



The Royal Australasian
College of Physicians

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Submission to the Australian Human Rights Commission Inquiry into Children in Immigration Detention

Executive Summary

The Royal Australasian College of Physicians (RACP) commends the Australian Human Rights Commission for initiating their Inquiry into Children in Immigration Detention, and values the opportunity to provide a submission.

The RACP has long expressed concerns that the detention of children is contrary to their best interests due to the significant and detrimental impact of detention on child health and wellbeing. As of 31 March 2014, there were a total of 1074 children in closed detention; 590 on the Australian mainland, 305 on Christmas Island and 179 on Nauru.¹ The RACP does not support the detention of children.

Onshore and offshore immigration detention facilities are not appropriate for children and their families. Normal family function is undermined by dehumanising management practices, difficult living conditions and restricted freedom of movement. Child health and safety is jeopardised by inadequate accommodation facilities, poor hygiene and sanitation and a lack of safe recreational spaces for children.

Currently, the average duration of time people are held in immigration detention facilities is 275 days.² There is a significant relationship between length and impact of detention. Physical health and psychological wellbeing deteriorate with increased duration in immigration detention.

The RACP is concerned at the lack of health screening for children, including screening for refugee specific health issues and proactive child and adolescent health screening, commensurate with an expected standard of care in Australia. It is essential that a full medical assessment including developmental review is completed for all asylum seeker children and adolescents. The RACP does not consider it is possible to complete an adequate assessment within 48 hours, and is extremely concerned at the health risks associated with transferring children to offshore detention centres. The RACP is also concerned about the maternal and child and adolescent health services available in immigration detention; with inconsistent provision of services, limited ability to monitor pregnancy, few support services available during the pre and post natal periods, and limited access to ongoing child and adolescent health care.

The RACP considers held detention to be inherently unsafe; especially for children. Management practices implemented under the guise of safety, such as heavy security presence, are frightening for children and increase the sense of being imprisoned. Children are exposed to self-harm and adults with significant mental health problems and there are significant child protection concerns. The community standards applied to hospitals or prisons, where minors are located separately to adults, are not applied in the detention context.

The impact of detention on children is further exacerbated by inadequate access to education and recreation activities, and lack of child developmental surveillance. Most children detained on

Christmas Island receive very little education, and children in some mainland detention facilities have limited or no access to school, which will have a profound impact on development.

The separation of immediate and extended family members across and within detention facilities is unfortunately common, traumatic for families, and is extremely concerning. The presence of family is a fundamental and primary support network, helping to mitigate the full impact of detention. Family separation increases parent and child distress, compromises safety, and will have profound effects on child and adolescent mental health and development.

For unaccompanied children and adolescents who have travelled to Australia without the support of parents or guardians, the impacts and risk of detention are amplified. These children are currently placed under the guardianship of the Minister for Immigration and Border Protection, who is also responsible for their detention. The RACP believes this position results in a significant conflict of interest for the Minister, as detention is damaging for children, and is never consistent with the best interests of the child.

Where there is uncertainty about age, and a young person claims to be under 18 years, a full assessment of age must be undertaken, and if there is ongoing uncertainty, the benefit of the doubt should be applied to ensure that no child is detained in an adult only facility.

The experience of detention for children, parents, and families has a significant and long-term negative impact on the physical and mental health, and development of children and adolescents. Although the provision of services within detention may mitigate some of the risk of held detention, it does not address the primary harm, which is the fact of being detained. The RACP does not support the detention of children and families for any length of time, and expresses grave concern at the Government policy of mandatory detention.

Australia's human rights obligations

Australia is a signatory to a number of international legal instruments that protect the fundamental human rights of refugees and people seeking asylum.

The United Nations Human Rights Commission's *Convention and Protocol relating to the Status of Refugees* and the *Universal Declaration of Human Rights*, both impart obligations on Australia to respect the right of all people to seek asylum and to respect and uphold their human rights.

