



Enhanced Screening of Children

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1. Overview and recommendations

The Centre for Human Rights Education (CHRE) is a centre of research, scholarship and teaching in human rights with a specific focus on asylum seeker and refugee rights. The CHRE is multidisciplinary and draws on law, sociology, politics and psychology in our framing of human rights. Staff at the CHRE have published extensively in the field of asylum seeker and refugee rights with a particular focus on immigration detention.

The CHRE works to bring attention to the plight of asylum seekers detained under the government’s mandatory detention policy. CHRE is committed to the ending of mandatory detention as a policy that is contrary to Australia’s international human rights obligations. The removal of a person’s liberty is one of the strongest sanctions a state can exercise on people within its borders. It is only in the rarest of circumstances that asylum seekers should be detained, for compelling security reasons. The comments we provide are framed by this position.

In this submission, we provide an analysis of the Enhanced Screening procedure introduced in October 2012 and since applied to Sri Lankan nationals arriving in Australia by boat. The impacts of this procedure on many who have been subjected to it, including children and young people, raise serious concerns.

The Enhanced Screening procedure is a mechanism that allows individuals to have access to refugee status determination (RSD) procedures. Individuals are interviewed according to this mechanism while held in immigration detention on Christmas Island. Under the procedure, a Sri Lankan national who raises protection claims that are assessed as “plausible and have substance” will be “screened in”. Sri Lankan nationals who are assessed as raising no

protection claims or who raise claims that are “appear not to be plausible and/or not to have substance” will be “screened out”.

Those “screened in” who arrived after 19 July 2013 are subject to removal to an offshore processing centre to formally apply for protection. Those that are “screened out” are subject to removal from Australia.

This procedure raises concerns for children and young people who are screened out and subsequently removed. These concerns arise because of:

- The lack of procedural safeguards in screening procedures, such as access to legal advice, independent observers and independent review.
- The inherent conflict of interest with the Minister for Immigration acting as guardian for unaccompanied minors subject to the enhanced screening procedure.
- Particular vulnerabilities of children and unaccompanied minors may not be apparent upon arrival or during a screening interview.
- Application of a standard for claims as to whether they are “plausible” or have “substance” seems to amount to an assessment of the merits of the child’s claims for protection. Assessing the merits of a child’s claim almost immediately after their arrival without procedural safeguards may lead to unfair outcomes.
- Determining whether a claim is “plausible” or has “substance” may mean applying a standard of proof that is inconsistent with the standard used in current protection visa cases.

If the Enhanced Screening procedure is not designed to give a fair hearing to claims, then children in danger of persecution in Sri Lanka may have their claims rejected incorrectly and be removed. That children have already been screened out and returned to Sri Lanka under this procedure is of great concern.

Recommendations

1. The current Enhanced Screening procedure carries with it an inherent and unacceptable risk that Australia is breaching its *non-refoulement* obligations and for that reason it should not continue.
2. Children subject to any immigration procedure should be advised of their right to seek legal assistance and be provided with appropriate support to allow them to contact legal providers.
3. UNHCR guidelines state that all children should be given access to territory. Should the government wish to continue with some form of an expedited process, then such a process should include the provision of the following safeguards:
 - a. Clear guidelines and standards used in the process.
 - b. Interview guidelines outlining child appropriate interview techniques.
 - c. Advice and representation by migration agents during interviews.
 - d. The right to independent review of negative decisions.
 - e. Clear guidelines of persons not suitable for expedited processing.

2. Introduction

The Enhanced Screening procedure has been in place since October 2012. It was introduced in order to deal with a particular surge in irregular maritime arrivals (IMAs) from Sri Lanka as Australian intelligence indicated that a proportion of this group were seeking to enter Australia not to seek protection, but were motivated by “economic reasons”.¹

The introduction of the Enhanced Screening procedure allows for a rapid initial assessment of claims and subsequent removal of individuals where it has been determined that they do not have claims which engage Australia’s protection obligations (where a person is “screened out”).

