

No Place for Children: Immigration detention on Christmas Island

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1. Executive summary

Convention on the Rights of the Child – Article 3

In all actions concerning children ... the best interests of the child shall be a primary consideration.

Convention on the Rights of the Child – Article 22

... a child who is seeking refugee status ... whether unaccompanied or accompanied ... [shall] receive appropriate protection and humanitarian assistance...

Detaining children violates their basic human rights. But when they are housed in locked facilities such as Christmas Island, it is the responsibility of the government and its contractors, in this case Serco Asia Pacific (“Serco”), to take the very best care of the children. Serco is contractually bound by its Detention Services Contract with the Department of Immigration and Citizenship to provide services to people in immigration detention.

Convention on the Rights of the Child – Article 39

Children subjected to abuse, torture or armed conflicts should recover in an environment which fosters the health, self-respect and dignity of the child.

Many children in detention have fled active war zones, and depriving them of liberty does not promote their recovery from such experiences. As the mental health section of this report shows, detention compounds trauma.

Convention on the Rights of the Child – Article 37(b)

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

Australia’s mandatory detention regime has been found to be arbitrary. For all people who do not hold a valid visa, it is the first, not last, resort. This is its ultimate point of failure: the system is fundamentally flawed. While it imprisons children as a first resort and for indefinite periods of time, it contravenes international law and common sense morality. Children should not be locked up. Ultimately the government must recognise this and legislate to prevent the implementation of policies that breach Australia’s legal and moral obligations.

ChilOut visited Christmas Island in April 2011, and has grave concerns about a variety of risks that children in detention are exposed to there. If Australia is unable to keep children safe in off-shore facilities for which it is wholly responsible, what hope is there of human rights standards being maintained in facilities managed on our behalf in other countries?

The immigration detention regime does not keep children safe and presents significant risks to their ongoing wellbeing.

ChilOut calls for changes to policy or legislation to institute the following:

1. Develop alternative accommodation facilities
2. Develop criteria for the need to detain or release children
3. Apply a time limit to the detention of children
4. Develop a risk-based determinant framework
5. Institute a detention review process that can be enforced
6. Institute an alternative Guardian for children in detention
7. Create a unified, national code of mandatory reporting
8. Remove the discriminatory treatment of children who arrive by boat

2. Introduction

2.1. About ChilOut

ChilOut – Children Out of Immigration Detention – is a community group of Australians who are concerned about the plight of children held in immigration detention. Our belief is that Australia's treatment of children – regardless of their visa status – must adhere to our obligations under international human rights instruments and to the traditional Australian values of protecting and nurturing children.

ChilOut began its campaign to release all children from immigration detention facilities in 2001. It quickly drew the support of many thousands of Australian parents and citizens. Our campaign was put on hold after the June 2005 changes made by the Howard Coalition Government to release children from secure detention facilities. At that time the government amended the *Migration Act 1958* (Cth) to include the principle that children should only be detained “as a measure of last resort” in accordance with article 37(b) of the *Convention on the Rights of the Child* (CROC).¹

In recent years, although there has been no official change to policy, this practice has been reversed. The number of children being held in locked facilities has risen at an alarming rate, with conditions in those facilities worsening. ChilOut has resumed its campaign to demand that children's rights are protected. Despite the Labor Government claiming that “no child is held behind razor wire”,² by the beginning of 2011 the number of children subjected to mandatory detention in secure immigration detention facilities reached over 1000.³

ChilOut will continue to campaign until the human rights of detained children are protected in law and practice.

2.2. Purpose of this report

The purpose of this report is to determine if children's welfare and wellbeing are protected within the immigration regime on Christmas Island. This report will assess the Labor Government's own Detention Values as well as the obligations enshrined in CROC, and determine if they are being properly applied in the context of detention on Christmas Island.

¹ “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.” *Convention on the Rights of the Child*, Art 37(b).

² Centre for Policy Development, ‘Suffer the little children – asylum seeking kids in Australia’, 30 September 2010, <http://cpd.org.au/2010/09/suffer-the-little-children-asylum-seeking-kids-in-australia/>

³ Australian Government, Department of Immigration and Citizenship, ‘Statistics’, <http://www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/>

2.3. Christmas Island and excision

Christmas Island is part of the Australian Indian Ocean Territories, 2300 kilometres north-west of Perth, a four-hour flight away. A temporary facility based at Phosphate Hill opened on 13 November 2001, with a nominal capacity of 500, although it exceeded its capacity at times. Unauthorised arrivals were detained in Christmas Island's sports hall with tents set up next to it, as required, until December 2001.

From September 2001, asylum seeker boats intercepted outside Australian waters were taken to Manus Island, Papua New Guinea or Nauru, which became known as the "Pacific Solution". Their legal rights were severely curtailed, resulting in many genuine refugees being denied protection and being sent home to danger.⁴ In some cases, refugees denied protection by Australia were later granted protection in other countries.

In 2002, the Howard Government announced plans to build a permanent facility capable of housing 1200 people, subsequently downgraded to an 800-bed facility. The old facility was 'mothballed' on 19 March 2003, and then recommissioned in July 2003 when 53 Vietnamese asylum seekers were detained there.

The Rudd Labor Government opened the new purpose-built, high-security facility at North West Point in December 2008.

The original plans for North West Point included nurseries and classrooms; it was designed with the intention to accommodate families and children. After community protests, the policy changed so that children were not detained at North West Point. They are held with their families, if accompanied, in the former Construction Camp or Charlie Compound at the Phosphate Hill Alternative Place of Detention (APOD).

The Pacific Solution was based on September 2001 excision laws: *Migration Amendment (Excision from Migration Zone) Act 2001* (Cth) and the *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001* (Cth). These laws remove parts of Australia from the 'Migration Zone', so that asylum seekers arriving in certain places are restricted from making a valid Protection Visa application and are not eligible for legal protections usually afforded to any non-citizen in Australia. Excision laws allow for processing of asylum seeker claims outside Australia's migration laws. They attempt to remove legal rights and processes that are enshrined in our domestic legal system and Constitution. In some cases, refugees denied protection by Australia were later granted protection in other countries.

⁴ Edmund Rice Centre, 'Deported to Danger', http://www.erc.org.au/index.php?module=pagemaster&PAGE_user_op=view_page&PAGE_id=76&MMN_position=79:79

Despite strongly criticising the Pacific Solution when in Opposition, the Labor Government has retained its legal elements, but it now processes people in the equally remote location of Christmas Island, using the same system of denying access to standard merits or judicial review for asylum applicants.⁵ Not surprisingly, acceptance rates for protection claims in offshore locations are far lower than onshore,⁶ which suggests that genuine refugees have been rejected and inevitably returned to places of danger or persecution.

⁵ The Australian Labor Government did implement a non-statutory merits review system that attempted to deny access to further judicial review. However, the High Court found in 2010 that asylum seekers processed by Australian Government officials do have the right to judicial review. See *Plaintiff M61/2010E v Commonwealth*; *Plaintiff M69/2010 v Commonwealth* [2010] HCA 41; Case Summary [2010] HCASum 40 (11/11/10), <http://portsea.austlii.edu.au/au/other/HCASum/2010/40.html>. See also David Marr, 'Detention system hinges on High Court's decision on boat people', *Sydney Morning Herald*, 11 November 2010, <http://www.smh.com.au/opinion/politics/detention-system-hinges-on-high-courts-decision-on-boat-people-20101110-17nmo.html>

⁶ Australian Government, Department of Immigration and Citizenship, Estimates, October 2010, response to Question on Notice 122, http://aph.gov.au/senate/committee/legcon_ctte/estimates/sup_1011/diac/122qon.pdf

3. Risk-based 'Detention Values'

In July 2008, the Minister for Immigration and Citizenship, Senator Chris Evans, outlined seven Key Immigration Detention Values to "guide and drive new detention policy and practice into the future".⁷ These were:

1. Mandatory detention is an essential component of strong border control.
2. To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:
 - a. all unauthorised arrivals, for management of health, identity and security risks to the community
 - b. unlawful non-citizens who present unacceptable risks to the community and
 - c. unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre.
4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.
5. Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.
6. People in detention will be treated fairly and reasonably within the law.
7. Conditions of detention will ensure the inherent dignity of the human person.

In announcing the policy, the then immigration minister, Senator Chris Evans said "The key determinant of the need to detain a person in an immigration detention centre will be risk to the community – a modern risk management approach."⁸ In other words, when there is no risk to the Australian public, why detain a person at great expense both in financial and human impact terms?

The minister went on to say "The department will have to justify a decision to detain – not presume detention."⁹

Yet three years later, all boat arrival asylum seekers, including children, are being held in prolonged detention, with no assessments to ensure a risk-based detention system. The department does not

⁷ Senator Chris Evans, Minister for Immigration and Citizenship, 'New directions in detention – Restoring integrity to Australia's immigration system', Australian National University, Canberra, 29 July 2008, <http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm>

⁸ Senator Chris Evans, Minister for Immigration and Citizenship, 'New directions in detention – Restoring integrity to Australia's immigration system'.

