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PARLIAMENT of AUSTRALIA  
Joint Standing Committee on Migration  
Inquiry into Immigration Detention in Australia

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3 August 2008

## Summary of Submission

From a perspective of an overseas student who is a former detainee of the Villawood Immigration Detention Centre, I make the following submission in response to each of the questions set out in the terms of reference:

- the criteria that should be applied in determining how long a person should be held in immigration detention

### Submission 1

No students should spend any time in detention. Imposing a jail term in immigration detention as a discipline upon a student cannot be appropriate by any criteria.

- the criteria that should be applied in determining when a person should be released from immigration detention following health and security checks

### Submission 2

No student should be detained in the first place. Health and security checks of students were completed before their arrival.

- options to expand the transparency and visibility of immigration detention centres

### Submission 3

To enter into the area, a detainee must be named by a visitor. This restriction should be lifted.

### Submission 4

When visitors enter into the visiting area, mobile phones, cameras or any other recording devices are prohibited. This restriction should be lifted.

- the preferred infrastructure options for contemporary immigration detention

### Submission 5

The fence served no purpose and should be removed.

Submission 6

Detainees should be able to put their envelopes into a post box and hand over their envelopes directly to a courier service in addition to be able to use fax.

Submission 7

A sufficient number of working computers and printers should be provided to enable preparation for legal proceedings.

Submission 8

The detention centre should hold copies of the migration legislation and cases.

Submission 9

The number of medical staff should be increased.

Submission 10

For a detention centre to have lesser facilities than a prison should not be maintained.

- options for the provision of detention services and detention health services across the range of current detention facilities, including Immigration Detention Centres (IDCs), Immigration Residential Housing, Immigration Transit Accommodation (ITA) and community detention

Submission 11

Given that immigration detention was not for punishment, detainees should be allowed to have their own belongings with them.

Submission 12

A guard to be appointed to a position which assumes responsibility for maintenance of rubbish bins including the mini skips.

Submission 13

Pest control should be considered or otherwise the removable compartments should be taken away.

Submission 14

A system for monitoring the compliance by guards of the procedure should be established.

Submission 15

External monitoring bodies for the detention centre should regularly check whether or not the facilities were functioning.

Submission 16

The Department of Immigration should take responsibility for providing basic amenities to detainees.

Submission 17

A heavy escort was unnecessary.

- options for additional community-based alternatives to immigration detention by
  - a) inquiring into international experience;
  - b) considering the manner in which such alternatives may be utilised in Australia to broaden the options available within the current immigration detention framework;
  - c) comparing the cost effectiveness of these alternatives with current options.

I make no submission.

## 1. Introduction

### 1.1 Author

I was a detainee known as 'Oscar Detainee 00092' at the Villawood Immigration Detention Centre between May and July 2006. At that time, I was also known as an overseas PhD student who had a dispute with the University of Melbourne Law School. I was a Rotary International Ambassadorial Scholar and also a Melbourne International Research Scholar. I am currently an associate lecturer in the School of Law and Justice at Southern Cross University. I expect to be awarded a PhD in Law from the University of Queensland shortly.

### 1.2 Scope

The aim of this submission is to present my observations as an overseas student detainee of one of the Immigration Detention Centres in Australia both in terms with its facilities and operation. Having been detained as an overseas student, my experiences in immigration detention are unlikely to be akin to those of asylum seekers, illegal workers or Australian permanent residents whose visas were cancelled as a result of their criminal records. While overseas students do not constitute the majority of the population in the Immigration Detention Centres in Australia, they represent a certain proportion of the detainees. Hence my experience is not an isolated one.

### 1.3 Methodology

In this submission, I will follow events that led me to the Villawood Immigration Detention Centre and then reflect on life there. Then I will briefly mention the impact of detention on my subsequent life. When doing so, I will confine myself to write what I did, what I saw, what I heard and what I thought. I will neither engage in legal analysis nor undertake policy investigation. Therefore, my recommendations to be made at the end of this submission are drawn solely from my personal views based on my personal experiences. Consequently, this submission will not address the last item in the terms of reference.

## 2. Background to Detention

### 2.1 Background to the Dispute

On 24 November 1999, I arrived in Australia as a Rotary Ambassadorial Scholar to undertake research in copyright law for a PhD at the University of Queensland after I was granted a student visa which allowed me to stay in Australia until 15 March 2004.

