The steps to family reunion

An initiative to support young refugees needing legal help to bring their families to Australia

A report by the Victorian Legal Assistance Forum
‘For refugees, anxiety about the welfare of family members left behind continues and maintains a sense of helplessness and powerlessness… Unresolved family reunion contributes to long-term trauma and serves as a continual reminder of an unbearable past.’

Australian study into refugee resettlement and family separation, 2009

‘Children exposed to multiple traumas (e.g., shelling, combat) and those who were bereaved, victimised by or had witnessed violent acts, showed more post-traumatic stress disorder symptoms than those who had not witnessed such acts…

Particular groups in this population constitute higher psychological risk than others, namely those with extended trauma experience, unaccompanied or separated children and adolescents and those still in the process of seeking asylum.’

Australian review of international research into the psychological health of young refugees (2002)

‘Bearing in mind that unaccompanied refugee minors are among the most vulnerable refugees…and mindful of the fact that the ultimate solution to the plight of unaccompanied minors is their return to and reunification with their families… (this Assembly)… calls upon all Governments… to exert the maximum effort to assist and protect refugee minors and to expedite the return and reunification with their families.’

United Nations General Assembly resolution, February 2004

‘Imagine you are sitting in this meeting and your car is in the car park. All you can think about is your meter is running out and you can’t concentrate on the meeting. Consider if this was your family. That you were worried about their safety. It affects your whole system. The physical and emotional system’

An Afghan refugee describes the effect of separation from family
EXECUTIVE SUMMARY

An innovative partnership between legal assistance and migration support services has been assisting young unaccompanied refugees, who need legal help to bring their families to Australia.

The project has led to these findings and recommendations:

1. It is essential that vulnerable young refugees receive timely, early information about their legal rights, given the importance of family reunion to long-term wellbeing.

2. These young people are facing significant hurdles because of the way immigration law is presently being interpreted and administered. So that these can be addressed, opportunities for regular collaboration and ongoing dialogue with the Department of Immigration and Citizenship should be fostered.

3. Migration legal advice and assistance should be more readily available through publicly funded legal assistance programs that have a social justice focus, such as community legal centres and legal aid.
About the unaccompanied humanitarian minors project

The project assists young refugees, aged under 18, who have settled in Australia without their parents. They are known as unaccompanied humanitarian minors. They have been separated from their families through the trauma of war in their home country.

These young refugees, who were formerly held in detention centres on Christmas Island, have now been granted permanent protection visas. Since September 2009, almost 90 have been resettled in Victoria; more than 60, who came originally from Afghanistan, are now living within the City of Greater Dandenong. Support is provided to these young people by the Victorian Department of Human Services’ Refugee Minor Program.

The problems facing unaccompanied humanitarian minors

Unaccompanied humanitarian minors are children and teenagers trying to adapt to a new way of life after the horrors of war and dislocation, and are especially vulnerable to mental health issues and the development of depression and anxiety. Isolation from family support can compound all the usual difficulties that refugees can encounter in adjusting to their new circumstances.

They are at a critical point in their lives, having to negotiate the path to adulthood as well as the transition to Australian life, without the love, care, guidance and support of their families.

Before arriving in Australia, these young people have often been through horrific experiences. Many have been exposed to violence and have sometimes witnessed the murders, beatings or imprisonments of their parents or siblings. They may have little information about the wellbeing of those left behind in war-ravaged countries or camps, and may be suffering guilt that they have ‘escaped’ a situation which is still precarious for their families.

Most have lost at least one member of their immediate family, and in a number of families the young person in Australia is the only living male, which increases their sense of obligation, anxiety and responsibility towards those left behind.

In most situations these young people have lived as refugees for quite some time and have had disrupted education. Lack of social friendships and connections in their new country can lead to isolation and
disadvantage, while they also face additional barriers such as language and cultural misunderstandings. Truancy and poor school performance can become issues, and are associated with poor concentration, anxiety, and difficulties in trusting others and forming friendships in their new country.

For many, their families have tried to ‘save’ their young people from conscription or capture by selling their property and making enormous financial sacrifices to send their child to Australia. This leaves the family behind destitute, and the young person can feel an enormous obligation to continue to provide financially for their family left behind, as well as repaying debts incurred in their perilous journey to Australia.

