

Executive Summary

This executive summary is divided into two parts. Part A sets out the major findings and recommendations of the National Inquiry into Children in Immigration Detention (the Inquiry). Part B provides a chapter summary of the Inquiry's report: *A last resort?*

Part A: Major Findings and Recommendations

Major Findings

The Inquiry has made the following major findings in relation to Australia's mandatory immigration detention system as it applied to children who arrived in Australia without a visa (unauthorised arrivals) over the period 1999-2002.

1. Australia's immigration detention laws, as administered by the Commonwealth, and applied to unauthorised arrival children, create a detention system that is fundamentally inconsistent with the *Convention on the Rights of the Child* (CRC).

In particular, Australia's mandatory detention system fails to ensure that:

- (a) detention is a measure of last resort, for the shortest appropriate period of time and subject to effective independent review (CRC, article 37(b), (d))
- (b) the best interests of the child are a primary consideration in all actions concerning children (CRC, article 3(1))
- (c) children are treated with humanity and respect for their inherent dignity (CRC, article 37(c))
- (d) children seeking asylum receive appropriate assistance (CRC, article 22(1)) to enjoy, 'to the maximum extent possible' their right to development (CRC, article 6(2)) and their right to live in 'an environment which fosters the health, self-respect and dignity' of children in order to ensure recovery from past torture and trauma (CRC, article 39).

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2. Children in immigration detention for long periods of time are at high risk of serious mental harm. The Commonwealth's failure to implement the repeated recommendations by mental health professionals that certain children be removed from the detention environment with their parents, amounted to cruel, inhumane and degrading treatment of those children in detention (CRC, article 37(a) – Chapter 9).
3. At various times between 1999 and 2002, children in immigration detention were not in a position to fully enjoy the following rights:
 - (a) the right to be protected from all forms of physical or mental violence (CRC, article 19(1) – Chapter 8)
 - (b) the right to enjoy the highest attainable standard of physical and mental health (CRC, article 24(1) – Chapters 9, 10)
 - (c) the right of children with disabilities to 'enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community' (CRC, article 23(1) - Chapter 11)
 - (d) the right to an appropriate education on the basis of equal opportunity (CRC, article 28(1) – Chapter 12)
 - (e) the right of unaccompanied children to receive special protection and assistance to ensure the enjoyment of all rights under the CRC (CRC, article 20(1) – Chapters 6, 7, 14).

A more detailed summary of all the Inquiry's findings is set out in the Chapter Summary in Part B.

Recommendations

1. Children in immigration detention centres and residential housing projects as at the date of the tabling of this report should be released with their parents, as soon as possible, but no later than four weeks after tabling.

The Minister and the Department of Immigration and Multicultural and Indigenous Affairs (the Department) can effect this recommendation within the current legislative framework by one of the following methods:

- (a) transfer into the community (home-based detention)
- (b) the exercise of Ministerial discretion to grant humanitarian visas pursuant to section 417 of the *Migration Act 1958* (Cth) (the Migration Act)
- (c) the grant of bridging visas (appropriate reporting conditions may be imposed).

If one or more parents are assessed to be a high security risk, the Department should seek the urgent advice of the relevant child protection authorities regarding the best interests of the child and implement that advice.

2. Australia's immigration detention laws should be amended, as a matter of urgency, to comply with the *Convention on the Rights of the Child*.

In particular, the new laws should incorporate the following minimum features:

- (a) There should be a presumption against the detention of children for immigration purposes.
 - (b) A court or independent tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of any initial detention (for example for the purposes of health, identity or security checks).
 - (c) There should be prompt and periodic review by a court of the legality of continuing detention of children for immigration purposes.
 - (d) All courts and independent tribunals should be guided by the following principles:
 - (i) detention of children must be a measure of last resort and for the shortest appropriate period of time
 - (ii) the best interests of the child must be a primary consideration
 - (iii) the preservation of family unity
 - (iv) special protection and assistance for unaccompanied children.
 - (e) Bridging visa regulations for unauthorised arrivals should be amended so as to provide a readily available mechanism for the release of children and their parents.
3. An independent guardian should be appointed for unaccompanied children and they should receive appropriate support.
 4. Minimum standards of treatment for children in immigration detention should be codified in legislation.
 5. There should be a review of the impact on children of legislation that creates 'excised offshore places' and the 'Pacific Solution'.

