A photograph of a child riding a tricycle on a dirt path in a fenced-in area, likely a detention facility. The child is wearing a yellow shirt and blue pants. The path is bordered by a chain-link fence on the left and a building on the right. The sky is blue with some clouds. The text is overlaid on the top half of the image.

The arrest, detention or imprisonment
of a child shall be... used only as a measure
of last resort and for
the shortest appropriate period of time.

Convention on the Rights of the Child

A last resort?

A summary guide to the
National Inquiry into Children in Immigration Detention

Children in playground at Woomera with hunger strike in background, January 2002



This publication provides a summary of the important issues, findings and recommendations of the National Inquiry into Children in Immigration Detention. It is not an exhaustive account of all the information contained in the Inquiry report.

For further information on any aspect of the Inquiry process, the submissions received by the Inquiry or to read the full Inquiry report, visit the website of the Human Rights and Equal Opportunity Commission at www.humanrights.gov.au.

ISBN: 0 642 26992 0

© Human Rights and Equal Opportunity Commission 2004



Contents

Preface	2
About the Inquiry	4
How was the Inquiry conducted?	6
The facts about immigration detention in Australia	8
What does international law say about the detention of children?	18
Australia's detention policy - does it protect children's human rights?	20
Safety in detention centres	22
Mental health	30
Physical health	38
Education	43
Children with disabilities	51
Unaccompanied children in detention	54
Recreation and play	60
Religion, language and culture	62
Temporary Protection Visas	64
Major findings and recommendations	66
Further information	72
Glossary and abbreviations	inside back cover



Preface

The arrest, detention or imprisonment of a child shall be ... used only as a measure of last resort and for the shortest appropriate period of time.

Convention on the Rights of the Child

Few people would disagree with this fundamental principle from the *Convention on the Rights of the Child*. In fact, most Australians would agree that every possible option should be explored before a child is locked up. However, Australia's immigration policy makes the detention of children who arrive without visas the first and only option and it puts no limit on the time that they can be detained.

Australians don't need a team of experts or dramatic media stories to convince them that detention centres are no place for children. However, this Inquiry analysed evidence from a large number of sources to objectively assess the environment in which children have been held.

The results are clear. Immigration detention centres expose children to enormous mental distress – which confirms the need to ensure that children should only be locked up in this environment as a measure of **last resort** and for the **shortest appropriate period of time**.

More than 92% of all children arriving by boat since 1999 have been recognised by Australian authorities to be refugees. In the case of Iraqi children the figures are as high as 98%.

And yet we have welcomed these children by taking them to remote facilities and detaining them there to wait for an outcome on their visa application.

Children regularly wait for months or years in detention. In fact, as at the end of 2003, the majority of children in detention had been held for more than two years. This policy seems a complete departure from the principle of detention as a measure of last resort.

The irony is that the long-term impact of Australia's immigration detention system on these children will, in the main, be borne by Australian society, since almost all children in detention eventually become members of the Australian community. They will carry the scars of their detention experience throughout their lives.

It is worth noting that, despite ten years of a mandatory detention regime, the Department of Immigration and Multicultural and Indigenous Affairs' own administrative measures and instructions virtually ignored the special needs of children. There was also little regard paid to obligations arising from the *Convention on the Rights of the Child*. This state of affairs changed somewhat in late 2001 – about the same time that this Inquiry was established.

Since then there have been some positive measures to improve the environment in which children in detention live. I commend the Department for introducing these changes without awaiting the formal outcome of this Inquiry.

However, it is disappointing that these measures did not occur much, much earlier. Furthermore, they ultimately represent a band-aid approach to repairing a detention system that is fundamentally flawed. The only real solution is to change the policy as a whole.

While recognising the right of Australia to protect its borders, I hope that this report removes, once and for all, any doubts about the harmful effects of long term immigration detention on children. It is now time for our parliamentarians to change our immigration laws to respect the human rights of children – rights that Australia has agreed to uphold.

Let no child who arrives in Australia ever suffer under this system again.



Dr Sev Ozdowski OAM
Human Rights Commissioner

April 2004





About the Inquiry

The Human Rights and Equal Opportunity Commission was established in 1986. It is an independent statutory organisation and reports to the federal Parliament through the Attorney-General.

The Commission's goal is to foster greater understanding and protection of human rights in Australia and to address the human rights issues facing a broad range of individuals and groups.

When the Commission was established it was given a responsibility to advise the Commonwealth Government on Australia's commitments under international laws and whether these are reflected in Commonwealth laws, policies and practices.

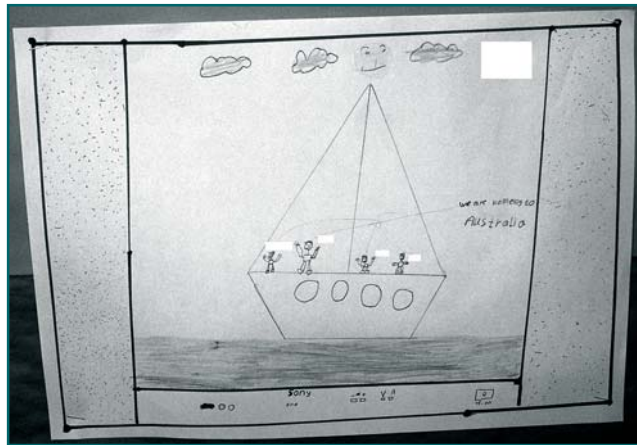
In November 2001, the Human Rights Commissioner, Dr Sev Ozdowski, announced that the Commission would hold a National Inquiry into Children in Immigration Detention.

Why did we hold an Inquiry?

Since 1992, asylum seekers who arrive in Australia without a visa – both adults and children – have been subject to mandatory detention. In all but a few rare cases, their detention ends only when they are recognised as refugees and granted a protection visa or when they are removed from the country.

From 1999 the number of children in detention rose significantly and there was widespread concern about their treatment.

The Inquiry was established to examine whether the laws requiring the detention of children and the treatment of children in immigration detention met Australia's obligations under international law, especially the *Convention on the Rights of the Child*.



Drawing of a boat of children seeking asylum in Australia, by a child in immigration detention

What did the Inquiry look at?

First, the Inquiry considered whether Australia's detention laws complied with international law and looked at alternatives to placing children in immigration detention centres.

The Inquiry also looked at the treatment of child asylum seekers held in immigration detention centres between 1999 and 2002. In particular, it examined:

- the safety and security of children in detention
- the effect of detention on children's mental and physical health
- whether children in detention received an appropriate education
- the care available to children with a disability in detention
- the opportunity for children in detention to enjoy recreation and play
- the care of unaccompanied children in detention
- children's ability to practice their religion and culture in detention.

Finally, the Inquiry considered the needs of child asylum seekers and refugees living in the community after being released from detention.



How was the Inquiry conducted?

Submissions

The Inquiry received 346 submissions, including 64 confidential submissions. Detailed information was provided by organisations representing detainees, human rights and legal bodies, members of the public, religious bodies, state government agencies and a range of non-government policy and service-providing organisations.

Visits to immigration detention centres

Inquiry staff visited all immigration detention facilities in Australia between January 2002 and December 2002, including three visits to Woomera. During each visit, Inquiry staff conducted a tour of the facility, spoke with detention centre staff and interviewed all families and children who wished to talk about their experiences. The Inquiry conducted a total of 112 interviews with children and their parents, on the understanding that their identity would be protected.

Focus groups

During 2002, the Inquiry held 29 focus groups with over 200 children, parents and other former detainees now living in Sydney, Melbourne, Perth, Adelaide and Brisbane on temporary protection visas. These focus groups were also conducted on the understanding that the identity of the participants would be protected in order to allow them to talk freely about their experiences.

Public hearings

Between May and August 2002, the Inquiry held public hearings in Melbourne, Perth, Adelaide, Sydney and Brisbane to allow members of the community, state government agencies, non-government organisations and former ACM staff, amongst others, to provide further information to the Inquiry. The Inquiry held 61 public sessions (105 witnesses) and 24 confidential sessions (50 witnesses). Nine of the witnesses in confidential hearings (seven sessions) later agreed to make their evidence public.

Evidence from the Department and ACM

The Inquiry received a series of documents from the Department and ACM throughout 2002 in response to requests and legal 'Notices to Produce' issued by the Inquiry. The Department also provided a written submission in May 2002.

In December 2002, the Inquiry heard oral evidence from the Department and ACM on various issues, including:

- how unaccompanied children are cared for in detention
- how families with deteriorating mental health are assessed and helped in detention centres
- the provision of education in detention facilities
- the provision of services to families with disabilities
- how compliance with human rights standards is monitored in detention centres.

After these hearings, the Inquiry wrote a draft report containing initial factual findings and a preliminary view as to whether there were breaches of children's rights. In accordance with the principles of natural justice, a copy of the draft report was provided to the Department and ACM, allowing them to respond to the Inquiry's findings and to provide further evidence and submissions. ACM requested the opportunity to make oral submissions and these were heard in September 2003.

A second draft was provided to both the Department and ACM for further comment. After the Inquiry received their second round of responses, the final report was completed. The Department and ACM were given a final opportunity to inform the Inquiry about what actions they were taking in response to the final findings and recommendations.



The facts about immigration detention in Australia

What is immigration detention?

Since 1992, Australia's migration law has made it mandatory for any person in Australia without a valid visa to be detained until they are issued with a visa or removed from Australia. This law applies equally to adults and children.

Some children are placed in immigration detention because they enter Australia without a visa (unauthorised arrivals). Other children are in immigration detention because they overstay or break the conditions of their visa.

During the period of the Inquiry, the majority of children in detention were unauthorised boat arrivals. Over this period, other children made up no more than 5% of the total number of child detainees.

Most unauthorised arrivals seek refugee protection when they arrive – in other words, they are asylum seekers. However, although almost all children in detention are asylum seekers, not all child asylum seekers are in detention. Children who come to Australia on a tourist visa or student visa and then claim asylum after they arrive (authorised arrivals) usually live in the community on a bridging visa while their refugee status is being determined.

How many children have been in immigration detention?

A total of 976 children were in immigration detention in 1999-2000; 1,923 children in 2000-2001; 1,696 children in 2001-2002 and 703 children in 2002-2003. Most of these children arrived by boat.

The total number of unauthorised arrival children who applied for refugee protection visas between 1 July 1999 and 30 June 2003 was 2,184. These figures do not include children transferred to and detained on Nauru and Manus Island (Papua New Guinea).



