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2002 RCOA SUBMISSION TO THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION'S INQUIRY INTO CHILDREN IN IMMIGRATION DETENTION

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Introduction

The Refugee Council of Australia welcomes the Inquiry by the Human Rights and Equal Opportunity Commission into Children in Immigration Detention. In our opinion, this is a very timely and important Inquiry into an area of great significance to Australia as a nation and to the way that Australia is perceived internationally.

The Refugee Council is aware of the considerable interest in this Inquiry and the fact that the Commission will receive submissions from a large number of organisations and individuals with expertise in relevant areas including the law, medicine and child development. For this reason, the Council sees no point in replicating material we know will be covered by other submissions. Instead we have elected to focus on an area that we suspect might not have as wide coverage, that of the guardianship arrangements for unaccompanied minors seeking asylum, because this is an area where the Council can hopefully add value by drawing on our international experience and contacts with counterpart organisations overseas.

Before going down this path, however, we would like to make some introductory statements. The Refugee Council:

- strongly opposes the current Government's policy of mandatory non-reviewable detention;
- believes that the current detention policy contravenes many of Australia's international treaty obligations, in particular:

* Article 9 of the International Covenant on Civil and Political Rights and Article 37 of the Convention on the Rights of the Child, which prohibit arbitrary detention;

* Article 37 of the Convention on the Rights of the Child which prohibits detention of children except as a last resort and for the shortest appropriate period of time;

* Article 9 of the International Covenant on Civil and Political Rights and Article 37 of the Convention on the Rights of the Child, which recognise a right to take legal proceedings to challenge detention;

* Article 22 of the Convention on the Rights of the Child, which requires the state to provide appropriate protection and humanitarian assistance to refugee and asylum seeker children, especially in relation to family reunion.

· considers that the current detention policy also fails to comply with the UNHCR Detention Guidelines, Excom Conclusion No. 44;

· is deeply concerned about the impact that the conditions in immigration detention centres have on the development and psychological well-being of children;

· argues that there are alternatives to the current detention policy that meet the Government's expressed desire to control entry to this country while at the same time are legally and morally defensible.

This being said, it is the intention of this submission to highlight the major shortcomings of the current provisions in the guardianship of unaccompanied minors seeking asylum in Australia which is seriously compromised by the many areas in which there is conflict of interest and complicated by complex federal-state demarcations. In this regard, the submission relates specifically to the 3rd of the Terms of Reference of the current Inquiry.

RCOA argues that there is a significant need for a greater and more effective level of support for unaccompanied minors as they move through the asylum process and after a decision is made as to their refugee status. It is further argued that there needs to be continuity of support for the entire period that the minor is in Australia, irrespective of whether they are in detention or the community. In this context, RCOA examines international models of guardianship of unaccompanied minors and recommends a system of active guardianship that seeks to marry the lessons learnt elsewhere with the local conditions.

The Target Group

Amongst those who arrive in Australia seeking refugee status are a number of unaccompanied minors. Under Australian law, an unaccompanied minor is defined as a person under 18 years old who is either alone or accompanied by a person or relative under the age of 21.

Unaccompanied minor asylum seekers are not a numerically large group, but they do require particular attention because of their vulnerability as children and their rights as children and as potential refugees. Unaccompanied minors may have lost their parents or other key carers. They may have lost physical items such as their home and material possessions. They have lost familiar surroundings and familiar ways of doing things. The children may also have experienced trauma in the form of warfare, destruction of their homes, rape, violent death of family and friends, arrest and/or torture, shortage of food and water, and fear of discovery or arrest.

In addition to children defined as “unaccompanied”, there are also children who arrived with a parent or guardian and subsequently separated from them. These are generally referred to as “separated” minors. To all intents and purposes, their needs are the same as unaccompanied minors and for the purpose of this submission, the two groups will be linked together under the general descriptor of “unaccompanied minors”.

