

**Submission of the Rau Family to the
Inquiry into the Detention of Cornelia Rau**

University of Newcastle Legal Centre

**Conducted by the School of Law
Level 2, University House
300 King Street
Newcastle NSW 2300
Telephone: (02) 4921 8666
Facsimile: (02) 4921 8866**

<http://www.newcastle.edu.au/school/law/centres/index.html>

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Introduction

Limitations on the Family's Submissions

This submission has been prepared by the staff and students of the University of Newcastle Legal Centre ('UNLC') on behalf of the family of Cornelia Rau.

The authors of the submission are: Associate Professor Ray Watterson, Robert Cavanagh, Barrister at Law, Jenny Finlay-Jones, James Marshall, and Shaun McCarthy, assisted by students and staff from the School of Law, University of Newcastle. A list of students who assisted in the preparation of this submission is contained in **Appendix 1**. Christine Rau, the sister of Cornelia, made considerable and significant input into this submission, supported by her parents Edgar and Veronika Rau. Dr John Buxton of the UNLC, Virginia Newell of the School of Law, University of Newcastle and Greg Carne, School of Law, University of Tasmania also assisted with particular sections of the submission.

Mr Palmer has not supplied the legal representatives of the family with any of the evidence that he has collected, and he has advised that he will not make available any of the evidence. These submissions are therefore limited to evidence supplied by Edgar Rau, Veronika Rau, Christine Rau, witnesses who agreed to be interviewed, media reports and documents on the public record. A list of witnesses interviewed or sought to be interviewed by the UNLC forms **Appendix 2** to this submission.

The restrictions placed on the legal representatives of the Rau family are unreasonable. The Inquiry has advised that one of the reasons for failing to supply relevant evidence is that he has given a commitment to witnesses that their evidence will remain confidential. Mr Palmer has advised that this commitment will be ongoing, and that the inquiry has a separate database for witness evidence that is inaccessible to the government. However we are concerned that the Inquiry has no independent judicial function which would allow the suppression of evidence and the enforcement of such suppression.

An undertaking to keep evidence confidential only has meaning if the witness wants the evidence kept confidential. There has been no indication from the Inquiry that it has given witnesses the opportunity to have their evidence placed on the public record. Where a witness wants their evidence placed on the record, subject to relevance, privilege and a limited number of legal limitations, such evidence should be made available to the public. Suppressing relevant probative evidence in this case merely raises the reasonable apprehension that the Minister and her government want to protect their own operations from public scrutiny.

It is submitted that the nature of the Inquiry, its powers and terms of reference are too limited to enable it to uncover the truth and bring about necessary change. All relevant evidence gathered by the Inquiry and all relevant evidence that is available but has not been obtained by the Inquiry should be gathered and tested in a judicial forum. The private and closed inquiry currently being conducted by Mr Palmer could provide a useful starting point for such a judicial inquiry.

Recent public reports involving past and ongoing serious abuse of the rights of Australian citizens like Vivian Alvarez by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) render the need for a judicial inquiry already made out by Cornelia's ordeal overwhelming.

We continue to receive information concerning Cornelia's detention. Of course, we will supply information any new information we receive to the Inquiry.

The material included in this report is that which is available to us on Friday 20 May 2005. New revelations about DIMIA's detention practices continue to become public even as we write.¹ We have attempted to take account of these developments in this submission, however, it is not possible, given their unsettled and volatile nature to properly assess these developments and their full implications for Cornelia's case.

The Inquiry should ensure that a process is in place to ensure that any new facts or knowledge relevant to the Cornelia Rau, including that arising from investigation by the Inquiry of any new cases of wrongful detention referred by the Minister, are drawn to the attention of Cornelia's guardian, the Rau family and its legal representatives.

In a media statement dated 20 May 2005 Mr. Palmer stated:

My report into the Cornelia Rau matter is well advanced and is expected to be completed and presented to the Minister within the next four weeks. I have advised government that my report should not be delayed pending the completion of the detailed examination into the Vivian Alvarez matter which is well under way. Investigation to date into the case of Ms Alvarez confirm key issues of concern and will be reflected in the finding and recommendations to be completed shortly.

¹ Jenny Roberts, "Man held despite plea to check passport at home", *The Australian* (Sydney), 18 May 2005, 4.

We welcome the earliest possible resolution of Cornelia's matter. However, it is obvious that investigation of the new cases referred to the Inquiry may throw light on DIMIA's detention practices and culture that in turn will be relevant to the resolution of Cornelia's case. We ask the Inquiry and the Minister to bear this in mind.

We have attempted to compile the submission so that it may be made public as well as provided to the Inquiry. However, some information we received names individuals. Other information raises suspicions about matters such as mistreatment of Cornelia which requires further investigation by the Inquiry. Other information was provided by individuals, for example detainees, who were not prepared to be revealed publicly as informants because they fear reprisals. Other information is contained in letters sent by Cornelia whilst she was in detention. All such confidential information has been provided in confidential appendices.

Background

Family History

The Rau family's association with Australia is summarised in the statement of Edgar Rau. He states:

In February 1967 I arrived in Australia from Hamburg Germany. I arrived with my wife and two children. My wife's name is Veronika Rau. I have two daughters; their names are Cornelia and Christine Rau. Cornelia is now 39 years of age and Christine is now 42 years of age.

When we originally came to Australia I was employed by a German pharmaceutical company as Managing Director to establish that company in Australia. My daughters were then aged 1 ½ years (Cornelia) and 5 years (Christine). I was on a three-year contract which was renewed four times. We stayed in Australia for thirteen years living in Sydney until the end of 1979. We then returned to Germany and stayed for two years. Then we went to Indonesia for another two years where I worked for the same company. We then returned again to Australia at the end of 1983 and settled here.

We have, as a family, remained in Australia ever since. All family members became permanent residents of Australia. No-one in the family has become an Australian Citizen because we would have had to have given up our European passport and we still had family in Germany that we wished to visit.

In 1983 my daughter, Cornelia, was seventeen years of age. She had returned to Australia before the rest of the family. Cornelia went to school during this time at Hurstville High School and she finished her Higher School Certificate at Killara High School.

When we first came to Australia Cornelia went to school at Wakehurst Public School in Belrose, Sydney, New South Wales. She then went to Davidson High School in Davidson, Sydney New South Wales. At home the family mostly spoke in German. Cornelia also studied German at High School and went to Saturday School to learn German.

After Cornelia left High School she went to Kuring-Gai College of Advanced Education where she completed an Associate Diploma of Leisure and Recreation Studies.²

Cornelia lived and was raised almost entirely in Australia from the age of eighteen months. Apart from the three and a half years Cornelia's family lived in Germany

² Edgar Rau, *Statement*, 8 March 2005, paragraphs 3-8.

and Indonesia, when Cornelia was aged 14 to 17 years, Cornelia received all her primary, secondary and tertiary education in Australia. All her working life has been in Australia. She was acculturated as an Australian and spoke with an Australian accent. These facts point to a lack of due care in the decisions taken to detain her and keep her detained for over ten months.

It is submitted that there is sufficient evidence contained in this submission indicating that the average Australian could clearly identify Cornelia as a person who was a long term resident of Australia. We expect that the Inquiry will obtain additional evidence of this.

Although Cornelia Rau was a permanent Australian resident, not an Australian citizen, she and her family had a legitimate basis for the belief that she would be treated by all government authorities in the same way as a person who was born in Australia. Considering her length of residence in Australia and her history of employment, the community would also be entitled to expect that government authorities would treat her in the same way as if she was an Australian citizen.

We have letters and copies of letters written by Cornelia while she was in detention and signed “Anna” and “Anna Schmidt (Brotmeyer)”. They are relevant to central issues for this Inquiry. These include the issue of Cornelia’s Australian identity and the issue of Cornelia’s treatment by authorities and individual officers and officials while she was in detention. The letters are **CONFIDENTIAL Appendix 3**.

How Cornelia's Family Discovered She Was in Detention

The discovery of Cornelia by her family is described in the statement of Edgar Rau.

The family had reported Cornelia missing and had been searching for her for some months. Edgar Rau states:

On 3 February 2005 we received from a friend an article from the Sydney Morning Herald titled 'Aid sought for ill, nameless detainee'. I believed that the person referred to in the article was my daughter Cornelia. The only difficulty with the article was that it referred to a person 'aged about 18'. My wife rang Senior Const. Murray Bell at Manly Police and advised him about the article. He told her that he would email Baxter Detention Centre and get a photograph of the person referred to in the article from them. We were holidaying in Hawks Nest in New South Wales at the time. Bell sent by email a photograph of the person at Baxter to the police station in Tea Gardens. We went to the police station and viewed the photograph at 6 pm. We immediately saw that the photograph showed our daughter.

The same day 3 February 2005, we telephoned Senior Constable Bell and informed him that the person in the photograph was our daughter. He gave us the Baxter Detention Centre telephone number. We rang Baxter Detention Centre and my wife spoke to a woman in Baxter called Kay Kennis or Kannis on telephone 08 86415715. My wife asked if we should come down and identify our daughter. She said that our attendance at the Detention Centre for the purposes of identification would not be necessary. She said that they would try and transfer Cornelia to Adelaide by the Flying Doctor's Service.³

Cornelia had serious mental health problems at the time of her disappearance.⁴ The fact that Cornelia was placed in a detention system for an indefinite period whilst suffering a mental illness needs to be fully explained. In our Preliminary Submission to the Inquiry on Friday 29 April 2005 we said as follows:

Of great concern is the very real possibility that people who have limited English speaking ability or who are suffering mental illness may also have suffered or are suffering under the same indefinite detention regime. The private inquiry established by the Minister does not attempt to address this possibility.

³ Edgar Rau, *Statement*, 8 March 2005, paragraphs 28-29.

⁴ A detailed description of Cornelia Rau's mental health problems can be found in the statements of Edgar and Christine Rau.

The following day the Acting Minister for Immigration Peter McGauran announced that 33 cases of wrongful detention had been identified between July 2003 and February 2004.⁵

Since that time it has been revealed that an Australian citizen, Vivian Alvarez, was wrongly deported to the Philippines in 2001. At the time of her removal from Australia by DIMIA officials she is reported to have been suffering from physical and mental illnesses. Her two young children were left behind. The government has now admitted that there have been ‘some cases that could be similar to the Cornelia Rau case’.⁶

There is sufficient evidence in the public domain indicating that many people who are indefinitely detained pursuant to the *Migration Act* 1958, have developed mental illness as a consequence of the detention. Mandatory detention involving the potential for indefinite incarceration coupled with inadequate provision for basic needs like medical care and mental well being are matters that require urgent remedy. The private inquiry currently underway into the Cornelia Rau matter cannot materially assist in overcoming these systemic problems.

⁵ Joseph Kerr, ‘33 Wrongly Held in Detention’, *The Sydney Morning Herald*, 3 May 2005.

⁶ Paul Giles (adviser for Acting Immigration Minister, Mr McGauran) as cited in Andrea Jackson, ‘Wrongly Deported Australian Now Missing’, *The Age* (Melbourne), 2 May 2005, 3.

The Family's Position

The position of the Rau family in relation to Cornelia and the Inquiry has been consistent and has been set out in correspondence by UNLC to the Minister. The family seeks the following:

- a. the best medical support and treatment necessary to enable Cornelia to regain her mental and physical health;
- b. appropriate living conditions which will optimise Cornelia's chances of a full recovery;
- c. full opportunity and support for the Rau family to participate in and contribute to the Inquiry;
- d. the whole truth about Cornelia's treatment at all relevant times, including what is adverse to government;
- e. to preserve Cornelia's right to privacy and to optimise the conditions for her successful recovery;
- f. to preserve the legal rights of Cornelia and her family; and
- g. improvements in the services available to and the treatment of persons with mental illness or disorders, the detention of persons as illegal immigrants, and the handling of missing persons. Especially in areas highlighted by Cornelia's treatment, detention and handling.

The family has also indicated to the Minister that it seeks from the Inquiry:

- a. identification and proper acknowledgment of those parts of the system and people involved in the system including detainees that provided appropriate support, treatment and assistance for Cornelia;
- b. identification of individuals who failed to provide appropriate support, treatment and assistance for Cornelia;
- c. identification of any systemic failures to provide appropriate support treatment and assistance for Cornelia and identification and censure, where appropriate, of individuals responsible for such failures; and

The family has advised that at all times they will assist the Inquiry to fulfill the terms of reference. The aims of the family and those of the federal government are however significantly different. The fundamental difference is that the family seeks an open inquiry that identifies systemic failures and those responsible for them. The government has instead established a closed inquiry which is not equipped to ensure that all necessary information is obtained.

Minister Vanstone states in a letter to the legal representatives of the family the following:

I note your clients' aims and to a large extent they mirror the Government's aims in commissioning the Inquiry. The Government is seeking a comprehensive explanation of what happened to Ms Rau together with recommendations for improvements to current procedures. It is for this reason that the Government has commissioned Mr Palmer to conduct the Inquiry independent of my department and of other interested parties.⁷

The aims of the Rau Family *do not* 'to a large extent . . . mirror the Government's aims'.

⁷ Letter from Senator Amanda Vanstone, dated 10 March 2005, to Shaun McCarthy, Principal Solicitor, University of Newcastle Legal Centre.

Cornelia's family believes that fundamental inadequacies in mental health systems were an important precursor to her wrongful detention at the hands of DIMIA. They believe it should not be forgotten that it was the failure of the mental health system to adequately respond to chronic cases like Cornelia's that led to her disappearance in the first place.

Cornelia absconded from Manly Hospital. Had there been a system in place where involuntary mental health patients are automatically registered as missing when they escape, and had the police missing persons register been a national, immediate and co-operative one, police might have found Cornelia before she reached North Queensland.

The terms of reference of the Inquiry focus upon matters occurring during Cornelia's 10 months' detention. However the Rau family would like to see greater acknowledgement of the deep and widespread flaws in mental health systems, where even the most acute patients are sometimes turned away from hospital.

In commenting on the Alvarez case, SANE Australia executive director Barbara Hosking said:

the case highlighted the dearth of services for people on the way down, because mental health budgets favour acute care over community support programs.

What is really sadly lacking in Australia today is good supportive accommodation and rehabilitation services.

When you're acutely ill you do tend to get help, but if you're becoming ill or if your illness has stabilised a little bit, it's often very difficult to get help or support.⁸

⁸ Cath Hunt and Sean Parnell, 'That's no way to treat a lady', *The Weekend Australian* (Sydney), 14 May 2005, 21.

This is precisely the experience of the Rau family with Cornelia's treatment for her illness before she was detained by DIMIA.

In their personal suggestions to this inquiry, Edgar and Veronika Rau drew attention to a reported public admission by Prime Minister John Howard in *The Australian* on 8 February 2005, that Cornelia's case 'also raises some questions about the mental health policies that this country has followed for a long time.'⁹

The Rau family hope that the Inquiry will draw the attention of government to the need to provide for the care of chronic mental health patients by building well-funded, secure, long-stay hospitals in each State which would break the revolving-door cycle for patients like Cornelia who never stay in hospital long enough to stabilize properly. They believe this would be ultimately more cost-effective than the current system of patchwork treatment leading only to deteriorating health among the mentally ill.

In their personal submission to the Inquiry, Mr and Mrs Rau said:

In the absence of such a facility, countless people whose 'crime' is mental illness, will offend and offend again with sometimes tragic consequences for the community and themselves. They will increase our jail population, the number of homeless and they have to live without hope, and yet, the above mentioned facilities can offer help and hope.

Edgar and Veronika's personal submission to the Inquiry is dated 4 March 2005 is

Appendix 4.

⁹ Elizabeth Colman and Andrew McGarry, 'Minister Considers Database of Missing', *The Australian* (Sydney), 8 February 2005, 4.

There has been only one meeting between the Rau family and the inquirer Mr. Mick Palmer. This meeting occurred on 5 April 2005 at UNLC. This meeting was constructive in the sense that Mr Palmer advised that he was “unfettered” by government and that his aim was to “improve the process for the future”.

There can be little doubt that Mr Palmer is genuine in his desire to improve the process for the future. However, the limitations of the Inquiry ensure that only limited procedural change can be recommended. In saying this, it should be understood that the comments made in this document are designed to assist the Inquiry while also attempting to identify its limitations.

The Scope of the Inquiry and the Terms of Reference

The Terms of Reference

The Inquiry will investigate, examine and report on matters relating to the case of Cornelia Rau, including in particular the actions of DIMIA and relevant state agencies, during the period March 2004 to February 2005.

In particular the Inquiry will:

- examine and make findings on the sequence of events that gave rise to her being held in immigration detention;
- examine and make findings on the circumstances, actions and procedures which resulted in her remaining unidentified during the period in question;
- examine and make findings on measures taken to deal with her medical condition and other care needs during that period;
- examine and make findings on the systems and processes of, and co-operation between, relevant state and commonwealth agencies in relation to identification/location of missing persons and provision of mental health services; and,
- recommend any necessary systems/process improvements.

The Inquiry will need to request the support and co-operation of relevant state agencies.¹⁰

Initially the Inquiry was to report by 24 March 2005, this has been extended to a date yet to be finalised by Mr. Palmer. It has also been announced that the government has referred to Mr Palmer for review a number of other cases of wrongful detention. We note that such a review relies on DIMIA audits for selected periods. Accordingly, it would appear that any cases of wrongful detention in other periods will be omitted. This includes the period 1998 to 2001 a time of heightened apprehension of illegal immigration, will not be the subject of Mr Palmer's review. The Rau family and its legal representatives have not been informed by the Minister or Mr Palmer of the terms of reference of this extended inquiry.

¹⁰ Senator Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs, *Cornelia Rau Inquiry*, Press Release, No 30.05 (8 February 2005).

The Nature of the Inquiry: Administrative Review

Minister Vanstone offered the following reasons for the kind of inquiry she initiated when she stated in answer to questions posed by an ABC journalist:

DEBBIE WHITMONT: Although Anna was in jail, she was an Immigration detainee and not a convicted criminal. So it was the Department of Immigration, DIMIA that had overall responsibility for looking after her. A private Ministerial enquiry into her case is already underway. For that reason, the Minister declined to comment yet on the Department's actions.

SENATOR AMANDA VANSTONE (IMMIGRATION MINISTER): Well, that's one of the reasons we've got an enquiry so that a proper assessment can be made at a distance with all the facts at hand as to what was appropriate, if there was anything that wasn't appropriate and, more to the point, if there's any change in procedures we can make that would improve the likelihood of us picking up this extraordinary event earlier.¹¹

The Minister places emphasis on procedural change rather than requiring a review and change to the detention system. This narrow approach is also supported by her comment that the detention of Cornelia Rau was an “extraordinary event”. Events recently revealed in media reports indicate that the detention of Australians by immigration officials is far from an “extraordinary event”.

Limitations Implicit in the Terms of Reference

¹¹ Debbie Whitmont, Interview with Senator Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs, 4 Corners Program ABC (4 April 2005).

Cornelia has rights and expectations of individual liberty and fair and dignified treatment at the hands of government officials and agencies, as well as access to health care.

Cornelia was undoubtedly mentally ill immediately before and after the period of her detention, and almost certainly, mentally ill at all times during her detention. The community expects that she and others in her position receive appropriate mental health care.

Her family notified that she was a missing person during the period of her detention. Cornelia's family expects that national (best practice) efforts would have been undertaken to identify and locate her.

As previously stated, the Rau family and the community expect the Inquiry to uncover the truth about Cornelia's detention, identify systemic failures and make appropriate recommendations to bring about necessary improvements in areas highlighted by the circumstances of Cornelia's detention. However, it is our submission that the nature of the inquiry, its powers and terms of reference are too limited to uncover the truth and bring about necessary change.

The introductory paragraph of the terms of reference is expressed quite widely, namely, to 'investigate, examine and report on matters relating to the case of Cornelia Rau . . . during the period March 2004 to February 2005.' Standing alone such terms of reference would undoubtedly support a review which considered matters such as: the legality of Cornelia's detention, her general treatment whilst in detention, the

general conditions of her detention and fundamentals such as detention without independent review.¹²

However, given the context of the particular matters listed by the Minister for investigation, examination and report, it may be that the inquiry focuses exclusively, or at least, principally, upon matters that relate to departmental procedures rather than the lawfulness of her incarceration or the failure of particular individuals to treat her properly and provide her with appropriate medical care. It also remains to be seen whether or not the inquiry provides any cogent explanation for the failure of the missing persons system.

