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Committee Secretary
Senate Legal & Constitutional Committee
Department of the Senate
Parliament House
CANBERRA ACT 2600

Dear Sir,

Re: Migration Act & Practice Review

I make this Submission on behalf of the Woomera Lawyers Group.

The Group played a pivotal role in:

- Getting access to Woomera.
- Exposing the harsh treatment of Refugees at Woomera.

- Providing legal representation to people incarcerated in the Woomera Detention Centre.
- Running some of the most significant cases for Refugees this century in the Family Court, the Federal Court and the High Court.
- Encouraging others to advocate for Refugees and provided them with the framework to do so.
- Encouraging the UN Human Rights Commissioner's Envoy, Mr Justice Baghwati to visit Australia and tell the world about Woomera.

The Woomera Lawyers Group had the support of approximately 200 lawyers and other volunteers who gave their time, expertise and resources freely to assist Refugees.

I have been struck by the ordinariness of the people who gave their time and energy to this cause. Generally they were not people who were accustomed to, nor in the habit of publicly challenging government policy. They were ordinary members of the community who would not tolerate our Government's inhumane treatment of asylum seekers.

I do not know of an issue that has ever drawn the huge response from lawyers that the issue of immigration detention has. Lawyers have involved themselves because the policy of detention has raised serious issues such as – the presumption of innocence; the right to liberty except in exceptional circumstances; the right to a fair trial; the right to due process; access to legal representation; the rights of the child. Many lawyers continue to give their services on a pro-bono basis to asylum seekers.

The Woomera Lawyers Group, after having gained access to the detention centre, continued to provide legal representation and to advocate for and on behalf of the people locked up at Woomera. It did that by phone contact, regular visits and eventually on 22nd November 2001 establishing an office at Woomera in the township which provided a base for lawyers to attend the detention centre most days until the detention centre closed.

I have frequently been asked to speak publicly about the plight of refugees and their experience of detention. I have often found it useful to speak to a chronology of events and have included "Woomera Detention Centre Chronology" as Appendix 1.

Policy of Deny, Deter and Return

Through my close involvement with people at Woomera I concluded that Prime Minister Howard's approach to boat people was to pursue a policy of deny, deter

and return. The Government implemented the policy with gusto, reinforcing the message that people who came on boats were not welcome and should be punished to send a message to others not to come.

The establishment of detention centres in remote areas such as Woomera as high security prisons can only be seen as forming part of a policy of deterrence.

Woomera was an inhumane place where people were called by numbers, vilified and treated as criminals for lengthy and indeterminate periods of time. Any improvements to their situation was the result of constant legal challenge, public protest and media attention.

Following the naïve and premature position by the USA that the Taliban had been defeated and Afghanistan was safe processing of asylum seekers at Woomera was suspended. This ridiculous position was maintained for months. The Afghans' begged and pleaded with DIMIA that there would never be a quick fix for Afghanistan. The Afghans' out of desperation engaged in a peaceful hunger strike.

Access to the Centre at Woomera

Up until the 1st December 2000 when lawyers entered the centre to give advice about human rights, access had been very restricted.

There was a large number of mothers and children at the centre and it was not until about June 2001 that any husband was able to visit his wife and children. This was despite the fact that the husbands had already been accepted into Australia as genuine refugees.

Access for these men only occurred because the Woomera Lawyers Group discovered that none of the detainees had been made aware of the procedure to have visitors. The process was that the person who had been detained had to sign a form requesting a particular person to visit. That form then had to be conveyed to the visitor who then had to present it at the gate. DIMIA had not made that policy known to people wanting to visit and accordingly no one visited. Once the first person visited many others followed.

There was no Visitors Centre at Woomera and no privacy for husbands to visit their wives and children once access was established. Clearly there was a covert policy of isolating detainees from family and friends and the Australian community.

Arbitrary rules as to how and when people could visit the detention centre evolved. I and a number of lawyers were refused access at different times for no legitimate reason. The rules changed in 2002 as to how and when forms had to be provided and where lawyers could walk. These changes were designed to impose extra and unnecessary restrictions.

Processing

The unpredictable nature of visa processing led to significant stress for detainees. There were periods when very few people got visas. My belief is that this was sometimes a punitive measure used by the Government to encourage people to return to their countries and give up their claims for asylum. There were periods when very few Afghanis' got visas.

Visa processing was unnecessarily drawn out. Once people were found to be genuine Refugees they were then required to have police checks which generally took between 2 and 5 months. DIMIA could have run the Police checks at the time the processing was being carried out.

