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A voice for young children

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National Inquiry into Children in Immigration Detention 2014

Submission from Early Childhood Australia

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About us

Early Childhood Australia (ECA) is the national peak early childhood advocacy organisation, acting in the interests of young children, their families and those in the early childhood field. ECA advocates for quality in education and care as well as social justice and equity for children from birth to eight years. We have a federated structure with Branches in each State and Territory. In 2013, ECA celebrated 75 years of continuous service to the Australian community.

About this Submission

ECA has undertaken some consultation with our members and stakeholders to develop this submission. ECA submission builds upon our South Australian member's contribution to the SA Coalition for Refugee Children submission from 2004, and our position statement on Children of Asylum Seekers (2011).

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Introduction

Half of the world's refugees are children. They need special protection and care.

Children are physically and psychologically less able than adults to provide for their own needs or to protect themselves from harm. They rely on the care and protection of adults.

Children's developmental needs are often not considered in relief efforts. Basic health care, nutrition and education are generally recognised by all Australians as necessary for the healthy development of children. Beyond these, however, healthy psychosocial development depends in large measure on the nurturing and stimulation that children receive as they grow, and on the opportunities that they have to learn new skills. For asylum seeker and refugee children, healthy development and wellbeing also requires coping effectively with the multiple trauma of loss, uprooting from culture and place and often more damaging experiences. In short, tragic long-term consequences may result where children's developmental needs are not adequately met.

Asylum seeker and refugee children share certain universal rights with all other people and have additional rights as children and particular rights as refugees. The United Nations *Convention on the Rights of the Child* (1990) provides a comprehensive framework to guide the development of policy and practices that relate to children. Australia is a signatory to the Convention. This submission provides additional advice about what needs to be considered in the development of policy and practice to ensure appropriate protection and assistance for asylum seeker and refugee children.

Children's needs should not be addressed in isolation. They are met most effectively within the context of family and community. A child's welfare is closely linked to the health and security of the primary caregiver, who is usually the parent. It is therefore necessary to strengthen the capacities of refugee families to meet their own needs and improve the participation and situation of asylum seeker and refugee women, thereby contributing significantly to the welfare of their children.

Early Childhood Australia opposes the mandatory detention of asylum seeker and refugee children and we are very concerned about the physical, emotional and psychological harm that is caused as a result of continued detention.

Until release from detention is achieved, this submission seeks to identify ways in which the harm caused by continued detention can be reduced as far as possible through improved conditions and better support programs that appropriately address asylum seeker and refugee children's needs for life-long learning and wellbeing.

The Human Rights Commission's *Inquiry into Children in Immigration Detention 2014* is a significant opportunity to examine the progression made since the Commission released *A last resort? The report of the National Inquiry into Children in Immigration Detention* in 2004, and to further advocate for the rights of asylum seeker and refugee children and identify improvements that will best serve those children and their families in detention now and in the future.

Early Childhood Australia's submission seeks to address the key issues identified by our members and the broader sector and options for consideration in providing the best care and support to children in detention.

ECA draws on its experiences as a partner with Beyond Blue, the Department of Health and Ageing, the Australian Psychological Society and the Principals Institute of Australia in the KidsMatter initiative—a mental health and wellbeing framework for primary schools and Early Childhood Education and Care services. This project focuses on socio-emotional wellbeing and building resilience in children. KidsMatter Early Childhood uses a risk and protective factor framework to focus on four components that ECEC services can use to strengthen the protective factors and minimise risk factors for children's mental health and wellbeing.

The lack of information available about children in detention and services that are provided to them inhibits our ability to provide detailed factual information about current conditions of children in detention. Therefore this submission outlines what should be provided as a minimum standard of care and protection and realising children's rights. While we understand certain conditions exist, it is the role of Human Rights Commission and the Australian Government to ascertain, verify and explain factual circumstances in the context of children's rights.

ECA would welcome the opportunity to be involved further with the Human Rights Commission and the Australian Government in realising the fundamental rights and humanitarian and developmental needs of children in detention.

1 Put children first

1.1 Recognise children's rights

The UNHCR *Refugee Children: Guidelines on Protection and Care* have been adopted as a policy in order to improve and enhance the protection and care of refugee children. They provide goals and objectives, the principles and practical measures for the protection and assistance of these children. At the core of the guidelines is the realisation of the special care and attention that needs to be afforded to this most vulnerable group. However, this special care and protection cannot be produced in isolation. This should encompass the provision of support to the families and communities of this vulnerable group in order to adequately meet the children's physical and social needs.

