

William Mudford's personal submission to Joint Select Committee on Australia's Immigration Detention Network

To: Joint Select Committee on Australia's Immigration Detention Network
Parliament House
Canberra ACT 2600

From: William Mudford

Date: September 2011

To the Chair of the Joint Select Committee on Australia's Immigration Detention Network,

I am writing to make a personal submission about Australia's immigration detention network. No element of my report is to be construed as the view of any organisation I have been involved in. These are my personal observations and views. Any mention of any organisation I have been involved in is merely by way of context to my involvement in the issue and to demonstrate my experience and the credibility of my own information.

Reason for Submission

I have decided to make a submission to this inquiry because immigration detention has a direct and negative effect on peoples lives and I have witnessed this first hand.

This issue also has serious reflection on the international reputation of our country, Australia. While on academic exchange in Europe I went to visit Geneva and went to the Universal Periodic Review of Australia's Human Rights record that was conducted by the United Nations early this year. Many of the countries mentioned our immigration detention policy and expressed concern that it is violating Australia's obligations to process asylum applications in a humane manner. One particular concern is the mandatory and indefinite nature of the detention.

My other concern is that this has been a long standing issue of the parliament and there needs to be significant change in the way Australia deals with asylum applications. We should not require any further inquiries to tell us that mandatory immigration detention does not work effectively as a system. It has significant detrimental outcomes both for Australia and the people that are directly involved in it.

Personal Background and Experience

I am currently a **fourth year student at the Australian National University** studying a Bachelor of Arts (majoring in Sociology and International Relations) and Laws. I have done relevant courses in Penology (study of prisons), Australian Foreign Policy, International Law and Sociology of Third World Development.

I have been **involved with the issue of immigration detention since 2001** when I did a year 8 school project about the use of immigration detention by Australia. During the project I personally interviewed Philip Ruddock about the use of mandatory immigration detention, particularly in relation to Children.

Since then I was appointed as the **ChilOut youth ambassador for the ACT**. ChilOut was one of the key organisations which advocated for the removal of children in immigration detention. In 2006 ChilOut disbanded believing that its aims had been achieved with the successful removal of children from immigration detention centres. Unfortunately within the last year ChilOut has been forced to re-form due to the significant increase in the number of children remaining in the various forms of immigration detention. My involvement with ChilOut included a variety of activities such as going to schools and public forums to discuss the importance of refugees being allowed to come to Australia and the problems with detention centres.

I **personally visited Baxter detention centre** in South Australia during 2005 at the age of 16. I did this with my friend Sr Jane Keogh. During my visit I engaged with various families there and witnessed the terrible effects that detention has on children and families as a whole. I witnessed the nature of places of detention and find that they are abysmal places for anyone to be held.

In recent years I have become friends with people that have been released from immigration detention centres. Each of them has not only been scared by the reasons for their asylum application, but also by the horrific nature of being detained by Australia while their applications for asylum were processed.

Summary of recommendations

1. Cease the use of immigration detention for the purpose of processing asylum claims.
 - (a) If detention is retained for any purpose it should only be used temporarily before people are deported for legitimate legal reasons.
 - (b) If detention is retained it should genuinely be used as a last resort after all other avenues have been tried and exhausted for each individual.
2. If you chose to retain immigration detention centres then contracts with private companies such as Serco should be cancelled and they should instead be run directly by appropriate government departments.
3. Offshore processing should not be used. It is far cheaper and more humane to process people on mainland Australia.

My submission is structured around the Terms of Reference for this inquiry.

Should you have any questions I would be very pleased to appear in my personal capacity before the committee. This would be easy for me as I live here in Canberra.

Yours sincerely

William Mudford

Introduction

I note that there have been many inquiries and reports made about Australia's use of immigration detention. Many recommendations I will be making have already been made by such inquiries but I feel that by making a submission I can add a personal view and experience of this horrendous policy of detaining innocent people. To allow the committee the easiest possible way of processing my submission and using the information I provide, I have structured my submission around the terms of reference for the inquiry.

This is a personal submission about Australia's immigration detention network. No element of my submission is to be construed as the view of any organisation I have been involved in. These are my own personal observations and views. Any mention of any organisation I have been involved in is merely by way of context to my involvement in the issue and to demonstrate my experience and the credibility of my own information.

Terms of Reference

(a) any **reforms needed to the current Immigration Detention Network in Australia;**

The major reform needed is to **remove most people from immigration detention centres** unless actually required for imminent and legally founded need for removal from Australia. This will allow many of the inefficient and costly detention facilities to be closed down.

