



The Centre for Refugee Research
UNSW
THE UNIVERSITY OF NEW SOUTH WALES

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NEW SOUTH WALES



Submission to Legal and Constitutional References Committee

Senate Inquiry into the Administration and Operation of the Migration Act 1958

**From the University of NSW Centre for Refugee Research
(CRR)**

and

**The Australian National Committee on Refugee Women
(ANCORW)**

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About the UNSW Centre for Refugee Research

Mission Statement

To provide an international and interdisciplinary centre to initiate programs of inquiry relevant to refugee issues.

To conduct research into the social, economic, legal, political, health and medical impacts of refugee intakes in countries of resettlement such as Australia, as well as countries of first asylum with whom Australia is likely to have links based on trade and foreign relations.

To apply research to the provision of foreign and humanitarian aid for peoples displaced within their own countries as a result of armed conflict as well as for exile and refugee communities internationally.

To develop and extend a human rights framework for the analysis of all aspects of the refugee experience, and to evaluate the effectiveness of current human rights instruments for refugee populations.

To produce research which will benefit the Australian community by maximising the capacity of refugees to become productive members of society.

To benefit refugees, displaced persons and humanitarian immigrants through the provision of research to guide government policies and services.

To develop and maintain a country information database about human rights violations around the world that is relevant to establishing refugee status.

To disseminate outcomes through a web page, publications and a program of symposiums and conferences.

About the Australian National Committee on Refugee Women (ANCORW)

Mission Statement

ANCORW is a lobbying, advocacy and research group which works with and for refugee women and their families in order to bring about change in the refugee system and to enhance their ability to rebuild their lives.

ANCORW regards refugee issues as human rights issues. Empowerment and the full achievement of all human rights for refugee women and their children is equally as important as protection.

At a national level, ANCORW lobbies for changes in domestic law, social policy and for improved services.

At an international level, ANCORW lobbies at the United Nations for changes in international law, United Nations Declarations.

ANCORW is committed to undertaking research into issues which adversely affect the lives of refugee women and their dependent children and to use this research to lobby for change.

ANCORW is committed to empower refugee women to have control over their own lives and to advocate on their own behalf through the provision of advocacy training and by providing opportunities for refugee women to participate in national and international forums.

The Terms of Reference for this Inquiry

- A) The administration and operation of the Migration Act 1958, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration, and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications, migration detention and the deportation of people from Australia;
- B) The activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies in processes surrounding the deportation of people from Australia;
- C) The adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention;
- D) The outsourcing of management and service provision at immigration detention centres; and
- E) Any related matters.

This submission focuses in particular on one of the mission statements of the Centre for Refugee Research. This is:

To develop and extend a human rights framework for the analysis of all aspects of the refugee experience, and to evaluate the effectiveness of current human rights instruments for refugee populations.

With this focus in mind, the submission reports on relevant research which has evaluated the affect of:

- A) The administration and operation of the Migration Act 1958, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration, and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications, migration detention and the deportation of people from Australia;
- B) The activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies in processes surrounding the deportation of people from Australia;
- C) The adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention;
- D) The outsourcing of management and service provision at immigration detention centres; and
- E) Related matters.

Research Findings

A) The administration and operation of the Migration Act 1958, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration, and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications, migration detention and the deportation of people from Australia;

RE: Temporary Protection Visa and Bridging Visa E

Both the Temporary Protection Visa and the Bridging Visa E deny asylum seekers and refugees rights and services which are their due under international human rights conventions.

This submission points to research which has documented the negative affect for refugees and asylum seekers of living with Temporary Protection Visas and Bridging Visa Es, and argues that this body of material be taken into account in relevant decision making by the Department of Immigration and Multicultural and Indigenous Affairs DIMIA.

Asylum Seeker Project, Hotham Mission. 2003. *Welfare Issues and Immigration Outcomes of Asylum Seekers on Bridging Visa E*. ASP, HM. Victoria.

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Phillips, C. and Manning, S. 2004. 'Temporary Protection Visas and Child Refugees' in *Medical Journal of Australia* 181, 3, 171-172.

Taylor, S. 2000. 'Do On-shore asylum seekers have economic and social rights? Dealing with the moral contradiction of liberal democracy.' in *Melbourne Journal of International Law* 1, 1. 84-91.

RE: Complementary Protection Visa

This submission notes the model of Complementary Protection presented in the document *Complementary Protection: The Way Ahead* by the Refugee Council of Australia, the National Council of Churches in Australia and Amnesty International Australia. This submission supports the adoption of this model.

