

**AMNESTY
INTERNATIONAL**



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

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Submitted by
Amnesty International Australia

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About Amnesty International

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the *Universal Declaration of Human Rights* (UDHR) and other international instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights. Amnesty International is the world's largest independent human rights organisation, comprising more than 3 million supporters in more than 160 countries and has over 370,000 supporters in Australia. Amnesty International is impartial and independent of any government, political persuasion or religious belief. Amnesty International Australia does not receive funding from governments or political parties.

Protecting the rights of refugees is an essential component of Amnesty International's global work. We aim to contribute to the worldwide observance of human rights set out in the Universal Declaration of Human Rights, the United Nations (UN) Convention on the Status of Refugees and other internationally recognised standards. Amnesty International works to prevent human rights violations that cause refugees to flee their homes. At the same time, we oppose the forcible return of any individual to a country where he or she faces serious human rights violations.

Executive summary and scope of this submission

Amnesty International welcomed, like many other organisations, the Australian Human Rights Commission (then the Human Rights and Equal Opportunity Commission or HREOC) 2004 report 'A Last Resort?: National Inquiry into Children in Immigration Detention'¹ and called for the full adoption of the recommendations of that report.

Amnesty International contributed to that inquiry in 2003², providing a comprehensive submission outlining the organisation's assessment of Australia's international legal obligations to asylum seekers and children. The submission also explored the severity to which the then Australian Government's policy of mandatory detention was in breach of those obligations. The submission further provided detailed analysis of the impacts of this detention. The organisation is disheartened that the majority of the concerns in that submission remain of current concern.

Amnesty International considers that Australia's practice of detaining children asylum seekers indefinitely contravenes Article 37 (b) of the Convention on the Rights of the Child. The Article states that "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time". The policy of mandatory detention is inconsistent with the Convention's stipulation that detention should only be used as a last resort.

While some improvements have been made in the years since ‘A Last Resort?’ was published, including the introduction of Community Detention and the expanded use of Alternative Places of Detention (APODs), the policy of mandatory detention remains. Amnesty International holds that this detention, particularly when applied to children, is in direct contravention of Australia’s human rights obligations and has serious damaging impacts on both children and their families. Indeed, Amnesty International holds that despite the small mitigations that have been made, overall the situation of child asylum seekers has worsened.

Over the past 10 years Amnesty International has continued to monitor all forms of detention centres on mainland Australia, Christmas Island and offshore. This has included inspection visits of the IRHs in Sydney, Perth and Port Augusta and the APODs in Darwin and on Christmas Island.

The organisation holds that a number of so-called APODs are in fact just detention centres under a different name, and that serious risks to a child’s mental and physical health, remain. Further, it is clear that long-term, even indefinite, detention of children is an even greater possibility given the increased number of asylum seekers with families receiving negative ASIO assessments and being held without statutory review.

Australia’s obligations to child asylum seekers are represented in the following international instruments:

- The Convention relating to the Status of Refugees and its 1967 Protocol
- The Convention of the Rights of the Child
- The Universal Declaration of Human Rights (UDHR)
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights

Amnesty International does not however, seek to repeat our detailed assessment of Australia’s international legal obligations to asylum seekers and children in this submission. As well as setting these out comprehensively in the 2003 submission, Amnesty International has provided this assessment to government in numerous other submissions in the intervening years.³

In line with the AHRC’s intended methodology for this inquiry – to hear from those with direct experience of immigration detention⁴ – Amnesty International draws from our client base to provide case studies to illustrate the impacts of immigration detention on children and their families. Through our Refugee Casework team, Amnesty International provide daily to a range of asylum seeker clients in detention, including families. The case studies in this submission represent a very small sample of the cases Amnesty International provides support to. Amnesty International has received permission to present these cases to the AHRC for the purpose of this submission; identities have been removed for privacy reasons.

Amnesty International, noting that the powers of the AHRC cannot, at present, be exercised in extraterritorial jurisdictions, raises serious concerns relating to the re-establishment of offshore processing in Nauru and on Manus Island PNG. The organisation particularly condemns the blanket policy under which all asylum seekers who arrive by boat after 19 July 2013 will be sent to a regional processing centre.