Prior to the Enhanced Screening procedure, IMAs from Sri Lanka were automatically screened in. The screening for cohorts other than IMAs from Sri Lanka is described in the Department of Immigration and Border Protection (DIBP) policy manual as an interview process to determine whether a person has a “prima facie” claim for protection.²

Under the Enhanced Screening procedure, applicable only to Sri Lankan IMAs, a Sri Lankan national who raises protection claims will be screened in. DIBP has stated that the main difference between the normal screening procedure and the enhanced screening procedure is that the enhanced screening interview is ‘conducted by officers trained in assessing Australia’s protection obligations’.³

Between 27 October 2012 and 30 October 2013, 3 063 Sri Lankan boat arrivals were subject to the Enhanced Screening arrangements. Of these, 1 475 were screened in and 1 588 were screened out.⁴ Statistics are not available about how many children have been screened out. DIBP has indicated that the Enhanced Screening procedure would apply to children and even unaccompanied minors who are under the age of 18 years of age but that it is not applied if the Department thinks that “a client is vulnerable”, such as they have a physical and/or mental disability, or vulnerabilities due to their age and maturity.⁵

Despite the statement that vulnerability can be taken into consideration in the Enhanced Screening procedure, DIBP has stated that unaccompanied minors have been screened out and returned to Sri Lanka, including a 12 and 14 year old.⁶

¹ Department of Immigration and Citizenship, Supplementary Budget Estimates Hearing, Legal and Constitutional Affairs Committee, 27-28 May 2013, answer to question on notice BE13-0115, available at http://www.aph.gov.au/~media/Estimates/Live/legcon_ctte/estimates/bud_1314/diac/BE13-0115.ashx.

² Department of Immigration and Border Protection, Procedure Advice Manual (PAM 3) P. 28/05/2014 - > PAM3 - REFUGEE AND HUMANITARIAN>PAM: Protection Obligations Evaluation Manual>INITIAL PROCESSING.

³ Department of Immigration and Border Protection, Supplementary Budget Estimates Hearing, Legal and Constitutional Affairs Committee, 19 November 2013, answer to question on notice SE13/0115, available at http://www.aph.gov.au/~media/Estimates/Live/legcon_ctte/estimates/sup_1314/DIBP/SE13-0115.ashx.

⁴ Department of Immigration and Border Protection, Supplementary Budget Estimates Hearing, Legal and Constitutional Affairs Committee, 19 November 2013, answer to question on notice SE13/0059, available at http://www.aph.gov.au/~media/Estimates/Live/legcon_ctte/estimates/sup_1314/DIBP/SE13-0059.ashx.

⁵ Department of Immigration and Citizenship, Supplementary Budget Estimates Hearing, Legal and Constitutional Affairs Committee, 27-28 May 2013, answer to question on notice BE13-0117 http://www.aph.gov.au/~media/Estimates/Live/legcon_ctte/estimates/bud_1314/diac/BE13-0117.ashx.

⁶ Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 19 November 2013, 115 (Martin Bowles, Secretary DIBP).

3. Enhanced Screening procedure

There is no provision for Enhanced Screening within the *Migration Act 1958*. It has evolved as a matter of policy and practice. While there have been a number of challenges to the policy in the Federal Court there have been no court decisions on the procedure to date as the cases are settled prior to hearing.

Details about the exact processes involved in the Enhanced Screening procedure are not publicly available;⁷ the information below is derived from evidence provided during Senate Estimates by DIBP:

1. Interviews are conducted by two experienced officers. There are at least two senior officers who are part of Enhanced Screening.⁸
2. At least one senior officer of the Department reviews all Enhanced Screening findings.⁹
3. Unaccompanied minors are accompanied by an independent observer during the interview.¹⁰
4. Those subject to the screening process are not advised of their right to speak with a lawyer. If they request legal assistance they are given a phone book, access to a phone and an interpreter.¹¹
5. DIBP have stated that the Enhanced Screening interview is not an assessment of protection claims:
'What we are asking is: is there something they are raising that needs further investigation in a protection assessment process? I will give you the most obvious example. If someone comes and says, 'I've come to Australia and I'm looking for a job', that does not engage our protection assessment processes'.¹²
6. If the information provided 'warrants further consideration through a protection status determination, the individual is screened in. If not, the individual is screened out'.¹³
7. IMAs who are screened in are told that their claims will need to be considered further through a formal protection status determination (for pre 19 July 2013

⁷ There are no references to this procedure in the Procedures Advice Manual.