Guidelines do not merely offer suggestions but are tools for reaching goals. The guiding principle of the UNHCR policy is that, in all actions taken, primary consideration should be given to the child's best interests. Ultimately, it is the translation of the guidelines from words into actions that will provide refugee children with definitive value.

A refugee child is understood to mean any child of concern to the Commissioner, including those children who are refugees, returnees, asylum-seekers and displaced persons of concern to the UNHCR. As a general principle asylum-seekers should not be detained. This is further reiterated in the Guidelines that minors who are asylum-seekers should not be detained. Children, including refugee children, are the future. They need special protection and care to realise their potential.

Three interrelated factors contribute to the special needs of refugee children: their dependence, their vulnerability and their developmental needs (i.e. their requirements for healthy growth and development at different ages). Children's vulnerability results in part from this dependence. They are physically and psychologically less able than adults to provide for their own needs or to protect themselves from harm.

Refugee children share certain universal rights with all other people and as children and refugees have additional rights. States are responsible for protecting the human rights of all persons within their territory, including refugee children, and for providing the adults accountable for these children with the support necessary to fulfill their own responsibilities.

Child asylum seekers are entitled to special legal status in recognition of their need for international protection. The best interests of the child require that procedures be child friendly and take into account children's specific needs.

ECA notes the guidelines on the protection and care laid down by UN and HCR where a child is accompanied by one or both parents the principal of family unity applies and the dependent child should be accorded the parent status.

However, all children should be entitled to make individual claims and unaccompanied children must make individual claims. Children are entitled to individual legal representation. Children should be assisted to participate in the decision making process.

All agencies involved with refugee children should be trained in child development and the needs of refugee children. Any professional conducting an interview of a child refugee should be skilled appropriately. Interviews should be kept to a minimum. Where more than one agency is involved with refugee children they should work collaboratively to maintain a child focus.

This Inquiry provides an opportunity to put the best interests of children and their families at the centre of the immigration detention system. This would mean that all actions are prefaced on the primary question 'is this in the best interests of children?' This not only requires the Government to consider the evidence base on early childhood development, or put themselves in children's shoes and consider their interests, but also to ask children what they would like and give it due consideration. As a signatory to the international Convention on the Rights of the Child Australia has given a commitment to do this in all actions concerning children.

1.2 Unaccompanied children

Unaccompanied refugee children are the most vulnerable of all refugee children. Therefore, unaccompanied children's cases should be given priority. The UNHCR Guidelines define unaccompanied children as those who are separated from both parents and are not being cared for by an adult who, by law or custom, is responsible to do so. Article 37 of the Convention on the Rights of the Child, reiterates that State Parties are required to ensure that the detention of minors be used only as a measure of last resort and for the shortest appropriate period of time. Further, alternative care arrangements should be made for unaccompanied minors and any form of detention should not resemble prison-like conditions.

1.3 Monitoring and complaints

There has been little government consultation with children in detention since the 2004 Inquiry. Early Childhood Australia (ECA) recommends establishing mechanisms for age appropriate consultation in immigration detention systems design and improvement, informed or assisted by the National Children's Commissioner.

Children should also have appropriate avenues to make complaints, resolve issues and otherwise have voice to authorities. Official visitors play a pivotal role in child institutions in Australia in ensuring children's rights are being met. Official visitors for children, employed the Human Rights Commission's Children's Commissioner, with access to all detention facilities and unsupervised contact with children should be funded and made available in all detention facilities.

In addition, ECA believes that the Australian Government's duty of care to children in detention should be monitored by an independent group of experts rather than the Department or its contractors who are not necessarily equipped to understand the needs of the children or the appropriateness of responses provided. Such an independent body should include experts on child development, child health and their education. Monitoring should include unannounced visits of any detention centers. This monitoring function again should be led by the National Children's Commissioner and will require additional resources.

Recommendations

- 1) The best interests of children should be at the centre of detention centre policies and systems.**
- 2) Reforms and ongoing improvements to immigration detention centres should be informed by the views of children, as well as their families, with support from the National Children's Commissioner.**
- 3) Unaccompanied children's rights and interests should be given priority.**
- 4) The Children's Commissioner should establish regular consultation with children in detention.**
- 5) Official visitors for children should be established in the Human Rights Commission under the Children's Commissioner to establish regular contact with children in all immigration detention facilities unencumbered, talk with providers and Government about the children, progress complaints or requests from children, advocate and report to Government.**
- 6) An independent monitoring body of experts in children's development and the delivery of children's services should be appointed under the Children's Commissioner. The body would monitor the treatment of children throughout the process of detention and during their time in the community, against the standard of protection and care recommended by the UN and HCR and the UN Convention on the Rights of the Child.**

2 Mental health and development

Early childhood mental health has been defined as a young child's ability to 'experience, regulate and express emotions; form close and secure interpersonal relationships; and explore the environment and learn all in the context of family, community and cultural expectations for young children. Infant mental health is synonymous with healthy social and emotional development' (Zero to Three, 2002).

