

Submission No.....116
Date Received.....

## **Submission for the Senate Inquiry into Immigration Detention in Australia**

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From: Chris Rau

RECEIVED  
16 AUG 2008  
BY: M16

To: Committee Members  
Chairman: Michael Danby  
Member for Melbourne Ports

Wednesday, August 06, 2008

Dear Mr Danby and dear Committee members,

Please pardon the delay in this submission. Family circumstances made it unavoidable. Hopefully you still have time to read it.

I already wrote a brief letter to Senator Evans about this, before he released his very welcome public amendments to detention policy last week.

I'll attach this with other documents in the form of appendixes so you're not too bogged down.

Your terms of reference seem open and admirable. I'm commenting from 24 years' of journalistic experience, mainly in law, crime and social issues.

Not a lawyer myself, I'm nonetheless very familiar with the law.

Unfortunately, I'm also commenting as an "accidental investigator" into the Cornelia Rau case in 2005, as she's my sister, and our family was caught up in the then turmoil of her case.

Objectivity was not always easy. But the facts presented to myself and the barristers, lawyers, solicitors and students from the University of Newcastle Legal Centre, who were also investigating her case, spoke for themselves.

There was much in both the theory and the practice of mandatory detention I found abhorrent for the legal concepts we usually adhere to in Australia.

The Uni analysed the Migration Act as part of our submission to Mick Palmer, but I won't rabbit on about that.

The relevant documents will be included below.

In the meantime, let's deal with the terms of reference:

## **One: The criteria that should be applied in determining how long a person should be held in immigration detention.**

Firstly: is it possible to establish identity?

Are competent interpreters speaking in the right dialect available? Is the immigration official monitoring the interview qualified to pick up any inconsistencies in the story?

The anecdotal stories I have heard over the past three years suggest a percentage, perhaps 10% of refugees who were boat-people were fleeing not persecution, but criminal records.

I'm not sure what the percentage of in-flight refugees would be, but suspect it might be higher, as they have more funds.

Life became difficult in detention camps for the majority of innocent refugees, who were often terrorised; the women sometimes raped, by the criminal element.

Usually, though, crime records exist, even overseas, for people who Senator Evans calls a safety risk.

That's why identity is so important.

On the other hand, it's very difficult to establish people's identity who've come from war-torn countries where papers have been lost amidst endless conflicts and conflagrations.

Or papers may even have been forged just to get out of the country.

I wouldn't even begin to know how to solve this. You'd have to find reliable eyewitness confirmation for a start, which isn't always easy if the eyewitnesses are in a war zone.

Identity is one. That might or might not be within your control.

What is in your control is to set a time-cap on immigration detention.

During that time it is possible to observe someone's behaviour, should the authorities be exercising an adequate duty of care.

Three months should be the maximum for identity and other checks.

The main criterion for immigration detention – and let's not mince words – it's imprisonment – should be safety for the rest of the community.

Indefinite detention is still enshrined under the High Court. This has to be contested by law. Only new legislation or a challenge to the Al-Kateb case can truly solve the question about how long someone can be detained.

I applaud the Government's new measures, but remain critical about the failure to enshrine these in law. It may be unpopular, as a poll this week showed, but now you've got the mandate and it's a long way away till the next election.

## **Reference Two: Criteria about when someone should be released from detention following health and security checks.**

Someone who passes health and security checks should immediately be released into the community, albeit with some obligations.

Perhaps if their status were still being verified, they should have a sanction, if, say, they committed a criminal offence in the meantime.

That sanction may initially be detention in an Australian jail and then parole, like anyone else who offends.

The consequences of reoffending might be deportation, but that's a touch decision too.

The recent al-Masri case from Gaza highlights how difficult it is to define cases.

He was obviously fleeing tribal persecution, just not political.

However, the persecution was genuine and seemingly intractable. He was killed after being repatriated, leaving behind a young family who is no doubt still at risk.

Deportation is always an ethically-fraught option.

To conclude number two, if someone's healthy, stable and able to work, why not give them the benefit of the doubt and release them?

Also, is there some kind of staggered residency system where people can prove their worth in say, five years, and thereby gain residency?

Would that make sense?

## **Reference Three: Options to expand the transparency and visibility of IDCs.**

Oh dear, how to approach this in a framework where Christmas Island still exists? I'll try.

One: sell Christmas Island.

Turn it into the casino it was once mooted to be – we all know how far away it is and we all know how hard it is to get any independent scrutiny out there. We may as well ship them to Indonesia – it's almost as close! If you think otherwise, the cost alone will put the public off. Most people don't realise just how far away it is.

Two: get rid of the contractors, and the sub-contractors, and the sub-sub-contractors...and so on...

If you're going to have mandatory detention, do it on the mainland and keep track of it yourselves.