In my first two years of study, I published five articles in refereed journals in Australia and Japan, won an award from the University of Queensland and a research grant from a Japanese foundation and was appointed an editorial contributor to an Australian journal and a research fellow of a Japanese university.

On 24 November 2001, I transferred to the University of Melbourne which provided me with a scholarship for living expenses and another scholarship for fee remission. I decided to transfer since, among other reasons, the University of Melbourne was famous in my research area and the University of Melbourne promised to provide me with a supervisor in the area of my research.

### **2.2 Dispute with the University of Melbourne**

When I moved to the University of Melbourne, my supervisor repeatedly told me to go back to Japan and withdrew as my supervisor. This caused a dispute between the University of Melbourne and myself. The University terminated my enrolment on 24 December 2002. I tried to resolve the dispute outside the court in vain. On 9 September 2003, I instituted a proceeding in the Federal Court seeking orders which would enable me to complete my PhD.

### **2.3 Dispute with the Department of Immigration**

Despite doing nothing for nearly ten months after the University of Melbourne cancelled my enrolment, shortly after I instituted my proceeding against the University of Melbourne in the Federal Court, the Department of Immigration cancelled my student visa. This was on 29 September 2003.

On 8 October 2003, I applied to the Migration Review Tribunal for a review of the decision of the delegate cancelling my student visa. On 9 June 2004, the Tribunal handed down its decision setting aside the decision of the delegate. I won the case. However, as the Tribunal took eight months to hand down its decision, my student visa had already expired. Accordingly, I could not retrieve my student visa. Thereafter, I had to run a series of cases against the Department of Immigration in order to retrieve my visa.

On 30 June 2004, I requested the then Minister for Immigration to return my student visa under his power of intervention. At the same time, I applied for judicial review to the Federal Court even though the Tribunal's decision was in my favour. I considered that the Tribunal had made some mistake otherwise a student visa would have been returned to me.

On 6 July 2004, I was granted a Bridging Visa E for my judicial review proceeding relating to my student visa. On 23 July 2004 the Federal Court dismissed my application. On 29 July 2004, I applied for leave to appeal to the Full Federal Court. On 26 November 2004, the Full Court dismissed my application for leave to appeal. On 22 December 2004, I applied to the High Court for special leave to appeal.

A problem occurred on 21 January 2005. The Registrar of the High Court refused to file my document. The Registrar's refusal was plainly wrong as evidenced by the fact that Justice Callinan of the High Court later ordered that the Registrar file my document.<sup>1</sup> In any event, since my document was not filed at the time, the High Court proceeding was deemed abandoned notwithstanding that I had never abandoned the proceeding.

The abandonment of the High Court proceeding could have resulted in the expiry of my Bridging Visa. However, I was not overly worried about it at that time since I still had a pending request for ministerial intervention which would provide me with a ground for obtaining another Bridging Visa. In fact, later when I telephoned the Ministerial Intervention Unit of the Department of Immigration upon arrival at the Villawood Immigration Detention Centre, an officer of the Unit exclaimed with surprise:

'Why are you there? You have a ministerial intervention request. You should not be detained.'

#### **2.4 Decision to Detain**

On 4 April 2006, I won a Federal Court case against the University of Melbourne in *Ogawa v Federal Magistrate Phipps and the University of Melbourne* [2006] FCA 361 which determined, after approximately 3 years of battle, that my claim against the University of Melbourne would eventually be heard in the Federal Court on a date to be fixed at the next court date.

On 5 April 2006 which was only a day after my success in the Federal Court, the Department of Immigration decided to detain me. I became aware of the date of the Department's decision from a Departmental document concerning my personal information which I later obtained through FOI. The document reads:

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<sup>1</sup> *Ogawa v the Minister for Immigration, Multicultural and Indigenous Affairs* [2006] HCA Trans 587.

'Received A/hrs call conferred with Deputy State Director and agreement reached to Detain Client if QPOL locate and seek direction.  
5/4/2006'

On 19 May 2006, I was taken by the Australian Federal Police into immigration detention. An officer of the Department of Immigration said to me that I had been detained since my Bridging Visa expired on 17 February 2005 which was more than a year previously. I did not and still do not believe that the visa expiry was the reason for my untimely detention. At the Brisbane Office of the Department of Immigration, I applied for another Bridging Visa E. My application was refused.