Australia is also signatory to the United Nations *Convention on the Rights of the Child*, which states that the best interests of the child should be a primary consideration, and describes the rights of children to be protected from discrimination based on their parents' opinion, their rights to health, education, play, and their rights to protection from physical and mental violence, injury, abuse, neglect and maltreatment.³

The RACP asserts that the detention of all people, and especially the detention of children, is a breach of Australia's international obligations.^{4,5}

The appropriateness of facilities in which children are detained

Immigration detention facilities are not appropriate environments for children, especially not for prolonged periods of time. The 2004 Human Rights Commission Inquiry found that the physical characteristics of the detention environment adversely affect children's health, development and psychological wellbeing.⁶ Other independent reports into immigration detention in Australia have consistently found that the environment of detention is prison-like in its appearance and its routine.^{7,8}

Ten years on, the detention centre environment remains harsh. There is no freedom of movement outside facilities, and the presence of metal and wire fences, use of identification numbers and the presence of multiple security staff in the centre contribute to a prison-like environment.

Living conditions in detention facilities foster dependency, dehumanise families, and reduce their ability to live a normal life. There is a lack of living space for family members to interact in privacy and engage in daily activities such as cooking or eating together. Family members sleep in close proximity to one another and to other families, resulting in minimal privacy and a limited ability to prevent children from vicarious trauma exposure. There are limited play spaces or ability to separate children from adults for any period of time. These conditions undermine parents' capacity to care for their children and protect them from the stressful detention environment.^{9,10}

The accommodation facilities on Christmas Island and Nauru are especially concerning. The RACP does not consider temporary accommodation options (such as dongas or tents) appropriate for children and families, especially given the tropical climate. There is inadequate protection from the elements (including heat, rain and flooding) in temporary housing and increased risk of communicable and vector borne diseases. The physical environment on Christmas Island raises concern for child safety and risk of injury, with puddles of water, rocky areas and easily accessible spaces under buildings and a lack of suitable alternative play options.

Crowded living conditions and poor sanitation are a further risk for communicable disease transmission. Direct observation of the facilities on Christmas Island indicates that there are significant hygiene issues, with limited, dirty and poorly maintained bathroom areas without adequate soap, and that children have health issues related to the crowded conditions such as skin infections, respiratory illnesses and gastrointestinal infections.

Detention facilities and institutionalised care also affect children's physical health in other ways. In the Christmas Island facility, many children have been observed to be overweight, which may be a result of institutional meals and lack of opportunity to exercise. Conversely, lack of access to appropriate weaning foods and lack of flexibility with infant and toddler meals may result in young children failing to thrive and developing nutritional deficiencies.

The impact of the length of detention on children

The average duration of time in immigration detention facilities is now 275 days (March 2014)¹¹. People are spending significant periods of time in detention with profound uncertainty about their future. Ongoing uncertainty about processing timeframes, outcomes, and resettlement locations adversely affects the health and wellbeing of children, adolescents and their families.

The length of detention affects mental health, with longer duration associated with higher rates of physical and mental health problems.^{12,13,14} However, even brief periods in detention can affect wellbeing, and children may be exposed to significant trauma in short time periods.

Prolonged detention can result in post-traumatic stress disorder, depression, anxiety and regressive conditions such as secondary enuresis.^{15,16} Members of the RACP have reported that many of these issues are present in children detained on Christmas Island, with an escalation in recent weeks after witnessing self-harm incidents by adults.

The exposure to detention worsens the vicarious and actual inflicted trauma children and adolescents have experienced during their flight and transit. Asylum seekers in held immigration facilities suffer greater levels of past trauma compared with asylum seekers placed in the community.^{17,18} For many asylum seekers, detention is a re-traumatising experience, contributing to worsening mental health.^{19,20}

Parent and family mental health has profound consequences on children's health, mental health and development.²¹ Parental distress and/or mental health conditions such as depression and post-traumatic stress disorder will affect parental capacity to care for and supervise their children.²² In some circumstances, parental distress may be so great that it results in a 'role-reversal', with the child taking on the caring role for the adult.²³ The impact of parent distress can also result in family violence

and family breakdown, with additional impact on children. RACP members are aware of situations where enforced family separation has resulted in developmental regression in young children, including loss of language skills, bedwetting and emotional-behavioural difficulties.