Part B: Chapter Summary

The table of contents for each chapter of the Inquiry report provides a detailed guide to the topics covered. The summary of findings at the end of each chapter sets out the Inquiry's factual and legal findings in some detail. This chapter summary highlights the key issues and findings in each of those chapters.

Chapter 1: Introduction

The Inquiry was announced on 28 November 2001. The primary purpose of the Inquiry was to examine whether Australia's laws and executive acts and practices ensure that children can enjoy their rights under the CRC.

The Inquiry examined the immigration detention system as it applied to children who arrived in Australia without a visa, usually by boat (unauthorised arrivals). However, the rights discussed by the Inquiry apply equally to all children.

Chapter 2: Inquiry Methodology

The Inquiry gathered evidence regarding the treatment of children in Australia's immigration detention centres for the period covering 1999-2002. However, where possible the Inquiry has updated its information.

The Inquiry heard from all relevant parties including: children and parents who are or were in immigration detention; the Department and its detention centre staff; Australasian Correctional Management Pty Limited (ACM) and its detention centre staff; State child protection authorities; organisations providing services to current and former detainee children; professional organisations; non-government organisations and individuals. Most of the evidence from children, and some evidence from detention centre staff and service providers, has been de-identified to protect their anonymity.

The Inquiry collected evidence in a variety of ways including: visits to all Australian detention centres; a public submission process (346 public submissions, 64 confidential submissions); public hearings (68 public sessions – 114 witnesses, 17 confidential sessions – 41 witnesses); and focus groups (29 groups). The Inquiry also obtained access to primary documents relating to the management of detention centres and the circumstances surrounding particular children and families who have been in detention for prolonged periods of time. The Department and ACM provided oral and written evidence and submissions. They had two opportunities to provide comments and submissions on the draft of this report and a third opportunity to provide information regarding actions taken in response to the Inquiry's findings and recommendations. The Inquiry carefully balanced and considered those comments and all other evidence when making its findings.

Chapter 3: Setting the Scene – Children in Immigration Detention

The total number of children who arrived in Australia by boat or air without a visa (unauthorised arrivals), and applied for refugee protection visas between 1 July 1999 and 30 June 2003 was 2184. Since 1992, all unauthorised arrivals have been mandatorily detained pursuant to Australian law. Approximately 14 per cent of those children came to Australia alone (unaccompanied children). The highest total number of children in Australia's immigration detention centres over that period was 842 on 1 September 2001.

Most of the children in detention centres between 1999 and 2003 came from Iraq, Iran or Afghanistan. Almost 98 per cent of the Iraqi children who applied for asylum from detention centres during this period were recognised as refugees and released into the Australian community on temporary protection visas. Approximately 95 per cent of Iranian children and 74 per cent of Afghani children were also found to be refugees and released into the Australian community. They all waited in detention centres while their claims were processed – some for weeks, others for months or years.

At the beginning of 2003, children had spent an average of one year, three months and 17 days in detention. By December 2003, the average time in detention increased to one year, eight months and 11 days. As at 1 October 2003, 62 children (51 per cent of the total number of child detainees) had been in detention for more than two years. The longest a child has been held in detention is five years, five months and 20 days. That child was released in 2000 on a protection visa.

Chapter 4: Australia's Human Rights Obligations

Sovereignty brings with it rights and obligations. While Australia has the right to protect its borders, it also has the obligation to ensure that border protection occurs in a manner such that all children in Australia's jurisdiction can enjoy the basic human rights that Australia has agreed to uphold.

The Inquiry closely examined the meaning of the various human rights in the CRC with the assistance of United Nations (UN) guidelines and the findings and comments of UN treaty bodies. The key principles are discussed in this chapter. More specific rights are discussed throughout the report.

Chapter 5: Mechanisms to Protect the Human Rights of Children in Immigration Detention

The framework for the management of immigration detention centres failed to ensure that Australia fulfilled its responsibility to children in immigration detention.