The particularised terms of reference may be limiting in other respects. For example, the reference that requires the Inquiry to, ‘examine and make findings on the sequence of events that gave rise to her being held in immigration detention’ may be satisfied by a chronological description of events. Certainly, the nature of the Inquiry and such a term of reference are unlikely to provide the kind of deeper analysis of the underlying cultural and systemic reasons for Cornelia’s detention that is more likely to emerge from evidence that has been openly tested.

The second particularised reference, ‘examine and make findings on the circumstances, actions and procedures which resulted in her remaining unidentified during the period in question’, invites a description of events relating only to Cornelia’s non-identification within the detention system. It does not require consideration of any abuse or mistreatment of Cornelia’s human rights, let alone any

¹² This remains a right in all criminal and mental health jurisdictions in Australia.

abuse or mistreatment, contemporaneous or otherwise, of others who were detained along with Cornelia or in similar circumstances.

The third particularised term, ‘examine and make findings on measures taken to deal with her medical condition and other care needs during that period’, while appropriately emphasising the critical issue of Cornelia’s medical treatment, appears to foreclose consideration by the Inquiry of the availability and standard of medical care for detainees generally.

The fourth particularised term, ‘examine and make findings on the systems and processes of, and co-operation between, relevant state and commonwealth agencies in relation to identification/location of missing persons and provision of mental health services’ focuses upon co-operative mechanisms. This term does not allow the Inquiry to properly analyse any state or federal conflicts. Political interests are well protected by the terms of reference.

The fifth particularised term, ‘recommend any necessary systems/process improvements’, allows only recommendations for ‘any necessary systems/process improvements’ in respect of a person who may be in Cornelia’s position. That is, a mentally ill Australian resident who was reported missing.

Finally, the terms of reference do not allow for identification of failure in a way that attributes responsibility or accountability to individuals. The Inquiry is of a short duration. It must rely upon individual and agency co-operation and has been provided with no powers to obtain evidence or processes for testing evidence. In these

circumstances, the Inquiry faces insurmountable difficulties in properly attributing individual responsibility.

In summary, the terms of reference do not appear to allow for consideration of, amongst other things, the policy that mandates removal of individual liberty without judicial scrutiny, the legality of the detention and the conditions of detention. The terms are flawed in that:

- They do not require any consideration of how the constitutional and human rights of detainees may be infringed by the mandatory immigration detention system.
- They do not require consideration of any abuse or mistreatment of Cornelia's human rights, let alone any abuse or mistreatment, contemporaneous or otherwise, of others who were detained along with Cornelia or in similar circumstances.
- They foreclose consideration by the Inquiry of the availability and standard of medical care for detainees generally.
- They are likely to be satisfied by sound but superficial findings and are unlikely to lead to the discovery of the cultural and systemic reasons underlying Cornelia's detention and treatment.

- They do not allow the Inquiry to properly analyse any state or federal conflicts.
- They only allow recommendations for ‘any necessary systems/process improvements’ in respect of a person who may be in Cornelia’s position. That is, a mentally ill Australian resident reported missing.
- They do not allow for identification of failure in a way that attributes responsibility or accountability to individuals.

It has come to our attention that a letter from Minister Vanstone to a state government agency at the time she announced the Inquiry uses the following words:

If you agree, I would be grateful if you would nominate appropriate senior contact officers in each relevant agency to whom specific requests for information can be addressed by the Inquiry. I would also propose that relevant parts of the Inquiry Report are made available to you and your officers in draft prior to its finalisation so that any comments may be considered in finalising the report.

This letter causes us some concern¹³. It would appear that a consequence of the cooperative nature of the Inquiry is that government agencies will have a publicly undisclosed opportunity to influence the content of the Inquiry’s report. It is with an element of unease that we consider Senator Vanstone may have provided an opportunity to government agencies to deflect legitimate criticism of their operations.

The family also seeks a copy of the Inquiry’s draft report at the same time as it is

¹³ Our concern is increased by a report by Joseph Kerr in the *Sydney Morning Herald*, Saturday 21 May 2005, “Vanstone to vet Rau report before release”. Senator Vanstone is reported as saying that she will review Mr. Palmer’s report on the Rau case when it is given to her to decide whether it should all be made public. The Minister is quoted as saying: “ We’ll obviously release the recommendations, but I’d have to see the report to see if there are any things that for good reason shouldn’t be released. But my natural inclination and desire is to release as much of it as is appropriate”.

provided to government agencies. Our purpose in seeking the draft report is to have an opportunity to reply and to preserve Cornelia's medical privacy.

History of the Cornelia Rau matter

The following chronological narrative is from the time Cornelia went missing through to the time she was released from the Baxter Detention Centre. A more detailed chronology concerning Cornelia's detention is **Appendix 5** of this submission.

On 17 March 2004 Cornelia disappeared from a psychiatric hospital in Manly. Edgar Rau states:

On 17 March 2004 she disappeared from Manly Hospital. Cornelia was an involuntary patient. I do not know if hospital authorities contacted the police to report her missing. I understand that there is a protocol that requires mental health hospitals to report to the police if a patient goes missing.¹⁴

On 30 March 2004 Cornelia arrived at the Exchange Hotel in Coen, North Queensland. The publican had concerns for her safety and notified the police.

When she began asking men at the bar for somewhere to sleep, the publican and his wife got worried. They gave her a free room for the night and asked the local policeman to come down and talk to her. She said she was Anna Brotmeyer from Germany.¹⁵

That evening Queensland police first interviewed Cornelia at the Exchange Hotel when she gave her name as Anna Brotmeyer and said she was from Germany. Later that evening the police contacted DIMIA and passed on the details Cornelia had given them.

¹⁴ Edgar Rau, *Statement*, 8 March 2005, paragraph 15.

¹⁵ Debbie Whitmont, Interview with Senator Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs, 4 Corners Program ABC (4 April 2005).

On 31 March 2004 an 'official' phoned the publican to say there was no record of Anna Brotmeyer entering Australia and that she might be an 'illegal immigrant'.

The next morning, the local police came looking for Anna Brotmeyer. They found her about 20 kilometres up the road. The Department of Immigration, DIMIA, had had no record of an Anna Brotmeyer arriving in Australia, and they'd asked the local police to detain her.¹⁶

She was taken into custody on suspicion that she was an illegal immigrant. She had a passport with her but it was not in the name of Anna Brotmeyer.

The above account, even when fleshed out by reference to the detailed Chronology in Appendix 4 is, of course, incomplete and will need to be completed by the Inquiry.

The detention of Cornelia was presumably done pursuant to s. 189 of the *Migration Act* 1958. The basis for 'an officer' under s.189 having 'reasonable suspicion' to detain Cornelia has not been made available to the legal representatives of the family. That is, we do not have evidence from the officer who made the decision. Furthermore, neither that evidence nor indeed, any evidence collected by the Inquiry will be openly tested by the closed Inquiry chosen by the Minister and undertaken by Mr Palmer.

On 2 April 2004 Cornelia was interviewed by the Honorary German Consul in Cairns.

By the time she saw the Honorary German Consul in Cairns two days later, 'Anna Brotmeyer' was 'Anna Schmidt'. She spoke simple German and didn't know her parents' names or her own birthday. She said she'd walked or gone by train to Russia and China and then arrived by boat from Indonesia with a people smuggler. It was enough for the Consul to call DIMIA and tell them, 'Someone should look at her.' On

¹⁶ Ibid.

5 April, 'Anna Brotmeyer' or 'Schmidt' was taken to the Brisbane Women's Prison. She was put into a secure unit with convicted criminals.¹⁷

On 5 April 2004 DIMIA moved Cornelia to the Brisbane Women's Correctional Centre. During her time in Brisbane gaol she reportedly called herself Anna Schmidt, Anna Brotmeyer and Anna Sue Schmidt.

On 7 April 2004 a representative of DIMIA visited Cornelia in gaol. A DIMIA official told a Senate Estimates Committee that DIMIA's representatives also visited Cornelia on 30 September 2004, with possibly one other visit in between, during the six months she was in custody in Brisbane.¹⁸ A very significant matter for this Inquiry is the precise purpose of these visitations, their duration and who carried them out. For example, were they to confirm DIMIA's suspicions that Cornelia was an illegal immigrant? Were they to make enquiries about or to assist with her welfare? Were they to arrange for or to facilitate Cornelia's deportation to Germany and, if so, did Cornelia acquiesce in such arrangements? Did Cornelia request removal to Germany and if so did DIMIA attempt to facilitate such a request? What steps, if any, in these regards did DIMIA take? Were the visitations for some other purpose? The Inquiry will, of course, need to reveal all this.

Minister Vanstone's comments about these visitations, set out below, reveal what appears to be a very limited involvement of DIMIA officials with Cornelia while she was in gaol in Queensland. The inference that can properly be drawn is that Senator Vanstone and her department were disinterested in Cornelia while she was in a

¹⁷ Ibid.

¹⁸ Senate Estimates, 15 February 2005, 45.

Queensland gaol, and that any failures in her care would be the responsibility of the Queensland government.

DEBBIE WHITMONT: The Department of Immigration's own regulations say immigration detainees held in jail should be visited once a month.

That would seem, on the face of it, to be a breach of the duty of care.

SENATOR AMANDA VANSTONE: Well, what I'd say in relation to the prison is that when they're in the prison - when you say they'd been visited three times, I wouldn't want you to create the impression that they were alone all that other time. As you are well aware, they are in the prison under the care of the Brisbane prison officers.¹⁹

On 10 August 2004 at the initiation of the Prisoners' Mental Health Unit, a state forensic psychiatrist recommended psychiatric assessment at Princess Alexandra Hospital.

PRISON PSYCHIATRIST: 10th August 2004 ... Female with German background of unclear name, age and reason for being in Australia!! ... Behaviour very unusual ... poor hygiene, inappropriate toward male officers, laughs to herself, stands for hours staring at the wall or pacing up and down ... Behaviour has become increasingly bizarre and current presentation is consistent with psychotic disorder but given inconclusive and odd presentation need to exclude an organic cause ... Recommendation for assessment ... Will approach Department of Immigration and Princess Alexandra Hospital.²⁰

We understand the Inquiry has retained a psychiatrist, Dr David Chaplow, to review Cornelia's psychiatric condition and treatment. The extent of any expert medical review is unknown. Moreover, as we have observed previously in relation to untested evidence, untested opinion also has limited value.

¹⁹ Debbie Whitmont, Interview with Senator Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs, 4 Corners Program ABC (4 April 2005).

²⁰ Ibid.

We are equally concerned that the information on which Dr Chaplow's opinion will be based may be limited. It is unclear what information the Inquiry's expert will have access to. The family believes the failure to diagnose Cornelia's condition is a key factor in her prolonged detention. Our next concern is that Cornelia's guardian has not been provided with crucial medical records from Queensland. We are also unaware of whether Dr Chaplow will seek to interview Cornelia and health professionals that had dealings with her in Queensland and Baxter. We were informed by Cornelia's appointed guardian, Mr John Harley, that Mr Palmer attempted to interview Cornelia at Glenside Hospital in Adelaide. We do not know whether or not Mr Palmer was accompanied by Dr Chaplow on that occasion or indeed by any other psychiatrist.

On 11 August 2004 Cornelia's parents notified her as missing with the New South Wales Police Service.

On 11 August 2004 we again reported Cornelia as a missing person to police in Gordon. The police in Gordon referred the details that we had provided them to Manly Police Station.

We had not further reported Cornelia as missing between 17 March 2004 and 11 August 2004 because we were aware she had a new passport, new immigration visa and money and we thought she might have travelled overseas. Also, normally Cornelia would make contact with us or people would notice her behaviour and report her to police or health authorities.²¹

Between 20 and 26 August 2004 a psychiatric assessment at Princess Alexandra Hospital found that Cornelia had behavioural problems but did not diagnose a mental illness. These submissions are limited to the extent that the full assessment of her condition by medical staff at the hospital has not been made available. It is difficult

²¹ Edgar Rau, *Statement*, 8 March 2005, paragraphs 19-20.

to understand how hospital staff failed to diagnose her condition and came to the view that Cornelia did not need psychiatric treatment or hospitalisation. Instead she was sent back to gaol.

Debbie Kilroy, the director of the women prisoners' lobby group Sisters Inside, informed us that the psychologist with the Prisoners' Mental Health Unit (PMHU), who had earlier seen Cornelia, disputed the Princess Alexandra Hospital's diagnosis. According to Debbie the psychologist told her that prison management denied her access when she tried to see Cornelia again after the diagnosis. According to Debbie Kilroy this conversation is supported up by a diary entry.

They were really worried about her. They were the ones who tried to see her afterwards. But they were blocked by prison management who told them 'she's fine; she's just badly behaved.' They attempted more follow-ups but prisons told them she'd gone back to Germany. They said they would have at least written a letter about this to Baxter had they known (she was there).²²

The Queensland Government would not permit the PMHU staff to speak to us to verify this information.

On 6 October 2004 Cornelia was transferred to and detained in the Baxter Detention Centre, South Australia. She remained in custody at the centre until 4 February 2005 when she was moved to a mental health facility in Adelaide, South Australia.

Whilst in custody in Queensland, she received no effective assistance from correctional authorities or mental health providers. It is submitted that her treatment

²²UNLC, Interview with Debbie Kilroy, Director, Sisters Inside, (29 March 2005).

in Queensland, whilst in the custody of the DIMIA, was punitive, prejudicial to her physical and mental health and amounted to abandonment.

Whilst in detention in Baxter, Cornelia also received inadequate assistance for her mental health problems. Like Queensland her custody in Baxter was punitive, prejudicial to her physical and mental health and brutal given that she spent three out of four months as the only female in the isolation compound Red One. According to public reports and evidence to the Senate Estimates Committee, Cornelia also spent time in the Management Unit and under SASH watch. To assist the Inquiry a description of Baxter and these units given by Justice Finn in *S v Secretary, Department of Immigration & Multicultural & Indigenous Affairs* [2005] FCA 549 (5 May 2005) is **Appendix 6**.

Despite continuing evidence of Cornelia's illness the only attempt at diagnosis by a specialised psychiatrist, Dr Andrew Frukacz, during her entire four months at Baxter, occurred on November 6, 2004.

As Justice Finn explains in *S v Secretary, DIMIA* [2005] FCA 549 (5 May 2005), health services at Baxter are outsourced by DIMIA to various different companies.²³ According to the evidence in that case, Dr Frukacz, a psychiatrist based in Bathurst, was the only medical practitioner contracted to provide psychiatric service during a time which coincides with the period of Cornelia's detention in Baxter. The evidence in that case is also that Dr Frukacz visited Baxter only once (in November 2004) in

²³ *S v Secretary, DIMIA* [2005] FCA 549 (5 May 2005) at [44].

the period of time corresponding to Cornelia's four months detention in Baxter.²⁴ Dr Frukacz's evidence before Justice Finn is that he considered the service he could provide Baxter at the moment was "not ideal" but was the best he could provide in a remote community. In terms of regularity of follow-up consultations a detainee would not get the same standard of care as would private patients in his home town.²⁵ The evidence found by Justice Finn in relation to psychiatric services available to detainees in the period August 2004 to 29 March 2005 is most relevant to Cornelia and is set out in full below.

It would seem that Dr Frukacz has not personally made an order under s 12 of the Mental Health Act for the detention in Glenside of a mentally ill person. He has, though, made recommendations in his reports that a person may be assessed and treated in a hospital environment if they do not improve. He would expect that the PSS people would act on his instructions but he accepted that he was aware in relation to a detainee not a party to these proceedings that a recommendation he had made in November had not been carried out by February. He accepted that he relies all the time on the opinions of the professional staff who work at Baxter.

Dr Frukacz indicated he was aware of criticism in the psychiatric community at large about the level of psychiatric care in Baxter. He would like it to be better but he would equally like such care to be better in rural and remote towns. He indicated he had never been consulted by DIMIA or by GSL about how the conditions of detention or the condition of the health service might be changed to improve the mental health of detainees.²⁶

It would appear that the detainee referred to by Dr Frukacz in this evidence is Cornelia.

Dr Frukacz may have indicated that Cornelia's symptoms, 'lead me to considering schizophrenia'.²⁷ He may have recommended that she be hospitalised for observation

²⁴ *S v Secretary, DIMIA* [2005] FCA 549 (5 May 2005) at [44].

²⁵ *S v Secretary, DIMIA* [2005] FCA 549 (5 May 2005) at [46].

²⁶ *S v Secretary, DIMIA* [2005] FCA 549 (5 May 2005) at [48]-[49].

²⁷ Debbie Whitmont, Interview with Senator Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs, 4 Corners Program ABC (4 April 2005).

or alternatively monitored in detention. His medical notes have not been made available to the legal representatives of the family, so reliance is limited to media reports and Dr Frukacz's evidence in *S v Secretary, DIMIA* [2005] FCA 549 (5 May 2005) for these comments. Despite Dr Frukacz's observations or recommendations no appropriate action was taken to ensure that Cornelia was medically assessed.

There were a number of people who attempted to alert the department or its agents to the plight of Cornelia whilst she was in detention in Baxter. They included Baxter church visitors, detainees, refugee advocates and outside psychiatrists. It is clear that their attempts were in vain and that DIMIA ignored Cornelia's distress to the extent that DIMIA could be regarded as in breach of its duty of care. These failures have seriously prejudiced Cornelia's welfare with no conceivable benefit to the community.

The incarceration of an Australian resident in indefinite detention is a matter that all right thinking people would regard as shameful. Minister Vanstone's protestations that there was a functioning system do her and her department no credit. Pamela Curr, Campaign Coordinator, Asylum Seekers Resource Centre, West Melbourne, has told us the following which, it is submitted, highlights this point.

I spoke to Cornelia on January 24th. She ... told her name was Anna Schmidt. Previously when I had spoken to DIMIA, they said they didn't know who she was. So when she told me her name was Anna Schmidt I rang Annabelle O'Brien in DIMIA to report this. Anna also told me she was 17 and she gave her birth date as the 15/11/86. Now of course the age and the birth date don't match up. I knew that because my daughter's born in '86 and daughter [was] born in '86 and she's 19. She told me she came from Dresden.

When I was talking to her on the phone she was very disconnected. What happened was I rang, I asked the guard if I could speak to her, I heard him walking up to her room because he had the hands free phone and he handed the phone [to her] and there was no one there for some minutes. I felt she was at the end of the phone so I just kept talking about trust and people needing help and I was offering to help if she needed it etc. And then after some minutes she came on the line and said:

‘Hello I’m here.’

The phone connection was really bad because if the electric sensors are on I think it interferes with the phone. On top of that if the hands free is quite some distance from the office and inside a room there is a lot of noise on the line. So it’s very hard to hear. At that point I asked her name etc and her details and said that I wanted to offer her help.

I was ringing her to encourage her to sign a form authorizing a lawyer to act on her behalf, because when you’re in detention unless you sign a form authorizing a lawyer to act no one can do anything for you. You’ve got no rights. The only one who can call on your behalf is your lawyer. So that was the point of my call. But realistically it was the quality of the line and the fact of her detention and [lack of] focus I really couldn’t get very far with that.

I asked her name and details. I also asked her if she had any family that she wanted me to contact. With that she started to sort of laugh in a strange way and I really felt I’d lost her. She came backwards and forwards a little bit but I wasn’t getting much sense out of it. So with that information I then rang DIMIA and they said to me

‘Oh look she’s told us her name’s Anna Schmidt and also Anna Brotmeyer.’

So my news wasn’t anything special at all – they did have names for her.

At this stage I was getting nowhere - No matter what I said to DIMIA or the Minister's office. I had asked the local South Australian authorities to help. So at that point I contacted Andra Jackson and told her about this woman. I’d also sent emails to German travel work sites in Australia and German sites in Germany, saying ‘Who is Anna?’ calling for her family to come forward, describing her but of course with the wrong age.

