

Reconceptualising State responses to unaccompanied child asylum seekers to do no (further) harm

by

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Certificate of Original Authorship

I, **Jenni Whelan** declare that this thesis, is submitted in fulfilment of the requirements for the award of Doctor of Philosophy, in the Faculty of Law at the University of Technology Sydney.

This thesis is wholly my own work unless otherwise referenced or acknowledged. In addition, I certify that all information sources and literature used are indicated in the thesis.

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ABSTRACT

Unaccompanied child asylum seekers arrive in States seeking protection with an acute burden of vulnerability due to the absence of their parents and their unauthorised presence, without the legal protections that even the most marginalised citizens possess. This burden of vulnerability is *in addition to* their universal vulnerability as children. This vulnerability is unacknowledged and obscured by global rhetoric of border securitisation that has become increasingly common in domestic public and political discourse since the terrorist attacks of 9/11. State law and policy responses to asylum seekers that prioritise border securitisation over protection obligations exacerbate the vulnerability of unaccompanied child asylum seekers. Human rights and refugee law ought to provide an effective counterbalance to securitisation rhetoric but has not yet done so. This failure is reflected in extensive human rights breaches caused by punitive laws and policies regulating unaccompanied children seeking asylum by boat in Australia. Australia's legal and policy responses have manifested grievous psychological and developmental harms to unaccompanied asylum seeking children while amendments to the *Immigration Guardianship of Children Act 1946 (Cth)* and the *Migration Act 1958 (Cth)* in 2012, 2013, and 2014 have progressively reduced the protection provided to them. Urgent interim changes to law and policy are required. These changes, which are also necessary beyond the Australian context, require a reconceptualization of the way we comprehend firstly, unaccompanied minor children and the impact of State practice on them, secondly, the relationship between the State and the child seeking asylum and thirdly, States' accountability for the impacts of State practice on the child because of that specific relationship. The convergence of these children's acute vulnerability and their spatial, temporal and relational proximity to the State compels a response by States that neither exacerbates existing nor generates new vulnerabilities whilst their refugee status is determined. This thesis proposes a response informed by vulnerability theory by which States avoid both aggravating these children's existing vulnerabilities and generating new ones while also assisting States to move towards greater compliance with their international legal obligations.

KEYWORDS

Asylum seeker, unaccompanied child, vulnerability theory, human rights, proximity

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