⁸ Department of Immigration and Citizenship, Supplementary Budget Estimates Hearing, Legal and Constitutional Affairs Committee, 28 May 2013, answer to question on notice BE13/0107 http://www.aph.gov.au/~media/Estimates/Live/legcon_ctte/estimates/bud_1314/diac/BE13-0107.ashx.

⁹ Department of Immigration and Citizenship, Supplementary Budget Estimates Hearing, Legal and Constitutional Affairs Committee, 28 May 2013, answer to question on notice BE13/0109 http://www.aph.gov.au/~media/Estimates/Live/legcon_ctte/estimates/bud_1314/diac/BE13-0109.ashx.

¹⁰ Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 19 November 2013, 116 (Senator Cash).

¹¹ Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra,, 28 May 2013, 62 (Vicki Parker, Chief Lawyer, Legal and Assurance Division, DIAC).

¹² Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 19 November 2013, 116 (Alison Larkins, First Assistant Secretary, Refugee, Humanitarian and International Policy Division DIBP).

¹³ Department of Immigration and Border Protection, Supplementary Budget Estimates Hearing, Legal and Constitutional Affairs Committee, 19 November 2013, answer to question on notice SE13/0115, available at http://www.aph.gov.au/~media/Estimates/Live/legcon_ctte/estimates/sup_1314/DIBP/SE13-0115.ashx.

arrivals). IMAs who are screened out are told that no reasons were found to allow them to stay in Australia and that they will be removed.¹⁴

8. The interview preamble and interview transcript pro forma are available through these links:

http://www.aph.gov.au/~media/Estimates/Live/legcon_ctte/estimates/bud_1314/diac/BE13-0124.ashx

http://www.aph.gov.au/~media/Estimates/Live/legcon_ctte/estimates/bud_1314/diac/BE13-0123.ashx

9. The test used to screen an individual in or out are contained in the 'SUMMARY OF INTERVIEW AND REFERRAL FOR FURTHER ACTION' in the interview transcript on page 11:

'Having regard to the information provided by the client in this interview and relevant country information, it is my view that:

- This person has not made claims that raise any fear of harm whether for a Refugees Convention reason or otherwise.
- This person has made claims that raise a fear of harm and:
 - those claims appear to be plausible and to have substance.
 - those claims appear not to be plausible and/or not to have substance.'

4. International framework

The Enhanced Screening procedure is contrary to a number of provisions in international human rights instruments, including the United Nations (UN) Convention relating to the Status of Refugees (Refugee Convention), as well as conclusions made by the UN High Commissioner for Refugees (UNHCR).

Although *non-refoulement* obligations contained in the Refugee Convention and other relevant human rights conventions are not synonymous with a right to admission, the principle of non-rejection at the frontier implies at least temporary admission to determine an individual's status. There are no clear directives given in the conventions containing *non-refoulement* obligations as to the types of procedures that could be involved. In 1983 The Executive Committee of the UNHCR in its Conclusion No. 30 (XXXIV) recognised that applications for refugee status from individuals who clearly have no valid claim are burdensome to the affected countries and that there may be a need for expedited procedures in such circumstances.¹⁵ However, the Executive Committee stated that such expedited procedures should still contain key procedural safeguards,¹⁶ including:

¹⁴ Department of Immigration and Border Protection, Supplementary Budget Estimates Hearing, Legal and Constitutional Affairs Committee, 19 November 2013, answer to question on notice SE13/0115, available at http://www.aph.gov.au/~media/Estimates/Live/legcon_ctte/estimates/sup_1314/DIBP/SE13-0115.ashx.

¹⁵ UN High Commissioner for Refugees, *The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum*, 20 October 1983, No. 30 (XXXIV) - 1983, available at: <http://www.unhcr.org/refworld/docid/3ae68c6118.html> [accessed 31 May 2014].

¹⁶ UN High Commissioner for Refugees, *The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum*, 20 October 1983, No. 30 (XXXIV) - 1983, available at: <http://www.unhcr.org/refworld/docid/3ae68c6118.html> [accessed 31 May 2014].