At that point I spoke to Andra and asked her to write the article. I think it was in *The Age* on Sunday and then it was in *The Sydney Morning Herald* on Tuesday and I’ve spoken to Chris Rau and that’s when they found out. The problem for me about going public is I have a position that people must give informed consent before you give information to the media, on their behalf. And you also have to go through their lawyer and get permission. But in these instances Anna didn’t have a lawyer although she’d signed the form by this stage, but the lawyer hadn’t seen her. And she wasn’t in the frame of mind where she could give informed consent. So that was the ethical difficulty I had but I thought unless we went public she was going to rot in Baxter forever. So that’s why I went to Andra Jackson.²⁸

²⁸ Interview with Pamela Curr, UNLC (19 April 2005).

Andra Jackson is a senior journalist with *The Age* newspaper. Without the actions taken by refugee advocate Pamela Curr and the publication in *The Age* and *The Sydney Morning Herald* of ‘Anna’s story’ Cornelia may have stayed in detention indefinitely.²⁹

On the night of Thursday 3 February 2005 after she was identified by her parents, Cornelia was moved from the Baxter Detention Centre to Port Augusta Hospital. The following day Friday 4 February 2005 she was flown to Adelaide and admitted to Glenside Hospital.

²⁹ The critical role this article played in Cornelia being identified by her parents is contained in paragraph 28 of Edgar Rau’s *Statement*, 8 March 2005.

The Effect of Incarceration on Cornelia

Cornelia was taken into custody on 31 March 2004 and remained in administrative detention until the evening of 3 February 2005. During that ten month period Cornelia did not receive any proper psychiatric treatment or any targeted medication for her mental illness. Her prolonged periods of isolation and the lack of targeted medication is likely not only to have exacerbated her condition but may have entrenched it.

Dr Louise Newman, Psychiatrist, Director NSW Institute of Psychiatry says:

The prolonged use of isolation is not consistent with current psychiatric practice and contravenes international conventions about the treatment of prisoners of war. The adverse effects of isolating vulnerable people for prolonged periods of time are well documented. It appears that Baxter has designed its solitary program (and what people have to do to get out of that program) to obtain behavioural control using very out of date and unethical behavioural management principles.

The Baxter approach is inadequate because it does not consider any of the underlying reasons why people might be disturbed, distressed, angry or acting out. It starts with the assumption that every uncooperative act is just bad behaviour and should be managed accordingly. The program is not set up in any way to look at underlying causes or pick up other problems that need addressing. It uses oppressive lengths of time in confinement and very inadequate provisions for time out of the confinement area as punishment. There is inadequate exercise. There is also constant surveillance and constant light and this can lead to disorientation as people do not know whether it is day or night.

If people have any mental illness, this is more likely to make them worse as happened with Cornelia Rau. She was paranoid to begin with. Then there are all the issues about what sort of interactions she had with the people and the guards, who are not trained in mental health and so do not know what they are observing and tend to assume that people are just behaving badly and sometimes treat them in a way that is likely to aggravate their condition.³⁰

³⁰ Dr Louise Newman, *Statement*, 16 May 2005, paragraphs 21 – 23.

From the family's point of view, the outlook for a positive prognosis for Cornelia is now more unclear than it has ever been in the past. Cornelia's condition had clearly deteriorated during the period of her detention. Edgar Rau states:

I have observed a dreadful deterioration in Cornelia's mental state since we last saw her in March 2004. When I last saw Cornelia on 9 March 2004 before she disappeared, she was properly dressed; she talked sensibly and looked beautiful. When we saw her on 26 February 2005 she was expressionless, crying, holding her teddy bears. She was wearing her black Baxter Detention Centre clothing.³¹

This dramatic deterioration in Cornelia's condition must be fully explained by the Inquiry.

The treatment Cornelia received in custody in Baxter seems to have gone beyond even punitive detention. Pamela Curr states:

I was told by 2 detainees on 2 separate occasions that they way the guards got her to follow instructions when she ignored them and didn't seem to hear their instructions and wasn't interpreting what they were saying. They would go over to her, put their hands on her shoulders and push her in the direction of where they wanted her to go. I also heard that she was terrified of going back into the room. And so it would take a number of them to come and physically push her into the room.

Q: And you also said that you heard reports of guards watching her showering.

A: Yes I had a call from a detainee who told me that, it's written down here (Diary), he told me that one of the guards was angry because the others were sitting and watching her showering on the monitor. And apparently this guard said to them you shouldn't do that, she's a woman. She deserves respect. Anyway the others laughed. Because he was angry he spoke to the other detainees about it. And of course when they were allowed out, they could see the guards sitting around the monitor talking about her. And I've also had reports from another detainee that the guards would discuss her body etc.

Q: These reports are directly from conversations you've had with detainees?

A: Yes. From two different detainees.³²

³¹ Edgar Rau, *Statement*, 8 March 2005, paragraph 46.

³² Interview with Pamela Curr, UNLC (19 April 2005).

The potential for abuse of a person within this unchecked detention system is very high. In Cornelia's case a full investigation should occur to determine the extent of the physical and mental abuse she may have suffered and to exclude, if possible, sexual assault.

According to a statement by three detainees who were in Red One with Cornelia, the guards in Red One would do the following:

When they wanted to look into the room they turned the light on and looked through the hole but because she was naked they turned the light on for a long time to check on her.

The statement by the detainees goes on to say:

The detainees heard the officers talking about her body several times and the detainees argued with the officers to put female guards to check on her.

The detainees also allege the guards told detainees:

They brain-washed everyone to make them believe that she had no mental problem. They said that according to the psychologist's report she plays her game very well, and she's a good actress and she just pretended to be crazy because she didn't want to be deported.³³

We are informed by Chris Warren that the full text of this statement by the detainees has been supplied by him to the Inquiry, as have the names of guards allegedly involved in Cornelia's mistreatment.

³³ Statement given by three long-term detainee contacts to Chris Warren, Channel 7 News Adelaide, reporter and regular Baxter visitor, 10 February, 2005.

Without affording full whistleblower protection to detainee eyewitnesses, any allegations of potential criminal misconduct involving Cornelia's care will remain untested.

The deterioration in her condition may at least partly be explained by the period of time she spent in isolation whilst in custody in Queensland. The amount of time is almost certainly in excess of five weeks. During this time, usually a week at a time, in the designated isolation unit she was apparently being monitored 24 hours a day via a video camera. She also spent additional shorter periods of time in isolation cells within the S1 section of the prison. The Queensland Government needs to specify the time she spent in all forms of isolation and the reasons for such excessively punitive treatment.

A factor that almost certainly contributed to Cornelia's deterioration and continued mistreatment was the initial misdiagnosis in the Princess Alexandra Hospital. This misdiagnosis became a reference point for health professionals in Queensland and Baxter. The Queensland Government needs to explain the failure of this specific hospital. The Inquiry should also explain this failure.

Repeated requests for documents and other pertinent material from Queensland by Cornelia's guardian, UNLC and Christine Rau have been met with the response that the relevant departments are concerned about legal liability.

Not even Cornelia's guardian, South Australian public advocate John Harley, has received crucial information from Queensland like the medical records and notes from Princess Alexandra Hospital.

It is our contention that mental illness is not taken seriously in prison cultures which are seeing higher numbers of people than ever before incarcerated who have mental illnesses. This makes prison culture similar to that in the DIMIA detention centres which also have high numbers of detainees with mental illnesses.

In prison, as in Baxter, Cornelia's fellow inmates reported to Sisters Inside Cornelia's symptoms including incontinence, refusing to shower, withdrawal and extreme agitation.

The humiliation and the degradations (experienced by some women in prison) – they push some women over the edge and we thought Cornelia was just another one of the people who'd been pushed over the edge.

[An inmate named to us] saw Cornelia tell them her name on a number of occasions. The guards said this was all an act and called her a lying bitch.

There are all these women in prison with mental illnesses. Prisons have become de-facto mental health institutions. (Prisoners) are treated appallingly and they're not treated for mental illness. The only time they're treated is if their behaviour is so outlandish that it requires an intervention. That intervention can range from locking them up in solitary to actually getting psychiatric help. We have to go through the whole triage process to see a psychologist.³⁴

Despite Cornelia exhibiting what were to outsiders clear signs of mental illness, these symptoms seem to go under recognised or are simply ignored in prisons and detention

³⁴ UNLC, Interview with Debbie Kilroy, Director, Sisters Inside, (7 & 29 March, 2005).

centres. We contend it was easier for Queensland Corrections to interpret Cornelia's behaviour as "bad", rather than acknowledging and treating her illness.

Attempts to elicit explanations for Cornelia's continuing deterioration in Queensland were met with less than satisfactory responses by the Queensland Government.

Notes of communication between Queensland authorities, Cornelia's guardian and the Rau family are contained at **Appendix 7**.

Cornelia's Treatment While in Detention in Queensland

The treatment of Cornelia while she was in custody in Queensland is outlined in the 4 Corners documentary of 4 April 2005. Some of the evidence in this regard is highlighted in the following transcript.

DEBBIE WHITMONT: On several occasions, Anna was put into the so-called 'suicide cell'.

'ANITA': I've seen her in there for up to three days; it could have been possibly longer. It's just a unit; in my eyes it's degrading.

DEBBIE WHITMONT: Do you know why she'd been put in there? Was she suicidal?

'ANITA': No, I think it was mainly because of her behaviour.

DEBBIE WHITMONT: It was a kind of punishment?

'ANITA': Yeah, it is a basis of punishment.

DEBBIE WHITMONT: In July, a Queensland Government investigation into alleged abuse taped interviews with 25 prisoners. One of them was Anna. She complained, in a well-spoken Australian accent, about more solitary confinement, this time in the detention unit, or DU.

'ANNA': Well I got put into the DU for just wanting to get the newspaper. Like, basically I went out of my unit wanting to get a newspaper from the other unit and the officer just said 'NO' for no reason. And I just said, 'Why?' and he said 'No' and then he just -

INVESTIGATOR: And did he breach you?

'ANNA': He breached me for just getting a newspaper and that's not right. I had to stay five days in that terrible setting where you only have one room and there's nobody else. There's only a bible and that's all in the room.

DEBBIE WHITMONT: She asked if she could be moved to another part of the jail.

'ANNA': I was just wondering if I might be able to move to 'res' - residential - because it may take a while to get my things organised and I would just like to move out of that area.

DEBBIE WHITMONT: The investigator was 'bewildered by the severity of Anna's treatment.' A week later, he raised it with the prison general manager but was told DIMIA would be moving Anna in a couple of weeks to a detention centre. Despite that, she stayed in the prison for another two months, more than six months in all, with five weeks spent in isolation. The prison guards couldn't control her.

'KYLIE': She was manhandled every day to get back in her cell. She'd be forced back in. They'd push her in and slam the door. She had no concept of where she was and she couldn't understand why they were being so mean to her. She cried all day.

DEBBIE WHITMONT: One problem was her name. When officers called her 'Anna Brotmeyer' she'd say 'Anna Schmidt'. One day she told 'Anita' something entirely different.

'ANITA': We were sitting on the steel chair in front of the TV and Anna looked at me and she said to me, 'I have a secret. I'm going to tell you a secret, will you keep it?' And I just said, 'Of course I will,' you know. And she told me her real name.

DEBBIE WHITMONT: Which was?

'ANITA': Cornelia Rau. So I kept that secret. I didn't tell anybody 'cause she was scared that if they found out her real name they were going to send her back to Germany and that was her fear.

DEBBIE WHITMONT: But soon 'Anita' wasn't the only one in the jail to hear the name 'Cornelia Rau'.

'KYLIE': In the line-up they used to call her 'Brotmeyer' and she would say, 'Schmidt'. One day she'd ID'ed in the muster line, 'I'm Cornelia Rau.' And the officer said, 'Oh, yeah, and so who are you going to be tomorrow, then?' I said to her later, 'What's your real name, you silly duffer? Tell me all the names, and we'll try and sort it out.' But she couldn't.

DEBBIE WHITMONT: By August, the prisoners were so concerned about Anna's strange behaviour that they put in a group request to have her see a doctor. By now, she'd been five months without medication.³⁵

With their consent, we have obtained the unedited transcripts of 'Kylie' and 'Anita's' interviews with Four Corners in which they spell out in more detail how Cornelia was treated. Those transcripts are provided as **Appendix 8**.

This information provides a good basis for further inquiry into the practices of the Queensland Department of Corrections. The use of isolation is of great concern as are media reports that prison guards involved in Cornelia's case have refused to speak to the Inquiry.

³⁵ Debbie Whitmont, Interview with Senator Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs, 4 Corners Program ABC (4 April 2005).

The Queensland Premier has acknowledged publicly that Cornelia's treatment was unacceptable. On the Sunday Program of 13 March 2005 the following is reported:

HELEN DALLEY: Suffering mental illness, Cornelia Rau had spent 10 long months lost in a bureaucratic system which imprisoned her, without adequate medical help or treatment for her schizophrenia.

This case really shocked Australia, didn't it, and to think that here was this woman who spent six months in one of your prisons...

QUEENSLAND PREMIER PETER BEATTIE: Mm.

HELEN DALLEY: I mean how would you feel if it was your daughter?

PETER BEATTIE: I'd be appalled and I'd be angry and I have to say I think the family, the Rau family have been a lot more understanding than I would be.

HELEN DALLEY: The story of Cornelia Rau's nightmare journey through Queensland jails, mental health facilities, and Immigration detention is a story of neglect of a woman in need. She was under the overall care of the Federal Department of Immigration for much of that missing 10 months, yet its hard not to conclude that a number of state and federal departments failed in their duty of care and trampled on her rights as an Australian.

PETER BEATTIE: This was a mess. It was clearly a bad mistake ah indeed I've actually apologised to her sister and her parents. And I've rung them to do that because I think they were entitled to that. We want to find out what went wrong here and I'm not interested in any form of cover up. Clearly this was a stuff up.³⁶

The extent of the 'stuff up' requires careful analysis, testing and public review. A simple description of the incarceration as a 'stuff up' may display the political nous of the Premier: it does not provide a valid explanation or suggest necessary change.

The Rau family have not been satisfied with the response from the Queensland Government despite Premier Beattie's private and public words of sympathy. It is a disappointment to the Rau family and to Cornelia's guardian, Mr Harley, that the

³⁶ Sean Parnell and Elizabeth Colman, 'Guards Refused to Help Rau Inquiry', *The Australian* (Sydney), 13 May 2005, 2.

Premier and his Police, Corrections, Health and Attorney General's departments have not translated those words into any practical provision of information to them or to UNLC.

While acknowledging that legal liability can pose some impediments to the provision of information, it has not been explained why it has not been possible to provide broad information, if necessary with individuals names deleted, on how Cornelia came to be arrested, what identity documents she had with her, incident reports from the jail and steps taken to provide her with medical help.

It is hoped that contrary to our experience, this Inquiry will have received adequate documentation from Queensland. It must be remembered that this information could be vital in getting to the truth of Cornelia's experience.

It is submitted that the Palmer Inquiry should take an unfettered approach to its analysis of the failures of the Queensland Government and its departments. A similar submission is made in respect of the Federal Government and its departments.

Evidence of Cornelia's Mental Ill Health Whilst in Custody in Queensland

Those witnesses who saw Cornelia while she was in custody and who observed that her behaviour was unusual include 'Kylie', 'Anita' and Debbie Kilroy.

Comments made by Debbie Kilroy on the Sunday Program:

She would walk around and around in circles. If she could, she would spend the whole day on the tennis court and just walk in circles the whole day. She would just love to have contact with other people and felt quite isolated and yeah, distressed and crying.³⁷

Debbie Kilroy is also reported in *The Age* in the following way:

Debbie Kilroy, director of prison advocacy group Sisters Inside, said when she spoke to the woman known as 'Anna' in contact visits at Brisbane women's prison in May, she told them: 'I shouldn't be here.'³⁸

She said Ms Rau was 'subdued and obviously wasn't well' and Sisters Inside called the department many times about her condition. Ms Kilroy said the department's response was that the case was not in the group's jurisdiction.

The opinion of Debbie Kilroy was again reported in *The Age* the next day.

We could tell that she wasn't OK,' said Ms Kilroy. 'She couldn't understand why her rights were continually violated and could not get her head around how the prison was running and why there were consequences or retaliation for certain behaviour.'³⁹

With their consent, we have obtained the unedited transcripts of 'Kylie' and 'Anita's' interviews with Four Corners in which they spell out in more detail their observations relevant to Cornelia's mental ill health. Those transcripts are provided as Appendix 8.

³⁷ Channel Nine, 'Cornelia Rau: A Case of Neglect', *Sunday*, 13 March 2005.

³⁸ Andra Jackson and Meaghan Shaw, 'Rau: Alarm First Raised in May', *The Age*, 9 February 2005.

³⁹ Mark Todd, 'Rau spoke at jail inquiry while held', *The Age* (Brisbane), 10 February 2005.

Evidence of Cornelia's True Identity Whilst in Custody in Queensland

Those witnesses who saw Cornelia while she was in custody and who noted that her identity may have been a matter of concern include 'Kylie', 'Anita', members of Sisters Inside and some of the following.

At an interview in the gaol with a migration official, women's prisoner advocate Debbie Kilroy, who was present, states:

DEBBIE KILROY: She wanted us to find out what was happening to her. She would continually say to us over and over again that she didn't belong there, that she hadn't done anything wrong, and please get this sorted out.

So we had contacted Department of Immigration a number of times.

IAN TOWNSEND: And she was speaking in English?

DEBBIE KILROY: Oh yeah, I've never heard her speak anything but English.

IAN TOWNSEND: Did she have a German accent that you could tell?

DEBBIE KILROY: No, not really.

IAN TOWNSEND: And did she say that she was a German citizen?

DEBBIE KILROY: She said to us that she was born in Germany, yes.⁴⁰

Upon being taken into custody the identity of Cornelia was a matter of concern to the Honorary German consul who appears to have advised the department of the concerns.

The Department of Immigration's first warning came from Mrs Iris Indorato, tour operator and honorary consul in Cairns for France and Germany. Overstaying backpackers are a normal part of Indorato's responsibilities, but the two hours she spent in the cells with Anna on the morning of April 2 left her baffled.

⁴⁰ Debbie Kilroy, interview with Ian Townsend, *Rau transcript rouses calls for detention centre inquiry*, Radio National PM Program, ABC Radio (9 February 2005), <<http://www.abc.net.au/pm/content/2005/s1299422.htm>> at 23 May 2005.

Anna Brotmeyer - she was also calling herself Anna Schmidt - presented as an overstayer who wanted a new German passport. 'She was very intelligent and obviously very scared,' says Indorato. She claimed to speak only German, but such peculiar German that Indorato wondered if she could be German at all. 'She spoke very childlike and with an Eastern European accent.'

Persistent and gentle questioning produced no concrete details. 'There is something wrong,' Indorato thought. 'She could not name her parents. She said, 'I grew up very unconventionally and we never addressed them by name.' She could not say where she was born. Just, 'maybe in Dresden'.'

But Anna did have amazing tales to explain why there was no record of her entering Australia: she was dropped off the coast of Darwin after paying a people smuggler in Russia 1000 euros to get her to Indonesia. Or she walked her way through China. Or both. 'It was absolutely unbelievable.'

Reporting back to the Department of Immigration the same day, Indorato said she thought Anna needed urgent medical attention. 'I had the impression this was no surprise [to the department] and that they had already ascertained she needed to be evaluated.' The consul believed this would happen in Brisbane.⁴¹

With their consent, we have obtained the unedited transcripts of 'Kylie' and 'Anita's' interviews with Four Corners in which they spell out in more detail their observations relating to Cornelia's true identity. Those transcripts are provided as Appendix 8.

The reason for the Department not acting on these concerns remains to be explained. The advice from the Consul, it is submitted, should have required department officials to make all relevant reasonable inquiries about her identity and residency status. There is no publicly available evidence that all relevant reasonable inquiries were made: the inference can properly be drawn that if the inquiries had been made Minister Vanstone, a member of her staff or department would have made a public announcement to this effect.

The specific areas of inquiry that should be undertaken by the Inquiry include:

⁴¹ David Marr, Mark Metherell, Mark Todd, 'Odyssey of a lost soul', *Sydney Morning Herald* (Sydney), 12 February 2005, 27.

At the Time of Arrest in Coen, Queensland

1. All police documentation relating to her arrest and detention. This should include the following: property documentation; statements indicating the words said to her and by her; any records of interview; running sheets or computerised entries; and all relevant police notebook entries.
2. All documentation relating to communication between Queensland police and Federal officials involved in her arrest and detention.
3. Any reports made by Queensland police.
4. All statements taken from civilians.
5. All records of interview with civilian witnesses.

