# NSW Council for Civil Liberties
# Submission to HREOC on Children in Detention

## 1. Opening statement

The Council for Civil Liberties NSW (CCL) considers mandatory detention of asylum seekers to be a breach of Australia's international obligations. The CCL is of the view that mandatory detention of children is morally indefensible particularly given Australia's ratification of the UN Convention on the Rights of the Child (CROC)

## 2. Relevant conventions and domestic law

UN Convention and Protocol Relating to the Status of Refugees 1951 and 1967 (Refugee Convention)

UN Convention on the Rights of the Child (1989) - ratified 1990 (CROC)

UN International Covenant on Civil and Political Rights (ICCPR)

Migration Act1958 (Cth)

Migration Regulations

Immigration (Guardianship of Children) Act 1946 (Cth).

Migration (Guardianship of Children) Regulations

DIMA Detention Standards

UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers 1999 (UN Guidelines)

## 3. Mandatory Detention of children

Children are detained in Australia under s178 of the *Migration Act* 1958 which effectively requires the detention of all persons who enter Australia by boat without a valid visa.

Such detention breaches the *UN Convention and Protocol Relating to the Status of Refugees* Article 31which states:

> 1. The contracting states shall not impose penalties on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorisation, provided that they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
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> 2. The Contracting States shall not apply to the movement of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or they obtain admission into another country. The Contracting states shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Mandatory detention also breaches Article 9 of the *International Covenant on Civil and Political Rights* ("ICCPR").

> Every one has the right to liberty and security of the person. No person shall be subjected to arbitrary arrest or detention.

The UNHCR guidelines make it clear there should be a presumption against detention of asylum seekers, the right to seek and enjoy asylum being a basic human right contained in article 14 of the Universal Declaration of Human Rights. The permissible exceptions should be clearly prescribed by law. Such exceptions should be limited to establishing identity, establishing the basis of the claim for asylum (that is a preliminary interview not a determination of the merits of the claim)where documents have been destroyed or falsified, and in exceptional circumstances where there is a necessity to protect public order and there is evidence to show a particular asylum seeker is a risk for example having criminal antecedents. Detention should be for the shortest possible time. The guidelines state detention for the purpose of deterrence is contrary to the norms of refugee law. Deterrence is the declared policy of the current government.

In particular, children should not be detained. The detention of children breaches *UN Convention Rights of the Child* ("CROC"):

> ***Article 37***
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> (a) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

Other relevant articles of CROC include article 2 against discrimination on any basis.

> ***Article 3***
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> 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

And see article 23, which requires the State to provide appropriate protection and assistance. Detention is not appropriate protection or assistance.

The UN Human Rights Committee has previously condemned Australia's practice of detention in *A v Australia* 1993 where the detention was considered arbitrary. Further, the period of detention and practice of lack of legal assistance were identified as breaches of Australia's obligations. under articles of the ICCPR.

## Legal Safeguards

The minimum legal safeguards for those detained should include the ability to take the issue of their detention before a court with the power to order their release and to have access to legal advice both in regard to their detention and other matters such as their entitlements under human rights law.

Article 9(4) of ICCPR provides:

> Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court of law in order that a court may decide without delay the lawfulness of his detention and order his release if the detention is not lawful.

And again more particularly with a child, Article 37 of the *UN Convention Rights of the Child* ("CROC"):

> Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.

The Australian Government has gone to extraordinary lengths to deny and remove such safeguards. Detainees are now effectively held without judicial review and proper access to the courts.

The *Migration Act*:

> **196 Period of detention**
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> (1) An unlawful non-citizen detained under section 189 must be kept in immigration detention until he or she is:
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> (a) removed from Australia under section 198 or 199; or
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> (b) deported under section 200; or
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> (c) granted a visa.
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> (2) To avoid doubt, subsection (1) does not prevent the release from immigration detention of a citizen or a lawful non-citizen.
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> (3) To avoid doubt, subsection (1) prevents the release, even by a court, of an unlawful non-citizen from detention (otherwise than for removal or deportation) unless the non-citizen has been granted a visa.

And further:

> **183 Courts must not release designated persons**
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> A court is not to order the release from immigration detention of a designated person.

