

Submission No 138

AG.

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Clerk Assistant (Committees)
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Please find following an electronic version of the Submission to the Inquiry into Immigration Detention submitted by Mairi Petersen and Natalie Gould.

Mairi Petersen

And
Natalie Gould

We would like to have noted that full details of all examples we have given in the Submission can be produced if required, as long as confidentiality is respected.

We have both been regular, almost weekly visitors to Villawood Immigration Detention Centre for the last almost 6 years. We believe that we have a lot of knowledge of the conditions for both the detainees and the staff at Villawood IDC that the Minister would not be aware of. We would be grateful of the opportunity to appear before the Inquiry, either in Sydney or in Canberra to be able to expand on our Submission.

Inquiry into Immigration Detention in Australia

1. The criteria that should be applied in determining how long a person should be held in immigration detention

(a): More humane treatment of people on arrival and when they are in detention
(b): Health and security checks should be undertaken as quickly as possible. People should be held no longer than 90 days in order to allow those checks to be undertaken.

(c): All Australian Detention Centres, including Christmas Island, should be closed. Asylum seekers should be held in detention only to establish their current identity, for criminal clearance, and for security checks for a period no longer than 30 days. If there were problems with identity, health or security, then detainees could be held for no longer than a further 2 stays of 30 days. This would be a more decent and compassionate as well as cost effective way of processing asylum seekers.

(d): under some circumstances, people are deemed not to be immigration cleared. This is most often (not always) when people are detained at the airport before passing through Customs. The irony is that if a person passes through Customs on a false passport they are deemed Immigration Cleared and thus eligible to live in the community. When not deemed to be immigration cleared they are either not eligible to be released from detention unless given a Protection Visa or are removed from the country.

An example:

A man is presently in Villawood IDC in this situation. He faces many years in detention whilst he pursues his Protection claim unless the situation is changed. This situation would be easily remedied by doing health and security checks and deeming him immigration cleared.

(e): The practice of DIAC Officers going to Immigration Detention Centres and telling detainees to "go home, go home" whilst their cases are proceeding must cease immediately. This is cruel, unnecessary harassment and must be stopped.

(f): Immediate moratorium of removals and forced deportations of refugee applicants who have been in Australia for 10 years or more, or refugees who have failed their applications under the present regime

2. The criteria that should be applied in determining when a person should be released from immigration detention following health and security checks

(a): Immediately upon arrival, or being placed in detention, health and security checks should be commenced.

(b): DIAC should ensure that all people should understand their rights, understand the processes and procedures, and have access to appropriate interpreter services as well as to independent health and legal professionals.

(c): Once a person has had their health and security clearances, then they should be allowed into the community with work and Medicare rights, and to report to either DIAC in the cities or to the local Police Station in the outer suburbs or country areas.

3. Options to expand the transparency and visibility of immigration detention centres.

(a): Detention centres should be taken out of the hands of private enterprise and managed by the public sector. They should be publicly accountable and open to scrutiny, rather than be left to private ownership and therefore private profit.

(b): People in detention should have access to their records, including medical as well as immigration records. At present, people can only obtain their medical records through FOI. In some cases their records have been changed or deleted. In some cases, months of records have been deleted.

Some examples:

1. There are 2 instances where DIAC has admitted that detainee's files have been lost. In one case, a completely new file was created, and then his original file was found, so he ended up with 2 files. In the other, complete untrue statements were made about that person. However, the original file had been obtained under FOI so those untruths could be pointed out to DIAC.

2. One young man who is at present in Villawood IDC consulted the psychologist on a weekly basis for several months. When he obtained his medical records under FOI none of those consultations were included in his records.

(c): Detainees should have easy access to an interpreter and should have all rules, regulations and Court, MRT and RRT processes and procedures written in their own language. At present, detainees, most of whom do not speak English, or speak very little English, have to seek advice about RRT, MRT and Court procedures and processes from fellow detainees. They are also dependent on their fellow detainees to complete the various forms required - for example, the Protection Visa form the Bridging Visa E forms and others.

(d): There needs to be a complete overhaul of the manner in which DIAC determines whether a person is a refugee. Where a person could possibly be a refugee and DIAC is unsure of the person's claims, that person should be given the benefit of the doubt. If this were done then most of the people in detention would not be there. If a person is refused at any stage of the process, then the decision making process should be completely transparent and the reasons explained to the applicant, with the aid of an interpreter. The applicant should also have the right of appeal.

(e): Where there is doubt as to the validity of the documents, unless it can be proved that the documents are fraudulent, those documents should be taken on face value. For example, Bangladeshi documents can be easily forged, so DIAC always assumes that they are forged, when in many cases they are not.

