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The Secretary
Joint Standing Committee on Migration
Enquiry into immigration detention in Australia closing
date 18 July 08

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<http://www.aph.gov.au/house/committee/mig/detention/index.htm>

Dear Committee members

I am a former immigration officer. I worked as a refugee decision maker and team leader at Australia's immigration detention centres from 1992 (decision making) until September 2002. I am sending this initial submission by email. I've taken two days off work to write it as I am going overseas on 10 July and will not return until August 08.

I am writing this submission in the hope of contributing insight and suggestions which may improve conditions for asylum seekers living in detention in Australia.

Sincerely

A. Wallace

**SUBMISSION TO THE
SENATE JOINT STANDING COMMITTEE ON MIGRATION:
ENQUIRY INTO IMMIGRATION DETENTION IN AUSTRALIA**

I am a former immigration officer. I worked as a refugee decision maker and team leader at Australia's immigration detention centres from 1992 (decision making) until September 2002. The following is some recollections of the environment and challenges of the Immigration detention system. I provide it as background to help the Committee understand the significant problems that occurred and that are still occurring in Immigration detention centres.

Background

In the late 90s, when large boatloads of asylum seekers started arriving, Australia's refugee policy, previously very good, took on some aspects of a compliance program. Rather than focusing on quality decision making or protection of refugees, procedures were developed often on the run, with a view to stemming the flow of asylum seekers. As the detention centres were not bound by any legislative framework (as jails are) there were no checks and no framework of accountability to ensure the welfare of people being detained.

In 1999 race and religion had become issues of national debate, and there was massive pressure from government and the media, to find solutions to the sudden rush of asylum seekers from Iraq, Iran, Sri Lanka Afghanistan and other countries.

Australia's immigration detention centres for the most part operate in a legal vacuum. This allows the government to direct how the centres operate. In 1999, the government built new centres in isolated locations, in deliberately remote and harsh localities, with deliberately few facilities.

The emerging detention centres were being hastily built in hostile locations around the country, as bureaucrats and politicians responded to the rising numbers of refugee arrivals on the run. Initially, "tent cities" were built at the Curtin Air Force Base land near Derby, to cope with the unexpected influx of arrivals.

Women were not placed in tents in a separate compound, but in tents among the general community of mostly male residents. The tents were not secure, and prior to more secure sheds being built, there were allegations of snakes entering tents and of women being raped in tents.

A new policy – screening people out of the asylum application process

Some time in 1999, the government also initiated a new process for boat arrivals called "screening out". Asylum seekers were given a brief initial compliance interview on arrival, not recorded on tape and with no lawyers present. While most interviewing officers did their job diligently, not all asked questions relating to the person's experience in their country of origin. It was claimed that some did not write down all of the comments that asylum seekers made. Very senior bureaucrats were then given the task of reading through the written records of these interviews and screening out all those who had not made claims for convention at their interviews.

As a result of this policy, hundreds of asylum seekers were denied access to lawyers, prevented from lodging protection applications, and were denied basic information about why they had been separated from their companions and kept in a separate compound. They were kept in the desert in a state of legal limbo.

What sort of people were screened out?

Like many others I conducted hundreds of interviews in our detention centres. In late 1999 I interviewed two men from Iraq who had been screened out, but were screened back in after going on a hunger strike. They both claimed to have been detained for refusing to fight in the army. This is a legitimate claim to asylum, if the army under question has committed human rights abuses. One was a Kurd who did not want to fight against fellow Kurds, the other was an intellectual man who claimed to be a pacifist. Both were severely depressed, one showed me small round scars all over his stomach, which he said were scars from cigarette burns that he received when in jail in Iraq. The other, when I asked him how long he had been detained, asked whether I meant in Iraq or in Australia?

Shortly after this, the government decided not to allow people who had been screened out to get back into the system, even if they went on hunger strikes. So these men were very lucky, they got in early.

On my first visit to Woomera, as I walked with other Immigration officers and interpreters through the layers of gates, to my left were dozens of people behind the fence yelling and shouting and banging their fists against the fencing wire. It was like running the gauntlet, and I asked the interpreter with me what they were saying. She said that they were saying things like "where am I", "what's happening?" "when can I ring my family?" and "please help me".

The decisions to screen people out were without evidence at best and careless at worse, as exhausted and busy senior officers of the department read through dozens of faxed pages late at night.

