



**Submission to:**

the Human Rights and Equal  
Opportunity Commission  
Inquiry into Children in Detention

**May 2002**

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## Introduction

UnitingCare Burnside (Burnside) is an agency of the Synod of the Uniting Church in NSW working with disadvantaged children, young people and families. Through services such as family support and family centres, out-of-home care for children and young people, educational support and development, Burnside aims to protect children from abuse and neglect, breaking cycles of disadvantage and improving life opportunities. Burnside's Social Justice and Research Program undertakes policy analysis and advocacy on issues impacting on children, young people and families.

Burnside has a long history of involvement in issues relating to children and young people who are refugees. Most recently our services have had contact with a number of young people who were unaccompanied minors released from immigration detention on Temporary Protection Visas (TPVs). Burnside has developed a proposal to offer care and accommodation for up to 20 young people (over 14 years in the case of the submission) in similar situations who have been released from Immigration Detention Centres (IDCs). This proposal has been submitted to the Federal and the New South Wales governments.

In 1983 Burnside implemented a program to resettle 28 Khmer young people (average age 16 years plus) who were unaccompanied minors from refugee camps on the Thai-Cambodian border. The Khmer Program provided accommodation or accommodation assistance, intensive support in the initial years and ongoing support for young people as they reached adulthood (Plant 1988).

Our experience, both in the 1980's and more recently, has given us an insight into some of the issues experienced by children and young people who are refugees, particularly the vulnerable group of unaccompanied refugee minors. While the nature of cross national migration has shifted, and with it the ethnicity and cultural backgrounds of the refugees arriving in Australia, the common experience of being a refugee, seeking asylum and being left without the support of parents or other adults remains relevant.

Burnside also has a more general interest in the rights, welfare and well being of children, young people and their families. Burnside has a strong commitment to advocating on issues that are particularly relevant to children, young people and their families who are affected by disadvantage. Children and young people in detention are a uniquely disadvantaged group in Australia. Not only have they experienced the trauma of fleeing their country of origin and undertaking a dangerous journey to Australia, but they have been detained without charge, face an uncertain future and conditions that have been shown by at least two independent inquiries (Human Rights and Equal Opportunity Commission 1998 and Commonwealth Ombudsman 2001) to be of serious concern.

**This submission will deal with aspects of the following Terms of Reference of the Inquiry:**

- 1. The adequacy and effectiveness of the policies, agreements, laws, rules and practices governing children in immigration detention or child asylum seekers and refugees residing in the community after a period of detention.**
- 2. The impact of detention on the well being, health and development of children including their long-term development.**
- 3. The additional measures and safeguards which may be required to protect the human rights and best interests of child asylum seekers and refugees residing in the community after a period of detention.**

Some young people<sup>1</sup> who were previously in detention and who have since been in contact with Burnside services agreed to share their experience of detention in an interview with a Burnside staff member (with the assistance of an interpreter). Their stories highlight clearly the problems with immigration detention in its current form and are pointers to areas which need to be addressed immediately. The young people spoke to Burnside on the condition of anonymity. Therefore names, dates and other identifying information have been removed or changed. The young people gave their permission for the transcripts of the interview to be used in Burnside's submission to this Inquiry.

## **1. The adequacy and effectiveness of the policies, agreements, laws, rules and practices governing children in immigration detention or child asylum seekers and refugees residing in the community after a period of detention**

### **1.1 The conditions under which children are detained**

*They (the other young people in the room) are very close to you (he hunches up to show how cramped the room was), you can't move... it's all so hot and there's no tree, so we can't go outside.*

*Spending my time (was) very hard, it was long time there. Nine months there,, very hard spending my time because it is boring, no possibility for us. There was not very much to do, Just breakfast time, lunchtime, and dinnertime and there were one-hours/two hours we could just play soccer. That's it.*

Young people who spoke to Burnside have clearly stated that the conditions in detention centres in Australia are not positive for children. This seems particularly true of the newer IDC's, which are based in remote areas of Australia, have little contact with the broader Australian community and are subject to extreme heat and cold.

The young people highlight that, particularly for unaccompanied minors, there is a lack of focus on the differing needs of children and young people in detention from adults. Their evidence shows that while (in the case of unaccompanied minors) they may be separated in sleeping arrangements from single adults, they are subject to the same harsh rules and conditions as adults. This means that there is little or no protection for such children and young people from further traumatic events such as self-harming behaviour by other detainees, being placed in isolation rooms<sup>2</sup> or the crushing and debilitating boredom of having no regular, consistently available and structured education and recreation programs.

