

# Protecting children or political priorities?

## The role of governments at Woomera

Max Liddell and Chris Goddard

*In March 2002 the authors notified all the children living in the Woomera Detention Centre to South Australia's child protection system, in an effort to ensure that the well-being of those children was protected. An investigation was conducted; serious problems at Woomera were identified; and the relevant South Australian Minister asked the Federal Minister for Immigration for 'new guidelines' for the centre. Then silence descended.*

*In this article, the authors detail the reasons for their notifications and outline the events which followed. The Federal Government criticised the report of the investigation by SA child protection workers, and there is no indication of any action taken on it. In explaining the ensuing silence the authors refer to their understanding of the contents of a Memorandum of Understanding between the Federal and South Australian Governments. This memorandum, it is believed, ensures no further information about Woomera will be revealed. Further, the memorandum appears to leave the Federal Government with total responsibility for follow-up action. The South Australian Government seems to have surrendered its responsibility in this regard. Given the lack of action, the authors question whether both levels of government could be in breach of South Australia's Children's Protection Act 1993.*

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On 21 March 2002 the authors referred all the children held in the Woomera Detention Centre to the South Australian Department of Human Services 'Child Abuse Report Line' (CARL). We took this action because we formed a suspicion, on reasonable grounds, that the children held in the Detention Centre were being abused and/or neglected. Under the South Australian Children's Protection Act (CPA 1993), reporting of suspected child abuse is mandatory for social workers. We are not social workers working in South Australia, but the Act mandates social workers to report reasonable suspicions formed as a result of their everyday work (CPA 1993: S.11 [1a]; S.11 [2g]). We formed our suspicions, as researchers, in reviewing the evidence about the conditions under which the children at Woomera were living (Goddard & Liddell 2002).

The town of Woomera is located nearly 500 kilometres north of Adelaide, in the midst of the forbidding South Australian desert, where temperatures are routinely over 45° in summer. It was originally established in 1946 as a rocket testing range. The facilities located outside the town which are now used as the detention centre were built decades ago and were never designed for the victims of trauma, refugees or asylum seekers, or their children.

The largest groups of detainees held at the Woomera Detention Centre are Afghans, Iraqis and Iranians (Department of Immigration, Multiculturalism and Indigenous Affairs [DIMIA] 2002) – people escaping from traumas in their homelands, and normally reaching Australian shores by boat. There were a total of 1,337 adults and 607 minors placed at Woomera between 1 July 2001 and 12 April 2002. On 12 April 2002 there were 61 minors in detention

at Woomera (DIMIA 2002). This number has been reducing.

Our aim in notifying these children to CARL was to ensure that South Australia's Department of Human Services (DHS) would investigate the circumstances of the children and act to secure their safety and best interests, as required under the CPA 1993. In this investigation, we believed that the contribution of all parties to the care of the children, including the actions of the Federal Government and the responsible Minister, Phillip Ruddock, should be assessed.

### THE EVIDENCE FOR NOTIFICATION

The following summarises the reasons why we notified the children living at Woomera.

- In February 2002, after a five day visit, the Human Rights and Equal Opportunity Commission (HREOC) confirmed that Australia's detention of the 236 children then in the camp was a breach of the UN Convention on the Rights of the Child. The HREOC said that children at Woomera were being inadequately educated, and that health services and general living standards were poor. In just two weeks, the organisation recorded 13 threats of self harm, five lip sewings, one attempted hanging and three self slashings. One 14-year-old was reported to have sewn his lips twice and slashed the word 'freedom' into his arm. Dr Sev Ozdowski, the HREOC Commissioner, said in February that there were nine children who had been in Woomera for longer than one year and 70 who had been there for more than six months (Taylor 2002a: 1).

