



*'A last resort?'*

## Report of the National Inquiry into Children in Immigration Detention

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### MAJOR FINDINGS AND RECOMMENDATIONS

The Inquiry has found that Australian laws that require the mandatory, indeterminate and effectively unreviewable immigration detention of children, and the way these laws are administered by the Commonwealth, have resulted in numerous and repeated breaches of the *Convention on the Rights of the Child*.

The Inquiry made a range of specific findings in relation to:

- monitoring of conditions in detention centres
- Australia's detention laws and policy
- Australia's refugee status determination system as it applies to children
- safety and security
- mental health
- physical health
- children with disabilities
- education
- recreation and play
- unaccompanied children
- religion, culture and language
- temporary protection visas.

These specific findings, based on evidence received by the Inquiry, were assessed against Australia's human rights obligations under the *Convention on the Rights of the Child*. From this, the Inquiry reached its major findings and recommendations.

#### MAJOR FINDING 1

Australia's immigration detention laws, as administered by the Commonwealth, and applied to unauthorised arrival children, create a detention system that is fundamentally inconsistent with the *Convention on the Rights of the Child* (CRC).

In particular, Australia's mandatory detention system fails to ensure that:

- (a) detention is a measure of last resort, for the shortest appropriate period of time and subject to effective independent review (CRC, article 37(b), (d))
- (b) the best interests of the child are a primary consideration in all actions concerning children (CRC, article 3(1))
- (c) children are treated with humanity and respect for their inherent dignity (CRC, article 37(c))
- (d) children seeking asylum receive appropriate assistance (CRC, article 22(1)) to enjoy, 'to the maximum extent possible', their right to development (CRC, article 6(2)) and their right to live in 'an environment which fosters the health, self-respect and dignity' of children in order to ensure recovery from past torture and trauma (CRC, article 39).

## MAJOR FINDING 2

Children in immigration detention for long periods of time are at high risk of serious mental harm. The Commonwealth's failure to implement the repeated recommendations by mental health professionals that certain children be removed from the detention environment with their parents amounted to cruel, inhumane and degrading treatment of those children in detention (CRC, article 37(a)).

## MAJOR FINDING 3

At various times between 1999 and 2002, children in immigration detention were not in a position to fully enjoy the following rights:

- (a) the right to be protected from all forms of physical or mental violence (CRC, article 19(1))
- (b) the right to enjoy the highest attainable standard of physical and mental health (CRC, article 24(1))
- (c) the right of children with disabilities to 'enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community' (CRC, article 23(1))
- (d) the right to an appropriate education on the basis of equal opportunity (CRC, article 28(1))
- (e) the right of unaccompanied children to receive special protection and assistance to ensure the enjoyment of all rights under the CRC (CRC, article 20(1)).

## RECOMMENDATION 1

Children in immigration detention centres and residential housing projects, as at the date of the tabling of this report, should be released with their parents as soon as possible, but no later than four weeks after tabling.

The Minister and the Department can effect this recommendation within the current legislative framework by one of the following methods:

- (a) transfer into the community (home-based detention)
- (b) the exercise of Ministerial discretion to grant humanitarian visas pursuant to section 417 of the Migration Act
- (c) the grant of bridging visas (appropriate reporting conditions may be imposed).

If one or more parents are assessed to be a high security risk, the Department should seek the urgent advice of the relevant child protection authorities regarding the best interests of the child and implement that advice.

## RECOMMENDATION 2

Australia's immigration detention laws should be amended, as a matter of urgency, to comply with the *Convention on the Rights of the Child*.

In particular, the new laws should incorporate the following minimum features:

- (a) There should be a presumption against the detention of children for immigration purposes.

- (b) A court or independent tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of any initial detention (for example, for the purposes of health, identity or security checks).
- (c) There should be prompt and periodic review by a court of the legality of continuing detention of children for immigration purposes.
- (d) All courts and independent tribunals should be guided by the following principles:
  - (i) detention of children must be a measure of last resort and for the shortest appropriate period of time
  - (ii) the best interests of the child must be a primary consideration
  - (iii) the preservation of family unity
  - (iv) special protection and assistance for unaccompanied children
- (e) Bridging visa regulations for unauthorised arrivals should be amended so as to provide a readily available mechanism for the release of children and their parents.

### **RECOMMENDATION 3**

An independent guardian should be appointed for unaccompanied children and they should receive appropriate support.

### **RECOMMENDATION 4**

Minimum standards of treatment for children in immigration detention should be codified in legislation.

### **RECOMMENDATION 5**

There should be a review of the impact on children of legislation that creates 'excised offshore places' and the 'Pacific Solution'.