Sign outside Woomera indicating ACM and the Department, June 2002

The highest number of children in detention at any one time between 1 January 1999 and 1 January 2004 was 842 (on 1 September 2001). Of this number, 456 were at the Woomera detention centre.

When the Inquiry was announced in late November 2001, there were over 700 children in immigration detention. By the time of the Inquiry's public hearing with the Department a year later, the number had reduced by 80% to 139. The number of children in detention has not decreased at the same rate since that time.

There were still 111 children in immigration detention in Australia on 26 December 2003.

Where have the children been held?

Children arriving in Australian territory (including Australian territorial waters) without a visa were detained in any one of the following detention facilities over the period of the Inquiry:

- Baxter Immigration Detention Facility (opened July 2002)
- Christmas Island Immigration Reception and Processing Centre (opened November 2001, 'mothballed' March 2003, re-commissioned in July 2003)
- Cocos (Keeling) Islands Immigration Reception Centre (opened September 2001, closed March 2002)



- Curtin Immigration Reception and Processing Centre (opened September 1999, 'mothballed' September 2002)
- Maribyrnong Immigration Detention Centre (opened 1966)
- Perth Immigration Detention Centre (opened 1981)
- Port Hedland Immigration Reception and Processing Centre (opened 1991)
- Woomera Immigration Reception and Processing Centre (opened November 1999, 'mothballed' April 2003) or the Woomera Residential Housing Project (opened August 2001, 'mothballed' December 2003)
- Villawood Immigration Detention Centre (opened 1976).

Residential housing projects were opened in Port Hedland and Port Augusta (near Baxter) after the period of the Inquiry.



Locations of detention centres in and around Australia

After September 2001, and the introduction of the 'Pacific Solution', children who arrived on Christmas Island, the Ashmore Islands or the Cocos (Keeling) Islands, or who were intercepted at sea by Australian authorities, were transferred to detention facilities in Nauru or Manus Island (Papua New Guinea).

Since late January 2002, most asylum seeker children travelling without a parent or guardian (unaccompanied minors), were transferred from immigration detention centres to 'alternative places of detention', such as foster homes in the community.

The following table provides an overview of where children were held in detention between July 1999 and July 2003. The figures show that most children in detention were held in remote centres at Curtin, Port Hedland and Woomera.

Detention Centre	1.7.99	1.1.00	1.7.00	1.1.01	1.7.01	1.1.02	1.7.02	1.1.03	1.7.03
Curtin	–	147	133	167	153	63	33	–	–
Port Hedland	27	91	142	64	128	85	11	20	14
Woomera	–	118	215	16	304	281	45	11	–
Woomera Housing Project	–	–	–	–	–	7	0	6	10
Villawood	19	32	32	28	37	16	14	32	29
Maribyrnong	11	9	4	11	7	3	10	3	5
Perth	0	0	0	0	0	0	1	0	1
Christmas Island	–	–	–	–	–	79	10	5	–
Cocos K. Islands	–	–	–	–	–	5	–	–	–
Baxter	–	–	–	–	–	–	–	38	41
Other (hospitals, etc.)	1	2	16	1	2	4	14	17	11
Total number of children in detention	58	399	542	287	631	543	138	132	111

Note: A result of '0' means no children were held at that time. A result of '–' means that facility was not operating at that time.



How long have children been held in detention?

Since 1999, children have been detained for increasingly longer periods of time. By the beginning of 2003, the average detention period for a child in immigration detention was one year, three months and 17 days. As at 26 December 2003, the average length of detention had increased to one year, eight months and 11 days.

The longest a child has ever been in immigration detention is five years, five months and 20 days. This child and his mother were released from Port Hedland detention centre on 12 May 2000, after eventually being assessed as refugees.

Length of detention of children: 1999–2003

Periods children detained	0–6 wks	1.5–3 mths	3–6 mths	6–12 mths	1–2 yrs	2–3 yrs	More than 3 yrs	Total children detained
1 Jan 99	26	23	4	4	0	1	1	59
1 Apr 99	19	9	16	6	2	1	1	54
1 July 99	19	5	15	17	0	1	1	58
1 Oct 99	37	29	6	20	4	0	2	98
1 Jan 00	220	128	27	8	14	0	2	399
1 Apr 00	72	110	299	22	18	0	2	523
1 July 00	51	51	169	252	19	0	0	542
1 Oct 00	94	9	34	138	14	4	0	293
1 Jan 01	122	48	55	24	33	5	0	287
1 Apr 01	212	107	87	47	30	3	0	486
1 July 01	174	170	184	71	29	3	0	631
1 Oct 01	193	242	153	108	44	0	0	740
1 Jan 02	5	87	288	104	52	7	0	543
1 Apr 02	8	4	13	98	69	10	0	202
1 July 02	9	2	2	33	85	7	0	138
1 Oct 02	14	6	3	13	79	19	0	134
1 Jan 03	14	13	6	4	56	36	3	132
1 Apr 03	17	3	14	9	33	49	0	125
1 July 03	8	2	11	10	10	69	1	111
1 Oct 03	12	24	3	13	7	54	8	121

How many children arrived in Australia without their parents?

Most children arriving in Australia without a visa come with one or both parents. However, there are a significant number of children who arrive unaccompanied. Until January 2002, when most unaccompanied children were transferred to foster homes, unaccompanied children were detained in the same manner as all other unauthorised arrivals.

At the start of 2000 there was a large rise in the number of unaccompanied children detained in Australia. On 1 July 1999 there were just two unaccompanied children, who had been detained for a short time. Six months later, that figure had grown to 41.

By 1 July 2000 there were 49 unaccompanied children in detention, 37 of whom had been detained for longer than three months. By 1 July 2001, a year later, there were 121 unaccompanied children in detention, 22 of whom had been detained for over three months. Their number grew to 143 during that month. On 1 January 2002, there were only 40 unaccompanied children in detention but 90% of them had been detained for more than three months.

What is the background of the children in detention?

There were more boys than girls held in immigration detention. However, the percentage of girls has increased since 1999. Between 1 July 1999 and 30 June 2003, 37% of asylum seeker children in detention were girls. The majority of children in detention were under 12 years of age. The following table shows the age of children in immigration detention as at 30 June for each year from 1999 to 2003.

Age of children as at 30 June each year	0–4 years	5–11 years	12–17 years
30 June 1999	23	15	23
30 June 2000	164	208	162
30 June 2001	144	210	278
30 June 2002	33	54	53
30 June 2003	32	29	52



Some infants (0-4 years) spent substantial portions of their lives in immigration detention. On 30 June 2000 there were 164 infants in detention. Five of them had spent more than 18 months in detention. On 30 June 2001 there were 144 infants in detention. Two of these children had spent more than two and a half years in detention – more than half of their lives.

Where do children in detention come from?

Most of the children in detention over the Inquiry period were from Iraq, Afghanistan, Iran, the Palestinian Territories and Sri Lanka.

How is a person's refugee status decided?

Once asylum seeker children and their families in detention make an application for a protection visa, the Department begins an assessment of their cases. Children who arrive with their family are generally included in the application made by their parents and the claim for asylum is based on the strength of the father's or mother's claim. Unaccompanied children, because they are not part of a family unit, need to make an application for asylum in their own right.

In determining whether a person is a refugee, the Department uses the definition of a refugee as set out in the United Nations Refugee Convention.

All applications are assessed on a case-by-case basis. If the application is successful, the family and the child are granted a temporary protection visa. If an application is refused, a review of the decision can be sought from the Refugee Review Tribunal.

Applicants are also entitled to limited judicial review of a visa decision. This process does not review the merits of a decision but it ensures that certain standards have been followed during the determination of an application.

How many children in immigration detention were found to be refugees?

Between 1 July 1999 and 30 June 2003, 2,184 children arrived in Australia *without* a valid visa and sought asylum (unauthorised arrivals) – all these children *were* held in immigration detention while their refugee status was being determined. More than 92% of these children were found to be refugees and were granted a temporary protection visa. For some nationalities the success rate was even higher (98% Iraqi; 95% Afghan).

Between 1 July 1999 and 30 June 2003, 3,125 children arrived in Australia *with* a valid visa and then sought asylum (authorised arrivals) – these children *were not* held in immigration detention while their refugee status was being determined. Only 25% of these children were found to be refugees. The top three countries of origin for authorised arrivals were Fiji, Indonesia and Sri Lanka.

Year of application	Unauthorised arrival children recognised as refugees	Authorised arrival children recognised as refugees
1999–00	95.2% (569 out of 598 applicants)	30.6% (260 out of 851 applicants)
2000–01	90.0% (815 out of 906 applicants)	19.0% (185 out of 973 applicants)
2001–02	95.2% (639 out of 671 applicants)	23.7% (178 out of 751 applicants)
2002–03	33.3% (3 out of 9 applicants)	30.9% (170 out of 550 applicants)

Who operates the detention centres?

The Department is responsible for the operation of Australia's immigration detention centres. However, since February 1998 and throughout the period of the Inquiry, ACM – a private firm - was contracted by the Department to deliver all services at the detention centres.



Immigration Detention Standards, developed by the Department, set out the quality of services expected in the centres and the requirement to take into consideration the individual needs of detainees. Department officers at each immigration detention centre are expected to monitor the performance of ACM against these standards.

What did children say about detention centres?

I want to tell you that actually I spent about fifteen nights in the ride to Australia. I was in a small boat if you want to call that a boat, because it was smaller than that, with lots of difficulties. When I saw (we were) getting near Australia I was becoming a little bit hopeful. When we passed Darwin I got to the detention centre, as soon as I looked at these barbed wires my mind was full of fear. That was the time that I experienced fear ...

**Unaccompanied Afghan boy found to be a refugee,
Melbourne focus group**

I think every Australian knows what a prison is, what a prison looks like and what happens in a prison ... prisoners they know when they're going to be released ... and at that date they're going to get their freedom ... But in detention centre, like no one knows when they're going to be released. Tomorrow, day after tomorrow, for two years, like, you know, waiting how much hard it is ...

