

Chapter 14

Unaccompanied Children in Immigration Detention

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14. Unaccompanied Children in Immigration Detention

Most children come to Australia with their parents, but some come alone, either sent by their family for their protection or because they have lost their family in a crisis. These children are known as unaccompanied children, separated children or unaccompanied minors (UAMs).¹ The Department of Immigration and Multicultural and Indigenous Affairs (the Department or DIMIA) uses the term unaccompanied minor which it says is the 'broad term used to describe a non-citizen, under 18 years of age who does not have a parent to care for them in Australia'.² This chapter uses the term unaccompanied child and unaccompanied minor interchangeably.

Unaccompanied children who are seeking asylum are particularly vulnerable on several accounts. These children have faced the challenge of making the difficult journey to Australia alone, and upon their arrival in Australia they must negotiate the refugee status determination process and the experience of detention without family support. International law recognises their special vulnerability and requires that appropriate assistance be given.

Most of the unaccompanied children seeking Australia's protection from persecution arrive without a visa (unauthorised arrivals), and therefore are detained while their claims for protection are assessed. Between 1 January 1999 and 30 June 2002, 285 unaccompanied children arrived in Australia without a visa seeking asylum and they were all detained. The highest number of unaccompanied children in detention was in mid-2001, when there were over 100 unaccompanied children in detention in Australia. Most of the unaccompanied children detained were adolescent boys, and either Afghani or Iraqi.³

Many unaccompanied children were detained in remote detention centres for lengthy periods of time. There are, however, two options within the current migration laws pursuant to which unaccompanied children may be removed from detention: (a) the grant of a bridging visa or (b) transfer to alternative detention in the community. In Chapter 6 on Australia's Detention Policy the Inquiry finds that neither of these options were appropriately pursued.

A last resort?

Between 1999 and 2002 only one unaccompanied child was removed from detention pursuant to the first of these options: an eight-year-old was granted a bridging visa in November 2001 after he had been detained for five months. Between January and April 2002, just under 20 unaccompanied children were transferred to alternative detention in foster homes in Adelaide, pursuant to the second of these options. The case studies at the end of the chapter link the difficulty of satisfying the best interests of unaccompanied children within detention centres with the importance of ensuring their speedy release.⁴

However, this chapter focuses primarily on the efforts made to care for unaccompanied children who remained within detention centres for substantial periods of time.⁵ The bulk of the evidence available to the Inquiry covers 2001 and early 2002, which is also the period during which the largest numbers of unaccompanied children were in detention facilities.⁶ Furthermore, as most unaccompanied children were detained at Curtin, Port Hedland and Woomera during 2001, this chapter focuses on the general systems in place to ensure that unaccompanied children received special protection and assistance within those detention centres.⁷

This chapter addresses the following questions:

- 14.1 What are the rights of unaccompanied children in immigration detention?
- 14.2 Who was responsible for the care of unaccompanied children in detention centres?
- 14.3 What did ACM do to care for unaccompanied children in detention centres?
- 14.4 What did the Department do to care for unaccompanied children in detention centres?
- 14.5 What did State child protection authorities do to care for unaccompanied children in detention centres?
- 14.6 What care was provided to children who were temporarily separated from their parents?
- 14.7 What was done to trace the parents of unaccompanied children?

At the end of the chapter there is a summary of the Inquiry's findings and three case studies.

14.1 What are the rights of unaccompanied children in immigration detention?

The *Convention on the Rights of the Child* (CRC) requires Australia to ensure that children lacking the support of their parents, especially those who are seeking asylum, receive the extra help they need to guarantee enjoyment of all rights set out under the CRC and other international human rights or humanitarian instruments:

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Convention on the Rights of the Child, article 20

When read with the best interests principle in article 3(1) of the CRC and the obligation to take appropriate measures to assist asylum seekers in article 22(1) of the CRC, the Convention makes it clear that Australia must provide special protection and assistance to ensure that the best interests of unaccompanied children seeking asylum are a primary consideration at all times.

Effective guardianship is an important element of the care of unaccompanied children. Article 20(2) of the CRC requires Australia to 'ensure alternative care for such a child,' which may be met through the appointment of a guardian.

Article 18(1) states that 'the best interests of the child will be [the legal guardian's] basic concern'. Thus article 18(1) suggests that the best interests of an unaccompanied child must not only be a primary consideration (as suggested by article 3(1)) but *the* primary consideration for his or her guardian.

Article 18(2) of the CRC states that:

For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Thus legal guardians should be assisted in ensuring that children enjoy all the rights set out in the CRC.

The United Nations High Commissioner for Refugees (UNHCR) has applied the 'special protection and assistance' provisions of the CRC to the context of unaccompanied children seeking asylum and recommends that 'an independent and formally accredited organization ... appoint a guardian or adviser as soon as the unaccompanied child is identified'.⁸

The legal guardian should be a person who understands what a child needs and can put the child's interests first:

The guardian or adviser should have the necessary expertise in the field of childcaring to ensure that the interests of the child are safeguarded, and that the child's legal, social, medical and psychological needs are appropriately covered during the refugee status determination procedures and until a durable solution for the child has been identified and implemented.⁹

A last resort?

The role of a guardian or adviser is to take on the role of a parent and ensure that the best interests of each unaccompanied child are a primary consideration in all actions taken regarding the child. To this end, the guardian should act 'as a link between the child and existing specialist agencies/individuals who would provide a continuum of care required by the child'.¹⁰ In the context of unaccompanied children who are unauthorised arrivals seeking asylum in Australia, the role of the guardian would include:

- advocating that an unaccompanied child not be detained by reason of his or her immigration status, or if detained, for the shortest possible period of time in the best possible conditions (see Chapter 6 on Australia's Detention Policy)
- ensuring suitable legal representation and other assistance regarding an unaccompanied child's claim for asylum (see Chapter 7 on Refugee Status Determination)
- ensuring suitable care, accommodation, education, language support and health care provision both during and after refugee status has been determined
- assisting in tracing the parents of an unaccompanied child
- advocating on behalf of an unaccompanied child regarding any other issue concerning him or her.¹¹

UNHCR has recommended that unaccompanied children should never be detained.¹² However, in the event that detention does occur, unaccompanied children should be detained in conditions appropriate for children. UNHCR recommends that:

If children who are asylum seekers are detained in airports, immigration-holding centres or prisons, they must not be held under prison-like conditions. All efforts must be made to have them released from detention and placed in other appropriate accommodation. If this proves impossible, special arrangements must be made for living quarters which are suitable for children and their families. The underlying approach to such a programme should be 'care' and not 'detention'. Facilities should not be located in isolated areas where culturally-appropriate community resources and legal access may be unavailable.¹³

Thus the guardian should first seek to ensure the unaccompanied children are released from detention and placed in alternative accommodation. However, if this proves impossible, they should ensure that appropriate care is being taken of the unaccompanied child inside detention. Article 3(2) of the CRC states that:

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Irrespective of whether the child remains in a closed detention environment, open reception centre or a form of alternative care, the guardian should ensure that the child is being regularly supervised and assessed to ensure their physical and psychosocial well-being.¹⁴ In other words, special measures should be taken to ensure that unaccompanied children can enjoy an environment which provides, to the maximum extent possible, the right to development and recovery from past trauma (articles 6(2) and 39). Children who remain in detention must also be treated with respect for their inherent dignity, in accordance with article 37(c) of the CRC.

A further obligation regarding unaccompanied asylum-seeking and refugee children is to provide assistance with tracing their family:

States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist ... a child [who is seeking or who has achieved refugee status] and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family.

Convention on the Rights of the Child, article 22(2)

Where an unaccompanied child has reason to believe that his or her parents may be alive, tracing should commence immediately, in conjunction with the services of the national Red Cross Society in the country of asylum.¹⁵ Children should be properly informed and updated about the process and, where an unaccompanied child's parents have been located, or whereabouts are known, the child has the right to maintain personal relations and direct contact with her or his parents on a regular basis (articles 9(3) and 10(2)). This also applies to children in detention who have become temporarily separated from their parents within Australia.

14.2 Who was responsible for the care of unaccompanied children in detention centres?

As discussed in section 14.4.1, according to Australian law, the Minister for Immigration and Multicultural and Indigenous Affairs (the Minister) is the guardian of all unaccompanied children seeking asylum in Australia. The Minister has the 'same rights, powers, duties, obligations and liabilities as a natural guardian of the child would have'¹⁶ and remains their legal guardian from the moment of arrival until the unaccompanied child turns 18 or leaves Australia.¹⁷

The Minister is permitted to delegate the exercise of any of his or her powers and functions as guardians to any officer or authority of the Commonwealth or of any State or Territory.¹⁸ A form of this delegation has existed since 1986, when cost-sharing arrangements between the Commonwealth and the States for the care of unaccompanied children were first established.¹⁹ Since 1999, these powers have been formally delegated to State child welfare authorities and since 2002 to the Department's Managers or Deputy Managers.

A last resort?

However, since 1999, responsibility for the day-to-day care of unaccompanied children in detention has generally been understood to belong to Australasian Correctional Management Pty Limited (ACM). Documents provided to the Inquiry indicate that ACM believed that it had a role in the guardianship of these children even though the Minister had, at no stage, delegated the guardianship of unaccompanied children to ACM.²⁰

This perception, albeit incorrect, most likely stems from statements and practices of the Department to the effect that while it retains:

ultimate responsibility for all detainees, the Department ... exercises its duty of care commitments through the engagement of a Services Provider within the framework of relevant legislation, comprehensive contractual obligations, the Immigration Detention Standards and associated performance measures.²¹

The Department also states that it relies on State child welfare authorities for advice regarding the management of unaccompanied children. Specifically it states that in making decisions about the welfare and care of unaccompanied children in detention:

DIMIA Managers and Deputy Managers draw upon the advice of people with expertise in child welfare, such as the Services Provider, psychologists and the State child welfare authority.²²

Furthermore, the Department states that:

State child welfare authorities are also regularly consulted and advised on the status of each unaccompanied minor and the effectiveness of the management plan.²³

As discussed further in section 14.4 below, the appointment of a guardian is not sufficient in itself to satisfy the obligations towards children. The guardian must address his or her mind to the best interests of the child in all actions affecting children including:

- (a) whether or not to detain
- (b) the length of detention
- (c) the location of detention
- (d) the care arrangements made for children while in detention.

It is the last of these considerations which is discussed in some detail in this chapter. The first three have been considered in Chapter 6 on Australia's Detention Policy. However, this chapter demonstrates that there is a close link between the length of detention, the location of detention and the ability to ensure that unaccompanied children receive the level of care necessary to fully enjoy all their rights under the CRC.

14.2.1 Department policy and standards regarding the care of unaccompanied children

The care provided to unaccompanied children is governed by both the Immigration Detention Standards (IDS) in the contract between the Department and ACM and, since September 2002, by a Migration Series Instruction (MSI) issued by the Department.

The IDS nominate unaccompanied children as ‘detainees with special needs’ and require that ‘[u]naccompanied minors are detained under conditions which protect them from harmful influences and which take account of the needs of their particular age and gender’.²⁴ This was the only specific mention of unaccompanied children in the IDS that were applicable during the period of the Inquiry.

The first occasion on which the Department outlined, in detail, the specific care arrangements required for unaccompanied children was in Migration Series Instruction 357 (MSI 357), ‘Procedures for Unaccompanied Wards in Immigration Detention Facilities’, issued on 2 September 2002. At the time this MSI was issued, there were three unaccompanied children accommodated within detention centres,²⁵ and 14 unaccompanied children residing in alternative places of detention.²⁶

MSI 357 stated that decisions concerning the day-to-day care of an unaccompanied child should be made by the Department Manager, taking into account the recommendations of persons with expertise in child welfare, including ACM staff and State child protection authorities.²⁷

The MSI required ACM to ‘develop an individual management plan for each unaccompanied ward which identifies, records and addresses their special care needs’.²⁸ The ‘management plan is designed to ensure DIMIA’s duty of care and the Minister’s guardianship responsibilities under the *Immigration (Guardianship of Children) Act 1946* (Cth) (IGOC Act) are fully discharged’.²⁹ The Department Manager must approve ACM’s management plan and is responsible for ensuring that the plan meets obligations under the CRC. The Manager must also liaise with State child welfare authorities regarding the plan.³⁰ MSI 357 also sets out in significant detail the means by which the well-being of an unaccompanied child should be monitored by the Department Manager within the context of a detention centre.³¹ It appears that this instruction formalises some of the care arrangements that had been gradually established by ACM and the Department in the immigration detention facilities.

MSI 357 was replaced on 2 December 2002 by MSI 370. This later instruction is substantially the same in terms of the care arrangements for unaccompanied children. However, as discussed further in Chapter 6 on Australia’s Detention Policy, the new MSI includes a presumption that it is in the best interests of an unaccompanied child to be transferred out of a detention centre to a place of alternative detention in the community or released on a bridging visa as soon as possible after arriving in the country.³² This is the first occasion on which the Department has been directed to consider whether it is in the best interests of unaccompanied children to remain in detention at all.

14.2.2 ACM policy and procedure regarding the care of unaccompanied children

Until MSI 357 was issued in September 2002, the only documents setting out the strategy for the care of unaccompanied children were ACM policy documents. The general ACM policy document regarding unaccompanied children, entitled 'Special Care Needs for Minors and Unaccompanied Minors', appears to have been in place in April 2001.³³ The August 2001 version of this policy required ACM staff to:

- assess all minors on induction for special needs, including for all known or anticipated risks
- develop a plan addressing the special needs of unaccompanied minors
- locate safe accommodation and ensure this is approved by the Department Manager
- assess whether it is appropriate to appoint a suitable mentor from the detainee community for the unaccompanied minor 'to provide guidance and support while the unaccompanied minor remains in immigration detention'
- conduct weekly monitoring of the welfare and special needs of unaccompanied minors (conducted by the centre nurse)
- conduct two hourly observation of unaccompanied children
- provide a weekly written report on the welfare and special needs of all unaccompanied minors to the Department Manager.³⁴

The Woomera facility issued its own procedure based on these principles in August 2001 and updated it in November 2001. The procedure has substantially the same provisions as the general policy, but sets out the procedures to be undertaken by ACM officers in their care of unaccompanied children in further detail.³⁵

Another procedure specific to unaccompanied children at Woomera was the Integrated Care & Social Support Program (ICASS). This policy was issued in May 2002, although some ICASS documents were present in case management files from December 2001. The ICASS system aimed to establish an 'integrated cross referral process for professional colleagues in Medical, Psychological, Educational and Recreational/Welfare fields to meet resident needs more comprehensively at Woomera'.³⁶ If a detainee was identified as having special needs, an ICASS assessment should have been undertaken. The assessment form included a diagram on which a detainee's needs in these four areas could be noted. The Programs Manager was responsible for ensuring that the needs identified through the assessment were met.

14.3 What did ACM do to care for unaccompanied children in detention centres?

ACM, being primarily responsible for the care of unaccompanied children in detention, developed a range of management strategies for these children over time. These strategies expanded the requirements set out in ACM policy regarding unaccompanied children. They included:

- the appointment of a designated officer to work with the unaccompanied children
- case management plans
- regular meetings of all staff involved with unaccompanied children, commencing in 2001 in most centres
- progress reports on unaccompanied children
- provision of adult detainee mentors to unaccompanied children.

The ACM staff who implemented these strategies worked very hard to ensure that unaccompanied children were as well cared for as possible in the environment in which they were detained. Two former ACM staff members, who worked at Woomera during 2001, gave evidence to the Inquiry that unaccompanied children had a higher level of care than children who were detained with their parents. A psychologist who worked at Woomera from May 2001 until December 2001 stated:

I regarded unaccompanied minors as being relatively well taken care of. Indeed, because other children had to rely on their parents to provide care, and sometimes the parents were, or became, unable to do this, unaccompanied minors sometimes received better levels of care.³⁷

A former Activities Officer who worked at Woomera between May 2000 and January 2002 told the Inquiry:

From my experience physical, educational and recreational needs of unaccompanied minors were met at a higher level than those children who were in detention with their parents because of the extra attention that was paid to the needs of unaccompanied children.³⁸

It does appear to the Inquiry that unaccompanied children were quite appropriately given greater attention by ACM staff than children with parents. However, as the following sections and the case studies at the end demonstrate, these systems were not sufficient to address the problems faced by the unaccompanied children in detention.

This section discusses how the primary elements of ACM's management strategy for unaccompanied children were implemented in Woomera which, according to ACM, represents 'best practice'. It also discusses the operation of these policies in Port Hedland and Curtin.

14.3.1 Provision of designated ACM officers for unaccompanied children

As noted above, the Woomera procedure regarding the Special Care Needs for Minors and Unaccompanied Minors, dated November 2001, sets out that certain detention officers (UAM Officers) will be given responsibility for supervising the care of unaccompanied children.

The role of the UAM Officer is articulated in the November 2001 Woomera procedure regarding unaccompanied children:

A Detention Officer designated by the Centre Manager to monitor, supervise and record occurrences of unaccompanied minor daily needs in relation to Detention Standards and ACM Policy on Security, Health, Welfare and daily living needs. The Designated Officer will monitor and supervise unaccompanied minors on a day-to-day basis.³⁹

It appears that the first UAM Officer was appointed in Woomera in January 2001 when a large number of unaccompanied children arrived at the centre. The officer appointed at this time identified that the unaccompanied children had significant support needs and appeared to work hard to meet these needs.⁴⁰ The minutes of the Unaccompanied Minors Committee meetings at Woomera⁴¹ also indicate that there were designated officers for unaccompanied children from early 2001 onwards.⁴²

However, ACM staff at Woomera expressed concern that there were, on occasion, an insufficient number of UAM Officers to address the needs of the unaccompanied children in the centre. For example, the minutes of a meeting in Woomera on 6 November 2001 stated that:

Uniform Officer One reported that after today she would be the only UAM officer in the Centre. Uniform Officer Two and Uniform Officer Three were at the end of their rotation and their contracts were not being extended. To their knowledge no other officers had been contracted to carry out UAM officer duties. Detention Manager UAMs advised that these positions had been advertised and would remain open for another two weeks to enable staff presently out of the centre to apply.⁴³

The following week's minutes state that the contracts would be extended for another four weeks, but that '[t]here did remain a problem however in that UAM Officers were constantly being tasked on other duties such as contractor escort'.⁴⁴

In Port Hedland, an ACM Child Protection Officer was appointed during the January – March 2001 quarter, charged with ensuring 'that the needs and welfare of all the children are attended to'.⁴⁵ The Port Hedland Department Manager expressed some concern that, in September 2001, the role of these officers was unclear because the policy with respect to unaccompanied children was vague:

Title of Child Protection Officer changed by ACM to the more appropriate Minors Liaison Officer. The duties of this position are currently being reviewed by the Health Services Coordinator, partly due to the vagueness or absence of clear policy guidelines relating to UMs.⁴⁶

However, by 2002 this issue appears to have been clarified. In March 2002 the Port Hedland Department Manager stated that:

The ACM Child Liaison Officer (CLO), who talks to all the unaccompanied minors on a daily basis and carefully monitors and addresses their needs and welfare. The CLO is readily available to DIMIA staff for consultation concerning issues pertaining to unaccompanied minors.⁴⁷

There is also evidence that there was a UAM Officer at Curtin. For example, the Department Manager's reports of October 2001, November 2001 and December 2001 all stated that:

All UAMs have regular contact with the Minors liaison officer to ensure that their welfare is being monitored and that they are receiving appropriate care from all service areas.⁴⁸

Former child detainees gave varied reports on the support that they received from designated officers. Children formerly detained at Woomera told the Inquiry that they needed special support during their time in detention. When asked whether there was an officer responsible for his care, one child reported that:

After one month they brought one woman but you don't know who she is – we are just UAMs with her. At this age we need mother and father – we not leave mother and father unless there are big things to make us leave our families.⁴⁹

Other former Woomera unaccompanied children said that they knew an officer was responsible for their care but they did not perceive that their needs were being met by these officers. One child told the Inquiry that:

Yes it is true but they don't come all the time and ask. When I need them it is true there is an officer they don't come and ask you what you need – if I need something I am told to come back after an hour, after one hour. I have to beg for what I want and they say to come back. And when I get it I have to have my arm out for it, it is like suffering.⁵⁰

Another child who was detained at Woomera told the Inquiry that there were officers who were assigned to the unaccompanied children but that they 'did not sit with us and ask us how we were'.⁵¹

On the other hand, some unaccompanied children found the close observation by the designated officers to be intrusive.⁵² One unaccompanied child told the Inquiry:

When I was in Woomera two years ago, in our time it was like usually the officers were coming because of checking if we are in the camp, twice a night, and some nights they were coming because some of us that we didn't go to eat, they were asking where were you, what were you doing and usually, twice they were coming at night. And in our time they were like coming and okay, where is, for example where is [number removed] or something, and then okay, he's in this room, come, come out and I want to see you if you are the real one, in the middle of the night. You can't just like, say, 'it's me'. It's like WAKE UP and show yourself.⁵³

A last resort?