*The whole condition in the camp is really, really bad, people are really stressed. Those people they are there for a long time they get really agitated. They used to come to restaurant<sup>3</sup> for example...a guy sits there for a while and then he gets really upset , mentally sick and he just pulls the chair and throws it away and causes lots of fight and scaredness between people - young people, children - because the restaurant it (is)for everybody, everybody is there.*

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<sup>1</sup> The term young people in this submission refers to children over the age of 12, but under the age of 18 years. We have used both the terms "children" and "young people" to highlight to diverse needs of people aged under 18 years in detention, ie the needs of a child of 3 years differ markedly from one of 12 years and again from one of 16 years.

<sup>2</sup> This issue is dealt with in detail in section 1.3.

<sup>3</sup> The people interviewed always called the dining room at the detention centre 'the restaurant'.

Young people also talk about the creation of an environment of fear and intimidation in the detention centres because of the unaddressed incidents of self-harm, the lack of separation between groups and the overwhelming despair, particularly of adult detainees.

**Question: So people are actually scared of one another?**

*Yes, exactly. And each time people they go to the restaurant for lunch, dinner, they are always cautious and careful because something might come up...*

There is extensive research to suggest that young refugees are a particularly vulnerable group in the refugee population and the need to craft appropriate responses to their needs is critical to a humane response. A review of the literature relating to the mental health of young people of refugee background highlights the key issues for young people.

*Some of the key issues raised in the literature include the psychiatric and psychological effect of refugee experiences, the impact of being a refugee on young people's development and functioning and the impact of the refugee experience on the family. A number of groups are mentioned consistently in the literature as having particular vulnerabilities, including unaccompanied minors and young women. (Bevan 2000, p. 35)*

The exposure of children and young people to the harsh conditions inside IDC's is a real and significant concern. It appears from the evidence presented to Burnside and others, that there is little distinction with in camps between the treatment of children, young people, young people on their own and adults. Given that children and unaccompanied minors in particular are under the guardianship of the Minister for Immigration and are entitled to special protection under the UN Convention on the Rights of the Child, their continuing exposure to these conditions seems inappropriate and unreasonable. As we will discuss in relation to children's health and development, there are compelling reasons to ensure that children are not exposed to ongoing trauma and stress that will impact on the way they function, possibly for the rest of their life.

## **1.2 Rules and day to day operations in detention centres**

The young people interviewed by Burnside said that there were two types of what they called 'camps' in the remote IDC where they had been detained for up to 9 months. They said that in one 'camp', the people had very restricted movement and could not go outside, and in the second (what they called the 'free camp') there was the 'restaurant' and a yard for exercise.

*There are two sections (to the IDC). The section where you can move around has a big 'L' space, a bit like a yard or something, they call it like a 'free' camp. The other section which was interview time was just like a very small room. There is no place to move around or anything like that. It's that they take you to interview and bring you back to kind of room.*

One young person said that they were in the first 'camp' for 25 days, until after the second interview with Department of Immigration (DIMA) officers. Then they were moved to the second part of the detention centre, where there were dining and recreation areas.

The young person described conditions in the first camp thus:

*This is not a good place...very close. No place to play and it's very bad situation for 25 days.*

Young people who have been in detention report that while they were in detention that they were unsure of the rules, found it hard to establish consistency in approach in detention and processing and release of detainees and believed that they were not given correct information about their rights.

*Nobody knew what their real right was. Just like people, they knew they had to go to interviews, certain amount of interviews should be done and after that, people assumed that whoever came first should go first. But sometimes after they did interviews with people about twenty, twenty five people at the one day, and some of them they release in twelve days, ten days but they kept the rest for two months, three months, four months. We did not understand the reason for that and that caused lots of tension with us because we knew we had been accepted we knew basic rights. We knew we had to go to interview we had to get the visa to be able to go out, things like that. But the timing we did not really understand, why some people go to ten days but the rest of us we didn't. We asked for lawyer, some legal aid but they didn't really pay attention, they didn't say no or yes. They just said we didn't have time today or we do this in the future or next week. And that delay time caused lots of tension with people.*

**They commented that in relation to day to day conditions that:**

- **there was little variety in the food available:**  
*...you can't get every kind of food you want, so we can't get it, we didn't have a good choice.*
- **there was a one to two hour period each day where the detainees were able to play (eg soccer) and this could be arbitrarily cancelled by detention centre staff:**  
*...we can't play every time – like two/one hour we should play. So the police<sup>4</sup> say (you) should go to your room.*
- **detainees were discouraged from asking questions about rules or restrictions:**  
*If you ask why, you told "shut up, no 'why?'"*
- **there was no regular, meaningful education programs in the detention centre:**  
*There is one day if you want the teacher gives you a paper if you want is leaning some words, that's all....*

### **1.3 The use of cruel or inhumane treatment**

Article 37 of the UN Convention on the Rights of the Child includes that state parties shall ensure that:

- No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment...
- Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age....