People need to be removed from detention regardless of age or gender

It is extremely important that all children are removed from detention but also very important that people of all ages are not subjected to this inhumane practice. People seeking asylum in Australia have not committed any crime under international law. The Refugee Convention and Protocol explicitly state the right to seek asylum in any country that has signed those documents. People should not be detained unless they have faced trial for a crime and been convicted of that crime. The long term detention of people, regardless of purpose of that detention is detrimental to their health.

Risks

The risk to people's lives is far greater if we continue to incarcerate them than if we were to allow people to live in the community. There is very little risk to processing people in the community. We regularly allow a variety of people to enter our large country for a variety of purposes. A vast majority of people commit no crime while they are here. People coming to Australia seeking asylum need our assistance and are unlikely to commit serious crime while here. There is a far greater risk that Australia is harming them than they will harm Australia or anyone else that is within its borders.

(b) the **impact of length of detention** and the **appropriateness of facilities and services for asylum seekers;**

Indefinite and indeterminate

The biggest problem with the length of detention is the indeterminate nature of it. People waiting in detention centres do not have the ability to know or control the length of their incarceration. At least sentenced prisoners are afforded the right of knowing the length of their sentence, along with a

tribunal of inquiry proving the need for them to be behind bars. Unfortunately asylum seekers and other people in immigration detention are not afforded this human right. This has horrible effects psychologically on the people detained.

Control of own lives

One of the biggest problems with detention is that it is run much like a prison and people have very little control over their own lives, where they go, what they eat, what they do, when they sleep etc are all controlled by the institutional nature of detention centres. People do much better in the community being able to control their own lives. Allowing people to control their own lives is also far better economically as the community and its services directly support people, rather than relying on the vast sums of money that the federal government currently pays to private companies to run these places of detention.

Facilities and Services

Location

One of the biggest problems for facilities and services in immigration detention is the remote locations of them. I visited Baxter detention centre. Not only is it not near a capital city, it was even a long way out of a small town in South Australia. This made it difficult for people to visit the detainees and it also makes it difficult for essential medical, psychological and educational services to be provided to detainees.

I recommend that all remote detention facilities be closed and if immigration detention is retained that they are only located in capital cities where people have access to the important services that they require.

- (c) the **resources, support and training for employees of Commonwealth agencies** and/or their agents or contractors in performing their duties;

My personal experience with the staff in immigration detention is that, like other members of the population, some of the staff are nice and others are not so nice.

The biggest problem is that it is **difficult for the immigration detention system to engage top quality staff** because of the **location** and because a **private company** is running them and wants to make a **profit**.

Staff with the appropriate training and experience to deal with these people (who have experienced torture and other practices which result in them seeking asylum) are unlikely to be living in these remote locations and are unlikely to want to move to these remote places to work. This results in private companies engaging low skilled people to run detention centres. Having insufficient skills and experience leads to mistreatment and inability to cope with these complex circumstances.

Private contracting and the profit motive: Private companies are not in the business of running detention centres to do a quality job of helping these people, **they are there to make a profit**. The problem is that this becomes the sole driver of all things that happen within these institutions. Staff are inadequately trained, paid and supported because the companies running them make profit out of not doing so. Wages are a significant cost to any private company contracted to run the facilities.

People that are adequately trained and experienced command better pay and this creates a disincentive for private companies to employ them. This is one of the key reasons that Immigration detention should only be part of a government department, not controlled by the profit margin of a private company listed on the stock exchange.

(d) the health, safety and wellbeing of asylum seekers, including specifically children, detained within the detention network;

My personal experience of the health, safety and well-being of the detention system comes from a) visiting Baxter detention centre and b) having personal friends and contact with people that have been released from detention.

Many people who are in the detention system having made a claim for asylum have experienced extremely traumatic events. Detaining them in a prison like environment is not going to help them recover. This is cruel and inhumane regardless of whether they are later found to be a refugee under the UN convention and protocol.

When I visited a child and their family that were detained in Baxter I could see that the child was clearly distressed from the monotony of a confined life. Being a child in detention meant that that child could not have any form of social life with the peers at their school. Every day after the child left school they were forced to return to the centre rather than be able to make friends and visit other children. At one point this child and their mother were allowed to be detained in a community detention facility. This separated them from the father of the family. While in the 'community' detention the family was still surrounded by guards and large fences. The problem was that this maintained the harsh environment of detention with little environmental benefit for them. It kept them from accessing the community properly and caused them significant distress to be separated from each other.

