

Submission No.	1279
Date Received	22 OCT 2008

RECEIVED
22 OCT 2008

BY: MLE

Dear Sir/ Madam,

Please find The Justice Project's Supplementary Submission dated 22 October 2008 to be lodged with the Standing Committee. As is made clear in the body of the Submission, it attempts to explore how the present regime might be replaced with what we have called the '30day rule'. As requested by the committee at its public hearings in Melbourne on 11 September 2008, we also suggest how, after the elapse of 30 days, the Federal Magistrates Court should deal with detainees, even if there is no resolution to the questions of identity and security, by reference to what we have called the 'compelling evidence' test.

Yours Sincerely

KURT ESSER
Chair, The Justice Project Inc

Level 13/30 Collins St.
Melbourne VIC 3000
Tel: +61 3 9639 9722

THE
JUSTICE
PROJECT INC
STANDING UP FOR A FAIR GO

The Secretary
The Joint Standing Committee
on Migration
Parliament House
Canberra
ACT 2600

RECEIVED
22 OCT 2008
BY: ...MLG.....

22 October 2008

SUPPLEMENTARY SUBMISSION

A. Introduction

The need for this document arose out of a dialogue that occurred at the public hearings in Melbourne on 11 September 2008 when the committee sought more information as to how our suggested '30 day' solution might be applied. The committee accepted Kurt Esser's proposal to make a supplementary submission limited to exploring these issues.

B. Medical criteria

In most cases sufficient medical tests can be administered and completed to ascertain if someone is suffering from an infectious disease or not, within 30 days of arrival. The possible exception is TB. If persons are carrying or suspected of carrying TB or some other transmissible disease and this is identified within the 30 days, they should be isolated and treated in an infectious diseases hospital or facility. In the case of TB, for example, the person concerned would be eligible for release only when the disease is considered non-transmissible.

C. Identity and security – the problem

Very often these criteria are linked. If identity is unclear this will sometimes mean security will be difficult to check. Sometimes an asylum seeker will readily admit a false passport or an assumed identity as part of the full narrative as to how and why asylum was sought in the first place. Sometimes a knowingly false identity will not impact at all on security. As Julian Burnside QC said in evidence, during the height of Nazi persecution of the Jews, it mattered little and did not impact on security at all, if a person had an assumed identity. The only question was whether the person concerned was Jewish and if the person was fleeing persecution.

THE JUSTICE PROJECT INC.

ABN 167 310 814 35

Old City Watch House, 345-355 Russell St, Melbourne Victoria 3000 PO Box 527 Carlton South Victoria 3053

PHONE: (03) 9654 4778 EMAIL: info@thejusticeproject.com.au

WEBSITE: www.thejusticeproject.com.au

The same considerations apply to many conflicts from which asylum seekers have fled to Australia. It matters not that a Hazara fleeing from the Taliban cannot prove his identity (records are scarce, often do not exist, travel documents and authentic passports are rare etc). The point is whether the person can show or prove, by whatever means, he or she is a Hazara.

On the other hand, just because a person can prove identity with certainty, does not mean the person concerned may not be a security risk. In other cases the very persecution the asylum seeker is fleeing from is the purposeful deprivation of certain official documents, birth records, identity records, passports and exit visas. Very many people unable to prove their identity with certainty are not security risks at all. Especially when asylum seekers come from places where official records do not exist or may not exist universally, the Justice Project says that this reason by itself is an insufficient reason to deprive another person of liberty.

The difficult practical question is, assuming there are no medical issues, then, as a matter of policy, what should the Commonwealth do when there is no certainty after 30 days as to an asylum seeker's identity and or security risk?

The Justice Project emphatically believes that any final decision about an asylum seeker's ongoing detention is one that must be made impartially, in the light of the best evidence available and must be based firmly on admissible evidence that both parties are in a position to call into question and challenge.

The Justice Project believes the Federal Magistrates Court (FMC) is by far the most appropriate tribunal to be vested with this new and important jurisdiction.

C. Identity and security - the suggested answer

In many cases, especially where asylum seekers come from places where official records are haphazard or non-existent, identity and security issues will not be solved with certainty within 30 days of arrivals reaching Australia. In those relatively small number of cases when all the issues (including medical issues) can be sorted well before the 30 days, all other things being equal, release could occur earlier ie. immediately certainty has been reached. We therefore specifically agree with the suggestion made in the course of the hearing by the member for Kooyong, Mr Petro Georgiou, MP. Some releases may well be effected within a much shorter time.

The Justice Project believes that after 30 days if detention is to continue, notwithstanding there may no certainty as to identity or the security risk to Australia of an asylum seeker being released, the Commonwealth should be required to approach the FMC for an order extending detention for a further month (to a maximum of 6 months). In such proceedings the Commonwealth would have the burden of adducing evidence.

The Justice Project recommends the *Migration Act* should be amended so that the FMC is obliged to come to a conclusion only after applying a new test called the 'compelling evidence test'. Under that test, after taking into account an explicit but non-exhaustive list of criteria stated in the amending legislation (age, sex, country of origin, difficulty of obtaining

official records in the country of origin, security risk to Australia posed by people from that ethnicity, locale etc.) and after reviewing all admissible evidence produced by both sides, the FMC would make a determination. The FMC could only order an extension of the detention period if persuaded by compelling evidence that it was necessary.

The FMC's rules of procedure, including the rules of evidence would apply. The detainee must be legally represented by solicitor or migration agent or a barrister, paid for by the Commonwealth. The rules of the FMC would have to be amended - specifically for these kinds of cases - to compel both sides to file and serve on the other party all documents (helpful and unhelpful) that are relevant to security and identity within 3 days of each party coming into possession of the same. This would mirror the on-going obligation on parties to litigation to file and to serve up-dated lists of discoverable documents. If, for example, the asylum seeker was in possession of two different passports, these would need to be disclosed and discovered to the Commonwealth. Any relevant security report about the applicant, or about a group that included the applicant, held by the Commonwealth that was sought to be relied on, would, prima facie be discoverable and may have to be vetted, or 'blacked out' in some way to protect the identity of the source of the report.

A determination made by the FMC would be appealed to a single judge of the Federal Court on an error of law. No doubt decided cases would develop, so as to refine and interpret the meaning and application of the 'compelling evidence test' and jurisprudence would develop as to the criteria the FMC would have to take into account in the application of the test.

The Justice Project in making this submission would submit that the present system of mandatory detention cannot be replaced by a policy and legislative framework that stands outside the normal rule of law as it applies to non-asylum seekers. The rule of law, by its very meaning must apply to all.

If the Commonwealth is to detain persons seeking asylum for a period of more than 30 days, then these reasons must be for unresolved health, identity or security issues. If the detention is to last beyond the 30 days, this must be justified by 'compelling evidence'. Provided the FMC has a clear statutory framework within which to operate and the parties are both 'equally' represented, this important decision - which balances freedom of the individual against the legitimate interests of the State - is one appropriately made by a court and made on the basis of the best available evidence.

Naturally this submission should be read in conjunction with the principal submission already lodged with the Law Institute, Liberty Victoria and The Justice Project.

If there remains any questions arising out of this supplementary submission, please feel free to contact the writer on 03 9639 9722.

