

14 October 2016

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam,

Submission to the Inquiry into “*Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre.*”

Thank you for the opportunity to make a submission to this Inquiry on a serious matter of Government policy affecting the human rights of vulnerable people seeking asylum.

Catholic Social Services Australia (CSSA) has been very concerned about the growing evidence and external reviews (such as the report recently released by the United Nations Committee on the Rights of the Child¹) which show a lack of care and respect for the basic human rights and dignity of people seeking asylum in Australia, who are being held in isolated offshore detention centres and away from public scrutiny. We are most particularly concerned on the impact on children of indefinite detention in offshore facilities.

Catholic Social Services Australia is the Catholic Church’s peak national body for social services. Our 52 member agencies are the frontline service providers caring for and directly assisting some 450,000 people across 650 sites nationally.

Our vision is for a compassionate and just Australia, a place where all people are treated with respect and have the opportunity to fully participate and contribute to society and live a dignified, healthy and meaningful life. We recognise we live in a global community where according to the UNHCR² an unprecedented 65.3 million people around the world have been forced from their homes. Pope Francis has called on Catholics to welcome such vulnerable people as our brothers and sisters.

Some of our member organizations support newly arrived individuals and families, refugees and humanitarian entrants, and new and emerging migrant communities and groups. These members provide a range of critical support services to assist newly arrived people, including settlement case management, employment services, community education and development, youth work and advocacy services. Others Catholic agencies have, in the past, worked in onshore Immigration Detention Centres providing pastoral support.

¹ See <http://us7.campaign-archive2.com/?u=0bfcfbfe7b23d4d0399421d8b1&id=1dbfe78e7e>

² <http://www.unhcr.org/figures-at-a-glance.html>

These member organizations have, and continue to deal with, the many complexities facing newly arrived people, particularly those arriving from areas of conflict or seeking asylum. People fleeing conflict are particularly vulnerable and require compassionate support that will enable people to build trust and feel secure in their new communities – factors which are critical to successful settlement over the longer term.

The vulnerability of people seeking asylum is clear and this is at the heart of The Australian Catholic Bishops Conference statement released in October 2016 calling for offshore detainees to be brought to Australia, with an end to the harsh treatment of people seeking our protection.

“In Australia, we do not have to directly meet the responsibilities that many other nations bear. But we do bear the shame of the expulsion and harsh treatment of the people who sought our protection only to be detained on Nauru and Manus Island. International agencies have been appalled by the conditions under which they live and the effects on their health, spirits and self-respect. Pope Francis, to whom people detained on Manus Island have written, has also expressed his deep concern. The human costs on the detainees are mounting by the day.”³

CSSA also makes the following points relevant to this Inquiry’s deliberations:

1. **CSSA does not support the detention of children** and has consistently called for all children and their families to be removed from detention centres and housed in the Australian community. CSSA remains gravely concerned about the allegations of mistreatment in Nauru and Manus Island and, in particular, the treatment of vulnerable children and their families. CSSA’s previous submission to the *Human Rights Commission Inquiry into Children in Detention* outlines our concerns and rationale (Attachment 1).
2. **CSSA supports the creation of an independent position to take on the role as guardian of unaccompanied children and possibly extend more broadly to the oversight of all children seeking asylum.**

CSSA believes the Minister for Immigration and Border Protection should not be the legal guardian of unaccompanied children. This was outlined further in our submission to the Senate Legal and Constitutional Affairs Committee *Inquiry on the Guardian for Unaccompanied Children Bill 2014* (Attachment 2). T

There are models that can be drawn upon such as those operating at the national level and in the states/territories where Children’s Commissioners and/or Guardians have been established. These existing models should be further investigated to assess whether they provide the adequate level of care and protection for children.

³ <https://www.catholic.org.au/acbc-media/media-centre/media-releases-new>

3. As a member of the Catholic Alliance for People Seeking Asylum, CSSA wishes to draw attention to the Alliance's guiding principles⁴ including:
 - a. *"Arbitrary or indefinite detention at any stage of the refugee determination process is unacceptable", and*
 - b. *"People who seek asylum should live in the Australian community. Respect for their humanity demands that they have the right to work, access to basic services, and to some financial support if they cannot find work."*

Furthermore, we believe the UN Convention on the Rights of the Child, the UN Declaration of Human Rights and the UN Convention on the Status of Refugees, all of which are statements to which Australia is a signatory, should guide as a minimum, the treatment of refugees and asylum seekers.

CSSA would be pleased to elaborate further on this submission.

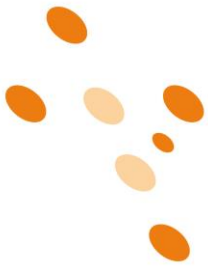
Please contact Liz de Chastel, Director Social Policy on Tel: 6188 6943 or Liz.deChastel@cssa.org.au should you require further information.

Sincerely,



Marcelle Mogg
Chief Executive Officer

⁴ See <http://capsa.org.au/about-us/our-principles/>



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National Inquiry into Children in Immigration Detention 2014
Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001

Dear Sir/Madam,

National Inquiry into Children in Immigration Detention 2014

Thank you for the opportunity to provide input to the *National Inquiry into Children in Immigration Detention 2014* (the Inquiry). Our submission outlines our grave concerns for the welfare and rights of all children¹ kept in immigration detention centres.

Catholic Social Services Australia (CSSA) is the Catholic Church's peak national body for social services. For over 50 years, CSSA has assisted member agencies to promote a fairer, more inclusive society that reflects and supports the dignity, equality and participation of all people. Our 60 member agencies employ around 12,000 people, with 4,000 voluntary contributors to this work.

Some of our member agencies have worked in onshore Immigration Detention Centres providing pastoral support. Our members also support newly arrived individuals and families, refugees and humanitarian entrants and new and emerging migrant communities and groups with the following services:

- settlement case management;
- employment services;
- community education and development;
- youth work; and
- advocacy services.