It appears that Cornelia was driven to Cairns by the police and processed in that city.⁴²

In this case, much of the relevant police documentation may reside in Cairns.

There is no publicly available evidence showing that Cornelia did not have in her possession documentation or things that would have allowed her true identity to be established. It should be self evident to the Inquiry that the release of documentation in respect of identity, will avoid continuing public disquiet and speculation about the legitimacy of her initial detention. There is no basis for a claim that confidentiality or privacy concerns would prevent the release of relevant documents relating to identity and reason for arrest and detention. Indeed, the government and its officials have

⁴² Andra Jackson, Farah Farouque, David Marr and Penelope DeBelle, 'The Missing Months of Cornelia Rau', *The Age*, 12 February 2005.

continually claimed that Cornelia has caused her own arrest by lying to authorities.

For example, Minister Vanstone stated that Cornelia:

. . . claimed that she was German. . .(she) spoke German, said she was German, said she was a visitor, said she had no friends and family and had with her a stolen passport. So it's a pretty fair understanding that both police and immigration would think this person maybe an unlawful [non] citizen.⁴³

This theme was maintained by DIMIA Deputy Secretary Philippa Godwin who stated:

Throughout this period, all our contacts with her continued, on her part, to emphasise that she was from Germany and that she wanted to leave Australia and go back to Germany. When we asked if there was anyone else that we could talk to or approach who would have information about her, she said no. That was asked on a number of occasions. The information coming to us consistently pointed to her being a German national who wanted to go back to Germany. Our efforts were to try to establish her details and circumstances with sufficient certainty so that we could get her a travel document.⁴⁴

The attempt to pass blame for government actions onto a mentally ill person is ignoble. If DIMIA was simply trying to obtain travel documents for Cornelia, as is suggested, then there was no reason to require her arrest and detention. It is not unlawful for a German national to request to go back to her country.

Upon closer investigation by the Inquiry it may be that the reason Cornelia was not deported back to Germany, the way Vivian Alvarez was deported back to the Philippines, was because German officials had no records of any German nationals unaccounted for under her aliases. In the experience of the Rau family, Germany has a

⁴³'Fair to think Rau unlawful: Vanstone', www.theage.com.au/news, 7 February 2005 as cited in Peter Prince *The detention of Cornelia Rau: legal issues*, Parliament of Australia, Parliamentary Library, Research Brief, 31 March 2005, no 14, 2004 – 2005 at n 5.

⁴⁴ Commonwealth of Australia, *Senate Legal and Constitutional Estimates Committee* 15 February 2005, 89.

sophisticated national ID system where any resident even moving house has to report to the local council to have their new address recorded on their identity card.

Residents must have an identity card in addition to other documents like a drivers' licence or passport.

It is our submission that the absence of any record in Germany of Cornelia as 'Anna', and her fluent, Australian-accented English, combined with what were clear symptoms of mental illness to outsiders, should have triggered suspicions and further inquiries about her self-described status as an illegal immigrant.

The Minister and her officials should be required to explain to the Inquiry why they say detention was necessary in Cornelia's case.

At the Time of Admission into the Brisbane Women's Correctional Centre

Cornelia appears to have been admitted to the Brisbane gaol on 5 April 2004. The Inquiry should obtain at least the following documentation from that gaol:

1. Her case management file.
2. Her medical file.
3. All reports made by prison officers in respect of her custody whilst in the gaol.
4. Any audio and video recordings of her presence in the gaol.
5. Visitor attendance records related to her.
6. Any records relating to prisoner observations of her behaviour.

7. Her property records.
8. All communications between the gaol and DIMIA.

Similar documentation should be obtained from the Baxter Detention Centre. It is assumed that the Inquiry will have obtained every document created by a DIMIA official in respect of her arrest and detention.

Early media reports suggest that when she was taken into custody she had a passport in her possession but it was not in the same name as she provided to the police. The Inquiry should immediately provide to Cornelia's guardian and to the legal representatives of the family a photocopy of the passport allegedly found in her possession at the time of her arrest. The statement of Edgar Rau indicates that on 17 March 2003 Cornelia 'withdrew the bulk of her Qantas staff credit union account in two cash withdrawals of \$1000 leaving only minimal funds.'⁴⁵

The Inquiry should immediately provide to Cornelia's guardian and to the legal representatives of the family a photocopy of any documents, notes, cards or other material obtained by police or DIMIA officers at the time of her detention.

⁴⁵ Page 3 of Annexure 'C' to Edgar Rau *statement* 8 March 2005.

Cornelia's Treatment While in Detention in Baxter

As previously noted, Baxter Detention Centre is well described by Justice Finn in *S v Secretary, Department of Immigration & Multicultural & Indigenous Affairs* [2005] FCA 549 (5 May 2005) at paragraphs 8 – 10.

Baxter, a purpose built immigration detention facility, is located 10 kilometres from the city of Port Augusta in South Australia on land previously used as a "bare-base" training camp for the Army. It is set in what a witness, Dr Malcolm Richards, described as "a very arid landscape" and commenced operations in September 2002. It contains nine separate, self-contained and secure residential compounds for detainees, these being differentiated by reference to colour and number (i.e. Red 1, 2 and 3; White 1, 2 and 3 and Blue 1, 2 and 3). The operations of the Red 1 compound ("Red 1") are outlined below. Red 1 is used for what the General Manager of Baxter described as "behavioural modification purposes". The evidence is that from most of the residential compounds while a detainee can see the sky he or she cannot see beyond the compound to the horizon.

Outside the detainees' compounds are amongst other things a visitor compound; a double-peaked roof gymnasium (the site of a protest referred to later in these reasons); a management compound in which is located what is known as the "Management Unit" (a purpose built facility allowing for 24 hour observation of detainees and the operations of which are described below); and a medical compound. About 70 video monitoring cameras are located in the facility (including in the detention areas of the Management Unit). The perimeter is bounded by a wire fence that holds razor-wire.

At the time of the hearing, the nominal roll for Baxter recorded 326 detainees. It is the evidence of Ms Kannis, a DIMIA official and Manager of Baxter, that about one third of this number is made up of long-term detainee asylum seekers; that probably most of the detainees receiving psychiatric treatment and medication for depression come from that group; and that DIMIA has a significant mental health problem amongst that group. The causes and the significance of that problem are discussed later in these reasons.⁴⁶

This "facility" can properly be described as a gaol in a harsh environment where the family or friends of inmates are excluded from visiting if for no other reason than its distance from any major population centre. The incarceration of Cornelia Rau in this

⁴⁶ This description is also contained in Appendix 5.

alien setting would have been sufficient to be detrimental to her health. However, in addition there is evidence that the treatment of Cornelia whilst she was in Baxter involved abuse. The obvious abuse involved imprisonment that caused a deterioration of her mental health. The other is exposing her to potential physical and sexual assault. The abusive treatment said to have been metered out to Cornelia is described in a statement provided by the Honourable Dr Carmen Lawrence. She states:

‘Tour of Baxter on 19 April 2005

2. I am a member of the Australian Parliament’s Joint Standing Committee on Migration (‘the Committee’). With other members of the Committee I visited Baxter Immigration Detention Centre (‘Baxter’) on Tuesday 19 April 2005.
3. The committee and I were shown around Baxter by a number of people including one of the senior Baxter officers, Mr. Nigel Brown.
4. During our tour we met with about 30 – 40 detainees. I was approached by one of the detainees who spoke to me about Cornelia Rau. I believe I had previously met this detainee in the Port Hedland Detention Centre. I cannot disclose the name of this detainee as this person fears repercussions if his identity is revealed. I will refer to this person as ‘the detainee’.
5. The detainee said he had spent a significant amount of time in isolation detention in the Management Unit and Red One at the same time as Cornelia Rau’s incarceration.

Baxter guards who mistreated Cornelia Rau⁴⁷

Paragraphs 6- 9 of the Statement of Dr Lawrence are in **CONFIDENTIAL Appendix**

9. This section of the Statement is provided on a confidential basis only to the Inquiry because it names individuals and requires further investigation by the Inquiry.

Dr Lawrence describes her visit to Baxter:

‘The Baxter isolation cells

10. I have seen isolation immigration detention cells a number of times at different immigration centres. The ones I saw at Baxter are worse than those at Port

⁴⁷ Dr Carmen Lawrence, *Statement*, 22 April 2005.

Hedland. The Baxter isolation cells are in transportable buildings which have been modified.

11. I made the following observations about the Baxter cells. There are about 9 – 10 on either side of a corridor. Each cell has a video camera monitored centrally. Each cell has a large ‘peep hole’ in the door which is about 20 cm by 20 cm. From the door I saw a grubby mattress on the floor on the left hand side. On the other side there is a ½ wall in front of a shower and toilet, which has a reverse mirror. The reverse mirror enabled me to see straight into the shower and toilet area from the doorway.
12. During my visit to Baxter on 19 April 2005 the committee and I were informed that the Management Unit and Red One had not been used for some time. The officers claim that if a detainee is placed in there now, it is for no longer than 48 hours.

[Mental Health Services] at Baxter

13. Before entering Parliament I taught psychology in the University of Western Australia medical school and carried out research in the Psychiatric Research Unit in the W.A. Health Department. I have an Honours degree and a PH.D in psychology.. ...

Paragraphs 13 - 23 of the Statement of Dr Lawrence are in **CONFIDENTIAL**

Appendix 9. This section of the Statement is provided on a confidential basis only to the Inquiry because it also names individuals and requires further investigation by the Inquiry.

The parts of Dr Lawrence’s statement that are included in these submissions can be made public.

Further evidence of the mistreatment of Cornelia is provided by the detainees themselves:

In Red One compound she was so cold and didn’t have enough clothes. She asked the officers for more clothes but they refused. The detainees got her clothes and put them in the office, but it was several days before they were passed on.

Once she was very sick and she asked to see a doctor. But two male officers came to talk to her instead of a doctor, and told her they would put her name on the doctor’s

list. When you put your name on the list it lasts more than 2 weeks and sometimes more than a month before you see a doctor.

They usually let detainees out of their locked rooms at specific times. Once when they wanted to open the doors Cornelia was having a shower. She wanted more time to finish her shower and they didn't open her door for another hour.

She was really furious and was complaining about the delay. One of the officers called ... struck her on the chest and threw her back onto the floor of her room and locked the door again. He didn't let her out of her room for the rest of the day.

When you are placed in Red One compound they increase the time you are allowed out of your room every week. Six hours in the first week and eight hours in the second week. But Cornelia's hours never exceeded 2 to 3 hours a day, but sometimes they decreased to zero for the two months she was in Red One compound....

When Cornelia put her clothes in the laundry for washing the officers took her bra and underpants to make fun of her. They always did it.

Cornelia was also in the Management Unit which is isolation with no windows. Just one mattress and a video camera which can see you on the toilet. You are not allowed to turn-off the light and it is always very cold and damp because there is no door on the bathroom. It is very damp.

Most of the time Cornelia was crying. She said she missed her friends and going fishing.⁴⁸

It remains to be seen if the officers who allegedly mistreated Cornelia are appropriately questioned, and if other evidence is collected to include or exclude abuse. What is clear is that detainees have a legitimate fear of repercussions if they speak out about abuses.

⁴⁸ Statement given by three long-term detainee contacts to Chris Warren, Channel 7 News Adelaide, reporter and regular Baxter visitor, 10 February, 2005.

Evidence of Cornelia's Mental Ill Health Whilst in Custody in Baxter

Those witnesses who saw Cornelia while she was in custody and who observed that her behaviour was unusual include fellow detainees, two outsiders who phoned her, Baxter staff and members of the clergy who visit Baxter.

Emily Ackland, a local resident and regular Baxter visitor, states:

EMILY ACKLAND: I was talking to someone else who was in Red 1 at the time on the phone, and I could hear her in the background. She was crying in the background.

DEBBIE WHITMONT: Emily had several disturbing conversations with Anna and with other detainees about her. By now, Anna had spent more than nine months untreated.

EMILY ACKLAND: Well, when I first heard about Cornelia, it went from she'd sometimes walk around semi-clothed occasionally, to by January, it was that she was going to the toilet on the floor in people's rooms and she was always screaming. It just became more and more, I guess, yeah, traumatic for her.⁴⁹

A member of the clergy [interviewed by UNLC but name withheld by request] who regularly visits Baxter states:

On 13 January 2005 I saw Cornelia after the church service standing towards the entrance of the visitors centre. She was about to leave the area as the church service had finished. Cornelia was standing with a couple of other detainees, in front of the officer's station in the visitors centre. This was towards the eastern wall of the visitors centre. I remember and know the name of one detainee who was with her.

This detainee, that I know the name of, and a couple of other detainees brought Cornelia over to me. She was eating some sort of nuts. While Cornelia was with me she spat a few nuts onto the floor. As she put one nut in her mouth she would half look at me. Her head was a little down and she would try to look up and then she would almost dribble it sideways out of her mouth and onto the floor.

⁴⁹ Debbie Whitmont, Interview with Emily Ackland, 4 Corners Program ABC (4 April 2005).

Cornelia's behavior seemed improper. She did not respond in any communicative way. She was looking at me every now and again, sideways or beyond me, with an unusual smile. She sometimes had a vacant look.

There were at least two officers standing behind Cornelia during this time. One I know as Mardi. I do not recall the name of any other officer. The officers did not intervene on this day. There was nothing confronting them. It seemed obvious to me they were aware of Cornelia's behavioral problems. On this day, the officers were standing back and seemed to me to be uncomfortable about the way Cornelia was behaving, as they smiled awkwardly.⁵⁰

Reverend Michael Hillier, another member of the clergy who regularly visits Baxter states:

I had heard about this very mentally disturbed woman named 'Anna'. I knew that it was adding stress to those detainees who had to be with her in Red One and who had enough of their own problems to deal with.

I met 'Anna' at the Church service on 27th January and clearly she was very disturbed both in her actions (she stood and just stared with her elbow held by her opposite hand and the other hand holding her chin) and her conversation.

I noticed at the end when it was time to return to Red One, one of the officers asked one of the detainees to take her back. He thrust her hand away in such a manner that it was clear he didn't want to have anything to do with her. Another detainee led her away like a small child.⁵¹

Reverend Michael Hillier confirms: 'It was obvious to me that something was very wrong with Cornelia'.⁵²

A Baxter detainee states:

Q. How did she act during her time in Red one?

A. She played soccer with me. Sitting, speak with me and sometimes she is crying too much. She is upset because she was sick.

⁵⁰ A member of the clergy, *Statement*, 17 May 2005, at paragraphs 14-17.

⁵¹ Reverend Michael Hillier, *statement* 8 April 2005, annexure "A" Letter to Father Bourke dated 2 March 2005.

⁵² *Ibid*, at paragraph 8.

Q. What do you mean by sick?

A. She has a mental problem.⁵³

Parijat Wismer, a member of the refugee group 'Circle of Friends' states:

I knew Cornelia Rau as Anna, a German backpacker. I received an email from Pamela Curr about Anna, and told her that I would be willing to ring Anna as I speak German.

I spoke to Cornelia on the telephone once on 25 January 2005.

From speaking to her I had the impression that she was totally mentally ill. She would laugh uncontrollably. It was a 'crazy' laugh, not a 'belly' laugh. I asked if she had any family I could contact. I asked whether anyone would be worried about her and she laughed. When I asked her questions she would laugh uncontrollably or not say anything. She told me that Baxter was not a nice place, and asked me to visit. This was not possible as I live in Byron Bay. We spoke only in German.

After speaking to her, I told a friend about her behaviour who also thought she was mentally ill.⁵⁴

Trisha Highfield, an early childhood professional and advocate for children in immigration detention states:

In late November and early December 2004 I became aware of concerns circulating in the advocacy networks about a young woman in Baxter IDC.

Fellow detainees were contacting advocacy friends to tell of their deep concern over her inappropriate behaviours and their distress that officers and officials were not looking after her properly. They believed her to be distressed and mentally unwell.

The name "Anna" and her ID – Baxter 8311 – was passed on emails. There were conflicting reports on her age, ranging from 18 to early 30's. She was described as strong and athletic who spoke German, but had an Australian accent and spoke English.

By early January 2005, the frequency of the reports revealed a woman in a state of mental distress being held in isolation in Management and Red 1 Compound for many hours a day. She was said to be squatting on the ground and eating dirt.

Information passed to me by a highly respected senior psychiatrist detailed the tenacious efforts being made by the Melbourne advocate Pamela Curr to have DIMIA meet its duty of care by responding appropriately to the health needs of this young woman. Our advocacy contact in Port Pirie gave frequent reports as to how detainees

⁵³ Interview with a detainee, UNLC (13 April 2004).

⁵⁴ Parijat Wismer, *Statement*, 20 May 2005, at paragraphs 6-9.

were becoming distressed as they witnessed “Anna’s” deterioration and the way she was being manhandled.

24 January 2005 Telephone Conversations

On 24 January 2005 at 11:08 Eastern Standards Time I had a 7 minute 46 second conversation with Carmen, an assistant to Steve Davis, First Assistant Secretary, Unauthorised Arrivals and Detention at DIMIA on Canberra 02 6264 1986.

Carmen explained that Mr Davis was not available. I asked her to pass on to senior people my grave concern about detainee Anna, Baxter 8311 who was “exhibiting signs of serious mental disturbance”. I said “if she had a broken leg she would be in hospital right now, but she appears to have a broken mind and you (DIMIA) are locking her up in isolation in Red 1 Compound”. I said she should be immediately transferred to Glenside Psychiatric Hospital. She could be someone’s backpacking daughter from Europe who has had a psychotic episode. Her parents may be frantically trying to find her”. I asked Carmen to get Mr Davis or another senior officer to call me back.

At 11:27 Eastern Standards Time I made a call to the Canberra PH office of Senator Amanda Vanstone, the Minister for Immigration. I spoke to “Robert” and over 7 min 34 sec duration conversation asked him to act urgently on Anna’s case, reiterating my concerns put to Carmen in Steve Davis’ office.

At 12:45 Eastern Standards Time I phoned Baxter IDC on 08 86418900 and, in a 12 min 09 sec conversation asked to speak to Kaye Kannis, DIMIA Manager. I was told (by Carol or Erin?) that Ms Kannis was in a meeting and unavailable. After briefly leaving the phone – the assistant returned to say that Ms Kannis had said I should put what I wanted to discuss in a fax. I eak to her.” On my insistence that I speak to someone with authority, the assistant suggested that I should speak to “Anna’s” Case Manager, Justin Rhys-Jones. I was transferred to Mr Rhys-Jones and I expressed my concern telling him that “this woman is obviously very ill and should be at Glenside with Dr Jon Jureidini”. I repeated my earlier statement to Steve Davis’ office about broken legs and minds. He responded with a general statement along the lines “we are looking at ways to manage this case”. I responded emphatically “She needs to be in hospital, not detention!”

Later that afternoon a representative called me from the Public Affairs/Media Unit (Steve?) at DIMIA Canberra. I expressed similar concern and sentiments from my previous conversations with Canberra and Baxter, adding “many people at a very high level in the advocacy movement were working on this and that “Anna” needed help immediately”. I also said apart from the humanitarian concerns it was in DIMIA’s interest from a PR point of view to do something fast, as many people were now aware of the young woman’s plight.⁵⁵

Dr Louise Newman, Psychiatrist states:

On or about 8 or 9 December 2004, I became aware through an email newsletter that there was a woman calling herself ‘Anna’ in Baxter Immigration Detention Centre (‘Baxter’) who was said to be mentally unwell.⁵⁶

⁵⁵ Trisha Highfield, *Statement*, 11 April 2005, at paragraphs 5-14.

⁵⁶ Dr Louise Newman, *Statement*, 16 May 2005, at paragraph 3.

Bernadette Wauchope, a refugee advocate who regularly visits Baxter states:

On either 13th or 14th December when I was visiting Baxter I spoke with three female detainees, I asked them about Cornelia and what was happening. They told me that Cornelia had been in Blue One, Management and Red One. They also told me that the detention staff had been video taping Cornelia's room and had been packing up all of her things such that the female detainees believed Cornelia would be deported soon.

All of the female detainees that I spoke with expressed concern about Cornelia's mental health. **Sentence Deleted Cornelia Privacy**. The female detainees said that she should not be there because she was sick and needed help.

