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**quiry into the Administration and Operation of  
the Migration Act 1958**

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## **Submission to the Inquiry into the Administration and Operation of the Migration Act 1958**

### **My background**

Since 2001 I have been active in the refugee rights movement in several ways. I have been part of the campaign to change public opinion and government policy to humane treatment of all asylum seekers and refugees. I have also been a volunteer worker for agencies giving direct aid and support to the victims of government policy, including two years with the Romero Centre, Brisbane, and six months with the Refugee Claimants Support Centre, Brisbane. A third activity I have been involved in is writing to people in various forms of immigration detention.

### **Problems of Nauru detainees**

Since last Christmas I have been regularly writing to four Iraqis and one Afghani detained at Nauru for almost four years. They are what the Government calls "rejected asylum seekers." They have failed to absolutely prove their refugee status according to the very tough and selective definitions of a refugee. One can fail to be counted as a refugee even though one was genuinely fleeing for one's life. Two of these men were teenagers when detained and are now in their early twenties. A fifth of their entire life has been wasted. The other three are in their late twenties, early thirties and forties, respectively. All of them have family that they are worried about and miss. The one in his forties suffers guilt for not being able to look after his wife and children. All of them believe that a return to their home country would be a death sentence. Reports I read of events in these countries confirms to me that their fears are justified. I believe that most or all of them are really refugees in the dictionary meaning of the word, and that they have been knocked back on legal technicalities. I am also concerned about DIMIA procedures in assessing asylum seekers. There is a wealth of anecdotal evidence that different DIMIA officers use different criteria. Some DIMIA officers find a negative result whatever evidence is put before them. Some very questionable methods have been used. For example, many Afghanis have been accused of being Pakistani on the grounds of analysis of their speech. But many have moved all over the place and have picked up different accents and dialects during their travels. (Many Australians who have lived in the USA for a few years would not have their origin confirmed by such a test). Such complaints are documented by lawyers and advocates. I cannot quote any cases while they are still being worked on. But I would point out that many cases that were initially rejected have achieved a positive outcome upon review. The high number of these surely implies something wrong with the procedures, especially when the Government tries to argue that the very fact of rejection proves that the asylum seeker is in the wrong and should return to his or her country. Given enough time and enough extra evidence, it is even conceivable that all or most of the detainees at Nauru will be found to be genuine refugees after all.

Those who have found themselves at Nauru are in a very bad situation. Their letters and e-mails overwhelmingly and repeatedly indicate that they are going out of their minds. The indefinite length of their detention, their isolation and loneliness and their boredom are systematically destroying them as human beings. Since the numbers detained at Nauru have been so drastically reduced, their frame of mind is getting worse, not better. Their feeling of rejection is intensified, and there is an overwhelming sense of emptiness ("death", some of them call it), in the camp.

I have written to many MPs and senators about this, urging them to push the Minister for Immigration to use her ministerial powers to decide the future of individual cases based on humanitarian grounds. They should be given visas and released into the Australian community on humanitarian grounds, as a matter of immediate priority. In the longer term, the cruel and abominable way they have been treated implies a crying need for a completely different approach to the whole question, including a rejection of mandatory detention, permanent visas for recognised refugees, and fair and consistent assessment procedures.

#### **A letter from DIMIA as an example of the cultural problem in DIMIA**

I recently wrote an email to the Prime Minister drawing his attention to the unbearable ordeal of detainees at Nauru, and urging him to use his influence to free them, on humanitarian grounds. My letter was answered by an Assistant Secretary, not of the Prime Minister's Department, but of DIMIA. Please find a copy of this reply attached (Appendix 1) to this submission. In my view the content of the reply exemplifies many of the problems existing in the administration of immigration policy, both in the Public Service and in the Government. I do not know the author, indeed I have never heard of him. It follows that my following comments are based solely on the letter he sent me and not on any form of personal prejudice against him. I emphasise that this submission is not intended as a complaint against this or any individual. I regard the contents of the Assistant Secretary's letter as *typical* of the rhetoric that comes out of DIMIA today, mindlessly parroting the statements of Government ministers, including the Prime Minister. *That* is what I am complaining about.