⁹ Senator Chris Evans, Minister for Immigration and Citizenship, 'New directions in detention – Restoring integrity to Australia's immigration system'.

have to justify a person's detention on any grounds, except that they do not yet have a visa. Unlike all other circumstances that deprive people of their liberty, no legally binding review procedure is in place to seek justification for the ongoing detention of children.

ChilOut sees three conflicts between the Key Immigration Detention Values and the ongoing policy towards children:

1. the conditions under which children continue to be held in detention;
2. that detention will remain arbitrary and a matter of first resort for children; and
3. that detention is not for the shortest practicable time.

3.1. Conditions of detention

The policy approach to detaining children is in breach of the above values. While the government's policy is to ensure that children are not detained in an Immigration Detention Centre (IDC), they have simply renamed the lower security facilities "Alternative Places of Detention" (APODs). They call this form of detention for families "alternative temporary detention in the community". This is deceptive. There is nothing more or less temporary about these places of detention than that faced by anyone in an IDC. The APODs are also not "in the community"; children are still imprisoned within immigration detention facilities, with fences and guards, and detainees are only able to leave the facility under guard. The sole purpose of using these terms is to deceive the public and the media into thinking that families are not detained in prison-like facilities. On many occasions, ChilOut members have had to enlighten media to the fact that children are still locked up in secure facilities, and members of the media have cited the above terms as being the reason they thought all asylum seeking children were living in the community.

Dr Louise Newman, a child psychiatrist who advises the government on detention mental health issues, has pointed out that in many cases facilities like APODs are worse for children than the main IDCs, because at least IDCs are purpose-built for long-term detention with proper recreational facilities.

The APODs which accommodate children on Christmas Island are the Construction Camp and Charlie Compound, both at Phosphate Hill.

In 2005, the Howard Government removed children and families from high security detention to Community Detention. Under the auspices of the Red Cross and other agencies, accommodation was provided that enabled "people in detention to reside and move freely about the community without needing to be restrained or accompanied by an officer under the 1958 Migration Act".

To ensure people in Community Detention are properly supported, "... NGOs are funded to source appropriate housing, the payment of living expenses, and to ensure access to relevant health and community services and social support networks is provided".¹⁰

By no means is this the "Community Detention" provided on Christmas Island.

3.2. Arbitrary and first resort detention of children

The Minister for Immigration announced on 18 October 2010 that the government would move "significant numbers of children and vulnerable family groups out of immigration detention facilities and into community-based accommodation".¹¹ Most people, including the media, assumed this meant that children would no longer be held in secure detention facilities.

Unfortunately the devil is in the detail. At the time of the announcement, 752 children were held in the immigration detention regime, with ten in Community Detention (actual release in the community, not "APODs") and 742 in secure detention facilities such as APODs.¹²

Since then, numbers of children in detention have grown to 1041. As at 6 June 2011, 568 children are approved for release into Community Detention: 309 already released, 127 due for imminent release and 132 since granted permanent visas and have left the detention system. That leaves 456 children still in locked detention facilities; the majority are unaccompanied children (UAMs).¹³ There are 414 unaccompanied children in detention, and only 160 so far have been transferred into Community Detention.

ChilOut has been informed that the government has ceased looking for housing stock for future releases of asylum seekers from detention. ChilOut infers from this that the government has no intention of releasing the remaining 400-odd children; it has committed to the continued detention of children, despite justifying the release program for children on the grounds that "protracted detention can have negative impacts on their development and mental health".¹⁴

Who will be eligible for release under this program? No-one knows; there are no established criteria for release. It relies on the goodwill and whim of the minister of the day to determine who will be released or detained, depending upon the political needs at the time. There have been no moves to develop criteria for the duration of detention or eligibility for release into the community for any new

¹⁰ Australian Government, Department of Immigration and Citizenship, 'Fact Sheet 82: Immigration Detention', <http://www.immi.gov.au/media/fact-sheets/82detention.htm#f>

¹¹ Chris Bowen MP, Minister for Immigration and Citizenship, 'Government to move children and vulnerable families into community-based accommodation', Media Release, 18 October 2010 <http://www.minister.immi.gov.au/media/cb/2010/cb155484.htm>

¹² Australian Government, Department of Immigration and Citizenship, 'Statistics Summary', as at 15 October 2010.

¹³ Australian Government, Department of Immigration and Citizenship, 'Immigration Detention Statistics', quoted in Kirsty Needham, 'Backdown over detention pledge', *Sydney Morning Herald*, 7/6/11, <http://www.smh.com.au/national/backdown-over-detention-pledge-20110606-1fpe7.html>

¹⁴ Chris Bowen MP, Minister for Immigration and Citizenship, 'Government to move children and vulnerable families into community-based accommodation', Media Release, 18 October 2010.

arrival child asylum seekers. The government has retained a system of mandatory, indefinite and arbitrary detention of children.

Presumably the government now hopes the choice to detain or release children will be a problem for Malaysia, as they intend to send the next 800 boat arrivals – including children – to the tender mercies of the Malaysian Government. A report from Amnesty International details the treatment of asylum seekers in Malaysia. It states that children are among those being caned: a 15-year-old boy, arrested in September 2006, was sentenced to one stroke of the cane as well as four months' imprisonment and "In several camps, guards have reportedly ill-treated inmates, including pregnant women, who have been kicked, hit with batons and given inadequate food."¹⁵

In a letter to the Prime Minister, Julia Gillard, Human Rights Watch urged the government to abandon the plan to swap 800 boat arrivals for 4000 "genuine refugees". It stated that "Australia plans to trade refugees like horses ... The government will be violating its human rights obligations if any of the 800 asylum seekers sent to Malaysia ends up in its inhuman migration detention centres."¹⁶

In order for detention to adhere to the principle that "the detention of children should be a matter of last resort" some alternative accommodation facilities must be provided. Currently, all children are detained in locked detention facilities until personally approved by the minister for transfer into Community Detention.

Guidelines and criteria must be produced for the need to detain or release certain children. Currently, the single criterion to detain children is simply that they do not hold a valid visa. This creates an arbitrary detention regime for children.

3.3. Duration of detention – not for shortest practicable time

Depriving a person of their liberty is one of the harshest legal sanctions and should be used with caution and due process.

We are told that:

Immigration detention is mandatory "administrative detention"; it is not indefinite or correctional detention.¹⁷

¹⁵ Amnesty International, 'Malaysia: 217 asylum-seekers, including children and pregnant women', http://asiapacific.amnesty.org/apro/APROweb.nsf/pages/appeals_malaysia_UA16207

¹⁶ Human Rights Watch, 'Australia: End threat of tawdry refugee trade; Drop proposal to swap asylum seekers, refugees with Malaysia', 26 May 2011, <http://www.hrw.org/en/news/2011/05/26/australia-end-threat-tawdry-refugee-trade>

¹⁷ Immigration Detention Centre Contract, s 2.2.1 'People in Detention Services', p 10.

The anxiety and other mental health effects caused by the indeterminate length of detention are well documented and will be explored in more detail later. We are particularly concerned about the risks long-term detention presents to families through the breakdown of parents' ability to function.

Not only does the system have life and death impacts beyond "administrative detention", it is not subject to the rigorous checks and balances that are in place for judicial incarceration. There is no confidence in the complaints process and external review agencies can only make recommendations. Even the Commonwealth Ombudsman does not have any enforcement authority.

The risk of acquiring long-term mental health issues increases exponentially with the length of detention. This was acknowledged by the minister when the release of children into community detention was first announced in October 2010: "This is especially important for children, for whom protracted detention can have negative impacts on their development and mental health."¹⁸

To achieve the principle of detention for "the shortest practicable time" for children, again, criteria need to be determined around which children should be detained, why, and for how long. Currently, children are only eligible for release into the community at the whim of the immigration minister of the day. At any time, the whim can change, leaving vulnerable children to the "negative impacts" of protracted detention.

¹⁸ Chris Bowen MP, Minister for Immigration and Citizenship, 'Government to move children and vulnerable families into community-based accommodation', Media Release, 18 October 2010.

4. ChilOut's observations

Two representatives of ChilOut, Dianne Hiles and Jo Hind, visited Christmas Island between April 8 and 12, 2011 to observe the conditions in which children were being held in immigration detention. The aim was to visit the Phosphate Hill facilities to ascertain what risks the children's detention presented to their wellbeing and development.

Major disturbances had occurred at the North West Point detention facility while ChilOut planned this fact-finding visit. ChilOut was particularly concerned about the implications any subsequent policy changes might have on children in the care of the Minister of Immigration and Citizenship.