### 3. Life in Detention

#### 3.1 Accommodation

On 19 and 20 May 2006, I was locked up in a motel room and was transferred to the Villawood Immigration Detention Centre on 21 May 2006. This operation seemed to be treated as a secret by the Department of Immigration. The Department refused to provide any information, including where I was and would be, even to the person to whom I had authorised release of information relating to me. I felt as if I had been abducted. I still do not understand the necessity for the secrecy.

#### 3.2 Fences

In the late afternoon of 21 May 2006, I was escorted by a team of three when I arrived at Villawood. The Villawood Immigration Detention Centre looked akin to a prison. It was surrounded by a double or triple fence which was about three metres high. The fences were installed between every couple of buildings and also on both sides of the pathways connecting each building compound. Each compound was separated by a gate. The appearance was overwhelming.

The fences were supposed to be connected to a monitor which would detect any contact and set off the alarm. I later witnessed that detention guards walking along the fence every night and knocking it to check whether the alarm worked. However, whenever I was locked out of the compound where my room was and shook the fence to call a guard to come to open the gate, there was absolutely no response.

A detainee told me that the switch of the alarm was always off otherwise it would be too noisy as the alarm was set off by a bird flying down on the fence or the rain hitting the fence. The switch was turned on only when the guards



checked the alarm. I thought that it was a waste of tax payers' money to maintain an unused alarm.

A different detainee told me another story about the fence. When there was a razor wire at the top of the fence (which was apparently removed some time before I was there), one of the detainees climbed over six fences in three minutes and ran away. The detainee wore as many shirts and trousers as possible before climbing the fence and he took off a shirt or trousers one by one every time his clothes were trapped by the razor wire. After successfully absconding, he telephoned the detention centre and told his anecdote to detainees.

The detainee who told me this story seems to have been asked by the police why he did not go with the absconding detainee. He told me that he had replied: 'It's because I didn't want to go.' It appeared to me that most detainees were staying in the detention centre not because they could not climb over the fence but because they had no intention of breaking the law. I thought that the fence served no purpose and should be removed.

### **3.3 Storage**

On arrival at the Villawood Immigration Detention Centre, I was informed that I could only take my clothing and legal documents with me into the residential area and everything else had to be kept in storage. I was very worried about the possibility of: my belongings being tampered with by the guards; being denied access to my own belongings when necessary; and my belongings going missing. All my worries came to fruition.

When a guard received my belongings, she recorded each and every item on an inventory. Then she put each item into a plastic bag which she sealed with a numbered plastic lock. The numbers of the plastic locks were also recorded on the inventory before the plastic bags were stored. Later when I needed to access my belongings, the same procedure was followed to return my property to storage.

It sounds as if the appropriate procedure was in place. The problem I subsequently encountered was that some guard insisted on using a plastic bag with a large hole. Since there was a hole through which the guard could easily put his arms, locking the bag was meaningless. The guard put my laptop computer in the bag with the hole and carried it away to storage.

Unsurprisingly, the next time when I opened my laptop, I found two sets of strange foreign characters had been installed without my knowledge.

Access to my own property was a significant challenge since detainees were not allowed to go to the storage without escort. Guards plainly preferred to stay in their office eating snacks and reading magazines. Caucasian female guards often yelled at me, 'Stupid woman! Why did you come to Australia!' Given that the Australian Government insisted that immigration detention was not for punishment, I could see no reason why I was not allowed to have my own belongings with me. Detainees should be allowed to have their own belongings with them.

Later when I was about to be released from detention, a guard and I checked my belongings with reference to the inventory. We discovered that three items were missing. The guards and my case management officers tried to force me to sign for the receipt of all items including missing items by threatening that I would not be able to go out of detention until I signed the receipt. I refused to sign. The missing items were never found and the GSL eventually paid compensation to me in 2007.

### **3.4 Buildings**

There were about ten buildings in the area of the detention centre where I was allowed to move around. Most of them were two storey buildings with thirty or forty rooms. There was a bathroom for every two or three rooms. Those buildings looked like residential colleges of suburban universities. Other buildings were single storey removable compartments just like the ones seen at a construction site.