The United Nations High Commission for Refugees (UNHCR) states that children should not be detained and should not be separated from their parents. Prolonged detention of children affects children's physical and mental health. This will have a significant impact on the child's social and emotional wellbeing and the ability to function in a learning environment.

Children have not only been potentially traumatised by their experiences in their home country, on their journey to Australia, by the conditions with the detention centre but also by witnessing their parents and families distress and powerlessness to improve their conditions

A child's physical, intellectual, psychological, cultural and social development can be harmed during the time of uprooting, disruption and insecurity that is inherent in relocation situations. Unaccompanied children are particularly vulnerable to these factors.

KidsMatter – Australian Primary Schools Mental Health Initiative - Helping children with mental health difficulties

Summary of the literature

The psychosocial wellbeing of refugees was considered in a literature review prepared by the Australian Psychological Society (Murray, Davidson & Schweitzer, 2008)

The authors note that the refugee experience can be varied, and raise particular concerns in relation to the psychological vulnerabilities of children held in immigration detention. An extensive review of local and international research into the mental health status of children and adolescents who were refugees, or were detained in the course of claiming refugee status, concluded that symptoms of post-traumatic stress were common (Thomas & Lau, 2002). Symptoms in school aged children included: flashbacks, exaggerated startle responses, poor concentration, sleep disturbance, complaints of physical discomfort, and conduct problems. Children who were separated from parents or other caregivers were more likely to exhibit symptoms of depression.

There is a breadth of literature on the negative affects of children in detention, which is exacerbated by pre-existing trauma, (see Bull et al., 2012; Dudley, 2003; Dudley et al., 2012; Mares & Jureidini, 2004; Silove et al., 2007; Steel et al., 2004); and the length of stay in detention settings (Bull et al., 2012; Green & Eagar, 2010; Mares and Jureidini, 2004; Procter, De Leo & Newman, 2012; Steel et al., 2004).

While in detention, children and their families are not in a secure environment and live in fear of being deported.

Psychosocial wellbeing can be defined as reflecting the intimate relationship between psychological and social factors. Therefore, it is essential to ensure those factors that enhance a child's wellbeing are promoted. Special assistance should be provided to ensure full recovery for those children who have been traumatised, harmed or have special needs.

Children are greatly influenced by the protection and care afforded to them by their families. The existence of attachment through a stable relationship between the parent and child is particularly important (Bowlby 1969; 1973; 1980). When adults suffer depression and other mental disorders in a detention centre this affects attachment with the child and may cause the child anxiety and other issues (Mares, Newman, Dudley, & Gale, 2002). Parental distress can also result in family disintegration. ECA is very concerned about the high levels of mental health issues in immigration detention amongst adults, affecting children.

During a child's detention they should be provided with adequate information concerning their situation, their rights and responsibilities and possible solutions to their situation. A child has a right to participate and anxiety will arise where a child does not understand what is happening to them. This anxiety can only be compounded when their adult parent/s are not fully aware themselves of their rights or what their current or future situation holds.

Children and young people detained in facilities are a particularly vulnerable group. They may have witnessed the torture or death of a parent, been forced to leave their country of origin with few possessions, endured a hazardous voyage, been subjected to extremely unsanitary conditions on their voyage and witnessed their parents being humiliated by guards in the detention facility. Some children may not themselves experience RES syndrome, but may have to watch the effects of this syndrome on other members of their family.

Due to the stress and trauma already experienced by a large percentage of refugee children prior to their arrival in Australia special services and treatments should be available to them in the detention centres. Provision of these services should be in a culturally and linguistically appropriate setting.

KidsMatter – Australian Primary Schools Mental Health Initiative - Helping children with mental health difficulties

Summary of the literature

Culture appears to play a part in people's understandings of child behaviour and emotional expression, and in determining what is considered to be cause for concern. The experience of some emotions and their expression - such as anger and aggression or shyness and inhibition - may be seen as either socially-acceptable or as indicative of a possible mental health difficulty and cause for concern. The perspective depends upon the cultural norms and values of those in judgement, which can result in a variety of understandings and tolerance levels of behaviours (Rubin, 1998). Such differences in understanding can lead to the behaviour of children from minority cultural backgrounds being perceived differently to those from majority groups (Bernard, 2004; Brantlinger, 2003). The role of teachers cannot be ignored in these considerations, including their own cultural background, culturally-embedded expectations, and social and emotional competence (Han, 2010).

