



# Department of Immigration and Multicultural Affairs

REPORT INTO REFERRED IMMIGRATION CASES:  
CHILDREN IN DETENTION

December 2006

Report by the Commonwealth and Immigration Ombudsman,  
Prof. John McMillan, under the *Ombudsman Act 1976*

REPORT NO. **08|2006**

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## 1—SCOPE OF THIS REPORT

1.1 In 2005 and 2006 the Australian Government referred to the Commonwealth Ombudsman the cases of 247 persons who had been detained by the Department of Immigration and Multicultural Affairs (DIMA) and later released on the basis that they could not be detained any longer as an unlawful non-citizen. This office agreed to investigate and report to DIMA about each individual's case under the Ombudsman's power to conduct an own motion investigation, as provided for in s 5 of the *Ombudsman Act 1976*.

1.2 For the purposes of analysis, the referred matters were divided into seven categories on the basis of the preliminary information provided by DIMA.<sup>1</sup>

1.3 This report deals with 10 cases, which have not been publicly reported, where children were taken into immigration detention. The period in which these detentions occurred spanned the years 2002 to 2005.<sup>2</sup> These cases are referred to by way of de-identified case studies throughout the body of this report. There is a brief summary of each case at the end of this report. An individual analysis of each case has been provided to DIMA by the Ombudsman's office, but these will not be published. The issues relating to immigration administration identified in the individual cases have been incorporated into this consolidated report. The Ombudsman acknowledges that since these events occurred DIMA's approach to the management of unlawful non-citizen children has changed so that children will only be detained within an immigration detention facility (IDF) as a measure of last resort.

1.4 The investigation of these cases was limited in scope, to identify the specific issues in each case and any systemic problems with DIMA's administration of the *Migration Act 1958* (Migration Act). The primary focus of the investigations was either to establish the facts that led to the children being detained, or the process by which the children were dealt with after acquiring Australian citizenship while in detention. This investigation acknowledges the extensive research undertaken by the Human Rights and Equal Opportunity Commission in the National Inquiry into Children in Immigration Detention.<sup>3</sup>

1.5 Investigation of these matters was conducted primarily by examination of relevant DIMA files and other records relating to each of the individual cases. The material that was examined included:

- DIMA client files for the individual cases investigated
- the Integrated Client Services Environment (ICSE) (DIMA's Information Technology interface) for the individual cases investigated
- detention dossiers, where applicable, for the individual cases investigated
- an interview with a parent of one of the children detained
- the National Compliance Operational Guidelines
- the Operating Guidelines and Immigration Detention Standards of the Detention Service Contractor
- DIMA policy documents relevant to children

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<sup>1</sup> The cases were divided into the categories of mental health, children in detention, data problems, cases affected by the Federal Court decision in *Srey*, validity of notification, detention process and other legal issues; further, see Commonwealth Ombudsman Annual Report 2005–06 at pages 83–84.

<sup>2</sup> At the time of writing this report, one family remains in detention.

<sup>3</sup> Human Rights and Equal Opportunity Commission, *A last resort? National Inquiry into Children in Immigration Detention*, April 2004.

- information obtained from DIMA in relation to policy, procedures and guidelines, including about future policy development
- relevant sections of the *Migration Act 1958* and the *Citizenship Act 1948*
- the Convention on the Rights of the Child<sup>4</sup> and other related material.

1.6 The investigations also considered broader aspects of DIMA's approach to working with children and the extent to which policy and the Migration Series Instructions<sup>5</sup> (MSIs) adequately guided DIMA staff in their dealings in immigration matters involving children.

1.7 This report deals with some general themes that arise from the individual investigations, especially themes that point to systemic difficulties in the ability of DIMA officers, in the period under consideration, to perform their functions effectively while ensuring that the best interests of a child are met.

## 2—LEGAL AND POLICY FRAMEWORK

2.1 Each of the 10 children covered in this report was taken into immigration detention under s 189 of the Migration Act; in many cases the child was an Australian citizen or lawful non-citizen at the time. For the purposes of this report, references to detention accord with the definition provided in the Migration Act. The Migration Act defines immigration detention as including being held in an IDF, being housed in the community under a residence determination or being in some other place approved by the Minister in writing. Other places approved by the Minister may include motels, foster care arrangements or residential housing centres which are separate to immigration detention facilities. These detention arrangement options provide DIMA with considerable flexibility when detaining a person under s 189 of the Act, even though it is correct to speak of the person as being in 'immigration detention'.

2.2 Section 189 provides that an officer must detain a person if the officer knows or reasonably suspects that the person is an unlawful non-citizen. There is no mention of the person's age. Recent legislative and policy changes relating to the detention of children mean that a child will only be detained within an IDF as a measure of last resort. This office understands that since the implementation of this policy, children have not been detained in immigration detention facilities, but have been detained in alternative detention arrangements or in residence determination detention arrangements.

2.3 The critical legal issue in most cases will be whether there is an adequate basis on which an immigration officer can form a reasonable suspicion that a child is an unlawful non-citizen. This question arises independently of whether the parents or siblings of the child are unlawful non-citizens. There may be a cross-over between the circumstances of children and their parents, but their legal status can be different. For that reason the individual status of each child must be separately considered, before an officer can properly form a reasonable and objectively justifiable suspicion that the detention of the child is required by s 189.

2.4 Section 10(2)(a) of the *Citizenship Act 1948* (Citizenship Act) provides that a child born in Australia acquires citizenship by virtue of that birth, if at least one parent

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<sup>4</sup> Office of the United Nations High Commissioner for Human Rights, Convention on the Rights of the Child, ratified by Australia on 16 January 1991.

<sup>5</sup> The Migration Series Instructions are temporary policy guidelines intended for incorporation into DIMA's Procedures Advice Manual.

is either a permanent resident or an Australian citizen. Further, under s 10(2)(b) a child acquires Australian citizenship if the child was born in Australia after the commencement of the *Australian Citizenship Amendment Act 1986*, and the child has been ordinarily resident in Australia for 10 years from the date of birth. Another relevant provision is s 78 of the Migration Act, which provides that a child born in Australia holds each of any visas held by the child's parents at the time of birth.

2.5 Under those provisions it is possible that a child can be an Australian citizen or lawful visa holder, even though one of the parents is an unlawful non-citizen. Indeed, it is possible under s 10(2)(b) that a child who was born in Australia after 1986 and has lived in Australia for 10 years could be an Australian citizen, though both parents of the child are unlawful non-citizens. Consequently, if a child is in the company of a parent who is being detained under s 189, it is necessary to consider whether the child is nevertheless a citizen or lawful visa holder.