KURT ESSER
Chair of The Justice Project



VICTORIAN COUNCIL FOR CIVIL LIBERTIES

THE
JUSTICE
PROJECT INC
STANDING UP FOR A FAIR GO

Submission

Law Institute of Victoria, Liberty Victoria and The Justice Project

Inquiry into Immigration Detention in Australia – Supplementary Submission

To: Joint Standing Committee on Migration

A submission from the Law Institute of Victoria (LIV), Liberty Victoria and The Justice Project

Date: 22 October 2008

Queries regarding this submission should be directed to:

LIV contact person *Laura Helm*

Ph

Email

Liberty Victoria contact person *Evelyn Tadros*

Ph

Email

The Justice Project contact person *Kurt Esser*

Ph

Email

© Law Institute of Victoria (LIV), Liberty Victoria and The Justice Project. No part of this submission may be reproduced for any purpose without the prior permission of the LIV, Liberty Victoria and The Justice Project. The LIV makes most of its submissions available on its website at www.liv.asn.au.

Contents

1	Introduction	3
2	Proposals for an Immigration Detention Order system.....	3
3	The question of identity and implications for persons in immigration detention.....	4
4	Criteria to be applied by the Court in making an immigration detention order	5
5	Proposals to amend Ministerial Direction 21 relating to s501 visa refusals and cancellations	5
6	APPENDIX 1: Examples of mismanagement of Immigration Detention Centres, extracted from <i>Human Rights Overboard</i>	7

1 Introduction

The Law Institute of Victoria, Liberty Victoria and The Justice Project (the joint authors) are pleased to make a supplementary submission to the Joint Standing Committee on Migration (the Committee) *Inquiry into Immigration Detention in Australia*.

This submission supplements the written submission made to the Committee by the joint authors on 25 August 2008 (joint submission) and the oral submissions made to the Committee by the joint authors' representatives at the public hearing in Melbourne on 11 September 2008.

This submission provides further information in relation to the following issues which arose at the public hearing:

- Proposals for an immigration detention order system;
- The question of identity and implications for persons in immigration detention;
- Criteria to be applied by a court under an immigration detention order system; and
- Proposals to amend Direction 21 relating to s501 visa refusals and cancellations.

The joint authors note that the Committee also requested further information about examples of mismanagement of detention centres by GSL Australia Pty Ltd. In this regard, we refer the Committee to the findings of the Peoples Inquiry into Immigration Detention, conducted by the Australian Council of Heads of Social Work, reported in *Human Rights Overboard* and extracted in appendix 1.¹ Please note that The Justice Project proposes to make a further submission to the Committee with respect to sections 3 and 4 below.

2 Proposals for an Immigration Detention Order system

In our joint submission, we recommended that an "immigration detention order" system be established in Australia (see section 4.3 of the joint submission). We consider that a system of immigration detention orders would increase judicial oversight of immigration detention and accordingly increase transparency and accountability of the system.

As outlined in our joint submission, the proposal for a system of immigration detention orders is made in light of the speech delivered by Senator Chris Evans, Minister for Immigration and Citizenship, on 29 July 2007. In his speech, the Minister set out seven values 'that will guide and drive new detention policy and practice into the future'. In particular, he stated that only three groups will remain subject to mandatory detention:

- (a) All unauthorised arrivals, for management of health, identity and security risks to the community;

¹ Linda Briskman, Susie Latham and Chris Goddard, *Human Rights Overboard: Seeking Asylum in Australia* (2008)

- (b) Unlawful non-citizens who present unacceptable risks to the community; and
- (c) Unlawful non-citizens who have repeatedly refused to comply with their visa conditions.²

The joint authors understand from the Minister's speech that people will no longer be detained on a mandatory and indefinite basis while their immigration status is under consideration.

With respect to those who are detained, the government has indicated that "detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time".³ In his speech, the Minister stated that following initial health, identity and security checks, the onus of proof will be reversed so that the Department will have to justify why a person should continue to be detained.

The joint authors emphasise that the changes proposed in the Minister's speech must be effected by amendments to the *Migration Act 1958* (Cth) (the Migration Act) and its regulations. It will not be sufficient to implement the proposed changes by way of changes to policy directions.

As set out in our joint submission, the joint authors consider that the management of health, identity and security risks anticipated in the Minister's speech for "unauthorised arrivals" should occur **within one month**. By way of clarification, we consider that persons should be released from detention as soon as possible and held no longer than one month.

Where health, identity and security checks are not completed within a period of one month, we submit that the Department of Immigration and Citizenship (the Department) should be required to apply to a court for an immigration detention order, justifying in the application why a person should continue to be detained. The joint authors submit that the **Federal Magistrates' Court** (the Court) is the appropriate body to provide judicial oversight of immigration detention.

3 The question of identity and implications for persons in immigration detention

At the public hearing, the Committee requested further information about how the Department, or a court, might resolve the question of identity of an unauthorised arrival where the person does not possess adequate documentation.

The joint authors are of the view that, in many cases, the question of identity is relevant only to a person's visa application. We consider that the question of identity will be relevant to detention only if identity has a bearing on whether someone poses a security risk.

² Senator Evans, Minister for Immigration and Citizenship, "New Directions in Detention, Restoring Integrity to Australia's Immigration System", speech delivered to Centre for International and Public Law, Australian National University (29 July 2008), key immigration value 2 ("Minister's speech").

³ Ibid, key immigration value 5.

4 Criteria to be applied by the Court in making an immigration detention order

The joint authors recommend that the Migration Act be amended so that the Court is empowered to make an immigration detention order only where it is satisfied that the person presents an “unacceptable risk to the community”.

In determining whether the person presents an unacceptable risk to the community, the Court should take into account relevant factors, including:

- (a) The outcome of the health checks anticipated in the Minister’s speech;
- (b) The outcome of security checks, including any adverse security assessment made in respect of the person under Part IV of the *Australian Security Intelligence Organisation Act 1979*.

Where health and security checks have not been completed, the Department should be required to show that there has been no unreasonable delay in the completion of these checks.

The joint authors submit that the detained person must be legally represented at the hearing. This is crucial to ensure that both sides are fairly and equally represented in a hearing that will balance freedom of the individual against the legitimate interests of the State. This is in addition to our recommendation in our joint submission that all unauthorised arrivals should have the right to immediate access to legal advice in respect of their visa application.

5 Proposals to amend Ministerial Direction 21 relating to s501 visa refusals and cancellations

Section 501 of the Migration Act authorises the Minister to refuse or cancel a visa on character grounds. Character is assessed against several criteria, including criminal conduct. *Ministerial Direction 21* provides guidance to decision-makers in exercising the s501 powers.⁴ It is divided into two parts: part 1 provides directions on the character test described in s501; part 2 sets out ‘primary’ and ‘other’ considerations to be taken into account when exercising the s501 powers.

The ‘primary’ considerations to be taken into account in a s501 decision concern the protection and expectations of the Australian community and the best interests of any child of the non-citizen; the ‘other’ considerations concern the non-citizen’s links to Australia and a range of obligations under international agreements. *Ministerial Direction 21* directs decision-makers to give greater weight to the ‘primary’ considerations than to the ‘other’ considerations in making a decision to refuse or cancel a visa under s501.

The joint authors consider that *Ministerial Direction 21* should be amended to better protect non-citizens with links to Australia. In this respect, the joint authors are gravely concerned by the recent amendments to the Migration Act which, in effect, reverse the decision in *Sales v Minister for Immigration and Citizenship*.⁵ The effect of the *Sales* decision was that s501 could not be applied in respect of certain visas. Following the amendments to the Migration Act, we understand that

⁴ Migration Act 1958 – ‘Direction – Visa Refusal and Cancellation under section 501 – No.21’, [http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/95DC3CD189CCA6B0CA25723B007F1417/\\$file/COPYDirection21character.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/95DC3CD189CCA6B0CA25723B007F1417/$file/COPYDirection21character.pdf)

⁵ [2008] FCAFC 132; see *Migration Legislation Amendment Act (No. 1) 2008*, Schedule 4.

