

# Fifteen years of detaining children who seek asylum in Australia – evidence and consequences

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## Abstract

**Objective:** To review and summarise the evidence about and consequences of Australia's policy of mandatory indefinite detention of children and families who arrive by boat to seek asylum.

**Methods:** This paper will summarise the accumulated scientific evidence about the health and mental health impacts of immigration detention on children and compare methodologies and discuss the political reception of the 2004 and 2014 Australian Human Rights Commission (AHRC) Inquiries into Immigration Detention of children.

**Results:** The conclusions of the 2004 and 2014 Inquiries into Immigration Detention of Children are consistent with Australian and international research which demonstrates that immigration detention has harmful health, mental health and developmental consequences for children and negative impacts on parenting.

**Conclusion:** The evidence that prolonged immigration detention causes psychological and developmental harm to children and families and is in breach of Australia's human rights obligations is consistent. This is now partially acknowledged by the Government. Attempts to limit public scrutiny through reduced access and potential punishment of medical witnesses arguably indicates the potency of their testimony. These harmful and unethical policies should be opposed.

**Keywords:** immigration detention, children and families, asylum seekers, human rights and mental health

Since 2001 the author has visited families in Australia's immigration detention centres and was appointed Royal Australian and New Zealand College of Psychiatrists (RANZCP) consultant to the 2014 Australian Human Rights Commission (AHRC) Inquiry into Immigration Detention of Children. The detention environment, distress of infants and children, and impact on family life is described elsewhere.<sup>1</sup> The AHRC consultancy was challenging: contact with large numbers of symptomatic children and adults; responsibility to listen and document stories without therapeutic authority; and a need to respect Inquiry decisions about what was discussed publicly, and when. The AHRC provided two sessions of debriefing after visits to Christmas Island.

## The evidence

In 2002 the impact of the harsh physical and psychological environment of immigration detention on family functioning and vulnerable children was first documented.<sup>2</sup> Quantitative evidence of the harm caused to children followed,<sup>3,4</sup> adding to existing research on

adults.<sup>5</sup> International studies<sup>6</sup> and review papers<sup>7,8</sup> have shown that even brief periods of detention impact on children's functioning. Host countries can support or undermine the wellbeing of asylum seeking children, post-migration detention and insecure asylum status being particularly detrimental.<sup>9</sup> In Australia there is the additional threat of transfer offshore. The particular vulnerability of unaccompanied children has been identified,<sup>10</sup> while the needs of infants and young children are underreported. There is a small literature on the wellbeing of pregnant asylum seekers.<sup>11</sup>

Research with detained populations is difficult for many practical and ethical reasons.<sup>12</sup> Despite this the findings are consistent: children in closed immigration detention have high levels of psychiatric disorder; there is a clear link between duration of detention and worsening men-

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tal health; and rates of mental disorder are higher than in refugees with similar levels of pre-migration risk who were not detained. These findings align with evidence of the developmental impacts of exposure to cumulative risks including parental mental illness and violence in an environment where protective factors are largely absent.

### The Australian context

Mandatory indefinite detention of children and adults arriving in Australia without visas was introduced in 1992 and has been successively extended to include changes to the migration zone and offshore processing. Recently this has meant transfer of asylum seekers to Nauru or Manus Island (Papua New Guinea) for processing, precluding resettlement in Australia. Families remained on the remote offshore Christmas Island between July 2013 and late 2014 while this was negotiated. Reports of inadequate medical services, assault and hardship on Nauru and deaths of asylum seekers on Manus Island have added to extreme anxiety about offshore transfer and further doubts about the probity of Australia's policies.<sup>13</sup>

### Human rights inquiries into immigration detention of children

In 2004 the Australian Human Rights and Equal Opportunity Commission (the name of the Australian Human Rights and Equal Opportunity Commission (HREOC) was changed to the Australian Human Rights Commission (AHRC) in 2009) published *A Last Resort; National Inquiry into Children in Immigration Detention*.<sup>14</sup> The human costs are extensively documented. Children are affected by the harsh inadequate environment, recurrent exposure to adult violence, self-harm and loss of effective parenting due to mental illness. HREOC found that the failure 'to protect and promote the mental health and development of children...not only constitutes a breach of a child's right to mental health, development and recovery, it also amounts to cruel, inhuman and degrading treatment'(p.13).<sup>14</sup>

This Inquiry was followed by amendments to the Migration Act 2005, affirming the principle that minors should be detained only as a last resort. Numbers of children detained fell dramatically between 2004 and 2009.

The AHRC maintained regular visits to immigration detention facilities between 2004 and 2014. Boat arrivals and detainee numbers again increased. By July 2013 there were 1992 children detained, averaging 231 days in March and 413 days detained by November 2014. Between January 2013 and March 2014, 128 infants were born into detention.<sup>15</sup>

### Context

Between 2000 and 2002, during sustained protests in detention centres, children in detention were exposed to

riot police, water cannons, tear gas and fires, and adults were injured and self-harming. A decade later protests continued but the violence was less overt. The systemic institutionalisation, dehumanising environment and the harsh developmentally inadequate context were replicated.<sup>1,15</sup> The legal situation in 2014 was more pervasively grim; hope of having refugee claims processed or of settling in Australia had been removed, a fact frequently restated to those seeking asylum. Many children were again deprived of adequate developmental experiences and exposed to adults, including parents, cutting, attempting to hang or poison themselves and being restrained.

