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Mr Jonathon Curtis Secretary
Senate Legal & Constitutional Legislation Committee
Parliament House Canberra ACT 2600

Dear Mr Curtis

SUBMISSION CONCERNING THE MIGRATION AMENDMENT (DESIGNATED UNAUTHORISED ARRIVALS) BILL 2006 (the Bill)

I have been asked to supplement the submissions of others to this Committee by providing some primary source material related to the previous processing and treatment of asylum seekers banished to Nauru for processing of their refugee claims post-Tampa as part of the (so-called) Pacific solution.

My principal objection to this Bill is NOT the nomination of Nauru as the place to which all future "unauthorised" boat arrivals who seek asylum in Australia will be sent.

Rather, my objection is that the acknowledged purpose of the Bill is that of sending people to Nauru in order to remove them from Australia's legal jurisdiction and deny them access to legal representation and review.

This was the reality of the earlier much trumpeted "Pacific Solution" which saw Tampa and post-Tampa boat arrivals sent to Manus Island and Nauru for processing, enforced removals (shamefully of many unaccompanied minors) to unsafe and uncertain futures and long term detention of those who could not be forced.

The role of the Afghan Embassy in Australia should be acknowledged – the then Ambassador and his staff stood firmly opposed to forcible removals to Afghanistan or elsewhere of their nationals and assisted many of the refugees to establish their identities in the face of allegations that they were Pakistanis posing as Afghans. A delegation from Afghanistan also agreed that the decision to return was not theirs to make – no one could guarantee safety to an individual returning to an area he himself judged to be unsafe. The Afghan Government could not guarantee safety and security or even the protection of law to returnees and the Australian Government was forced to reassess cases time and again in the light of "new information".

The UNHCR likewise refused to endorse the processing of people on Nauru and Manus although agreeing to process the people from the *Tampa* and also from the *Acheng* (whose people were picked up and taken to Nauru with the Tampa refugees). This was not to be seen as a precedent or an endorsement – simply as an initial humanitarian intervention to deal with the situation of people rescued at sea.

The cost of maintaining Nauru as a processing centre has been stated by DIMA as around $188 million between September 2001 and June 2004 – all borne by the Australian taxpayer.

What was not factored into this cost was the amount of work done by me, my office and the hundreds of other volunteers such as Elaine Smith, Susan Metcalfe, Dr Mary Holland, Sue Christophersen, Jack Smit, RAR Groups around Australia and the UNHCR in maintaining contact with the Nauruans (as the asylum seekers incarcerated there were called), counselling them; encouraging them and providing them with phone cards; information; money; books; personal laptops and other equipment and educational resources.

Without that contact and support the Pacific Solution would have been more dire than anyone would want to imagine. This assistance has never been acknowledged by the Government.

I have had the chance to read Elaine Smith's important submission to this Committee (as posted on the web-site). I believe that reading Elaine's submission and studying the photographs should be obligatory for all those Parliamentarians who are considering endorsing this latest Bill.

The very public hunger strike of December 2003 was broken only by the intervention of "ordinary" Australians like those people mentioned above – not because the Government sent a special delegation there to talk to them and NOT because the Minister announced the re-opening of the Afghan caseload. By the time of the hunger strike, the Nauruan detainees had lost all trust in the Australian Government's processing of their applications and all trust in DIMA officials.

The Pacific Solution was brokered in my office through hours of hard and dedicated submissions to the Minister and the DIMA. I visited Nauru three times with the permission of the DIMIA and the Minister. These trips were self-funded with assistance from community groups and, in the case of the Iraqis particularly, by some family members in Australia who contributed to the cost of my work.

In effect I became the review mechanism (RRT equivalent) as well as the Agent/Advocate for all the detainees on Nauru as of December, 2003.

The solution was hard won as the accompanying documentation reveals. The time, effort, energy and intelligence that went into each individual submission has never been costed. Nor has the entire exercise been costed but it would amount to many thousands of dollars – none of these costs have been borne by the Australian taxpayer through Government expenditure.