There, I saw nests of rats for the first time in my life. Rats nested under the removable compartments. Later, the guards said to me there were lots of rats since detainees took their meals out of the mess to their rooms. It did not take long before I discovered it was not true.

I saw rats running with food scraps in their mouths every night. They picked food scraps not from the detainees' rooms but from the mini skips which the guards did not look after. I thought that there was a need to appoint someone to assume responsibility for maintenance of rubbish bins including the mini skips. Further, pest control should be considered or otherwise the removable compartments will have to be taken away in the end.

### **3.5 Rooms**

I was assigned to a room with two beds along the walls on both sides of the room. There was about a fifty centimetre space between the beds. When I stood between the beds, I could touch the wall beside the bed. The room was far too small for two persons. A guard later told me that the room had been used by four persons in the past when the detention centre had been crowded.

I remembered that there had been some photos of a room in the Villawood Immigration Detention Centre on the website of the Department of Immigration. In one of the photos, there was a desk and a chair in the room. In my room, there was no furniture other than the beds and a steel locker without a key. I thought that the photo on the Department of Immigration website should be taken down.

There was no lock for this room. A guard told me that female guards on the night shift were watching the rooms of female detainees from outside constantly so that it was safe without a room key. The guard also informed me of the procedure that a male guard must be accompanied by a female guard whenever he came near the female detainees' rooms at night. I soon found the truth. Female guards on the night shift were busy either watching a TV in a recreation room or reading a magazine in an office. They were so busy so that they did not have time to go accompanying a male guard. It appeared to me that a system for monitoring the compliance of the procedure was required.

### **3.6 Bathrooms**

Next to my room was a bathroom with a toilet and a shower. The shower pan could be used as a shallow bath, perhaps because children had been held in the detention centre. The toilet was working well but the shower was not. Hot water was not available until 25 May 2006 when the shower was fixed. I had a hard time. I thought that external monitoring bodies for the detention centre should regularly check whether or not the facilities were functioning. It is not enough to check whether there are appropriate facilities, they need to function.

### **3.7 Fax Facilities**

After checking my room, the first thing I did was to send my application to the Migration Review Tribunal by fax. There was a good photocopier which also had a fax function. It looked to be one of the latest models. Despite that, there were some problems in relation to sending faxes.

First, detainees were not allowed to use the photocopier including sending a fax. Therefore, when a guard was not available or not willing to work, a fax could not be sent.

Secondly, even a guard was available and was willing to send a fax, there were a number of guards who did not know how to send faxes with the photocopier. To make it worse, some guards were too proud to take instructions from a detainee.

Thirdly and the most importantly, there was a rumour amongst detainees that fax transmission was intercepted by the Department of Immigration. Correspondence between detainees and their lawyers who were running a case in court against the Department of Immigration could be of interest to the Department. Confidential complaints by detainees to external review bodies such as the Ombudsman or the Human Rights and Equal Opportunity Commission could also be of interest to the Department. This rumour sounds very plausible given the photocopier first saves scanned images before faxing them.

Although fax was convenient, it might be more desirable for detainees if they were also able to put their envelopes into a post box and hand over their envelopes directly to a courier service in addition to be able to use fax.

### **3.8 Telephones**

There were a limited number of public telephones in the detention centre. I had a considerable number of problems in relation to a telephone. However, since detainees are now allowed to have their mobile phones in the detention centre, my experiences with the telephones are no longer relevant.

### **3.9 Computers**

On 22 May 2006, I went to the computer room. It was shocking to say the least. There were five or so old computers of the types I used more than fifteen years ago. Each computer was barely kept in one piece with tapes. Some computers contained a working floppy drive while others did not. The working floppy drive regularly destroyed a floppy disc for no apparent reason. There was an old printer. However, it was often out of order. Needless to say, there was no Internet and hence no online dictionaries when I was there.

Most detainees had a court case in an attempt to get out of detention. The Australian legal system allows detainees to go to court. For a migration case, the most important court must be the High Court in the sense that it was the only court which had jurisdiction in some cases. The High Court had its rules on filing documents with the court. It did not accept a handwritten document. The Department of Immigration and the detention centre could prevent detainees from accessing the High Court simply by denying them access to a computer or the printer. I thought that this could explain why the computers and the printer were so old and did not function well. A sufficient number of working computers and printers should be provided to enable preparation for legal proceedings.