Mr Sales – a UK citizen who migrated to Australia at the age of two – and other similarly situated non-citizens have been returned to immigration detention pending removal from Australia.⁶ We consider it inappropriate that s501 has been exercised in this and other instances against people who, though not Australian citizens, are nevertheless members of the Australian community.

The joint authors propose that *Ministerial Direction 21* be amended to remove the distinction between 'primary' and 'other' considerations so that the non-citizen's links to Australia and Australia's international obligations are considered on an equal footing with all of the considerations relevant to a decision to refuse or cancel a visa under s501 of the Migration Act. The joint authors are concerned that a number of the issues relevant to *Ministerial Direction 21* – best interests of the child, links to Australia, arrival in Australia as a minor, health concerns and non-refoulement obligations – are not given appropriate consideration. We also reiterate the proposal in our earlier written submission that persons subject to visa cancellation under s501 should be allowed to live with their families until removal is an immediate practical possibility.

⁶ See Sarah Smiles, 'Labor reverses detainee freedom', *The Age*, 10 October 2008.

6 APPENDIX 1: Examples of mismanagement of Immigration Detention Centres, extracted from *Human Rights Overboard*

The following examples of “mismanagement” of immigration detention centres are extracted from *Human Rights Overboard*, which reports the findings of the Peoples Inquiry into Immigration Detention (the Inquiry), conducted by the Australian Council of Heads of Social Work. Page numbers in brackets refer to page numbers in *Human Rights Overboard*. This information was collated by Liberty Victoria.

Conditions of Detention:

The physical conditions of detention were often poor and unbearable for many asylum seekers. From the descriptions to the Inquiry and personal experience poor physical conditions were not only endured in remote detention centres.

Date, Location & Contractor	Example of Mismanagement
Woomera	<p>A former Woomera worker told the Inquiry about the physical conditions for detainees held there:</p> <p>“Eighteen hundred detainees arrived in a couple of weeks. We had to allocate them places to live, which were mainly Bessa block buildings fit for one person and on many occasions there would be six people in one. There was no air conditioning, the temperature would range easily high 40s and my shirt would be covered head to toe with flies, there were scorpions and snakes and lizards. There were eight toilets for 1800 people. There were two washing machines. There were two taps in the compound. One would often break down so there was very limited access to drinking water apart from meal times. There was hardly any staff. They used to line up for four or five hours in the heat just to get Panadol” (p116).</p>
Villawood	<p>Poor physical conditions in detention centres were not confined to remote detention centres. A former Villawood detainee told the Inquiry:</p> <p>“I had a lot of cockroaches in my room where I used to wake up in the morning and there were cockroaches in my chest and in my hair. For three months I asked either to be moved to another room or to have the cockroaches exterminated. They refused” (p117).</p>
Curtin	<p>A boy who spent three years in detention described to the Inquiry how young detainees often went hungry:</p> <p>“The denial of food was everywhere. It was absolutely bad in Curtin. They would force people to actually steal and children saw this. Parents couldn’t say anything because they needed the food...” (p119)</p> <p>Note:</p> <p>In July 2002, Mark Huxstep, a nurse who worked in detention, told the Human Rights and Equal Opportunity Commission (HREOC) Inquiry into Children in Immigration Detention that detainees were only allowed 250mL of milk and one piece of fruit per day. Mr Huxstep also told the HREOC Inquiry that there was sometimes not enough formula for infants, due to the bureaucracy involved in its distribution (p119).</p>

	<p>Asylum seekers, visitors and people who worked with detainees told the Inquiry that complaints about treatment and conditions of detention to detention authorities were largely ignored.</p> <p>For example, a former Villawood detainee told the Inquiry:</p> <p>"We had monthly meetings where we brought up things like quality of food, quality of health care and they just ignored it. Ignored it totally. Every month was the same agenda. They did nothing and they made people really uptight and anxious" (p158).</p>
<p>August 2004</p> <p>Baxter</p> <p>GSL</p>	<p>Following numerous complaints from detainees about the food provided in detention centres, it was confirmed by the Department of Immigration that maggots had twice been found in food served to detainees (p120).</p> <p>Note:</p> <p>The then Minister for Immigration responded by saying that Baxter was "the best detention centre that I have seen in the world in terms of conditions. I don't have any evidence of unhygienic conditions in Baxter" (p120).</p>
<p>October 2005</p> <p>Villawood</p> <p>GSL</p>	<p>A Villawood detainee issued proceedings in the Federal Court against the Immigration Department, GSL and the Federal Police in relation to the merit-points scheme – in which asylum seekers worked in the detention centres to occupy themselves and earn merit-points, which could be used at canteens within the centres. He claimed that detention authorities were flouting <i>Section 235(3)</i> of the <i>Migration Act</i>, which prohibits unlawful non-citizens from engaging in work, paid or otherwise, while in Australia, and that the Federal Police had failed to investigate this offence – <i>Hussein v Secretary of the Department of Immigration and Multicultural Affairs (No. 2)</i> [2006] FCA 1263</p> <p>Note:</p> <p>Although the case was dismissed, five months later the former government amended the migration regulations to allow detainees who requested employment to perform work within detention centres (p121).</p>

Provision of Health services and care:

The inadequacy of medical care provided to people in detention centres is a recurring theme in the Inquiry. It is essential to note that GSL sub-contracted health-care providers, namely International Health and Medical Services (IHMS) for primary and allied health-care services within detention centres; and Davidson Trahaire, trading as Professional Support Services Pty Ltd (PSS), for psychological services. It also engaged general practitioners and psychiatrists on a contract basis. Whilst, when ACM ran detention centres, health services were provided by staff directly employed by ACM and those engaged by it on a fixed-term contract basis. (122)

Date, Location & Contractor	Example of Mismanagement
Port Hedland	The Inquiry heard that, in many cases, the only dental care offered to detainees was tooth extractions, with more expensive procedures denied on the basis of costs. A refugee supporter told the Inquiry that she paid \$400 so a detainee in Port Hedland could access dental care:

ACM	<p>"Frequent requests to ACM's doctor to allow him to visit the dentist were denied, with expense given as the reason. Finally he was told that if he could produce \$400 to pay for his own treatment, he would be taken to the dentist. Are not taxpayers already paying the contractor for medical and dental treatment?" (p123).</p> <p>Note:</p> <p>Such instances were not limited to Port Hedland, a former detainee told the Inquiry:</p> <p>"I have heard a nurse speaking to the department that the Chinese with infection in her tooth has come to her begging could you do something? 'How long's she going to be here?' 'Oh', he says, 'maybe a couple of weeks.' She said: 'Oh, if she is being deported we don't need to spend money on her" (p123).</p>
Woomera ACM	<p>A man detainee in Woomera detention centre told the Inquiry that detainees who required glasses were asked to pay \$120 for them (p123).</p> <p>Note:</p> <p>Mark Huxstep, a registered nurse who worked at Woomera detention centre for six months, told the HREOC Inquiry that despite numerous people requiring glasses no detainee was provided with glasses, because the cost was deemed unnecessary by detention authorities (p123).</p>
Woomera ACM	<p>A former detention worker told the Inquiry that Woomera's medical centre was equipped to deal with eight to ten detainees but had to deal with up to forty. Although, untrained she performed basic medical procedures and gave out medication (p123).</p>
	<p>A woman whose son had a fractured foot, and whose repeated requests for him to see a doctor were ignored, told the Inquiry:</p> <p>"Then one day I just got so angry and I said, 'look, if I am not going to see tomorrow my number to go in hospital, believe me you have job with me. You not going to have easy day tomorrow.' That is what I said. If you be very quiet you never going to get what you want" (p158-9).</p>
Nauru	<p>According to Oxfam, at least forty people were airlifted to Australia from Nauru for medical treatment due to a lack of services on Nauru (p124).</p>
2002-4 Manus Island	<p>In February 2002, the Royal Australian College of Physicians issued a press release calling for the immediate removal of asylum seekers from Manus Island after some of them contracted malaria (p124).</p> <p>Note:</p> <p>However, asylum seekers were detained on Manus Island until the last detainee, Aladdin Sisalem, the sole occupant of its detention centre for the previous 10 months, arrived in Australia in May 2004 (p124).</p>
May 2003 Baxter	<p>The Inquiry heard that health services near Baxter were limited and that there was often disagreement among health workers as to who were priority detainees requiring assistance. A visitor to Baxter told the Inquiry the consequences of poor medical services for one detainee:</p> <p>"In May 2003, my friend said 'so-and-so has got a sore back'. The next day he said, 'he's got a really bad stomach as well', then the next day this guy couldn't go to the toilet and by the end of it he couldn't actually move. He'd asked for the doctor. He'd been to medical so many times. Finally the other guys said: 'Look, if you don't do something we're going to smash the place up – get him a doctor.' So</p>

	<p>there was a CERT (Centre Emergency Response Team), which is where the officers get in the riot gear, and then at four o'clock the next morning he was taken to Port Augusta Hospital and had an operation to get his appendix removed because it had burst. He had to be transferred to Queen Elizabeth Hospital in Adelaide because he had developed peritonitis, which can kill you" (p125-6).</p>
Baxter	<p>The Inquiry also heard that often medical care was often only provided after detainees fought with detention centre staff or damaged property. A man who spent two and a half years in detention told the Inquiry:</p> <p>"Nurse came in and I asking, 'my finger like this, I have very pain.' One day one Iranian guy was very upset and he say, 'come with me' and he used bad words and he said, 'look his finger and are you human or no?' A that time two weeks already and I have to wait another two or three days doctor came. Doctor saw me and he said, 'when it happen?' I said 'three weeks ago.' He arrange for the operation in hospital in Whyalla. He said he knows what is going on in Baxter" (p126).</p>
Baxter	<p>Another detainee told the Inquiry:</p> <p>"I was literally crawling on my elbows to go to toilet. A person used to carry me on his back to take me to the toilet (as a result my four discs were bulged). There was one week of struggle, shouting and screaming to get crutches or a wheelchair so I don't have to rely on other people to take me to the toilet" (p126).</p> <p>Whilst, Kate Gauthier, a refugee advocate told the Inquiry:</p> <p>"A man had a broken ankle. He was taken to hospital where they X-rayed it but they weren't able to set it at that time. He was supposed to come back the next day but they didn't take him back for another thirteen days. And that was only after he smashed a light bulb to force the issue" (p127).</p>
	<p>Detainees were often handcuffed while undergoing medical procedures, leading some to refuse health services. A refugee advocate told the Inquiry:</p> <p>"This young man said, 'I wouldn't go to the dentist, they came to put me handcuffs.' He said 'I wasn't going out in the street,' he was too proud to do that" (p128).</p>
	<p>Whilst another detainee who complained to DIMIA about finding himself handcuffed to the bed whilst in recovery and received a letter of regret refused further treatment when detention workers demanded they handcuff him again (p128).</p>
Maribyrnong	<p>Detainees who became ill enough to be hospitalized were technically still in detention, and so were guarded by detention officers. A visitor told the Inquiry:</p> <p>"I visited a woman from Nauru in Maribyrnong and in hospital and also in a rehabilitation centre. She had spinal trouble so she was in a very, very bad way and yet both in the hospital and the rehabilitation centre there were two officers on duty 24 hours a day. She couldn't move from the hospital bed to the door. She knew no English and she was virtually crying all the time" (p128-9).</p>
Woomera	<p>Detention officers sometimes believed that detainees were faking their illnesses. Wayne Lynch, who worked as a nurse at Woomera detention centre as a nurse and counselor told the HREOC Inquiry that:</p> <p>"A 60-year-old woman with neurological deficits was not transferred to hospital upon advice of medical and nursing staff. Management believed that it was psychomatic. Eventually this detainee was diagnosed as having had a stroke" (p129).</p>
Baxter	<p>Other detainees reported that detention workers believed Cornelia Rau was faking her mental illness:</p> <p>"While Cornelia was in the compound they brainwashed everyone to make them believe that she had no mental problem. They said that</p>

	according to the psychologists report she plays her game very well. And she's a good actress and she just pretended to be crazy because she didn't want to be deported" (p129-30).
Baxter	A refugee advocate told the Inquiry that a Baxter psychologist noted on the file of a detainee who was losing consciousness and falling into concrete in regular panic attacks: 'Informed that many people feel his panic attacks are not genuine.' Aware of the attitude of detention health staff to his illness, the detainee refused to interact with them. The refugee advocate told the Inquiry: "During one attack, in full view of those witnessing, a senior male nurse allegedly exposed this young man's penis and pinched it with his fingers. His motive apparently was to prove he was feigning the event. This experiment failed, as he was actually unconscious, and he was later informed of the incident" (p130).

Mental Health Conditions:

The mental health of detainees has emerged as a major issue for concern, not only for those held indefinitely, but also for those released into the community. The provision of mental health services, similar to other health services, by contracted companies has proved to be problematic as the examples below clearly demonstrate.

Date, Location & Contractor	Example of Mismanagement
	Detainees were forced to rely on detention officers for the most basic of needs. A man who spent six years in detention told the Inquiry: "I know the meaning of humiliation because I have been humiliated. Not only me. They provoke people, they harass people, they humiliate people and they enjoy that... In detention there is no law. Everything depend on individual officer. Our life depend on his kindness, which should not be" (p134).
Woomera ACM	Journalist Madeleine Byrne, who conducted research on staff in detention centres, told the Inquiry: "I spoke to a former nurse who worked at Woomera and she told me that a former cook was conducting preliminary psychiatric assessments of detainees in 2000. Another person at Woomera around the same time saw what she said was a nursing aide dispensing drugs in the mess. Both are good examples of people who were doing things outside their legal responsibilities, and putting people at risk" (p141).
Woomera ACM	A former Woomera worker told the Inquiry she had been asked to counsel people despite not having the appropriate training: "You are looking at 400 to 500 people. I couldn't possibly reach most of them and the counseling area was under a tree. There was no private area. I would deal with six to twelve people a day self-harming. I was dealing with people tying razor wire around their throats, using razor blades, knitting needles that they would sharpen, rope, whatever they could access, overdosing on Panadol, detergent, chemicals, gravel – one person ate a kilo of gravel and perforated his bowel. People climbing on roofs and trees threatening to jump. I had to negotiate [with] these people to not hurt themselves. I was successful in about 80 per cent [of cases]" (p141-2).
	A social worker who visited detention centres told the Inquiry: "I saw one guy who tried to commit suicide and who was then on a two-minute watch with these completely unqualified officers just