Despite adequate notice, ChilOut's request for a tour of the facilities used to detain children was not accommodated as:

Immigration detention is subject to regular scrutiny from external agencies such as AHRC [Australian Human Rights Commission], the Ombudsman, UNHCR [United Nations High Commissioner for Refugees] and CISSR [Council for Immigration Services and Status Resolution] to ensure people are treated humanely, decently and fairly.¹⁹

Our special interest was not recognised. Our access was restricted to the Construction Camp. The Appendix details the 40 instances of correspondence we had to process to achieve six hours of face-to-face, supervised, segregated visiting time.

The DIAC/Serco Detention Services Contract lists key performance indicators²⁰ (KPIs) for the provision of services to people in detention under these headings:

- Duty of care;
- Appropriate amenities;
- Healthy environment;
- Supportive culture.

This section will follow this structure to outline ChilOut's comments and observations.

4.1. Duty of care – Serco

In terms of the Serco contract this covers 'Catering', 'Transport' and 'Programs, Activities and Amenities'. Our observations are:

4.1.1. Catering

The food provided appears to meet basic nutritional needs. The menu mainly seemed to offer western fare with curries and stir fries as concessions to Asian tastes. Food is the least of people's

¹⁹ Refer to the Appendix: Correspondence from Sophia Liu, DIAC Detention Visits.

²⁰ Immigration Detention Centre Contract, Schedule 4.1, 'Performance Management Manual, Annexure A – Abatement Indicator Definition', p 28.

concerns but ChilOut notes that institutionalised living and the inability for parents to feed their own children as and what they wish detracts from effective parenting function.

We were told some microwaves were available for in-room cooking and ingredients could be purchased in the on-site shop. However, the microwaves tended not to last very long as they were used to excess in the production of yoghurt.

The physical location of Christmas Island presents logistical challenges in ensuring reliability of supplies.²¹ At what must be considerable environmental and financial cost, most fresh food is flown up from Perth. Fuel for generating the island's electricity is shipped in. It is not inconceivable that during prolonged periods of severe weather both lines of supply could be compromised:

During the WET season, Flying Fish Cove is frequently battered by gale force winds and heavy seas, disrupting shipping activities for up to weeks at a time. Heavy mists occur at higher altitudes also, often disrupting flights to and from the island.²²

Christmas Island has no air traffic control tower and planes are unable to land when visibility is below 1000 metres.

ChilOut was told fuel stocks had been running low enough in the recent wet season for the Commonwealth Administrator to consider introducing power rationing. A lull in the poor conditions allowed a fuel ship to dock, thereby alleviating that potential situation.

Apart from the risk of running out of food and power, it should be noted that electricity is also needed for the water pumping stations.²³ All people in the Christmas Island detention system are dependent upon the authorities for the maintenance of basic services and the adequate provision of food and water. They are in no position to undertake individual initiatives to minimise such risks. Given the increasing vagaries of global weather patterns,²⁴ it is not impossible for authorities on the island to be in a position of having to manage food, power and potable water restrictions, which can only be detrimental to the wellbeing of all people in the detention facilities. It is to be hoped stringent contingency management is in place to deal with these possible scenarios.

4.1.2. Transport

No issues were raised with ChilOut concerning the transportation of children or families around the island.

²¹ Attorney General's Department, 'Report for Crown Land Management Plan for the Indian Ocean Territories Christmas Island', September 2009, http://www.ga.gov.au/image_cache/GA17221.pdf, p 6.

²² ABC, Christmas Island, 'Climate', <http://www.abc.net.au/nature/island/ep2/about1.htm>

²³ Shire of Christmas Island, 'Christmas Island 2018 Plan: Initial directions report', Appendix B, <http://www.shire.gov.cx/Misc/CI%202018%20Plan%20CI%20Initial%20Directions%20Report.pdf>

²⁴ World Bank, 'The poverty impacts of climate change', search <http://www-wds.worldbank.org/>, p 17

4.1.3. Programs, activities and amenities

Serco appeared to be delivering programs and activities within their contractual framework. To not do so would put them in breach of contract facing heavy “abatements” (breaches of Serco’s contract with immigration that attract a financial penalty) for non-compliance.²⁵

Detainees told us of attending woodworking and carpentry workshops in Charlie Compound. Some are able to leave the centre to visit the temple and participate in football matches.

ChilOut saw 30 detainees attend the Sunday morning mass at Christmas Island Catholic Church.

ChilOut observed Serco personnel designated as activities officers escorting groups to the recreation centre for organised indoor football games and to use the gym. Some unaccompanied minors told us they were unable to participate in the scheduled activities as they were over-subscribed.

ChilOut representatives met with a former ALIV volunteer who explained they offer classes in yoga, cooking (with some difficulty procuring the ingredients, given the cost and limited range of food on the island), Australian life skills and ESL (English as a Second Language).

Excursions are arranged but, beyond Ethel and Lily beaches, the island itself is very limited in excursion destinations.

A playgroup is run in the dining area for very small children. ChilOut heard of a four year old being excluded from this as he was considered too old. The only resource available to him is the toy library.

Serco appear to do less well on the requirements that they:

- **must** provide access to free-to-air television and library facilities including access to dictionaries, foreign language books, periodicals and newspapers; must ensure quantity of books is adequate.²⁶
- **must** ensure the books available meet the cultural, educational and recreational needs of people in immigration detention.

At the time of our visit ChilOut were advised that there were **no** televisions in the Construction Camp. Previously Serco supplied one television per block. This means young people are unable to watch DVDs either. No radios are available. Vietnamese detainees told us there were no books or papers in their language; they had no access to Vietnamese news.

²⁵ Adam Brereton, ‘Department admits “No one watching Serco”’, 24 May 2011, *New Matilda*, <http://newmatilda.com/2011/05/24/departments-admits-no-one-watching-serco>

²⁶ Immigration Detention Centre Contract, Sch 2, s 2.2.1 ‘People in Detention Services’, p 15.

Under the terms of the Detention Services Contract, Serco **must**: “facilitate and manage access by People in Detention to internet services”.²⁷

ChilOut was told that 14 computers were available in the Construction Camp between the hours of 9 am to 12.30 pm, 1.30 pm to 5 pm and 6 pm to 8 pm. The 14 computers must be shared among 500 detainees. Access is limited to one hour per person per day, and skewed to those needing to progress their asylum claim. This means the many detained teenagers have few opportunities to access the computers for recreational purposes.

Section 1.2.5(a)(i) of the Detention Services Contract recognises that equity of access by people in detention to communication services will be an issue. The Service Provider is required to implement a booking system “for People in Detention to access telephones, facsimile machines, Internet service facilities, desktop computers and other communications systems, that is open and transparent” with section 1.2.5(a)(iii) “priority access to be provided to People in Detention working on matters related to their immigration case”.²⁸

Again, this contention for resources can lead to aggravation and arguments which children can witness.

Despite the glaring omissions of access to television, DVDs, computer games, and books, considerable energy and effort is put into trying to keep detainees, particularly teenage unaccompanied minors, occupied. Yet this can never be a substitute to being able to move freely within the community.

4.2. Duty of care - DIAC

This section addresses the broader, non-contractual question of the duty of care DIAC owes to minors in its care.

4.2.1. Guardianship

The overarching duty of care owed to unaccompanied minors rests with the Minister of Immigration and Citizenship in his capacity as their legal guardian. We question how he can act in children’s best interests (CROC: Article 3.1) when he is also serving as their gaoler and the ultimate decider of visa grants.

CROC Article 3

The best interests of the child shall be a primary consideration.

²⁷ Immigration Detention Centre Contract, s 2.2.1 ‘People in Detention Services’, p 8.

²⁸ Immigration Detention Centre Contract, s 2.2.1 ‘People in Detention Services’, p 8.

Presently, unaccompanied minors in Australia are wards of the Minister for Immigration, who delegates his guardianship functions to officers of DIAC and to officers in relevant child welfare authorities in each state and territory.²⁹ However, a clear conflict of interest lies in the minister's other duties under the *Migration Act 1958* (Cth), whereby the minister is responsible for detaining certain asylum seekers, including children, and makes decisions in regard to applications for refugee status and visas to remain in Australia. A person who is required to detain children cannot be said to act in their best interests, a role that should be taken by any guardian of children.

Indeed, Life Without Barriers is one agency charged with both providing foster care to unaccompanied child asylum seekers and guardianship and recreation services to detained children. Life Without Barriers has been investigated for poor recruitment processes that left a boy in the care of a man with a history of sexual abuse against young people³⁰ and other foster carers who engaged in serious neglect.³¹ It is hard to accept that the minister is properly monitoring even his delegating of responsibility if this is the sort of care provided to vulnerable children with no adult relative to oversee their care.

4.2.2. Mandatory reporting

Every state in Australia legally requires specified people to report suspected child maltreatment to statutory child protection services.

