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Below is my submission to the Enquiry into the administration & operation of the Migration Act 1958.

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East Timorese asylum seekers

Immediately after Anzac Day this year, Acting Immigration Minister Peter McGauran announced that applications for asylum by "about 50" East Timorese asylum seekers had been unsuccessful. In response to media questions he said they were rejected on "serious character grounds". Asked how "character" was decided, he said: "We look at obviously criminal records ... information from law enforcement agencies". In fact, 53 had been rejected; and the announcement came as a bombshell to the majority of law-abiding East Timorese. A lot of the details were shocking. They had fled from persecution (that's too antiseptic a word - they fled from murder, rape and torture by the Indonesian army - like all East Timorese, no family was untouched by the murder, rape and torture - many had lost family members in what was a worse genocide per capita than Pol Pot's Khmer Rouge regime in Cambodia). They had been in Australia for 9 to 12 years. All that time their lives had been held in limbo by DIMIA & successive governments. Prevented from attending university & unable to really plan their futures, they nevertheless got on with their lives as best they could. Many married & had children. The vast majority worked, integrated thoroughly into the community & made many friends & were law-abiding. Several of the families rejected by DIMIA had children all born in Australia. In one case, the East Timorese wife of an Australian resident was rejected. What would they have been sent back to? Unemployment of about 70%; widespread food shortages; widespread shortages of basic essentials like safe water, electricity, adequate health facilities; the poorest nation in Asia, according to UN Development reports; shockingly high maternal & infant mortality rates. President Xanana Gusmao repeatedly asked Australia not to send the asylum seekers back because of the dire economic situation in East Timor. But none of that mattered to DIMIA, because there were these "serious character grounds".

What serious character grounds? Well, it turns out that when the law enforcement agencies actually investigated the 53 rejected asylum seekers, they found just 6 on their records. Where is the Minister's apology to the other 47, who had been defamed without any chance of redress? Why did DIMIA make the announcement on April 26th without first checking their "facts"? What will be done to stop DIMIA doing this again to other asylum seekers? Do we need to extend Australia's defamation laws to enable people to defend themselves against arbitrary announcements by unaccountable government departments?

The Bakhtiyaris - a gross abuse of the Migration Act

The Bakhtiyari family was deported at the end of last year to Pakistan. Why Pakistan? They were from Afghanistan. The evidence is conclusive. It was conclusive at the time of their deportation. Sydney Barrister Nicholas Poynder gave to Minister Vanstone's office in June 2004 a number of letters & documents showing the Bakhtiyaris were from Afghanistan. The included confirmation from the District Governor, from the Provincial Governor, from the residence of a local mosque in their district, from the Afghan Government, from a village representative, from a local high school representative & from the Acting District Governor. These were followed by a statement by a Norwegian Refugee Council worker given to the minister's office in November. There was never any response to these documents from the Minister, possibly because, as she openly admitted at one stage, she had not read the Bakhtiyaris' file. And yet they were deported - to Pakistan, not to their country of origin, Afghanistan.

Why? The "evidence" quoted by DIMIA can only be described as flimsy - so flimsy it's transparent. It's a document which isn't signed or dated & which gives the names of Ali Bakhtiyari's children incorrectly. In fact, DIMIA's evidence is so transparent that the real motive for this deportation can easily be seen. The Bakhtiyaris embarrassed the Government by challenging its appalling mandatory detention regime. When the 2 boys, Alamdar & Monty, sought asylum at the British consulate in Melbourne in 2002 the Howard Government decided to deport the family. They were forcibly removed from their home in Adelaide, Mrs. Bakhtiyari was deported while pregnant, and they were deported into danger. They are Afghan Hazaras. The Hazaras have been a persecuted minority in both Afghanistan & Pakistan for centuries. Many Hazaras have recently been murdered in the region of Pakistan which the Australian Government claims is their place of origin. The children had been well integrated into the Adelaide community. They were torn from their Adelaide schools, & the door was slammed permanently shut on attempts by the boys' school to continue their education by charging the family up to a million dollars for the privilege of being detained in various concentration camps. This case is nothing short of a scandal. It merits a Royal Commission on its own, let alone all the other DIMIA scandals.

SIEV-X

The greatest scandal of all is the deaths by drowning of 353 men, women & children when SIEV-X sank in international waters on October 19th 2001. At the time, the Australian Navy & Air Force were conducting extensive surveillance of the area under Operation Relex. Evidence that it sank in international waters comes from People Smuggling Taskforce notes (October 23rd), a Foreign Affairs (DFAT) cable (October 23rd), a DIMIA Intelligence Note (October 23rd) & a Harbourmaster's report from Sundu Kelapa, North Jakarta (October 24th).