It is important to note that amongst unaccompanied and separated minors, there could be children who are the victims of trafficking that adds another dimension to their need for protection. The fact that a minor has been trafficked is an issue entirely separate from whether the minor has Convention-related protection needs and the mode of arrival should never preclude the lodgment of an application for a protection visa if such is considered appropriate.

Before moving on, however, it is important to stress that all members of the target group are first and foremost children and the fact that they are also asylum seekers must not over rule their rights and needs as children.

The Rights of Unaccompanied Minors

There is considerable guidance in international law about the rights of unaccompanied minors and the responsibilities states have towards them. This is supplemented by various non-binding but aspirative guidelines and conclusions from UNHCR.

The Convention on the Rights of the Child (CROC), to which the Australian Government is a signatory, states that “in all actions concerning children ... the best interests of the children shall be a primary consideration” (Article 3.1).

The CROC also sets out that:

- every child who is seeking refugee status has a right to protection and humanitarian assistance in the enjoyment of the rights contained in treaties and declarations pertaining to refugees (Article 22.1);
- children who are capable of forming his or her own view should be consulted in matters affecting the child and be provided with the opportunity to be heard (either directly or through a representative) in any judicial or administrative proceedings affecting the child (Article 12);
- children deprived of their families are entitled to special protection and assistance (Article 20.1);
- states shall assist guardians to carry out child rearing responsibilities (Article 18.2).

The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, in paragraph 214, states that a legal guardian should be appointed to promote a decision that is in the best interests of an unaccompanied or separated child.

The UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, in paragraph 5.7, re-enforce the necessity of ensuring the appointment of guardians.

The Needs of Unaccompanied Minors

First and foremost, it is important to stress that children can also be the victims of persecution and can be refugees in their own right. Sometimes the grounds for persecution will be the same as for adults, as in the case of race or religion. In some instances, however, the persecution is age-specific, for example under-aged conscription, female genital mutilation or indentured labour.

It is internationally recognized that unaccompanied minors need additional support during and after the refugee status determination process. This support is required in relation to:

- advocacy during the determination process. While some older minors may have an understanding of the context of the persecution they have experienced and the reasons for their flight, this is not always the case. Then in the case of younger unaccompanied minors (noting that there have been some as young as 8), it is unrealistic to expect them to be able to articulate their reasons for needing protection. If the refugee status determination process is to operate efficiently, and if the best interests of the child are to be protected, someone is required to be an advocate for the child and to take responsibility for signing legal documentation on his/her behalf. It is stressed that this role cannot be filled by the legal representative whose responsibilities are clearly defined and quite different. Further, it is not only in relation to the determination process that a child might need an advocate. It could also be in relation to access to support or programs, tracing family members, securing release from detention or other matters concerning the best interests of the child;

- protection: the sad reality is that children are vulnerable to abuse. The chances of abuse are increased when children are in an environment where people are in a state of tension and where social mores have been eroded. Detention centres are such environments. It stands to reason that children who do not have a parent or caregiver are more likely to be subjected to sexual or physical abuse. While the risk might be lessened for minors in the community, unsupervised adolescents are subject to many pressures from peers and from unscrupulous adults who prey on their need for a sense of “belonging” to undertake criminal acts;

- care: younger unaccompanied minors need day to day care – someone to make sure that they are, for example, being properly fed, getting enough sleep, washing regularly, in possession of suitable clothes and attending school. Someone is needed to monitor child development and to seek help if there are medical, psychological or educational problems. Someone is also needed to give the child affection and support given the trauma that these children have gone through. And while some of the older minors might not need the same level of care, it is inappropriate to assume that they can cope alone. They too need care – but more in the form of mentoring, guidance and knowing that they are not alone to cope with all of the complexities and decisions life in an unfamiliar environment requires. Adolescents also need monitoring in terms of school attendance and advice about vocational choices.

It is the view of the Refugee Council that these needs can only be met where there is active oversight by a legal guardian, supplemented by a comprehensive program of care and protection.

The Current Situation in Australia

The current situation relating to the guardianship of unaccompanied minor asylum seekers and refugees is complex and varies according to the mode of arrival and immigration status of the child.