The RACP is concerned about the long-term impact of detention on children, as psychological distress resulting from detention can persist for years after release.²⁴

Measures to ensure the safety of children

The RACP considers the detention environment to be an unsafe place for children, exposing them to traumatising situations, such as violence, self-harm and parental distress, adults with significant mental health problems, thereby increasing their risk for abuse and neglect. Family separation places children at increased safety risk due to reduced supervision capacity and the impact on parent and child mental health. Child protection issues are a real concern, and the child protection policies in place in immigration detention are unclear.

Standards of care that apply in the community, where children are placed separately from unrelated adults (i.e. in hospital wards or in prisons), are not applied within the detention setting. However, family integrity needs to be maintained in all circumstances, and the fact these standards cannot be implemented, only serves to highlight the unusual situation of holding multiple families in a locked environment.

The RACP understands there are trauma and torture counselling services that provide support to children in detention facilities, although the level of child mental health expertise is unclear and services vary depending on the location of the facility. Reactive mental health services do not address the environmental or policy factors contributing to mental health problems.

Security processes in place to monitor movement within and outside of immigration detention facilities are inappropriate for children. The heavy presence of security (i.e. guards employed by the service providers) criminalises children and their families, and is at times unnecessary. The requirement that at least two guards (and in some circumstances, up to four) accompany medical transferees at all times can be distressing for children and their families.

The RACP has specific concerns for the safety of unaccompanied children in light of inadvertent, inappropriate transfers of children to adult male facilities, including Manus Island. It is critical that all measures be taken to protect individuals claiming to be children prior to transfer.

Provision of education, recreation, maternal and infant health services

Education

As a significant social determinant of health and a fundamental human²⁵ and child²⁶ right, children must have access to significant and meaningful educational opportunities. All children in Australia, or in the care of Australian services, regardless of asylum seeker status, who are of compulsory schooling age, should have access to school, including access to age appropriate curriculum, classrooms, activities and support as needed.

In practice, access to education for children in detention facilities is inadequate and the RACP considers this to be a significant breach of child rights. Most asylum seeker children on Christmas Island have only received 2-4 weeks of school over a 6-8 month period. For children detained in facilities on the Australian mainland, access to schooling varies from centre to centre. Children in Sydney Immigration Residential Housing have access to schooling, whereas children in Perth Immigration Residential Housing, and some children in Melbourne Immigration Transit Accommodation do not have access to school. The RACP is aware of one adolescent and one child

who were not able to access any formal education program for over 8 months.

Recreation

Free and imaginative play is a fundamental developmental process for all children and adolescents. Engaging in age-appropriate play and recreational activity teaches children motor skills, helps them learn about themselves and their environment and assists with self-expression and identity.^{27,28,29}

Play and recreation is also a basic child right, with the Convention on the Rights of the Child outlining the right of the child:

“...to engage in play and recreational activities appropriate to the age of the child”

Recreation has also been found to support children in overcoming traumatic experiences and developing resilience,³⁰ which is highly relevant for children in immigration detention facilities.

The lack of recreational activities for both children and their parents in detention facilities and lack of safe and engaging playing space for children is likely to have a considerable impact on child wellbeing and development. The tropical climate of Christmas Island (and Nauru) is not conducive to playing outside during the majority of the day, due to extreme heat and lack of shade.

Maternal health services

The RACP considers that there are inadequate maternal and neonatal health services for pregnant women in detention on Christmas Island and Nauru. Women in detention on Christmas Island report that the food available during pregnancy is inadequate, with limited access to fresh and appetising fruit and vegetables, eggs and other simple meals.