One has to ask, what would have happened to those people on Nauru had I not become involved?

By "allowing" my involvement, the Government and / or the DIMIA initially hoped to save face – rejections could be made and sustained once a legal representative had been permitted a short first visit to Nauru AFTER DIMA had conducted the interviews.

The continued commitment by my office and other committed Australians no doubt surprised the DIMA but eventually provided the Government with the means to bring an end to the Pacific Solution without too much fallout.

This current Bill has no precedent in Australia and no legal justification under international law. Once enacted, Australia will be in breach of Internation Law and in particular will breach various International Conventions to which we are signatory, including the Refugee Convention; the Convention on the Rights of the Child; the ICCPR; and the Convention on Torture.

This Bill, if enacted, will ensure detention on Nauru is:

- Mandatory
- Indefinite
- Non-reviewable

Nauru is not a signatory to the UN Convention on Refugees and will ensure that those detained are given limited visas which enable them to stay in Nauru for processing until either visaed for another country or forcibly removed.

Determination by DIMIA officers that a person is a Convention refugee will be no guarantee of resettlement in Australia or elsewhere and past experience shows that other countries, except for New Zealand, have been unwilling to condone Australia's behaviour by accepting people from Nauru. The horrific possibility of "stockpiling" refugees looms large and is abhorrent to all who value human life and freedom.

Under the Bill as proposed, all mechanisms for ensuring openness, accountability, quality and honesty are denied.

There will be:

- No legal representation or assistance
- No access to independent review
- No access to the Australian Court system
- No legislated time frame for processing
- No legislated period under which people can be detained – exile on Nauru will be indefinite

WHY WITHOUT PRECEDENT?

The focus of many people in objecting to this Bill has been on the isolation of Nauru and on its physical environment.

This is to ignore the fact that this second Pacific solution is not Nauru Revisited – this is worse in terms of the denial of human rights, including the undeniable right under international law to seek asylum, and the denial of legal rights under domestic law.

Rather than Nauru, this is Lombok.

How many Australians have heard of Lombok and the people held there indefinitely having been turned back at sea and refused access to Australia? How many Australians know who these people are? Or how many know what the cost to Australia is of their life in limbo in Lombok? Or the emotional and physical cost to the people on Lombok and their families in Australia?

But Nauru if this Bill is enacted will be a holding centre worse than Lombok because we as Australians will this time be directly culpable for whatever transpires there.

We should be very careful that legislation designed to *"protect our borders"* now, does not become in the future legislation designed to *"enlarge our borders"* and allow us to whisk away unheralded and secretly those within our borders whom we may suspect of terrorism or sedition or other crimes for detention and interrogation without legal representation or access to the courts.

SOME LESSONS FROM NAURU UNDER PACIFIC SOLUTION 1 (2001 – 2006):

In March 2005, after my third visit to Nauru, I wrote to Minister Vanstone, identifying three broad categories within the remaining caseload on Nauru:

1. FLAWED DECISIONS: Applicants whom I considered to be refugees who had cases with obvious flaws in the decision making process and therefore the decisions themselves were unsound.

2. HUMANITARIAN CASES: Those applicants who were in need of consideration for visas to Australia for humanitarian reasons, (the first and second categories overlap in a number of cases – especially within the Iraqi caseload)

3. COMPLEMENTARY PROTECTION: A third category of applicants (Iraqis identified by the UNHCR) who were simply unable to be returned to Iraq and therefore faced indefinite detention on Nauru.

I was aware of the fact that the UNHCR had recommended that the Iraqi asylum seekers on Nauru should be given "Complementary Protection" and that they had similarly identified Afghanis from defined regions and categories.

I submitted, however, that **the majority of those remaining on Nauru should have been successful in their original refugee claims** and therefore that they deserved a more permanent form of protection than the nebulous notion of "Complementary Protection."

My careful reading of the DIMIA files, as they were released to me, had revealed a significant number of examples of what I would term "flaws in the decision making process."