It is not the intention of the Refugee Council to give a detailed analysis of the current situation as we are aware that many of the other agencies preparing submissions to this Inquiry are doing exactly this. Rather, what we intend to do in this section is to highlight some of the key problems of the current system so as to develop the rationale for the changes we propose.

Unaccompanied Minors in Detention

Where a minor seeks to enter Australia without authorisation with the intention of seeking refugee status, he/she is taken into immigration detention for the duration of the determination

process. While the Minister for Immigration and Multicultural and Indigenous Affairs (the Minister) has discretionary powers to release these children into the community, in most cases the Minister chooses not to exercise these powers.

While the children remain in detention, the Minister is their legal guardian. RCOA argues that inherent in this guardianship is significant conflict of interest. The Minister is required to be both:

- guardian and jailer;
- guardian and decision maker.

There is no way that the Minister can give due regard to what are inherently contradictory functions. Nor is it possible that a Minister of the Crown can take an active role in monitoring the welfare of every child under his guardianship.

In practice, the guardianship is delegated, in the first instance formally to the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) manager in the detention centre and then, informally to the staff of Australasian Correctional Management (ACM). This delegation, however, does nothing to resolve the problems of conflict of interest. The DIMIA manager is the Minister's delegate in the centre and as such, has the same responsibilities – and conflicts – as the Minister and while ACM does have a responsibility for the care and welfare of the detainees, it also acts as their custodians.

This system leads to many legally questionable practices, such as a DIMIA officer signing the minor's application for refugee status, or worse still, the minor signing him/herself. It also leaves minors exposed to neglect and abuse in the detention centres as regular staff rotation means that there cannot be continuity of care.

As things stand at present, there is no delegation of guardianship to a person who has the best interests of the child as his/her sole and unambiguous responsibility and who will have responsibility for the child for as long as he/she remains in Australia or until the child reaches majority. There is therefore no designated individual who can:

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

While in no way fully compensating for this shortcoming, it is relevant to note that there has been activity between the Federal and State Governments on the issue of child protection within immigration detention centres. Most notable is the recently drafted Memorandum of Understanding (MOU) between DIMIA and the South Australian Department of Human Services (DHS), which relates to child protection notifications and Child Welfare Issues pertaining to children in immigration detention in South Australia.

On the matter of unaccompanied children, the MOU (at section 11.2) requires "...that on request from DIMIA, DHS will provide advice and assessments on appropriate care arrangements for unaccompanied minors in immigration detention in South Australia". This is

a step in the right direction but the inherent conflict of interest in the role of DIMIA or its appointed officer's remains.

Nonetheless, this agreement gives added protection to all children in danger of sexual, physical or emotional abuse whilst in detention. It also allows provision for the special needs of unaccompanied minors to be addressed, although it does not ensure this.

The MOU explicitly excludes a number of activities including:

- a) the processing and decision making in relation to applications for visas for persons in immigration detention and any merits or judicial review related to such decisions;
- b) the conduct of negotiations with foreign governments and international agencies on questions related to the removal from Australia of foreign nationals;
- c) the interpretation of international agreements to which Australia is a party, which might impact on the delivery of Australia's immigration detention functions and policies.

In addition to formal agreements between some states and the Commonwealth, there are a number of NGOs working with asylum seekers both in and outside detention centers. These NGOs often liaise with relevant authorities to assist cases of special need where and when they arise. This too is ad hoc and ultimately at the discretion of DIMIA and ACM.

In the Australian context guardianship of unaccompanied minors in detention has become a minimalist and legal notion unable to address their range of needs. Guardianship as undertaken by the Minister and his delegates cannot adequately support a minor in detention and does not prepare the child for a constructive and positive life outside detention. Some/many of these children will ultimately remain in Australia and it is in both the child's and the country's interests that they are given adequate support as they grow towards adulthood.

Guardianship of Unaccompanied Minor Asylum Seekers in the Community

On those occasions where the Minister has elected to exercise his discretion and release an accompanied minor into the community, the minor is issued with a bridging visa and guardianship is transferred to the state department responsible for child welfare.