If you farm it out to for-profit prison corporations, corners get cut. It's inevitable. People suffer to the extent they can't get a decent feed, you get systems like the "Behaviour Management Plan" for indignant prisoners, and you're in a lose-lose situation. You lose money and the inmates lose care, both physical and mental.

Investigating Cornelia's case, I also followed the corporate route: there were four layers of contractors and subcontractors before you even got to the "independent" psychiatrist.

All of these were milking government funds.

Make up your minds – either have a detention/prison policy and at least make it accountable, and do it yourselves, or farm it out and expect more corruption. There's only one honourable choice, and that's to do your own dirty work.

That's just on the corporate side. Next comes transparency and the media.

You can rest assured, the media aren't that interested in detention stories.

It's too hard and too worthy.

Some will always ask the niggling questions, though. Unless you let the media in who want to get in, people will still find a way to leak footage or documents.

So make the centres open to the visitors, lawyers, doctors and journos who bother to take an interest. Otherwise they'll still find a way.

Many refugees are very talented in IT and all sorts of things I don't understand. Many are very educated. They'll always smuggle their stories out somehow.

In Soviet Russia, they called it Samizdat.

Unfortunately, inspired by Mr Ruddock's regulations, there was a lot of Samizdat going on here too recently.

This was not just in the refugee advocate community; it was also occurring among respectable networks of Australian doctors, dentists, lawyers and other professionals.

#### **Reference Four: Preferred contemporary infrastructure options for immigration detention.**

Victoria has several options here which sounded quite enlightened.

The Asylum Seekers' Resources Centre has outlined their plan to you for "A Better Way", which involves a hostel-based system including curfews until people have passed security checks.

Another system already in place, run partly by the Uniting Church, is the Hotham Mission, which provides housing, English lessons and medical care, all funded voluntarily. Few, if any, refugees have absconded, contrary to the dire warnings of the current Opposition.

Here in Sydney there is the House of Welcome, run by Rev. Jim Carty (a non-denominational group), 9727 9290.

This group of volunteers tries to provide housing (rental accommodation), furniture, clothing, and other practical help to immigrants. The House of Welcome has also liaised with hospitals in Sydney's West which can provide acute psychiatric care for some refugees.

Bridge for Asylum Seekers, also based in Sydney, has raised nearly half a million dollars in bridging funds for refugees who were in limbo under their current visa arrangements.

Whether you agree with them or not, they've done a heroic job to overcome gaps in Government policy.

What all these groups need is the eternal juggling ball for Governments: the "f" word. Better funding.

For infrastructure - including housing, better interpreters, better access to medical and educational facilities. ESL is especially important.

Politically, funding can be sold in the sense that we were all refugees once, and look what Australia's become today. Especially juxtaposed with figures below.

If these NGOs, to name just a few, and the Government could work together and share their expertise, a far more streamlined service could occur. Not just more efficient, but more humane, and surely that's the ideal.

What the Government could better arrange would be really basic instructions for new immigrants. Including how to work a telephone, how to work a stove, how to work a washing machine, even how to flush a toilet...

These omissions led to a young African family losing a sick baby in Newcastle a couple of years ago. The baby, just days new to Australia, died in his father's arms because the father didn't know how to pick up the phone and ring an ambulance for help (nor was his English good enough had he done so).

At the same time, the Immigration Department had contracted a private company with no previous migration experience to look after this family's welfare.

I don't have the details to hand but can provide them if necessary. I still think that company was criminally negligent. According to budget papers I later received in confidence, this company was on a contract of millions a year for the so-called resettlement of immigrants, when they didn't have a clue what to do.

Again, the dangers of farming duties out to untested private companies.

All my paper files are in a large box but I thought I'd give you an overview and dig something out if you need it later.

Under infrastructure, I'd include the more nebulous infrastructure of visas, as it does relate to the issue.

There has already been some streamlining of visas like the TPVs, but the Bridging Visas (BVEs) and the Removal Pending Visas (RPs), surely should be reexamined?

Under BVEs, some people still cannot access work or medical care. Medical care is provided pro-bono by some caring doctors.

Removal Pending are a particularly curious hybrid which Amanda Vanstone introduced after 2005 in which people like Peter Qasim, who may or may not have character issues, are held in limbo unless they agree to deportation. Trouble is, noone's allowed what these so-called "character issues" are. Haneef springs to mind.

It's not only harsh, but dangerous for the person constantly threatened with deportation. As you know, Peter Qasim was in detention for more than seven years but under this visa still remains in limbo.

Again, my idea of a sort of staggered residency – putting graduated residencies under the one umbrella - might appeal to you. Abolishing the labyrinthine array of visas now around. At least it would be more logical.

## **Reference Five: options for detention services and health services across the range of current detention facilities.**

Again, opt out of the corporate sector. Don't subcontract services. If you like, make an offshoot of the AFP responsible for policing detention centres. Just like Corrections and Police are coordinated among the States.

