

Submission to the Senate Legal and Constitutional Reference's Committee's inquiry into the administration and operation of the Migration Act 1958.

This submission relates to the first term of reference.

Temporary Protection Visas

Temporary Protection Visas (TPVs) were introduced in 1999. They are unnecessary and in fact have had a number of unfortunate consequences that arguably are not in the national interest.

TPV holders are denied supports available to refugees with permanent protection which creates two levels of refugee.

Conditions of TPVs do not allow TPV holders to leave this country and return, and do not allow family reunions. Tourist visas are not generally issued to people from refugee-generating countries so there is no way TPV holders can even meet with family members. Many families have now been split up for 5, 6, 7 years.

Effect of TPVs

1. Creating a new market for people-smugglers and increasing the number of women and children attempting sea-crossing especially in the period 1999 to 2001.

Prior to the introduction of TPVs, most asylum seekers arriving by boat were single men. Up to 1999, on average only 10% of asylum seeker boat passengers were children.

After TPVs were introduced, there was no legitimate way for families to re-unite and boat statistics record a marked and steady rise in the number of women and children using people-smugglers.

SIEV X was the asylum seeker boat that sank in October 2001. More than 35% of its passengers were children.

2. SIEV X and the loss of 353 lives

Many of the women and children who died when this boat sank would not have attempted the journey if there had been other means of joining their menfolk.

3. Women and children held in large numbers in detention centres

Detention centres were commissioned to cope with mainly single men. Either DIMIA did not foresee or did not act quickly enough to deal with the large numbers of women and children arriving by boat. If family reunion programs had been accessible to TPV holders, its probable that there would not have been large numbers of women and children locked up for years in detention centres..

4. Heavy workloads for DIMIA

About 10,000 people found to be refugees were issued with TPVs. Their cases had to be reviewed when the visas expired, to ascertain if protection was still required. This

placed a huge burden on the department, on RRT and ASIO who were then required to provide a second security check for each TPV holder.

5. Ineffective as a deterrent to asylum seekers

No asylum seeker has to my knowledge identified the introduction of TPVS as a deterrent in seeking asylum in Australia. To the contrary, TPVs are responsible for encouraging greater numbers of women and children to make the journey to join loved ones in Australia

6. Impact on mental health systems

Refugees are more likely to suffer mental health issues compared with the rest of the population because of experiences in their country of origin that can manifest as severe post traumatic stress disorder. Refugees by definition have fled persecution and are likely to witness war, killings, deprivation and themselves may have been tortured.

Studies have shown that TPV holders are 7 times more likely than other refugees to experience significant mental health issues.

TPV holders when granted visas were understandably very pleased to be released from detention but after a while begin to see TPVs as simply a bigger prison.

- a. Their futures are uncertain
- b. They are separated from loved ones
- c. They live in fear
- d. TPVs and torture

a. Their futures are uncertain

For someone to begin to overcome the effects of a traumatic experience, they need to feel safe. If they still feel under threat, it is hard for the healing to begin. TPV holders feel unsafe because they don't know if they will be returned to countries like Iraq and Afghanistan.

b. They are separated from loved ones

Most people after a traumatic experience gain comfort from being with loved ones. This is denied TPV holders. TPV holders who have wives and children overseas not only miss them, they worry about their wellbeing. Some of these men arrived in this country in 1999 and have not seen their wives and children since then.

Many men have said to me they are desperate to see their parents, particularly mums, at least once before the parents die. For some it's too late, their mums have died within the last year. I have heard this from Iraqi, Iranian, Afghani and Algerian men. (Although it's not safe for them to go home, they can meet up in a safe third country.)

c. They live in fear

Many TPV holders are deeply distrustful of this government through their experiences in the detention centre environment and/or through the process of

being recognised as a refugee. Many targeted Australia because they had heard it was a country that supported human rights, and were completely unprepared for their harsh reception and lengthy incarceration.

Many are too frightened to speak out about their experiences in Australia because of their perceptions of how certain refugee families have been targeted.

They believe they are particularly vulnerable whilst being on a TPV and some have said to me that they fear doing something as innocuous as speaking to an MP in case DIMIA finds out. This may sound absurd and paranoid until you start to look at how regimes like Saddam's Iraq operated, and how asylum seekers have been vilified by sectors of Australian society.

