



# Australian Children's Rights News

Newsletter of the Australian Section of Defence for Children International

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## Doin' it for the Kids.

### Report on the KIDS submission to the Human Rights Commissioner.

In November 2001, the Human Rights Commissioner Sev Ozdovski, OAM, ordered an investigation into the incarceration of asylum seeker children under Australia's mandatory immigration detention regime. Six months later, KIDS<sup>1</sup> presented its submission.<sup>2</sup> DCI-A member Barbara Rogalla, who used to work at the Woomera detention centre, represented DCI at this working party. She also gave evidence to the working party and to HREOC,<sup>3</sup> co-authored the KIDS' chapter on Health, and wrote a personal submission in which she claims that the detention of children breaches the Convention Against Torture.<sup>4</sup>

"It is to our great sadness and frustration that we need to make the case we are making. It is to our great sadness and frustration that children are being detained as they are, and that there is not already an overwhelming consensus in the community and inside our governments that this must be remedied tomorrow, if not later today. But that is how things stand as we complete this submission. It is our hope that in the not-too-distant future this submission, and the issues with which it deals, will be of historical record and interest only, not day-to-day urgency: In other words, that we, as a community, will have found our conscience and our reason."

This fervent plea comes from the preface of the submission.

HREOC received about 230 submissions from concerned Australians. All but one<sup>5</sup> echo the sentiments of the KIDS submission. Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) stands alone in its defence of the incarceration of children.<sup>6</sup>

Continued on page 4

### Features:

Doin' it for the Kids - p1

A Bit About Words - p7

Urgent Health Warning:  
What is the "Ruddocks" -  
p9

Children and Young  
People - The Law and  
Human Rights - p11

Labor's Plan for a  
Children's Commissioner -  
p15

NCYLC and DCI Australia  
to co-ordinate the  
Australian NGO report  
under CROC - p16

Children's Lessons in  
Compassion - p17

Schoolgirl Tells PM: Time  
For Us to Say Sorry - p17

### COLUMNS

President's Column  
Publications  
Conferences  
Websites

### AND MORE

Continued from page 1 bought them if they could afford to.”

Experts in Health, Mental Health, Education, and Law wrote the 244-page document. Each chapter begins with a discussion of accepted national and international standards, and then explores how these standards relate to children in immigration detention. Each chapter identifies a large gap between these standards and day-to-day reality in detention centres.

But the KIDS submission not only contrasts what is with what ought to be. It also presents graphic personalised examples from within detention settings, and tells of how other countries respond to uninvited asylum seekers far more humanely than Australia does.

## Health

Children need more than shelter and food if they are to grow and prosper. They also need an optimal cultural and social environment, and the wellbeing of their parents directly influences the wellbeing of children. Concerns are raised about impediments to normal development in the detention setting.

“After a baby is delivered no special advice is given regarding breastfeeding. Accessing infant formula is difficult due to bureaucratic processes.”

“Many mothers make their own napkins for their babies from old sheets or other material. Disposable nappies are not readily available all the time. Forms must be filled and submitted at the right time to the right person...”

“Young babies and toddlers seem not to be reaching key milestones in their development. Their social and communication skills are behind. They’re not talking, not engaging. There’s a definite lack of curiosity...”

“There are no proper nutrition or health services for children under one...Most of the children hated the food that was given at the detention centre. Because of this they lived on chips and sweets which were expensive, but the parents

Health clinics are staffed by nurses 24 hours per day, and doctors visit frequently. But getting to a clinic presents its own challenges.

“When any sort of problem arises, people are treated as prisoners. They make a request through one set of fencing. If the attendant on the other side feels it is reasonable the person is allowed to walk across and repeat the request to the authorities on the other side who then make the final decision on what needs to be done.”

“Replacement of names with numbers contributes significantly to dehumanization of individuals. This process will also have an impact on staff working with detainees. Many ex staff have reported the difficulties associated with maintaining their own ethical standards in an

## Call for Articles

Australian Children’s Rights News depends on the input of members affiliates and subscribers to keep providing you with a wide-ranging and informative update on children’s rights issues. Others with a viewpoint on children and young people’s rights are also invited to submit.



We are now seeking articles to be considered for the first edition of 2003. Contributions of between 700 and 1500 words are preferred and should be e-mailed with full author details to [judycash@nsw.bigpond.net.au](mailto:judycash@nsw.bigpond.net.au)

Suggested graphics or photos to accompany the article are most welcome. The closing date for receipt of material is 15 December 2002 but please advise the editors as soon as possible if you are planning to submit.

**If you have an idea which you would like to discuss, please phone Judy Cashmore 02 9880 2286**

Articles published in Australian Children’s Rights News may also be placed on the DCI-Australia Website: [www.dci-au.org/](http://www.dci-au.org/)

environment where the highest priority was securing the asylum seekers.”

## Education

Education in detention is not compulsory. Yet the greatest impediment to learning comes from detention itself, because of the harsh and intimidating conditions of a regime that has eluded normal accountability and transparency mechanisms.

“Teachers and families report that education programs in Australian immigration detention are erratic, fail to reach all children, and are designed neither to be culturally or linguistically sensitive, nor sensitive to individual needs.”

“It would appear that the centres are not required to adhere to state based children’s services regulations which establish requirements for staff numbers and qualifications, staff ratios, and the physical space in which learning is to take place.”