The continued detention of young people has the potential to have a profound detrimental effect on their future.. The psychological trauma suffered prior to arrival in Australia and the continued suffering in the dehumanising conditions of detention in Australia set the stage for a future compounded with severe psychological problems.

2.1 The impact on children's development

There is now a breadth of evidence demonstrating that the care and education of young children (birth to eight years) greatly impacts on their health, wellbeing and resilience throughout their lives. The early years are a time of rapid brain development; when the child's environment actually helps program the development of neural circuits in the brain. A child's learning and development is a critical foundation for success in schooling and later life (Oberklaid, 2007).

This means that the positive and responsive interactions between the child and their care giver is critical— whether this be through a parent, carer, grandparent or an early childhood educator (Britto et al, 2013). This interaction enables the child to be exposed to language, exploration and learning.

If these positive interactions between the child and their primary care giver are not enabled, the consequences can be profound.

KidsMatter – Australian Early Childhood Mental Health Initiative – Working with parents and carers

Literature Review

Parenting is the most important influence on children's development....

Parents are usually the primary caregivers of a child, supporting their physical, social and emotional development through their daily interactions (Centre for Community Child Health, 2007). The parent-child relationship and parenting practices are critically important for children's development. The presence of consistent caring, responsive, warm, and secure parent-child relationships have been well documented as supporting children's mental health and wellbeing (Commonwealth Department of Health and Aged Care, 2000); (Kay-Lambkin, et al., 2007); (Maselko, et al., 2010); (Raphael, 2000).

The attachment relationship between the child and parent is a fundamental aspect of social and emotional development and impacts all of their future relationships (Gordon, 2003). Nurturing and responsive caregiving is the gateway to secure attachment, and through promoting and modelling this relationship parents and caregivers can establish a positive and secure relationship with their children (Early Childhood Australia, 2007).

Surrounding children with positive relationships can act as a buffer against the detrimental effects of stress.

Research has identified a number of family-related risk and protective factors that influence children's mental health and wellbeing. Family-related risk factors for mental health difficulties in children include negative parenting styles and lack of warmth and affection in the parent-child relationship (Vermeer, 2008); (Côté, 2009) (Commonwealth Department of Health and Aged Care, 2000); (Kay-Lambkin, et al., 2007); (Maselko, et al., 2010).

In contrast, family-related protective factors include parental caring, affection, secure attachment, warmth, security and consistency, and experiencing positive relationships (Field, 2010); (Vermeer 2008); (Côté, 2009); (Maselko, et al., 2010) (Kay-Lambkin, et al., 2007); (Commonwealth Department of Health and Aged Care, 2000). Providing children with a warm and secure environment surrounded by people that care and show affection assists them in developing good mental health.

Negative parenting practices can create stress for the entire family and impact on children's mental health. Excessive stress in early childhood can have detrimental effects on brain development, and place the child at risk of physical and psychological health problems later in life (Shonkoff and Boyce, 2009)

The detrimental effects of stress on children can be long term, and difficult to reverse (Gordon, 2005) The frequent activation of the brain's stress response systems can increase a child's vulnerability to a range of mental health difficulties (e.g., depression, anxiety and behavioural disorders) and can therefore affect children's overall brain development (NSCDC, 2012); (Perry, et al., 1995).

Respected Australian Paediatrician Professor Frank Oberklaid's and Academic Tim Moore's research shows that if children are exposed to certain situations such as in the context extreme poverty, physical or emotional abuse, chronic neglect, severe and prolonged maternal depression, substance abuse and family violence, stress hormones are released impair cell growth, interferes with the formation of healthy neural circuits and disrupts brain architecture.

‘In these situations, the early development of a child’s brain is compromised, establishing pathways early in life which put the child at major risk of problems throughout the life cycle.’ (Oberklaid & Moore, 2007)

The detrimental effects of stress on children can be long term, and difficult to reverse (Gordon, 2003); (NSCDC, 2012) these effects include learning difficulties, problem behaviors and physical and mental health issues.

Early Childhood Australia (ECA) is particularly concerned about the exposure of children in detention to chronic stress, fundamentally altering the structure of brain development with lifelong consequences for children.

To mitigate against these risks, children and their families should be removed from detention.

If children remain in detention, these institutions should be operated in a manner that reduces stress for children and their families, provides a safe environment for children, with appropriate health and quality education services and support for children and their families.

ECA understands that there is no, or very inadequate, access to play and education for children in detention centres. There is also no, or very limited, access to any other services in relation to physical and mental health.

ECA recommends that multidisciplinary teams—who have experience and training in working with traumatised people—should be deployed in immigration detention centres to work with early childhood professionals including educators and teachers.