Amnesty International inspected the Nauru Offshore Processing Centre (OPC) in November 2012 and Manus Island OPC in November 2013. During these visits Amnesty International found that detention at both centres constituted cruel, inhuman and degrading punishment and that Nauru was certainly completely inappropriate for children.⁵ Under the current policy all children and families are sent to Nauru OPC. The organisation has recently been denied access to return to Nauru to visit the facilities in which families and unaccompanied minors are now detained. Recent

reports of conditions at the Nauru centre give the organisation no cause for optimism that the facilities are now any more appropriate for the detention of children.⁶

Overview of progress since 2004 National inquiry into children in detention

It has been 10 years since the HREOC released its report 'A Last Resort?', outlining both the serious breaches of Australia's human rights obligations towards children and the devastating physical and mental health impacts Australia's mandatory detention regime has had on children. Many of the concerns raised by Amnesty International in its submission to that inquiry remain. This is despite a number of policy changes by successful Australian governments during this period.

While Australia has maintained its policy of mandatory detention, for those who arrive undocumented, in August 2005 legislation was introduced stating that children should only be detained as a last resort.⁷ With this, the then government implemented a number of initiatives to ensure that while children would still officially be detained, under mandatory detention provisions, they would not be housed in Immigration Detention Centres (IDCs). This included the introduction of Residence Determination⁸ (Community Detention) and the extension of programs utilising APODs and Immigration Residential Housing (IRH). Amnesty International also notes the introduction of and expanding use of Immigration Transit Accommodation (ITA).

Amnesty International supported the move to Community Detention as an important step away from the held detention of children in adult facilities. Under Residence Determination the Minister has the discretion to determine what constitutes a place of detention, thus allowing freedom of movement but residence in a designated location. As such a significant number of unaccompanied children and families (as well as a smaller number of vulnerable single men) have been released under the care of the Australian Red Cross and its partners, over the last 10 years.⁹

A number of concerns remain however; including the fact that given it is administrative detention no one in Community Detention is able to work. This results in families living in severely depressed conditions, reliant on welfare for the necessities.

Further, many experience significant delays in processing their refugee claim.¹⁰ This extended period of uncertainty and inactivity often leads to mental health implications. Also, as release from held detention requires Ministerial discretion this can also lead to unnecessary delays in the release of families, with some cases of long term-separation despite a lack any apparent rationale.

In October 2011, the Australian Government announced that it would begin to expand the use of bridging visas for asylum seekers arriving without authorisation. Under the new policy, asylum seekers in detention who have passed initial health, identity and security checks are considered for release on bridging visas which allow them to live in the community while their applications are processed. While initially used for single men, increasingly families are also being released on these visas. While strongly supporting their release, Amnesty International remains concerned at the lack of work rights, for many, coupled with the minimal support for those released on bridging visas.¹¹ With the announced closure of most the APODs in May 2014¹² is welcomed, there is still minimal information about what will happen to those who had been detained in these centres. If the hundreds of children and families in these centres are to be released, the Government must ensure adequate support.

Amnesty International welcomed the decision to end the policy of offshore processing (on Manus Island, PNG and Nauru) in 2008. The organisation was appalled at reintroduction of this policy in

2012.¹³ Amnesty International maintains its strong opposition to this policy, which constitutes a clear breach of Australia's international human rights obligations.

Appropriateness of detention facilities in which children are detained including security of detained children

Alternative Places of Detention (APODs)

Since their introduction, Amnesty international has consistently outlined its concerns regarding the use of APODs.¹⁴ The organisation holds that many APODs are in fact completely unsuitable for detaining children. Many are effectively IDCs under another name, with a number of the APODs on Christmas Island, as well as Pontville in Tasmania, having been used as IDCs, with the designation switched back and forth depending on the make-up of the detention population at the time.

Amnesty International conducted a site inspection of Phosphate Hill APOD on Christmas Island in February 2012. At that time the organisation found that:

*'Detention of children and families in the Construction camp compound remains unacceptable given the confined space for families to move about in and areas for children to play. The unaccompanied minors have recently been moved out of this compound and taken across the road to the "Charlie Compound". This change has helped ease some of the tension in the cramped confines of the centre, but other measures have also been implemented, such as curfews for children and also for adults that only further reinforces the detention environment in which the families are living.'*¹⁵

As at February 2014, there remained 794 people in APODs on Christmas Island, including 356 children.¹⁶

Immigration Residential Housing (IRHs) and Immigration Transit Accommodation (ITA)

A number of IRHs have been built over the last 10 years. While a "lesser" form of held detention, the use of IRHs for families and children remains of concern to Amnesty International. Detaining families in prolonged, indefinite detention (often due to adverse security assessments) with single men, a number of whom have significant mental health issues, is extremely problematic. Environments where there are suicides, attempted suicides and self harm are clearly inappropriate places to detain children. While the accommodation and facilities are superior in the purpose built IRHs rather than in the IDCs, concerns remain. Overbearing security, the mixture of detainees, the length of time in detention and the impact on both the physical and mental health of children in those centres combine to create an entirely inappropriate situation.