(f): In view of the lack of transparency and the present culture in DIAC, the only humane way of solving the current crisis is to have a complete revamp of DIAC and a complete restructure of how a refugee's status is determined. It should be completely transparent and in the interim, all people currently seeking asylum should be allowed to reapply.

(g): At present, many people, when finally granted residency, are given a large Commonwealth Debt Account, amounting to hundreds of thousands of dollars. These people will never be able to pay that money. These debts are not usually 'waived' but not pursued, which means that in all probability they will never have to be paid, but that the Government could call for them to be paid at any time. That leaves a person in a very stressful situation, having such a large debt hanging over their head.

(g): It also appears that some people are not given the correct advice when released on BVEs, and are never advised that their 'security bond' has been cancelled. They are never advised that they can appeal that decision, or indeed that that decision was in fact ever made.

(h): DIAC should comply with international covenants in the removal/deportation process.

(i): There should be an automatic transfer into protection visas from TPVs.

(j): The haste in which DIAC removes some people within immigration detention and in the outside community is unnecessary and cruel. It is designed to prevent refugee applicants from accessing legal remedies to prevent them being removed. Often we believe it is done to be able to break Australian laws by removing people who are unfit to travel. In any case, the haste is designed to prevent transparency and visibility of the process. Once someone is gone, then they are gone. Their supporters cannot do anything about it, and in the cases where they are sent back to danger the supporters cannot try to get any publicity for DIAC's actions because it would put the person who is removed into even greater danger.

Examples:

1. A man was informed he was to be removed the next day, his supporters managed to get an appeal into the FMC, and obtain legal representation by the close of business that same day. DIAC was informed that he would be legally represented, and so a Hearing

was organized for the applicant to apply for an injunction against his removal at 8.30. that same night. Fortunately for him, he informed one of his supporters who had turned up and waited at the Court for him. At the hearing, DIAC failed to inform the Magistrate that the applicant would be legally represented, and the applicant was nervous and so he did not either. It was only that his support person asked to speak and inform the Magistrate that he would be legally represented, and produced a letter from his legal representative to that effect, that an injunction was granted.

Two... In another case, a man whom DIAC knew was living in a homosexual relationship with an Australian man was removed to a country where homosexuality is illegal and carries a 10-year sentence. In the lead up to his removal, he was interviewed by DIAC on 3 occasions, when he was not allowed to have a support person with him. On one occasion he was locked up in a cell in Compliance at Lee Street for 2 hours, and on all 3 occasions threatened with detention if he did not sign a paper saying that he wanted to go back. At the Hearing over whether to grant an injunction the DIAC lawyers kept reiterating that the applicant had signed papers on 3 occasions saying he wanted to return to his country of birth. The lawyer failed to tell the Magistrate that those documents had been signed under duress. By that time, the applicant was so depressed that he did not say anything. On both occasions, DIAC did not have any consideration for the individual situation and was only intent on haste.

4. The preferred infrastructure options for contemporary immigration detention.

- (a): Detention Centres to be managed by the public sector.
- (b): People should be detained only for a maximum of 90 days.
- (c): Culturally appropriate food to be always available.
- (d): Provision of readily available interpreter services, when a person is first detained to explain all rules and regulations in the person's own language.
- (e): Provision of medical and dental services on site as well as access to specialist services outside, with access to interpreter services when the detainee needs them
- (f): Strict adherence to 'duty of care' policies of DIAC and GSL
- (g): People in Community Detention should be given the right to work and Medicare.
- (h): All detention officers - whether DIAC or GSL or another private company - must receive proper training; both culturally appropriate, health wise and management skills wise. At present GSL Officers receive only 6-8 weeks training and no training in psychology or specific health issues.

An example:

A person in Villawood Stage 2 was transferred to Stage 3 on the recommendation of a GSL Officer. When questioned about the transfer, the DIAC officer stated that he did not question the recommendation that he did not know about the detainee's severe depression and other mental health issues and had not thought about the fact that the detainees would be socially alone in Stage 3. Obviously, it was wrong to put that distressed man in a socially isolated area.

- (i): GSL Officers should have less power in detention centres.
- (j): It is at present the practice of DIAC/GSL to put suicidal detainees in Stage 1 or on 24/7 watch. A prison like environment is not a suitable place for a suicidal person. GSL staff do not have the skills to monitor such a person. There should be a professional psychiatric facility within each centre or provision made for those detainees to receive proper care such as being taken to a psychiatric hospital. People with mental health issues should be assessed by an independent psychiatrist.
- (k): There should be time limits placed on the provision of security/health checks on detainees.