(e) impact of detention on children and families, and viable alternatives;

As I just mentioned detention has extremely bad effects on families and children. The only viable alternative to detention is to allow people to **live in the general community** of well **resourced places in Australia**. Children and their families need access to high levels of support regardless of whether they are later found to be convention refugees. They need access to healthcare and education in order to recover from the trauma and disruption that they have experienced.

Experience of other countries

Allowing people claiming asylum to live in the community is the norm in other countries. Other countries such as Ireland do not have detention centres. People that seek asylum are able to live in the community. This works well for these countries and Australia should stop using detention for the purpose of processing asylum claims.

(f) the effectiveness and long-term viability of **outsourcing immigration detention centre contracts to private providers**;

Logical Problems with outsourcing to private companies

It is very clear that private companies are not the best operators of detention facilities. Rather the government should return immigration detention to an in house agency run like other places of detention (such as prisons) within Australia. Theoretically and in practice it costs more for private companies to run detention centres because they are doing it for the **profit of their shareholders**. There is no viable possibility for on going **market competition** to reduce the costs of detention. Competition only occurs effectively when there is more than one constant player in the market. This does not exist in relation to immigration detention centres where one company receives a long term contract and is allowed to continue to run that centre regardless of their actual performance. **This is why any remaining detention centres should be run by the government. Profit should not be a motive when dealing with the detention of people.**

Problems with the current operator Serco: research into the international reputation and operations of Serco shows that it is not a responsible corporation to its workers nor detainees. Serco is well known in the UK for running places of detention that breach peoples human rights.¹ This company has been found to be one of the most unethical companies in the UK.² This company should not be allowed under any circumstances to continue to run places of detention.

(g) the impact, effectiveness and **cost of mandatory detention and any alternatives, including community release**; and

It is well documented that detention centres cost a significant amount of money. There is little gained out of incarcerating people for long periods of time.

The money currently spent on detention could be far better spent on providing support and education to the people seeking asylum in Australia.

Community release would be a far cheaper option as charities and other organisations will be able to help support the people that will arrive in our community.

(h) the **reasons for and nature of riots and disturbances** in detention facilities;

Riots and disturbances occur under extreme frustration for detainees. The environment of incarceration generates the reason that detainees have little other outlet than to physically act out the horror and injustice of what is happening to them. That is why the vast majority of people should no longer be detained. It just creates more problems, frustration, cost and harm.

1 <http://www.medicaljustice.org.uk/content/view/811/>

2 <http://www.ethicalconsumer.org/commentanalysis/features/isthatwhatyoucallgoodservice.aspx>

Someone I know personally was in immigration detention for a significant period of time. During their incarceration they were treated with a lot of contempt. At one point they acted out against a member of staff due to frustration at their treatment. This would not have been able to occur had the person I know not been wrongly detained and humiliated by the experience.

- (i) the performance and management of Commonwealth agencies and/or their agents or **contractors in discharging their responsibilities associated with the detention** and processing of irregular maritime arrivals or other persons;

Use of the Navy

The government should stop using the navy and never use the SAS to detain people. These parts of our government should only be used as defence force. Asylum seekers are not a dangerous force. It costs too much to continue to use these agencies. Instead people with appropriate training and resources should be dispatched to collect any boat stranded in our territorial waters.

- (j) the **health, safety and wellbeing of employees of Commonwealth agencies** and/or their agents or contractors in performing their duties relating to irregular maritime arrivals or other persons detained in the network;

I have little to say on this issue because I have had little contact with these people or experience in their conditions. However it is logical that improperly trained and supported staff are unable to cope effectively with the horrific and unjustified nature of incarceration.

Future OH&S claims of staff

The other thing to consider on this issue is that staff of these facilities who are not properly trained or supported may be able to take legal claims to the government and corporations employing them for any physical or psychological harm they suffer themselves through their employment.

- (k) the level, adequacy and effectiveness of **reporting incidents and the response to incidents** within the immigration detention network, including relevant policies, procedures, authorities and protocols;

There is a significant **need for an independent arbiter and monitoring process for detention facilities**. Human rights agencies are too under resourced to be dealing with and monitoring detention facilities. Instead the government should create a separate organisation or agency arm to do this process. An independent investigator is the only way we can ensure that facilities comply with human rights standards set for them.

- (l) compliance with the Government's **immigration detention values** within the detention network;

Many of these values are not what they should be. The first value should be removed as it is manifestly wrong and creates a terrible system of locking people up. I will now address the issue of compliance with each of these values.