2.6 Another implication that flows from s 10(2)(b) is that a child who has been lawfully detained under s 189 could, during the period of detention, acquire Australian citizenship when the child turns 10 years of age. A point made in earlier reports of the Ombudsman is that it is implicit in s 189 that DIMA officers must continue to hold a reasonable suspicion that a person is an unlawful non-citizen. This is not possible if it is known or should be known that the person meets the criteria specified in s 10(2)(b) for acquiring Australian citizenship.

2.7 The legislative provisions are supplemented by international standards and policy and procedure documents that provide guidance for DIMA officers in managing cases involving children.

2.8 The Convention on the Rights of the Child (CROC) was ratified by Australia in January 1991. The Convention is recognised within government as an important instrument that should be respected in the administration of Australian law. Article 37 of the CROC provides that detention of a child 'shall only be used as a measure of last resort and for the shortest appropriate period of time' and that a child deprived of liberty 'shall be treated with humanity and respect for the inherent dignity of the human person'. This principle is now recognised in the Migration Act, following the passage in 2005 of the *Migration Amendment (Detention Arrangements) Act 2005*. Section 4AA(1) of the Migration Act provides:

The Parliament affirms as a principle that a minor shall only be detained as a measure of last resort.

2.9 This section goes on to say that the measure of last resort principle does not apply to residence determination detention arrangements.

2.10 There are a number of MSIs that were relevant to the cases covered in this investigation. The most important being:

- *MSI 370: Procedures for Unaccompanied Wards in Immigration Detention*  
This MSI was introduced in December 2002 and discusses DIMA's duty of care and responsibilities relating to the special care needs of unaccompanied children being held in detention. The MSI acknowledges article 37 of the CROC and discusses the interaction of that international standard with the provisions of the Migration Act that require an unlawful non-citizen to be taken into detention (s 189) and kept in detention until lawfully released (s 196). MSI 370 also states that decisions concerning bridging visas and alternative places of detention should accord with the principle of the best interests of a child.

- *MSI 371: Alternative Places of Detention*  
This MSI was introduced in 2002 and includes limited references to duty of care obligations and alternative detention options for children.
- *MSI 384: Bridging E Visa (subclass 051) Legislation and Guidelines*  
This MSI was introduced in 2003 and specifies that it is usually in a child's best interests to remain with their parents. The MSI outlines that the best interests of the child are always a primary consideration when a decision is to be made concerning the child. With this in mind, it is necessary to consider on a case-by-case basis whether a child is eligible for the grant of a bridging visa E, or whether the child should be transferred to an alternative place of detention.
- *MSI 329: Unlawful Non-Citizens*  
This MSI provides information for DIMA officers on how a person obtains Australian citizenship.

2.11 There are also draft guidelines in relation to the Minister's Detention Intervention powers. These provide instruction on matters specific to children in detention that are relevant when a matter is referred to the Minister to consider making a residence determination or issuing a visa.

### **3—OVERVIEW OF THE CHILDREN IN DETENTION CASES**

3.1 The 10 cases discussed in this report occurred during the period 2002 to 2005. In each case a child was taken into detention under s 189 of the Migration Act, and later released from detention on the basis that the child could not be detained any longer as an unlawful non-citizen. Special features of the cases include:

- in eight cases the child was an Australian citizen or lawful non-citizen at the time the child was detained
- the period of time a child was in an IDF varied from three days to 282 days
- nine of the 10 cases involved children being detained within an IDF
- one child was detained within a Residential Housing Centre and one child was moved into residence determination arrangements as a visitor of her mother, who remained in immigration detention
- in three cases a child, who was recognised as an Australian citizen, stayed in an immigration detention facility as a visitor of the child's parents
- in one case a child was taken into detention by himself, unaccompanied by a parent
- in five cases there was little regard to the family unit in detention and planning for removal.

3.2 The general conclusion of this report is that in all 10 cases there was unsatisfactory administration by DIMA that in many instances breached the existing DIMA policy and Australian standards. These shortcomings stemmed from inadequate and ambiguous policy in DIMA relating to children, and in some cases, from a lack of understanding on the part of DIMA officers concerning the applicable policy and legislation. Generally, there was a failure in all cases to consider the best interests of a child or to give adequate individual consideration to a child's circumstances or needs. Often, the decisions made in relation to children failed to consider that their immigration status could be different to that of their parents, or that the child's interests may require different treatment to that of their parents.



3.3 The Ombudsman's office has not examined the further issue of whether there was a period of unlawful detention in any of the cases. Only a court of competent jurisdiction could make a conclusive finding to that effect; and a more extensive inquiry (including consultation with relevant parties) would be needed before a firm view could be reached on the legality of the detention. Nevertheless, in each individual case, where appropriate, the Ombudsman's office recommended to DIMA that it give further consideration to this issue, for the purpose of considering whether a remedy should be provided to the person to acknowledge or redress any suspected unlawful action.

3.4 There has been a substantial reform program underway within DIMA since many of the incidents dealt with in this report occurred. This is supplemented by legislative changes in 2005 that affirms as a principle that a minor shall only be detained as a measure of last resort. DIMA policy outlines that children shall not be detained, or continue to be detained, in traditional detention arrangements except as a measure of last resort.<sup>6</sup> DIMA has already acknowledged the problems identified in this report and is working to ensure that those problems do not recur. The Ombudsman's office understands that DIMA's management of cases involving children has improved as a result of policy development including alternative detention arrangements.

3.5 Nevertheless, the issues identified in this report indicate that there is a serious problem to be addressed. Moreover, as this report shows, immigration issues concerning children can be complex and unique; immigration compliance activity affecting children should be well grounded in policy, procedural documents and training. One of the recommendations made later in this report is that there is a need for a new policy framework that deals comprehensively with all issues relating to children, and that ensures a consistent, lawful and child-focused approach when dealing with the detention of minors. This policy should aim to alleviate anomalies between existing instructions, provide advice for dealing with competing considerations and ensure that the complexities specific to working with children are identified.

## 4—ASSESSMENT OF INDIVIDUAL CIRCUMSTANCES

4.1 The decision to detain a person under s 189 of the Migration Act must be a decision made specifically in reference to that person. This is clear from the terms of s 189, which speaks of an officer knowing or having a reasonable suspicion that the person to be detained is an unlawful non-citizen. If a DIMA officer is dealing with a family, one or more of whom is suspected of being an unlawful non-citizen, the individual circumstances of each member of the family must be considered before a decision to detain is made under s 189. As noted earlier in this report, the immigration status of a child may be quite different to the immigration status of their parent or siblings.