From engaging in the issue as a volunteer and activist I have picked up a certain amount of knowledge. This letter insults my intelligence and such knowledge as I have gained. At best the arguments presented are specious. At worst they are transparently deceitful. The letter never seeks to address the facts I originally presented to the PM, but blindly and stubbornly defends Government policy *whatever facts or complaints are presented*. That an Assistant Secretary of the department can write such rubbish is very worrying to me. In the meantime my friends at Nauru continue their tortuous and endless ordeal.

#### **Unpacking the letter from DIMIA**

I shall now explain why the Assistant Secretary's letter is rubbish.

He starts by pointing out that the detainees at Nauru (who I pointed out are going out of their minds) have been rejected as refugees. He claims that the process by which they were judged is acknowledged to be just, fair and efficient, by UNHCR. It may be so that, *in theory*, UNHCR has approved the Australian Government's processes. But UNHCR has more than once condemned Australian Government *practices*. For example, in April this year UNHCR specifically took the Australian Government to task about its apparently endless detention of people at Nauru, and called on it to find a humanitarian solution for these asylum seekers. Four months later 32 people still do not know their fate. The Assistant Secretary has some cheek claiming the support of UNHCR.

As well, there is plenty of evidence that that these processes are not just, fair and efficient. The report by Hassan Ghulam (see *References*) is a starting point on this question.

### **Nauru "residents" not in detention?**

The whole tone of the reply is summed up in the next statement: "Residents of the OPC in Nauru are not held in detention." It may be true in a merely technical, legalistic sense, but here the author's tone is that of a smart-aleck. I would call him a clown, were it not for the intensity of the suffering such words lead to, in the prison camp at Nauru. My original email was written in deadly earnest. It is insulting to have it treated like this. I am expressing myself in the common English language. According to the meaning of the word in any dictionary, "residents" at Nauru (or "migrants", as IOM and ancillary staff at Nauru call them) truly are, in every sense of the word, *detained*. Many of them were originally taken there at gunpoint. They are not free. They see the supposed "freedom" to return to their countries as nothing but the freedom to go to their deaths. In English, it is correct to call them "detainees". I intend to persist using this word.

### **Gloating over the fate of returnees**

The reply gloats over the fact that 473 detainees have returned to their countries of origin. He does not mention that they were bullied into doing so. Sometimes they were lied to by DIMIA staff about their rights and told they had no choice. Often, the key decision making factor was that the conditions of detention were so unbearable that detainees would risk death to get out of them. In some well documented cases, forced deportations have occurred with detainees restrained by various means, including handcuffs, blindfolds, gags, and drugs. I wonder if they are counted in the 473, or if the author just didn't want to mention them?

The reply seems to imply that the 473 detainees who returned to their countries represent 473 happy, or at least satisfactory, endings. I refer you to the recent publication, *Following Them Home*, by David Corlett. It is solemn reading. It is a record of the author's tracking down of some of those "failed asylum seekers" who have returned. There are no happy endings, just a range of tragedies ranging from almost instantaneous death or arrest on returning, to being stuck in another refugee camp, with a host of sufferings in between.

### **Nauru detainees free and living well!**

The Assistant Secretary then claims that those now present at Nauru have "chosen" to be there, and their ordeal is justified by the fact that they are "well cared for". Once again, he refuses to acknowledge the well documented facts about the dangers for these people in returning. Their only choice has been to survive instead of being killed. They would much rather be somewhere other than this actual (though not technical) indefinite detention at Nauru. The Assistant Secretary would know that, but is apparently being facetious at their expense.

By all accounts the running of the camp at Nauru by IOM is far superior to the running of detention centres in Australia by Global Solutions Ltd. The former tend to try to make the best of impossible conditions and try to help their inmates, contrasting with the hundreds of reports of bullying and victimisation (both petty and serious) that reach refugee supporters from Australian detention centres, for which DIMIA also

bears duty of care. But IOM staff themselves know, as do psychologists who have worked at Nauru and have gone on the record, that the *very situation* of isolation, deprivation of rights and freedoms combined with no end to it, amounts to a form of psychological torture. The good intentions of the hapless staff of IOM make no difference to that fundamental fact.