The Migration Act by virtue of the September 1994 amendments has seriously eroded the ability of the Federal Court to deal with applications before it by denying access to the Judiciary Act and limiting grounds of appeal. This denies the asylum seeker access to the courts and is contrary to the guarantee of same treatment as a national in relation to such access provided for in article 16 of the Refugee Convention. The Minister and the Prime Minister have both stated the purpose of the current policy of pushing off and the Pacific Solution is to prevent access to the Australian Court system.

## 4. Lack of Provision of legal advice

The Migration Act provides that there is no obligation on DIMA to provide legal advice or access to advice until requested.

**193 Application of law to certain non-citizens while they remain in immigration detention**

(2) Apart from section 256, nothing in this Act or in any other law (whether written or unwritten) requires the Minister or any officer to:

(aa) give a person covered by subsection (1) an application form for a visa; or

(a) advise a person covered by subsection (1) as to whether the person may apply for a visa; or

(b) give a person covered by subsection (1) any opportunity to apply for a visa; or

(c) allow a person covered by subsection (1) access to advice (whether legal or otherwise) in connection with applications for visas.

(3) If:

(a) a person covered by subsection (1) has not made a complaint in writing to the Human Rights and Equal Opportunity Commission, paragraph 20(6)(b) of the *Human Rights and Equal Opportunity Commission Act 1986* does not apply to the person; and

(b) a person covered by subsection (1) has not made a complaint to the Commonwealth Ombudsman, paragraph 7(3)(b) of the *Ombudsman Act 1976* does not apply to the person.

(4) This section applies to a person covered by subsection (1) for as long as the person remains in immigration detention.

**256 Person in immigration detention may have access to certain advice, facilities etc.**

Where a person is in immigration detention under this Act, the person responsible for his or her immigration detention shall, at the request of the person in immigration detention, give to him or her application forms for a visa or afford to him or her all reasonable facilities for making a statutory declaration for the purposes of this Act or for obtaining legal advice or taking legal proceedings in relation to his or her immigration detention.

DIMA has a policy of separation detention ,to keep new arrivals away from the other detainees in part to prevent any person receiving advice about their legal rights.

The agreement between DIMA and ACM specifically empowers ACM at their discretion to exclude persons including unsolicited lawyers and the media

There is no distinction under the Migration Act for children. CROC requires

**Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other

person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

**Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

This is as opposed to DIMAs attempts to block contact with lawyers and HREOC and even other detainees for initial arrivals.

The Guidelines on procedures and criteria for determining legal status under the refugee convention notes a child or for that matter an adolescent not having legal independence should if appropriate have a guardian appointed whose task would be to promote a decision that will be in the minor's best interest.

## 5. Guardianship

The guardian appointed under Australian law for unaccompanied children is the Minister for immigration under the Immigration (Guardianship of Children act 1946.

**6. Guardianship of non-citizen children**

The Minister shall be the guardian of the person, and of the estate in Australia, of every non-citizen child who arrives in Australia after the commencement of this Act to the exclusion of the father and mother and every other guardian of the child, and shall have, as guardian, the same rights, powers, duties, obligations and liabilities as a natural guardian of the child would have, until the child reaches the age of 18 years or leaves Australia permanently, or until the provisions of this Act cease to apply to and in relation to the child, whichever first happens.

Given the entitlements of children under CROC it would seem appropriate that children receive through their guardian legal advice and assistance, and that such advice be from lawyers throughout the entire process to ensure they are advised of all their rights and not just those under the Migration Act.

The role of the Minister as Guardian was explored in *Jaffari v Minister for Immigration & Multicultural Affairs* [2001] FCA 1516 (26 October 2001). The matter related to a 15 year old asylum seeker who claimed to be from Afghanistan. His application had been rejected on grounds of credibility; the Refugee Tribunal had not believed he was Afghani. There was an objection to the competency of the Federal Court on the basis that the child's application was outside the 28 day period allowed and no extension was permissible. This raised issues of the validity of service of the notice of rejection on a minor. During the proceedings it became known that the

Minister had delegated his powers and responsibilities in relation to Jaffari to the Western Australian Department for Family and Community Services later known as the Department of Community Development. It was argued that the guardian had obligations with respect to the child's visa application that the WA department had obligations not limited by the delegation but also encompassing the constitutional powers of the State. Evidence was given by a senior legal officer from the Department who stated she was not aware of any role taken by the department in relation to visa applications. She agreed with the proposition that there was very little in the way of administrative procedures or guidelines for the implementation of the delegated power. The issue of possible conflict in duties of guardian and border protection was raised.