I then listed for the Minister's (and the DIMIA's) consideration the following examples of flawed decision making.

EXAMPLES OF IDENTIFIABLE FLAWED PROCESSING:

1. A primary decision maker who misrepresented the statements made at the Refugee Determination Interview. That decision maker had placed her notes of the interview on file, and her own notes contradict the negative assertions made in her decision about the applicant's knowledge of his area.
2. Review case officers who took the flawed primary decisions at face value without reading the file thoroughly and therefore were not alerted to misrepresentations in the decision record.
3. Written decisions in which the decision of more than one applicant has been merged together, with both names appearing in different parts of the decisions.
4. Written decisions that have virtually no difference in wording despite the fact that the cases are very different.
5. Written decisions that contain almost no personal detail about the applicants.
6. Decisions in which the rejection has been based on an entirely wrong finding about nationality, and then later the nationality has been affirmed as Afghani but without any reassessment in the light of the new information. Such cases should be immediately reopened.
7. Decisions where the finding has been faulty because the applicant's home area has been listed as different places in different parts of the decision. This has obviously occurred because of cutting and pasting text about country information from one decision to another. However, the whole decision is undermined when an applicant who has never made a claim against a certain home province is declared to "no longer be in danger" if he returns to a place he has never visited, let alone lived in!
8. Decisions that "have a bet both ways" about nationality. Such decisions leave unchallenged the previous faulty findings about nationality but, *"for the purposes of the assessment"*, test the claim against Afghanistan then assert that the home area of the applicant is now safe enough to return. This is both dishonest and an abuse of process.
9. Decisions which expose a serious lack of understanding and knowledge of Afghan political groups. One decision maker denied the existence of a party, where a simple internet check, or even a check of the DIMIA database, would have affirmed the applicant's description of his political party and its affiliations.
10. Decisions that use Country of Origin information in ways which illustrate a superficial understanding of the situation on the ground in Afghanistan in particular and an inability to analyse the information available to the case officers.
11. Decisions where the case officer inexplicably decides that an applicant would now be safe in a Province where it is generally considered by other decision makers that someone of a particular ethnicity from a particular province would automatically fit the profile of continuing to need protection.
12. Decisions about the safety situation in some areas, that neglect to factor in the small distances between settlements along the border of districts or provinces where armed insurgents or other perpetrators are operating with a virtual free rein.
13. The total ignoring of documentation carried by the applicants that gives rise to serious concerns for people's safety if they are returned. This is especially

serious when the authenticity of the documents has been confirmed by the Afghan Embassy or other agencies. The case of Mr Amin Jan Amin, recently granted a TPV to enter Australia, is a glaring example, but unfortunately not an isolated case, given that at least two people remain on Nauru without serious consideration being given to their documentation and therefore their protection claims. I copied these documents when in Nauru and have made them available to the DIMIA.

14. Decisions that wrongfully relegate issues which should have supported the refugee claim, to the level of a general safety concern.
15. More than a dozen examples of large quantities of material which I submitted to DIMIA **not** being placed on the files of each applicant.
16. Serious inequities/discrepancies between the decisions being handed down for my Afghan clients from the onshore caseload and those being assessed on Nauru.

In addition, I submitted to the Minister, that since the reopening of the cases in 2004, the security situation in some areas has worsened and the dangers facing some applicants, had in fact increased. Therefore, **many of the rejected cases now had a stronger case than they had in mid-2004,** over and above all the barriers to robust decision-making which I have listed above.

