SUBMISSION TO THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

ON THE EXPERIENCES OF CHILDREN LIVING IN IMMIGRATION DETENTION
Acknowledgments

The Commission would like to thank the children and young people who participated in the project and demonstrated great courage in allowing us to hear and tell their often painful and traumatic stories, in a hope that things would change for the better.
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1.0 INTRODUCTION

The Commission for Children and Young People

The Commission for Children and Young People (hereafter referred to as the Commission) was established by the Commission for Children and Young People Act 1998. The Act lays down three statutory principles which govern the work of the Commission:

(a) the safety, welfare and wellbeing of children are the paramount considerations

(b) the views of children are to be given serious consideration and taken into account

(c) a co-operative relationship between children and their families and community is important to the safety, welfare and well-being of children: s10.

The Commission is required to give priority to the interests and needs of vulnerable children: s12.

Children are defined in the Act as all people under the age of 18 years and the terms ‘child’ and ‘children’ will be used in this submission to refer to children and young people under the age of 18 years.

One of the principal functions of the Commission is to make recommendations to government and non-government agencies on legislation, policies, practices and services affecting children: s11(d).

The Commission’s Response

The Commission is pleased to have the opportunity to respond to the National Inquiry into Children in Immigration Detention. The issues raised by the Terms of Reference link a number of aspects of detention with childhood opportunity and experience that have significant impact for outcomes in a range of areas of later life. As such the Commission has a great interest in ensuring, alongside of the many “professional” submissions that are likely to be made, that the views of children and young people who have experienced immigration detention are heard. This is particularly important given that so many of the children and young people settle in NSW, after immigration detention.

The Commission commends to the Inquiry key aspects of the submissions to the Inquiry from the Alliance of Health Professionals Concerned About the Health of Asylum Seekers and their Children and the Australian Psychological Society. In view of both submissions excellent summaries of research and impact of detention on the health and development of children and young people,
especially those already suffering trauma, the Commission will not attempt to canvass the same matters, but focus on telling the children’s and young people’s stories.

Being locked up is a difficult, often traumatic, experience. That is why imprisonment is the most severe punishment in most criminal justice systems, reserved for the most serious offences and the most serious offenders. Convicted prisoners often find it easier to cope with their imprisonment because:

- They know the maximum period of imprisonment, that is, they know the latest date by which they will be released, and so literally can count down the days;
- They know they have been imprisoned following a fair and open trial at which they had an opportunity to state their case, to defend themselves;
- They know they are being imprisoned as punishment for crime, as a result of their own serious misconduct.

Virtually all those who come to Australia seeking to be recognised and protected as refugees are detained by operation of law pending determination of their claim. Unlike convicted prisoners,

- They do not know the maximum length of their detention, that is, their detention is indefinite;
- They have not had the opportunity to challenge their detention, to state their case and defend themselves, in an independent court, because under the law no court has the power to review their detention or order their release;
- They have done nothing wrong, they have not been convicted of any wrong-doing, even of a minor nature, but they have done no more than claim a right under Australian and international law, to seek and obtain protection from persecution.

For these reasons asylum seekers may find detention harder to endure than prisoners do. Detention also comes after a long, often dangerous journey to Australia and, in the case of refugees, after years of persecution or fear of persecution in their own countries. Many are traumatised by these experiences. Detention is hardest for children. That is why the Convention on the Rights of the Child provides that a child shall only be detained “as a last resort and for the shortest appropriate period of time”.

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1. Migration Act 1989 (Cth).
2. Detention is imposed on all unlawful non-citizens from arrival until a visa is granted on refugee or humanitarian grounds or until deportation.
3. Although technically the lawfulness of detention can be challenged, the Act requires detention of unlawful non-citizens and the court has no jurisdiction to examine the reasonableness or necessity of detention and order release. There is therefore no effective right of judicial review.
4. Article 37(b).
seekers detained longest in Australia. In one case a very young child of a Chinese family was detained for five years and six months, from November 1994 to May 2000. In another case two Cambodian teenage brothers were detained for five years.

This submission examines the experiences of child detainees from their perspectives. It is the result of intensive interviews with ten children now recognised as refugees and living in the community on temporary protection visas. All were detained as children and were released within the past two years. It examines their experiences against the obligations Australia has as a party to the Convention on the Rights of the Child. It indicates that Australia is in violation of key provisions of the treaty that relate not only to the fact of detention itself but also to the treatment of the children while detained. Further, this treatment breaches Australia’s own Immigration Detention Standards and questions the adequacy, implementation and monitoring of the standards.

The overriding theme and focus of this submission is the impact of ‘imprisonment’ on the children and young people, who are clearly traumatised by earlier events in their lives, but come to Australia seeking refuge. The very logic of mandatory detention as it applies to children and young people is flawed, as a duty of care is not maintained. Consequently this submission expresses what the children wish, which is for mandatory detention to be abolished, especially for children and their families. Further, in recognition of the time it takes to establish a different processing system the submission outlines numerous changes that must be made immediately to detention to reduce the physical and psychological trauma and reach a humane level of "administrative detention".
2.0 THE BASIC RIGHTS OF CHILD DETAINEES

This submission is based on the rights of children recognised in the *Convention on the Rights of the Child*. The Australian Government ratified the Convention in 1990 and is bound in international law to comply with its requirements. The Convention has a number of provisions that apply to child detainees in Australia. This submission will consider a number of these provisions in some detail. Other provisions establish the foundational principles for law, policy and practice in relation to these children and underlie the discussion in the submission. These underlying provisions concern the overall framework of detention of child asylum seekers, the principle of the best interests of the child and the obligation to provide care and assistance to child detainees.

*The detention regime*

The *Migration Act 1989* (Cth) in effect requires the indefinite detention of virtually all asylum seeker children. This submission does not debate the lawfulness of this because that issue appears to be outside the terms of reference of the inquiry being undertaken by the Human Rights and Equal Opportunity Commission. However, the Commission considers that these provisions in the Act and the resultant policies and practices violate the *Convention on the Rights of the Child* article 37(b) that provides

“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 detention of child asylum seekers under this system is not “a measure of last resort” and is not “for the shortest appropriate period of time”. On the contrary it is the first and only resort and for an indefinite period of time. It therefore violates this provision of the Convention.

The Commission concurs with the opinion frequently expressed by independent experts, domestic and international, that this form of detention is arbitrary and so a violation of the prohibition of arbitrary detention found both in the *Convention on the Rights of the Child* article 37(b) and in the *International Covenant on Civil and Political Rights* article 9.

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5 Other international human rights treaties also contain relevant provisions, most significantly the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. The law, policy and practice of indefinite mandatory detention, including of children, also violates provisions of these treaties. However, this submission deals specifically only with the situation under the *Convention on the Rights of the Child*.

The best interests principle

The Commission also affirms the right of children expressed in the Convention on the Rights of the Child article 3.1.

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

The principle binds the Australian Government in its administration of on-shore asylum seekers as much as in any other area of public policy and practice affecting children. This submission is based upon this right. The experiences of child detainees related in this submission indicate that actions take in relation to them have not been in their best interests.

The special responsibility towards child asylum seekers

Under the Convention on the Rights of the Child Australia has special obligations towards child detainees over and above those it has towards children generally. The Convention article 22.1 provides that states must provide “appropriate protection and humanitarian assistance” to these children.

“States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.”

Both accompanied and unaccompanied child detainees have the right to “appropriate protection and humanitarian assistance”. However, the obligations on the state are especially significant in relation to children separated from their parents and families. Under Australian law, the Minister for Immigration is guardian of these children, acting in the place of and with all the responsibilities of their parents. This additional responsibility receives specific recognition in the Convention on the Rights of the Child article 20.1.

“A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.”

The experiences of children related here demonstrate that the rights of child detainees under these articles have been violated.
3.0 DEMOGRAPHICS

This submission presents the experiences of child detainees. The Convention on the Rights of the Child article 12 recognises the right of a child “capable of forming his or her own views … to express those views freely in all matters affecting the child”. This submission records the experiences in detention of refugee children. They were interviewed for this purpose. All spent periods of months in immigration detention in 2000 and 2001. They have all been all recognised under Australian and international law as refugees. They were not economic migrants. They had not violated the law. After being recognised as refugees they were granted temporary protection visas and released from the camps.

Ethnic and cultural background

Ten children were interviewed. Nine were born in Afghanistan with one child being from Iran. All identified their religion as Muslim, six were Shiite Muslim. Children identified with a variety of cultural groups. Two children chose to identify as Australian rather than specifying an ethnic background.

Detention experience

All the children were detained in one of three centres. The majority were detained in Curtin (six) with three being detained in Port Hedland and one in Woomera. The children all remained in detention for a period of months with the average length of detention being 140 days. The shortest period of detention was a few months and the longest well over a year. Of particular concern was that the youngest child interviewed spent the longest period in detention.
The mean age of the children entering detention was 14 years. All of the children had left detention within the last two years. Children came into detention in a variety of circumstances, some without an adult guardian or any family at all. Three others were accompanied by at least one parent and one travelled with his extended family.
4.0 METHODOLOGY

Qualitative research techniques were used to investigate the experiences of the children. This came in the form of in-depth individual interviews with the children with each interview lasting between 45 and 80 minutes and recorded on tape. These interviews were then transcribed and the tapes destroyed. The children were reimbursed $40 to cover the expenses of participating in the interview. Confidentiality was assured and all children (and in one case their guardian) provided informed consent to take part. This included signing a consent form (see appendix A)

*Interview structure*

In all but two cases, the children were interviewed without guardians. In the case of the child aged eight years his mother was present and in part helped him translate his experiences and provided support. In the parts of the report where the mother is relating on behalf of her child the text is italicised to clearly differentiate between the two. With the young boy play techniques were used to elicit responses in a fun and non-threatening way. These included drawing, role-play and a game in which the child had three wishes. In one other case two sisters were interviewed together. Given that their experiences were near identical in that they were almost always in each other’s company, they have not been quoted separately.

A translator was necessary for interviews with seven of the ten children. All the participants knew the translator, which assisted in creating an environment where participants felt comfortable sharing their story. However, it should be noted that the translation wasn’t simultaneous and so some words would have been lost in the translation.

*Tools*

To ensure consistency across interviews a basic instrument (see appendix B) was developed. The instrument provided a guide for interviewers but also sought to ensure that the children raised issues of concern to them. Interviewers encouraged the children to speak generally about their experiences and concerns rather than be constrained by a rigid set of questions to be answered. An introduction guide was also developed for interviewers to inform the children involved of their rights during the interview process (appendix C). All participants completed a demographic questionnaire (appendix D).

*Recruitment*

All interviewees were recruited through an organisation providing rehabilitation and support services to refugees. This service works specifically with refugees and has strong links within the community. The recruitment process tried to
interview children who had a diversity of experiences. There was a particular emphasis on inviting children who came to Australia as unaccompanied minors to participate. Given the higher levels of males in immigration detention it was expected that more males would be interviewed than females.
5.0 COMING TO AUSTRALIA

Leaving home

The focus of the interviews was the experience of detention. However, many of the children interviewed referred briefly to the reasons for their flight and gave accounts of their travel to Australia. Each said that his or her departure came after close family members had been imprisoned, disappeared or been killed. Their departures occurred in a climate of trauma and uncertainty. Few knew where they were going and none had any clear idea of what would await them on arrival here.

The Taliban took my father and my older brother and my mother was very devastated by what had happened to us and she told me I had to leave. She thought that my cousin was going to leave and I could go with him and I had no idea of where we were going and what arrangements were made … (Unaccompanied teenage boy)

My brother and myself are from the city of ____________ in Afghanistan. And we left Afghanistan because my father was in prison from the Taliban and he feared for our safety and he contacted my uncle and arranged for us to be sent out of the country. (Unaccompanied teenage boy)

The Taliban took two of my brothers and we do not know what has happened to them. And since then my father decided to save us as it was very difficult to lose any more of his family. (Teenage girl)

Travelling to Australia

The journey to Australia was difficult and dangerous, a further cause of trauma for the children. Many of the children interviewed grew up in villages, some in remote parts of Afghanistan where education was limited, and they had little or no experience of other countries and cultures. For village people from a land-locked country like Afghanistan the experience of travelling by car, plane and boat was both exciting and frightening. These children had never seen the sea before embarking on a long voyage in cramped conditions in unseaworthy vessels.

First we left Afghanistan and eventually came to Indonesia. Mother was pregnant and she born her baby there by caesarian. Then we moved to the boat and it was so difficult for my mum as she had a baby on the boat and all around there was water and it was a small boat and all the people were sitting next to each other. We could not
sleep. We had to sit and sleep. It was so hard. I thought the boat would be like Titanic boat but there was a hole in it and we wanted help. (Teenage girl)

I was 13 years old when I left my parents. I was born in Afghanistan. I came from Afghanistan to Australia via Indonesia. I came near to beach with smugglers and I saw many, many people speaking my language. I was surprised as my smugglers did not speak my language and I did not understand their language when they speak. In Afghanistan my father gave me money and said when I see the boat to give it to the smugglers. I gave the money and he pushed me and this is the boat and in this we go to Australia. I gave the money to the smugglers. And this is the first time I came in a car for I lived in a village in Afghanistan and I was very sick for the nine days I came to Australia ... I was very sick. All the people’s hands and legs on me, everything. I can’t say, “Please get off” because I was very sick (Unaccompanied teenage boy)

We stayed a few days in Indonesia and from there we were sent with friends of the smugglers and for two days we stayed in a hotel and we travelled to the beach. It was a small tiny boat for two or three people and they put twelve people in that boat. It was the most terrible experience in my life as I had never travelled by boat and when I saw the sea it was shocking. Then we were taken from this boat to a bigger boat that just fitted 120 people. Four days and nights and we did not know where we were going – an unknown destiny. (Unaccompanied teenage boy)

My father arranged a trip for us with a smuggler. He took us from our homeland and after a long trip to Kabul. The smuggler placed us in a boat, a very big boat and later after we travelled for a while we were placed in a small boat. Sixty to seventy people could be accommodated and then from there to another boat. This other boat had about 220 people. It was quite overloaded and it was dark. It took us several days and nights to arrive in Australia and on our way once our boat had engine problems. (Teenage girl)

We travelled by boat from Indonesia. It took us two nights and three days. The boat was nearly about to be sunk and we were saying our last prayer. It was very traumatic for us. Then we arrived at Christmas Island. We were not allowed to land and told that we had to stay in the boat and we stayed for 24 hours. It was very difficult as it was very overcrowded and people were very exhausted from the trip. (Teenage boy)
Some of the children continued to experience trauma arising from the trip for some time afterwards.

I was very sick because of the trip and in a few days I was very dizzy as though the room was circling around me and even now when I travel for a few hours I get the same feeling and feel I am going through the same experience. (Unaccompanied teenage boy)

**First contact**

Some children spoke positively of their first contact with Australians. There was some fear at the strangeness of the first Australians they met.