The ultimate responsibility for ensuring the protection of the human rights of children in immigration detention lies with the Commonwealth – through the Parliament, the Minister for Immigration and Multicultural and Indigenous Affairs (the Minister), the

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Department and the courts. Australia's legislation leaves it to the Minister and Department to ensure that the conditions of immigration detention meet Australia's human rights obligations to children.

In 1999 the Department contracted a private company - ACM - to provide services to children and others who were in immigration detention. The contract between the Department and ACM did not fully incorporate the rights which the Commonwealth owed to children in immigration detention. This meant that even full compliance with the contract did not guarantee that children in detention were enjoying all their rights under the CRC. Nor did the Department's monitoring systems reliably record or assess whether children were fully enjoying their rights under the CRC.

The Department made inadequate arrangements with the appropriate State authorities to provide the advice and services relevant to children in immigration detention centres. Several Memoranda of Understanding (MOUs) are still being negotiated despite the fact that mandatory detention of children was introduced in 1992.

Chapter 6: Australia's Immigration Detention Policy and Practice

The evidence before the Inquiry demonstrates that Australia's immigration detention laws and practices create a detention system that is fundamentally inconsistent with what the CRC seeks to achieve. The result is a serious and ongoing breach of a child's right to personal liberty.

The CRC requires the detention of children to be 'a measure of last resort', but Australia's detention laws make detention of unauthorised arrival children the first, and only, resort. The CRC requires the detention of children to be for 'the shortest appropriate period of time', but Australia's detention laws and practices require children to stay in detention until they are granted a visa or removed from Australia – a process that can take weeks, or years. The CRC protects children against arbitrary detention and requires prompt review before an independent tribunal to assess whether the individual circumstances of a child justify detention. Australia's detention laws, on the other hand, require the detention of all unauthorised arrival children, irrespective of their individual circumstances, and expressly restrict access to courts. The result is the automatic, indeterminate, arbitrary and effectively unreviewable detention of children.

While the detention laws themselves breach the CRC, the manner in which they have been applied has exacerbated the impact of those breaches. Since 1994, the Minister has had the power to declare any place in the community a place of 'detention' (home-based detention). Children transferred to these places need not be supervised by ACM staff but they do need to be under the supervision of a 'directed person' like a foster carer or school principal. It took a hunger strike, lip-sewing and a suicide pact in January 2002 before arrangements were made to transfer a group of unaccompanied children to home-based foster care detention

in Adelaide. As at the end of 2003, only two families had ever been transferred to home-based detention.

Australia's laws also provide for release on bridging visas in limited circumstances, but only one unaccompanied child was released on a bridging visa into foster care over the Inquiry period. By failing to ensure that unaccompanied children were taken out of detention centres as quickly as possible, the Minister, as guardian to unaccompanied children, breached his duty to protect the best interests of these children and provide them with the special protection and assistance that they needed to enjoy their right to liberty under the CRC.

Furthermore, while residential housing projects offer improved conditions when compared to detention centres, children in these projects continue to be deprived of liberty and cannot live with their fathers. Until late 2002, the rules excluded boys more than 12-years-old from the Woomera housing project, other than in exceptional circumstances. Release or transfer of families to places in the community are a far preferable solution to the ongoing detention of children.

Chapter 7: Refugee Status Determination for Children in Immigration Detention

The evidence before the Inquiry demonstrates that the Commonwealth failed to take all appropriate measures to incorporate relevant safeguards for children in its refugee status determination system over the period of the Inquiry and therefore breached the CRC.

The failure to implement these safeguards in a number of areas is especially serious for unaccompanied children who have no independent person to support and advise them through the asylum process.

A system which does not adequately recognise the difficulties faced by, or accommodate the needs of, children in detention leads to an increased risk that a child will be returned to a place where he or she faces persecution. It may also result in the prolonged detention of children.

