Submission to Senate Inquiry into the administration and operation of the Migration Act 1958

Date: 29/7/05

From: Diane Gosden of Bundeena, NSW

Re: The processing and assessment of visa applications

Refugee Review Tribunal

I have been a visitor to Villawood Immigration Detention Centre since early 2002. In late 2002 and in 2003, I provided assistance, although I have no legal training, to a Cambodian asylum seeker f riend in Villawood who was unable to access legal representation to appeal a Refugee Review Tribunal (RRT) decision. I address my remarks to problems evident in the RRT decision handed down to my friend, which formed the basis of the subsequently successful appeal to the Federal Court.

Issue1) Mistaken understandings and pronunciation on the part of the Tribunal Member, which are then used by the Tribunal Member to accuse the applicant of presenting non-credible evidence.

I had been present at my friend's first RRT as a support person. On reading the RRT decision, a number of errors became apparent in the document. These errors were verified on listening to the audio tape of the RRT proceedings. They included mistakes made by the Tribunal Member between the names of provinces in Cambodia, and the name of the newspaper journal for which my friend's husband had worked in Cambodia. This mistake of the Tribunal Member was corrected firstly by my friend during the course of the proceedings, and later in the proceedings when the Tribunal Member repeated the same mistake, corrected again by my friend's husband. This can be verified by listening to the audio tape of the proceedings. This particular instance was not therefore a matter of poor interpretation, but of a misunderstanding and mispronunciation of Khmer names by the Tribunal Member.

However, in the Tribunal decision, the Member used her own mistake (twice corrected by my friend and her husband) to reflect negatively on the credibility of the evidence given by the applicant, and to use this purported unreliability of the evidence by the applicant, as part of the basis for refusing refugee status.

This aspect - of the Tribunal Member utilising her own mistake to discredit the credibility of the applicant appearing before her, was only one of a number of problems inherent in the hearing.

Issue 2) Quality of interpretation

During the Tribunal proceedings, one thing that became noticeable was that the interpreter would speak only briefly in the course of interpreting both the English speech of the Tribunal Member and the Khmer speech of my friend, even though both of these people often spoke for much longer periods of time. For both of these people, (fluent only in their own language), there was of course no way of knowing whether the interpretation of their words and of the other person's words was correct and in full.

This second issue was one of the issues raised in my friend's submission to the Federal Court, along with a number of instances in which there appeared, from listening to the audio tape, to have been misunderstandings, between questions asked and answers given. In regard to the particular issue of the quality and accuracy of interpretation, in this instance the Judge of the Federal Court ruled that a hearing of the audio tape of the Refugee Review Tribunal be made - in the presence of the applicant, her supporter, the legal representative for MIMIA, the Registrar of the Court and a new interpreter. Following this hearing, errors and omissions were documented to be evident in the initial interpretation. Subsequent to this hearing and documentation, the Minister for Immigration, Multicultural and Indigenous Affairs MIMIA, withdrew her objection to the applicant's appeal against the Refugee Review Tribunal hearing.

A reading of the RRT Interpreter Confirmation Form revealed that the interpreter at my friend's RRT had a Level 2 qualification. This is the level of a "para-professional" interpreter. The specific qualification of "Interpreter" is a Level 3 qualification. On the RRT Interpreter Confirmation Form of my friend's proceedings, in the section "Reasons Offered For Interpreter Not Being Interpreter Level (Level 3) Or Above" , the reason

given by the Tribunal Member was that “this language/dialect is not tested at Interpreter Level (Level 3). However, NAATI does provide Level 3 accreditation for the Khmer language.

I have raised two issues in relation to the inadequacy (from my own personal experience) of the current Refugee Review Tribunal process.

The first issue concerns the subjective nature of the Tribunal decisions and the need for greater rigour and improved country and cross-cultural knowledge on the part of Tribunal Members. I submit that there is an urgent need for improvements in the manner in which the Tribunal is constituted - and argue for the Tribunal to be constituted by not one, but two to three Tribunal Members in order to minimise personal errors made by individual Members. I also argue that, since these decisions can be a matter of life or death for applicants, Tribunal Members should preferably be chosen on the basis of their previous judicial experience and preferably a knowledge of refugee law.

The second issue concerns the problems encountered by applicants to the RRT in terms of the quality of interpretation provided, and the lack of accountability checks for that quality. Again, there is a need for improvements in the monitoring of the quality of interpretation provided in the Tribunal hearings. I argue for the need for the establishment of a system of standard random checks on audio-tapes of RRT proceedings, in order to audit the quality of interpretation provided.

NB. Verbal permission has been given by my friend (the applicant in the above proceedings) for her to be identified. This information can be provided to the Inquiry if required for verification.

Re: Mandatory Detention

As a regular visitor to Villawood Immigration Detention Centre from February 2002 to the present, I have continually witnessed the deterioration of people detained in Immigration Detention Centres. There is for detainees, - a hopelessness, and an understanding of the uncertainty and arbitrary nature of the process, especially in regard to decisions by DIMIA and MIMIA. Detainees often come to understand that it is not so much the justice of a particular case which can lead to a favourable decision, but the influence of those lobbying with MIMIA for a particular individual. They see this as the sign of a corrupt system in which justice cannot be assured.

The psychological and subsequent physical ill-health that results from the present system of incarceration in Immigration Detention Centres, in tandem with the uncertainty and loss of faith in the justice of the process of evaluation of refugee claims in Australia, takes a dreadful toll on detainees, as has been documented so many times in expert evidence by Australian psychiatrists.

I consider that the cruel experiment that constitutes Australia’s on-shore refugee policy will be a blot on Australia’s history for the years to come. I recommend that the decision making power for determining refugee status be removed from the Department of Immigration, Multicultural and Indigenous Affairs. I endorse the provisions of the second bill originally introduced into (and subsequently removed from) the Australian parliament by Mr. Petro Georgiou MP, whereby the decision making process for determining refugee status is removed from DIMIA and placed into the processes of the Australian judicial system.

Yours sincerely

Diane Gosden.