4.2 In other reports on the referred immigration cases, the Ombudsman's office has emphasised that there must be objective evidence to substantiate the reasonable suspicion formed by a DIMA officer.<sup>7</sup> It is to be expected as a principle of law and good administration that the officer will make a record of the facts and circumstances that have led to the formation of a reasonable suspicion.

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<sup>6</sup> Draft Guidelines on Minister's Detention Intervention Powers.

<sup>7</sup> For example, Commonwealth and Immigration Ombudsman *Report on referred immigration cases: Mr T*, Report number 04|2006 available at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

4.3 Two other considerations reinforce the importance of those points. The first is that, apart from provisions such as s 189, a person in the Australian community has a right to freedom of movement and residence. As Gray J observed in *VHAF v Minister for Immigration and Multicultural and Indigenous Affairs* (2002) 122 FCR at [79], ‘the clear assumption underlying these provisions is that detention of a citizen, or a lawful non-citizen, is unlawful unless justified’. Secondly, s 189 imposes an obligation on an officer to detain a person who is thought to be an unlawful non-citizen. The formation of a properly based reasonable suspicion is the only protection against arbitrary detention and deprivation of liberty.

4.4 It cannot be said that those principles were properly observed in some of the cases examined in this report. In eight cases the child who was detained was, at the time of being detained, either an Australian citizen or a lawful non-citizen. There was a failure in each case to properly consider the individual immigration status of the child, or to document why a decision was made to detain the child. Rather, one is left with the impression that a child was detained on the basis of an opinion formed about the immigration status of the parents.

4.5 In the same vein, there was a failure in other cases to undertake in a timely manner an individual assessment of a child already in detention. In some cases there was a failure to recognise that a child in detention became an Australian citizen upon reaching the age of 10, and at that stage could no longer lawfully be held in detention under s 189. In some other cases, where this point was recognised, the child nevertheless remained in detention as a visitor of its parents without any proper, documented examination of whether an alternative arrangement should be made for the child.

4.6 The following two case studies provide examples of those deficiencies in DIMA administration.

#### **Case study 1—detention of a child born an Australian citizen**

LP was an Australian citizen at birth, having been born in Australia to a father who was an Australian citizen (Citizenship Act s 10(2)(a)). LP was detained with his mother and two sisters, who were all unlawful non-citizens. On the day they were detained, LP’s mother advised DIMA officers of the name of LP’s father; two days later she advised them that LP’s father was an Australian citizen. It appears that little action was taken at this time to determine LP’s citizenship status and LP was detained under s 189 of the Migration Act with his family at the Baxter IDF; they were moved to the Port Augusta Residential Housing Centre (RHC) four days later.

LP’s mother advised DIMA officers on several occasions that he had an Australian citizen father. Limited action was taken to confirm this, though some officers questioned whether they could maintain a reasonable suspicion that LP was an unlawful non-citizen. LP was held in immigration detention, at the RHC, for 149 days, until DIMA officers finally concluded that they had sufficient evidence to consider him an Australian citizen. Thereafter he remained in the Port Augusta RHC as a visitor of his mother.

From the first day of his detention until the day he was officially recorded as being an Australian citizen, DIMA officers had several opportunities to confirm LP’s citizenship. Moreover, there was enough information on which a DIMA officer could entertain a reasonable doubt about LP’s status. The possibility that he was a citizen should have been discounted before a decision was made to detain, or continue to detain him under s 189.

### **Case study 2—detention of a child born in Australia who later became a citizen**

MT was an Australian citizen, having been born in Australia and lived here for 10 years (Citizenship Act s 10(2)(b)). Aged 10, he was detained with his parents in 2004. His birth certificate, showing he was born in Australia, had been provided to DIMA in 1994 as part of a protection visa application lodged by his mother. A copy of the certificate was retained on the DIMA file. Despite this, DIMA systems showed MT as having been born in the Philippines and his citizenship was registered on DIMA's database as either Philippine or unknown. DIMA systems also showed that both his parents were in Australia when he was born.

MT's parents were detained under s 189 in 2004, as unlawful non-citizens after the expiration of their bridging visas, which had been granted in conjunction with applications they had made for review and Ministerial consideration of their protection visa refusal. The DIMA file material indicates that compliance activity to locate and detain them had been planned for some time.

The base problem in this case is that the computer records were inaccurate. However, it is also reasonable to expect that the officers planning the compliance activity should have comprehensively interrogated their own databases for all available information. Had this been done, concerns would have been raised about MT's status, as the records showed his parents were in Australia at the time of his birth and neither the parents nor MT had left Australia at any time during the 10 years after his birth.

4.7 Since these incidents occurred, DIMA has acknowledged that more needs to be done – in training, record keeping, instructional manuals, internal monitoring and other areas – to ensure that proper attention is paid to the individual circumstances of any person being detained, and that each decision is supported and documented by objective evidence specific to the circumstances of each decision.

4.8 The cases in this report serve as a reminder of the particular steps that may need to be taken in an individual case. For example, the extra steps that could have been taken in these cases to consider a child's status included:

- effective interrogation of ICSE and other DIMA databases
- adequate interviews and questioning of the parents in relation to their children's status
- timely follow up on information provided by the parents
- checks with births, deaths and marriage authorities
- perusal of DIMA client files.

4.9 It can also be important to resolve the lawful status of each parent prior to making a decision about the child, since – as noted earlier – s 78(2) of the Migration Act provides that a non-citizen child born in Australia is taken to have been granted each of any visas held by the child's parents at the time of birth, subject to the same visa terms and conditions.

## 5—CITIZENSHIP ISSUES

5.1 It is indisputable that DIMA officers involved in compliance must clearly understand Australian citizenship law. The opposite appears to be true of the cases examined in this report. This is illustrated in different ways.

5.2 There is firstly the issue of how a person's citizenship comes to be recognised under s 10(2)(b) of the Citizenship Act. The section provides that a child born in Australia after 1986, who remains ordinarily resident in Australia, acquires citizenship at age 10. Two documents, *MSI 329: Unlawful Non-Citizens* and the Australian Citizenship Instructions, correctly provide guidance on the application of s 10(2)(b). It is noted that no application is required for a grant of citizenship under that section, and that a child does not need to be in Australia on the date they turn 10. The Instructions set out the steps that should be taken for an assessment against this section and gives guidance on what the test of 'ordinarily resident' will entail. Importantly, the Instructions indicate that an assessment under s 10(2)(b) is usually made only once a person seeks a Certificate of Evidence of Australian Citizenship.

5.3 In some of the cases in this report, it seems that a contrary approach was adopted, whereby DIMA was of the view that a person effectively had to claim their citizenship. For example, in the case of MT (Case study 2 above) DIMA proceeded with making plans for the family's removal on the basis that the family had not yet applied for MT's Australian citizenship.