	literally following him around all the time. Every two minutes, they would write something on a piece of paper. I just thought, this would drive me crazy after half an hour" (p142).
Baxter	Detainees who received bad news got little consideration or support from detention officers. A migration agent told the Inquiry she witnessed an Iraqi detainee being told of his father's death one Saturday morning in the Baxter visit centre, which was full of other detainees and visitors. The distant family members who gave hi the news were made to leave the visit centre with other visitors during the officers' lunch break. When they tried to return an hour later, they were initially refused entry because the distraught detainee was 'causing trouble' by refusing to leave the visit centre" (p136).
Baxter	Regular visitors and psychiatrists informed the Inquiry that they had never seen such mental deterioration. Dr Howard Gorton, a psychiatrist who worked at Baxter, told the Inquiry: "The people I saw and treated at Baxter were the most damaged people I've seen in my whole psychiatric career. Up until that time, I'd never met an adult-onset bed-wetter. I'd never someone with psychological blindness. And there were also a few physically crippled people who believed they were unable to walk, and this was probably psychological too" (p139-40). Note: The response of detention authorities and health care professionals most often was to prescribe psychiatric medication. Psychiatrist Jon Jureidini told the Inquiry: "Every adult we've ever seen in detention has been psychiatric drugs" (p144).
Port Hedland	On entering the detention centres, all asylum seekers were given ID cards and assigned numbers, the number was used for all official transactions within the centres. A former detainee told the Inquiry: "The first day we were given a number and I was that from now that's how I will be known. You will be ACS123. That was one of the most difficult things for us because having your normal freedom taken away from you and at the same time you lost your name. One of the most difficult things for me too was that there were three different head counts. There one at six in the morning, one at midnight and another at two in the morning. No matter who you are, even a baby, they will have to wake you up, you show your card or shout your number loudly" (p132-3).
	Detainees in Woomera and Maribyrnong described similar stories about the head counts. An American woman who was detained in Maribyrnong told the Inquiry that women and men would head count in the women's dorm (p133).
GSL	A man who spent four years in detention told the Inquiry: "I got psychiatrists. Always when we talk they supporting GSL; they don't about ourself because their main point is that we be quiet in there. If I make trouble and GSL call the psychiatrist, [the psychiatrist] say if you do this they put [you in] jail or they can make it worse for you. They give tablet for us to be calm" (p144).
2004 GSL	External mental-health professionals frequently had difficulties accessing detainees referred for assessments, as they were often cancelled by detention officers due to a lack of transport or concerns about security (p142).

<p>2004 Baxter GSL</p>	<p>A 2004 document presented to the Inquiry outlines a five-stage management process for Baxter detainees who 'have demonstrated unacceptable behaviour or who have demonstrated behaviour that has threatened the security and good order of the facility.'</p> <p>The five stages are: placement in the 'management unit' and then through four stages of increasing freedoms, including visits, phone calls, 'time out' of the room and the ability to earn merit points in Redgum compound. Stage one and two of Redgum compound are reviewed after seven days, stage three is reviewed after 14 days and stage four lasts for 31 days (p152).</p> <p>Note:</p> <p>A visitor to the Baxter detention centre told the Inquiry that despite time frames, the five-stage management process could continue indefinitely (p152).</p> <p>An asylum seeker who spent years in Baxter described the management unit to the Inquiry:</p> <p>"Almost soundproof, there is no window, twenty-four hours there is a light, there is a video camera, there is no privacy. If you go for toilet or shower, they will see. There is female officer watching everything and this is called humiliation. I been only a couple of times. But I have seen many people there 20 times, 30 times, so because of that treatment I believe people become mentally insane or abnormal" (p151).</p> <p>Whilst, an asylum seeker who had been detained in Baxter told the inquiry he was put in Redgum compound for throwing plastic cutlery on the ground (p153).</p>
<p>October 2004 – February 2005 Baxter GSL</p>	<p>Through-out her detention at Baxter detention centre Cornelia Rau was placed in behaviour management units -- two weeks for the first time and 94 days for the second time.</p> <p>External psychiatrists and visitors consistently expressed concern about Rau's mental state only to be dismissed by detention centre workers (p148-50).</p>
<p>July 2005 Baxter GSL</p>	<p>Two psychologists practicing at Baxter detention centre were discovered to be unregistered in breach of the Psychological Practices Act (p141).</p>
<p>2005 Baxter GSL</p>	<p>In <i>S v Secretary, Department of Immigration & Multicultural & Indigenous Affairs</i> Finn J stated that a detainee's refusal to accept counseling from detention-centre psychologists on the basis of distrust was 'understandable'. (143-4)</p> <p>Furthermore, Finn J concluded that one of the applicants, 'though known to be a mentally ill detainee, was treated with neglect and disregard' and that Baxter provided inadequate psychiatric services (p156).</p> <p>Note:</p> <p>That year, 37 detainees were transferred from Baxter to Glenside, almost four times the total number that had been moved there since Baxter opened in 2002 (p156-7).</p>

GSL	<p>Detainees transferred to psychiatric hospitals still felt the presence of detention authorities, like asylum seekers hospitalized for physical problems, with at least two guards assigned to each detainee.</p> <p>A former detainee transferred to Glenside told the Inquiry:</p> <p>"They took me to Glenside. Anytime we wanted to go walking around, three officer each detainee, they follow us. Actually we were joking all the doggies coming for a walk..." (p157).</p> <p>Note:</p> <p>It is estimated that using guards in this way cost at least \$200,000 per month and considerable other costs were incurred (p157).</p> <p>Hospital staff successfully negotiated for the removal of most the guards. A refugee advocate told the Inquiry:</p> <p>"It was the first time I ever saw anyone stand up to GSL and win. The hospital staff couldn't come to terms with the way that GSL just moved in on the hospital and wanted to take it over. It was only a matter of weeks before they insisted that GSL remain outside. Eventually they reduced it to just two officers to monitor the visits" (p157).</p>
------------	--

Physical Mistreatment:

Date, Location & Contractor	Example of Mismanagement
Baxter	<p>An unwell detainee was refused food on a nine-hour return trip to investigate his illness. Dave Leach, a regular visitor to Baxter told the Inquiry:</p> <p>"Three guards took him to Adelaide and it was fairly warm day. They stopped at McDonald's but they would not get any lunch for this detainee. On the way back they stopped at McDonald's again and this man said, 'look, can you get me something to eat. I'm very hungry.' He said to them, 'I will give you some money when I get back. Could I just have some chips and Coca-Cola.' That's all he asked for, and they said no. These men sat eating their McDonald's in front of him. He was handcuffed to them. Then he said, 'I'm thirsty.' So they stopped the car at a petrol state and said, 'go and drink the water out of the hand basin in the toilet" (p135).</p>
	<p>A former detainee told the Inquiry:</p> <p>"When I escape from detention centre and they catch me, they pushed me on the ground and one officer put fee on the back of my neck and they tie my hand with leg together from the back, then they sent me to isolation room. They took my clothes and they, behind the small screen window, a couple of officers make fun" (p176).</p>
2001 Port Hedland ACM	<p>Port Hedland officer Graeme Hindmarsh was convicted of assaulting a handcuffed 47-year-old Iranian detainee.</p>