Yet child protection laws do not apply to children in immigration detention. A well-known case of children detained in Baxter Detention Centre illustrates this point. The children's lawyers made an application for release to the Family Court, arguing that the conditions of detention were in breach of South Australian child protection laws. The Family Court agreed and ordered the release of the children.³² The Department of Immigration transferred the children into Community Detention, but appealed this matter to the High Court. The government did not argue that there was no abuse of the children, but appealed on the grounds that the Family Court had no jurisdiction in Commonwealth matters of immigration detention. This argument was upheld. Justices Gleeson and McHugh stated:

The question in this appeal is whether the Family Court of Australia has jurisdiction to order the Minister for Immigration and Multicultural and Indigenous Affairs to release children who are detained in an immigration detention centre in accordance with the *Migration Act 1958* (Cth) ... In our opinion, the Family Court has no jurisdiction to make such an order. Nor has it any

²⁹ *Immigration (Guardianship of Children) Act 1946* (Cth).

³⁰ Adele Horin, 'Foster carer linked to sex abuse slipped past the barriers', *Sydney Morning Herald*, 13 December 2010, <http://www.smh.com.au/nsw/foster-carer-linked-to-sex-abuse-slipped-past-the-barriers-20101212-18u1w.html>

³¹ Caroline Overington, 'Kids lose out as foster carers cash in', *The Australian*, 8 November 2008, <http://www.theaustralian.com.au/news/nation/kids-lose-out-as-foster-carers-cash-in/story-e6frg6nf-1111117977993>

³² *B & B & Minister for Immigration & Multicultural & Indigenous Affairs* [2003] FamCA 451, <http://www.austlii.edu.au/au/cases/cth/FamCA/2003/451.html>

jurisdiction to make orders concerning the welfare of children who are held in immigration detention.³³

If staff do not comply with child protection laws the Family Court is powerless to intervene.

This is in direct contravention of Article 37 of CROC, to which Australia is a signatory:

CROC Article 37

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.

In early 2011 Senator Sarah Hanson-Young raised the question of the children's welfare in Budget Estimates.³⁴ In relation to offshore asylum seeker management she queried:

Are appropriate procedures in place to ensure staff at all facilities are aware of, and comply with requirements for making child welfare and protection notifications in relation to concerns arising in respect of children in detention in each facility?

The question was finally answered several months later:

Under the Detention Services Contract, all service provider personnel who will, or may work with minors in any capacity must comply with relevant **state** child protection legislation.

Each jurisdiction in Australia mandates different requirements. However, as we can see from the above court battles, there is *no* legal mandate to enforce such requirements. This protection does not extend to children detained in Commonwealth facilities.

Even if Western Australian child protection regulations did apply to the Phosphate Hill facilities, who would be responsible for reporting children at physical or psychological risk? Medical staff are only required to report sexual abuse. Responsibility for reporting physical and emotional/psychological abuse resides with "Court personnel; family counsellors; family dispute resolution practitioners, arbitrators or legal practitioners representing the child's interests."³⁵

How much contact with these categories of people do children detained on Christmas Island have? None.

³³ *Minister for Immigration and Multicultural and Indigenous Affairs v B* [2004] HCA 20; 219 CLR 365; 206 ALR 130; 78 ALJR 737, <http://www.austlii.edu.au/au/cases/cth/HCA/2004/20.html>

³⁴ Additional Budget Estimate Hearing, Question 326 Part 4, February 2011.

³⁵ Australian Institute of Family Studies, 'Mandatory reporting of child abuse', <http://www.aifs.gov.au/nch/pubs/sheets/rs3/rs3.html>

A detention centre employee recently aired concerns regarding abuse of children on Christmas Island on *60 Minutes*, 'The inside story':

ANNE: We had ah half a dozen of the Afghani boys with bad head injuries. One in particular bleeding from both ears um, and his nose, big gash to the head.

LIAM BARTLETT: Was that that bad? You you're still emotionally scarred by it? And yet the people who are capable of doing that harm to that boy and others [got] no punishment whatsoever?

ANNE: No punishment. It's like living in a war zone up there ...³⁶

This would indicate that those responsible for the Christmas Island detention system are failing to keep young people safe.

The child protection and mandatory reporting frameworks clearly do not apply in these facilities.

4.3. Appropriate amenities

Children are not detained in the purpose-built Immigration Detention Centre (IDC) at North West Point on Christmas Island. They are held with their families, if accompanied, in the former Construction Camp or Charlie Compound at the Phosphate Hill Alternative Place of Detention (APOD). This is about four kilometres away from the town centre on the island.

The sites are fenced in and manned by security guards 24 hours a day. Children and families are not free to come and go as they please.

4.3.1. Crowding

Apart from administration, accommodation, commercial kitchen, medical amenities, ablution/laundry facilities,³⁷ the Construction Camp is a densely packed collection of demountables known as dongas. They are air-conditioned with en-suite bathrooms and were intended for single occupation.

ChilOut heard of families of four being accommodated in these dongas designed for one person.

Often the number to be accommodated is significantly in excess of 300 and other camps have been created at Phosphate Hill; Compounds Alpha, Bravo and Charlie. Children are also accommodated at Compound Charlie.

According to the Serco/DIAC contract,

³⁶ *60 Minutes*, 'The inside story', <http://sixtyminutes.ninemsn.com.au/article.aspx?id=8248772>

³⁷ Immigration Detention Centre Contract, Sch 1 'Facility Descriptions and Plans', p 14.

the current accommodation capacity of the Construction Camp is 332 based on one person per room, however this capacity may vary depending on how this facility is used ...

the Phosphate Hill APOD has an operational capacity of 104 and a surge capacity of 208.³⁸

As no briefing was extended to ChilOut we are unable give the official population of these facilities at the time of our visit, but informally we learned that 484 people were detained in the Construction Camp and 225 in the Phosphate Hill facilities. Figures later provided by DIAC indicated 251 children were detained on Christmas Island as at 13 April 2011. This was after several people had been transferred to the mainland in the wake of the March disturbances.

Crowding is an ongoing issue within these facilities.

In view of the density of the buildings, the fact the premises are fenced, the history of unrest and arson in detention centres, ChilOut has grave concerns about the safety of children at these sites in the event of a major incident involving fire, rioting or other disturbances.

We have no knowledge of evacuation drills being routinely practised.

4.3.2. Mix of detainees

The facilities are not restricted to children and family groups. All Indonesian crew members, including adults, are held here. They are meant to be in a segregated area, but that is not enforced. ChilOut met four single Vietnamese adults who were accommodated in the Construction Camp. They had been on the island for 17 months and all appeared to be profoundly depressed.

All unaccompanied minors are held in this area, notwithstanding the mix of ethnicities and cultures which can lead to flashpoints of volatility. These can be witnessed by children.

On the evening of 10 April during our visit, several adult Vietnamese detainees refused to go back into their rooms in Bravo Compound because they had been intimidated by Iranians. Janet Mackin, Acting DIAC Assistant Secretary Irregular Maritime Arrival (IMA) Operations – Christmas Island, was on-site to resolve that situation: the Vietnamese detainees were transferred to new rooms in Compound Charlie.

4.3.3. Inappropriate behaviours

Large numbers of unaccompanied, predominantly male, teenagers are held in the same area as family groups. Unsurprisingly, this creates tensions.

³⁸ Immigration Detention Centre Contract, Sch 1 'Facility Descriptions and Plans', p 13.

In the Construction Camp, six landlines near the reception area were to be shared among almost 500 people. ChilOut did not hear of anyone having a mobile phone. We were told arguments over access to phones occur frequently, and can be witnessed by children.

4.3.4. Recreational facilities

CROC Article 31:

State 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.

The only free play area accessible to all 484 people detained in the Construction Camp is a single basketball court, described as “multi-use all weather” in the Serco/DIAC Contract.³⁹ To us, it just looked like a basketball court; its all weather features were not apparent. Given that Christmas Island enjoys an equatorial climate, and can experience monsoon conditions between November and June, we are at a loss to understand how the basketball court could continue to be usable during the monsoonal “intermittent downpours of rain”.⁴⁰

Notwithstanding weather conditions, even this facility is not available all the time. Sometimes programmed activities such as volleyball and badminton are scheduled to use this space. We understand contention for access to this resource can also lead to disagreements and arguments which can be witnessed by children.

The Construction Camp APOD is adjacent to the community recreation facility swimming pool and oval.⁴¹ While detainees might be able to access the recreation hall and pool through organised activities, at the time of our visit they were completely banned from using the oval due to a dispute between the Christmas Island Cricket Club and DIAC.

It was alleged that detainees had caused damage to community equipment and until \$100,000 in compensation was paid, the ban would continue. This extended to play equipment that actually abuts the detention centre. The upshot for several months was that small children could see the brightly coloured slippery dip and clambering equipment through the fence, but knew they were forbidden to use it. We have recently been informed that this dispute has been resolved and children are again allowed to use the play equipment, but between November 2010 and May 2011 it was an extremely cruel state of affairs that ought to have been managed better and resolved more swiftly.