Most of the detainees that I spoke to said that Cornelia was sick and that she required help.⁵⁷

Sister Claudette Cusack, a member of the clergy states:

SISTER CLAUDETTE CUSACK: I first met Cornelia Rau at the church service and I was struck by her odd behaviour. When I say 'odd', I mean that she would avoid all eye contact and any attempt at conversation and at first I thought, 'This is because she doesn't have the language.' But then during the service, at the sign of peace, I was near her and when we turned to say, 'Peace be with you,' she said, 'Peace be with you' with quite an Australian accent. And I thought, 'Well, that's very strange.'

SISTER CLAUDETTE CUSACK: I saw her two or three times at the church service week after week. But then the detainees kept saying to me, 'She's crazy,' you know.

DEBBIE WHITMONT: Why did they think that?

SISTER CLAUDETTE CUSACK: Because they had been with her in the compounds and had witnessed her behaviour.

SISTER CLAUDETTE CUSACK: Well, I just know that every time she had to be put back into her room that it took three or four officers in their riot gear to come and put her back.

DEBBIE WHITMONT: That's what you were told?

SISTER CLAUDETTE CUSACK: Yes.

DEBBIE WHITMONT: From somebody who saw her?

SISTER CLAUDETTE CUSACK: From detainee who were there, yes.

⁵⁷ Bernadette Wauchope, *Statement*, 20 May 2005, at paragraphs 10-12.

DEBBIE WHITMONT: In management?

SISTER CLAUDETTE CUSACK: In management, yes.⁵⁸

The Baxter psychologist states:

BAXTER PSYCHOLOGIST: '7th October 2004. It is my impression at this stage that her behaviour exhibits a severe form of a personality disorder ... She has not demonstrated psychotic experience ... Her behaviour appears to be very reactive and prevalent when in the company of others ... Her behaviour appears to be an attempt to push boundaries in order to draw others toward her on a constant basis.'

BAXTER PSYCHOLOGIST: 'For DIMIA, GSL management only ... Detainee Anna has proved to be very difficult to manage ... She has been: walking into the rooms of other detainees uninvited, disobeyed direct instructions, broken rules, increasingly inappropriate behaviour. For example, last night she stood nude in her bedroom for a few minutes in the presence of males.'

BAXTER PSYCHOLOGIST: 'There are no treatments that are likely to be effective in this situation. Environmental management will be the only option.'

DEBBIE WHITMONT: He was worried, though, about detaining her among men.

BAXTER PSYCHOLOGIST: 'The ideal solution would be for her to be managed in a female compound at a centre such as Villawood.'

DEBBIE WHITMONT: But Anna wasn't transferred to Villawood. Instead, she was kept for nearly three months in the two compounds the Baxter psychologist had specifically warned DIMIA and GSL in his confidential memo were unsuitable to hold her in. The first was the management unit.

BAXTER PSYCHOLOGIST: 'Detainee option ... 'ANNA' Move to management unit. This is only useful in the short term and is likely to increase dependency and escalation of problem behaviours.'⁵⁹

Eric Upton, a former detainee, states:

ERIC UPTON: And I heard this banging and banging and kicking and, 'I want my food!' This is what drew me to this other room next to me, and I was like, 'Who's that next door?' 'Oh, it's this lady, she's a bit cuckoo, you know.'

DEBBIE WHITMONT: The next morning, when Upton walked past her room, he saw Anna.

⁵⁸ Debbie Whitmont, Interview with Sister Claudette Cusack, 4 Corners Program ABC, (4 April 2005).

⁵⁹ Debbie Whitmont, Interview with Baxter Psychologist, 4 Corners Program ABC (4 April 2005).

ERIC UPTON: I was a bit ashamed, myself, but when I looked through her window, there she was in the shower. I could clearly see straight into her shower. She had no shower curtain. My room had a shower curtain, but her room didn't.

DEBBIE WHITMONT: Later, though he couldn't see what they were watching, Upton saw two guards staring through Anna's window.

ERIC UPTON: I could clearly see there was something wrong with her. I would say one can short of a six-pack, but she was actually probably four cans short of a six-pack, which means there was definitely clearly something wrong. And even the guards knew there was something wrong.

ERIC UPTON: He goes, 'We're gonna have to make a report about this.' And she just spat at one of them. And he goes, 'Right, that's it. That's it. That's assault.' And so they just dropped everything, and they went, 'Right, Anna,' and they just marched off. Next minute, they locked us all up. Next minute, there was about 10 officers - about three females and about seven males. And I remember the one bastard, I call him, his name was (BEEP). He had these plastic straps - you put both hands in and they pull them and strap them together. He had a set, this other big fat guard had a set and they're all marching down and they're all laughing. I couldn't see but you could hear Anna going off - 'Oh, you wanna take it, you take it!' and all this stuff. And then about five minutes later they're all walking back and they're all laughing and that. They'd obviously calmed her down and locked her up.⁶⁰

The evidence suggests that Cornelia did not receive any assistance with her mental health problems whilst she was in Baxter. It also appears that there are insufficient resources available to provide assistance for detainees who may be mentally ill. Dr Lawrence makes this point in CONFIDENTIAL Appendix 9. This appendix also includes our comments on Dr Lawrence's statement.

The Royal College of Australian and New Zealand Psychiatrists has made its position known about the level of care provided to mentally ill inmates at Baxter for some time.

The first of these was a letter by a group of psychiatrists (including Drs Jureidini and Dudley) published in the Australian and New Zealand Journal of Psychiatry in November 2004 which amongst other things noted with endorsement that the College of Psychiatrists (i) have had a sustained and outspoken stance criticising current

⁶⁰ Debbie Whitmont, Interview with Eric Upton, 4 Corners Program ABC (4 April 2005).

immigration detention policies; (ii) has called repeatedly for an independent review of the conditions in detention centres and their impact on detainees' mental health. It notes that the latter appeal has been ignored and that there has been no indication that the Australian Government has listened to the advice of any College member about their concerns regarding immigration detention.

On 11 February 2005 the "Australian" newspaper published an interview with Dr Jureidini under the heading "Baxter 'failing mentally ill'" in which Dr Jureidini is reported as having said, amongst other things, that Baxter detention centre staff were unable or unwilling to diagnose acute mental illness and to request suspected cases be removed to a South Australian mental health facility.⁶¹

Dr Louise Newman, Psychiatrist explains the difficulties in treating people with mental illness in detention:

People with mental illness cannot be treated in detention centres. Detention centres are like defacto psychiatric hospitals without any psychiatric staff. People who are ill should not be detained in such centres, they should be transferred into a psychiatric facility or into community treatment programs if that is what they need. This is largely because in the detention centre there are no trained psychiatric staff, it is isolated and the conditions are likely to exacerbate the mental disorder especially where it is caused by the stress of detention.

Detention centres should not be turned into super duper facilities that can treat psychiatric illness - persons with psychiatric illness should not be there in the first place.

If the detention centres do not have trained staff they should not be running solitary confinement units, considering the standards for staffing in terms of psychiatrists, psychologists and other mental health staff required to care for vulnerable populations. The detention centres do not meet any of the standards of accreditation for a hospital or a psychiatric facility. They fail to meet what would be the documented equivalent standard for the general community.⁶²

Dr Newman comments on the lack of adequate medical treatment at Baxter as follows:

I think the government has to provide for a very vulnerable population group. Some of them will have endured earlier trauma and be suffering from stress and other problems. Many of them will develop disorders particularly depression and anxiety problems whilst they are held in detention for prolonged periods of time.

⁶¹ *S v Secretary, Department of Immigration & Multicultural & Indigenous Affairs* [2005] FCA 549 (5 May 2005) at [68].

⁶² Dr Louise Newman, *Statement*, 16 May 2005, at paragraphs 24-26.

The government must acknowledge that they should adhere to the existing standards of care for people with the same conditions in the rest of the country. That means treating detainees in hospitals or community health centres with appropriate levels of staffing. Having a psychiatrist fly in for a visit once every 6 weeks is inadequate for people with psychotic illness. Having a psychologist on staff is also inadequate for people with psychotic illness and other conditions that might require medication.

At Baxter, for Cornelia Rau especially, it was clearly inadequate to have one psychologist who could not even confer or be supervised. There is no resident psychologist at Baxter any more and as far as I am aware, there are no specialist mental health nurses and no dedicated mental health programs.

The problem is exacerbated because many of the detainees do not trust individuals who are paid by and can be seen as employees of Global Solutions Limited (“GSL”) and DIMIA.⁶³

Dr Newman visited Baxter on late December 2004 with another psychiatrist, Dr Michael Dudley. The detainees informed Dr Newman about ‘Anna’ and the degree of her behavioural disturbance.

In late December 2004, in my capacity as Convenor of the Alliance of Health Professionals for Asylum Seekers, I visited Baxter with Dr Michael Dudley and Claire O’Conner’s legal team from South Australia, to do a psychiatric assessment for court of Iranian long term detainees and in particular some of the men involved in hunger strikes and self harm.

Dr Michael Dudley and I went to Baxter with a brief to see some 8 or 9 people. The woman I was later to learn was Cornelia Rau was not on our brief.

Three of the detainees I interviewed asked me if was going to see ‘Anna’. They described to me some of the things that they had observed her doing which convinced them that she was mentally unwell and needed treatment. **Sentence Deleted** **Cornelia Privacy**. They told me she was being roughly manhandled back into her cell and that guards were taunting to her in their behaviour.⁶⁴

Dr Newman tried to get access to ‘Anna’ to do an assessment:

I spoke to the lawyers on the team and they told me that the only way that we could get to see a detainee would be if the lawyer acting for the detainee requested an independent medical review, and the detainee consented in writing.

At that time ‘Anna’ had no legal representation and was probably unfit to request or consent to an assessment.⁶⁵

⁶³ Ibid, at paragraphs 27-30.

⁶⁴ Ibid, at paragraphs 5-7.

⁶⁵ Ibid, at paragraphs 8-9.

Dr Newman outlines the lack of provision of psychiatric care at Baxter:

While I was at Baxter, I saw another person with a psychotic illness in the same Red One Compound as Cornelia. We decided that this man needed immediate hospitalisation and yet he too had had no psychiatric assessment and had been deteriorating rapidly. When we saw him he was catatonic, pretty much frozen and unable to move or speak. I did a psychiatric assessment on him and a South Australian doctor Scheduled him under the South Australian Mental Health Act.⁶⁶

Dr Newman indicates what she and her colleague would have done if they had been allowed to see Cornelia:

Had we been able to get access to Cornelia we could have done the same thing with her.⁶⁷

After their visit to Baxter, Dr Newman and her colleagues tried to do something about the concerns they and others had for Cornelia:

After my visit to Baxter I was immediately concerned about the bigger picture - if the detention centre has a duty of care to provide medical services and health services, what happens if they don't provide those services? If medical concerns about an individual come to the attention of a medical specialist why can't that specialist request directly to see that individual? What, in these circumstances, is the responsibility of medical staff who are employees of the detention centre managers?

By the end of December 2004, concern about 'Anna' was growing. My colleagues and I spoke to Dr Jonathon Phillips, the head of the Mental Health Service in South Australia. I think he had been informed previously about 'Anna' but the referral to the mental health people had been couched in terms that suggested that it was not particularly urgent and therefore it was not prioritised. But Jonathon Phillips was aware of the situation with 'Anna'.

I spoke to a couple of the visiting priests to Baxter who had also raised concern about 'Anna' and I spoke to the advocates who were in touch with the German consulate, to try to identify 'Anna'.⁶⁸

⁶⁶ Ibid, at paragraph 15.

⁶⁷ Ibid, at paragraph 16.

⁶⁸ Ibid, at paragraphs 10-12.

Dr Jonathon Jureidini, Psychiatrist and Head of the Department of Psychological Medicine at the Women's and Children's Hospital, Adelaide has visited Baxter about six or eight times. He consulted Cornelia on 7 and 8 April 2005 after she had been released from Baxter. He states:

All the detainees that I have seen in Baxter have been in severe state with a diagnosable mental illness. I believe that a lot of people who have come into Baxter relatively intact are very damaged by now or by the time they leave. The most common disorders that I have seen are post traumatic stress disorders, severe depression, psychosis and eating disorders. These are severe psychiatric disorders which have been caused or facilitated by being in the detention environment.

I have observed that some Baxter staff display a harshness and cynicism towards detainees with a mental illness. I think most of these people are not deliberately setting out to harm the detainees, but, in my view, working in a culture of hostility makes good people do bad things. I think a lot of the time the worse treatment of people is the product of the system rather than an individual person. In my view, however, there are probably people who at times behave in a deliberately cruel fashion towards the detainees.

Many detainees have told me that they have been mistreated. For example, all members of one family who were forcibly transferred from Woomera to Baxter arrived with quite severe bruising as a result of the way they were handled throughout the transfer. I have seen a woman who has been confined to bed for several months and cannot walk. She was regarded by the Baxter authorities as not having any mental health problems that they could not handle. She nearly died by the time that she was released. In that case nobody was treating her poorly on a day to day basis, but the effect of depriving her of proper care was the cause and the same thing applies to Cornelia Rau.⁶⁹

Evidence of Cornelia's True Identity Whilst in Custody in Baxter

Those witnesses who saw Cornelia while she was in custody and who noted that her name may not have been as claimed include:

A Baxter detainee says:

⁶⁹ Dr Jonathon Jureidini, *Statement* 18 May 2005, at paragraphs 7-9.

Q. Did she tell you anything about where she came from?

A. Yes, she said she was born in Germany.

Q. What was your impression of Cornelia? What did her voice sound like? Did it sound German?

A. No, English.

Q. Was her English good?

A. Yes, she read the newspaper for me quick, really perfect.⁷⁰

Pamela Curr told AAP:

Her English was fine.

She told me then she really wasn't in touch with reality, but there was a moment of clarity when she just wanted to get out of Baxter.

I spoke to a detainee two days ago and he said her English was so good, he thought she was an Aussie girl.⁷¹

Trisha Highfield, refugee advocate states:

The name "Anna" and her ID – Baxter 8311 – was passed on emails. There were conflicting reports on her age, ranging from 18 to early 30's. She was described as strong and athletic who spoke German, but had an Australian accent and spoke English.⁷²

Bernadette Wauchope, refugee advocate states:

I am not sure of the time, but I think around December, one advocate, Chris Latona, had a conversation with a male detainee that she regularly visits. The male detainee told Chris that they (DIMIA) had locked up an Australian woman. The male detainee did not have a lot of knowledge about Cornelia, only that he thought she was an Australian.⁷³

Eric Upton, a former detainee who was in Red One compound at the same time as

Cornelia states:

⁷⁰ Interview with detainee, UNLC (13 April 2005).

⁷¹ Lauren Ahwan, Sam Lienert, Paul Osborne, 'Woman wrongly detained due to bungle', *The Age* (Sydney), 4 February 2005.

⁷² Trisha Highfield, *Statement*, 11 April 2005, at paragraph 7.

⁷³ Bernadette Wauchope, *Statement* 20 May 2005, [13].

In Red One, three of us were unlocked at a time. I was interacting with Anna a bit more. ... Some days she's say 'Hello, good morning' in a sort of toffee accent. We'd joke because I'd make a point of saying, emphasizing 'Helloooooo, good mooorning' to her.

Other days she'd just walk past and ignore us and do her own thing. Other times she would turn off completely and just stare at the wall – we'd be watching TV and she'd be in another world just looking at the wall.

Her accent was sometimes a German tone, sometimes toffee-nosed English, sometimes Aussie. I thought she was being different characters at different times.⁷⁴

A detainee at Baxter states:

I first saw Cornelia at a church service. This was in about November 2004. I knew Cornelia as "Anna". At this church service I observed Cornelia acting different and abnormal. She was crying and scratching her neck and chest. She was walking about alone and not talking to anyone or smiling. I noticed that her behaviour was different because people usually talk to their friends and are not crying when they come to the church service.

After one church service I attempted to talk to Cornelia. She was eating a piece of paper when I approached her. When Cornelia spoke to me she spoke very proper English. I noticed that she had an Australian accent. I thought that there would be communication problems when I tried to talk to her but she had very good English.⁷⁵

⁷⁴ Eric Upton, Telephone interview with Chris Rau (24 March 2005).

⁷⁵ Baxter detainee (name withheld), *Statement* 18 May 2005, at paragraphs 6-7.

Evidence of Failure to Make Proper Inquiry of Cornelia's Australian Residency Status Whilst in Custody in Baxter

A report in the *Sydney Morning Herald* provides a useful summary of departmental actions that indicate all relevant reasonable inquiries were not made.

The Germans, meanwhile, were conducting a last search of databases to find any trace of Anna Schmidt or Anna Brotmeyer in Germany. The search was requested by Immigration on January 6. A few days later, the Germans asked for Anna's fingerprints. These were provided. But on January 14, the German embassy informed Immigration: 'There are no indications that Anna Schmidt is a German.'

Last week, Vanstone told Parliament that the department's search for Anna's identity had taken it, fruitlessly, to the Queensland Police Service missing persons unit - but only once, back in April - plus 'Births, Deaths and Marriages, Centrelink and a whole range of agencies'.

By the time the department reached the end of the line with the Germans in mid-January, there was absolutely nothing but a very disturbed woman's own claims to suggest she might be illegally in Australia. But she was still held in Baxter.

The Germans were not washing their hands of her. Asylum groups, including Curr's Asylum Seeker Resource Centre, were continuing to bring their worries to the Melbourne consulate. The German ambassador, Dr Klaus-Peter Klaiber, has told the Herald that on January 24 the consulate rang and wrote to Immigration. 'The NGOs claimed there were human rights issues at stake and we informed DIMIA accordingly.'⁷⁶

A check with the New South Wales Police Service using photographs and other information, including the fact that she spoke German, would probably have revealed her identity. Another section of these submissions deals with the inadequacies of the missing persons systems at both state and federal levels. Despite the dysfunctional missing persons operations, the relevant federal department does not seem to have attempted to make even the most basic inquiries of missing persons units. If the federal department did make adequate inquiries of missing persons units, then there

⁷⁶ David Marr, Mark Metherell, Mark Todd, 'Odyssey of a lost soul', *Sydney Morning Herald* (Sydney), 12 February 2005, 27.

will need to be a careful analysis done of the steps undertaken by New South Wales police to find Cornelia.

It is submitted that there was sufficient evidence available very shortly after Cornelia was taken into custody to alert those vested with responsibility for detaining her that she may have needed help not detention. The fact that she was not given help reveals systemic failures in both state and federal custody systems.

Access to Missing Persons Information

Cornelia was notified as a missing person by her parents. This occurred on 11 August 2004 when Cornelia's parents notified her as missing to the New South Wales Police Service. Edgar Rau states:

On 11 August 2004 we again reported Cornelia as a missing person to police in Gordon. The police in Gordon referred the details that we had provided them to Manly Police Station.

'We had not further reported Cornelia as missing between 17 March 2004 and 11 August 2004 because we were aware she had a new passport, new immigration visa and money and we thought she might have traveled overseas. Also, normally Cornelia would make contact with us or people would notice her behaviour and report her to police or health authorities.'⁷⁷

The police also had details about Cornelia when she had been reported as missing on 1 December 2003.⁷⁸ There is no evidence to suggest that the New South Wales police who had responsibility for actioning the information did other than a competent job, within the limitations of their guidelines.

It remains to be determined whether Manly Hospital reported Cornelia missing when she disappeared on 17 March 2004. Because she was under treatment, the protocol would have been that the hospital report her as missing to the police.

The National Missing Persons Unit defines a missing person as:

⁷⁷ Edgar Rau, *Statement*, 8 March 2005, [19]-[20].

⁷⁸ *Ibid.*

A missing person is anyone who is reported missing to police, whose whereabouts are unknown, and where there are fears for the safety or concerns for the welfare of that person.⁷⁹

One of the categories of missing person that the Unit identifies is:

Person suffering such physical or mental incapacity as to be wholly or substantially reliant upon others for support or survival;
Missing from mental institution who poses a danger to her/himself or to others by being at large.⁸⁰

The Unit provides a purpose for missing persons procedures.