This is the first time I see English people and hear them speak English. I did not understand what they say and I was scared somewhat because our hair and our face was different and our language different too and I thought, “Oh my God, what are they?” (Unaccompanied teenage boy)

Australia people came by our way and they help us … (Unaccompanied teenage boy)

When we arrived we saw Australian police and they were happy that we had made it and arrived safe. The people from the government took us from that boat to their own boat and then another two days on that boat to reach Australia. They took us to somewhere that was very big and they checked up on us and also our baggage. Even after this check up we were happy we had made it safely. At last we were on the land. (Teenage girl)

For other children, the first Australians they encountered were remembered as having refused them assistance and threatened violence.

[W]e wanted help and we thought Australian ship was going to come and we would shout and scream that we need help. And they came to us and they said no, they can’t do anything, they would fix it a little bit but we have to go back to Indonesia. So in that condition they were trying to send us back. And there were women pregnant and we were showing them they were pregnant and they were shouting that we had to go back. Those people were shouting and they were showing their hands like they wanted to hit us and saying, “You have to go back” … The Australian boat came again and said, “Why don’t you go back?” and we said, “Our boat has a hole”. All of us were crying, all the small children and the women. And the men were crying. They put our food in the sea as the boat had a hole and we
had to make it lighter and so we did that. And after one day the Australian boat came again and everything was going around our ship. (Airplanes?) Yes. We were shaking our hands and waving to show them we were needing help but they didn’t do anything. After one day they came again and finally all the women, the children and the men were crying that we really needed help and they said, “Ok, we are going to get you to Australia”. (Teenage girl)

[T]hey take us to a hall [on Christmas Island], like inside like a basketball stadium but no people playing. You have to line up for food. … very hard with men, women, children, very dirty. No bed but bench. We sleep on this bench – very dirty, very dirty. Our faces are red, red like bugs eat us, sunburn. We need cream the officer said no cream. My face is burnt red …[We] just have one toilet not much, one only. No there was one for men and one for girls. (Boy under 10 years and his mother)

It was around 10pm when we arrived at the camp. We did not have enough food in the boat and we were hungry. There was a person who could speak Farsi, one of the guards, but I was too scared to ask for food. There were six people and they placed us in a room without checking with us if we needed anything. I was very sick because of the trip (Unaccompanied teenage boy)

[When we were not allowed to land for 24 hours] two officers came and they took some films or videos and they brought water but not food. [Sick people] were told that they could move from the first floor to the top floor of the boat. You can go up on the top deck and you will be all right. But they were not allowed to land. The conditions on the first floor of the boat were very overcrowded. (Teenage boy)

Yes, my ship was too full so we arrived in an army boat. I do not know where it [where we landed] was but they took our bags. It was close to water. They checked us and took our bags aside and then a bus came and we drove for two hours and we went to Port Hedland. (Unaccompanied teenage boy)

[After arriving we] flew to Adelaide and then, about six or seven hours hours, we went by bus to Woomera. They checked up on us [when we arrived] and they took our things, like rings and watches, in case we lose them. I asked if they would give them back and they said yes. I was with my uncle and we stayed together. (Teenage boy)
6.0 DETENTION CONDITIONS

6.1 THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

The Convention on the Rights of the Child

Article 27 provides

1. States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.

The children interviewed spoke about the actual living conditions in detention both in general terms and in relation to specific aspects of these conditions.

The children's experiences

The children interviewed described the conditions in the camps as harsh, crowded, difficult and foreign to their cultures and prior experiences.

When I first came to the detention centre there were different people from different countries and different cultures – really difficult to believe it. It was like a desert … It felt like we were in a cage. We could not go anywhere with all the fences and that stuff … It was like jail as there was no care … Many of the people were angry because of the time they were in detention. The children were crying. My father is so angry and I don't know why … It was a bad experience. There were no times when we were happy there … We were at war in Afghanistan because of the Taliban and we thought we have come to another war here. In the detention centre, always soldiers all around us. Oh my God, can the Taliban get us again? … It was so hot, so very hot and lots of flies and we needed a fan. (Teenage girl))

I don't want to come back because the fence is too high and spikey. I don't want to come back again in the camp. [The fence was] big and the upper was spikey – one room and a fence around it, then one
other room with fence around it. And there were snakes, big and little ones like cobras – scary. My dad killed one. (Boy under 10 years and his mother)

[When I arrived in Port Hedland] they did not ask us [if I was by myself]. They just put a tag on us and gave us a plastic bag with some shampoo and soap in it and told us to go to a certain room. We were sharing a room with ten other detainees but the same age, all underage, all without families, all boys. One room and all doubled up. (Unaccompanied teenage boy)

The camps were divided into sections. One section was reserved for new arrivals undergoing initial intake. New arrivals were segregated there from other detainees in the camp. This section was known as the closed camp, in contrast with the sections known as the open or free camp with greater freedom of movement within the fenced area and higher levels of activity. The children spoke of the particular hardship in the closed camp.

I still remember how terrified I was, because hearing all these voices, all these people screaming and yelling at the camp. They were restless and we were restless too. It was really very difficult circumstances that took us there and I cannot describe it. It was one of my most difficult experiences to be in that closed camp. So we spent more than two and half months in this closed camp, one of the more terrible experiences being in such circumstances, and then one month in the free camp. (Unaccompanied teenage boy)

It is difficult to describe [the closed camp] … It was like a prison, no window to open to see outside. They were taking us outside for an hour in the morning and an hour in the afternoon. The window had small holes, but too dusty and windy – blocked with all this dust. (Unaccompanied teenage boy)

[In the closed camp] there was not enough space to wander around and too hot to stand there. The police would check up on us four or five times a day and also in the night to take the roll … they would come into our room … (Unaccompanied teenage boy)

Two children commented that conditions improved before official visitors came to the camp.

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According to the Human Rights and Equal Opportunity Commission the initial period of segregated detention is to prevent new arrivals learning from other detainees what rights they have under Australian law to make an application for protection and to request and obtain independent legal advice: *Those who’ve come across the seas* 1998.
When people, officials, came to visit our detention centre they made everything good and, when they were gone, it went back to before. When they visited, we had hot water, playground … there was good water and good food. When they go they don’t care anymore. (Teenage girl)

Detainees are given work opportunities to earn some money to spend at a small store in the camps. They can buy additional food, drinks and personal items. They receive low rates of pay and are not paid in cash but in credit at the store or in telephone cards. Children considered that without this extra money they could not have what they wanted or even needed. As a result family members were forced to work for the very low pay for their children’s sake. There is insufficient work for all who want it and so the work is rationed.

There is no shop in the detention centre, just a room with things to sell. We had no money and to earn money we were forced to wash toilets or work in the kitchen. Everyone was fighting to wash the toilets to buy a coke. My small sister saw a soldier drinking coke and my small sister wanted some coke and he said go away, like swearing, but we did not know what he was saying. My father was forced to work for his small child, to wash the toilet and then to get a coke to give to her. You have to wait in line to wash the toilet. Especially the people who have been in the detention centre for one year, they had to do it as they did not have clothes to wear. (Teenage girl)

Children are not permitted to work and so unaccompanied children are unable to earn any money to buy additional food and drink or other goods.

We had one shop, one week open one day 7am to 1pm. The people who have money buy and most of them that lived with me brought money with them. They [were] buying tapes and cassettes. I did not have any money and I applied for a job, but they said, “No, you are underage and we cannot give you a job”. (Unaccompanied teenage boy)

Shelter including bedrooms and bathrooms

The children interviewed said that living conditions in the camps were very crowded with many people, including at times from different families, sharing a single small room. The rooms were very impersonal. There were no cupboards in which to put clothing and other personal possessions.

Me and my sister and my brother and small sister were all together. They wanted to put us all in one room, but we said we can’t, the
rooms are very small rooms. So they gave us two rooms and my mother and father and my small brother were in the other one … We had bunks. They were good. There was nothing else in the room. (Teenage girl)My cousin and my dad and mum and me sleep on the ground [at Curtin]. We live in a room a little bit bigger than this room, four families. Before when we came in camp, give us one room for four families together…a single man with women and children. I think 15 or 16 people in one room … After four or five months [they] give us small room, two beds and my son sleep on bare floor. We have no clothes. (Boy under 10 years and his mother)

[I stayed in Woomera] with my family. There were other families but they were separated from us. I stayed with my uncle in one room. But his wife and his son were in another room but they were connected. (Teenage boy)

The living conditions reported for children who arrived without their parents or families were particularly crowded, causing difficulties for younger children accommodated with older ones. Unaccompanied boys were “sharing room with 22 other detainees” (Unaccompanied teenage boy).

We slept with 22 boys in one room. … They are underage and some of them sleep in the day and not in the night as the day was very, very hot … We would try to sleep and want the light off, not on, but they said no. They are stronger than us and bigger than us. If we fight they hit us. We fight with each other, hitting each other by glass, by everything. Then after that they became two rooms. One group slept in this room and one group in that other room … For one month our minds are not working as we can’t sleep – in the day we can’t sleep, in the night we can’t sleep … Twenty-two boys but the room was very hot. We had air conditioner but it was not working and they did not fix it for us … (Unaccompanied teenage boy)

When there was noise or someone went missing after dark, then all the boys in the room would be woken and often told to muster outside.

When we are sleeping some 17 or 18 year old go to his friends to play cards and the police come at 3am or 2am and check us with the light and if the person is not sleeping he get up everybody. “Come on get up, out.” We were very depressed. “What has happened?”, we are crying. And he said, “If the person is not sleeping then we get you all up”. And we say, “It is not our fault. That’s the boy’s fault. He has not come in.” I was scared what had happened. Maybe something wrong with them … The second night police said, “The boy is not sleeping here and everyone wake, everyone wake up. Come on outside, line up.” 3am, 2am, 12 o’clock – if one or two person is not
asleep, we are all got up. One night one person went to the toilet and he did not go to any other camp, because from 12 o’clock the gate is closed. During that time the police came and checked and he was not here and he woke everyone and we have to line up. Then the man came back from the toilet and the police said, “Where have you been?” “I went toilet.” “Oh,” the policeman said, “very sorry”. Our eyes became very red as we can’t sleep. And all the time some people asking if we drink something to be like this. But we say, “No, we can’t sleep enough”. The older persons, they are happy, they are understanding each other. From 10 o’clock or 11 o’clock they turn off the light and they are all sleeping. It is just the underage people. I was just 13 and it was the bigger ones, 16 and 17 years. I could not get enough sleep because they are so noisy and they were sleeping during the day and they would not let them sleep during the night plus the police checks. (Unaccompanied teenage boy)

The only thing was experience from the guards. If one detainee left the room they would come in the middle of the night and wake us all up and count us all and that was one of the unpleasant experiences in the camp. (Unaccompanied teenage boy)

One boy said that he was separated from the only family member he was travelling with, a young cousin, and placed in a room with a number of adult males.

I spent another week sharing with some other detainees, three Iranians and four Afghans. My cousin was taken to another room sharing with others. We were in the same area but different rooms. [In my room] They were adults 20-25 year old . . . all adults. (Unaccompanied teenage boy)

Sharing with adults caused particular difficulties for one young woman. The room was very crowded and the presence of a young man raised particular cultural and religious sensitivities for her and her young sister.

We were sharing a room with three other families. … We were sharing a room with families plus a single man in that room too …It was not easy. Two families, one had five girls of our age and the other, two girls and a son aged 3. They had both parents. There were two bunk beds and I was sharing with my brother. I was in the first bed and he was in the top bunk but my sister had to share the bunk bed with a single man, like she on the lower and he was on the higher. This man was a nice man and during the daytime he would leave the room to let us have some privacy. But during the night he had to sleep somewhere and it was really, really, very, very
uncomfortable for us to be in that situation, especially for my sister.
(Teenage girl)

Detainees were moved from one section of the camp to another, sometimes more than once. They were issued with bed linen and blankets when they arrived and were expected to take these with them when they were moved from room to room. If they did not, because they did not know they had to or they could not carry them or they forgot them, then they were not given replacement linen and blanket.

When we arrived in Australia it was winter and it was too cold. They give for us blanket, sheet everything – everyone take for their own. At the first camp I cannot take my pillow or everything. When we came to the [next] camp I have not anything and I ask the policeman, “Please give me. I left my pillow, everything.” And he said, “It is up to you. You left it.” And one man, old man 42, 45 years old, he left the camp and one old blanket and he gave it to me saying, “I know you have nothing” … At the beginning they give to us. The people … who are not sick, they take for their own, put it in the plastic and put it on their shoulder and bring with them. I can't carry, it is too heavy. I can't carry my bag. I put my bag in place of my pillow. I use on my bed.
(Unaccompanied teenage boy)

The children interviewed spoke about the insufficient numbers of toilets and showers and the difficulties this caused them. The children felt that this situation was especially serious at the temporary facility on Christmas Island.

[T]here wasn't many bathroom – just two for women and two for men for 1000 people. And we had to wait and stay in a line to go to the bathroom. The women would get up at 4am to go to the bathroom. They were saying, “We have to go first. We don’t like waiting in the line.” There was no hot water, just cold water. (Teenage girl)

It was reported by the children that the numbers of toilets and showers at Curtin were a problem. People had to queue for significant periods to use the toilets and showers, causing both discontent in the difficult conditions and increasing tensions among detainees, especially when different groups had different access to the facilities.

The bathrooms were good. Most of the Brolga camp had too many toilets and bathrooms. Everything was good. But all Iraqi people are here and Iranian people. When they were not fighting they were mixed up with each other. So they separated the people and put the Afghani here. Then there [were] four toilets for 500 people, two clothes washing [machines], four showers for 500 people. The Iraqi people they have a lot and most of the time we go there. Most of the
time we went there but the police said, “Don’t do that. Don’t go there.” (Teenage girl)

People had to line up for showers and toilets. When we played the soil was red and when the rain was coming. We all were lining up. Sometimes there was fighting, not by hand but by arguing. (How long did you have to queue for a shower?) 10, 15, 20 minutes – it depends. Sometimes half an hour. (Unaccompanied teenage boy)

The closed camp at Port Hedland was also singled out for comment about the need to queue for considerable periods.

One bathroom and if you wanted to go to the toilet you have to wait ... one or two hours, line up. (Unaccompanied teenage boy)

**Food and drink**

Most of the children’s comments about food and drink were clear and unequivocal. They expressed dissatisfaction with both the quantity and the quality of the food. Detainees often complain bitterly about the food and so the interviewed children’s comments were not extraordinary. There were, however, a few more positive comments.