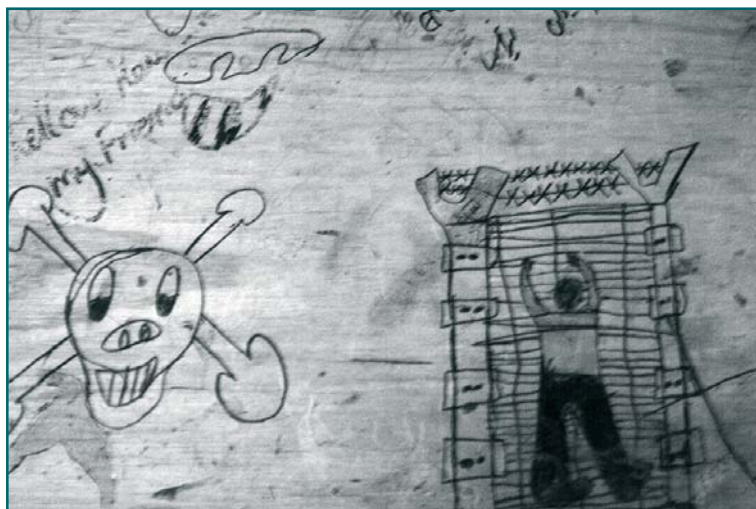
Teenage boy found to be a refugee, Brisbane focus group

I think that the children should be free and when they are there for one year or two years they are just wasting their time, they could go to school and they could learn something. They could be free. Instead they are like a bird in a cage.

**Ten-year-old Afghan girl found to be a refugee,
Perth focus group**

We came here because we wanted freedom. We did not come to be imprisoned for three years. Nothing will help us, only freedom will help us. We want to be free – that is all.

Detainee boy, Baxter



Drawings on a school desk at Port Hedland, June 2002



What does international law say about the detention of children?

As a sovereign country, Australia has a right to decide who is allowed to enter and stay in the country. However, with this right comes a set of legal responsibilities.

Sovereignty doesn't mean that nations can do whatever they like. Over the past 50 years, the nations of the world have worked together to develop a system of international human rights law based on agreed standards and principles.

By ratifying a treaty or convention, a country agrees to take on the rights and responsibilities of the treaty and uphold its principles in the policies and practices of the government.

The fact that Australia has ratified a treaty does not mean that it automatically becomes part of Australian law – it needs to be specifically written into domestic law before there are enforceable rights.

However, this does not mean that ratifying a treaty has no significance for Australia. As the High Court has said in the *Teoh* case, 'ratification of a convention is a positive statement ... that the executive government and its agencies will act in accordance with the Convention.'

Australia has, as a sovereign country, freely entered into a range of human rights treaties and, therefore, has an obligation to put the principles of these treaties into practice in how it carries out its immigration policies.

The Convention on the Rights of the Child

The Inquiry has taken the rights set out in the *Convention on the Rights of the Child*, which Australia ratified in 1990, as the basis for its investigations. One of the basic principles of the Convention is that the **best interests of the child** should be a primary consideration in all decisions that affect them.

The Convention also sets out specific requirements to protect the liberty of children including:

- detention of children must be a **measure of last resort**
- detention of children must be for the **shortest appropriate period of time**
- children in detention have the right to **challenge the legality of their detention** before a court or another independent body
- children should not be detained **unlawfully or arbitrarily**.

Other key rights in the Convention are that:

- children seeking asylum have a right to appropriate protection and assistance – because they are an especially vulnerable group of children
- children separated from their parents have a right to special assistance
- children in detention should be treated with respect and humanity and they have the right to healthy development and to be able to recover from past trauma
- children seeking asylum, like all children, have rights to physical and mental health; education; culture, language and religion; rest and play; protection from violence; and to remain with their parents.

The Inquiry also drew on other important human rights treaties, including the 1951 *Convention relating to the Status of Refugees* (and its 1967 Protocol), which requires Australia to offer protection to people fleeing persecution because of their race, religion, nationality, membership of a particular social group or political opinion.



Australia's detention policy – does it protect children's human rights?

While a short period of detention may be permitted for the purpose of conducting preliminary health, identity and security checks, Australia's detention system requires detention well beyond those permitted purposes. In fact, Australia's immigration detention laws and practices create a detention system that is fundamentally at odds with the *Convention on the Rights of the Child*.

The Convention requires detention of children to be 'a measure of last resort'. However, Australia's immigration laws make the detention of unauthorised arrival children the first – and only – resort.

The Convention requires the detention of children to be for 'the shortest appropriate period of time'. However, Australia's immigration laws and policies require children to stay in detention until they are granted a visa or removed from Australia – a process that can take weeks, months or years.

The Convention protects children against arbitrary detention and requires prompt review before an independent tribunal to determine whether the individual circumstances of a child justify their detention. However, Australian immigration laws require the detention of all unauthorised arrival children, regardless of their individual circumstances. These laws also expressly limit access to courts.

The end result is the automatic, indeterminate, arbitrary and effectively unreviewable detention of children. No other country in the world has a policy like this.

Immigration detention in a secure detention facility is not, by law, necessary. Since 1994 the Minister has had the power to declare any place in the community a place of 'detention', including a hotel, hospital, foster house or family home.

However, this power has been extremely rarely used. As at the end of 2003, only two families had ever been transferred to this 'home-based detention'. Furthermore, it was not until a hunger strike, lip-sewing and a suicide pact

occurred in January 2002 that arrangements were made to transfer about 20 unaccompanied children to foster home 'detention' in Adelaide.

The Australian Government and the Department have regularly stated that keeping children who arrive with their parents together as a family is in the best interests of a child; therefore, if parents are detained then their children should remain in detention with them.

The Inquiry believes this argument is flawed for a number of reasons. It implies that the Government has no other option but to detain parents and their children. It also implies that the rights of children can be traded off against each other, whereby a child's right to 'family unity' is more important than his or her right not to be held in detention for an indeterminate period of time. In addition, it fails to take account of the destructive effects of detention itself on family unity.

There are other alternatives available to the Department and to policy makers – alternatives that would both allow a child to be with their parents and not be held in detention during the period that their visa application is being assessed.

While alternative detention programs, such as the Woomera Residential Housing Project, offered improved day-to-day living conditions for children, they also raised their own problems.

First, significant restrictions remain – children and parents are not free to make their own decisions about where they go to school, where they play and so on. In addition, fathers in two-parent families are not allowed to take part in the program and, until late 2002, neither were boys aged 13 and over. This means that the housing projects lead to the separation of families, which can further undermine a child's sense of safety and well-being.

Inquiry finding

Australia's immigration detention policy creates a fundamental breach of a child's right to be detained as a measure of last resort and for the shortest appropriate period of time.

In addition, long-term detention significantly undermines a child's ability to enjoy a variety of other important rights.



Safety in detention centres

Under the *Convention on the Rights of the Child*, children have a right to live in a safe environment.

Throughout the course of the Inquiry, a number of serious disturbances occurred in immigration detention centres, including riots, fires, hunger strikes, protests, self-harm and suicide attempts.

In addition, the Inquiry heard that the measures taken to address disturbances in the detention centres – such as the use of tear gas and water cannons – left children feeling frightened and unsafe.

During these incidents, children were exposed to a level of risk to their physical safety – and, as a consequence, to their mental health – that children in the community are unlikely to face.

Disturbances and unrest

Unfortunately the environment is not very healthy because every day they are witnessing people who are going on top of the tree, who are suiciding or just cutting their body by blade or jumping, shouting, doing everything violent and they are witnessing and they think this is a game they have to participate on it. It's a very dangerous situation and we cannot have any control of it.

Detainee parent, Curtin

Between July and December 2001, the Department recorded 688 major incidents involving 1,149 detainees across all detention centres. Of these incidents, 321 were alleged, actual or attempted assaults (19 involved children), 174 involved self-harm (25 involved children) and about 30% involved 'contraband, damage to property, disturbances, escapes and protests'. Almost 75% of these incidents occurred in the Curtin, Port Hedland and Woomera centres, where the largest number of children had been detained for the longest periods of time.

From January to June 2002, there were 760 major incidents involving 3,030 detainees across all detention centres. There were 116 alleged, attempted or actual assaults (16 involved children), 248 self-harm incidents (25 involved children) and 52% involved contraband, damage to property, disturbances, escapes and protests. Almost 80% of all incidents occurred in the Curtin, Port Hedland and Woomera centres.

The following chronology of major disturbances in the Woomera, Curtin and Port Hedland detention centres gives some sense of the environment in which the majority of children in immigration detention were living. It doesn't provide a comprehensive description of each and every disturbance in the detention centres. It has been drawn together primarily from media reports.

Major disturbances in immigration detention centres: Jul 1999 – Dec 2002

Date	Woomera	Curtin	Port Hedland
July 99	[Not open]	[Not open]	Riot and escapes.
Aug 99	[Not open]	[Not open]	Protests.
Mar 00	Demonstrations.		
June 00	Two days of protests. Approx 480 detainees walk into town.		
Aug 00	Three days of riots and fires. Tear gas and water cannons used. Approx 60-80 detainees involved.		
Nov 00	Hunger strike by more than 30 detainees. Some forcibly fed in hospital.		
Jan 01		Riot involving approx 300 detainees.	Riot involving approx 180 detainees. Hunger strike.
Mar 01			Riot.
April 01		Riots and fires. Tear gas used. Approx 200 detainees involved.	



Date	Woomera	Curtin	Port Hedland
May 01		Riot.	Riot, hunger strike. Tear gas used.
June 01	Riot and confrontation between ACM and approx 150 detainees. Water cannon used. Injuries on both sides.	Riot.	
Aug 01	Riot, fires and self-harm. Tear gas used. Centre on riot alert for more than a week.		
Sept 01	Protest outside. Water cannons and tear gas used on detainees inside.		
Nov 01	Riot and extensive fires. Approx 250 detainees involved.		
Dec 01	Three separate riots, each with fires. Tear gas and water cannons used.		
Jan 02	Hunger strikes, lip-sewing, including seven children.	Hunger strikes, lip-sewing.	Hunger strikes, lip-sewing.
Mar–Apr 02	Riots over the Easter period. Approx. 50 escapes, including mother and three children.	Riots and fires involving 150 detainees. Tear gas used. Family compound created after these riots.	Riot involving approx 150 detainees.
June 02	Hunger strikes, including 13 children. Escapes, including three children.		
July 02			Riots and fires.
Dec 02	Extensive fires.	[Not open]	One fire.

Disturbances in Woomera

The Woomera detention centre, which opened in 1999, was the site of more disturbances than any other centre. In this relatively small and contained environment, children were inevitably exposed to the riots, protests and violence that occurred. As one detainee father at Woomera told the Inquiry: “They know everything – who cut themselves, who try to hang themselves.”