As TPV holders, they feel controlled by DIMIA as an arm of the government, and frightened of what DIMIA can and might do. This then of course spills over into how they relate to the wider Australian community.

d. TPVs and torture

An Iraqi friend who was tortured (about as bad as it gets) during the two years he spent in Saddam's jails described physical torture as something that recedes in 4 or 5 hours whereas the mental and psychological torture of TPVs never stops.

On 2 July 1998, Pauline Hanson's One Nation released a policy document entitled 'Immigration, Population and Social Cohesion', which argued that refugees should be given only 'temporary protection'.

Philip Ruddock, then Immigration Minister responded that year "Can you imagine what **temporary** entry would mean? It would mean that people would never know whether they would be able to remain here. There would be uncertainty, particularly in terms of learning English, in addressing the torture and trauma so they healed from some of the tremendous physical and psychological wounds they have suffered. So I regard One Nation's approach (calling for a system of **temporary protection visas**) as being highly unconscionable." In Fethi and Leach, *Temporary Protection of Refugees: Australian Policies and International Comparisons*, 2002

Mr Ruddock's view was supported by the then Commonwealth Health Minister, Michael Wooldridge also in 1998;

"Creating uncertainty and insecurity...is one of the most dangerous ways to add to the harm that torturers do.

It is even well documented that in pursuing domination, regimes that practise torture deliberately set out to create a climate of fear and chronic alarm by removing any sense of safety or control from those they seek to oppress.

<Temporary protection>...would only continue the suffering of refugees who have been tortured and could well complete the insidious work that torture began. We must not and will not turn our backs on those who come here for refuge. To do so would be to betray our moral obligation as a community and to betray that great Australian tradition of helping out those in need."

Michael Wooldridge, Health Minister, 1998 Speech made in launching a GP's manual on refugee health, quoted by William Maley, <http://www.cis.org.au/Policy/Spring02/polspring02-7.htm>

Concluding comments

There are no redeeming features of TPVs. A very small number of TPV holders, concerned about their families and their uncertain futures, have given up and left Australia. This might be viewed as a good outcome by some but at what cost.

As some TPV holders are now receiving permanent visas, they are starting the process of reuniting with their families. After six years of separation, their children may not remember them. Many of the men are themselves more damaged now as a result of their experiences in Australia than they were when they arrived, and now have to try and re-establish their relationships with wives and children.

The ill-effects of TPV policy will undoubtedly be felt by future generations.

Sue Hoffman

Submission to the Senate Legal and Constitutional Reference's Committee's inquiry into the administration and operation of the Migration Act 1958.

This submission relates to the first two terms of reference, specifically deportation.

In August 2003, three Iranian asylum seekers were taken from Baxter IDC to Perth in an attempt to deport them back to Iran. Lawyers were able to halt the deportation of one of the men, now living in the community on a Temporary Protection Visa, released in April 2005 after more than 5 years in immigration detention.

Points of interest

1. Three Iranian officials had flown from Iran and were waiting in Perth airport to escort this man back to Tehran.

The Iranian officials could only have been there as a result of high-level arrangements made between Iranian and Australian government departments. This view is supported by comments made by Commonwealth lawyers as reported in the media, see below. Also an ACM security officer told the Iranian man that the Iranian officials had been waiting for him in an area of the airport complex used by Police, and not accessible to the general public.

I've been unable to find another example of officials from country of origin coming to Australia to escort failed asylum seekers back to their home country. This action by Iranian officials supported the asylum seeker's claim that he would be in extreme danger if he returned to Iran and it would appear his fear of persecution by the Iranian government was well-founded.

The Iranian officials were not interested in escorting the two other Iranian asylum seekers taken from Baxter at the same time.

2. During the 27 August 2003 Federal Court hearing which halted the deportation, according to media reports, the DIMIA lawyer [REDACTED] said that deportations required cooperation of other governments and international agencies, and warned that Australia's diplomatic standing and status could be harmed if those arrangements were not followed through.

Australia has obligations to provide asylum to those with a well-founded fear of persecution; these should not be undermined because of trade or other considerations. Her comments, if accurately reported, might indicate the involvement of other government departments such as DFAT.

Last year I contacted Julian Burnside QC who'd acted for the Iranian man at the Federal Court hearing and he confirmed media reports were broadly correct. (Texts of media reports follow as appendix one.)

3. DIMIA signed an MOU with Iran in March 2003 which the government refused to table in the Senate. DIMIA's media release says "Australia and Iran have agreed that their first priority is to work together to promote the voluntary repatriation of those Iranians currently in detention in Australia. However, arrangements for the handling of those who do not volunteer to return have also been established."