T]he food was very bad, not good to eat, sometimes cold, frozen. We had seen it before – it was chicken and rice ... Most of the food was mixed. It was not halal. We had to eat what there was there. (Teenage girl)

Food first month was good and, after that, I did not know whether we eat halal. They said it was but who knows ... First month enough, but after that hungry ... We had no other choice but to eat that awful food. Often it was not cooked properly or overcooked ... If for any reason we missed the period to eat, we went hungry. And the quality of food was rubbish because we did not have money or access to any other food ... There were people from everywhere, Africa, Sri Lanka, Iraq and Iran – common food for everyone. (Unaccompanied teenage boy)

In Curtin I sometimes did not eat food. I give it to my mum cause it was yuck. They give us like kangaroo food, something like that ... I hated some. We got vegetables only for the children. I gave them to my mum as hate vegetables. Fish was only for the children ...Sometimes I got the baby food. If children not eat breakfast they were hungry. We hide bread for the children. (Boy under 10 years and his mother)
We spent two weeks in the closed camp and the food was OK. The intermediate camp, we spent two weeks and it was OK. Detention was OK there. But the third camp the food was awful. Day by day the quality and the quantity was changing and it was really really bad. (Teenage boy)

[The food] was awful. It was not enough and not good. Sometimes there was food and sometimes not. There was unfair treatment as some people would get more and some would not. Probably some people made friendships with the guards and it was not the same for all of us. I never had a full stomach. There were three meals but nothing in between, just survival. (Unaccompanied teenage boy)

The food was good but chicken every time. For Afghan people cooking rice, meat and vegetables – the food was good and enough food – three times a day. Never hungry, but we were not allowed to take out from the restaurant. (Unaccompanied teenage boy)

Food in the closed sections of the camp was generally said to be more limited and less appealing than in the open areas.

In the closed camp we usually were provided with food in a lunch box. We would queue and we were given it and there was a room where we could eat it. In the morning we had bread and jam. I do not know if it was halal food … It depends on your stomach. If you were a big eater you did not have enough food but for some people it was OK. (Teenage girl)

The biggest difficulty in the camps was that the evening meal was served early in the evening and only a light supper later in the evening. The long gap between dinner and breakfast was very hard for younger children. Detainees were not permitted to take food or drink from the eating area but the parents and family members of young children took risks and endured humiliation to provide for the children.

This family, they had young children and some of them, they had to hide one or two pieces of bread under their chador to give to the children later on when they were hungry. And also some people were fasting even if it was not Ramadan because especially for women they cannot always fast if they are travelling or they have their period etc. So they had to keep some food aside for that but it was very humiliating. Around 300 people were having lunch or dinner in that room and as we were leaving the room a group of the guards would
tell us to show if we had any bread underneath. It was very difficult for me. (Teenage girl)

Lack of access to drink was remembered as especially problematic in dry, hot, desert areas.

At the night when we wanted to go outside, the doors were locked and we could not go out. And if we wanted a drink of cold water we had to leave our room and walk so far for water. This was in a big container of water and it had to last from the morning until the next day. People were putting their hands in the water and it was so dirty and we could not drink that. There were no taps, just water out of a container for 1000 people. It was so difficult. (Teenage girl)

Clothing

The children all spoke of having little clothing and of the difficulty in obtaining more. Some lost their clothes along the way. Some said their clothes had been so dirty when they arrived in Australia that they threw them away. Others said that clothing they had brought with them had been taken from them and burned following their arrival. This was probably for health and quarantine reasons. The children said the clothes thrown away or removed were not replaced.

All our clothes were too dirty and chucked … we chucked them as they were dirty. (Boy under 10 years and his mother)

We had no more clothes when we arrived. I bring a lot of clothes with me but on Christmas Island the police took me to somewhere and put my clothes in the rubbish. (Unaccompanied teenage boy)

When we were in the Christmas Island they threw away our clothes and said they would give us clothes, socks and shoes and everything. But on Christmas Island they just gave us a shirt and shorts, just for summer. We asked many times for clothes and blankets and eventually after a lot of complaining they gave us a new blanket but they took our old ones so it was not enough to keep us warm. (Unaccompanied teenage boy)

Clothing could be obtained in two ways. Clothes were available for purchase from the store but detainees needed money for that and many did not have any.

We have to have money to buy clothes but we didn’t, even for shoes. But we didn’t have money so we made like this – like tissue and we cut and with needle and thread from rugs make a shirt in the camp. (Boy under 10 years and his mother)
Otherwise, the children said, detainees could apply for clothes if and when they required them. All the children expressed dissatisfaction with the system of providing needed clothes.

When we were in Curtin about three or four months, we said we need the clothes and have no clothes. One day they give for us clothes, not new. We stay in line in the sun for three hours. The officer lie to us, a very long line, they laughed at us and closed the door and said, “Go, there are no clothes”. They laughed at us. “Look at these people fighting for clothes and not new clothes.” I am very angry. I have a headache, 3 hours in the sun. I come back home. Next week I come back. I get a shirt, only shirt, and my friend gives us trouser for my son. (Boy under 10 years and his mother)

You must apply for clothes, write your name, everything, and after that he call your name and come straight. I put it two times and my name did not come – most of the people, because Iranian people they live all this time in the camp, and they are disappointed. Everything is not in the hands of officers but in the hand of the Iranian people and they are enemy with Afghani people. (Unaccompanied teenage boy)

They used to give us poor quality slippers (thongs), especially for children as they were running around. The family would have to ask again and again and there was a big long queue and they had to stay in the queue for hours and hours and then after that they would not be given a good response. (teenage girl)

**Personal effects**

The children described how personal effects were taken from them and how they and their families had difficulty in obtaining such necessary personal items as soap, shampoo and sanitary napkins.

Other things were taken – flasks, torch taken away. And we were never given them again. When we went to detention centre they checked our bags and all the things not allowed to have they took and given the other things the next day … We got nappies but we had to buy soap. Mum had some material and she put it in plastic and made a nappy. (What about women and girls? Did you get sanitary pads?) No. There was shampoo in the bathroom. The shampoo they gave us I think was used in the washing machines too. One soap for everything. (Teenage girl)
Commentary

The right to an adequate standard of living includes

- shelter of a reasonable standard that is secure, safe and not overcrowded
- hygienic washing and toilet facilities
- adequate accessible water of good quality
- food of good quality and sufficient quantity and that is nutritious.

Indeed the Department of Immigration and Multicultural and Indigenous Affairs' own Immigration Detention Standards list a variety of standards that relate to the adequacy of living standards, such as food (8.4), accommodation (7.7), and clothing (8.2). These children's experiences demonstrate that these standards are not being met, especially in terms of their age, the gender appropriateness of the accommodation and the adequacy of food, clothing, water and bathroom facilities.

The children's descriptions of their living conditions give rise to the following concerns:

- Their accommodation was generally over-crowded and, because of the mixing of adults and juveniles, unsafe. The conditions in closed detention were particularly problematic, for example, the lack of access to other areas of the camp, limited windows within the closed camps and the fact that the children were kept in segregation from family and friends.
- The toilet and washing facilities were inadequate to the numbers of detainees and were unhygienic. In some sections of the camps they were difficult to access at night.
- Water was not provided in sufficient quantities, and convenient locations, especially at night.
- Food was of questionable quality and quantity and it was unreasonable to provide no food for the children between the early dinner time and breakfast next day.

Perhaps most striking is the connection between the living conditions and the concept of imprisonment felt by the children, a perception that goes beyond the mere physical location and design of the facilities. The descriptions by the children outline a system that is not meeting standards consistent with either Australia's obligations internationally or its own standards. The treatment raises serious concerns about the duty of care being exercised, especially for unattached minors for whom Australia, via the Minister, has guardianship responsibilities.
Recommendations

The Commission recommends that the Department of Immigration, Multicultural and Indigenous Affairs establish the following requirements for detention centre management;

1. Children should not be detained in a segregated environment. They should be accommodated with their families in family units with sufficient bedroom, kitchen, bathroom, toilet and living space. They should be furnished with adequate cupboards for clothes and personal effects.

2. Children without families should be accommodated together appropriately in small units with adult support. These units should also have sufficient bedroom, kitchen, bathroom, toilet and living space. They should be furnished with adequate cupboards for clothes and personal effects.

3. Children, especially girls, should not be accommodated in environments that would be culturally inappropriate in their own country.

4. Children should have easy access to washing and toilet facilities, as a component of their accommodation, without the need to queue for significant periods of time.

5. Food and water of adequate quantity and good quality should be available as required by the children not the requirements of the centre.

6. The clothing needs of detained children should be assessed regularly and children provided with additional clothing as and when required by the children.

6.2 THE RIGHT TO EDUCATION

The Convention on the Rights of the Child

The Convention on the Rights of the Child sets out both the purposes of education and the content of the right to education. Article 29(a) provides that “the education of the child shall be directed to … [t]he development of the child’s personality, talents and mental and physical abilities to their fullest potential”. Article 28 provides

1. States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and
accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

The children’s experiences

The children interviewed described the extent and nature of the education they received or made available in the detention centres. As in all other respects the situation was worst in the closed camp environment. The children reported that virtually no education was provided there.

Just two days one teacher came to teach in two and a half months.
(Unaccompanied teenage boy)

The children regarded the situation in the open camp environment as little better. Some children received only one hour of education once or twice a week. Most received only English lessons of a very rudimentary kind, in large classes made up of children and young people across a very wide age range. Often the teachers would be other detainees who had some limited English. The children were grateful for the English they had learned and for the care shown them by their teachers.

At the week we had two days to go to school. We went to the class. When I arrived in Australia I did not speak English. They speak English and I did not understand what they said and the lady that looked after us, everyone weekday, and she asked how school does and she became angry and upset ... she was very helpful. I draw a flower for her and I give to her ... One man, a friend, he is teaching English too. He was a teacher in Afghanistan and learning English and speaks English very well ... The teacher was playing with the girls and I say, “Please, we are coming to learn and you must teach us as I cannot understand how I can say to you” ... We just spend the time there but not teaching ... I was writing in my room all the time. She gave to me paper and pencil and she said, “You must learn English here. When you get out of the camp all the people speak English. If you do not speak English it will be hard for you.”
(Unaccompanied teenage boy)
Our teacher [taught us] for one hour. Another teacher was good, some were bad and some were good … They give us big paper to write on it. Pencils … Some officers let us one hour but a teacher would keep us for two hours. I used to be bad at Curtin but I speak English now … The teacher learnt us.
(Boy under 10 years and his mother)

There was no education, just learn English lessons with one teacher for thirty students and different age groups, 5 to 20 years … We had no computers. We had pens and exercise books. We just copied from difficult books, some books like dictionaries, just copying, then put in the rubbish bin. No easy story books, just dictionaries. Not learning English, just copying and copying. We were like a printer!
(Teenage girl)

On other occasions, however, the children reported more frequent classes but the quality of the education offered appears to have been of a very low standard and the circumstances made teaching and learning very difficult.

I would have school from nine to eleven with children my age and younger than me, nine years and ten years, and we would start at ABC. Then we would have lunch and then afternoon school from three to five … At the beginning it was basic stuff, ABC, write something on the board and write it down and use the dictionary and find the meanings of words. That was the way that we learnt.
(Unaccompanied teenage boy)

We went but did not learn anything because we were all together, 10 years to 20 years, all together. (Teenage girl)

In the closed camp there was nothing and in the free camp the room was full so I did not learn anything. (Unaccompanied teenage boy)

It was not really a school. There was no maths, just English, and I could not learn as it was only an hour. There were around eight computers and there were times when my age group could go. We had a teacher. She was good to us and she told us she was a refugee herself. She told us she was a little child when she came and that made us feel good. (Teenage boy)

The reported teaching methods were very basic, with little available to the teachers and students other than boards and paper. In general, English language was the only curriculum taught. Only one of the children had an opportunity to go out of the camp on excursions. In Australian schools excursions are seen as an ordinary and essential part of the learning process.
[We left the camp] twice, once to take photos – about half an hour and it was good to see all this green around us and the second time they took us swimming for an hour – an hour from the camp. They would say we will take you swimming and then they would told us no. I could not believe the time they took us because they had lied so much before. (Unaccompanied teenage boy)

The teacher write something on the board and the students know or understand it. Because all the students all together, one student can speak and write well but I was not able to speak English so I just sitting and looking … Some maths and some geography … We did not have much geography – just told that Australia was a big big island continent. (Unaccompanied teenage boy)

The camp situation itself made learning very difficult for the children. Some children were so distressed in the camp that education was impossible for them.

I went one hour. In one month I went eight or nine days. There was one morning class from 8 to 11 and then in the afternoon from 2 to 4 but I was not able to attend the morning school. This was because we had two adults in our room and they would play cards until 2 or 3 in the morning and I could not get enough sleep. I would often fall asleep in the morning. (Unaccompanied teenage boy) was so distressed and very sad and could not concentrate at all. I went three times. (Unaccompanied teenage boy)

**Commentary**

The children’s descriptions of the educational opportunities provided to them demonstrate a standard of education well below that required by the *Convention on the Rights of the Child*. Further, the descriptions indicate the standard of education is not consistent with that required by the government’s own *Immigration Detention Standards*, relating to education generally (4.4) and specifically for children (9.4.1). The amount of time allocated to each student was minimal – at most four hours a day but commonly one hour twice a week. The children were exposed to little or no curriculum other than English language, and the class sizes, mixed skill levels and age ranges of students were inappropriate to the effective teaching of English as a second or other language.

In relation to the *Convention on the Rights of the Child* the education offered did not promote “the development of the child's personality, talents and mental and physical abilities to their fullest potential” (article 29). Primary education was not compulsory and was not available to all children in any meaningful sense. It did not meet requirements to provide secondary, vocational or further educational opportunities.
The reported educational standards in the camps are far below those in Australian schools, denying child detainees equality of opportunity in education, on the basis of their status as asylum seekers. This violates not only article 28 of the Convention but also article 2, which prohibits discrimination on the basis of status. The provision of education in the camps does not meet the standard of education received by the general Australian community and is in stark contrast to the standards that the Australian Government recently committed to meeting as part of the May 2002 UN General Assembly Special Session for Children.

It is important to recognise that children and young people are at a sensitive developmental stage for learning and should have opportunities for educational development during this period.

The benefits of education for children and young people residing in the detention centres, in terms of ongoing learning and developing their abilities are obvious. Schools would also provide the children and young people with a constructive activity to fill in their days, a sense of hope for their future in Australia, opportunities to feel achievement and alleviate boredom during their time in detention.

**Recommendations**

The Commission recommends that the Department of Immigration, Multicultural and Indigenous Affairs establish the following requirements for detention centre management;

- **7.** Child detainees should receive general comprehensive education comparable to that provided to other children in Australia. During the initial phase of education the focus should be on learning English to prepare the children for broader educational participation, though this should also include other key learning areas such as health and human movement. The English classes should be as intensive as appropriate to each child, taking account of his or her age, maturity, emotional readiness and capacity to learn.

- **8.** No later than two weeks after arrival each child should begin to attend a nearby school outside the camp. The child should be located in a class appropriate to his or her age, maturity, capacity and prior educational attainment. He or she should study the standard applicable Australian curriculum. Although detention centres are located in remote areas all have general schools in the immediate vicinity of the camp except for Curtin where the nearest school is a half hour drive away.