**The importance of family reunion**

The pivotal role of the family unit is acknowledged as a basic human right and is enshrined in United Nations Conventions, such as the Universal Declaration of Human Rights, to which Australia is a signatory.

The importance of family reunion is also enshrined in Australian child welfare policies and practice, which give primacy to the concept of a child’s relationship with his or her family, and commits resources and time towards this goal, even where there have been protective concerns.

Furthermore, in the situation of the young refugees, research demonstrates that family support also plays a positive role in recovery from the stress and trauma of the refugee experience, while, conversely, continued separation from family heightens the risk of post-traumatic stress disorders.

Symptoms of depression have been consistently shown to be more evident in refugee children who have experienced separation from their parents and displacement than those who remained with their parents. On the other hand, the presence and support of even one family member has been shown to be ‘protective’ of a young person’s mental health and resilience to overcome the trauma they have witnessed. It is not only the separation itself that causes stress; uncertainty about the fate of family left behind contributes to feelings of helplessness, powerlessness, depression and anxiety. It is extremely difficult for these teenagers to fully immerse themselves into their new lives in Australia while the prospect of family reunion remains unresolved. The young people feel a tremendous sense of uncertainty, unable to plan for their future. This can lead to reduced energy and motivation for the more practical long-term challenges of settlement such as finding employment, learning English, and participating in vocational training.

The goal of family reunion is therefore viewed by agencies working with these teenagers as the single most crucial factor that could prevent the problems of alienation, depression, social exclusion and isolation that the young people experience.
Origins of the project
To address the escalating need for free legal help, several agencies working in the south eastern suburbs of Melbourne came together to establish a service called the Split Family Clinic. This was to assist young people aged under 18 in completing the necessary steps to apply for visas for their family members to come to Australia.

Unaccompanied minors aged under 18 can apply to have a ‘split family visa’. There were a number of young people who were approaching this milestone, and needed assistance with their applications, just prior to the end of 2009. Many were about to turn 18 years old and their nominated birth dates were 31 December or 1 January.

The legal needs of unaccompanied minors
As holders of protection visas, the young people are entitled to seek reunification with their families through a ‘split family visa.’ However, migration law, rules and procedures about bringing family members to Australia, which are overseen by the Department of Immigration and Citizenship (DIAC), can present a complex labyrinth.

Navigating this system is a difficult, almost impossible, challenge for the young people concerned, who have limited language, skills and understanding in order to tackle the legal system and immigration bureaucracy. They may be confused by definitions of ‘family’ as set out by the Australian Government which may be at odds with their own cultural understanding of what comprises a family unit. There are many other challenges to overcome, such as requirements to provide proof of relationship – often a near-impossible task in countries affected by war and civil unrest, and where events such as births, deaths and marriages do not have to be registered with the state.

Unfortunately an overall shortage of public funding for affordable migration law advice has meant there has been nowhere for the young people to turn to get the help they need in making their application. Because of their age, vulnerability and financial situation, they face insurmountable challenges in being able to access legal advice or employ a migration agent.

‘My father and brother were killed by the Taliban. My mother borrowed so that I could be sent to safety. I am the only male in the family and I am now responsible for them.’
This model enabled greater numbers of clients to be assisted than could be seen by any one migration agent or lawyer from each service. Referrals into the service came from the Department of Human Services’ Refugee Minor Program and the Adult Migrant Education Service Settlement Program. The project was initially intended to run for only six months but has continued operating in response to the ongoing demand.

With the growing need and complexity of cases, and the urgency of the approaching deadlines, Springvale Monash Legal Service put forward a request to the Victorian Legal Assistance Forum (VLAF), for help in developing a solution. VLAF is a partnership of legal assistance providers which advocates for increased access to legal services for socially and economically disadvantaged people.

VLAF has a working group, to which Springvale Monash Legal Service belonged, which explores collaborative responses to legal issues facing people from culturally diverse backgrounds. This working group provided the impetus for a partnership of organisations to come together to address the need for migration legal advice.

It was able to draw upon a wider pool of experience, resources and knowledge to meet the need for legal assistance, and effectively tap into the strengths of each partner agency.

For significant numbers of the young people, who do not have proof of, or may be unsure of, their birthdates, January 1 is their ‘presumed’ date of birth. Absence of evidence of birthdates often occurs in war-torn countries and in the chaotic circumstances in which people flee from their homeland. (For example, many Afghans of Hazara origin have no tradition of recording dates of birth. Where dates are recorded, these tend to be male children only, and in accordance with the Hirji calendar. The date is often written at the back of the family Koran, and culturally the Hazaras consider it disrespectful to ask a person their date of birth).