The 10,000 boat people from the Middle East could have, and should have been processed in Indonesia. The UNHCR had two facilities that operated from 1999 to 2003. The Howard Government contributed to the cost of running those facilities.

Hundreds of people were found to be genuine Refugees. Those people generally applied to be resettled in countries such as Australia. Australia only agreed to take three of those people as at 31st March 2002. If people from Afghanistan, Iraq and Iran knew that they could have been processed and then allowed to be resettled in Australia then the leaky boats would not have come.

Temporary Protection Visas (TPV's)

The people who were released from Woomera on TPV's have had to endure continuing uncertainty. They can not organise for their families to join them in Australia. They can not leave Australia and return.

The TPV concept is at variance with Refugee Conventions which provide for people who have been accepted as genuine Refugees being able to resettle and establish themselves.

Private Contracting

Woomera was run in tandem by DIMIA and ACM who were jointly involved in the administration and processing of Refugees and the overall running of the centre. This system provided a lack of accountability.

ACM had a background in management of penal institutions. It was inappropriate for ACM to be in charge of a facility which housed women and children . Its style of management and heavy-handedness towards the detainees was evidence of this fact.

Unnecessary amounts of violence were inflicted by ACM guards on a number of asylum seekers without consequences to the guards or the Company.

The Government have not and were not held accountable for their actions in allowing the in humane treatment of people detained at the Woomera Detention Centre. There were no minimum standards of conduct provided.

ACM received extra remuneration for activities such as preventing escapes and quelling riots. Obviously then there was a degree of incentive for the Company to establish that a riot had broken out and then to use heavy-handed means to quell it.

The Refugee Review Tribunal

Through my involvement with hundreds of applications to the RRT I have been seriously concerned about the competence and lack of independence of RRT members.

The RRT comprised a single member. RRT members were appointed for short periods of time and I believe that their re-appointment was at risk if they did not refuse a substantial number of applicants.

Applicants were denied legal representation at RRT hearings and there was no guarantee that the rules of natural justice would be followed. Refugees often reported that they felt the RRT member was trying to trick them and were not listening to their story.

RRT members were often reported as being rude and insensitive.

A substantial number of decisions were irrational and illogical.

Migration Agents

The Department paid for Migration Agents to provide assistance to asylum seekers.

There was a perception that if Migration Agents did not support the Government line their contracts would not be renewed.

DIMIA made vague threats that if people who were Non-Migration Agents appeared to give any Migration Act advice then they would be prosecuted.

Migration Agents were restricted in what they could do for asylum seekers. They visited the Woomera Detention Centre and by their silence endorsed the appropriateness of the conduct of DIMIA and ACM.

Immigration Detention Advisory Group

The Government appointed a number of high profile individuals to its Advisory Group. These individuals included Professor Harry Minas, Psychiatrist, Paris Aristotle, Psychologist, John Hodges and Air Marshall Ray Funnell. Their photos were prominently displayed at the front gate house at Woomera. The appointment of this group created the impression the Howard Government had set up checks and balances to make sure asylum seekers were treated appropriately with respect in accordance with Australia's international obligations.

My experience of this group was that it condoned and supported the Government policy in relation to asylum seekers.

Unaccompanied Minors:

These were children that arrived in Australia without any family. Most were teenage boys who had fled the Taliban. The Government failed to treat them as a special category until it had pressure put on it by lawyers. Even after they were released from detention and granted Protection Visas they were offered packages of \$2,000.00 to return to Afghanistan even though the whereabouts of their families were unknown.

One particular incident involved an eight year old boy who arrived in Australia as an unaccompanied minor, spent four months at Woomera and was subsequently

released on a TPV only to have DIMIA insist that he be offered the return package of \$2,000.00 to travel back to Afghanistan.

It is little known that the Immigration Minister became the legal guardian of all unaccompanied minors. This is completely inappropriate. The Minister's requirement to detain children (in what have been shown to be damaging environments) is at odds with his/her responsibility to ensure the child's best interests are met.

A complicated arrangement existed between State and Federal Governments so that the State welfare authority (FAYS in South Australia) were paid to look after these children on their release. Technically the children were still detained until they received TPV's. This served only to compromise the State welfare authority also in restricting the care they could provide for the children. The Howard Government entered into a memorandum of understanding with the South Australian Government. The Howard Government thereby effectively silenced criticism from the State Government.