The weaknesses of Australia's refugee status determination system, as applied to children in immigration detention, include:

- Children and their parents are kept in separation detention until they make an asylum claim. The purpose of separation detention is to isolate new arrivals. Generally, they cannot make or receive phone calls. Australian law does not require Department officials to tell families in separation detention that they have the right to seek asylum and the right to request a lawyer.
- Migration agents are provided to detained families for the primary and merits review stages, but the quality of assistance is compromised by restrictions regarding time with, and physical access to, children and parents in remote facilities.

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- Departmental officers are not specially trained to assess the claims of children. There are no guidelines on how to create a child-friendly environment and no requirements to take into account special considerations when assessing the substance of children's asylum claims.
- Australian law restricts access to judicial review of negative visa decisions, with the possible consequence that children may be returned to a place where they will be persecuted. The Department does not provide free legal assistance to children at the judicial review stage.
- There is a fundamental conflict of interest between the Minister as guardian of unaccompanied children in detention centres and the Minister as the person who makes decisions about visas. No other person has been appointed to fulfil the protective role of guardian, leaving unaccompanied children in detention centres without any independent advice or support.
- Children processed pursuant to Australia's 'Pacific Solution' legislation have no access to legal assistance or judicial review for their asylum claims.

Chapter 8: Safety of Children in Immigration Detention

The evidence before the Inquiry demonstrates that the Commonwealth failed to take all appropriate measures to protect the safety of children in immigration detention over the period of the Inquiry and therefore breached the CRC.

Between 1999 and 2002, Woomera, Port Hedland and Curtin detention centres were the site of multiple demonstrations, riots, hunger strikes and violent acts of self-harm. The longer children were held in such an environment the more likely they were to be exposed to risks of harm.

When children are detained in a closed environment, the options available to shelter them from such events are limited. Thus the detention of children in immigration detention centres simultaneously increases the risk of harm and limits the options available to address that harm. The Department failed to take the appropriate steps to minimise the impact of violence on children within that context. The security standards, policies and procedures in detention centres did not make the protection of children a priority. While detention staff clearly had the obligation and right to protect themselves and other detainees, sometimes the security response added to the risk of harm for children and exacerbated the climate of fear to which children were exposed. The use of tear gas, water cannons and riot gear in the presence of children caused them particular distress.

Evidence before the Inquiry revealed other problems encountered by children.

- Lock-down procedures designed to contain violence trapped children within that violence.
- Headcount procedures were conducted in an obtrusive manner throughout the night, at certain times in certain centres.

- Children were sometimes placed in special 'security' compounds, even if they were not themselves being punished, exposing them to greater risks of harm.
- Accommodation of families and single men in the same compound increased the vulnerability of children to assault by other detainees. The new Baxter facility addresses this problem appropriately.
- It took until 2001 to clarify the reporting procedures to State child protection authorities in the event of suspected or actual assault of children. There has been appropriate reporting since that time.
- Child protection authorities have no jurisdiction to enforce their recommendations in detention centres. However, in the event of threatened or actual assault those recommendations were generally implemented.
- MOUs clarifying the role of State and Federal police authorities and State child protection agencies were still not finalised as at November 2003 (except in South Australia where an MOU was signed with the child protection authority in December 2001).

Chapter 9: Mental Health of Children in Immigration Detention

The overwhelming evidence before the Inquiry demonstrates that the Commonwealth failed to take all appropriate measures to protect and promote the mental health and development of children in immigration detention over the period of the Inquiry and therefore breached the CRC.

With respect to some children, the Department failed to implement the clear - and in some cases repeated - recommendations of State agencies and mental health experts that they be urgently transferred out of detention centres with their parents. This failure 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.

It is no secret that the institutionalisation of children has a negative impact on their mental health. The experiences of children detained for long periods in Australia's immigration detention centres prove this point many times over. The longer children were in detention the more likely it was that they suffered serious mental harm.

Children in immigration detention suffered from anxiety, distress, bed-wetting, suicidal ideation and self-destructive behaviour including attempted and actual self-harm. The methods used by children to self-harm included hunger strikes, attempted hanging, slashing, swallowing shampoo or detergents and lip-sewing. Some children were also diagnosed with specific psychiatric illnesses such as depression and post traumatic stress disorder.