Amnesty International is also aware of a number of incidences at the Villawood IRH, where again children are detained in an environment with adults, in particular adult single men. Those detained in the Villawood IRH include individuals who have been detained for a number of years. The psychological impact of this long term detention has seen a number of self harm and suicide attempts.

Case Study: AAF

AAF's youngest daughter was born in Villawood IRH and AAF has stated that she felt supported during the pregnancy. AAF was able to leave once a month for a checkup.

AAF's family are currently housed in two rooms at Melbourne Immigration Transit Accommodation (MITA). Each room is meant to house 2 people, and the size of it is from 2x2.5m. AAF feels that the place is not suitable for children, as it seems that most people stay in MITA for a short period of time, while AAF's family has been in MITA for approximately 10 months. According to the DIBP website, MITA "provides hostel-style accommodation for detainees whose pathway, generally, is likely to be resolved quickly".¹⁷ There is a playground for the children to play on, but this is in the open with no cover, so if the weather is too hot, rainy or cold, the children are not able to play.

Amnesty International also notes that Immigration Transit Accommodation (ITA), designed to be a short-stay option prior to removal or movement elsewhere, are being increasingly used as a low security detention option. As at February 2014, 93 children were being held in ITA facilities in Adelaide, Brisbane and Melbourne.¹⁸

As noted in 'A Last Resort?', "the detention of children in Australia's detention centres simultaneously increases the risk of harm and limits the options available to address those risks."¹⁹ Heightening these risks is exposure to hunger strikes, violent self harm and suicides. News stories have highlighted the exposure to this kind of threat, such as in August 2012 when it was reported that a Sri Lankan man in Villawood detention centre was suffering serious mental illness and was believed by his brother to be a risk to himself and others.²⁰ Tragic cases such as this illustrate the serious conditions in which children and families, as well as other asylum seekers are detained.

While children are no longer detained in IDCs with single adult men, they are still detained in other locations with adults. This includes unaccompanied children detained with families in a number of the APODs. Amnesty International is aware of violence between unaccompanied boys and adult men in the Phosphate Hill APOD on Christmas Island in late 2011 and 2012, leading to the unaccompanied children being moved to the nearby Charlie Compound. During its 2012 visit to the Darwin Airport Lodge APOD in 2012, Amnesty International spoke to teenage unaccompanied minors who had also been recently moved due to tensions with adults.

In addition, the organisation expressed its concerns that a group of vulnerable unaccompanied Vietnamese children, predominantly girls, had recently been brought to the APOD.²¹ These children remained extremely fearful, being locked up with much larger adult males. The children highlighted how in any dispute with other children, they would be threatened by parents and many feared leaving their rooms.

Offshore processing centres at Nauru and Manus Island

As part of the organisation's rolling program of inspections of immigration detention facilities both on and offshore, Amnesty International has conducted site inspections of the OPCs in Nauru and on Manus Island in recent years. The organisation last visited the Nauru OPC in November 2012, reporting 'a toxic mix of uncertainty, unlawful detention and inhumane conditions creating an increasingly volatile situation on Nauru...'²² Amnesty International found that the conditions at the centre at that time constituted cruel, inhuman and degrading treatment and that the centre should be immediately closed. It is of huge concern to the organisation that this centre continues to be utilised, and indeed, that all children and families who arrive by boat after 19 July 2013 will be sent to Nauru, without exception.

Amnesty International was recently denied access to return to the Nauru OPC by the Government of Nauru. Such a refusal is uncommon for Amnesty International globally and the organisation was extremely disappointed. Despite the inability of the organisation to report directly on the conditions at the present time, Amnesty International is aware of, and appalled by, the recent reports of the conditions at the Nauru OPC for children and other asylum seekers.