THE SITUATION OF THE IRAQIS ON NAURU:

The situation of the Iraqis on Nauru became of increasing concern to all those dealing closely with them. They did not attract the same concern as the Afghanis and they became increasingly frustrated and desperate. Many became ill both physically and mentally and they were doomed to life in limbo with the UNHCR unable to act on their cases without a formal recognition by the UN in Geneva that the situation on the ground in Iraq was deteriorating and this was not politically possible. The most the UNHCR could do was ask signatories to the Convention not to return any Iraqis against their will to Iraq but instead to allow them what was termed "Complementary Protection". This Australia refused to do fearing again another "floodgate" opening. Instead, after many submissions from my office, it was decided to "revisit" the cases in light of the concerns I had raised in relation to a number of specific cases and in the light of the following analysis of the inequity in the processing of offshore and onshore Iraqis. [1]

INEQUITY BETWEEN THE PROCESSING OF THE IRAQI CASELOAD ONSHORE AND THOSE PROCESSED ON NAURU:

If the Iraqi applicants on Nauru had been rejected by a DIMIA Case Officer working on Australian soil in late 2001 or early 2002, it is quite possible that the same COI

[1] **INEQUITY BETWEEN THE PROCESSING OF THE IRAQI CASELOAD ONSHORE AND THOSE PROCESSED ON NAURU:** ***A critique of the Country of Origin Information used to process Iraqi Applicants on Nauru – particularly the use of the Danish Immigration Service Report of March 2001 and Onshore Protection's internally produced paper on "Illegal Departure and Imputed political Opinion" (May 2002)- paper provided to the DIMIA by Marion Le Consultancy and attached in full to this Submission***

(The Danish Report and the IPO) being used on Nauru would have been used to reject them here. However, **if the applicants were being processed onshore**, they would have had access to qualified legal advisors and perhaps many applicants would not have been in the state of "blind panic" that many suffered from on Nauru. The Nauru caseload had been reduced to following the "migration advice" of people smugglers and other similarly ill-informed people.

ON-SHORE REVIEW BY THE RRT (2001-2002):

A search of RRT Decisions being made in Australia during that time period, looking at cases where the Tribunal members overturned DIMIA rejections that were based on the opinion that illegal departure and return after failing an asylum claim overseas would NOT cause an Iraqi applicant to be at risk due to imputed political opinion, is illuminating reading.

In particular, the vast range of COI used by the RRT members to inform their decisions casts the limited use of COI to inform the decisions on Nauru into a very poor light.

For example: a simple search of the Refugee Review Tribunal Database using the key-words "Iraq – 2002 - illegal departure – imputed political opinion – failed asylum seeker" resulted in **thirty-five** links to RRT Hearings.

Of the thirty-five links, **twenty-eight** related to cases where Iraq was the country of nationality and the issues of illegal departure and imputed political opinion were considered in depth as part of the decision making process. Each Member included comprehensive lists of all the Country of Origin Information available about imputed political opinion and illegal departure. The Danish Report of March 2001 (and for the cases decided after 24/4/02), the Departmental IPO Paper, were included in these lists, but none of the RRT Members gave primacy to those two sources above all others.

RRT RESULTS:

Thirteen RRT Members presided over twenty-eight cases; all but one of the RRT Members overturned the DIMIA case officer's rejection decisions and found the applicants to be refugees. [2]

NAURU DIMA IRAQI PROCESSING 2001 - 2002:

The Iraqi applicants on Nauru were interviewed in late 2001 and early 2002.

The primary decision makers were instructed via emails to State Directors by Wendel Parrinder in Central Office, "to sign but not date their decisions" until the document prepared by Onshore Protection called "*Illegal Departure, Voluntary Return and imputed political opinion in Iraq"* had been "circulated to State Directors and others." [3]

[2] The RRT Hearing that did not find the claimant to be a refugee was in August 2002, quite late in the year.
[3] Folio 48-49 MAS File

As at 1/5/02, Mr Parrinder's email notes that there are 64 remaining Iraq cases on Manus Island and Nauru that were awaiting decisions because of "the IPO issue."

When I became involved in the processing of Iraqis on Nauru two years later, more than half of those 64 cases remained rejected. Once I had received the files for the remaining Iraqis under FOI in January 2005, I was able to examine the decision making process and compare it to Iraqi cases being decided onshore in a similar time period.

I submit that the March 2001 Danish Report and the April 2002 Departmental paper, the IPO, predominated adversely in the decision making process on Nauru where there was no access for the applicants to independent review of the DIMIA decisions. In comparison, those cases reviewed in RRT Hearings onshore in Australia were almost without exception found to be refugees.

