

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600

SUBMISSION to the Inquiry into the Administration and Operation of the Migration Act 1958

Although I am a member of the Daylesford group of Rural Australians for Refugees, I wish to make a personal submission to this inquiry.

SUMMARY:

A. Personal background

B. Areas of concern covered

This submission expresses my concerns with the following areas based on the Terms of Reference:

1. processing and assessment of visa applications
 - Number of decision-makers involved
 - Negative assumptions
 - Quality of interpreting
 - Immigration 'Dob-In' line
2. migration detention
 - Effects of long-term detention
 - The atmosphere within detention centres
 - The Pacific Solution
 - Detention of Children
3. adequacy of healthcare, including mental healthcare
 - General health concerns and dental care
 - Mental healthcare
 - Treatment of hunger strikers - Baxter December 2004
4. deportation of people from Australia
 - Deportation of Christian Iranians

C. Conclusion and Recommendations

My conclusion seeks to show the link between the 'deep-seated cultural and attitudinal problems within DIMIA and a failure of executive leadership' criticised in the recent Palmer Report (Main Findings 17) and the above-mentioned mistakes and inadequacies. I offer a recommendation which could lead to positive changes to the processing and treatment of asylum seekers by the Department of Immigration and Multicultural and Indigenous Affairs.

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A. Personal Background

As a fourth-generation Australian who has always been proud of my country and its people, I have found it extremely distressing to watch the ways in which the current government and DIMIA policies have developed. It has been impossible for me to ignore the way current immigration policies have caused or exacerbated the physical and mental devastation of desperate people seeking asylum in Australia. I became actively involved, not only by meeting and supporting refugees and asylum seekers but also in researching government immigration policies, the countries from which these people had fled and the treatment they received once in Australia.

I have been involved with the support of asylum seekers (both in detention and in the community) and refugees on TPVs for over four years. During that time I

have corresponded with and visited perhaps 20 people-six of whom I now consider close and valued friends.

As a teacher specialising in migrant and indigenous education and the teaching of Standard English as a Second Language and Dialect, I have been interested to see how the use (and misuse) of language has frequently weakened the position of asylum seekers while strengthening prejudice against them.

I have spent much time and energy presenting my concerns to members of the Government and the Opposition. Unfortunately I received only token responses in reply-form letters which regurgitated policy and/or 'spin' statements from media releases. I am hopeful that recent public criticism of the treatment meted out to people deemed unlawful non citizens' will finally bring about a more humane system.

B. Areas of Concern

1. The processing and assessment of visa applications

◦ Number of decision-makers involved

I find it strange that such important decisions should be made by a single person.

Only one DIMIA staff member makes the primary decision as to whether the asylum seeker is in need of protection as a refugee; if an appeal against a negative decision is lodged then one member of the Refugee Review Tribunal is required to hear and decide on the case. This gives an enormous amount of power into the hands of one person each time and calls into question their experience and ability to deal with such responsibility.

◦ Negative assumptions

From numerous conversations with detained asylum seekers and refugees who now hold protection visas it seems that frequently there was an assumption by some members of DIMIA and the RRT that their stories of persecution and danger were exaggerated and unreliable, if not untrue. This certainly seemed to be the case on several occasions when I spoke to or read letters from DIMIA staff, read tribunal members' reasons for rejecting appeals and on one occasion when I listened to the tapes of a friend's RRT interviews.

It is my opinion that this attitude could be due, in part, to the lack of knowledge and understanding of the realities of life faced by people living under repressive regimes. Perhaps there was an underlying belief that 'If it doesn't happen in Australia, it couldn't happen anywhere else'? My concern about decision-makers' lack of knowledge was strengthened when I read the Auditor-General's comment that "Decision-makers stated that at times the information contained within CIS did not provide them with analysis of the current situation in a particular country at the level of detail that they required". (p.45 - 3.23. Report No.56 Management of the Processing of Asylum Seekers, June 2004.)

◦ Immigration Dob-in Line

I also find the 'Immigration Dob-in Line' a dangerous affront to the Australian value of the 'fair go'. Anonymous statements, often of a general nature eg. "So-and-so is not from Afghanistan, he is Pakistani", are accepted, apparently entered on DIMIA records and can be presented for rebuttal by the asylum seeker at RRT interviews. If any anonymous information is accepted, it should be the job of DIMIA to check that out thoroughly; the burden of proof should NOT be on a detained person with few facilities available.