Iran's human rights record is well known with political dissenters routinely tortured and killed.

Julie Macken of Australian Financial Review (AFR) reported in May 2003 that John Okley, assistant secretary of international co-operation in the Department of Immigration, put together a strategy in December 2002 entitled "Return of Iranian Nationals; Update on negotiations and proposed next steps".

"Encouraging voluntary departures" would be done by offering detainees inducements: \$2000 per person; waiving the cost of their accommodation in detention; giving them the status of a returnee, rather than a deportee; and supplying them with airfares and travel documents.

Of more concern, AFR reported the second part of the strategy was aimed at those who still didn't want to go back. "Creating a credible threat of involuntary removal" meant telling detainees that Iran was now willing to accept their involuntary repatriation. DIMIA would target detainees who had attempted self-harm or committed acts of violence within detention centres.

The article reports that DIMIA gave letters to Iranian detainees saying that Iran now accepted involuntary repatriation, a position denied by Iranian consular officials.

As a refugee advocate, I am interested to know if this is true, in which case it would seem that lying is considered acceptable by DIMIA in the day to day execution of their duties.

In November 2003 AFR ran a story concerning arrangements made for the deportation of a failed asylum seeker back to his country of origin. United Nations High Commissioner for Refugees had written to DIMIA asking them "to exercise extreme caution in undertaking such a removal".

A memo from the psychologist employed at the detention centre asked that the detainee "be constantly monitored because he will portray acute and severe tendencies to self-harm. Due to his current status, I would believe that the nature of the self-harm could border on fatal if the opportunity was to present itself." That is, he may kill himself.

AFR describes what happened to this man when four ACM officers came to remove him from Sydney's Villawood Detention Centre to fly him to Perth. He "became very distressed, lying on the floor shaking and not responding to vocal stimuli, but did to painful stimuli." An hour later, the man "was restrained and conveyed to Bankstown Airport" in Sydney.

The article also refers to three failed asylum seekers who were killed on return to their country of origin. DIMIA confirmed the deaths but denied they were related to refugee claims.

As a refugee advocate, I have been told by ex-detainees of subterfuge and coercion on the part of DIMIA officials to obtain detainees' signatures on documents authorising voluntary repatriation. For example with no interpreter present, a detainee was asked by a DIMIA official to sign a form that according to the official was authorisation to return

belongings or money, or similar benign purpose. In fact, the document was about agreeing to voluntary repatriation.

I would be interested to know who authorises or allows such behaviour within DIMIA, and why departmental standards do not ensure such documents are available in appropriate languages and/or interpreters present when such serious matters are discussed.

Appended to this submission is the text of DIMIA media release concerning the MOU, and the two newspaper articles published in Australian Financial Review referred to above.

Sue Hoffman

24 July 2005

Appendix One	media reports concerning attempted deportation
Appendix Two	media release from DIMIA re MOU with Iran
Appendix Three	AFR article May 2003
Appendix Four	AFR article November 2003

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APPENDIX ONE – text of media reports 28 August 2003

Deportation appeals 'harming' diplomacy ABC ONLINE NEWS Thur, 28 Aug 2003
6:51 ACST

A lawyer for Immigration Minister Philip Ruddock has warned that an appeal against the deportation of an Iranian asylum seeker could affect Australia's international standing.

In the Federal Court yesterday, Justice John Mansfield rejected a 32-year-old Iranian man's application to defer his deportation but allowed his lawyers leave to appeal against the decision.

The 32-year-old arrived in Australia in January 2000 and had exhausted all avenues of appeal for his asylum application by March last year.

Mr Ruddock's lawyer, Sashi Maharaj, told the court three Iranian officials had flown to Australia to escort the man back to Iran.

She said deportations required cooperation of other governments and international agencies and warned that Australia's diplomatic standing and status could be harmed if those arrangements were not followed through.

Mr Ruddock is prevented from deporting the man until the appeal over his deportation is heard. <http://www.abc.net.au/news/australia/sa/metsa-28aug2003-2.htm>

Man faces 'certain death' if deported, court told by Terry Plane, The Australian , 28-08-2003

THE Federal Court has been told an Iranian man awaiting deportation in Perth faces death, torture or prosecution if he is sent home. The man, 32, whose name has been suppressed, was transferred to Perth from the Baxter detention centre with two other men, who have since been deported, without the chance to call lawyers.