A table outlining the scope of refugee and asylum seeker programmes and services delivered by our member agencies is attached to this submission.

Of particular relevance, several CSSA members also work in partnership with local community organisations to provide asylum seekers who are unaccompanied minors in Australia (for example those who are part of Community Detention Programmes), with accommodation, case management, transition planning, living skills programmes, education and cultural support services while they await the outcomes of their applications for refugee visa status.

¹ As of July 2013 there were 1,992 children in closed immigration detention centers as reported by the Human Rights Commission <http://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/national-inquiry-children-immigration-detention-2014>

In addition, CSSA and its members have a long history of working in child protection, family relationships and social services generally. For example, our members work across Australia with vulnerable children, families experiencing relationship challenges, people with mental health issues, people with disabilities, people who are homeless and Aboriginal and Torres Strait Islander people and communities.

Recently, CSSA together with six other faith-based social service agencies made a public commitment to treat those people who seek refuge and asylum with respect, dignity and compassion. Central to the commitment are three guiding principles for the treatment of refugees and asylum seekers which are relevant to this Inquiry:

1. *The UN Declaration of Human Rights and the UN Convention on the Status of Refugees to which Australia is a signatory, should guide as a minimum, the treatment of refugees and asylum seekers.*
2. *Australia should be generous in providing migration to people in humanitarian need. We should welcome asylum seekers and provide protection to refugees arriving in Australia. Together with our regional neighbours, we should ensure just processing and adequate protection for all asylum seekers in transit in the region.*
3. *Refugees and asylum seekers should be treated with a respect for their human dignity and integrated into our communities, including the right to work, and an adequate level of welfare assistance. Those people found to be refugees should be reunited with their families.*

These principles form the basis of our concerns around the current treatment of children in Immigration Centres.

Our submission as outlined in the attachment addresses the following Terms of Reference of the Inquiry:

- the impact of the length of detention on children;
- the separation of families across detention facilities in Australia;
- the guardianship of unaccompanied children in detention in Australia; and
- progress that has been made during the 10 years since the Commission's 2004 report: *A last resort? National Inquiry into Children in Immigration Detention.*

However, we would firstly like to make some general statements outlining our concerns with the current practices of detaining children in immigration detention.

Central to the mission and ethos of CSSA and its member agencies is a concern to ensure that all members of society are treated in accord with the general principles of human dignity. In this regard, primacy is given to ensuring that the most vulnerable are afforded the highest degree of protection.

As a Catholic organisation we believe that anyone whose life is threatened has the right to protection. Human life is sacred and human dignity is inalienable. The human dignity and human rights of asylum seekers must be respected, regardless of their citizenship, visa status or mode of arrival.²

It is our view that the present practice of placing children in immigration detention centres fails to demonstrate due regard for their human dignity. It is also disregards the due care that must be taken of those who are more vulnerable or dependent on others for care and protection.

² Australian Catholic Migrant and Refugee Office (2014) *What the Catholic Church Teaches on Asylum and Migration* pamphlet

Due to their dependent status, children are often vulnerable and, in times of crisis, are in need of special protection. Their vulnerability is increased by inherent imbalances of power between children and adults who are both the providers of services and the holders of authority.³ This vulnerability is even more evident when children are subject to the traumas associated with seeking asylum in another country or are separated from their families.

There are also a range of human rights instruments that can be referred to as a means of challenging the present use of immigration detention of children, such as the UN Convention on the Rights of the Child, the UN Declaration of Human Rights and the UN International Convention on the Status of Refugees, all of which Australia is a signatory. In addition to these human rights international conventions, our view is that that the obligation for any society to care for children is primarily a moral one.

The *Migration Act 1958 Section 4AA (1)* states that the Parliament affirms as a principle that a minor shall only be detained as a measure of last resort, though *Section 4AA(2)* provides an exception for minors residing in nominated locations such as the recent off shore centres. However it is clear from the Act that the principle of detention of minors as a last resort has been a position of Government notwithstanding the recent changes to recognise off shore centres.

The policy of mandatory detention especially in off shore centres has led to community perception that there is something intrinsically criminal about seeking asylum. People who seek to arrive in Australia by boat without a visa are presently being confined in conditions that are punitive. The location and the physical design of these detention centres reinforces the misconception that seeking asylum is a punishable offence. To pursue such a policy of deterrence is highly questionable. To keep children incarcerated in such circumstances is totally unacceptable.

The Catholic Bishops of Australia have recently joined with the Catholic Bishops of Papua New Guinea to voice strong concerns about the current Government policy and in particular the use of Manus Island for detention.⁴ The Bishops' view is that - *“Could not the same goals be achieved by policies, which were less harsh, even humane policies which respected not only our international obligations but also basic human rights? Can we not achieve a balance between the needs of people in desperate trouble and the electoral pressures faced by politicians? We believe we can; indeed we must.”*

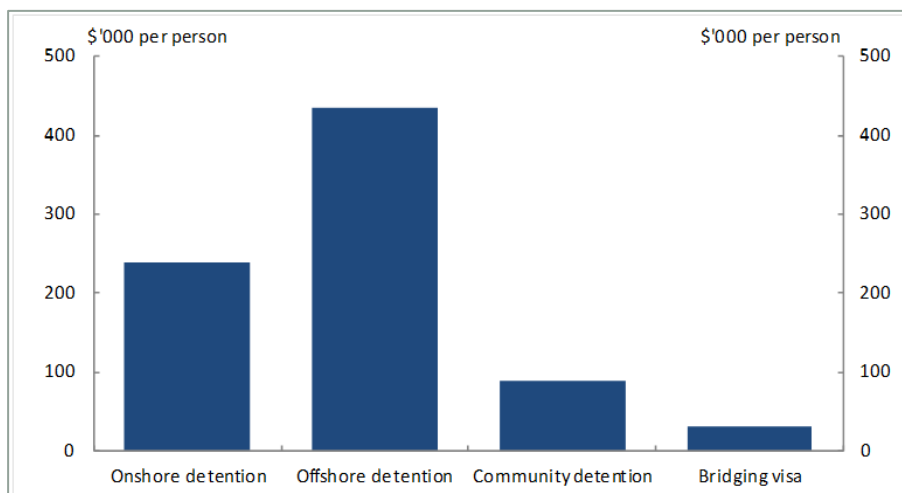
It is acknowledged that there are many complex issues associated with any form of child protection. However we believe that it is beyond question that the placement of children in immigration detention centres, especially for lengthy periods of time, is never of benefit to the children concerned. Neither the children involved nor the wider community are served by the use of mandatory detention.