◦ Quality of interpreting

Several friends have complained about the quality of the interpreters provided. Some were from hostile ethnic groups eg. Hazara asylum seekers were provided with

Pashtun interpreters. Iranian Farsi speakers had interpreters whose mother tongue was Arabic and spoke Farsi as a second language. In 2000 four Iranians wrote a formal letter of complaint to DIMIA stating among other things that, 'In some cases, the statements we made to the immigration investigation officers either were not there, or if they were, they were seriously wrong or false.' The misinterpretations were discovered only much later when the detainees listened to the interview tapes.

2. Migration Detention

° Effects of long-term detention

I do not argue against some form of detention for asylum seekers while health, identity and security checks are carried out but, having seen the physical and psychological deterioration in my friends over the last four years, I firmly believe that to keep men, women and children incarcerated indefinitely is a travesty of justice and a complete contradiction of values we have treasured in the past. We, as a nation, cannot plead ignorance. There have been too many reports revealing the effects of long-term detention published over the last 5 years. In Parliament, reports have been tabled and sympathetic politicians from all parties have brought their misgivings forward. Parliamentary committees have made numerous recommendations. In the Senate, Senator Andrew Bartlett has made speech and speech giving detailed information, eye-witness accounts and asking probing questions. Lack of public and political interest meant that little changed. Sometimes it seemed to get worse.

In his 2002 report Justice Bhagwati, the Regional Advisor for Asia and the Pacific of the United Nations High Commissioner for Human Rights, stated in Section IV Issues of Concern Identified and Discussed During the Mission: 'extended and often seemingly open-ended detention appears to cause great distress and psychological trauma to several persons in detention in Woomera.' (p.15, para. 45)

It is worth noting that the people whose psychological state had so alarmed Justice Bhagwati had been in detention for periods 'often exceeding 12 months, and sometimes considerably more'. Most of my released friends spent over 5 years in detention while one almost reached his sixth year. Others still waiting are well on the way to their fifth 'anniversary'.

° The atmosphere within detention centres

The following observations are based on approximately 100 visiting hours spent in Maribyrnong, Port Hedland and Baxter detention centres. The environs and procedures are intimidating; the lack of freedom and sense of powerlessness is experienced by visitors and must be so much worse for the detainees- I refuse to use the euphemism 'residents'. Special efforts on the part of both visitors and detainees are required to bring any sense of pleasure to the surroundings. Visitors bring food, rugs, books, games, flowers and photos to bring a sense of well-being. The detainees wear their good clothes, welcome us warmly and make endless cups of coffee and tea. There is always plenty of multilingual conversation, laughter and sometimes there is music. But on leaving, the smiles fall from our faces once we have passed the Visitors' Centre windows. We know it is the same for those left behind.

There is also the ever-present surveillance by uniformed staff-some of whom are friendly and helpful, some disinterested, officious or deliberately unhelpful. It seems that the quite a few staff really do not understand that these asylum seekers are not criminals in jail because of crimes they have committed. Perhaps this is due in some cases to previous employment in the prison system or security firms.

Detention centres are hot-houses where rumours thrive, anger and despair are contagious and incidents of rudeness, lack of respect and mistreatment by guards (whether real or perceived) can lead to dangerous confrontations. The effects of mental and physical health problems exacerbate the situation. This means that food and medication are important issues. When the quality of the meals deteriorates badly or the distribution of much-needed medication is arbitrarily changed it leads to anger and distress. If, at such a time, the situation is mishandled by IDF staff, the situation can become aggressive on both sides. Unfortunately, there seems to have been little staff-training in ways of defusing such situations. I hope this will change.

◦ The Pacific Solution

The Australian government's use of the desperate financial situation of our neighbours PNG and Nauru to solve the perceived problem of boats loaded with asylum seekers 'flooding' onto our shores heralded a low period in our history. As did the excision of Christmas Island etc. The small number of remaining asylum seekers on Nauru should be brought to Australia and released on protection visas.

The Pacific Solution has been inhumane in operation and an incredible waste of taxpayers' money and must be ended. The empty centre on Manus Island closed along with a soon-to-be empty centre on Nauru and the Christmas Island construction stopped while the refugee situation is re-assessed.

◦ Detention of Children

It is with great relief that I hail the government's decision to bring the children out from behind the razor-wire after ignoring growing public pressure and numerous reports such as last year's HREOC's A Last Resort? No child should have to grow up behind steel fences, with uniformed guards, locked gates and under 24 hour surveillance. These children have had many dreadful experiences during their time in detention-will adequate psychological counselling now be provided? Perhaps the money saved by closing the Manus Island and Nauru centres could be used for this.