5.4 There is also evidence in *Case study 1* of confusion among some DIMA officers and a lack of understanding of the implications of the Citizenship Act. *Case study 3* illustrates the same point in a different way: it was wrongly assumed that removal of a child from Australia before turning 10 would prevent the child acquiring Australian citizenship.

5.5 In principle there is nothing to stop DIMA, in the routine administration of the Migration Act, from arranging for the removal of a child who is an unlawful non-citizen at any time prior to the child turning 10. If plans are independently afoot to remove other members of the family who are unlawful non-citizens, it may distinctly be in the best interests of the child to leave with the rest of the family.

5.6 But there is a fine balance to be struck. The Citizenship Act confers the right of citizenship when certain requirements are fulfilled, and it would be wrong for a government agency to take action specifically designed to pre-empt that opportunity. In some of the cases in this report it seems that action was taken by DIMA officers to hasten the removal of children and their families to prevent a child from acquiring Australian citizenship. The email correspondence in two cases stated that 'if all goes well, we may still be able to remove mother plus six children before [date] the day the eldest child turns 10' and 'he intends to apply for [Australian citizenship] for his youngest son who was born in [Australia] and will be 11 years old in February ... at the moment they have applied for nothing so if you can get [travel documents] for them to remove them I would suggest to move on it ASAP'.<sup>8</sup>

5.7 *Case study 3* provides a further illustration of this practice, contrary to the legislative and policy framework for immigration and citizenship law.

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<sup>8</sup> This child was an Australian citizen at the time.

**Case study 3—planned removal action prior to child’s tenth birthday**

JT was detained as an unlawful non-citizen with her mother. JT had been born in Australia almost 10 years earlier and under the Citizenship Act would soon acquire Australian citizenship on her tenth birthday.

Throughout JT’s period of detention officers attempted to obtain travel documents for the family to facilitate their removal. As JT’s tenth birthday approached, plans and efforts to remove the family appeared to increase. An example is an email between DIMA officers discussing removal prior to the child turning 10, one of which said: ‘We were trying to organise this asap in the hope that we could remove the family prior to [date] as Mrs T’s eldest daughter turns 10!’.

The removal of JT from Australia prior to her tenth birthday may not have precluded her from gaining Australian citizenship if she was still regarded as having been ‘ordinarily resident’ in Australia for the relevant period.

5.8 A third shortcoming in the approach taken by DIMA officers to citizenship issues concerns the verification of documents that go to establish citizenship. There is some instruction on this issue in *MSI 292: Non-Citizens using False Identities and/or Bogus or Fraudulent Documents*. Paragraph 3.5 (referring to foreign documents) provides the following instruction: ‘If you suspect that a document has been fraudulently obtained your only option is to investigate the bona fide of the applicant. If your investigation does not give rise to corroborating or confirming evidence, then it is reasonable for you to give the applicant the benefit of the doubt and assume that they have a genuine right to the document’. (See also Chapter 8 of the Australian Citizenship Instructions in the context of registration of Australian citizenship under s 10B of the Citizenship Act.)

5.9 The approach taken in MSI 292, that an applicant should have the benefit of the doubt where documents are apparently regular on their face, is not reflected in the approach taken in some cases. In some it appears that DIMA officers saw it as part of their role to verify the validity of information recorded in a child’s birth certificate before accepting the child’s citizenship. In one case (*Case study 1*), the identification of a child as an Australian citizen was delayed by three months, during which the child was detained, because DIMA officers chose to investigate the validity of information recorded in an Australian birth certificate.

5.10 It has to be remembered that the issuing of birth certificates falls within the jurisdiction of the relevant State births, deaths and marriages registration authorities; a doubt about the authenticity of a document should ordinarily be brought to the attention of the relevant State authority. In all but the clearest of cases – for example, a father may have denied paternity or there may be evidence that he could not have been with the mother at the time of conception – the role of DIMA should ordinarily stop at requiring the presentation of a copy of a child’s birth certificate so as to confirm their place of birth and parents’ details.

5.11 *Case study 4* provides an illustration where DIMA officers failed to accept Australian documents that were apparently genuine and that were corroborated by other information.

#### **Case study 4—failure to accept the authenticity of birth certificate**

AP was an Australian citizen, having been born in Australia to a father who was an Australian citizen. His mother was an unlawful non-citizen who was located and detained by compliance officers under s 189. AP's mother explained at the time that she wanted AP kept at the detention facility with her and signed a written request to this effect. DIMA officers involved in AP's detention were aware that he was an Australian citizen and had sighted his Australian birth certificate and passport.

On the basis of his mother's responses to questions about his father's whereabouts and a receipt that recorded the payment of \$5,000 to AP's father by his mother some months before his birth, a DIMA compliance officer decided to detain AP under s 189. The basis for doing so is that the compliance officer determined that there was a suspicion that AP's Australian citizenship had been fraudulently obtained and that he was an unlawful non-citizen. The DIMA investigation team actively investigated the relationship between AP's parents to establish whether they had engaged in fraudulent activity. The investigation was ultimately inconclusive and DIMA was unable to prove that AP's father was not as stated in his birth certificate.

5.12 In summary, the foregoing discussion raises a worrying doubt that some DIMA officers have a limited or flawed understanding of Australian citizenship law and procedures. Training is required to address this deficiency. Consideration should also be given to developing a comprehensive policy document, including checklists, resources and guiding principles, to assist DIMA officers to more effectively manage cases involving children and citizenship issues.

## **6—DETENTION PROCESSING AND UNACCOMPANIED MINORS**

6.1 In one case in this investigation (*Case study 5*) an unaccompanied minor was detained without the child's parent being contacted.

#### **Case study 5—detention of an unaccompanied minor**

HS arrived in Australia with his mother in 1996. At the time of his detention in 2003 at Villawood IDF, HS was lawfully in Australia on a Bridging Visa E. However, the expiry date of his visa had been wrongly recorded and the ICSE record showed him as an unlawful non-citizen.

HS was 15 years old at the time that he was apprehended and detained by police. He was not in the company of a parent or guardian at the time. The police contacted DIMA who advised the police to detain HS under s 189 of the Migration Act. There is no further information on HS's DIMA file to explain why this occurred, nor is there any record of any attempt by the police or DIMA to contact HS's mother.

HS was taken unaccompanied to the Villawood IDF. The detention details sheet records his address and that he was known to be a minor. HS was released from detention two days later when the error on ICSE recording the cease date of his bridging visa was identified.

6.2 The action taken by DIMA officers in *Case study 5* was contrary to a well-established principle in policing and compliance that a child should not be detained without a parent or guardian being contacted at the earliest opportunity. There is the further practical point that if DIMA officers had contacted the mother of HS they were likely to have obtained information that prevented his detention.