In February 2014 the AHRC announced a second Inquiry. Of the 889 children including 56 unaccompanied minors then detained, 40% were under five years, 38% aged five to 12 and 22% were adolescent. *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014* had public release in March 2015.<sup>15</sup> Numbers of children in closed detention had then fallen to 227 with 103 on Nauru.<sup>16</sup>

Neither Inquiry was given access to Nauru or Manus. The 2014 Inquiry included a chapter on Nauru AHRC, (p. 181)<sup>15</sup> based on UN High Commissioner for Refugees (UNHCR) and other site visits,<sup>17</sup> interviews with and submissions from medical, service staff and detainees and limited information provided by the Department of Immigration and Border Protection (DIBP).

### Methodologies

A comparison of the methodologies and data sources for the 2004 and 2014 Inquiries is provided in Table 1. Specifically in 2014 a semi-structured interview was completed with 1129 detained children and families, providing a more robust approach to data collection. That Report also used a developmental orientation to highlight the particular needs of expectant families; those with infants, (pertinent given the 40% of children under five); the distress of children denied schooling; the anxieties for adolescents and additional vulnerability of unaccompanied children.<sup>15</sup> The DIBP reportedly also sought to conceal IHMS data showing that 34% of detained children had symptoms of moderate to severe mental disorder.<sup>15: p.61</sup>

### Inquiry conclusions and recommendations

Both Inquiries report discrepancies between reports from asylum seekers, policy documents and evidence from DIBP, Serco and IHMS staff<sup>14: p.38; 15: p.46</sup>. Also language was at times deceptive. The 2014 Inquiry heard that all children have a 'Best Interests Assessment' before they are transferred to Nauru, but found that 'By the Department's own explanation, the best interests of an individual child has no bearing on whether that child is to be transferred to Nauru...it is the view of the Commission that the Best Interests Assessment for children, is in name only'<sup>15: p.192</sup>.

**Table 1.** Methodologies and Data Sources – 2004 and 2014 Inquiries into Children in Detention

	<b>Timeframe</b>	<b>Report</b>	<b>Detention centre visits</b>	<b>Public hearings (witness numbers)</b>	<b>Submissions</b>	<b>Interviews</b>	<b>Access to Nauru and Manus</b>
HREOC <i>A Last Resort</i> 2004	Inquiry Nov. 2001–Dec. 2002	Presented April 2004 Concerned children detained 1999–2002	11	61 public hearings (105) 24 confidential hearings (50)	346	112 interviews	No
AHRC <i>The Forgotten Children</i>	Feb.–Oct. 2014	Presented Nov. 2014 Tabled March 2015	11	Five public hearings (41)	230	1129 adults and children Semi- structured interviews with current detainees; 104 with former detainees	No Includes a chapter on Nauru

HREOC: Australian Human Rights and Equal Opportunity Commission; AHRC: Australian Human Rights Commission.

The conclusion of the two Inquiries is similar and in line with scientific studies: 'Prolonged, mandatory detention of asylum seeker children causes them significant mental and physical illness and developmental delays, in breach of Australia's international obligations'<sup>15: p.13</sup>

Both Reports make similar recommendations: that Australia comply with obligations under the Refugee Convention and Convention on the Rights of the Child; detained children and families be immediately housed in the community; the Migration Act be amended to ensure that children are detained for a strictly limited period; timely processing of refugee claims and an independent guardian for unaccompanied children.

### Reception of the Inquiries

The political reception of the two reports differed. In 2004 the evidence of the harms caused by Immigration detention was in some ways 'new' and while the findings of HREOC were disputed, there was no sustained attack on the Human Rights body itself, and protective amendments to the Migration Act followed.

In 2015 *The Forgotten Children* report was received with great political hostility, including claims that the AHRC President had lost the Government's confidence and should step aside.<sup>18</sup> There was less attempt to deny the evidence that detention causes harm; rather a sustained 'attack on the messenger', including a suggestion of 'overreliance on the Commission's own experts'<sup>15: p.308</sup>. Attempts to limit public scrutiny and silence medical witnesses through increasingly restrictive employment contracts and legislation have followed.<sup>19</sup>

During Public Hearings a senior official in the DIBP had acknowledged the impact of immigration detention: '...there is a reasonably solid literature base which we're not contesting...which associates a length of detention with a whole range of adverse health conditions...' (DIBP Secretary M Bowles)<sup>15: p.61</sup>

Thus the harm caused to asylum seekers is accurately described as 'predictable and foreseeable',<sup>20</sup> unethical and in breach of our human rights obligations.<sup>21,22</sup> Given this, significant ethical challenges face doctors working within the immigration detention system.<sup>18,23,24</sup>

### Conclusions

The tide of adults and children who seek asylum will continue and it is clear that humane geopolitical and regional responses are necessary. The findings of two Human Rights Inquiries into Immigration detention of children are supported by scientific evidence. The harm caused by current immigration policies is undeniable, and partially acknowledged by the Government. Australia's immigration policies and practices can be described as deliberate and informed. They are unethical, infringe the human rights of those detained, knowingly cause suffering and breach our international obligations. Attempts to limit public scrutiny and silence medical witnesses indicate the potency of testimony by health practitioners. There is no defence of ignorance. The human rights violations and consequent evidence of psychological harm to children and adults are very clear. As individuals and as a profession we have an obligation to oppose these policies.

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## Disclosure

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