One unaccompanied child who had been detained at Port Hedland, said:

We were treated very inhuman. Nobody looked after us, or told us, this is ... your guardian.⁵⁴

Some of the children who were detained at Curtin also reported that they received special attention. One child said that:

We had a guardian and he took us swimming and to play football and also teaching us there. For example they gave us pencils and notebooks and things like that, but toys and things were very limited, two or three times they checked on us that we are okay and not sick or anything, that we were unwell so they have to let medical people know, then an officer took us there.⁵⁵

Another reported that they had weekly meetings with their guardian:

We had a guardian. Her name is [name removed]. And she looked after us. Every Friday she came with an interpreter and he talked with us and asked a lot of questions: 'How's your situation, do you want to go to school?' She gave us a pencil and paper and she told us you must study English in here and that when you go outside all the people speak English and if you don't understand English it will be hard for you.⁵⁶

14.3.2 ACM case management plans for unaccompanied children

The requirement to produce individual case management plans was first articulated in ACM policy in November 2001. However, the Department first formalised the requirement to produce case management plans in MSI 357, issued in September 2002.⁵⁷

ACM clarified that prior to November 2001:

there was no obligation on behalf of ACM to keep [individual case management] records. However, a generic management plan for children at Woomera was in place during March of 2001. A modified version of this plan was attached to each minor's file and acted as a [case management plan].⁵⁸

Thus, despite the absence of any written requirement for case management plans prior to November 2001, ACM informed the Inquiry that they were first created in March 2001 for children detained in Woomera, Port Hedland and Curtin; in December 2001 at Maribyrnong; and in May 2002 at Perth and Villawood.⁵⁹

In its submission to the Inquiry in May 2002, the Department states that:

Each unaccompanied minor in detention has an individual case management plan developed by the Service Provider, in consultation with Departmental staff and the State child welfare authority. This plan is developed by the Services Provider's welfare officers, psychologists and medical staff. The plans are designed to ensure that duty of care for each unaccompanied minor is fully met.⁶⁰

According to the Department, the content of these case management plans included strategies regarding: social development and interaction; health needs (medical, dental, psychological); recreation and leisure activities; educational needs (including English and first language skills, numeracy, schooling arrangements, interests and talents, and any other special learning needs); disabilities; counselling needs; religious and cultural considerations; and mentoring arrangements.⁶¹

Thus, on the face of it, individual case plans were a vital tool to ensure that the needs of unaccompanied children in detention were being met. The Inquiry was therefore concerned to test the Department's and ACM's assertions about the existence, substance and effectiveness of the plans for unaccompanied children in detention facilities.

The Inquiry issued Notices to both ACM and the Department requiring the production of case management plans for specific periods of time on 18 July 2002 (Notice 2). However, concerned that these documents may not have fairly represented the full system, the Inquiry issued further Notices and requests to ACM on 24 October 2002 (ACM Notice 5). The Department was given further opportunity to provide case management plans to the Inquiry after the hearing in December 2002.

In summary, the Notices and requests required production of the following:

From all centres:

- Individual case management plans for all unaccompanied children taken into immigration detention in all detention facilities between 1 January 2001 and 31 March 2001 (Woomera – 36 children; Port Hedland – 3 children; Curtin – 23 children).

From Woomera and Port Hedland:

- All case management plans for all children taken into detention at Woomera and Port Hedland between 1 April and 30 June 2001.

The following is a description of the case management system at Woomera, Port Hedland and Curtin based on all those documents.

(a) Woomera

The Inquiry received a total of 28 individual case management plans for unaccompanied children at Woomera, 27 of which were created in early December 2001.⁶² The Inquiry also received generic management plans created in March 2001 and April 2001 and an 'Unaccompanied Minor Plan', dated 16 August 2001, which was also a generic document.

The March and April generic plans were identical two-page documents recording the services and programs offered to all unaccompanied children.⁶³ The August 2001 plan states that Designated UAM Officers will 'ensure all essential needs of the minors are addressed on request'. This plan also states that weekly meetings will be held by the UAM Committee, and stipulates the process for medical care

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and for meeting the educational and recreational needs of unaccompanied children.⁶⁴

In November 2001, the Department told ACM that it required individual (rather than generic) plans for unaccompanied children.⁶⁵ The ACM Programs Manager advised that every child's file already contained a management plan; however, as indicated above, the Inquiry received no evidence of individual management plans existing at this time.⁶⁶

In any event, the majority of the individual case management plans created in December 2001 were also very general in nature. Most of the plans received by the Inquiry included one line observations about the good behaviour of the unaccompanied child, but made very few recommendations for his or her management.

Some of these plans are accompanied by a one-page diagram entitled 'Integrated Personal Care and Social Support/Development Program for Minors at the Woomera Immigration Reception and Processing Centre', containing information about unaccompanied minor needs and recommendations for their care. These diagrams are part of the ICASS (Integrated Care & Social Support Program) described above in section 14.2.2. ACM describe these plans as a 'psychosocial approach in the provision of integrated social development and care services at Woomera'.⁶⁷ The Inquiry is not satisfied that the inclusion of these diagrams demonstrates the operation of a comprehensive system of monitoring the needs of unaccompanied children. Most of these diagrams are extremely brief in their comment on the needs of these children.

One of the more detailed plans concerning an unaccompanied child who had been detained for eleven months notes that he is 'well behaved, polite and a good influence on the other boys'.⁶⁸ The section entitled Management Plan contains the following:

[name removed] has been exposed to very limited socialisation. Will require comprehensive assistance with respect to the social institutions and in particular education, religion and recreation. Close support from ACM Officer [name removed] crucial as his major "significant other". If possible, involvement in work would be valuable as this is the only activity that he seeks positively.⁶⁹

However, this paragraph is the only element of the document that could be described as a plan.

The Inquiry received only one comprehensive management plan for an unaccompanied child at Woomera, in a follow-up plan for one of the children for whom there was a plan in December 2001.⁷⁰ This document largely details the child's lack of involvement in activities in the centre, and makes only one specific recommendation for the management of the child, namely that ACM officers visit him to ensure that he attends school.

In November 2001, eleven unaccompanied children were involved in a self-harm incident following an ACM decision to move them to a safer compound. This incident is described in detail in Case Study 2 at the end of this chapter. The Inquiry is concerned that the case management plans for these children which were written in the month following the November 2001 incident make extremely brief mention of this incident. For example, one of the case management plans notes that the child was 'involved in one minor disturbance', and that after the incident he was '[p]laced on HRAT [High Risk Assessment Team watch] and counselled by a psychologist'.⁷¹ The management plan contains no discussion of the child's well-being in the aftermath of this incident or of his risk of engaging in further self-harm.

In January 2002, the majority of the unaccompanied children remaining in the centre were involved in hunger strikes, some sewed their lips, and some engaged in a range of other self-harm actions. These instances of self-harm led to the transfer of most unaccompanied children to alternative detention in foster homes in Adelaide. The situation of unaccompanied children in Woomera in January 2002 is described in detail in Case Study 3 at the end of this chapter. While these events may have been very difficult to predict, the Inquiry is surprised that the December 2001 case management plans did not draw out the difficulties that the children were obviously experiencing as a result of their detention.

(b) Port Hedland

No management plans were provided to the Inquiry for children detained at Port Hedland, even though ACM reported that case management of unaccompanied children commenced in March 2001, and there were at least three unaccompanied children taken into detention at Port Hedland during the period for which production of management plans was required.⁷² Initial plans should have been created for these children in March 2001.

The Port Hedland Department Manager's report of October 2001 appears to confirm that there was no case management system operating at the centre prior to this time, noting that none of the unaccompanied children in the centre were being case-managed.⁷³ The Department Manager requested on 26 October 2001 that 'individual management plans tailored specifically around the needs of each child' be developed.⁷⁴

Although no plans were produced to the Inquiry in response its request, one plan was included in a child's general file provided to the Inquiry. This child was detained in August 2001, and the plan, his 'Initial Management Plan' was dated 12 December 2001. This plan is the most detailed of any seen by the Inquiry from any centre. It provides a comprehensive assessment in the areas of physical health, educational services, social supports and activities, and psychological health and makes specific recommendations.⁷⁵ It is unclear why this particular case warranted a detailed plan when there was so little evidence of plans concerning other children. It can only be presumed that such plans were not uniformly applied.

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Department Manager reports indicate that by January 2002 a case management system was in place at Port Hedland:

There is an emphasis on attention paid to U[A]Ms by ACM and DIMIA. Each has an individual case management plan and are seen regularly by mental health and teaching staff. ACM reports that this attention is having a negative impact on UAM behaviour. The UAMs receive special attention in classes which detract teacher resources from other minors and adults at the Centre.⁷⁶

The Department does not explain what aspects of the attention paid to unaccompanied minors had a negative impact on unaccompanied children's behaviour, what that behaviour was, or what they did to address the problem.

(c) Curtin

ACM reports that case management plans were introduced at Curtin in March 2001. This is supported by the production of eleven plans from this time. These plans, called Detainee Management Strategies, were created when most of the unaccompanied children had been in detention for less than a month. They are almost identical to each other in content. The only section that differs from report to report is one line in each report describing the child's current medical needs.

The uniformity of the reports is surprising, given that each strategy states that '[t]his strategy has been developed in order to ensure the educational, welfare and medical needs of this unaccompanied child are addressed'. The strategies also state that '[i]t is anticipated that these recommendations will provide a cohesive network which acts to provide a total case management approach to the care and welfare of the detainee'.⁷⁷ There are no follow-up reports for any of these children.

Two case management strategies created in November 2001 contain reports that are very similar to each other, noting that the boys concerned have a pattern of sleeping at day and staying up at night. Action was taken to work with the boys on their sleep habits.⁷⁸ There were no follow-up reports for either of these unaccompanied children.

Follow-up Detainee Management Strategies were only provided for one unaccompanied child, with plans created in November 2001, and January, March and April 2002. The reports on this child indicate that management strategies were in place. For example, in the report of 18 January 2002, ACM developed a strategy to encourage the child to turn up at mealtimes.⁷⁹ It is also apparent that ACM was monitoring the child's mental health during this period. Despite indication of attention to the needs of this child, it is of significant concern that the first plan for this child was created only after he had been in detention for 8 months,⁸⁰ even though case management plans were being developed for other children at the time he was detained in March 2001.

The Inquiry also received a series of one-page weekly reports regarding one child from March – June 2001, which are almost identical to each other. They do not indicate a high level of individual attention.

The Inquiry is concerned that reports on only 15 children at Curtin were provided even though 23 unaccompanied children were detained during the period for which the plans were required.⁸¹

(d) Summary of case management plans

Having conducted a comprehensive review of all the case management plans provided to the Inquiry regarding unaccompanied children in Woomera, Port Hedland and Curtin, the Inquiry was left with a strong impression that completion of case management documents for unaccompanied children was not a high priority. ACM told the Inquiry that:

The level of documentation may not have reflected the high level of service provision that was provided to UAMs. The relationships and interaction between UAM officers and relevant minors are given higher priority than constantly recording and documenting such processes. The relationship between unaccompanied children and designated officers is highly dynamic and fluid. To maintain such a relationship and to maximize normalised living requires that designated officers spend a great deal of time 'face to face' with unaccompanied children. This is considered by ACM to be a preferable approach to the management of UAMs.⁸²

ACM also emphasised that:

There are no formal documented Departmental guidelines for case management of detainees by the service provider ... It is the case that the concept and expectations for case management need to be clearly defined and until such a clarification is made, allegations of inadequate documentation in regards to case management will continue without resolution.⁸³

The Department urged the Inquiry to take into account that case plans were only one part of the strategy to protect the rights of unaccompanied children in detention:

case management plans were a component part of a much broader strategy for managing unaccompanied minors, which included dedicated ACM staff with responsibility for managing unaccompanied minors, centre meetings specifically about management of unaccompanied minors and weekly unaccompanied minor teleconferences convened with the department's Central Office where issues of concern were raised and dealt with.⁸⁴

The following sections address the other components of the care strategy for unaccompanied children referred to by ACM and the Department. It is therefore premature to conclude that the absence of detailed individualised case management plans necessarily means that unaccompanied children were receiving inadequate care. However, it is clear that the case management plans contributed very little to that overall strategy.

14.3.3 Staff meetings regarding unaccompanied children

ACM and the Department both suggest that regular staff meetings regarding the welfare of unaccompanied children in detention are an important element of the care of unaccompanied children in all detention centres.

Again, the Inquiry relied on the production of documentation by the Department for evidence of meetings regarding unaccompanied children. The following documents were required:

From all centres:

- Minutes of all meetings regarding unaccompanied children from all centres from the date on which the meetings commenced until 30 September 2002.

From Woomera:

- Minutes of all meetings regarding unaccompanied children; reports created as a result of these meetings; and correspondence with the South Australian child welfare agency (Department of Human Services, Family and Youth Services)⁸⁵ for the period 1 April 2001 to 30 June 2002.

In Woomera, weekly meetings regarding unaccompanied children began in February 2001.⁸⁶ These meetings included ACM officers, health staff, programs staff and education staff, as well as an officer from the Department, although the Department officer did not regularly attend. Although the name of this meeting changed slightly over time, this chapter will refer to all such meetings as Unaccompanied Minors Committee meetings.⁸⁷

The minutes of the meetings held at Woomera are extremely detailed and demonstrate that significant attention was paid to the needs of the unaccompanied children detained in the centre. The meeting minutes note detailed discussion of issues facing individual unaccompanied children as well as general issues such as education and health. Thus, although the case management plans discussed previously were sparse in detail, it appears that the children received attention on a day-to-day basis.

For example, the minutes of the staff meeting of 20 September 2001, when 55 unaccompanied children were detained at Woomera, contain the following:

- detailed comment about the care of an eight-year-old unaccompanied child residing in the centre
- discussion of the individual needs of several other children
- discussion of planned recreational activities for all unaccompanied children
- strategies to encourage school attendance by unaccompanied children.⁸⁸

However, the minutes of these meetings only make very brief reference to the November 2001 self-harm incident that is detailed in Case Study 2. There was more detailed discussion of the children involved in self-harm in January 2002, with minutes containing detailed comment on the situation of individual children.⁸⁹ The situation of these children is discussed in detail in Case Study 3 at the end of this chapter.

The nature of these meetings changed slightly over time as the numbers of detained unaccompanied children, and children generally, decreased. From February 2002 onwards the meetings considered the needs of all children (not just unaccompanied children) in the centre. From 30 April 2002 onwards the minutes included a section called Individual Management Plans that considered the needs of individual children (including the one remaining unaccompanied child).⁹⁰

Meetings regarding unaccompanied children commenced at Port Hedland in November 2001.⁹¹ These meetings were between unaccompanied children and representatives from ACM and the Department and were held until January 2002.⁹² In these meetings the children raised issues about which they were concerned (medical care, education, work, and the request for a room to use for recreation purposes) with ACM and Department staff. The Department was not always able to answer their questions. For example, in the meeting of 3 January 2002, one unaccompanied child asked whether the Department had stopped granting visas to Afghans, to which the response from the Department's Assistant Manager is recorded as '[n]ot sure'.⁹³

In late January and early February 2002 there were two meetings regarding unaccompanied children involving ACM and Department staff at Port Hedland. Unaccompanied children did not attend these two meetings. However, the minutes of these meetings are detailed and demonstrate action being taken to meet the needs of unaccompanied children. In particular, there are specific notes of concern regarding individual children.⁹⁴

In March 2002, the Port Hedland Department Manager stated that meetings regarding unaccompanied children continued on a weekly basis:

there is a weekly meeting between the DIMIA UMLO [Unaccompanied Minor Liaison Officer], the ACM CLO [Community Liaison Officer], the ACM psychologist, the ACM counsellor, and ACM Programs Manager, during which there is discussion of specific issues relating to the welfare and wellbeing of unaccompanied minors.⁹⁵

However, after February 2002, no minutes of meetings were provided to the Inquiry despite the continuing presence of unaccompanied children.⁹⁶ The Notice to Produce required production of minutes of all meetings regarding unaccompanied children until 30 September 2002.

The documents regarding the convening of regular ACM staff meetings to monitor the care of unaccompanied children suggest that the level of attention paid by ACM staff to unaccompanied children varied quite substantially between centres. At Woomera, staff held regular meetings and kept extremely detailed minutes. At

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Port Hedland, minutes of meetings were provided for only a short period of the time that unaccompanied children were held in the centre.

At Curtin there was no ACM involvement in meetings regarding unaccompanied children, with meetings instead being held between Department staff and children (see further section 14.4.3).⁹⁷

While it may be that there was regular informal contact between staff and unaccompanied children at Curtin and Port Hedland, that contact was not adequately documented in either the case management plans or meeting minutes. The Inquiry is concerned that these issues were taken too casually in these centres. Furthermore, it is disappointing that there was no consistent strategy between centres regarding the conduct and documentation of such care strategies.

14.3.4 Progress reports regarding unaccompanied children

At Woomera, weekly progress reports regarding unaccompanied children were created by ACM staff from February 2001. Woomera was the only centre at which progress reports were produced.

The progress reports were the formal reports from the Unaccompanied Minors Committee meeting; however, they generally contained much less detail than the minutes from those meetings. They were initially only provided to ACM management, but from at least 12 April 2001 were given to the Department Manager, with copies to all ACM officers involved in the care of unaccompanied children in the centre.⁹⁸

From 8 June 2001 the South Australian child welfare authority, Family and Youth Services (FAYS), a section of the South Australian Department of Human Services (DHS), were noted as recipients of these reports.⁹⁹ However, in the minutes of the UAM Committee Meeting of 3 July 2001, it is noted that '[f]or many months the Committee has thought that UAM Reports have been faxed off to FAYS. As a matter of concern it has been discovered that they have not been faxed to FAYS'.¹⁰⁰

These progress reports indicate monitoring and follow-up of significant issues regarding the unaccompanied children in Woomera. For example, there is detailed and ongoing comment about the needs and care of an eight-year-old unaccompanied child in July and August 2001.

However, the reports for the latter half of 2001 are remarkably similar, with only minor details being changed from report to report, despite there being a large number of unaccompanied children detained in the centre. No comment regarding any specific unaccompanied child is made in the reports from September 2001 onwards; the reports instead contain general descriptions of the services and activities available to unaccompanied children. There is also only a brief reference to a serious incident of self-harm by a group of unaccompanied children in November 2001 which is discussed in detail in Case Study 2. No progress reports were created for the period during January 2002 when the majority of unaccompanied children were involved in self-harm incidents as described in Case Study 3. When the meetings recommenced in February 2002, they note that there is only one unaccompanied child remaining in the centre.¹⁰¹

Reports from 15 February 2002 onwards concern the one remaining unaccompanied child in the centre (a detached minor).¹⁰² From 26 April 2002 onwards these reports are almost identical, with repeated reference to this unaccompanied child not attending recreational and educational activities. There is no indication of any strategy to encourage this unaccompanied child to engage in education or recreational activities.

14.3.5 Provision of adult detainee mentors to unaccompanied children

ACM policy requires staff to assess whether unaccompanied children might benefit from the appointment of an adult detainee ‘mentor’.