RE: Migration detention

The most recent report on migration detention is the July 2005 report by Mr. Palmer *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*. In terms of the stated focus of this submission, we concentrate on those major findings of the report which show:

- The lack of adequate review processes to provide confidence that the power to detain is being exercised lawfully, justifiably and with integrity. (findings 3, 4, 9).
- The deficiencies of current policy and procedure with ‘policy, procedures and enabling structures being developed on the run’ (2005:V111)
 - (findings 5 and 6).
- The lack of adequate training of DIMIA staff (findings 9, 14, 15), which may also account for the noted cultural and attitudinal problems (findings 8 and 17).
- The need for effective reform of DIMIA to include external professional assistance (finding 20 and 26).
- The inadequacy of the mental health care provided to detainees, including the lack of a mechanism for external accountability and professional review of standards and arrangements for the delivery of health services (findings 24, 25, 26). This will be addressed in the submission under the Inquiry’s Term of Reference C.
- The inadequacy of DIMIA’s contract with Global Solutions (finding 28). This will be addressed under the Inquiry’s Terms of Reference D.
- The inappropriateness of current arrangements for surveillance of female detainees (finding 30). This will be addressed under the Inquiry’s Terms of Reference E.
- The inadequacy of executive leadership in the compliance and detention areas, and the lack of oversight by executive management in Canberra (finding 17 and 29).
- The inappropriateness of DIMIA’s attitude to the provisions of the Commonwealth *Privacy Act 1988* which has operated in a way ‘that is clearly against the public interest and the intent of the Act’ (finding 34).
- The lack of adequate review processes to provide confidence that the power to detain is being exercised lawfully, justifiably and with integrity. (findings 3, 4, 9).

- The practice of detaining all those who arrive without documentation, often for prolonged periods, directly contravenes international standards of refugee protection which deem that the detention be used only in exceptional circumstances and for the shortest possible period (EXCOM Conclusion 44, in Amnesty International 1998). It is only in Australia that all asylum seekers who arrive without documentation are mandatorily and arbitrarily detained.

As the publication *The Better Way* notes, ‘Unlike other asylum seekers, these people are always taken to detention centres and there is no time limit on how long they stay’ (JAS 2002:2). Groups such as the Justice for Asylum Seekers (JAS) Alliance have developed alternative policies based on the practices of other western countries, which distinguish between those people who may need to be detained (such as those posing a security risk), and the majority of people seeking asylum who do not. Even for those deemed to be at a high security risk, there is a necessity for set periods of judicial or administrative review. The detailed recommendations for such a system are contained in the research publication from which *The Better Way* was developed, ie. *Alternative Approaches to Asylum Seekers: Reception and Transitional Processing System* (June 2002).

The evidence gathered by Mr. Palmer further highlights the human rights implications of a policy which “violates the right to liberty and security of persons due to its lack of a case by case examination of the necessity and appropriateness of detention” (Amnesty International Australia AIA 2005).

The recent Amnesty International Australia report *The impact of indefinite detention: the case to change Australia’s mandatory detention regime* rightly points out that Australia’s policy of mandatory non-reviewable detention is in breach of the 1966 International Covenant on Civil and Political Rights ICCPR (2005:5).

This submission supports Amnesty International Australia’s challenge to the Australian government to amend the policy and legislation to ensure that no person is detained in violation of their human rights.

- The deficiencies of current policy and procedure with ‘policy, procedures and enabling structures being developed on the run’ (2005:V111)
- (findings 5 and 6).
- The lack of adequate training of DIMIA staff (findings 9, 14, 15), which may also account for the noted cultural and attitudinal problems (findings 8 and 17).
- The inadequacy of executive leadership in the compliance and detention areas, and the lack of oversight by executive management in Canberra (finding 17 and 29).
- The inappropriateness of DIMIA’s attitude to the provisions of the Commonwealth *Privacy Act 1988* which has operated in a way ‘that is clearly against the public interest and the intent of the Act’ (finding 34).

In view of the breach of the ICCPR which the policy of mandatory non-reviewable detention

constitutes, it is all the more disturbing to note the above findings of the Palmer report, ie. that DIMIA staff are not even adequately trained or vigilant in the exercise of those powers.

This submission supports the establishment and inclusion in DIMIA policy development and implementation, of an independent body with professional expertise across policy, legal, health, human rights and social justice fields to advise DIMIA on these areas of deficiency noted in the Palmer report.