Maternal and child health services, postnatal care, breastfeeding support and support groups for new mothers are not provided consistently across the detention network - these services are essential to promote and maintain maternal and infant wellbeing.

Currently women on Christmas Island and Nauru are transferred to the mainland at 32 weeks gestation and remain there until 6 weeks post-partum, The RACP is concerned that there are insufficient resources available in either location to adequately monitor the development of the fetus up to this point. In addition, family separation may occur during this period, placing maternal mental health at risk, with implications for bonding and early infant care.

Child health services

The RACP considers that child health screening practices in immigration detention are currently inadequate, in the context of large numbers of people in close living conditions, with multiple risk factors for communicable and vaccine preventable diseases, and unique risk factors for mental health and developmental issues in the detention environment. There is no evidence that children have developmental screening or surveillance, as is recommended for Australian children..³¹ Further, it is unclear what mental health screening, surveillance or management is available for children.

The RACP recommends that a thorough paediatric health assessment is conducted for refugee or asylum seeker children shortly after arrival in Australia.

The RACP has previously outlined the minimum requirements of an initial refugee health assessment for children in the 2007 statement *‘Towards better health for refugee children and young people in Australia and New Zealand’*. The assessment should be undertaken by staff with paediatric experience, and:

“...should have a structured approach, initially identifying acute, potentially severe conditions, such as infectious diseases, severe psychopathology, haemoglobinopathies and nutritional deficiencies. The management of chronic conditions including psychological morbidity and developmental issues should also be addressed, either initially or subsequently as appropriate. A thorough history and examination is essential.”³²

Children should be vaccinated as per the Australian National Immunisation Program Schedule, and may require additional vaccinations in view of close living conditions in detention. This should be documented in the Australian Childhood Immunisation Register (ACIR) (available for children up to seven years) as well as in personal child health records.

Access to paediatric healthcare staff is not consistently available in many Australian detention facilities, especially in remote or offshore locations. It is not clear that child and adolescent health issues can be adequately identified and/or managed by the health services in detention centres. A lack of timely paediatric review and treatment is likely to result in the development of preventable complications or comorbidities. Further, the RACP is concerned at the lack of services for children with disability or developmental concerns. The RACP expectation is that children with significant health or mental health problems should be referred for further assessment and management by specialist child health professionals.

The RACP is also concerned about the institutional approach to the management of health issues within detention facilities. Families have to request medical appointments through security staff, and people must queue to receive medications, which is dehumanising, and also difficult for families with small children. There is a lack of flexibility in the administration times for some treatments including supplementary nutrition and specialised medications such as desmopressin (prescribed as a treatment for enuresis) or rescue anticonvulsants (for seizures). The close living and sleeping conditions affect the ability to treat conditions such as secondary nocturnal enuresis.

Overall, the RACP considers that provision of services does not mitigate the risk of held detention, or address the primary harm, which is the fact of being detained.

Children with significant health or mental health conditions should be prioritised for community placement with appropriate support to ensure successful management and treatment of conditions.

The separation of families across detention facilities in Australia

Separation of families across immigration detention is common, due to medical transfers, pregnancy and childbirth, gender and age. It is common for families to be separated during the final stages of pregnancy, with women flown to the Australian mainland leaving their husband and children behind for periods of up to 14 weeks.

The RACP is aware of several cases where adults were transferred to Darwin for specialised medical treatment, while spouses and young children remained on Christmas Island. The profound psychological impact this separation has on families is unacceptable and avoidable. There are also accounts of sons being transferred away from their families, from Christmas Island to Manus Island and other single male facilities once they turn eighteen years.

Separation is a traumatising experience, which has an adverse impact on families and children.³³ Many people are accustomed to extended family support and separation of the extended family leaves people without their usual support system, in a situation of uncertainty, anxiety and grief. In children, family separation is associated with psychological distress³⁴ and attachment issues, which can lead to developmental regression and compound existing mental health problems for both parents and children.