4.3.5. Lack of wet weather space

There is little provision of wet weather space. Given Christmas Island has a six month ‘wet’ season, the only place most detainees can shelter from inclement weather is in their rooms. The

³⁹ Immigration Detention Centre Contract, Sch 1 ‘Facility Descriptions and Plans’, p 13.

⁴⁰ ABC, Christmas Island, ‘Climate’, <http://www.abc.net.au/nature/island/ep2/about1.htm>

⁴¹ Immigration Detention Centre Contract, Sch 1 ‘Facility Descriptions and Plans’, p 14.

dongas have been positioned with 'breezeways' to maximise air movement. This means the corridors between the blocks of accommodation units are not weatherproof so, apart from the dining hall, children have nowhere to gather and play during prolonged periods of rain.

These overcrowded amenities fall a long way short of enabling "the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child". This places the Australian Government in breach of CROC Article 31.

4.4. Healthy environment

The contractual KPIs listed under this heading relate to: 'Facility presentation', 'Incident reporting' and 'Interaction and wellbeing'. ChilOut's main focus is on 'Interaction and wellbeing' which have the stated performance objective:

To ensure that the Service Provider is responsive to the individual needs, wellbeing and rights of People in Detention, and that those interactions are conducted in a fair and reasonable manner. This includes ensuring that People in Detention have access to visitors, that all Records in relation to each individual are up-to-date and that each Person in Detention's Individual Management Plan is being actioned.⁴²

4.4.1. Health and wellbeing

The stated aim of service delivery to people in detention is "to ensure that the only change to an individual's wellbeing as a result of being in Immigration Detention is the restriction of freedom of movement".⁴³

The section summarises concerns about detainees' health and wellbeing we observed or that were directly communicated to us.

CROC Article 24.1

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.

In 2010, the Australian Human Rights Commission report entitled *Immigration detention on Christmas Island* raised serious concerns about medical care.

Many of the Commission's concerns relate to difficulties in providing adequate care for a large detainee population in such a small and remote community. The Commission's key concerns include the very limited access to specialist care, psychiatric care and dental care; the ratio of

⁴² Immigration Detention Centre Contract, s 4.1 'Performance Management Manual', p 59.

⁴³ Immigration Detention Centre Contract, s 2.2.1 'People in Detention Services', Philosophy, p 3.

mental health professionals to people in detention; and the extent to which torture and trauma policies are being implemented.⁴⁴

Detainees told us of their worries about the availability of proper healthcare should an emergency arise during the night.

Reportedly the “Drink plenty of water and have a Panadol” school of detainee healthcare is again in vogue.

Detainees have to wait for routine specialists such as dentists and optometrists to visit the island. We spoke with a young boy who had lost his glasses on the journey over and had to sit very near the whiteboard when he attended English classes.

We were surprised to note that children who attend Christmas Island District High School receive free dental care. This fortuitous benefit to the detention service providing regime is part of the West Australian Department of Education’s normal practice.

The limitations of Christmas Island Hospital’s ability to respond to more than basic situations is exemplified by the fact that all pregnant women, those from the general population as well as detainees, have to be flown to the mainland for scans and to deliver. Flights from the island do not leave daily. Simply being on the island can compound the risk of not being able to access emergency healthcare due to the occasional unreliability of flights due to bad weather, as already discussed.

While we were visiting the island considerable concern was expressed about the wellbeing of a baby with a brain tumour who had just been flown to the mainland. Despite extensive enquiries, advocates were unable to establish where that infant had been taken and whether s/he had been adversely impacted by being on Christmas Island at the onset of her/his condition.

We noted that children can request psychological counselling, but usually require interpreters to be available to properly avail themselves of this service. The need for an interpreter adds another layer of complexity for children seeking to use this service on this remote island.

Interpreters have to be available for the provision of all other health related services.

While the Serco/DIAC Contract might state that:

⁴⁴ Australian Human Rights Commission, *Immigration detention on Christmas Island*, http://www.hreoc.gov.au/human_rights/immigration/idc2010_christmas_island.html#Heading840 Read the report for a more comprehensive discussion of health care on the island.

All service delivery decisions taken by the Service Provider will take account of the individual needs of People in Detention, and will aim to improve health and wellbeing outcomes for each Person in Detention⁴⁵,

the reality is that indefinite detention in such a remote community presents significant risks to and detracts from individuals' health and wellbeing.

4.4.2. Interactions

Interactions fall within the ambit of wellbeing under the DIAC/Serco contract. Among other things, service provider personnel are meant to treat detainees "equitably and fairly, with dignity and respect".⁴⁶

Staff working at the detention facilities are rostered on for twelve hour shifts. Resources for their off-time are limited. Food is expensive but alcohol and tobacco are cheap, available at duty-free prices.

We were told that staff are often over-tired, stressed, sometimes openly abusive. "[Name withheld] in Property hates everyone." Other officers complain to detainees about their taxes being spent on accommodating asylum seekers. This has to have an adverse impact on their dealings with the detainee population, which of course, includes children.

We were also disappointed to note that the practice of referring to detainees by their number is back in operation.

This was highly criticised in the pre-2005 previous high volume detention regime, but not only were staff referring to detainees by their number (boat number/number, eg 227/38) detainees were identifying each other by number. We appreciate there can be confusion where more than one person has the same name but calling people by number rather than name does not foster the culture of dignity and respect that Serco seeks to engender. Instead, we believe, it leads to increased dehumanisation of the people in their care.

Another aspect of interaction defined in the contract is:

the Service Provider must focus on the well-being of each Person in Detention and will make every effort to ensure **visits from family, friends and support groups are facilitated**.⁴⁷

We believe ChilOut would come under the category of "support group", yet our visit was far from facilitated. (See Appendix for fuller details.)

⁴⁵ Immigration Detention Centre Contract, s 2.2.1 'People in Detention Services', p 4.

⁴⁶ Immigration Detention Centre Contract, s 2.2.1 'People in Detention Services', p 4.

⁴⁷ Immigration Detention Centre Contract, s 2.2.1 'People in Detention Services', p 4.

Serco made it very clear that their obligations only extend to “authorised”⁴⁸ visitors and in our case, authorisation from DIAC was not readily forthcoming.

4.5. Supportive culture

Under the contract this section deals with ‘Complaints’, ‘Information sharing’, ‘Issues management’. We only have comments pertaining to ‘Complaints’.

4.5.1. Complaints

A KPI structure⁴⁹ measures, for example, occasions where behaviour of service provider personnel is found to breach:

1. the human rights of people in detention;
2. the privacy of people in detention;
3. the confidentiality of people in detention;
4. the Code of Conduct (of Serco).

In accordance with their contractual obligations, Serco display notices about the available complaints processes. “In Australia you have the right to complain” was emblazoned on posters in four languages, Bahasa, Farsi, English and Vietnamese which gave details of how to complain to the Ombudsman.

Yet it seemed detainees had little faith in the process. Often detainees feel that complaining and making a fuss could detract from their determination process. Some told us that even when they did complete complaint forms, they are ignored and the Ombudsman is not effective. A family explained how they had to argue/shout for maternity clothes for an expectant mother. If you are polite and courteous nothing happens. You have to fight (shout and swear) to get results.

⁴⁸ Immigration Detention Centre Contract, s 4.1 ‘Performance Management Manual’, p 60.

⁴⁹ Immigration Detention Centre Contract, s 4.1 ‘Performance Management Manual’, p 61

5. Scrutiny from external agencies

We were repeatedly told that DIAC and Serco's operations are subject to:

regular scrutiny from external agencies such as Australian Human Rights Commission, the Ombudsman, UNHCR and CISSR to ensure people are treated humanely, decently and fairly⁵⁰

ChilOut has attended meetings where representatives of these agencies have indicated they have neither the financial or human resources to continue monitoring immigration detention to the extent they have been. The proliferation of detention facilities has not been matched by increasing the capacity of the external agencies charged with oversight responsibility. Clearly this presents risks to the entire detainee population but particularly to children and young people.

Even when such agencies make strong recommendations, there is no requirement for the department to ensure they are implemented. The Australian Human Rights Commission (October 2011) the Commonwealth Ombudsman (February 2011) and Amnesty International (November 2010) all expended their valuable time and energies in the production of reports with recommendations, which if observed could possibly have averted the riots and disturbances of March 2011.

⁵⁰ To see the response from DIAC to ChilOut's request for a formal tour of the Christmas Island facilities refer to the Appendix.

6. Education

CROC Article 28.1

State Parties recognize 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 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

The DIAC/Serco Detention Services Contract makes no provision for education services.

The Christmas Island District High School (CIDHS) is operated by the West Australian Department of Education. It has capacity for 400 children, from kindergarten to academic year 12, and welcomes children up to the age of 12 from the immigration detention facilities.