His Honour held that there was nothing in the *Migration Act* to say an unaccompanied minor cannot make a valid application for a visa and the question is a factual one. Nor was there anything to make service of notices upon a minor ineffective. His Honour did ponder that if the child of tender years was incapable comprehending the nature of such application the question may arise whether a duty to facilitate an application rested on a state delegate. His Honour noted it was unlikely children of such tender years would be unaccompanied. With respect to His Honour, there have been children as young as 8 unaccompanied in Australian detention. And further in this matter it was noted by the tribunal that the applicant was unsophisticated as one might imagine many children may be, particularly where their educational opportunities may not have been as high as those of many in Australia. There are no available statistics as to the literacy of these minors.

His Honour held:

> "… in my opinion, the role of the Minister as statutory guardian does not affect his function as decision-maker in relation to the grant of visas to non-citizen children. He is not their guardian for the purpose of advancing applications for such visas or initiating reviews of decisions made under such applications. The very conflict that would arise if such a dual role were imposed on him indicates that it was not intended by the legislation.
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> The Second Reading Speech for the *Immigration (Guardianship of Children) Bill 1946* reinforces this view. The stated purpose of the Act was "... to enable the Minister to act as legal guardian of all children who will be brought to Australia in future as immigrants under the auspices of any governmental or non-governmental migration organisation" (Parl Deb H of R 31.7.46 p 3369). Arrangements had been made prior to the enactment of the Act that "...the Commonwealth Minister would be the legal guardian of the children, and shall delegate his authority to the State departments" (Parl Deb H of R p 4090). It is apparent that the Act did not contemplate the possibility of unaccompanied minors making applications for visas in circumstances which apply today."

With respect His Honour's views that the Minister has no obligation in respect of assisting the child applicant with visas is hard to fathom. In the Australian CROC report section H, it was noted that the *Immigration (Guardianship of Children) Act*

> "… has lent itself to a variety of situations, covering for example, the many unattached refugee refugees who entered Australia after the fall of Saigon and the evacuation of East Timor in 1975."

Surely, either the Minister does have all the obligations of a guardian under section 6 of the Act or alternatively there is a fall-back to State welfare departments and their constitutional powers. Otherwise, Australia is seriously failing in its obligations to

such children. One must also question whether if the "intention to reside permanently" which is part of the definition of "non citizen children" relates to the intention of the child, its parent or the Minister or some other government or welfare authority. If this Act was never intended to apply in these circumstances, was it intended to apply to these children ie asylum seekers.

His Honour concludes:

> "… that arrangements for the proper supervision of the welfare and protection of unaccompanied minors seeking asylum seem to be somewhat inchoate with a presently ill-defined role on the part of the Director of Community Development notwithstanding that the current delegation has been in place for nearly two years. Moreover there appears to be a significant discrepancy between the guidelines published by the United Nations High Commissioner on Refugees ("UNHCR") in respect of unaccompanied minors seeking asylum and the current administration of the *Migration Act* in relation to such persons."

His Honour referred to the Guidelines and in particular regard to detention:

7.6 - children should not be kept in detention;

7.7 - observance of article 37 CROC shortest possible time, not prison like conditions and special arrangements for care not in isolated areas away from community support and legal assistance; and

7.8 - right to education outside detention premises.

In regard to procedures:

8.1 - priority to children's claims;

8.2 - possibility of appeal;

8.3 - representation by an adult who would protect his interest and access to a legal representative;

8.4 - interviews by specially qualified and trained personnel taking into account child's position; and

8.5 - ability to seek appeal expeditiously.