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Mental health experts told the Inquiry that a variety of factors can cause mental health problems for children in detention including pre-existing trauma, negative visa decisions and the breakdown of the family unit. These factors are either the direct result of, or exacerbated by, long-term detention in Australia's detention centres. Living behind razor wire, locked gates and under the constant supervision of detention officers also caused a great deal of stress. While many officers treated children appropriately, some used offensive language around children and, until 2002, officers in some centres called children by number rather than name.

Although individual mental health staff tried to assist children, there was no routine assessment of the mental health of children on arrival, insufficient numbers of mental health staff to deal with the needs of those children and inadequate access to specialists trained in child psychiatry. Children suffering from past torture and trauma had no access at all to the relevant specialist services.

The only effective way to address the mental health problems caused or exacerbated by detention, is to remove the children from that environment. The three case studies at the end of this chapter illustrate the importance of this measure.

Chapter 10: Physical Health of Children in Immigration Detention

The evidence before the Inquiry demonstrates that the Commonwealth failed to take all appropriate measures to protect the physical health of children over the period of the Inquiry resulting in a breach of the CRC.

The quality of health care in immigration detention centres varied over time. The Inquiry recognises the significant efforts of individual staff members and the improvements made during 2002. However, children in immigration detention over the period of the Inquiry were not in a position to enjoy the highest attainable standard of health, as required by the CRC, due to the following factors:

- extreme climate and physical surroundings of the remote centres
- insufficient cooling and heating and inadequate footwear for the terrain at certain times in certain centres
- overcrowding, unsanitary toilets and unclean accommodation blocks at certain times in certain centres
- failure to individually assess pre-existing nutritional deficiencies
- food was not tailored to the needs of young children, was of variable quality and great monotony
- uneven provision of baby formula and special food for infants
- failure to conduct comprehensive initial assessments focussed on the health vulnerabilities of child asylum seekers

- inadequate numbers of health care staff with the paediatric and refugee health expertise needed to identify and treat particular problems faced by child asylum seekers
- inadequate numbers of health care staff to deal with the demands of children
- delays in accessing the appropriate secondary health care services, due to the remote location of centres and unclear referral procedures at certain points in time
- inadequate numbers of on-site interpreters for the purpose of medical examinations, especially in Port Hedland
- inadequate preventative and remedial dental care for children detained for long periods.

Chapter 11: Children with Disabilities in Immigration Detention

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

There is an inherent conflict between the detention of children with disabilities and the right of those children to enjoy conditions conducive to the 'child's active participation in the community' and 'fullest possible social integration and individual development' (article 23 of the CRC). Furthermore, while providing care to children with disabilities is always a challenging task, the detention of children in remote centres creates additional hurdles. The Inquiry closely examined the services provided to two families with children with serious disabilities who were detained in immigration detention centres in 2000 and released in late 2003. Despite the efforts of individual staff members and significant improvements over 2002, these case studies demonstrate a failure to ensure:

- routine and prompt consultation with State disability services
- prompt and comprehensive individual case management plans focussed on providing appropriate care and services
- prompt provision of appropriate aids and adaptations (such as a wheelchair and eating utensils)
- prompt provision of suitable educational programs conducted by appropriately qualified staff
- recreational programs tailored to the individual needs of the children
- adequate parental support focussed on coping with the stresses of caring for children with disabilities in detention
- prompt release or transfer from remote detention centres.

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.

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.

Chapter 14: Unaccompanied Children in Immigration Detention

The evidence before the Inquiry demonstrates that the Commonwealth failed to take all appropriate measures to ensure that unaccompanied children in immigration detention received the special protection and assistance they needed to enjoy their rights and therefore breached the CRC.

Australia's immigration detention centres are no place for any child, but long-term detention has a particularly significant impact on unaccompanied children. Since January 2002, the Department has taken action to address this issue by transferring most unaccompanied children to foster care homes in the community. As at December 2003 there were no unaccompanied children in detention centres. This is a commendable initiative, if somewhat delayed in the making.

Despite the efforts of individual staff members, the management systems designed to deal with unaccompanied children held in detention centres for long periods were inadequate to protect their best interests over the period of the Inquiry.