ChilOut visited the school and it appeared to be very well-resourced but it lacked language books and dictionaries. ChilOut was not afforded a formal tour of any educational facilities on the island and could only ask “general” questions when we attended the school to make our donation of dictionaries. We were told that, generally, asylum seeker children settle quickly and do well at language acquisition.

ChilOut understands that over 12s attend four classrooms in Charlie Compound which are serviced by the West Australian Department of Education CIDHS staff. On a shift basis these older children receive perhaps one or two hours per day of ESL teaching followed by an hour or so in the Recreation Centre. We heard there is not much variation in the levels of ESL available: an already competent English speaker was sitting in basic classes so he had something to do.

We met 12- and 14-year-old Vietnamese boys who were not attending any classes and also said they were unable to participate in activities program as they were over-subscribed.

ChilOut also met a 12-year-old boy who does attend CIDHS. He had just been to see the psychologist to discuss his fears around having to leave the safe school environment every day and return to the Construction Camp. His older brother interpreting for him said:

He is frightened by the UAMs shouting and fighting over access to phones and volleyball.

We were told there have been issues with older children being allowed to attend CIDHS. Because of uncertainty over the ages of some unaccompanied minors, the community felt there was a chance that adults were being allowed to attend the school. For this reason, children 13 and over can only access the classrooms in Charlie Compound.

It appears that DIAC is generally meeting its obligation to provide primary education, but not secondary education.

7. Mental health impacts

This is a summary of available key research that amplifies the mental health harms induced in young people through prolonged indefinite incarceration.

In 2004 the Human Rights and Equal Opportunity Commission (HREOC) released “A Last Resort? National Inquiry into Children in Immigration Detention”, a report based on a year-long investigation. This report provided comprehensive and damning documentation of the disabling effects of detention on child asylum seekers.

Since the release of HREOC’s report, significant research has been undertaken into one of its key findings: the deleterious effects of detention on the mental health of young asylum seekers.

7.1. Adults and parents

While we seek to summarise the results of this recent research, it is important to acknowledge the causal connection between the mental health of adults in detention, and the ways in which exposure to traumatic events compounds the challenges faced by children. For this reason, we will also briefly examine the key mental health problems identified in adult detainees, and their impact on the parenting function in particular.⁵¹

In one recent study detailing the experiences of asylum seekers who had been detained for two years or more, all adults surveyed were diagnosed with major depression, while most had experienced suicidal ideation.⁵²

Exposing child asylum seekers to suicide attempts or self-harm behaviours is highly traumatic, and serves to increase the levels of distress experienced by young people.⁵³ Compounding this issue, incidences of mental illness among parents have been consistently shown to damage family bonds and reduce the ability of detained asylum seekers to be effective and successful parents.⁵⁴

In another recent survey, all but one of the parents interviewed believed that they were unable to offer their children adequate care and support while in detention. These feelings resulted not only

⁵¹ Green, J.P. & Eagar, K. (2010). ‘The health of people in Australian immigration detention centres’, *Medical Journal of Australia*, 192(2): 65–70.

⁵² Steel, Z., Momartin, S., Bateman, C., Hafshejmi, A., Silove, D.M., Everson, N. Roy, K., Dudley, M., Newman, L., Blick, B. & Mares, S. (2004). ‘Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia’, *Australia and New Zealand Journal of Public Health*, December 28(6): 527–536.

⁵³ Newman, L.K., Dudley, M. & Steel, Z. (2009). ‘Asylum, detention, and mental health in Australia’, *Refugee Survey Quarterly*. 27(3): 110–127.

⁵⁴ See for instance: Mares, S., Newman, L., Dudley, M. & Gale, F. (2003). ‘Seeking refuge, losing hope: Parents and children in immigration detention’, *Australian Psychiatry*, 10: 91–96; Fazel, M. & Stein, A. (2002). ‘The mental health of refugee children’, *ArchDis Child*, 87: 366–370; and, Mares, S. & Jureidini, J. (2004). ‘Psychiatric assessment of children and families in immigration detention: Clinical, administrative and ethical issues’, *Australia and New Zealand Journal of Public Health*, 28: 520–526.

from the lack of adequate resources available while in detention, but also as a result of the stress and trauma that they themselves were experiencing.⁵⁵

The length of time spent in detention also has a demonstrable effect on the mental health of parents, with protracted periods having a significant negative impact on the post-migratory experience of families.⁵⁶ The detention centre environment has a long-lasting effect on mental health – by re-creating (and reinforcing) the destructive relationship with authority figures that asylum seekers experienced in their country of origin, there is little hope for healing the traumas of the past.⁵⁷

7.2. Children

While criticism has been levelled at the small sample sizes used in research investigating the mental health of child asylum seekers, the consistency of the results is overwhelming.⁵⁸ In a longitudinal study assessing child asylum seekers who had been detained for between 1–2 years at the time of interview, the following disturbing results were documented:⁵⁹

⁵⁵ Steel, Z., Momartin, S., Bateman, C., Hafshejani, A. & Silove, D. (2004). 'Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia', *Australia and New Zealand Journal of Public Health*, 28: 527–536; Robjant, K., Hassan, R. & Katona, C. (2009). 'Mental health implications of detaining asylum seekers: Systematic review', *British Journal of Psychiatry*, 194: 306–312.

⁵⁶ See: Nielsen, S., Norredam, M., Christiansen, K., Obel, C., Hilden, J. & Krasnik, A. (2008). 'Mental health among children seeking asylum in Denmark: The effect of length of stay and number of relocations, a cross-sectional study', *BMC Public Health*, 8: 293–302; Steel, Z., Silove, D., Brooks, R., Momartin, S., Alzuhairi, B. & Susljik, I. (2006). 'Impact of immigration detention and temporary protection on the mental health of refugees', *British Journal of Psychiatry*, 188: 58–64.

⁵⁷ Newman, L.K., Dudley, M. & Steel, Z. (2009). 'Asylum, detention, and mental health in Australia', *Refugee Survey Quarterly*, 27(3): 110–127; and, Steel, Z., Silove, D., Brooks, R., Momartin, S., Alzuhairi, B. & Susljik, I. (2006). 'Impact of immigration detention and temporary protection on the mental health of refugees', *British Journal of Psychiatry*, 188: 58–64.

⁵⁸ For a brief discussion on the difficulties associated with small sample sizes in research projects involving young asylum seekers, see: Nielsen, S., Norredam, M., Christiansen, K., Obel, C., Hilden, J. & Krasnik, A. (2008). 'Mental health among children seeking asylum in Denmark: The effect of length of stay and number of relocations, a cross-sectional study', *BMC Public Health*, 8: 293–302. It should be noted, however, that the current structure of IDCs in Australia makes it exceedingly difficult for clinicians to conduct effective research. Privately owned and often built in remote parts of Australia and surrounding nations, there is no right of public access. Taking these factors into account, the consistent results of the research that has been conducted remains convincing.

⁵⁹ Mares, S. & Jureidini, J. (2004). 'Psychiatric assessment of children and families in immigration detention: Clinical, administrative and ethical issues', *Australia and New Zealand Journal of Public Health*, 28: 520–526.

Children under 5 years of age

- Developmental delays were significant in children under the age of five years, with 50% of the surveyed children in this age bracket demonstrating delayed development in language and social skills;
- Mood disorders (referred to as emotional dysregulation) were observed, which may result in unnaturally aggressive behaviours, inappropriate emotional outbursts, or threats of self harm.

Children from 6–17 years of age

- 100% presented with Post-Traumatic Stress syndrome;
- 100% presented with major depression;
- 100% displayed suicidal ideation;
- 80% engaged in self-harm behaviours;
- 70% displayed symptoms of an anxiety disorder;
- 50% presented with persistent physical health problems.

All of the young people surveyed reported feelings of boredom, concern about their future and their chances of succeeding in the Australian education system, a strong sense of shame and humiliation due to their detention, and persistent difficulty sleeping.

A further study, also conducted in Australia, sought to determine the effect that pre-migration trauma had on the mental health prognosis of child asylum seekers.⁶⁰ Children were assessed immediately upon arrival in Australia, and then again after a period in immigration detention. The surveys allowed for a comparative analysis to be made, revealing a tenfold increase in incidences of mental illness once children had spent time in detention. The same study also documented:

- 100% diagnosed with at least one psychiatric disorder;
- 80% diagnosed with multiple psychiatric disorders;
- 95% diagnosed with major depression;
- 55% demonstrated suicidal ideation;
- 50% assessed to be suffering from separation anxiety disorder;
- 45% displayed oppositional defiant disorder;
- 25% engaged in self-harm behaviours (such as wrist-cutting or banging their heads).

⁶⁰ Steel, Z., Momartin, S., Bateman, C., Hafshejani, A. & Silove, D. (2004). 'Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia', *Australia and New Zealand Journal of Public Health*, 28: 527–536.