There have also been a small number of unaccompanied minors who have entered Australia lawfully and then applied for refugee status. They too are issued with bridging visas (which enable them to remain lawfully in the community when their substantive visa expires) and they too are referred to the relevant state welfare agency.

The level of support the minor receives from the state government agency varies according to the age and needs of the asylum seeker and the state in which the minor is residing. The younger the minor, the greater the level of support provided. Typically for minors over the age of 16, there is very little intervention by the state and thus it can be argued that care and protection needs are not being effectively met.

In no states is a person appointed to act as legal guardian for the purposes of the refugee status application procedure and thus the child has no effective advocate in this or other interactions with authorities.

Guardianship of Unaccompanied Minor Refugees

The situation with respect to unaccompanied minors who have been determined to be refugees closely approximates that of asylum seekers. Their guardianship is delegated by the Minister to the relevant state authority. In some states, Queensland being an example, the state agency further delegates responsibility to a community-based organisation, in this case Mercy Family Services.

Concern has been raised about:

- the level of resources available to the state agencies to undertake this role;
- the ability of the state agencies to provide adequate support given the limited resources and the many other pressing demands on their services;
- whether the level of support afforded to “wards of the state” is sufficient to meet the complex legal and social needs of unaccompanied refugees.

While this is in no way intended as criticism of any state agency, it does point to a system unequal to the task it is required to perform and to the fact that there can be no guarantees that the advocacy, protection and welfare needs of unaccompanied minor refugees are being met in a coordinated and comprehensive fashion.

Some Overseas Approaches to Guardianship

The current system in Australia has many flaws and in no way can be said to operate in the best interests of the child. It is therefore important to look for alternatives.

Given that many other western asylum countries receive vastly greater numbers of unaccompanied minors than does Australia, RCOA thought that there would be merit in examining how other countries respond to unaccompanied minors to see what lessons can be learnt.

Whilst some of these models have inherent deficiencies, more often than not the result of funding shortfalls, the intention of each is to protect the best interests of the child. By and large these models are structured to deal with children outside detention, some focusing primarily on care provision, others having a stronger focus on guardianship.

Canada

In Canada, the care arrangements vary from province to province but all provinces are required by Federal law to appoint a 'Designated Representative' for the child in relation to the asylum procedures.

In British Columbia, for example, the unaccompanied minors amongst the large influx of Chinese boat arrivals in 1999 were taken into care and guardians were appointed for them. In Quebec there is a specialist social service agency that works with refugees and immigrants, and which provides a classic social work service to all unaccompanied children. There are, as yet, no legal guardianship arrangements but these are being developed. In Ontario, the province with large numbers of asylum seekers, it is the practice to make unaccompanied minors under 16 wards, a status equivalent to guardianship.

Europe

Before examining what individual states are doing in Europe, it is worth noting that the Council of Ministers of the European Union passed a resolution in 1997 on unaccompanied

minors. This resolution identifies the need for the representation of separated children as soon as possible after arrival, however, the means of ensuring this is left open to interpretation by individual states.

In 1998 a continent-wide program was established by UNHCR and the International Save the Children Alliance. This program aimed to establish the numbers of unaccompanied and separated minors, to monitor what was occurring in various states and to develop measurable standards for their care. The 'Separated Children in Europe Program' (www.sce.gla.ac.uk) created a European-wide framework of good practice, (the Statement of Good Practice) which looks in depth at the experiences of separated children, with a view to highlighting ways in which the situation could be improved.

Also relevant to note is the adoption by the European Union's Justice and Home Affairs Council on 2nd June, due to delays in appointment of guardians.

Sweden

In Sweden all unaccompanied children have an adviser appointed (usually from the Board of Guardians), whose task is to 'protect the interests of the child from a holistic perspective and with his or her best interests at heart. How this role is exercised is not clear as there are no clear guidelines.