The purpose of missing persons reporting and investigation procedures should be to:
a) Locate the missing person (MP) as expediently as possible in order to minimise trauma to the person and family;
b) Identify suspicious circumstances.⁸¹

The Unit even suggests that there needs to be follow-up investigation and sets out periods for such investigations to commence after seven (7) days and, ‘within 14 days of commencement of follow-up investigation....’ to undertake specific tasks.⁸²

In the Cornelia Rau case, the role of the National Missing Persons Unit is not known to the writers. However, it is the case that most jurisdictions have the same principles guiding police. For example, in New South Wales the definition of a missing person is:

‘A missing person is anyone who is reported missing to police, whose whereabouts are unknown, where there are fears for the safety, or concern for

⁷⁹ Police Consultative Group on Missing Persons, “National Minimum Reporting/Investigation Standards for Missing Persons”, National Missing Persons Unit.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

the welfare of that person. This includes anyone missing from any institution, excluding escapes.⁸³

The New South Wales police also have a case management system and are required to make relevant inquiries and enter details in the Computerised Operational Policing System (COPS) that is accessible to other police within the state. There are also procedures for notifying and obtaining the assistance of the media. There does not appear to be any system for notifying police in other states, or the national unit unless the person is missing overseas.

It is claimed on behalf of the New South Wales Police Service that:

The Police Service has also introduced a user friendly, interactive, Intranet Data Base for use by all Police which enables information to be searched both as a management tool for administrators and also for the purpose of trend analysis. The current system has the ability to store photographs and is being upgraded to include dental and medical information as a searching criteria to further assist in the identification of human remains, ultimately replacing a stand alone computerized dental register held within the Missing Persons Unit.⁸⁴

The current status of this system is not known. However, the police in New South Wales also have a website dealing with missing persons. Unfortunately, the missing persons website is sometimes not accessible. It is also unfortunate that the National Missing Persons Unit website seems to be limited in at least two respects: it allows access by name only and seems to have a very limited number of names that are accessible.

⁸³ *Commissioners Instruction 39.01*, Police Issues and Practises Journal, October 1996.

⁸⁴ Peter John Marcon, Senior Sergeant, Missing Persons Unit, *Statement to New South Wales State Coroner*, 3 January 2000.

The condition of the New South Wales site at the time Cornelia went into custody is unknown. Despite the limitations of the publicly available websites, it is submitted that a detailed description of Cornelia along with her photograph should have been forwarded to missing persons units in each state along with a request for urgent assistance. This was or should have been the responsibility of the Department of Immigration and Multicultural and Indigenous Affairs. There has been no reason offered by the department or the Minister for the failure to access missing person's information Australia wide.

We have been advised that the New South Wales Missing Persons Unit does not rely on websites when communicating with other states. The technology used, at least initially, is the telephone.

The Inquiry should publish in its report full details of the steps taken to utilise federal and state missing persons systems. The Inquiry should also make recommendations for the improvement of the systems.

Law and Procedure

In the preparation of this section of the submission the writers have drawn heavily upon Peter Prince, *The detention of Cornelia Rau: legal issues*, Parliament of Australia, Parliamentary Library, Research Brief, 31 March 2005, no 14, 2004 – 2005. The Research Paper is **Appendix 10**.

The Law: Sections 189 and 196 of the *Migration Act 1958*

As previously stated Cornelia was apparently brought to the attention of Queensland police by citizens who were concerned for her welfare. There was no question of her being suspected of committing a crime. It appears that neither the Queensland nor federal authorities who first interceded considered Cornelia's possible detention under the *Mental Health Act 2000* (Qld).

Cornelia was born in Hamburg, Germany on 21 November 1965. She moved to NSW Australia with her family when she was eighteen months old. She has never become an Australian citizen. She entered Australia as a baby under her mother's 'spouse visa.' As a permanent Australian resident she has a legal right to live in Australia. Cornelia's status under the *Migration Act 1958* s.13 is that of a 'lawful non-citizen' .

Cornelia's detention was at all times purportedly under the authority of the *Migration Act 1958*.

Cornelia and the *Migration Act 1958*

This section of the submission examines the requirements for lawful detention under the *Migration Act*. In particular, does the Act authorise the detention of a lawful non-citizen such as Cornelia in the kind of circumstances applying in Cornelia's case?

The High Court has dealt with the general issue of immigration detention in a number of recent cases.⁸⁵ However, the Court has not yet determined the question that may arise in the kind of circumstances that might be found in Cornelia's matter of whether the *Migration Act 1958* authorises the Commonwealth to detain or deport a citizen or lawful non-citizen under the *Migration Act*.

The issue of the limits of the Commonwealth's detention powers under the *Migration Act* has arisen in *Ruddock & Ors v Taylor* [2005] HCA Trans 65 (2 March 2005), a case heard by the Court on 2 March 2005 and in which judgment has been reserved. The case, involving an appeal against damages for false imprisonment under the *Migration Act*, may resolve the legal basis of immigration detention under the Act.⁸⁶

During argument in *Ruddock v Taylor* the Solicitor-General for the Commonwealth referred to the power under the Act to do things "in relation to aliens and matters

⁸⁵ *Al-Kateb v. Godwin* (2004) 208 ALR 124 (legality of indefinite detention); *Minister for Immigration and Multicultural and Indigenous Affairs v. Al Khafaji* (2004) 208 ALR 201 (legality of indefinite detention); *Behrooz v. Secretary of the Department of Immigration and Multicultural and Indigenous Affairs* (2004) 208 ALR 271 ('harsh and inhumane' detention); *Re Woolley and Another; Ex Parte Applicants M276/2003* (2004) 210 ALR 369 (children in detention); *Minister for Immigration v. B* (2004) 206 ALR 130 (children in detention).

⁸⁶ Peter Prince canvasses many of the issues relevant to Cornelia touched on in *Ruddock & Ors v Taylor* and most of what is contained in this section of this submission is drawn from his paper. *The detention of Cornelia Rau: legal issues*, Parliament of Australia, Parliamentary Library, Research Brief, 31 March 2005, no 14, 2004 – 2005.

incidental thereto.” The Solicitor-General identified a key area of controversy in the case to be whether:

it is incidental to the aliens power to detain a person reasonably suspected of being an alien, pending the determination, as long as one has a provision, as one has here, in effect, requiring release as soon as the suspicion ceases because it is determined either by a court or as a factual matter, administratively, that the person is not an alien.⁸⁷

Justice Hayne said a critical question in the case concerned:

... the meaning to be assigned in 196(1) to the opening expression ‘an unlawful non-citizen detained under’... Is that referring to someone who, in truth, is an unlawful non-citizen or is it referring to a person of a kind identified in 189(1) as a person known or reasonably suspected as falling within that category?⁸⁸

The following extract relating to that question from Prince is set out hereunder for the assistance of the Inquiry:⁸⁹

In response, the Commonwealth Solicitor-General, David Bennett QC, reiterated the Federal Government’s view that s. 196 together with s. 189 meant immigration officers must keep a person in detention for as long as a ‘reasonable suspicion’ persisted.⁹⁰ Lawyers for Mr Taylor, on the other hand, argued that there was nothing in s. 196 that authorised the continued detention of ‘a lawful non-citizen who has been picked up on suspicion but who in truth is a lawful non-citizen’.⁹¹ They said, moreover, that when looking at that part of the *Migration Act*:

... it does not properly and adequately provide a code so that one can say the legislature has addressed its mind to how you keep in detention someone who is found ultimately to be a lawful non-citizen and how you let them go.⁹²

Hayne J raised the issue, again by way of argument as follows:

“[T]he consequence then is that 189(1) cannot have lawful operation, cannot have valid operation, in respect of persons who, in fact, are not unlawful non-citizens. It cannot have operation in respect of persons who turn out to be citizens. It cannot have valid operation in respect of persons who turn out to be lawful non-citizens.”⁹³

⁸⁷ *Ruddock & Ors v Taylor* [2005] HCA Trans 65 (2 March 2005) at [675].

⁸⁸ *Ruddock & Ors v Taylor* [2005] HCA Trans 65 (2 March 2005) at [300].

⁸⁹ Peter Prince *The detention of Cornelia Rau: legal issues*, Parliament of Australia, Parliamentary Library, Research Brief, 31 March 2005, no 14, 2004 – 2005, 13.

⁹⁰ *Ruddock & Ors v Taylor* [2005] HCA Trans 65 (2 March 2005) at [230].

⁹¹ *Ruddock & Ors v Taylor* [2005] HCA Trans 65 (2 March 2005) at [2590].

⁹² *Ruddock & Ors v Taylor* [2005] HCA Trans 65 (2 March 2005) at [2595].

⁹³ *Ruddock & Ors v Taylor* [2005] HCA Trans 65 (2 March 2005) at [980].

Kirby J raised the issue, by way of argument, in the following way:

“ a person who is not a constitutional alien cannot enliven 189(1) because you cannot have the reasonable suspicion that a person in the migration zone is an unlawful non-citizen if constitutionally that person cannot be an unlawful non-citizen.”⁹⁴

Resolution of these questions and issues will, of course, need to await the decision of the High Court in this case.

Was Cornelia’s Freedom Unlawfully Constrained?

Cornelia was detained within Australia notwithstanding the fact that she was a permanent resident. As Prince has observed, preventing Cornelia from entering the country or segregating her while she applied for permission to stay are not relevant in her case. This leaves removal from Australia as the only legitimate reason for detaining Ms Rau.⁹⁵

Prince provides a useful analysis of this issue. That analysis is set out in full hereunder for the assistance of the Inquiry:

Restricting continued detention to people who are shown to be ‘unlawful non-citizens’ protects against the danger that people legally in Australia who are wrongly suspected of being here without authority could be ‘removed’ or deported from this country. Under the *Migration Act* s. 128, once a person is detained, removal from Australia must occur ‘as soon as reasonably practicable’.

Removal appears to have been a prospect for Ms Rau. As DIMIA Deputy Secretary Philippa Godwin said:

Throughout this period, all of our contacts with her continued, on her part, to emphasise that she was from Germany and that she wanted to leave Australia and go back to Germany. When we asked if there was anyone else that we could talk to or approach who would have information about her, she said no. That was asked on a number of

⁹⁴ *Ruddock & Ors v Taylor* [2005] HCA Trans 65 (2 March 2005) at [975].

⁹⁵ Peter Prince, ‘The detention of Cornelia Rau: legal issues’, *Parliament of Australia, Department of Parliamentary Services – Research Brief*, 31 March 2005, no.14, 17.

occasions. The information coming to us consistently pointed to her being a German national who wanted to go back to Germany. Our efforts were to try to establish her details and circumstances with sufficient certainty so that we could get her a travel document.⁹⁶

It is not necessary in all cases to obtain a passport—requiring the positive identification of a person—before they can be removed from Australia. Under s. 274 of the Migration Act, the Secretary of DIMIA, or a delegate, can issue a document stating ‘to the best of the Secretary’s [or delegate’s] knowledge, the name and nationality of the person concerned’.⁹⁷ Official guidance published by DIMIA explains that this document is issued in accordance with International Civil Aviation Organisation (ICAO) standards, and is provided to the airline transporting the person for use at transit points and the final destination.⁹⁸ If a person is in a DIMIA detention centre, the document can be issued by a ‘Detention Review Officer’. In deciding whether to do so, the Detention Review Officer should consider various factors, including the likely cost of detention ‘to the person in custody and/or to the Australian taxpayer’ and ‘the wish of the person in custody to depart as quickly as possible.’⁹⁹ As a protection against wrongful removal, immigration officials are instructed that where unlawful non-citizens destroy their travel papers and tickets:

... it is essential to establish and document the route by which they came to Australia ... it is essential that the date of arrival, place of arrival, and responsible carrier be identified in the document.¹⁰⁰

Such information would be part of the ‘details and circumstances’ referred to by Ms Godwin that immigration officials would need to establish before they could issue a document to an airline enabling the removal of Ms Rau from Australia. It might be noted that this protection is part of DIMIA’s procedural guidance to immigration officials and is not enshrined in legislation.¹⁰¹

Unconstitutional Punishment of Cornelia?

⁹⁶ Commonwealth of Australia, *Senate Legal and Constitutional Estimates Committee* 15 February 2005, 89.

⁹⁷ Subsection 274(3) (emphasis added).

⁹⁸ DIMIA, *Migration Series Instruction (MSI) 17: Issue of documents to facilitate travel for unlawful non-citizens*.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ Peter Prince, *The detention of Cornelia Rau: legal issues*, Parliament of Australia: Department of Parliamentary Services, Parliamentary Library, Research Brief, 31 March 2005, no 14, 2004 – 2005, 15-16.

Prince also analyses the issue of whether Cornelia's treatment by immigration authorities while in detention may have involved 'punishment' in breach of the Constitution. Prince's analysis of the Constitution, immigration detention and punishment is contained in Appendix 10.

The *Migration Act* and Cornelia's Detention

The Migration Act 1958, in particular Division 7, contains provisions dealing with detention of unlawful non-citizens. The key provisions of the Act authorising, indeed, mandating detention of a person unlawfully in the country are sections 189 and 196. These sections, of course, must be read together in the context of Division 7 and the Act as a whole.

Section 189, dealing with detention of unlawful non-citizens, places a legal obligation on authorities, including immigration officials and State police, to detain anyone 'reasonably suspected' of being unlawfully in the country.

Section 196 deals with 'the duration of detention' and operates upon and after the original detention required by s.189. Section 196(1) requires an 'unlawful non-citizen' to be kept in detention until he or she is removed, deported or granted a visa. Section 196(2) allows for the release from detention of a person who is a citizen or a lawful non-citizen. Cornelia was at all times a lawful non-citizen of Australia.

In *Goldie v Commonwealth* (2002) 188 ALR 708 the full Federal Court considered reasonableness of a detention. In this case, departmental computer records wrongly showed that Goldie had no current visa. Immigration officials failed to make other

checks before detaining him. The full Federal Court held that Mr Goldie's arrest 'was precipitate and not justified by s.189(1) of the *Migration Act*'.¹⁰² His detention was unlawful and his claim against the Commonwealth for damages for wrongful detention was upheld.¹⁰³

The principles concerning 'reasonable suspicion' in s.189 enunciated in *Goldie* are crucial to any consideration of the legality of Cornelia's detention.

The word 'reasonable' permeates the common law and legislation, qualifying and providing the boundaries of and standards for a multitude of decisions and actions. In s.189 of the *Migration Act* the word 'reasonable' provides the only protection in the section against arbitrary detention. Officials detaining a person must be able to justify their suspicion as 'reasonable'. As the full Federal Court said:

By itself the word 'suspects' would be capable of being construed to include the formation of an imagined belief, having no basis at all in fact, or even conjecture. Plainly, to empower an arrest on the basis of an irrational suspicion would offend the principle of the importance of individual liberty underlying the common law.¹⁰⁴

While officials need only need to have a reasonable *suspicion* not a reasonable *belief*, the court in *Goldie* emphasised that detention under s.189 involved a more rigorous test than merely thinking that a person *may* be unlawful:

... the officer is not empowered to act on a suspicion reasonably formed that a person *may* be an unlawful non-citizen. The officer is to detain a person whom

¹⁰² *Goldie v Commonwealth* (2002) 188 ALR 708 at [20].

¹⁰³ Peter Prince, *The detention of Cornelia Rau: legal issues*, Parliament of Australia, Parliamentary Library, Research Brief, 31 March 2005, no 14, 2004 – 2005 at 9.

¹⁰⁴ *Goldie v Commonwealth* (2002) 188 ALR 708 at [4].

the officer reasonably suspects *is* an unlawful non-citizen.¹⁰⁵

According to the court, to qualify as ‘reasonable’ a suspicion ‘must be justifiable upon objective examination of relevant material’. Moreover, since a person’s freedom was being taken away, detaining officers could not simply rely on information in front of them but must make ‘efforts of search and inquiry that are reasonable in the circumstances.’¹⁰⁶

As Justices Gray and Lee said in *Goldie*:

... the reasonableness of any suspicion formed by [the detaining] officer must be judged in the light of the facts available to him or her at the particular time ... If, at the time of forming the suspicion, the officer is aware of conflicting facts, it may not be reasonable simply to discard those facts and to form a suspicion on the basis of the single fact capable of supporting such a suspicion.¹⁰⁷

¹⁰⁵ *Goldie v Commonwealth* (2002) 188 ALR 708 at [6].

¹⁰⁶ *Goldie v Commonwealth* (2002) 188 ALR 708 at [4].

¹⁰⁷ *Goldie v Commonwealth* (2002) 188 ALR 708 at [6].

Cornelia's Original Detention

Under s. 189 of the *Migration Act*, an 'officer', including immigration officials or State police, who 'knows or reasonably suspects' that a person is an unlawful non-citizen, must detain that person.¹⁰⁸

As the above discussion makes clear, a fundamental issue in the matter before the Inquiry is whether or not it was "reasonable" to suspect that Cornelia, a lawful Australian resident, was an unlawful non-citizen.¹⁰⁹

As a matter of law this issue cannot be determined by reference to:

- what officers in fact did in this case;
- whether officers subjectively and honestly believed what they did was reasonable; or
- whether officers complied with governmental standards, guidelines or practice relating to migration detention.¹¹⁰

As a matter of the rule of law, Cornelia's detention must comply with the requirements for lawful detention contained in the *Migration Act*, as interpreted by the courts.

¹⁰⁸ Peter Prince, *The detention of Cornelia Rau: legal issues*, Parliament of Australia, Parliamentary Library, Research Brief, 31 March 2005, no 14, 2004 – 2005 at 9.

¹⁰⁹ Ibid.

¹¹⁰ Nor can it be determined by a Ministerial pronouncement such as: stated "if you do describe it as an unlawful detention, the suggestion that that conveys to the public is that at the time of the detention it was unlawful; and that is, of course, an incorrect statement of fact. The Minister for Immigration, Senator Amanda Vanstone, Senate Estimates, 15 February 2005.

Applying the principles in *Goldie* to Cornelia's case the relevant issues and matters

include the following:

- who is the relevant officer(s) involved in Cornelia's detention
- which officer(s) formed a 'reasonable suspicion' that Cornelia was an unlawful non-citizen?
- what was the basis of that officer(s) suspicion?
- which officer(s) detained Cornelia pursuant to s.189? Was this the same officer(s) that formed a 'reasonable' suspicion in relation to Cornelia? If not, then which officer(s) detained Cornelia pursuant to s.189 and did this officer(s) form a 'reasonable suspicion' that Cornelia was an unlawful non-citizen and, if so, what was the basis of that officer(s) suspicion?
- what procedure did the officer(s) follow?
- what documents or other material are in existence which cast light on the facts and circumstance surrounding Cornelia's original detention?
- who, if anyone, was consulted at the time of the original detention and what oral and written communication between them occurred?
- what policies, procedure or guidelines were available to such officer(s) at such time?
- what information were police given concerning Cornelia prior to and at the time of detention?
- was such information in and of itself capable of supporting or casting doubt on suspicions that she was an unlawful entrant?
- what if any observations did police themselves make about Cornelia prior to and at the time of detention? Were such observations capable of supporting or casting doubt on suspicions that she was an unlawful entrant?
- what if any observations were made to police about Cornelia by others prior to and at the time of detention? Were such observations capable of supporting or casting doubt on suspicions that she was an unlawful entrant?
- what if any observations were made by police about Cornelia to those persons reporting to or informing police or other officials in relation to Cornelia prior to and at the time of detention? Were such observations capable of supporting or casting doubt on suspicions that she was an unlawful non-citizen?

-assuming that Cornelia gave officials a false name and a fictional account of her background before and at the time of her detention was it reasonable for officials to rely simply on what she told them? If so it would follow that s.189 provides little or no protection “for those prone to inventing stories about themselves, whether because of mental illness, old age or for some other reason.” Instead authorities are required to make ‘due inquiry’ at their own initiative before placing a person into detention.¹¹¹

-what if any inquiries were made in relation to missing persons by police and immigration officials prior to or at the time of Cornelia’s detention?

-what, if any, inquiries in relation to missing persons by police and immigration officials prior to or at the time of Cornelia’s detention was it reasonable to make?

-what, if any, results would have been achieved if any such inquiries were made?

The Inquiry should address each of these issues.

As previously stated, the High Court has considered but not yet determined the requirements for lawful detention under the *Migration Act* ss. 189 & 196 in *Ruddock & Ors v Taylor* [2005] HCA Trans 65 (2 March 2005). A Full Bench of the court heard this case on 2 March 2005 and has reserved judgment.