Whilst the economic implications of immigration detention are not a focus of this Human Rights Commission Inquiry, CSSA notes that in a tight fiscal environment the detention and processing of asylum seekers has been the fastest growing government programme over recent years.⁵ Furthermore the costs of community detention are substantially lower than onshore or offshore detention. The graph below shows the relative costs per person for 12 months in detention in 2013.

³ Adapted from Truth Justice and Healing Commission (2013) *Issues Paper 3: Child Safe Institutions* Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse P8

⁴ Statement by the Australian Bishops Conference on Asylum Seekers 8th May 2014 <http://www.catholic.org.au/>

⁵ National Commission of Audit (2013) <http://www.ncoa.gov.au/report/appendix-vol-2/10-14-illegal-maritime-arrival-costs.html>



Source: Department of Finance⁶.

The attachment documents our response to the nominated Terms of Reference and includes experiences from our member agencies.

In summary we strongly recommend:

- 1. Children should never be held in Immigration Detention Centres and, if detention is absolutely required, Community Detention is preferable. We have provided evidence and practitioner experience as to why the current practice of housing children within Immigration Detention Centres is contrary to basic human rights and is not in the best interests of the child;**
- 2. Families should not be separated. The collective and accrued experience of our member agencies is that the emotional, educational, spiritual, and physical well-being of children is contingent on the sense of security that they feel in their family; and**
- 3. The Minister for Immigration should not be the legal guardian of unaccompanied children due to inherent conflicts of interest. Our submission suggests alternatives.**

We also would like to acknowledge that some of our member agencies will also be submitting to this Inquiry.

We would be happy to elaborate further on this submission and follow up with a meeting, including with our members who provide services to refugees and asylum seekers and in particular unaccompanied minors. If you have any further queries please contact Liz de Chastel, Senior Policy Officer on (02) 6285 1366.

Yours sincerely

Jackie Brady
A/Executive Director
30th May 2014

⁶ As reported by the National Commission of Audit (2013) in its assessment of *Illegal Maritime Arrival Costs* <http://www.ncoa.gov.au/report/appendix-vol-2/10-14-illegal-maritime-arrival-costs.html>

CSSA RESPONSES TO TERMS OF REFERENCE

Below is CSSA's response to the nominated Terms of Reference.

1. The impact of the length of detention on children

In March 2002, the Australian Catholic Bishops' Conference issued a statement on Refugees and Asylum Seekers that also underpins the position adopted by CSSA in regard to the care that should be provided to children who are seeking asylum.⁷ The Bishops stated that:

The Church's pastoral care of asylum seekers convinces us that detention, beyond the minimum time necessary for carrying out security and health checks, identity checks, and the lodgement of applications for Protection Visas, is deeply destructive of human dignity. This is particularly true of children. After a minimum time these people should be released into the community and be obliged to contact the immigration authorities on a regular basis.

Laws which subject asylum seekers to arbitrary and prolonged immigration detention, or prevent them from seeking protection, fail to uphold justice and mercy and are immoral. It is not illegal to seek asylum and many asylum seekers including children are survivors of crime, torture and trauma. Indefinite detention adds further stress and suffering, impacting on their mental and physical health.⁸

People who seek asylum and especially children and their families, should generally live in the community. Detention should be used only for necessary processing or when ordered by the Courts. Asylum seekers should be treated with a respect for their human dignity that expresses itself in the right to work and to some financial support if they cannot find work.

Various investigations into the care of children in this country have indicated that many forms of institutional care were not conducive to the normal and healthy development of children.⁹ As far back as the 1940s, the Catholic Welfare Bureau in Sydney was actively committed to reducing the number of children who were being cared for in institutions.

“The asylum seeker debate has been at best misinformed and at worst cruel. The debate has added further strain on already highly vulnerable people. The psychological consequences of uncertainty and dehumanisation by current policy, is both devastating and lifelong. Despite our staffs' best efforts we are limited in our ability to change the root cause of people's suffering.”

CSSA member agency which provides a range of migration services.

⁷ Australian Catholic Bishops' Conference (2002) *Refugees and Asylum Seekers*

⁸ Australian Catholic and Migrant Refugee Office (2014) *What the Catholic Church Teaches on Asylum and Migration* pamphlet

⁹ See *The Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions*. (The Forde Inquiry)

Currently the Royal Commission into Institutional Responses to Child Sexual Abuse¹⁰ is assessing how trusted institutions profoundly failed vulnerable children. In its terms of reference it is made clear that the Australian Government has “undertaken international obligations to take all appropriate legislative, administrative, social and educational measures to protect children from sexual abuse and other forms of abuse, including measures for the prevention, identification, reporting, referral, investigation, treatment and follow up of incidents of child abuse”.¹¹ Given the secrecy, location and conditions within Australia’s immigration detention centres, the protection of vulnerable children seeking asylum is not guaranteed.

Although theories about how best to provide for children in need of care have altered from time to time, it is now widely considered a matter of ‘best practice’ that children should only be placed in institutional settings as a last resort. The damaging psychological effects for children in institutional care can include emotional, behavioural and intellectual impairments.¹² This means that where it is not possible for a child’s parents or family to care for the child, a living situation should be found which approximates as normal a family environment as possible.