In the case of Curtin, several of the case management plans created in March 2001 contain a space for the notation of the detainee under whose ‘guardianship’ the unaccompanied child is placed. None of the plans has this section completed, although some of the plans noted that ‘no detainee willing to take on task’,¹⁰³ indicating the absence of detainee mentors.

However, mentors were appointed on certain occasions. For example, an ACM memo dated 17 April 2001 refers to six unaccompanied children in Woomera residing with ‘de-facto’ families. Two of these ‘de-facto’ carers concerned ‘detached minors’, in other words they were the child’s aunt, uncle or cousin.

Furthermore, as set out in some detail in Case Study 1, despite the serious difficulties in finding a suitable foster carer for an eight-year-old unaccompanied child detained at Woomera during 2001, staff went to considerable trouble to try and make appropriate arrangements.

Thus, the evidence before the Inquiry suggests that adult mentors were not routinely appointed to unaccompanied children nor were they ‘fostered’ with other detainee families. However, the Inquiry accepts the Department suggestion that a reason for the low number of mentors was that:

the vast majority of unaccompanied minors were males in the mid to late teens. In many cultures, such young men are considered adults and, indeed the majority of such unaccompanied minors viewed themselves this way. Accordingly, some were unwilling to participate in any mentoring arrangement they perceived as diminishing their ‘adult’ status.¹⁰⁴

14.3.6 Findings regarding ACM involvement in the care of unaccompanied children

The Inquiry acknowledges that many individual ACM staff worked hard to meet the needs of unaccompanied children in detention. ACM also developed a range of strategies over time for the care of these children, the most comprehensive articulation of which is found in the November 2001 Woomera procedure regarding unaccompanied children. However, there were significant weaknesses in the system despite these efforts.

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Designated officers with responsibility for the care of children appear to have been appointed in Woomera and Port Hedland in early 2001 and in Curtin by late 2001. By late 2001 Department records indicate that they had regular contact with unaccompanied children in all centres. However, several former detainee children interviewed by the Inquiry reported that, at least from their point of view, there was no specific person responsible for their welfare in detention.

The practice of using individual case management plans as a guide for the care of unaccompanied children developed in late 2001 shortly before the majority of unaccompanied children were removed from detention. ACM stated that the system began in Woomera, Curtin and Port Hedland in March 2001. However, the Inquiry finds that although generic case management plans existed at Woomera from March 2001 onwards, individual case management plans were first created at Woomera in December 2001. Although individual case management plans were created at Curtin in March 2001, they were of very poor quality. The Inquiry is not satisfied that any case management plans were produced in Port Hedland prior to December 2001.

Even where individual case management plans were produced, they were generally formulaic, sparse in detail, contained few recommendations for management of children and were rarely followed up. The Inquiry therefore finds that while individualised case management plans are an appropriate measure in principle, in practice they were an ineffective tool to address the needs of unaccompanied children in Woomera, Curtin and Port Hedland detention centres.

The Inquiry finds that regular meetings discussing the care of unaccompanied children were held at Woomera from February 2001. The minutes of these meetings demonstrate that significant attention was given to the needs of the unaccompanied children detained at the centre. At Port Hedland, the meetings were less effective and only commenced in November 2001, well after the date on which many unaccompanied children were initially detained. At Curtin there were no minuted meetings between ACM staff and unaccompanied children.

Weekly progress reports regarding unaccompanied children were created in Woomera only. From April 2001 these reports were provided to the Department's Manager at Woomera; however, they were not regularly provided to the South Australian child welfare authorities. While these reports initially contained significant detail, the Inquiry is concerned that in the latter half of 2001 they did not adequately document the situation of unaccompanied children in the centre.

Finally, the Inquiry finds that mentors or de facto guardians were rarely appointed to unaccompanied children, although accepts that in many cases this was because they were older teenagers.

Therefore, despite the considerable efforts of individual staff members and the development of some systems for the care of unaccompanied children in detention, the Inquiry finds that some elements of the system of care were not adequately implemented, others were not adequately documented and all commenced well

after the dates on which unaccompanied children were initially detained. Furthermore, there is considerable variation in the implementation and documentation of these systems between centres – with Woomera providing the best example.

Despite the fact that the system was working at its best in Woomera, those systems failed to provide sufficient guidance as to how to protect the wellbeing of children in long-term detention. Those systems failed to prevent or address the levels of distress demonstrated in the group self-harm incidents described in Case Studies 2 and 3 at the end of this chapter. Furthermore, those systems failed to adequately protect the best interests of an eight-year-old unaccompanied child, as described in Case Study 1. This raises the question as to whether the best interests of unaccompanied children can ever be fully satisfied within a detention centre, especially where that detention is for prolonged periods. It is the Department's responsibility to address that larger question.

14.4 What did the Department do to care for unaccompanied children in detention centres?

The Department is primarily responsible for ensuring that unaccompanied children receive the special assistance required by international law. To the extent that the Department relies on ACM to fulfil that duty it must effectively monitor the care provided to ensure that it is appropriate. When care is found to be inadequate, the Department must take action to remedy the deficiencies.

The Department has an additional responsibility due to the fact that under domestic law the Minister is the guardian of unaccompanied children in detention and therefore has a heightened duty to put the best interests of the child first. This section sets out those responsibilities in greater detail and assesses the measures taken by the Department to fulfil those duties.

14.4.1 The Minister's and the Department's responsibilities towards unaccompanied children

By definition, unaccompanied children arrive in Australia without a legal guardian. This makes them especially vulnerable because they do not have someone to support them through the difficulties encountered within a detention environment and the potentially confusing process of applying for asylum.

The IGOC Act provides that the Minister is the guardian of all unaccompanied children seeking asylum in Australia.¹⁰⁵ This includes children in excised offshore places, but not those in Nauru and Papua New Guinea.¹⁰⁶ The Minister has the 'same rights, powers, duties, obligations and liabilities as a natural guardian of the child would have'¹⁰⁷ and remains legal guardian from the moment of arrival until the unaccompanied child turns 18 or leaves Australia.¹⁰⁸

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The Federal Court of Australia¹⁰⁹ has found that the duty of the guardian under the IGOC Act is to ensure that all children under the guardian's care enjoy the fundamental human rights enshrined in the CRC, and in particular that the guardian must act at all times in the best interests of the child.¹¹⁰ The guardian must ensure that the child under care is properly fed, clothed, housed and educated.¹¹¹

Furthermore, there is High Court support for the view that a guardian has a fiduciary obligation towards his or her ward.¹¹² This means that the guardian is bound, in matters falling within the scope of the fiduciary relationship, to place the interests of the ward before his or her personal interests.¹¹³

In the context of unaccompanied children who arrive in Australia without a visa, this means that the guardian must address his or her mind to the following questions regarding each and every unaccompanied child:

- (1) whether the child should be detained
- (2) whether to pursue release of the child from detention by the grant of a bridging visa
- (3) if the child remains in detention, the form of detention that can provide the best care (including consideration of whether the child would be better off in home-based detention in the community, a residential housing project or a metropolitan detention centre)
- (4) the manner in which the child is cared for while in detention.

Each of these four considerations is interlinked. For example, the longer a child is in detention the more difficult it will be to ensure that his or her best interests are met within that context. Similarly, where the care arrangements in detention centres are ineffective to protect a child's best interests it becomes more important to ensure prompt release or transfer to home-based detention.

Questions (1)-(3) are discussed in some detail in Chapter 6 on Australia's Detention Policy. Briefly, regarding question (1), Chapter 6 finds that Australian legislation does not leave room for the guardian to make any choices regarding whether or not to detain in the first place. Regarding questions (2) and (3), Chapter 6 finds that the Minister, through the Department, failed to actively pursue the release or transfer of unaccompanied children from detention centres prior to January 2002 and as a result, failed to properly address the best interests of unaccompanied children.

This chapter focuses primarily on question (4) which requires the guardian to address his or her mind to whether the care arrangements in detention are effective in protecting the best interests of the child and ensuring that each unaccompanied child is able to enjoy all the rights in the CRC. Those rights include the right to assistance through the refugee status determination process (see Chapter 7), the right to be protected from violence (see Chapter 8), the right to the highest attainable standard of mental and physical health (see Chapters 9 and 10), the right to education and recreation (see Chapters 12 and 13) and cultural life (see Chapter 15).

The Department's primary responsibility with regard to unaccompanied children is to act as the delegated guardian of the Minister. The Department acknowledges its special duty of care to unaccompanied children:

[o]ver and above the duty of care to all detainees, and to detainee children in particular, a special duty of care is owed to unaccompanied minors because of the Minister's guardianship responsibilities for these children.¹¹⁴

The Department also acknowledges that the Minister's special duty of care includes ensuring that the rights of children under his or her care are protected.¹¹⁵

The Minister delegated the powers relating to the guardianship of unaccompanied children to Department officers on 11 January 2002. The delegation to the Department Managers and Deputy Managers appears to make practical sense in that the Departmental officers working in the various centres are more likely to understand the particular needs of unaccompanied children than the Minister.

However, prior to the official delegation in January 2002, it appears that the Department effectively acted as a representative of the Minister as guardian. Indeed, it appears that some ACM staff understood that Department officers were acting on behalf of the Minister. For example, in Woomera, the Unaccompanied Minors Committee meeting of 29 May 2001 states that the Department Manager is the legal guardian and must be informed of notifications to FAYS.¹¹⁶

14.4.2 Difficulties facing the Department in fulfilling its duties to unaccompanied children

In addition to the difficulties facing the Department with regard to release from detention centres (as discussed in Chapter 6 on Australia's Detention Policy), Department Managers face the following difficulties in executing their duty of care within the detention context.

(a) Child welfare expertise of Department Managers

The IGOC Act does not require that the Minister or his or her delegates have any particular child care qualifications to become the guardian of an unaccompanied child.

Given that the Minister and the Department's Managers are normally immigration professionals, rather than child care professionals, it is more likely than not that they do not in fact have such qualifications. This was admitted by the Department in the hearings of the Inquiry.¹¹⁷ The Department was asked whether it provided child care training to the Managers. The answers given indicate that almost no such training exists.¹¹⁸

The Department has argued that the absence of special qualifications is overcome by the fact that the Department consults child welfare authorities and hands over the care of unaccompanied children to ACM staff with close monitoring by the Department.¹¹⁹ However, section 14.5 on the role of State authorities suggests that,

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until the mass self-harm events described in Case Studies 2 and 3 at the end of this chapter, the State authorities had little to do with the care of unaccompanied children.

While ACM staff may well have had appropriate child care qualifications, the findings set out in section 14.3.6 above suggest that during certain periods in certain centres there was sparse documentation by ACM staff regarding the progress and management of unaccompanied children. Therefore to the extent that Department Managers were relying on child welfare assessments and management strategies administered by ACM staff, they were hampered by the absence of documentation in some centres. In any event, ACM staff were the people who the Department Managers were supposed to be monitoring. The Department could not therefore rely on them for an independent assessment of the quality of care being given to unaccompanied children.

Thus it is difficult to see how the Department Managers and the Minister, as guardian, can properly monitor and ensure the appropriate care and progress of an unaccompanied child by others if they do not have appropriate qualifications or specific experience in child welfare.

(b) Guidelines for Department Managers

As discussed earlier, prior to September 2002 when MSI 357 was issued, there were no guidelines explaining to Department Managers their role and responsibility with regard to unaccompanied children. For example, the Department Managers' Handbook is missing the chapter on unaccompanied children.

Although the Department states that the *Migration Act 1958* (Cth) (the Migration Act) and the Migration Regulations are also a guide for Department Managers,¹²⁰ they provide no specific information about the services that should be provided to children in detention. Therefore, the Department Managers were in the difficult position that they had no expertise, no additional training regarding children, and no guidelines as to what they should be doing.

(c) Independence of the Minister and his or her Departmental delegates

The primary role of a guardian is to step into the shoes of a parent and ensure that the best interests of an unaccompanied the child are protected. International law experts and community groups have suggested that the Minister's ability to fulfil that role is seriously compromised by the fact that he or she is simultaneously the guardian, detaining authority and visa decision-maker.

For example, the United Nations High Commissioner for Human Rights Special Representative, Justice Bhagwati, who visited immigration detention centres in Australia in 2002 said:

Furthermore, the policy of detaining unaccompanied minors also appears seriously flawed and must be regarded as totally unacceptable from a human rights perspective. A particular issue of concern is the fact that the Minister for Immigration is both the "detainer" and the guardian which represents a serious conflict of interest.¹²¹

A Western Australian community legal centre, Southern Communities Advocacy Legal and Education Service (SCALES), stated that:

Well, I think that having the Minister for Immigration as their guardian [and] also the person that decides, is the ultimate arbiter of their case in terms of their application for asylum, can represent a conflict of interest, particularly to the Government's policy and certainly, the Minister has stated, intention ... to use mandatory detention models and to continue using them. And so he has those conflicting issues about what is the Government policy as opposed to acting in the best interests of the children involved.¹²²

The Refugee Council of Australia (RCOA) stated that:

There is no delegation of guardianship to a person who has the best interests of the child as his/her sole and unambiguous responsibility ... [t]here is therefore no designated individual who can:

- ensure that the child is properly represented during the refugee status determination procedures and take legal responsibility for signing documents on his/her behalf;
- act as an advocate for the child if there are problems in the refugee status determination process or with welfare or other issues;
- oversee the care and management of the child;
- ensure that the child is not exposed to abuse or neglect.¹²³

The Federal Court has recognised and accepted that there may be a conflict between the role of the Minister as guardian of unaccompanied children under the IGOC Act and his or her role in administering the Migration Act:

Although it is clear from the wording of the [I]GOC Act, and accepted by the Minister, that the Minister is the guardian of unaccompanied asylum-seeker children, the potential for conflict of roles must, of course, exist.¹²⁴

In the context of visa decisions, the Federal Court found that any such conflict was resolved by the provision of independent merits review by the Refugee Review Tribunal.¹²⁵ The Department suggests that the conflict is removed by the appointment of a migration agent.¹²⁶

The Federal Court did not directly address how the conflict could be resolved in the context of unaccompanied children's care in, or removal from, detention centres. The Minister states that the conflict of interest regarding care is removed through the delegation of guardianship to the Department Managers and Deputy Managers.¹²⁷ However, the RCOA argues that the delegation of guardianship to Department Managers:

does nothing to resolve the problems of conflict of interest. The DIMIA manager is the Minister's delegate in the centre and as such, has the same responsibilities – and conflicts – as the Minister and while ACM does have a responsibility for the care and welfare of the detainees, it also acts as their custodians.¹²⁸

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The current structure places Department officials in an invidious position with respect to unaccompanied children. On the one hand they are asked to gain the children's trust as delegated guardian, on the other hand, generally, the children want to be released from the detention centre for which the Manager is responsible. A former ACM psychologist told the Inquiry that in his view the absence of an independent advocate for unaccompanied children may have resulted in them staying in detention longer than they needed to:

I regarded the failure to remove UAMs, over whom the Minister for Immigration was guardian, from [Woomera] as a matter of particular concern. There did not appear to be a competent and independent advocate for UAMs.¹²⁹

The extremely limited number of instances in which unaccompanied children were released from detention centres by the grant of a bridging visa or transfer to an alternative place of detention is the clearest evidence of the problems caused by the absence of an independent advocate. The seriousness of the problem is illustrated by Case Study 3 at the end of this chapter (regarding January 2002). This issue also discussed in detail in Chapter 6 on Australia's Detention Policy.

Note that MSI 370, issued in December 2002, has addressed this issue to some extent by importing a presumption that the best interests of unaccompanied children are usually that they be released from detention centres. MSI 370 also imposes an obligation on the Department Manager to pursue this option.

14.4.3 The Department's execution of its responsibilities towards unaccompanied children

As discussed above, in addition to pursuing the speedy release or transfer of children from detention centres (see Chapter 6 on Australia's Detention Policy), one of the Department's primary responsibilities as the representative of the Minister and delegated guardian is to monitor the care that is provided to unaccompanied children in order to ensure that their best interests are protected.

A former Department Manager from Woomera, who worked at the centre between May 2000 and May 2001, provided evidence that the monitoring of the care and well-being of unaccompanied children was taken very seriously by Department staff:

I insisted that there be at least one male, one female detention officer allocated to the minors and they be consistent, continuous. I insisted that there be a psychologist assigned to them. I insisted that there be a weekly report of everybody and everything, no matter how small come in, that I get copies of it. We also implemented a system of them having a different band around their ID card. It wasn't to pinpoint them so much as to say, if they were lining up for meals and they were being jostled by some older men that they were immediately recognised by the detention officers and they were told to act in a parental role, to resolve it, support the boy. I also – normally if I wasn't in court or facing another Inquiry, I would see them once a fortnight myself.

I also [told] one of my staff, 'I want you to keep an eye on – just go and see them', ... because she has a gentleness there, and in addition I reinforced

to the boys that they needed to support each other as well. We accommodated them together, around families rather than single men. An additional thing we did – or I did – because they didn't have their parents who would explain about the whole process of their application. ... They were minors so I ran a couple of sessions for them and had them ask questions, you know, even explaining down to the Federal Court, where they could complain, how they could get forms, all of that. Actually, most of that was videoed, it is somewhere in ACM at Woomera.¹³⁰

In addition to the regular reporting mechanisms of monthly Department Manager reports and incident reports,¹³¹ the Department informed the Inquiry that it monitored the care of unaccompanied children through the following mechanisms:

- monitoring ACM case management plans
- involvement in regular meetings regarding unaccompanied children
- regular teleconferences regarding unaccompanied children
- regular consultation with State child welfare agencies.¹³²

The following subsections evaluate the quality of the Department's monitoring of the care provided by ACM on the basis of the primary records provided by the Department.

(a) Monitoring of case management plans

The Department suggests that it kept a close watch on the case management plans developed for each unaccompanied child.

Central Office involvement appears to have commenced in 2002. The minutes of the first Unaccompanied Minor Teleconference of 13 December 2001 state that all management plans for unaccompanied children had been forwarded to Central Office.¹³³ Although the situation of unaccompanied children appears to have been discussed in detail in these teleconference meetings from 28 February 2002 onwards, the only discussion of the quality of case management plans occurred in the first teleconference.

In the case of Port Hedland, the Department Manager testified before the Federal Court that case management plans were provided by ACM to the Department for approval:

The creation of individual management plans for unaccompanied minors was advised to DIMIA Centre management through the weekly Unaccompanied Minors' in Detention Conference and High Risk Assessment Team (HRAT) meetings (which always include a DIMIA representative) and endorsed by DIMIA Management.¹³⁴

It is unclear when this practice began. It is also unclear what advice Department Managers sought in order to assess the plans. However, the generally poor quality of the written case management plans, as set out in the findings in section 14.3.6 above and Case Study 3 at the end of this chapter, suggest that this responsibility was not a high priority.

(b) Department meetings regarding unaccompanied children

The weekly meetings that the Department refers to as a monitoring tool are the Unaccompanied Minors Committee meetings discussed in section 14.3.3. In the case of Woomera, although Department representatives were on the invitation list for these meetings, a review of the minutes shows that they were regularly absent. Department staff attended no meetings in April 2001, June 2001, and July 2001; 25 per cent of meetings in November 2001, February 2002, March 2002 (late arrival), April 2002, and May 2002; and 50 per cent of meetings in December 2001, and January 2002.

There appears to have also been irregular direct contact between Department officials and unaccompanied children at Woomera. This contact occurred when the unaccompanied children's mood was low and they asked for information about Department processes regarding refugee status determination.

The Department Managers were generally well received by the unaccompanied children when they did come to meetings. For example, it was reported that the Department Manager met with the unaccompanied children on 23 March 2001 and that '[s]ince this meeting there is marked change in attitude, behaviour and positive actions on the UAM's behalf'.¹³⁵ A 20 April 2001 report notes that a Department representative attended the last few life-skill development programs which helped the unaccompanied children 'to come to terms with the processing of their visas and other DIMA related issues'.¹³⁶ On 11 May 2001 the Department Manager met with the unaccompanied children to ensure that they fully understood the refugee status determination processes.¹³⁷ The Department Manager appears to have visited the personal development program on two further occasions in June 2001.¹³⁸

It appears that meetings between the Department and the unaccompanied children at Woomera had lapsed by October 2001. This is indicated by the query from the centre psychologist regarding:

what happens to the UAMs when they receive an RRT rejection as they appear not to have anyone to talk to about the rejection. DIMA used to have regular meetings with the UAMs to explain processes to them.