Recommendations

- 7) Children and their families should be removed from immigration detention because of the negative impact on children’s brain development.**
- 8) If children remain in detention, centres should be operated in a manner that reduces stress, provides a quality environment for children, with appropriate health and quality education services for children and their families.**
- 9) ECA recommends that multidisciplinary teams should be deployed in immigration detention centres with experienced practitioners to work with traumatised children and families and early childhood professionals including educators and teachers.**

3 Health and nutrition

It is well documented that stress can have a negative impact on how babies develop. There is no doubt that the trauma and stress evident in most parents and in children themselves is receiving inadequate support and is being exacerbated by detention. The witnessing of violence and anger, and in some cases self-mutilation, is dramatically affecting not only the parents' ability to nurture but also the child's development. Parents cannot carry out adequately their parenting role and children are being presented with severe sleep problems, aggressive behaviours and eating disorders.

Anti-natal and post-natal care arrangements are particularly important time and should be supported adequately according to Australian standards. ECA remains concerned that the basic standards of anti-natal care are not being met on Christmas Island, as well as access to basic health care.¹

Breastfeeding should supported and encouraged in detention centres for the infant's health and for attachment between mother and child. Lactating mothers are provided with the appropriate nutritional options.

It is important that whilst in detention, children's nutritional needs are adequately met. Our understanding is that there are strict meal regime times and that snacks are frequently not available.

ECA understands that nutritional needs of children in detention are not being met adequately because of the strict meal time regime with healthy snacks not provided. Also whilst in detention, breast-feeding is not supported properly, nor are the significant nutritional needs of lactating mothers. The Immigration Detention Centre (IDC) environment is hot, harsh and colourless, ECA understands that parents report there are no special, stimulating toys for babies and children.

In short, the nurturing of babies and young children goes unrecognised and unsupported. Instead, parents are left confused, angry and depressed, their resources to care for their youngest children depleted.

¹ <http://www.theguardian.com/world/2013/dec/19/revealed-doctors-outrage-over-unsafe-refugee-patients>

4 Education

4.1 A right to quality early childhood education

The right to education is a universal right. The absence of this right creates a lifelong disadvantage for a child. Education should be a priority for children in immigration detention as it contributes to their sense of wellbeing and provides continuity for them in their lives.

There is now extensive evidence demonstrating that the care and education of young children (birth to eight years) greatly impacts on their health, wellbeing and resilience throughout their lives. The early years are a time of rapid brain development and a secure, nurturing environment provides a solid base for learning. A child's learning and development is a critical foundation for success in schooling and later life. (Oberklaid, 2007).

Children who attend quality early childhood education programs show better performance and progress in their early school years in intellectual, cognitive and social domains (Barnett, 2008). While a high-quality education program can provide an important head start for children as they make the transition to school, poor-quality education programs can provide no benefit or even cause children to perform less well (Elliott, 2006).

Unfortunately, Early Childhood Australia (ECA) understands that children in detention are not receiving appropriate access to early childhood education, with only limited access to qualified early childhood educators or teachers and use of play equipment and toys which contribute to their development and wellbeing.

ECA recommends that children in immigration detention:

- receive access to education that is at least comparable to the education that any Australian child would receive;
- are able to participate in regular playgroups led by facilitators who can support parents;
- are able to participate in regular preschool programs led by qualified early childhood teachers to support children's learning and development;
- have appropriate access to play areas and other early learning opportunities;
- have unlimited access to toys, books and other educational resources.

The trauma of displacement and chronic stress will only be multiplied if an educational opportunity is also withdrawn. Education should be available to children in immigration detention immediately upon the onset of their arrival.

The education provided should be appropriate in its accessibility, quality, relevance and language.

It is recommended that early primary education should be in the mother tongue to enable effective and quicker learning for children. It is not effective for education to be delivered in English only, or if it is not culturally appropriate. If no teachers are available who speak the mother tongue of the children, a translator should be present to ensure that children have the greatest chance at understanding and embracing the educational opportunity. Each child's education should be documented and monitored.

The Council of Australian Governments (COAG) initiated major reform in 2009, recognising that there is a solid body of research evidence demonstrating a direct connection between the quality of early childhood services and long term outcomes for children. The National Quality Standard (NQS) sits at the heart of this reform and provides, for the first time in Australia, a national system of quality assurance. We would like to see the same type of basic standards introduced into detention centres, and education and care services delivered in detention.

Children in detention centres are children in difficult circumstances, with many belonging to ethnic minorities.