The 'Nauru Site Visit' report of the 'Physical and Mental Health Subcommittee of the Joint Advisory Committee for Nauru Regional Processing Arrangements', obtained by Guardian Australia and published on 30 May 2014²³ provides an account from independent medical professionals of the conditions for children and other asylum seekers at the Nauru OPC. Amnesty International has serious concerns at the findings, which include inadequate protection for children from sexual abuse, and no paediatricians at the centre or paediatric life support on the island. The situation described in the report constitutes a failure of duty of care and a breach of basic human rights standards. Amnesty International will continue to request access to the Nauru OPC and for broader access to human rights groups, including the AHRC. Transparency is a vital pillar in ensuring the upholding of Australia and Nauru's human rights obligations to detainees – which is of particularly significance when it includes children.

Amnesty International visited the Manus Island OPC in November 2013, finding appalling conditions and a denial of adequate basic provisions such as water and shoes, to detainees. Once again, the organisation concluded that the conditions at the centre as well as the uncertainty surrounding processing and resettlement, constitutes cruel, inhuman and degrading punishment.²⁴ While, under the current policy, no children or families are to be detained or processed at the Manus Island OPC, Amnesty International was aware that at the time of the visit, there were at least three asylum seekers in the centre who claimed to be under the age of 18 years.²⁵ These asylum seekers were treated no differently to any other at the centre, and were kept in the same accommodation alongside adult men. The organisation is aware that at least a further three asylum seekers had been returned to Australia prior to the visit, after having their age reassessed.

Amnesty International explores our concerns relating to the rigor pre-transfer assessments including age determination in the section below, however it is clear that the conditions in the Manus Island OPC are entirely inappropriate for children – raising serious concerns about the presence of anyone under 18 years old at that centre.

The impact of the length of detention on children

The evidence that lengthy periods of time spent in detention have a negative impact on detainees is well established. This is evidenced by the high rates of mental illness, self-harm and suicide among detainee populations. In February 2014, the Australian Medical Association (AMA) highlighted the extremely high rates of mental illness in Australia's immigration detention centres reflected in figures held by IHMS.²⁶

In 2011, the United Nations High Commissioner for Human Rights, Ms Navi Pillay, criticised the policy of mandatory detention of asylum seekers, saying it has led to suicides, self-harm and trauma. Amnesty International highlighted this in its 2011 submission to the Joint Select Committee on Australia's Immigration Detention Network, calling on the government to urgently cease the practice for all asylum seekers.²⁷

In respect to children, a major finding of the report 'A Last Resort?' was that '*Children in immigration detention for long periods of time are at high risk of serious mental harm*'²⁸

AS

AS is very concerned about his children, especially as they have witnessed suicide and self harm attempts in the Perth Immigration Residential Housing (PIRH), and feels powerless as he is unable to physically be there with his wife and children to support them. AS reported in February and March 2014 that there had been a suicide attempt in PIRH “[f]or the third time in such a short period” and expressing concern about “[s]uicides occur[ing] with the presence of children”. AS stated that there was no access to counselling as a child psychologist was not available.

AS was concerned about the children’s mental health as they had started to wet the bed. AS has said that his youngest daughter has started to bite herself and pull her own hair. She has also bitten another child in one incident.

ASIO negative security assessment

Amnesty International wishes to highlight the significant impacts of indefinite detention of children and their families due to the government’s policy response to an asylum seeker receiving a ‘negative ASIO assessment’. It is well established that the uncertainty on top of the drawn out incarceration without criminal charge has further serious negative impacts on a person’s mental health.

RK

RK is a mother of three, held in detention for a year. Two of her children have been recently released from detention but she remains with her infant child. RK received a negative ASIO assessment and has been denied release after Justice Margaret Stone reviewed and upheld the assessment. RK will wait at least a further 12 months before her case can be reviewed again. RK reports deteriorating mental health and is now separated from her children. RK faces indefinite detention.

Amnesty International has advocated for some time for a sustainable policy response to those who receive a negative ASIO assessment. Further, the United Nations Human Rights Committee has found Australia to be in breach of its obligations under international law, committing 143 human rights violations by indefinitely detaining 46 refugees for four years, on the basis of ASIO’s adverse security assessments.²⁹

The introduction of the Independent Reviewer, Federal Court justice Margaret Stone in 2012 to review the ASIO assessments was a positive step.³⁰ After an extended period of inaction, cases were reviewed and some overturned by the independent reviewer. One such case was that of the ██████████ family, who had been in detention from 2009 until 2013 – along with their three children.

██████████ Family

The ██████████ family arrived in Australia in 2009 were found to be genuine refugees. However, both parents received negative security assessments from ASIO. The family was held at Villawood IDC with their three children; their youngest child born in detention. They have no photos of their youngest child’s early years owing to departmental rules which ban all photographs of detainees.