- Australia's Catholic Bishops called on the Government to reassess the way that asylum seekers were treated (Ahwan 2002). Former staff doctors at Woomera also spoke out. One described conditions as 'inhumane' and 'distressing' (Peake 2002; *Adelaide Advertiser* 29 Jan 2002: 4).
- The Australian Medical Association asked to send a team of doctors to the camp, such were the concerns about the physical and mental health of the adults and children (Metherell 2002: 4; Byrne 2002: 1).
- The Australian Education Union called on the Federal Government to release children into the community because they were not receiving adequate education (*AAP News* 7 February 2002).
- Dr Bernice Pfitzner, who spent nine months working in the camp, said that a large proportion of detainees had mental health problems (Debelle & Clenell 2002: 5).
- We are learning more about the effects of abuse and neglect on the child. Abuse at an early age has many more negative and long-lasting effects on brain development and functioning than hitherto realised. Teicher (2002) argues that child abuse unleashes molecular and neurobiological consequences that irreversibly affect the development of the brain. Kerr & Black (2000) quote a variety of research studies, including their own, confirming that children with multiple risk factors are at highest risk of negative impacts on their development and behaviours.

It is concerning that the very fact that these are *children* (let alone children and adolescents with special needs) appears to be challenged by the Government. In a reply to the HREOC concerns about the children's psychological health, Immigration Minister Phillip Ruddock was reported to have said that many detainees described as children were actually '14, 15, 16 or 17'. 'In other words you are dealing with minors who can be very close to adult' (Maiden & Duffy 2001: 4). Yet the *CPA 1993* clearly states that a child is a person under the age of 18 years (*CPA 1993: S.6 [1]*).

There are further concerns. The Federal Government has chosen the subsidiary, Australasian Correctional Management (ACM), of an overseas company, Wackenhut Corrections Corporation (WCC), to hold children in conditions that many health and welfare workers regard as damaging. WCC describes itself as:

...a leading provider of business services to major corporations and government agencies, and a wide range of industrial and commercial customers. Its principal business lines include physical security, investigations, training, facility management and operations, fire fighting and prevention, and emergency protection ([www.wackenhut.com](http://www.wackenhut.com)).

In our opinion the evidence from Woomera suggests that what is required instead is a world leader in family support, therapeutic services, and residential care for children.

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We understand that all employees of ACM, including those that care for children, must sign confidentiality clauses. Given that some of those employees are responsible for the day-to-day care of children and young people, it appears these confidentiality clauses could conflict with South Australia's mandatory child abuse reporting laws, and with the likely contents of a Memorandum of Understanding (MOU) apparently struck between the South Australian and Federal Governments (see below).

Although we have not visited Woomera, we formed the opinion that the children were at least emotionally abused. The South Australian Govern-

ment website ([www.cyh.sa.gov.au](http://www.cyh.sa.gov.au)) states that:

Emotional abuse is behaviour towards a child which destroys self-esteem, confidence and a child's sense of worth... A child can be left feeling worthless, unlovable and lacking self-confidence.

We believe adolescents 'close to adulthood' may possibly suffer even more in this regard. In South Australia the object of the *CPA 1993* is:

...to provide for the care and protection of children and to do so in a manner that maximises a child's opportunity to grow up in a safe and stable environment and to reach his or her full potential.

The legislation also states that administration of the Act is founded:

...on the principles that the primary responsibility for a child's care and protection lies with child's family and that a high priority should therefore be accorded to supporting and assisting the family to carry out that responsibility (*CPA 1993: S.3 [2]*).

It was our view, therefore, that where children were in the Woomera Detention Centre with one or both parents, DHS was under an obligation to assist those children and families by providing more appropriate accommodation. If unaccompanied children remained in Woomera – in what is after all an adult prison – it seemed reasonable to expect DHS to take immediate steps to place those children in alternative care, if their guardian, Mr Ruddock, would not do so.

Much early writing on child abuse was intended to draw attention to the severe injuries that some children suffer, and designed to draw attention to the fact that some adults prefer not to see abuse and some professionals prefer not to act. There is an awful symbolism at work here; we are permitting vulnerable *foreign* children to be placed out of sight in the desert. Abuse of a child involves abuse of trust. Failing to act when abuse is suspected is a further damaging abuse of trust.

Our notification was published in the *Age* on the day it was transmitted (Goddard & Liddell 2002: 17). The Immigration Minister Philip Ruddock

rejected our claims the following day, commenting that:

Woomera contained a level of amenity most Australians did not have access to, including medical and psychological care, education and recreation facilities of a high standard (Davies 2002: 8).

## THE RESPONSE AND ITS CONTEXT

The South Australian child protection system defines three 'tiers' in its response to notifications. We understand this model is part of an agreement with the Federal Government under which South Australia can intervene when there are allegations of abuse and neglect at Woomera.