The Convention on the Rights of the Child provides that all asylum seeker children, including those who have had their applications for refugee status rejected, are entitled to similar education as other children in Australia. The dynamic nature of Australian society presents a challenge, and offers the opportunity for innovative, inclusive and rigorous curriculum, and pedagogical development that supports equitable learning opportunities for all children and students. In Australia, the commonwealth government along with all State and Territory governments have agreed that:

Australia's future depends upon each citizen having the necessary knowledge, understanding, skills and values for a productive and rewarding life in an educated, just and open society. ...Schooling provides a foundation for young Australians' intellectual, physical, social, moral, spiritual and aesthetic development. By providing a supportive and nurturing environment, schooling contributes to the development of students' sense of self-worth, enthusiasm for learning and optimism for the future.

Specifically we know that learning in the early years is critical to present and future success and that children aged birth to eight are entitled to have their particular learning needs met by high quality staff and in appropriate environments:

The early years are a critical period when learning can be maximised. If this early advantage is missed, learning may be much slower, more difficult, and more expensive, in social and economic terms to revisit in later life.

Current brain research is contributing to understandings of the ways children learn and develop. The first five years of life are marked by critical periods during which the brain is most ready for appropriate stimulation and nurturing from social environments.

The brain research has implications for education in that, while it highlights the importance of stimulation, it identifies the potential harm that stressful and inappropriate stimulation and intervention can do to the child's learning and dispositions to learn.

Families are central to a child's early learning. Educators actively promote meaningful partnerships with families and communities and support each child's learning and sense of belonging.

A quality early childhood curriculum engages the hearts, minds, bodies and spirits of children and all who work with them. Early childhood can be a time of delight, discovery and wonder. Central to the early years (birth to eight years) is an uncompromising view of the child as capable of co-constructing knowledge and understanding.

Quality education and environments of care and learning remain the most effective and successful way to construct the knowledge, skills, values and attitudes that are needed for full human development and participation in society.

No child in detention should be denied access to a full and effective education. Young children who are exceptionally vulnerable should have access to programs that support their ongoing social, emotional, physical, linguistic and intellectual development.

All these care, education and support services and programs enrich the lives of children and families, minimise the obstacles to learning and maximise the potential of each child. For those children living in detention centres, who are already suffering from their life experiences, such services would support them to live far more enriched lives with both a sense and real optimism for their future.

4.2 Importance of play and learning environments

Play is vital to a child's development. Not only is it essential for relaxation but it is also imperative to the development of coping and functioning mechanisms within the family and community situation.

The right to engage in play and recreational activities is enshrined in Article 31 of the *Convention on the Rights of the Child*.

Article 31 – UN Convention on the Rights of the Child

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and

artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

The rights under Article 31 of the *Convention on the Rights of the Child* are interpreted in General Comment No.17. The Human Rights Commission should be guided by the General Comment in making recommendations for Government in fulfilling its obligations under Article 31.

Early Childhood Australia (ECA) has excerpted relevant parts of the General Comment which we think have gravity for this inquiry. Children in detention are a category of children which are referred to expressly in the General Comment.

ECA is concerned that the actions of the Australian Government and non-state actors including multi-national corporations involved in running immigration detention facilities are not providing the conditions where children can realise their rights under Article 31.

General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)*

A. Links with the general principles of the Convention

2. Article 2 (non-discrimination): The Committee emphasizes that States parties shall take all appropriate measures to ensure that all children have the opportunity to realize their rights under article 31 without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Particular attention should be given to addressing the rights of certain groups of children, including, inter alia, girls, children with disabilities, children living in poor or hazardous environments, children living in poverty, children in penal, health-care or residential institutions, children in situations of conflict or humanitarian disaster, children in rural communities, asylum-seeking and refugee children, children in street situations, nomadic groups, migrant or internally displaced children, children of indigenous origin and from minority groups, working children, children without parents and children subjected to significant pressure for academic attainment.

27. Articles 28 and 29: Education must be directed to the development of the child's personality, talents and mental and physical abilities to the fullest potential. Implementation of the rights under article 31 is essential to achieving compliance with the right provided for in article 29. For children to optimize their potential, they require opportunities for cultural and artistic development as well as participation in sports and games. The Committee also emphasizes that the rights under article 31 are of positive benefit to children's educational development; inclusive education and inclusive play are mutually reinforcing and should be facilitated during the course of every day throughout early childhood education and care (preschool) as well as primary and secondary school. While relevant and necessary for children of all ages, play is particularly significant in the early years of schooling. Research has shown that play is an important means through which children learn.