Later, some detainee told me that the computers were an in-kind donation from a volunteer group for children who had occupied the detention centre. The Department of Immigration did not provide any computer to detainees for the preparation of legal documents. A few detainees said to me that guards pinched all the better computers and took them home.

### **3.10 Copies of Legislation and Cases**

In order to run a case to get out of detention, I needed a copy of the migration legislation and cases. Since the Australian legal system allowed anyone whose visa application was refused to apply for review to the Tribunal and subsequently to the courts, most detainees had pending proceedings either in the Tribunal or some court. Notwithstanding that, I was informed by a guard that there was no copy of the Migration Regulations 1994 or migration cases available. There was a copy of the *Migration Act* 1958 but it was long outdated after a few major amendments.

It appeared to me that the Department of Immigration had no respect for the country's own legal system. In fact, a senior assistant secretary of the Department of Immigration later threatened me by saying that even though there was a pending court case in which the legality of the Department's act of detaining me for deportation would be reviewed, the Department could still deport me without waiting for the hearing and determination by the court.

The detention centre should hold copies of legislation and cases. However, without altering the mindset of the Department of Immigration, the real issues may not be addressed.

### **3.11 Meals**

My first breakfast experience was also on 22 May 2006. Meals were provided at the mess. As soon as I went to the mess and sat down, I found a male detainee standing in front of me wanting to have a chat with me. Shortly before he left, another person turned up and shortly before he left, the next person turned up and this continued until I had finished eating my cereal and left the mess. I was very scared of this particularly since the door of my room had no lock. I felt that there were many men in the mess but later, I found that there were only a small number of detainees at breakfast. It might be because breakfast time was inconvenient for them or because there was no hot meal for breakfast.

I met more people at lunch and dinner. Lunch menus included a small salad. These were the only vegetables other than potatoes offered in the mess. The dinner menu was always the same, Indian curry and Chinese stew. No vegetables were served. The guards often talked about the meals. According to them, they were allowed to have meals in the mess. However, they did not want to because there was no meat but only bones and fat in any menu provided in the mess. What I could not stand was the lack of vegetables. I asked a nurse to place an order for a special diet for me, namely a plate of vegetables every night. As a result, I had a plate of mixed vegetables day after day for two and a half months until I was released from detention. I do not want to see mixed vegetables ever again. Other detainees appeared to be dependent upon food which visitors to the detention centre brought for them.

After I got out of detention, a refugee advocate told me that the same menu of bones and fat was a natural outcome of the outsourcing of detention management. Since the detention centre was run by a private company which had to make profit for its shareholders, the company cut its costs at the weakest persons' expense, namely the detainees. If the outsourcing is to be maintained, some strong monitoring system seems to be needed.

### **3.12 Laundry and Clothes**

On 25 May 2006, I learned the location of the laundry. There were two washing machines and two dryers but these were occupied by other detainees for almost the entire day. I later noticed that competition for the use of a dryer was particularly fierce since a dryer took longer to finish one cycle than a washing machine. One day, some detainees tied one end of a rope to one of the iron bars on their room window and the other end to a branch of a tree in front of their room in order to hang their washing. A few guards rushed to the detainees and forced them to remove the rope.

Washing (and drying) was my headache because of the fierce competition. More particularly, I had to wash my clothes frequently due to the small number of clothes I had. I did not have many clothes to wear because of the difference in temperature between Brisbane where I had lived and Sydney where I was held. Both guards of the detention centre and my case officers from the Department of Immigration said that I should ask the Salvation Army for clothes. Unless the Department of Immigration can take responsibility for providing basic amenities for survival, it should not detain any person.

### **3.13 Personal Hygiene**

On 27 May 2006, I tried to trim my front hair with a razor. I struggled for a while and gave up. I wanted to use scissors but scissors were not permitted in the detention centre. A guard informed me that a volunteer group came to the detention centre every other week to help female detainees cut their hair. During the two and a half month period of my detention, I did not see anyone help detainees cut their hair. In my understanding, there is usually a rule in Australian prisons that hair cutting facilities must be provided to prisoners. The same rule should be in place in immigration detention centres.