Elderly and very young family members were sometimes screened out by mistake. For example, a five year old girl was left without the protection or support of any relative in the mostly male environment of the screen out compound because no claims were entered in on her arrival interview sheet, and because the vetting bureaucrat had forgotten to check her date of birth. These sort of screen outs happened to those who were too young, too old or too sick or infirm to properly answer questions in the compliance interview. The other contributing factor is that these people were denied a legal advocate, and the advocates would have written developed submissions that properly represented their clients' situations.

While many people are aware that the detention centres built up huge numbers of people who had been rejected, and who could not be sent home, most people are unaware that many of these people, those who were screened out, had never had the chance to even lodge an application. They were detained for many years without going through any legal process, with the government hoping that they could somehow be deported at some stage.

Working to the government's vision

It is easy to point the finger at officers of the Immigration department. Whenever mistakes or incidents happened, people did their best to resolve problems and sort things out. A lot of people of various backgrounds had to work in and around these places. While not all were perfect, most of them were people just trying to do the job they were given, to make fair and legal decisions with the information given them by the Department. People at all levels of the Department worked very long hours, under arduous conditions, spending time away from their families, over very long periods of time. Very senior bureaucrats and people who worked full time in the detention centres suffered the most.

While each person in a bureaucracy is responsible for their own small part as a cog in a machine of government policy, we can only act within the legal and bureaucratic framework which is either created or maintained by the government. Only the government or the courts can oversee, direct or limit the actions of bureaucrats. It is very hard to know what "duty of care" means when people are sent to live behind razor wire in 48 degree heat.

It is a requirement of the ADJR Act (Administrative Decisions Judicial Review Act) that anyone making an application to a government agent be given a decision in writing, but these people were denied both the opportunity to present their claims, and the opportunity to know even if a decision had been made.

The Migration Act has a clause which says that Migration decisions are not bound by the ADJR Act. This lack of accountability contributes to some very flexible legal and policy approaches in responding to hundreds of cases of “illegal” entry.

Crisis Management

As pressures built, there were riots at the detention centres, and some asylum seekers considered to be ringleaders were sent to jail. Again, mistakes occurred, sometimes caused by people having very similar names, and there were instances of the wrong person being sent to jail (for example, an old man).

Sending a person to jail by accident seems an appalling error, but the really sad thing is that those asylum seekers who were sent to jail preferred it there, because conditions were so much better. The food was better, there were gardens, libraries, it wasn't so hot and there was more privacy because cells weren't as crowded. Australian prisons are controlled by legislation and because of this people in prisons have certain basic rights that those in immigration detention centres do not have.

But immigration detention centres operated outside any legislation and had no rules. And where even rules have since been brought in (such as the legal requirement for a case officer for every detainee) they may still not always be implemented, because of local departmental inability to find the number of staff necessary to provide this case management to all detainees.

While the personal files of detainees were meant to record any incidents pertaining to the applicant, reports written by ACM (the security company in charge of some centres) vastly underreported the incidents happening at the centre.

I obtained the ACM file relating to one applicant who had been involved in four incidents over a week.(self harm by slashing). Only one of those incidents was mentioned on his file.

People in the system

When you have any institution operating without judicial oversight, it creates an environment where the best and the worst parts of human nature come out. When detainees are powerless and totally dependant on those in control, small courtesies become very important. In the same way, unjust or abusive treatment can be devastating to an incarcerated person.

Some detention centre managers were respected for their commitment to detainees, and for treating them with respect and courtesy. Some were not. Some people working at detention centres developed (and still do develop) long term psychological problems as a consequence of things that they witness or are asked to cover up. Many people working in detention centres were and are exhausted by the volume and nature of the work.

The stuff bad dreams are made of

Some of the unpleasant memories from my time in Immigration detention centres include:

- . A catatonic Middle Eastern woman who had just been interviewed at Curtin (when accommodation was still in tents).
- . A survivor of one of Saddam's jails who had "jail pallor" - his skin was completely white, and physically emaciated.
- . A Kurdish man (another survivor of Saddam's jails) who swung between being happy, polite, laughing, and hysterically sobbing, and back again through each emotion through the interview.
- . The large, curved, thickened scars all over a man's arms and upper body, not gained in a third world jail but from throwing himself repeatedly from the roof of a building at Woomera onto the razor wire.
- . An intellectually disabled man, a member of a large family, from Iraq, who was rejected and remained alone in detention while the rest of his family was granted asylum.
- . Having to leave an interview at Port Hedland hurriedly, and evacuate the team because of a riot, and seeing the security forces in Darth Vader-like outfits

racing towards asylum seekers.