Children ‘in care’ should be able to engage in routine educational and social opportunities in the hope that the separation from their family of origin will not be unduly destructive. It is also considered a matter of ‘best practice’ that any child who may need to be placed ‘in care’ should be provided with all the basic educational and social supports to enable them to develop to their full potential. Ideally any child placed in substitute care should be placed in a family environment.¹³

Therefore, the principle of ensuring that the ‘best interests of the child’ are held paramount is presently actualised in Australia’s domestic policy by avoiding any unnecessary separation of children from their parents. Even if it is necessary to place children ‘in care’, the present reality in this country is that no one would countenance the use of detention facilities that approximate prison conditions.

Besides the psychological trauma of being isolated in such a harsh climate, this forced isolation also mitigates against contact with the wider community. It is not only the actual detention of children that may harm their development but it is also their confinement within harsh and potentially soul-destroying environments that needs to be addressed.

“The young people are supported with their education, health needs and developing their independent living skills. They are also encouraged and helped to maintain their cultural and religious practices and connect with their families”

CSSA member agency describing support provided in the Unaccompanied Minors in the Community Detention Programme.

¹⁰ <http://www.childabuseroyalcommission.gov.au/>

¹¹ <http://www.childabuseroyalcommission.gov.au/about-us/terms-of-reference>

¹² Browne, K (2009) *The Risk of Harm to Young Children in Institutional Care* Save the Children UK and Better Care Network

¹³ Australian Catholic Social Welfare Commission, 1997, *The Heart Of Our Nation: Towards a National Commitment to Caring for Children and Young People*. Discussion Paper No. 12 p 17. Canberra.

CSSA member agencies support children within families and unaccompanied minors in the community to assist them integrate into the community and “normalise” their lives after often traumatic experiences. Our members have the following observations about unaccompanied children (under 18 years of age) currently in their care, including children in Community Detention Programmes and those who have spent time in immigration centres:

- There is a lack of trust of authority figures with some believing that CSSA member agency staff had similar roles to the guards in the detention centre;
- All have had traumatic experiences and are fearful for families left behind as well as their own future;
- Many will not speak about their time in detention centres though speak about their home country and journey to Australia. This could be because of fear of speaking out or wanting to forget these experiences; and
- All unaccompanied minors currently in community detention in Australia face an uncertain future with bridging visas (from when they turn 18) not allowing them to work or study for around 3-5 years.

The anecdotal experience of the CSSA member agencies, which have provided services to Unaccompanied Minors in Community Detention for almost three years, is that those who spent the shortest period of time in Immigration Detention prior to placement in Community Detention had much better outcomes in terms of fewer mental health issues, faster adjustment to living in the community and better outcomes. Those who spent protracted periods of time in Immigration Detention frequently presented with typical signs of institutionalization syndrome (vulnerability to stress, extreme dependency, unable to make decision themselves, less independent living skills and poor learning ability), and often presented with more significant trauma, greater hyper arousal and anxiety, more frequent episodes of self-harm and a heightened sense of having been treated unjustly.

Many of the unaccompanied asylum seeking minors reported witnessing serious acts of violence either between fellow detainees or between detention centre staff and detainees as well as witnessing serious acts of self-harm or attempted (or in one case a successful) suicide of other detainees. These sights were etched in their minds and on several occasions persisted as nightmares or daytime intrusive visions that necessitated therapeutic interventions.

A significant number of the unaccompanied minors exhibited a pattern of learnt behaviour predicated on their view that the only way to have an impact on their detention environment and to influence decision makers was to engage in threatened or actual self-harm. This was evident in verbal threats made during their period of time in Community Detention that, if for instance, they were to receive a negative outcome in respect of the processing of the refugee application, they would kill themselves, or they would set themselves on fire in front of the Immigration Department building, or that if their claim for refugee status were not progressed they would cut themselves. Many of the young people referred to the program from held detention had impaired basic negotiation skills and their behaviour would quickly escalate in the face of perceived unfair treatment or any delay in responding to their requests.

Not surprisingly, anecdotal experience seemed to suggest a strong correlation between the length of time it took to process (or even progress) an unaccompanied minor's refugee claim and the escalation of their sense of hopelessness and frustration. This also appeared, in many cases, to result in an increase in self harm episodes, threatened suicide and actual attempts. Clients who saw others receiving refugee visas whilst they seemed to wait for protracted periods of time soon became despondent.

CSSA member agencies have previously raised concerns about the constant threat by the Department of Immigration and Border Protection of revocation of the Community Detention of unaccompanied minors in response to reported incidents (such as failure to abide by curfew, minor mis-behaviour incidents, etc). In many cases, these sorts of behaviours were considered 'normal' or 'routine' for Australian adolescents living in the community in response to which there would be little or no adverse ramifications, but for the unaccompanied asylum seeking minors, engaging in these minor behaviour incidents could have the dire and unjust consequence of resulting in their re-detention. As a result many of these unaccompanied minors lived in constant and debilitating fear of being re-detained.

Several accounts have been received of denial of adequate and timely medical attention by unaccompanied minors whilst they were in held detention; some spoke of there being a daily quota of how many people could see the medical staff in the detention centre and that on frequent occasions they were required to wait until the following day for medical attention. Another concern was inadequate or no access to education: the delivery of schooling in Immigration Detention Centres seemed spasmodic and random.

CSSA is also concerned with anecdotal evidence that unaccompanied children in immigration detention centres are being housed in the same compound as adults.¹⁴ Our members have also told us that Community Detention houses in Australia have vacancies, with no new referrals of unaccompanied children since December 2013, which indicates unaccompanied children are still being held in Immigration Detention Centres.

Given the professional paradigm of limiting 'out of home' care, it is difficult to see how there could be any justification for keeping children locked up in detention centres. If a welfare organisation in Australia were to provide 'out of home care' equivalent to that of the detention centres, then it is highly probably that such an organisation would have to answer claims that it failed to provide a proper 'standard of care'.