Collaborating to address the legal needs of the young people

The Split Family Clinic was operating as a pilot program as part of the South Eastern Migration Advice Service – a joint initiative of Springvale Monash Legal Service, and Springvale Community Aid and Advice Bureau.

The partnership established a service model in which one specialist migration lawyer supervised volunteers (including law students) to provide direct service to the unaccompanied minors. They assisted the young people to complete applications, provide supporting documentation, and respond to complex requests for further information from DIAC.
How the project worked
The South Eastern Migration Advice Service initially took on the role of broker to receive referrals and assess each situation, and refer them to one of the partner agencies. Legal assistance was then provided by lawyers from Victoria Legal Aid, and Flemington and Kensington Community Legal Centre. Complex matters were referred to the Public Interest Law Clearing House, which liaised with members of the private legal profession who were able to take on the work on a pro bono basis.

(The partners, and their roles, are outlined on page 12).

As of March 2011, more than 62 young people have so far been assisted with initial advice and have had their applications completed. Follow up work has been required as DIAC has frequently requested additional information or asked the young applicants to vary or remove family members’ names.

“My family can’t leave my widowed sister – she will die. She cannot go out of the house in Pakistan without a male. If they know she is widowed she will be further harassed’.

Project challenges
Initially the partners involved in the project believed that, legally, the main imperative was to ensure the applications were submitted on behalf of the young people before their 18th birthdays. There had been, up until this time, a practice within DIAC of considering applications under the Split Family Program, if the person was not yet 18 at the time they made an application. During 2010, however, there was a change in procedure, and a stricter interpretation was adopted of an existing regulation requiring a person to be under 18 at the time of the decision.

This means that applicants had to be under the age of 18, not only at the time of the application, but at the point when DIAC would make its eventual decision about their application.

There is, however, no set timeframes in which DIAC must make such decisions, and it is not uncommon for the process to take as long as two years. Given these common processing delays, even if, for example, unaccompanied humanitarian minors submit their application to reunite with their parents when they are 16 years old, they may have the application rejected if they have turned 18 at the ‘time of decision’.

If unable to apply through the Split Family Program, the young people instead have to apply through the more general Special Humanitarian Program. Their chances of success are much lower through this avenue, given the large number of applications and limited places available.
Furthermore, if the young person’s family members are still living in the ‘home country’, they may have no humanitarian claim that can be used if the split family application is refused. The only other option available is a family visa, which is unlikely to succeed, as in this category, financial sponsorship must be provided by the applicant – not a likely prospect for the young refugees.

Further hurdles were encountered by a large number of the young people when they received letters placing an onus on their family members to provide submissions as to why their case was compelling. Many were also asked to organise for their siblings to undergo DNA testing, to prove their family relationship. This is costly and not always feasible, and was causing enormous stress.

The effect of all these requirements by DIAC are that the young people are likely to remain separated from their families indefinitely, increasing their trauma and reducing their chances of making a successful transition into Australian life. This is particularly concerning as the actual process of applying for asylum, and delays in having claims considered, have been identified in research here and overseas as heightening the risk factors for the development of poor psychological health. 10

Members of the legal partnership have met with DIAC to discuss issues in processing the applications and the implications of the ‘time of decision’ interpretation, and to advocate on behalf of the young people. This dialogue was valuable as the partners were able to get clarification about the ‘time of decision’ interpretation, and address these changes in submissions. It also helped to keep the young people informed of what was going on, and give them a realistic picture of the path ahead and even to prepare themselves for possible unfavourable outcomes.

Members of the partnership also contributed to the Refugee Council of Australia’s annual submission to the Minister for Immigration and Citizenship on issues the Australian Government should consider in planning the coming year’s refugee program.

**Resourcing of the project**

All work on the project has been unfunded. It has drawn upon the goodwill of the partner agencies and pro bono contributions from the legal profession, as well as many committed volunteers. Additionally, the Department of Human Services provided funding for on-site interpreters to assist in the processes of obtaining information and producing statutory declarations.
Due to lack of resources, the partnership has little capacity to take on new matters. In many instances there are virtually no other options for other young people needing legal help in migration law. This demand is likely to continue to grow as more unaccompanied humanitarian minors settle in Victoria. Inability to meet the demand means there are young people who are quite alone and unsupported as they take on the task of applying to bring their families to Australia. There are potentially grave consequences in making decisions with momentous consequences without professional migration advice and assistance. As an example, young persons have sometimes been asked by DIAC to remove one of the family members listed on the application. This can result in an impossible dilemma for a young person without support – being in effect asked to choose one member of their family to be left behind in a war-torn country or a refugee camp.