The Inquiry visited Woomera three times – in January 2002, June 2002 and September 2002. During the first visit – at a time when 281 children were detained there – there was a major hunger strike, involving a large number of detainees. During this period, more than 30 children joined the hunger strike and a number of children sewed their lips. Two unaccompanied children swallowed shampoo and disinfectant and one boy cut the word ‘freedom’ into his arm.

Extensive riots occurred at Woomera during Easter 2002, which coincided with a major protest held outside the centre. During the riots:

- detainees climbed onto roofs, waved banners and shouted to protestors and media outside the centre
- some detainees threatened to set themselves on fire
- fences were brought down and some detainees used fencing, bricks and rocks as weapons
- tear gas was used on four occasions
- water cannons were used to subdue detainees.



Hunger strike at Woomera, January 2002



Video evidence of the Easter riots shows that some children were actively participating in the riots and others were highly distressed by what was going on around them.

Security procedures

Maintaining safety and security in detention facilities is a very challenging task. Some detainees have been violent during demonstrations, arming themselves with makeshift weapons and threatening staff. On some occasions, fences were pulled down and staff had to prevent detainees from escaping.

It is clearly legitimate for staff to protect themselves at times when they are being threatened. However, evidence to the Inquiry suggests that sometimes the security measures used compromised the physical safety and mental health of children.

When children are detained in a closed environment, the options available to shelter them from those events are limited. Thus the detention of children in immigration detention centres simultaneously increases the risk of harm to children and limits what can be done to address that harm.

The use of tear gas and water cannons and the sight of detention staff dressed in 'riot gear' caused particular distress to children. These experiences featured in drawings that detainee children presented to the Inquiry.



Drawing of water cannons at Woomera by a child in immigration detention

The Department and ACM acknowledged that they had a special responsibility to protect children from harm whilst the children were held in immigration detention. However, evidence to the Inquiry suggests that procedures in place to address unrest in detention centres did not sufficiently take into account the need to provide children with special protection.

Protecting children from harm during disturbances – who has responsibility?

That incident (a riot at Curtin) really psychologically affected my daughter ... she says that she prefers to go back and die than stay here in this country. We took refuge in this country because of the injustice in our own country, but now we see that the situation in here is even worse.

Detainee mother, Curtin

ACM and the Department

ACM, through its contract with the Department, has primary responsibility for maintaining security in the detention centres. However, ACM told the Inquiry that several factors made it difficult for them to fulfil that responsibility. For instance, the Inquiry was told that the infrastructure and, in particular, the ‘design limitations’ of the Woomera and Curtin centres made it difficult to protect children from violent incidents.

Whilst families were sometimes given the option to move to safer areas before or during a riot or disturbance, there were other times when ACM staff would implement a ‘lock down’ procedure to try and contain violence within a particular compound. As a result, parents and children were sometimes trapped in the middle of a riot.

A former ACM Operations Manager spoke of the problems he encountered during a ‘lock down’:

I was very concerned about children’s safety when there were riots and disturbances. When there was a riot, the centre was locked down and kids were in the thick of it. It was difficult to get children out because parents often did not want to be separated from them. Staff, particularly nurses, tried their best to keep children safe.



Even when families were able to move to a safer compound, children were not always protected from the psychological impact of the riots, either because the disturbances occurred in all the compounds or because children were frightened by what they could still see and hear going on nearby.



Blue fire trucks sitting outside Woomera, June 2002

Parents

Both ACM and the Department expressed the view that parents of detainee children had a responsibility to prevent their children from witnessing riots and other distressing events, particularly when they were given the opportunity to remain in their accommodation units or move to other compounds.

The Inquiry accepts that parents have primary responsibility for their children in such circumstances. The Inquiry also acknowledges that some parents did participate in the demonstrations and, therefore, may not have removed their children to a safer place.

However, the ability of parents to protect their children in such situations should be put into context. Within the detention environment, parents are forced to protect their children from situations of violence that they would only rarely encounter in the community. The frequency of major disturbances in detention centres through 2001 and 2002 also made it difficult to prevent exposure to violence.

In addition, parents faced the same problems as ACM staff – that is, trying to find a safe place for their children in a relatively small, contained environment.

It is all very well to say that parents should be able to keep their children away from that. The reality, based on my observations, is that in that environment it would be almost impossible to deprive children of the opportunity to see that kind of behaviour. Children are drawn to exciting things and if the most exciting thing that is happening is something negative and destructive, they will be drawn to that as surely as they are drawn towards positive exciting things that are available to them.

**Child psychiatrist who treated children at Woomera,
evidence to the Inquiry**

Inquiry finding

After considering substantial evidence about the safety of children in detention centres between 1999 and 2002, the Inquiry found that the Commonwealth breached the Convention on the Rights of the Child by failing to take all appropriate measures to protect children in detention from physical and mental violence.



Mental health

I felt so bad staying in a place surrounded by razor fence. I can't understand and I always asked 'Why did they take me here?' ... It was scary.

Unaccompanied child, quoted by Migrant & Workers Resource Centre, Refugee Assessment Project

The traumatic nature of the detention experience (at Woomera) has out-stripped any previous trauma that the children have had. So it has got to the point where being in detention is the worst thing that has ever happened to these children.

Child psychiatrist who treated children at Woomera, evidence to the Inquiry

Under the *Convention on the Rights of the Child*, all children living in Australia – including children held in immigration detention – have a right to the 'highest attainable standard of health'. The Convention also states that children escaping conflict, torture or trauma have a right to special help to recover 'in an environment which fosters the health, self-respect and dignity of the child.'

A child's mental health affects every part of his or her life. For instance it can stop children from enjoying healthy relationships with family and friends, it can hinder their ability to learn and it can undermine their enthusiasm to play. In other words, a child's mental health is strongly linked to his or her overall well-being.

The Inquiry received a wide range of evidence which indicated that detention has a significantly detrimental impact on the mental health of some children. While children who were detained for short periods of time may not have been greatly affected, evidence from the primary records of mental health professionals who treated children in detention showed that the longer children were held in detention, the more their mental health deteriorated.

Whilst children in detention did receive some support and help from mental health professionals, many experts told the Inquiry that the detention environment made it virtually impossible to meet the mental health needs of children and their families. This was because the source of many of the problems was the detention environment itself.

The Inquiry heard numerous examples where State mental health and child protection agencies, as well as independent experts, repeatedly recommended that children be removed from detention to protect their mental health. By April 2002 most unaccompanied children were removed from detention centres following these recommendations – but the recommendations were not implemented for children in detention with their parents.

Mental health experts, many of whom had treated children in detention, told the Inquiry that child detainees had experienced, amongst other things, clinical depression, post traumatic stress disorder, and various anxiety disorders.

Children in detention exhibited symptoms including bed wetting, sleep walking and night terrors. At the severe end of the spectrum, some children became mute, refused to eat and drink, made suicide attempts and began to self-harm, such as by cutting themselves. Some children also were not meeting their developmental milestones.

Recovery from past trauma

More than 92% of children in detention have been found to be refugees. This means that most, if not all, children in immigration detention are likely to have been affected by significant traumatic episodes before they arrived in Australia.

However, the Inquiry received evidence that the trauma children experienced before they arrived in Australia does not account for the extent of mental health problems they demonstrated in detention. In fact, the evidence was clear that immigration detention centres were not an environment where they could recover from their past persecution and trauma.



The detention environment

Children, parents, child protection authorities and psychiatrists all agreed that children are deeply affected by witnessing violence in the detention centres, such as riots, fires, suicide attempts, incidents of self-harm and hunger strikes.

An atmosphere of fear and violence can cause extreme anxiety in children, which can cause them to relive past traumas. It can also lead some children to copy the behaviour they see around them.

**Parents expressed concern for their 3 year old ...
(that) he has picked up bad habits from what he observes
in his environment, including bad language, climbing
and jumping, violence against himself and others and
saying (that) he wants to drink shampoo ...**

**South Australian Department of Human Services,
Woomera Detention Centre Assessment Report, April 2002**

The atmosphere of violence was compounded by other factors associated with life in a detention centre, such as living in a closed environment and the uncertainty surrounding visa applications.

In the early stages of detention, before a primary determination is made on a visa application, detainees are generally hopeful that their application will be successful and their time in detention short. However, as weeks and months pass without any news on their visa application, or if the application has been rejected, detainees grow more depressed, anxious and fearful.

**There are children who have been there for a very
long time – two to three years – and they have done
things that are very distressing, like they went up the
trees and they wanted to throw themselves, trying to
commit suicide. There were kids that actually stitched
their mouths. Things that are so traumatic that we are
now having nightmares on a daily basis.**

Former detainee boy, Perth focus group

Breakdown of families

Experts agree that strong, effective parenting is crucial to the well-being and healthy development of a child. However, being in detention can severely undermine the ability of parents to care for their child.

Parents in detention spoke of their frustration at being unable to maintain normal family arrangements in detention, such as cooking their own food, providing discipline or celebrating birthdays or other special days.

Parents also said they felt guilty in bringing their children to Australia – instead of finding freedom and a new home, they were being held in ‘a prison’.

The Inquiry heard that parents in detention who were previously very effective and competent became depressed in detention, which meant they were unable to play with their children, read to them, supervise them or look after their safety. In some cases, parents also found it difficult to manage their children’s behaviour in the detention environment.

A parent’s depression can lead to children taking on an ‘adult’ role – children would care for a parent or younger siblings and discuss issues with detention centre staff because they had stronger English language skills than their parents.

Child welfare experts told the Inquiry that it was very harmful for children to take on these roles. Not only is the behaviour ‘developmentally inappropriate’, it also means they sacrifice their own needs and try to offer a level of care to others that they are not really able to give.

My mum was sick always. She was very sad. Every night she was crying until one or two o’clock because we lost our father ... But now we are big and we look after her. My mum is always worried about the visa. Sometimes she has headaches.

Afghan former detainee girl, Perth focus group



Mental health problems suffered by children in detention

Children detained for lengthy periods have experienced significant mental health problems. A study by mental health professionals (the 2003 Steel report) of 20 children from a remote detention centre who had been detained for an average of 28 months found that:

All but one child received a diagnosis of major depressive disorder and half were diagnosed with Post Traumatic Stress Disorder (PTSD). The symptoms of PTSD experienced by the children were almost exclusively related to experience of trauma in detention. Children described nightmares ... and many would scream in their sleep or wake up shouting.