His Honour noted:

> "The Act provides little in the way of the kinds of protections contemplated by the UNHCR guidelines. At the very least, there is a case for considering the provision of legal advice and assistance to unaccompanied minors up to and including the point of judicial review. It is of concern that the application for judicial review in this case was lodged by a 15 year old non-citizen and lodged out of time thus depriving him of such limited rights of review as he would otherwise have enjoyed."

A concerning post note to this case is that the child was initially rejected on grounds of lack of credibility. It is not clear that the relevant decision-maker has any specific training or applies any different criteria in assessing the credibility of a minor. The issue of credit in this matter went directly to nationality the tribunal not believing he was an Afghani national but not being able to identify where the else he came from. Presumably, he remains in detention awaiting deportment, legal limbo.

There are no specific procedures for children either in respect of visa applications and reviews or as to care whilst in detention. Minimum requirements for children's applications should include;

(a) provision of a guardian primarily concerned with the child's welfare if unaccompanied;

(b) provision of legal advice and assistance at all stages of the refugee process whether accompanied or not (ie even if child's application is attached to a parent's application);

(c) child friendly procedures with appropriately trained persons;

(d) child's best interest a primary consideration in decision making;

(e) child to have the ability to participate in procedure.

## 6. State Child and Welfare Authorities

It is clear that despite numerous recommendations, there is insufficient communication with state welfare authorities and DIMA has been slow to reach MOUs with the various state authorities. It is unclear whether State authorities are notified of the presence of children and particularly unaccompanied children.

In *Jaffari*, a senior legal officer with the Western Australian Department of Community Development attended and gave evidence, which was not disputed, about the implementation of the ministerial delegation. She said 'there are at present two memoranda of understanding being negotiated between the Department of Immigration and Multicultural Affairs ("DIMA") and the Western Australian Department of Community Development in relation to unaccompanied minors who are applicants for protection visas. One relates to unaccompanied minors released into the community on temporary protection visas. The other relates to children in detention centres and predominantly concerns what she described as "child protection issues". By that term she meant "...concerns expressed about the health, welfare and safety of children in detention centres; for example allegations of abuse". There had been an arrangement in place whereby DIMA advised the Department of Community Development of the presence of unaccompanied minors at the Curtin Detention Centre in Derby. That arrangement had ceased at the instigation of DIMA in mid-May. The Department was still receiving notification of the arrival unaccompanied minors at the Port Hedland Detention Centre. Ms Gupta was unable to provide any information about whether any system of reporting was in place to monitor the time spent by minors in the detention centres. If a report were made to the Department about the condition of a particular child in detention, the Department would make contact with DIMA officers and make arrangements to assess the protection issues in respect of the child. She was not aware of any role taken by the Director or any officer of the Department in relation to applications by unaccompanied minors for protection visas.

The various State welfare agencies seem to restrict their view of involvement to notifications received from DIMA or ACM. Presumably given the restriction of access to legal advice it is unlikely many notifications would be received from the refugee population in detention. DOCS should however have a role in the overview of all detained children's welfare and a direct involvement in the welfare of unaccompanied children for whom they have delegated guardianship duties. Such

arrangements should include making available alternative arrangements for care and advocating for bridging visas for unaccompanied children. There should be a requirement for the State authorities to provide a report in respect of each child in detention as to whether a bridging visa would be in the child's best interest.

The Minister announced on 6 December 2001 that a MOU had been signed with the South Australian Department of Human Services and states it is the first such agreement. The press release states it covers child welfare and protection issues and documents the procedures for identifying allegation of abuse or neglect. Enquires with the SA Department of Human Services for a copy of the MOU were met with the reply that it was a confidential document.

The recent case in SA where the public advocate has been fighting the return to detention of an 18 year old who is suffering from post traumatic stress as a result both of events in his home country and his time in detention begs the question of the role of the child's guardian before his 18th birthday. Does the MOU cover neglect and abuse by detention conditions and the State's obligations under UN conventions?

> ***Article 39***
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> States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment, which fosters the health, self-respect and dignity of the child.

The current SA Minister appears to be taking a more proactive view. One wonders whether this will result in more amendments to the *Migration Act* seeking to block access this time to state welfare organisations.