- . Applicants being bullied for long hours in interviews to "confess" that they were not from the country claimed, and that if they didn't confess they'd never get out of there.
- . The appalling initial accommodation for detainees at Manus Island, rusting corrugated iron rooves over concrete slabs, left over from the Second World War, and worms in the water.
- . A man from Afghanistan, hysterical and confrontational about his experience being raped by members of the Taliban.
- . People who showed signs of severe trauma including severe emotional depression, mood swings, hysteria, anger, sadness, fear, and crippling physical depression which made it hard to move.
- . The scorching heat at Woomera, with sunscreen "frying" on my skin even when in the shade.
- . The shock for decision makers who went in after the "lip stitching" incidents at Woomera, and witnessed the degeneration of the place into a Dickensian asylum. People interviewed on that trip ranged from being hopeful, humble, grateful or reserved, to totally hysterical, angry or completely passive. One man was unable to come to the interview because he was too physically depressed to leave his shed. When I rang Canberra and asked how long it would take for these applicants to receive their decisions, I was told "What makes you think they'll be receiving decisions?"

It would be a grave mistake to think that these problems won't happen again in places like Villawood. They are still happening, and will continue to happen until a complete change is made to the immigration detention system.

Border control and international obligations

While the Australian government has an obligation to maintain border control, it also has obligations under various international conventions, and there is no reason why they have to cancel each other out.

Bureaucrats are obliged to deliver the policy of the elected government. Government is responsible, but it is the people on the ground who have to witness and deal with the results of government direction.

What next?

In ancient times, refugees became slaves and spent their lives working as other people's property. Today they subsist in sometimes anarchic conditions in refugee camps, or, if they have the capacity, travel to seek safe haven in another country.

The majority of people in detention need only be there for a short period of time. If the government wants to monitor them, they could be fingerprinted, prior to being given the right to work and the support of a social worker or case manager. This would be much cheaper than the costs of detention, and would assist people towards leading relatively normal lives while awaiting the outcomes of their cases.

Australia needs more workers and we currently have a low level of unemployment. The money that goes into punitive incarceration facilities would be much better spent on settlement services and graduated programs into employment.

However, if the current government considers there is a need to maintain some form of immigration detention for some, it would be a good idea to develop a more accountable, more humane and more temporary option. The following recommendations may be useful, or may spark other better ideas if considered.

1. Issue:

The person in charge of a detention centre has complete influence over the culture and environment of the place. That can be positive or negative, depending on the attributes of the person.

Option:

Managers of asylum hostels or detention centres could be someone from completely outside the Immigration and security environments. They could be social workers, housing workers or officers from another department (such as FAHCSIA or Centrelink). They would be in charge of the basic care and wellbeing of people inside, and have no connection to their immigration applications. Having three people in charge, on rotating shifts, or each in charge of a different aspect of the centre, would ease the potential for one person to have too much power, and

it would also ease the huge burden of administrative responsibility for the IDC manager by sharing it.

2. Issue:

There is no clear legislation covering Immigration detention centres, and so there are no legal protection for inmates against abuse.

Option:

A committee or taskforce could examine the legislation and policy that covers prisons, old people's homes and mental institutions. The committee could take from these models ideas that work, and create proposed regulations for consideration which define the legal rights and responsibilities of people in immigration detention. Any model must be better than no model.

3. Issue:

People in immigration detention were denied proper medical treatment, because the security company in charge profited on any unspent medical allocations.

Option:

Any money allocated for medical care, psychiatric care, or for any allocation towards wellbeing such as training or sport activities, could be allocated to a separate organisation with an incentive to spend the money for the purpose given. All unspent money could be recalled by government at the end of the financial year.

4. Issue:

Many people were in indefinite detention and in a legal limbo, through being screened out.

Options:

All people on Australian soil who seek to apply for asylum should be given access to a lawyer, if in detention. No applicants to be screened out, but all to have equal rights to submit claims and receive a decision.

5. Issue:

Many people were in indefinite detention, because they had exhausted all options and failed to be eligible to migrate.

Option:

That entry without a visa, illegal entry, be legislated as having a defined period of detention. This is arguable because we have signed the UN Convention of Refugees and under that Convention asylum seekers should be entitled to illegally enter a country, if in fear of their life. However, we have some local laws which state a different intention than the Convention, and this one would have the outcome of limiting time detained, rather than keeping it open-ended.