“Children unable to express themselves fluently in their first language may be cut off from the security of their family background and the support of family members.”

“The experience of children mandatorily detained in Australian immigration detention centres makes a mockery of the principles that underpin the provision of education in the rest of the country. We are loath to recommend models for education in immigration detention because of our findings that detention and education are essentially incompatible.”

## Mental Health

The security driven detention environment harms children by depriving them of their freedom and confining them within in a monotonous environment for a long time. Detention also undermines the capacity of the family to nurture and protect children.

“... children have begun to identify themselves by numbers instead of by names and families.”

“Detainees often do not trust health staff whom they see as employees of management. The result is that mental health problems are minimised by detainees themselves and self referrals are less likely to occur.”

*“What have I done to be kept in prison is a common plea ...”*

“There have been frequent reports of behavioural disturbances in detained adolescents, manifesting as violent or self-harming acts.”

“Many asylum seekers, including children, suffer from sleep disturbance due to previous trauma or depressed mood.”

“The opinion of a worker who has observed detention officers, is that for some officers the tension associated with working with children in detention has an impact on themselves as parents. In order to minimise this impact, she believed that some officers tried to distance themselves from the children in detention by referring to the children by their numbers and through minimising direct contact with the children.”

## Legal

Concerns are raised about violation of the Commonwealth Constitution and also of the Migration Act, because the conditions are so harsh and punitive that detention may contravene the lawful authority of these statutes.

Conventions and legislation that apply to prisons and to juvenile detention in Australia are generally not enforced within immigration detention.

“During searches, personal effects may be confiscated, without a right of review. Doors have been removed from rooms in Maribyrnong Immigration Detention Centre and WIDC<sup>7</sup> to allow for spot searches. “Head counts” and other practices often entail intrusion into the family quarters at times when children are sleeping. The Migration Act allows strip searches of adults, and of children, in certain circumstances. Families, or other detainees, cannot meaningfully exercise the right to privacy.”

“The complaints mechanism is not effective to protect against the provision of inaccurate or incompetent advice because, in part, it rests on the individual asylum seeker’s ability to make judgments with respect to a system and, most likely, a language with which they are not familiar and in circumstances where they are unlikely to have any point of reference or comparison. The problem is greatest in the case of unaccompanied children, because they cannot be expected to have any of the knowledge or skills required to protect their own interests.”

“The Government has through legislation attempted to limit access by the Ombudsman’s Office and the Human Rights and Equal Opportunity Commission in accessing asylum seekers in detention when there is no direct approach by the asylum seekers themselves.”

“Because the policy of mandatory detention of children is arguably contrary to the obligations and minimum standards set down in international instruments, it is clear that the Commonwealth and ACM<sup>8</sup> owe a very high duty of care to children simply by virtue of the fact of the policy being in place ... Where a policy is implemented that contravenes these Instruments the likelihood of human rights violations and negligent acts and injuries occurring is very high and very foreseeable.”

## Conclusion

“The authors of this submission commenced their work in the expectation that they would research the issues, examine and document the evidence, and make recommendations about what should be done in the future. But the completion of the first two stages of that task has made the third implausible. There are no sensible recommendations that can be made other than the single, fundamental one: that children must not be held in immigration detention, save for the time strictly necessary for the conduct of health and identity checks.”

## Footnotes

1 Kids in Detention Story. KIDS is the name of the working party that produced the submission.

2 Kids in Detention Story. *Submission to the Human Rights and Equal Opportunity Commission National Inquiry into children in Immigration Detention*. May 2002  
<http://members.ozemail.com.au/%7Eburnside/hreoc-submission.htm>

3 Human Rights and Equal Opportunity Commission

4 Barbara Rogalla. *Submission to National Inquiry into Children in Immigration Detention by the Human Rights Commissioner*. April 2002  
[http://www.humanrights.gov.au/human\\_rights/children\\_detention/submissions/rogalla.html](http://www.humanrights.gov.au/human_rights/children_detention/submissions/rogalla.html)

5 Department of Immigration and Multicultural Affairs. *HREOC National Inquiry in Immigration Detention*. Undated  
<http://www.dima.gov.au/illegals/hreoc/index.htm>

6 “Critics slam child detention” The Courier Mail. Newspaper. 30-5-02  
[http://www.couriermail.news.com.au/common/story\\_page/0,5936,4416282%25E421,00.html](http://www.couriermail.news.com.au/common/story_page/0,5936,4416282%25E421,00.html)

7 Woomera Immigration Detention Centre

8 Australasian Correctional Management

The Human Rights and Equal Opportunity Commission has received more than 200 submissions for its *Inquiry into Children in Immigration Detention*, and expects to present its report to parliament at the end of 2002. The HREOC web-site is [http://www.humanrights.gov.au/human\\_rights/children\\_detention/index.html](http://www.humanrights.gov.au/human_rights/children_detention/index.html)

### Universal Children’s Day: 20 November.

In 1954, the United Nations General Assembly recommended that all countries institute a Universal Children’s Day, to be observed as a day of worldwide fraternity and understanding among children and of activity devoted to promoting the welfare of the world’s children. The date of 20 November marks the day of adoption of the Declaration of the Rights of the Child by the General Assembly in 1959 and the adoption in 1989 of the Convention on the Rights of the Child.

**For more information:**  
<http://www.un.org>