## 7. Detention Standards

The provisions of CROC apply regardless of a child's immigration status. These include:

(a) rights to development (article 6);

(b) freedom of association (article15);

(c) alternative care if separated from family (article20);

(d) highest possible standard of health (artice24);

(e) periodic review of care (article 25);

(f) standard of living adequate for child's physical, mental moral and social development (article27);

(g) education (article 28);

(h) rest and leisure (article 31); and

(i) appropriate measures for recovery from physical and psychological trauma (article 39).

The UN guidelines recommend segregation of children from non-related adults, the opportunity to make regular contact with friends relatives religious social and legal counsel and access to a complaints mechanism which should be advised.

DIMA has released detention standards. There is little in the standards about specific standards of care for children.

> 9.2 Unaccompanied Minors
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> 9.2.1 Unaccompanied minors are detained under conditions which protect them from harmful influences and which take account of the needs of their particular age and gender
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> 9.3 Infants and Young Children
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> 9.3.1 The special needs of babies and young children are met.
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> 9.4 Children
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> 9.4.1 Social and educational programs appropriate to the child's age and abilities are available to all children in detention.
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> 9.4.2 Detainees are responsible for the safety and care of their child(ren) living in detention.
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> 9.4.3 Where necessary, help and guidance in parenting skills is provided by appropriately qualified personnel

There are no specific provisions about the discipline or punishment of children or about the use of restraints. There is a general reference to Australia's international obligations in the introduction but none of the relevant instruments are named. There is no reference to the principle of the best interests of the child. There is nothing to require education provided be equivalent to that received by non detainees. There is nothing in the standards to provide for legal services or any specifics of the care of children. All of the inspections carried out including the Flood report, the Ombudsman's report and HEREOCs own enquires have indicated a failure to maintain even these basic standards.

Most recently the Social Services Minister for South Australia has indicated a report made following an inspection by child protection officers at Easter 2002 has led her to conclude conditions in Woomera are intolerable for children.

Of major concern is the continued practice of detaining children along with non-family adult males.

> ***Article 37 CROC***
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> States Parties shall ensure that:
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> (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

DIMA should provide separate facilities for families without separating children from their parents.

## 9. Alternative Detention Scheme

DIMA's current alternative detention scheme at Woomera suffers from a hostage mentality requiring the women and children to leave behind a male relative to qualify for the scheme. It is not necessary for such schemes to exclude fathers and older brothers thus splitting families.

## 10. Bridging Visas

Children may be released from detention on bridging visas pursuant to section 73 of the *Migration Act*. The visas are not available to their parents unless they meet one of the other exceptional criteria. Bridging Visas can be issued where the requirements of Reg 20 are met. These provide for State welfare authorities to certify that release from detention is in the best interest of the child and the Minister to be satisfied that arrangements have been put in place for the release of the child into the custody of an Australian citizen, permanent resident or eligible New Zealand Citizen. The Minister has to be satisfied that arrangements are in the best interest of the child and not prejudice another person's rights to the child. It appears DIMA has had a policy of not issuing the bridging visas ,hiding behind arguments of the inability to find suitable placements.

The current statistics provided by DIMA are that as at 1 February 2002 there were 363 children in detention including 13 unaccompanied minors. This does not include those kept in detention at Australia's behest in on Naru and Manus Island for whom statistics are not provided. There are a further 9 unaccompanied minors in alternate care under SA Department of Human Services and 1 minor with a bridging visa, just one. DIMA has a policy of having unaccompanied children cared for by other detainees in detention , claiming this to be pursuant to the best interest principle.

The *Migration Act* should be amended to provide a presumption in favour of bridging visas to all unaccompanied children. The class of persons to whose custody they can be released should be amended to include holders of TPVs particularly if related. The decision whether to issue such visa should be judicially reviewable.

To make Bridging Visas available to all children, the categories of persons who are eligible to apply for such visas should include at least the family members of children.

## 11. Temporary Protection Visas

Temporary protection visas granted to those unlawful entrants who establish refugee status breach articles 31 and 34 of the Refugee Convention (providing that the contracting State shall as far as possible facilitate the assimilation and naturalisation of refugees), together with a number of articles from CROC including being able to benefit from social security entitlements without discrimination (article 26) and health services (article 24).