Melbourne QC Julian Burn side, who represented the man in court yesterday, said he had been left in Perth because of a "cock-up", and that three Iranian officials were waiting in Perth to escort him to Tehran.

Mr Burnside told Justice John Mansfield it would be "curious" if Australia, a signatory to the UN convention on refugees, deported someone to a country "where he would be killed", and questioned whether Immigration Minister Ruddock was required to send the man back to "certain death".

Conceding the Commonwealth's "obligation to remove" detainees who had failed to obtain Temporary Protection Visas and exhausted all legal appeals, Mr Burnside said that did not include an "obligation to send him to death, torture or persecution".

He told the court the man fled from Iran in Syria in mid-1999 and arrived in Australia in February 2000. In December 1999, the man was convicted in Iran on unspecified charges relating to illegal movement for an unspecified term. Such people often "disappeared", Mr Burnside said.

Commonwealth counsel Sashi Maharaj argued that Mr Burnside was attempting to rerun the man's visa application and appeal. Her argument cited section 198(6) of the Immigration Act, which obliged the minister to deport anyone who has failed to prove their refugee status through legal processes.

Justice Mansfield rejected Mr Burnside's application but granted him leave to appeal on the man's behalf and stayed deportation until then.

Another Iranian man, whose daughter was deported two weeks ago, remained in solitary confinement at Baxter, despite the commonwealth's telling Justice Mansfield on Tuesday that arrangements were being made for the man to be transferred to an Adelaide mental hospital. Yesterday was the man's 44th day in solitary.

<http://www.newstext.com.au/pages/thumb.asp?P=AUS&D=20030828&Pg=004&E=1>

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APPENDIX TWO – text of DIMIA media release

Media Release from DIMIA website

http://www.minister.immi.gov.au/media_releases/ruddock_media03/r03013.htm
accessed 17 July 2005

**Iran and Australia to Cooperate on Consular Matters
MPS 13/2003**

The Minister for Immigration and Multicultural and Indigenous Affairs, Philip Ruddock, today signed an agreement with senior government officials from the Islamic Republic of Iran that provides for cooperation on a range of consular issues.

Under the Memorandum of Understanding on Consular Matters, Australia and Iran have agreed on a range of initiatives to promote the legal and mutually beneficial movement of people between the two countries. The MOU also includes measures to combat illegal migration.

Australia and Iran have agreed that their first priority is to work together to promote the voluntary repatriation of those Iranians currently in detention in Australia. However, arrangements for the handling of those who do not volunteer to return have also been established.

The MOU also establishes a Work and Holiday Visa (WHV) scheme that will provide opportunities for young Iranians and Australians to work and holiday in each others' country, further strengthening the cultural and personal links between the two countries.

The delegation of senior government officials from Iran comprised representatives of the Iranian Foreign Affairs, Labour and Interior Ministries, underlining the breadth of the issues covered by the agreement.

I thank the Iranian Government delegation for coming to Australia and providing an opportunity to work together to build a closer relationship between Australia and Iran in these areas.

Australia has received a regular stream of Iranian visitors and temporary entrants, with some 10,672 arriving lawfully between 1995 and 2000.

I look forward to further expansion of these mutually beneficial and legal movements of people between Australia and Iran.

12 March 2003

**Submission to the Senate Legal and Constitutional Reference's Committee's
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APPENDIX THREE – text of newspaper article

Ruddock's Iran deal shrouded in doubt

Author: Julie Macken

Date: 02/05/2003

Words: 1761

Publication: The Australian Financial Review

Section: Australia

Page: 88

Source: AFR

On March 13, Immigration Minister Philip Ruddock claimed to have signed a deal with the Islamic Republic of Iran. The minister said Iran had agreed to the involuntary repatriation of 277 Iranian detainees in Australian detention centres.

There is real doubt such an agreement exists.

The Iranian embassy in Canberra denies Iran has agreed to accept any forced repatriation. Its position is "business as usual", according to a spokesman. "We shall not accept the forced repatriation of Iranians from any country."

The embassy does concede that detainees deposited in Iran could not be rejected. Meanwhile, the government has refused a Senate demand to table the memorandum of understanding.

Helen Coonan, speaking on behalf of Ruddock, told the Senate: "The government does not consider it to be in the public interest to table the MOU in the Senate. It was signed on the understanding that it is a confidential agreement between governments that will not be released publicly at any time."