The negative consequences of long-term institutional care and, more precisely, institutional care that resembles prison has been well documented in the social sciences. What is now emerging from the implementation of a detention/exclusion policy in Australia is that children who seek asylum or children who are with their parents who seek asylum are being treated in a dehumanising fashion. One of the long term consequences of mandatory detention for children is evidenced by the prevalence and frequency of self-harm incidents.¹⁵ It is possible to postulate that even an emotionally resilient child may not have an easy transition into adulthood as a consequence of their being incarcerated during their formative years.

“Like all detainees, the family is subject to frequent musters and nighttime head counts. On one occasion the family was separated into four different compounds for over a month. In desperation, to reunite his family, the father threatened to cut his throat with a broken piece of glass unless the camp manager relented.

The son Parviz has become deeply depressed and withdrawn. For him and other youth of his age there is no formal education. The critically important developmental years, age 16 and 17, have been spent sitting behind the razor wire gazing off into what must look like an empty horizon, with nothing to do. no stimulation, no education, just total boredom and frustration

Extract from a story (from 2002 but with similarities to current practice in 2014) on the “House of Welcome” web site CSSA NSW member agency
<http://www.houseofwelcome.com.au/storie>

¹⁴ Ibid.

¹⁵ Commonwealth Ombudsman (2013) *Suicide and Self Harm in the Immigration Detention Network* P41

For the above reasons, CSSA strongly recommends that no children be kept in immigration detention centres for any period of time.

2. The separation of families across detention facilities in Australia

The Catholic Church has traditionally seen the rights of children being safeguarded by the protection offered by the state to the family as the foundational unity within society.¹⁶ From the perspective of CSSA, any immigration policy that works against the maintenance of the family unit cannot be seen as being in the ‘best interests’ of the child.

The collective and accrued experience of our member agencies is that the emotional, educational, spiritual, and physical well-being of children is contingent on the sense of security that they feel in their family.

Their inability to influence their environment or progress the processing of their asylum claim, combined with their own emerging mental health issues, seems to have been a factor in a number of cases where parents of families referred to a CSSA member agency have exhibited an impaired, withdrawn or ineffectual style of parenting in respect of their children. On occasion this also resulted in the children being seen to be the primary source of care and support to their own parent(s).

“Our homelessness programmes have reported an increase in the number of refugees with no financial support requiring assistance to obtain accommodation”

CSSA ACT member agency

Catholic social service organisations in Australia have always placed a high priority on supporting families. Consequently many of CSSA members are involved in Commonwealth Government or State/Territory Government sponsored programmes such as the Family Support Programme and state-based child protection and out-of-home care programmes. These programmes have been designed to minimise the breakdown of family life and to maximise the options for those who experience irreconcilable differences in their relationships. At every point in these programmes, where there are children involved, the ‘best interests of the child’ are held paramount. It is totally appropriate, indeed critical, that the family law system in this country should ensure that all those who provide any service within the system should uphold this ‘best interest’ principle.

It is evident to our member agencies who work in the area of child protection and family law, that there is something fundamentally flawed in a policy that results in some children not being offered the protection of this ‘best interest’ principle. The perception is that children in immigration detention are not regarded as needing the same degree of family support. On the contrary, any child in institutional detention seeking asylum from war or natural disasters for example, would surely have at least and equal or if not a greater claim on the Government’s protection.

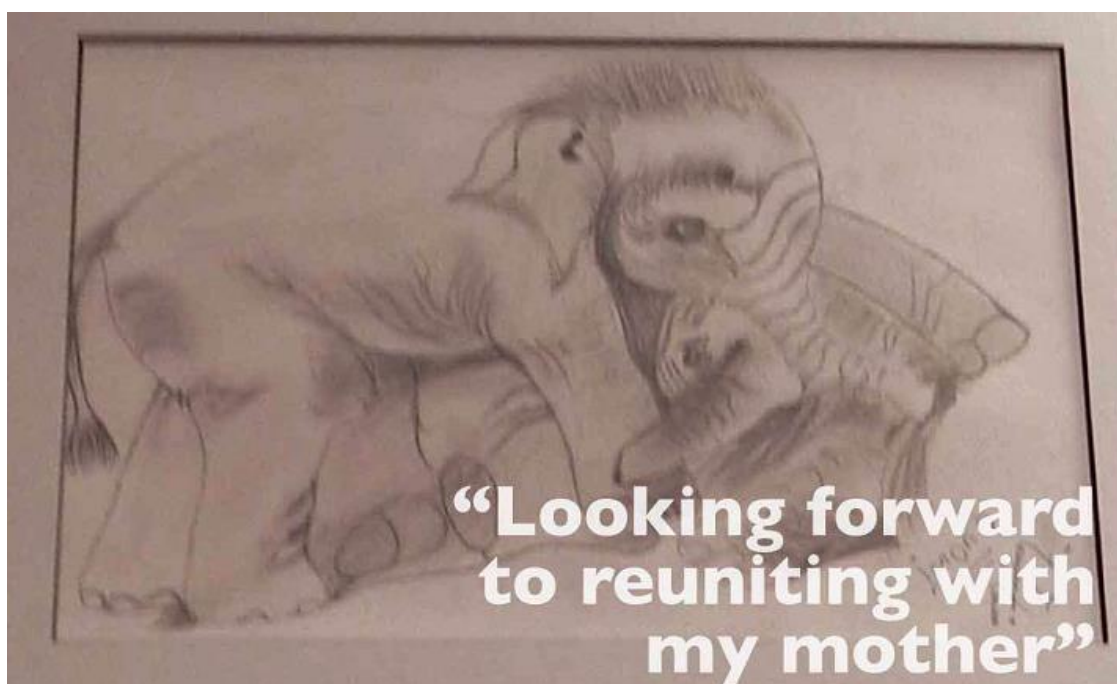
Those responsible for immigration policy need to address this disparity if Australia is to be considered a nation of integrity. This can only be achieved by ensuring that all children who are residing in Australia or under the protection of the Australian Government are offered the same access to family relationships regardless of the child’s immigration status.