In April 2002, the South Australian child welfare authority made the following report on a 13 year old boy who had been detained for 455 days:

[He] is very withdrawn and lethargic. Since entering Woomera he has been suicidal and very sad. He reports nightmares nightly, seeing himself dead, or unable to move with people carrying his body. He reports waking screaming and finds trouble falling to sleep. He reports a diminished appetite. He has little memory of past events and no hope for the future. He refuses to make new friends because he believes they will be released but not him. He engages in constructive day time activities but spends hours sitting staring vacantly.

Children in detention also self-harmed – they have sewn their lips together, attempted to hang themselves, swallowed shampoo and detergents and have cut themselves. Between April and July 2002, one child detained at Woomera made four attempts to hang himself, climbed into the razor wire four times, went on hunger strike twice and slashed his arm twice. Records from April 2002 report this boy saying:

If I go back to camp I have every intention of killing myself. I'll do it again and again ... We came for support and it seems we're being tortured. It doesn't matter where you keep me – I'm going to hang myself.

CASE STUDY

A family – a father, mother and 10-year old son – arrived at the Ashmore Islands in April 2001. They were immediately taken to the Woomera detention centre. A few months later, in August 2001, the family agreed to be separated, with the mother and son moving to the nearby Residential Housing Project (the rules of the Project do not permit fathers to live there).

In May 2002, South Australia's Family and Youth Services (FAYS) noted that the boy was showing 'clear signs of severe stress: his sleep-talking, nightmares and now sleep-walking indicate deep-seated trauma'. In the same month, an ACM psychiatric nurse reported that his mental health was deteriorating and recommended the family be reunited and released on a bridging visa.

At the end of May, the mother and son went back to the Woomera detention centre because they no longer wanted to be separated from the father. Between May and November 2002, the young boy attempted to hang himself twice and self-harmed by cutting himself on at least eight occasions.

Regular psychological assessments documented the boy's deteriorating mental health and the urgent need for intervention, including immediate release from the detention environment. These reports were provided to the Department.

'He is at on-going risk of self-harm and his parents are unable to support and help him. In fact, he is currently the 'strong one' in the family – and he is only 11 years old.

FAYS, June 2002

He is completely dysfunctional for his age and experiences bouts of depression and uncontrollable rage ... the stresses for a young boy to represent the family under these circumstances is pushing him into extreme and dangerous behaviours.

ACM psychologist, June 2002

(L)ittle can be done to help them whilst they remain in the detention situation.

Psychiatrist, Royal Adelaide Hospital, July 2002



Continued detention increases the risk of self-harming behaviour and increased traumatisation.

**Psychiatrist, Women and Children's Hospital (Adelaide),
July 2002**

The boy's self-harm incidents have risen in frequency so much that 'he now seems to be disassociated when he cuts himself.'

**Teleconference involving FAYS, ACM, the Department
and Woomera Hospital, October 2002**

Long term detention has had a devastating effect on (this) family ... Detention of this family at the Woomera Detention Centre is no longer an option. I strongly recommend that ... the family be given alternative accommodation, preferably community-based ... Anything less would be a failure in our duty of care.

ACM psychologist to Department Manager, October 2002

In November 2002, ACM's Acting General Manager wrote to the Department outlining the serious concerns of health professionals and recommending that the family be transferred from Woomera, at least to a detention centre other than Woomera, but preferably to an alternative place of detention. Attached to the letter were 18 reports on the family and their health needs.

In January 2003 the family was transferred to the Baxter detention centre.

(He) remains depressed with symptoms of PTSD. He remains at high risk of suicide and the centre is clearly unable to provide the appropriate supports to ensure his safety.

**SA Child and Adolescent Mental Health Service,
January 2003**

When I asked if there was anything I could do to help him, he told me that I could bring a razor or knife so that he could cut himself more effectively than with the plastic knives that are available (showing me the many scars on his arm).

**Psychiatrist, Women and Children's Hospital (Adelaide),
February 2003**

In December 2003 the family was still in Baxter detention centre.



Family compound at Baxter, December 2002

Inquiry finding

The Commonwealth failed to take all appropriate measures to protect and promote the mental health and development of children in detention over the period of the Inquiry and therefore breached the Convention on the Rights of the Child.

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



Physical health

I am primarily a paediatric doctor. I saw many of the children in (Woomera) ... and really so many of their problems relate directly to the prolonged and indeterminate nature of their detention, which is a combination of the very harsh and isolated physical environment, the poor accommodation facilities and the lack of resources for their mental health and their leisure activities.

Former Woomera doctor, evidence to the Inquiry

As mentioned previously, under the *Convention on the Rights of the Child*, children held in immigration detention have a right to grow up in a healthy environment and to 'achieve 'the highest attainable standard of health'.

Most Inquiry evidence regarding children's health related to children's psychological health. However, children's physical health is closely related to their mental health. For instance, depression and lethargy can mean that a child does not want to eat and they miss out on the nutrition they need. Serious mental health problems can lead to attempts to self-harm.

However, it became apparent throughout the course of the Inquiry that, despite the efforts of health staff, the detention environment and the standard of medical care available had an impact on the physical health of children.

Creating a healthy environment

The Department has a responsibility to ensure that children in detention have a healthy environment in which to live. Shelter, clothing, food and hygiene are all factors that contribute to the physical health of children.

Food

The Inquiry was told that the strict regime of serving three meals a day did not suit the eating habits of children – in fact, most children prefer to

'graze'. In addition, some parents would go without food to create another meal for their children or give them the food that they wanted.

Evidence presented to the Inquiry showed that the food varied in quality between the detention centres and over time and that the menu was sometimes unappetising and monotonous for children – especially over long periods of time in detention.

The provision of baby formula at Woomera was uneven for substantial periods of time. In addition, there was no evidence that individual assessments of children were made to identify and address any pre-existing nutritional deficiencies.

Accommodation

At certain periods of time families were living in crowded conditions which caused discomfort and stress. This became less of a problem as detainee populations decreased over 2002.

Hygiene

Much of the cleaning in remote detention centres was done by detainees who were paid an equivalent of one dollar per hour. During periods of tension and unrest in the facilities, however, some of these jobs were not done and there were inadequate systems in place to maintain an appropriate level of hygiene.

Physical surroundings and climate

The extreme heat and cold of remote detention centres contributed to health problems. Medical staff said that dehydration was common among children and adult detainees. Children complained that rocky surfaces and the absence of grass meant that they hurt themselves playing. The Inquiry also heard complaints about eye and skin infections caused by the glare, dirt and dust storms.

Providing health services

When children arrive in detention facilities they undergo two types of health assessments. Firstly, there is a public health screening to identify communicable diseases, such as typhoid and tuberculosis. Secondly, a screening takes place to identify the general health needs of each detainee.



Assessment and treatment

Children arriving from countries all over the world may have ailments that are not common to Australia and need specialised assessment procedures. However, evidence received by the Inquiry suggested that the initial assessments may have failed to pick up special medical conditions of child detainees and that there was no regular follow-up. There was no routine hearing tests for children and no routine testing of sight for children above five years of age.

Children also felt that, at times, medical staff did not take their concerns seriously. The submission of the NSW Commission for Children and Young People quotes children who say that no matter what ailment they had medical staff would recommend 'water and Panadol'. This was consistent with interviews conducted by the Inquiry.

When we were in the detention centre and someone was sick, headache or sick and they would say, 'Just drink water.' ... My sister has a problem with her eyes. She said her eyes were so painful and she went to the doctor who said, 'You just have to drink water'. Now we come to Sydney and the doctor says she has a problem in her eyes.

Teenage girl, Sydney focus group

Access to health staff

All immigration detention centres have health care staff available for treatment, including nurses and doctors. However, at various times detention centres were understaffed. A triage system set up to deal with staffing problems led to delayed treatment in some cases, causing distress to children and parents.

Qualifications of health staff

Many of the doctors and nurses that Inquiry staff met were highly professional and caring. However, it seems that many were not trained to identify and address the possible special medical conditions of child asylum seekers and that there were insufficient staff with paediatric training.

This problem was compounded by the difficulty in recruiting and retaining staff for work in remote immigration detention facilities. In these circumstances, it is even harder to recruit personnel with the necessary mix of skills and experience.

Cultural awareness

The cultural awareness of medical staff also affects the quality of health care that children in detention receive. For instance, some female children and mothers may feel that it is inappropriate for medical assessments and examinations to be done by a male nurse or doctor.

Although there were some efforts to improve cultural awareness, the specifics of that training remain unclear. Health staff at Woomera commented that everything they had learned was through the detainees.

Availability of interpreters

Providing on-site interpreters to help with medical examinations has been a persistent problem in some detention centres, particularly Port Hedland. The Department Manager at that facility reported an absence of on-site interpreters over a period of 19 months.

The absence of interpreters has a dual impact on children. For children who do not speak English, medical examinations can be intimidating and inaccurate. In addition, children who do speak English often end up interpreting for their parents.

We had a lot of difficulty not being able to speak very good Farsi or Arabic, and most of the detainees (in Woomera) had very little or no English ... I remember one specific instance when a seven or eight year old child was brought in screaming with blood pouring from his lip. And somebody said that he had been assaulted. Eventually we found an interpreter who was able to get the hysterical mother to explain that, no, he had been playing soccer and had tripped on the rocky ground and cut his mouth open on the ground.

Former Woomera doctor, evidence to the Inquiry

Access to external doctors and hospitals

Medical centres within detention facilities are only intended to provide initial, primary care. It is the Department's policy that detainees who can't be treated within detention centres are referred to off-site specialists and hospitals. In remote detention centres in particular, the absence of clear procedures for referral, and the difficulties that come with isolation, were frustrating for doctors and led to delays.

Access to dental care

All centres reported managing demand for dental services as a major problem. Because of advanced dental problems in the detainee community, most visiting dentists spent all their time on pain relief and extractions, with no time left over to provide children with the preventative dental care they needed. In June 2002, ACM staff took steps to develop guidelines to improve dental services. However, dental care remained an issue in some centres in late 2002.

Pre and post natal care

While efforts were made to provide pre- and post-natal care to women and their babies, the location of the remote detention centres and the restrictions that come with the detention environment meant that women about to give birth were sometimes separated from husbands and other children for weeks at a time.

Inquiry Finding

Despite the efforts of individual staff members, the Commonwealth failed to take all appropriate measures to ensure that children in detention could enjoy the highest attainable standard of health – especially in the remote detention centres. This resulted in a breach of the Convention on the Rights of the Child.



Education

In Port Hedland there is a school outside ... I used to stand on a chair and look out at them. I like to see what they looked like in their school uniform. There was an officer ... and she pulled my shoulder down and put me on the ground and said, 'You are not allowed to look at those people because they are different to you.' And I was like 'Why are they different to me? Because they know English and they are Australian, does that make them better?'