OFF-SHORE PROCESSING OF IRAQI ASYLUM SEEKERS:

I submit that if the broader context of international discourse about Iraq in mid-2002 had been properly included in the range of country information used to inform the decision, it is possible that many more of the Iraqi applicants on Nauru would have been accepted earlier as refugees.

The Human Rights Report titled "*Iraq: Systematic Torture of political prisoners"* was published by Amnesty International on 15th August 2001. The Report gives a sobering glimpse into the kind of treatment prisoners in Iraqi jails suffered and it is clear that many of the Iraqi applicants on Nauru feared this treatment. Fear of being arrested and tortured was reportedly the catalyst for many of the Iraqi applicants' decisions to flee Iraq.

Many of the 2002 Case Officers used the 2001 Danish Report and the IPO Paper to conclude that the applicants would not face persecution for leaving Iraq illegally and attempting to claim asylum overseas.

Other country information sources indicate that the US Government, the UNHCR, the European Union and international organisations like Amnesty International and Human Rights Watch had a different position on illegal exit and forced return to the Danish Report and the IPO Paper.

Had the 2002 Case Officers referred to a broader range of sources in determining whether the Iraqi asylum seekers, who returned to Iraq after leaving illegally, would still face persecution, they would have found many of the Iraqi applicants DID have a well-founded fear of persecution.

The following US report was not released until 2003, but it relates to the situation in Iraq in 2002. It contains the following comments about the high rates of executions in Iraq and the supposed safety of Iraqis returning after departing illegally:

> *"… In keeping with its long and established record of executing perceived or alleged political opponents, the regime committed numerous political and other extrajudicial killings throughout*

the reporting period. The U.N. Special Rapporteur repeatedly criticized the regime for the "sheer number of executions" taking place in the country, the number of "extrajudicial executions on political grounds," and "the absence of a due process of the law."

The following extracts from a Human Rights Watch Country Report on Iraq published in 2003 reinforces the position that it is not appropriate to be putting Iraqi asylum seekers under pressure to return to their country. [4]

> *"… The Iraqi government continued to commit widespread and gross human rights violations, including the extensive use of the death penalty and the extrajudicial execution of prisoners, the forced expulsion of ethnic minorities from government-controlled areas in the oil-rich region of Kirkuk and elsewhere,* ***the arbitrary arrest of suspected political opponents and members of their families, and the torture and ill-treatment of detainees.*** (my emphasis)

European Union

> … On May 16, (2002) the European Parliament adopted a resolution on the human rights and humanitarian situation in Iraq, as well as issues relating to regional security and disarmament. **The resolution condemned the "regime of terror against all levels of society" and the continued perpetration of gross human rights violations …**

United States

> … In its *Country Reports on Human Rights Practices for 2001*, released in March 2002, the State Department said that the Iraqi government **"committed numerous political and other extrajudicial executions" of suspected political opponents. It said that Iraq's human rights record "remained extremely poor" and that the authorities "continued to deny citizens the basic right to due process."**
>
> … In its *Annual Report on International Religious Freedom for 2002*, released in October, the State Department said that the **government "continued its systematic and vicious policies against the Shi'as," severely restricting their religious practices and perpetrating "a brutal campaign of murder, summary execution, arbitrary arrest, and protracted detention against Shi'a religious leaders and adherents."** [5]

The extracts from the Human Rights Watch Report above indicate that the UNHCR, the United States of America and the European Union were all critical of the human rights violations being perpetrated in Iraq during 2002. The US was in fact taking the first steps towards the invasion of Iraq that took place in early 2003.

Nowhere in this US Report was there any suggestion that Iraqi asylum seekers would now be safe to return to Iraq. In fact, close analysis of the international focus on Iraq in 2002, reveals an increasing level of concern about the continuing targeting of the Shi'a population and of ethnic minorities for gross human rights violations. Such considerations are **virtually invisible** in the country of origin information being used by the DIMIA to decide the Iraqi cases on Nauru in 2002.