**Attempt to twist my typical example into a special case**

The Assistant Secretary notes my concern for "a particular resident". In an apparently futile attempt to awaken the conscience of the reader of my email I had attached a message from one of my Nauru friends (without his name of course) in which he complained that he was going out of his mind. And yet I made it very clear in my original email that my concern was *not* just for this particular resident, but for *all* those who write to me, and indeed all of the detainees there. *All* regularly make the same complaint. *All* of them have problems with anxiety, depression, sleeplessness, exhaustion, loneliness, boredom, constantly plummeting self-esteem, and probably worse. None have mentioned serious psychotic symptoms, but it would surprise me if they were absent in that mentally toxic environment. It may be that such symptoms are too sensitive an issue to discuss with someone they have never met in person. Given that I made it clear that my concern was for the entire group and that the quoted email was simply an example of what was concerning me, the Assistant Secretary's comment about "a particular resident" strikes me as a deliberate attempt to twist my meaning.

**Psychological torture OK if mental health care available?**

He then repeats a long rehearsed response from DIMIA and Government ministers to the accusation that detention (including the technical non-detention at Nauru), being itself a form of trauma, both provokes and exacerbates mental illness. He states that there are mental health services provided. There are mental health units, mental health strategies, mental health professionals, blah, blah, blah. What a pity he has never taken any notice of what these mental health professionals themselves say about detention! By this bizarre logic you may as well justify bashing detainees to a pulp with crowbars as being humane, as long as there are medical services to administer first aid. It is an evasion of my serious and fully justified concern.

The causal link between Australia's form of detention (including Nauru) has been fully documented by mental health professionals, in a large and growing body of literature, which is easily accessible through research databases and to some extent, the Internet. The Assistant Secretary would no doubt be aware of this, but probably wishes to hide it.

For example, I would draw your attention to the work of Dr Maarten Dormaar (former head psychiatrist at Nauru), Dr Zachary Steel (School of Psychiatry, University of NSW), Dr Louise Newman (NSW Institute of Psychiatry) and Dr Christine Phillips (ANU Medical School). All of the above argue that mental health practice in detention centres (including Nauru) is utterly useless. Healing cannot take place unless the patient is released. Or, as Robert Manne and David Corlett quote Maarten Dormaar, (see *References*), "The practice of psychiatry at Nauru is as futile as the practice of medicine in the filthy hospitals of early 19<sup>th</sup> century Vienna." (pp. 51-54)

I have also included the address of the ABC transcript of an interview with Dr Dormaar on the same subject (see *References*).

### **Border protection as justification for harsh treatment**

The letter then proceeds to the question of border protection. The Assistant Secretary seems to vaguely imply that mandatory detention and harsh treatment of asylum seekers has something to do with border protection, but he does not say what. It appears to be a kind of “dog whistle” argument. You just mention the words “border protection” and the dogs you are aiming at all obediently heel. You don’t even have to *have* an argument. I find his vagueness interesting. Former Minister Ruddock always denied that mandatory detention had the function of deterrence. He always claimed it was for the efficient processing of claims only. The present Minister Vanstone and the Prime Minister himself are, on the other hand, shockingly upfront about the fact that it is about deterrence, and that therefore detainees are meant to have a bad time. Vanstone even once said that she hoped they would be ringing up people back home telling them what a bad time they were having. I would not be surprised if the Assistant Secretary proved to be suffering a bit of confusion on this issue. It illustrates the extent to which *the Government’s policies themselves are the problem*. In the same way that you cannot run a concentration camp in a humane fashion, neither can you run a detention centre humanely, *if the very intention behind it is the opposite*.

The statement that the Government’s “firm commitment” to border protection “stands beside” Australia’s human rights obligations” might be reassuring if it were true. If it were true this letter would have been an opportunity to place new, hitherto unknown facts or evidence on the record. But this has not been done.