The need for effective reform of DIMIA to include external professional assistance (finding 20 and 26).

This submission argues that this finding is crucial to any real change in DIMIA policy and procedures. Mark Considine, in the 1994 publication *Public Policy: A Critical Approach*, outlined an ideal ‘policy innovation’ model in which a balance is found between regulation (in its role of providing stability and cohesion) and learning (with its connotations of utilisation of expert knowledge and collaborative investigative and decision making structures). This is the model suggested here as a reference point in future collaboration.

The Centre for Refugee Research notes that a wealth of expert, professional knowledge exists which has not been utilised by DIMIA in the past few years, and which has in fact, been ignored or discredited (for an example, see Steel et al. 2004).

RE: Deportation of people from Australia

This submission points to research which has documented the consequences of forced deportations from Australia. We argue for this research to be utilised by the Department of Immigration and Multicultural and Indigenous Affairs in the development of policy and procedures.

Deported To Danger: A Study of Australia’s Treatment of 40 Rejected Asylum Seekers

In the 2004 report by the Edmund Rice Centre for Justice and Community Education in cooperation with The School of Education, Australian Catholic University, researchers investigated the situation of 40 asylum seekers who had been rejected by Australia for refugee status. The research documented, that out of those 40 people, 35 were “living in dangerous circumstances immediately on arrival at the point of deportation and only five are clearly safe in the longer term” (2004:2).

Following Them Home: The Fate of the Returned Asylum Seekers

This research, published in 2005 by Mr. David Corlett, provides further documentation of the situation of asylum seekers deported from Australia, and the destructive affects on these people of Australia’s policies and practices. Corlett argues that “if people are so damaged by their experiences in Australia...Australia has obligations to them” (2005:208).

B) The activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies in processes surrounding the deportation of people from Australia;

We refer again to the pioneering research by the Edmund Rice Centre for Justice and Community Education in cooperation with The School of Education, Australian Catholic University for documentation regarding this area of concern.

We also point to the need for effective implementation of the recommendation made by the HREOC Human Rights Commissioner in a submission to the Report of the Senate Inquiry in 2000, *A Sanctuary Under Review*, ie. for a system of monitoring of the results of deportation from Australia.

C) The adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention;

Health professionals such as Dr. Jon Jureidini have concluded that the detention environment itself is the primary cause of mental illness (as noted by Justice Finn in *S v Secretary, Department of Immigration and Multicultural and Indigenous Affairs* {2005} FCA 549 (5 May 2005), Section 237).

In the study presented by Dr. Zachary Steel at the 38th Congress of the Royal Australian and New Zealand College of Psychiatrists, in Hobart in 2003, there was indicated ‘a threefold and tenfold increase in psychopathology among adults and children, respectively, subsequent to detention’ (Steel et al. 2004: 667).

The response of the Department of Immigration and Multicultural and Indigenous Affairs to this body of work has generally been to either minimize issues of mental health in detention populations, or to discredit the findings of the research on the basis of alleged researcher bias (Steel et al. 2004).

The research on the effect on detainees’ health of being in the Australian immigration detention system, constitutes a large body of evidence. The following is only part of this body of evidence. This submission argues for this body of evidence to be responsibly utilised by the Department of Immigration and Multicultural and Indigenous Affairs in the development of policy and procedures.

Thompson, M., McGorry, P., Silove, D. and Steel, Z. 1998. ‘Maribyrnong Detention Centre Tamil Survey’ in D. Silove and Z. Steel (eds) *The mental health and well being of on-shore asylum seekers in Australia*. Psychiatry Research and Teaching Unit. Sydney.

Silove, D., Steel, A. and Watters, C. 2000. ‘Politics of Deterrence and the Mental Health of Asylum Seekers’ in *Journal of the American Medical Association* 284, 5, 604-611.

Sultan, A. and O’Sullivan, K. 2001. ‘Psychological Disturbances in Asylum Seekers Held in Long Term Detention: A Participant-Observer Account’ in *Medical Journal of Australia* 175, 593-596. 10

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Mares, S., Newman, L., Dudley, M. and Gale, F. 2002. 'Seeking Refuge, Losing Hope: Parents and Children in Immigration Detention' in *Australasian Psychiatry*, June.

Zwi, K., Herzberg, B. Dossetor, D. and Field, J. 2003. 'A Child in Detention: Dilemmas Faced by Health Professionals' in *Medical Journal of Australia* 179, 6, 319-322.