April 2002 advice from DFAT noted that the fact that the Iraqi Government does not cooperate with international organisations like IOM or UNHCR and allow them to access to returned asylum seekers means there is no way that the treatment of the few

[4] Although published in 2003, the report documents the situation in late 2002, the very time period when the DIMIA Review Officers were rejecting Iraqi applicant's claims for the second time.
[5] http://www.hrw.org/wr2k3/mideast4.html

asylum seekers who do chose to return to Iraq can be monitored. Therefore it is "*difficult to give any guarantee as to the treatment of asylum seekers could expect from the government on their return to Iraq."*[6]

In May 2002 Amnesty International voiced its serious concerns about Lebanon returning Iraqi asylum seekers to areas where they would not receive protection and may even be forcibly repatriated to Iraq.

> . ***Amnesty International is also concerned about the systematic removal of asylum-seekers and refugees to countries where they would not have protection against forcible return to countries where they may risk human rights abuses. … Amnesty International is concerned about reports that, during April 2002, at least one Iraqi recognized by UNHCR as a refugee, was removed to northern Iraq where he is at risk of refoulement (forcible removal of a person to a country where he or she may face human rights abuses). According to reports this man was forced, under torture, to sign papers allowing for his removal from Lebanon …"***[7]

In contrast to the Amnesty concerns of April/May 2002, in the very same time-period, Onshore Protection's IPO paper on Iraq was minimising the risks facing any Iraqi asylum seeker who had been denied asylum by Australia.

As such, the focus of the IPO paper was totally out of step with the wider debate raging internationally about whether it was safe to return Iraqi asylum seekers to the region.

The US invaded Iraq in March 2003 and coinciding with the invasion, they released their *Country Report on Human Rights Practices in Iraq, 2002* (already mentioned above). Even bearing in mind that the US might have a vested interest in emphasising the scope of human rights violations in Iraq, **there is no denying that the body of evidence the US presented about human rights abuses in 2002 was considerable.**

The same information would have also been accessible (from the web) to the DIMIA Case Officers making Iraqi decisions on Nauru in 2002.
Instead of using a wide range of sources to inform their decisions, however, many Case Officers who rejected Iraqi applicants in 2002 used a very narrow sample of the available source documents.

The core of many of the Iraqi applicant's claims was fear of arbitrary imprisonment and torture if they were forced to return. The UN Special Rapporteur raised the issue several times and confirmed that the family members of known dissidents (or perceived enemies of the Iraqi state) were at risk of arbitrary arrest, disappearance, torture and death due to the activities of other members of their family.

Despite the evidence of the targeting of the family members, many of the DIMIA Case Officers assessing applicants on Nauru in 2002 rejected applicants with almost **no reference** to the human rights situation in Iraq in 2002.

[6] DFAT Cable CX64137 – Return to Iraq, 22 April, 2002.
[7] http://web.amnesty.org/library/print/ENGMDE180052002

The only mention of the human rights situation made by many of the DIMIA Officer were under **Part C – CAT – ICCPR – CROC -Humanitarian Consideration.** In this section of the decision DIMIA Officers occasionally made statements like:

> *"A pattern of mass violations of human rights clearly exists in Iraq. Country information that suggests illegal departure from Iraq and seeking asylum are not, in themselves enough to place someone at risk of Convention based persecution.*
>
> *However UNHCR do not consider involuntary return to be an option in Iraq. Forcing someone to return to that country might place them at significant risk. I am not aware of other states returning people involuntarily to Iraq.*
>
> ***If returned involuntarily to Iraq, it is possible an applicant would be in danger of imprisonment and torture**.* [8]

The two statements above contradict each other and I think that contradiction is emblematic of the problems inherent in the processing of the Iraqi applicants on Nauru at that time. The problems arose because the decision makers were using two very narrow and internally inconsistent sources in order to assess the applicants' claims.