Teenage boy, Perth focus group

All children in Australia have a right to education. Under the *Convention on the Rights of the Child*, Australian governments are required to provide, as a minimum, primary education that is 'compulsory and available free to all' and secondary education that is 'available and accessible to every child'.

All children in Australia, regardless of their nationality, their immigration status, or how they arrived in the country, have the same right to education.

The Inquiry looked at whether children in immigration detention received a standard of education that was comparable to 'similar children' in the Australian community. To help make this assessment, the Inquiry looked at the education services available to refugee children and asylum-seeker children living in the community.

It is the responsibility of the Department to ensure that detainee children receive an adequate education.

Since 1999, most detainee children have had access to educational programs inside detention centres. For several years, some detainee children from some centres have attended local schools outside their detention centre.



Since late 2002 this opportunity was extended to most detainee children. However, as most children in immigration detention over the period of the Inquiry attended internal detention centre schools, it was important to examine the quality of that education.

How does the detention environment affect children's ability to learn?

When I first came here, we were very hopeful to get out – we thought our stay here was very short ... after that I became very upset and depressed and because of my mental condition I couldn't bring myself to go to the school.

Teenage boy, Curtin

Children in detention often carry with them experiences that make learning very difficult, such as the effects of past torture and trauma. However, the detention environment itself makes learning even harder.

Experts told the Inquiry that factors such as riots and disturbances, moving from one compound to another, disruptions associated with arrivals and releases and uncertainty over visa applications, all undermine the effectiveness of education programs.

Of most particular concern, however, was the mental health of children, which deteriorated the longer they were in detention. Detainee children told the Inquiry that depression and anxiety made it very difficult for them to concentrate and learn.

In addition, children's attendance at on-site schools declined with the length of time they had spent in detention and as they grew older because they felt depressed and because the classes didn't meet their needs.



School education buildings and recreation area at Curtin, June 2002

Education in detention centres

The lack of adequate education programs is a major issue. More often than not no trained teacher (is) available, classes are irregular at best, no curriculum, no subject programs or timetables and no learning outcomes identified. This also has a negative impact on the behaviour of the children as they don't have enough to occupy their time constructively.

**Department Manager Report, Port Hedland,
January - March 2001**

Despite the significant efforts of teachers, the Inquiry found that there were fundamental problems associated with providing education services in on-site schools throughout the period of the Inquiry. These included:

- insufficient infrastructure
- inadequate hours of tuition
- inadequate educational assessments and reporting of children's progress.

Two other significant problems – the lack of an appropriate curriculum and the shortage of teachers – are discussed below.

Many of these problems were substantially addressed when, in 2002, the Department arranged for increasing numbers of children to attend local schools.



Curriculum and resources

There was no curriculum set or advised by ACM or (the Department) ... we were certainly given some classrooms to teach (in at Woomera) and some materials in terms of white boards ... but nothing in terms of what type of syllabus for any subject so we made that up ourselves.

Former Woomera teacher, submission to the Inquiry

An effective education requires a carefully developed curriculum which is appropriate to the needs of children. It also requires adequate resources. Former education staff and community organisations presented evidence to the Inquiry that the curriculum offered to detainee children at on-site schools varied considerably over time and between centres – however, it was often inadequate and unstructured.

Detainee children and parents consistently said that a lack of age-appropriate teaching resources restricted children from receiving an education suitable for their age and needs. This was a particular concern for older children.

There was only one class and everybody like from five year old and I were put in the same class. And what they did was put a photocopy of some basic mathematics in front of us and they were trying ... to teach me simple addition and these sort of things – basic mathematics.

Teenage girl, Curtin

Further, there were limited learning opportunities for detainee children aged 15 and over – even though two years of post-compulsory schooling are available to children across Australia. At this age detainee children were encouraged to enrol in education programs for adult detainees, which were generally inappropriate to these children's needs.

We had no computers. We had pens and exercise books. We just copied from difficult books, some books like dictionaries, just copying, then put in the rubbish bin. No easy story books, just dictionaries. Not learning English, just copying and copying. We were like a printer!

Teenage girl, quoted in NSW Commission for Children & Young People, submission to the Inquiry

By late 2002, efforts were made to expand the curriculum in some centres, particularly in Woomera and Baxter. However, this expanded program was not given sufficient resources in the early stages.

Availability of teachers

Evidence to the Inquiry highlighted the significant shortage of suitably qualified teachers in detention centres, particularly in Woomera and Port Hedland, which at times had very large numbers of children.

For instance, there were 282 children at Woomera on 1 August 2001 and 456 children there on 1 September 2002. However, during these months no more than five teachers were employed – often the number was less. By contrast, there is one teacher for every 25 to 30 students in Australian primary schools.

To cope, adult detainees without Australian teaching qualifications were sometimes called upon to teach classes. Mostly they acted as teaching assistants but occasionally they taught classes alone.

This shortage of teachers also had an effect on the hours of tuition students received. In most Australian schools, students receive approximately six hours of teaching each day. However, detainee children attending on-site schools prior to the end of 2001 received considerably fewer hours of tuition. For example, ACM documents show that during 2001 teaching hours at Woomera varied between one and three each day, depending on detainee numbers.

The high turnover of teachers also undermined the quality and availability of education programs.

Finally, in some centres during 2002, teachers wore ACM uniforms and security earpieces and consequently it was initially difficult for children to distinguish teachers from detention officers.

Attending local community schools

Prior to 2002, education for detainee children largely took place in on-site schools in detention centres. Some child detainees from some detention centres were able to attend local schools in the community.



However the arrangements for this provision of external education were ad hoc and the opportunity was only extended to a small number of children in detention.

From mid-2002, increasing numbers of children in detention were allowed to attend local schools, after the Department began to negotiate agreements with State and Territory education authorities. By the end of 2003, the majority of children in detention were attending external schools.

Evidence to the Inquiry was clear about the benefits – child detainees are able to experience a ‘normal day’ outside the detention centre, be taught a full curriculum, socialise with other children and make new friends, all of which improves their well-being. The Department Manager in Port Hedland reported in June 2002 that the ‘[b]ehaviour and socialisation skills of the children [are] improving as a result of attending community schools.’

Parents told the Inquiry that they preferred their children to attend external school. However, these benefits can be offset by the experience of returning to the detention centre each afternoon.

When we go outside we see the children, they go out free, when they go back home, we have to come back here. Sometimes they say to each other, ‘We’re going to beach or somewhere else’ – we can’t go.

Teenage boy, Port Hedland

Not all children, however, were allowed to attend external schooling. For example, at Curtin, ACM staff determined whether a child could attend the local school, based on how well they thought the child would cope, their level of English and their social skills. Children in the Australian community are never excluded from school on the basis of requirements such as these.

In addition, some older children aged 16 and above were denied the opportunity to attend external schooling because of their age. Being denied access to attend a local school had a detrimental effect on some children, contributing to greater levels of depression which, in turn, affected their ability to learn in the detention centre school.



St Cecilia's Catholic school attended by children in Port Hedland, June 2002

When did children in detention attend local schools?

Maribyrnong

- 1998 Children had access to education at St Margaret Mary's Catholic primary school from the beginning of 1998. Approximately 12 children participated in this arrangement.
- 2002 In October children began attending the local State schools.

Port Hedland

- 1998 Two children enrolled at St Cecilia's Catholic primary school.
- 2002 In April two children began attending St Cecilia's. From May, all children attended the school.

Curtin

- 2001 Children commenced at Derby District High School in March 2001 – five children attended during 2001.
- 2002 Approximately 16 children attended Derby District High School – a small proportion of the children detained at the time.

Villawood

2002 In August 2002 some children began attending local State schools. More children commenced at external schools in October, however, not all children could participate.

Woomera

2002 In December, primary school-aged children commenced attending St Barbara's Catholic Parish School in Roxby Downs, two days a week.

2003 By mid-2003 children detained at the Woomera Residential Housing Project were attending the Woomera Area School.

Baxter

2003 In March 2003 secondary school-aged children began attending local State schools, with primary school-aged children attending local State schools from April 2003. Some children were excluded from these arrangements.

Inquiry Finding

The Commonwealth failed to take all appropriate measures to provide children in immigration detention with an adequate education over the period of the Inquiry, resulting in a breach of the Convention on the Rights of the Child. Many problems were addressed when child began attending external schools.



Children with disabilities

The *Convention on the Rights of the Child* is very clear that extra efforts must be taken to provide children with disabilities with the support they need to enjoy a 'full and decent life'.

The Inquiry closely examined the services provided to two families with children with serious disabilities. These families were held in immigration detention centres between 2000 and 2003 – one family was in Port Hedland, the other was in Curtin.

Despite the efforts of individual staff members and the significant improvements over 2002, evidence to the Inquiry demonstrated that in the case of these two families there was a failure to provide:

- prompt access to State disability and child welfare services to assist with the identification of children with disabilities
- prompt development of comprehensive individual case management plans
- prompt provision of aids and adaptations, such as a wheelchair and eating utensils
- prompt provision of suitable educational programs conducted by qualified staff
- prompt provision of recreational programs tailored to the individual needs of the children
- adequate support to help parents cope with the stress of caring for children with disabilities in detention.

The longer children with disabilities are held in immigration detention the greater the impact of these problems will be. Whilst the Inquiry acknowledges that providing services to children with disabilities in remote detention centres is extremely challenging, the Department has the power to release these families or transfer them to facilities that are better placed to meet their needs.

The Department failed to promptly consider any alternative options to detention for these children with disabilities.



CASE STUDY

A family, including two boys and a girl, aged 7, 11 and 13, arrived in Australia in August 2000. The children had aspartylglucosaminuria (AGU) which creates an intellectual disability. The family was initially detained in the Port Hedland detention centre and was later transferred to the Villawood detention centre in September 2003.

The exact nature of the disability of the three children was not determined until August 2002 – two years after the family arrived in Australia. While this is not always an easy problem to diagnose, the evidence before the Inquiry suggests that there were no serious efforts to commence the diagnostic process until seven months after this family's arrival in Australia. Furthermore, there was slow follow-up once the process started.