The United Kingdom

In 1993 the Social Services Inspectorate, within the Department of Health, published 'Unaccompanied Asylum-Seeking Children: A Practice Guide and Training Pack', to deal with who applies for asylum in the Netherlands and who is not over 17 years and 6 months old. If there is no relative or friend living in the Netherlands, a staff member of an NGO will be appointed as guardian. Each one of these court-appointed NGO guardians has approximately 25 wards. The role of the guardian includes:

- integrating the child into Dutch society and providing general guidance. For this purpose, he or she will see the child every month and will also be in contact with relevant organizations such as the school, the "new arrivals" office, the government immigration office, lawyers and the organizations responsible for the child's daily care in the reception centre;
- deciding how the child will be cared for on a long-term basis. The guardian will decide this after consulting those who took care of the child in the reception centre during the first three months in the country;
- advising on educational pathways;
- arranging for the child to receive financial support;
- assisting the child if he or she wants to find other family members.

If this is the case, the guardian will represent the child at the tracing department of the Dutch Red Cross.

Norway

Under the Norwegian system, independent guardians are appointed to assist the child until he or she is 18 years of age. Their role is to ensure that the rights of separated children are respected and implemented by the responsible authorities. The children have a right to the

support of a guardian throughout the asylum process – at police interviews, during residence in the asylum centre, and after settlement by local authorities. The guardian also has some personal responsibility for the child, but this is not to replace the social support provided by the child welfare authorities.

Italy

In Italy, the law stipulates that guardians are appointed to assist the child until he or she is 18 years old, and they should ensure that the rights of the child are respected and implemented by the responsible authorities. The theory is that unaccompanied children should be supported throughout all the asylum procedure, including the appeal phase. In practice, however, it can often take a considerable length of time for a guardian to be appointed. This causes a number of problems, not least because an unaccompanied child cannot make an asylum application without the agreement of the guardian. In some cases unaccompanied children have been prevented from being reunited with recognized refugee family members, as entitled to under the Dublin Convention, due to delays in appointment of guardians.

Sweden

In Sweden all unaccompanied children have an adviser appointed (usually from the Board of Guardians), whose task is to 'protect the interests of the child from a holistic perspective and with his or her best interests at heart. How this role is carried out in practice, however, varies significantly as there are no clear guidelines.

The United Kingdom

In 1993 the Social Services Inspectorate, within the Department of Health, published 'Unaccompanied Asylum-Seeking Children: A Practice Guide and Training Pack', to address concerns about the care of this group of children arising within statutory childcare organizations. We understand this is currently being updated.

This work led to the establishment of the "Panel of Advisers for Unaccompanied Children" scheme in 1994. This scheme is funded by the Home Office and administered by the (British) Refugee Council's Children's Section.

It is the aim of this scheme to provide an adviser for each newly arrived unaccompanied minor who can give support and advice, be an advocate for appropriate care arrangements, be attentive to cultural and religious needs, and ensure education, health care and legal advice needs are met. Many advisers are from refugee communities and can work in the child's mother tongue; others work through interpreters. Advisers were initially matched with the child for 10 weeks.

During the first year of operation the Panel provided support to 361 children and young people. During 2000-2001, 4,276 referrals were received, half from the Asylum Screening Unit or the Immigration Service. As numbers of new arrivals have grown, the service could not meet its intentions and could no longer provide an individual adviser to all new arrivals. In an effort to compensate, a drop-in service has been developed where young people can receive on the spot assistance with immigration, education, health and housing concerns, but this does not meet needs for ongoing advice, contact and guidance.

While the UK's Panel of Advisors provides a model for the appropriate orientation of unaccompanied children on arrival (or subsequently if self referred or referred by another agency), it does not provide legal guardianship. In the United Kingdom, the Children Act (1989) does not really serve to ensure anything equivalent to guardianship, although it does contain provisions for considering the best interests of the child.

