



## HIGH COURT OF AUSTRALIA

Public Information Officer

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### MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS v B AND B

The Family Court of Australia did not have the jurisdiction to order the release of children from an immigration detention centre, the High Court of Australia held today.

The High Court also held that the Family Court did not have any jurisdiction to make orders concerning the general welfare of children held in immigration detention.

The five B children – two boys and three girls – and their mother were found to be unlawful non-citizens. They claimed to be refugees from the Taliban regime in Afghanistan but were held by the Refugee Review Tribunal to be Pakistan nationals. The father had arrived in 1999 and was granted a temporary visa. The mother and children arrived in 2001 and were refused protection visas. They were originally in the Woomera detention centre, from where the two boys escaped in 2002. On their return to Woomera the boys began proceedings in the Family Court. Their sisters were later joined as parties to the proceedings and the father intervened and sought various orders against the Minister. The father's visa was revoked in December 2002 when he was also found to be from Pakistan and was he taken into detention at Villawood. The mother and children and shortly afterwards the father were all transferred to the Baxter detention centre in January 2003. In June the mother and daughters were moved out of Baxter to the Woomera residential housing project. Proceedings seeking the release of the children and other orders relating to their welfare were commenced in the Family Court.

In October 2002, Justice Christine Dawe dismissed the children's and the father's applications, holding that the Family Court did not have jurisdiction in South Australia to make the orders sought. An appeal to the Full Court of the Family Court succeeded, by majority, and the matter was remitted for rehearing before Justice Steven Strickland, who also dismissed the applications. After another appeal a differently constituted Full Court unanimously ordered the children be released from immigration detention, holding that the Family Court's child welfare jurisdiction was not limited to custody and access disputes or disputes about parental responsibilities, and that the Court could make orders against third parties. The Full Court also granted a certificate under section 95(b) of the Family Law Act giving the Minister a right of appeal to the High Court on the ground that the case involved an important question of law or of public interest.

The High Court unanimously allowed the Minister's appeal, holding that the Family Court did not have jurisdiction to order the children's release. Under the Constitution, the Family Court, as a federal court, only has the jurisdiction that Parliament confers and this did not extend to a general power to make orders against third parties relating to the welfare of children.

- *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.*