Margaret Stone overturned the ██████'s negative assessments in June 2013, allowing their release. While in detention, Mr ██████ wrote for Amnesty International in June 2012:

As parents we are constantly worried for our children's mental stability. But as the already frustrating system of restrictions keeps tightening around us, we cannot help but feel severely shaken ourselves.

Other children get their mother and father to take them to school, my eight year old daughter gets me along with a different Serco guard each day, a frightful experience for any human being, let alone a young child. She has asked that the guards stay in the car while my wife and I walk her the extra few meters to the school gate but this request has been refused.

We are encouraged to take part in activities at certain times to 'earn' points. But I am not a sheep; I do not need a shepherd. Sometimes it is hard to remember that I am a 35 year old man with a family. And the sum of these frustrating indignities is what really breaks you in the end.³¹

While the Independent Reviewer was a positive step forward, there is no legislative framework around this review process. The Australian Government must introduce a statutory review process of ASIO assessments and immediately investigate and implement alternatives to long term detention, such as community detention including reporting mechanisms.

The separation of families across detention facilities in Australia

Amnesty International works with many asylum seekers whose families have been separated for a range of reasons. It is often the cause of the greatest consternation in asylum seekers who have little if any understanding of why they have been separated.

AS

AS is currently in immigration detention at Perth Immigration Detention Centre (PIDC). AS is an Ahwazi from Kuwait. He arrived in Australia with his wife, and two daughters, aged 4 and 1 in June 2013. The family were living together at the Inverbrackie APOD until January 14, which caters to families who have been assessed as acceptable for a low security facility. AS and his family were then moved from Inverbrackie APOD to Perth Immigration Detention Centre (PIDC), where AS was subsequently separated from his wife and two children. AS currently is detained at PIDC while his wife and two children were placed in Perth Immigration Residential Housing (PIRH).

AS has not been provided with a reason as to why he and his family were moved from Inverbrackie APOD to PIDC. There have also been no reasons provided as to why AS is being detained separately from his wife and children in Perth. A security assessment interview occurred in March 2014 but there has been no outcome as of yet, and no timeframe given about when an outcome would be reached.

While AS is allowed to visit his family in PIRH daily, subject to operational requirements, the continuing separation is extremely distressing for both AS, his wife, and the children. AS is often able to stay with his family from the afternoon until his children are put to bed, but there have been a few occasions where visits have had to end early, causing the children great distress.

Clearly the severe mental health impacts of immigration detention on children and their families are only exacerbated by the anxieties and lack of security that comes from separation from a parent or family member. Amnesty International has found alarming regularity of cases where families have been separated without clear reasons and certainly without adequate communication to the family involved.

AAF

AAF and her family arrived in Australia on 31 October 2012. AAF and her two daughters are separated from AAF's husband who is housed in Blaxland.

AAF was 17 years old in 2012. She struggled with the separation and caring for two young daughters by herself. She had trouble sleeping during that time, and her oldest daughter cried a lot for her father. They were allowed to visit the father 3 hours each day.

AAF and her family were moved to MITA in August 2013, where the family was reunited and housed together. AAF has continually expressed frustration at being in detention for over a year, as well as the impact of detention on her two children. AAF has also said that there has been incidence her eldest daughter bit another child, and that the eldest daughter has some difficulty with speaking Arabic with AAF and her husband. AAF believes that as her daughter is spoken to in different languages by the other residents and staff at MITA, she is unsure of which language to use and has developed her own language. While AAF has stated that it might allow her daughter to learn other languages more easily in the future, she has noticed that her daughter's confidence in speaking Arabic is low as she often has to repeat herself for AAF and her husband to understand what she is saying. AAF was also upset by the fact that they were unable to conduct important family occasions such as a birthday celebration for her daughter due to their detention.

While the family is now housed together, AAF's main concerns are the effects of detention on both herself, her husband and her children's mental wellbeing. Her continuing frustration stems from the lack of timeframe or explanation provided about the progress of the ASIO investigation of her husband, which means that her husband has to remain in detention.

While acknowledging the Department of Immigration and Border Protection (DIBP)'s recognition that families should not be separated in detention where possible, Amnesty International is concerned that the practice of DIBP in this vital area is reactive – responding to advocacy from organisations like Amnesty International and other advocates – rather than pro active work to ensure that families are not needlessly separated and that specific efforts are made so that children are not separated from their siblings or parents.