Woomera ACM	<p>A young man who spent six months in Woomera detention centre as an unaccompanied minor told the Inquiry he had witnessed detention officers assaulting a detainee:</p> <p>"There was one person, mentally he was not well. He threw a chair which is not good... About five or six ACM officers grabbed him. They got some karate and they pushed him to the ground. There was no-one except the ACM officers and that person, and I was there. When they pushed him to the ground, one ACM officer put his knee on his neck and was saying, 'now are you okay, now are you okay?' I was really shocked and I ran and told other people to come. But when we came, there was no-one there. They took him away, I don't know where" (p178).</p>
2002 Woomera ACM	<p>The Inquiry was presented with a 2002 ACM stocktake of armoury and equipment at Woomera. Despite the fact that immigration detention is described as administrative rather than punitive, ACM held, at the time: 48 standard ring batons, 48 'grenade grip' batons, 55 riot helmets, 48 riot vests, 48 riot shields and 48 each of guards for legs, forearms, elbows and groins, 54 pairs of handcuffs, 32 'rescue tool' knives, tear as, 85 gas masks, 2 cameras and 3 video cameras (p178)</p>
2004 Transfer from Maribyrnong to Baxter GSL	<p>Five detainees being transferred from Maribyrnong to Baxter were mistreated. Despite the initial denial of any wrongdoing by GSL and the Immigration Department, it was found that the detainees had been assaulted, denied food and water and had been forced to urinate in the van when officers ignored their pleas for help and denied them toilet breaks (p134).</p> <p>Note:</p> <p>A report detailing this mistreatment was released by the then immigration minister Amanda Vanstone in July 2005.</p> <p>GSL was fined \$500,000 for breach of contract and the matter was referred to the Victorian police to consider criminal charges (p134).</p>
GSL	<p>A female detainee that had been using a crochet hook to do craft work was asked by a detention officer to give it up because it was a weapon. When the female detainee argued, the detention officer called for backup and three detention officers threw her down and handcuffed her to take away the crochet hook (p135-6).</p> <p>Note:</p> <p>Items considered by GSL to pose a security risk include: crochet hooks, Rollerblades, tape recorders, soccer boots, DVDs, wallets, nail polish, pencils and pens (p135-6).</p>
October 2004 Baxter GSL	<p>A former Baxter detention officer, Paul Leavai, received a two month suspended sentence after kneeling a detainee in the stomach (p177).</p> <p>Note:</p> <p>Paul Leavai later went to work at a refugee camp in Nauru (p177).</p>
13 December 2004	<p>Australian environmental consultant Sonia Chirgwin witnessed a deportation on a flight from Sydney to Thailand. Ms. Chirgwin told ABC Radio:</p> <p>"There was an enormous amount of noise, of metal scraping on metal... then two big... security guard-looking people dragged onto the plane a man who was in handcuffs and leg cuffs with chains to a... leather restraint thing around his waist. Probably the most alarming sight was he was gaffer taped around his mouth, all around the back of his head, several times, so that he could not make any noise whatsoever and he looked terrified. They put a flight mask over his eyes... The man that I spoke to said that he was so uncooperative that he'd been screaming for eight hours" (p221).</p>

	<p>Note:</p> <p>In response then Acting Immigration Minister, Peter McGauran, told ABC Radio:</p> <p>"Restraints are rarely used, and only when necessary to prevent a person harming themselves or others. It's the behaviour of the person being removed that determines the measures that have to be used. I'm sure it wasn't pretty for the observers on the aircraft, but it was necessary and entirely brought about by the person himself" (p221-2).</p>
	<p>A submission to the Inquiry included an account by a man, who was eventually deported in January 2005, of a previous attempt to deport him:</p> <p>"I stood screaming and asking for help from passengers. Those escort officers beat me fiercely with kicks all over my body, especially my genitalia. The nurse, trying to inject in my leg, missed my body to hit the plane seat where the needle got bent. But he didn't change the needle and injected me again with that contaminated needle. I continued to scream and ask for help until few passengers cried and combined with each other to relieve my oppression" (p219).</p>
	<p>The Inquiry heard numerous stories of deportations in which asylum seekers were forcibly injected or made to take tablets, despite it being against Departmental policy. A former detention officer described an attempted deportation to the Inquiry:</p> <p>"We have an 'extraction', he's high risk, whatever that meant... We get this guy out of bed early in the morning. He clings to the bedstead... My job is to unwind his fingers, struggling, shouting he won't go. There are nurses. First time I'd seen a 'chemical restraint' used. They must have broken about three needles on him. I'm thinking there must be a better way, this blokes not an animal. We put him in the fishbowl, that's like a cage. There were about six big blokes like me. Antother tries to get these injections into him. But it's not working... Next week we did it again. This time he went quietly. 'Just give me the tablet,' he said, 'don't inject me with that'" (p221)</p>
2005 Baxter	<p>Peter Mode, a 24 year-old Baxter detainee, complained about the food whilst another detainee threw it against the wall. Shortly afterwards they were watching a video when Peter left the room briefly. Upon returning, up to 12 guards were taking the other man away. Peter claimed that, when he objected that the man had just had a kidney operation, Peter was held down by guards while one of them deliberately twisted his leg until it broke, after which he was forced to wait an hour before being taken to hospital (p178).</p> <p>Note:</p> <p>The incident was referred to the South Australian police (p178).</p>
GSL	<p>A refugee advocate told the Inquiry:</p> <p>"There was a very, very bad riot. He had tear gas sprayed directly into his face. He was beaten by the guards. They came in riot gear to remove him from the compound and when he was taken to management, they threw him against a wall so severely that he couldn't get up and he had difficulty walking for some time. About a year later they finally decided that he needed surgery. He was obliged if he wanted to make a complaint to do so in front of GSL officers. It was considered a security risk to leave him a room with a policeman on his own and he knew that if he did that he would very likely get some kind of retribution, so he refused to give evidence" (p183).</p>
Villawood	<p>A refugee advocate informed the Inquiry about a case where the Department of Immigration initially attempted to deport an asylum seeker who was later recognized as a refugee.</p> <p>"He was seeing some visitors when the riot people arrived in the visitors' centre and removed him to Villawood for deportation. There was actually a seat booked by DIMIA on an Emirates flight at 6pm that night. He was in such a state they thought they had better admit</p>

him to a psychiatric unit to see if he was fit to travel. We went and visited him and he was in the locked ward in a foetal position on the floor, unable to speak, with two GSL guards. He subsequently was taken back into Villawood and was on 14 separate pills, very physically ill" (p222).

Violence and Self-Harm in Detention:

As a consequence of formal complaint mechanisms proving to be largely ineffective, and indefinite detention impacting dramatically on people's mental health, asylum seekers turned to the only forms of protest and expression of frustration available to them – property damage, demonstrations, self-harm and hunger strikes.