VII Children requiring particular attention to realize their rights under article 31

51. **Children in institutions:** Many children spend all or part of their childhood in institutions, including, inter alia, residential homes and schools, hospitals, **detention centres**, remand homes and **refugee centres**, where opportunities for play, recreation and participation in cultural and artistic life may be limited or denied. **The Committee stresses the need for States to work towards the de-institutionalization of children; but until that goal is reached, States should adopt measures to ensure that all such institutions guarantee both spaces and opportunities for children to associate with their peers in the community, to play and to participate in games, physical exercise, cultural and artistic life.** Such measures should not be restricted to compulsory or organized activities; safe and stimulating environments are needed for children to engage in free play and recreation. Wherever possible, children should be afforded these opportunities within local communities. Children living in institutions for significant periods of time also require appropriate literature, periodicals and access to the Internet, as well as support to enable them to make use of such resources. Availability of time, appropriate space, adequate resources and equipment, trained and motivated staff and provision of dedicated budgets are needed to create the necessary environments to ensure that every child living in an institution can realize his or her rights under article 31.

* Adopted by the Committee at its sixty-second session (14 January – 1 February 2013).

VIII. States parties' obligations

54. Article 31 imposes three obligations on States parties to guarantee that the rights it covers are realized by every child without discrimination:

- (a) The obligation **to respect** requires States parties to refrain from interfering, directly or indirectly, in the enjoyment of the rights provided for in article 31;
- (b) The obligation **to protect** requires States parties to take steps to prevent third parties from interfering in the rights under article 31;
- (c) The obligation **to fulfil** requires States parties to introduce the necessary legislative, administrative, judicial, budgetary, promotional and other measures aimed at facilitating the full enjoyment of the rights provided for in article 31 by undertaking action to make available all necessary services, provision and opportunities.

...

57. The obligation to protect requires that States parties take action to prevent third parties from interfering in or restricting the rights provided for in article 31. Accordingly, States are obliged to ensure:

...

- (g) **Complaint mechanisms:** Independent, effective, safe and accessible mechanisms must be in place for children to make complaints and seek redress if their rights under article 31 are violated². Children need to know who they can complain to and how (what procedure) to do so. State are encouraged to sign and ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OPIC), which will allow individual children to submit complaints of violations.

...

58. The obligation to fulfil requires that States parties adopt a wide range of measures to ensure the fulfilment of all the rights provided for under article 31. In accordance with article 12 of the Convention, all such measures, both at the national and local levels, and including planning, design, development, implementation and monitoring should be developed in collaboration with children themselves, as well as NGOs and community-based organizations, through, for example, children's clubs and associations, community arts and sports groups, representative organizations of children and adults with disabilities, representatives from minority communities and play organisations³. In particular, consideration should be given to the following:

- (g) **Schools:** Educational environments should play a major role in fulfilling the obligations under article 31, including:
 - **Physical environment of settings:** States parties should aim to ensure the provision of adequate indoor and outdoor space to facilitate play, sports, games and drama, during and around school hours; active promotion of equal opportunities for both girls and boys to play; adequate sanitation facilities for boys and girls; playgrounds, play landscapes and equipment that are safe and properly and regularly inspected; playgrounds with appropriate boundaries; equipment and spaces designed to enable all children,

² General comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child.

³ General comment No. 12 (2009) on the right of the child to be heard.

including children with disabilities, to participate equally; play areas which afford opportunities for all forms of play; location and design of play areas with adequate protection and with the involvement of children in the design and development;

- **Structure of the day:** Statutory provision, including homework, should guarantee appropriate time during the day to ensure that children have sufficient opportunity for rest and play, in accordance with their age and developmental needs;
- **School curriculum:** Consistent with obligations under article 29 concerning the aims of education, appropriate time and expertise must be allocated within the school curriculum for children to learn, participate in and generate cultural and artistic activities, including music, drama, literature, poetry and art, as well as sports and games;⁴
- **Educational pedagogy:** Learning environments should be active and participatory and offer, especially in the early years, playful activities and forms of engagement;

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⁴ General comment No. 1 (2001) on the aims of education.

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4.3 The delivery of early childhood education

Research is unequivocal on the link between staff qualifications and training and improved outcomes for children in early childhood education and care programs. A comprehensive review of the literature on *Determinants of quality in child care* (Huntsman, 2008 p. iii) concluded that across age groups and service settings 'the most significant factor affecting quality appears to be caregiver education, qualifications, and training'.

The stability of relationships in early childhood education and care is considered to be critically important in the socio-emotional and cognitive development in early childhood (AAP/APHA,

⁶ General comment No. 12 (2009) on the right of the child to be heard.

⁷ General comment No. 1 (2001) on the aims of education.