- Designated officers with the responsibility to watch over unaccompanied children were appointed in Woomera and Port Hedland in early 2001 and in Curtin by late 2001, long after large numbers of unaccompanied children started arriving in detention centres in late 1999.
- Individual case management plans were introduced in Curtin in March 2001 and in Port Hedland and Woomera in December 2001. They were formulaic, sparse in detail, failed to give an accurate picture of the needs of unaccompanied children or the strategies best suited to meet those needs. However, ACM Woomera staff initiated weekly Unaccompanied Minor Committee Meetings in February 2001 which, unlike the case management plans, indicate that a great deal of attention was given to unaccompanied children by ACM staff in that centre over 2001.
- The Unaccompanied Minor Teleconferences, which were specifically designed to bring together the Department's detention centre staff and central office staff to address the well-being of unaccompanied children, only commenced in December 2001, long after the children began arriving in detention centres.
- The Department Manager monthly reports to central office rarely mentioned unaccompanied children. Woomera Department staff, at best, only attended half of ACM's Unaccompanied Minor Committee Meetings each month. There were several months when Department Managers did not attend any meetings at all.
- State child welfare authorities were not routinely consulted for advice when children arrived in detention centres; however, they were called when things went wrong. For example, they were consulted in January 2002 when several unaccompanied children threatened to commit suicide unless they were released from detention.

The Minister, as guardian of unaccompanied children, and his Departmental delegates, failed to satisfy the duty to ensure that the best interests of unaccompanied children were their 'basic concern', as required by the CRC. There were two primary reasons why this occurred.

- There is an insurmountable conflict between the Minister's role as the executor of Australia's mandatory detention policy and his or her role as the guardian of unaccompanied children detained in furtherance of that policy.
- The Departmental staff on whom the Minister relied did not have child welfare expertise and were not given appropriate training, support or guidance in the form of policies and procedures until late 2002. They were, therefore, in no position to monitor the care arrangements made by ACM or fulfil that role themselves. The Department failed to ensure routine consultation with State child welfare authorities who do have the appropriate expertise.

The Inquiry is concerned that there were no clear policies ensuring that children who were temporarily separated from their parents (due to hospitalisation, behaviour management or imprisonment of parents) were provided with appropriate care. However, the Inquiry finds that sufficient efforts were made to facilitate regular contact between these children and their parents within the context of the detention environment.

In addition, the Inquiry finds that the Commonwealth complied with the CRC by providing appropriate tracing services to unaccompanied children with parents overseas.

Chapter 15: Religion, Culture and Language for Children in Immigration Detention

Australia has provided children in immigration detention with sufficient opportunities for the practice of religion, culture and language to meet the low threshold regarding those rights in the CRC.

Children in immigration detention were provided with a range of facilities regarding religion, culture and language.

- Most centres reserved space for public prayers and services. Children could pray in those facilities or in their private accommodation, albeit in cramped conditions.
- Outside clergy were generally permitted access to the detention centres. However, it was difficult for many clergy to travel to remote centres. Detainees were free to appoint their own representatives to conduct religious services.
- In some cases, religious instruction and texts were provided. Parents were permitted to engage in the religious instruction of their children.
- Certain special cultural events and Muslim and Christian religious festivals were facilitated.

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- Efforts were made to provide halal food for the Muslim population.
- Detainee children were not denied the right to use their own language with their families and other detainees.

Some children in immigration detention felt unsafe due to fears of bullying and harassment regarding their religious beliefs. The Department took some general measures to try to protect children and their families from such harassment, for example by providing separate and secure accommodation to Sabian Mandaean families in a few instances. However, there is no evidence of a more comprehensive preventative approach to discrimination and harassment – for example through educational programs promoting tolerance and respect. The Inquiry also finds that there was insufficient cultural awareness training for most staff members working inside detention centres over the period of time covered by the Inquiry.

Further, the detention of children in remote areas limited a child's ability to fully enjoy his or her rights. In particular, access to appropriate temples, clergy, religious schools, language schools, cultural centres, culturally appropriate foods was limited. These factors were particularly problematic for children from Muslim and Sabian Mandaean religions. The impact of these restrictions increased the longer children were in detention.