- **9.** Local schools receive the necessary additional resources to support the participation and learning of child detainees, including in relation to learning English and coping with classes conducted in English.
10. Children and young people over the age of 15 years should have access to technical education and training. They should be informed about education, training and employment opportunities available in Australia and prepared to take up these opportunities if and when granted a visa.
6.3 THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH

The Convention on the Rights of the Child

The Convention on the Rights of the Child article 24.1 provides

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

The Convention, in article 39, also provides

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

The children's experiences

The children often arrived at the camps with serious illnesses as a result of the difficult travel to Australia or their experiences before leaving their countries of origin.

My foot was very painful, because when I came to Australia my boat was very wet. Some people had their own blankets and they did not get too wet. I was like this and people said he was dead. If I run, then at the night I can't sleep and I have back pain too. I have seen a doctor two times but they give a tablet and it is not better.
(Unaccompanied teenage boy)

When we arrived, the lady was very helpful. She was the nurse there and this was when I was sick. When we check out of the boat the policeman tell her. Interpreter said, “Who is sick?” and all the people said “He is sick. He is sick.” And the nurse come and took me and take my blood pressure and give me injection. In the bus my head was on her legs. She was very helpful. Good things I remember, the lady at the beginning she was helpful and very kind and working with me and I was so happy with her. (Unaccompanied teenage boy)
Conditions in the camps and the harshness of the desert locations also caused illness and disease.

Mum got so red and everywhere there were bites and bugs and things like that. (Boy under 10 years and his mother)

Each of the children interviewed related an account of inadequate access to health care and medical treatment. They said that the camps had medical staff on site but treatment was limited and often unhelpful,

“no doctors, just nurses” (Teenage girl)

*but not good – one nurse, woman, very bad. She did not like us, did not like refugees. She very bad, not to speak with us.* (Boy under 10 years and his mother)

The children often found it difficult to obtain medical assistance. There were no medical staff located permanently in the closed camp. In the open camp the medical staff were located in an area separately fenced and gated from the general area of the camp and it was difficult to pass through the fence to seek medical attention.

In the closed camp the doctor would come and check on us about twice or three times a week. But in the free camp, if we had a problem, we could not go to the doctor. We had to wait.

(Unaccompanied teenage boy)

Each said that the principal medical advice given was to drink more water and the only medication prescribed was panadol. This is consistent with what immigration detainees have said for the last decade.8

When we were in the detention centre and someone was sick, headache or sick, they would say, “Just drink water”. The doctor said, “Drink water, three or four cups, and, if you don’t get better, just drink more”. My sister has a problem with her eyes. She said her eyes were so painful and she went to the doctor who said, “You just have to drink water”. Now we come to Sydney and the doctor says she has a problem in her eyes … There was a man who had a leg broken and he went to say his leg was broken and they said, “Just use some cream to make it better and drink water”. No medicine – we do not know of any medicine being given, not even panadol (teenage girl)

I had a tooth pain and they say just drink water. If the person had eye problem, drink water. Stomach problem, drink water. If you drink

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8 See, for example, Human Rights and Equal Opportunity Commission *Those who've come across the seas* 1998.
water 10 glasses, then drink 11. If we drink 11, then drink 12, 13. All the people sick, then drink water – nothing else. (Unaccompanied teenage boy)

I think the same treatment as everyone – water. Once I had a stomach ache and I was prescribed panadol and a few times headaches and general body pain and whenever I approached the medical staff I was told to drink water. (Unaccompanied teenage boy)

I have got a kidney problem in both kidneys and I suffered a lot with that in the camp. I was having this pain and they were telling me to drink water. Any sickness or any pain we were told to drink water. Very little painkillers. Altogether five or six times I was ill. My older brother lobbied a lot for me to be sent to a doctor. One night I was very sick and he felt I should see a doctor but they gave me two panadol and told me to drink water. (Unaccompanied teenage boy)

There was a particular concern at the lack of treatment for toothache. Because of poor conditions and lack of dental care in countries of origin many children arrive with advanced tooth decay. When treatment was provided, it was usually extraction rather than (more expensive) treatment that repaired the tooth.

when we have teeth [ache], not fix it for us” (Boy under 10 years and his mother)

I was having a teeth pain. No one helped me for eight days. After eight days the doctor came to take it out. He took it out. (Unaccompanied teenage boy)

I had a very bad toothache and all they said was drink water. So I could not stand it any more and said just take it out and they said “No, no, no you are only young – you can just drink water”. I had to do my traditional healing and grabbed an onion and squeeze it and drop the juice on the tissue and put it in my mouth. It was a little better. (Unaccompanied teenage boy)

The children also recounted experiences of serious misdiagnosis that caused great distress and of non-treatment of serious illnesses. One account was especially concerning.

We experienced a lot of difficulty and bad times because of the mystery of my brother’s physical problem. We knew that it was kidney problem and he needed treatment and I tried a few times to get some medical attention for him … I had to ask if they could at least send him to a doctor, because what they were giving him was
some panadol and just drink water. Eventually I got him to a doctor … The doctor used a telephone interpreter and the interpreter, very simply as though he was telling me to drink water, told me that my brother had [a terminal disease]. He told me without any kind of support or explanation. I was really shocked and asked him what was going to happen and he asked me if I could do anything in these circumstances. I said, “What can I do? I am in prison.” So I left it with him. My brother heard what he said and was very distressed and kept saying that he would die … After my brother was diagnosed we stayed another 27 days in the camp and during this period every now and then they would come and ask for my brother by his number and he was told to drink a glass of water. And then he had a really bad pain from his kidney and they gave him pain killer and some sleeping tablets on one occasion because he could not sleep with the pain. But nothing specific for [the terminal disease]. (Unaccompanied teenage boy)

Some months after this boy and his brother were released, further tests were done and the children were told that the original diagnosis was wrong. The younger brother had a kidney disease, not a terminal illness.

Many of the children arrived at the camp traumatised from their experiences and, in the case of those without families, from their separation. The brother of the boy wrongly diagnosed, for example, said

At that time I had pressure from every angle, from leaving my family, concern about my family, the long, long journey, all these interviews and being in a very uncertain situation in a very traumatic environment and on top of that my brother was diagnosed with a fatal disease. I felt very concerned for him because he was going to die and I also felt responsible for him as I was the older one. I tried to keep my feelings inside of me and be a support person for him and calm him down and this put me in difficult circumstances and something we did not need on top of everything else.
(Unaccompanied teenage boy)

None of the children indicated that he or she had received specialist attention for trauma.

Commentary

The accounts given by the children are very similar. Some medical staff were helpful and sympathetic and some were not. This is inevitable in any system but probably especially so in one as closed as the immigration detention system in which persons presenting with illness have no choice as to whom to see, when and for what treatment.
However, the experiences in relation to medical care were unsatisfactory without exception. At no point can it be said that these children enjoyed “the highest attainable standard of health and … facilities for the treatment of illness and rehabilitation of health” (article 24.1). Further the level of medical care described is clearly in breach of the government’s own standards (section 8.3) as the service provision is neither at a “necessary” or a “reasonable” level.

Perhaps most damning in relation to health care is the seeming absence of any psychological care. None of the children interviewed indicated that he or she had received any assistance “to promote physical and psychological recovery and social reintegration” (article 39) in relation to the trauma experienced in his or her country of origin and during the travel to Australia. Far from being “an environment which fosters the health, self-respect and dignity of the child” the detention camps appear to exacerbate the trauma experienced by the children increasingly damaging their children’s development.

**Recommendations**

The Commission recommends that the Department of Immigration, Multicultural and Indigenous Affairs establish the following requirements for detention centre management;

11. Child detainees should have access to all health and medical services (inclusive of dental care) they require to enable them to enjoy the highest attainable standard of health. Their illnesses should be diagnosed with the utmost care and treated as they would be treated within the general Australian community. Children who cannot receive necessary treatment or respond appropriately to treatment within the detention environment should be released without delay for that purpose.

12. Early treatment should be provided for children and their families experiencing trauma as a result of their experiences. Special attention should be paid to the psychological needs of children separated from their families.
6.4 THE RIGHT TO PLAY, RECREATION AND CULTURAL ACTIVITY

The Convention on the Rights of the Child

Article 31 of the Convention provides

1. States Parties recognise 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.

These provisions recognise the importance of play, recreation and cultural activity to "[t]he development of the child's personality, talents and mental and physical abilities to their fullest potential" (article 29(a)). Children unable to play can become withdrawn and isolated, leading to serious mental illness.

The children’s experiences

All the children interviewed described the boredom of life in the camps. This was especially acute in the closed camp where detainees, including the children, were locked in-doors except for an hour in the morning and an hour in the afternoon.

For just one hour in the morning we come out of the room to see the sky and one hour in the afternoon. And then the doors closed, locked in. I could visit friends in other rooms but not go outside … We had one small TV for 17 or 18 people … for one or two hours, we have ball to play … but very small place to play and, if we kicked the ball out, we ask the officers, “Could we have the ball please?” and they would say, “No. Why did you kick the ball out?” (Unaccompanied teenage boy)

Even in the open camp the children had few facilities for play, recreation and sport – few toys and little sporting equipment. There was little cultural activity, certainly none provided by outside individuals or organisations.

The children were always fighting because of the playground and because of the toys, as there were very little toys. [There was] a small playground and there were so little toys and sand – not grassy. When they wanted to go play they were always fighting. No good grounds. Fighting over small cars … When you wanted to borrow the
toys you had a card in the detention centre and when you going to
dinner you had to show your card and give your name and when you
went to borrow a toy you had to give that card for the toy. If you lose
it you have to wash the toilet to pay for it. (Teenage girl)

Some of the parents or the children themselves improvised playthings, but at
times those using them were placed in some danger of injury.

One day we made a swing. Yes, it nearly cut my finger off – yah yah!
The swings weren’t dangerous. We made them. There was a little
and a big one, like a ship, like a pirate ship. Dad made it. When we
first came there was just one swing and everybody fight about it.
They shouted, “Heh! Come down, you cheeky boy” and I say, “I got it
first”. So there was one swing and then we had three swings. My
friend Wahid and he had a sister and they made one for his sister
and one for his brother and one for me. One day my friend’s cousin
who pushed us, the thingy got ripped and nearly chopped my finger
off. I was so lucky. It was this close. (Boy under 10 and his mother)

Television sets were provided by the camp managers but the few sets were
placed in large viewing areas and it was difficult for children to obtain access to
them to watch programs suitable to their age and of interest to them.

In the free camp [the TV] was in a room where we could watch it but I
was not very interested as I had never seen TV before in my life. Too
big halls with one for women and one for men – no chairs so we had
to sit on the floor. (Unaccompanied teenage boy)

The children had few, if any, opportunities for excursions outside the camp
environment.

We were never allowed to go out. Better to take us out for
sightseeing, better than just being imprisoned. It was not only that
they did not take us. They would lie to us. They would say, “We will
take you swimming” and then they would told us no. I could not
believe the time they took us because they had lied so much
before. (Unaccompanied teenage boy)

Only one of the children interviewed said he had left the camp for reasons other
than a medical appointment,

Once to take photos – about half an hour. And it was good to see all
this green around us. And the second time they took us swimming for
an hour, an hour from the camp. (Unaccompanied teenage boy)
All that remained for the children to do, then, was play sport. Yet they said that there was little sporting equipment and that no sporting events were organised by the camp staff.

We played soccer, basketball and volleyball. No net for volleyball. A ground but no hoop [for basketball]. (Unaccompanied teenage boy)

Volleyball and football. There was a basketball too but I did not know how to play that. Also tennis I think. (Was there a basketball hoop there?) There was. (Was there a net for the volleyball game)? No, it was not there and we asked and they gave us one. (Unaccompanied teenage boy)

You can play basketball or soccer – everything you like. You organise it yourself. We had Iraqi teams and Iranian teams and Afghani teams and I played … I play badminton. I like to play football but I can’t play it. (Unaccompanied teenage boy)

I did not play sport in the beginning but when the other boys left they brought us a ball and I played with some others in the closed camp. (Were there any other games you could play?) No. (So what did you do all day?) I was wandering around and then inside sleeping. It was very boring. (Unaccompanied teenage boy)

There was a kind of football but the ground was awful. If you fell down you really hurt yourself. So we did not do that too much. There was a tennis court but I did not know that game. (Teenage boy)

Commentary

The children’s accounts make it clear that the standard, quality and quantity of the play and sporting equipment provided for the children were inadequate for the numbers of child detainees and did not take account of the range of their ages. There were too few toys for the younger children. The sporting equipment was basic at best and often less than necessary for games. There was no indication of any cultural activity organised by the camp managers. The failure to take children on excursions outside the camps is especially troubling. Access to play, recreation and cultural activity is a necessary part of children’s development and a key component of education and learning. These child detainees do not receive opportunities for this that is sufficient or appropriate.

Section 4.4 of the *Immigration Detention Standards* refers to access to programs so that detainees can utilise their time in a constructive and beneficial manner, the descriptions by the children indicate this standard is not being met and more alarmingly the absence of structured and facilitated age appropriate recreation is adding to the levels of frustration and tension within the camps.
Recommendations

The Commission recommends that the Department of Immigration, Multicultural and Indigenous Affairs establish the following requirements for detention centre management;

13. An extensive range of sporting and play equipment adequate for the numbers and appropriate to the ages of child detainees should be provided to children in camps.

14. A structured recreation and play program (facilitated by specially trained staff) should be implemented to teach children how to use equipment, including through sport instruction and training and are linked to children’s development.

15. Cultural, recreational and artistic opportunities and activities should be provided to child detainees, including through visits by outside performers and educators and through excursions outside the camp, at least for one full day a week.

6.5 THE RIGHT TO PROTECTION

The Convention on the Rights of the Child

Articles 19.1 and 34 provide the right of all children to protection from abuse and neglect.

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.9

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.10

Article 20 entitles children deprived of their families to special protection by the state.

A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

9  Article 19.1.
10  Article 34.
The children’s experiences

The situation in the camps and their location raised many protection issues in the interviews with the children.

One common issue was snakes. A number of the children referred to the presence of snakes in and around the camp and their resultant fears.

There were so many snakes. When I wanted to go to the toilet and I have to go to my mother’s room and to wake her. Then she come with me. There was girl bitten by a snake so I scared to go by myself. The girl, they took her away and then brought her back later. Under our room, some animal, I saw it and shouted and screamed. Mother went to the officer and he came and said, “Don’t worry. He doesn’t care about you.” That night I could not go to my room. (Teenage girl)

There were snakes, big and little ones like cobras. Scary. My dad killed one. (Boy under 10 years and his mother)

None of the children interviewed alleged that he or she personally was subjected to physical or sexual abuse or exploitation. All, however, referred to the general atmosphere in the camps as one of violence, conflict, threat and intimidation. Most experienced this on a daily basis. Their comments indicated that they felt unsafe and vulnerable because of it.