6.3 It is not necessary in this report to dwell at length on the practice that should be followed concerning the detention of unaccompanied children. In summary, DIMA officers must:

- make every attempt to contact a parent, legal guardian or relevant child protection agency at the earliest opportunity
- ensure that the parent, legal guardian or other representative is present for any interviews conducted
- ensure that the best interests of the child is a primary consideration in all decision making concerning them
- fully investigate alternative places of detention, if a thorough assessment concludes that detention is the only option
- ensure that all action, decision making and consideration of the child's best interests is clearly documented.

6.4 A related issue is the procedures to be followed in reception processing of minors at detention facilities. This is dealt with in *MSI 370: Procedures for Unaccompanied Wards in Immigration Detention Facilities*. The MSI states that the Detention Service Provider must assess all minors, including unaccompanied minors, upon their arrival at a detention facility to determine their special needs commensurate with age, gender and background (paragraph [5.2.1]). The reception process should be undertaken by staff of the Detention Service Provider who have appropriate expertise in child welfare (paragraph [5.2.2]).

6.5 The instruction provided in MSI 370 is sound, but needs to be amended to have regard to the legislative and policy reform relating to the detention of children. One difficulty is that the title of the MSI is misleading, in referring only to unaccompanied minors. The text of the MSI applies generally to *all* minors, but there is a risk of this being overlooked by DIMA officers. In many of the cases in this investigation there was no evidence that an individual assessment had been undertaken of children who were detained in the company of their parents. Once again, the point may be understood more clearly by DIMA officers if all instructions applying to children were contained in a policy document that dealt comprehensively with matters concerning children.

## 7—COMPLIANCE ACTIVITY IN SCHOOLS

7.1 *Case study 6* deals with an unacceptable practice of undertaking compliance activity in a school without a parent or guardian being present.

### **Case study 6—compliance action in a school**

IH and JH, two siblings aged six and 11, were detained by DIMA officers in 2005. Earlier in the day their mother had been detained as an unlawful non-citizen when she arrived at an Australian airport. She was taken to Villawood IDF. IH and JH, who had remained in Australia with a relative while their mother was overseas, both had valid visas.

DIMA officers attended the children's school, had them taken out of class and removed them from the school. The children were not accompanied by a friend or guardian when being escorted by DIMA officers. DIMA officers took the children to their residential flat, where again there was no adult familiar to them. They were told to pack their belongings and were then transported to the Villawood IDF, where they were reunited with their mother.

7.2 It is understood that, following this incident, the NSW Department of Education negotiated a protocol with DIMA. The impetus for this step was the concern held by parents and teachers relating to the detention of IH and JH. It is likely that they and other children in the class would have been confused and frightened.

7.3 DIMA has advised that the protocol with the NSW Department of Education was not formalised and exists in a verbal sense only. However, DIMA did issue a minute to all staff in relation to care arrangements for dependants affected by compliance actions. Dated 18 April 2005, the minute included the following instruction:

If a parent is located separately from their child and if there is a need to go to a school or another place to locate an unlawful child, a parent should accompany officers where this can be managed effectively. As a general rule, we should not conduct compliance action in schools.

7.4 DIMA has advised the Ombudsman's office that the substance of this minute will be incorporated into a departmental policy.

## 8—ALTERNATIVE DETENTION OPTIONS

8.1 Article 37(b) of the CROC, cited earlier in this report, states that detention of a child shall be used only as a measure of last resort and for the shortest appropriate period of time. The principle has also been enshrined in the Migration Act since 2005 (see s 4AA(1), noted above).

8.2 In the period following much of the detention action discussed in this report, there has been a considerable change in policy and administrative practice in DIMA concerning the detention of children. Some of the changes are noted below. However, for the purposes of this report it is important to record that many actions taken by DIMA in the cases covered by this investigation were inconsistent with the



policy and practice applying at the relevant time. Relevantly, *MSI 371: Alternative Places of Detention* provided detailed guidance for DIMA officers on when an alternative place of detention should be considered. The MSI commenced operating in December 2002, and thus had relevance to all but one of the cases in this report.

8.3 Generally, there was a failure by DIMA in the cases in this report to give active consideration to less restrictive detention options where detention of a child was concerned or to regard detention as a measure of last resort. *Case study 7* provides a telling illustration.

#### **Case study 7—lengthy detention of a family**

A mother and six children were held at the Villawood IDF in 2004 for nine and a half months. One of the children, JT, was nine years old and became an Australian citizen on her tenth birthday, after six months in detention.

File records indicate that the mother's emotional and mental health was suffering as a result of the delay in the family being removed from Australia, particularly given the delay was as a result of difficulties in obtaining travel documents. One file record indicates that after seven months in detention the family was being considered for a Removal Pending Bridging Visa; another file record soon after shows that consideration was given to transferring the family to the Baxter IDF, which was regarded as a more family-friendly environment. However, no outcome or follow up action appears to have been taken in relation to either of those, and the family remained in Villawood IDF.

In an interview with staff of the Ombudsman's office, JT's mother stated that she observed a significant change in her children's behaviour following their detention at Villawood IDF. She stated that she raised this with DIMA staff, but was advised that nothing could be done. She advised that she found it very difficult to cope and that DIMA did not discuss alternative places of detention with her.

8.4 An example of the policy shift that has subsequently occurred within DIMA is the minute issued to staff on 18 April 2005, concerning the care arrangements for dependents affected by compliance actions, including children whose parents are detained. The minute requires DIMA officers to consult with the Detention Service Provider via National Office prior to considering children being housed in detention with a parent. The minute also discusses the involvement of State welfare authorities and the escalation of cases to supervisors. The details of this minute require prompt inclusion into a more formal DIMA policy and procedure document.

8.5 There is also a range of other options available to DIMA officers to prevent children from being detained within a detention facility. These include:

- an alternative detention arrangement, such as foster care, hotel, other community accommodation facility
- the Minister's Detention Intervention Powers, such as a Residence Determination (s 197AB) or the grant of a visa to a detainee (s 195A)
- short-term placement of the family in a residential housing centre.

8.6 The positive impact of these changes has been noticeable to the Ombudsman's office across its immigration oversight work.