3. The adequacy of healthcare, including mental healthcare

◦ General Health Concerns and Dental Care

As stated above the health and well-being of detainees affects the every-day operation of detention centres. Therefore it is of prime importance that the private companies running the centres should view the provision of healthcare as a priority. In my experience this is often not the case. People find it a difficult and time-consuming task to get medical attention and are often dissatisfied with the treatment. I have formally complained to GSL and DIMIA several times about less-than-adequate treatment of friends, most recently on behalf of someone who had undergone a minor operation at the Port Augusta hospital. A few days later he was still in a lot of pain and described feverish symptoms, bleeding and 'green stuff' coming from the operation site. Even to a non-medical person this clearly indicated infection. He was offered only ordinary Panadol. I was concerned and insisted that he go to the centre's doctor in the morning. The following night I rang to check and he said he had been but, although the doctor had prescribed anti-biotics, he hadn't receive any. In fact he did not receive them until after my telephone call to a GSL staff member the following day.

Dental health is also a problem with many detainees complaining of toothache. It

seems extremely difficult to obtain dental treatment and people have to wait for weeks, if not months to see a dentist. I know of four friends who had teeth extracted. No other treatment was offered. In Port Hedland a friend suffered raging toothache from Thursday to Tuesday with only Panadol to ease the pain. I have been told that a diabetes sufferer in Baxter has lost most of his teeth.

° Mental Health

Most detainees are on long-term medication for sleeplessness and anti-depressants. I believe that there are suicide and self-mutilation attempts that go unreported to DIMIA. There has been better treatment of such attempts since Cornelia Rau's case came to public attention.

I have spent many hours talking on the telephone and during visits to deeply depressed and despairing people. I have visited friends in Glenside and felt relief that their problems were now being properly treated. I have also seen the after-effects when the first euphoria of release disappears. I have watched as friends fought against feelings of depression, anxiety, hopelessness, confusion, lack of concentration and physical symptoms such as stomach problems, dizziness, headaches, etc. They have described feeling that they are 'going mad' and can 'never be normal again'. It is difficult to watch these recurrent battles-I salute their courage and determination. We DO want people of such strength in our country. The toxicity of long-term indefinite detention should not have been ignored for so long by the people making and administering government policy-nor by the media and the Australian public.

° Treatment of Hunger Strikers - Baxter December 2004

In December last year there were two hunger strikes at Baxter. It may be helpful to understand the background to these hunger strikes.

In November there had been several forcible deportation attempts-deportations always increase the level of fear in all centres. There had also been a number of suicide attempts and finally, GSL had put into operation changes to the way medication was distributed which had increased the anger and anxiety experienced by highly stressed people having to wait for long periods of time to receive their medication. Even more serious, mistakes occurred which resulted in some detainees missing out on their regular doses of anti-depressants.

The first hunger strike was by Sri Lankan detainees and ended when they, mistakenly, believed that their cases would be reviewed by DIMIA 'soon'. A few days later three Iranians went up on the roof and from then on the hunger strike spread to involve most of the Iranians, some sewing their lips together. I was extremely worried as I knew many of those involved and was particularly concerned about long-term health effects. So I was relieved when one friend told me he had finished his six-day long strike after experiencing increasing pain and blood in his urine. He then spent 10 hours in the medical centre where he was examined and treated for kidney damage by the doctor who told him he would see him the next day. He went to nurses' station next day, still in pain and with blood visible in his urine, but was told that the doctor would see him in the compound that evening. However, in the compound that night he was told by a member of GSL that he could not see the doctor. He understood that this was because he was no longer on the hunger strike. It seemed that access to the doctor was rationed after the first 24 hours for people coming off the hunger strike.

When I spoke to this GSL staff member the following day about my concerns he

denied this, explaining that the doctor was only in the compound to see 'specific' detainees not 'residents in general'. I have doubts about this explanation as the doctor had, I believe, fully intended to check up on my friend's condition the day after treating him for kidney damage. I believe it is more likely that the decision to limit access was taken by GSL. Even after my telephone discussion my friend was still not seen by the doctor. The visible blood in the urine disappeared after three days but the pain persisted and still recurs at intervals. What worried me even more at the time was the thought that the detainees who had been longer on the hunger strike and would be weaker might also have time limits put on their access to the doctor. It seemed dangerously shortsighted. I put these concerns in writing to both GSL and DIMIA but received no reply.

4. Deportation of people from Australia

It has become increasingly clear that grave mistakes have been made by the Department of Immigration and Multicultural and Indigenous Affairs with regard to the deportation of so-called 'failed' asylum seekers. Many of the people currently being released from detention with protection visas have tried for years to prove that they are genuine refugees. Can we be sure that those deported were not also in need of protection from persecution in the countries to which they were returned? I think not. For example, it took years before the Sabian Mandaeans were recognised as a persecuted religious minority and who knows how many were returned to danger before that.