Date, Location & Contractor	Example of Mismanagement
Baxter	<p>A detainee who spent 18 months in Baxter detention centre told the Inquiry:</p> <p>"Every officer have different rules. They like make people angry. Someone got very bad headache and they have to wait hours to get a Panadol, and some people lose their control and they just start breaking things. They say we don't have enough staff today, you have to wait, and when they start breaking things, within one second nurse and hundred officers around" (p161).</p> <p>Note: Many detainees told similar stories of detention workers provoking trouble.</p>
Port Hedland	<p>A detainee at Port Hedland described a riot to the Inquiry:</p> <p>"The riot happened because people were really tired. They were trying to move one of the family and the boy, 16 or 17, did resist and said he didn't want my father be treated like that. The boy was taken away; they started beating the boy. People were really unhappy about everything else anyway, so people got really upset and started breaking things and took the hammer on everything and for a couple of hours the officers were not allowed in the compound and a lot of things were broken, the kitchen was destroyed.</p> <p>A couple of weeks later they brought the police in. We had to go back to our room and there was a security guard in front of every room. Everyone has to get out of their room, and lie down and put their hands on their backs for hours..." (p163).</p>
2000 Woomera	<p>Following the June 2000 breakout from Woomera the mindset of detainees changed dramatically, as did the conditions of detention. Mark Huxstep, a registered nurse at Woomera witnessed a Centre Emergency Response Team (CERT) arriving after detainees had walked around the compound chanting for their freedom two months later, he described the scene to ABC radio:</p> <p>"They were certainly something to behold. They were dressed in dark blue overalls with riot gear and helmets, riot shields, batons. They had covers over elbows and knees. They were prepared for a full-on conflict. All huge men, and it was just intimidating to witness it, and I was on their side of the fence" (p165-6).</p> <p>Note:</p>

	The incident escalated as two detainees believed to be the ringleaders were removed – detention officers fired tear gas and water cannons at the detainees. At about five o'clock the next morning a CERT team moved in to remove some detainees, initially they dragged out an elderly old lady before going back inside and dragging out the correct person (p166).
Port Hedland	A former detainee held in Port Hedland told the Inquiry: "There was one man from Afghanistan, a bit elder man and he was really, really mentally sick. He has signed more than a year that he want to go back but they didn't send him. He was waiting and waiting. One day he just climb on the tree and be jump and he hit the concrete and was bleeding all over. I look and I thought he died. They took him in hospital and then they deport him to Afghanistan" (p168-9).
	A man who made numerous requests to be held in the same detention centre as his brother told the Inquiry: "Even they didn't let me sometimes ring and talk to him. You know what way I could talk to my brother, just take the razor in my hand and I tell them, 'if you not going to let me talk to my brother, easy, I cut myself,' and I did it. If you see here, everywhere I did it. I didn't have anybody in this country, just my brother. Finally after three years I saw him" (p169).
Late December 2002 – Early January 2003 Baxter	During this period detention centres in Woomera, Baxter, Port Hedland, Christmas Island and Villawood were severely damaged by fire. A refugee advocate told the Inquiry that after the fires all the single men in one compound at Baxter were given a letter telling them to pack and be ready to be deported. The detainees told her: "We sang, 'We want freedom, we did not do violence.'" But about 50 guards came in riot gear and sprayed tear gas into our faces...On 4 January, early in the morning, crowd of guards came in riot gear and dragged the men out of their beds, some had no clothes on and were not allowed to dress. Then they had to sit outside for hours like this. This very shame for us." (174) Note: Following the fires, detainees were refused access to phones and other communication with anyone except their lawyers or human rights organizations – some for up to six weeks. More than 132 men were strip searched, 77 Woomera detainees and 55 men held at Baxter (p174).

Families and Children in Detention:

More than 2000 children were kept in Australian detention centres for an average of one year and eight months (p184).

Date, Location & Contractor	Example of Mismanagement
Villawood	A refugee advocate told the Inquiry that a young mother who climbed onto a low roof at Villawood in a protest with her three-year-old daughter, suffered severe consequences: "She was sedated, restrained, and locked in solitary management. The next day she was transferred to the psychiatric unit at Bankstown Hospital and scheduled. At no time was she deemed psychotic. The daughter was placed with an unknown family at an

	undisclosed location. The child was returned bruised and dirty one week later. We never knew where this little girl was taken, we couldn't find out" (p190)
Curtin	<p>A man who spent a year in Curtin as the sole parent of his five- and six-year-old children described to the Inquiry how they were left alone in the detention centre when he served a four-month prison sentence for participating in a riot:</p> <p>"Everyone had been involved in that demonstration but they targeted a selective group, and I was unfortunate enough to be among those. My mind was completely occupied by thinking about my children in Curtin. After one month imprisonment they allowed the children to visit me once a month via video conference..." (p190-1)</p>
Woomera	<p>Psychologist Harold Billboe who worked at Woomera for 14 months told HREOC that:</p> <p>"I saw tear gas used two or three times on groups that included children. I also saw water cannon used four to five times on groups involving children during demonstrations... I also saw adolescent children cuffed behind their backs and carried by their elbows." (p206 FT)</p>
Woomera	<p>A former worker at Woomera told the Inquiry:</p> <p>"A lot of my reports never went through to organizations they were supposed to. A lot of my reports on children were stolen, went missing. One incident was two young boys sleeping in their beds with their mum and dad, and two officers dragged them in their boxer shorts across the compound which is gravel. Their feet, their body, their legs were cut to smithereens." (p208)</p> <p>Note:</p> <p>Detention workers told the Inquiry similar stories of ACM or the Department of Immigration failing to take further action after complaints were made describing assaults on children.</p>
December 2001 Woomera ACM	<p>Zihar Sayed, a 13-year-old unaccompanied boy was dragged by his neck from a room in riot gear. A nurse, doctor and female guard all witnessed this and the female guard tried unsuccessfully to prevent the child being taken. Once outside, the guards allegedly demanded that he identify people rioting in another compound. When the boy refused, he was bashed in the face and shoved back into the room where witnesses said he was crying and shaking violently. Within minutes of the assault, Dr Dominic Meaney examined him and reported bruising around his neck and a welt on his face. The following day the boys injuries were photographed, but the photos later disappeared. On the day of the incident Federal Police were at Woomera but did not interview Dr Meaney until several weeks later.</p> <p>Note:</p> <p>In March 2002, the three guards were sacked after an ACM investigator found that the boy had been assaulted, but were later reinstated after an intervention by ACM's Sydney headquarters.</p> <p>By October 2002, the case had gone to court twice, but each time the guards failed to appear whilst responsibility for the guards was denied by ACM. (pFT)</p> <p>In early 2003, Steve Davis, a senior Department of Immigration official told a Senate committee that of the three charges against the officers, two had been withdrawn due to insufficient evidence and one was being pursued. (p209 FT)</p>
7 April 2002	An ACM incident report provided to the Inquiry described how a 12-year-old and 14-year-old boy attempted to hang themselves. (p211-2)

Woomera ACM	
	Giving birth was particularly stressful for women in detention, a visitor to detention centres told the Inquiry: "She had recently given birth to her daughter and told me how she was taken to hospital in a van and escorted by female officers who stayed with her during the birth. She was crying while she was telling me that they treated her like a criminal even in labour." (p191)
1999 Port Hedland	A nine year-old Chinese boy who had been held at Port Hedland detention centre for six years was forcibly fed tranquillizers to control his behaviour (p196)
	Detention authorities often prevented families from visiting women in hospital after giving birth. A woman who had previously given birth to premature triplets that later died, gave birth to twins at 26 weeks gestation while in detention. Her husband told the Inquiry: "When my wife was at the hospital, she told the interpreter and doctor 'Bring my husband to visit me.' She was very worried, but ACM said 'We can't do anything because we not have enough staff.' Maybe two or three times we visit hospital. My children were crying everyday, 'Do we go and visit mother?' ACM said 'afternoon' and in the afternoon ACM said 'evening' and 'tomorrow'.... (p191-2)
August 2003 Nauru International Organization for Migration	Three Australians working for the International Organization for Migration were charged with drug offences amid claims of drug dealing in the centres). A boy who spent a year on Nauru told the Inquiry: "Over there I used to smoke two packs a day to just keep myself busy. I did drugs, I want to be honest, to just get my mind out of it. You don't have hope...They are torturing you, but they have smiles on their face..." (p199)

Deaths in Detention:

The Inquiry state that between the introduction of mandatory detention and 1999 only one death occurred in detention. On 10 May 1998, an American who had arrived in Australia the day before died of liver disease in Villawood. Between 2000 and 2008, 18 people died under the care of the Immigration Department, which is a 17000 per cent increase (p243).