Amnesty International has specific case studies where clients have been separated due to administrative error at the DIBP. While of course a level of human error can be tolerated, it appears as though cases are not considered until they are brought to light by a third party. Amnesty International is concerned that this demonstrates a lack of commitment to the clear principle that the separation of the family in immigration detention must be avoided wherever possible and the responsibility inadvertently placed on non-government agents to bring cases to the attention of the department.

The guardianship of unaccompanied children in detention in Australia

Amnesty International echoes the concerns raised over a number of years by a range of organisation about the ongoing conflict of interest that exists due to the Minister for Immigration and Border Protection being the legal guardian of unaccompanied minors under the Immigration (Guardianship of Children) Act 1946. Under the CROC, the legal guardian has a duty to act in the best interests of the child.³² This clearly conflicts with the Minister's role in immigration matters, particularly in creating and applying detention laws and especially in relation to the transfer of unaccompanied minors to an offshore processing facility.

This conflict of interest is explored and condemned in 'A last resort?', which recommended that:

“...Australia's laws be amended so that the Minister is no longer the legal guardian of unaccompanied children. This is the only way to ensure that the role of the Minister (and the Department) as visa decision-maker and detention authority is separated from the role of advocate for the best interests of unaccompanied children.”³³

Amnesty International supports this recommendation which is as critical today as it was a decade ago.

Pre-transfer assessments of children to be detained in 'regional processing countries'

Amnesty International has a range of concerns relating to the adequacy and rigour of the pre-transfer assessments of child asylum seekers to be detained offshore including relating to age determination and health.

International and domestic legislation requires that Australia must treat the best interests of the child as a primary consideration in actions concerning children. Amnesty International is concerned, however, that the blanket policy that all asylum seekers who arrive by boat, including all children without exception, will be transferred offshore, ignores that vital obligation to children.

The 'procedures advice manual' for DIBP decision makers, pre-transfer sets out the processes that must occur prior to transfer of an individual to regional processing countries (RPC). While this manual requires that “all minors (both accompanied and unaccompanied) must undergo a “best interest assessment” as part of the pre-transfer assessment, Amnesty International is unconvinced that this 'best interest assessment' is sufficiently rigorous.

This is evidenced by DIBP internal guidance notes for decision makers,³⁴ obtained by Amnesty International, which make no reference to a need to refer to Australia's human rights obligations to children. Rather, the decision maker is required to consider only the terms of the Memorandum of Understanding (MoU) between Nauru and Australia and the support and services for minors available in the Nauru centre. It makes no reference to human rights. Further, Amnesty International has significant doubts as to whether the services available in the Nauru OPC are adequate and comply with international standards. Amnesty International, therefore is concerned that the decision makers have insufficient ability under the process to adequately assess the situation of individual children.

Of further concern to the organisation is the policy to allow a maximum 48 hour period at Christmas Island before an asylum seeker is transferred to an RPC. Amnesty International is of the view that 48 hours is insufficient time to conduct thorough analysis any asylum seeker, and yet less likely to allow adequate assessment of the best interest of a child.

During Amnesty International's visits to detention centres designed for adults both on and offshore, Amnesty International met a number of detainees who claimed to be minors. Indeed,

during the organisation's inspection of Manus Island Offshore Processing Centre (OPC) in November 2013, Amnesty International found that there were at that time at least three asylum seekers in that centre who claimed to be under the age of 18 years.³⁵ The organisation is aware that at least a further three had been returned to Australia after having their age reassessed.

Amnesty International's report 'This is Breaking People', released following the November 2013 inspection of the Manus island OPC, included detailed evidence that the 48 hour period is insufficient to either assess a person's health or even their age. In that report Amnesty International recommended that:

- adequate time is given for age assessment processes, including contact with home country and the gathering of relevant documentation and other information, prior to any transfer; and
- adequate time for proper health checks prior to transfer, including appropriate assessment, diagnoses, and treatment of any illnesses, injuries or disabilities and that asylum seekers are not transferred to a facility where these health needs cannot be addressed or under circumstances in which their health would be adversely affected.³⁶

Finally, Amnesty International is aware that the procedure for assessment of unaccompanied child asylum seekers pre-transfer to an offshore facility requires the presence of an independent observer. Amnesty International welcomes this presence of an independent observer, however the organisation holds that best practice would require a more engaged representative who is capable of vocally representing the child's best interests.