Some of the Iraqi applicants expressed concerns about the over-reliance on the Danish Report to their Case Officers. In one set of interview notes a DIMIA Review Officer recorded that an applicant stated *"I was surprised that interviewer relied on the Danish organisation – he said they said 'no fear for Iraqis."*[9]

The Review Decision acknowledged that the applicant *"expressed surprise at the content of the Danish Report, believing the information in it to be incorrect."* Based on first-hand knowledge of life in Iraq, that applicant asserted that the Danish Report was "incorrect."[10] In response, the Review Officer stated categorically in the Decision that she would ***give weight to the Departmental information paper "Illegal Departure, Voluntary return and Imputed Political Opinion in relation to Iraq." (The IPO)*** [11]

The UNHCR Handbook's section on *Sur Place* claims instructs decision makers that a refugee assessment must take into consideration any changes to an applicant's profile since they fled their country and how they would be treated upon return, not only the person's circumstances when they departed.[12]

In order to judge whether that Iraqi applicant's fear of returning to Iraq was well-founded, the 2002 Decision Makers should have taken into consideration **all** the available country information, especially anything that challenged the assertions of the Danish Report and the IPO. Despite the applicant's concerns, however, the

[8] Unfortunately these referrals under CAT were simply a recording mechanism to be noted if and when the DIMIA attempted deportations!
[9] Folio 56 of one Iraqi applicant's file
[10] Folio 82 of one Iraqi applicant's file
[11] Folio 83 – as you can see the applicants were placed in a no-win situation – even if they complained, the DIMIA Case Officers still gave weight to their own "hand-picked sources.
[12] UNHCR Hand book paragraphs 95-96.

Decision Makers relied only on the two narrow sources, to the exclusion of all other dissenting views.

It was simply inappropriate for a DIMIA Review Officer to assert that the Danish Report of March 2001 was "*one of the most comprehensive, recent documents available on this matter*" without acknowledging that there were a myriad of updated Country Reports on Iraq which contradicted the position of the Danish Report and the IPO.

The fact that an applicant personally challenged the use of the Danish Report, should have lead to the Review Officer doing wider COI searches.

The only conclusion I can draw from the fact that in 2002 DIMIA Case Officers rejected so many Iraqi applicants without citing the full range of COI available on Iraq, such that they could compare and contrast the different positions, is that they were content to use, or had been instructed to use, a prefabricated formulaic document instead of doing their own research.

The release of the Nauru Iraqi files has brought some transparency into this process, and as the legal advisor to many of the rejected Iraqi applicants, I am very disappointed that more care was not taken in the processing of their claims in 2002.

There was a vast body of country information available in 2002, which indicated that Iraqi asylum seekers should not be sent back to Iraq. Unfortunately, the 2002 DIMA case officers did not use this country information in their analysis.

CONCLUSION:

Iraqi cases heard onshore in Australia by the RRT in 2002 were subjected to a decision making process informed by Country of Origin Information that was much more academically robust than was afforded to equivalent applicants who were processed as part of the (so-called) "Pacific Solution."

This does not offer me any assurance that future processing in Nauru without access to independent review will serve either the applicants or Australia well.

ATTACHMENTS:

The attached documents are primary source material for any future researcher and for examination by this Senate committee. They are evidence of my concerns for the future processing of asylum seekers offshore in a situation where there will be no review mechanism and no legal representative or adviser.

The difficulties that I had even gaining access to the files under the FOI legislation are outlined in one of the documents – one supposes that in any future assessments, no access under FOI will be available for analysis.

The brief chronology gives the briefest of outlines of my involvement with the Nauru caseload under the previous Pacific Solution.

The fact that there is still no permanent solution for the people transferred to Australia on Temporary Protection and various types of Humanitarian Visas should be of concern to all of us. We need to learn from the past in order not to repeat our mistakes in the future. My concern is that the Government and the DIMA will not only repeat the mistakes of the past but will compound them by enacting this Bill in defiance of international law and the concerns of informed, progressive and intellectually responsible and concerned citizens of Australia.

MARION LE, OAM
23/05/2006