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<sup>4</sup> The young people interviewed consistently referred to detention centre staff as the 'police'. It is unclear as to whether this reflects a belief that the ACM security staff were representatives of the Australian police or is an effect of the translation.

### **1.3.1 Inappropriate response to self-harm**

One young person told Burnside of his experience of a room that he called 'India', which seemed to be a room used for the solitary containment of detainees who had exhibited problem behaviours. The second person who shared their story with Burnside and was in detention with the young person concerned, corroborated the details about 'India'.

The young person said that he was put in the solitary room after he had harmed himself. He says that he was denied appropriate medical care for his injuries and was punished for the self-harm by being placed in the room he called 'India' for 5 days. He describes his experience of this in detail.

**Question: So you were by yourself in that room for five days?**

*There was a camera in the corner.*

**Question: How big was the room?**

*Smaller than this room (motioning to room we were in -about 3x4 metres). Camera there, there is no chair to sit down. This is for punishment, there is just a small hole for bit of light coming and all around is the camera.*

**Question: Did they explain why you were being kept in that room?**

*They wanted me to say why I did hurt myself. They just kept asking why I hurt myself. I said I was in pain, I went to the medical ...and ask for tablets for pain killer and sleeping and they just kept ignoring me.*

**Question: Did you get treatment? Did someone treat the wounds?**

*She just cleaned the blood and put on a patch of gauze, that's it. When you are in the India room if you eat and you behave they let you go. If you don't they just keep you there for longer. There were people there longer time than five days, six days.*

*If you behave after a few days they come and take you out. If you don't they keep you there for longer time. This was kind of like a mental game for me. I saw an Iranian guy – he was there about twenty days refusing to eat and they used to, police used to come and force him to eat and give him some kind of food injection for not eating.*

This information points to very serious breaches of the UN Convention on the Rights of the Child in Australian IDC's.

### **1.3.2 Lack of appropriate medical care**

The lack of medical care highlighted in the above case for children in detention must be of serious concern. The young person concerned was denied appropriate medical care for pain from previous injuries, and appropriate medical care for injuries caused by self-harm. He was also denied medical treatment for his obviously distressed and agitated mental health state.

It is clear from his story that the pain resulting from his previously acquired injuries was exacerbated by lack of exercise and normal movement while in the IDC. The lack of appropriate attention to his distress in the IDC, combined with his feelings of fear, powerlessness and rage, may have created the conditions where he began to harm himself.

Thus it seems that the actual process of detention could be directly responsible for the conditions that created his distress and the mental health issues that resulted in his self-harming behaviour. This is clearly unacceptable treatment of children, both in relation to UNCROC and in relation to what would be considered acceptable behaviour in the wider Australian community (including appropriate responses to children and young people in other forms of detention, such as Juvenile Detention).

It is interesting to note, that in NSW, if a child is at risk of harm experienced by a child as a result of a care giver's failure to provide appropriate medical treatment, under state care and protection legislation (Children and Young Persons (Care and Protection) Act 1998), a health professional or other person encountering the young person in the course of their professional work, would be required to report the matter to the Department of Community Services. Under the Mental Health Act 1993 in NSW, such response to self-harming behaviour would also be seen as inappropriate.

The Department of Juvenile Justice Centres in NSW policy *The Management of Suicide and Self-harm in Juvenile Justice Centres* includes a set of principles that underlies appropriate responses to attempted suicide and self-harm by children and young people in detention. These have been in place since 1999 and some of the more general (non centre specific) principles include:

