DETENTION POLICY AND CHILDREN

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*.

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.

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 rarely been used. As at the end of 2003, only two families had ever been transferred to '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 of Immigration have regularly stated that keeping children who arrive with their parents together as a family is in the best interests of a child; therefore, since parents are detained 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 (The Inquiry recommends that the laws be changed – see Inquiry Recommendation 2).

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 on movement remain – children and parents are not free to make their own decisions about where they to 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 can lead to the separation of families, which can further undermine a child's sense of safety and well-being.