Chapter 16: Temporary Protection Visas for Children Released from Immigration Detention

Australia's laws fail to ensure that children released from immigration detention on temporary protection visas (TPVs) can enjoy their right to mental health, development, recovery from past trauma and family unity and therefore result in a breach of the CRC. The laws also fail to take into account the special protections owed to unaccompanied children and asylum-seeking children.

Children released from detention on TPVs fled their homes out of fear of persecution and sought Australia's protection. The evidence before the Inquiry demonstrates that the TPV system poses substantial barriers to their successful integration into Australian society for two primary reasons.

- The temporary nature of the visa creates a great deal of uncertainty for refugee children. This uncertainty affects their mental health and impacts on their capacity to fully participate in educational opportunities offered in Australia.
- The absence of the right to family reunion for the duration of the TPV (other than by the exercise of Ministerial discretion), combined with the effective prohibition on overseas travel, means that some children may be separated from their parents and siblings for long – potentially indefinite – periods of time.

Although temporary status and the denial of family reunion has a particularly high impact on unaccompanied children, those children are generally well cared for by State agencies on release.

The health, education and social services attached to TPVs satisfy the requirements of the CRC. However, the limited settlement services, including housing assistance, stringent reporting requirements in order to receive Special Benefit, limited employment assistance programs and limited English language tuition for adults all put additional strain on families trying to recover from their past persecution and detention experiences.

Chapter 17: Major Findings and Recommendations of the Inquiry

The mandatory, indefinite and effectively unreviewable immigration detention of children who arrive in Australia without a visa has resulted in multiple and continuing breaches of children's fundamental human rights. The Inquiry's primary findings and its recommendations are set out in Part A of this Executive Summary. Those findings are in addition to the detailed findings in Chapters 5-16 summarised above.

The Inquiry's recommendations are based on Australia's human rights obligations, the practice of other nations around the world and submissions made to the Inquiry.

The Department expressed several objections to the recommendations made by the Inquiry. Generally speaking, the Department's objections are the result of a fundamental difference in perspective between the Inquiry and the Department as to what is required by international human rights law. Briefly summarised, the Inquiry's view (supported by UN and Australian experts) is that because deprivation of liberty is such an extreme measure to impose on a child, the need to detain must be justified in the case of each and every child. The Department, on the other hand, is of the view that detention need only be justified in a general sense.

The Inquiry rejects each of the Department's six primary objections:

1. *Introducing routine and systematic review of the need to detain in the individual circumstances of each case would clog courts and slow down visa processing.*
 - Adopting such a process would be no different to applying the existing domestic criminal bail procedures to children in immigration detention.
 - Extra expense and time is no justification for denying this fundamental right.
2. *Statistics suggest that all children must be detained to ensure availability for processing and removal.*
 - There are no domestic or international statistics suggesting that child asylum seekers are a special flight risk.
 - More than 92 per cent of unauthorised arrival children are genuine refugees and therefore have no incentive to abscond.

A last resort?

- Even if there were evidence suggesting that children are likely to abscond, this would only justify detention of those specific children assessed to be an *actual* flight risk, and even then detention should only be used as a last resort.
3. *Mandatory detention helps deter children and families from coming by boat to Australia.*
 - There is no evidence linking mandatory detention with decreasing numbers of child boat arrivals. Mandatory detention has been in place since 1992 and since that time there have been ebbs and flows of arrivals.
 - If the purpose of the mandatory detention policy were deterrence, this would be contrary to human rights law.
 4. *It is too expensive to support children in the community during visa processing.*
 - Recent studies suggest that it would be cheaper to support child asylum seekers in the community than keep them in detention.
 5. *It is too difficult to codify human rights protections for children in detention in legislation.*
 - Difficulties in codifying human rights protections for children in immigration detention should be no barrier to engaging in the task.
 - State laws regarding the rights of juveniles in detention provide a good model.
 6. *There is nowhere to put unauthorised arrivals.*
 - There is plenty of room in Australia and a willingness in the community to welcome and support asylum seekers.