

Background - Education

The department rejected the Inquiry's findings that there has been a breach of Convention on the Rights of the Child (CRC). These findings are based on the assertion that, over the period of the Inquiry, detainee children were provided with education that was "significantly short of the level of education provided to children with similar needs in the community."

In describing the provision of education to detainee children over the period of the Inquiry, the Inquiry Report does not give due acknowledgment to the fact that as a result of concerted negotiations with State education authorities and non-government schools during 2002/3, the majority of school-age detainee children attend external schooling in the community. Nor does it sufficiently recognise that having arrangements in place for children to attend school in the community was not a new development.

Instead the Report has a negative focus on the perceived delays in often very complex and sensitive negotiations. The difficulty of these negotiations, including the range of concerns of State education authorities and local communities, has been overlooked or minimised. The Report does not fairly draw out the links between the changed detainee caseload and the challenges with transition into external schooling, let alone the practicalities of enrolments for large numbers of recently arrived children in local community schools, eg Woomera. As a result, a misleading impression is given of the department's responsiveness to the educational needs of detainee children over time.

The Report fails to sufficiently address the challenges of providing education to a large, highly mobile population. The department and services provider made efforts to tailor curricula to the needs of detainee children however on occasion service provision within detention centres was affected by the available infrastructure and destruction of buildings during protests. These circumstances, however, are not directly comparable to other children in the community and it is therefore inappropriate to draw such links without acknowledging the distinctly different circumstances facing children in an immigration detention facility.

The Inquiry focuses largely on education to children above compulsory school age. Education for detainee children, both within and external to the detention facility, does not discriminate in access. Although such access may not have been utilised by some children in detention (in particular, adolescent males), the department and the services provider nevertheless actively encouraged participation in educational activities (which included adult education, if such detainees refused to attend schooling). Evidence of active encouragement was available to the Inquiry. It is incorrect to state that there was a policy of limiting such access to children over 15 years of age.

Lastly, as described in the department's general comments on all chapters of the Report, the principle of non-discrimination does not require that Australia provide education to children in detention in exactly the same manner as children in the community. Australia's obligation is to provide appropriate education to all children in Australia, consistent with Article 28 of the CRC.

Such provision must, however, also take account of the individual circumstances of a child, which in this case will include, among other things, that the child is required to be detained. The department is of the view that, taking into account the circumstances facing the changing detainee child caseload, it has met the obligations under the CRC to provide compulsory primary education, make available and accessible secondary education, information and guidance, and take measures to encourage regular attendance at schools.

Talking Points - Education

- **Even in the area of education for children, the Report fails to acknowledge the department's significant positive efforts and achievements.**
- **Again the Report's findings are unbalanced and disappointing.** The Report fails to appreciate the complexities.
- **You don't have to be Einstein to appreciate that trying to establish schooling arrangements for many hundreds of newly-arrived children would be difficult in most circumstances,** let alone when these children are unauthorised arrivals and need to be immigration processed, are moving through fairly quickly, have little schooling experience or English-language skills and have a range of health issues that need to be addressed including the difficult experience of their journey to Australia.
- **OK, education arrangements were not perfect for all children from the very start.** But they wouldn't be in the community either if that many children with these needs suddenly turned up.
- Of course under the circumstances of hundreds of children arriving there were challenges. **It's not as if these children booked in ahead of arrival!**
- But did we ignore the challenge, the children and their education? No! We set about making practical arrangements.
- **Some children at Curtin began attending school in the community as early as 2001, again, before the Inquiry was announced.** Children from Port Hedland commenced in early 2002, followed by children from Baxter starting at government schools early in 2003, not too long after the centre opened, and once the community had accepted the arrangement.
- **So what have we achieved?** All school-aged children in detention for more than a couple of weeks attend external schools in the community. These arrangements have been in place for sometime now, in some cases, even before the Inquiry was announced.

- Very importantly, **have agreements with state governments** to engage their co-operation with the continued access to government schools for children in detention. The system is in place!
- And let me **quote one school principal** who in September 2003, when some children from Baxter began attending the community school, reported that the children are doing fine at their classes. **“The tuition at Baxter must have been alright. There are no glaring holes in their learning.”**
- And **other school highlights for detainee children:**
 - One girl topped her year 10 maths class;
 - Another was made ‘head girl’, captain of year 10;
 - One child was awarded a prize at the end of 2003 for his consistently high achievements in all areas;
 - A male child attended a state-wide competition in marketing strategies in a capital city;
 - Some children from a centre were chosen to represent the region in soccer competitions;
 - Others from another centre were selected to represent the school in basketball at a competition in the city.
- Children are encouraged and supported to participate in **extracurricular activities** such as school excursions, including school camps and choirs, and sports, and parents are encouraged to engage with the schools attending parent-teacher evenings etc
- **The Report wants to provide a picture of unrelieved doom and gloom. But it just isn’t so.** OK. Some kids have had trouble with their education but so do some in the community. I want to show that there are achievements and successes too, just as there are in the community. This is the balance.
- **Focussed on continuous improvement.** The fact is that both the department and the services provider made considerable achievements in this area despite the challenges. Surely those arrangements, now firmly in place, are what is important

A last resort?