Conclusion

Amnesty International is extremely disheartened that this inquiry has been required to be repeated 10 years after the ground breaking 'A Last Resort?' report was published. That report, as well as a range of submissions to that inquiry, set out in painstaking fashion the numerous breaches of human rights obligations of the Australian policy of detention of children in immigration detention. It further made clear the serious impacts that detention has on children and the urgent need to cease any policy which sees a child detained in an immigration facility.

Australia is the only OECD country to enforce indefinite detention of both child and adult asylum seekers. In this submission Amnesty International, has not focussed on providing a detailed examination of Australia's breaches of human rights obligations – which are well established. Instead the organisation has drawn from our asylum seeker clients to highlight the damning consequences of those breaches.

Amnesty International recommends the full and unqualified adoption of the recommendations of 'A Last Resort?'. The organisation further calls on the government to actively consider alternatives to the indefinite detention of families including children as a result of a negative ASIO assessment.

The government must immediately bring to an end any policy which sees the detention of children in this way.

¹ HREOC, 'A Last Resort? Report of the National Inquiry into Children in Immigration Detention', 2004. Available at < https://www.humanrights.gov.au/sites/default/files/document/publication/alr_complete.pdf >

² Amnesty International, Submission to the National Inquiry into Children in Immigration Detention, January 2003. See < <https://www.humanrights.gov.au/publications/commission-website-national-inquiry-children-immigration-detention-115> >

³ See for example: Amnesty International, Submission to the National Inquiry into Children in Immigration Detention Network, January 2003 <<https://www.humanrights.gov.au/publications/commission-website-national-inquiry-children-immigration-detention-115>>; Amnesty International, Submission to Joint Select Committee on Australia's Immigration Detention Network, August 2011

<<https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=7fd54e67-9044-4ded-ba5a-669c939daddb>>

⁴ Australian Human Rights Commission, National Inquiry into Children in Immigration Detention, Discussion Paper, p.3

⁵ Amnesty International, 'Nauru Offshore Processing Facility Review 2012- Media Briefing' p. 1 See <http://www.amnesty.org.au/images/uploads/news/NauruOffshoreProcessingFacilityReview2012.pdf>; Amnesty International, 'This is Breaking People: Human rights abuses at Australia's asylum seeker processing centre on Manus Island, PNG', p. 4

<http://www.amnesty.org.au/images/uploads/about/Amnesty_International_Manus_Island_report.pdf>

⁶ Guardian Australia, 'Nauru detention: serious health risks to children revealed in confidential report', 30 May 2014. See <<http://www.theguardian.com/world/2014/may/30/nauru-detention-serious-health-risks-to-children-revealed-in-confidential-report>>

⁷ The commitment by the Australia government not to detain children was reaffirmed in July 2008 by Labor Immigration Minister Chris Evans, as one of seven 'key immigration detention values' (at least not in IDCs).

⁸ Under Section 197AB Of the Migration Act 1958. The use of Community Detention was significantly expanded in October 2010 in response to the increasing number of children in held detention.

⁹ Total number of children in Community Detention under Residence Determination as at 28 February 2014 was 1579. Statistic from: DIBP, 'Immigration Detention and Community Statistics Summary', 28 February 2014, p 3

¹⁰ See for example, Amnesty International media release 'Unacceptable and prolonged delays damage those seeking safety', 29 May 2013, See <<http://www.amnesty.org.au/news/comments/31915>>

¹¹ As noted by the RCOA: Asylum seekers released on bridging visas are not provided with public housing, do not have access to financial support from Centrelink and must report to the Department of Immigration on a regular basis. Those who arrived in Australia before 13 August 2012 are eligible to work but those who arrived after this date are not. Asylum seekers who are unable to find work or are not eligible to work receive basic income support paid at 89% of the Centrelink Special Benefit.