Delegates

To prove some mechanism for asylum seekers to have representation in the centre a system was developed whereby asylum seekers could appoint Delegates. The Delegates provided a means whereby asylum seekers could have issues such as health, education and security raised with management. The Delegates helped to maintain harmony amongst the detainees. DIMIA discarded the system after the UN visits. I submit the reason for this was to further disempower asylum seekers.

The Commonwealth as a "model litigant"

I was appalled by the attitude displayed the Australian Government when refugees sought review of their RRT decisions, especially given that over 90% of people detained at Woomera were eventually found to be refugees. The Government frequently appealed decisions and often refused to concede points that could have and should have been conceded. Enormous amounts of public funds were consumed in unnecessary litigation.

RECOMMENDATIONS:

1. The mandatory nature of immigration detention is contrary to the fundamental human right to liberty except in exceptional circumstances. The Immigration Act should be amended to abolish mandatory detention.

2. The indefinite Nature of Detention is contrary to the fundamental right to due process and a fair trial. The Immigration Act should be amended to limit the period of any discretionary detention to no more than four weeks unless with Court approval.
3. Asylum seekers have a right to legal advice and representation:-
Reasonable access to lawyers should be provided just as there is in a prison. Detention centres should be located in or close to major cities.
4. Processing of Visa applications must be speeded up.
Health and Security checks should have been completed by the time a visa is granted.
5. TPV's should be abolished.
6. The RRT should be abolished because it is tainted. A Judicial Review process should be made via the Federal Magistrates Court.
7. Asylum Seekers should be provided with information about applying for refugee status before the process begins. They should be assisted to understand how the process works from the earliest opportunity. The procedure of screening out people who do not speak English and do not make a technically accurate claim for refugee status, even children as young as eight, is abhorrent and needs to be stopped.
8. Contracting out of operating Detention Centres should stop. It is not appropriate. The Australian Government should take full responsibility for immigration detention so that there is accountability and transparency. Asylum seekers are an especially vulnerable group. They are not Australian citizens, as the law now stands they are not detained for a specified period and private operators stand to benefit from their prolonged detention.
9. Conditions of Detention should comply with minimum standards that are available on request through Freedom of Information applications. Conditions and procedures should be specified for children, aged, infirm, women, mentally ill and other groups as necessary.
10. The Commonwealth Government should behave as a model litigant. The Government has not behaved as such and should provide a statement to Law Societies in each State detailing how it can be expected to behave in litigation. It should then comply with this.

11. That the Howard Government issue a formal apology for its inhumane treatment of the boat people from the Middle East. Refugees are the poor of the poor and need to be protected and respected.

I submit that it is the leadership which the Australian Government shows that has a significant effect on the views of Australian people. Australians look to the Government for moral guidance on issues such as refugees. If the Government treats those people with respect and compassion then so will the majority of Australian people. If, on the other hand the Australian Government engages in vilifying a particular group of people, then the Australian people are likely to follow suit (at least for a time). This causes division and conflict in our communities which is unnecessary and dangerous.

I request an opportunity to address the Committee in due course.

Yours faithfully,

JEREMY MOORE & ASSOCIATES

Per:
Jeremy Moore

APPENDIX 1

WOOMERA DETENTION CENTRE - CHRONOLOGY

1st December 1999

Camp Opened – Initially 300 – 400 people detained in make-shift accommodation.

April 2000

Detainees demonstrated peacefully seeking better conditions and speedier processing of their visa applications.

June 2000

Still none of the approximately 1600 people detained had been released with visas. Still no T.V, radio or newspapers provided and no visitors had been to the centre apart from a Catholic nun and a Catholic priest. The detainees were essentially cut off from contact with the outside world

Detainees broke a fence and there was a mass exodus to Woomera township. All returned peacefully and DIMIA promised speedier processing.

July 2000

Some visas were issued.

August 2000

Riots and fires. DIMIA promised to increase visa processing. Detainees requested access U.N. but this was not facilitated. Some improvements made to facilities - T.V., computers, and limited education classes. More visas granted.

September 2000

Decrease in visas granted and processing generally.

October 2000

Minimal processing of claims and granting of visas. Fires and riots.

October 16th 2000

A Four Corners Programme about Woomera.

November 2000

Jeremy Moore sought access to Woomera Detention Centre to see two clients. Access was refused. Mr Moore made Application to Federal Court for Access to his clients. The matter was settled and access granted.

1st December 2000

First visit by Legal Group – Paul Boylan, Jane Moore and an Interpreter (Ahmed Hashemi)

December 2000 – March 2001

Approximately fortnightly visits by Legal Group.