While the MOU and its contents remain a mystery to everyone outside the Department of Immigration, The Australian Financial Review has learnt that departmental officials told Iranian detainees being held in South Australia's Baxter detention centre last Monday that they had 28 days to accept returning voluntarily or face the dire consequences of involuntary repatriation.

Australian Democrats leader Andrew Bartlett says the situation has the hallmarks "of the usual combination of half-truths, secrecy and blackmail that has characterised the government's dealings with these vulnerable people".

So, political rhetoric aside, what is going on behind the walls of Baxter, and what is the truth behind the MOU?

Iranian detainees are the largest group of asylum seekers in Australia and have been in detention the longest - some for almost four years. Their claims for protection have been rejected. The limited scope for appeal has been exhausted. However, because the Iranian government has steadfastly refused to accept any involuntary return of nationals - from Australia and Europe - our government has been unwilling to place them in the community and unable to find third countries to accept them.

This is why the United Nations Working Party on Arbitrary Detention found Australia guilty of "arbitrary and indefinite detention" of asylum seekers - and therefore in breach of the Refugee Convention and

the International Covenant on Civil and Political Rights. While the war against Iraq has cleared the way for the removal of Iraqi refugees from Australia, the problem of Iranian asylum seekers remains. Without regime change in Iran, it's not considered safe for refugees to return.

This is why, according to departmental documents obtained by the AFR, John Okley, assistant secretary of international co-operation in the Department of Immigration, put together a strategy last December entitled "Return of Iranian Nationals; Update on negotiations and proposed next steps".

The document is a plan for the repatriation of Iranian nationals, and the author suggests a two-pronged approach.

"Encouraging voluntary departures" would be done by offering detainees inducements: \$2000 per person; waiving the cost of their accommodation in detention; giving them the status of a returnee, rather than a deportee; and supplying them with airfares and travel documents.

Further, the Australian government would secure the support of the Iranian government by offering Iran a work and holiday visa program, so Iranian nationals could work and study in Australia.

The second part of Okley's strategy involves 'the creation of a credible threat of involuntary removal'. That threat would be telling detainees that Iran was now willing to accept their involuntary repatriation.

He then suggests the department target a specific group of detainees first. "In particular, we would be seeking to include those who have attempted self-harm or committed acts of violence within the centres."

It appears a number of people fall into the category of self-harm and suicide risk. The Iranian detainees are among the most traumatised and brutalised people within Australia's camps. Having spent the last three to four years behind razor wire, many, particularly women and children, are now in a state described by one former Australasian Correctional Management psychologist as "psychically disintegrated".

A spokesman for Ruddock told the AFR the document and its contents were only a draft, and therefore "the department has no further comment to make".

Okley finishes his document by enclosing a letter which he suggests be given to detainees as soon as "the Iranian authorities agree on involuntary removals".

Last Monday, detainees received that letter.

They were told they had 28 days to agree to their voluntary return or they would be forcibly returned, and, yes, Iran had agreed to accept their forcible return.

The Iranian Embassy spokesman told the AFR: "We are pleased the Australian government is encouraging people to return to Iran voluntarily. But Iran does not want any involuntary repatriation and we accept no responsibility for Iranians living in Australia that do not want to return to Iran. But if the Australian government put Iranians on a plane and dumped them on our tarmac, obviously we would not reject them. No country can reject its own nationals."

This seems far from the agreement the federal government says it has. But it does introduce the spectre of forcible return.

A spokesman for Ruddock said: "The MOU is very clear. The Iranian ambassador here may or may not be appraised of that, or he may have misunderstood. The minister and the Iranian government have signed an MOU which allows for the involuntary return of people who have no entitlement to remain in Australia."

As the government refuses to release the MOU for scrutiny, this assertion can only be accepted on faith.

Okley warned Ruddock that just such a situation might arise: "The only other country to have achieved progress on this issue to date is Switzerland, which has reportedly secured the agreement of the local Iranian embassy to the deportation of up to 100 Iranians. They have advised that they have only achieved one return to date."

It appears that, when Tehran found out about the arrangement with Switzerland, it reversed the decision.

This is not surprising. While Iran would like access to a work and holiday visa program, it knows that if it accepts the involuntary return of 277 Iranian nationals from Australia, it faces the prospect of having to accept the hundreds of thousands of Iranian nationals living in Europe. It is not a circumstance any country would welcome, not when unemployment is up around 20 per cent.