- Tier 1 notifications are when there is a major danger or risk from injury, sexual abuse, severe physical abuse or life threatening neglect. Immediate investigation is required.
- Tier 2 notifications involve risk of immediate or significant harm from serious physical, sexual or emotional abuse or neglect. Investigation is required within 4 hours.
- Tier 3 notifications involve children in need with low risk in the short term from minor physical abuse, neglect or emotional abuse or recent abuse where the perpetrator no longer poses a threat. Investigation is required within 24 hours.

It is not clear what priority was given to the children at Woomera. Our notification was acknowledged by the Minister for Social Justice, Hon. Stephanie Key, the following day (22 March 2002, personal communication) but it was several days before the Minister announced that a team of SA child protection workers would go to Woomera to investigate the allegations. Our assumption is that intensive discussions would have been held between the Federal and South Australian Governments during this time.

The Minister reported the findings of the child protection team on 16 April 2002. Her statement was published in the *Age* the following day under the title 'Report slams living conditions at Woomera' (Debelle 2002b: 6). The child protection team found that

children went hungry and slept on the floor; toddlers could not be fed outside set meal times; and education was limited. These findings are hardly surprising given Woomera is run by a correctional facility, and they question the appropriateness of contracting Woomera to ACM. Young people were found by the team to be suffering mental health problems, suicidal thoughts, and displaying disturbing behaviour (O'Brien 2002). In response the SA Minister indicated she would urge Federal Immigration Minister Philip Ruddock to 'set new guidelines' (Debelle 2002b: 6). A spokesman for the Immigration Minister, in rejecting the report, suggested it contained 'unverified allegations' (O'Brien 2002). The Federal Justice Minister said he was disappointed that the report's findings were made public without the government having been notified (Debelle 2002b: 6), a statement which has special significance as we shall see later.

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Public controversy has continued, coloured by debate over Australia's general handling of asylum seekers. Speculation is rife about whether senior Federal public servants and Ministers knew that stories concerning boat people throwing children off boats (which circulated before the Federal election in November 2001) were untrue. The Melbourne newspapers reflected the contradictory and conflicting attitudes which prevailed.

The *Age* ran a story on 9 April 2002 indicating that hundreds of boat people had been classified as genuine refugees (Taylor 2002b: 6). On the same day the *Herald-Sun* (9 April 2002: 1) ran a story indicating that hundreds of boat people had been rejected.

Debate about Woomera itself also continued. On 24 April 2002 the *Age* quoted two former psychiatric staff at Woomera who told of the distressed state of people there and the lack of care. It also reported that carers and others were speaking up in spite of gags imposed by their employment contracts (Debelle 2002c: 15; Debelle & Taylor 2002: 4). There was also a report on the new detention centre nearing completion (Debelle 2002a: 3). This centre at Baxter (300 kilometres north of Adelaide and 10 kilometres from Port Augusta) would hold 1,200 people, was to contain air conditioning, and was later described by Justice Minister Chris Ellison as having provision for family care. 'Baxter will be a modern facility and will provide all avenues of care for young children' (Debelle 2002b: 6). However the *Age* on 25 March 2002 described the new centre as marginally more hospitable than Woomera, which it appeared would remain open but as a centre for detainees whose applications for asylum had failed. Further, the local response at Baxter did not look promising. The local mayor, Joy Baluch, was quoted as saying of the detainees: 'If the bastards can't look after them at Woomera, we don't want them here....I'd like to wipe my arse on the lot of them' (Debelle 2002a: 3).

## THE SOUND OF SILENCE

But the politicians, while having plenty to say about other issues, fell silent about the SA child protection workers' report on Woomera. We need to ask why, and ask whether their response has been sufficient.

Hon. Stephanie Key has not released the child protection report. Perhaps this is justified; it will contain confidential information about families and children or confidential information provided by other people interviewed by the child protection team. But there is a lot the Minister should tell us. She would have known in advance that the Federal

Government would criticise the child protection report. She could reassure us, therefore, that the best child protection workers were selected for the Woomera investigation, and that their report could not be criticised on the grounds of competence. She could inform us what the child protection team was instructed to do and possibly instructed not to do. She could tell us how the investigation was conducted. In particular she could tell us where the responsibility for the reported abuses lies and what must be done to rectify them. The Federal Government, she stated, had been asked to revise its guidelines. What does this mean? What are the two governments actually doing about the abuse and neglect clearly identified at Woomera?