It was agreed that the meetings between the Department and the unaccompanied children would recommence.¹³⁹

For Curtin, the Inquiry was provided with minutes from meetings which occurred approximately fortnightly between June and December 2001. These meetings appear to have been between the Department's Deputy Manager and the unaccompanied children. They were opportunities for the unaccompanied children to raise concerns about issues such as provision of clothing and bedding, health care and education. The Department Deputy Manager generally indicates that she will address the issues raised regarding welfare and care with ACM. The minutes of the first meeting noted some significant problems with the care provided to these children, in that not all of them had blankets or sufficient warm clothing, and that they were not provided with an interpreter to explain their protection visa decisions.¹⁴⁰

(c) Teleconferences regarding unaccompanied children

The Department states that it monitors the overall care of unaccompanied children by a national teleconference regarding unaccompanied children, the Unaccompanied Minor Teleconference. These teleconferences commenced in December 2001, long after large numbers of unaccompanied children began arriving in detention centres. They involve staff from the Department's Central Office and each immigration detention facility. From February 2002 other 'children of interest' were also discussed at these meetings.

Although the early minutes of these teleconferences indicate that each unaccompanied child was discussed, this discussion was not minuted. The minutes are concerned with general issues such as whether case management plans existed and whether they had been forwarded to State child welfare authorities. The minutes do indicate some action was taken on these general issues, for example, in the minutes of 13 December 2001, regarding Port Hedland it is noted that 'all UAMs had management plans however DIMIA manager was concerned with quality and each plan is now being revised'.¹⁴¹

The Inquiry is concerned that significant incidents regarding unaccompanied children, like those set out in Case Studies 2 and 3, were not discussed at the meetings, or at least they were not minuted. For example, teleconferences held during and after the events of January 2002 do not mention the hunger strike at Woomera in which significant numbers of unaccompanied children were participating.¹⁴²

From late February 2002, teleconferences involved detailed discussions about children of concern, with statements regarding what action was being taken or recommendations for further action. By this date, very few unaccompanied children remained in detention.

(d) Department Manager reports

As discussed in Chapter 5 on Mechanisms to Protect Human Rights, Department Manager reports are the primary forum for the on-the-ground Department Manager to report to Central Office regarding ACM's performance under the IDS. It may be that from December 2001 the teleconference, described above, took over as the main form of monitoring regarding unaccompanied children. However, unaccompanied children did not appear to capture a great deal of attention in the Woomera Department Manager reports prior to this time.

One of the only reports mentioning unaccompanied children concerns the self-harm incident in November 2001, described in Case Study 2. The comments are extremely brief:

Following a move to a different compound eleven unaccompanied minors made self-harm attempts – minor lacerations to arms and in a number of instances, chests. Placed on HRAT – FAYS informed.¹⁴³

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In the December 2001 Department Manager's report the comments about this incident are identical, indicating that this was not an issue that was seen to require any specific and individualised reporting in the Department Manager reports.

The situation of unaccompanied children is mentioned in the Port Hedland Department Manager's report of October 2001 which states that:

DIMA-initiated weekly meetings commenced (between deputy DIMA manager, Minors Liaison Officer and Health Services Manager), with the intention of raising the standard of service to this vulnerable group. Set up in response to a growing awareness that the individual needs of UMs are generally not being addressed. The first meeting revealed that some have inadequate clothing, none being case-managed and none has been taken out of the Centre since they arrived.¹⁴⁴

These meetings are discussed in section 14.3.3, which did indicate detailed consideration of the needs of unaccompanied children in the centre, although the meetings do not appear to have continued into 2002 despite the continuing presence of unaccompanied children.

At Curtin, the March 2001 Department Manager's report notes that:

[a]ll unaccompanied minors are cared for appropriately. All are on individual management plans which ensure that they are monitored on a daily basis. All are allocated guardians within the Centre and all seen by the counsellor on a weekly basis.¹⁴⁵

In October 2001, the Curtin Department Manager again notes that all unaccompanied children are on individual management plans and have regular contact with the Minors Liaison officer 'to ensure that their welfare is being monitored and that they are receiving appropriate care from all service areas'. The identical words are used in the November and December 2001 reports.¹⁴⁶ As discussed in section 14.3.2, the case management plans in March 2001 were very broad and generic in nature. Thus the Manager's statement regarding the effectiveness of the case management plans may be an overstatement.

In March 2002, the police investigated allegations of sexual assault against an unaccompanied child. This incident suggested to the Curtin Department Manager that the case management system was not working very well:

It came to the notice of DIMIA staff during the month that ACM staff had not been monitoring unaccompanied minors in accordance with their management plans. Reasons for this occurring appear to range from insufficient staff to staff not being fully aware of the priority given to the welfare of UMs. Issues being raised on daily HRAT sheets in regard to UMs were not being addressed to shift supervisors. Partially as a result of ACM's failure to monitor the UMs a police investigation became necessary to explore a possible sexual assault against one of the UMs. Had proper monitoring taken place this investigation was unlikely to have been necessary.¹⁴⁷

There were no follow-up comments in subsequent monthly reports.

From September 2001, there was a 'Special Needs' section at the end of the Woomera Manager reports to note concerns about individual cases. This was rarely used to note concerns about unaccompanied children. The only mention of unaccompanied children occurred when four individual cases were noted in the September, October and December 2001 reports. There was also a note of general concern about unaccompanied children in the January 2002 report.¹⁴⁸

In summary, the monthly Department Manager reports from Woomera, Port Hedland and Curtin reporting on the progress of unaccompanied children are surprisingly brief given the significant issues of concern regarding these children in all centres during 2001 and 2002.

14.4.4 Findings regarding the Department's involvement in the care of unaccompanied children

The Inquiry finds that the Minister and his delegates failed to exercise their duty to address their mind to the best interests of each unaccompanied child in order to ensure the full enjoyment of their rights within detention centres.

The Department's practical involvement in the care of unaccompanied children was minimal and its monitoring of the care provided to unaccompanied children by ACM was ineffective to protect them. There is very little evidence of Departmental monitoring of case management plans; Department officers attended very few meetings within detention centres regarding unaccompanied children, particularly in Woomera; and teleconferences regarding unaccompanied children only commenced in December 2001 – long after unaccompanied children had entered detention centres. Significant incidents involving unaccompanied children were scarcely mentioned in Department monitoring documents.

However, the Inquiry recognises that there were significant impediments to the Department Managers effectively fulfilling their role as delegated guardian for unaccompanied children. They did not have child care qualifications or experience. They were not provided with training specific to ensuring that the needs of unaccompanied children were met. There were no guidelines describing the role of the Department Manager.

Furthermore, there is a significant conflict of interest in the role of the Minister as guardian, detention authority and visa decision-maker. The Inquiry is of the view that this conflict of interest remains despite delegation of the care responsibilities to Department Managers and Deputy Managers. In fact, the delegation to Department Managers creates an additional tension. Department Managers are not in a position to both manage the detention facility and make decisions in the best interests of the child within that context. This is especially the case when consideration of the best interests of the child requires the Manager to find that the detention facility is not adequately meeting the child's needs.

While the Inquiry acknowledges that the Department has made efforts to clarify the responsibilities of Department Managers in the new MSIs, they were created well

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after most unaccompanied children had been released. Furthermore, the MSIs do not adequately deal with the issues of conflict of interest and the expertise of Department Managers.

Case Studies 1-3 at the end of this chapter demonstrate the difficulties of fully addressing the needs of unaccompanied children within detention centres. This fact is recognised in MSI 370 which presumes that it is in the best interests of unaccompanied children to be transferred from detention centres to alternative places of detention or be released on a bridging visa. Nevertheless, the systems in place prior to the introduction of this MSI did not enable the Department to meet its obligations to unaccompanied children.

14.5 What did State child protection authorities do to care for unaccompanied children in detention centres?

As noted earlier, the Department clearly states that it relies on State authorities for advice regarding the management of unaccompanied children.

14.5.1 The guardianship role of State authorities

The Minister formally delegated the powers relating to the guardianship of unaccompanied children to various senior officials in State and Territory child welfare agencies on 1 December 1999. As noted earlier, a form of this delegation has existed since at least 1986.

Prior to September 2002, it was unclear from the delegations themselves whether the Minister, his or her State and Territory delegates and his or her Departmental delegates were simultaneously responsible for all unaccompanied children, or whether there were specific circumstances under which a particular child was under the responsibility of a particular guardian.¹⁴⁹

In 2001, the Federal Court in *Jaffari v Minister for Immigration & Multicultural Affairs* noted:

that arrangements for the proper supervision of the welfare and protection of unaccompanied minors seeking asylum seem to be somewhat inchoate with a presently ill-defined role on the part of the Director of Community Development notwithstanding that the current delegation has been in place for nearly two years.¹⁵⁰

During the hearings of the Inquiry and in its submissions, the Department acknowledged that despite the unlimited delegation of guardianship to State authorities in 1999, in practice, the role of the State authorities as guardian only commenced after release from detention.¹⁵¹ This also appears to represent the current understanding of legal practitioners¹⁵² and the States themselves.¹⁵³

The situation was clarified in September 2002 in MSI 357, which stated that the delegation of guardianship powers to State agencies commenced only after an unaccompanied child had been released from detention, with the exception of children transferred to home-based care.¹⁵⁴ However, State authorities told the Inquiry

that, in the intervening period, they could not have fulfilled the responsibilities of a guardian even had that been the intention of the delegation. The Victorian Department of Human Services told the Inquiry that it was not generally told when unaccompanied children were in detention and was therefore not in a position to provide any assistance.¹⁵⁵

The Western Australian Government told the Inquiry that absence of automatic access to the children in detention would have prevented any appropriate implementation of its guardianship powers and responsibilities:

Given their extreme vulnerability, all unaccompanied children in detention should have a guardian who can ensure that the full range of their needs (relating to education, health, legal status, safety and general welfare) is met. Such a guardian must have the authority and capacity to fulfil the role in the best interests of the child. Since children are being detained in centres under Commonwealth control, State government officers are not in a position to exercise guardianship responsibilities effectively.¹⁵⁶

Home-based detention is the one exception to the understanding that State authorities have no guardianship powers for children in detention. In South Australia, there is a draft Memorandum of Understanding between the Department and DHS regarding the care of unaccompanied children in alternative detention. That document states that when unaccompanied children are transferred to alternative detention arrangements in the community, the Minister remains the ultimate guardian but officers of DHS can exercise delegated guardianship.¹⁵⁷ The practical effect seems to be that the State exercises control. Home-based detention is discussed further in section 6.4.2 in Chapter 6 on Australia's Detention Policy.

14.5.2 Involvement of State authorities in other aspects of managing unaccompanied children

Although State authorities had no effective guardianship role regarding unaccompanied children in detention, the Department states that it relies on State authorities' expertise regarding the care of unaccompanied children:

State child welfare authorities are also regularly consulted and advised on the status of each unaccompanied minor and the effectiveness of the management plan.¹⁵⁸

Prior to September 2002, when MSI 357 required the Department to consult State authorities about the case management of unaccompanied children, the interaction between the Department, ACM and DHS regarding unaccompanied children was uneven.

Two serious mass self-harm incidents regarding unaccompanied children in Woomera in November 2001 and January 2002, described in Case Studies 2 and 3 respectively, are the primary examples of extensive consultation between the Department and the State authorities. The State authority involvement in January 2002 eventually led to recommendations for removal of the unaccompanied children from Woomera and their placement in alternative detention.

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However, there are other examples of attempts to consult State authorities. As noted earlier, it was originally intended that the Unaccompanied Minors Committee meetings at Woomera would include FAYS. However, the record of attendance for meetings in Woomera indicates that this never eventuated.¹⁵⁹ It also was intended that the minutes of these meetings should be sent to FAYS; however, this did not happen until mid 2001.¹⁶⁰

In Western Australia, the relevant State child welfare agency is Family and Community Services, within the Department for Community Development (FACS, DCD). It appears that DCD was not involved in the management of unaccompanied children at Port Hedland until March 2001.¹⁶¹ And even then, there does not seem to have been a routine practice of involving DCD in assessing and managing the needs of unaccompanied children.

In the case of one unaccompanied child who arrived in Port Hedland in May 2000, DCD was not consulted until February 2002:

DCD was not requested by DIMIA to become involved with the appellant until late February 2002. This was because the appellant had consistently presented to ACM mental health staff as well-adjusted and enjoying firm support from his cultural peer group in the Centre.¹⁶²

The case management plans produced at Curtin in March 2001 state that FACS will be notified of the child's arrival and will be provided with 'a monthly status update of each unaccompanied minor whilst resident in the Curtin IRPC',¹⁶³ and the March 2001 Department Manager report states that FACS are advised about all unaccompanied children.¹⁶⁴ The Inquiry has received no primary evidence of this interaction.

In February 2002, the Department's Central Office in Canberra requested that DCD assess all unaccompanied children in both Port Hedland and Curtin. The letter stated that:

We request that you look at the current emotional status of the individuals, and how this is impacted by being placed in a detention centre. We would further request your advice on what can be done to minimise or eliminate any negative consequences of being in the detention centre.¹⁶⁵

DCD's report back to the Department, dated 19 March 2002, stated that:

It is therefore recommended that all young people are issued with bridging visas or temporary protection visas, and are provided with community placements by the Department or community-based agencies. Given the ages of the young men, these placements would generally be in share-houses, with access to a range of services relating to education, counselling, and support. If the young men are released on visas the Department would provide support and services consistent with those already provided to unaccompanied minors released from detention, and on a cost-recovery basis.¹⁶⁶

At this time there were at least three unaccompanied children detained at Port Hedland, and three detained at Curtin.¹⁶⁷ By 28 March 2002 three unaccompanied

children from Port Hedland were detained in a hotel.¹⁶⁸ By June 2002 all three had been released.

Three unaccompanied children from Curtin were transferred into alternative detention in Adelaide on 23 April 2002.

14.5.3 Findings regarding State involvement in the care of unaccompanied children

The Inquiry finds that prior to September 2002, when the operation of the Minister's delegations regarding the guardianship of unaccompanied children was clarified, there was considerable confusion as to the role of State authorities in the care of unaccompanied children in detention. At this time it became clear that State authorities have no guardianship responsibilities for unaccompanied children until they are released from detention on a visa or transferred to an alternative form of detention.

State authorities also have an advisory role for the care of children in detention. However, there is no evidence to suggest that State authorities were called in at the moment an unaccompanied child was detained. Furthermore, prior to January 2002, State child welfare authorities were rarely called in to assess the situation of unaccompanied children and therefore had little active role in providing advice on the day-to-day care of children, rather they were called in when things started to go wrong. However, the recommendations made by the State authorities regarding children detained in January 2002 were implemented by the Department. Case Study 3 sets out the influence of State authorities in January 2002.

14.6 What care was provided to children who were temporarily separated from their parents?

Some children who arrive in Australia with their parents nonetheless become temporarily separated from them at various times within detention. They are effectively left alone without supervision by an adult relative during this time.

This can occur for a variety of reasons, including hospitalisation of a parent or the removal of a parent from the compound or the detention centre for security reasons.

In effect, these children temporarily become unaccompanied minors, and have the right to special protection and care as specified under article 20 of the CRC. However, unlike children who arrive without their parents, the Minister is not the guardian of these children. The parents retain responsibility for their children, although as the following examples make clear, they do not have control over their children's care or location. That responsibility is left to the Department as the detaining authority. These children have the right to maintain personal relations and direct contact with both parents on a regular basis, unless it is contrary to the child's best interests.

14.6.1 General provisions for the care of children who were temporarily separated from their parents

The Department and ACM do not have procedures and policies that specifically ensure that children who are temporarily separated from their parents within detention receive appropriate care in the absence of parental care.¹⁶⁹ The Department suggests that 'it is very difficult to develop a set of rules that applies across all circumstances which could determine the best interests of the child, length of separation, and care arrangements'. However, 'where the Department has felt it necessary, specific guidelines have been developed'.¹⁷⁰

The IDS make some provision for facilitating contact between family members generally. Standard 11.1 specifies that contact between detainees and their families is permitted and encouraged except when in separation detention. This contact is facilitated through detainee access to telephones, through regular visits and letters.

14.6.2 Examples of children temporarily separated from their parents

It appears that in certain cases at least, children temporarily separated from their parents have had similar care arrangements as those in place for unaccompanied children. For example, designated officers have been organised for children temporarily separated from parents.

Chapter 9 on Mental Health (section 9.3.4) and Chapter 10 on Physical Health (section 10.4.7) set out some examples where hospital transfers have caused children to be left without one or more parents at Woomera during 2002. In one example examined by the Inquiry, the Department acted relatively quickly to ensure that a nine-year-old girl was cared for in close proximity to her mother, who was hospitalised for over six months.¹⁷¹ Eight days after the separation of mother and daughter, the Department received Ministerial approval to place the girl in foster care in Adelaide, closer to her mother. The decision was made on the advice of DHS.

It is clear from the evidence available to the Inquiry that the girl had regular and direct contact with her mother during the ensuing six months of separation.

In another example, an Iranian mother and her seven-year-old child were separated from each other after the mother attempted suicide in their fifteenth month of detention at Woomera.¹⁷² For the five and a half weeks of separation, during which the mother was hospitalised, the boy was looked after by other detainees, firstly at the detention centre, then at the Woomera Residential Housing Project (RHP). The following is from a memo from the ACM Acting Programs Manager to the ACM Centre Manager on the twelfth day of separation (20 June 2002):

[The detainee at the housing project] states that she does not want to look after [the child] as it is now apparent that his mother is likely to be in hospital for an indeterminate period. [The detainee] says that she had her eldest daughter in hospital, she is under a great deal of stress with her own case and it is too difficult to cope with [the boy] when he is having nightmares

and not eating properly. She agreed to look after him for a few days until ACM found a solution.

[On 18 June, ACM's Social Welfare Officer] asked every lady in [Woomera detention centre] if they would look after [the boy]. All ladies were very apologetic but were unable to take on a child as they were either too depressed, too sick, already looking after other children or had enough children of their own to look after. There were 3 families in the [housing project]. [Name deleted] is too sick, [name deleted] has 3 children and is 5 months pregnant. She has subsequently been released. [Name deleted] is an Arabic speaker and ... it would not be appropriate to place [the boy, who speaks Farsi] with her in the long term.

[ACM's Social Welfare Officer] then went to visit [the mother] who stated that she is too weak and sick to look after [her son] and she needs all of her strength to fight her case. She would also like [him] to be fostered out in the long term as she is unable to look after him. If she took him back she would attempt suicide again as it would be better for her if [he] were an Unaccompanied Minor as he would then get a visa.

Following this I spoke with [the ACM Centre Manager] about various options and then spoke with the [Department's Manager], who advised us to maybe bring the child back to the [detention] Centre, pay a [detainee] to look after him and dismissed the idea of fostering [the boy] into the community.¹⁷³

On the same day, ACM took some interim steps pending feedback from social workers.¹⁷⁴ ACM decided to give the boy the option of either sleeping in proximity to another 'foster mother' in the housing project or in a room made up in the ACM Officers' Station. ACM decided that the first 'foster mother' would remain the authorised carer and would be asked to spend more time with the boy. Meanwhile, the second 'foster mother', a 19-year-old Afghan woman who ACM had earlier mentioned was 'too sick' to care for a child, would 'be asked if she would mind if [he] slept [in her house] and maybe do his washing and oversee him at bath time'. In addition, an ACM guard would oversee the child day and night and 'keep his case file up to date'. Under these circumstances, ACM aimed to keep the child 'in the most stable and secure environment possible to ensure a minimum psychological impact'.¹⁷⁵

After his mother returned from hospital to the detention centre, the boy remained in the housing project, as the mother did not want to care for her child in the detention centre environment.¹⁷⁶

Child psychiatrists reported that whilst his mother was in hospital and the boy was in the housing project, 'he was very happy...however he soon began to miss his mother and wanted to be reunited with her' and that '[his mother] often draws a parallel between how [her son] lost his father during the divorce and now he is afraid that he might lose his mother as well'.¹⁷⁷ The boy stated that he 'can only stand being away from his mother for up to a month and needs up to a week in order to charge his energy again'.¹⁷⁸

Two weeks after his return to the detention centre, the boy and his mother were reunited in the housing project.