- Permission to appeal to a higher administrative authority or to the courts.¹⁷
- Access to legal advice and to the UNHCR.¹⁸

In terms of unaccompanied children, the UNHCR has clearly stated that '[b]ecause of their vulnerability, unaccompanied children seeking asylum should not be refused access to the territory' and 'should always have access to asylum procedures, regardless of their age.'¹⁹

5. Concerns arising from Enhanced Screening procedure for children and unaccompanied minors

The Enhanced Screening procedure carries inherent risks for both accompanied and unaccompanied children.

5.1 Inappropriate nature of interview for children

From the procedure outlined above, the legal process in determining whether a child should be screened in requires that the child exercise a great deal of personal responsibility and initiative. It is unusual to demand this of a child or young person. In the determination process, the young person is ultimately responsible for providing relevant and adequate information in order for the authorities to consider the case. For the vast majority of individuals this process would be one that is very stressful as the stakes are so high.

An appropriate procedure, that is, one that allows real participation in the process and takes into account what is in a child's best interest, requires consideration of a number of factors: developmental capacity, cultural and language differences, torture/trauma, separation from family and the detention environment.

According to the DIBP, a child may be considered to be too vulnerable to participate in an interview but it is unclear what criteria are used to assess this vulnerability. Even if a child may be considered capable of participating in an Enhanced Screening procedure, there are still barriers to implementing appropriate participation by children. The processes have not been designed to include the participation of children. They are made and implemented by adults, with adult attributes. The language is jargonistic and the systems are complicated and can be overwhelming to the child participant.

¹⁷ UN High Commissioner for Refugees, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html> [accessed 24 April 2013] at para [192]; UN High Commissioner for Refugees, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html> [accessed 31 May 2014].

¹⁸ UN High Commissioner for Refugees, *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12, available at: <http://www.refworld.org/docid/3b36f2fca.html> [accessed 31 May 2014] [22].

¹⁹ UN High Commissioner for Refugees (UNHCR), *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, February 1997, available at: <http://www.refworld.org/docid/3ae6b3360.html> [accessed 31 May 2014].

An example of legalistic language and jargon is illustrated by the language used in the preamble:

Because you arrived in Australia without a visa you are an unlawful non citizen and do not have an automatic right to remain in Australia. Therefore a finding is to be made as to whether you have a valid reason to be allowed to remain in Australia. The purpose of this interview is to inform that finding by collecting information about you and your reasons for coming to Australia.

If on the basis of the information that you provide or is otherwise available to the Australian Government it is found that you should be allowed to remain in Australia then you will be advised about how your case will proceed in due course. Alternatively you may be liable to be taken to a regional processing country.

If it is found that you do not have a valid reason to be allowed to remain in Australia then you will be considered for removal. If a decision is made that you can be removed you are expected to comply with that removal.

You should understand that there are significant penalties for providing false or misleading information to a migration officer in the course of their duty. Any false or misleading information that you provide could also raise doubts about the reliability of what you have said.

In addition, accompanied children who arrive with their family may not be consulted at all about their views during the Enhanced Screening procedure. Their claims are often “subsumed” within those of their families and the authorities will assume their parent or guardian will advise them of the process. Given the Enhanced Screening procedure has occurred in circumstances designed to give a rapid assessment of claims there are significant risks that claims raised on behalf of children may not be raised and/or they are not given the opportunity themselves to present any fears of persecution that they may have.

5.2 Duty of care of Minister

Under the *Immigration (Guardianship of Children) Act 1946* (IGOC Act) the Minister for Immigration is the nominal guardian of all unaccompanied migrant children until they ‘reach majority, leave Australia permanently or otherwise cease to fall within the provisions’ of the *IGOC Act*.²⁰ As such, the Minister has a particular responsibility to protect the welfare of unaccompanied minors. The overarching principle is that a guardian must always act in the best interests of the child.

The inherent conflict of interest that the Minister for Immigration has in acting in his role as guardian of UAMs in respect of detention and processing their claims has been noted by the Human Rights Commission previously²¹ and in academic literature.²² In this case the Minister’s

²⁰ Immigration (Guardianship of Children) Amendment Act 1994 (Cth), s 6.

