

Submission to the Senate Legal and Constitutional References Committee's Inquiry into the Administration and Operation of the Migration Act 1958

from

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This submission will address the following Terms of Reference:

- a) The processing and assessment of visa application and migration detention
- b) Migrant detention centres
- c) The deportation of people from Australia

Background to this submission

This is a personal submission, although I am a member of Rural Australians for Refugees (Castlemaine, Vic). RAR will no doubt present its own submission. However, I am physically removed from Castlemaine at present as I am working temporarily in a remote part of the Kimberley, WA in an Aboriginal Community, and have therefore decided to write my own submission.

In 2001, after learning about the Tampa incident I decided that, as an Australian, I could not sit back and allow a government cause unnecessary suffering to people for blatantly political purposes and especially not in my name. With the help of a few others I initiated the group that later became known as Castlemaine RAR. The response from the Castlemaine community was surprisingly strong. Over 200 people attended the first meeting. Since then RAR groups have been formed in over 86 towns across Australia.

My husband and I also began corresponding with detainees on Nauru. We still do that.

In 2004 we were delighted to welcome some ex-detainees from Nauru to Brisbane (where we were living at that time) and had four Afghan Hazara men stay in our house until they were able to find their own accommodation. These men were given Temporary Protection Visas. They now all have jobs and are valued as conscientious and reliable workers by their employers. But the men suffer because they cannot bring their wives and children here and they cannot leave Australia even to visit their families, some of whom have found insecure shelter in Pakistan.

Another friend is a Hazara with whom we had corresponded whilst he was on Nauru, a man who had been on the Tampa and who was detained there for three years. He was released to New Zealand with a permanent visa. He is therefore able to leave that country and return if he chooses to do so. But he is still trying to locate the wife and young son he was forced to leave behind in Afghanistan. So far he has failed to do so and does not know if they are alive or not.

Castlemaine RAR approached the local municipal council in 2003 with a proposal that Castlemaine become a "Welcome Town" for refugees. The proposal was accepted. As a result the town's people

have supported several refugees who had been in detention camps by providing accommodation, food, medical and dental help, and by helping them find work in the local community.

Every one of these contacts with asylum seekers and refugees has been emotional and moving because we have learned of the circumstances they faced that forced them to flee Afghanistan or Iraq, their dangerous journey to reach a safe place – Australia- and their agony at being punished as criminals for doing so.

Without exception, these refugees are outstanding human beings. Every one would be an asset to our country. Every one has demonstrated courage, determination, honesty, the will to work hard and a genuine desire to contribute to society.

However, those on Temporary Protection Visas are still suffering. They cannot forget the traumas of the past years. They cannot see their families. Therefore they cannot plan for the future.

a) The processing and assessment of visa applications

My main concern is that some interpreters used in the process of assessing applications for refugee status have not been impartial. For example, I have learned that Pashtun interpreters were used for Hazara Afghan applications.

Hazaras are an ethnic minority who were displaced from their traditional lands by other tribal groups and, as a result, were forced to live in the mountains in the centre of Afghanistan. This area is surrounded on all sides by other, rival tribal groups. Hazara people are different. They look different, and they have a different language, culture and religious outlook. They are Muslim, but their practice of Islam is not as narrow as others.

There is a practice of ethnic cleansing happening in Afghanistan today because those in power want to rid the country of Hazaras.

Those who fled did so because their families chose them as the ones that could escape and survive, believing that in some other country such as Australia they would not be terrorised by other Afghan ethnic groups. We can only imagine their horror at finding that the interpreters for their refugee applications were representatives of enemy tribal groups.

All Afghans now left in detention on Nauru are Hazaras. I question the reason for this. If their applications for refugee status have been refused, could it be that the reason lies not in the truth of their claims, but in the processing and assessment of visa applications?

I ask the Senate LCR Committee to change the practice of allowing members of one ethnic group to interpret for a rival group.

I also ask that the present process of employing inexperienced staff to go on the Refugee Review Tribunal be stopped. I cannot provide evidence for this, but am confident that others will do so. My understanding is that on many occasions justice has not been done for asylum seekers because the process of the RRT has been inadequate and unfair.

My other main concern regarding visas is the granting of Temporary Protection Visas to refugees. Why does Australia not follow New Zealand's example and issue permanent visas as soon as a person has been assessed as a genuine refugee? TPVs result in good people not being able to plan for their futures. They cannot leave Australia to look for or to visit their own families.

One Hazara Afghan friend lives in Brisbane after having spent three years in detention on Nauru. His wife and two young children live in Pakistan. He can speak to them by phone and finds it increasingly difficult to explain to his wife that his TPV (which is for 5 years) means that for five years after finally reaching Australia, he cannot go to see them and he cannot sponsor them to come to Australia because he cannot apply for Australian citizenship. Even after five years he may not be able to do this because he must reapply for another TPV. This means that for a total of ten years, plus the three years on Nauru, plus the year travelling to get to Australia – for 14 years he will be separated from his family. This does not sit well with the Australian government's concern for the maintenance of family values.