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This example demonstrates the considerable efforts made by ACM and the Department to look after the child in his mother's absence and the difficulties of doing so in an environment where many of the alternative carers have mental health problems of their own. It is important to note that they are neither registered foster parents nor the mother's family or friends. The Inquiry is not aware of a designated officer assigned to the care of the child during this period, nor of individual management plans.

In another case, four children in a family seeking asylum were separated from their parents on various occasions in the three years they spent in Australian immigration detention centres. Circumstances of the children's major separations¹⁷⁹ from their parents while they were detained by the Department are as follows:

A family's experience of separation in detention

20 Dec 1999	Family arrives at Christmas Island, transferred to Curtin. Children aged 4, 9, 13 and 15. Older son already in detention (since 8 Nov).
May 2000	Family transferred to Port Hedland.
Dec 2000	14-year-old son hospitalised in Perth, family separated between Perth and Port Hedland for two weeks.
Dec-Jan 2000	Mental health practitioners recommend the family be transferred to a more suitable detention centre with appropriate psychiatric services.
May 2001	Parents sent to prison, older boys sent to juvenile prison. Younger children 'fostered' to Port Hedland detainees, monitored by ACM.
July 2001	Children transferred to Villawood; parents remain in WA prisons.
Sept 2001	Mother transferred to Villawood, reunited with children.
April 2002	Father transferred to Villawood, reunited with children.
10 Feb 2003	Family removed from Australia.

While the parents were at different prisons,¹⁸⁰ the two youngest children were kept at Port Hedland without their parents or any other relatives to look after them. They had regular phone calls to their brothers in juvenile prison.¹⁸¹ However, phone calls with their parents appeared to be less frequent and were to be 'on a once a month basis, as per policy'.¹⁸² The ACM Counsellor told the ACM and Department Managers that she would 'negotiate more regular calls for the children'.¹⁸³ The Child Protection Officer reported that 'visits to see their parents ... have not been [arranged] due to the fact that they [have] been transferred to other facilities'.¹⁸⁴

The option of foster care within the centre was discussed with the children's mother, who designated a fellow detainee with a child as a foster parent. For four months

the children were 'fostered' to various adult detainees¹⁸⁵ although the ACM officer designated as their 'Child Protection Officer' noted that:

There may not be a suitable family in the centre to look after the children.¹⁸⁶

This same person was the designated officer for all unaccompanied children. She expressed reservation about her capacity to take on the care of the two children:

I would like to state at this stage I am not happy with this situation. As I do not have the qualifications to implement a management plan, and I am not happy to put my name to the document that might cause problems for myself or the company should anything go wrong ... I spoke with [the ACM Operations Manager] regarding the management plan. I said that I would not be happy to put my name to it and that anything I came up with would have to be cleared by both ACM Management and DIMA before I would act on it. [He] said that between myself and the counsellor [name deleted] that we should be able to come up with something.¹⁸⁷

The officer went ahead, keeping detailed notes on the children's whereabouts and behaviour over the six weeks that they were 'unaccompanied minors' at Port Hedland, prior to being transferred across the country to Villawood. This transfer was in accordance with advice from medical professionals that the children be transferred to a centre where access to more suitable psychiatric services was available.¹⁸⁸

Meanwhile, the older children were held at a juvenile detention facility until they appeared before a magistrate who released them without conviction or punishment. They were released to the Department which detained them in Perth immigration detention centre,¹⁸⁹ and eventually transferred them to Villawood to be with their younger siblings. At Villawood, the children were designated 'unaccompanied minors', although ACM did not appoint a dedicated officer to supervise them for six and a half weeks.¹⁹⁰ It appears that a Care Management Plan for the youngest child was written on the 1 September which outlined a proposal for shared supervision by a nurse and detention centre officers for daily care needs, such as ensuring she is taken to school and is ready for bed.¹⁹¹ However, this was almost seven weeks after their arrival at Villawood:

Initially, another detained family took care of the children. This 'proxy' family was deported soon after the children's arrival. The youngest, and the only girl, had to spend evenings by herself in the female dorm, as her older brothers had separate accommodation. Other detainees [said that] the child would cry for her mother at night and did not want to sleep in her own bed. [She displayed] increasingly aggressive behaviour. The two oldest children suffered depression, and ... both attempted suicide on at least one occasion by cutting their wrists. The mother was released from prison after four months and was reunited with the children in Villawood. At the time of writing, the father was still in prison.¹⁹²

When the children were transferred to Villawood, the parents remained in detention in Western Australia. The mother was sent to Villawood several months later, whereas the father remained in Western Australia until April 2002.

14.6.3 Findings regarding the care of children who are temporarily separated from their parents

The above cases illustrate the problems of caring for children within the detention environment in the absence of both parents. Children in the community whose parents are in prison or hospital may have friends and family, and community services, to support them during the period of separation. However, children in detention must rely on other detainees, who are coping with their own distress at being in detention, and ACM officers, who are not necessarily trained in child welfare.

The examples show that the children were clearly distressed by their parents' absence and may have required additional care to provide them with some normality and continuity and to help them maintain close contact with their parents.

The case of the nine-year-old girl described above indicates that the Department was able to arrange foster care for children in the community relatively quickly when the situation demanded. However, Department and ACM records on other temporarily unaccompanied children do not indicate any routine consideration of options other than ACM supervision or detainee fostering within detention.

The Inquiry also finds that while the Department and ACM generally took measures to arrange contact between temporarily separated children and their parents, detention clearly restricts the ability of children to maintain direct contact to the extent available to children in the community. In the last example described above, contact was clearly restricted by the children remaining in Port Hedland, and then being transferred to Villawood while their parents remained in Western Australian prisons – considerable distances from these facilities. The case of the nine-year-old girl suggests that alternative arrangements could have been made to ensure more regular and more direct contact.

14.7 What was done to trace the parents of unaccompanied children?

Separation from family can cause unaccompanied children considerable distress. One unaccompanied child told the Inquiry that:

I sent a couple of letters but didn't see a response. Now I am going to see someone specially to see if they can find my family. Maybe they moved, maybe something happened. But we can't think 'something happened', because it's like, you know [fights tears] ... but maybe something happened.¹⁹³

International law recognises the importance of family tracing and imposes a specific obligation to help children in this process.

14.7.1 Provisions for tracing of and communication with parents

The Department states that 'Australia assists, to the extent possible, the process of reunification of unaccompanied minors who are currently seeking asylum in Australia with their families, whether they are in detention or in the community'.¹⁹⁴

The Department goes on to state that it:

cooperates with the United Nations and other competent international organisations to trace the parents of any refugee child for the purposes of reunification. In particular, the Department and the Australian Red Cross work in a cooperative and collaborative manner to provide these services to detainees, with a particular attention on assisting unaccompanied minors.

Where the location of a parent is unknown, tracing of parents or other relatives by the Australian Red Cross is requested by the DIMIA Manager as soon as practicable. The Australian Red Cross will visit the child in detention and seek information to assist them to undertake a tracing request. The unaccompanied minor is kept informed by the Australian Red Cross of the process on a regular basis, as it is important for the general wellbeing of the child to know that someone is looking for his or her parents.¹⁹⁵

The documents provided to the Inquiry suggest that the Department facilitated access to the Australian Red Cross Tracing Service, particularly from late 2001 onwards.

For example, the minutes of a meeting between the Department Manager and unaccompanied children at Curtin, on 12 October 2001, record that an unaccompanied child was 'concerned about his family who live in Kabul, Afghanistan. I said I would arrange for the Red Cross to talk to him when they next visited, as they may be able to assist in contacting them'.¹⁹⁶ A file note by a Department officer from Curtin on 23 October 2001 noted that the Red Cross met with all of the unaccompanied children from the centre.¹⁹⁷

The minutes of a January 2002 meeting regarding unaccompanied children at Port Hedland also indicate that tracing services were offered in the centre:

DIMIA DM reported that the Red Cross had attended the Centre for a period of 2 days and although the UAM's were encouraged to make an appointment to speak with them, only [two unaccompanied children] met with them. The Red Cross indicated that the meetings went well.¹⁹⁸

There is further evidence regarding the provision of tracing services to unaccompanied children in the minutes of Department teleconferences regarding unaccompanied children. The minutes of the teleconference of 13 December 2001 note that 'Red Cross tracing in relation to family members of [young unaccompanied child] (... family believed to have drowned in boat sinking off Indonesia)'.¹⁹⁹ The minutes of the teleconference of 17 January 2002 note that tracing should occur for two unaccompanied children detained in Curtin. The minutes of the teleconference

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of 31 January 2002 note that at Woomera, the Red Cross would be requested to focus on unaccompanied children.²⁰⁰ The minutes of 28 March 2002 note that the details had been forwarded to the Red Cross of an unaccompanied child who wished to go home if his family could be located.²⁰¹ April minutes note that a child from Curtin had been seen by the Red Cross to assist in contacting relatives.²⁰²

The difficulties involved in successful tracing were understood by unaccompanied children. One of the Afghan unaccompanied children now living in the community on a temporary protection visa described the difficulties of tracing family in Afghanistan:

The problem is that in Afghanistan, more than 80 per cent of the people are living in villages. And if there is a town, they give the address of the town as 'one or two hours walk by donkey behind the mountains' but there are heaps of mountains and behind the mountains there are houses. So it's really hard for Red Cross or UNICEF to find them. They have no number, they have no post box. No postal address.²⁰³

On 7 May 2003, a Memorandum of Understanding (MOU) between the Department and the Australian Red Cross regarding the provision of certain services to detainees was signed. The MOU formalises the tracing services that were already provided by the Australian Red Cross. Regarding unaccompanied children, the MOU states that:

The DIMIA Manager, as the delegated guardian of certain unaccompanied minors, agrees to discuss the special needs of any unaccompanied minors with ARC representatives during a visit, and in particular, unaccompanied minors' access to ARC core services.²⁰⁴

14.7.2 Findings regarding tracing and communication with parents

The Inquiry finds that access to family tracing was generally offered to children at some stage during their detention.

14.8 Summary of findings regarding the care of unaccompanied children in detention

The Inquiry finds that there has been a breach of articles 3(2), 18(1), 18(2) and 20(1) of the CRC. There has been no breach of articles 22(2) or 9(3) of the CRC.

The obligations in the CRC in relation to unaccompanied children recognise that children without their parents are extremely vulnerable, especially when they are asylum seekers or refugees, and therefore need assistance to ensure that they can enjoy all their rights.

There is a special duty on the Commonwealth to ensure that the best interests of unaccompanied children are protected. Article 20(1) states that children temporarily or permanently deprived of their family are entitled to 'special protection and assistance'. Article 18(1) states that a legal guardian shall make the best interests

of the child not merely a primary consideration (as required by article 3(1)) but *'their basic concern'*. The Australian common law has come to a similar conclusion about the responsibilities of the Minister as the legal guardian. Article 18(2) also requires that a legal guardian be given appropriate assistance in the performance of his or her child-rearing responsibilities.

Chapter 6 on Australia's Detention Policy contains the Inquiry's findings that Australia's legislation and the administration of that legislation by the Minister and the Department fails to ensure that the detention of children, including unaccompanied children, is a matter of last resort and for the shortest appropriate period of time (in accordance with article 37(b)). That chapter also finds that the long-term detention of children results in further breaches of articles 3(1) and 20(1). The Department's Migration Series Instruction 370, issued in December 2002, also recognises that the best interests of unaccompanied children are better protected if children are removed from a detention centre as soon as possible. The three case studies at the end of this chapter further support those findings.

This chapter has focused on what measures have been taken by the Department to ensure that the best interests of each unaccompanied child are protected during the period that they are required to remain in detention centres.

The Inquiry acknowledges that many ACM staff members worked hard to try and take care of unaccompanied children in detention. This was particularly the case in the Woomera facility during 2001. The Inquiry also acknowledges that the strategies to assist unaccompanied children improved over time. However, it was not until April 2001 that the ACM strategies were clearly articulated. 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. However, this was well after large numbers of unaccompanied children started arriving in detention centres in late 1999.²⁰⁵

In Curtin there were some individual case management plans in March 2001 but they were of very poor quality. In Woomera there were some generic case management plans in March 2001 but individual case management plans were only created in December 2001. There is no evidence of case management plans in Port Hedland until December 2001. In any event these case management plans were formulaic, sparse in detail, contained few recommendations and were rarely followed up. Case Study 3 demonstrates the large gaps between the information contained in those case management documents and the psychological well-being of the children. Thus while individual case management plans were an appropriate strategy in principle, they were introduced at a late stage and they failed to give an accurate picture of the needs of unaccompanied children in detention or the strategies best suited to meet those needs.

ACM Woomera staff initiated weekly Unaccompanied Minors Committee meetings in February 2001. Unlike the case management plans, the minutes of these meetings indicate that a great deal of attention was given to unaccompanied children by ACM staff in that centre over 2001. Departmental staff, however, at best only attended

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half of these meetings each month and there were several months where they failed to attend any meetings at all.

ACM staff at Woomera also created weekly progress reports on unaccompanied children which were provided to the Department Manager from April 2001. On a limited number of occasions those reports were also provided to the South Australian child welfare authorities. The quality of those reports diminished in the latter half of 2001.

In Port Hedland there were some meetings between ACM staff and unaccompanied children from November 2001; however, they do not appear to have been particularly effective in monitoring children's needs. There were no minuted meetings at Curtin.

Detainee mentors or de facto guardians were rarely appointed to unaccompanied children in detention. However, it appears that this was primarily due to the fact that the children were often older teenagers and such measures were seen as unnecessary.

Case Studies 2 and 3 at the end of this chapter demonstrate that despite the fact that the system was working at its best in Woomera, those systems failed to adequately protect the best interests of unaccompanied children. The primary reason for this is that the children were in the detention centre for too long, making the mental harm caused to these children almost unavoidable. However, the fact that the Department's practical involvement in the care of unaccompanied children was minimal and its monitoring of the care management systems was inadequate may well have exacerbated the problem. In particular, the Unaccompanied Minor Teleconferences, which were specifically designed to bring together the Department's detention centre staff and Central Office to address the well-being of unaccompanied children, only commenced in November 2001, long after the children began arriving in detention centres. The Department Manager reports rarely mentioned unaccompanied children and the Department failed to regularly attend the ACM meetings discussing the children.

However, the Inquiry acknowledges that the reason that the Department Managers did not become more involved in the management and monitoring of unaccompanied children in detention may be related to the Department's failure to ensure that these Managers had the relevant expertise. The Department Managers had no child welfare experience. The Commonwealth failed to provide them with appropriate assistance in the form of training or support which would have enabled them to better meet the needs of these children. There were no guidelines for Department Managers until late 2002. There was also a failure to ensure routine consultation with State child welfare authorities who did have the appropriate expertise.

In addition, the legislation providing that the Minister be the guardian of children (the IGOC Act), and the delegation of those powers to Department Managers, created an insurmountable conflict of interest. In the Inquiry's view the Minister cannot possibly make the best interests of an unaccompanied child his or her primary concern when, at the same time, he or she is the detaining authority and

visa decision maker. This conflict is not removed by delegation to the Department Managers. Indeed those Managers are placed in the invidious position of trying to gain children's trust while those same children view him or her as the person responsible for their detention.

Department Managers did not actively consult State child welfare authorities regarding care strategies for unaccompanied children until January 2002, when a group of unaccompanied children at Woomera threatened to commit mass suicide. However, Case Study 3 demonstrates that the Department did implement the recommendations of the State authorities in that case by transferring most children to home-based detention.

The Inquiry concludes that the protection and assistance which was provided to unaccompanied children was inadequate. It fell short of the 'special protection and assistance' to which unaccompanied children have a right under article 20(1) and therefore amounts to a breach by the Commonwealth.

The Inquiry also finds that the legal guardian of unaccompanied minors, namely the Minister and the Minister's delegates, failed to make the best interests of unaccompanied children 'their basic concern', as required by article 18(1) of the CRC. In the Inquiry's view, one of the primary reasons for this failure lies in the fundamental conflict between the pursuit of a mandatory detention policy and the interests of the individual children who are detained in furtherance of that policy.

Where legal guardianship or associated responsibilities were delegated to Departmental staff, the Inquiry finds that the Department failed to provide appropriate assistance in the performance of those responsibilities, as described above. This is a breach of article 18(2).

The ineffective management of unaccompanied minors also leads the Inquiry to conclude that Australia's detention laws, and the manner in which they were administered by the Department, failed to ensure those children such protection and care as was necessary, in breach of article 3(2).

These failures also impact on an assessment of whether unaccompanied children were provided with the opportunity for the maximum possible development and recovery from past trauma in accordance with articles 6(2) and 39, as well as respect for the inherent dignity of unaccompanied children in accordance with article 37(c). These issues will be discussed further in Chapter 17, Major Findings and Recommendations.

The Inquiry recognises that ensuring the adequate care of unaccompanied children within a detention centre may be extremely difficult. The Inquiry also acknowledges that unaccompanied children who were in detention centres for short periods of time were less affected by that environment than children who were there for longer periods of time. However, Case Studies 1, 2 and 3 demonstrate that the management systems designed to deal with children who were held in detention centres for extended periods were inadequate to protect the best interests of a significant number of unaccompanied children and therefore amount to a breach of article

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3(1) by the Commonwealth. These factors highlight the importance of ensuring that unaccompanied children are detained as a measure of last resort and for the shortest appropriate period of time (article 37(b)).

The Inquiry is also concerned that there were no clear policies in place to ensure that children who became temporarily separated from their parents within detention (due to the hospitalisation, behaviour management or imprisonment of parents) were provided with appropriate care for the duration of the separation. 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, albeit that some of that contact was by phone. The Inquiry therefore finds no breach of article 9(3).

The Inquiry also finds that there have been sufficient efforts to provide children whose parents may be outside Australia with appropriate tracing services and therefore finds no breach of article 22(2).

14.9 Case studies

14.9.1 Case Study 1: Woomera July 2001-June 2002, care arrangements for an eight-year-old unaccompanied child

This case study describes the sequence of events regarding an eight-year-old unaccompanied child who was detained in Woomera in July 2001. To the Inquiry's knowledge, he is the youngest unaccompanied child to have arrived by boat in Australia.

In the Inquiry's view, the treatment of this boy represents the unaccompanied child management system working at its best. The primary documents show that Department and ACM staff went to considerable efforts to try and ensure that this child was looked after in the best way possible. However, despite these genuine efforts:

- The child was fostered by six different foster families over four months, demonstrating the difficulty in organising continuity of care within detention centres.
- It took six weeks for the Department to approach the State welfare authorities for assistance in developing a solution for this child outside the detention environment. The State authority recommended release as soon as possible, yet this recommendation was not acted upon for another two months.²⁰⁶
- It took ten weeks to move the child to the Woomera RHP.
- It took over three months for the Department to recommend that he be granted a bridging visa and another three weeks to grant that visa.
- It took two months to commence the refugee status determination process and almost a year before the Department made a primary decision about his application for a protection visa.

Thus this case study is yet another illustration of the artificial nature of the detention centre environment; the absence of clear procedures for dealing with unaccompanied children in July 2001, for example immediate contact with State authorities; and the strictness of the mandatory detention laws and bridging visa regulations all inherently mitigate against protecting the best interests of the child.

9 July 2001

Child taken into detention at Woomera.