Unaccompanied children become the responsibility of the Local Authority's Social Services Department in the area the unaccompanied minors were when drawn to the attention of the authorities. The level and type of care provided depends on the Local Authority, in large part because of the differential - and sometimes inadequate - level of resources devoted to monitoring the welfare of the young people. Care provided also depends on the age or assumed age of the child. Minors are variously referred to children's homes, hostels bed and breakfast accommodation and fostering arrangements. Within this broad framework there are some specific programs, for example:

- fostering by culturally matched carers: most London Social Services Departments have recruited foster carers from refugee and migrant communities, to enable them to place unaccompanied children with carers from their country/ethnic or language community of origin. They are trained, supported, supervised as other foster carers, and expected to provide care to nationally agreed standards. National standards apply regarding assessment of children and regular reviewing of placements;

- residential units and children's homes: there are specialist units run by Social Services Departments (such as that in the Hillingdon area which works with minors detected at Heathrow airport) or NGOs (for example The Cedars which is run by the British Refugee Council). Units vary in size and in the level of care, with those for older adolescents based more on a semi-independence model. The programs link the minors to trained workers from the same language and/or cultural background and ensure they are linked to educational, health and legal resources. The support networks between young people and between young people and staff forged at this time typically continue to function after they leave the facilities;

- a drop in service for older unaccompanied refugee children: established by the British Refugee Council in 2000 and extended in 2001 due to the high level of demand.

In addition, the Diana, Princess of Wales Memorial Fund has funded work with unaccompanied children through 10 different NGOs based mainly in London. Included in this are the following programs:

- "Befriending", a program established by the Medical Foundation for the Care of Victims of Torture for clients of their Child and Adolescent Psychotherapy team. The program links the unaccompanied minor to a trained adult who commits to befriend the minor for at least a year. The adult "friends" receive support and debriefing from the service during this time;

- activity, social support and sports clubs run by organisations such as Save the Children Fund.

In addition, there are two fora that bring service providers and policy makers together around the issue of unaccompanied minors. One is run by the Department of Health and the other, the Children's Consortium on Separated Children, is an NGO initiative. Both have proved very valuable in terms of ensuring information exchange, monitoring programs and developing best practice frameworks.

Improving the Current System

The current system for dealing with unaccompanied and separated minors who are seeking asylum in Australia has many flaws. While it does allow for the appointment of a legal guardian:

- the principal guardian, the Minister for Immigration, has conflicting and contradictory responsibilities that will never allow him to focus exclusively on protecting the best interests of the child;
- the principal guardian delegates his responsibility to unaccompanied minors in immigration detention to others who have similar conflicting interests and to people who are in rotating positions (thereby ensuring no continuity of care or support);
- the principal guardian delegates responsibility for unaccompanied minors in the community to state agencies whose capacity to provide specially targeted services is limited by lack of resources.

Unaccompanied minors who seek Australia's protection are not linked to a responsible adult who will remain with them during the process and who will act as an advocate on their behalf and oversee their welfare. As a result we have seen unaccompanied children as young as eight in Woomera for over six months during some of the worst violence seen at the centre.

The failure of the current system to provide effective guardianship means that unaccompanied minors are left without the advocacy, protection and care that they need and to which they are entitled. It is the Council's opinion that a whole new approach is required to address the current problems and to make Australian practice compliant with the Convention on the Rights of the Child and the 1951 Convention Relating to the Status of Refugees. For this we recommend the following:

i. Transfer Guardianship Responsibility:

Guardianship should be transferred from the Minister for Immigration to the Minister for Children and Youth Affairs. This would address the issue of conflict of interest and place the prime responsibility in the portfolio of a Minister whose mandate is to ensure the protection of children. This transfer would also result in the engagement of the federal Department of Family and Community Services (FACS).

ii. Delegation of Guardianship:

Recognizing that no Minister can assume the day-to-day responsibilities of guardianship, it is further recommended that the direct guardianship responsibility for unaccompanied minor asylum seekers be delegated to members of a Panel of Advisers.

It is envisaged that the Panel of Advisers program would be funded by FACS and administered by a community organisation that had successfully tendered to undertake this role.

How Would the Proposed Program Operate?