I ask the Senate Committee to act to rid Australia of these TPVs and to replace them with Permanent visas for those with refugee status.

b) Migrant detention centres and the adequacy of health care, including mental health care for people in detention

Even after the changes made by the government on June 17, 2005, Australia is still in clear breach of its international human rights obligations in the treatment of asylum seekers and refugees.

Recent decisions by the High Court of Australia confirmed Australia's Migration Act stating that failed asylum seekers who cannot be returned to their country of origin can be held in indefinite detention for the rest of their lives. This was a shocking decision.

Migrant detention centres rob people of their freedom, their health and their lives. The mental health issue is being covered thoroughly elsewhere so I will not write much about it, except to say that it is because of the treatment people have suffered in detention centres that has caused mental illness in people such as Cornelia Rau and Peter Quasim. My own experience with refugees confirms this.

The Australian government says that this is used as a deterrent to stop other asylum seekers coming here and that this policy has succeeded in greatly reducing the numbers. But it is morally wrong to use the destruction of innocent peoples' lives as a deterrent for others. There are ways to protect Australian borders other than locking asylum seekers up for long periods.

When people fleeing Bosnia and Vietnam in the past came to our country seeking safety and a new lives, Australian people responded by welcoming them into their communities. Past Australian government gave support. People awaiting assessment for refugee status were allowed to live in the Australian community.

The recent decision to release families from detention and allow them to live under what is effectively house arrest on the edge of the Australian community is not the same. They are still imprisoned.

Castlemaine is an example of a country town that decided to welcome refugees and to provide necessary support. There are many such towns across Australia. There is no need to lock people away. Figures show that the number of asylum seekers who have committed crimes, are terrorists or who have absconded is nil.

c) The deportation of people from Australia

I will focus on Afghanistan as an example.

Afghanistan is the poorest country in Asia. One fifth of children die before the age of five. (Source: London Alert News.) People, especially those living away from Kabul, suffer from chronic hunger. There is the constant danger of land mines. Up to 100 people are killed or wounded by landmines each month (Source: United Nations). Education is a luxury. An estimated 500,000 people are homeless in Kabul or living in makeshift accommodation. Only 25% have access to safe drinking water and adequate sanitation. There are frequent epidemics of cholera, Congo-haemorrhagic fever, malaria, measles, meningitis and pertussis. It's a grim picture.

3.5 million people have moved back to Afghanistan since 2002. Many of these have returned from neighbouring countries such as Pakistan or Iran, and for them, although difficult, it is not as difficult a transition as it is for those returning from a country far away such as Australia. From a neighbouring country people are sometimes able to gather relevant information as to whether or not they will have access to their old homes or land. They will have some information about the security risk.

They will not be seen as outsiders, unlike those returning from Australia. Crossing the border into neighbouring countries has been an accepted way of life for a long time.

On the other hand, those who return from countries far away are in a very different situation. The money they receive from, for example, the Australian government means that they will be seen as well off and most likely will be a target for extortion or violent crime.

The asylum seekers who have come to Australia are mainly single young men. When they return to Afghanistan they often find that their families and villages are no longer there, especially in the case of Hazaras. Their old friends who would have supported them in the past are no longer there. So they go to the cities or to another country. According to the UN about 40% end up in Kabul with no roots or family to support them. This causes many to move to Pakistan where they have no status.

Kabul has been able to rebuild vital infrastructure, but it is different in rural areas. The government has little control beyond the capital and militant violence continues. The Taliban and allies continue to fight NATO led troops in the south and east. Even in the north there is infighting between local communities over power or land. Many international aid organisations such as Medicines Sans Frontieres have withdrawn from Afghanistan because it is too dangerous.

This is a country to which the Australian government wants to return asylum seekers such as Hazara Afghans. Why? If it is to make a point, what is that point?

The result is that young men's lives are being wasted. There is much talent and potential amongst them and, as Ian Skiller, who owns a fruit and vegetable farm in a small town on the border of Victoria and New South Wales says, without the help of Afghan refugee workers his farm would not have survived in the long term. A shortage of labour and competition from surrounding commercial farms and larger properties would have sounded the death knell for small growers like himself. (Source: The Australian Women's Weekly, May 2005)

Australia needs such people, yet we are sending them back to the poorest country in Asia in the case of Afghanistan, or back to Iraq where war continues and the public is in constant danger.

I ask that the Senate acts to stop these unnecessary, pointless and inhumane deportations of asylum seekers from Australia.

Conclusion

My thanks go to the Senate Inquiry into Migrant Detention for the opportunity to make this submission. Hopefully, with the Committee's help, positive changes will take place which will not only benefit asylum seekers and refugees but will also greatly benefit Australian society.

Rosemary McKenry