On the journey to Australia, the child is cared for by a family with three children. Upon arrival at Woomera the child and the family are interviewed together. Although the child agrees to remain with the family, he demonstrates independent behaviour, including sleeping in the detention officer's quarters rather than with the family. He agrees to move into the family's quarters but the psychologist recommends that he be carefully supervised by detention officers.²⁰⁷

13 July 2001

Psychologist interviews child and suggests management strategies, including: officers closely monitor foster family arrangements and the child's safety and well-being; the child remain supervised at all times, by either a detention officer or one of his foster parents; and the psychologist review the child on a regular basis.²⁰⁸

13 July 2001

The first 'foster' family advises that they are having difficulty managing the child.²⁰⁹

17 July 2001

Child is fostered to another family in Mike Compound.²¹⁰

24 July 2001

Child moves back to the family that originally fostered him, a temporary arrangement. Concern is expressed that he was found wandering around the compound late at night and a strategy for watching him is set up by ACM staff.²¹¹

25 July 2001

Child is moved again, and two women, both of whom had children of their own, share his fostering.²¹²

7 August 2001

Unaccompanied Minors Committee meeting. Detailed notes are made regarding the child, his behaviour and the capacity of his foster parents to care for him. 'It was suggested that [the child's] family be given extra support. Welfare Officer One was asked to visit each day and ensure that this child attends school and that parenting support is given to the foster Mothers'. It is also determined that the psychologist interviews the child formally.²¹³ Management plan created for the child.

8 August 2001

ACM notes that his younger foster mother not coping with him.²¹⁴

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9 August 2001

Boy is interviewed by the centre psychologist. She reports that:

the flow of the population in the Detention Centre will not give stability to the fostering of this young child. Contact is currently being made with the Family and Youth Services [FAYS] in Port Augusta for advice on this matter.²¹⁵

Psychologist calls FAYS on the same day, to discuss the possibility of the child being fostered in the community.²¹⁶

FAYS advises that the recommendation should be sent through ACM or DIMIA channels rather than from the psychologist directly:

so that any discussion regarding plans for the ongoing care for this child can be held between the appropriate Commonwealth and State officers. Given the age of this child, we would welcome as much notice as possible if you are intending releasing him into the community, to enable us to recruit a suitable placement.²¹⁷

15 August 2001

Memo from the centre psychologist to ACM Centre Manager states that it is unlikely to be possible to arrange:

lasting foster care in the Centre, because of the flow of the population. Successive changes to his care situation will undoubtedly have a disadvantageous effect on this child. ... I request that an immediate referral be made to Family and Youth Services to find a more permanent placement for him. It does not appear to be within the power of ACM at Woomera to provide this child with an environment to support his needs.²¹⁸

16 August 2001

Child's older foster mother is released on a temporary protection visa.

21 August 2001

Department formally approaches FAYS requesting assessment including 'whether an external care arrangement (with a foster family) would be in the best interest' of the child.²¹⁹

24 August 2001

Child is interviewed by FAYS.

29 August 2001

FAYS recommends that it would be in the child's best interests to be removed from the detention environment. The report recommends that the child be placed with a former foster family that had been released from detention. It further states that:

If this is not an option, then the child would need to be matched with an appropriate foster family in the state he is to be released to. The best outcome would be for the child to remain at Woomera until a foster family is found to prevent the child from having a number of short term/emergency placements.²²⁰

30 August 2001

The Department requests that FAYS commence investigating a possible foster placement in South Australia. It also asks that they investigate the possibility of the child being fostered with the family that had been released from detention.²²¹

Early September

Child's younger foster mother leaves the centre at the beginning of September. Another family is found, but the child refuses to move accommodation to be with the new family. He is then fostered by a young couple, a woman aged 17 and a man aged 20,²²² 'but this arrangement has been determined to not be suitable'.²²³ The child is not eligible to participate in the Woomera RHP at this stage as he had not reached the 'immigration stage'.²²⁴

10 September 2001

Department conducts its first interview regarding the refugee status determination phase. The Department engages UNHCR to urgently help with tracing with a view to returning the child to his home country.²²⁵ The Department states that child was not interviewed earlier because he did not present any claims during his initial interview, and the Department hoped to locate his family to return him.

17 September 2001

Western Australian child welfare authority advises that the carer proposed by FAYS officers on 29 August 2001 is an unsuitable foster parent. This information is sent to FAYS by the Department the following day. The Department requests that FAYS continue its efforts to locate a suitable foster family for the child.²²⁶

18 September 2001

FAYS asks a series of questions about the type of visa likely to be granted, the probable timing of his release from detention and costs. Department responds on 25 September 2001.²²⁷

28 September 2001

Child is moved to the Woomera RHP to the care of a foster mother who had two sons aged nine and seven, until her release on 16 October 2001. He is then fostered by a woman who had one son.²²⁸ ACM requests staff provide a weekly report on the child.²²⁹

5 October 2001

Department gives FAYS an update on the child's progress and asks them to provide advice regarding a possible placement.²³⁰

12 October 2001

Department recommends that child be granted a bridging visa.²³¹

1 November 2001

Boy released into the community on a bridging visa.

18 June 2002

Boy recognised as a refugee and granted a temporary protection visa.

14.9.2 Case Study 2: Woomera November 2001, group self-harm by unaccompanied children

This case study describes an incident that occurred in November 2001, where eleven unaccompanied children from Woomera attempted self-harm after ACM moved them to a safer and more child-appropriate compound.

As with the first case study, this case demonstrates that the detention environment is unsuited to protecting the best interests of unaccompanied children, even when staff are trying to do their best. However, unlike the first case study, this example does not represent the case management or monitoring system at its best.

While the Inquiry accepts that the purpose of moving the boys to the safer compound was appropriate, the move appears to have been poorly handled given the pre-existing knowledge that the children were unhappy about it. Furthermore, the management and security systems intended to protect children clearly failed to prevent the occurrence of self-harm. Nevertheless, the Inquiry acknowledges that the self-harm incident may not have been due to the failure of the management strategy itself as the detention environment as a whole made preventing such behaviour extremely difficult. This is discussed in greater detail in Chapter 8 on Safety and Chapter 9 on Mental Health.

The Department did ultimately impose an economic sanction on ACM regarding this event. However, the Department's monitoring documents do not suggest that it viewed this event as a sign of the mental fragility of the unaccompanied children or the inappropriateness of the environment for those children. The State child protection authority was immediately notified of the self-harm. However, this incident did not trigger efforts to arrange for these children to be removed from the environment.

The chronology of events is as follows:

6 November 2001

The Unaccompanied Minors Committee meeting reports that some of the unaccompanied children had been:

refusing to attend school or to go to work. The attitude of the UAMs was extremely negative. They have claimed ownership of the Designated Officers in that they believe the Officers are working for them. If they cannot have their own way they simply refuse to go to school, to work or they simply trash their rooms. The officers have tried to enforce good behaviour with a positive outcome but this does not always have a good result.²³²

9 November 2001

The UAM progress report states the '[c]urrent mood of the UAMs is good with some longer-term resident UAMs demonstrating frustration and despondency'.²³³

16 November 2001

ACM moves 25 unaccompanied children from Main Compound to Mike Compound for 'behavioural management purposes'.²³⁴ Incident reports note that the children

were not staying in their designated area in Main Compound, were not complying with curfew restrictions and were not attending education daily.²³⁵ Incident reports further note that the move to Mike Compound was decided upon for the following reasons:

- Large open areas to better facilitate recreational programs.
- The opportunity to further enhance the monitoring, educational attendance and active participation of all resident UAMs accommodated in Mike compound.
- To further enhance the family environment for all of the UAMs accommodated within Mike compound.²³⁶

Some of the unaccompanied children make it clear to ACM officers that they are not happy with the move. This prompts the calling of an eight-member Centre Emergency Response Team (CERT) to 'provide assistance if required'. A directive was 'issued to the non-compliant UAMs to pack their personal belongings, or that the officers would have to pack it for them'.²³⁷ Two of the children lie on the floor, but are assisted to their feet and the move is completed.

After the children are moved, a group of Afghan unaccompanied children indicate that they are not happy in Mike Compound and request permission to return to the Main Compound.

At 12.25pm on the same day, 14 of the unaccompanied children 'held razor blades to their arms and demanded to be returned to the Main compound'. Eleven of these children inflict 'minor lacerations to their arms and a number to their chests'. The children are aged between 12 and 17 years. The incident report notes that '[t]he injuries are relatively minor and all were returned to Mike compound except [one unaccompanied child] who was moved to India compound'.²³⁸

FAYS are asked to address the immediate self-harm problem. They are not asked to assess whether it was in the children's best interests to remain in Woomera. A psychologist is asked to counsel all of the unaccompanied children.

19 November 2001

The self-harm incident is discussed at the HRAT meeting:

The current situation regarding the UAMs was discussed at great length, and it was decided by the team members that all of the UAMs had responded in a positive manner to the counselling from both the psychology and designated officer staff.²³⁹

20 November 2001

The Unaccompanied Minors Committee meeting minutes report that the children have been moved, and that there are no further concerns about them. The minutes note that the Centre Social Psychologist has been asked by the Centre Manager to explain why the 'UAM's behaviour is so difficult' and that he will interview each unaccompanied child and prepare a report.²⁴⁰

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22 November 2001

Contract Operations Group meeting minutes²⁴¹ report a general discussion of self-harm, with no reference to the incident with the eleven unaccompanied children. The recommended action is to 'consider options for reducing incidents of self-harm'.²⁴²

23 November 2001

The progress report on unaccompanied children for 23 November 2001 notes that the '[c]urrent mood of the UAMs has improved towards the end of this week', and that the 'ACM Centre Psychologists are monitoring the UAMs along with the designated UAM officers'.²⁴³

27 November 2001

The Unaccompanied Minors Committee meeting minutes note that 'the huge upheaval in moving them all to Mike compound had upset the boys [but that] now they were much more settled and happy'.²⁴⁴ There is no mention of the self-harm inflicted by the unaccompanied children.

November 2001

The Woomera Department Manager report makes very brief reference to unaccompanied children. The report states that '[f]ollowing a move to a different compound eleven unaccompanied minors made self-harm attempts – minor lacerations to arms and in a number of instances, chests. Placed on HRAT – FAYS informed'.²⁴⁵ Exactly the same text is used in the December 2001 report.

December 2001

During December the Unaccompanied Minors Committee meeting minutes either report that the unaccompanied children are happy, or make no mention of them at all. Extremely similar comments are made in the progress reports for the remainder of December.

Department Unaccompanied Minor Teleconference minutes make no mention of the situation of the unaccompanied children at Woomera.

As the Department is 'of the view that the unaccompanied minors were not protected from harmful influences in this instance' a sanction is applied in the Performance Linked Fee Report for the December 2001 quarter. In response to the deduction of points, ACM states that the movement of the children was to remove them from 'harmful influences in the main compound', and that there was extensive liaison with the children prior to the move.²⁴⁶

22 January 2002

The Contract Operations Group meeting minutes note 'great concern due to the involvement of the large numbers of Unaccompanied Minors'.²⁴⁷

The Department informed the Inquiry that there was intensive and ongoing monitoring and follow-up of all unaccompanied minors involved in the self-harm incident:

For example, a social needs analyst was employed at Woomera to prepare “Care and Social Support/Development Personal Management Plans” for each unaccompanied minor. Furthermore, the DIMIA representative at the UAM Committee meeting on 4 December 2001 reported that the children had informed her they did not want to meet with her as often as had been occurring. In addition there was extensive and ongoing telephone contact with the department’s Central Office about the incident.²⁴⁸

However, as described earlier in this chapter, the Inquiry is not satisfied that the case management plans sufficiently considered the situation or needs of unaccompanied children, and the telephone contact regarding the incident was not documented.

Furthermore, it is disappointing that this series of events did not trigger the Department or the Minister into taking steps to bring about the release of these children from the detention environment that was clearly causing them such distress – either by transferring these children to home-based detention or commencing the process of obtaining a ‘best interests’ bridging visa (see further Chapter 6 on Australia’s Detention Policy).

14.9.3 Case Study 3: Woomera, January 2002, group self-harm resulting in removal of unaccompanied children

This case study describes the involvement of unaccompanied children in the hunger strikes, lip-sewing and other acts of self-harm in Woomera in January 2002. This incident was serious enough to trigger the transfer of almost all unaccompanied children in Woomera to foster care and group homes in Adelaide. The mechanisms for this transfer are discussed in some detail in Chapter 6 on Australia’s Detention Policy. The general circumstances leading up to these protests are described in Chapter 8 on Safety. The information set out below sets out the case management documents for most of the unaccompanied children who took part in these protests and the assessments conducted by FAYS when it was called in to help in January 2002.

The documents demonstrate that for the most part internal records either failed to identify the mental fragility and other worries of unaccompanied children that contributed to these drastic acts or failed to recommend any specific strategies to ensure the overall well-being of those children. They also raise the question as to why FAYS was not called in to assess the well-being of the children prior to this incident rather than afterwards.

While there is some evidence to suggest a failure to take sufficient proactive measures to ensure the best interests of children are a primary consideration within detention centres, in the Inquiry’s view it would be over-simplistic to conclude from this that the self-harm was the direct result of those weaknesses. Rather, as the Department and ACM have stressed to the Inquiry, there are a variety of pressures within Woomera that led to the incident. For example, the Department explained that these disturbances:

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mainly involving adults ... included hunger strikes, lip-sewing, and occasional other acts of self harm, that encouraged the actions of the unaccompanied minors. ... Despite the efforts of ACM and DIMIA, the behaviour of the adults involved clearly influenced the children, ultimately rendering it necessary for the department to remove the majority of unaccompanied minors.²⁴⁹

The covering letter to the 28 January 2002 FAYS report makes a link between the 'group suicide pact' by certain unaccompanied children and the desire to pressure the Government to release them from detention:

[t]he Department of Human Services remains seriously concerned regarding all minors in Woomera. They have stated that they are intending to "group suicide" and whilst this statement can be regarded as an attempt to pressure the Commonwealth government to release them from detention the risk of suicide remains high.²⁵⁰

The fact that children would go to such desperate measures, albeit under the influence of other detainees, only goes to emphasise the inappropriateness of keeping unaccompanied children within immigration detention centres. It shows the difficulties of protecting a child's best interests within that environment and the corresponding importance of ensuring that children are removed as soon as possible.

The first group of children released into alternative detention included five unaccompanied children. On 14 January 2002, the Department requested that FAYS conduct urgent investigations of the situation of three of these children, the youngest unaccompanied children in the centre. Specifically FAYS was asked about the possibility of having the children alternatively housed, outside the centre, on a bridging visa. These children were aged between 12 and 14 years of age and had been detained at Woomera between June and August 2001. These children were removed from Woomera on 24 January 2002.

On 16 January 2002, hunger strikes began at Woomera in response to the Minister's announcement that all processing of applications by Afghan asylum seekers would be suspended. Following are details regarding two of these children:

Child 1 – 12-years-old, detained June 2001, transferred to Adelaide 24 January 2002

Case management plan (December 2001): '[Child] is always polite and well behaved. He tends to follow the lead of the older boys and subsequently has been involved in one minor disturbance'. The only recommendation on the attached ICASS form is that he attends St Michael's school.

This child was one of the youngest unaccompanied children in Woomera during 2001. On 18 December 2001, he alleged he was assaulted by ACM officers.²⁵¹ On 20 January 2002, he sewed his lips together. He remained on hunger strike until he was removed from the centre on 24 January 2002. In documents provided to the Commission, there is no evidence of this child being allocated a detainee mentor or an ACM staff member to monitor his welfare.

Child 2 – 14-years-old, detained August 2001, transferred to Adelaide 24 January 2002

Case management plan (December 2001) '[Child] interacts well with the other UAMs and is generally polite and well mannered. He follows direction accordingly and has never been in any trouble'. There are no recommendations for the management of this child.

A month later, he threw himself against a wall, threatened to kill himself at least three times, went on hunger strike and ingested shampoo.

Four more unaccompanied children were removed from Woomera on 27 January 2002. Three of these children had been assessed by FAYS in the previous days. FAYS reported on 26 January 2002 that the children assessed 'should be removed as a matter of urgency from the Detention Centre'.²⁵² Following are details regarding two of these children:

Child 3 – 15-years-old, detained June 2001, transferred to Adelaide 27 January 2002

Case management plan (December 2001): '[Child] is a very quiet young man and is always polite and well mannered. He tends to follow the other UAMs in which ever direction they take. [He] has been involved in one minor disturbance'. The ICASS form for this child recommended the development of links with the UAM designated officer and the education officers.

On 23 January FAYS noted that the child reported that 'he had sewn his own lips and is on a hunger strike that is in it's 8th day'; 'that when upset he removes himself to a corner and cries and has no one to talk to about his situation'; and that he had 'no adult support within the centre and no information about his own family's whereabouts and well being'.²⁵³ This child clearly felt like there was no person who had his best interests at heart.

Medical records of 19 January 2002 noted his hunger strike (four days after he started). At that point he had already sewn his lips together. He was taken to the Woomera Base Hospital on 19 January, returned to the centre and then hospitalised again on 4 January 2002.²⁵⁴ He was transferred from Woomera to Adelaide on 27 January 2002.

Child 4 – 16-years-old, detained April 2001, transferred to Adelaide on 27 January 2002, released 12 February 2002

No case management plans were received for this child.

On 26 January 2002, FAYS reported that the child had been on hunger strike since at least 19 January 2002, had ingested shampoo on 21 January 2002,²⁵⁵ when he was admitted to the Woomera Base Hospital. He remained on hunger strike until 25 January 2002.

FAYS reported that he 'presented as highly depressed, with an inability to focus his energies on anything other than dying via starvation and dehydration'.²⁵⁶ One possible reason for this depression was that he was successful in the Refugee Review Tribunal in early November,²⁵⁷ but was not released on a temporary protection visa until 12 February 2002. There are no documents suggesting that the child was assisted and supported throughout this difficult time.

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A number of unaccompanied children remained in the centre. Five of these children were the subject of the FAYS assessment of 28 January 2002 after the hunger strikes, which suggests that the children felt like their needs were not given sufficient priority and they therefore felt they had to resort to this form of protest:

The Afghani minors identified a cycle of initial co-operation with no perceived outcome, frustration/aggression and then experiencing despair and desperation. They report being on a hunger strike for 10 days (in protest of holds on visa processing) but say they have been taking liquids. ... They were resolved that a drastic action of self harm was the only option to draw attention to their despair of their living conditions.

They also pressed a futility and frustration at the amount of people who had spoken to them within the camp, concerned for their well-being, who do nothing to change their circumstances. They stated that the compound is unfriendly, they are unable to play in the yard, as they get scratched by rocks. They indicated that a lack of education, work or skill development activities (ie computer skills) added to their despair. Not knowing where any of their family were was also distressing for them. They also indicated they had all seen a psychologist at the WIRPC, but found this of no assistance.²⁵⁸

FAYS recommended the children's immediate release from the centre. The Department did not act on this recommendation. A week later, on 7 February 2002, these children reinstated their pact to self-harm if they were not removed from the centre by the end of the day.²⁵⁹ In a letter of 7 February 2002, DHS again 'strongly recommended that the young people subject to these notifications be placed outside the Woomera Detention Centre to ensure their safety'.²⁶⁰ These five unaccompanied children were finally released into alternative detention on 8 February 2002.

It is of concern to the Inquiry that, despite the desperate measures taken by these children in January 2002, the case management plans from December 2001 indicate very few issues of concern regarding these children, nor do they mention any forward looking management strategies.

Child 5 – 17-years-old, detained January 2001, transferred to Adelaide 8 February 2002

Case management plan (December 2001): 'No outstanding DIMA/legal matters at this time. Has not indicated any wish to depart Australia voluntarily'. The attached ICASS form stated that he 'wants to see psychologist. Stopped attending English classes after rejection – broken heart'.

January 2002, participated in group suicide pact. Transferred to alternative detention on 8 February 2002.

Child 6 – 17-years-old, detained June 2001, transferred to Adelaide 8 February 2002

Case management plan (December 2001): '[Child] is a hard worker and always follows directions accordingly. He is polite and well spoken. [He] has been involved in one minor disturbance'. There are no recommendations for the management of this child.

January 2002, participated in group suicide pact.