¹⁶ Gudorf, C., 1994, cited in *New Dictionary of Catholic Social Thought*. Dwyer, JA., (Ed.) see page 144.

3. The guardianship of unaccompanied children in detention in Australia

The current guardian of unaccompanied children is the Minister for Immigration. CSSA has grave concerns about this position given the Minister's existing wide ranging powers under the *Migration Act 1958* that have the potential to conflict with protecting the best interests of unaccompanied children.

CSSA recommends that an independent position be established to take on the role as guardian of unaccompanied children. There are models that can be drawn upon such as those operating at the National level and in the States/Territories where Children's Commissioners and/or Guardians have been established. These existing models should be further investigated to assess whether they provide the adequate level of care and protection for children. Whilst a children's commissioner works to improve and ensure better services for all children, a children's guardian works solely to help improve the services for children in the care of a department (not all states and territories have a commissioner *and* a guardian). In most states and territories the commissioner also acts as the guardian. A commission's independence from government is important for providing children with a representative body solely concerned with protecting and promoting their rights, without other political influences.¹⁷



Source: Artwork by Unaccompanied Minor in Community Detention, a client of Marist Youth Care NSW (MYC) and displayed at the MYC Art Show 2012

¹⁷ Australian Institute of Family Studies <http://www.aifs.gov.au/cfca/pubs/factsheets/a144880/index.html>

4. Progress that has been made during the 10 years since the Commission’s 2004 report: A last resort? National Inquiry into Children in Immigration Detention

Unfortunately CSSA cannot report on positive progress since the last Inquiry and we have reiterated many of the same concerns that we presented in our previous submission.¹⁸ We did see some initial improvements around 2011 when all children were no longer in institutional detention but housed within community detention. Since that time there has been a winding back of this provision under the “no advantage” concept where children were regarded as no exception to the legislation.

We recognise and acknowledge that issues relating to refugee and asylum entry are complex, often contentious and can be clouded by misinformation; however it is our hope that we see a more balanced approach towards our treatment of asylum seekers and refugees in Australia in the near future. However, what we have seen over the last 10 years has been an ever increasingly hard line and harsher treatment of people who are vulnerable. For example, the establishment of off shore detention centres and compulsory resettlement to third countries that do not have a human rights governance framework all point to a worsening of Australia’s treatment of vulnerable people.

We recognise that global and regional conflicts, as well as the impacts of climate change on already vulnerable nations, will continue to generate large numbers of people seeking refuge over the coming decade. We also recognise that effective regional diplomacy will be central to any improved outcomes.

CSSA calls for all children (unaccompanied or with their families) to be removed immediately from immigration detention centres and placed in community detention in the Australia community and be given access to financial resources and support.

¹⁸ Catholic Welfare Australia (2003) *Submission to the National Inquiry into Children in Immigration Detention* <http://www.humanrights.gov.au/publications/commission-website-national-inquiry-children-immigration-detention-57>

Scope of CSSA Members Agencies Providing Refugee and Asylum Seeker Services

State/ Territory	Name of CSSA Member Agency	Refugee and Asylum Seeker Services Programmes and Services	Other comments
ACT/NSW	CatholicCare Canberra Goulburn http://www.catholiccare.cg.org.au/	CatholicCare Migration Service	Reported increase in the number of refugees accessing homelessness programme (2012-13) (from 2012-13 annual report)
NSW	CatholicCare Sydney http://www.catholiccare.org/ http://www.catholiccare.org/community/refugee-services/refugee-programme	Refugee Programme Assisting refugees who have recently entered Australia to overcome barriers to community living. In 2012-13, change of focus from general assistance to pre-employment training and skills building (eg. interview skills, resume writing)	Support up to 30 refugees at a time Supported 85 asylum seekers in financial year 2012-2013 Have partnerships with other providers of services for asylum seekers, eg. Red Cross (from 2012-13 annual report)
NSW	Marist Youth Care http://www.maristyc.com.au/programmes-a-services/asylum-seekers-services	Unaccompanied Minors Programme Offers accommodation and support for unaccompanied minors while their asylum claim is processed. Young people in this programme are assisted with education, skills for independent living and community participation, they are also encouraged to maintain relevant cultural and religious practices. Community Detention Programme Deliver services for 18-25yo males and families in community detention. Includes individualised care plans and support.	Youth in community detention participated in MYC art show (from p.30 2012-13 Annual Report)
NSW	St Anthony's Family Care http://www.saafc.org.au/settlement-grants-programme.htm	Settlement Grants Programme Provides settlement support to humanitarian entrants including case work, referrals, group information sessions, support groups and workshops.	In 2012-13, 61 people with refugee status/protection visa accessed programme (From 2013 Annual Report)

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NSW	St. Francis Social Services http://www.stfrancis.org.au/index.html http://www.houseofwelcome.com.au/	House of Welcome A key programme of St. Francis Social Services, focused solely on refugees and asylum seekers. The service offers “transitional housing, financial and emergency assistance, no-interest loans, advocacy and casework support, community activities, material aid and skills development courses to community-based asylum seekers at risk of homelessness and destitution.” Further “We campaign with our asylum seeker organisations across Australia for the right to work for all asylum seekers, for an end to mandatory detention and for a nation of welcome and justice for all.” (from website)	
QLD	Centacare Cairns http://www.centacarecairns.org/ http://www.centacarecairns.org/services/migrant-services/migrant-services.html	Humanitarian Settlement Services Intensive case management for refugees during first year of settlement Migrant Services Individual and Family Settlement Services, Community Advocacy, Youth Support, Employment Services	Use of volunteers in supporting refugees –eg. help with homework or accessing public transport