- All acts of self-harm, including all suicidal threats and gestures, must be taken seriously.
- All acts of self-harm require an immediate and appropriate response.
- Knowledge of self-harming / suicidal behaviour must be covered in competency-based training and in performance review processes. All direct care staff (permanent, temporary, casual) must be trained in suicide awareness and suicide prevention, and be aware of:
  - (i) the factors, crises and events that may predispose or place a juvenile at risk of suicide or self-harm;
  - (ii) the various indicators of suicide risk.
- Direct care staff must be trained in behaviour management techniques, critical incident responses, and first-aid and resuscitation techniques so they can respond effectively to any self-harm incidents. Appropriate resource manuals and other materials must be provided by the centre manager to all unit staff.
- At the time of admission, standardised screening procedures must be used to help assess the risk of suicide and self-harm, and other health and related issues. These procedures must be carried out sensitively and in such a way as to ensure the confidentiality of the information.
- Supervision, security, management procedures and case co-ordination must be focused on the effective prevention of suicide and self-harm tendencies.
- Where risk is identified, a psychological assessment must be carried out to assess the need for counselling, hospitalisation, or other support from suitably experienced or qualified personnel.
- Identified suicidal or self-harming clients must be provided with closer supervision, additional support services, and special accommodation arrangements as necessary.
- There must be constant monitoring and regular review of the physical environment of Juvenile Justice Centres to assist in the prevention of suicide and self-harm (NSW Department of Juvenile Justice, 1999).

Based on these principles, it is clear that a young person detained in a Juvenile Justice Centre who attempted to self-harm would receive a very different response to a young person detained in an IDC. The focus on support and identification and management of risk would ensure a more positive outcome in the situation of the young person who shared their experiences with Burnside. Should detention of children and young people continue to be a part of Australia's response, then a more adequate approach to children at risk of suicide and self-harm must be implemented.

### **1.3.3 Denial of name**

**Question: Do they call you by name?**

*First young person: No, no just number. Like my number was 759<sup>5</sup>. They call me 759, that's all. Not name.  
Second young person: Yes they call you number. 452 my number.*

**Question: What was that like being called a number?**

*Apart from the humane aspect of it you feel really lonely when they call you with number because you are used to your name, people communicate with you with your name, when they call you with the number you feel really lonely, you feel you are just a number, nobody.*

Children in detention, like adults, are called only by number by staff of IDCs. This is dehumanising treatment and unacceptable under the UN Convention of Children's Rights. Article 8(1) of the Convention states that:

*State parties must undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.*

### **1.3.4 Denial of contact with other detainees**

Young people who had been in detention told Burnside that they had been prevented from attempting to speak with other detainees who were of a different language or cultural background.

### **1.3.5 Lack of information about visa processing and legal assistance.**

**Question: You talked a bit about your visa application. Were you kept informed about the progress of your visa application while you were in detention?**

*There is no discussion, no talk about what condition or which state of processing you are in. Its just like interview, you go to your room and ... the person you are dealing with is your case officer and the case officer and the case officer... you don't see them until they need you again. That's it.*

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<sup>5</sup> Numbers have been altered to protect the young people's identity.

Young people talked about the lack of information about the status of their applications for refugee status. They reported that they had been denied the opportunity to seek legal assistance and to ask questions of their Case Officer regarding the processing of their application. The young people reported that this lack of information caused them and the other detainees high levels of distress.

One young person was informed that he had been granted a TPV, but was kept in detention for a further two and a half months, without explanation. There was no consistent approach to the release of detainees, causing further anxiety, depression and distress.

#### **1.4 Current legal and administrative arrangements regarding children in detention and on their release**

Burnside has developed a proposal to provide care and accommodation for unaccompanied refugee minors on their release from detention. In the course of developing and progressing this proposal, we have liaised with relevant state authorities and sought information about both the role of the Department of Community Services (DoCS) in making contact with children and young people in detention (including reporting or investigating reports of children at risk of harm under the relevant state legislation) and the processes by which unaccompanied minors might be referred and accommodated within our program.

From our discussion with DoCS we understand that there are unresolved issues of legal and administrative jurisdiction that are capable of having a negative impact on children in detention.

Our understanding of the role of DoCS and process of exit for unaccompanied minors is as follows:

- DoCS do not regularly receive or investigate reports of children at risk in the Villawood IDC, although they may investigate some matters.
- NSW care and protection legislation is not accepted by the Commonwealth as having jurisdiction in Villawood IDC.
- When unaccompanied minors (under 18 years) are discharged from an IDC, they automatically come under the parental responsibility of the relevant state Minister.
- Should an unaccompanied minor move interstate after their release, parental responsibility is transferred to the relevant state Minister in that state.