**Child 7 – 17-years-old, detained June 2001,
transferred to Adelaide 8 February 2002**

Case management plan (December 2001): '[Child] is a quiet, well mannered young man. He continues to be a positive influence on the other UAMs. [He] has no known issues'.

January 2002, participated in group suicide pact.

**Child 8 – 17-years-old, detained June 2001,
transferred to Adelaide 8 February 2002**

Case management plan (December 2001): '[Child] interacts well with other residents and is always polite and well mannered. [He] always follows directions accordingly. He has no known issues'. There are no recommendations for the management of this child.

January 2002, participated in group suicide pact.

**Child 9 – 16-years-old, detained August 2001,
transferred to Adelaide 8 February 2002**

Case management plan (December 2001): '[Child] is a quiet polite young man. He is always happy and follows direction accordingly. He has no known problems or issues'. However, the attached ICASS form stated that he is '[u]nhappy in this prison'.

January 2002, participated in group suicide pact.

The Unaccompanied Minors Committee meeting minutes taken at the time indicate that ACM staff took very seriously the situation of unaccompanied children in the centre during January. The minutes of the meeting of 22 January 2002 describe in detail the situation of several of these children. The minutes of 29 January 2002 indicate substantial discussion of the situation of the remaining unaccompanied children.

However, the Department's monitoring systems do not indicate detailed consideration of what was happening to these children. In January 2002, the following was the only reference in the Department Centre Manager's report:

A number of unaccompanied minors made threats to self harm or actually made attempts. Investigated by FAYS and some then released to home based detention in Adelaide, others then made threats or attempts in the belief that they too would be released – most were right.²⁶¹

The Department's teleconferences regarding unaccompanied children had commenced by this stage. However, there is no mention of the hunger strike in the minutes of the meeting of 31 January. Even if the discussion about individuals was not minuted, there is no evidence of consideration of the overall situation of the unaccompanied children or of action that may have been possible to remedy it.

At the Inquiry hearing a senior officer from the Department stated that the situation in January 2002 emerged very quickly and that 'we didn't anticipate at that point that unaccompanied minors would be involved or would be impacted by that significant incident that happened at Woomera at the end of January'.²⁶² However,

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it is of concern that it took the dramatic events of January 2002 before there was any consideration of whether it was in the best interests of these children to remain in detention, or whether it would be possible for an alternative to their detention to be organised by the Department.

ACM's case management strategy was clearly not meeting the needs of these children. This is evident in a comparison between the case management reports of December 2001, and the events of January 2002. For every child there is a glaring discrepancy between the comment on their case management plan, and their situation a month later. These case management plans generally contained only brief discussion of the circumstances of each child and in most cases cannot be described as detailed evaluations of the welfare and special needs of these children. More detailed case management plans may not have prevented the events of January 2002. However, given the extent of the distress exhibited in January 2002, it is surprising that the case management plans of December 2001 did not demonstrate concern at the impact of detention on these children.

ACM emphasises that they had no control over the factors precipitating the hunger strike, and that it was commendable that 'ACM was able to ensure that no UAM inflicted serious injury or harm to themselves'.²⁶³ However, the Inquiry strongly disagrees that it can be concluded that no unaccompanied child inflicted serious injury or harm to themselves, given the dramatic events described above.

Endnotes

- 1 Note that the Separated Children in Europe Programme (a joint initiative of Save the Children and UNHCR) uses the term 'separated children' rather than unaccompanied minor because 'it better defines the essential problem that children face. Namely that they are without the care and protection of their parents or legal guardian and as a consequence suffer socially and psychologically from this separation'.
- 2 DIMIA, Submission 185, p107. The Department notes that there are two types of unaccompanied children: Unaccompanied Wards are non-citizens under the age of 18 years, who do not have a parent or relative (who is over the age of 21) to care for them in Australia; Unaccompanied Non-wards do not have a parent, but do have a relative over the age of 21 years to care for them in Australia. ACM defines unaccompanied children as 'Children under 18 years of age who are not accompanied by a parent or adult sibling or relative'. ACM, Policy 1.1, Glossary, Issue 6, 12 June 2002.
- 3 See further Chapter 3, Setting the Scene, section 3.5.1.
- 4 Note that there is also some overlap with Chapter 8 on Safety which discusses the involvement of unaccompanied children in various protests during the same period.
- 5 For example, of the nine unaccompanied children considered in Case Study 3 at the end of this chapter, who remained in detention in early 2002, one had been detained since January 2001, one since April 2001, five since June 2001, and two since August 2001.
- 6 DIMIA has argued that this is an inappropriate period for the Inquiry to focus on because the large influx of detainees over 2001 'required the department to focus on these practical aspects of managing detention before focussing on improving facilities, amenities and services and the development of more comprehensive educational and recreational programs'. DIMIA, Response to Draft Report, 10 July 2003.
- 7 The Inquiry notes that while there are very few unaccompanied children resident in detention centres as at September 2003, the systems established for the care of unaccompanied children continue to apply to those few who continue to be detained within the centres.
- 8 UNHCR, *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum* (UNHCR UAM Guidelines), Geneva, 1997, para 5.7.

- 9 UNHCR UAM Guidelines, para 5.7.
- 10 UNHCR UAM Guidelines, para 5.7.
- 11 Save the Children and UNHCR, Separated Children in Europe Programme, *Statement of Good Practice*, para C.4.; UNHCR UAM Guidelines, para 8.3.
- 12 UNHCR UAM Guidelines, p2.
- 13 UNHCR UAM Guidelines, para 7.7.
- 14 UNHCR UAM Guidelines, paras 7.4-7.5.
- 15 UNHCR UAM Guidelines, para 5.17.
- 16 *Immigration (Guardianship of Children) Act 1946 (Cth)* (IGOC Act), ss6, 4AAA.
- 17 IGOC Act, s6.
- 18 IGOC Act, s5.
- 19 DIMIA, Letter to Inquiry, 13 December 2002.
- 20 Case management plans created at Curtin in late 2001 state that the children were either under the guardianship of the mental health team or the counsellor. ACM Curtin, Detainee Management Strategies, 19 November, 20 November 2001, (N2, Q3, F2); ACM Curtin, Detainee Management Strategy, 30 March 2001, (N2, Q3, 19 August 2002).
- 21 DIMIA, Submission 185, p33.
- 22 DIMIA, Submission 185, p98.
- 23 DIMIA, Submission 185, p102.
- 24 IDS, 1998, para 9.2.1, www.immi.gov.au/detention/det_standards.htm.
- 25 DIMIA, Unaccompanied Minor Teleconference Minutes, 5 September 2002. DIMIA, Letter to Inquiry, 27 November 2002, Attachment B.
- 26 DIMIA, Response to Draft Report, 10 July 2003.
- 27 DIMIA, Migration Series Instruction 357, Procedures for unaccompanied wards in immigration detention facilities (MSI 357), 2 September 2002, paras 3.4.1, 3.4.3.
- 28 DIMIA, MSI 357, para 6.1.1.
- 29 DIMIA, MSI 357, para 6.1.2.
- 30 DIMIA, MSI 357, para 6.2.1-6.2.5.
- 31 DIMIA, MSI 357, section 9.
- 32 DIMIA, MSI 370, 2 December 2002, para 1.1.5.
- 33 ACM Woomera, Unaccompanied Minors (UAM) Team Meeting, 3 April 2001, (N2, Q5, F4).
- 34 ACM, Policy 16.1, Special Care Needs for Minors and Unaccompanied Minors, Issue 4, 12 August 2001.
- 35 ACM Woomera, Procedure 16.01, Special Care Needs for Minors and Unaccompanied Minors, 16 November 2001, (N1, Q19, F18).
- 36 ACM Woomera, Procedure 16.06, Integrated Care & Social Support Program, 22 May 2002, para 3.1, (N1, Q19, F18).
- 37 Dr Marie O'Neill, Submission 252, para 20.
- 38 Sharon Torbet, Submission 62a, para 30.
- 39 ACM Woomera, Procedure 16.01, para 4.9, (N1, Q19, F18).
- 40 ACM Woomera UAM Officer, Memos and reports, to ACM Operations Manager, 10 January 2001, 12 January 2001, 13 January 2001, 14 January 2001, 15 January 2001, 19 January 2001, 22 January 2001, 23 January 2001, (N1, Q19, F18).
- 41 Unaccompanied Minor (UAM) Team Meetings were weekly meetings of all ACM staff at Woomera involved in the care of unaccompanied children. These meetings were also attended on occasion by Department officers. The first set of minutes for this meeting provided to the Inquiry are from 3 April 2002, (N2, Q5, F4).
- 42 The minutes of these meetings indicate that there was a designated officer for unaccompanied children from this time, although designated officers were not in attendance at all meetings, (N2, Q5, F4).
- 43 ACM Woomera, Unaccompanied Minors (UAM) Committee Meeting, 6 November 2001, (N2, Q5, F4).
- 44 ACM Woomera, Unaccompanied Minors (UAM) Committee Meeting, 13 November 2001, (N2, Q5, F4).
- 45 DIMIA Port Hedland, Manager Report, January-March 2001, (N1, Q4a, F5).
- 46 DIMIA Port Hedland, Manager Report, July-September 2001, (N1, Q4a, F5).
- 47 Katina Kannis, DIMIA Port Hedland Manager, Affidavit, 1 March 2002, para 18, filed in proceedings before the Full Federal Court, *Odhiambo v Minister for Immigration and Multicultural Affairs* (2002) 122 FCR 29.
- 48 DIMIA Curtin, Manager Report, October 2001, (N1, Q3a, F5); See also DIMIA Curtin, Manager Report, November 2001; December 2001, (N1, Q3a, F5).

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- 49 Inquiry, Interview with unaccompanied child, Woomera, January 2002.
- 50 Inquiry, Interview with unaccompanied child, Woomera, January 2002.
- 51 Inquiry, Focus group, Adelaide, July 2002, unaccompanied child formerly detained at Woomera.
- 52 ACM emphasised to the Inquiry that the purpose of regular observation of unaccompanied children is to ensure 'the safety and well being of unaccompanied children is maintained at all times'. ACM, Response to Draft Report, 5 September 2003.
- 53 Inquiry, Focus group, Melbourne, May 2001, unaccompanied child.
- 54 Inquiry, Focus group, Sydney, April 2002.
- 55 Inquiry, Focus group, Melbourne, May 2002, unaccompanied child formerly detained at Curtin.
- 56 Inquiry, Focus group, Sydney, April 2002, unaccompanied child formerly detained at Curtin.
- 57 DIMIA, MSI 357, Procedures for Unaccompanied Wards in Immigration Detention Facilities, 2 September 2002.
- 58 ACM, Response to Draft Report, 5 September 2003.
- 59 ACM, Letter to Inquiry, 14 November 2002.
- 60 DIMIA, Submission 185, p101.
- 61 DIMIA, Submission 185, p101.
- 62 It appears that, in total, 34 management plans for unaccompanied children were created at this time, as this number were forwarded to DHS in South Australia on 7 December 2001. DIMIA Woomera Deputy Manager, Letter, to DHS, FAYS, Port Augusta, 7 December 2001, (N2, Q7, F6).
- 63 The April 2001 plan notes that it specifically refers to five children. ACM Woomera, Minors Management Plan, 15 March 2001; ACM Woomera, Minors Management Plan, 18 April 2001; ACM Woomera, Unaccompanied Minors & Children Management Plan, 18 April 2001, (N2, Q3, F2).
- 64 ACM Woomera, Unaccompanied Minor Plan, 16 August 2001, (N2, Q3, F2).
- 65 ACM Woomera, Unaccompanied Minors (UAM) Committee Meeting, 20 November 2001, (N2, Q5, F4).
- 66 ACM Woomera, Unaccompanied Minors (UAM) Committee Meeting, 20 November 2001, (N2, Q5, F4).
- 67 ACM, Response to Draft Report, 5 September 2003.
- 68 ACM Woomera, Unaccompanied Minor Management Care Plan, December 2001, for unaccompanied child detained since 2 January 2001, (N2, Q3, F2).
- 69 ACM Woomera, Unaccompanied Minor Management Care Plan, December 2001, for unaccompanied child detained since 2 January 2001, (N2, Q3, F2).
- 70 ACM Woomera, Detainee Individual Management Strategies, undated, but probably produced in July 2002, for child detained since 5 January 2001, (N2, Q3, F2).
- 71 ACM Woomera, Unaccompanied Minor Management Care Plan, undated but probably December 2001, for unaccompanied minor detained since 3 June 2001, (N2, Q3, F2).
- 72 DIMIA, Information Required (N2, Q1, F1).
- 73 DIMIA Port Hedland, Manager Report, October 2001, (N5, Q3a, F5).
- 74 DIMIA Port Hedland Manager, Minute, to ACM Health Services Manager, 26 October 2001.
- 75 ACM Port Hedland, Unaccompanied Minors Management Plan, 12 December 2001, (N5, Case 8).
- 76 DIMIA Port Hedland, Manager Report, January 2002, (N1, Q3a, F5).
- 77 ACM Curtin, Detainee Management Strategy, 30 March 2001, for unaccompanied child detained since 15 March 2001, (N2, Q3, 19 August 2002).
- 78 ACM Curtin, Detainee Management Strategy dated 19 November 2001, for unaccompanied child detained since 8 January 2001, (N2, Q3, F2).
- 79 ACM Curtin, Detainee Management Strategy, 18 January 2002, for unaccompanied child detained since 21 March 2001, (N2, Q3, 19 August 2002).
- 80 ACM Curtin, Detainee Management Strategy dated 20 November 2001, for unaccompanied child detained since 21 March 2001, (N2, Q3, F2).
- 81 DIMIA, Information Required (N2, Q1&Q2, F1).
- 82 ACM, Response to Draft Report, 5 September 2003.
- 83 ACM, Response to Draft Report, 5 September 2003.
- 84 DIMIA, Response to Draft Report, 10 July 2003.
- 85 The Department of Human Services (DHS) is responsible for child protection and child welfare in South Australia. Family and Youth Services (FAYS) is the section of DHS that manages these responsibilities.
- 86 ACM, Letter to Inquiry, 14 November 2002. Minutes for meetings were provided from February 2001 onwards.
- 87 The name of these meetings changed over time. They were initially called the Unaccompanied Minors (UAM) Committee Meeting, then in early 2003 the Unaccompanied Minors and Minors (UAMM) Committee Meeting, then finally the Minors Committee meeting.

- 88 ACM Woomera, Unaccompanied Minors (UAM) Committee Meeting, 20 September 2001, (N2, Q5, F4).
- 89 ACM Woomera, Unaccompanied Minors (UAM) Committee Meeting, 22 January 2002, (N2, Q5, F4).
- 90 ACM Woomera, Minors Committee Meeting, 30 April 2002, (N2, Q5, F4).
- 91 ACM, Letter to Inquiry, 14 November 2002.
- 92 ACM Port Hedland, Unaccompanied Minors Meeting Minutes, 1 November 2001, 8 November 2001, 3 January 2002, (N1, Q19, F18); ACM Port Hedland, Unaccompanied Minors Meeting Minutes, 29 November 2001. DIMIA, Letter to Inquiry, 27 November 2002, Attachment B. The October 2001 Department Manager Report notes that the meetings were already occurring; however, the Inquiry only received minutes from November 2001 onwards.
- 93 ACM Port Hedland, Unaccompanied Minors Meeting Minutes, 3 January 2002, (N1, Q19, F18).
- 94 ACM Port Hedland, Unaccompanied Minors Meeting Minutes, 31 January 2002, 13 February 2002, (N1, Q19, F18).
- 95 Katina Kannis, DIMIA Port Hedland Manager, Affidavit, 1 March 2002, para 27, filed in proceedings before the Full Federal Court, *Odhiambo v Minister for Immigration and Multicultural Affairs* (2002) 122 FCR 29.
- 96 Department teleconference minutes indicate that there were three unaccompanied children detained at Port Hedland in March 2002, two in April 2002 and one in May and June 2002. DIMIA, Unaccompanied Minor Teleconference, 14 March 2003, 28 March 2003, 11 April 2003, 2 May 2003, 6 June 2003, 27 June 2003. DIMIA, Letter to Inquiry, 27 November 2002, Attachment B.
- 97 ACM reported that with regard to Curtin, 'Meetings were held but ACM cannot say when they were first held because it cannot now find minutes for meetings among the archived records for Curtin, some of which presumably have been destroyed by fire'. ACM, Letter to Inquiry, 14 November 2002. However, the Inquiry received minutes for meetings between June and December 2001.
- 98 Progress Reports regarding unaccompanied children for all of 2001 and until June 2002 were provided to the Inquiry.
- 99 ACM Woomera, UAMs Progress Report, 8 June 2002, (N2, Q6, Attachment B).
- 100 ACM Woomera, Unaccompanied Minors (UAM) Committee Meeting, 3 July 2001, (N2, Q5, Supp 1).
- 101 ACM Woomera, UAMs Progress Report, 15 February 2002, (N2, Q6, Attachment B).
- 102 A detached minor is a child who is not accompanied by a parent, but is accompanied by a relative over the age of 21 years. Despite the Department's differentiation between unaccompanied minors and detached minors, within detention detached minors were usually cared for in the same manner as unaccompanied minors.
- 103 ACM Curtin, Detainee Management Strategies, March 2001, (N2, Q3, 19 August 2002).
- 104 DIMIA, Response to Draft Report, 10 July 2003.
- 105 The IGO Act requires that an unaccompanied child intends to become a permanent resident of Australia for guardianship to vest in the Minister; s4AAA. The Department indicated in evidence before the Inquiry that unaccompanied children who are seeking asylum in Australia are treated as having such an intention.
- 106 See Chapter 6 on Australia's Detention Policy.
- 107 IGO Act, ss6, 4AAA.
- 108 IGO Act, s6.
- 109 The Federal Court has jurisdiction to supervise the Minister's function as guardian pursuant to s6 of the IGO Act and s39(1A)(c) of the *Judiciary Act 1903* (Cth): *X v Minister for Immigration and Multicultural Affairs*, (1999) 92 FCR 524 at [79]; *Jaffari v Minister for Immigration and Multicultural Affairs* (2001) 113 FCR 10 at [16].
- 110 *X v Minister for Immigration & Multicultural Affairs* (1999) 92 FCR 524 at [43].
- 111 *X v Minister for Immigration & Multicultural Affairs* (1999) 92 FCR 524 at [41] and [43].
- 112 *Bennett v Minister for Community Welfare* (1992) 176 CLR 408 at 411 per Mason CJ, Deane and Toohey JJ. See also *Johnson v Department of Community Services* (2000) Australian Torts Reports 81-540.
- 113 *Birchnell v Equity Trustees, Executors and Agency Co Ltd* (1929) 42 CLR 384 at 408 per Dixon J; *Hospital Products Ltd v United States Surgical Corporation* (1984) 156 CLR 41 at 67 per Gibbs CJ, at 96-7 per Mason J.
- 114 DIMIA, Submission 185, pp2, 33, 42.
- 115 DIMIA, Transcript of Evidence, Sydney, 2 December 2002, p23; DIMIA, Transcript of Evidence, Sydney, 3 December 2002, p102.
- 116 ACM Woomera, Unaccompanied Minors (UAM) Committee Meeting, 29 May 2001, (N2, Q5, F4).