Steel, Z. 2003. 'The politics of exclusion and denial: the mental health costs of Australia's refugee policy'. Paper presented at the 38th Congress, Royal Australian and New Zealand College of Psychiatrists, Hobart.

Steel, Z., Mares, S., Newman, L. Blick, B. and Dudley, M. 2004. 'The Politics of Asylum and Immigration Detention: Advocacy, Ethics, and the Professional Role of the Therapist' in J. Wilson and B. Drozdek (eds) *Broken Spirits: The Treatment of Traumatized Asylum Seekers, Refugees, War and Torture Victims*. Brunner-Routledge, New York.

D) The outsourcing of management and service provision at immigration detention centres; and

DIMIA has supplied immigration detention services through outsourced arrangements since 1997. This submission points to recent documentation of the inadequacies of this arrangement:

- Finding 28 of Palmer report, 2005.
"The current detention services contract with Global Solutions Limited is fundamentally flawed and does not permit delivery of the immigration detention policy outcomes expected by the Government, detainees and the Australian people"
- The recent 2005 judgement by Justice Finn, which provided a clear indication of this inadequacy (S v Secretary, Department of Immigration and Multicultural and Indigenous Affairs {2005} FCA 549 (5 May 2005)).

Justice Finn noted in his Conclusions that "The Commonwealth entered into a complex outsourcing arrangement for the provision of mental health services which left it to contractors and subcontractors to determine the level of services to be supplied.....The service provision was so structured that there was a clear and obvious need for regular and systematic auditing of the psychological and psychiatric services provided if the Commonwealth was to inform itself appropriately as to the adequacy and effectiveness of these services for which it bore responsibility. There has to date been no such audit" (2005, Section 259).

- The 2005 report by the Auditor-General (Audit Report No. 1 2005-06 Performance Audit).

In terms of the detention services contract between DIMIA and GSL, this report found that “ the Contract does not adequately specify key responsibilities that are to be met, either by DIMIA or GSL. In particular, clear and consistent definitions are not provided for health standards that are central to detainee welfare. For example, Duty of Care and the specific obligations for a subcontractor supplying psychological services are not consistent with the department’s Immigration Detention Standards. The audit found that the Contract does not clearly specify mechanisms for the ongoing monitoring of subcontractor arrangements, for compliance with intended outcomes” (Key Findings, number 18).

E) Related matters

- The inappropriateness of current arrangements for surveillance of female detainees (finding 30 in the Palmer report).

This submission deplores the arrangements as reported by Mr. Palmer, which govern surveillance of female detainees in Red Compound and the Management Unit at Baxter IDC, and requests urgent reform.

- Women giving birth in detention

The submission deplores the practice of the Department of Immigration and Multicultural and Indigenous Affairs in relation to women giving birth in hospital rooms which are designated as a detention centre, with all of the restrictions and deprivations that apply (see Steel et al. 2004:674 as an example of this practice).

Recommendations

The Centre for Refugee Research has consistently argued that Australia’s mandatory detention policy fails to meet the very basic humanitarian needs of the individuals it incarcerates (see our submission to the HREOC Inquiry into Children in Immigration Detention). We recommend that:

The practice of mandatory detention cease immediately on the grounds that it is detrimental to the mental and physical health of all detainees, and that it contravenes their human rights under a number of the conventions to which Australia is a signatory.

The TPV system be either dismantled or substantially revised to incorporate the potential for permanent residency and access to all settlement services, and this must be backdated to cover those people currently with TPV status.

The principle of family reunification be reintroduced as a component of any TPV system, and backdated to cover those people currently with TPV status.

The recipients of Bridging Visa E be given work rights and other rights necessary for their adequate living necessities and health care.

The introduction of the Complementary Visa model.

New, humanitarian and effective models of on-arrival reception.

Investigation and reform be urgently constituted into the findings of the Palmer report on migration detention.

The wide body of research evidence available to policy makers (partly documented in this submission) be recognised and included in consideration of policy development and implementation.

An independent body with professional expertise across policy, legal, health, human rights and social justice fields, be established to advise DIMIA on the areas of deficiency noted in the Palmer report, and included in future policy development and implementation.

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Senate Legal and Constitutional Reference Committee. 2000. *A Sanctuary Under Review: An Examination of Australia's Refugee and Humanitarian Determination Processes*. Commonwealth of Australia.

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