° Deportation of Christian Iranians

Conversion from Islam is considered apostasy, a crime harshly punished by the Iranian clerical courts. The death penalty can still be invoked. There is a wealth of information on the internet on the subject of religious persecution in Iran but even as recently as January this year Christian Iranians have been forcibly deported by DIMIA and others were pressured to 'voluntarily' return or threatened with deportation. I truly cannot understand how this could happen. Did those making such decisions not understand the danger that these converts faced if returned to Iran? Or did they not believe the genuineness of the conversions? Either way they must have totally ignored the many letters written by supporters and statements from ministers, priests and nuns vouching for the strength of the converts' Christian beliefs, the regularity of their attendance at church services while in detention and the likelihood of religious persecution in Iran..

This year I have written a number of letters to the Minister and other members of the Government on the plight of Christian Iranians in detention and especially those known to me. In response I have received at least two letters stating the 'These judgments are made on the individual facts of each case. They do not rely on sweeping and superficial generalisations that particular countries are "not safe" for their own nationals.' These letters came from different branches and were signed by different people. It seems to be a well-used set of sentences as other RAR members have received the same wording in their DIMIA response-letters and I once read it in DIMIA spokesperson's statement in a newspaper. However, seeing that those 'sweeping and superficial generalisations' were direct quotes from sources such as the UNHCR, Amnesty International, Human Rights Watch and U.S. Department of State, I am less than convinced that 'Australia takes seriously its obligation of not returning asylum seekers to a country where they might suffer persecution'-another oft-repeated sentence from Departmental letters.

It now seems that many of the Christian Iranians are being released on temporary

protection or Removal Pending visas. I am very happy for my friends but pray that those previously deported have been able to avoid danger and persecution in Iran.

C. Conclusions and Recommendations

As I was writing this submission I downloaded a copy of the Palmer report, Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau (July 2005). Although I only skimmed through it I realised that many of the concerns, mistakes and weaknesses I was describing came under Mr. Palmer's 'Main Findings'. So I will simply add my voice to his call for urgent reform to deal with the 'serious cultural problems within DIMIA's compliance and detention areas' (Main Finding 7) and hope that his practical recommendations will be carried out successfully. I believe that, in some cases, a start has already been made by the Minister.

I do however wish to make one recommendation. It is based on the interrelationship between language and culture. It is impossible to separate the two whether we are talking about a country or a government department. As far as the government and the Department of Immigration and Multicultural and Indigenous Affairs are concerned, unless this inextricable link is understood and changes made to the language used, there can be little success in attempts at culture change.

When the Prime Minister talked on radio about Australia becoming 'just an easy touch for illegal immigrants' and the then Minister for Immigration stated in The Age (7/8 October 2001) that 'a number of children have been thrown overboard, again with the intention of putting us under duress'; when the media and politicians from both sides of the House used emotive language such as 'coming in by the thousands', 'illegals' and 'queue jumpers', it is little wonder that the treatment of asylum seekers in detention deteriorated and physical as well as verbal abuse by guards increased. I believe that such statements press buttons in people which lead to unacceptable behaviours. The results of this type of connection was graphically shown on the Four Corners expose of the Woomera Detention Centre. Here the language used in the media and by politicians and that used to denigrate asylum seekers by staff in detention centres showed many similarities.

Accordingly, when the former Minister for Immigration suggests, during a television interview that suicide and self-harm attempts are made, not through desperation, but as a ploy to manipulate the government into granting visas and the current Minister describes the Nauru hunger strike as 'unattractive' behaviour rather than a cry for help by desperate people and blames the parents seeking asylum for the mental health problems of their children held in detention for years, we should not be surprised when mentally ill people are seen as uncooperative attention-seekers whose problem behaviour can be fixed with a spell in isolation.

If there is to be the true cultural change in DIMIA that all parties now agree is necessary, then 'Reform will need to come from the top'. As Mr. Palmer states in Main Finding 20 of his report. All politicians, from the Prime Minister and Leader of the Opposition down, must take responsibility for the way they use language.

I suggest that they begin by using the active rather than the passive voice in statements and interviews so that 'We accept that mistakes have been made' becomes 'We accept that we have made mistakes'. Or, even better, 'I have made mistakes'

Thank you,
Rosalind Berry. 29th July, 2005.

(Copies of letters mentioned in the submission can be sent if necessary.)

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