¹² Minister Morrison media release, Government success stopping illegal boats to save \$2.5 billion, 7 May 2014 See <<http://www.minister.immi.gov.au/media/sm/2014/sm214451.htm>>

¹³ Amnesty International media release, 'Short-term political gains trump Australia's human rights obligations', 13 August 2012. See <<http://www.amnesty.org.au/news/comments/29475/>>

¹⁴ See for example Amnesty International, 'An uncertain future: Inside Australia's detention centres', 1 November 2010. See <<http://www.amnesty.org.au/refugees/comments/24020/>>

¹⁵ Amnesty International, Detention Facilities Visit 2012, Findings and recommendations, 22 February 2012 See <<http://www.amnesty.org.au/images/uploads/news/Amnesty-International-Australia-DetentionFacilitiesVisit-2012-FINAL.pdf>>

¹⁶ Statistic from: DIBP, 'Immigration Detention and Community Statistics Summary', 28 February 2014, p 3

¹⁷ See <<https://www.immi.gov.au/media/fact-sheets/82detention.htm>> Accessed 19 May 2014

¹⁸ Statistic from: DIBP, 'Immigration Detention and Community Statistics Summary', 28 February 2014, p 3

¹⁹ HREOC, 'A Last Resort? Report of the National Inquiry into Children in Immigration Detention', p342

²⁰ ABC news, Authorities urged to help Villawood detainee, 6 Aug 2012. See <<http://www.abc.net.au/news/2012-08-06/authorities-urged-to-help-villawood-detainee/4180710>>

²¹ Amnesty International, 'Nauru Offshore Processing Facility Review 2012- Media Briefing' See <<http://www.amnesty.org.au/images/uploads/news/NauruOffshoreProcessingFacilityReview2012.pdf>>

²² Amnesty International, 'Nauru Offshore Processing Facility Review 2012- Media Briefing' p. 1

²³ Physical and Mental Health Subcommittee of the Joint Advisory Committee for Nauru Regional Processing Arrangements, Nauru Site Visit Report, 16-19 February. Published by Guardian Australia, 30 May 2014 Available at <<http://www.theguardian.com/world/interactive/2014/may/29/nauru-family-health-risks-report-in-full>>

²⁴ Amnesty International, 'This is Breaking People: Human rights abuses at Australia's asylum seeker processing centre on Manus Island, PNG', p. 4

<http://www.amnesty.org.au/images/uploads/about/Amnesty_International_Manus_Island_report.pdf>

Families and children initially transferred to Manus Island by the government in 2012. The current government has returned children and women from the Manus Island Offshore Processing Centre and now detains children and families at the Nauru Offshore Processing Centre only.

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- ²⁵ Amnesty International, 'This is Breaking People: Human rights abuses at Australia's asylum seeker processing centre on Manus Island, PNG', p. 76. See <http://www.amnesty.org.au/images/uploads/about/Amnesty_International_Manus_Island_report.pdf>
- ²⁶ AMA, Australian Medicine 'Depression, anxiety soars among asylum seekers' 18 February 2014 See <<https://ama.com.au/ausmed/depression-anxiety-soars-among-asylum-seekers>> accessed 16 May 2014
- ²⁷ ABC Radio Australia News, 26 May 2011, Australia defends mandatory detention policy for refugees, available online at <<http://www.radioaustralianews.net.au/stories/201105/3226706.htm?desktop>>
- ²⁸ HREOC, 'A Last Resort? Report of the National Inquiry into Children in Immigration Detention', p850
- ²⁹ Amnesty International media release 'Australia guilty of 143 human rights violations, says UN Body' 22 August 2013, See <<http://www.amnesty.org.au/news/comments/32569/>>
- ³⁰ Attorney General's Department website, Independent Reviewer of Adverse Security Assessments See <http://www.ag.gov.au/NationalSecurity/CounterterrorismLaw/Pages/IndependentReviewofAdverseSecurityAssessments.aspx>
- ³¹ ██████████, 'My kids are growing up in detention', 20 June 2012. See <<http://www.amnesty.org.au/refugees/comments/28995/>>
- ³² United Nations, Convention on the Rights of the Child, 1989, available at <http://www2.ohchr.org/english/law/crc.htm>, Article 3.
- ³³ HREOC, 'A Last Resort? Report of the National Inquiry into Children in Immigration Detention', Chapter 7
- ³⁴ DIBP, Guidance for Completing the Best Interests Assessment for Transferring Minors to an RPC, 13 February 2014 See < <http://www.immi.gov.au/About/foi/Documents/FA140201097.PDF> >
- ³⁵ Amnesty International, 'This is Breaking People: Human rights abuses at Australia's asylum seeker processing centre on Manus Island, PNG', p. 76. See <http://www.amnesty.org.au/images/uploads/about/Amnesty_International_Manus_Island_report.pdf>
- ³⁶ Amnesty International, 'This is Breaking People: Human rights abuses at Australia's asylum seeker processing centre on Manus Island, PNG', p. 97