²¹ Australian Human Rights and Equal Opportunity Commission, *A last resort? report of the National Inquiry into Children in Immigration Detention* (2004)

²² See Mary Crock and Mary Anne Kenny, "Rethinking the Guardianship of Refugee Children after the Malaysian Solution" (2012) 34(3) *Sydney Law Review* 437.

responsibility to act in the best interests of UAM should include the obligation to ensure the fundamental human rights set out in the Convention on the Rights of the Child.²³

In a number of cases involving the IGO Act the courts have held that any obligations of the Minister involving UAMs are subordinate to the powers and obligations under the *Migration Act 1958*.²⁴ While this may be the case the obligation on the Minister in the case of UAM should be to at least accord them with procedural fairness and an opportunity to present their claims in a process that is designed to elicit the participation of the child.

5.3 Lack of access to legal assistance

Legal assistance is important in this environment. Without legal assistance a child is left to present his or her case to two immigration officials, albeit in the presence of an independent observer. Although the duty to ascertain and evaluate all the relevant facts of a claim is shared between the interviewee and the Department, generally the burden of proof lies on the individual submitting his or her claim. Demonstrating that his or her situation raises protection claims is not easy, particularly for children and young people.

Despite the *Migration Act 1958* and the DIBP's previous Immigration Detention Standards providing for the right to legal advice, this right is no longer enabled.

Section 256 of the *Migration Act 1958* states:

"Where a person is in immigration detention under this Act, the person responsible for his or her immigration detention shall, at the request of the person in immigration detention, give to him or her application forms for a visa or afford to him or her all reasonable facilities for making a statutory declaration for the purposes of this Act or for obtaining legal advice or taking legal proceedings in relation to his or her immigration detention".

Access to legal advice and representation is also in accordance with the DIBP Service Delivery Values one of which states that "[p]eople in detention will be treated fairly and reasonably within the law."²⁵ The Detention Services Manual provides that

On arrival at an immigration detention facility (IDF), as part of the induction process, persons in immigration detention are informed of their entitlement to seek legal advice. Each person is informed of:

- *their right to receive visits from their legal representatives and*
- *their right to contact their legal representatives by phone and to send and receive correspondence via fax or post.*²⁶

²³ *X v Minister for Immigration & Multicultural Affairs* (1999) 92 FCR 524, [41] and [43].

²⁴ See Mary Crock and Mary Anne Kenny, "Rethinking the Guardianship of Refugee Children after the Malaysian Solution" (2012) 34(3) *Sydney Law Review* 437.

²⁵ Migration > 2014 > 02/06/2014 - > P. 02/06/2014 - > PAM3 - MIGRATION ACT> PAM - Detention Services Manual - Contents> Chapter 1 - Legislative and principles overview > Service delivery values > SERVICE DELIVERY VALUES

Despite this DIBP has stated that individuals involved in the Enhanced Screening process are not in fact informed of their right to seek legal assistance.²⁷

5.4 Independent observers

The DIBP have stated that UAMs will have an 'independent observer' present. Without access to procedures for the Enhanced Screening process it is not clear what those procedures would be.

The Detention Services Manual states that while there is no legislative requirement for an independent observer to be present during interviews with a minor 'The Department's policy is that an independent observer should be present whenever the Department or other Government agency interviews an unaccompanied minor.'²⁸ The role of that independent observer is not one to provide any legal advice or assistance but is 'to act in the best interests of unaccompanied minors and ensure that the Department's and other agencies' treatment of unaccompanied minors during certain immigration detention processes is fair, appropriate and reasonable.'²⁹

The CHRE is aware of at least one case involving an Enhanced Screening interview involving a 16 year old UAM who was interviewed without the presence of an independent observer. He was asked during the interview if he wanted an independent observer present and he declined.

The interview proceeded and he was screened out.³⁰

5.5 Problems with standard – does a claim appear plausible and have substance?

The UNHCR and other states have referred to claims which are "clearly abusive" or "manifestly unfounded." These are defined by the UNHCR as those which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the *1951 United Nations*

²⁶ Migration > 2014 > 02/06/2014 - > P. 02/06/2014 - > PAM3 - MIGRATION ACT> PAM - Detention Services Manual - Contents> Chapter 4 - Communication and visits> Access to legal representation> PROVISION OF LEGAL ADVICE

²⁷ Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra,, 28 May 2013, 62 (Vicki Parker, Chief Lawyer, Legal and Assurance Division, DIAC).