8.7 There are, however, two other issues arising in this investigation that require further consideration in the context of the changes being implemented in detention policy and practice. The first concerns the practice, observed in some cases in this report, where children stayed in a detention facility as a visitor of their parents. This happened when a child's Australian citizenship was recognised while they were in detention and they could no longer be detained under s 189. In these cases, DIMA officers requested the parents to sign a form or provide some other form of written consent to the child remaining in the detention facility as a visitor. This ran counter to the more cautious advice provided in *MSI 234: General Detention Procedures*:

... cases may arise where a detainee wishes to have citizen or lawful non-citizen dependent relatives stay with them at a place of detention. This should normally be refused as detention facilities are generally not an appropriate environment for those who do not need to be detained. In addition, detention costs would increase and the Commonwealth may become subject to a duty of care for such persons, which would not otherwise arise (paragraph [19.1]).

8.8 DIMA needs to provide clear and consistent instructions, and focused training, concerning the options and requirements for allowing a child to remain as a visitor with their parents in a detention facility.

8.9 Secondly, there is a conflicting emphasis in two of the items of legislation administered by DIMA. Section 189 of the Migration Act provides for mandatory detention of a person reasonably suspected of being an unlawful non-citizen, including children. Section 4AA and Article 37 of CROC provide that detention of a child is to be a measure of last resort. MSI 370, concerning detention of unaccompanied wards, refers to legal advice that the 'initial mandatory detention of children who are asylum seekers does not breach Australia's obligations under Article 37 of CROC' (paragraph [13.1.5]). These different requirements are not easy to reconcile. Further specific guidance for DIMA staff on how to do so is required.

## 9—RECORD KEEPING

9.1 Deficiencies in record keeping by DIMA have been discussed in other recent reports by the Ombudsman's office. Recording errors were also noted during this investigation that had an adverse impact on the children discussed in this report. An example in *Case study 5* was that the expiry date of a visa was incorrectly recorded, resulting in a child being wrongly detained as an unlawful non-citizen. Another example is *Case study 2*, where a child's place of birth and citizenship was wrongly entered on the DIMA database. In other instances there was a failure by DIMA officers to record sufficient information to explain the reasons for detention, the action taken in relation to a child, and the date on which a child's detention under s 189 came to an end.

9.2 The following three case studies provide examples of other record keeping errors and failures to update records.

**Case study 8—wrong identification and description of Australian citizen**

When GN was detained he was initially known to DIMA and detention facility staff as SK, a Fijian citizen. Three weeks after being detained, DIMA staff interviewed GN's mother and asked if his name was GN, which his mother confirmed. DIMA also confirmed during this interview that GN was an Australian citizen by virtue of birth. GN's identity and Australian citizenship status was not updated on DIMA's systems and files for a further six weeks, after which he remained in the detention facility as a visitor of his mother. Notwithstanding this recognition that he was an Australian citizen, officers continued to refer to GN as SK and as a Fijian citizen.

**Case study 9—failure to update record about citizenship**

JT acquired Australian citizenship while in detention on her tenth birthday. Her status was not updated on DIMA's systems until at least three months after she acquired citizenship. Emails between officers showed that the delay was a result of staff not knowing whose responsibility it was to update the records.

**Case study 10—wrong information recorded about visas**

The members of JT's family each held a Bridging Visa E in association with a protection visa application. They were nevertheless mistakenly recorded in ICSE as being involved in a judicial review matter that did not relate to them. As a result of this erroneous ICSE entry, a 28-day countdown (the time for lodging an appeal) appears to have been triggered when the outcome of the judicial review matter was recorded in their ICSE records. At the end of the 28 days, their bridging visas incorrectly ceased without their knowledge and DIMA systems showed them as unlawful non-citizens.

One consequence of this error was that the family was on three occasions issued with a Bridging Visa E to enable their departure from Australia. This was mistaken, as they already held a bridging visa in conjunction with their protection visa application. Another consequence is that at a later date the family was detained and refused a further bridging visa on the basis that they had failed to comply with the conditions of the previous Bridging Visa Es that had been granted in error.

9.3 There is now a major reform program underway within DIMA to improve record keeping practices in response to recent reports that have detailed serious record keeping problems in immigration administration and detention. Little more needs to be said about the general issue in this report, other than to note again its importance. The case studies in this report illustrate how a person (even a family) can be significantly disadvantaged by a record keeping error. The direct consequence in some cases was that members of a family, including Australian citizens, were held in detention when they should not have been.

9.4 A particular challenge that lies ahead for DIMA is to ensure that staff have a clear understanding of their joint and individual responsibility to ensure the accuracy of immigration records.

## 10—DETENTION COSTS

10.1 The Migration Act provides that a non-citizen who is detained under the Act can be liable to pay a daily maintenance amount to the Commonwealth for the cost of detention (ss 208 and 209). If a child is detained with one or other parent, the parent but not the child is liable to pay the detention cost (s 211). The issue is addressed in two MSIs: *MSI 70: Liability of non-citizens to repay costs*; and *MSI 396: Liability of non-citizens to repay costs of detention, removal or deportation*.

10.2 Those principles were breached in a few instances in the cases under investigation. In some instances a detention cost debt was recorded against the child being detained. In one case a detention cost debt was raised against an Australian citizen child. The general issue of detention costs was raised with DIMA when it was identified during the investigations. DIMA responded by advising that the following action would be taken:

- the issue of recording debts, including debts against children, will be added to the agenda of the Practice Management Group so that current procedures/instructions for staff are reviewed
- the topic of raising detention debts will be incorporated into the College of Immigration training module for compliance officers
- a sample of debt cases will be quality assured within the next six months to ensure that the Department is raising debts appropriately in accordance with legislation and policy.

10.3 A particular issue that requires further attention is that of detention costs in respect of children who remain in detention as visitors of their parents. The issue is not dealt with explicitly by the Migration Act, and there is little specific policy guidance on the issue. It is, however, an important issue, given that it can be desirable in exceptional circumstances that a child remain with a parent in detention to avoid a family being split. In principle, it would seem undesirable that a detention debt be raised in this instance against the parent in relation to the child.

## 11—REMOVAL ISSUES

11.1 *Case study 11* deals with an instance in which no action was taken by DIMA to ensure the welfare of two children when the departure of their parents from Australia was being supervised by DIMA. This was contrary to the principle that the best interests of a child are a primary consideration in any action concerning the child.

### **Case study 11—absence of care arrangements for children upon removal of parents**

IH and JH, two siblings aged six and 11, were left in Australia following the supervised departure of both their parents. Their mother, Mrs H, was the first to depart Australia; their father, Mr H, departed five months later.