Some reported violence or rough handling on the part of the camp guards and officials. Some thought that the camp guards were armed with guns and were violent.

(What made you feel unsafe? Because of the other people or the guards?) Uniformed officers and fences and fighting among the people, shouting “We want to be free!” … The guards made us feel scared. The soldiers that came to check our rooms had guns in their pocket. (But most of the staff did not have guns?) Yes, they do. (Teenage girl)

The situation engendered in one very young child grave fears for his physical safety from camp guards.

The boss sometimes in morning, he kicks the door in and if he sees you he puts you in jail. At night when we sleep the officer comes inside, with his foot kicks the door, and he came inside and he have a torch and see we in the room or not … The worst thing was one
day they tried to make a fence and tried to shut it on us and lock us in so we could not go out. In morning the officers come and see your card and they say, “What number are you?” Everybody and they can kill you or that. They come and check us … (When you were in Curtin, did you feel safe?) No … every time he knocked down the door and bring torches, he picks out a few if you open your eyes, he grabs you and he takes you and he hits you and you come back like One am. He even takes us and our bags. He kicks them. He got them and hides them somewhere. One day, one day, my friend went down and there was everything of ours hanging there. They hide them and laugh at us … (Was there anything else?) Some of them bring guns, no, not guns, sticks. (Boy under 10 years and his mother)

This child also was a witness to a particularly violent incident during a confrontation between camp officials and detainees who attempted to walk out of the camp.

The worse thing was they hit us, everybody, and some of us cried! The first person who got hit – whack – cried, hit with a stick. (Do you know why he got hit?) Because he jumped on the officer. And someone else’s head was bleeding. I was scared. We did not bother them. We just tried to walk on the road but they bothered us … Men broke the fence and they got some people like the armies and they got sticks and hit us … (Was it just the men who were hit when they tried to fight?) Yes, my father was hit but not hurt. They went whack, whack, whack, whack. (How many times was your father hit?) Hit on the back of the head with a stick, a baton. (Boy under 10 years and his mother)

Another child spoke of the violence he had witnessed, the actions of the guards and the effect on him.

I witnessed demonstrations and strikes in the camp. There were people there who had been there for years … It was quite a violent action because these people in the jail were screaming and yelling and self harming themselves by either beating or bashing or cutting themselves. Then the guards would interfere and usually the guard had a stick or electric thing. We would hear all this screaming and yelling and then later on they would be quiet because of the action used against them. It was quite frightening to see and hear this thing. Even in that free camp once they demonstrated and, whenever such happened, the guards came in and interfered with us, a violent action with this electric stick or something to break up the demonstration. It was not all the time but, if something was happening, they would interfere. I could not stand it anymore and
went to my room and sat by myself. I could not watch it. (Teenage boy)

Other children spoke about tension and anxiety as an ordinary state of affairs, arising from the everyday incidents of camp life.

The detention centre had one TV for the whole of the camp of 1000 people. There was always fighting about the TV. Some people wanted to watch a movie and the men wanted to watch soccer. When I was in the detention centre, about three times I saw the men were fighting and hitting us because of the TV or the children were fighting because of the playground or the toys. (Teenage girl)

(Did you see any violence while you were there?) Nearly every second day. Just fighting, because everybody was losing their temper, fighting over small things like TV or a ball. (Unaccompanied teenage boy)

There were detainees from other nationalities and detainees that they have left there for years, like three years, and they were just mad being in detention for three years. So every now and then there would be fighting between detainees and the guards. Instead of just separating them in a peaceful kind of way, they usually used a baton and bashed them and then take them away. Sometimes if there was an argument the guards would just watch until it reached a point where an arm was broken or a nose bleeding or something really serious had happened. Then they would take action. (Unaccompanied teenage boy)

One night we went to restaurant to eat something and one lady, she is from Iraq, she start fighting with the police. All the Iraqi people come to help her and hit the police and everything was broken, the plates, everything. (Unaccompanied teenage boy)

There was violent fighting between Afghans and Iraqis. [The guards] thought it was their own business and they did not do anything. (Unaccompanied teenage boy)

At the beginning it was OK but after a while there was fighting between Afghan and Iraqi detainees, violence because someone was injured in their eyes and bruising on their face. There was an Iman giving the prayer and he tried to negotiate between them all. But it did not work and after that it was tense between Afghans and Iraqis. But they sent apologies to each other and it changed. (Teenage boy)
Some were witnesses to acts of deliberate self harm by detainees.

A man from Iraq had been in the detention centre for one year and half and he was crying, “I want to go out”. He put boiling water over himself and then he died. (Teenage girl)

Two detainees attempted suicide. They took some pills and taken to the hospital. A few detainees climbed trees. One of the detainees in the basketball court took a razor and wanted to cut himself in the basketball court, cut his neck. He wanted to commit suicide. He was taken away and placed in jail for three days. He was saying that he did not want to come to Australia because he found the detention situation worse than being back in his own country. He wanted to go back. (What happened to him?) He stayed here. Until the time that we were released he was still in detention. They were two brothers and one was released and one wasn’t. Then he became very distressed and tried to kill himself. (Unaccompanied teenage boy)

A person wanted to cut himself in the basketball court and he was screaming and saying he would do it and the guard came and he was taken into a small room and left there. I saw it as I left the mosque. He was trying to cut himself in the neck. (Unaccompanied teenage boy)

One child expressed her continuing concern about what had happened to a detainee, who was apparently a spokesperson for some of the detainees, who had been injured in one incident in a camp.

After that incident happened, DIMA took [him] to give him medical attention and since then we have never heard from him and I keep wondering if he is alive or still in detention or been prosecuted. (Teenage girl)

Other children also spoke about the sudden absence of other detainees and their fears for their safety.

One of my other bad memories from the closed camp, someone would come and call a number without any explanation and that person would be taken and we did not know what was going to happen to that person and later we would find out that that person got a visa or probably deported. It was really uncomfortable feeling, to be in that situation. Their number was called and we did not know what had happened to them. (Unaccompanied teenage boy)
Of course some of the children did not feel so threatened and commented on the level of harmony among the different groups living together in a very confined space for long periods. So, for example, although there is inherent risk in requiring children to share bedrooms with adults not members of their own family, the children expressed confidence in the adults.

(When in the room with seven adults, did you feel safe with them?)
… I felt safe. They were people I had travelled with all the way. They were Afghans from the boat. I did not have problem with any detainees. (Unaccompanied teenage boy)

Another boy spoke positively about the care and concern he had experienced from some of the guards.

Some of them were really good and, if we asked for something, they would do it for us. Some of them did not like us. One of my good experiences with a guard. We were rejected once for our visa on the basis that they said we were not Afghans. That lady cried for me and said, “Why did they make that decision?” Not all of them were bad. (Unaccompanied teenage boy)

However, the effects of living amid regular violence were evident.

Watching and witnessing all this violence is very distressing and I still have not got over it. (Teenage girl)

The youngest child interviewed revealed the depth of fear and despair in the relationship between camp officials and detainees. He had said earlier in the interview that detainees who complained were “put in jail” until they said they were happy.

(If you were a magic person and had three magic wishes, what would you do with these wishes to change Curtin to make it better for people like you?) I see [a camp manager] come and I say, “Abracadabra” and whack. And he says, “Ow!” And he would get tiny. My hand gets big and he is like a tiny ant. Then I say, “You happy?” and he says, “No”. And then I make my second wish. I put an ant jail and chuck him in there for five weeks and, when the five weeks come, I ask, “Are you happy?” “No.” Then the last wish. I say, “Are you happy? Are you happy?” And make him like a teeny tiny and squash him like an ant. And then he says, “Yes, I am happy, just make me big.” I say, “No, in your dreams”. And then I make the officers get hold of the man and he is then squashed. (Boy under 10 years and his mother)
Commentary

Detention of children of itself gives rise to significant child protection issues. Confining children to camps in remote locations for periods of months or even years is child abuse, both physical and emotional. Any parent who did this would be likely to be charged with a criminal offence. This submission, however, is directed not to the fact of detention but to children’s experiences in detention.

The physical safety of the children in these locations is the first issue of concern. The children spoke about the presence of snakes and their resulting fear. Australian children in remote areas, both indigenous and non-indigenous, encounter snakes and other potentially dangerous animals and situations. But they are accustomed to the dangers and are taught how to deal with them. Child asylum seekers come from very different physical environments and cannot be expected to have the knowledge and skills to avoid the dangers of the camp locations. Indeed most Australian city children would be in the same position. This is a safety concern.

Living in an atmosphere of regular violence is far more serious because it is more immediate and more clearly harmful to the children. Traumatised by violence in their countries of origin they come to Australia to escape it. But the camps as they describe them are places in which violence is endemic, an everyday occurrence. It is an inevitable product of the forced cohabitation of large numbers of distressed, insecure people in a confined space in an extreme environment. The children’s accounts of their lives in the camps describe an atmosphere laden with violence, the potential of violence and the threat of violence. The effects of these conditions on the children themselves are evident in their comments and have created an atmosphere of fear. Fear is linked to a person’s ability to recover from trauma and indeed appears to add to trauma. The cumulative traumatising effects of detention and violence are well documented in the submissions of the Australian Psychological Society and the Alliance of Health Professionals concerned about the Health of Asylum Seekers and their Children.

Another grave risk arises from the mixing of children and adults. The Migration Act 1989 (Cth) requires that children and adults should not be detained together because, among other things, of the risk of physical or sexual abuse of the children by the adults. Yet the camps do not separate children and their families from other adults, including large numbers of single young men. In fact some of the children, male and female, said they had been forced to share bedrooms with single men. In any context within Australian domestic law, such as care and protection or justice, this is unacceptable. Fortunately none of the children interviewed indicated that he or she had been physically or sexually abused. Their right, however, is not merely a right not to be abused but a right to be protected and a right not to be placed in a position of unacceptable risk, as is outlined in the United Nations Rules for the Protection of

The situations outlined by the children interviewed indicate that they were not properly or adequately protected whilst in the camps.

**Recommendations**

The Commission recommends that the Department of Immigration, Multicultural and Indigenous Affairs establish the following requirements for detention centre management;

16. Detention centres should be required to meet same standards as residential services for children in out of home care. Conditions in the camps should be monitored regularly against these standards by an independent Agency familiar with these standards such as, in NSW, the Office of the Children’s Guardian. Policies and procedures must stipulate that children should not be accommodated with adults who are not members of their family or home community.

17. Detention centres should adopt policies and procedures to identify and address potential situations of conflict and violence. They should have staff trained in conflict resolution on site at all times.

18. Children should not be exposed to violence or the threat of violence. They should be kept away from potentially violent situations. They should be assisted to deal with any incidents of violence or self harm they might witness, including through being provided with appropriate information about the fate and well-being of those they see injured.

19. As part of induction and safety information children in the camps should be taught about local environmental dangers and how to deal with them safely.

**6.6 THE RIGHT TO PARTICIPATION**

*The Convention on the Rights of the Child*

One of the key principles of the *Convention on the Rights of the Child* is the principle of participation. The Convention provides in article 12.1:

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

*The children’s experiences*
Participation requires knowledge and understanding. The children interviewed said that they knew little about what was happening to them and their application to remain in Australia. They did not understand the process involved or its progress or otherwise. They did not know the language.

Nothing was discussed with us. There was no consultation … They gave us no explanation. (Unaccompanied teenage boy)

They tell us nothing. (Unaccompanied teenage boy)

We did not have the language and we did not know the system. When we arrived two other boats arrived with us. They were full of Afghan Hazaras and Iraqis. So in those first weeks it was very difficult for us but we did not know to say anything. (Teenage girl)

The children who came without their families were interviewed by departmental officials. The circumstances of these interviews have already been the subject of comment. However, they were able to play some role in the determination process. By contrast, children who accompanied their parents said that they were not asked for their views.

Our mother and father were interviewed, not us. Some of the other families, their children were being interviewed but they were older than 16 years. (Did you understand the process?) We understand from our parents. They want to make sure they let us stay in Australia or not. (Teenage girl)

There was no process for the children to express their views on the running of the detention centres or on issues associated with the centres. The children interviewed said that there was no committee or other process by which they could deal with the camp management.

(Was there any system for the young people there to have a committee to deal with the camp administration?) No. (Unaccompanied teenage boy)

**Commentary**

The children interviewed clearly felt alienated from the camp management. There was no formal or informal structure through which they could raise their concerns and express their views. They had no control or even influence over their lives and futures while in the camps. They could not “express [their] views freely in all matters affecting [them], [their] views … being given due weight in accordance with [their] age and maturity”. Children’s participation is one of the central rights in the *Convention on the Rights of the Child*. The Convention recognised for the
first time that child should be participants, subjects of action and not merely passive objects. Yet the interviews give no indication that the camp managers appreciated this and responded to it by providing mechanisms for the participation of child detainees. Indeed whilst recognising dignity of detainees as a key aspect of the *Immigration Detention Standards* there is no mention of participation or being informed about the asylum seeking process, a key component to being treated with dignity, especially for unattached minors.

**Recommendations**

The Commission recommends that the Department of Immigration, Multicultural and Indigenous Affairs establish the following requirements for detention centre management:

20. Immigration officials should inform children of the procedures for determining applications for protection and the progress of any application affecting them. Children should be given opportunities to express their own views and to have their views taken appropriately into account.

21. Interviews with a child should be conducted in a manner appropriate to the age and maturity of the child and with due care for and protection of the child’s rights (including the right to have an independent adult present during the interview) and well-being.

22. Mechanisms for formal and informal consultation with children should be developed in each camp. This could include consultation about educational activities in the centre or the determination of their refugee status. Children should be encouraged to express their own views and their views should be given due weight in accordance with Article 12 of the *Convention on the Rights of the Child* which deals with the child’s right to participation.

**6.7 THE RIGHT TO RELIGIOUS PRACTICE**

*The Convention on the Rights of the Child*

Under article 14 children are entitled to enjoy the same rights as adults in relation to religious belief and practice, subject to “appropriate direction and guidance” by their parents in accordance with article 5.

States Parties shall respect the right of the child to freedom of thought, conscience and religion.

*The children’s experiences*

The children interviewed said that their right to religious belief and practice was generally respected in the camps, but that there was difficulty in finding appropriate places for prayer.
(Did you have a prayer room?) No special room. We can pray outside the room or at the basketball on Friday night we can do our prayer, under the tree. (Unaccompanied teenage boy)

In a room with three families, we did not have enough space to pray. There was just a tiny space to put our prayer mats so we had to make a roster. One person would pray and, when she had finished, another would pray. I found it uncomfortable as I did not have my own space to pray. (Was there any other space within the camp where the men could pray together and the women pray together?) There was no such place in the closed camp. The single man sharing a room with us went to another room to pray. (Teenage girl)

We had to pray in our room. The men would pray together on the sand but it was so hot to do it. (Teenage girl)

One child commented that there was nothing to do in the closed camp but pray.