When child protection authorities investigate allegations of abuse or neglect against families living in the community and find there is a case to answer, they have various options. They will, unless the situation is urgent, attempt to negotiate solutions with the family while preserving confidentiality and privacy. If the situation is urgent the case may need to be taken to court immediately. Even so privacy is normally assured and negotiation and provision of services to resolve problems will normally continue, even in the presence of a court order.

But the Federal Government is no ordinary guardian. It is our representative in the care of the children at Woomera, spending taxpayers' money. We have a right therefore to know how well the Government is discharging that responsibility; whether it is responsible for abuse or neglect; whether the situation is urgent; what needs to be done; and who needs to do it. If we are not happy with the way responsibility is being discharged, then as a community we have the right and the obligation to demand change.

There are short and long-term issues at stake. The short-term issue is the protection of the children at Woomera. The South Australian government is responsible for ensuring this and ensuring that any perpetrators of abuse or neglect correct that situation. If the Federal Government is culpable the South Australian government has a right to demand it fix the problem. Federal responses are not reassuring. Federal Justice Minister Chris Ellison

did not accept that allegations in the protection workers' report were correct (Debelle 2002b: 6). A spokesman for Philip Ruddock rejected the report, saying it contained 'unverified allegations' (O'Brien 2002). The community will be interested to know these people are child protection experts. But in a 'normal' situation, faced with resistance that cannot be resolved, the child protection system usually has no option but to test its allegations in court. Should this happen if the Federal Government has taken no action?

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The situation is too serious to be resolved by guesswork. In the public interest the South Australian Government must provide more information. If the Federal Government has been cleared of allegations we need to be reassured on that. If it is guilty of child abuse or neglect we need to know why and how. Responsibility for redressing the situation must be clarified.

The long-term implications involve the building of a new detention centre. We are told that it will be modern, air-conditioned, and with family facilities. But it will still be run by an organisation with expertise in corrections. This doubtless will perpetuate the inappropriate rigidities detailed in the child protection report. It will be modern and air-conditioned – but still a detention centre, still in the desert, still behind razor-wire. Is this adequate? It is impossible to believe it is; more detail from the child protection workers' report would doubtless help confirm this. The views of the United Nations' recent investigation into Australia's detention centres (Skelton & Taylor 2002: 1) appear to confirm our view.

## **THE FOLLOW-UP: TWO GOVERNMENTS PROTECTING CHILDREN...**

It would be less than accurate to imply that no action at all has been taken to improve conditions at Woomera. One piece of information coming to public attention was of changes made in preparation for the visit by a United Nations delegation. The *Age* reported on 28 May 2002 (Debelle 2002d: 4):

Woomera has had a spruce-up worthy of a royal tour. Part of the razor wire has been removed, the food has improved, the guards call asylum seekers by name instead of number, and after months of unrelenting inactivity, an excursion was offered to watch sheep being sheared.

The report continued that detainees were taking steps to prevent the delegation from being fooled.

A few days later, just before a public enquiry into the holding of children at Woomera conducted by the HREOC, the Federal Government released a 200 page submission defending its actions and painting a positive picture of conditions in detention centres. Amongst its statements are the following:

The Department takes appropriate measures to endeavour to ensure that children are protected from all forms of violence, injury or abuse, neglect or maltreatment. The department has in place appropriate legislative, administrative, social and educational measures for the protection of children in detention. ... In certain circumstances, the Department may also decide, in consultation with State child welfare authorities, to place children who are at serious risk in appropriate alternative arrangements. (DIMIA 2002: 4)

However these provisions are heavily qualified. In discussing previous responses to protective concerns, the report notes:

Where a recommendation was made which could not be fully implemented (such as a recommendation for release from detention of a child and its parents, where the parents were not eligible for the grant of a visa) the Department consulted with child welfare authorities

to reach a legally possible and mutually acceptable outcome for the child. (DIMIA 2002: 96)

In other words the safety and best interests of the children was not the highest priority, as required under the CPA 1993 (S. 4 [1]); other considerations prevailed.