The guardianship of unaccompanied children in detention in Australia

The RACP has repeatedly expressed concerns regarding the guardianship of unaccompanied children in detention^{35,36,37} and considers that there is a conflict of interest where the Minister for Immigration and Border Protection is appointed the legal guardian for unaccompanied minors seeking asylum and is responsible both for placing them in detention, and for acting in their best interests.

Article 18 of the Convention on the Rights of the Child outlines the Minister's obligations as appointed legal guardian:

*"the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern."*³⁸

The Minister is also responsible for placing children in detention; a situation which the RACP considers to be contrary to their best interests.

Further, in exercising guardianship, the Minister or their delegate does not provide a role comparable to a figure *in loco parentis*. The guardianship role is one of legal and administrative duties rather than ethical and moral care and this will not meet the unaccompanied child's basic needs for care, guidance and support.

The transfer of children to regional processing countries

The RACP firmly upholds its position that pregnant women and children should not be detained, and should never be detained in regional processing countries.³⁹ Detention in off-shore facilities is likely to expose children to greater uncertainty, increased physical and psychological risks. This predisposes children to greater harm, although the lack of prospective and independent monitoring makes the impact difficult to measure.

The RACP's 2013 *Statement on the health of people seeking asylum* outlines a number of environmental and infrastructural challenges that adversely affect the health and wellbeing of all people detained in regional processing countries, including limited access to physical and mental health services, a lack of engaging and meaningful activity and increased exposure to communicable disease.⁴⁰ Given the potential risk to health and wellbeing, the RACP considers regional processing of children is never justified.

The RACP has serious concerns about health assessments prior to transfer to regional processing countries, especially in regard to the Government's transfer target of 48 hours.⁴¹ The RACP does not consider that a full post-arrival medical assessment is possible within a 48-hour timeframe. The RACP is also significantly concerned with the statement that necessary medical checks would be conducted once transferred to a regional processing country⁴² given the limited capacity for such checks to take place on Nauru and Manus Island.

Other considerations include the time required to complete the full Australian Immunisation Schedule, and also ensure immunity against typhoid and hepatitis A. A full course of catch-up immunisations takes four months to complete, and is not possible with the current timeframes.

The RACP also has concerns regarding the adequacy of age assessments conducted prior to the transfer of young people to adult male facilities such as Manus Island. The RACP recognises that the process of determining age is complex and not scientifically accurate. Age assessments should always include consideration of psychological, cognitive, developmental and cultural factors. Where doubt remains, authorities should take a conservative approach to assessing an individual's age and ensure that they are treated as a minor.

Progress made during the 10 years since the Commission's 2004 report: A last resort? National Inquiry into Children in Immigration Detention

The 2004 Inquiry report's recommendations were that⁴³:

- 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.
- Australia's immigration detention laws should be amended, as a matter of urgency, to comply with the Convention on the Rights of the Child.
- An independent guardian should be appointed for unaccompanied children and they should receive appropriate support.
- Minimum standards of treatment for children in immigration detention should be codified in legislation.
- There should be a review of the impact on children of legislation that creates 'excised offshore places' and the 'Pacific Solution'

The RACP acknowledges the changes that occurred following the release of the 2004 report. Children were removed from immigration detention centres in July 2005, and the Commonwealth Migration Act 1958 was also amended in 2005 to state:

*"The Parliament affirms as a principle that a minor shall only be detained as a measure of last resort."*⁴⁴

However the RACP analysis of the current policy environment and situation is that there has been a significant decline since the Commission's 2004 report. As at 31 March 2014, there were a total of 1074 children in closed detention; 590 on the Australian mainland, 305 on Christmas Island and 179 on Nauru.⁴⁵ Children are being held in immigration detention, and not as a measure of last resort.

Finally, while the RACP acknowledges the terms of reference for the Inquiry, the College is also concerned about the large numbers of adults in immigration detention, and their complex health and mental health conditions.