In the closed camp we had no choice but to pray all the time as we were locked in our rooms. In the free camp there was a mosque. (Unaccompanied teenage boy)

Another child commented that there were no visits arranged for Muslim religious leaders and that this was difficult because of the remoteness of the camps and the small Islamic populations in those areas.

Halal food was provided in the camps for Muslim detainees, although one detainee wondered whether the food was really halal and two did not believe it was.

Food first month was good and after that I did not know whether we eat halal. They said it was but who knows? (Unaccompanied teenage boy)

Most of the food was mixed – it was not halal – we had to eat what there was there. (Teenage girl)

Arrangements were made for Muslim detainees to eat during the night during Ramadhan.

3am the restaurant was open for the people who were fasting, 12 midnight and 3am for breakfast … Just ordinary food but just dates extra … Same food we eat every day but different hours. (Unaccompanied teenage boy)
The crowded conditions in the camp and the mixed population of detainees made this difficult, however.

At midnight we had to wake up to have something to eat and we had to be so quiet, turning on light for a minute and eating quickly.  
(Teenage girl)

**Commentary**

The children's accounts do not indicate any restriction on freedom of belief but the arrangements made for religious practice were inadequate. The camp managers appeared to provide in some cases halal food for Muslim detainees and assisted during Ramadhan in making food available during the night. However the children described difficulties in finding appropriate space for prayer. Nonetheless there was no evidence in their interviews of serious restriction on the right of religious practice.

**Recommendations**

The Commission recommends that the Department of Immigration, Multicultural and Indigenous Affairs establish the following requirements for detention centre management;

23. Appropriate and sufficient space in each detention centre for prayer and other religious activities should be provided in accordance with section 4.2 of the *Immigration Detention Standards*.

24. Visits to child detainees by outside religious personnel should be facilitated as desired by the children for purposes of worship, instruction and support.
6.8 THE RIGHT TO A NAME

The Convention on the Rights of the Child

Article 7.1 of the Convention provides

The child shall be registered immediately after birth and shall have the right from birth to a name … and

Article 8.1 of the Convention provides

State Parties undertake to respect the right of the child to preserve his or her identity …

The children’s experiences

Some of the children interviewed referred many times to being called by number rather than by name while they were in detention.

Most of the police did not know the name, so we have a number. The people all wrote our card number and he read for us, “[my number], you come”. The first time the police came into my room and he told me, I was very scared. (During the time in the camp did they call you by your name or always a number?) By number. (All the time?) Yes. When you go to the DIMA and they call the name, when the DIMA has any question or we have any problem, they call [one number], [another number], [another number], like that. We were outside. The police had a paper and he say, “[My number], come inside. [Another number], come inside.” (Unaccompanied teenage boy)

Some of them would speak with us in a very, very humiliating way to put us down. I felt humiliated and I think many other detainees did too. They called us by number, never by name … Then every now and then they would call our number and we were not sure whether we had to go for something, whether it was an interview or doctor appointment or something else. They gave us no explanation … It was around 5 am in the morning and that guard came and called my number and my brother’s number. (Unaccompanied teenage boy)

They would come and ask for my brother by his number. (Unaccompanied teenage boy)

Commentary
Child detainees are human beings with names, as is their entitlement. The right to a name is included in the *Convention on the Rights of the Child* in recognition of the intimate link between a personal name and being human. The removal or suppression of a person’s name is a dehumanising act that contravenes several articles of the Convention and the dignity of detainees as covered in the *Immigration Detention Standards*.

The Commission acknowledges that camp staff can have difficulty knowing and pronouncing unfamiliar names. Also some names are very common in particular cultures and so there can be more than one person with a particular name even in a small group. However, the replacement of a name with a number and then the exclusive or near exclusive use of the number rather than the name reinforce the sense of loss of personhood and of personal control in detention. It is especially unacceptable to treat children this way. They are vulnerable and at great risk of emotional harm when detained. The loss of personal identity by replacing names with numbers can be particularly harmful to them.

**Recommendation**

The Commission recommends that the Department of Immigration, Multicultural and Indigenous Affairs establish the following requirement for detention centre management;

25. Children in detention should always be called by name. Where there may be some confusion, due, for example, to more than one child sharing the same name, then a number or other personal identifier may also be used in conjunction with the name. Numbers should never be used instead of or in the absence of a name.

**6.9 THE RIGHT TO HUMANE TREATMENT**

*The Convention on the Rights of the Child*

The right to be treated humanely, with respect for human dignity, is the most fundamental right of persons in detention. It applies to all persons in detention, whether justly or unjustly detained, whether detained following criminal conviction or not, whether an adult or a child. Article 37 of the *Convention on the Rights of the Child* provides in relation to children

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment …

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner that takes into account the needs of persons of his or her age. In particular,
every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so …

The children’s experiences

The nature and context of detention affects whether the detainees are treated with humanity and respect for their inherent dignity. All of the situations already described by the children, therefore, affect this question. The experience of detention as a whole must be considered.

For the children the camp was like a prison.

It was like a prison, not detention. Whatever that we had to do, just tiny little things, we had to ask for permission. We were not allowed to have it without permission……. In the first few weeks their attitude was good to us, treating us as a human, but gradually it changed, day by day and week by week …… We have had enough to deal with, with the traumatic journey, leaving our families and not knowing about anything that has happened to them and them not knowing anything about us. We needed to be treated better than we were treated in detention camp. (Unaccompanied teenage boy)

Physical accommodation arrangements are especially relevant to whether detainees are treated humanely. The comments of the interviewed children on their living conditions have already been set out in this submission. Some aspects require further consideration in relation to the humaneness of the treatment.

As already indicated the situation in the closed camp was particularly disturbing. One child said they were locked in the building except for one hour in the morning and one hour in the afternoon.

For just one hour in the morning we come out of the room to see the sky and one hour in the afternoon. And then the doors closed. Locked in. (Unaccompanied teenage boy)

Also disturbing was the practice of accommodating children and adults who were not family members in the same room. Several of the children said that they had been accommodated in rooms with adult men in both the closed and the open camps. One boy said that he was separated from the only family member he was travelling with, a young cousin, and placed in a room with a number of adult males.

I spent another week sharing with some other detainees, three Iranians and four Afghans. My cousin was taken to another room sharing with others. We were in the same area but different
rooms. [The others in the room] They were adults 20-25 year old. . . . all adults. (Unaccompanied teenage boy)

A single adult male was also placed in a room with three families, including teenage girls.

We were sharing a room with families plus a single man in that room too ... My sister had to share the bunk bed with a single man, like she on the lower and he was on the higher. (Teenage girl)

Certainly all children were within areas of the camps in which single adult males were also detained.

For one child, however, the greater concern was loneliness and the fear that produced.

For three months I was in the closed camp. All my friends were transferred from the closed camp to the free camp and I was the only one left. I tried to find someone who could translate to find out why I was the only one left. Nobody could tell me and I was left by myself. (Were the other boys Afghani too?) Yes, they left after two months and I stayed another month. Basically I was left by myself for a week and no one else in the room. I was too scared in the room and I could not sleep and I used to leave the light on. It was too hot also. I was wandering around. After a week they brought someone else who was 17 and then they took him away and then they brought him back and he stayed for the remaining three weeks. I was so lonely by myself for everybody else was adult and no one was speaking to me. That was quite scary to be myself for a month without anyone to talk with. (Unaccompanied teenage boy)

The children interviewed commented frequently on the attitudes of the camp officers.

Some were good; some were bad. Some of them treat you like they would give you everything you want. Not everything – only if they bring. They were eating lollies. We were watching them eat lollies and ice cream and somebody said, “What are you doing? You are eating in front of our children and they are hungry.” Some of the children jump on him and say, “Give me the lollies” ... Some were nice and some mean. Some people very, very good. They can understand us. But some not. They think we’re like animals. Just eating like sheep, eat, eat. We not came for eat. In my country we can eat anything. We came for freedom. Government in Iran and Iraq is very bad. We came here for freedom. But no freedom, just 10 months in the jail. My friend she came with us and she has one son,
now two years and 4 month, she in the jail, in Curtin. (Boy under 10 years and his mother)

While in the camp the children were interviewed about their situations and their applications to remain in Australia as refugees. The interviews as they described them were often intensive and threatening. Two brothers were required to undergo a series of tests before the authorities were satisfied that they were telling the truth about their relationship and their ages. And then they were questioned repeatedly at great length about their claim to be Afghan and not, as the interviewer asserted, Iranian. The rigorousness of this testing contrast starkly with the brothers’ requests for medical assistance. No independent adult support person was present during these interviews.

They more concerned with other tests than with my health. We had to have tests to prove that we were brothers and they did some tests, DNA. First time it did not come through. They did it a second time and it was proved that we were brothers. Then they said that we were not underage and they did a bone test and it was proved that we were underage. Finally we were told that we were not Afghans as we come from a place on the border with Iran, and we have an Iranian accent. (Unaccompanied teenage boy)

… they did not provide such a thing [an adult support person]. At the interview there was someone they called a case officer, a female, a male interpreter and a male that was doing nothing but sitting and listening and I do not know what was his role. (Teenage girl)

When [staff from DIMA] came they kept asking me where did I come from, which part of Afghanistan. He finished a whole tape, both sides, asking me questions ... We were not told that we could have anyone else with us. They took ten boys at the same age and they took pictures of us all and asked us to smile and we smiled. After that they took us to a room and interviewed each of us. I cannot say exactly but approximately 2 hours or so. They interviewed us and then sent us out another way, so we would have not contact with the others. (Who else was in the interview room?) One interpreter and probably two others. (Did they explain who they were and where they had come from?) Yes. They asked us about our experience in Afghanistan, why did we come and how did we come. I was very scared. It was the first time I had been interviewed and I was scared and crying. They did not care about what was my experience. They were so focused on the interview I wasn’t important. They could have explained about the type of questions they would ask and explain the purpose, why they were interviewing us and try and calm us down. They could have made it easier for us … [When I cried] they just kept interrogating me. (After the interview did they tell you what would
happen with what you had told them?) No ... I was afraid that I would stay in this camp forever for there were people there that had been years in the camp and they were totally mad. They had lost their mind and I thought I would be in the same situation. (Unaccompanied teenage boy)

After two weeks they interviewed us again and then a week later a third time, three interviews in a month. Because the fighting was happening between the Iranians and Afghans, even though they were in the camp, ... they also told us that all the visas were stopped for a month. Each time they had a visa they would take out a few people and on the fourth time I was released. (Unaccompanied teenage boy)

The first time that they interviewed us they told us, “If you lie to us or make up stories that the smuggler has told you, you will be in trouble. We will interview when your turn has arrived.” We were in a queue. It was more official information than an interview ... Three interviews, but individual, not with my sister or brother. At first they interviewed my older sister. They took her away so there was no contact with her in between. Then my brother and, when he finished, [my sister and my brother] were taken back to the camp and I was left by myself ... It was three hours and they asked me if I needed water or the toilet and I said no but they did not offer me food ... For example they asked if I did commit any crime. I was shocked and I asked, “What do you mean by this?” and they said had I killed anybody. I was very uncomfortable and very difficult to answer the questions. How could I do that? I am this age and very young. Some silly questions like that made me uncomfortable. (Teenage girl)

We were interrogated as though we were criminals. The interviews were hours and hours and repeatedly asked the same questions: why did you leave your country, what did the Taliban do, where is your father. Quite traumatic as in our special circumstances, we had to prove our identity, whether we were brothers, our age. English was frustrating. A few interviewers from outside the camp came in and the interview just went on and on. It was very uncomfortable to be in that situation. (Can you remember fairly accurately how many hours?) Around four to five hours. I was interviewed five times [for that long] and one was a short interview, about half an hour. That was about what we eat, our customs. But, if it was an interview about what I was, then it was five times that length. I spent a month in the camp just doing interviews. The last interview we had it was 9am until 4.45pm. The lady that interviewed us, at the beginning she told us that, because we were children, she would not interview us for too long. But she kept all the day, question after question. Even if I had to
leave the room, she would ask me something as I opened the door and I would have to answer and it was very uncomfortable for me. (During this time did you break for lunch and time to walk around?) She had a break but we didn’t. I took a glass of milk with me but did not have an opportunity to drink my milk. The guards kept our lunch aside for us. The lunch was cold [when given to us later]. We had water, but no food. (Unaccompanied teenage boy)

Another child spoke about the interview process. On this occasion he had a support person present, a lawyer. He said that, after his visa had been approved, his release and that of others in his group was delayed for twenty days because of earlier disturbances at the camp.

My case officer at the interview and I tell him if you have any question about Afghanistan tell me now and ask me now about Afghanistan. I have not time to live in the camp and she understand. She asked me a lot, a lot questions about myself, about the situation of Afghanistan, about the quality of Afghanistan, how the women wearing, how’s the marriage, how you build a house, how’s your life in Afghanistan. But when I give the interview, my lawyer he tell me good, and I was waiting for 20 days ... The Afghani people they are starting the fighting, they are fighting in the centre and they are hating the centre. Our legs, our bones are broken. And for 20 days more, the visa was approved and they didn’t give to us and you must wait in here. After 20 days they call us and give to us the visa … One lady said, “I am sorry about that. We can’t give you your visa … for more than 20 days. We are not allowed to give to you because you are fighting.” (Unaccompanied teenage boy)

**Commentary**

While an individual act can constitute inhuman or inhumane treatment, the whole context and experience of detention must be taken into account when evaluating the nature of the treatment accorded detainees and whether it meets the standards set by law.

International human rights jurisprudence establishes a very high threshold for an act to constitute torture or cruel, inhuman or degrading treatment or punishment. The treatment described by the children does not reach that threshold.

The standard of inhumane treatment is a lower standard. A lesser level of mistreatment is sufficient to constitute failure to treat “with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age”. Several aspects of the children’s treatment fail to meet this standard, both generally for all the detained children and in relation to particular incidents affecting individual children. This includes:
The general conditions in the camps, the living conditions of the children, accommodating children with adult detainees who were not relatives, the denial of opportunities for useful activity, being routinely called by number rather than name, lengthy interrogation in the absence of an independent adult support person and other aspects of the detention described by the children combine to establish conditions of detention that violate the requirement of treatment “with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age” under article 37(c) of the Convention on the Rights of the Child.

The interrogation of children for lengthy periods, without food and in the absence of an independent adult is a violation of the requirements of article 37(c). These practices are not permitted in Australia during the interrogation of juvenile criminal suspects and they are even more unacceptable during the interrogation of traumatised child asylum seekers. Those children who were interrogated under these circumstances were treated inhumanely.

The conditions in the closed camp have been described. They are unsuitable for children. The child who was detained in the closed camp for a period of three months was subjected to inhumane treatment and possibly to inhuman treatment.