These disturbing results are mirrored in recent international studies conducted into the mental health of young asylum seekers.⁶¹

7.3. Separated children

Unaccompanied minors are a group without a voice in the debate over the detention of young asylum seekers. The research to date has been limited, and the focus is on the legal aspects of their plight, although it is acknowledged that young people travelling without the safety and security of a family member are particularly vulnerable.⁶² It is estimated that unaccompanied minors comprise between 3–5% of the world's total refugee population. In real numbers, this means somewhere between 400,000 and 900,000 children seek asylum without the protection or support of an adult.⁶³

The UNHCR has recognised a special category: 'separated children'. These are young people who have been separated from their parents or the legal caregiver in their country of origin. Importantly, while separated children may be in the custody of extended family or other adult caregivers, the UNHCR acknowledges that without the protection of their parents, they remain at significant risk of abuse or exploitation.⁶⁴

While we acknowledge that further research is required into this area of refugee mental health, we are confident in asserting that separated children in detention will exhibit the mental health issues detailed above, and will be subject to additional levels of stress and trauma.

⁶¹ See, for instance: Lorek, A., Ehntholt, K., Nesbitt, C., Wey, E., Githinji, C., Rossor, E. & Wickramasingh, R. (2009). 'The mental and physical health difficulties of children held within a British immigration detention centre: A pilot study', *Child Abuse & Neglect*, 33: 573–585; McLeigh, J.D. (2010). 'How do Immigration and Customs Enforcement (ICE) practices affect the mental health of children?' *American Journal of Orthopsychiatry*, 80(1): 96–100; Kirmayer, L., Narasiah, L., Munoz, M., Rashid, M., Ryder, A., Guzder, J., Hassan, G., Rousseau, C. & Pottie, K. (2010). 'Common mental health problems in immigrants and refugees: General approach in primary care', *CMAJ*, July: 1–9; Chaudry, A. (2011). 'Children in the aftermath of immigration enforcement', *The Journal of the History of Childhood and Youth*, 4(1): 137–154; and, Young, W. & McKenna, M. (2010). 'The measure of a society: The treatment of unaccompanied refugee and immigrant children in the United States', *Harvard Civil Rights – Civil Liberties Law Review*, 45.

⁶² Montgomery, C. (2002). 'The "Brown Paper Syndrome": Unaccompanied minors and the question of status', *Refuge*, 20(2): 56–57.

⁶³ UN High Commissioner for Refugees. (2001). 'Separated children seeking asylum in Canada', <http://www.web.net/~ccr/separated.pdf>

⁶⁴ UN High Commissioner for Refugees. (2002). 'Action for the rights of children: Critical issues – Separated children', <http://www.unhcr.org/4c98a5ab9.html>

8. Recommendations

The current immigration detention regime does not keep children safe and presents significant risks to their ongoing wellbeing.

ChilOut calls for changes to policy or legislation to institute the following:

1. Develop alternative accommodation facilities – In order for detention to adhere to the principle that “the detention of children should be a matter of last resort” some alternative accommodation facilities must be provided. Currently, all children are detained in locked detention facilities until personally approved by the minister for release into community detention.
2. Develop criteria for the need to detain or release children – In order for the detention of children to not be arbitrary, guidelines and criteria for the need to detain or release certain children must be specified and put into practice. Currently, the criteria to detain children is simply that they do not hold a valid visa. This creates an arbitrary detention regime for children.
3. Apply a time limit to the detention of children – In order for the detention of children to be “for the shortest appropriate period of time”, acceptable time limits must be defined in law and implemented in practice. Currently children may potentially be consigned to detention indefinitely.
4. Develop a risk-based determinant framework – In order for detention to be justified, and not presumed, the focus of determining the need for detention should be based on an assessment of the risk to the community. Currently, detention is presumed and not risk-based.
5. Institute a detention review process that can be enforced – In order for the external review process to be effective, the reviewing agencies need to be invested with some powers of compulsion. Currently, reviewing agencies can only make recommendations to an “administrative detention” regime which deprives people of their liberty but is not subject to the rigorous checks and balances that are in place for judicial incarceration.
6. Institute an alternative Guardian for children in detention – There is a compelling logic for a Federal Children’s Commissioner to take on the role of guardian and advocate for children’s best interests. While such a role does not exist, it could be undertaken by the respective States’ Children’s Commissioners, invested with explicit authority that their powers are not subservient to Commonwealth laws for the purposes of child protection. Currently the best interests of the child are subject to the conflict of interest caused by dual roles undertaken by the minister.
7. Create a unified, national code of mandatory reporting – In order for reporting of suspected child abuse to be standardised, a single code should be developed and applied to all places

where asylum seeking children are accommodated. Currently children are subject to varying standards of protection through different State reporting requirements and Commonwealth laws taking precedence over State laws.

8. Remove the discriminatory treatment of children who arrive by boat – There is no legal basis for the discrimination of processing between those who arrive by air and those who arrive by boat. Currently asylum seeking children who arrive by air are not subject to mandatory detention while those who arrive by boat are.

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APPENDIX 1

Contact with DIAC/Serco personnel

These contacts with DIAC and Serco personnel were made in the process of ChilOut's Dianne Hiles and Jo Hind seeking to visit Christmas Island Construction Camp, April 8–12, 2011.

Serco recognises the importance of visitors for people in immigration detention; such contact is integral to their continued wellbeing throughout what is a very uncertain time. Serco welcomes visitors to all Immigration Detention Centres.

Statement on Visitor Conditions of entry on Visitor Application Form (now removed)
http://www.immi.gov.au/managing-australias-borders/detention/_pdf/idc-visitor-application-form.pdf

| <u>Means of communication</u> | <u>Number sent/received</u> | |
|-------------------------------|-----------------------------|------------------|
| EM | Email | 20 |
| FAX | Fax | 2 |
| TC | Telephone Call | 12 |
| VM | Voice Message | 2 |
| SMS | Text Message | 3 |
| TWT | Tweet (Twitter Message) | 1 |
| | TOTAL: | <u>40</u> |

ChilOut members visiting Christmas Island

Dianne Hiles (DH)

Jo Hind (JH)

DIAC/Serco personnel contacted

| | |
|---------------------|--|
| Fiona Andrew (FA) | DIAC Assistant Secretary Irregular Maritime Arrival (IMA) Operations – Christmas Island |
| Sophia Liu | DIAC Detention Visits Stakeholder Engagement Section Detention Operations East Branch Community and Detention Services Division |
| Alexis Gibson (AG) | Serco Centre Manager, Construction Camp/Phosphate Hill |
| Ben Stoneley | DIAC Compliance Officer |
| Sandi Logan (SL) | DIAC Communications Manager |
| Janet Mackin (JM) | Acting DIAC Assistant Secretary IMA Operations – Christmas Island (while Fiona Andrew on leave) |
| Tony de Bello (TdB) | Serco Construction Camp Duty Manager |

Others

| | |
|---------------------|----------------------------------|
| Gordon Thomson | Christmas Island Shire President |
| Jessica Perini (JP) | ChilOut |
| Kaye Bernard | Christmas Island Workers Union |

List of acronyms

| | |
|--|--------|
| Alternative Place of Detention | APOD |
| Australian Human Rights Commission | AHRC |
| Christmas Island Immigration Detention Centre | CI IDC |
| Council for Immigration Services and Status Resolution | CISSR |
| Detention.Visits/Sophia Liu | DV/SL |
| Department of Immigration and Citizenship | DIAC |
| Non Government Organisations | NGOs |
| United Nations High Commissioner for Refugees | UNHCR |

Contact log

| Type | Date | To | From | Subject |
|------|---|--------------------------------|--------------|---|
| EM | 29/03/11 | Fiona Andrew | Dianne Hiles | Requesting a review of family facilities on Christmas Island. |
| EM | 29/03/11 | Dianne Hiles | Fiona Andrew | Visits to all detention facilities on Christmas Island are coordinated through the Detention Visits section in DIAC's National Office. |
| EM | 30/03/11 | Fiona Andrew | Dianne Hiles | Clarified ChilOut were requesting a tour, not asking to visit detainees. |
| EM | 30/03/11 | Dianne Hiles | Fiona Andrew | DIAC's procedures are: all NGOs, researchers and other visitors must go through Detention Visits section in National Office. FA unable to agree to ChilOut's visit without National Office approval. |
| EM | 30/03/11 | Detention.Visits Sophia Liu | Dianne Hiles | Asking what, if anything, ChilOut needed to do to organise a review of family facilities on Christmas Island prior to arrival. |
| EM | 31/03/11 | Fiona Andrew | Dianne Hiles | Apologised for the confusion and thanked for the clarification. |
| EM | 31/03/11 | Dianne Hiles | DV/SL | ChilOut's request for a tour cannot be accommodated. "Immigration detention is subject to regular scrutiny from external agencies such as AHRC, the Ombudsman, UNHCR and CISSR to ensure people are treated humanely, decently and fairly." |
| EM | 04/04/11 | Detention.Visits Sophia Liu | Dianne Hiles | Pointing out that the impact of the recent difficulties on families and children in Christmas Island facilities is one of the principal things ChilOut would like to assess. Requesting if things settle in the next few days the Department might revisit this decision. |
| EM | 13/04/11 The day after ChilOut | Dianne Hiles | DV/SL | "The Department is not in a position to host visit activities at this stage on CI. When activities on the island are normalised, we will be able to |