Lack of expert legal advice can also lead to young refugees inadvertently providing incorrect information which may seriously hamper their case, especially with language and cultural barriers.

Benefits of the project

The agencies contributing to the partnership strongly believe that this service has already had significant benefits to the wellbeing of these very disadvantaged young people. Without the project, many of these teenagers would have missed the cut-off point for visa applications, and have had little hope of achieving their dream of family reunion. They have been empowered to at least take the first steps to bring their families to Australia.

Supporting them in this goal is vital as the teenagers are in exactly the situation identified by a wide body of research as constituting raised psychological risk:

- extended trauma experience;
- being unaccompanied as a child or adolescent;
- being still in the process of seeking asylum.

Providing effective, timely and professional advice to guide a young person through the legal system is maximising the chances of a relatively early, and favourable, decision about family reunion. It also minimises the risk that a young person, confused by the complexity of the rules and processes, may inadvertently hamper his or her own case by providing incomplete or inaccurate information, which further delays what can be a lengthy and drawn-out process.

The long-term benefit to the community if young people are finally reunited with their families is incalculable. It has been well-documented that refugees’ separation from families is strongly linked to symptoms of mental illness such as depression, feelings of guilt, anxiety and greater incidence of physical illness; the impact is even stronger among young people, coming to terms with horrific experiences, and still making the transition into adulthood. This project is playing an important role maximising the chances that these teenagers can again have the love and care of their family around them, and the community can only benefit from the improved mental health and social outcomes associated with this.
The steps to family reunion

This project also highlighted the need for settlement and legal assistance providers to have regular opportunities to meet with DIAC in order to highlight systemic flaws that are disadvantaging these vulnerable young people. The continuation of regular meetings and opportunities for open dialogue about the issues that are being encountered by the young people would be a very positive step in the view of the project partners.

Another area of concern which emerged from the project is the conflicting role of current guardianship arrangements, with the Minister of Immigration and Citizenship acting as the ‘parent’ while at the same time determining their applications for family reunion. There is a need for an independent Children’s Commissioner who can oversee the protection of these young people’s rights and advocate on their behalf.

The project also highlighted the need for migration advice to become an integral part of publicly funded legal assistance programs. Migration law is extremely complex and specialised and is a fundamental need for those that are newly arrived in our country, who are particularly disadvantaged in their access to the law. The project has demonstrated that legal advice and assistance should be more widely available through programs that bring about social justice such as community legal centres, legal aid and pro bono practitioners.

Recognition of this vital role, in the form of ongoing funding so that the legal partnership can continue and extend, would ensure that vulnerable young refugees receive important, early information about their legal rights in an area that is so important to their long-term wellbeing.

The cost to government of assisting these young people to take steps to be reunited with their families is minimal compared with the long-term consequences to the community of putting back together lives that have been disrupted by trauma and lack of family support.

If the young people that Australia has taken into its care and responsibility continue to be separated from the support and guidance of their loved ones, the eventual social and financial impact could be significant.

Assistance in reunion with their family is not only humane but pragmatic if compared with the risk of these young people developing mental health issues, that could require ongoing support from government agencies.

NEXT STEPS

The project is providing a vital avenue for young people who are among our most vulnerable to get legal help to achieve a fundamental human right – that of children to have the care and support of a family.