In July 2000, the Australian Federal Police (AFP) established a joint people-smuggling team of 10 AFP officers and 5 DIMIA officers which cultivated a network of paid informants in Indonesia within the people-smuggling trade. In September 2000, the AFP signed a special protocol with Indonesia's police (Polri) to target people-smuggling gangs in Indonesia. People-smuggling was not a crime in Indonesia; nor was it a law-enforcement issue. Under the protocol. AFP would gather intelligence & pass it to Polri. AFP provided communications equipment & training; Polri provided teams of 10 officers to

disrupt people-smugglers. No conclusive evidence has ever been presented on how people-smugglers were disrupted; the Howard Government is dedicated to keeping it that way. On August 28th 2001, the Australian Security Intelligence Service (ASIS) was given a blank cheque by the Government to conduct a separate campaign against people-smugglers in Indonesia. On September 12th 2001, Indonesia's Foreign Affairs Department suspended the protocol between AFP & Polri. This may have been because they were concerned about what was being done under the disruption program - no complete explanation has ever been given. Despite the protocol being rescinded, the people-smuggling task-force continued its activities. Even less is known about just what ASIS was doing at this time. The protocol wasn't restored until June 2002 (it represented agreement between the 2 governments). AFP & Polri continued their activities unchecked by any lack of intergovernmental agreement.

Then-AFP Commissioner Mick Keelty's description of the task-force's activities is alarming: "... once we ask them to do it, we have to largely leave it in their hands as to how best they do it." Enter Abu Qassey, organiser of the SIEV-X voyage. Was he a Polri sting agent? We may never know, because the Howard Government is dedicated to keeping such information forever secret. On October 18th 2001, over 400 people were forced at gunpoint (some being beaten in the process) onto SIEV-X by Polri officers. The boat had a normal carrying capacity of 150. There was an obvious crack in the hull. It's only stating the obvious to say the boat was sabotaged & that hundreds were deliberately sent to their deaths.

Australian Kevin Ennis has publicly admitted that he was an informant, he acted as a people-smuggler, he organised voyages, collected money & then sank the boats close to Indonesia. According to People Smuggling Task Force (set up within the Prime Minister's Department) notes on October 12th 2001, the Task Force discussed ways of "beefing up" disruption activity. Was what happened to SIEV-X an example of "beefing up"? This is not fanciful when you consider the extreme secrecy surrounding this whole operation to this day. David Marr's book "Dark Victory" reports that a Canberra source says SIEV-X was a target of ASIS. Mick Keelty described the instruction to "beef up" disruption activity as an "operational call along the lines of: `The departure of the vessel is imminent; we'd better be doing everything we can possibly do`".

The October 23rd DFAT cable from the Jakarta Embassy revealing where the boat had sunk was withheld from the Ceratin Maritime Incident (CMI) enquiry until after the enquiry had finished taking evidence and tabled its report. When the cable was finally tabled in Parliament, the Chair of the CMI enquiry, Senator Peter Cook, told the Senate that he realised officials had lied to the enquiry. The Navy officer reported to have a complete overview of all intelligence on Operation Relex, Admiral Raydon Gates, was never allowed by Defence Minister Hill to testify to the CMI enquiry. The Senate has passed 4 motions calling for a full judicial enquiry. All have been ignored by the government.

Why does the RAAF surveillance map of the day SIEV-X survivors were rescued not show any rescue boat within 27 nautical miles of the rescue coordinates? Did an RAAF Orion fly directly over the survivors as they were being rescued as reported? Why hasn't the full list of SIEV-X survivors & victims been made public? How can we accept a cover up of evidence before a Senate enquiry which was called to investigate a cover up? How did the AFP so easily extradite other people-smugglers from Indonesia to face trial here (eg Kais Asfoor, Ali Al Jenabi and Hassan Ayoub) when it couldn't manage to extradite the worst people-smuggler of all, Abu Qassey? Why was the charge against Abu Qassey downgraded by an Egyptian court from manslaughter to "causing death by mistake"? Was this done on the advice of Australian authorities who were so closely advising Egyptian authorities at the time? Why is evidence provided by the AFP before this court not publicly available? Why did the AFP

show such an obvious lack of interest in extraditing Abu Qassey from December 2002 onwards? (they persisted with charges of people-smuggling, not a crime in Indonesia, despite the obvious futility of their feigned interest in extraditing him in this way). In the light of all this obvious cover-up, how can the Australian people possibly trust either the AFP or ASIS, especially when it comes to operations in Indonesia, supposedly the front-line in our so-called "War on Terror"? Are any AFP or ASIS agents complicit in mass murder? Why did then-Defence Minister Peter Reith suddenly depart politics shortly afterwards? Was former DIMIA head Bill Farmer booted upstairs into the Jakarta Embassy (after presiding over a fiasco in DIMIA) because he knows where the bodies are buried?

146 children died when the SIEV-X sank. And 142 women. And 65 men.