No arrangements were put in place for the care of their children at the time of Mrs H's departure, nor does it seem that she was given an opportunity to make such arrangements. Prior to her departure she was detained by DIMA as an unlawful non-citizen and taken to the Villawood IDF. (DIMA has since identified that she was the holder of a Bridging Visa E at the time and should not have been detained.) The record of interview completed by a DIMA officer following her detention does not contain any answer to a question on the interview form, asking whether the person being detained has any immediate family in Australia. A few days later a DIMA officer recorded on the DIMA system that Mrs H had two children who were staying with a friend. This fact was also recorded on the Reception Assessment Checklist; a separate ICSE entry recorded that Mrs H had a dependent son who was onshore. This information was apparently disregarded at the time of Mrs H's departure.

The father, Mr H, was imprisoned the day after Mrs H departed Australia. Five months later, when his sentence ended, he left Australia in a supervised departure. At the time, Mr H was the holder of a Bridging Visa A. Prior to his departure, Mr H advised DIMA officers that he was unsure what visas he held and indicated that, while he would depart Australia voluntarily, he had two children living in Australia, aged six and 11. There is no evidence of any action being taken at the time by DIMA officers to safeguard the welfare of the children.

11.2 In another case, DIMA was planning the removal of a mother and her children, three of whom were Australian citizens. The mother was to be notified of the removal on the morning of her departure. She had previously indicated that if removed she might not take her Australian citizen children with her. The short period of notification to be given her would have left little time for important decisions to be made about the immediate and possibly long-term welfare of her children. In the event, the removal action did not go ahead.

11.3 The general issues concerning removal have recently been addressed by DIMA in a new *MSI 408: Removal from Australia* that came into operation in November 2005. An issue that warrants further consideration is the elliptic guidance given to staff in MSI 408 on safeguarding the best interests of a child in removal action either of the child or their family. MSI 408 only mentions the child's best interests in a brief sentence stating 'any queries by an officer about the child's best interests are to be referred to the Legal Policy Section for advice' (paragraph [53.3]). While this suggests that a child's best interests are relevant to removals, it provides no direction to staff as to when a child's best interests should be considered. The issues raised in this report suggest that fuller guidance is needed.

## 12—MEMORANDA OF UNDERSTANDING WITH STATE AGENCIES

12.1 This report has noted some of the changes that have recently been implemented in legislation, policy, procedures and training to ensure a different approach to issues concerning the detention of children. This has been supplemented by Memoranda of Understanding (MOUs) signed with various State government departments to assist the management of children in detention:

- Child Protection MOU with South Australia (signed 6 December 2001)
- Child Welfare MOU with Western Australia (signed 5 July 2004)
- Education MOU with New South Wales (signed 25 June 2001)
- Education MOU with Victoria (signed 5 February 2003).

12.2 MSI 370 states that DIMA is also in the process of developing similar MOUs with other State government departments.

12.3 A residual concern of the Ombudsman's office is that these worthwhile developments are not being adequately notified to staff at appropriate levels. An example in point is the MOU signed in 2001 between DIMA and the South Australian Department of Human Services (DHS). The MOU has been viewed by the Ombudsman's office and appears to provide a solid basis for the management of children in immigration detention by the two agencies. Much of the detail in this agreement is not reflected in the relevant MSIs, which contain DIMA's primary instructions to staff. The MSIs make reference to the MOU, but do not advise staff on how to obtain the text of the MOU, nor pinpoint the obligations on staff that can arise from the MOU. The MOU further provides that DHS will provide training to DIMA and staff of the Detention Service Provider on relevant topics, although the extent to which this occurs or is monitored is not known.

## 13—RECOMMENDATION

13.1 This report has drawn attention to many administrative deficiencies that occurred during the period 2002 to 2005 in the handling of the 10 cases covered by this investigation. Many of these administrative deficiencies are similar to those that have already been identified by DIMA in response to reports of the Ombudsman and by other internal and external inquiries. It is recommended that DIMA, as part of that process of reform, note the contents of this report and ensure that adequate measures are implemented to address the following problems identified in this report:

- officers should be properly instructed in the requirements of Australian citizenship law and practice, and be aware of the implications of Australian citizenship law for the exercise of powers conferred by the Migration Act, especially the power to detain under s 189
- officers should be properly instructed to give individual consideration to the circumstances of any child whose immigration status needs to be determined
- record keeping in DIMA should be improved, taking note of the need to record accurate information about the immigration status of persons, the reasons for detaining a person, and the release of persons from detention
- detention costs should not be recorded against children
- MOUs signed between DIMA and State government departments should be reviewed to ensure that they accurately reflect legislative and policy changes,

that obligations imposed by those MOUs are properly notified to DIMA staff, and that other MOUs are negotiated with State agencies where necessary

- a dedicated policy document is required that deals comprehensively with all relevant issues concerning the detention, removal or other compliance activity involving children. Issues noted in this report that should be addressed in the policy document include:
  - Australian citizenship law as it relates to children
  - assessing the best interests of a child
  - applying the legal principle that detention of a child is a measure of last resort
  - considering alternatives to detention of children
  - ensuring that a child is supported by a parent or other guardian during compliance activity
  - measures that can be taken to avoid splitting of families.

## ATTACHMENT A—DIMA'S RESPONSE

On 23 November 2006, Mr Andrew Metcalfe, Secretary, Department of Immigration and Multicultural Affairs, wrote to this office in response to this report. The covering letter from the Secretary and the response to the recommendations are reproduced below.

### Covering letter from Secretary

Dear Prof. McMillan

Thank you for providing me with your draft *Report into Referred Immigration Cases: Children in Detention*. The issues you raise are important, and I agree with your recommendations.

My department has taken significant steps to ensure that its detention policies and practices are founded on principles of fairness, reasonableness and a duty of care. Children are especially vulnerable, and my department is committed to ensuring that all reasonable alternatives are explored before any decision is made to detain a child. This principle is informed by amendments that were made to the Migration Act in 2005. My department is also committed to ensuring that the immigration status of every individual is assessed with regard to their particular circumstances. This includes children, especially those who may be eligible for citizenship. To this end, College of Immigration training is currently provided to compliance officers on key aspects of Australian citizenship law.

As part of reforms to detention, arrangements have also been established that are more appropriate for families with children. These include:

- community-based residential determination arrangements which allow families to live in the community without restraint
- additional support, arranged through Non-Government Organisations, to ensure that families in community residential settings have access to necessary services and social networks
- provision of Residential Housing in Sydney, Perth and Port Augusta suitable for families for the first couple of weeks after arrival, and before community-based options can be put in place.

I consider the welfare of children under the care of the department to be a priority. To ensure that this is reflected in all immigration practices, agreements have been negotiated with government agencies in a number of states to facilitate the proper management and protection of children in the department's care.

As your report observes, my department is making notable progress in achieving its reform goals. We will continue in our efforts to achieve these goals through monitoring our performance and building in continual improvements.