Recommendations

Recommendations already made in relation to particular aspects of detention would address some of the concerns in relation to humane treatment that respects the inherent dignity of the children. The additional issue raised in this section is the process of interviewing or interrogating the children and maintaining a duty of care.

The Commission recommends that the Department of Immigration, Multicultural and Indigenous Affairs;

26. Adopt standards and procedures for interviewing children. These standards should accord child asylum seekers protection and safeguards at least as high as those accorded children interviewed in the course of criminal investigation, whether as a potential offender or as a victim of crime. The procedures need to include that:

- Child detainees should not be interviewed for lengthy periods of time and during the course of an interview they should be provided as required with food, drink and opportunities for breaks;
- The number of interviews with child detainees should be kept to the absolute minimum necessary to establish the basic facts of the child’s claim for protection;
- A child detainee should not be interviewed without the presence of an independent supportive adult who has the confidence of the child;
- Each child detainee should have an advocate who will speak on his or her behalf, if the child so desires. A child detainee is entitled to legal advice and representation before and during an interview; and
- Child detainees should not be interviewed in threatening or hostile environments. The interview should be conducted in a child friendly location and in a supportive manner.

6.10 THE RIGHT TO ASSISTANCE

*The Convention on the Rights of the Child*

Article 22 obliges states to provide special measures of assistance to child refugees and asylum seekers.

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organisations or non-governmental organisations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

In the context of detention while seeking asylum the assistance required by article 37(d) is also relevant.

Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.
The right to “appropriate protection and humanitarian assistance” includes the right to assistance “to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family”. This provision supplements other rights that deal with the place of a child with his or her parents and the obligation of states to facilitate that. Under article 7 the child has, “as far as possible, the right to know and be cared for by his or her parents”. Under article 10.1

… applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.

Under article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child …
2. … States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities …

These provisions recognise the particular vulnerability of children generally and of refugee and asylum seeker children in particular. They give priority to assisting child detainees separated from their parents with family reunification.

The children’s experiences

All the children interviewed recounted experiences of isolation, confusion and ignorance of the procedures under which they were detained and by which their application for protection was to be processed.

They tell us nothing. (Unaccompanied teenage boy)

We were not told about the process of our application … Nothing was discussed with us. There was no consultation. Then every now and then they would call our number and we were not sure whether we had to go for something, whether it was an interview or doctor appointment or something else. They gave us no explanation … One of my memories from the closed camp, in the male or single section, everyone went on hunger strike as they were not being given any explanation about how long they would be in this closed camp or when we are going to be transferred. Myself and my brother and we had to go like for 24 hours in this hunger strike and then they transferred us to the family section. The same camp but the family section. When we had any question and we would ask the guards they would say, “It is nothing to do with us. It is DIMA.” All the time we lobbied for us and they would tell us to write it down. We did not
have enough English and we did not know whom to ask. If we wrote it in our own language there was no translation for it. (Unaccompanied teenage boy)

Nobody told us one single word and we didn’t know if we were going to stay a month or years. We did not know what was going to happen to us. The only time there was an interpreter available was at the time that they interviewed us … Other detainees in this closed camp were all in the same situation. They did not know what was happening either … They explained to me why they were interviewing but there were things that I had never heard before and even if they interpreted I did not know the words. (Teenage girl)

Yes, there was one interpreter. He was just helping us … No, we did not know how long. We thought one year like other people or one year and half, and two years and after two years they were sending them back to their country. We thought we were going to be locked in this place for a long time. (Teenage girl)

I have a lawyer and a case officer. (Unaccompanied teenage boy)

The interview process itself seems to have been designed to catch the children out rather than assist them. The comments of the children have already been reported in this submission.

Detainees depended on earning some money to buy small items. Children with families could rely on them for support. Parents worked whenever they could to provide additional items for their children.

*I worked in the kitchen for one week from 6am to 1pm for $26 for one week … We buy chips, clothes. We clean the toilet – but the toilet was too yucky – picked up the garbage … They don’t give you money – we work, they give us points when we go shopping and they know our points and we buy… Yes, we work only for the children. We clean the toilet, clean the outside, pick the rubbish, work in the kitchen – only for the children. (Boy under 10 years and his mother)*

Children without adult family members in the camp had no access to additional money and so no means of acquiring additional items they needed or wanted. Children were not permitted to work and so could not earn money themselves. Unaccompanied children were not paid any allowance or pocket money.

We had one shop, one week open one day 7am to 1pm. The people who have money buy and most of them that lived with me brought money with them. They buying tapes and cassettes. I did not have any money and I applied for a job but they said, “No, you are
underage and we cannot give you a job”. I had a 100 US dollars and I lost it. I was very sick and everything was wet and I put it inside my Holy Koran and put it in my bag and when I arrived in the camp they take it. “What is this?” I said, “the Koran, my money is not there”. And totally lost. I do not know who took it … the people who have the money you can buy anything. I was given no pocket money. (Unaccompanied teenage boy)

None of the children who had come without parents had had contact with their families since leaving their homes to come to Australia. When accepted as refugees they are given temporary protection visas that do not permit them to be re-united with their families in Australia.

I have not had one single contact since I left Afghanistan. I don’t know if they are alive or dead or if the Taliban killed them or if they were killed by the earthquake and they don’t know about me either. So I don’t know where they are. (Unaccompanied teenage boy)

When we were released we were told that we had a temporary protection visa for three years. We would not be able to go back to Afghanistan to see our family. After three years our visa will be reviewed and we have permanent residency. They told us that we can’t bring our family in. (Unaccompanied teenage boy)

Children separated from their parents required special care and consideration but they said none was given.

(Did they help you in any special way because you were without your family?) No, we were the same as anybody else. There was no special attention or special feeling from them. (Teenage girl)

Commentary

The Convention on the Rights of the Child recognises the particular needs and vulnerability of children who are refugees and asylum seekers. It therefore places a specific obligation on states to provide them with protection and assistance. The children’s accounts indicate that no special assistance was provided to them, not even to those separated from their parents and families.

The Convention singles out a special obligation of assistance with family contact and reunification. Not only does the Australian Government fail to assist but Australian law specifically prohibits this assistance by denying refugees on temporary protection visas the right of family reunion in Australia and the right of re-entry to permit family reunion elsewhere. Many of the children interviewed said they had had no contact with their families since they had fled their homes. This is especially concerning. It appears that no agency, governmental or non-
governmental, is taking steps to assist unaccompanied child detainees to re-establish contact with their families even to enable each to assure the other of safety and well-being. Clearly this process is adding to the stresses that children are experiencing and in the case of unattached minors raises ethical and legal questions over the duty of care being exercised by the Immigration Minister as guardian for these children.

The interview process has already been discussed in relation to the obligation of humane treatment. It is also of particular concern in relation to the obligation to provide assistance. The safety of these children depends on accurate determination of their status, that is, of whether they or their families have a well-founded fear that they are at risk of persecution in their countries of origin. However, the interviews were often conducted without appropriate assistance being provided to vulnerable minors. As already indicated, the children had no support person and no lawyer present while being interviewed. Alone and under interrogation by stern officials in a foreign language, children are likely to freeze, to be unable to tell their stories, to forget critical events and facts, perhaps even to withhold information for fear of the consequences of it becoming known. Immigration officials, therefore, may not obtain all the information or all the relevant information required for the right decision to be made. As a result, there is a real risk that refugee children may be denied the protection to which they are entitled under Australian and international law.

**Recommendations**

The Commission recommends that the Department of Immigration, Multicultural and Indigenous Affairs:

27. Develop guidelines that set out the assistance it will provide to child detainees to fulfil its obligations under the *Convention on the Rights of the Child*. In particular it should state clearly its understanding of its responsibilities towards child detainees who come to Australia without adult family members to support and care for them. It should ensure that its guidelines and procedures are consistent with *Refugee Children: Guidelines on Protection and Care* and *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum* issued by the United Nations High Commissioner for Refugees in 1994 and 1997 respectively.

28. Make every possible effort to enable child detainees to contact their parents and other family members outside Australia as soon as possible after arrival to assure them of their safety and well-being and to obtain information from their families. These children should then be assisted to maintain regular contact with their separated family members.
The Commission also recommends that;

29. The Government should amend migration legislation to permit reunification in Australia of refugee children and their parents, guardians or carers and their child siblings, in line with sound child development practice.

7.0 BEING RELEASED

All the children interviewed spoke of their longing for release while detained. The success of their applications for protection and their release from detention should have been occasions of joy and celebration for them. However, all spoke of the period of their release as if it were a further hardship, a further trauma, they had to endure. It was generally sudden, threatening because the children feared rejection of their application, confusing and physically difficult because of the long journeys they had to make to reach the city to which they had been assigned.

They just called us at 9am and said, “You have to be ready by 10am. You are going.” No time to say goodbye. Just put our clothes in a bag. They said, “You have to go by this car and put in a city” and then we went in airplane and we went to Tasmania. It was hard and we had no food. (Did someone meet you?) Yes, we were met. She was not from our detention centre. There was some men who came out before us and the men had a friend. Her name was Suzy. And she came to meet and help us. She took us to a hotel and then – it was so hard as we did not talk English and we had to change our train and airplane. We did not know where we were to go. When we arrived in Tasmania we did not know where it was and they showed us a map as we thought we had left Australia … [T]he woman who met us was so kind to us. She was an Australian. She was so kind and nice. First person that was nice to us. (Teenage girl)

One day they come tell us the number and you go in the office and, when we go in the office, he say we can go out. (Did he ask where you want to go or just tell you?) Just tell you. No, he did not ask us, only saying, “You going Canberra or Melbourne”. We came at 6.30am and waited for two hours and got so tired. We were very happy, going outside and other people were crying, “Why we in here?” Some of my friends were staring. I say bye bye. (Were you sad to leave your friends behind?) I was so sad. I was not happy because I could not take my best friends with me. (Boy under 10 years and his mother)

We were outside. The police had a paper and he say, “[My number], come inside. [Another number], come inside.” We go to inside. “This
is visa, a photocopy not original, and you give when you arrive in Brisbane to someone who is working here”. And we came to Brisbane. For this it take a week. It was very long time. I was taken to the hospital on the way as I was sick on the bus. Four days - four days on the bus, day and night, two drivers. They had a bed. All the time we sit like this and our legs became very fat. (Unaccompanied teenage boy)

Then they got a map and they chose us and called out our name. Then they said, “Melbourne. Canberra. Melbourne. Canberra.” And me and my family got Canberra and then we went on the bus for three days … Officer chose. If you went on that side you went to Canberra on the same bus. (Did you understand what was going on?) We just found out. (Do you think Mum and Dad understood what was going on?) No. (Boy under 10 years and his mother)

It was around 5 am in the morning and that guard came and called my number and my brother’s number. My brother was praying and he was not in the room. He said, “Pack up your things. You have half an hour. You need to go somewhere else and you have got your visa.” I had to wait for my brother and I did not know where we were going. Just in half an hour we had to pack up. (Unaccompanied teenage boy)

Around noon time they told us that we would be released the following morning and we were to pack up our belongings. They released us around 9 am the following morning. They gave us a sheet of paper with something written on it but they did not give us one single explanation of what would happen to us. We were taken from there in a small car and went to Derby and from there we were sent to Perth by plane. We spent 3 hours in Perth. The person from DIMA that came with us gave us $30 so that we could buy some food. Then they arranged another trip for us from Perth to Melbourne by plane. Then we were taken to a church in Melbourne. In the church there were very nice people and they gave us different food and fruit. A lady explained that this bread was halal … They told us to wait another hour. Other people were also released at the same time as us but, because we took a flight, we had to wait for them to arrive. They told us we could stay in the evening in the church and they would try and provide us with some accommodation. When they first arrived they gave us food and fruit for free but they told us after that if we needed any food we had to pay for it. (Teenage girl)

We went for four days and four nights in a bus. (Did they explain how far it was and how long it would take?) They did not tell us anything. But we were so happy to be leaving that, if they had told us to walk,
we would have walked. (When you were travelling on the bus did you get breaks, food and water?) We had stops in different places but the food was just a slice of bread and a little jam and the same for all the meals … Usually we had three stops in the daytime. (Unaccompanied teenage boy)

The youngest child interviewed explained the release experience well.

… I was happy to be leaving Curtin. (How come you were happy to leave Curtin?) Because we did not have freedom for ten months. (So once you had left Curtin you were going to be free?) Yes. (Boy under 10 years and his mother)

8.0 LIFE AFTER RELEASE

All the children interviewed have been recognised as refugees and granted temporary protection visas. These visas do not provide entitlement to permanent residence in Australia. Originally holders of temporary protection visas could apply within 30 months for permanent resident status but changes to the law on 26 September 2001 removed this right and replaced it with an entitlement only to seek another temporary protection visa. Those on temporary protection visas before that date could have applied for permanency before they lost the right to do so but some of the children said they were not informed of this or did not understand the information provided to them. As a result they failed to apply and lost the opportunity to obtain permanent resident status.

They told us that we had a temporary protection visa and that we could lodge our application within 30 months but it did not matter if we did this today or in 30 months. So we did not do it. Later on we were told that we should have done it, because we can’t get permanent residency because we lodged our application after the law changed. (Who gave this wrong information? Was it the guards or DIMA?) It was DIMA. (Teenage boy)

So life for these children remains insecure and their futures uncertain.

