

# Submission to Senate Inquiry into Migration Act – July 2005

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## 1- Processing and assessment of visa applications

By comparing statistics and numbers we can reach very clear conclusions that the processing of applications (for many categories of visas not only for protection ones) is not according to consistent regulations and procedures. The government treats many holders of certain visa categories as criminals, liars and law-cheaters as a general principle. This is why the rejection of the applications by people seeking protection and spouse visas was very high at the departmental level, yet the acceptance of the same cases by the RRT or MRT was very high.

The regulations and directions seem to have been that the applicants for these categories are liars and need to be rejected without reason, ie the applicants were not innocents until proven guilty but the way around.

The issue here is why these inconsistencies were not investigated to determine why there was a high rejection rate for genuine refugees at the departmental level then the opposite at the RRT level? Why were these inconsistencies not rectified for the last 8 years? On the contrary, these inconsistencies were increased in the last few years. Talking about some outrageous illogical inconsistencies are the case, for example, of N [REDACTED]. He was deemed to not been a refugee, while his son, who was arrived by the same way and has identical circumstances, was accepted as refugee and now an Australian citizen.

The other question is who will compensate the genuine refugees who were locked up in detention for long periods, many to be discovered after more than 4 years that in fact they were genuine refugees? This is what happened in the case of Iranian refugee M [REDACTED], who spent 4 years in detention, after which the High Court determined that he is genuine refugee. Instead of receiving compensation for the wrongful detention he was issued a bill for \$18,000 for the cost of the RRT and federal court. The same happened to many other refugees. In fact, there are very few refugees who spent less than 6 months in detention.

The other issue here is the indefinite detention and stateliness. A [REDACTED], N [REDACTED] and I [REDACTED] all are stateless people and all were determined to be not genuine refugees. After few years in detention, where they developed many illnesses including mental illnesses, they were released on No-Visa basis with no help from the government. They tried all what they can do to arrange for their departure from the country but unsuccessfully. Instead of opening their cases again and see how to solve their problem, they were treated very bad. They are required to sign in DIMIA every fortnight, they nor elegable for any welfare help, they are not elegable to work, no Medicare. After years in detention, which left them with deep scars and

illnesses, they were further punished and still subject to very harsh treatment which exacerbated their problems.

So it appears that the directions given to DIMIA case officers were to reject as many as possible on very thin grounds, as there is no accountability for such rejections, either by case officers or senior DIMIA officials. Why did DIMIA not investigate case officers who had high rejection rates against high acceptance rates for the same type of application processing for many years?

The same was and is still happening for applicants for spouse or prospective spouse visas, which were the rejection is the rule.

### **2- Assessment of applications**

On many of the letters of rejection for protection visas, the cause of rejection was that the case officer was not satisfied that if the applicant were to return to their country of origin he/she would be persecuted. Well, this cause is not valid, especially for this category of visa, where well founded fear of persecution can apply to groups of people rather than individuals. This compares to the apparent Australian requirements, wherein the only proof for the officer to be satisfied is the return of the applicant, which may well result in the death or imprisonment of the applicant. The whole idea of the Geneva Convention of 1951 was to stop this loss of life because of persecution from happening. Australia under this government is rolling back more than 50 years of human rights and life protection.

### **3- Migration detention**

Mandatory detention of all unauthorised arrivals is a clear breach of Australian obligation under the international law. This violate many articles of the Geneva Convention of 1951, Universal Declaration of Human Rights 1948 and many other conventions (including the Convention on the Rights of the Child).

The detention system is not only illegitimate under International laws, but also inhumane. How many ex-detainees were released with permanent mental health problems? I can give you countless cases.

Take for example the case of Palestinian ex-detainee O [REDACTED], who was detained because he failed to pay his university fees on time, then placed in Stage One in Villawood DC, where he developed a very deep case of mental illness. He was hospitalised on different occasions in the Bankstown mental health unit. He spent more than 3 years in detention, before being deported back to Gaza strip early this year. He will suffer permanently from mental-related illness because of his detention.

Then there is the case of Russian asylum seeker K [REDACTED], who was detained for more than 3 years, and even after more than one year since her release she still suffers from deep mental-related illnesses and is still on heavy medication. Instead of compensating her for her suffering, she is not allowed to receive any help from the government (welfare benefits) and lives on the charities.

I can mention too [REDACTED] D [REDACTED] a Palestinian refugee who has now very serious mental illness after his ordeal in the detention centre. I can mention names of hundreds of similar cases.

I want to mention here too that the detention did not only affect the mental health of detainees, but their overall health status. Many, if not the majority, arrived to Australia in very good health, but their health deteriorated after their detention. I can mention here asylum seeker N [REDACTED], who arrived very healthy, and is now suffering from multiple illnesses (Diabetes, hypertension, high cholesterol, in addition to mental-related problems).

He is not unique of such situation. Take for example Nauru ex-detainee [REDACTED] A [REDACTED], who became blind because of the weather, which exacerbated previous eye sensitivity she had.