²⁸ Migration> 2014> 02/06/2014 -> P. 02/06/2014 -> PAM3 - MIGRATION ACT> PAM - Detention Services Manual - Contents > Chapter 2 - Client placement> Minors in detention> ROLES AND RESPONSIBILITIES [22]

²⁹ Migration> 2014> 02/06/2014 -> P. 02/06/2014 -> PAM3 - MIGRATION ACT> PAM - Detention Services Manual - Contents > Chapter 2 - Client placement> Minors in detention> ROLES AND RESPONSIBILITIES [22.3]

³⁰ Subsequent advocacy on his behalf with DIBP has meant that he has now been screened in.

Convention relating to the Status of Refugees nor to any other criteria justifying the granting of asylum.³¹

At the end of the transcript included in section 3 above, it is stated that an assessment is made about the plausibility and substance of claims during Enhanced Screening interviews. However, in our research we have been unable to find any source for the standard of whether claims are “plausible” or have “substance”. In our opinion there may be problems with using this standard.

This standard may have derived the test by extrapolation from the “real chance” test formulated by the Australian courts that is used to establish whether a claim for protection under Article 1A is “well-founded”. The High Court of Australia in *Chan v MIEA*³² established that the fear of being persecuted is well founded (in the objective sense) if there is a “real chance” of persecution. In explaining the “real chance” test, the Justices discussed that in order to establish a real chance a claim must be plausible and substantial.

- “Well-founded” must mean something more than plausible, for an applicant may have a plausible belief which may be demonstrated, upon facts unknown to him or her, to have no foundation.³³
- ‘A “real chance”...does not weigh the prospects of persecution but, equally, it discounts what is remote or insubstantial.’³⁴
- ‘Real chance...clearly conveys the notion of a substantial, as distinct from a remote chance, of persecution occurring.’³⁵

The Full Court of the Federal Court has recently adopted the “real chance” test for assessing complementary protection claims under s 36(2)(aa) of the *Migration Act 1958* in *Minister for Immigration and Citizenship v SZQRB* [2013] FCAFC 33.

Despite the DIBP stating that ‘the interview is not intended to be a full protection assessment interview’,³⁶ it would appear from the interview transcript that in fact the officers are engaging in an assessment as to whether or not a person has a “well-founded fear of persecution” or a “real risk of significant harm”. Thus whether a claim is plausible and has substance would appear to be a **higher** standard than the “real chance” test as expressed by the High Court.³⁷

³¹ UN High Commissioner for Refugees, *The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum*, 20 October 1983, No. 30 (XXXIV) - 1983, available at: <http://www.unhcr.org/refworld/docid/3ae68c6118.html> [accessed 31 May 2014] at para (c).

³² *Chan v MIEA* (1989) 169 CLR 379.

³³ *Chan v MIEA* (1989) 169 CLR 379 at 397 per Dawson J.

³⁴ *Chan v MIEA* (1989) 169 CLR 379 at 407 per Toohey J.

³⁵ *Chan v MIEA* (1989) 169 CLR 379 at 389 per Mason J.

³⁶ Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 19 November 2013, 116 (Alison Larkins, First Assistant Secretary, Refugee, Humanitarian and International Policy Division DIBP).

³⁷ See for example *Minister for Immigration and Citizenship v SZQRB* [2013] FCAFC 33; *Mok v MILGEA (no 2)* (1994) 55FCR 375; *Chan v MIEA* where the courts stated that the real chance test could mean “real chance” test may well



6. Conclusion

As detailed in this submission, the CHRE has raised a number of serious concerns about the Enhanced Screening procedure for children and young people who are screened out and subsequently removed. As it currently stands, we are concerned that the procedure is not designed to give a fair and full hearing to claims where persecution is raised. Children in danger of persecution in Sri Lanka may have their claims rejected incorrectly and be removed. That children have already been screened out and returned to Sri Lanka under this procedure is of great concern.

be below a 50 per cent chance. A real is a substantial chance, as distinct from a remote or far-fetched possibility; however, it may be well below a 50 per cent chance.