The report added that good medical and educational opportunities were available to children at detention centres, and that the Government was not violating the children's rights because it was in their best interest to stay with their parents, who played a critical role in providing a nurturing, stable environment for their children. It added though that children with emotional difficulties might also have parents with a pre-existing disposition towards depression and poor coping skills.

The lack of structural analysis and the victim-blaming in these statements aside, the implications of the situation at Woomera are serious. Why do the politicians remain silent about the child protection report on Woomera?

A rider: the 'silence' has paradoxical elements. In a letter to the *Age* on 4 June 2002, Immigration Minister Philip Ruddock expressed annoyance with people who reported allegations of abuse and neglect via the media. He encouraged people with concerns to report them to the appropriate authorities (Ruddock 2002). They have not been the only interest groups to warrant the minister's ire. The United Nations investigation into detention centres found that 'collective depression' and 'agonising uncertainty' are driving asylum seekers to acts of self-harm including attempted suicide (Skelton & Taylor 2002: 1). The investigation also expressed concern about detention of babies, children, unaccompanied minors, the elderly and the disabled. The Federal Government's slow processing of asylum seeker claims was also criticised.

In reply the Minister blamed inspections of detention centres for making detainees more depressed, and was reported as saying that pressure groups were determined to arrange as many inspections as possible.

The incidents of self harm and exhibitions of collective depression increase significantly with the number of visits undertaken.... When you have periods when you have had fewer visits, the general condition of the detainee population improves. (Madigan 2002: 11)

Questions remain, especially about why the Minister is so forthcoming on some matters but silent on the SA child protection investigation at Woomera. The following may help to clarify the reasons for this.

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### EXPLAINING THE 'SILENCE'

Concerns about the children held at Woomera have been expressed for some time, and some unaccompanied minors were moved from Woomera before our notification. The DIMIA (2002) report makes it clear that large numbers of protective concerns have been dealt with in detention centres across Australia. Probably as a result, an agreement on management of child protection issues was negotiated between the South Australian Government and the Federal Government over a period of months in 2001, and was finalised in December 2001 (DIMIA 2002). It was clearly concluded that a management plan was required in the light of the incidence of protective concerns. A management plan is what appears to have been finalised in the Memorandum of Understanding (MOU), rather than a plan to reduce the risk factors at Woomera. Interestingly

the MOU is referred to but not included in the DIMIA (2002) report.

The content of the intergovernmental negotiations may explain current government silence. The MOU, if finalised along the lines we believe it was, contains significant matters constraining the management of protective concerns at Woomera which have not been explained in the DIMIA (2002) report.

We understand that what was sought from the negotiations was a framework for the involvement of the SA Department of Human Services in the affairs of minors at Woomera. In seeking this outcome we believe it was clarified that the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) had the duty of care for all detainees, and ultimate responsibility for their welfare, though day to day operations were contracted out to ACM. We believe the Federal Government acknowledged that DHS had a legal responsibility to investigate child protection concerns in South Australia. DIMIA maintained the right to be informed in advance of the identity of any child or young person to be interviewed prior to the investigation taking place. However we believe DIMIA also maintained that any post-investigation intervention to secure the care and protection of Woomera detainees had to be carried out by DIMIA, and it appears that DIMIA itself has to request advice on the matter from DHS. The DHS role is confined to matters such as advice, assessment, and training of staff.

We believe that significant negotiation also took place over confidentiality issues. It appears that DHS is not to issue any information about children in detention without consultation with DIMIA. Also confidential is any information or documentation pertinent to any detainee or services provided under the MOU, except in relation to any legal proceedings or associated activities. These two provisions do not seem compatible; the latter provision seems to ensure that absolute silence on any child protection matter at Woomera should prevail.

If finalised as we believe they were, these provisions have important implications for the current situation.

They explain the silence; virtually no information, by agreement between the two levels of government, can be given. One wonders how the South Australian Minister was able to provide the information from the child protection workers' report that she did. If the Justice Minister's comment noted earlier that the Federal Government did not know of the contents of the report before the DHS Minister's statement is correct, then South Australia would appear to be in breach of what we understand to be the content of the MOU. Certainly it is clear, both from our understanding of the contents of the MOU and from the silence following the Hon. Stephanie Key's announcement of the protection team's findings, that there must be a gag on release of information about follow up of the child protection workers' report. Should one assume that the Hon. Stephanie Key was taken to task over her statement? It is also significant that there is no reference in the DIMIA (2002) report to the child protection investigation carried out at Woomera in the wake of our notification. It is as if it never happened.

