commission continues to have serious concerns about the impact of Australia's mandatory immigration detention system on children, and Australia's compliance with its obligations under the *Convention on the Rights of the Child*.

Figures from the Department of Immigration and Border Protection show that on 30 November 2015 there were:

- **174** children in closed immigration detention facilities: 104 are held in closed immigration detention facilities in Australia and 70 children are detained in the Regional Processing Centre in Nauru
- **331** children in community detention in Australia.

Children are detained in the Regional Processing Centre in Nauru because of Australia's system of transferring asylum seekers (including children) who come by boat to third countries.

Legislation

In September 2015 the Government introduced into Parliament the *Migration and Maritime Powers Amendment Bill 2015*, to tighten the requirements applying to asylum seekers. When the Bill reached the Senate in November, amendments were agreed "to limit the detention of children and increase the transparency of Australia's detention network" (according to Paul Power of the Refugee Council of Australia in a media release on 25 November).

The amendments propose including a statement that says:

The Parliament affirms as a principle that no minor is to be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a minor must be in conformity with the law and must only be used as a measure of last resort and for the shortest appropriate period of time.

The Senate also proposed requiring the Minister to determine that a child live at a place other than an immigration detention facility, provided that a suitable relative or guardian could be identified. The Bill is now back before the House of Representatives.

International Context

Australia ratified the [*Convention on the Rights of the Child*](#) (CRC) in 1990. One of the basic principles of the CRC is that the best interests of the child should be a primary consideration in all decisions that affect them. The CRC sets out specific requirements to protect the liberty of children, including the requirements that:

- children must only be detained as a measure of last resort
- children must only be detained for the shortest appropriate period of time
- children should not be detained unlawfully or arbitrarily
- children in detention have the right to challenge the legality of their detention before a court or another independent body
- children seeking asylum have a right to appropriate protection and assistance - because they are an especially vulnerable group of children
- children separated from their parents have a right to special assistance
- children in detention should be treated with respect and humanity and they have the right to healthy development and to be able to recover from past trauma
- children seeking asylum, like all children, have rights to physical and mental health; education; culture, language and religion; rest and play; protection from violence; and to remain with their parents.

The Human Rights Commission has previously conducted three national inquiries relating to children in immigration detention in Australia. The reports of these inquiries (2004, 2012, 2014) make recommendations to the Australian Government aimed at protecting the human rights of children. For further information, see the Human Rights Commission website (below).

When Australia appeared before the United Nations Human Rights Council in November 2015 for its regular review of human rights policies, it was criticised by many other countries (including allies) for its shortcomings in relation to the treatment of refugees and asylum seekers, especially children, and seen as a poor example to other nations.

Human Rights Watch, in its Global Report (January 2016) has identified several examples that raise serious questions about Australia's approach:

- (a) Attacks on the head of the Human Rights Commission (Gillian Triggs) following the HRC report on the negative impact of detention on children (February 2015).
- (b) A report by the UN special rapporteur on torture (March 2015) that Australia's practice of detaining children was in violation of the Convention Against Torture.
- (c) The deferral of a visit to Australia by the UN special rapporteur on the human rights of migrants because of "lack of full co-operation from the government".

(b) The extra penalties imposed on anyone working on border protection disclosing information obtained on the job.

On 3 February 2016 the High Court of Australia, in response to a case seeking to prevent an asylum seeker from being returned to Nauru after medical treatment in Australia, ruled that the law under which the Government made an arrangement with the Nauru Government to set up and fund the detention centre was valid. This decision could strengthen the Government's determination to send back to Nauru many asylum seekers (including children) who have been in Australia for special assistance. In a statement to the ABC, Chilout campaign coordinator Claire Hammerton said "detention is never an appropriate environment for children, but detention in Nauru is especially inappropriate". Pressure is now being applied by groups such as *Love Makes a Way* to get a change in the Government's policy.

Action

Quakers are part of the Australian Churches Refugee Taskforce, which seeks through combined effort to bring compassion and justice for refugees. You can check their website for details. www.acrt.com.au

Several Quaker Meetings have indicated they are willing to offer sanctuary to asylum seekers who are to be sent back to Nauru. There is now a campaign called *Let Them Stay* with which Friends might connect. The Presiding Clerk of Yearly Meeting wrote to the Government (8 February) urging a review of current policies in the light of the harm being done to people held in off-shore detention.

Fulcrum Australia is a new website that aims to engage people in a campaign to let politicians know that asylum seeker policy needs to change, and that votes will be directed to those who support the closure of detention centres and the release of all children immediately. www.fulcrumaustralia.com

Friends may wish to work with these and other networks of concerned citizens, such as *Love Makes a Way*. There is a way of writing to children in detention – see www.befriendachildindetention.wordpress.com

You are encouraged also to contact members of Parliament (especially the House of Representatives) to ensure that the current legislation strengthens the protection of children in detention, by adoption of the proposed changes agreed by the Senate.

Canberra
February 2016

References:

Australian Human Rights Commission www.humanrights.gov.au
 Refugee Council of Australia www.refugeecouncil.org.au
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 United Nations Human Rights Office www.ohchr.org
 Australian Churches Refugee Taskforce www.acrt.com.au
 Fulcrum Australia www.fulcrumaustralia.com
 Human Rights Watch Global Report www.hrw.org
 Love Makes a Way www.lovemakesaway.org.au
 Let Them Stay campaign www.getup.org.au/let-them-stay
 Befriend a child – www.befriendachildindetention.wordpress.com