Chapter 12: Education for Children in Immigration Detention

The evidence before the Inquiry demonstrates that the Commonwealth failed to take all appropriate measures to provide children in immigration detention with an adequate education over the period of the Inquiry and has therefore breached the CRC.

While there were significant variations in the amount and quality of education provided in different detention centres at different times, the education available to children at on-site schools always fell significantly short of the level of education provided to children with similar needs in the Australian community. Despite the significant efforts of teachers, the Inquiry found that there were fundamental weaknesses in the on-site schools over the period of the Inquiry.

- No curriculum to suit the needs and capacities of children in immigration detention. This was especially the case for children above the compulsory age of education. Until late 2002 there was no systematic attempt to adopt the State curricula available and apply them within the English as a Second Language (ESL) framework.
- Insufficient infrastructure, curriculum resources, and teachers to support an appropriate education program for the numbers of children in detention.
- Inadequate hours of schooling. Contact hours were often well below the standard school day.
- Inadequate educational assessments and insufficient reporting of children's educational progress.
- No teachers with ESL qualifications in certain centres at certain points in time. Detainees without teaching qualifications were sometimes used to make up the shortfall in qualified teachers. A high turnover of teachers also impacted on the quality of teaching.
- The inadequacy of on-site education combined with increasing depression in long-term detainees resulted in low attendance levels at on-site schools at certain points in time.

Many of these problems were substantially addressed when, in mid 2002, the Department arranged for increasing numbers of children in immigration detention to go to local schools. However, not all children were eligible to attend external schools and the fact that children had to return to detention centres every day prevented them from taking full advantage of the external educational experience. It is unacceptable that it took ten years of mandatory detention before the Department began negotiating MOUs with State education authorities regarding routine access by children in immigration detention to external schools.

Executive Summary

Chapter 13: Recreation for Children in Immigration Detention

The evidence before the Inquiry demonstrates that the Commonwealth provided children in immigration detention with sufficient opportunities for play and recreation to meet the low threshold regarding this right in the CRC. However, recreational opportunities are closely linked to a child's right to enjoy, to the maximum extent possible, development and recovery from past trauma. The programs and facilities provided in detention failed to meet those obligations. There has therefore been a breach of the CRC.

The Inquiry makes the following findings regarding the play and recreation opportunities provided to children in detention.

- There were no constraints on children regarding leisure time or access to outdoor areas, albeit that those outdoor areas were surrounded by razor wire and usually not grassed. The exception was that children in separation detention in Port Hedland had limited access to the outdoors.
- By 2002 all centres had play equipment, although the Inquiry notes with concern that it took two years for playground equipment to be installed at Woomera.
- Toys and sporting equipment were generally provided, although there were times when they were insufficient to meet the needs of children in the centres.
- Access to televisions and videos varied between centres, but they were generally available to children. There were some problems in Baxter.
- Each centre had a recreational program in place, although the quality of those programs varied. Understaffing and resource constraints meant that the needs of children in Woomera were not always met. Children detained in Villawood and Maribyrnong had greater access to recreational programs due to the proximity of outside community groups and facilities.
- Excursions were arranged on an ad hoc basis at all centres at different points of time. There were periods of time in some centres when no excursions at all were offered to children, and in some centres excursions were cancelled at late notice. However, concerted efforts to offer regular excursions to children began in late 2001.

Long-term detention impacted on the mental health and development of children which, in turn, impacted on their enthusiasm to play. At the same time, a disinterest in play impacted on children's mental health and development. This highlights the importance of ensuring that detention is a measure of last resort and for the shortest appropriate period of time.

The right to education

Article 13 of the ICESCR recognises “the right of everyone to education” including compulsory and freely available primary education and “generally available” secondary education “in its different forms”. Article 28(1) of CROC also provides for these obligations and imposes an additional obligation to “take measures to encourage regular attendance at schools.”

All children in immigration detention have access to primary and secondary education. Children in some centres attend local primary or secondary schools. Otherwise, the detention services provider provides education services. The provision of education to immigration detainees is complicated by the fact that children are in detention for varying periods of time, come from a variety of different cultural and linguistic backgrounds and have varying levels of literacy in their own languages and in English. Detainees cannot therefore necessarily be streamed into the full Australia-based curricula. It is reasonable and in the children’s interests that English language tuition be a main element of the education services provided.

While participation at the primary school level is high, it is sometimes difficult to persuade teenagers to attend at the secondary level. Every effort is made to encourage children to attend school and to take advantage of other activities, such as supervised use of computers, but we also rely on parents to encourage their children to take advantage of the programmes offered.

Educational services also depend on the physical facilities available. These have been increased in most centres recently but the situation is not helped by the targeting of education buildings by detainees in disturbances and fires such as at Woomera IRPC late last year.