A strict entry criteria, including psychological testing, must be a prerequisite for guards, and any applicants with criminal or cruel histories must be screened out.

The bottom line is, if the Government undertakes a policing policy, it must administer this policy and not hand it on to unaccountable groups. Conversely, if the policy's too unpalatable to do it yourselves, ditch the policy!

Health services: Easy. Free and open access to Medicare doctors or specialists. Not screened by guards or other gatekeepers. Not subcontracted doctors. Access to independent lawyers who can arrange immediate medical care should it become necessary.

Not the ludicrous situation where someone who's fleeing to a totally unknown country or is mentally ill and doesn't know anyone has to specify a lawyer or specialist – on paper – before they're even allowed any access to care. Catch 22 in Australia – who'd have thought it in the 21<sup>st</sup> century? These sort of details have to be fixed.

Should a complaint be frivolous, as it also often is in the wider community, perhaps a reason for the medical request might unearth other psychological or institutional information.

That's the problem, of course. Whoever's in charge doesn't want to hear criticism, especially public criticism. Is our democracy and are our institutions strong enough to cop it? That's a challenge.

How you solve part of this conundrum is simple in the detention model: independent doctors in the refugees' community would be on call on a rotating basis, just like they'd be in any community.

The key word here is independent. Not doctors who, like in Cornelia's case, admitted they had a conflict of interest between their patient and their employer. (see Finn.J, Fed Crt, May 5, 2005.)

If I were at Sydney Airport airport lounge and had a heart attack, I'd want the nearest doctor. So would any immigrant. (By the way, I am one, albeit from long ago!). Noone should have to wait till the subcontracted Macquarie Bank's doctor turns up when they feel like it (and then charge you for parking). That's just a mild parallel to some of the stories I've heard. Like the man in Baxter who complained to GSL guards of a headache for two years – they gave him panadol - before his aneurism burst and he had to have a 12-hour brain operation. The documents are there.

Like it is for all of us, independent access to medical personell across all the IDC alternatives is a must. This is available, to some degree, in prisons. In immigration in the past it's been hampered if IDCs are remote, especially as remote as Christmas Island. Accountability on Christmas Island will be in name only. Get rid of it.

## **Reference five: options for additional community-based alternatives.....**

International experience: Have a look at NZ.

I'd also be practical. Some refugees do have an uncertain status. If well-trained and unbiased officials are still unsure of a refugee's status, what about a parole-type alternative or even ankle-bracelets? If this were the alternative to detention, most would surely prefer the less intrusive option of the bracelets. Then they could live in hostels or community accommodation.

Cost comparisons:

Visas: Under current visa arrangements, many skilled refugees who would like to work and contribute to tax can't do so. I've met IT professionals, farmers, mothers, artists, engineers and students who were willing to take on any work to regain their dignity. This was denied them. Not only are you denying them their livelihood under some current visas, you're denying them their humanity. Most of these people are bored – those that haven't been too damaged by previous detention – and don't want to be "bludgers".

This is the more amorphous cost.

Senate Estimates has its own figures. On June 1 this year, the Sun-Herald quoted Senate Estimates figures from the week before saying Christmas Island is currently costing \$32million a year to run with almost no "guests". It also costs money to keep Baxter in mothballs. Not to mention the expense of upgrading an asbestos-riddled Villawood in Sydney. Melbourne has been quiet recently, so don't know what the costs are there.

In Baxter, under the previous regime, two GSL guards per shift were required to intrude on every immigration patient in psychiatric care at Adelaide's Glenside's psychiatric hospital around the clock.

That meant six guards a day per patient and quite an intrusion on staff. So many guards were required (and paid for by the Fed Gvt), they had to hire a campervan for the guards twiddling their thumbs minding the maximum of ten immigration patients allowed there at a time. What a joke! And what an expense....

Less of a joke were intrusions like guards monitoring female refugees giving birth and breastfeeding, in the latter case, to the extent breastfeeding couldn't be established.

In this context, I tried in my limited way to follow the money trail a few years ago. The figures are in a speech and I can dig them up for you.

You have a wonderful resource in that you can ask a few maths whizzes who work for you to do the sums.

Just to count up line by line what immigration detention in its punitive form costs, and compare that to a hostel-type arrangement in each State.

If you ditch the private contractors, you'd be surprised at the savings you could make. Not only that, it'd be electorally popular if put in a financial context.

Will attach the appendixes.

One is the letter to Senator Evans. The other is the executive summary of our analysis for Palmer. The third is our main submission to Palmer. The fourth, if I can find it, is the money-trail speech.

It was painful having to find these sorts of stories out back in 2005. Please don't ask us to tackle this again in the future. It's too sad. Australia can do better than this.

Thanks for your time and it's not an easy topic to tackle, so good luck!

Kind regards,

Chris Rau