In a further development, and one that has potentially far-reaching consequences, Josh Bornstein, of the Melbourne firm Maurice Blackburn, appealed to the Federal Court last week on behalf of an Iranian asylum seeker.

The federal government is attempting to have the case struck out before it is heard, but Bornstein is hopeful the court will allow it to proceed.

The case concerns the power of the minister for immigration to remove "unlawful non-citizens" under section 198 of the Migration Act.

The minister argues that he has unlimited power to remove any asylum seeker who has failed to secure refugee status.

"We argue," says Bornstein, "the Migration Act is a statute that should be interpreted in accordance with Australia's international treaty obligations, particularly the Refugee Convention and the Torture Convention.

"Article 33 of the Refugee Convention says that no state shall return a refugee to a place where his or her life or liberty is threatened. The Torture Convention states that no state can send a person to a place where there is a real prospect of torture.

"We argue that the government is putting our client at risk of losing his life, liberty and facing torture."

The Refugee Review Tribunal has already found that Bornstein's client is not entitled to be a refugee.

However, Bornstein argues that the court should be able to look at the issue independently of the RRT and that the RRT does not have a perfect track record.

The crux of the debate, he says, is whether the minister has unlimited power to send asylum seekers anywhere. "If that is the case, Philip Ruddock could choose to send someone to a desert island or back to certain death," he says.

However, the alternative is to have the minister's power mediated by Australia's international treaty obligations. That's not a situation this federal government would welcome, despite the concern the Prime Minister expressed about the human rights of Iraqi citizens before Australia got involved in the war against Iraq.

The RRT and the federal government have consistently argued that Iranian asylum seekers, while sometimes facing discrimination, do not face persecution in Iran.

It appears this is no longer the opinion of many in the UN.

A team of UN experts has recently completed its first mission in Iran for seven years. Its findings offer little comfort to Iranian returnees or deportees.

The head of the mission, Louis Joinet, told journalists in the United Kingdom that Iran was detaining dissidents and others without due process on a "large scale" and keeping them in solitary confinement.

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APPENDIX FOUR – text of newspaper article

Our secret shame

Julie Macken *Australian Financial Review*, 5 November 2003

The Australian government is sending asylum seekers back to death and torture in their country of origin. The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) is attempting to deport asylum seekers in the full knowledge that those sent back are suicidal. These are some of the findings that are coming out of a three-year investigation carried out by the Coalition for the Protection of Asylum Seekers, a coalition of Christian, Jewish and Muslim communities.

Former immigration minister Philip Ruddock grew in profile and power as a consequence of how he handled this contentious portfolio. Now all eyes are fixed on Amanda Vanstone to see how she will negotiate these tricky issues. However, while many refugee advocates were hoping to find her more flexible and responsive, she appears to be holding the same hard line as her predecessor.

Frances Milne, a former chairwoman of the board of Unitingcare, the social justice arm of the Uniting Church NSW, says: "Australians would be appalled if they understood what the government is doing to asylum seekers in their name. We have been concerned about the growing evidence of human rights breaches and deportations to countries that grossly abuse human rights.

"What sort of country are we when we take the most terrorised and suicidal people back to countries where they are sure to face death or torture?"

The Australian Financial Review has received documents that reveal the deliberations of officers working for DIMIA. The officers are arranging the deportation of a failed asylum seeker back to his Third World country of origin. Included is a letter from the United Nations High Commissioner for Refugees asking the department "to exercise extreme caution in undertaking such a removal".

This is followed by a memorandum from a clinical psychologist working for Australasian Correctional Management, the private company running the detention centres. In discussing the management of this man on his flight from Sydney to Perth, where he is to be flown back to his country of origin, the psychologist says: "The current mental status reveals that he is clinically depressed."

He adds: "It is also important that once XXXX arrives at Perth IDC [Immigration Detention Centre] that he be constantly monitored because he will portray acute and severe tendencies to self-harm. Due to his current status, I would believe that the nature of the self-harm could border on fatal if the opportunity was to present itself."

Two other documents are included. One was a medical incident report from ACM, the other is a standard ACM incident report. Both described what happened to this man when four ACM officers came to remove him from Sydney's Villawood Detention Centre to fly him to Perth. As the medical report says: "XXXX became very distressed, lying on the floor shaking and not responding to vocal stimuli, but did to painful

stimuli." An hour later, the man "was restrained and conveyed to Bankstown Airport" in Sydney.