A large group of 326 detainees including 14 unaccompanied minors were screened out of the process of applying for visas because they did not technically request protection.

February 2001

Harold Bilboe requests counselling for asylum seekers who received RRT refusals.

March 2001

A Habeas Corpus Application was made to the High Court – but later withdrawn. Lawyers started acting in Federal Court matters and many RRT decisions were overturned.

April 2001

A more adequate kitchen was built at Woomera.

June 2001

For the first time a husband, Mohammad, was allowed to visit his wife and children in the Detention Centre.

July and August 2001

Bus trips transported members of the Legal Team to see detainees.

26th August 2001

Tampa

3rd September 2001

Nauru accepts Refugees.

11th September 2001

Twin Towers destroyed.

21st - 23rd September 2001

The first Group of Australian protesters arrived at Woomera. DIMIA and ACM did not allow contact between protesters and detainees. 17 men and 1 woman got through fence and met with protesters. ACM use water cannon, tear gas and batons. Men, women and children were hurt.

The processing of visa applications for Afghanis' was suspended. Previously 50-60 were released each week.

26th September 2001

Privative clause passed in the Senate which meant the end of all merits review of RRT decisions.

7th October 2001

Children overboard incident. Mr Ruddock and Mr Howard accuse the Iraqi refugees on the boat "Olong" of throwing their children into the sea. The senate inquiry reveals that the navy were ordered to shoot hundreds of live rounds at an unsafe boat in the middle of the night, then tow it for a day, to deter others.

19 October 2001

The refugee boat codenamed later as SIEVX sank. 353 refugees drowned. Most of the passengers were women and children from Iraq who had husbands in Australia and were on the boat as a direct consequence of their husband's having TPV's. DIMIA and ACM have records of survivors who were in Woomera but these were not released.

22 November 2001

A Legal Outpost opened in Woomera.

December 2001

Detainees Rioted. Buildings were destroyed. Afghanis' processing was suspended. A tougher Government line was announced. Thousands of toys denied to the 350 children.

January 2002

Approximately 835 people still detained.

Hunger strike began in mid-January. Lip sewing. Initially Afghanis' joined later by other nationalities.

22nd January 2002

First IDAG visit after 8 days of Hunger Strike to investigate and report to Government.

26th January 2002 – Australia Day

A detainee (Mazhar Ali) jumps off fence at Woomera.

27th January 2002

Second IDAG visit – day 13 of the Hunger Strike.

Lawyers assist Detainees to give Declaration to ACM and DIMIA seeking their removal from Woomera and fair and timely processing.

29th and 30th January 2001

IDAG dishonestly made a deal with the Afghanis' to finish the hunger strike.

Iranians and Iraqis not included in IDAG negotiations.

Increased public concern about detention and negative media attention resulted in children being taken to swimming pool in Woomera township. Lawyers learned that the pool keeper charged to clean the pool after each visit.

2nd February 2002

Hazara interpreters provided.

Unaccompanied minors moved out to foster care.

March 2002

10 day Iraqi hunger strike. Mock graves dug. High level of self-harming and suicide attempts. IDAG did not attend in Woomera. More releases promised.

Good Friday Easter riots. Lawyers refused access by DIMIA and Federal Court – protestors storm the compound. Some people escape.

Noticeable improvements began to be made after the announcement of a UN visit.

April 2002

DIMIA and ACM restrict conditions of access for lawyers.

May 2002

Approximately 200 people detained.

27th June 2002

35 people broke out including Montezar and Alamdar Bakhtiari who were missing for three weeks before being returned on 19 July 2002.

31st July 2002

Jeremy Moore issued proceedings in Family Court for release of Bakhtiari children.

15th August 2002

A *habeas corpus* application resulted in Akram Al Masri, a young Palestinian man, being released. He had been denied refugee status but the Australian Government was unable to return him to his country.

16th September 2002

Abbas Al Khafaji proceedings issued. Mr Al Khafaji was a stateless person and claimed his continued detention was unlawful.

5th November 2002

Abbas Al Khafaji released by Federal Court.

31st December 2002

Fires at Woomera, buildings destroyed. Most of “Mike” and “November” compounds destroyed.

February 2003

95 people detained in Centre, no women, no children.

17th May 2003

Woomera Detention Centre closed.

4000 asylum seekers went through the Woomera Detention Centre and over 90% received Refugee status. Approximately 200 of those people voluntarily returned to their respective countries.