The children did not receive the appropriate case management, education, recreation and other support and assistance they needed. The difficulty of providing specialist services in a remote detention facility contributed to this failure. For instance a teacher from the Port Hedland centre described the challenges of trying to provide a positive education experience for them in the detention environment:

There were two support detainees in the class that I was teaching in and we just tried to keep them going with very simplified work and quite often the other children would rile the smaller boy as it was very easy to do that and he would jump on tables and start screaming out and run round the classroom. It was very difficult to know what to do, I guess. After a while I developed some techniques ... But it was another area – it was yet another level to deal with in that classroom and the people working with me were untrained. They were very humane and very good with the children, excellent actually, but they weren't trained in any – in that specialist area.

The family were released on permanent refugee protection visas in December 2003 – three years and four months after first being taken into detention.

Inquiry Finding

The Commonwealth breached the Convention on the Rights of the Child by failing to ensure a 'full and decent life' for children with disabilities in detention and by failing to ensure they received the special care and assistance they required.



Unaccompanied children in detention

The *Convention on the Rights of the Child* states that unaccompanied children – particularly those seeking asylum – need special protection and assistance. Where unaccompanied children have a legal guardian, their best interests must be the guardian's 'basic concern'.

Most of the unaccompanied children who come to Australia seeking asylum arrive without a visa and are, therefore, automatically held in immigration detention.

Between 1 January 1999 and 30 June 2002, 285 unaccompanied children arrived in Australia without a visa and sought asylum. They were all detained. The highest number of unaccompanied children in detention was in July 2001 when 143 were held in detention.

Most unaccompanied children were adolescent boys – either from Afghanistan or Iraq – and most were detained at Curtin, Port Hedland and Woomera detention centres.

Alternatives to detention

During the course of the Inquiry, many unaccompanied children were detained in remote detention centres for lengthy periods of time. There are, however, options available to the Minister and the Department to remove unaccompanied children from detention centres. For instance, they can be granted a bridging visa or transferred to an alternative place of detention in the community. From December 2002 onwards, it was Department policy to make one of these alternatives a priority.

However, between 1999 and the end of 2001, only one unaccompanied child was removed from detention and placed in the community – an eight-year-old boy who was granted a bridging visa after being detained at Woomera for four months. Between January and February 2002, the majority of unaccompanied children remaining in detention were transferred to alternative detention in foster homes in Adelaide.

In December 2003 there were no unaccompanied children remaining in detention centres.

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

According to Australian law, the Minister is the legal guardian of all unaccompanied children seeking asylum in Australia. The Minister has the same rights and duties as a natural guardian and remains the child's guardian from the moment of arrival until he or she turns 18 or leaves Australia.

The Minister is able to delegate this guardianship role to another representative of the Commonwealth government or a representative of a State or Territory government. Since 1999 guardianship has been formally delegated to State child welfare authorities and since 2002 to the Department's Managers or Deputy Managers. However, since 1999, day-to-day care of unaccompanied children in detention centres has generally been understood to be the responsibility of ACM.

The Minister's role as guardian of unaccompanied children raises a significant conflict of interest as the Minister is also the detention authority and the visa decision-maker. Given these multiple roles, it is difficult for the Minister, or Departmental delegate, to make the best interests of the child the primary consideration when making decisions concerning unaccompanied children.

This conflict is not resolved by delegating the guardianship function to the Department Managers. Indeed, those Managers are placed in the impossible position of trying to gain the trust of the unaccompanied children when the same children view them as the people responsible for their detention.

I regarded the failure to remove UAMs (unaccompanied children), 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.

Former Woomera psychologist, submission to the Inquiry



ACM's care of unaccompanied children

Many individual ACM staff worked hard to meet the needs of unaccompanied children in detention and unaccompanied children were, quite appropriately, given greater attention by ACM staff than children with parents.

Designated officers with responsibility for the care of children were appointed in Woomera and Port Hedland in early 2001 and in Curtin by late 2001.

ACM staff also developed a range of strategies over time to attempt to improve the care available for unaccompanied children, such as case management plans, progress reports and regular meetings to discuss their needs.

However, these systems were generally not able to address the problems and serious distress faced by these children – as evidenced when a group of unaccompanied children at Woomera took part in acts of self-harm in November 2001 and January 2002.

This raises the question as to whether the best interests of unaccompanied children can ever be met within a detention centre, especially when they are detained for long periods.

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.

Unaccompanied child, Woomera, January 2002

The role of the Department

The Department has a role to act as the delegated guardian of unaccompanied children in detention. Department Managers were responsible for monitoring the care received by unaccompanied minors in each centre.

However, evidence to the Inquiry suggests that the Department had minimal involvement in the care of unaccompanied children and that its monitoring was ineffective.

Department Managers faced significant obstacles in effectively fulfilling their role as the delegated guardian of unaccompanied children – they did not have child care qualifications or experience and were not provided with specific training to help them understand and meet the needs of unaccompanied children.

There were also no guidelines describing the role of the Department Manager until late 2002 – by which time most unaccompanied children were no longer in detention centres.

CASE STUDY

During January 2002 a group of unaccompanied children in the Woomera detention centre took part in hunger strikes, lip-sewing and other acts of self-harm. These violent protests were serious enough to trigger the transfer of almost all unaccompanied children in Woomera to foster care and group homes in Adelaide.

The first group of children released into alternative detention included five unaccompanied children. On 14 January 2002, the Department requested that the South Australian child protection agency (FAYS) conduct urgent investigations regarding three of these children, the youngest unaccompanied children in the centre. These children were aged between 12 and 14 years and had been detained at Woomera between June and August 2001.

On 16 January 2002, hunger strikes began at Woomera in response to the Minister's announcement that processing of applications by Afghan asylum seekers would be suspended. Following are details regarding two of the unaccompanied 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.' On 20 January 2002, this child sewed his lips together. He remained on hunger strike until he was removed from the centre on 24 January 2002.



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

Four 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.' 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.'

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 its 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.'

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

No case management plan was available for this child. On 26 January 2002, FAYS reported that the child had been on hunger strike since at least 19 January 2002 and had ingested shampoo on 21 January 2002, when he was admitted to the Woomera Base Hospital. FAYS reported that he 'presented as highly depressed, with an inability to focus his energies on anything other than dying via starvation and dehydration.'

A number of unaccompanied children remained in the centre. Five of these children were the subject of an assessment by FAYS on 28 January 2002, after participating in hunger strikes. According to FAYS:

(The children) 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 expressed 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.

FAYS recommend the children's immediate release from the centre. The Department did not act on this recommendation. A week later, on 7 February 2002, these unaccompanied children reinstated a pact to self-harm if they were not removed from the centre by the end of the day. Following an urgent recommendation by the South Australian Department of Human Services on 7 February, these unaccompanied children were released into alternative detention the next day.

Inquiry finding

The Commonwealth breached the Convention on the Rights of the Child by failing to take all appropriate measures to ensure that unaccompanied children in detention received the special protection and assistance they need to enjoy their rights.



Recreation and play

It was like a new life for us when we went out of the centre.

Teenage boy, Perth focus group

Rest, play, recreational activities and the opportunity to take part in artistic and cultural events, as set out in the *Convention on the Rights of the Child*, are very important for the healthy development of children.

Participating in games and play can help improve a child's social and personal skills, such as negotiation and sharing. For children in detention, it can help them cope with past experiences of trauma and violence and improve their mental health.

Although some efforts were made by the Department to provide play and recreation activities, the detention environment – often in remote locations, poorly grassed, surrounded by razor wire and subject to riots and disturbances – can stifle a child's desire to play and, therefore, their mental health and development. The longer a child is detained, the more serious the effects.

The Inquiry found that:

- there were no constraints on children regarding leisure time or access to outdoor areas. However, children in separation detention in Port Hedland had limited access to play outdoors
- by 2002 all centres had playground equipment for children, however, it took two years before it was installed at Woomera
- toys and sporting equipment were generally provided, although at times of overcrowding they were often insufficient to meet the needs of children in the centres
- access to televisions and videos varied between centres but was generally available.

Comments were often made by detainees regarding the absence of greenery and how this contributed to them feeling sad ... On an excursion to St Michael's School in Woomera, when I took the children to the oval the whole group ... began laughing with delight and ran directly to the oval ... They behaved as if they'd never seen grass before ... they did not want to leave ...

**Former Woomera Activities Officer,
submission to the Inquiry**

Organised recreational activities are also important in contributing to a child's healthy development. The Inquiry found that:

- each centre had a recreational program in place although the quality varied between centres. Although individual staff made efforts, understaffing and a lack of resources meant that the needs of children in Woomera were not always met. Children held in Villawood and Maribyrnong had more recreational opportunities because of nearby community groups and facilities.
- excursions were generally arranged on an ad hoc basis, although there were periods when no excursions were offered and in some centres excursions were often cancelled at late notice. However, concerted efforts to offer regular excursions began in some centres in late 2001.

Inquiry finding

The Commonwealth provided children in detention with sufficient opportunities for play and recreation to meet its obligations under the Convention on the Rights of the Child. However, recreational opportunities are closely linked to a child's right to enjoy – to the maximum extent possible – healthy development and recovery from past trauma. The programs and facilities provided in detention failed to meet these obligations, resulting in a breach of the Convention.



Religion, language and culture

The *Convention on the Rights of the Child* requires Australia to protect children's right to cultural identity, language and religion. It places a responsibility on the Department to facilitate their religious and cultural practices, such as worship, diet, health and hygiene.

Between 1999 and 2002, children in detention predominantly came from three language groups – Arabic, Dari (Afghan Persian) and Farsi (Modern Persian). Smaller numbers of children spoke Pashto, Singhalese, Tamil and Turkish. The major religious groups were Shi'a Muslim, Sunni Muslim, Christian and Sabian Mandaean.

The Department and ACM tried to accommodate the religious and cultural needs of children, although the detention environment and the remoteness of some of the facilities created some difficulties. The Inquiry found that:

- most centres reserved space for public prayers and services and children could also pray in their private accommodation
- clergy were generally allowed to visit detention centres, however, it was difficult for many to travel to remote centres
- detainees were free to appoint their own representatives to conduct religious services
- parents were allowed to provide religious teaching to their children and, in some cases religious texts and religious instruction by external authorities were provided
- certain special cultural events and Muslim and Christian religious festivals were celebrated
- efforts were made to provide culturally appropriate food for detainees, such as halal food for Muslim detainees.



Muslim prayer room at Port Hedland, June 2002

There are conflicting groups forced into close proximity with each other that leads to tensions ... Religious tensions that may have caused people to flee in the first place are part of everyday life in the detention centres.