In the detention centre, nail clippers were also banned. A guard explained to me that a guard kept a pair of nail clippers in the office to lend to a detainee. I thought that sharing nail clippers was unhygienic and dangerous. I had my own pair in storage and wished to use them. Despite this I had to ask a guard to lend me a pair until an officer of the Ombudsman to whom I complained contacted the Department of Immigration about the availability of nail clippers.

Later, a detainee told me that he always got a new pair from a welfare officer at the detention centre. He kept them in his room until a guard found and confiscated them during a room search. He then went to the welfare office, asked for another pair, got a new pair and kept them until the next room search. It seems to me that unless the detention centre allows detainees to keep their nail clippers, the detention centre will have to provide new nail clippers to detainees every time they need them.

### **3.14 Escort**

On 29 May 2006, there was a Tribunal hearing. The officers of the Detention Centre arranged a heavy escort to take me to the Tribunal. I was pushed into a van with all the windows iron-barred. The door was padlocked from the outside.

Despite the heavy escort, the guards did not know the way to the Tribunal. They lost the way, drove me around the city probably for more than half an hour and when they eventually found the Tribunal, they went into a multi-storey car park which prohibited vans and crashed into the ceiling of the car park. I thought that I would die. Had the van caught fire, I would have been burned to death since getting out of the van was impossible because of the padlock outside the door. The accident was very traumatic.

In my view, a heavy escort was unnecessary because a guard undertook an unpleasant body search before escorting a detainee to the court or Tribunal. Furthermore, the detention centre did not allow a detainee to take anything other than court papers. Even a bag to carry court papers was not allowed. If a detainee decided to abscond, he or she would climb over the fence of the detention centre with some personal items and money in a bag rather than run out of an escort van only with court papers in his or her hand.

### **3.15 Health Care**

After the car accident on 29 May 2006, I went to the medical section of the detention centre to see a GP for medical check. A nurse told me that I could not see a GP since I had no appointment. She suggested that I come back to the medical section the next day - not to see a GP but to make an appointment to see a GP.

The detention centre also denied me access to mental health care. At midnight on 30 June 2006, I suddenly felt like hitting myself on my head. I felt something seriously wrong. I telephoned triple zero and asked for an ambulance. A guard turned down my arrangement for an ambulance and also refused to arrange medical consultation.

The next day, I sought help from one of the visitors to the detention centre who immediately complained to the management of the detention centre. Later that day, a nurse in the detention centre agreed to telephone a GP who had never seen me before. Over the telephone, the GP tried to prescribe medication. I was surprised and asked the GP whether a GP in Australia was allowed to prescribe medication without having seen a patient. The GP agreed to refer me to a hospital but the detention centre rejected this arrangement on the ground that there was no guard available for escort.



Two days after my call to triple zero, I was able at last to go to a hospital psychiatric emergency where I was assessed as becoming increasingly depressed.

Despite this, the Department of Immigration and the detention centre insisted that the detention centre had adequate medical facilities notwithstanding they did not appear to have caught up with the needs of detainees. For example, I needed the frequent support of a psychologist from mid-June 2006 but a psychologist was often not available.

One day, I overheard a psychologist talking to her friend over the telephone and saying 'You may be looking after three crazy people but I am looking after 200 crazy people!' It seemed apparent to me that the psychologist was stressed. In fairness to the 200 crazy people, who no doubt included me, I must say that if there was anyone who did not go crazy in the detention centre, that person must have already been insane.

### **3.16 Activities**

On 31 May 2006, a guard invited me to join a CPR class run by the Australian Red Cross. I knew that the Red Cross offered the course worldwide and issued a certificate which was recognised universally. The skills help to save life. I asked an officer from the Red Cross whether I could obtain a CPR certificate. The Red Cross officer told me that the Red Cross was prepared to issue a certificate for a detainee free of charge but the Department of Immigration prohibited them from providing a certificate to a detainee. The Red Cross officer did not know the reason for the prohibition. I could see no reason for the Department of Immigration discouraging detainees from acquiring the skills.

To me, the detention centre appeared to encourage detainees to engage in reprehensible activities. For instance, everyone smoked there. Stressed detainees smoked perhaps because the Detention Centre used them as its servants and gave them cigarettes as a reward. Detention Officers who probably had no reason to be stressed also smoked not only outside but also in a room. Furthermore, they did not extinguish cigarettes and just threw them away everywhere. I saw detainees cleaning up cigarette butts every morning.