State/ Territory	Name of CSSA Member Agency	Refugee and Asylum Seeker Services Programmes and Services	Other comments
QLD	<p>Centacare Toowoomba http://www.toowoomba.centacare.org.au/home/ http://www.toowoomba.centacare.org.au/our-services/toowoomba-refugee-migrant-support/</p>	<p>Volunteer and Community Programmes Offers support to refugees and migrants through:</p> <ul style="list-style-type: none"> • English classes • Women’s sewing group • Computer suite and free internet access • Employment education <p>Settlement Grants Programme Supports people between six months and five years of their settlement process. Activities include:</p> <ul style="list-style-type: none"> • Casework • Referral • Group information sessions • Women’s support • Driver education • Homework assistance • Youth sports • Youth - Get Ready for Work programme 	<p>Volunteer and Community Programmes funded through donations, fundraising and volunteer support, Settlement Grants Programme has Commonwealth Government funding</p>
SA	<p>Centacare Catholic Family Services http://www.centacare.org.au/</p>	<p>Refugee Care - Alban Place Provides support and accommodation for unaccompanied male refugee minors while waiting for application to stay in Australia to be processed. Assists with independent living skills and engagement with community.</p> <p>Wandana Community Centre Offers services to refugees and others experiencing disadvantage. Services include social, recreational and adult education activities</p>	<p>(From 2013 Annual report)</p>

State/ Territory	Name of CSSA Member Agency	Refugee and Asylum Seeker Services Programmes and Services	Other comments
TAS	Centacare Tasmania http://centacaretas.org.au/ http://centacaretas.org.au/family/hs/	<p>Humanitarian Settlement Services Provides intensive support for humanitarian entrants for up to 6-12 months. Includes case management, accommodation assistance, orientation (training in accessing services), volunteer support</p> <p>Settlement Grants Project Supporting emerging communities to participate fully in Australian society through assistance finding suitable housing, and STITCH –weekly life skills group for Humanitarian entrant women focusing on hand crafts and learning English</p> <p>Complex Case Support Services Supporting humanitarian entrants with exceptional needs through specialist case management</p>	<p>Strong volunteer basis</p> <p>-Helped settle 250 people over a year (2012-2013), majority “offshore” arrivals (refugee status determined overseas by UNHCR as opposed to those making claim in Australia)</p> <p>-STITCH programme 74 sessions attended by 825 women over the year</p> <p>-staff: 14 permanent, 26 casual, >189 volunteers (From 2012/13 annual report)</p>

State/ Territory	Name of CSSA Member Agency	Refugee and Asylum Seeker Services Programmes and Services	Other comments
VIC	<p>CatholicCare Melbourne http://www.ccam.org.au/</p> <p>http://www.ccam.org.au/ServicesCourses/RefugeeAsylumSeekerServices.aspx</p>	<p>Asylum Seeker Support -supports vulnerable individuals and families released from detention centres into community detention, and those on bridging visas -community activities and individual support conducted by volunteers</p> <p>Refugee Resettlement Programme -equipping recent refugee and humanitarian entrant arrivals for life in Australia through</p> <ul style="list-style-type: none"> • case management • employment and training support • English and financial literacy • family and community participation in local events and social occasions <p>Also run a community garden and no interest loans scheme for refugees.</p>	<p>-Asylum Seeker Support Programme assisted 62 asylum seekers through community detention programme and 5 families in bridging visa support programme in 2012-2013 -Refugee Resettlement Programme assisted 353 individuals and families, facilitated 1359 referrals to link clients with local mainstream services. 843 client sessions were conducted, with 294 people receiving assistance (2012-2013) (From 2012/13 annual report)</p>
VIC	<p>Jesuit Social Services http://www.jss.org.au/</p> <p>http://www.jss.org.au/programmes/settlement-and-community-building</p>	<p>Community Detention Programmes Accommodation and case management support for asylum seekers placed in community detention</p> <p>Also offer Settlement Programmes for new arrivals including community building, and strong advocacy work</p>	<p>-supported 71 individuals, with 37 new referrals in 2012-2013 (From 2013 annual report) -offered in partnership with a network of other organisations including MacKillop Family Services & Catholic Care</p>
VIC/NSW/ WA	<p>Mackillop Family Services http://www.mackillop.org.au/</p> <p>http://www.mackillop.org.au/refugee</p>	<p>Refugee Services Partners with other community organisations to assist asylum seekers through case management, transition planning, living skills programmes, education and cultural support services. Provides accommodation for up to 100 unaccompanied minors who are seeking asylum.</p>	<p>In 2012-13 assisted >200 asylum seekers (unaccompanied minors, families & adults)</p>

State/ Territory	Name of CSSA Member Agency	Refugee and Asylum Seeker Services Programmes and Services	Other comments
WA	MercyCare	<p>Settlement Grants Programme Service for refugees and humanitarian entrants which helps clients resolve settlement issues and develop an understanding of Australian society and culture. Services include case work, information and referrals, advocacy, workshops (eg. on employment, health, relationships) and a rent-ready programme</p>	<p>Programme is a joint initiative with Polytechnic West and Central Institute of Technology. (From 2013 Annual report)</p>
WA	<p>Centrecare http://www.centrecare.com.au/ http://www.centrecare.com.au/counselling-support/metropolitan-services-metro/migration-services-metro/settlement-grants-prog-metro/</p>	<p>Residential Determination Support Programme Supports families in community detention, includes classes taught by clients for other clients (eg. in pastry making), and excursions</p> <p>Settlement Grants Programme Settlement support for refugees up to five years after settlement in Australia. Provides information, support and advocacy to access relevant services. Includes case workers, telephone interpreters for appointments, youth camps & activities and youth workshops</p> <p>Migration Advice Service Provides advice to members of the community regarding migration issues, assists with lodging asylum claims</p>	<p>-Residential Determination Support Programme assisted 22 families -Settlements Grant Programme 186 clients -two youth camps over the year with total 36 attendees</p> <p>(From brochure and 2012/13 Annual Report)</p>