Date, Location & Contractor	Example of Mismanagement
22 December 2000 Maribyrnong	Viliami Tanginoa, a Tongan who had lived in Australia for 17 years after overstaying his visa, deliberately dived to his death at Maribyrnong detention centre on the day he was due to be deported. For eight hours prior to his death he was perched on top of a basketball hoop in the rain. The Inquiry obtained a copy of Victorian State Coroner Philip Byrne's Record of Investigation into that death, it states: "I remain puzzled why virtually no-one appreciated Mr Tanginoa was at imminent risk of some form of self-harm...Quite frankly, it should

ACM	<p>have been patently obvious and management should have been alerted that great risk of self-harm was by this time, very probable..."</p> <p>"I do not see any strategic, informed, cohesive, active structured management plan... In fact what I see is a haphazard, unmethodical wholly inadequate approach... If one action epitomizes the ineptitude of the approach adopted by ACM, it is the action of... bouncing a basketball in the courtyard in the vicinity of Mr Tanginoa... If expert negotiators had been involved, I am satisfied the tragic event would have been prevented. Whilst the immediate cause of My Tanginoa's death was his own action... Another cause was the inaction of centre management." (p244)</p>
23 June 2001 Port Hedland ACM	<p>On 21 January 2001, 41-year-old Palestinian asylum seeker and father of three, Mohammed Saleh, was placed in Juliet – the isolation area of Port Hedland detention centre, for alleged involvement in a riot. No charges were laid against him and Department of Immigration manager told the coronial inquiry that he posed no behavioural management difficulties. Thirteen days later Mohammed was released in a severely depressed state. In the seven weeks following his isolation, he had a mental breakdown and was no longer able to care for himself, Mohammed sought medical attention 22 times. He was admitted to Hollywood Private Hospital in Perth in early April for severe depression with the probability of psychosis. ACM accompanied him at all times. Whilst in hospital it was discovered that he had a tumour in his stomach, which required surgery. Doctors waited two months for his depression to improve so they could operate, eventually giving him electric-convulsive therapy, an option they had tried to avoid because he had been tortured by electric shock. He died from complications following the surgery (p245).</p>
26 July 2001 Villawood ACM	<p>Avion Gumede, a Nigerian man with a wife and child in South Africa, hanged himself hours after being taken to Villawood (p246).</p>
26 September 2001 Villawood ACM	<p>Phuangtong Simaplee, a 27-year-old Thai woman, died at Villawood detention centre after being there for three days. Phuangtong had been brought to Australia as a 12-year-old sex slave and was taken into immigration detention after authorities raided a Sydney brothel. (FT) When Phuangtong arrived at the detention centre she weighed just 38kg. The Inquiry was presented with a report to the NSW State Coroner by forensic pathologist Allan Calla. The report shows that Phuangtong had informed detention staff she was a heroin user, and that she believed she would experience withdrawal symptoms whilst in detention. Phuangtong was seen vomiting more than 16 times and her weight plummeted to 31kg in three days.</p> <p>Barrister Georgina Costello, who appeared at her inquest, wrote:</p> <p>"She was given a bucket and, as the withdrawal symptoms intensified, she vomited, defecated and urinated in that bucket, too weak to walk to the bathroom. Three days after her arrival at Villawood, without having seen a lawyer, social worker or friend while in detention, she died face down in a pool of vomit."</p> <p>The inquest into her death included some of Dr Cala's conclusions:</p> <p>"...Had this woman been recognized as requiring hospitalization, and treated with simple measures, she may well have survived" (p247).</p>
13 January 2002 Villawood	<p>Thi Hang Le, a 33-year-old Vietnamese woman, was returned to Villawood detention centre on 8 January after being hospitalized for slashing her wrists before escaping from a psychiatric ward. Upon returning to Villawood Thi Hang Le stood on a stair rail and launched herself headfirst three meters onto the concrete. Refugee activist Cyrus Sarang told the <i>Sydney Morning Herald</i>:</p> <p>"When they brought her [back], within two to three hours... she went to the balcony and was shouting, crying and she was saying 'send</p>

<p>ACM</p>	<p>me back to my country.' Nobody was listening and she jumped from the balcony." Thi Hang Le died in Liverpool Hospital five days later (p248).</p>
<p>January 2003 Christmas Island ACM</p>	<p>The Inquiry head from Judith Quinlivan, a lawyer, about the death of her client, a young asylum seeker and mother of three, Fatima Erfani. Just prior to Fatima's death Afghans on Christmas Island had been offered a repatriation package to return to Afghanistan and told f they didn't accept it they would be transferred to Nauru and held indefinitely. Judith Quinlivan told the Inquiry: "There was enormous pressure for them to return to Afghanistan. Fatima had been diagnosed with high blood pressure, she was on medication.... During this period her blood pressure was getting quite high... After two or three days of these blinding headaches, she got taken up to the Christmas Island Hospital and saw a doctor and he thought she was just in some migraine cycle... The ACM nurse could see that it was getting worse and, according to her statement to the coroner, she went back to hospital and said she's not getting any better. About the fifth day, she collapsed and didn't regain consciousness. A plane was brought to take her to Perth and she was admitted to Sir Charles Gairdner Hospital. By that stage she was brain dead basically. I fronted up at Sir Charles Gairdner where her husband was keeping vigil and I wasn't allowed in. He was begging them inside, please let me friend stand with me, but there were ACM guards at the door. They had to turn the life support off. He had to make this big decision and he wanted me there. In the end I was removed fro the hospital because I was just so angry..." (p250).</p>
<p>29 August 2004 Villawood GSL</p>	<p>Marc Lao Thao, a French man in his seventies, who had been held at Villawood detention centre, died of a brain hemorrhage. A visitor to the detention centre told the Inquiry that: "When I saw Marc he had just been operated on for a hernia and was back from hospital. The younger detainees worried about him because he was vomiting every night. Marc was taken to the hospital only when he collapsed. I went to see him in Liverpool Hospital. There were two guards to look after an unconscious sick man. He never regained consciousness and died the next day" (p251-2). Note: A spokesperson from the French Embassy in Canberra told <i>The Australian</i>: "Frankly, we are appalled at the way our citizen was treated. Consular officials were not told he was in detention for five months and only knew he was in hospital because an Australian doctor alerted them to his condition" (p252).</p>
<p>25 March 2005 Maribyrnong GSL</p>	<p>The Department of Immigration & Multiculturalism & Indigenous Affairs informed the Inquiry that an immigration detainee died of lung cancer on 25 March 2005 in Western General Hospital, having previously being held at Maribyrnong detention centre (p252). Note: While the Department stated that the case had been referred to the Victorian State Coroner's officer it failed to answer questions from the Inquiry regarding whether an inquest had actually been held; the length of the person's detention; the reason for the person's detention; and the circumstances leading to their death (p252).</p>
<p>13 January 2008 Villawood GSL</p>	<p>Pishevaraz Khodaverdi died of heart failure after collapsing on the steps of St George Private Hospital on his way to an appointment there two days earlier. Mr Khodzverdi had been held in Villawood for the previous three months after being assessed as unfit to be deported. A man held in Villawood detention centre a the time of Mr Khodzverdi's death told the Inquiry that:</p>

	He "wasn't surprised. You could tell he was on his last legs. The man had to struggle up the hill to his medication. He used an umbrella as a walking stick. We told the GSL officers this an shouldn't be in here" (p252-3).
--	---