2002).¹¹ However, Early Childhood Australia understands that teachers are appointed for short term contracts. This lack of continuity is a serious concern for the implementation of any quality educational program.

Our recommendation is that educational programs are delivered by registered teachers who are culturally appropriate and where possible, facilitate engagement between children in immigration detention and local children.

Teachers in immigration detention need to be equipped to provide a learning climate/ environment where trust and respect is fostered, with respect for diversity in family, cultural and religious practices.

Extended stays in detention centres adversely affect the emotional development of refugee children. This can result in serious adaptation problems when a child finally leaves the detention centre.

Activities for refugee children should be planned and coordinated by child welfare workers in partnership with refugee parents and the refugee community. ECA recommends that early childhood experts be involved in coordinating activities that are appropriate for the varying age groups and developmental stages of children.

Recommendations

- 10) Programs should be delivered by staff with experience in teaching ESL and who are linguistically and culturally sensitive.**
- 11) Programs should be delivered by staff with relevant language, cultural and religious understanding. i.e. people on Protection Visas, refugees living in the community etc.**
- 12) Support and encouragement to maintain the child's home language should be provided.**

4.4 Physical environment

Early Childhood Australia (ECA) is very concerned about the environment for children provided in detention centres. In particular, the risks of overcrowding, children's safety, and the physical limitations on children's developmental opportunities.

11

Playgrounds should be available to all children within the detention centre. There needs to be ample equipment provided to children and it should be freely available.

Due to the harsh conditions—e.g. absence of shaded areas—and location of some detention centres any play outside is often impossible. Coupled with an absence of any facilities for children and availability of toys, books and other stimulating objects are vital for a young child's education.

The physical environment is an important contributor to the provision of quality early childhood education. Early childhood development occurs through play and exploration. It is important that there is sufficient space, facilities and accessible pathways to create learning spaces that provide rich opportunities for creative play both indoors and outdoors appropriate to the climate.

Young children need a safe (physically and psychologically) secure and aesthetically pleasing learning environment. The environment should support children to investigate and explore their surrounding through a range of play, sensory and artistic experiences, including music, art, dance and drama. Children need opportunities to be imaginative and creative, use a range of thinking modes and utilise their developing literacy and numeracy to shape the world around them. Children need personal space, time and resources to explore, experiment, discover and manipulate.

Poor environments can have a number of negative consequences on child wellbeing, often leading to behavioral difficulties. These environments are also difficult to work in, for teachers and other practitioners.

ECA recommends adequate physical resources and space for children to play, and appropriate facilities and environments for early childhood practitioners to deliver quality services including early childhood education.

Recommendations

- 13) Children in immigration detention receive access to consistent and regular early childhood education including:**
- a. playgroups with a focus on younger children**
 - b. preschool education led by qualified early childhood teachers and educators for children appropriate access to play areas**
 - c. unlimited access to toys, books and other educational resources.**
- 14) The Government should fulfil Article 31 of the Convention of the Rights of the Child as articulated in General Comment 17.**
- 15) The Human Rights Commission should make practical recommendations about how the Government can fulfil Article 31 in immigration Detention settings.**

5 Summary of Recommendations

- 1) The best interests of children should be at the centre of detention centre policies and systems.
- 2) Reforms and ongoing improvements to immigration detention centres should be informed by the views of children, as well as their families, with support from the National Children's Commissioner.
- 3) Unaccompanied children's rights and interests should be given priority.
- 4) The Children's Commissioner should establish regular consultation with children in detention.
- 5) Official visitors for children should be established in the Human Rights Commission under the Children's Commissioner to establish regular contact with children in all immigration detention facilities unencumbered, talk with providers and Government about the children, progress complaints or requests from children, advocate and report to Government.
- 6) An independent monitoring body of experts in children's development and the delivery of children's services should be appointed under the Children's Commissioner. The body would monitor the treatment of children throughout the process of detention and during their time in the community, against the standard of protection and care recommended by the UN and HCR and the UN Convention on the Rights of the Child.
- 7) Children and their families should be removed from immigration detention because of the negative impact on children's brain development.
- 8) If children remain in detention, centres should be operated in a manner that reduces stress, provides a quality environment for children, with appropriate health and quality education services for children and their families.
- 9) ECA recommends that multi-disciplinary teams should be deployed in immigration detention centres with experienced practitioners to work with traumatised children and families and early childhood professionals including educators and teachers.
- 10) Programs should be delivered by staff with experience in teaching ESL and who are linguistically and culturally sensitive.

- 11) Programs should be delivered by staff with relevant language, cultural and religious understanding. i.e. people on Protection Visas, refugees living in the community etc.**
- 12) Support and encouragement to maintain the child's home language should be provided.**
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