The documents also reveal deliberations about which protective service to use to carry the man back to his country of origin. It was decided to use Protecting and Indemnity Associates, a South Africa-based courier service for high-risk people.

The last paragraph says: "Also the transit arrangements agreed to in the MOU [memorandum of understanding] with South Africa were underlined by our use of P&I to effect removals to other African states.

"It is a credit to P&I and the way their escorts work with removees that they have managed to organise the transit of removees within the 24-hour window allowed for under the MOU and without the removee seeking to engage South Africa's protection obligations."

Julian Burnside QC says the fact DIMIA officers conceded the man in question could engage South Africa's protection obligations is evidence of refolement - that is, returning refugees to countries where they face persecution. "These strategies facilitate the refolement of a refugee," he says. "Otherwise they would not be concerned that this man could engage South Africa's obligations. It is typical of this department, who act as if our non-refolement obligations are meaningless."

A spokesman for DIMIA told the AFR: "Migration laws require the department remove people with no legal entitlement to be in Australia as soon as is reasonably practicable."

On the question of whether DIMIA would return a person who was suicidal, the spokesman said: "Airlines will not carry people who are unfit to travel."

In this instance, the airline in question is a private charter company designed to carry people who are considered high risk.

Vanstone told the AFR: "People in immigration facilities who are diagnosed with serious medical conditions are closely monitored to ensure their wellbeing and that appropriate treatment is received.

"They are not removed from Australia until they are fit to travel. Having said that, the Australian government will not be held to ransom by people who threaten self-harm in order to gain a particular migration outcome."

On the question of whether DIMIA would try to prevent a person seeking refugee status in a third country, a spokesman from the department said: "Once they are outside Australia, we have no influence on them."

Vanstone explained the situation by saying: "The Joint Ministerial Statement signed between Australia and South Africa supports the principle of the international protection system that asylum-seekers should make their claims for asylum at the first available opportunity.

"The agreement allows Australia to return to South Africa third-country nationals who resided in South Africa for a period of more than seven days and have subsequently sought asylum in Australia. South Africa will return to Australia people in similar

circumstances. The JMS was the first readmission agreement of its kind that Australia has signed.

"The JMS also provides that such persons readmitted to Australia or South Africa will be able to present any claims for protection, and where protection is warranted, will be given protection, in accordance with the established arrangements in each country."

Of course, all of that is meaningless if the courier company employed by Australia prevents the person being deported from contacting the appropriate authorities as the aircraft is transiting through South Africa.

Over the past two years, the media have reported on the deaths of three men who were refused Australia's protection and left to return to their country of origin: Ahad Bilal, Alvaro Moralez and Mussa Nazari.

All three told DIMIA they would be killed if they were returned. All three failed to convince DIMIA and the Refugee Review Tribunal of their need for protection. All three were killed when they were returned, precisely as they said they would be.

However, a DIMIA spokesman told the AFR: "Claims of persecution of any person who returns home are taken seriously and explored carefully. DIMIA has inquired into allegations made in the media about these three men. We can confirm their deaths.

"But, while tragic, we have not identified any evidence to substantiate claims that they were persecuted or that there was any flaw in their refugee decisions."

Finally, there is the issue of returning failed asylum seekers to torture.

On August 24 this year the government began the first of its forcible deportations of Iranians. While DIMIA officials were able to pressure one man to sign a form saying he was going voluntarily to Iran, the other man refused to sign.

The AFR has received a statutory declaration from another asylum seeker describing what happened to the Iranian man who was forcibly removed.

It says in part: "Upon arrival in Iran via Tehran Airport, he was arrested by the Iranian Intelligence Officers and was taken to Evin Prison, where he was beaten, tortured and interrogated severely from the day he arrived in Tehran on Sunday 24th of August, 2003 till Friday 5th of September.

"He has been released on bail. Meanwhile, until the date is set for the Hearing of the Revolutionary Court, he is not allowed to leave Tehran, and has to check in and sign at the police station close to his residence once a week. The charges against him are not clear."

Labor's immigration spokeswoman, Nicola Roxon, says this kind of behaviour goes to the heart of the federal government's approach to refugees.

"No one in the Australian community would want to return anyone to torture," she says.

"It breaches our international obligations, but it is also morally wrong. This demonstrates that the whole system is falling apart, with the government desperate to get people out of Australia, whatever the cost."