Since I did not smoke (and still do not), it was not easy even to have a walk in the detention centre. There was no place free of smoke outside my room. It was hard for me not to be able to walk in the fresh air. Since there was no gym

in the detention centre, walking was the only exercise available to me. According to a former prisoner who was in the detention centre, a prison usually had a gym.

The former prisoner told me that in prison, there was a TV in each cell. There was no TV in my room in the detention centre. Although there were a few common rooms where there was a TV, Chinese detainees constantly used them to watch Chinese DVDs. I could not even watch TV. For a detention centre to have lesser facilities than a prison should not be maintained.

### **3.17 Visit**

On 3 June 2006, I was invited to join a meeting with visitors from the community. There was a visiting area in the detention centre. To enter into the area, a detainee had to be named by a visitor. Therefore, until and unless the existence of a detainee came to the knowledge of a visitor, the detainee was unable to meet with and seek assistance from people who visited the detention centre with the full intention of supporting detainees. Combined with the Department of Immigration's reluctance to release information about the place of detention even to an authorised person, a newly detained person had great difficulty in obtaining any support from the community despite the community's willingness to assist them. I could discern no reasonable justification for this restriction imposed upon detainees and the restriction should be lifted.

I heard complaints about the visiting area from a large number of visitors. It was an outside area with a couple of picnic tables, too hot in summer and very cold in winter. When it rained, we got drenched. This environment put frail people off and worked as a barrier reducing the number of visitors to the detention centre. Given that even prisons in this country have meeting rooms for visitors, I believe that the detention centre should also have meeting rooms.

Another common complaint was the rules for visitors. When entering into the visiting area, mobile phones, cameras or any other recording devices were prohibited. This restriction continued to exist even after detainees were allowed to have mobile phones. Changing this rule would result in enhancing the transparency of the detention centre.

### **3.18 Deportation**

On 25 June 2006, a Cambodian detainee rushed to me asking that we keep in touch with each other. He said that he had leaked information that he would be

deported to Thailand the next day. I was amazed and asked him why he was going to be deported to Thailand. He said that he had no idea. I asked him whether he spoke Thai. He told me that he neither spoke Thai nor knew how to survive there. The next day, I saw him screaming at a half a dozen of guards who were surrounding him. That was the last time I saw of him and I have neither heard from him nor about him since. This was not the only case of the mismatch of destination for deportees I saw in Villawood.

Another detainee told me that he would be deported to India. This surprised me very much since he did not look like an Indian at all. He was Caucasian. I asked him why he would be sent to India. He told me that his parents were English and Dutch who met in India and got married. He was born in India and migrated to Australia with his family using his Indian passport when he was five years old. Since then, he had lived in Australia for more than thirty years without a problem. Recently he got into trouble for the first time in his life which was going to result in separation from his family. He told me that he did not know what to do since he had no knowledge of the language or customs and he did not look Indian.

Some detainees did not wish to be deported but others did. A detainee who was an overseas student at an Australian university asked me to help him be deported. What he told me was this. During a semester break, he went back home to his country and returned to this country after a semester had started. Since he came back a little too late to enrol in the semester, he asked his university to defer his re-enrolment to the next semester. The university agreed to enrol him the following semester for the tuition fees he had paid for the previous semester. He went to the Department of Immigration to notify them of the arrangement. The Department cancelled his student visa on the spot and detained him in custody forthwith.

He applied for a Bridging Visa to get out of detention but he needed eighteen months to fight against the Department to obtain a Bridging Visa. Before he got out, the lessor of his unit had already sold all his valuables and had chucked out everything else including his passport and ID. Because of this, he could no longer leave the country. Although he had asked the Department of Immigration to find a way to obtain another passport to go back to his country, the Department had been totally unable to arrange a new passport for him.

There seems to have been a complicated history between the time of his detention and the time when he told me his history. However, the point is

that he was in the detention centre in 2006 and was telling me how he had been taken into detention as long ago as 2001. This was again not an isolated case of an overseas student who wished to be deported but could not be.

Another student told me that she had forgotten to extend her student visa. She wanted to apply for another student visa if she could in order to finish her studies but she did not mind going back home to have a break if she was not allowed to apply for a visa. She told her desire to the Department of Immigration. An officer said to her that she would consider whether she could apply for another student visa.