The Panel of Advisers would be made up of specially selected people who:

- ideally (but not exclusively) come from the background of the main entrant groups, noting as this is said, that there are sub-groups within nationalities that have to be considered, and that in some instances there are good reasons why a minor should not be linked to someone from his/her own background;
- have undergone full police clearances to establish good character;
- have qualifications or experience in child welfare or a related discipline;

- have undergone specialist training in the role and responsibilities of a guardian and about the particular issues confronting unaccompanied minors who are seeking asylum.

The Advisors would operate according to a set of Policy and Practice Guidelines drawn up by FACS, in consultation with the governing NGO, and approved by the Minister for Children and Youth Affairs.

Each adviser would work with a number of children (maximum 20) at any one time and would be responsible for oversight of their legal and welfare arrangements. They would have the authority to intervene with relevant authorities.

The number of advisers appointed at any time would be a decision based on existing and projected needs. Using a mixture of fulltime positions and part time positions would allow for flexibility to respond to changing needs, while at the same time enabling continuity and the development of expertise.

Advisers should be located in major capital cities. This would require that, if an unaccompanied minor is held in detention (a practice in no way supported by the Refugee Council but which currently exists), the unaccompanied minor be housed in a facility in Sydney or Melbourne and not in any of the remote centres.

As soon as an unaccompanied minor is identified, an Advisor will be appointed. It is envisaged that this Advisor will retain guardianship responsibilities for the minor until he/she leaves the country or reaches the age of 18, unless the minor relocates, the Advisor relinquishes the position or there is a breakdown in the relationship. In which case, a new Advisor would be appointed.

The responsibilities of the Advisor might include the following:

- to act as an advocate for the minor and to ensure that all decisions made in relation to the minor are in his/her best interests;
- to ensure that the minor has suitable care accommodation, education, language support and healthcare;
- to ensure that the minor is not placed in any situation that would place him/her at risk of psychological trauma, physical danger or sexual abuse;
- to ensure that the child has competent and child-responsive representation to deal with his/her asylum claim and/or other legal matters;
- to act as a mentor to the minor and provide guidance and support;
- to contribute to finding a durable solution in the minor's best interests;
- to provide a link between the minor and the various organizations that might provide services to him/her: DIMIA, ACM (not just centre management but also health workers, teachers and welfare staff), other Government agencies (Centrelink, community services, education, health etc) and community welfare agencies;
- to monitor any foster or care arrangements;
- to assist the minor with family tracing and reunification.

It would not be the role of the Advisor to provide care or legal advice. For minors in detention, day-to-day responsibility for care would rest with ACM and DIMIA as it does at present. Advisors would have automatic access to detention centres and to the detention centre managers as the delegated guardian of the unaccompanied minor.

When the minor is in the community, case-specific decisions would be taken as to what is in the best interests of the child. For older adolescents, this could be shared accommodation, a hostel or independent living. If foster care is considered appropriate, negotiations could be undertaken with the relevant state agencies as they are at present, with the key difference being the involvement of the Advisor.

Given the success of the Drop-In Centres in the United Kingdom, it is also suggested that consideration be given to opening Drop-In Centres for young asylum seekers and refugees in major centres. These would provide a safe place for the young people to gather and participate in culturally appropriate and constructive activities with others in a similar position. Many young refugees report that they miss their siblings very much. Such centres would enable young refugees to acquire new “brothers” and “sisters”, bound by their common experiences if not by blood.

Conclusion

The Refugee Council recognises that the above proposal requires legislative changes and the allocation of additional resources. We reiterate, however, that the current system is deeply flawed and argue that only by radically changing the nature of the way that Australia protects and supports unaccompanied minors will any real improvement be achieved.

It is vitally important that we learn from Australia’s failure to provide constructive support to the young Indochinese minors who came in the 1980s. This resulted in young people falling between the cracks of society – neither functionally literate in their own language or in English, not accepted by their own community and excluded from the mainstream. It is little wonder that many sought connection and “family” by joining gangs and participating in antisocial or criminal behavior. The issues from this time are well documented. What we have to guard against is creating new fodder for sociologists with each new wave of unaccompanied minors.

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