Lutheran Community Care, submission to the Inquiry

In some cases children were detained with people from the same religious groups that had persecuted them in their homeland. Sabian Mandaean children, in particular, experienced some harassment and bullying from other child and adult detainees. The Department took some general measures to try to protect children and families from such harassment, although there was little evidence of a comprehensive preventative approach.

Inquiry Finding

The Commonwealth has not denied children in detention the right to religion, culture and language to the extent of breaching the Convention on the Rights of the Child. However, the Inquiry is concerned that the detention of children, in remote centres and often long-term, limited their ability to fully enjoy those rights.



Temporary Protection Visas

Following a successful application for asylum, children – either individually or as part of their family group – are generally released from detention into the community on a three-year temporary protection visa (TPV).

Since 2001, the conditions attached to the TPV mean that children and their families:

- are not eligible for permanent residence in Australia, unless the Minister decides otherwise
- are unable to bring any family to join them in Australia for the period of their TPV, unless the Minister decides otherwise
- lose their visa if they travel outside Australia, as TPVs are single-entry visas.

After three years the TPV expires. At this time the child is required to apply again to stay in Australia on the basis that they are still a refugee and that it would not be safe for them to return to their country of origin.

Evidence presented to the Inquiry highlighted two very significant barriers that children released from detention on TPVs face as they try to integrate into the Australian community.

The first is that the temporary status of their residence creates a deep uncertainty and anxiety about their future. This can exacerbate existing mental health problems from their time in detention and their past history of persecution. It also affects their capacity to fully participate in the educational opportunities offered in Australia.

It is like a cancer. It is like a brain tumour or something – you know that you are going to die after three years. Even if you have a brain tumour, you know that you are going to die in that certain time ... so you live happily. With this, you just die every day. You don't know what's going to happen.

Teenage boy, Perth focus group



Drawing by a child detainee in Port Hedland

The second concern is that the absence of the right to family reunion for the duration of the visa, combined with the effective ban on overseas travel, means that some children may be separated from their parents or family for a long, potentially indefinite, period of time. Again, this can undermine a child's mental health and well-being, especially for unaccompanied children who may want to try to see their family.

Evidence to the Inquiry showed that unaccompanied refugee children released from detention were generally well-cared for by State agencies and that health, education and social services attached to temporary visas satisfied the requirements of the *Convention on the Rights of the Child*.

However, limited settlement services, including initial housing assistance; stringent reporting requirements in order to receive the Special Benefit; limited employment assistance programs; and limited English language tuition for adults all placed significant strain on children and families trying to integrate into the Australian community.

Inquiry finding

Australia's laws breach the Convention on the Rights of the Child by failing to ensure that children released from immigration detention on TPVs can enjoy their right to mental health, development, recovery from past trauma and family unity.



Major findings and recommendations

The Inquiry has found that Australian laws that require the mandatory immigration detention of children, and the way these laws are administered by the Commonwealth, have resulted in numerous and repeated breaches of the *Convention on the Rights of the Child*.

The Inquiry made a range of factual findings in relation to:

- monitoring of conditions in detention centres
- Australia's detention laws and policy
- Australia's refugee status determination system as it applies to children
- safety and security
- mental health
- physical health
- children with disabilities
- education
- recreation and play
- unaccompanied children
- religion, culture and language
- temporary protection visas.

These factual findings, based on evidence received by the Inquiry, were assessed against Australia's human rights obligations under the *Convention on the Rights of the Child*. From this, the Inquiry reached its major findings and recommendations.

MAJOR FINDING 1

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

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

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

MAJOR FINDING 2

Children in immigration detention for long periods of time are at high risk of serious mental harm. The Commonwealth's failure to implement the repeated recommendations by mental health professionals that certain children be removed from the detention environment with their parents amounted to cruel, inhumane and degrading treatment of those children in detention (CRC, article 37(a)).

MAJOR FINDING 3

At various times between 1999 and 2002, children in immigration detention were not in a position to fully enjoy the following rights:

- (a) the right to be protected from all forms of physical or mental violence (CRC, article 19(1))
- (b) the right to enjoy the highest attainable standard of physical and mental health (CRC, article 24(1))
- (c) the right of children with disabilities to 'enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community' (CRC, article 23(1))



- (d) the right to an appropriate education on the basis of equal opportunity (CRC, article 28(1))
- (e) the right of unaccompanied children to receive special protection and assistance to ensure the enjoyment of all rights under the CRC (CRC, article 20(1)).

RECOMMENDATION 1

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

The Minister and the Department can effect this recommendation within the current legislative framework by one of the following methods:

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

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

RECOMMENDATION 2

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

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

- (a) There should be a presumption against the detention of children for immigration purposes.

-
- (b) A court or independent tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of any initial detention (for example, for the purposes of health, identity or security checks).
 - (c) There should be prompt and periodic review by a court of the legality of continuing detention of children for immigration purposes.
 - (d) All courts and independent tribunals should be guided by the following principles:
 - (i) detention of children must be a measure of last resort and for the shortest appropriate period of time
 - (ii) the best interests of the child must be a primary consideration
 - (iii) the preservation of family unity
 - (iv) special protection and assistance for unaccompanied children
 - (e) Bridging visa regulations for unauthorised arrivals should be amended so as to provide a readily available mechanism for the release of children and their parents.

RECOMMENDATION 3

An independent guardian should be appointed for unaccompanied children and they should receive appropriate support.

RECOMMENDATION 4

Minimum standards of treatment for children in immigration detention should be codified in legislation.

RECOMMENDATION 5

There should be a review of the impact on children of legislation that creates 'excised offshore places' and the 'Pacific Solution'.



Final comments

The Inquiry acknowledges that Australia has a legitimate right to develop and maintain an immigration system. However, Australia also has a responsibility to do so in a way that respects the fundamental rights of children. The current mandatory detention regime fails to meet that responsibility.

The Department should carefully consider the conditions in which children are detained, and the services it provides to children in detention, taking into account the Inquiry's findings across the broad range of areas.

However, the Inquiry does not make detailed recommendations about improving these individual areas because recommendations for improvements within the current system fail to address the fundamental breach of children's rights – namely, the manner and nature of mandatory detention itself.

This Inquiry does not seek to outline the precise structure of a new immigration detention system. The Inquiry recognises that any reform of the current system will require a broad consultation process that takes into account a wide variety of factors, including issues that have not been considered by this Inquiry.

Therefore, drawing on the *Convention on the Rights of the Child*, the Inquiry has set out in its recommendations the key principles that should be the primary reference point in the development of any new migration laws and policies.

The key principles are that:

- children can only be detained as a measure of **last resort** and for the **shortest appropriate period of time**
- the **best interests** of the child must be a primary consideration in all actions concerning children
- **unaccompanied children must receive special assistance** so that they are in a position to enjoy the same rights as all other children

-
- children have the right to **family unity**
 - children must be treated with **humanity and respect** for their inherent dignity
 - children enjoy – to the maximum extent possible – the right to **development and recovery from past torture and trauma**
 - asylum-seeking children must receive appropriate assistance to enjoy their rights – including the **right to be protected under the *Convention relating to the Status of Refugees***.





Further information

The information contained in this publication provides a summary of some of the important issues, findings and recommendations of the National Inquiry into Children in Immigration Detention. It is not an exhaustive account of all the information contained in the Inquiry report.

For further information on any aspect of the Inquiry process, the submissions received by the Inquiry or to read the Inquiry report – *A last resort?* – visit the website of the Human Rights and Equal Opportunity Commission.

www.humanrights.gov.au

The content of the Inquiry report is set out under the following chapter headings.

Chapter 1: Introduction

Chapter 2: Inquiry methodology

Chapter 3: Setting the scene – children in immigration detention

Chapter 4: Australia's human rights obligations

Chapter 5: Mechanisms to protect the human rights of children in detention

Chapter 6: Australia's immigration detention policy and practice

Chapter 7: Refugee status determination for children in immigration detention

Chapter 8: Safety of children in immigration detention

Chapter 9: Mental health of children in immigration detention

Chapter 10: Physical health of children in immigration detention

Chapter 11: Children with disabilities in immigration detention

Chapter 12: Education for children in immigration detention

Chapter 13: Recreation for children in immigration detention

Chapter 14: Unaccompanied children in immigration detention

Chapter 15: Religion, culture and language for children in immigration detention

Chapter 16: Temporary protection visas for children released from immigration detention

Chapter 17: Major findings and recommendations of the Inquiry

Glossary and abbreviations

ACM

Australasian Correctional Management Pty Limited

During the period of the Inquiry, immigration detention facilities in Australia were managed for the Department by Australasian Correctional Management, although the Department maintains an official presence at each immigration detention facility.

Asylum seeker

An asylum seeker is someone who has fled their own country and applies to the government of another country for protection as a refugee. People experiencing persecution have a recognised human right to seek asylum in other countries.

Child

A child is defined by the Convention on the Rights of the Child as anyone aged under 18 years

Convention/CRC

Convention on the Rights of the Child

The Convention on the Rights of the Child sets out specific rights for children, such as the right to health and education and protection from abuse and exploitation. The Convention requires that the ‘best interests’ of the child must be a primary consideration in any decision that concerns him or her. It also requires detention to be ‘a measure of last resort’ and for the ‘shortest appropriate period of time’.

Department

The Department of Immigration and Multicultural and Indigenous Affairs

This is the Commonwealth agency responsible for implementing Australia’s immigration laws and policies.

Minister

The Minister for Immigration and Multicultural and Indigenous Affairs

Refugee

A refugee, as defined by the Convention relating to the Status of Refugees, is someone who is outside their own country and cannot return due to a well-founded fear of persecution because of their race, religion, nationality, membership of a particular social group or political opinion.

Temporary Protection Visa

A Temporary Protection Visa (TPV) is a three-year visa granted to some refugees in Australia.

After three years, the person has to apply again to stay in Australia on the basis that they are still a refugee and that it would not be safe for them to return to their country of origin.

Unaccompanied Minor/UAM

An unaccompanied minor is a child who arrives in Australia without his or her parents or a close relative over 21 years of age.



The National Inquiry into Children in Immigration Detention was announced in November 2001.

It was established to consider whether Australia's immigration detention laws and its treatment of children in immigration detention comply with the United Nations Convention on the Rights of the Child.

The Inquiry received substantial evidence about the treatment of children in immigration detention centres between 1999 and 2002.

Visit www.humanrights.gov.au for:

- the full report of the National Inquiry into Children in Immigration Detention
- background information and submissions received by the Inquiry
- the curriculum-linked education module examining the issues raised in **A last resort?**

April 2004



Human Rights and Equal Opportunity Commission