The children were interviewed in Sydney. Most had originally been sent to other cities, including Launceston, Brisbane, Perth, Canberra and Melbourne, but they had felt isolated, alone and unsupported and without contact with people of the same culture and language. All had come to Sydney, where there are larger numbers of people in these small immigrant communities. Some unaccompanied children came here because people who had come earlier from their region offered them accommodation and support. In fact the generosity of people in a very new and very poor immigrant community was astounding.
When I came to the Renmore Centre [in Brisbane] to give the visa, a man sat next to me and he said, not in English, in my language, and asked how was I. “Where do you come from? How old are you? What is your name? What is your father’s name? Which camp were you? Who are you staying with? It is hard for you to stay by yourself.” I said, “I have no relative here, so God help me.” “Are you the son of _____?” I said, “Yes”. He said, “Oh, I know that his friend is here in Australia. He came from Afghanistan. Do you know him?” I said, “Yes, I know him”. “He is in Sydney and has a job here. Do you want his mobile number?” And he gave me this number. I rang him and he said, “Hello, who are you?” And I said, “I am [name deleted]” I said, “I am his son”. And he said, “You must come here. I have room for you. You must come here. You have no mother and no father. I will look after you.” (Unaccompanied teenage boy)

Accidentally one day, in the station, I saw somebody. I was with my cousin and I told him that I know this person. He was from Afghanistan and had a kind of business or shop there. We hesitated and then we introduced ourselves and we were right. He was from our village. And we asked him if we could stay with him. We explained our circumstances and he said he was from Sydney and that he was on a trip to Melbourne. We asked if we could come to Sydney. He accepted us but he said we have to go to Sydney. (Unaccompanied teenage boy)

I was sharing a room [in Melbourne] with two other boys and they were underage with no adult supervision and they kept fighting all the time. I was scared that something would happen to us. I kept asking the immigration to move me from Melbourne … I came to stay with these people in Sydney, two adults. All TPV holders, single males. I am happy with them, not the same as family, but what can I do? … For a month I was wandering around but I heard that there was something called DOCS and then I found DOCS and they told me to wait for a week. There were other children being released from detention and they would provide a service for us all together … Several case managers changed. The first one enrolled us in school and another brought us some bedding and stuff. But it is the experience of all of us, the case manager now is not good. He does not care about us. He does not treat us as human. (Unaccompanied teenage boy)

Most were studying at school or technical college or doing language classes. Some were working. The temporary nature of their status in Australia is making it hard for them to focus on study or work. They remain in limbo, not knowing their futures.
I did not study well in my country and now I am not studying well in Australia as I think of too many other things. If they send us back to our country, it is not going to work for our education. We have to keep starting again and again … (You go to school here?) Yes, in [name deleted] and it is a good school and we have friends at that school, lots of Afghani children but also mixed friends now. We are learning at that school. (Teenage girl)

I am now in Year 10. Before, I was in intensive English centre and some of my Afghani friends said, “Why are you studying? You have to work to earn money because after two years your visit will be over and you have to go back. Just earn money.” That is why I didn’t really study hard in the intensive English center, because I thought I had to work and I was just wasting my time in the IEC. Then I went to the high school and I am not thinking about that anyway, just trying to study. Money is not everything. (Teenage girl)

When I came here for 25 days I did not go to school. After 25 days I was taken by another friend who thought it a good idea to go to school. He asked me do I want to study or go to work and I said, “I want to have an education. I like to study.” He said, “Good, I think you should go to school too as you are too young”. Now I am at school. I am a student. (Unaccompanied teenage boy)

Some of the children have regained a sense of ambition, of determination to succeed.

I want to be a doctor. I want to be things that I can’t be, but I wish that I could [be] like a professor. Then after that a doctor. Or after that the boss of immigration, look after refugees, think about what is going on for them. To help them feel better and happy in Australia. They flee their country to come to Australia because they are refugee and it is really difficult. (Teenage girl)

All the children, however, were still finding life difficult. Almost all showed signs of anxiety and continued to be distressed about their experiences both prior to detention and in detention itself. They showed symptoms of continuing trauma and there is a real concern about their ongoing mental health and well-being and the uncertainty of their status makes it almost impossible for them to adjust and resolve their psychological trauma. During the interviews, one boy scratched himself constantly, arms, legs and abdomen, although there was no sign of rash or other irritation on his skin. Another had a facial twitch. Another blinked continually. Well after their release from detention they still bore the marks of their experiences before leaving their countries of origin, during the dangerous travel to Australia and while detained in Australia.
**Recommendations**

Many of the recommendations already made would assist in making the process of release and life after release smoother and more informed, thereby reducing the anxiety and stress currently associated with the process.

The Commission recommends that:

30. Similar to care and protection and juvenile justice systems an emphasis needs to be placed by the Commonwealth Government on post immigration detention release for children and young people. These children and young people need to be able to access the full range of services available to all other members of the community to assist their transition to the community. The emphasis needs to be placed on community integration and associated levels of servicing not temporary and partial servicing.

**9.0 CHANGING DETENTION**

The children interviewed were asked to reflect on their experiences and nominate their priorities for changing the detention centres.

Some of the comments reflected their feelings and reactions to their own experiences, like the young boy already quoted who wanted to reduce the camp manager to the size of an ant and then put him in an ant jail.

Other comments were very practical, addressed to the physical deficiencies in the camps. They demonstrated insight into the difficulties the children encountered and how these difficulties could be corrected.

Helping the people – put in taps and TV and playgrounds and toys in the detention centre, clothes. No washing the toilets. (Teenage girl)

More teachers, a nice room, computers and they have to put effort in to teach them so they can use their time effectively. Probably, entertainment and activities like football and swimming in a timetable, something that is structured … Also I would suggest have maximum four people in one room under 18, because the situation with children is different to adults as adults are mature and they can control their talking and negotiate but children cannot do this. And I experienced real difficulties with shared room with 22 others because everybody had their own rule and their own king. Adults are not like this and I would have liked to have something like this. (Unaccompanied teenage boy)
We were never allowed to go out. Better to take us out for sightseeing, better than just being imprisoned. (Unaccompanied teenage boy)

For children Port Hedland camp was too small for in five minutes you could finish walking around – in the free camp that is. There should be very special facilities for children if they have to be detained. They would have something to distract them, to play, like a basketball court in a nicer area than where it is located at the moment. Then for education they have to have more hours and more teachers and different subjects and according to their age. Because they are putting people of different age in one group and it is hard to catch up. The closed camp was like a prison, no freedom and only one or two hours [outside] but this was not enough. They should make it available to have access to outdoor games and to education system because it was awful in the closed camp. (Unaccompanied teenage boy)

They need to change the food in the third camp. It was awful and not good for children. (Teenage boy)

Implicit in all the comments is the wish to be treated as children, as a human being. Two boys said it explicitly.

If they have to detain people, some things have to be changed. They have the right to be human and treated as human, to live free within the camps. In the closed camp you feel like a prisoner. Even if there is a camp, people should have access outside the camp, children especially. There is no need for them to be in prison. At the moment the Australian government is getting bad reputation, getting attention of the world, the way they are treating detainees, especially children. Even if the detention is there, they should have freedom to walk inside and outside the camp. If someone is knocking on your door seeking help, you would not kick that person out. If you don’t want them in, tell them go back. But if you allow them in, treat them as humans. (Unaccompanied teenage boy)

[Unaccompanied children] should be treated as human and given special attention. They should have a separate room with another boy or girl their age. They should have someone to pay attention to them. They do not have their family and they need someone to care for them. I would have liked to have someone come at least once a week to check on me to see if I was OK but they didn’t. (Unaccompanied teenage boy)
The fundamental issue, however, raised by many of the children, was the detention itself.

First of all there should not be any detention or camp and it is absolutely difficult to be in a camp situation, particularly for a child without parents, as in my circumstances. (Unaccompanied teenage boy)

What is the point of having detention camp? So I wish it would never happen, we would never have camps, because of how difficult it is to be in a camp situation. I know someone who is 16 and he is still in the camp and when I remember him I feel so sorry for him. He is only 16 and his life in the camp for that period of time. (Unaccompanied teenage boy)

Not so much time in detention. They need to go to school, education, medicine. (Teenage girl)

I think there should not be any detention for children at least. All these Afghans that are spending months or years in detention, they have not done anything wrong, they are not criminals and they should listen to them. But there should not be any detention for children. They should be free. (Teenage boy)

And there was also the question of security and permanency for those recognised as refugees.

The visa – can we live here forever or not? Schools and education for all the people, whether they are on temporary visa or not. (Teenage girl)

This visa that they gave me. Everywhere I go they say, "Oh, this is temporary visa. I can't do this for you." What is this visa? (Unaccompanied teenage boy)
10.0 CONCLUSION

Nothing can justify the present treatment of children who come here seeking protection from persecution. The children interviewed for this submission spoke freely and courageously, often with difficulty and emotion, about their experiences in Australia’s detention centres. No doubt their statements were coloured by those experiences. No doubt some may have misinterpreted events or not remembered or not remembered perfectly what happened. However, the children presented a clear and consistent picture of life for child detainees. It is a picture of routine, everyday human rights violation that does not recognise their needs as children.

The long-term implications of such treatment for these individual children and young people are problematic. A perception of being unwanted, unwelcome and unsupported is concerning not the least for its lack of humanity but also for the long term cost to the individual and the Australian community as these children are released and will need to be supported within the community, to overcome their traumatic experiences.

A picture of a culture of punishment and dehumanisation emerges from the camps; a picture that is not considered acceptable within prisons yet appears to be in place for ‘administrative detention’. The emergence of such a culture is in breach of Australia’s international obligations and for children is so detrimental as to jeopardise the very development of children and young people into sound functioning adults. To counter this a radical change is required to make Immigration Detention as humane as possible and not damaging to a child’s development. The Commission considers the most humane, sensible and pro-child development option is to not detain children in immigration detention, as the children have expressed themselves. The Commission acknowledges this may take some time to develop humane community options in line with our international obligations and therefore calls for the immediate implementation of all the recommendations in this report to assist in making “immigration detention” more child-friendly and ultimately humane.

The needs of these children encompass the almost entire range of human needs. Some of can be addressed by services that are traditionally the responsibility of the Commonwealth government; other by services which generally fall within State/Territory jurisdictions.

Recommendation

The Commission recommends that:

31. Commonwealth, State and Territory Governments, as a matter of priority, agree on their respective responsibilities in relation to children and young people in immigration detention centres and those who have been released. This agreement should be confirmed through a formal memorandum of understanding.
The submission has sought to give voice to the views of the children themselves. The concluding words, therefore, belong to them.

It was like a prison, not detention … In the first few weeks their attitude was good to us, treating us as a human, but gradually it changed, day by day and week by week … We have had enough to deal with, with the traumatic journey, leaving our families and not knowing about anything that has happened to them and them not knowing anything about us. We needed to be treated better than we were treated in detention camp. (Unaccompanied teenage boy)

I had never been in a camp in my life. I was by myself and it was enough trauma to leave my family and I would have expected that they take us somewhere to see some pleasure sight of Australia, not just concentrated in a camp, at least taken us in a bus on an excursion to a beach or somewhere and at least we have something to hold on, to a better view of Australia than just the camp. We had lost our family. (Unaccompanied teenage boy)

I am not sure how people who are out of detention could sense or feel the situation of the person who has been in detention. It is that bad. (Unaccompanied teenage boy)

That is what we want, that our message will be heard. (Unaccompanied teenage boy)
APPENDIX A: INTERVIEW CONSENT FORM

I understand that the purpose of the interview is to share my experience as a child or young person who has been in immigration detention for the purposes of a submission that the NSW Commission for Children and Young People are making to an enquiry by the Human Rights and Equal Opportunity Commission. The data may also be used by STARRTS for their submission.

I understand that:
1. I am participating in this research voluntarily;
2. The information will only be used to assist the Commissioner for Children and Young People, Gillian Calvert, and STARRTS to make a submission to an enquiry being undertaken by The Human Right and Equal Opportunity Commission.
3. The submission will be a written report but, if I am interested, there will be an opportunity to tell my story in person;
4. Anything that I talk about today is confidential. That means my information may be used but that my name or any unique details that could identify me will not appear in the report;
5. The interview will be taped however the only people who will hear the tape will be the project team and the transcriber. The tape will be destroyed after transcription.
6. The transcripts will be kept at the Commission for Children and Young People for one year after which they will be destroyed;
7. I can end the interview or take a break whenever I like during the interview and that I don’t have to talk about anything I don’t want to;
8. I can talk to someone after the interview if I want to;
9. Regardless of the length of the interview I have received $40 to cover expenses.

I ______________________ agree participate in the NSW Commission for Children and Young People’s interviews.

Signature of participant: ______________________

Date: _________________________
APPENDIX B: INTERVIEW GUIDE

1) Could you tell me your story of being in detention?

2) How did you arrive?

3) What did you think of the detention centre(s) you were in?

4) What were the good and bad things?

5) What do you think were the good and bad things about the:
   a) Food and drink
   b) Shelter including bedroom and bathroom (also ask about issues of privacy)
   c) Clothing you were provided (also ask whether you got to keep personal possessions)
   d) access to medical attention

6) How would you describe the level of support and respect for yours or others religious practice?

7) Describe your level of understanding of what was occurring to you and your family whilst in detention? For instance:
   Were interpreters available?
   Did you know what was happening to your application or your family’s application to stay in Australia?
   Were you kept informed about the likelihood of release?

8) What was the health of people in the detention centre(s) like?

9) What education did you receive at the detention centre? Please tell us about how you spent your day and what you did at school and elsewhere. Did you go on school excursions?

10) What opportunities did you have for play, sport and games? What equipment was there? Did you go outside the centre for excursions or sport or play? How often and where to?

11) Did you able to participate in decisions that affected you? In what ways?

12) Did you feel safe in the centre?

13) Tell me about how you got on with others specifically
   Staff
   Family
   Other detainees
14) Tell me about your experiences at the time of leaving detention?

15) Did you have access to people from outside the detention centre either by phone, or face-to-face specifically:
   family that weren’t detained
   representatives from NGO

16) How could your own experience of immigration detention been improved and how could it be improved for other children and young people?
Hi, my name is _____________ and I work for the Inspire Foundation. We have been asked by the NSW Commission for Children and Young People to talk with about 12 young people who have been in immigration detention. The reason for the interviews is that the Commissioner, Gillian Calvert, is making a submission to an enquiry being undertaken by Human Right and Equal Opportunity Commission. She wants to make sure that, when she is making her submission, the experiences of young people are being told. She believes it is important that children and young people are heard so that people and places can change to be more child friendly and supportive. The submission will be a written report but, if you are interested, there will be an opportunity to tell your story in person. I will leave you some information on the Commission for Children and Young People behind after the interview.

I expect that we will talk for about one hour and that we will discuss things such as your experiences when you arrived, what it was like living in the detention centers, including things like the food, whether you went to school or had time to play. I also want to talk about how you got on with staff and other people at the centre and what happened when you left.

Anything that we talk about today is confidential. That means we may use the information you give us but your name or any unique details that could identify you will not appear in the report. If it is OK with you I will record the interview. However the only people who will hear the tape will be the project team and the transcriber. After your interview has been transcribed it will be destroyed. What you and other children and young people say will be analysed into themes, that is common experiences and ideas will be grouped together. These themes will be reported and quotes will be used to illustrate them though these will not use names or any unique details that could identify you.

If something we talk about is upsetting to you or you do not want to talk about something, then that is OK. And if you want to speak with someone who can help you deal with upsetting things from the past, then we can arrange that for you. We can end the interview at any time or take a break if you need to. Regardless of the length of the interview we will provide you with $40 to cover expenses. Before we start can we fill out a consent form.
APPENDIX D: DEMOGRAPHIC QUESTIONNAIRE

1. Are you [ ] male
   [ ] female

2. What is your year of birth? ____________

3. What is your country of birth? ______________________________

4. What is your ethnic background ______________________________

5. What is your religious affiliation ______________________________

6. Did you live anywhere else prior to coming to Australia
   [ ] no
   [ ] yes ______________________________

7. How many of your family members did you arrive with (please list)?
   ______________________________________________________
   ______________________________________________________
   ______________________________________________________
8. What was your age when you first entered immigration detention in Australia? ____

9. What was your age when you left immigration detention in Australia? ________

10. Length of time spent in immigration detention? __________

11. What Australian immigration detention centres have you been detained in? (include details of how long you spent in each centre)

____________________________________________________________________
____________________________________________________________________
____________________________________________________________________