An example:

A man in detention who has been there for more than 2 years has had his health and security check. However, even though he had his security check more than 6 months ago, the results have not been forwarded to DIAC and he is still in detention. When DIAC was asked about the delay, DIAC said some peoples' security checks take more than 18 months and that DIAC has no control over the length of time taken. There must be a time limit in which ASIO has to report back to DIAC.

(l): Outside specialist services should be used always with the aid of an interpreter.

Some examples of breaches of 'duty of care':

1. A former detainee suffered severe depression whilst at Villawood IDC. After some months, he was sent to Toowong Private Psychiatric Hospital in Brisbane for care. After some time there, it was planned to return him to Villawood IDC Stage 2, the exact place that caused his depression in the first place. Only after considerable agitation from his supporters, and with the assistance of his Brisbane psychiatrist, and after being placed in a 4-5 star hotel with 2 guards 24/7 was he finally allowed into the community.
- 2... Another former detainee who had suffered psychotic episodes and asked to be transferred to Stage 1 because he feared for his life at the hands of his friends (his fellow countrymen), was put back in the same room when the detainees were sent to Holdsworthy after an asbestos scare at Villawood. He then had a complete breakdown. Only after much agitation from his friends, both inside and outside, was he taken to hospital for mental health care. When he was subsequently released into the community, he was released with a BE and a bond, and thus no access to Medicare and the PBS Scheme. His medication at that stage cost more than \$200 per month, which he could not afford. After much further agitation he was evaluated by a psychiatrist and DIAC then agreed to pay for his medication. However, he could not afford to attend a doctor. Eventually he was placed on the Red Cross Community Care Pilot. However, unfortunately his mental health deteriorated further and his medication was doubled.
3. Another person who is presently detained in Villawood suffers from severe epilepsy, which has become much worse since being detained. He has frequent seizures. Once when he was in the middle of a seizure he was handcuffed and sat upon before being taken to hospital.
4. Another former detainee, because he did not have an interpreter during his specialist appointment, thought he had 9 brain tumours, when in fact he had 2 benign tumours. When he was subsequently in hospital for the operation, with 2 guards 24/7, a visitor arranged for a hospital employee who spoke his language to speak with him. The visitor was castigated because, as the guard said she was in charge of his care, even in the acute care ward, he was not allowed to speak with the hospital employee because he had not asked permission of the guards to speak with him. The same man, when returned to Villawood after the operation, complained of chest pains, was told "he had to walk to prevent blood clots" when he actually had blood clots and needed to be rushed back to the hospital because of the blood clots. Again when later his nose started to run, which it did for a few weeks, the medical staff at Villawood did nothing. It was not until he had a follow up with his specialist that the specialist immediately sent him to hospital. It transpired that he was leaking cerebral fluid from his brain, and was in acute danger of developing meningitis.
5. Yet another detainee, who now has residency, was in bed in Stage 2 with his room mate. They had already taken their sleeping tablets. A gang of detainees rushed into their room, rolled them in blankets and attacked them with cigarette lighters. Only that other detainees were walking past their room and saw what was happening, those 2 people would have been burnt. GSL did not call the police, saying it was Federal territory, did not take action against the gang and sent the victims to hospital the next day. Apparently, someone wrote a report on the incident, which no one appears to have seen and certainly not the 2 victims.

Whilst written into the contracts of GSL and into DIAC policies special 'duty of care' policies are set out clearly, in reality the issue of 'duty of care' is not adhered to at Villawood IDC. Some GSL Officers physically ill treat people, not proper care is taken of detainees when they are sick, the medical staff do not explain illnesses or the prescriptions prescribed.

5. Options for the provision of detention services and detention health services across the range of current detention facilities, including Immigration Detention Centres, Immigration Detention Housing, Immigration Transit Accommodation and Community Detention:

- (a): Detention should be returned to public sector management. Detention facilities must be publicly accountable and open to scrutiny, rather than left to the mercy of the profit motive.
- (b): All Detention Centres must be closed in their present form (including Christmas Island). Asylum seekers should only be detained until their identity is established and they have passed all their security and health checks and criminal clearance.
- ©: There should be more humane treatment of people upon their arrival and when they are in detention.
- (d): There should be greater flexibility in the consideration of a person's individual circumstances when deciding their status.

6. Options for additional community-based alternatives to immigration detention by

- (a); inquiring into International experiences
- (b): considering the manner in which such alternatives may be utilized in Australia to broaden the options available within the current immigration detention framework
- ©: comparing the cost effectiveness of these alternatives with current options

We do not have the research at hand, nor do we have the time to do such research before this submission has to be submitted.

This Submission is submitted jointly by Mairi Petersen

**And
Natalie Gould of**

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