However we have also become aware that:

- there appears to be no consistent administrative approach to reporting and investigating allegations of risk of harm relating to children in detention;
- there appears to be no process for ensuring that a young person receives services upon their release;
- there is no coherent program for care and accommodation of unaccompanied minors on release and no agreements between the states and the Commonwealth in relation to how such care and accommodation would be funded;
- there appears to be no formal process of ensuring that appropriate care plans are developed before or on the young persons release from detention;

- there appears to be no formal process for notifying relevant state Ministers and departments about the arrival of unaccompanied minors, unless they come to the department's attention through other channels or where a referral for immediate accommodation is received.

Our understanding of the current situation then, is that there is little legal or administrative protections for children while in detention and few (if any) processes to support them on their release. Basic communications and agreements between the Commonwealth and the states do not appear to be functional. Unaccompanied minors appear to have no clear, consistent pathways to access services, care or accommodation. There is little commitment to a programmatic response to the care and accommodation needs of unaccompanied minors. There appears to be no allocated funding to meet the ongoing care and accommodation needs of unaccompanied minors.

Other aspects of this submission have highlighted the lack of protections and services available to children in detention because state legislation is not accepted as having jurisdiction in IDCs. In NSW, some of these include:

- compulsory attendance at school for children aged 6 to 15 years under the Education Act 1990;
- appropriate mental health responses and protections under the Mental Health Act 1990;
- complaints processes under the Ombudsman Act 1974;
- care and protection under the Children and Young Persons (Care and Protection) Act 1998.

The capacity of adult detainees to advocate on behalf of children is limited as a result of:

- their reduced control over the environment to which children are exposed,
- their own experience of trauma and poor mental health
- and their own lack of access to legal assistance.

A matter of urgency is the amendment of the jurisdiction of people detained in IDC's to allow them access to the appropriate state legal jurisdiction.

This is important for children in detention because they are particularly vulnerable as a result of:

- their age;
- lack of legal representation;
- past exposure to traumatic experience; and
- ongoing exposure to traumatic experience.

Children in detention require a legal and service framework to ensure their rights are protected, that they are protected from harm and that they receive appropriate services to reduce the long term effects of negative experiences. Unaccompanied minors are a particularly vulnerable group in the child detainee population and require a specific response while in detention and on release into the community.

With the current absence of such protection, children continue to be at significant risk of current harm and long term negative effects. The legal guardian of children in detention (the Minister for Immigration) must act in the interim to ensure that children in detention receive the appropriate care and protection they require.

It is Burnside's conviction the exercise of appropriate Guardianship of children in detention would result in the release of children with their families (where present) into the community after a short, time limited period for health checks and processing. This would remove children from harmful and long lasting effects of detention. Appropriate program supports for children and their families should be developed and adequately funded to support their release into the community.

In order to ensure that unaccompanied minors receive the appropriate special protection they are entitled to under international law, they must be released into the community. There should be appropriate programs for care and accommodation that offer a range of options including foster care, group care or community placements that meet children and young people's educational and developmental needs. It is vital that an agreement is brokered between the Commonwealth and the States regarding appropriate funding and responsibility for funding of these programs.

## 2. The impact of detention on the well being, health and development of children, including their long-term development

### 2.1 The importance of early experience

There is compelling evidence emerging internationally about the importance of the early years in children's lives and in early intervention on issues that may impact on their health and well being (such as mental health, abuse or neglect). The importance of this information is not diminished when it is considered in relation to children in detention. If anything, the information we have about brain development and other impacts of early traumatic experiences is even more crucial for children who are refugees or seeking refuge.

The first and most compelling reason for ensuring that vulnerable children are supported is a moral one. All children have inherent value and worth. Therefore all children have the right to be loved and nurtured as part of the human community and to live their lives free of abuse and neglect. Abuse and neglect and other forms of disadvantage diminish those rights. A necessary corollary of this conviction is that parents and families must be have access to the support necessary to enable them to care for their children to the best of their abilities. The general community cannot abdicate its responsibility to ensure that the worth of all children is protected. The value of children should be a fundamental principle of the society that is demonstrated through its policies and practices.