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- 117 DIMIA, Transcript of Evidence, Sydney, 3 December 2002, p107; DIMIA, Transcript of Evidence, Sydney, 4 December 2002, p6.
- 118 DIMIA, Transcript of Evidence, Sydney, 4 December 2002, p6.
- 119 DIMIA, Submission 185, pp4, 50, 92-93, 98, 101-102; DIMIA, Transcript of Evidence, Sydney, 3 December 2002, p107.
- 120 DIMIA, Transcript of Evidence, Sydney, 2 December 2002, p54.
- 121 Justice P. N. Bhagwati, Regional Advisor for Asia and the Pacific of the United Nations High Commissioner for Human Rights, Mission to Australia 24 May to 2 June 2002, *Human Rights and Immigration Detention in Australia*, para 53.
- 122 SCALES, Transcript of Evidence, Perth, 10 June 2002, p5.
- 123 RCOA, Submission 107, p6.
- 124 *Odhiambo v Minister for Immigration and Multicultural Affairs* (2002) 122 FCR 29 at [92].
- 125 *Odhiambo v Minister for Immigration and Multicultural Affairs* (2002) 122 FCR 29 per Black CJ, Wilcox and Moore JJ.
- 126 See further Chapter 7 on Refugee Status Determination.
- 127 Minister for Immigration and Multicultural and Indigenous Affairs, Border Protection, Children in Detention, HREOC Children in Detention Inquiry, Public Hearings, Fact versus Fiction, Conflict of interest, at http://www.minister.immi.gov.au/borders/detention/hreoc_issues/conflict.htm, viewed 24 December 2003.
- 128 RCOA, Submission 107, p6.
- 129 Harold Bilboe, Submission 268, para 50.
- 130 Anthony Hamilton-Smith, Transcript of Evidence, Adelaide, 2 July 2002, p14.
- 131 See Chapter 5 on Mechanisms to Protect Human Rights for a detailed discussion on the Department's monitoring mechanisms.
- 132 DIMIA, Submission 185, pp4, 50, 93, 98, 102.
- 133 DIMIA, Unaccompanied Minor Teleconference Minutes, 13 December 2001. DIMIA, Letter to Inquiry, 27 November 2002, Attachment B.
- 134 Katina Kannis, DIMIA Port Hedland Manager, Affidavit, 1 March 2002, para 17, filed in proceedings before the Full Federal Court, *Odhiambo v Minister for Immigration and Multicultural Affairs* (2002) 122 FCR 29.
- 135 ACM Woomera, UAM and UAW Progress Report, 30 March 2001, (N1, Q19, F18).
- 136 ACM Woomera, Progress Report on Unaccompanied Minors, 20 April 2001, (N2, Q6, Attachment B).
- 137 ACM Woomera, Progress Report on Unaccompanied Minors, 11 May 2001, (N2, Q6, Attachment B).
- 138 ACM Woomera, UAMs Progress Report, 8 June 2001; ACM, Woomera, UAMs Progress Report, 22 June 2001, (N2, Q6, Attachment B).
- 139 ACM Woomera, Unaccompanied Minors (UAM) Committee Meeting, 16 October 2001, (N2, Q5, F4).
- 140 DIMIA Curtin, Unaccompanied Minors Meeting, 22 June 2001. DIMIA, Letter to Inquiry, 27 November 2002, Attachment B.
- 141 DIMIA, Unaccompanied Minor Teleconference Minutes, 13 December 2001. DIMIA, Letter to Inquiry, 27 November 2002, Attachment B.
- 142 DIMIA, Unaccompanied Minor Teleconference Minutes, 17 January 2002. DIMIA, Letter to Inquiry, 27 November 2002, Attachment B; DIMIA, Unaccompanied Minor Teleconference Minutes, 31 January 2001. DIMIA, Letter to Inquiry, 27 November 2002, Attachment B.
- 143 DIMIA Woomera, Manager Report, November 2001, (N1, Q3a, F5).
- 144 DIMIA Port Hedland, Manager Report, October 2001, (N1, Q3a, F5). Although this report notes that the meetings occurred during October 2001, the Inquiry only received minutes from November 2001 onwards.
- 145 DIMIA Curtin, Manager Report, March 2001, (N1, Q3a, F5).
- 146 DIMIA Curtin, Manager Report, October 2001; November 2001; December 2001; (N1, Q3a, F5).
- 147 DIMIA Curtin, Manager Report, March 2002, (N1, Q3a, F5).
- 148 DIMIA Woomera, Manager Report, September 2001, October 2001, December 2001, January 2002, (N1, Q3a, F5).
- 149 On 11 January 2002, the Minister delegated guardianship powers to the Department's Managers and Deputy Managers in all detention facilities. This delegation did not revoke the delegation to the officials in the child welfare agencies.
- 150 *Jaffari v Minister for Immigration & Multicultural Affairs* [2001] FCA 1516 at [43], quoted in SCALES, Submission 176, p22.
- 151 DIMIA, Transcript of Evidence, 3 December 2002, pp104-105; DIMIA, Submission 185, pp13, 98, 109.

- 152 SCALES, Transcript of Evidence, Perth, 10 June 2002, p4.
- 153 Western Australian Government, Submission 223, p1; Western Australian Government, Transcript of Evidence, Perth, 10 June 2002, p33; Department of Human Services Victoria, Submission 200, p18.
- 154 DIMIA, Migration Series Instruction 357, Procedures for unaccompanied wards in immigration detention facilities, 2 September 2002, para 3.3.7.
- 155 Department of Human Services Victoria, Submission 200, p18.
- 156 Western Australian Government, Submission 223, p5.
- 157 *Draft Agreement between the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) and the South Australian Department of Human Services (DHS) relating to the care of some detainee minors*, paras 10.1-10.3, (N4, Q6, F5).
- 158 DIMIA, Submission 185, p102.
- 159 ACM Woomera, Procedure 16.01, Special Care Needs for Minors and Unaccompanied Minors, para 5.41, (N1, Q19, F18).
- 160 ACM Woomera, Unaccompanied Minors (UAM) Committee Meeting, 3 July 2001, (N2, Q5, Supp 1).
- 161 Katina Kannis, DIMIA Port Hedland Manager, Affidavit, 1 March 2002, para 35, filed in proceedings before the Full Federal Court, *Odhiambo v Minister for Immigration and Multicultural Affairs* (2002) 122 FCR 29.
- 162 Katina Kannis, DIMIA Port Hedland Manager, Affidavit, 1 March 2002, para 36, filed in proceedings before the Full Federal Court, *Odhiambo v Minister for Immigration and Multicultural Affairs* (2002) 122 FCR 29.
- 163 ACM Curtin, Detainee Management Strategies, 30 March 2001, (N2, Q3, 19 August 2002).
- 164 DIMIA Curtin, Manager Report, January-March 2001, (N1, Q4a, F5).
- 165 DIMIA, Assistant Secretary, Unauthorised Arrivals and Detention Services Branch, Letter, to Acting General Director, DCD and FACS, 14 February 2002.
- 166 DCD, Assessments of Unaccompanied Minors – Port Hedland and Curtin Detention Centres, 19 March 2002.
- 167 DIMIA, Unaccompanied Minor Teleconference Minutes, 14 March 2002. DIMIA, Letter to Inquiry, 27 November 2002, Attachment B.
- 168 DIMIA, Unaccompanied Minor Teleconference Minutes, 28 March 2002. DIMIA, Letter to Inquiry, 27 November 2002, Attachment B.
- 169 Nonetheless, Standard 2.2.3.2.3 of the revised IDS entered into with the new detention services provider in August 2003 specifies that 'suitable care arrangements are made for children when parent(s) are absent from the detention facility, including but not limited to the absence of an expectant mother when she is giving birth'.
- 170 DIMIA gives as an example the draft Memorandum of Understanding between DIMIA and DHS regarding the placement of detainee minors in alternative detention arrangements, which stipulates care arrangements and contact between children and their parents in the event of separation. DIMIA, Response to Draft Report, 10 July 2003.
- 171 N5, Case 26.
- 172 They were detained in April 2001.
- 173 ACM Woomera Acting Programs Manager, Memo to ACM Woomera Centre Manager, 20 June 2002, (N5, Case 19, pp180-1).
- 174 FAYS recommended in their assessment report of 18 June 2002, that the mother and child be moved to the housing project. DHS, FAYS, Woomera Child Protection Investigation: FAYS Assessment Report, 18 June 2002. (N5, Case 19, p11).
- 175 ACM Woomera Acting Programs Manager, Memo to ACM Woomera Centre Manager, 20 June 2002, (N5, Case 19, pp180-1).
- 176 DIMIA Woomera Deputy Manager, Email to DIMIA Central Office, 17 July 2002, (N5, Case 19, p52).
- 177 Department of Psychological Medicine, Women's and Children's Hospital, Adelaide, Report, to ACM Woomera Manager, 16 July 2002, (N5, Case 19, p58).
- 178 The child was speaking through an interpreter, quoted in Department of Psychological Medicine, Women's and Children's Hospital, Adelaide, Report, to ACM Woomera Manager, 16 July 2002. The report was based on an interview with mother and son conducted on 15 July 2002, (N5, Case 19, pp57-61).
- 179 There is not enough space to include all separations that occurred within the detention centres for this family over the period of their detention.
- 180 The father was at Hakea Men's Prison, south of Perth; the mother at Bandyup Women's Prison, north-east of Perth.

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- 181 ACM Port Hedland Child Protection Officer, Reports from 26 May to 27 June 2001, (N5, Case 31, pp504-545). The Officer notes on 30 May 2001 that twice weekly phonecalls with their brothers were arranged.
- 182 Presumably this refers to prison policy. ACM Port Hedland Counsellor, Memo, to DIMIA Port Hedland Manager and ACM Port Hedland Centre Manager, 30 May 2001, (N5, Case 31, p543).
- 183 ACM Port Hedland Counsellor, Memo, to DIMIA Port Hedland Manager and ACM Port Hedland Centre Manager, 30 May 2001, (N5, Case 31, p543).
- 184 ACM Port Hedland Child Protection Officer, Report, 28 May 2001, (N5, Case 31, p540). ACM claims that visits were organised. ACM, Response to Draft Report, 5 September 2003. However, the Inquiry was not provided with evidence that this occurred.
- 185 The initial foster carer received a protection visa and was released. Hence two new carers were arranged for each of the two youngest children: ACM Port Hedland Child Protection Officer, Report, 19 June 2001, (N5 Case 31, p515).
- 186 ACM Port Hedland Child Protection Officer, Report, 26 May 2001, (N5, Case 31, p544).
- 187 ACM Port Hedland Child Protection Officer, Report, 26 May 2001, (N5, Case 31, p544).
- 188 ACM Port Hedland Mental Health Nurse, Memo, to ACM Port Hedland Centre Manager, 19 January 2001, (N5, Case 31, pp204-205).
- 189 Usually for adults only.
- 190 They arrived at Villawood on 6 July 2001 and ACM records dated 21 August 2001 state that there was a 'dedicated officer assigned to supervise children': ACM Villawood, HRAT Morning Meeting, 21 August 2001 (N3, F15). ACM claims that immediately on arrival at Villawood a female officer was assigned to the children 24 hours a day. ACM, Response to Draft Report, 5 September 2003. There is no record of this in evidence before the Inquiry. HRAT records on 4 September 2001 also show that a 'personal carer [was] to be followed up by HSC [Health Services Manager], to help look after children 6.00 – 22.00'. However, records for the following day show that an outside carer is 'no longer an option' and '4 staff members to be trained as carers' instead: ACM Villawood, HRAT Morning Meeting, 4 September 2001 and 5 September 2001, (N3, F15).
- 191 ACM Villawood, Health Services Manager, Care Management Plan, 1 September 2001 (N5, Case 31, p632).
- 192 Confidential, Submission 203, p7. The father was released and the family reunited seven months after the mother's arrival at Villawood.
- 193 Inquiry, Focus group, Adelaide, July 2002, Afghan unaccompanied child.
- 194 DIMIA, Submission 185, p102.
- 195 DIMIA, Submission 185, pp103-104.
- 196 DIMIA Curtin, Unaccompanied Minors Meeting, 12 October 2001. DIMIA, Letter to Inquiry, 27 November 2002, Attachment B.
- 197 DIMIA Curtin, File Note, 23 October 2001. DIMIA, Letter to Inquiry, 27 November 2002, Attachment B.
- 198 ACM Port Hedland, Unaccompanied Minors Meeting Minutes, 31 January 2002, (N1, Q19, F18).
- 199 DIMIA, Unaccompanied Minor Teleconference, 13 December 2001. DIMIA, Letter to Inquiry, 27 November 2002, Attachment B.
- 200 DIMIA, Unaccompanied Minor Teleconference, 31 January 2002. DIMIA, Letter to Inquiry, 27 November 2002, Attachment B.
- 201 DIMIA, Unaccompanied Minor Teleconference, 28 March 2002. DIMIA, Letter to Inquiry, 27 November 2002, Attachment B.
- 202 DIMIA, Unaccompanied Minor Teleconference, 11 April 2002. DIMIA, Letter to Inquiry, 27 November 2002, Attachment B.
- 203 Inquiry, Focus group, Adelaide, July 2002, Afghan unaccompanied child.
- 204 *Memorandum of Understanding between the Department of Immigration and Multicultural and Indigenous Affairs and Australian Red Cross for the provision of certain services to immigration detainees.* DIMIA, Letter to Inquiry, 5 June 2003.
- 205 See further Chapter 3, Setting the Scene.
- 206 The Department informed the Inquiry that it was 'impossible under the bridging visa regulations to release the child from detention on 29 August 2001 before a suitable foster family in the community had been located'. DIMIA, Response to Draft Report, 10 July 2003.
- 207 ACM Woomera, Psychological Assessment Summary, 13 July 2001, (N5, Case 13, pp14-15).
- 208 ACM Woomera, Psychological Assessment Summary, 13 July 2001, (N5, Case 13, pp14-15).
- 209 DIMIA, Minute, Request for Grant of Bridging Visa (Subclass 051), 12 October 2001, (N5, Case 13, p49ff).

- 210 ACM Woomera, Unaccompanied Minors (UAM) Committee Meeting, 17 July 2001, (N2, Q5, F4).
- 211 ACM Woomera, Unaccompanied Minors (UAM) Committee Meeting, 24 July 2001, (N2, Q5, Supp 1).
- 212 DIMIA Woomera Acting Manager, Letter, to ACM Centre Manager, 25 July 2001, (N5, Case 13, p8); DIMIA, Minute, Request for Grant of Bridging Visa (Subclass 051), 12 October 2001, (N5, Case 13, p49ff); DIMIA, Minute, Information Brief, Unaccompanied Minor at Woomera IRPC, 27 July 2001, (N5, Case 13, p122).
- 213 ACM Woomera, Unaccompanied Minors (UAM) Committee Meeting, 7 August 2001, (N2, Q5, F4).
- 214 ACM Woomera officer, Memo, to ACM Programs Manager, 8 August 2001, (N5, Case 13, p3); ACM Woomera, Update [on unaccompanied minor], 6 August 2001, (N5, Case 13, p91).
- 215 ACM Woomera, Psychological Report, 9 August 2001, (N5, Case 13, p88).
- 216 DHS, FAYS, Acting Manager Operations, Country, Email, to DIMIA Central Office, 9 August 2001, (N5, Case 13, p89).
- 217 DHS, FAYS, Acting Manager, Operations, Country, Email, to DIMIA Central Office, 9 August 2001, (N5, Case 13, p89).
- 218 ACM Woomera Psychologist, Memo, to ACM Centre Manager, 15 August 2001, (N5, Case 3, p86).
- 219 DIMIA, Minute, Request for Grant of Bridging Visa (Subclass 051), 12 October 2001, (N5, Case 13, p49ff).
- 220 DHS, FAYS, Assessment Report Re: Unaccompanied Humanitarian Minor, 29 August 2001, (N5, Case 13, p74).
- 221 DIMIA Central Office, Email, to Woomera Deputy Manager, 30 August 2001, (N5, Case 13, p70).
- 222 ACM Woomera, Unaccompanied Minors (UAM) Committee Meeting, 4 September 2001, (N2, Q5, F4).
- 223 DIMIA, Minute, Request for Grant of Bridging Visa (Subclass 051), 12 October 2001, (N5, Case 13, p49ff).
- 224 DIMIA, Minute, Re: [unaccompanied child], 2 October 2001, (N5, Case 13, p95).
- 225 DIMIA, Minute, Request for Grant of Bridging Visa (Subclass 051), 12 October 2001, (N5, Case 13, p49ff).
- 226 DIMIA, Minute, Request for Grant of Bridging Visa (Subclass 051), 12 October 2001, (N5, Case 13, p49ff).
- 227 DHS, FAYS, Acting Manager, Operations, Country, Email, to DIMIA Woomera Deputy Manager, Woomera, 18 September 2001; DIMIA Woomera Deputy Manager, Email, to FAYS, Acting Manager, Operations, Country, 25 September 2001, (N5, Case 13, pp62-63).
- 228 DIMIA, Minute, Request for Grant of Bridging Visa (Subclass 051), 12 October 2001, (N5, Case 13, p49ff).
- 229 ACM Woomera, Memo, Re: [unaccompanied child], 28 September 2001, (N5, Case 13, p102).
- 230 DIMIA, Response to Draft Report, 10 July 2003.
- 231 DIMIA, Minute, Request for Grant of Bridging Visa (Subclass 051), 12 October 2001, (N5, Case 13, p49ff).
- 232 ACM Woomera, Unaccompanied Minors (UAM) Committee Meeting, 6 November 2001, (N2, Q5, F4).
- 233 ACM Woomera, UAMs Progress Report, 9 November 2001, (N2, Q6, Attachment B).
- 234 DIMIA, Performance Linked Fee Report, for quarter ending 31 December 2001.
- 235 ACM Woomera, Incident Report 736/01, 16 November 2001, (N5, Case 20, p38).
- 236 ACM Woomera, Incident Report 736/01, 16 November 2001, (N5, Case 20, p38).
- 237 ACM Woomera, Incident Report 736/01, 16 November 2001, (N5, Case 20, p38).
- 238 ACM Woomera, Incident Report 736/01, 16 November 2001, (N5, Case 20, p38).
- 239 ACM Woomera, Incident Report 736/01, Follow up Incident Report No 3, 24 November 2001, (N5, Case 20, p48).
- 240 ACM Woomera, Unaccompanied Minors (UAM) Committee Meeting, 20 November 2001, (N2, Q5, F4).
- 241 ACM Woomera, Unaccompanied Minors (UAM) Committee Meeting, 27 November 2001, (N2, Q5, F4).
- 242 The Contract Operations Group is a higher level meeting between Department and ACM staff. See further Chapter 5 on Mechanisms to Protect Human Rights.
- 243 DIMIA, Contract Operations Group Minutes, 22 November 2001, (N1, Q3, F4).
- 244 ACM Woomera, UAMs Progress Report, 23 November 2001, (N2, Q6, Attachment B).
- 245 DIMIA Woomera, Manager Report, November 2001, (N1, Q3a, F5).
- 246 ACM Managing Director, Letter, Performance Assessment for Quarter Ending December 2001, to DIMIA First Assistant Secretary, 11 July 2002.
- 247 DIMIA, Contract Operations Group Minutes, 22 January 2002, (N1, Q3, F4).
- 248 DIMIA, Response to Draft Report, 10 July 2003.
- 249 DIMIA, Response to Draft Report, 10 July 2003.

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- 250 DHS, FAYS, Executive Director, Country Services, Disability Services, Letter, to Acting First Assistant Secretary, DIMIA, 29 January 2002, (N2, Q7, F6).
- 251 ACM Woomera, Incident Report 823/01, 19 December 2001, (N5, Case 29, p73).
- 252 DHS, FAYS, Executive Director, Country Services, Letter, to Acting First Assistant Secretary, DIMIA, 26 January 2002, (N2, Q7, F6).
- 253 DHS, FAYS, Executive Director, Country and Disability Services, Letter, to DIMIA First Assistant Secretary, 24 January 2002, (N2, Q7, F6).
- 254 ACM Woomera, Medical Records, (N3, F3).
- 255 ACM Woomera, Incident Report 67/02, 22 January 2002, (N5, Case 21).
- 256 DHS, FAYS Assessment Report, 26 January 2002, (N2, Q7, F6).
- 257 ACM Woomera, Medical Records, (N3, F2).
- 258 DHS, FAYS Assessment Report, 28 January 2002, (N2, Q7, F6).
- 259 DHS, FAYS, Acting Regional Director Country, Letter to DIMIA, 7 February 2002, (N2, Q7, F6).
- 260 DHS, FAYS, Acting Regional Director Country, Letter to DIMIA, 7 February 2002, (N2, Q7, F6).
- 261 DIMIA Woomera, Manager Report, January 2002, (N1, Q3a, F5).
- 262 DIMIA, Transcript of Evidence, Sydney, 2 December 2002, p82.
- 263 ACM, Response to Draft Report, 5 September 2003.