¹¹¹ Peter Prince, *The detention of Cornelia Rau: legal issues*, Parliament of Australia, Parliamentary Library, Research Brief, 31 March 2005, no 14, 2004 – 2005 at 10.

Cornelia's Continuing Detention

One strained, artificial, impracticable and improbable interpretation of the *Migration Act* is that so long as one officer held a reasonable suspicion under s.189 on the first day of a person's detention, then that person's continuing detention will continue to be lawful.

However, this interpretation overlooks the operation of s.196 and defies both common sense and the common law which requires legislation depriving individuals of their freedom to be construed narrowly.

The contrary interpretation of the *Act* has the result that if new facts come to light which render the original suspicion false or unsustainable then that suspicion is no longer 'reasonable' and the detention becomes unlawful.

Similarly, if available facts, capable of being discovered by reasonable investigation, search or inquiry, exist or come into existence which renders the original suspicion false or unsustainable, then that suspicion is no longer 'reasonable' and arguably the detention becomes unlawful.

The Federal Government has consistently argued before the courts that the *Migration Act* requires that a person originally suspected of being an unlawful non-citizen be kept in immigration detention until that suspicion is shown to be wrong. Its argument has consistently, unequivocally and unanimously been rejected by the courts.

In *Goldie* the full Federal Court said that original suspicion requiring detention under s.189 is not enough to authorise continuing detention. The period for which a person can be detained is determined by s.196. As the full Federal Court said in *Goldie*:

Section 196 operates upon a person detained under s. 189 who is an unlawful non-citizen, not upon a person *reasonably suspected of being* an unlawful non-citizen.¹¹²

In *VHAF* (2002) 122 FCR 270 a member of the Hazara ethnic group from Afghanistan persecuted under the former Taliban regime, who arrived by boat from Indonesia in March 2001. Australian authorities agreed to give him a refugee visa, but with the fall of the Taliban in December 2001 decided to reconsider his case. He was not told of the original approval and was kept in immigration detention. After his lawyers learnt this history, they asked the Federal Court to order his release while his legal status was sorted out. The Government argued that until a court finally decided the applicant's status, immigration officials could 'reasonably suspect' that he was unlawful and under s.189 must keep him in detention.¹¹³

The Government argued that, together with other parts of the *Migration Act*, the effect of s.189 is twofold. Namely, "not only is there a power, and a duty, to take a person into detention if an officer knows or reasonably suspects that a person is an unlawful non-citizen, but there is also a power, and a duty, to keep that person in detention until the reasonable suspicion has been allayed."¹¹⁴

¹¹² *Goldie v Commonwealth* (2002) 188 ALR 708 at [6].

¹¹³ Peter Prince, *The detention of Cornelia Rau: legal issues*, Parliament of Australia, Parliamentary Library, Research Brief, 31 March 2005, no 14, 2004 – 2005 at 11.

¹¹⁴ *VHAF v Minister for Immigration and Multicultural and Indigenous Affairs* [2002] FCA 1243 at [76] per Gray J.

However, Justice Gray ruled that ‘s. 189 of the *Migration Act* provides no authority for the continued detention of a lawful non-citizen’.¹¹⁵

In *VHAF*, the Government also argued that a person must continue to be detained until ‘no relevant officer of the Department held a reasonable suspicion that the applicant was an unlawful non-citizen’.¹¹⁶

Justice Gray also rejected this interpretation, saying that it would cause ‘serious practical difficulties’:

It would be almost impossible to know whether, somewhere in the Department, there existed an officer, perhaps ignorant of recent developments or other facts, harbouring a suspicion that could therefore be considered to be reasonable, so that continued detention of a person was required. Even if the officer responsible for the original detention no longer had a reasonable suspicion that the person detained was an unlawful non-citizen, that officer would be powerless to arrange the release of the person unless he or she became satisfied that no other officer held such a reasonable suspicion. It would be almost impossible for a person in detention to know whom to contact for the purpose of providing information that would allay a reasonable suspicion.¹¹⁷

Justice Gray noted that the definition of ‘detain’ in s. 5(1) is expressed in the alternative as ‘a deliberate step of the drafter for the purpose of making the definition useful in a variety of contexts’. In addition, the definition is applicable ‘unless a contrary intention appears.’ His Honour said that an examination of the context of

¹¹⁵ *VHAF v Minister for Immigration and Multicultural and Indigenous Affairs* [2002] FCA 1243 at [80].

¹¹⁶ *VHAF v Minister for Immigration and Multicultural and Indigenous Affairs* [2002] FCA 1243 at [77] per Gray J.

¹¹⁷ *VHAF v Minister for Immigration and Multicultural and Indigenous Affairs* [2002] FCA 1243 at [78] per Gray J.

s.189 makes it clear that the word ‘detain’ in that section means ‘to take into immigration detention’, not ‘to keep, or cause to be kept in immigration detention’.¹¹⁸

According to Justice Gray, it was up to government authorities to justify ongoing immigration detention under s.196.¹¹⁹ As he said, ‘the clear assumption underlying these provisions is that detention of a citizen, or lawful non-citizen, is unlawful unless justified’.¹²⁰

In *VFAD*, (2002) 196 ALR 111, a case involving almost identical facts to *VHAF*, a full bench of the Federal Court unanimously endorsed Justice Gray’s position that s.189 of the Migration Act did not authorise continued detention of a person merely suspected of being unlawful.¹²¹

Chief Justice Black and Justices Sundberg and Weinberg said:

We consider that his Honour’s analysis provides an answer to this additional argument [that s. 189 requires detention until a ‘reasonable suspicion’ is allayed] advanced on behalf of the minister in this appeal. His discussion of the distinction between the scope of s. 189, and that of s. 196(1), in the context of the word ‘detain’ is persuasive.¹²²

¹¹⁸ *VHAF v Minister for Immigration and Multicultural and Indigenous Affairs* [2002] FCA 1243 at [32].

¹¹⁹ Peter Prince, *The detention of Cornelia Rau: legal issues*, Parliament of Australia, Parliamentary Library, Research Brief, 31 March 2005, no 14, 2004 – 2005 at 11.

¹²⁰ *VHAF v Minister for Immigration and Multicultural and Indigenous Affairs* [2002] FCA 1243 at [79].

¹²¹ Peter Prince, *The detention of Cornelia Rau: legal issues*, Parliament of Australia, Parliamentary Library, Research Brief, 31 March 2005, no 14, 2004 – 2005 at 12.

¹²² *Minister for Immigration and Multicultural and Indigenous Affairs v VFAD* (2002) 196 ALR 111 at [136].

Citing the High Court in *Coco v R* (1994),¹²³ the Full Bench said that a fundamental principle of interpreting legislation came into play when the right to personal liberty was at stake, namely that:

The courts should not impute to the legislature an intention to interfere with fundamental rights. Such an intention must be clearly manifested by unmistakable and unambiguous language.¹²⁴

In their view, ‘it would require language of much greater clarity’ than the current words in the *Migration Act* to prevent the court ordering the release of the applicant.¹²⁵

¹²³ *Coco v R* (1994) 179 CLR 427 at 437-438.

¹²⁴ *Minister for Immigration and Multicultural and Indigenous Affairs v VFAD* (2002) 196 ALR 111 at [128].

¹²⁵ *Minister for Immigration and Multicultural and Indigenous Affairs v VFAD* (2002) 196 ALR 111 at [137].

Government Immigration Detention Policy and Practices

An important question for the Inquiry is whether or not DIMIA's official guidelines relating to detention were followed in Cornelia's case.

Equally important questions for the Inquiry include:

whether the guidelines in operation at the time of Cornelia's detention, and indeed the guidelines as modified subsequently, are adequate to protect an Australian or a person lawfully in Australia from wrongful detention?;

whether the guidelines in operation at the time of Cornelia's detention, and indeed the guidelines as modified subsequently, are likely to mislead officers and others in relation to detention matters?

DIMIA provides guidelines for officers and others in relation to the administration of immigration detention. Prince describes these guidelines and analyses their operation and possible application to Cornelia's detention. That description and analysis is contained in Appendix 10.

DIMIA's *Migration Series Instruction (MSI) 321: Detention of Unlawful Non-Citizens*, states that when detaining a person the officer must ensure that knowledge or reasonable suspicion about that person's status as an unlawful non-citizen is based on objective evidence such as:

- Information held in Departmental records
- Credible information from third parties
- The person's inability to provide satisfactory evidence of being a lawful citizen and lack of credible explanation for this, and/or
- The person evading or attempting to evade officers¹²⁶

MSI 321 also:

- Refers to a range of evidence 'that a non-citizen may produce in order to satisfy an officer that they are a lawful non-citizen'.¹²⁷
- Instructs immigration authorities to 'allow the person a reasonable opportunity to provide appropriate evidence'.¹²⁸
- Notes that a failure to produce evidence immediately 'does not necessarily mean that the person is an unlawful non-citizen'.¹²⁹
- States that officers' 'must make an informed judgement as to whether the evidence provided is sufficient in the circumstances to decide that the person is a lawful non-citizen'.¹³⁰

However, MSI 321 also warns, that:

'If the person refuses to cooperate in providing evidence of citizenship or identity, that refusal may go towards the founding of a reasonable suspicion that the person is an unlawful non-citizen.'¹³¹

The DIMIA's *Migration Series Instruction (MSI) 234: General Detention Procedures* state that 'officers should regularly review the need for continued detention, and for maintaining the form of detention'.¹³²

What is squarely an issue for this inquiry is whether officers regularly reviewed the need for Cornelia's detention and the form that detention should take. What is also an issue for the Inquiry is whether or not a requirement of review expressed in such open

¹²⁶ DIMIA's *Migration Series Instruction (MSI) 321: Detention of Unlawful Non-Citizens*, 2.1.1.

¹²⁷ Ibid 2.2.1.

¹²⁸ Ibid 2.3.4.

¹²⁹ Ibid 2.3.5.

¹³⁰ Ibid 2.2.2

¹³¹ Ibid 2.3.9

¹³² DIMIA's *Migration Series Instruction (MSI) 234: General Detention Procedure*, 7.5.

ended and general terms may have itself contributed to the duration and form of Cornelia's detention.

As Prince's analysis shows, MSI 321 is inconsistent with settled judicial interpretation of the legal basis for and requirements of detention in the *Migration Act*. For example, the standards emphasise the evidence that a suspected unlawful non-citizen may produce to establish that he or she is lawful. However, they fail to mention the obligation of officials to make 'due inquiry' by reasonable efforts of search and investigation to obtain material relating to the person's citizenship. The standards also fail to provide adequate guidance for officials on the various procedures for original and continuing detention (per *Goldie*, *VHAF* and *VFAD*). As such, they are likely to lead "officials" and other relying on them into error when taking and keeping a person into detention.

Detention Centre Standards

Detention centres are established and maintained under the *Migration Act 1958* s. 273.

DIMIA is responsible for the operation of Australia's immigration detention centres. However, since February 1998 DIMIA has contracted out the delivery of services at detention centres. During the period of Cornelia's detention, GSL (Australia) Pty Limited (GSL) was contracted by DIMIA to deliver services at Baxter. In *S v Secretary, DIMIA* [2005] FCA 54 Justice Finn described the services as relating, essentially, to the day to day operations at Baxter as a detention facility. He noted

that such services ‘do not extend to advising, deciding, etc about the immigration status of a detainee, or of a detainee’s removal from Australia.’¹³³

Immigration Detention Standards (IDS), developed by DIMIA, set out the quality of services expected in the centres and the requirement to take into consideration the individual needs of detainees. DIMIA officers at each immigration detention centre are expected to monitor the performance of GSL against these standards.

The IDS relate to the quality of care and quality of life expected in immigration detention facilities in Australia. The IDS form the basis for the contract between the department and the detention service provider.

While ultimate responsibility for immigration detainees remains with the department at all times, the Service Provider is to exercise a duty of care to those immigration detainees to whom it is contracted to provide all that is required by way of care and security.

As a contractor of the department and in its delivery of detention services, the Service Provider is to:

- comply with all relevant legislation
- comply with departmental policies, instructions, directions and procedures, provided they are lawful
- provide all services lawfully, efficiently and in accordance with industry best practice and the Immigration Detention Standards

¹³³ *S v Secretary, Department of Immigration and Multicultural and Indigenous Affairs* [2005] FCA 549 at [30].

- refer to the department any issue relating to the migration status of a detainee and any request for access to legal advice.

An important question for the Inquiry is whether or not DIMIA, its officers and agents complied with all applicable IDS in relation to Cornelia's detention. DIMIA's records will, of course, assist the Inquiry to answer this question. We have been denied access by the Inquiry to those records.

Privatised Immigration Detention

Justice Finn's judgment in *S v Secretary, Department of Immigration & Multicultural & Indigenous Affairs* [2005] FCA 549 (5 May 2005) contains a description of the arrangements entered into between DIMIA and various contractors and agents, including GSL, for the provision of services, including health service for detainees housed in Baxter.

The fact that Baxter was a privately operated facility, as opposed to a public facility, may have contributed to the significant failure to identify and treat Cornelia.

The lines of communication between GSL and DIMIA may have been impeded by the private nature of GSL. For example, it has been suggested that Psychologist Micallef, who was employed by GSL at Baxter, was hindered by GSL in his attempts to have an urgent psychological assessment of Ms Rau undertaken by South Australia's mental

health authorities.¹³⁴ Furthermore, after Mr Micallef resigned the lines of communication between the South Australian mental health authorities and Baxter broke down and further delayed Cornelia's ability to access appropriate medical treatment.¹³⁵

As part of its contractual arrangements with GSL, the Commonwealth has insisted that GSL satisfy itself that, 'all persons detained by it are lawfully detained'.¹³⁶ The inclusion of this clause in the contract, is likely to mean that GSL will have insisted on receiving paperwork from DIMIA confirming that Cornelia was an unlawful non-citizen prior her transfer into the facility. Furthermore, it is likely that inclusion of the clause would have led GSL to seek to minimise its risk by notifying DIMIA and keeping records of any incident or behaviour which might have led it to doubt Cornelia's status as an unlawful non-citizen.

We have been denied access by the Inquiry to the records relating to Cornelia's detention kept by DIMIA and its agents and presumably obtained by the Inquiry. Consequently, our ability to assist the Inquiry to answer the question of whether or not DIMIA, its officers and agents complied with applicable guidelines and standards has been effectively nullified. We are therefore reliant on the Inquiry to expose each and every failing that attended Cornelia's detention and must await its findings in this respect.

¹³⁴ Russell Skelton, 'Everybody knew who she was except Immigration', *The Sun Herald* (Sydney), 13 February 2005.

¹³⁵ Ibid.

¹³⁶ Detention Services Contract between Department of Immigration and Multicultural and Indigenous Affairs and Group 4 Falck Global Solutions Pty Ltd (Group 4) on 27 August 2003, Schedule 2: Detention Services, 2.1.10, <<http://www.immi.gov.au/detention/group4/index.htm>> at 26 April 2004.

Cornelia and DIMIA Culture

It is our submission that Cornelia's treatment at the hands of DIMIA stems from a bureaucratic culture grown from the bad seed of the mandatory detention provisions of the *Migration Act*. This culture sees people caught by the system, denied their freedom without any public hearing, let alone a fair and impartial one. Once caught they are denied their very individuality. (In Baxter, "non-citizens" are called to the phone by number, not by name).

DIMIA appears to be out of control, ignoring simple humanity in favour of an inflexible, arbitrary system that is choking on its own bureaucracy.

Time and again we have heard detainees complain about the seeming lack of logic in the way DIMIA processes their cases: two individuals with the same story might have very different outcomes in their cases, with one released into the community and another left in detention for five years.

It is our submission that DIMIA, under a legal mandate to detain, and operating under a political agenda, disdains its duty of care to detainees and places their needs at the bottom of its list of concerns.

During our investigation of Cornelia's case we received abundant anecdotal evidence to suggest that DIMIA fails to adequately analyse the stories of asylum seekers it locks up and fails to provide adequate medical, and especially psychiatric care to detainees.

The anecdotal evidence we received during our investigation of Cornelia's matter now appears to be supported by reports coming to light of many new case of wrongful detention by DIMIA of Australian citizens and residents.

One reason much of the evidence about immigration detention has remained anecdotal is the very culture of fear which is described: where both employees and detainees are too daunted by possible legal retribution to speak out.

Employees sign confidentiality agreements and live with the threat of lawsuits if they breach them. Detainees have their visa applications pending which they fear can be adversely affected if they publicly complain about their treatment. Detainees have also given us accounts of being punished with solitary confinement if they have complained about their or others' treatment to detention centre staff.

We were told this happened in at least one case to a detainee who spoke out against Cornelia's treatment.

One former DIMIA employee who is willing to go on the record is Diana Goldrick, a former senior officer in DIMIA's On Shore Protection Program in Sydney who resigned in early 2001. She describes the DIMIA management style:

14. At a Senior Officer Meeting shortly after I joined DIMIA another senior officer commented to me, "Don't you know that this place is ruled by a culture of fear."
I asked her exactly what she meant – she replied "You'll find out."
15. Case Officers at the APS6 level (junior officers) were micro managed. Their decisions were counted, categorized by number of decisions per month and number of grants and refusals per month. Senior Management interviewed them if they did not produce an acceptable number of decisions per

month or if they granted an unacceptable number of protection visas. When a new computer system was introduced in 2000 in which case officers had to enter details of each case and the outcome of their decision, it became easier for Senior Management in Canberra to check the performance of each case officer.

16. If a case officer was going to refuse a Protection Visa to an applicant in detention, their draft decision had to be sent to the Legal Branch in Central Office for the wording to be checked. The case officer was then directed by a Legal Officer to include specific wording in the decision record so that DIMIA could avoid litigation. Some case officers voiced their concern to me about this procedure.
17. Senior Management considered some case officers “too soft on asylum seekers” or “bleeding hearts”.¹³⁷

This culture has not, on the face of it, changed, as described by a current senior immigration official speaking on condition of anonymity to the ABC’s Lateline. This official has said he would give evidence into DIMIA practices at a Royal

Commission:

In the compliance area, people on the whole are a bunch of cowboys, under so much pressure to deport people. All proper processes have broken down. They put their energy into picking up people and deporting them without proper investigation.

The officials are trying hard to give the Government what it wants.¹³⁸

DIMIA took steps to arrange travel documentation for Cornelia’s removal to Germany. Based on the Rau family’s experience of Germany any such steps would almost have certainly been thwarted by the comprehensive identity card system in

¹³⁷ Diana Goldrick, *Statement*, 18 May 2005.

¹³⁸ Margot O’Neill and Tom Iggulden, *Lateline*, ABC, Transcript: Family breaks silence over deportation, 9 May 2005 <<http://www.abc.net.au/lateline/content/2005/s1363610.htm>>.

place in Germany, which could not have been accounted for her under her aliases there.

...The Immigration Department requested travel documents for Ms Rau despite her confused state.

The German consulate refused within days to issue the papers, saying that the application was 'incomplete'.

Departmental records reveal that the application for German papers was faxed on May 11 last year to the Queensland prison where Ms Rau was initially detained.¹³⁹

It would have been cheaper to deport her rather than detain her. There is currently a strong financial, as well as a political motive to detain visa overstayers and to deport them. The current focus for DIMIA has shifted away from boatpeople to people illegally in the country who have not asked for asylum. DIMIA officials clearly believed Cornelia fitted into the latter category.

Financial analysts and a criminal justice expert have told the media this is partly because DIMIA must 'fill the beds' at purpose-built immigration detention centres like Baxter, for which it is paying GSL \$300 million over three years:

A key to GSL's future will be how successfully the government beefs up the hunt for visa overstayers, and how extensively GSL detention facilities are used as a staging post for criminals facing deportation.

According to the Department of Immigration, there were 922 people being held in federal detention on March 2 this year and "approximately 75 per cent of detainees arrived in Australia with a visa and have been detained as the result of compliance action by the department. The majority of these detainees are not seeking asylum.
...in 2004 the government has been able to locate and deport 12,689 overstayers."¹⁴⁰

¹³⁹ Elizabeth Colman, "German red tape stopped Rau's deportation", *The Australian* (Sydney), 17 May 2005, 2.

¹⁴⁰ Julie Macken, "GSL secures its future on other side of the wire", *Financial Review*, 30 March 2005.

