



HIGH COURT OF AUSTRALIA

Public Information Officer

7 October 2004

RE KIT WOOLLEY, MANAGER OF THE BAXTER IMMIGRATION DETENTION CENTRE,
AND THE HONOURABLE AMANDA VANSTONE, MINISTER FOR IMMIGRATION AND
MULTICULTURAL AND INDIGENOUS AFFAIRS; EX PARTE APPLICANTS M276/2003
AND GS AS THEIR NEXT FRIEND

The detention of asylum seeker children was lawful, the High Court of Australia unanimously held today. The Court dismissed an application for orders for habeas corpus, prohibition and injunction to end the detention of four Afghan children.

The children, aged between seven and 15 when the application was filed in October 2003, their parents and an adult brother arrived in Australia from Afghanistan in January 2001. The family had been detained in the Woomera then Baxter detention centres but have been released into the community since the appeal hearing. The father, GS, applied for a protection visa and the children were included as dependents. The Immigration Department and the Refugee Review Tribunal refused the application.

The children sought a writ of habeas corpus requiring Mr Woolley to release them, and either a writ of prohibition or an injunction to prohibit or restrain the Minister from detaining or continuing to detain them.

The Court held that it was within the power of the Commonwealth Parliament to legislate for the detention of children as well as adults. It held that sections 189 and 196 of the Migration Act do not distinguish between unlawful non-citizens who are above and below the age of 18 years and other provisions of the Act contemplate the presence of children in detention centres. The Court also rejected the contention that the Act was invalid because children lacked the capacity to request their removal from Australia. The Court held that the discretion to request departure was vested in parents and guardians and that some children would be mature enough to make such a request for themselves.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*