The three main complaints against TPVs are:

(1) lack of certainty;

(2) lack of access to services and various limits on financial assistance; and

(3) lack of family reunion rights.

It is argued by many that the increase in child refugees in 1999 through 2002 was a direct result of families who would have previously sought family reunion after the father or eldest son had made the sea voyage having to risk themselves.

## 12. Visas

It may not be appropriate in some cases for children travelling alone or with their mother to establish the necessary fear of persecution to claim refugee status in their own right. The International Covenant on Civil and Political Rights article 22(1) provides that the family is the natural and fundamental group unit of society and as such is entitled to protection by society and the state.

The Guidelines on Procedures and Criteria for Determining Refugee Status under the Convention, Chapter VI - The Principle of Family Unity contains the recommendation that the government takes the necessary measures for the protection of the refugees family with a view to (at 182(1)) ensuring that the unity of the refugee family is maintained particularly in cases where the head of the household has fulfilled the necessary conditions for admission to a particular country noting (at 186) that this principle also applies where the family unit has been temporarily disrupted through the flight of one or more of its members.

Of concern is that children's applications do not appear to be dealt with in any way differently from adults and in particular no regard is had to the child's best interest.

## 13. Interception

CCL is concerned as to those intercepted at sea in Australian waters and denied the ability to even make an application in Australia. When Australia removes refugees to Pacific islands where DIMA can deny all responsibility and as a country we lose accountability. It is almost impossible to even ascertain the number of children in the 'Pacific solution', or the conditions in which they are held. If there are children on the boats and they are refugees in accordance with article 1 of the Refugees Convention we have certainly not provided assistance in accessing the rights under CROC. A person's status as a refugee is not dependant on a decision of DIMA. Australia in effect seeks to excise parts of our nation not just for the purpose of migration law but also for human rights obligations, a matter unlikely to be referred to in any report by Australia to the UN. Noticeably our last report as at January 2002 managed not to refer to TPVs or detention let alone the 'Pacific solution'.

## 14 Conclusions

CCL deplores the detention of children.

Detention of child refugees, especially unaccompanied minors breaches Australia's obligations under international law.

Minimum legal safeguards are denied. Children are denied access to legal advice and effective access to the Courts.

The Government has ignored numerous reports into the conditions of detention and sought to reduce the powers of bodies such as HREOC and the Ombudsman with respect to detainees.

The *Migration Act* 1958 has been subject to numerous amendments that move the Australian legislative position further from international refugee law.

The Australian practice of ratifying UN conventions without enacting them as domestic law is unsatisfactory and casts doubt on Australia's commitment to human rights.

The arrangements for guardianship of unaccompanied minors is dangerously flawed and there is a clear conflict between the Minister's roles of guardian and in relation to border protection policy.

There is no clear procedure in place in respect of the state welfare authorities exercising their delegated powers as guardian.

There has been only one memorandum of understanding reached between DIMA and state welfare departments (SA in December 2001). State welfare Departments have failed to properly attend to the welfare of children in detention.

The *Migration Act* provides no special procedures for the making and dealing with applications by minors in accordance with CROC.

No reference is made by the *Migration Act* to the best interest of the child principle either in regards to detention or applications (with the exception of bridging visas).

Insufficient reference is made to Australia's human rights obligations in DIMA's detention standards.

No reference is made by DIMA to the best interest of the child principle in regards to detention standards.

DIMA's detention standards are not sufficiently detailed in respect to the care of children.

Alternative detention schemes should not disrupt family unity.

Bridging visas should be issued to all unaccompanied children and children with family members in the community.

The bridging visa scheme should be extended to all family members.

Children should not be detained in the same complex as non-related adult males.

Children should always be detained as close as possible to the residence of a close relative in the community.

Temporary Protection Visas should be abolished as they are discriminatory and cause distress due to lack of certainty financial hardship and heartbreak due to lack of family reunion rights.

Children should be granted refugee status if a parent has established refugee status regardless of whether they have arrived together.