One of the pre-eminent researchers in brain development has made the case most clearly for early intervention to prevent child abuse and neglect. His research shows that abuse and neglect changes the way a child's brain develops, forever altering the possibilities of a child's life:

*Of course, children 'get over it' – they have no choice. Children are not resilient, children are malleable. In the process of getting over it, elements of their true emotional, behavioural, cognitive and social potential are diminished – some percentage of capacity is lost, a piece of the child is lost forever. (Perry et al, 1995: 13)*

This submission has already made mention of the identification of children who are refugees as a vulnerable group in relation to mental health issues. For infants and very young children in particular, previous and continued exposure to trauma will have an impact on the way their brain develops its response to stimuli in the long term, as research by Perry et al (1995) and others have shown. This is because the brain develops in response to experience (Burnside 1999):

*With appropriate nurture, attention and stimulation in a predictable and consistent way, the infant's brain will develop towards optimum levels. However, traumatic experience or a lack of the right sort of experience at critical periods can actually change the structure and functioning of the brain. (Burnside 1999: p20)*

Information on brain development and the importance of early experience has become part of the accepted wisdom on policy and planning for children and young people in Australia at both state and federal levels (see for example, the development of the Families First Program in NSW and the Stronger Families and Communities Strategy from the Commonwealth Department of Family and Community Services). There is an urgent need for this information to be integrated into policy and procedures in relation to children in detention, particularly given the evidence (both first hand accounts and in Sultan and O'Sullivan's (2001) participant observer account) about children's exposure to ongoing trauma,

## 2.2 Mental health and long-term affects of detention

There is considerable support in literature for the thesis that children growing up in or exposed to long periods in refugee camps experience chronic stress and ongoing mental health effects such as depression and anxiety (Bevan 2000). While there are clear distinctions in the experience of children in refugee camps and those in Australian IDCs, the experiences of children in refugee camps are instructive. In addition, the work of Sultan and O'Sullivan (2001) highlights the stressors, such as adult detainees practising self-harm, that children are regularly exposed to in the Villawood IDC. They observed of a range of psychological disturbances evident in children in the centre:

*...separation anxiety, disruptive conduct, nocturnal enuresis, sleep disturbances, nightmares and night terrors, sleepwalking and impaired cognitive development,. At the most severe end of the spectrum, a number of children have displayed profound symptoms of psychological distress, including mutism, stereotypic behaviours, and refusal to eat or drink. Children of parents who reach the tertiary depressive stage appear to be particularly vulnerable... (Sultan and O'Sullivan 2001:p5)*

In comment in relation to this account, Steel and Silove (2001) highlight concerns about the ongoing impact of psychological symptoms developed as a result of the experience of detention. They raise the concern that for those asylum seekers who are released into the community, there is a possibility that the psychological symptoms that were a response to the detention environment, or symptoms of Post Traumatic Stress Disorder (PTSD) that were exacerbated as a result of detention, may have an adverse impact on those individual's process of acculturation. The international literature relating to impact of prior mental health issues on the settlement experiences of children and young people supports this proposition. Research and clinical reflection on the experience of young refugees in Australia clearly highlights the impact of ongoing mental health issues on children and young people's experience of school and home environments (for example Rice *et al* 1993).

This perspective on children's experience of detention strongly points to the need to respond to children's past experiences of trauma, grief and loss as well as new experience of stress or distress through creating an environment that will *decrease* the likelihood of long term effects of trauma. It is difficult to see at this time how this kind of environment could be created in IDC's.

*One of the people that hurt themselves was me. Because I had an operation in (country of origin) on my (part of body) and (it) was hurting a lot...for a few weeks. One night I was asking them to do something to let me go or do exercise ..I need to see a doctor. And they said you are not here permanently, you are temporary - we can't do anything, you have to wait. And after I have my visa they do not let me go for two and a half months and I just kept going to them and asking and asking all the time ...my (part of body) was hurting so much, I was not sleeping much and I was really distressed and really, really in anger I took a razor and I was cutting myself.*

*Nobody came to see what was happening. I went to the medical room, I went to the nurse and nurse says, what's happening and I said my knee is hurting and I showed my knee with the blood there and she calls the police and police came and took me to the small room, we called that room India. It's just a dark room, very small dark room and they kept me there for about five days. Then after five days I was crying and I tell them I don't hurt myself please let me go.*

The experiences of young people interviewed by Burnside, along with Sultan and O'Sullivan's (2001) participant observer's account of the experiences of detainees in Villawood IDC suggest that the current situation in IDC's in Australia exacerbates the long term impacts of recent or past traumatic experiences. In fact the lack of appropriate services, use of inappropriate punishment responses, such as isolation, would contribute to increasing the long-term effect of such experiences on children's well being and overall functioning.

It is clear from the research that the population of children who are currently held in detention in Australia may well require proactive health services as a result of their prior experiences. Some children's difficulties with communication (either because of language, development etc) mean that unless there is a proactive approach to addressing health issues these may be undetected and thus untreated. This is the case for both unaccompanied minors and children who are in detention with their parents.