Conclusion

The conditions for children, adolescents and families in detention do not meet their basic rights. The uncertainty associated with held detention, the restriction of liberty, the lack of appropriate education, recreational and meaningful activities, and the failure to protect health and wellbeing are not in keeping with Australia's international obligations as a signatory to the Convention on the Rights of the Child. Immigration detention has a devastating and long lasting impact on children, adolescents and their families. The RACP considers this ongoing impact to be unacceptable, The RACP does not support the detention of children and families for any length of time, and expresses grave concern at the Government policy of mandatory detention.

Recommendations

The RACP does not support the policy of mandatory detention. However, in the context of current Australian policy, these recommendations detail measures that would reduce the impact of detention on children and their families. The impact of held detention could only be minimised if processing time is reduced markedly, i.e. to a maximum of 2 weeks.

1. The appropriateness of facilities in which children are detained

- 1.1 That management of detention facilities be person-centred, and not deprive people of their dignity
- 1.2 That accommodation facilities include living space for private family interaction and family-centred food preparation
- 1.3 That there is an adequate number of maintained toilet and shower facilities for the population held in each detention facility
- 1.4 That bathroom and food preparation areas be maintained to ensure adequate cleanliness and hygiene
- 1.5 That each facility provide appropriate and safe play and recreation areas for children and adolescents

2. Impact of the length of detention on children

- 2.1 That children and adolescents be in detention for the minimum period possible, with a maximum time of two weeks
- 2.2 That families and unaccompanied children be transferred to community settings as a priority
- 2.3 That access to timely and appropriate paediatric specialist care is standard for children
- 2.4 That appropriate fresh foods be available for infants, pregnant women and breastfeeding mothers

3. Measures to ensure the safety of children

- 3.1 That the current heavy security presence be significantly modified to create a more humane environment for children and their families
- 3.2 That all measures are taken to assess the age of adolescents prior to transfer to adult facilities, with benefit of any doubt to favour the young person's claim

4. Provision of education, recreation, maternal and child health services

- 4.1. That an expert and independent child health advisory body monitor child health and education services delivered to children and adolescents in detention facilities.
- 4.2. That all children and adolescents in immigration detention receive education outside the detention facility at a standard consistent with Australian standards
- 4.3. That age-appropriate play and recreational activities are available to all children and adolescents

- 4.4. That appropriate maternal health services and nutrition are available for women in detention facilities, including off-shore detention facilities
- 4.5. That pregnant women and newborn babies receive timely access to antenatal and paediatric healthcare services
- 4.6. That detention health management practices are flexible to ensure management and treatment of health conditions in children and adolescents
- 4.7. That improved proactive child health screening processes, consistent with an Australian standard of care, are implemented
- 4.8. That maternal and child health nursing services be available in all detention facilities, including offshore facilities

5. *The separation of families across detention facilities in Australia*

- 5.1. That separation of family members be avoided at all times, including separation of extended family members.
- 5.2. That adult children be allowed to remain with their families, and are not sent to adult compounds.

6. *The guardianship of unaccompanied children in detention in Australia*

- 6.1. That an independent guardian is appointed for unaccompanied minors seeking asylum in Australia
- 6.2. That the guardianship role includes performing the usual parental roles of care, guidance and support.

7. *Transfer of children to 'regional processing countries'*

- 7.1. That children and pregnant women should not be eligible for transfer to regional processing countries
- 7.2. That agreed exclusion criteria for transfer to places of offshore processing are developed, and made publicly available for review by expert bodies
- 7.3. That people claiming to be less than 18 years of age should not be subject to transfer to adult facilities until they have undergone an adequate age assessment.

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- ⁴⁴ *Migration Act 1958* (Cwlth) http://www.austlii.edu.au/au/legis/cth/consol_act/ma1958118/ (accessed 17 April 2014)
- ⁴⁵ Australian Government Department of Immigration and Border Protection 2014. *Op.cit*