### **Attack on good character of Nauru detainees**

The letter then attacks those who have sought to come to Australia by boat, claiming that “many” of them (how many remains a mystery) have bypassed protection arrangements in countries closer to their home. It seems to be implied, although is not stated, that this is a criminal thing to do. Yet the international agreements to which Australia is a signatory do not say this, but rather grant the right to seek asylum to those who feel they need it, in any country that they can get to. I can see no reason why someone who gets to, say, Indonesia, should feel that it is improper or sneaky to go further, to Australia, if they can. Indeed, the reason for doing so that many in detention have stated is that they had greater faith in Australia’s commitment to human rights than in that of other countries (eg, Pakistan, Malaysia or Indonesia). Their wish to come to Australia reflected their high esteem for Australia. It seems that their faith was misplaced. Some of them now believe they were mistaken. Others make a distinction between the Australian people and their government.

### **Fallacy of safe haven in closer countries**

I would also argue that the very idea that asylum seekers in those countries closer to home have found satisfactory arrangements is often badly mistaken. In 2004, the well-known Australian refugee supporter of Hazara Afghani origin, Hassan Ghulam, toured Indonesia to visit asylum seekers and research their conditions. His report is available at [www.safecom.org/hassan-report.htm](http://www.safecom.org/hassan-report.htm). The report paints a grim picture of the situation of these asylum seekers, which is described as desperate, “destitute in Indonesia... without hope, without a life, without a future.”

This picture was filled out during the trial of the accused people smuggling participant, Abu Quassey, earlier this year. Most of the witnesses were, at the time of Quassey's activities, asylum seekers who had arrived in Indonesia. These are the very people that the Assistant Secretary claims should be content to stay put and not seek to go any further. One after another they told of being virtually imprisoned in overcrowded hotels and boarding houses. They rarely knew or were told their location. They were completely at the mercy of the people smugglers, and at times, also of armed Indonesian police (probably corrupt officers acting outside the law). They had to stay hidden, except when being taken to another place. Of course they want to reach a better place and the idea that they should be condemned for it is utterly callous.

I would add that the rejection of asylum elsewhere does not apply to most of these people anyway. The accusation appears to have been thrown in as another populist red herring. But *if* it ever did apply, that does not excuse such harsh and cruel treatment of people, which appears to be the argument being put.

**"Queue-jumping" myth trotted out yet again. A sneaky ruse**

The argument that follows is one of the most mendacious of all. Unauthorised arrivals are accused of taking "scarce resettlement places which would otherwise be available to refugees identified overseas as being in greater need". This is the line on which the epithet "queue-jumper" is based. It was used to justify mandatory detention right from the start, and was intensified to a hysterical level during the 2001 election. All through this period, it was utterly untrue. Australia is part of a UNHCR program of orderly resettlement of recognised refugees from camps in various parts of the world.

Australia gets to pick and choose the ones it wants. It is a modest program, but it genuinely assists a certain number of people. The point is there never was any connection between this resettlement program and the settlement of successful boat people. The latter did not deprive the former of any places. But because the "queue-jumper" accusation was so successful as a vote winner and driver of public hysteria, the Government has since deliberately introduced precisely such a connection. If there was any other reason for introducing it, the Assistant Secretary's letter would have been a good place to explain it. But instead he creates the impression that such a connection has always been the way it is. His very sneakiness here verifies the sneakiness of the Government in introducing it. I remind you, this is from a high ranking official of DIMIA.

**"Hordes from the north" myth trotted out yet again**

He then raises the "flood" scenario of many more people wanting to come to Australia than we can absorb. The same was said in the 1970s and 80s of the Vietnamese. Yet we *did* absorb them, and what good value, as a society, we got. I have met people who believe that literally millions will be on our doorstep if we treat people decently. The Assistant Secretary is obviously appealing to such lurid fantasies. There is no fact, no evidence and no reality anywhere in his letter. The Government to which he obviously gives such unquestioning loyalty set up a national panic about a few hundred arrivals. It was absurd then, and yet it is trotted out here again.

**"Illegals" myth trotted out yet again**

He goes on to accuse my friends at Nauru of being there "because they have paid people smugglers to assist them in attempting to enter Australia illegally." The well known QC, Julian Burnside points out repeatedly that it is not illegal for an asylum

seeker to attempt to enter Australia by any means that they can. First of all, their right to do so is defended by international law, to which Australia is a signatory. But there is also no Australian law that they are breaking. In the debates of the last few years this has been repeated hundreds of times. Neither the Government nor DIMIA has ever rebutted it. Yet they just keep on repeating it, even though it is untrue. Now a senior DIMIA official joins in the deceitful and cretinous chorus. How can they just get away with it?