## 2.3 Parenting and children's well being in detention

It is instructive to consider the findings by Mollica *et al* (1990) in their work with children in refugee camps on the Thai Cambodian border. They found that for children with their parents, parents underestimated the impact of a range of experiences of the children when compared with the children's self report on a range of questions related to traumatic experiences and ongoing impacts. They also found very high responses from parents on self report checklists related to their own experience of traumatic experiences and ongoing impacts.

Sultan and O'Sullivan (2001) also found parental mental state has an effect on children's mental health. This is consistent with broader literature on transgenerational effects of torture and trauma experiences, which shows that there is often a disturbing confluence in the trauma symptoms of parents and those of children (Bevan 2000).

In work produced by the Commonwealth Attorney General's Department on Crime Prevention and social support, family risk factors for negative child behaviours included:

- Psychiatric disorder, especially depression
- Single parents
- Antisocial models
- Violence and disharmony
- Disorganised family environments
- Father absence
- Long term parental unemployment
- Poor supervision and monitoring
- Low involvement in child's activities
- Neglect (Commonwealth Attorney General's Department 1999).

These risk factors almost describe the IDC environment. Where families are not free to make decisions about the way in which their children are parented because of the environment in detention (for example, times of meals, involvement in education or other activities), there are clear risks for children.

The needs of children that arise because of their parent's experiences are not being dealt with in detention. As discussed earlier in this submission, the lack of attention paid to the distinct needs of children in detention in relation to accommodation, education, protection from disturbing behaviour etc. are not being met. It is clear that parent's ability to proactively meet their children's needs may be compromised by their own mental state and there are few (if any) structures in place to ensure that these issues receive appropriate attention.

The descriptions of life in detention told to Burnside are consistent with public reports of people's experiences of detention and it is possible to conclude that detention is deleterious for parenting and therefore has long lasting negative effects on children's well being.

## 2.4 Education

*There is one day (when) if you want the teacher gives you a paper if you want is leaning some words, that's all...*

*They did not explain exactly what it was about. If they had explained like it was a special class the rules and everything the people would understand but it was just in one hour, two three papers sometimes. Maybe three days a week for just one hour.*

### 2.4.1 Access to primary, high school and vocational education

Evidence from children and young people in detention suggests that their access to education in detention was fragmented, insubstantial, unstructured and would not reflect the educational programs and opportunities available to other children in the community.

Article 28(1) of the UN Convention on the Rights of the Child sets out the basic rights to education that should be available to all children, regardless of their citizenship status, including:

- compulsory, free primary school education;
- encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- make higher education accessible to all on the basis of capacity by every appropriate means;
- make educational and vocational information and guidance available and accessible to all children;
- take measures to encourage regular attendance at schools and the reduction of drop-out rates.

*I wanted to study English, like grammar that we can get English, speak English like school like children for young people so everybody wanted to study. Everyone had a problem they did not have a serious class, only one day someone talking about Australia.*

It is clear that the education actually received by children in detention falls well short the basic framework in UNCROC and is clearly short of the education enjoyed by children in the broader Australian community. Under NSW law, children are required to attend school until they are 15 years old.

The impact of this lack of educational opportunities is particularly stark for children in detention centres. Literature on the educational experiences of children who are refugees shows that as a result of the refugee experience, they have experienced disrupted schooling and long breaks between school attendance (Bevan 2000). Research has also shown that this experience of interrupted and limited educational opportunities, in combination with trauma related symptoms and distress can negatively impacts on their learning experience after resettlement (Rice *et al* 1993). Therefore, the lack of educational programs available in detention has the capacity to have a life long effect on children's learning and educational achievement.

## **2.4.2 Early childhood education**

Access to early childhood education (for example structured pre-school programs) has also emerged as a concern for children in detention. Early childhood education has been identified internationally as one of the important ways of optimising the early years and providing appropriate opportunities for children to develop the building blocks for literacy and numeracy and social skills (Burnside 2001) It has also been shown to be particularly helpful for children from disadvantaged families (Burnside 2001). Burnside has extensively researched the benefits of early education for children and found that the international literature supports the benefits for children in cognitive and school readiness outcomes for children of access to structured early childhood education programs (Burnside 2001). Outcomes from early childhood programs targeted at children who experience disadvantage are also impressive (Burnside 2001).<sup>6</sup>

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<sup>6</sup> See attached paper: *Catching the Wave* for a more detailed discussion of early childhood education and intervention programs.