Yours sincerely

Andrew Metcalfe  
Secretary



## DIMA's response to recommendations

The department agrees with the report's recommendations, and many relevant measures have already been implemented.

The department has introduced reforms to its compliance, detention and removal processes that reflect the commitment to detain children only as a last resort. Since implementation of the government's reforms in mid-2005, there have been no children residing in immigration detention centres.

Major improvements have been made to staff understanding regarding the assessment of the status of children, including with reference to Australian citizenship legislative provisions. For example, the College of Immigration now includes training on:

- the key provisions of the Citizenship Act
- the implications of those provisions for exercising powers under the Migration Act, including reasonable suspicion and the power to detain
- record keeping improvements, including timely recording of information in appropriate systems.

The content of training packages will be reviewed as part of the continuous improvement cycle. Specific advice is also provided to compliance officers on the issuing, use and maintenance of compliance notebooks. More broadly, good record-keeping practices are also being incorporated into the design of the department's new information environment, *Systems for People*.

Training is supported by new procedural guidelines. For example, *Procedures for Detaining Non-Citizens* (due for release December 2006) will recommend that children should be assessed on an individual basis, and that assumptions not be made that they have the same immigration status as their parents and siblings. It will also provide advice about assessing a child's immigration status and citizenship from primary documents. Out in the field, officers will be required to use pre-interview checklists, which include a focus on identity and citizenship. New guidelines also require that children held in the community under residence determination or residential housing arrangements do not incur detention debts. DIMA confirms that no debts are currently levied against any of the children referenced in this report.

To ensure the proper welfare of children in residence determination or other community arrangements, DIMA is reviewing its MOUs with State government departments regarding the welfare and management of children. These MOUs, and further ones to be signed with the States, will reflect recent legislative and policy changes, and will be included in the department's forthcoming Detention Services Manual.

DIMA agrees to develop a guide on dealing with children. It will link all relevant policy and procedural material to reflect the importance of:

- the individual circumstances of a child (such as unaccompanied minors)
- the contextual environments of children, including family and other dynamics
- the 'best interests' and welfare of a child
- the department's need to detain only as a measure of 'last resort'.

The consolidated guide will be consistent with DIMA's *Onshore Compliance Programme Plan*, which supports the case management of clients, particularly vulnerable clients such as children.

## ATTACHMENT B—CASE SUMMARIES

### Case summary 1

*[See Case studies 6 (page 12) and 11 (page 17)]*

IH and JH, siblings aged six and eleven, were detained for a period of 135 days. Both their mother and father had earlier been detained and had separately been subject to supervised departures from Australia. At the time, the children stayed with a relative in Australia. On their mother's return to Australia she was detained at the airport and taken to Villawood IDF. Later that day the children were detained while at school and taken to Villawood IDF to be reunited with their mother. At the time of their detention, the siblings both held valid visas.

### Case summary 2

*[See Case study 5 (page 10)]*

HS, aged 15, was referred to DIMA by State police, and detained at the VIDF for a period of three days. At the time he was the holder of a valid bridging visa, but was detained as a result of an error in ICSE that recorded an incorrect visa expiry date. HS was detained without any contact being made with his mother who was residing in the community.

### Case summary 3

*[See Case study 8 (page 15)]*

GN, aged one, was an Australian citizen who was detained with his family at Villawood IDF in 2002 for a period of 214 days. DIMA officers did not interview GN's mother until three weeks after the family's detention, at which time she confirmed to officers that GN was an Australian citizen. This was not acknowledged on DIMA systems until almost six weeks later, when DIMA obtained a copy of GN's birth certificate. Following this, GN remained in detention as a visitor of his mother for a further five months.

### Case summary 4

OF, aged nine, was detained at the Villawood IDF for a period of 244 days, initially as an unlawful non-citizen. OF was released from detention, into the care of relative, the day before she acquired Australian citizenship on her tenth birthday. DIMA had earlier attempted to remove OF and her family from Australia, before she turned 10. At the time the family was still engaged in court and tribunal proceedings challenging various immigration decisions.

### Case summary 5

*[See Case studies 3 (page 9), 7 (page 13), 9 (page 15) and 10 (page 15)]*

JT, aged nine, was detained as an unlawful non-citizen with her mother and five siblings at Villawood IDF. After approximately six months in detention she turned 10 and acquired Australian citizenship. DIMA had earlier attempted to remove JT and her family from Australia, before she turned 10. After her tenth birthday, JT remained in the detention facility as a visitor of her mother. In total, JT spent 282 days in Villawood IDF. Thereafter the family lived in the community under a residential determination.

### **Case summary 6**

*[See Case study 1 (page 6)]*

LP, aged four months, was an Australian citizen who was detained with his mother and two sisters at the Port Augusta Residential Housing Centre after four days at Baxter IDF. During the first week of detention, LP's mother provided information to DIMA officers indicating LP was an Australian citizen by birth. DIMA did not at first accept this information, and instead investigated the validity of LP's birth certificate. LP was acknowledged to be an Australian citizen after 149 days in detention. He remained in the detention facility for a further 28 days as a visitor of his mother. LP was then removed from Australia with his mother and sisters, at his mother's request.

### **Case summary 7**

*[See Case study 4 (page 10)]*

AP, aged 11 months, was an Australian citizen who was detained with his mother at Villawood IDF. At the time of their detention, AP's mother asserted that AP was an Australian citizen, but requested that AP stay with her in detention as a visitor. Instead, DIMA detained him under s 189 as officers suspected his birth certificate had been fraudulently obtained. AP spent 51 days in the detention facility.

### **Case summary 8**

*[See Case study 2 (page 7)]*

MT, aged 10, was an Australian citizen when he was detained with his family. Following their detention, MT's parents indicated to DIMA officers that he was an Australian citizen. DIMA did not act on this information or undertake a full search of its records, which included his Australian birth certificate. DIMA attempted to remove the family prior to MT claiming Australian citizenship (though legally it was not necessary for him to make such a claim). MT was detained for a period of 15 days.

### **Case summary 9**

The Ombudsman's office has been unable to finalise the case of ZL at the time of this report, due to the family's involvement in current court action. Records indicate that ZL was an Australian citizen at the time of his detention, aged three and a half, and that he was detained at Villawood IDF for a period of three days.

## ACRONYMS

Citizenship Act	<i>Citizenship Act 1948</i> (Cth)
CROC	Convention on the Rights of the Child
DHS	Department of Human Services (South Australia)
DIMA	Department of Immigration and Multicultural Affairs
ICSE	Integrated Client Services Environment
IDF	Immigration Detention Facility
Migration Act	<i>Migration Act 1958</i> (Cth)
MSI	Migration Series Instructions
RHC	Residential Housing Centre