No Place For Children:
Immigration detention on Christmas Island

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| | left the Island | | | consider your request in the future”. |
| EM | 06/04/11 | Alexis Gibson | Dianne Hiles | Scanned copies of three Visitor Application forms. |
| FAX | 07/04/11 | CI IDC 08 9164 8058 | Dianne Hiles | Faxed copies of three Visitor Application forms. |
| EM | 07/04/11 | Dianne Hiles | Alexis Gibson | “Any new visitors who wish to enter an Immigration Centre/APOD need to be approved by DIAC, as well as by Serco. I am in the process of discussing your request to visit with DIAC. Until we have reached a decision, unfortunately you are not permitted to visit.” |
| FAX | 08/04/11 | CI IDC 08 9164 8058 | Jo Hind | Faxed copies of three Visitor Application forms. |
| EM | 08/04/11 | Alexis Gibson | Jo Hind | Following up on the faxing of three Visitor Application forms. |
| EM | 08/04/11 | Jo Hind | Alexis Gibson | “Any new visitors who wish to enter an Immigration Centre/APOD need to be approved by DIAC, as well as by Serco. I am in the process of discussing your request to visit with DIAC. Until we have reached a decision, unfortunately you are not permitted to visit.” |
| TC | 08/04/11 | Jo Hind | Ben Stoneley | Responding to fax. Need to refer to Janet Mackin. |
| EM | 08/04/11 | Alexis Gibson | Dianne Hiles | Now arrived on Island – awaiting the outcome of your deliberations. |
| TWT | 08/04/11 | Sandi Logan | Jessica Perini | Asking if we could have his contact details in the event of any issues. |
| TC | 08/04/11 18.00 | Alexis Gibson | Dianne Hiles | ChilOut’s application to visit still being discussed with DIAC. Everyone is busy with a boat coming in. Without DIAC’s authority AG will not permit access to the Construction Camp. |
| TC | 08/04/11 18.22 | Dianne Hiles | Alexis Gibson | Confirming AG had spoken with DIAC and no decision had been made. DH not allowed to visit tomorrow. |
| EM | 08/04/11 | Dianne Hiles | Sandi Logan | Providing his contact details in response to JP’s Tweet. |
| VM | 08/04/11 | Dianne Hiles | Sandi Logan | Providing his contact details in response to JP’s Tweet. |
| EM | 09/04/11 | Sandi Logan | Dianne Hiles | As of last night, CI time, DIAC still had not given DH permission to make an ordinary visit |

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| | | | | to people in Construction Camp (as opposed to an escorted tour of the facility which she also requested). DH not aware of anything untoward with her application and both Serco and DIAC were in receipt of it for more than the required 24 hours. Alexis Gibson has informed DH she will not be admitted without DIAC's permission. DH asks SL to progress the situation. |
| EM | 09/04/11 | Dianne Hiles | Sandi Logan | "Will see what's occurring but of course if you're seeking to visit a client, you must be approved by them first. If you're seeking some other access/arrangements, then I would expect your request(s) was/were lodged with DIAC well in advance. In any event, I am looking into this." |
| TC | 09/04/11 | Fiona Andrew (on leave) | Dianne Hiles | Tried ringing FA's phone in case Janet Mackin was using it. She wasn't but FA said she would let JM know I was trying to make contact. |
| SMS | 09/04/11 09.44 | Jo Hind | Dianne Hiles | Please text Ben Stoneley of DIAC to ask him to follow up with Janet Mackin. |
| SMS | 09/04/11 | Ben Stoneley | Jo Hind | Please follow up permission to visit status with Janet Mackin. |
| TC | 09/04/11 12?? | Janet Mackin | Gordon Thomson | Janet Mackin in a meeting. Said she would ring GT back shortly. |
| TC | 09/04/11 12.43 | Janet Mackin | Dianne Hiles | No reply – went through the 'leave a 10 second message which will be converted into an SMS' |
| TC | 09/04/11 | Gordon Thomson | Janet Mackin | JM explained to GT Canberra had refused DH's request for an escorted visit, but she was to be permitted to visit the three people she had put on my request. DH was not permitted talk to anyone else. |
| <p><u>Visit 1 to Construction Camp</u></p> <p>Kaye Bernard and Dianne Hiles were admitted – and given bottles of water (first time for Kaye) in lieu of drinks and biscuits to be available for visitors as per contract?</p> <p>Jo Hind not allowed in (despite completing and faxing her forms in accordance with the requirements).</p> <p>DH/KB met the three designated Vietnamese detainees in a segregated donga in the Indonesians' section.</p> <p>Completed more forms with names to meet tomorrow.</p> | | | | |
| TC | 10/04/11 11.00 | Janet Mackin Canberra No | Dianne Hiles | No reply – left message. |

| | | | | |
|---|-------------------|---------------------------------|---------------|--|
| TC | 10/04/11 11.00 | Janet Mackin Christmas Is No | Dianne Hiles | No reply – left message. |
| <p><u>Visit 2 to Construction Camp</u></p> <p>Attempted to enter at 14.25. Serco had no authorisation to admit JH or DH.</p> <p>They spent an hour with Duty Officer, Tony de Bello who tried ringing several people (Janet Mackin, Stuart ? (Serco DM yesterday), Alexis Gibson, Serco Centre Manager) to obtain the necessary permission – all to no avail. No-one answered, so he left messages. No-one responded to these in the hour we waited</p> <p>The ad hoc Visitor Application forms DH and JH completed the day before and left with reception had not moved from the front desk: a possible contract abatement.</p> <p>TdB assured DH and JH he would process the outstanding forms and if possible advise them of the outcome before he went off duty at 18.30.</p> <p>DH and JH left at 15.25.</p> | | | | |
| TC | 10/04/11 17.40 | Janet Mackin CBR No | Jo Hind | No reply – left message saying they would be following up with Canberra in the morning. |
| TC | 10/04/11 17.40 | Janet Mackin CI No | Jo Hind | No reply – left message saying they would be following up with Canberra in the morning. |
| SMS | 10/04/11 17.46 | Janet Mackin | Dianne Hiles | They would be following up with Canberra in the morning. |
| VM | 10/04/11 18.00 | Dianne Hiles | Tony de Bello | Permission granted to DH to visit tomorrow but not JH. |
| EM | 10/04/11 20.02 | Sandi Logan | Dianne Hiles | <p>ChilOut not progressing well on CI.</p> <p>ChilOut submitted applications to Serco to pay personal visits to specific detainees, all within the timeframes and in accordance with the rules.</p> <p>As advised SL on Friday, Serco say cannot admit us without DIAC authorisation. The Assistant Secretary on CI does not respond to ChilOut calls. Yesterday Shire President of CI intervened ChilOut's our behalf and DH was permitted to see the specified detainees. Yesterday DH admitted to the Centre.</p> <p>This afternoon, Serco advised they were not authorised to admit JH or DH. DIAC not responding to calls either before ChilOut visit or for the hour while DH and JH waited. Since ChilOut left the centre today Serco advised that DH approved for tomorrow (Monday, but not necessarily for Tuesday, DH and JH's last day) and JH is not yet approved at all.</p> <p>Even on Christmas Island, the system is supposed to permit personal visits and not subject people to this sort of run-around.</p> |

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| | | | | ChilOut have come a long way, at great personal expense and inconvenience, and it would reflect well on everyone if we could maximise the effectiveness of our remaining time here. |
| EM | 11/04/11 | Dianne Hiles | Sandi Logan | SL confident Janet Mackin will look after this in line with normal protocols. |
| EM | 11/04/11 10.56 | Sandi Logan | Dianne Hiles | Is it normal protocol not to return calls and keep visitors to the island informed of their situation (yet be prepared to speak to the Shire President about us)? |
| TC | 11/04/11 11.02 | Dianne Hiles | Janet Mackin | JM aggrieved re ChilOut's contact with Sandi Logan expressing frustration she wasn't returning her calls. Permission finally given for JH to visit, only the nominated detainees, and DH and JH not allowed to see the classrooms in Compound Charlie. |
| <p style="text-align: center;"><u>Visit 3 to Construction Camp</u></p> <p>14.15–16.15 DH and JH met with three orphaned Vietnamese Catholic boys and members of a large Iranian family.</p> <p>Put in forms with new names for tomorrow's visit.</p> | | | | |