Why should there be such a lack of information? Our interpretation of the import of the MOU is that it was intended, amongst other things, to protect governments from negative publicity. However, the attribution of duty of care to the Federal Government, together with its assumption of responsibility for intervention, has a paradoxical element. These acknowledgments appear to make it clear that, if any abuses have been perpetrated at Woomera, the Federal Government is responsible for them. If responsibility for the abuses was acknowledged publicly and the Federal Government failed to act, then clearly it could be taken to Court under the provisions of the CPA 1993. It would appear as if the MOU has pre-empted this possibility.

All this has resulted in an extraordinary juxtaposition of roles for the Federal Government. It apprehends asylum seekers, detains them in a facility run by a corrections service for an extended period, processes their claims, vilifies them, ultimately accepts the claims of many, and acts as judge and jury over child abuse allegations, including whether a child can or cannot be placed

in alternative accommodation. One cannot comprehend how this combination of roles can be carried out effectively. The Federal Government does not even have its own child protection legislation to guide it.

The apparent assumption of responsibility by the Federal Government has a further paradox. The DIMIA (2002: 97) report contains the following statement:

Parents play a critical role in ensuring the safety and welfare of their children in detention facilities. Parents remain the formal, legal guardians of their children while in immigration detention. This means that the parents are fully responsible for their children and every effort is made to assist them to fulfil their responsibilities.

The evidence we have presented paints a different picture. The Federal Government has clearly acknowledged the limitations on parents' and children's rights. Any statement that parents are fully responsible for their children is incorrect. Immigration and detention policy and the Federal assumption of responsibility for intervening when protective concerns are substantiated put clear boundaries around parental responsibility.

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What of the South Australian Government? It has effectively handed over its statutory obligation to ensure the welfare and protection of the children at Woomera to a Federal Government whose qualifications to

carry out this function, to be kind, are questionable. Apart from whether the assignment of this responsibility to the Federal Government is strategically wise, we see no provision in the CPA 1993 which empowers the South Australian Government to delegate this responsibility. We would question then whether this action by the South Australian Government would be upheld if challenged in the courts. So why has the South Australian Government done this?

One thing is certain. Once again political priorities have prevailed. Once again the needs and rights of children have been ignored; not for the first time in recent Australian politics.

Philip Ruddock's urging that reports be made to the authorities must be seen in the context of the above. A report to CARL, for example, is tantamount to ensuring that there will be no further publicity on the matter. If the Federal Government is found to have operated facilities which contribute to the abuse and neglect of children, we will never find out and the Government will never be held accountable. We cannot be confident that the Federal Government will relent. In the face of increasing criticism of detention centres it has, as evidenced by its criticism of the United Nations investigation and of other public critics such as ourselves, continued to deny there are problems in detention centres except for those created by others.

## CONCLUSION

The SA child protection team has identified serious problems at Woomera. The South Australian Government must now go further. It has to clearly assign responsibility, as it would for the parent or guardian in other circumstances. Guilt over child abuse aside, reports make it clear the Federal Government has responsibilities at Woomera it must accept. The outcome of negotiations between the Federal and South Australian governments appears to have the consequence, intended or not, of avoiding the exercise of those responsibilities. At the very least their exercise is being concealed by the prevailing confidentiality. Any agreement to this

effect between the two governments must be acknowledged and abandoned.

This is because the outcomes are not acceptable. These are our governments, exercising duty of care on our behalf as a community, with taxpayers' money, for children who cannot exercise their own rights or protect themselves. Accountability and transparency must prevail. Both governments must account for their actions and accept and carry out their responsibilities. If they do not, can we reach a conclusion other than that both are guilty of allowing abuse and neglect at Woomera to continue and that, under the *Children's Protection Act 1993*, both have a case to answer at court? This would be the result if anyone else abused or neglected children and refused to take remedial action. Our governments must face and deal with the situation or take the consequences and let the courts decide.

It is impossible to imagine any child protection service that would regard keeping a child behind razor wire in a desert as anything but abusive. It is also not hard to imagine how history will judge the holding of children at Woomera Detention Centre, and how it will judge the governments responsible.

◆

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