Pre-school age children in detention should have the same opportunity to participate in a range of activities as their counterparts in the general Australia. The positive flow on benefits for their health and well being in having access to a range of play and learning environments, and the correlating negative impacts of missing those opportunities, are compelling arguments for such access.

### 3. The additional measures and safeguards which may be required to protect the human rights and best interests of child asylum seekers and refugees residing in the community after a period of detention

**Question: When young people such as yourselves get out of detention what sort of help do they need?**

*When we come outside from detention centre ...we can't.... before I can't speak English, before I come out. So we need to like, education to help our direction to go to school, to somewhere else, to different food, different way, different situation. When I come to here (where now living) and I go outside and I can't do it, I lose the ways, everywhere (laughs). I can't find my house.*

*And when I go to school I not understand the teachers and she said why didn't you do your homework and I said.... I can't say something that's why I can't speak English. So the first time people come to outside they really need the help to explain very clearly.*

#### 3.1 Appropriate arrangements for unaccompanied minors on release from detention

As outlined in section 1.4 of this submission, Burnside has some concerns that there is an inadequate response to the release of unaccompanied minors from detention. Our concerns relate primarily to:

- the lack of appropriate planning for young people's release in to the community, including appropriate care and accommodation options;
- the lack of funded programs to achieve appropriate planning for care and accommodations;
- the lack of communication between state and Commonwealth government departments in relation to children released from detention and their needs;
- lack of agreement between state and federal governments in relation to responsibility for funding appropriate care and accommodation options.

It has come to our attention that unaccompanied minors released from detention on TPVs have had to independently access care and accommodation, often crossing states to find appropriate options. We are informed that young people receive little or no formal support on release and only find places to live, educational assistance through their own informal networks formed in detention.

## 3.2 Issues relating to Temporary Protection Visas

*People need first permanent visa because they want to see family..... I want to see my mother and brother but its not possible because my visa is temporary or the government is change the law, they saying we should go back (to country of origin). But it is not, the situation is not good....not safe I think. I heard from news everything and Internet and there is no security. Not safe. ... There is no safety I think. The government (Australian) is saying you should go back....there is safe for you and I think that is wrong. They should ask the people, if you have problem in (country of origin), you should be able get permanent visa.*

The use of Temporary Protection Visas is of particular concern for unaccompanied minors. Young people say they feel frightened to return home, but unable to get on with establishing a life in Australia. This adds to their distress.

Young people who spoke with Burnside emphasised their desire to get education and find work. Their focus is on learning English and other skills to become part of a community. However having a TPV strongly undermines their attempts at joining the broader community, as their future remains uncertain.

*...we feel really lonely here because we don't know what will happen to us. We want to study, we want to concentrate and have a normal life but it's very impossible, because we are anxious every day. They might say your visa is expired you have to go back and we know condition over there is not suitable, not a good condition for living.*

*It would be good if they would tell us if we are going to get it (permanent visa) or not now. If I am going to stay here for two years I want to work or study or something like that but this uncertain condition is really annoying, its really bothering because we can't focus on anything. Choosing education or work....because we don't have a permanent visa we can't really work, we don't have work permission and also studying, we don't know where they are going because after two years studying in Australia there education here is different to (country of origin) and we don't know what will happen. It is really uncertain future and that causes lots of anxiety.....so I can't decide what should I do now. If I study it will be good for me for my future. If not study, if they say, it is not possible to stay here for you after two years ....so I should work but my family there is no one to help them so it is all the responsibility for it belongs to me...*

### 3.2.1 Access to education

*Centrelink called me last week said .. 'you study full time?' I said yes. He said 'if your study continue full time your special benefit will be stopped'. I said why, he said 'it's the law'.*

*They said you cannot study full time. If you study full time I stop your money. I don't have any money to eat something or go somewhere else, I don't have any money to get the ticket..... It is not a good rights for humans that they say you cannot study anymore. Its not good rights like not equal rights. They say if it is temporary visa you can't study more.*

Young people who spoke with Burnside emphasised their desire to get education and find work. Their focus is on learning English and other skills and gaining employment.

Under the law relating to TPVs, young people are not permitted to study full-time, or they lose access to the Special Benefit which is their primary source of income. This appears to be assiduously applied by Centrelink. The reasoning behind this decision is unclear.

It has also come to our attention that there are further restrictions on study options for people, including young people on Temporary Visas. It is our understanding that besides studying English at TAFE Institutions, people on TPV's have no other access to government funded post- school educational options.

Denying young people access to education clearly goes against the spirit of the UN Convention on the Rights of the Child and discriminates against young people on the basis of their legal status.

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