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Dear Sir/Madam,

Thank you for the opportunity to comment on the Guardian for Unaccompanied Children Bill 2014. Catholic Social Services Australia (CSSA) supports the aim of the Bill which is to “*establish an independent statutory office of Guardian for Unaccompanied Non-citizen Children (the Guardian) to advocate for the best interests of non-citizen children who arrive in Australia or Australian external territories to seek humanitarian protection, who are unaccompanied by their parents or another responsible adult*”.ⁱ

We also emphasise the role of the Guardian as set out in the objects of the Bill: “*to protect the rights of unaccompanied children, promote their needs, involve them in decision making and monitor their condition particularly when they are being accommodated in held detention*.”ⁱⁱⁱ

CSSA’s position is already on the public record, that the Minister for Immigration and Border Protection should not be the legal guardian of unaccompanied children. Our primary concern is that the Minister’s wide ranging powers under *The Migration Act 1958* have the potential to conflict with protecting the best interests of unaccompanied children.

CSSA is the Catholic Church’s peak national body for social services. For over 50 years, CSSA has assisted member organisations to promote a fairer, more inclusive society that reflects and supports the dignity, equality and participation of all people. Our 59 member agencies employ around 12,000 people, with 4,000 voluntary contributors to this work.

Some of our member organisations support newly arrived individuals and families, refugees and humanitarian entrants, and new and emerging migrant communities and groups with the following services: settlement case management, employment services, community education and development, youth work and advocacy services. Others have worked in onshore Immigration Detention Centres providing pastoral support.

Several CSSA members also work in partnership with local community organisations to provide asylum seekers who are unaccompanied minors in Australia (for example those who are part of Community Detention Programmes) with accommodation, case management, transition planning, living skills programmes, education and cultural support services while they await the outcomes of their applications for refugee visa status.

Importantly CSSA and its members have a long history of working in child protection, family support and social services generally. Our members provide intensive support to some of society's most vulnerable people – children at risk, families experiencing violence, people who are marginalised because of disability or mental illness, people who are homeless and people who experience entrenched poverty and disadvantage, within the complexities of geography and ethnicity.

As a result of this experience, CSSA is particularly alert to upholding a duty of care, especially towards vulnerable persons such as children. CSSA recognises that duty of care is founded upon recognising the inherent dignity and rights of each individual person. Processes for ensuring that a duty of care is met must be independent, accountable and transparent. This requirement was fully recognised in the establishment of a National Children's Commissioner, and must apply equally in relation to the guardianship of children in the humanitarian protection system. The lack of a truly independent guardian for vulnerable children seeking asylum in Australia and those detained offshore is contrary to current best practice.

Due to their dependence on the care of adults for access to the requirements of life (food, shelter, education, health care), children are inherently vulnerable and, in times of crisis, are in need of special protection. Their vulnerability is increased by attendant imbalances of power between children and adults, as adults are both the providers of services and holders of authority.ⁱⁱⁱ This vulnerability is even more evident when children are subject to the traumas associated with seeking asylum in another country or are separated from their families.

In our recent submission^{iv} to the Human Rights Commission's National Inquiry into Children in Immigration Detention 2014, CSSA made the following three recommendations with the third recommendation stating that the Minister for Immigration and Border Protection should not be the legal guardian of unaccompanied children in detention:

1. Children should never be held in Immigration Detention Centres and, if detention is absolutely required, Community Detention is preferable. We have provided evidence and practitioner experience as to why the current practice of housing children within Immigration Detention Centres is contrary to basic human rights and is not in the best interests of the child;
2. Families should not be separated. The collective and accrued experience of our member agencies is that the emotional, educational, spiritual, and physical well-being of children is contingent on the sense of security that they feel in their family; and

3. The Minister for Immigration (and Border Protection) should not be the legal guardian of unaccompanied children due to inherent conflicts of interest. Our submission suggests alternatives.^v

There are also a number of human rights instruments, to which Australia is a signatory, that challenge the present situation, such as the UN Convention on the Rights of the Child, the UN Declaration of Human Rights and the UN International Convention on the Status of Refugees. We therefore fully support the final clause of the Object of the proposed Bill, *“that the office of the Guardian is to assist Australia in meeting its international obligations under the Convention on the Rights of the Child, particularly articles 4, 6, 12 and 37.”*^{vi}

Legal obligations are only a part of the picture. CSSA’s view is that the obligation for any society to care for children is primarily a moral one. Our member organisations take this responsibility seriously and have worked hard over decades to ensure injustices to children and other vulnerable people are redressed. While no society or institution is perfect, we must remain committed to protecting all people who are vulnerable, whether citizens or not.

For the above reasons, CSSA strongly supports an independent position be established to take on the role as guardian of unaccompanied children seeking humanitarian protection.

We would be happy to further elaborate on our submission and please contact me or Liz de Chastel, Senior Policy Officer on the contact details provided in this submission.

Yours sincerely,



Marcelle Mogg
Chief Executive Officer
17th September 2014

ⁱ Guardian for Unaccompanied Children Bill 2014 – *Explanatory Memorandum P2 General Outline*
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs968%22>

ⁱⁱ Ibid

ⁱⁱⁱ Adapted from Truth Justice and Healing Commission (2013) *Issues Paper 3: Child Safe Institutions* Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse P8

^{iv} Human Rights Commission – *National Inquiry into Children in Immigration Detention 2014* CSSA Submission - No 126 can be viewed here - <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/national-inquiry-children-immigration-detention-2014-0>

^v There are models that can be drawn upon such as those operating at the National level and in the States/Territories where Children's Commissioners and/or Guardians have been established. These existing models should be further investigated to assess whether they provide the adequate level of care and protection for children. Whilst a children's commissioner works to improve and ensure better services for all children, a children's guardian works solely to help improve the services for children in the care of a department (not all states and territories have a commissioner *and* a guardian).

^{vi} Guardian for Unaccompanied Children Bill 2014 - *Explanatory Memorandum Clause 3*
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs968%22>