### **Harsh or humane treatment? A strange contradiction**

There is then a boast that the Pacific Solution has made Australia a less attractive destination. This brings me to a contradiction that runs through the entire letter, and arguably through the whole of immigration policy and its administration. On the one hand they (both the Government and DIMIA) answer accusations of cruelty and harsh treatment by denying it and claiming that they are humane, they provide services, health care and so on. As mentioned earlier it has even been claimed that there is no element of punishment or deterrence in detention. But then, on the other hand the response is often an attack on those that are claimed to be suffering the bad treatment. They are queue-jumpers, they are illegals, they have paid people smugglers, they have "selfishly" come to Australia instead of "humbly" staying in a closer country. In the face of accusations of serious human rights violations, the purpose of the former response is obviously to convince us that they do not happen, and that detainees are well treated. But what, then, is the purpose of the latter response? It can only be to convince us that detainees do not deserve any concern, and to justify whatever harsh treatment they may complain about. This is meaningless unless the harsh treatment or abuse is real. Thus, this letter, by attempting to argue on both sides, undermines itself and even lacks the quality of coherence. The same can be said of most Government and DIMIA pronouncements on the subject of asylum seekers and refugees. It is obvious that serious abuses do occur, and arguable that indefinite detention is itself a form of abuse. But the authorities bat off all accusations using whatever spurious claims they think they can get away with. Sometimes that means "We treat people humanely and there are no abuses." Sometimes it means, "So what if there are abuses; they deserve it anyway." They really don't seem to care about the small question of truth. Still, it is a bit disturbing to get a letter from a single official in which *both* arguments get a run.

### **Stopping queue-jumpers to help "good" refugees. More mythology**

Almost as a final piece of mockery the letter ends with a reiteration of the previous lie about boat people stealing the places of those in the UNHCR refugee intake. Australia has increased its intake by 50%, it seems, only because the boats have been stopped. He hopes the deliberate strategy of linking the two (without mentioning that Government policy has been deliberately set up that way) will pull the wool over my eyes. The propaganda would then have succeeded.

### **DIMIA's letter written after Palmer**

My original email to the Prime Minister was sent before the Palmer Report was released. But the Assistant Secretary's reply was sent after. One can scour the letter in vain to find a skerrick of acknowledgement of the content of that report. His response to the unfolding crisis in his department's reputation and credibility is to stubbornly reiterate the correctness of everything the department and the Government have done and said in the past and the present. Not only does he ignore Palmer's warning about a



problem in the "culture" of the department, but his letter actually *exemplifies the problem*. So much for the Minister's reassuring statements that the problem was being addressed.

**Something wrong in the Public Service**

I am a former Commonwealth Public Servant (not from the area of immigration). My memory of the Public Service is that a base grade officer expressing such a mixture of ignorance, politically motivated mythology and facetiousness in response to serious questions at an internal job interview, would not have a hope of promotion. Yet this rubbish comes from the mind of a high ranking officer, in charge of others and wielding power. That this can be so is a symptom of something very wrong in administration of immigration policy, especially as it applies to asylum seekers, refugees, detention and deportation.



Paul McKinnon  
18 August 2005

## **References**

Corlett, D. (2005). *Following Them Home: the Fate of Returned Asylum Seekers*, Melbourne, Black Inc.

Ghulam, H. (2004). *Afghani asylum seekers and refugees in the Republic of Indonesia*, published at [www.safecom.org/hassan-report.htm](http://www.safecom.org/hassan-report.htm)

Manne, R. & Corlett, D (2004). *Quarterly Essay 13*, "Sending Them Home: Refugees and the Politics of Indifference", Melbourne, Black Inc.

The 7.30 Report, ABC-TV. (2003). Transcript of *Interview with Dr Maarten Dormaar, on mental health at Nauru*. Posted on ABC Online, [www.abc.net.au/7.30/content/2003/s855996.htm](http://www.abc.net.au/7.30/content/2003/s855996.htm)