The related issue here is that there is a deep feeling among detention authorities, officials and workers that they have an absolute mandate to do whatever they wish, with no real prospect of losing anything, been disciplined or ending up in courts for any reason or acts they may commit. During my regular visits to Villawood, this was very clear. On many occasions I (or other Australian citizen visitors) threatened to take actions against security, officials or manager, and we were confronted with the simple answer: do whatever you want. I, in fact wrote a lot of letters of complaints, but either received no reply or the minister dismissed my complaints without even investigating the claims. Is this acceptable in a democratic society?

The workers in these detention centres feel that they are immune from any accountability and it appears that they are having clear directions to make the life of the detainees hellish and the same of the visitors to force them to abandon visiting. There were many reports about security guards accused of mistreating detainees, for whom the government facilitated departure from Australia - presumably to avoid their prosecution here. Some of them went to New Zealand, and some of them were even transferred to work in the Nauru detention centre, away from any accountability.

#### **4- Deportation of people from Australia**

This is one of the most brutal actions any democratic civilised country can carry out. The threat of deportation by itself is very torturous and traumatic for the detainees. Then the method of deportations is very traumatic, violent and involves using prohibited drugs. During my visits to detainees, they expressed both disgust and deep fear from witnessing such acts. They were fearful of the same treatment if they will be forced to be deported.

There were several counts of dreadful acts of deportation, one of them the failed attempt to deport Sudanese asylum seeker [REDACTED] K [REDACTED] few years ago. At that time the deportation attempt was so violent that the seats of the light plane were ripped out.

Later on the deportation process of this asylum seeker early this year involved large numbers of officers, use of tranquilizers and still some violence. There were several claims about injuries during these actions.

Many reports about the destiny of deported people indicate that several people disappeared, were killed or imprisoned. This was documented in the report "Deported to Danger".

#### **5- The activities and involvement of the Department of Foreign Affairs and Trade**

The "successful" deportation of Australian citizen Vivian Alvarez was an alarming signal about institutional racism in the different government departments. When the issues are concerning White Anglo-Celtic Australians accused of drug smuggling, all governmental departments and even the Prime Minister, are heavily engaged in the affair. But when the matter is concerning persons of Asian-appearance in very bad medical situations and who was claiming to be Australian citizens, there is no rush even to investigate the matter. The institutionalised racism in all government departments prevented the raising of alarm even when reports landed on the desks of many officials, and ministers, about wrongful deportation of an Australian citizen. No efforts were made to even investigate the matter, let alone launch a campaign to find her and bring her back home.

We, Australians from NESB who speak English clearly as a second language, are living under constant fear of the possibility of similar treatment as Vivian Alvarez, Cornelia Rau and the other 201 Australian who were detained in the last few years by been in the wrong place at the wrong time. The racism is now well established to the extent that this could happen not to one or two Australians, but to more than 200. The alarming issue is that there were no significant measures taken to ensure that this will not happen in the future.

#### **6- The adequacy of health care, including mental health care, and other services and assistance provided to people in immigration detention**

There is no such thing as proper health care, particularly mental health care, for refugees in detention. It took me several weeks to convince the management to send Palestinian ex-detainee ██████████ A ██████████ for a medical check-up for persistent back pain in the middle of last year. This could not be accomplished without asking for legal and activist help to put pressure on detention authorities. I was told by many detainees that the solution for all their pains were to take panadiene and drink a lot of water. This was the reason why there were more than 10 deaths in detention centres during the last 5 years.

I was told by ex-detainees that even if they were successful in gaining a medical check-up by a specialist outside detention, the prescribed medications would not be bought.

It seems that this is a result of two factors. First, the privatisation of the management of these centres gave the management incentive to cut all services to a minimum to maximise the profits. The other factors could be that the government was agreeing to this policies in order to make the life of the detainees hellish to force them to accept "voluntary" repatriation on the one hand, and on the other hand to gain more support among the conservative voters by appearing as a tough government on refugees and asylum seekers.

The other services are very poor, if they exist at all. The food quality, I was told by the detainees, is very low -to the extent that many detainees stopped eating there and will depend on the food brought by visitors. I am talking about Villawood, where there are a lot of visitors to most of the detainees everyday. I have no idea about how they are managing/managed in other centres in the middle of the desert (Curtin/Woomera/Baxter/Port Hedland..)

The education process is carried out by volunteers. There is no entertainment activities, no Internet accessibility, no accessibility to a real library....

**Summary:**

Most of the problems identified are because of lacking of accountability. The detention centres are away from the reach of the media, independent bodies, free accessibility to politicians and free accessibility to records (with the consent of the detainees). The detention centre and DIMIA is operating outside the democratic society of Australia. This is behind the feeling of absolute power that the people working in these centres and in this particular department are feeling for the last few years. Any real changes should start with more accountability and accessibility by media and political institutions. Without this the current mistakes, atrocities and problems will persist.

The people in this area must start to feel that they are under the law and can be held accountable for their actions.