Attachment 2 – No Business in Abuse Pledge

The No Business in Abuse pledge defines a company that is not abusive as one which:

1. Has Zero Tolerance for Child Abuse, in policy and practice

The overarching finding of the Australian Human Rights Commission Inquiry '*Forgotten Children*', was that the prolonged, mandatory detention of asylum seeker children causes them significant mental and physical illness and developmental delays, in clear violation of the *Convention on the Rights of the Child*.[1] Many medial authorities have termed these practices child abuse.[2]

In addition, children are at increased risk of physical and sexual abuse in detention. Numerous incidents of abuse of children have been outlined in the Australian Government-commissioned independent review by Phillip Moss, and submitted as evidence to the Senate Select Committee on the conditions of detention on Nauru.[3] The Royal Commission on Institutional Responses to Child Abuse has said that "institutions operating without accountability, or with accountability only to themselves," those "operating in physically isolated places," and having operational or funding systems beyond the range of normal scrutiny were all factors that significantly increased the risk of child abuse.[4] All Australians detention facilities fit these indicators, in particular those operating offshore and in remote parts of Australia.

On the basis of findings such as these, the consistent recommendation of domestic and international authorities has been to immediately release all children and their families from detention. However, to date, children remain in both offshore and onshore immigration detention. No business enterprise can support these systems, without also supporting child abuse.

2. Respects people's fundamental rights to freedom from arbitrary and indefinite detention

Liberty is a fundamental human right, recognised in major human rights instruments including the International Covenant on Civil and Political Rights, Article 9 of which states "No one shall be subjected to arbitrary arrest or detention." Arbitrary detention is considered a gross human rights abuse, and, where is occurs as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, can amount to a crime against humanity as outlined in Article 7 of the Rome Statute of the International Criminal Court.

The current system of detaining asylum seekers in offshore and onshore centers clearly amounts to arbitrary detention and deprivation of liberty, a finding confirmed numerous times

---

[1] AHRC, "The Forgotten Children: National Inquiry into Children in Immigration Detention" (Sydney: Australian Human Rights Commission, 2014).

[2] Elizabeth J M Corbett, Hasantha Gunasekera, Alanna Maycock and David Isaacs, "Australia's Treatment of Refugee and Asylum Seeker Children: The Views of Australian Paediatricians," *The Medical Journal of Australia* 201 (7) (2014): 393–98.

[3] The Senate, Parliament of Australia, "Select Committee on the Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru: Taking Responsibility: Conditions and Circumstances at Australia's Regional Processing Centre in Nauru" (Commonwealth of Australia, August 2015).

[4] Royal Commission into Institutional Responses to Child Sexual Abuse, "Interim Report - Volume 1." (Commonwealth of Australia, n.d.), 140, http://www.childabuseroyalcommission.gov.au/about-us/our-reports/interim-report-volume-1-final-020714_lr_web.

by domestic and international human rights bodies. It is considered such because the system currently:

- Is mandatory and automatic;
- Is prolonged, open-ended and indefinite;
- does not provide a robust and transparent individual assessment mechanism to determine whether the detention of each person is necessary, reasonable or proportionate; and
- does not provide for anyone deprived of their liberty to be able to challenge their detention in a court. To comply with Article 9(4) of the ICCPR, that court must have the power to order the person's release if their detention is found to be arbitrary and in breach of article 9(1) of the ICCPR.

No business enterprise should be complicit in a system of arbitrary detention.

3. Does not treat people in a cruel, inhumane or degrading manner

All people have a fundamental right to humane treatment in detention (Article 10, International Covenant on Civil and Political Rights) and a right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment (Article 7, International Covenant on Civil and Political Rights and Articles 1 and 16 of the UN Convention Against Torture). The current system of offshore and onshore detention has been found to amount to a breach of the aforementioned articles. In the latest finding, in 2015, the UN Special Rapporteur on Torture stated that "by failing to provide adequate detention conditions; end the practice of detention of children; and put a stop to the escalating violence and tension at the Regional Processing Centre, has violated the right of the asylum seekers, including children, to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1 and 16 of the [Convention Against Torture]."[5]

No business enterprise should support the cruel, inhumane and degrading treatment of people within Australia's offshore and onshore immigration detention system.

4. Commits to transparency and independent monitoring to ensure these principles are upheld.

Independent monitoring, and the ability of detainees to make complaints to independent monitors, is essential for the prevention of torture and the protection of other human rights in detention. This is recognised in many international and regional human rights instruments and in Australian legislation.[6] All immigration detention facilities should allow monitoring by independent bodies, including the Commonwealth Ombudsman, the Australian Human Rights Commission, the United Nations High Commissioner for Refugees, Amnesty International and Australian Red Cross. The purpose of this monitoring includes ensuring that immigration detention facilities are administered in accordance with international obligations and with relevant statutory requirements. Detainees must be able to

[5] Juan E. Mendez, "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," March 6, 2015.

[6] See **Interpretive instruments:** OPCAT 4, 12, 14, 15, 19, 21; Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 'Guidelines on national preventive mechanisms', 9 December 2010; SMR 55; UNRPJDL 72-74; BOP 29; UNHCR Guidelines 10. **National law:** Ombudsman Act, s 5, 9, 14, 15; Migration Act part 8 C; Australian Human Rights Commission Act s 13.

communicate freely and in full confidentiality with monitoring bodies and any other person of their choosing, including legal representatives and members of the media.

There has been no public monitoring of Australia's offshore detention facilities since 2013, and any visits by independent bodies have been in secret, without public release of findings. Authorities such as the UN Special Rapporteur on the Human Rights of Migrants, and non-government organisations such as Amnesty International have consistently expressed concern at the lack of independent monitoring and access to the detention centres.[7]

No business enterprise should enter into a situation in which it is unable to guarantee transparency and independent monitoring, to ensure fundamental human rights are being respected.

[7] Office of the High Commission for Human Rights (UN), "Migrants / Human Rights: Official Visit to Australia Postponed due to Protection Concerns," September 25, 2015, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16503&LangID=E.