As days were passing, the student was getting to look very stressed because of her incarceration. The officer seems to have continued to say that she would consider whether she could apply for another student visa but the decision was not made for weeks. Eventually the student obtained the decision which denied her the opportunity to make an application for another student visa. She asked the Department to send her back home immediately. An officer informed her that she would do her best, but, only as soon as she could.

Notwithstanding that some detainees, in particular, detained overseas students wished to be deported, I believe that it was fortunate that their deportation did not take place. This is because deportation appears to be very dangerous particularly for female detainees. I discovered through FOI the email correspondence between the officers of the Department of Immigration discussing the plan of my deportation. In an email, one of the officers raised a question as to the appropriateness to hold me in a cell at an airport in Thailand while waiting for transit since the cells at that airport were dangerous.

I chose Australia as a country for my study partially because I, just like many other overseas students, thought Australia was safe. Had I known that the Australian Government regularly locked up overseas students in Thailand, I would not have come to Australia. I believe other overseas students think the same.

### **3.19 Courts**

On 21 July 2006, the Federal Magistrates Court handed down its judgment in my application for judicial review. In his judgment, Federal Magistrate Scarlett stated:

'In my view the Ministerial Intervention Unit of the officer of the First Respondent Minister, or the Department of the First Respondent Minister, cannot escape criticism.'<sup>2</sup>

Notwithstanding that the Federal Magistrates Court condemned the Department of Immigration, the Court could not rescue me.

Later on appeal in the Federal Court, Justice Cowdroy described me as 'the unfortunate victim' of the Australian migration authorities.<sup>3</sup> Again, the Court could not get me out of detention. It seems that once the Department of Immigration mishandles a case, there is no remedy available in law.

### **3.20 Student Refugees**

On 24 July 2006, since the court did not make an order to release me from detention but simply criticised the Department of Immigration, I decided to help myself get out of detention. Therefore, I applied for a protection visa.

A detainee, who was also an overseas student of an Australian university, told me that most overseas students in Villawood had become asylum seekers because the Department of Immigration had virtually forced them to do so. Another student detainee said to me that Australian universities should include photographs of the detention centre as part of their information to students.

On 28 July 2008, I walked out of the Villawood Immigration Detention Centre leaving behind other asylum seeking overseas students there.

## **4. Legacy of Detention**

On 6 September 2006, my dispute with the University of Melbourne was settled and I became able to return to the University of Queensland to complete my PhD provided I could obtain a visa allowing me to study. However, since the Department of Immigration rejected my protection visa application, I was prevented from applying for a student visa. The Department of Immigration at first even resisted lifting the no study condition attached to my Bridging Visa. Therefore I could not enrol in the University until 31 January 2007 after the Ombudsman successfully persuaded the Department of Immigration to remove the no study condition of my Bridging Visa.

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<sup>2</sup> *Ogawa v Minister for Immigration* [2006] FMCA 1039, para 39.

<sup>3</sup> See *Ogawa v the Minister for Immigration* [2006] FCA 1694, para 48.

Since then, the Ombudsman recommended the Department of Immigration to support my request to the former Minister to grant me a student visa: the former Minister in fact granted me a student visa but only for a month. I submitted my PhD thesis to the University of Queensland for examination and obtained a full time continuing position of Associate Lecturer in law at Southern Cross University. Southern Cross University applied for sponsorship of my permanent visa. The Ombudsman recorded his finding of maladministration by the Department of Immigration under the *Ombudsman Act 1976*.

As at 3 August 2008, despite all this, I am still on a Bridging Visa waiting for the Minister for Immigration to grant me a visa pursuant to his intervention power since the costs of my detention and subsequent litigation became Commonwealth debts owed by me and preventing me from being granted any visa other than a Bridging Visa.

## 5. Conclusion

Australia's immigration detention has adversely affected a large number of people including myself. Some problems were caused by the lack of appropriate rules and procedures and others were caused by the improper operation of appropriate rules and procedures. These problems could be addressed in a relatively simple manner as discussed in this submission. However, as apparent from my case, even if each problem of immigration detention was remedied, the legacy of immigration detention cannot be rectified under the current legislation. Ultimately, fundamental reform of the migration legislation needs to be undertaken.