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The Secretary of the Committee
Inquiry into Immigration Detention in Australia
House of Representatives
PO Box 6021
Parliament House
Canberra, ACT, 2600

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BY: MIG

Re: The situation of stateless people

In this submission, we cover one term of reference only: the issue of stateless asylum seekers: how long should such a person should be held in immigration detention. We give as a case study an example of a stateless asylum seeker in Perth, Western Australia, to illustrate the points we make (we call him "Wasim"). Anne Pedersen is his primary advocate; Mary Anne Kenny is his lawyer.

Case study: Wasim

Wasim is originally from Indian-occupied Kashmir. His father owned a printing press, which was occasionally used by the Jammu and Kashmir Liberation Front (JKLF). His father was arrested, tortured and killed by the Indian authorities in 1994. His mother died three months later. After this, Wasim became increasingly involved in JKLF pro-independence activities and distribution of information. In March 1996, he was arrested with four others, accused of being involved in the militant. He was kept naked in solitary confinement, interrogated and tortured. After ten days, he was taken away in a vehicle to be transferred to the central prison with the expectation that he would soon be executed with other detainees. Torture and extra judicial executions of dissidents in Kashmir by the Indian Police and Military are common and well documented. He escaped, and after a convoluted journey, arrived by open dinghy in Far North Queensland from Papua New Guinea in September 1998.

He presented himself to the Immigration Department, and was detained immediately. For reasons too lengthy to engage in here, but not because the Refugee Review Tribunal member rejected the substantive elements of his claim, Wasim's claim for asylum was denied. However, he could not be returned to his country of origin as they could not verify his identity and refused to accept him. For all practical purposes he was – and still is - "stateless".

As the Committee would be aware due to the effect of s 48 and 48A of the *Migration Act 1958* Wasim was not able to apply for another visa in Australia and due to his status he could not leave the country. His only options were to appeal to the Minister under s 417 of the *Migration Act 1958* or judicial review.

He spent five years in detention, and in August 2003 an interim order from the Federal Court of Australia declared that he should be released from detention. He was married the following year to an Australian citizen. His Federal Court case was put on hold awaiting the outcome of the High Court decision in Al-Kateb and appeals to the Minister for Immigration. During that period he held no visa while he was in the community. This meant no Centrelink, work rights, or Medicare benefits. For over

four years, he was wholly supported and maintained by his wife, a community based refugee charity organisation, and a number of supporters.

As noted by his psychologist, Wasim's mental health fluctuates dramatically. He often suffers from severe depression. His psychologist concluded in a letter to the Immigration Department in June 2006: *"Given the degree of pressure [Wasim] has been under for so long it is amazing that he has been able to hold things together as well as he has. Notwithstanding this, it is felt that humanitarian considerations alone demand that a decision in his regard be made as soon as possible. If this can't be done for some reason at a minimum he should be given a date by which a decision will be made or some explanation as to why it is taking so long. I fear if this course of action is not taken in the near future we may find that [Wasim's] psychological system does have a breaking point"*.

Over the nine year period, thousands of supporters wrote to four different Immigration Ministers about his case requesting he/she exercise his discretion under s 417 of the *Migration Act 1958*. Wasim was finally granted a Removal Pending Bridging Visa (RPBV) on 18 October 2007 by the then Immigration Minister Kevin Andrews. The RPBV means that Wasim finally has a visa which allows him to work and access Medicare. However it also means that Wasim can be returned at any time to his country of origin and he is not able to apply for another visa in Australia.

The Department of Immigration has not been successful in getting Wasim's country of origin to accept him as a national for a period of 9 years. It is untenable at the end of that time that such a visa was granted; there is nothing to suggest that they will be able to remove him in the future. The RPBV places him in a further state of limbo as he is unable to apply for a permanent visa.

The legal position regarding stateless people.

With respect to stateless people like Wasim, theoretically immigration detention could be for life - indefinite detention is enshrined in our legal system. The effect of High Court decisions in 2004 means failed asylum seekers can be held in detention **indefinitely** provided the Minister for Immigration is intending to deport them when that becomes possible.

It could be argued that Australia's treatment of stateless asylum seekers breaches international obligations. For example, Australia is signatory to the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961). These conventions require countries such as Australia to assist and protect stateless people; this includes the granting of nationality. These obligations are not incorporated into domestic law and there is no visa available for people who arrive in Australia and are found to be stateless. They are therefore only able to obtain a visa through the use of Ministerial discretion.

Ministerial guidelines relating to the exercise of the Minister's powers of intervention among other things identify cases of non-citizens to whom Australia has protection obligations under the Convention Against Torture and/or the ICCPR as cases in which it may be in the public interest to substitute a more favourable decision. Australia's obligations under the Statelessness Convention are not specifically mentioned. As

noted in its Concluding Observations in 2000, the UN Human Rights Committee stated: *“The Committee is of the opinion that the duty to comply with Covenant obligations should be secured in domestic law”*

In May 2008 the UN Committee on Torture stated that the Australian government should take “urgent measures to avoid the indefinite character detention of stateless persons”.

How long should stateless people be held in detention?

We recommend:

- a) Australia's obligations under the Statelessness Convention be secured in domestic law through a system of complementary protection that would allow a persons claims with respect to statelessness to be assessed.
- b) Persons found to be stateless be given access to a permanent visa

In short, stateless people like Wasim can be held in immigration detention indefinitely – theoretically for life. This is an untenable situation. We hope that this Senate Inquiry ensures that the situation is remedied immediately and will not happen in the future.

Dr Anne Pedersen (Wasim’s primary advocate)

Ms Mary Anne Kenny (Wasim’s lawyer)

Information taken from:

Pedersen, A., Hoffman, S., & Kenny, M.A. (2007). *Issues Paper: The Processing of Asylum Seekers Post-Howard*. Unpublished document, Murdoch University, Western Australia.

Pedersen, A., & Kenny, M.A. (2007). *Issues Paper: Stateless People in Australia*. Unpublished document, Murdoch University, Western Australia.

Pedersen, A., Kenny, M.A., Briskman, L., & Hoffman, S. (2008). Working with Wasim: A convergence of community. *Australian Journal of Community Psychology*, 20, 57-72.

UN Committee Against Torture, Consideration of Reports Submitted under Article 19 of the Convention, Concluding Observations – Australia, CAT/C/AUS/CO/I, 15 May 2008