DIMIA should process asylum seeker applications with a consistent humanitarian approach, not negated by financial considerations.

Ms Goldrick describes how DIMIA's approach to the large numbers of asylum seekers in Woomera and other detention centres changed dramatically over a very short period when financial imperatives intruded:

In late 2000 a very senior DIMIA official came to Sydney to talk to the case officers – which was most unusual. He told them words to the effect of “you have to be very careful processing these asylum seekers in detention because we don't know who they are.”

These words coming from him direct to junior case officers carried a very strong message - be extremely careful in granting protection visas to these people. At that stage Woomera and other detention centres were very overcrowded and living conditions were poor.

A short time later he arrived in Sydney to speak to the case officers again. This was even more unusual. This time he told them that the very senior officer of the Prime Minister's Department had told him DIMIA would go bankrupt if the asylum seekers were not released from detention very quickly as detaining them was bankrupting the Department. If this was not achieved, he, the very senior DIMIA officer, would lose his job. He appealed to them to work faster and promised them unlimited overtime.

I was shocked and sickened by the inconsistency of the government's behaviour towards asylum seekers in detention.¹⁴¹

Ms Goldrick has provided UNLC with the names of the DIMIA officials.

Continuing the theme of cost pressures conflicting with adequate care, it is also expensive to treat psychiatric illnesses. It appears that only after repeated court applications or the threat of media exposure will psychiatric care in state hospital

¹⁴¹ UNLC, Interview with Diana Goldrick (16 May 2005).

facilities be accorded to mentally ill detainees. This was illustrated in *S v Secretary, DIMIA* [2005] FCA 549.

One factor in DIMIA's inertia in providing adequate psychiatric care would appear to be the complex structure of arrangements between the department's contractor GSL and its subcontractors DTC, PSS, IHMS, and Carlton Medical Practice. As previously noted, these arrangements are described by Justice Finn in *S v Secretary, DIMIA* [2005] FCA 549. This structure adds unnecessary extra tiers of procedure and decision making to medical issues which should be straightforward: a sick detainee should be able to gain prompt and unobstructed access to independent professional help.

When Mr Palmer has handed down his findings it may be the government will need to give consideration to medical care in detention facilities being administered by either Federal or State health departments and not DIMIA.

Other documents that have been obtained by *The Australian* in Cornelia's case indicate that the narrow interpretation of the *Migration Act* required of DIMIA employees took precedence over basic humanity:

A statement from the department said the law took precedence over doctors' advice. Asked by Greens senator Kerry Nettle who had responsibility for implementing the recommendations made by medical professionals, the department responded:

'The department's practice is to follow the advice of the treating health professionals in regard to the treatment and location of a detainee, except where this is precluded by law, eg if the advice is contrary to the provisions of the Migration Act.'¹⁴²

¹⁴² Elizabeth Colman; Tom Richardson, 'Migration law came first in Rau's case', *The Australian* (Sydney), 16 May, 2005, p2.

It is not explained how DIMIA interpreted the *Migration Act* to mean Baxter staff were entitled to place Cornelia in punitive isolation in Red 1 for 94 days instead of providing her with psychiatric help. Nor is it explained how the *Migration Act* provided for her to be kept in a Queensland gaol for six months with little DIMIA activity on her case.

Diana Goldrick's experience as senior officer in DIMIA shows that in her time there, the Department of Immigration narrowed the interpretation of the *Migration Act* by bringing in regulations which, unlike legislation, did not have to be debated in Parliament:

At that stage the Minister pushing through more and more restrictive regulations that didn't have to be approved by Parliament. The temporary protection visa was the most notable one.

People who arrived by boat and didn't have adequate documentation could only be issued with a temporary protection visa (TPV). We could only grant them protection for a limited time and they were not permitted to bring their families to Australia. They couldn't travel overseas and come back into the country; they didn't have access to a full range of services such as Medicare. We were creating a second-class citizen type situation and I felt that was just so wrong.

I thought that people who were applying for protection visas were being squeezed harder and harder, and that was one of the reasons I resigned.¹⁴³

The repeated failure of DIMIA officials to respond promptly or at all to people concerned about 'Anna's' welfare also point at best to communication problems within the department and at worst a wilful inertia in responding to detainee issues.

¹⁴³ UNLC, Interview with Diana Goldrick (16 May 2005).

Procedures in Cornelia's case were by no means isolated, with other detainees and their lawyers also complaining to us about DIMIA's routine glacial response times in other cases.

It must not be forgotten that 'Anna' was regarded as 'an illegal' by DIMIA, detained as 'an illegal' and treated as a detainee. DIMIA's treatment of Cornelia has opened a very bleak window onto mandatory detention for many Australians.

The Rau family's painful experience in the aftermath of Cornelia's detention has given the family a greater understanding of the problems of immigration detention. We maintain that no Australian government authority should be able to lock up any person indefinitely without automatic recourse to the courts and without regular independent review of their detention. Not all Australians would agree with this contention. However, it is hard to contemplate any Australian welcoming the system now revealed by Cornelia's ordeal. That system is one which requires officials to lock up Australians suspected of not being Australian without automatic recourse to the courts and without independent review of their detention.

According to Cornelia's guardian, the South Australian public advocate, John Harley, in a submission to this inquiry:

We contend that the Minister and the DIMIA, and their agents ACM and GSL have ignored the suffering of people with mental illness whilst in detention, only acting appropriately when there is enormous pressure brought to bear upon them by persistent advocacy. A deliberate disregard for the welfare of refugees is evident. We suggest that this culture of disregard and deliberate obstructionism resulted in Ms Cornelia Rau being ignored and locked away in Baxter for so many months without identification, without treatment and without consideration for her humanity.

The conduct of DIMIA and its agents reflects an attitude of disbelief that the detainees were suffering from a mental illness, a refusal to accept professional advice

and an attitude that the behaviour of the detainees was merely to facilitate their earlier release from detention.¹⁴⁴

Another factor contributing to Cornelia's case was the Department's repeated denial of offers of outside help. According to Sisters Inside, that group and the PMHU in Queensland wanted to help her and were turned away. Outside psychiatrists and refugee advocates wanted to help her in Baxter and were also either turned away or ignored. It was only after she was identified that she was moved to Glenside hospital in Adelaide.

It is our contention that DIMIA needs outside, independent scrutiny on refugee issues. A judicial inquiry may need to consider removing the responsibility for refugee issues from DIMIA entirely. It is our submission that a judicial inquiry would certainly need to consider removing all detention functions from DIMIA.

Diana Goldrick says:

I don't think that the care of refugees, whether they come under the off shore program or whether they are processed on shore should have anything to do with DIMIA. I consider that department's main role is to facilitate the immigration of suitable people Australia for the national good.

That immigration function hasn't really anything to do with Australia's obligations under the United Nations Convention on Refugees to grant asylum to refugees. I consider people who apply as refugees under the UN refugee convention are a different category entirely and I would like to see an organisation set up that is completely independent of DIMIA to processing on shore and off shore protection visa applications and providing settlement services for refugees in this country.

Recent events have surely proved that DIMIA is ill-equipped to do that work.¹⁴⁵

In this submission we make a series of recommendations suggesting ways in which DIMIA's actions on detainee issues can be made more accountable. Implementing

¹⁴⁴ Submission to the Inquiry into the Cornelia Rau Matter from the Office of the Public Advocate, prepared by John Harley, Mary Allstrom and Annie Phillips to the Palmer inquiry, 2005.

¹⁴⁵ UNLC, Interviews with Diana Goldrick (12 & 16 May 2005).

such recommendations would go some way to preventing cases like Cornelia's from recurring.

According to Dr Michael Dudley, one of the independent psychiatrists who was turned away from seeing Cornelia on December 31 last year, there is currently a "profound distrust of review and transparency" which allowed Cornelia's case and others like hers to happen. He says of his visit to Baxter:

I found it pretty isolated; pretty forbidding, like a huge wire cage. There wasn't much opportunity to see out of it when you were inside it. We were in interview rooms in the main administration centre.

Some Adelaide lawyers wanted urgent action about eight detainees in there. (They) were all extremely sick. They had severe, major depression and post traumatic stress disorder; a couple were probably psychotic. Some of them had been there four years or so.

We'd earlier been made aware of Anna. I have some emails from Pamela Curr. We went in there being aware of Anna and the concerns about her.

We went in on the afternoon of the 30th and the morning of the 31st.

We were aware of it (situation with Anna) and asked if it was possible to see her.

We weren't allowed to see her at that point. We made the offer. That was declined.

Unless the protocols are dotted before you go in there ...there's a lack of flexibility in the system. It's locked in who you see. The paraphernalia around seeing people in this system is extraordinary.

You need a special authority to go in and there are very significant obstructions to seeing people.

We've had (in other centres) obstructions like the detainees being hours late; of them being moved to other compounds; once we were told there was something wrong with our shoes and we had to go away and change our shoes before we could see people.

There seems to be every obstruction to try and prevent outsiders from seeing this stuff.

It's like a total institution, not like standard prisons, more like something out of MIS.¹⁴⁶

¹⁴⁶ UNLC, Interview with Dr Michael Dudley (20 April 2005).

Dr Dudley is part of a group of psychiatrists and other health professionals who have spoken out against mandatory detention, arguing it causes mental illness.

Despite repeated calls for it, we've never been able to get an independent group of professionals in to review the system. Not in three and a half years.

They are secret places. Run for profit. And there's a conflict of interest – those who cause the distress are purporting to treat it. Detainees mistrust the professionals in there because they're seen as part of the punitive system.

The whole contracting arrangement needs to be reviewed – it's hard to put a band-aid on it. The GSL contract goes till 2007.

In prisons, the difference is that there's more checks and balances, people know how long they'll be in there, and there are appropriate services available. There may be questions about how well those services operate, but they are accountable, and also answerable to other departments like the Department of Health.

In Immigration Detention Centres, everything is kept in the institution. There's a profound distrust of review and transparency.¹⁴⁷

Even some guards whose livelihoods depend on detention centres are critical of DIMIA practices. A Baxter guard who declined to be named said:

I looked after Anna for three weeks. As a guard, I thought Four Corners got to the heart of it (Anna's case). It captured it. We could tell she wasn't well. A lot of us wondered why she was in there. She didn't seem that Australian. She wasn't verbally abused and she wasn't manhandled.¹⁴⁸

The same Baxter guard said he believed the time people spend in detention should be capped.

I think it should be like Dick Smith suggested: make detention 18 months maximum. You see them getting ill and going berserk because of the length of time they have to stay in detention. You get less for murder (than the time some detainees spend behind bars).

It's appalling the way DIMIA just let them rot in there. I wish I could give evidence at a royal commission and get all this out. But I want to keep my job. Maybe we'll meet again in court.¹⁴⁹

¹⁴⁷ Ibid.

¹⁴⁸ UNLC, Interview with Baxter guard who declined to be named (1 May 2005).

¹⁴⁹ Ibid.

Immigration Minister Senator Amanda Vanstone said on 19 May the government would consider amendments to the *Migration Act* to make it “more flexible” in the light of Cornelia’s and the Alvarez cases. She also said that ‘the department has developed a somewhat defensive attitude which has encouraged them to be less than open to a reinterpretation of their assessments of either individual cases or policy initiatives’.¹⁵⁰

According to Senator Nick Bolkus, the government had already amended the *Migration Act* about 50 times since gaining office, and this had not prevented these cases from occurring.¹⁵¹

Responding to him on the ABC’s ‘World Today’ program, Senator Vanstone said: ‘that may be right.’

A change in culture and greater accountability from the top of the Department down were needed to properly ensure such mistakes did not happen again, Senator Bolkus said.¹⁵²

We recommend that the *Migration Act* be carefully and fundamentally reviewed.

¹⁵⁰ Heather Ewart, ‘Immigration Department under the spotlight’ *The 7.30 Report* ABC (19 May 2005) and also see Simon Kearney and Elisabeth Wynhausen, ‘Vanstone blames officials’ *The Australian* (20 May 2005).

¹⁵¹ Alexandra Kirk, *The World Today*, ABC radio, Report: Vanstone flags changes to Migration Act 20 May, 2005, 12.25 <<http://www.abc.net.au/worldtoday/content/2005/s1373303.htm>>.

¹⁵² *Ibid.*

Recommendations

We submit that the Palmer Inquiry make the following recommendations in its report and take the following actions:

Recommendations regarding Cornelia

1. That the Palmer Inquiry recommend that government provide for the medical and other necessary support and treatment to enable Cornelia to regain her mental and physical health;
2. That the Palmer Inquiry recommend that government provide appropriate assistance with Cornelia's living conditions and necessary incidentals which will optimize Cornelia's recovery from the effects upon her of detention.
3. That the Palmer Inquiry recommend that government recognize and respond appropriately to the humiliation, indignity and distress suffered by Cornelia as a consequence of her detention.
4. That the Palmer Inquiry identify the failures to provide appropriate care, treatment and assistance for Cornelia during the period of her detention.
5. That the Palmer Inquiry report on the reasons why Cornelia's mental health problems were not properly diagnosed and treated in Princess Alexandra Hospital, and the basis for the diagnosis be clearly provided in the report.
6. That the Palmer Inquiry report on the reasons why Cornelia's mental health problems were not properly diagnosed and treated in the Baxter Detention Centre and the basis for the diagnosis be clearly provided in the report.

Recommendations relating to a Judicial Inquiry

7. That an open judicial inquiry be established by the Commonwealth into mandatory detention under the *Migration Act 1958*, including the treatment and care of persons detained under the Act.
8. That the terms of reference of the judicial inquiry include the circumstances surrounding the detention of Cornelia Rau.
9. That the judicial inquiry, as part of its terms of reference, identify those persons who have been wrongfully or improperly detained under the *Migration Act 1958*.
10. That the Commonwealth approach the governments of the States and Territories to join the inquiry.
11. That the responsible government ministers consult with relevant community and advocacy groups and detainees and their legal representatives to determine the terms of reference for the judicial inquiry.
12. That the judicial inquiry report on the effects of mandatory detention on detainees.
13. That the judicial inquiry considers and recommends changes to mandatory detention to uphold human rights and protect human dignity.
14. That the inquiry consider and recommend to government that where there is no evidence that an unlawful non-citizen is a criminal or otherwise a threat to the community, that they be issued with an appropriate visa until their status is finally determined.

15. That the inquiry consider and recommend to government that legislation be introduced requiring any person detained under the *Migration Act 1958* be brought before a Federal Court Magistrate within 48 hours of arrest, to initially determine if the arrest and detention is reasonable and that legal representation be made available to any such person.
16. That the inquiry consider and recommend to government that legislation be introduced requiring detainees to be brought before a Federal Court Magistrate on a fortnightly basis, to determine the reasonableness of their ongoing detention and that legal representation be made available to detainees for such purposes.
17. That the inquiry consider and recommend to government that state and territorial police and other state and territorial officials not be involved in the investigation and detention of persons under the *Migration Act 1958*.
18. That the inquiry consider and recommend to government that state and territorial gaol systems no longer be used to detain persons under the *Migration Act 1958*.

Recommendations relating to Action to be taken by the Palmer Inquiry

19. That the Palmer Inquiry provide all materials obtained or produced by it during the course of its investigations into the Cornelia Rau matter to any judicial inquiry established following Recommendation 7.
20. That the Palmer Inquiry identify any individuals who provided or failed to provide appropriate care, treatment and assistance for Cornelia during the period of her detention and refer any such individuals and agencies to the appropriate federal or state Minister for appropriate acknowledgment or corrective or disciplinary action.
21. That the Palmer Inquiry identify any individuals and agencies who may have engaged in criminal activity in relation to Cornelia during the period of her detention and make appropriate recommendations.
22. That the Palmer Inquiry identify the systemic failures in the detention, mental health and missing persons systems arising from the circumstances of Cornelia's detention and provide an explanation for all such failures.
23. That the Palmer Inquiry obtain and make public, subject to Cornelia's medical privacy, all relevant documentation relevant to the reasons for Cornelia's detention in Queensland.
24. That the Palmer Inquiry include an audio recording of Cornelia's interview with the Queensland ethical standards investigation unit with each copy of its report to the Minister and recommend to the Minister that the recording be included with any public report of the Palmer Inquiry into the Cornelia Rau matter.

25. That the Palmer Inquiry obtain and make public, subject to Cornelia's medical privacy, all documentation relevant to the reasons for Cornelia's detention in South Australia.
26. **That the Palmer Inquiry determine if those people employed at the Baxter Detention Centre as psychologists are appropriately registered. CONFIDENTIAL**
27. That the Palmer Inquiry make appropriate recommendations in respect of the above.

Recommendations relating to Detention, Mental Health and Missing Persons Reforms

28. That the Palmer Inquiry recommend improvements in relation to:
 - a. the services available to and the treatment of persons with mental illness or disorders,
 - b. the detention of persons under the *Migration Act 1958*; and
 - c. the handling of missing persons,especially in areas highlighted by the findings of the Inquiry relating to Cornelia's detention and her treatment and care during the period of her detention.
29. That the Palmer Inquiry recommend that legislation be introduced requiring any person detained under the *Migration Act 1958* be brought before a Federal Court Magistrate within 48 hours of arrest, to initially determine if the arrest and detention is reasonable and that legal representation be made available to any such person.

30. That the Palmer Inquiry recommend that legislation be introduced requiring detainees to be brought before a Federal Court Magistrate on a fortnightly basis, to determine the reasonableness of their ongoing detention and that legal representation be made available to detainees for such purposes.
31. That the Palmer Inquiry recommend that state and territorial police and other state and territorial officials not be involved in determining whether persons are to be detained under the *Migration Act 1958*.
32. That the Palmer Inquiry recommend that state and territorial gaol systems no longer be used to detain persons under the *Migration Act 1958*.
33. That the Palmer Inquiry recommend that the behavioural management principles of GSL in detaining inmates be reviewed, in particular the use of solitary confinement as a punitive measure. If a detainee's behaviour is criminal and warrants punishment, this should be done through the local police with complaints mechanisms available through the State Ombudsman.
34. That the Palmer Inquiry recommend that standards be formulated by the Minister in consultation with the Royal College of Australian and New Zealand Psychiatrists to avoid the wrongful detention under the *Migration Act 1958* of any person suffering a mental illness or otherwise vulnerable.
35. That the Palmer Inquiry recommend that detainees be provided with adequate assessment and treatment of their mental health needs, including transfer to public mental health facilities if appropriate.

36. That the Palmer Inquiry recommend that DIMIA consult with the Royal College of Australian and New Zealand Psychiatrists and follow its recommendations regarding the treatment of detainees who are mentally ill.
37. That the Palmer Inquiry recommend that detainees suffering from mental health problems not be placed in isolation.
38. That the Palmer Inquiry recommend that controls be established to ensure that the privacy and dignity of detainees should not be violated. In particular, to ensure that it is impossible for any officer of the opposite gender to view detainees while showering or going to the toilet.
39. That the Palmer Inquiry recommend that persons detained under the *Migration Act 1958* currently in force be detained in or near major population centres.
40. That the Palmer Inquiry recommend that the Immigration Detention Advisory Group be disbanded and replaced with an independent statutory body having oversight of the immigration detention centres. The body to be properly established in law, and regularly review the operations and costs of detention centres. The body to have the authority to inspect detention centres at random. Members of the statutory body to be able to order changes made to existing procedures if operational flaws are discovered during inspections. Visits to be followed up within a specified time to ensure compliance with any changes ordered after a visit.
41. That the Palmer Inquiry recommend to government that a copy of its report to the Minister in relation to the Cornelia Rau matter be made

public, subject to Cornelia's medical privacy and that Cornelia's guardian, the Rau family and its legal representatives be provided with a copy of that report and have access to all documents and materials obtained by the Inquiry or produced by it during the course of the Inquiry, subject to Cornelia's medical privacy.

42. That the Palmer Inquiry recommend that the attention of governments be drawn to the need to provide secure long stay hospitals for the mentally ill to ensure their stabilization and proper treatment.
43. That the Palmer Inquiry recommend that involuntary mental health patients who abscond from hospital or other mental health facilities are automatically registered as missing persons on a national missing persons register.
44. That the Palmer Inquiry recommend that detailed guidelines be formulated by the responsible federal, state and territorial Ministers for the use of missing persons units at all levels to assist with the identification of people who are subject to the *Migration Act 1958*.