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## PROJECT PARTNERS

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<tr>
<th>Project partner</th>
<th>About this organisation</th>
<th>Role in project</th>
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<tbody>
<tr>
<td><strong>South Eastern Migration Advice Service</strong></td>
<td>A partnership between Springvale Monash Legal Service and the Springvale Community Aid and Advice Bureau to offer migration law advice and assistance. Ran the pilot 'Split Family Clinic'.</td>
<td>Has provided advice and assistance to a majority of the young people to make applications and respond to requests for further information. Has provided information sessions to the group, and linked to other support services. Acted as broker to assess and refer the young refugees to other services once the legal partnership was formed.</td>
</tr>
<tr>
<td><strong>Springvale-Monash Legal Service</strong></td>
<td>A community organisation providing free, confidential legal advice. Gives accessible legal assistance and information, community legal education and law reform to disadvantaged members of the community.</td>
<td>Contributed to the work of South Eastern Migration Advice Service and the formation and operation of the legal partnership.</td>
</tr>
<tr>
<td><strong>Springvale Community Aid and Advice Bureau</strong></td>
<td>Provides practical services for people in the community who may be seeking information or assistance in times of hardship. This includes settlement support, employment assistance, counselling and practical assistance with daily activities.</td>
<td>Contributed to work of South Eastern Migration Advice Service. Assisted the young people with emotional, educational and employment support.</td>
</tr>
<tr>
<td><strong>Adult Migrant Education Settlement Services</strong></td>
<td>Largest provider of English language and settlement services in Victoria, in addition to being a major supplier of specialist employment and training services in Melbourne.</td>
<td>Made referrals and assisted with payment of interpreters when the Split Family Clinic was operating. Contributed to the formation and operation of the partnership.</td>
</tr>
<tr>
<td><strong>Victorian Department of Human Services Refugee Minor Program</strong></td>
<td>Provides support and case management to Unaccompanied Humanitarian (or Refugee) Minors. (DIAC refers all unaccompanied minors living in Victoria to this program).</td>
<td>Made referrals to the Split Family Clinic and the partnership. Assisted young people to attend appointments and provided funding for interpreters. Contributed to the formation and operation of the partnership.</td>
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<td><strong>Foundation House (Victorian Foundation for survivors of torture)</strong></td>
<td>Provides counselling, advocacy, family support, and information sessions to people from refugee backgrounds who have survived torture or war related trauma. Also provides referral, training and education aimed at developing and strengthening the resources of communities and service providers.</td>
<td>Provided advice to the partnership and support for young people. Contributed to the formation and operation of the partnership.</td>
</tr>
<tr>
<td><strong>Victoria Legal Aid</strong></td>
<td>Helps people with their legal problems. It is an independent statutory organisation which provides information, referral, advice and legal representation, with a focus on people who are marginalised and disadvantaged.</td>
<td>Assisted young people with advice and assistance in making applications. Contributed to the formation and operation of the partnership.</td>
</tr>
<tr>
<td><strong>Public Interest Law Clearing House</strong></td>
<td>An independent, not-for-profit organisation which is committed to furthering the public interest, improving access to justice and protecting human rights. PILCH does this by facilitating pro bono legal services to Victorian individuals and organisations in need, and by undertaking law reform, policy work and legal education.</td>
<td>Received referrals and allocated them to private lawyers who could assist the young people to make applications.</td>
</tr>
<tr>
<td><strong>Flemington Kensington Community Legal Centre</strong></td>
<td>Provides legal casework and advice, legal education and law reform, migration advocacy and an offshore refugee family reunion service, to the local community.</td>
<td>Provided assistance including advice and casework to clients unable to quickly access other services or clients on referral from Foundation House, other partners, or the Refugee Minor Program. Long term experience with Split Family applications and was able to provide advice to other agents new to the field.</td>
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Endnotes


2 Ibid, p.19


5 There are two different types of unaccompanied minors. ‘Non-wards’ are those who are here with a close adult relative over 21 years of age, who is prepared to accept care responsibility for them. DIAC will ask the relative to sign a ‘care undertaking’.

Wards are those who have no close adult relative (over 21 years of age) in Australia who is able to accept care responsibilities for them. The Minister for Immigration becomes the legal guardian of wards, and for those living in Victoria, requests the Department of Human Services (through the Refugee Minor Program) to act as the delegated guardian.

6 The United Nations Universal Declaration of Human Rights (1948), Article 16 (3): ‘The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.’

7 Trang & Lau, op cit.

8 This is a sample of some of the research evidence:


McDonald-Wilmsen & Gifford, op. cit.


9 In an online report by the Australian Broadcasting Commission, it was stated that ‘The ABC has obtained departmental letters sent to children who lodged applications at the age of 15 and 16, stating it is unlikely processing would be finalised before they turned 18.’ http://www.abc.net.au/news/events/castaway-kids/ (retrieved 1 March 2011).

10 Trang & Lau, op. cit.

11 Trang & Lau, op. cit.