6. Issue:

People in long term detention develop psychiatric problems.

Option:

Limit long term detention. Provide medical care, English classes, libraries, and activities such as gardening, sport, support groups for those in long term detention. Have no facility for solitary confinement. Have a wellbeing officer (as well as social workers, psychologists) from an external agency who can report on problems and make recommendations.

7. Issue:

Immigration legislation is complex and rigid. There is no flexibility and people in detention bear the brunt of this rigidity more than any other.

Option:

A discretionary clause in the Migration Act was removed in December 1989. It was felt that some decision makers were too free with it, and it was applied inconsistently. Basically, the clause allowed a decision maker to approve someone if they were working, met health and character checks, and almost met the criteria. This clause could be brought back in, and could be delegated to be considered by a higher level decision maker (for example by someone at the EL2 level).

8. Issue:

The Ministerial Intervention option is heavily used by some Ministers, and not by others. It is the only "last ditch" way of avoiding either deportation or lifetime detention for some. A Minister should be running policy, not making decisions. Ministers can be subject to influence from business and the community, and can be placed in a position of being subject to undue influence.

Option:

Section 417 could be amended to delegate the Minister's consideration to a three person committee be set up, with representatives from (for example) the Law Society, Attorney General's, and the AAT, MRT or RRT. The committee could remain the same, but each organisation rotating membership by three months, to deal with the issue of undue influence. Decisions can be monitored to identify signs of undue influence (which are, for example, a higher number of people with poor claims being approved from a particular country or a particular migration agent, while people with more valid claims are not getting up).

9. Issue:

Governments employ decision makers with a particular bias (eg anti-homosexual or anti a particular religion or race). These decision makers can make decisions that are popular with government or senior bureaucrats, but are not fair or legal.

Option:

Government or tribunal decision makers be removed or retrained if more than a certain number of their decisions are overturned by the next level of decision making (tribunals or courts).

10. Issue:

A clause that guaranteed the independence of the decision maker from making a decision under direction of supervisors of politicians was removed from legislation covering the review of refugee decision making.

Option:

Bring it back.

11. Issue:

Immigration detention centres have been built in an ad hoc way, are not always well lit, and do not always have enough security staff to cover all areas. Both staff and detainees can feel vulnerable and at risk.

Option:

Get two immediate outside safety audits of all detention centres, one considering the safety of personnel, and the other considering the safety of detainees. Give money to an outside firm (not the local Immigration office) to upgrade the centres to acceptable levels.

12. Issue:

There can be a culture of fear in some Immigration detention centres, and personnel may not feel listened to by senior Immigration management.

Option:

Give the Ombudsman or some other body regular access to the centres, including access to reports, to staff and detainees, to ensure a cultural of positive negotiation and constructive responses on behalf of staff and detainees.

13. Issue:

Some Immigration detention centres may be understaffed, and not all detainees case managed.

Option:

Compare the ration of social workers to prisoner in the prison system, in psychiatric institutions, or other similar institutions and legislate the number of case managers allowed per detainee.

Conduct spot checks (without warning) of detainee files in detention centres, to check for records of file notes, visits and detainee activity plans. Interview all detainees to find out how recently they have been seen.

14. Issue:

Detention centres are run with too few staff, poor resources and poor equipment, which may all be temporarily boosted prior to a designated visit from officials.

Option:

Inspections by Senate committees, the Ombudsman or other such visitors to happen with only 3 hours notice.

15. Issue:

Staff at Immigration detention centres are demoralised and unsupported.

Option:

Provide externally sourced wellbeing officers to meet with detention staff fortnightly or after incidents, to give support and feedback to staff detention centres.

While these some of these issues are not directly related to detention centres, they impact of the people in detention centres and contribute to the long and unnecessary detention of some people, some of whom are there because of poorly or wrongly trained decision makers or because of decisions made by people acting under direction or undue workplace pressure.

None of these measures would work alone, they are just suggestions to patch up an already creaky machine. An appropriate legal framework, with strong monitoring and involvement from a number of agencies, would be a way forward out of the darkness.

There is no way of knowing how many people have been subject to sexual abuse in these detention centres. Young people without the protection of an older family member, whose applications have been rejected, and who are detained for long periods when their compatriots had all moved out are in particularly vulnerable positions.

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