1. Mandatory detention is an essential component of strong border control

This first value is manifestly wrong and should be removed. Mandatory detention is what creates the significant problem of overcrowding in detention and the negative effects on people.

2. To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:

- a. **all unauthorised arrivals, for management of health, identity and security risks to the community**
- b. **unlawful non-citizens who present unacceptable risks to the community and**
- c. **unlawful non-citizens who have repeatedly refused to comply with their visa conditions.**

The detention of all unauthorised arrivals is an excessive use of detention facilities. These people can relatively easily be monitored and supported in the community.

People who have refused to comply with Visa requirements may be prosecuted and then given a sentence rather than detained automatically in detention with what is effectively an indefinite sentence for committing no crime.

3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre (IDC).

If this value has been complied with, then why are there so many young people and their families remaining in detention? This is a ridiculous process.

This value actually needs to be implemented. Families need to be automatically put into the community and supported by effective agencies and people trained in this area of assisting people who have faced torture and other forms of trauma.

4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.

This is an important value that should be maintained. It needs to be actually implemented. There is far too much arbitrary detention of people due to the process of mandatory detention.

5. Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.

The very practice of mandatory detention means that it is not being used as a last resort. Mandatory means that if these people fall into that category then they are automatically detained. This is a horrible practice. Instead only after problems are found with people should they have any possibility of being detained. Even then the individual personal cases should each be assessed for appropriateness of detention.

6. People in detention will be treated fairly and reasonably within the law.

People international human rights are being violated by the detention process. Australia needs to change its practices so that it can comply with those laws.

Remote detention of people is stopping their access to lawyers this is stopping them from being treated fairly by the system designed to process them.

7. Conditions of detention will ensure the inherent dignity of the human person.

The very idea of detention removes the dignity of people, that is why detention should not be used and it should not be used in a mandatory manner.

(m) any issues relating to **interaction with States and Territories** regarding the detention and processing of irregular maritime arrivals or other persons;

Costs that will be given to the states and territories: When people are released from detention they will be accessing services run by state and territory governments. These governments should be compensated by the commonwealth for providing those services.

(n) the **management of good order and public order with respect to the immigration detention network;**

Treat the cause not the symptoms. There are structural causes of the disorder that is occurring in detention centres. If people are not detained they will be less frustrated by the system. Detaining less people and for a shorter amount of time with a clear and justified need with proper support services is far more likely to prevent problems of public order.

(o) the **total costs of managing and maintaining the immigration detention network and processing irregular maritime arrivals or other detainees;**

There are far better places to spend the money and resources. It will be far more efficient to provide services to people who are freely able to live in the community rather than detention centres. The time and life of the detainees are valuable things in themselves and the more we detain them the greater personal cost exerted on them. Detaining people is a waste of these people with valuable skills. They need of our support rather than be detained. With our support they will be able to make even greater contributions to our society.

(p) the **expansion of the immigration detention network**, including the cost and process adopted to establish new facilities;

I strongly recommend not expanding the detention network

If the facilities are to be altered in any way they should be located in cities with adequate medical and associated support services with the possibility of employing sufficiently trained people at all levels of the agency running the institutions. Remote detention centres such as the one on Christmas Island should be closed.

(q) the **length of time detainees have been held in the detention network**, the reasons for their length of stay and the impact on the detention network;

People should not be detained for any length of time. By using mandatory detention the amount of people in immigration detention is far higher than it would be if only the limited number of people who need to be detained for imminent deportation were incarcerated there.

(r) **processes for assessment of protection claims made by irregular maritime arrivals and other persons and the impact on the detention network; and,**

The process does not require the detention of people claiming asylum. Thus there is no significant reason to be continuing to detain them.

(s) **any other matters relevant to the above terms of reference.**

Compliance with Human Rights standards

It is clear that immigration detention does not comply with international human rights standards. For this reason alone it should be discontinued immediately.

Child Safety

Detention centres are dangerous places for children. The trauma placed on children from being detained is significant and long lasting. Detention should be stopped.

A clear stream of evidence has been consistently submitted to governments from all sides of politics. This evidence has consistently shown that detention centres need to be emptied and proper support services provided to all asylum seekers and people previously detained in detention centres. Detaining people costs a lot of money and only creates further problems for these people.

There should be no further need for inquiries if the government and parliament acted on the sensible suggestions of previous inquiries into the issue. **The Human Rights Commission Report *A Last Resort* should be fully implemented.**

The money spent on inquiries (and other issues related to detention) would be far better spent actually processing people and providing them with the services and support that they need.

END OF SUBMISSION